

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

June 25, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Vince Ruegamer

ROLL CALL

MINUTES – May 29, 2007

June 11, 2007

COURTESIES

- Eagle Scout Recognition for Nicholas Peter

PROCLAMATIONS

- July 4-7, 2007 - Gold Wing Riders Association/Canadian Appreciation Days

ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 4, 5, 6, 7, and 8 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

### **CONSENT AGENDA:**

**1. A. Mayor's Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.		Library Board	06/25/07	12/31/07

1. Unexpired term of Steven Tucker.

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

**B. Bid Awards:**

(1) **SID 1375, Claremont Road Improvements.** (Opened 6/5/07). Recommend H.L. Ostermiller, \$297,665.92.

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

(2) **SID 1377, Greenbriar Road Improvements.** (Opened 6/5/07). Recommend H.L. Ostermiller, \$140,188.70.

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

(3) **W.O. 05-02 2005-2006 Miscellaneous/Developer Related Improvements.** (Opened 6/12/07). Recommend CMG Construction, Inc. \$429,845.00.

[\(Corresponding Staff Memo B3\)](#)

(4) **W.O. 05-14 Walter Pump Station Improvements.** (Opened 6/12/07). Recommend COP Construction, \$2,798,325.00.

[\(Corresponding Staff Memo B4\)](#)

(5) **W.O. 06-18 Broadwater Subdivision Improvements, Phase V.** (Opened 6/12/07). Recommend JTL Group, Inc., \$594,500.00.

[\(Corresponding Staff Memo B5\)](#)

(6) **W.O. 07-03 2007 Street Maintenance Contract No. 2.** (Opened 6/12/07). Recommend Riverside Sand & Gravel, Inc., \$1,111,111.11.

[\(Corresponding Staff Memo B6\)](#)

(7) **Airport Terminal Building Roofing Project.** (Opened 6/12/07). Recommend Commercial Roofing, \$371,800.00.

[\(Corresponding Staff Memo B7\)](#)

(8) **Airport Paving of the Overflow Parking Lots.** (Opened 6/12/07). Recommend JTL Group, Inc., \$288,178.35.

[\(Corresponding Staff Memo B8\)](#)

**C. Contract for Professional Services** with HDR Engineering, Inc. for Water System Emergency Power Supplies, \$74,639.00.

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

**D. Approval** of 3-year lease with Montana GSE, Inc. for lower level commercial airport terminal building space (July 1, 2007 – June 30, 2010).

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

**E. Approval** of hourly rate increase with Guardian Security for Library guard service to \$15.70 for the third year of a 3-year contract.

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

**F. Approval** of Police Department request to purchase Crime Analysis Reporting Software from Omega Group, \$37,890.00.

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

**G. Agreements** for Landfill Use with Bighorn County, Carbon County, Musselshell County, Stillwater County, Treasure County, Town of Columbus, Town of Fromberg, Town of Hysham, Town of Bridger, Town of Joliet, City of Laurel, and City of Red Lodge (7/1/07 – 6/30/08); and **Amendment #1** to the 3-year Landfill Use Agreement with Yellowstone County.

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

**H. Amendment #13, W.O. 05-14 Walter Pump Station Improvements.** Professional Services Contract, Morrison-Maierle, Inc. \$359,668.00.  
[\(Corresponding Staff Memo H\)](#)

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

(1) Parcel 1: Portion of Tract 2, Certificate of Survey 205, Joe Ann Black. \$9,218.50.

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

(2) Parcel 6: Portion of Lot 6, Welsh Subdivision, Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and Quincy & Sarah Clark. \$4,150.00.

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

(3) Parcel 7: Portion of Lot 7, Welsh Subdivision, Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and Quincy & Sarah Clark. \$1,800.00.

[\(Corresponding Staff Memo I3\)](#)

(4) Parcel 8: Portion of Lot 8, Welsh Subdivision, Quincy & Sarah Clark. \$2,000.00.

[\(Corresponding Staff Memo I4\)](#)

**J. Street Closure:** Gold Wing Road Riders request temporary street closure for parade on Thursday, July 5, 2007, from 3:00 p.m. to 7:00 p.m. originating at Faith Chapel; turning right on Shiloh Road; right on Rimrock Road; right on 38<sup>th</sup> Street West; left on Poly Drive; right on North 30<sup>th</sup> Street; ending at 1<sup>st</sup> Avenue North and North 30<sup>th</sup> Street.

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

**K. Acceptance of Donation:** Approval and acceptance of donation from BikeNet to the Big Ditch Trail Project, \$10,100.00.

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

**L. Acceptance of Donation:** Approval and acceptance of donation from St. Vincent's 2006-2007 Heart and Sole Run to the Main Street Underpass Project, \$10,000.00.

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

**M. Resolution** adopting the continuance of Resolution #06-18421 adopted by Council on May 22, 2006, for park ball field fence advertising, and extending the one-year time period indefinitely.

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

**N. Second/final reading ordinance expanding Ward V (Annex #07-08)** for Tract 3, Certificate of Survey 2298, containing approximately 4.27 acres located at Grand Avenue and 56<sup>th</sup> Street West. Hope Evangelical Church, owner.

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

**O. Second/final reading ordinance expanding Ward I (Annex #07-09)** for property described as: NW1/4 of Section 16, and the SW1/4 of Section 9, T1S, R26E and located on the southeast corner of the intersection of King Avenue East and Calhoun Lane. Miller Trois LLC, owner.

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

**P. Preliminary Subsequent Minor Plat** of Amended Lot 1, Block 1, Grand Avenue School Subdivision generally located on the south side of Grand Avenue between 13<sup>th</sup> and 14<sup>th</sup> Streets West, School District No. 2, owner, approval of the plat and adoption of the Findings of Fact.

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

**Q. Preliminary Major Plat** of King Meadows Subdivision generally located on the southeast corner of the intersection of King Avenue West and 48<sup>th</sup> Street West, conditional approval of the plat, approval of the variances, and adoption of the Findings of Fact.

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

**R. Bills and Payroll**

(1) May 25, 2007

[\(Corresponding Staff Memo R1\)](#)

(2) June 1, 2007

[\(Corresponding Staff Memo R2\)](#)

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

**REGULAR AGENDA:**

**2. RESOLUTION** approving and adopting the FY 2007-2008 Budget. Staff recommends approval. Delayed from 6/11/07. **(Action:** approval or disapproval of staff recommendation.)

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

**3. RESOLUTION** setting FY 2008 mill levy rates for the General Fund, Transit Operating Fund, Library Operating Fund, and Public Safety I Fund. Staff recommends approval. Delayed from 6/11/07. **(Action:** approval or disapproval of staff recommendation.)

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

**4. RESOLUTION** relating to \$10,700,000 General Obligation Bonds, Series 2007A and \$1,800,000 General Obligation Bonds, Series 2007B; determining the form and details and authorizing the execution and delivery of the bonds. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

**5. APPROVAL OF PURCHASE** of 13 patrol cars by June 28, 2007, at 2006-2007 State bid prices currently pending Council approval in the FY08 Equipment Replacement Plan. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**6. APPROVAL OF PURCHASE** of Lots 1-6, Block 1, Rolle Subdivision; Tract 1A, C/S 1434; and Tract 1B-1 of Amended Tract 1B of C/S 1434 (less 1B-1A and Block Otter Subdivision) for the purpose of maintaining the property as undeveloped. Brian Kurth and Black Otter Ventures, LLC, sellers. \$631,806.00. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**7. APPROVAL** of the Downtown Billings Partnership Annual Work Plan and Contract with the City. (**Action:** approval or disapproval of staff recommendation.)

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

**8. APPROVAL** of contract for City Hall Chiller System Rooftop HVAC Upgrade (Opened 6/19/07). Recommendation to be made at meeting.

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

**9. PUBLIC HEARING AND RESOLUTION** to file for the annual Federal Transit Administration Section 5307 Grant for federal transportation planning, capital, training, demonstration, and/or operating assistance. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**10. PUBLIC HEARING AND RESOLUTION ORDERING IMPROVEMENTS** for W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48), constructing sidewalks and associated public improvements along 11<sup>th</sup> Street West, O'Malley Drive, and Azalea Lane between Poly Drive and Delphinium Drive; a permanent crossing at 11<sup>th</sup> Street West and Poly Drive; and sidewalks along Beverly Hill Boulevard funded through a Safe Routes to School grant. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**11. PUBLIC HEARING AND RESOLUTION CREATING SID 1378, CLEVENGER AVENUE IMPROVEMENTS.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #807:** A zone change from Residential 6,000 Restricted to Community Commercial and Residential Professional (RP), and located on the southeast corner of Zimmerman Trail and Avenue E. Zoning Commission recommends

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

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

**13. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #808:** A zone change from Residential Multifamily to Planned Development, and located on North 26<sup>th</sup> Street bordered by 7<sup>th</sup> Avenue North, North 25<sup>th</sup> Street, and North 26<sup>th</sup> Street. Thomas Towe and Court E. Ball Partnership, owner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**14. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #809:** A zone change from Public to Community Commercial, and located on the southeast corner of 14<sup>th</sup> Street West and Grand Avenue. School District No. 2, owner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 14\)](#)

**15. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #810:** A text amendment to Section 27-601, Parking and Storage Regulations, regulating parking and storage in residential zoning districts and commercial or industrial zoning districts. Zoning Commission recommends approval of Zone Change #810, including Section 27-601(a)7 if a permitting system or similar system to control personal recreational vehicles on residential property is developed and denial of Section 27-601(b)7. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**16. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #811:** A text amendment to Section 27-1502(b) Amendments to Chapter, Applications for map amendments. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**17. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #812:** A text amendment to Special Review Uses, Sections 27-306; 27-601; 27-612; and 27-613, revising commercial and industrial use regulations. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**18. 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, JUNE 25, 2007**

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**TITLE:** Boards & Commissions –Appointment  
**DEPARTMENT:** City Administrator’s Office  
**PRESENTED BY:** wynnette Maddox, Administration

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

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

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Library Board	06/25/07	12/31/07

2. Unexpired term of Steven Tucker.

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

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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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**TITLE:** SID 1375 Claremont Road Bid Award  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** SID 1375 Claremont Road was bid on Tuesday, June 5, 2007. This project will construct water, sanitary sewer, storm drain, curb and gutter, and street improvements to Claremont Road between Gleneagles Boulevard and Lake Hills Drive.

**ALTERNATIVES ANALYZED:**

1. Award SID 1375 or;
2. Do not award SID 1375.

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

Engineer's Estimate	\$298,885.50
H.L. Ostermiller	\$297,665.92
COP Construction	\$349,476.00

**RECOMMENDATION**

Staff recommends that Council SID 1375 to H.L Ostermiller in the amount of \$297,665.92.

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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TITLE: SID 1377 Greenbriar Road Bid Award  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** SID 1377 Greenbriar Road was bid on Tuesday, June 5, 2007. This project will construct water, sanitary sewer, storm drain, curb and gutter, and street improvements to Greenbriar Road between Hillcrest Drive and Lake Hills Drive.

**ALTERNATIVES ANALYZED:**

1. Award SID 1377 or;
2. Do not award SID 1377.

**FINANCIAL IMPACT:** The total estimated costs of the Improvements are \$158,449.80. The costs of the Improvements are to be paid from the following sources: (1) \$58,000.00 of Special Improvement District to be assessed to 3 properties; and (2) \$100,449.80 of cash contribution by Ron Hill, owner of 5 of the 8 lots in the District. We received two bids for the project as follows:

Engineer's Estimate	\$121,682.14
H.L. Ostermiller	\$140,188.70
COP Construction	\$143,271.00

The apparent low bidder is \$18,506.56 above the engineer's estimate in which Ron Hill has agreed to make up for. Ron Hill's cash contribution will be \$118,956.36 plus \$2,522.25 in fees.

**RECOMMENDATION**

Staff recommends that Council award SID 1377 to H.L. Ostermiller in the amount of \$140,188.70.

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

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 25, 2007

TITLE: W.O. 05-02, 2005 & 2006 Miscellaneous/Developer Related Improvements

DEPARTMENT: Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for the 2005 & 2006 Miscellaneous/Developer Related Project on June 12, 2007. The Miscellaneous/Developer Related Project represents curb, gutter, and sidewalk improvements at various locations in the city. On April 9, 2007, Council passed a Resolution Ordering Improvements for the 2005 & 2006 Miscellaneous/Developer Related.

#### ALTERNATIVES ANALYZED:

1. Award Work Order 05-02, 2005 & 2006 Miscellaneous/Developer Related Project; or
2. Not award Work Order 05-02, 2005 & 2006 Miscellaneous/Developer Related Project.

**FINANCIAL IMPACT:** The proposed project is funded in FY '07 through multiple sources, including direct property assessments for a total project cost of \$616,020, as follows:

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

We received three bids for this project as follows:

	<u>WO 05-02</u>
Engineer's Estimate	\$480,689.50
CMG Construction, Inc.	\$429,845.00
H.L. Ostermiller	\$676,407.00
J & J Concrete	\$496,400.00

## **RECOMMENDATION**

Staff recommends that Council approve the construction contract for the 2005 & 2006 Miscellaneous/Developer Related Project with CMG Construction, Inc. in the amount of \$429,845.00.

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

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 25, 2007

TITLE: W.O. 05-14—Walter Pump Station Improvements, Construction Contract Award

DEPARTMENT: Public Works

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

**PROBLEM/ISSUE STATEMENT:** This project encompasses expansion and improvements to the Walter Pump Station. The upgrades will improve the water service to the Heights area and will replace existing pumps with new higher-efficiency pumps. The project was designed by Morrison Maierle, Inc. in conjunction with HDR Engineering, Inc., and the City has a contract with Morrison Maierle, Inc. for these professional services. Bids were opened for the project June 12, 2007, and by law, Council must act on the bid opening at this meeting.

**FINANCIAL IMPACT:** The project is being funded by Utility Water Revenue Funds. The associated CIP (FY 2007: PUD-102) provides \$1,800,000 for construction costs as well as CA, and has been approved by the Mayor and City Council. Due to the high priority of this project, Staff will be recommending to Council the delay of a FY 08 project to free up additional funds.

Bids were opened June 12, 2007, with the following results:

<b>Firms:</b>	<b>COP Construction</b>	<b>Williams Brother Construction</b>	<b>Engineer's Estimate</b>
Construction Lump Sum:	\$ 2,694,940.00	\$ 2,902,000.00	\$ 2,500,000.00
Alternate #1 (portable generator):	\$ 103,385.00	\$ 109,000.00	\$ 100,000.00
<b>TOTAL:</b>	<b>\$ 2,798,325.00</b>	<b>\$ 3,011,000.00</b>	<b>\$ 2,600,000.00</b>

## **RECOMMENDATION**

Staff recommends that Council award a construction contract for W.O. 05-14—Walter Pump Station Improvements to COP Construction, Inc. for \$2,798,325.00.

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

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 25, 2007

TITLE: W.O. 06-18, Broadwater Subdivision – Phase V, Curb/Gutter and Street Reconstruction

DEPARTMENT: Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for W.O. 06-18 Broadwater Subdivision Phase V on June 12, 2007. This project consists of reconstructing the streets in Broadwater Subdivision and removing/replacing or installing any defective or nonexistent curb/gutter and sidewalk.

#### ALTERNATIVES ANALYZED:

1. Award W.O. 06-18 Broadwater Subdivision – Phase V, to JTL Group, Inc. in the amount of \$594,500.00; or
2. Reject all bids and do not award W.O. 06-18 Broadwater Subdivision – Phase V

**FINANCIAL IMPACT:** Assessments to property owners are estimated to be \$251,000 in bonded costs. The remaining project costs are to be paid for from City funds. We received one bid for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 641,800.00
JTL Group, Inc.	\$ 594,500.00

A breakdown of the project funds is listed below:

#### Broadwater Phase V Improvements Funding

Storm Drain Funds	\$ 50,000.00
Gas Tax Funds	\$ 415,000.00
Property Assessments (Construction Only)	\$ 194,800.00
Previous Encumbrance	\$ (10,000.00)
<u>Contract Amount (This Memo)</u>	<u>\$ (594,500.00)</u>
<b>Remaining Funds</b>	<b>\$ 55,300.00</b>

## **RECOMMENDATION**

Staff recommends that Council award JTL's bid for W.O. 06-18 Broadwater Subdivision – Phase V in the amount of \$594,500.00.

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
Monday, June 25, 2007

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TITLE: Work Order 07-03, 2007 Street Maintenance Contract No. 2  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for the 2007 Street Maintenance Contract No. 2 on June 12, 2007. This project will overlay streets within the Gateway Business Park and Parkhill Drive between 13<sup>th</sup> and 17<sup>th</sup>.

**ALTERNATIVES ANALYZED:**

3. Award Work Order 07-03, Contract No. 2, to Riverside Sand & Gravel, Inc. in the amount of \$1,111,111.11; or
4. Not award Work Order 07-03, Contract No. 2.

**FINANCIAL IMPACT:** Funding for the 2007 Street Maintenance Program, Contract No. 2, will be provided from Gas Tax and Street Maintenance Funds. We received two bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 1,186,593.00
Riverside Sand & Gravel, Inc.	\$ 1,111,111.11
JTL Group, Inc.	\$ 1,190,527.95

**RECOMMENDATION**

Staff recommends that Council approve the construction contract for the Street Overlay Maintenance Project with Riverside Sand & Gravel, Inc. in the amount of \$1,111,111.11.

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

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## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, June 25, 2007

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TITLE: Approval of the Award of the Airport Terminal Building Roofing Project for Billings Logan International Airport

DEPARTMENT: Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Included in the City's Capital Improvement Program is the Roofing Upgrade for the Airport Terminal Building Roofing project. As recommended in the Airport Terminal Roofing Survey done in 2004, the identified roof replacement project will eventually remove and replace 10 sections of roofing on the Terminal Building, encompassing 45,000 square feet that is badly leaking or nearing the end of the roofing material's life cycle. The new roofing system will be an Ethylene Propylene Diene Monomer (EPDM) roof membrane installed over a new tapered insulation roof system. This new system will have a higher insulation value than the old roof and will decrease the heating and cooling costs. Additionally, there will be less maintenance costs, as there will be significantly less water leakage into the Terminal once the new roofing is in place. Due to the anticipated high cost to replace all roof sections that were identified in the 2004 study, the roof replacement was placed in the City's CIP plan over a three-year period. This year's project will replace the 28,478 square feet of the roof that is in the worst shape. The remaining sections of roof that are nearing the end of their useful life will be bid in the future. This project was advertised in the *Billings Times*, and on the City's Web site. On June 12, 2007, we received the following bids for this project:

<b><u>CONTRACTOR</u></b>	<b><u>BID</u></b>
Commercial Roofing	\$371,800
Empire Heating and Cooling	\$405,800
<b>ESTIMATE</b>	<b>\$350,000</b>

**FINANCIAL IMPACT:** The total cost of the project is \$371,800. The source of funding for this project is the Department's Capital Budget.

## **RECOMMENDATION**

Staff recommends that the City Council approve the award of the Airport Terminal Building Roofing project to the low bidder Commercial Roofing, for the amount of \$371,800.

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

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 25, 2007

TITLE: Approval of the Award of the Paving of the Overflow Parking Lots for Billings Logan International Airport

DEPARTMENT: Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** Included in the City's Capital Improvement Program is the Paving of the Overflow Parking Lots project. As you may be aware, the overflow parking lots, located on the west end of the Terminal, are now being used almost every weekend throughout the year. These lots are currently gravel surfaced with minimal drainage for storm water, and as a result, they can be difficult to walk through during wet and snowy conditions. This project will provide 141,112 square feet of new asphalt pavement surface, 287 parking stalls, a formal drainage system, and sidewalks to provide a better access route to the Terminal Building. This project has been advertised in the *Billings Times*, and is on the City's Web site. On June 12, 2007, we received the following bids for this project:

<b><u>CONTRACTOR</u></b>	<b><u>BID</u></b>
JTL Group, Inc.	\$288,178.35
JEM Enterprises	\$329,270.25
Riverside Sand and Gravel, Inc.	\$393,163.70
<b>ESTIMATE</b>	<b>\$400,000</b>

**FINANCIAL IMPACT:** The total cost of the project is \$288,178.35. The source of funding for this project is the Department's Capital Budget.

### **RECOMMENDATION**

Staff recommends that the City Council approve the award of the Paving of the Overflow Parking Lots to the low bidder JTL Group, Inc., for the amount of \$288,178.35.

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

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

---

**TITLE:** Contract for Engineering Services with HDR, Inc for Water System  
Emergency Power Supplies

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The Billings Water System is dependent upon the electrical grid for operation. Recent widespread blackouts in the northeast demonstrated the danger of not having any backup ability to provide water during such emergencies. In response, Public Works has established a multi-year effort to provide emergency power such that minimum public health supplies of potable water can be maintained during emergencies where the electrical grid is compromised. The priority of effort was established in the 2006 Water and Wastewater Master Plan and the approved Capital Improvement Plan.

Requests for proposal were solicited for engineering services and three engineering firms responded. A selection committee consisting of Alan Towler, Michael Rubich and Steve Bravo of Public Works and David Watterson of the Information Technology Division selected HDR, Inc. to provide the requested services. A contract has been negotiated with HDR for design and construction oversight of emergency power at four of the 11 existing booster pumping stations. The contract also has provisions for modification to provide engineering services for the installation of backup emergency power at the High Service Pumping Station in the future.

**FINANCIAL IMPACT:** The contract is for \$74,639.00. Adequate funds are available in the Water Construction Capital Account to cover this expenditure.

**RECOMMENDATION**

Staff recommends that Council approve a contract with HDR, Inc. in the amount of \$74,639.00 for engineering services related to the installation of emergency power at the water treatment facility and booster pumping stations.

**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, June 25, 2007**

---

TITLE: Terminal Building Commercial Space Lease with Montana GSE, Inc.  
 DEPARTMENT: Aviation and Transit  
 PRESENTED BY: Thomas H. Binford, AAAE, Director of Aviation and Transit

---

**PROBLEM/ISSUE STATEMENT:** Staff has negotiated with Montana GSE, Inc. for a three (3) year Terminal Building Space Lease for the Airport facilities commonly known as Rooms D103 and D104, located on the lower level of the Terminal Building facing the airfield. Montana GSE, Inc. is a local ground equipment repair service provider that proposes to use this garage space to perform maintenance on aircraft tugs and baggage ground-handling equipment owned by the airlines. This Lease is for 1,447 square feet of space. This space was previously leased to Delta Airlines as part of its exclusive use space under Delta's Airline Operating Agreement. Under Delta's bankruptcy restructuring, the airline relinquished this space and it has remained vacant since that time. The location of this space is ideal for Montana GSE, Inc.'s operations in that it will provide close proximity to the airlines' equipment that it currently services via contract with several of the airlines.

**FINANCIAL IMPACT:** The first year of this Lease will generate \$14,470 of revenue for the City's Airport. Subsequent years will be adjusted using the Consumer Price Index for Urban Consumers (CPI-U) to keep pace with annual inflation. This Lease rate calculates out to \$10.00 per square foot per annum.

**RECOMMENDATION**

Staff recommends that Council approve the three (3) year Commercial Terminal Building Lease to Montana GSE, Inc. for the term beginning July 1, 2007 and ending June 30, 2010.

**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, June 25, 2007**

---

TITLE: Library Security Guard Service  
DEPARTMENT: Parmly Billings Library  
PRESENTED BY: Bill Cochran, Library Director

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**PROBLEM/ISSUE STATEMENT:** The City Council approved a three-year agreement with Guardian Security for Library guard service on June 13, 2005. The agreement allows the City and Guardian to negotiate a new hourly rate for the service annually on the anniversary date of the agreement. For the final year of the agreement Guardian has proposed a new hourly rate of \$15.70, which is a \$.35 per hour increase over the current amount which has been \$15.35 for the first two years of the agreement.

**FINANCIAL IMPACT:** The estimated annual cost for the third year of the three-year agreement is \$64,000. The Library has sufficient funds in the proposed FY08 budget to cover the cost of the services.

**RECOMMENDATION**

Staff recommends that Council approve the hourly rate for the last year of the three-year agreement with Guardian Security.

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

**ATTACHMENTS**

- A. Listing of reported incidents – (pages 4 & 5)
- B. Library Journal article regarding Tacoma Library 2/25/02 – (page 6)

## **INTRODUCTION**

The current agreement with Guardian Security is for a three-year period, which began July 1, 2005. The agreement provides for an annual rate adjustment in the hourly amount paid to Guardian Security. The proposed rate charged to the Library for all costs associated with the service Guardian Security provides is an increase of \$.35 per hour with an adjusted hourly rate of \$15.70. This is a 2.3% rate increase and is the only increase requested during the length of the contract. The use of a guard service helps to maintain safety for patrons, staff and facility as per Attachments A and B.

## **PROCEDURAL HISTORY**

Members of the selection committee included Bill Lamdin, Library Board; Officer Mike Samson, Billings Police Department; Candi Beaudry, Planning Division Manager and 4<sup>th</sup> Floor Safety Committee representative; Elizabeth Fellerer, Library Circulation Staff and Sandy Raymond, Library Senior Administrative Coordinator.

The contract was advertised in The Billings Times on April 21 and April 25, 2005. In addition, RFP packets were mailed to the four local security firms listed in the then current telephone directory. Two firms submitted proposals to provide the guard service and copies of the proposals were supplied to committee members a week prior to the interviews on May 19, 2005.

D-N-D	\$15.00/hour with additional charge for security checks of the building beyond 2 times per day
Guardian Security	\$15.35/hour with no charge for 3-4 daily security checks of the building and parking lot late evening and early morning

Guardian Security was chosen by the committee based on the criteria, which was 50% related experience and qualifications and 50% level of service and price.

## **BACKGROUND**

Since the City Council approved the agreement for Library guard service in 1999, the guards have responded regularly to criminal activities including vandalism, theft, indecent exposure, consumption of alcohol and use of illegal substances in the building and on the Library grounds and viewing pornography in children's area and Teen Center. There have been a number of medical emergencies involving people coming into the Library who are injured or incapacitated and need assistance to patrons who have been transported to the hospital for medical attention. On a daily basis they deal with people who are panhandling on Library property and patrons whose conduct is not within the guidelines of the Library policy. See attachment A for a more detailed listing.

The guard is in contact with all floors of the Library at all times via cell phone and is in radio contact with the Guardian Security office and the Library 2<sup>nd</sup> floor via radio. This allows them to respond to incidents in the facility in a short period of time. The agreement also calls for checking the building and parking lot 3 – 4 times during the late evening, early morning, and

weekend hours. These checks have helped the Library avoid problems with vandalism and building maintenance emergency issues. An example of such instances include discovering doors that have been broken in an attempt to break in to the facility and doors that were inadvertently left unlocked. See attachment B for an article regarding guard service at another library.

Since the service started, there have been many positive comments from the public and city staff that enjoy the increased safety and change of atmosphere.

### **RECOMMENDATION**

Staff recommends that Council approve the hourly rate for the last year of the three-year agreement with Guardian Security.

### **ATTACHMENTS**

- A. Listing of reported incidents – (pages 4 & 5)
- B. Library Journal article regarding Tacoma Library 2/25/03 – (page 6)

## **Attachment A**

### **Library Security Guard Listing of Reported Incidents**

#### **Daily Situations**

- advise intoxicated persons that they are not allowed in the Library
- advise people that are panhandling in the Library, lobby and parking lot to move along
- stop people who have set off the Library's security system to see if they have any library items in their possession
- recover patron's personal property left on tables, desks and computer terminals (purses, library cards, billfolds, cell phones etc.)
- enforce Library policies which restrict the use of the children's area and Teen Pit to minors and parents or guardians who accompany them
- enforce cell phone policy
- monitor activities of known registered sex offenders that come into the Library
- monitor people going in and out of the public bathrooms
- monitor children playing on circular staircase or elevators, and locate parents
- monitor people that are loitering on sidewalk around the Library
- help to clear the Library at closing time by asking patrons to shut down computers and checking to insure that all patrons are out of the building and all doors are locked
- check to see that the appropriate doors are locked during regular business hours
- escort staff to their vehicles when the Library closes at 9:00 p.m.

#### **Recent Situations**

- issued 13 criminal trespass warnings to patrons in the past 12 months
- dealt with patrons engaged in arguments in the Library and on the Library property, several of which have included fist fights
- Came to the aid of an Alternatives, Inc. staff member who was trying to locate a male that had walked away from their facility – person located in Library
- Obtained photos of and watched for two gentleman that had threatened a Code Enforcement officer
- Called police and issued criminal trespass warnings to individuals involved in a dispute in the Library that resulted in one person threatening to kill Library staff and other patrons with a large rock he was carrying
- stopped unattended children that were left in a vehicle who escaped from the car and had opened the trunk and were attempting to get into it
- monitored conduct of petition canvassers on Library sidewalk to insure it is not aggressive to the level of being harassment and assist in mediating conflicts between canvassers working on different issues
- prohibited an adult male from entering the women's bathroom in the company of an adult female

- intervened when people circumvent the internet filters to access sexual oriented material in the teen and children's area, per Library policy
- called Fire Department and standby until they can assist sick, injured or impaired patrons
- responded to front desk calls for assistance with irate and/or threatening patrons
- advised people outside of the building that they can't consume alcoholic beverages on Library property
- responded to vehicle accidents in the parking lot
- contacted police when unlocked bicycle stolen from bike rack
- stopped toddlers and small children who are about to wander outside the front doors and into the parking lot
- assisted patrons who have locked keys in their car
- advised adult patrons that sleeping is not allowed in the Library
- upon request, escorted patrons to their vehicles
- investigated inappropriate patron behavior in Teen area
- helped parents locate children that have wandered away
- contacted police when patrons have had personal items stolen in Library
- contacted police when patron reported that a person who they have a restraining order against was following them into the Library
- patrolled areas where empty alcoholic beverage containers have been found both inside the building and on the grounds outside
- stopped people who are abusing the telephone privilege by exceeding the time limit or talking in a loud and or threatening manner on the telephone
- responded to staff calls because adult patron was loud and trying to sabotage one of the computers in the children's area
- investigated problem with patron who was angry and trying to damage security gates
- contacted Police Department and Fire Department regarding a patron who was passed out in the bathroom and could not be awakened
- stopped patrons who were smoking in the Library
- advised maintenance when public bathrooms needed attention because people have been sick and cleanup needs to occur
- enforced Library's policy regarding the requirement for shirts and shoes

#### Other Special Situations

- stopped suspected thief, known to Police Department, who was casing cars in parking lot
- stopped person/s urinating and/or defecating in doorways and/or parking lot and stairway
- removed persons sleeping in NW fire escape
- reported person in possession of a weapon
- stopped person who was committing incident exposure in Library

## Library Journal

### **Tacoma PL Director Says Library Beset by Drunks/Junkies**

-- 2/25/2002

Facing budget cuts in 2001, the Tacoma Public Library, WA, was forced to either reduce hours or trim its security team. In the interest of public service, Director Susan Odencrantz cut security. Though there was little choice, she's paying for the decision now. Odencrantz reports that the library has become a haven for drunks and drug dealers. A large contributing factor was the 2001 closure of a nearby homeless shelter, which was razed to make space for a new convention center. With the shelter gone, the homeless now have relocated to the library, which has experienced a 22 percent rise in gate count while its circulation figures have decreased. As many as 100 homeless are passing the daylight hours at the library, but the number of other patrons is falling off.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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TITLE: Crime Analysis Reporting Software  
DEPARTMENT: Billings Police Department  
PRESENTED BY: Chief Rich St. John

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**PROBLEM/ISSUE STATEMENT:** Currently the Billings Police Department has a software program which collects and retains a wealth of data pertaining to crime trends, crime patterns, statistical information and mapping. However, our current system does not allow us to extract the data in a timely manner to meet our ever growing reporting & data analysis needs. The Police Department needs a solution that will allow our staff to extract the information from our Computer Aided Dispatch (CAD) and Records Management (RM) systems. Once extracted, we need to be able to generate reports, charts, and maps which meet our crime trend, crime pattern, and statistical reporting needs. The information contained in CAD & RM systems include, but is not limited to, calls for service, officer initiated calls, cases, citations, arrests, warrants, and response times. In addition to the benefits already defined, a crime analysis & reporting solution would support a number of department functions to include patrol deployment, special operations, tactical units, investigations, planning and research, crime mapping, crime analysis, crime prevention and administration services. Additionally, this system can interface with the Community Information System, a database of information provided by major entities in the community.

**ALTERNATIVES ANALYZED:** To evaluate and better identify our needs, a committee comprised of the GIS Coordinator, IT Manager, IT Programmer/Analyst, Fire Department, and Department staff was created. Over the course of several months, the committee researched data analysis software, contacted other law enforcement agencies, and viewed data analysis software demonstrations. Subsequently, the committee short listed to the following four major software companies: CADMine by Corona Solutions, ATAC by Bair Corporation, CrimeView by Omega Group, and Data Analyst by New World Systems. An RFP was written and advertised on May 24<sup>th</sup> and May 31<sup>st</sup>, 2007. Two companies responded: New World Systems at \$19,740 and the Omega Group at \$37,890.

The committee evaluated both proposals and recommends accepting the bid from Omega Group. Omega Group was able to provide the following services that New World could not meet at the same level of service.

► Omega Group is an all inclusive product that has the extraction built at the time of implementation time. The extracted data can be manipulated on demand by clicking a button to produce reports, maps, charts, etc., which can be scheduled and emailed. The product would provide a greater range of functionality.

► Omega Group has the potential to grow with additional Web and Community modules. These modules, that are available for purchase at a later time, would build upon the software that we are recommending today. The committee favored a solution that provides future opportunities to further improve upon our ability to provide decision making & analytical information to our community and to our officers on the street.

► Omega Group's CrimeView can be used with any CAD/RMS system.

► Omega Group supports the most current ESRI software and data formats. ESRI's software products are the foundation of the City of Billings entire GIS development efforts. Omega Group's commitment to staying current with the developments in this technology are very important to our organization.

► Omega Group's proposes price includes all travel related expenses for installation and training. This approach eliminates the need for the City of Billings to estimate the travel costs such as: airline tickets, rental cars, hotels, meals, etc. The New World price quote did not include these costs.

**FINANCIAL IMPACT:** The CrimeView system from Omega Group has a one-time cost of \$37,890 for all software licenses, installation, training, travel, & computer hardware. The Police Department has budgeted \$35,000 in the current year budget for this new software. The balance of \$2,890 will be funded through the drug forfeiture fund.

### **RECOMMENDATION**

Staff recommends that Council approve the request to purchase the CrimeView system from Omega Group at a cost of \$37,890.

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

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

**TITLE:** 2007/2008 FISCAL YEAR LANDFILL USE AGREEMENTS  
**DEPARTMENT:** Public Works Department  
**PRESENTED BY:** David D. Mumford, Public Works Director

**PROBLEM/ISSUE STATEMENT:** The Billings Regional Landfill currently accepts wastes from adjoining counties and the cities and towns within those counties. This is accomplished via 1-year or 3-year agreements (with annual amendments) with those entities. The current agreements expire June 30, 2007. The renewal of these agreements is recommended to continue the current practice.

**ALTERNATIVES ANALYZED:**

- 1) Renew 1-year or 3-year agreements (with annual amendments) with each entity.
- 2) Do not renew agreements with each entity.

**FINANCIAL IMPACT:** These agreements specify a rate of \$11.50 per ton of waste. This is the same rate charged in the 2006/2007 Fiscal Year Landfill Use Agreements with each entity. We project these agreements will generate \$1,203,000 in revenue in fiscal year 2008.

**RECOMMENDATION**

Staff recommends that the City Council approve, and the Mayor sign, Amendment No. 1 to the 3-year agreement with Yellowstone County and new one-year Landfill Use Agreements with:

Bighorn County  
 Town of Bridger  
 Carbon County  
 Town of Columbus

Town of Fromberg  
 Town of Hysham  
 Town of Joliet  
 City of Laurel

Musselshell County  
 City of Red Lodge  
 Stillwater County  
 Treasure County

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

**ATTACHMENTS**

A – Example of "Standard" Landfill Use Agreement

B – Amendment No. 1 to the 3-Year Agreement with Yellowstone County

## **INTRODUCTION**

The Billings Regional Landfill currently accepts wastes from adjoining counties and the cities and towns within those counties. This is accomplished via 1-year or 3-year agreements (with annual amendments) with those entities.

## **BACKGROUND**

The City of Billings currently provides landfill services to each of the entities listed. The City provides this service based upon a 3-year agreement, with annual amendments, with Yellowstone County and 1-year agreements with the other entities. These agreements allow us to accurately reflect the actual cost of providing service to each entity.

Since each of these other governmental agencies works on a July 1 fiscal year, as we do, staff tries to obtain approval of these agreements before the adoption of both the City of Billings' budget and their budgets. The current rate of \$11.50 per ton is maintained in these agreements.

Previous City Councils have felt that offering landfill services to other communities is worthwhile because the citizens of Billings benefit from spreading the fixed overhead cost of the landfill operation over a larger base. The Landfill Master Plan contemplates providing this service and still shows a landfill life to the year 2049. We provide this "good neighbor" service to surrounding communities and counties that border Yellowstone County but do not have their own landfills.

## **STAKEHOLDERS**

We have held at least bi-annual *Landfill User Summits* since 1994. We extend invitations to representatives from each entity currently using the Billings Regional Landfill. The meetings are used to share statistical information, update participants on current programs, and discuss future plans.

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

The Landfill Master Plan contemplates providing this service and shows landfill life to 2049.

## **RECOMMENDATION**

Staff recommends that the City Council approve, and the Mayor sign, Amendment No. 1 to the 3-year agreement with Yellowstone County and new one-year Landfill Use Agreements with:

Bighorn County  
Town of Bridger  
Carbon County  
Town of Columbus

Town of Fromberg  
Town of Hysham  
Town of Joliet  
City of Laurel

Musselshell County  
City of Red Lodge  
Stillwater County  
Treasure County

## **ATTACHMENTS**

A – Example of "Standard" Landfill Use Agreement

B – Amendment No. 1 to the 3-year Agreement with Yellowstone County

## A G R E E M E N T

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between «ORGANIZATIO» and the CITY OF BILLINGS, MONTANA, a municipal corporation, herein called the CITY,

WITNESSETH:

WHEREAS, «TheOrganization» is desirous of using the landfill facilities of the CITY for the disposal of solid waste generated within «TheOrganization».

WHEREAS, the CITY is willing to allow «TheOrganization» use of its landfill facilities during normal published operating times which currently are seven (7) days a week between the hours of 8:00 A.M. and 5:30 P.M. during the period of March through November and six (6) days a week between the hours of 8:00 A.M. and 5:30 P.M. Monday through Saturday during the period of December through February.

NOW, THEREFORE, in consideration of the mutual covenants and agreements between the parties hereto, it is mutually agreed as follows:

1. That the CITY will permit the disposal of solid waste, except industrial wastes, collected by «TheOrganization» at the landfill facility operated by the CITY at such times as said landfill shall be open for disposal of solid waste pursuant to all rules, regulations, and limitation of Billings Municipal Code, Chapter 21.

2. That «TheOrganization» agrees to pay the CITY for the use of said landfill facilities at the rate of \$11.50 per ton as weighed on the landfill scale. Should the scale be inoperable, the rate will be \$1.45 per cubic yard of non-compacted solid waste and \$3.75 per cubic yard of compacted solid waste as determined by the load capacity of the vehicle used to haul said solid waste regardless of the actual size of the load.

3. The Billings City Council has adopted a policy for separate Landfill charges for the disposal of special waste, dead animals, non-processed tires, and asbestos. Said charges will apply in addition to, or in lieu of, the amount specified in paragraph two above, but it is further understood that the CITY will not hold «TheOrganization» liable for these additional charges but will bill said charges direct to the individual company or entity physically depositing said special waste, dead animals, non processed tires and asbestos at the landfill.

4. Only solid waste generated within the political jurisdiction of «TheOrganization» can be disposed of in the City of Billings landfill.

5. No liquid waste or hazardous waste as defined by the E.P.A. and the State of Montana Solid Waste Bureau will be accepted. By law, any hazardous waste is the responsibility of all parties involved from the time it is generated until its final disposal.

6. It is further understood and agreed that this agreement shall be effective for Twelve (12) Months from and after the 1st day of July 2007, unless terminated by the CITY. The CITY may terminate this agreement at any time, with or without cause, upon thirty (30) days written notice to «TheOrganization».

7. «TheOrganization» waives any and all claims and recourse against the CITY OF BILLINGS, including the right to contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incidental to performance of this agreement.

Further, «TheOrganization» shall indemnify, hold harmless and defend the CITY OF BILLINGS against any and all claims, demands, causes of action, damages, costs, expenses, liability, or judgments against the CITY OF BILLINGS which may arise as a result of the CITY OF BILLINGS entering into this agreement.

Indemnity under this agreement shall commence on the date of execution hereof and shall continue for the entire term this agreement is in effect and for any applicable period of limitations thereafter. The CITY OF BILLINGS agrees to notify «TheOrganization» in writing, within ten (10) days of any claim made against the CITY OF BILLINGS on the obligations indemnified against.

8. It is further understood and agreed that «TheOrganization» may terminate this agreement at any time upon payment in full of any monies owing under this agreement and upon written notice Ninety (90) days in advance to the CITY.

DATED THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

«ORGANIZATIO»

CITY OF BILLINGS

\_\_\_\_\_

\_\_\_\_\_  
RON TUSSING, MAYOR

\_\_\_\_\_

\_\_\_\_\_  
TINA VOLEK, CITY ADMINISTRATOR

\_\_\_\_\_

\_\_\_\_\_  
CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Billings City Attorney

AMENDMENT NO. 1

YELLOWSTONE COUNTY LANDFILL USE AGREEMENT

THE Agreement dated June 12, 2006, between THE CITY OF BILLINGS (City) and YELLOWSTONE COUNTY SOLID WASTE DISPOSAL DISTRICT (District) shall be amended as follows:

For July 1, 2007 to June 30, 2008, the total annual payment shall be \$ 366,900.00

Both parties hereby agree upon this Amendment. All other provisions of the original Agreement remain in full force and effect and shall be undisturbed by this Amendment.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_ 2007.

YELLOWSTONE COUNTY  
SOLID WASTE DISPOSAL DISTRICT

CITY OF BILLINGS

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

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

Attest: \_\_\_\_\_  
Cari Martin, City Clerk

Approved As To Form:

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

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

---

**TITLE:** W.O. 05-14—Walter Pump Station Improvements, Professional Services Contract with Morrison Maierle, Inc.—Amendment No. 13

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The City of Billings and Morrison-Maierle, Inc. (Consultant) agreed to a Master Contract on February 24, 1997. This original contract for Professional Services covers numerous Water/Wastewater Capital Improvement Projects, including improvements to the Walter Pump Station (W.O. 05-14). Amendment No. 12, approved by Council June 12, 2006, provides services for preliminary and final design and initial bidding of the new pump station, which has been completed.

The changes in Amendment No. 13 include providing Professional Engineering Services for bidding and construction administration (CA). Tasks include, but are not limited to, bidding assistance; post-bid administrative services; contract preparation; construction initiation services; project assistance, administration, and coordination; field observation, inspection, and survey; construction wrap-up and completion assistance; and post-construction warranty services. A copy of Amendment No. 13 is on file in the City Clerk's office.

**FINANCIAL IMPACT:** The project is being funded by Utility Water Revenue Funds. The associated CIP (FY 2007: PUD-102), providing \$1,800,000 for construction costs as well as CA, has been approved by the Mayor and City Council. Amendment No. 13 represents an increase in the amount of the contract by \$359,668.00. There are funds available to cover the increase.

Funding Sources: Water Revenue Funds—CIP #PUD-102 (FY 2007)

Approved Dollar Amount:	\$ 1,800,000.00
Spent (and obligated) to date:	\$ 0.00
Amount being requested:	\$ (359,668.00)

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute Amendment No. 13 to the Professional Services Contract with Morrison-Maierle, Inc., in the amount of \$359,668.00 for bidding and construction administration services.

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

---

**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #1, a Portion of Tract 2 of Certificate of Survey No. 205 with Joe Ann Black

**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 #1 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 \$9,218.50. 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 \$9,218.50. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, the cost to cure, 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 #1, a portion of Tract 2 of Certificate of Survey No. 205 with Joe Ann Black in the amount of \$9,218.50, and authorize the Mayor to execute these documents.

**ATTACHMENT**

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

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

## **INTRODUCTION**

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

## **PROCEDURAL HISTORY**

### Completed Items

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

### Future Items

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

## **BACKGROUND**

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
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 #1, a portion of Tract 2 of Certificate of Survey No. 205 with Joe Ann Black in the amount of \$9,218.50, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

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

## CITY OF BILLINGS

(hereinafter referred to as City)

### RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane  
DESIGNATION

Work Order: 04-33  
Project No. 05153

Yellowstone  
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
1	Tract 2, Certificate of Survey Number 205	22	1N	26E
List Names & Addresses of the Grantors (Contract Purchaser, Contract Seller, Lessee, etc.)				
Joe Ann Black 810 Lake Elmo Road Billings, MT 59105				

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.)

3,850 square feet by deed	\$5,896.50
Improvements (hedge, trees, asphalt paving, sod)	\$3,116.00
3. OTHER COMPENSATION:

550 square feet Temporary Construction Permit	\$ 184.00
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4. TOTAL COMPENSATION (includes all damages to the remainder): \$9,218.50, lump sum.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$9,218.50, to be made payable to Joe Ann Black and mailed to 810 Lake Elmo Road, Billings, MT. 59105.
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantor so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantor

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES S

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

igs  
jr

Signature: *Frederick Black* 5-25-2007 (Date)

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

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

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

N/A  
Boyd Darlow, Olson Land Services (Date) Mayor, City of Billings (Date)

*Nicholas P. Bailey* 5/31/07  
City of Billings, Public Works Department (Date) ATTEST: City Clerk (Date)

LER-001.200 BLACK

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

Project No. W.O. 04-33 Parcel No. 1 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 25<sup>th</sup> day of May, 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:

JOE ANN BLACK aka JOE ANN BALDRY  
810 LAKE ELMO ROAD  
BILLINGS, MT 59105

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

Parcel No. 1 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 2 of Certificate of Survey No. 205, on file under Document No. 449659, Yellowstone County, Montana, as shown by the shaded areas on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing a total area of 3,850 sq. ft.

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 550 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. 1

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Joe In Black

State of Montana )

County of Yellowstone )

This instrument was acknowledged before me on May 25, 2007  
(date)

by Joe In Black  
(names)

Mary J Bradley  
Notary Signature Line

MARY J BRADLEY  
Notary Printed Name

Notary Public for State of Montana

Residing at: Billings

My Commission Expires June 26, 2008

#### ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

\_\_\_\_\_  
Mayor, City of Billings

\_\_\_\_\_  
Date

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

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

STATE OF MONTANA )

:ss

County of Yellowstone )

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

\_\_\_\_\_  
Notary Public in and for the State of Montana

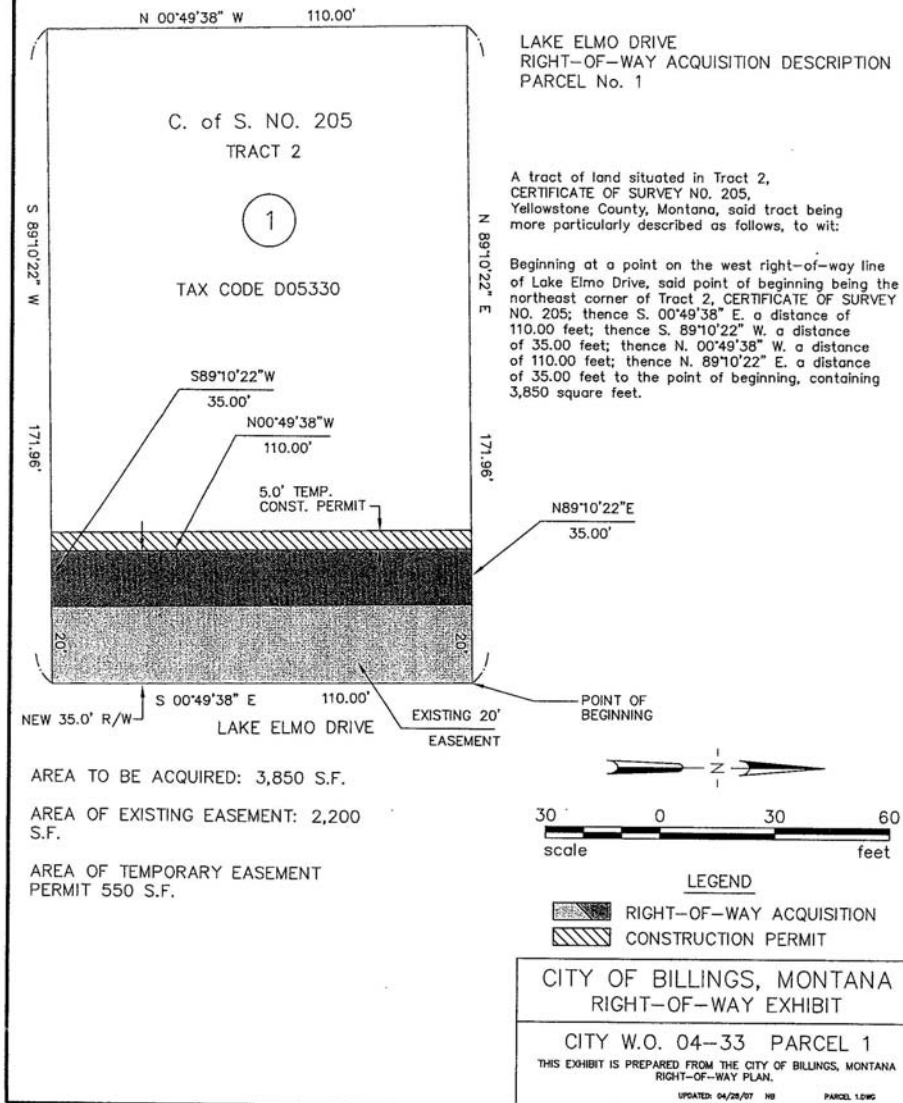
Residing in \_\_\_\_\_

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Print Name

# EXHIBIT A

## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN TRACT 2, CERTIFICATE OF SURVEY NO. 205, YELLOWSTONE COUNTY, MONTANA



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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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 #6, a Portion of Lot 6 of Welsh Subdivision With Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and With Quincy & Sarah Clark

**DEPARTMENT:** Public Works

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

---

**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #6 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 \$4,150.00. A copy of the right-of-way agreement; deeds; 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 \$4,150.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, the cost to cure, 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 #6, a Portion of Lot 6 of Welsh Subdivision With Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and With Quincy & Sarah Clark in the amount of \$4,150.00, and authorize the Mayor to execute these documents.

**ATTACHMENT**

A. Right-of-Way Agreement and Warranty Deed (8 pages)

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

## **INTRODUCTION**

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

## **PROCEDURAL HISTORY**

### Completed Items

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

### Future Items

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

## **BACKGROUND**

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
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 #6, a Portion of Lot 6 of Welsh Subdivision With Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and With Quincy & Sarah Clark in the amount of \$4,150.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

A. Right-of-Way Agreement and Warranty Deed (8 pages)

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

Lake Elmo Road Hilltop Road to Wicks Lane  
DESIGNATION

Work Order: 04-33  
Project No. 05153

Yellowstone  
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
6	Lot 6 of Welsh Subdivision	22	1N	26E

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

CONTRACT SELLER:  
JACK LEONARD WELSH AND  
THE HEIRS AND DEVISEES OF DARLENE D. WELSH, DECEASED  
819 LAKE ELMO DRIVE  
BILLINGS, MT 59105  
248-4106

CONTRACT PURCHASER:  
QUINCY CLARK AND SARAH CLARK  
3901 3<sup>RD</sup> AVENUE SOUTH  
BILLINGS, MT 59101  
698-4810

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.)

354 square feet by deed	\$1,505.00
Improvements (trees, asphalt driveway)	\$2,235.00
3. OTHER COMPENSATION:

954 square feet Temporary Construction Permit	\$ 405.00
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4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$4,150.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$4,150.00, to be made payable to QUINCY CLARK AND SARAH CLARK and mailed to 3901 3RD AVENUE SOUTH, BILLINGS, MT 59101
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Bargain and Sale Deed, and made for the period of the street improvements construction project plus the one-year warranty period. 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.

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)

10. City agrees to replace the irrigation facilities located within the acquisition area in kind. All work performed under the terms of this agreement shall be executed in a good and workmanlike manner consistent with the industry standards in accordance with recognized local construction practices.
11. If the Grantors elect to not have the irrigation facilities replaced and release the City from the obligation to replace the irrigation facilities, the City agrees to negotiate a settlement based on the cost savings. The Grantors will be required to obtain irrigation releases from all downstream interests and to protect the City and save it harmless from all claims, actions or damages of every kind which may accrue to, or be suffered by, any person or persons, by reason of the removal of the irrigation facilities. In case any suit or action is brought against the City, arising out of any of the above causes, the Grantors will defend the same at their sole expense and satisfy any judgement which may be rendered against the City.

#6

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DAY

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

Jack Leonard Welsh 04-22-07  
Signature: JACK LEONARD WELSH (Date)

Betty J. Welsh Personal Rep 4-22-07  
Signature: BETTY J. WELSH, AS PERSONAL REPRESENTATIVE (Date)  
OF THE HEIRS AND DEVISEES OF DARLENE D. WELSH, DECEASED

Quincy Clark 5-7-07  
Signature: QUINCY CLARK (Date)

Sarah P. Clark 5-7-07  
Signature: SARAH CLARK (Date)

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 5-18-07  
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

\_\_\_\_\_  
Mayor, City of Billings (Date)

ATTEST:

Michelle H. Bailey 5/31/07  
City of Billings, Public Works Department (Date)

\_\_\_\_\_  
City Clerk (Date)

LER-006.200 Welsh-Clark

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

Project No. W.O. 04-33 Parcel No. 6 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 22nd day of April, 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:**

JACK LEONARD WELSH AND  
THE HEIRS AND DEVISEES OF DARLENE D. WELSH, DECEASED  
819 LAKE ELMO DRIVE  
BILLINGS, MT 59105

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

Parcel No. 6 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 6 of Welsh Subdivision, on file under Document No. 536951, 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 354 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 983 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.

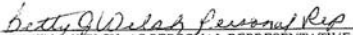
TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the CITY OF BILLINGS, and to its successors and assigns forever. IN WITNESSTH WHEREOF, the undersigned have executed these premises the day and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

Project No. : W.O. 04-33

Parcel No. 6

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

  
JACK LEONARD WELSH

  
BETTY J. WELSH, AS PERSONAL REPRESENTATIVE  
OF THE HEIRS AND DEVISEES OF DARLENE D.  
WELSH, DECEASED

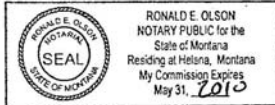
State of Montana )


County of Yellowstone )

This instrument was acknowledged before me on April 22, 2007  
(date)

by JACK LEONARD WELSH AND BETTY J. WELSH, AS PERSONAL REPRESENTATIVE  
OF THE HEIRS AND DEVISEES OF DARLENE D. WELSH, DECEASED

(names)



  
Notary Signature Line  
Ronald E. Olson  
Notary Printed Name

Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

#### ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

\_\_\_\_\_  
Mayor, City of Billings Date

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

City Clerk

STATE OF MONTANA )

:ss

County of Yellowstone )

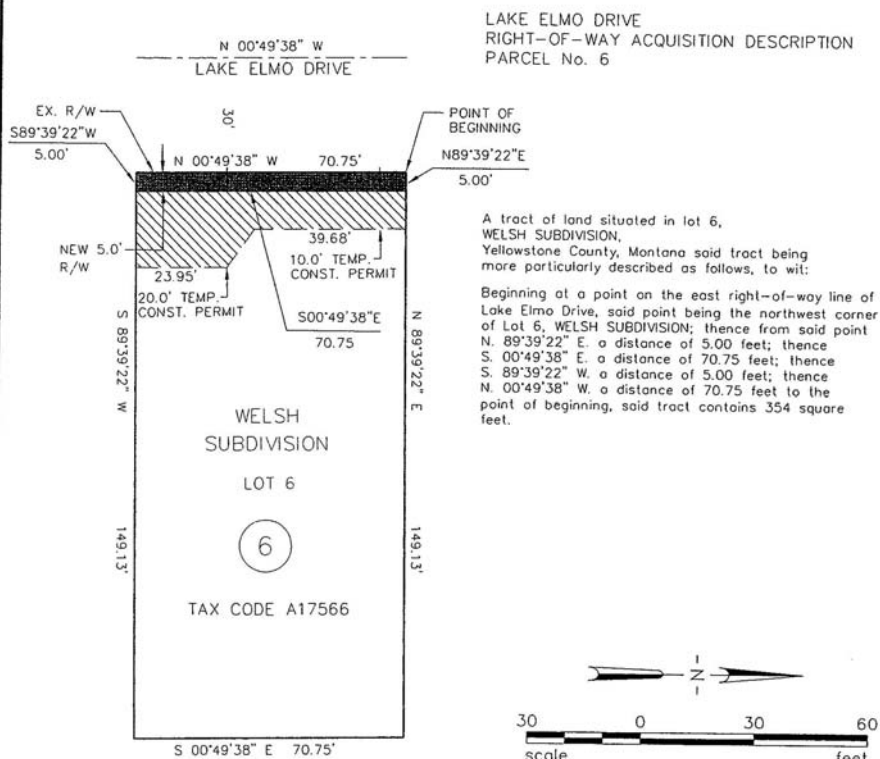
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public in and for the  
State of Montana, personally appeared \_\_\_\_\_ as Mayor and  
\_\_\_\_\_ City Clerk of Billings known to me to be the persons  
who signed, respectively, and acknowledge to me that they executed the foregoing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

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

\_\_\_\_\_  
Print Name

# EXHIBIT A

## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 6, WELSH SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



AREA TO BE ACQUIRED: 354 S.F.

AREA OF TEMPORARY CONSTRUCTION  
PERMIT: 983 S.F.

### LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT



**ENGINEERING, INC.**

Consulting Engineers and Land Surveyors

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

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 6

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

PARCEL 6.DWG

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

Project No. W.O. 04-33 Parcel No. 6 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 22nd day of April, 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:**

QUINCY CLARK AND SARAH CLARK  
3901 3<sup>RD</sup> AVENUE SOUTH  
BILLINGS, MT 59101

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. 6 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 6 of Welsh Subdivision, on file under Document No. 536951, 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 354 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 983 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. 6

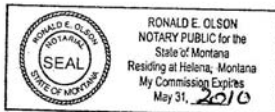
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

[Signature] Sarah Byrd

State of Montana )  
County of Yellowstone )

This instrument was acknowledged before me on April 22, 2007  
(date)

by Quincy Clark AND Sarah Clark  
(names)



[Signature]  
Notary Signature Line  
Ronald E. Olson  
Notary Printed Name  
Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

#### ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

\_\_\_\_\_  
Mayor, City of Billings Date

ATTEST: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )  
:ss  
County of Yellowstone )

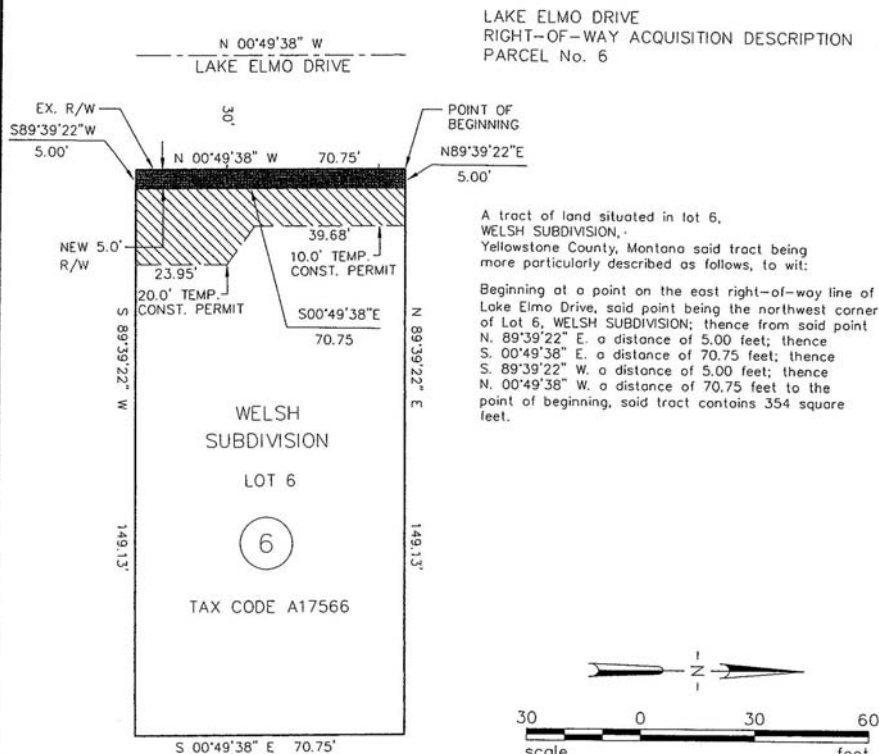
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument.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

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

\_\_\_\_\_  
Print Name

# EXHIBIT A

## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 6, WELSH SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



AREA TO BE ACQUIRED: 354 S.F.  
AREA OF TEMPORARY CONSTRUCTION PERMIT: 983 S.F.

### LEGEND

RIGHT-OF-WAY ACQUISITION  
 CONSTRUCTION PERMIT



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

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

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 6

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

PARCEL 6.DWG

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

---

**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #7, a Portion of Lot 7 of Welsh Subdivision With Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and With Quincy & Sarah Clark

**DEPARTMENT:** Public Works

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

---

**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #7 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$1,800.00. A copy of the right-of-way agreement; deeds; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$1,800.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, the cost to cure, 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 #7, a Portion of Lot 7 of Welsh Subdivision With Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and With Quincy & Sarah Clark in the amount of \$1,800.00, and authorize the Mayor to execute these documents.

**ATTACHMENT**

A. Right-of-Way Agreement and Warranty Deed (8 pages)

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

## **INTRODUCTION**

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

## **PROCEDURAL HISTORY**

### Completed Items

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

### Future Items

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

## **BACKGROUND**

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
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 #7, a Portion of Lot 7 of Welsh Subdivision With Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and With Quincy & Sarah Clark in the amount of \$1,800.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

A. Right-of-Way Agreement and Warranty Deed (8 pages)

## CITY OF BILLINGS

(hereinafter referred to as City)

### RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane  
DESIGNATION

Work Order: 04-33  
Project No. 05153

Yellowstone  
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
7	Lot 7 of Welsh Subdivision	22	1N	26E

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

CONTRACT SELLER:  
JACK LEONARD WELSH AND  
THE HEIRS AND DEVISEES OF DARLENE D. WELSH, DECEASED  
819 LAKE ELMO DRIVE  
BILLINGS, MT 59105  
248-4106

CONTRACT PURCHASER:  
QUINCY CLARK AND SARAH CLARK  
3901 3<sup>RD</sup> AVENUE SOUTH  
BILLINGS, MT 59101  
698-4870  
7872

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

305 square feet by deed	\$1,296.00
Improvements (Fence)	\$ 220.00
- OTHER COMPENSATION:

610 square feet Temporary Construction Permit	\$ 259.00
---	-----------
- TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$1,800.00.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$1,800.00, to be made payable to QUINCY CLARK AND SARAH CLARK and mailed to 3901 3RD AVENUE SOUTH, BILLINGS, MT 59101
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Bargain and Sale 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.
- This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
- At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

Reconfigure and repair sprinkler system, if any, affected by project.

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

(Continued from Previous Page)

10. City agrees to replace the irrigation facilities located within the acquisition area in kind. All work performed under the terms of this agreement shall be executed in a good and workmanlike manner consistent with the industry standards in accordance with recognized local construction practices.
11. If the Grantors elect to not have the irrigation facilities replaced and release the City from the obligation to replace the irrigation facilities, the City agrees to negotiate a settlement based on the cost savings. The Grantors will be required to obtain irrigation releases from all downstream interests and to protect the City and save it harmless from all claims, actions or damages of every kind which may accrue to, or be suffered by, any person or persons, by reason of the removal of the irrigation facilities. In case any suit or action is brought against the City, arising out of any of the above causes, the Grantors will defend the same at their sole expense and satisfy any judgement which may be rendered against the City.

#7

## THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DA

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

Jack Leonard Welsh 04-22-07  
Signature: JACK LEONARD WELSH (Date)

Betty J. Welsh Personal Rep 4-22-07  
Signature: BETTY J. WELSH, AS PERSONAL REPRESENTATIVE (Date)  
OF THE HEIRS AND DEVISEES OF DARLENE D. WELSH, DECEASED

Quincy Clark 5-7-07  
Signature: QUINCY CLARK (Date)

Sarah M. Clark 5/7/07  
Signature: SARAH CLARK (Date)

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 5-18-07  
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

\_\_\_\_\_  
Mayor, City of Billings (Date)

ATTEST:

City of Billings, Public Works Department

(Date)

City Clerk

(Date)

LER-007.200 Welsh-Clark

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

Project No. W.O. 04-33 Parcel No. 7 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 22nd day of April, 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:

JACK LEONARD WELSH AND  
THE HEIRS AND DEVISEES OF DARLENE D. WELSH, DECEASED  
819 LAKE ELMO DRIVE  
BILLINGS, MT 59105

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

Parcel No. 7 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 7 of Welsh Subdivision, on file under Document No. 536951, 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 305 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 610 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. 7

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

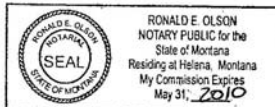
Jack Leonard Welsh  
JACK LEONARD WELSH

Betty J. Welsh Personal Rep  
BETTY J. WELSH, AS PERSONAL REPRESENTATIVE  
OF THE HEIRS AND DEVISEES OF DARLENE D.  
WELSH, DECEASED

State of Montana )  
County of Yellowstone )

This instrument was acknowledged before me on April 22, 2007  
(date)

by JACK LEONARD WELSH AND BETTY J. WELSH, AS PERSONAL REPRESENTATIVE  
OF THE HEIRS AND DEVISEES OF DARLENE D. WELSH, DECEASED



(names)

Ronald E. Olson  
Notary Signature Line  
Ronald E. Olson  
Notary Printed Name

Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

#### ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

\_\_\_\_\_  
Mayor, City of Billings Date

ATTEST: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )  
:ss  
County of Yellowstone )

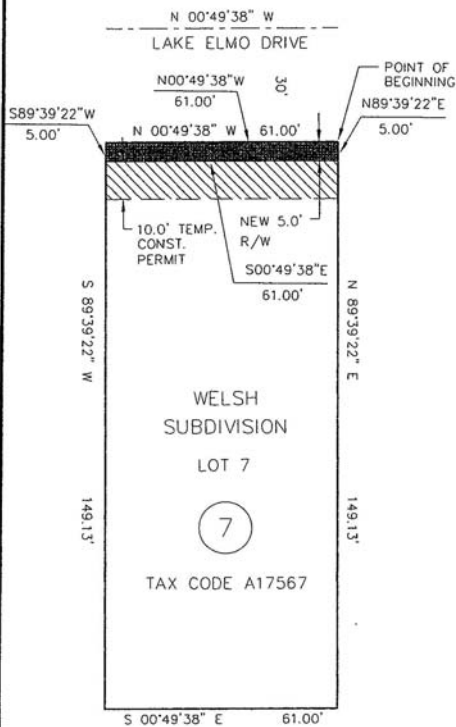
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument.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

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

\_\_\_\_\_  
Print Name

# EXHIBIT A

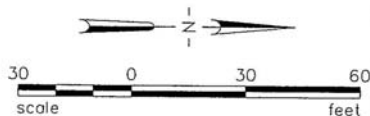
## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 7, WELSH SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



LAKE ELMO DRIVE  
RIGHT-OF-WAY ACQUISITION DESCRIPTION  
PARCEL No. 7

A tract of land situated in lot 7,  
WELSH SUBDIVISION,  
Yellowstone County, Montana said tract being  
more particularly described as follows, to wit:

Beginning at a point on the east right-of-way line of  
Lake Elmo Drive, said point being the northwest corner  
of Lot 7, WELSH SUBDIVISION; thence from said point  
N. 89°39'22" E. a distance of 5.00 feet; thence  
S. 00°49'38" E. a distance of 61.00 feet; thence  
S. 89°39'22" W. a distance of 5.00 feet; thence  
N. 00°49'38" W. a distance of 61.00 feet to the  
point of beginning, said tract contains 305 square  
feet.



AREA TO BE ACQUIRED: 305 S.F.  
AREA OF TEMPORARY CONSTRUCTION  
PERMIT: 610 S.F.

### LEGEND

RIGHT-OF-WAY ACQUISITION  
 CONSTRUCTION PERMIT



**ENGINEERING, INC.**  
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1300 North Tremont Way  
Billings, Montana 59102  
Phone (406) 656-5255  
www.enginc.com

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 7

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

PARCEL 7.DWG

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

Project No. W.O. 04-33 Parcel No. 7 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 22nd day of April, 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:

QUINCY CLARK AND SARAH CLARK  
3901 3<sup>RD</sup> AVENUE SOUTH  
BILLINGS, MT 59101

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. 7 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 7 of Welsh Subdivision, on file under Document No. 536951, 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 305 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 610 sq. ft..

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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. 7

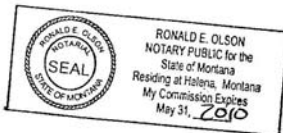
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

[Signature] Sarah McClay

State of Montana )  
County of Yellowstone )

This instrument was acknowledged before me on April 22, 2007  
(date)

by Quincy Clark and Sarah Clark  
(names)



[Signature]  
Notary Signature Line  
Ronald E. Olson  
Notary Printed Name

Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

#### ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

\_\_\_\_\_  
Mayor, City of Billings Date

ATTEST: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )  
:ss  
County of Yellowstone )

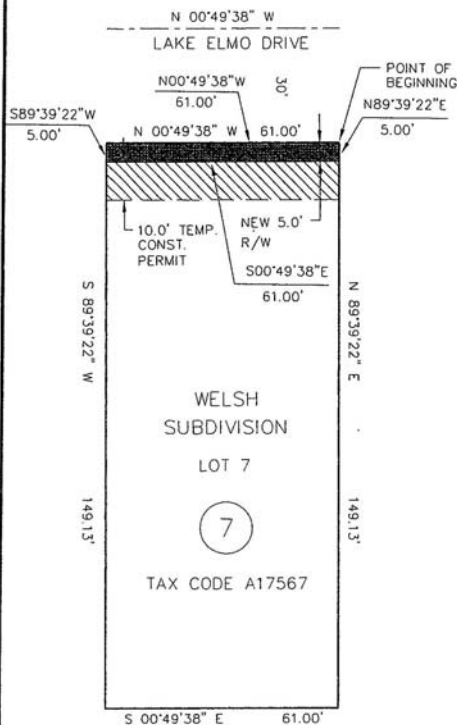
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument.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

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

\_\_\_\_\_  
Print Name

# EXHIBIT A

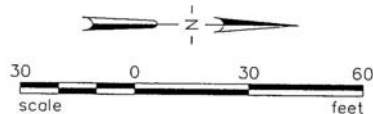
## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 7, WELSH SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



LAKE ELMO DRIVE  
RIGHT-OF-WAY ACQUISITION DESCRIPTION  
PARCEL No. 7

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N. 89°39'22" E. a distance of 5.00 feet; thence  
S. 00°49'38" E. a distance of 61.00 feet; thence  
S. 89°39'22" W. a distance of 5.00 feet; thence  
N. 00°49'38" W. a distance of 61.00 feet to the  
point of beginning, said tract contains 305 square  
feet.



AREA TO BE ACQUIRED: 305 S.F.  
AREA OF TEMPORARY CONSTRUCTION  
PERMIT: 610 S.F.

### LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT



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

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

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 7

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

PARCEL 7.DWG

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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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 #8, a Portion of Lot 8 of Welsh Subdivision With Quincy & Sarah Clark

**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 #8 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,000.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$2,000.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, the cost to cure, 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 #8, a Portion of Lot 8 of Welsh Subdivision With Quincy & Sarah Clark in the amount of \$2,000.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

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

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

## **INTRODUCTION**

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

## **PROCEDURAL HISTORY**

### Completed Items

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

### Future Items

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

## **BACKGROUND**

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
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 #8, a Portion of Lot 8 of Welsh Subdivision With Quincy & Sarah Clark in the amount of \$2,000.00, and authorize the Mayor to execute these documents.

## **ATTACHMENT**

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

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

Lake Elmo Road Hilltop Road to Wicks Lane  
DESIGNATION

Work Order: 04-33  
Project No. 05153

Yellowstone  
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
8	Lot 8 of Welsh Subdivision	22	1N	26E

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

QUINCY CLARK AND SARAH CLARK  
3901 3RD AVENUE SOUTH  
BILLINGS, MT 59101  
698-4810

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.)

305 square feet by deed	\$1,296.00
Improvements (Fence)	\$ 528.00

3. OTHER COMPENSATION:

305 square feet Temporary Construction Permit	\$ 130.00
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4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$2,000.00.

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

A warrant in the amount of \$2,000.00, to be made payable to QUINCY CLARK AND SARAH CLARK and mailed to 3901 3RD AVENUE SOUTH, BILLINGS, MT 59101

6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Bargain and Sale Deed, and made for the period of the street improvements construction project plus the one-year warranty period. 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.

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)

10. City agrees to replace the irrigation facilities located within the acquisition area in kind. All work performed under the terms of this agreement shall be executed in a good and workmanlike manner consistent with the industry standards in accordance with recognized local construction practices.
11. If the Grantors elect to not have the irrigation facilities replaced and release the City from the obligation to replace the irrigation facilities, the City agrees to negotiate a settlement based on the cost savings. The Grantors will be required to obtain irrigation releases from all downstream interests and to protect the City and save it harmless from all claims, actions or damages of every kind which may accrue to, or be suffered by, any person or persons, by reason of the removal of the irrigation facilities. In case any suit or action is brought against the City, arising out of any of the above causes, the Grantors will defend the same at their sole expense and satisfy any judgement which may be rendered against the City.

#8

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DAT

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

Signature: QUINCY CLARK 5-7-07  
(Date)

Signature: SARAH CLARK 5-7-07  
(Date)

Signature: \_\_\_\_\_ (Date)

Tax ID No.

Signature: \_\_\_\_\_ (Date)

Tax ID No.

RECOMMENDED FOR APPROVAL:

Nell Olson 5-7-07  
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

\_\_\_\_\_  
Mayor, City of Billings (Date)

ATTEST:

Nicholas F. Darling 5/31/07  
City of Billings, Public Works Department (Date)

\_\_\_\_\_  
City Clerk (Date)

LER-008.200 Clark

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

Project No. W.O. 04-33 Parcel No. 8 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 22nd day of April, 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:

QUINCY CLARK AND SARAH CLARK  
3901 3<sup>RD</sup> AVENUE SOUTH  
BILLINGS, MT 59101

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. 8 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 8 of Welsh Subdivision, on file under Document No. 536951, 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 305 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 305 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.

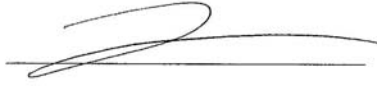
FURTHER EXCEPTING AND RESERVING, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, 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. 8

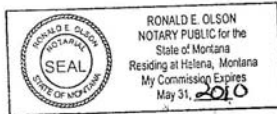
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

 Sarah H. Clark

State of Montana )  
County of Yellowstone )

This instrument was acknowledged before me on April 22, 2007  
(date)

by Quincy Clark and Sarah Clark  
(names)



  
Notary Signature Line

Notary Printed Name

Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

#### ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

\_\_\_\_\_  
Mayor, City of Billings

\_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )  
:ss  
County of Yellowstone )

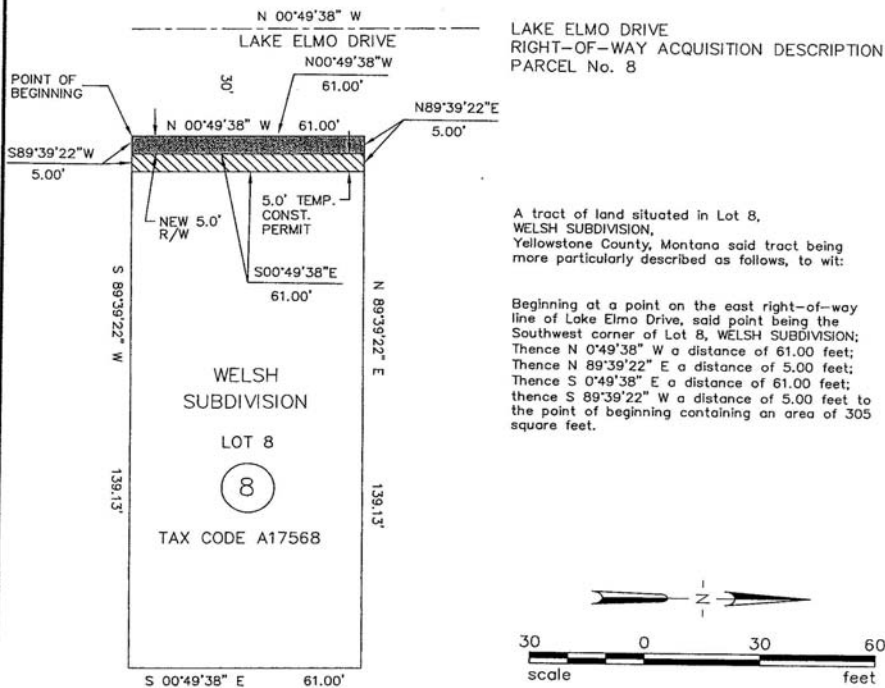
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument.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

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

\_\_\_\_\_  
Print Name

# EXHIBIT A

## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 8, WELSH SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



A tract of land situated in Lot 8, WELSH SUBDIVISION, Yellowstone County, Montana said tract being more particularly described as follows, to wit:

Beginning at a point on the east right-of-way line of Lake Elmo Drive, said point being the Southwest corner of Lot 8, WELSH SUBDIVISION; Thence N 0°49'38" W a distance of 61.00 feet; Thence N 89°39'22" E a distance of 5.00 feet; Thence S 0°49'38" E a distance of 61.00 feet; Thence S 89°39'22" W a distance of 5.00 feet to the point of beginning containing an area of 305 square feet.

AREA TO BE ACQUIRED: 305 S.F.  
AREA OF TEMPORARY CONSTRUCTION PERMIT: 305 S.F.

### LEGEND

RIGHT-OF-WAY ACQUISITION  
CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 8  
THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY PLAN.

3/27/07 PARCEL 8 ROW

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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**TITLE:** Gold Wing Road Riders Temporary Street Closure  
**DEPARTMENT:** Parks, Recreation and Public Lands  
**PRESENTED BY:** Mike Whitaker, Parks, Recreation and Public Lands Director

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**PROBLEM/ISSUE STATEMENT:** The Gold Wing Road Riders requests temporary street closure for a parade on Thursday, July 5, 2007 from 3:00 pm to 7:00 pm. (See attachments)

Recommended conditions of approval include the Gold Wing Road Riders:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event as soon as possible
3. Clean the area to be used and provide and empty waste cans
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
5. Provide and install adequate traffic barricades directing motorists around closure
6. Coordinate with the Police and Traffic Engineering Departments to ensure proper traffic control and police assistance
7. Provide a certificate of insurance naming City of Billings as additional insured

**ALTERNATIVES ANALYZED:**

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

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

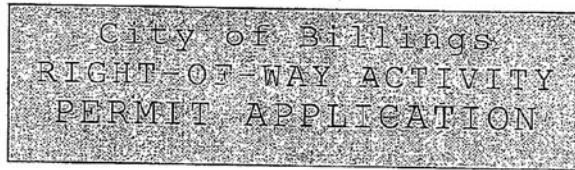
**RECOMMENDATION**

Staff recommends that Council approve closure of the event route described above on Thursday, July 5, 2007, for the Gold Wing Road Riders Parade.

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

**ATTACHMENTS**

- A. Right of Way Special Activity Permit (2 pages)
- B. Event route map (2 pages)
- C. Parade Specifications (1 page)
- D. Landing Area Information (1 page)
- E. Certificates of insurance (2 pages)



**Please check the type of activity you are applying for:**

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

Submit this application with a cover letter to: Events in the Central Business District are to be submitted to: Downtown Billings Association, attn: Lisa Woods, 2815 2<sup>nd</sup> Avenue North, Billings, MT 59101. Events outside the Central Business District are to be submitted to: Director of Parks, Recreation and Public Lands, 390 North 23<sup>rd</sup> Street, Billings, Mt 59101. Application should be made at least 60 days in advance of the date of proposed event.

PERSON MAKING APPLICATION NANCY O'LEARY ON BEHALF OF CHAMBERLAIN  
 ORGANIZATION MAKING APPLICATION CODWING ROAD RIDERS ASSN.  
 PHONE PLEASE CALL NANCY @ 245-4111  
 ADDRESS 815 S 27 BLVD MT 59101  
 City STATE ZIP

APPROXIMATE TIME EVENT WILL:

Assemble 2-5 PM Start 5:00 PM Disband 7:00 PM  
C FAITH CHAPEL

DATE OF EVENT JULY 5, 2007

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

OWARRA 29<sup>th</sup> ANNUAL WINE DRINK MOTORCYCLE PARADE

EVENT ROUTE DESIRED: (Please attach map.)

ATTACHED

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

PROVIDED IN CONNECTION W/ ALIVE AFTER 5

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ 1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as an additional insured.

YOU OR THE ORGANIZATION YOU REPRESENT MUST SIGN THE METERS WITHIN THE EVENT ROUTE FOR NO PARKING AT LEAST TWENTY-FOUR HOURS PRIOR TO YOUR EVENT. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE. IT IS YOUR RESPONSIBILITY TO CLEAN UP ALL STREET GARBAGE AND EMPTY ALL GARBAGE CONTAINERS ON THE SIDEWALK THROUGH THE EVENT AREA.

YOU OR THE ORGANIZATION YOU REPRESENT MUST NOTIFY ALL BUSINESSES WITHIN THE EVENT ROUTE AT LEAST TWENTY-FOUR HOURS PRIOR TO YOUR EVENT.



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

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

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

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

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

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

You will be notified if there are any concerns from any of the department heads or if there are any questions about your application and/or event.

APPLICANT SIGNATURE Nancy O'Leary DATE 4/30/07

APPLICATION APPROVED \_\_\_\_\_ DATE \_\_\_\_\_

APPLICATION DENIED \_\_\_\_\_ DATE \_\_\_\_\_

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

**FOR CITY USE ONLY**

FEE: \_\_\_\_\_

APPLICANT NOTIFIED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

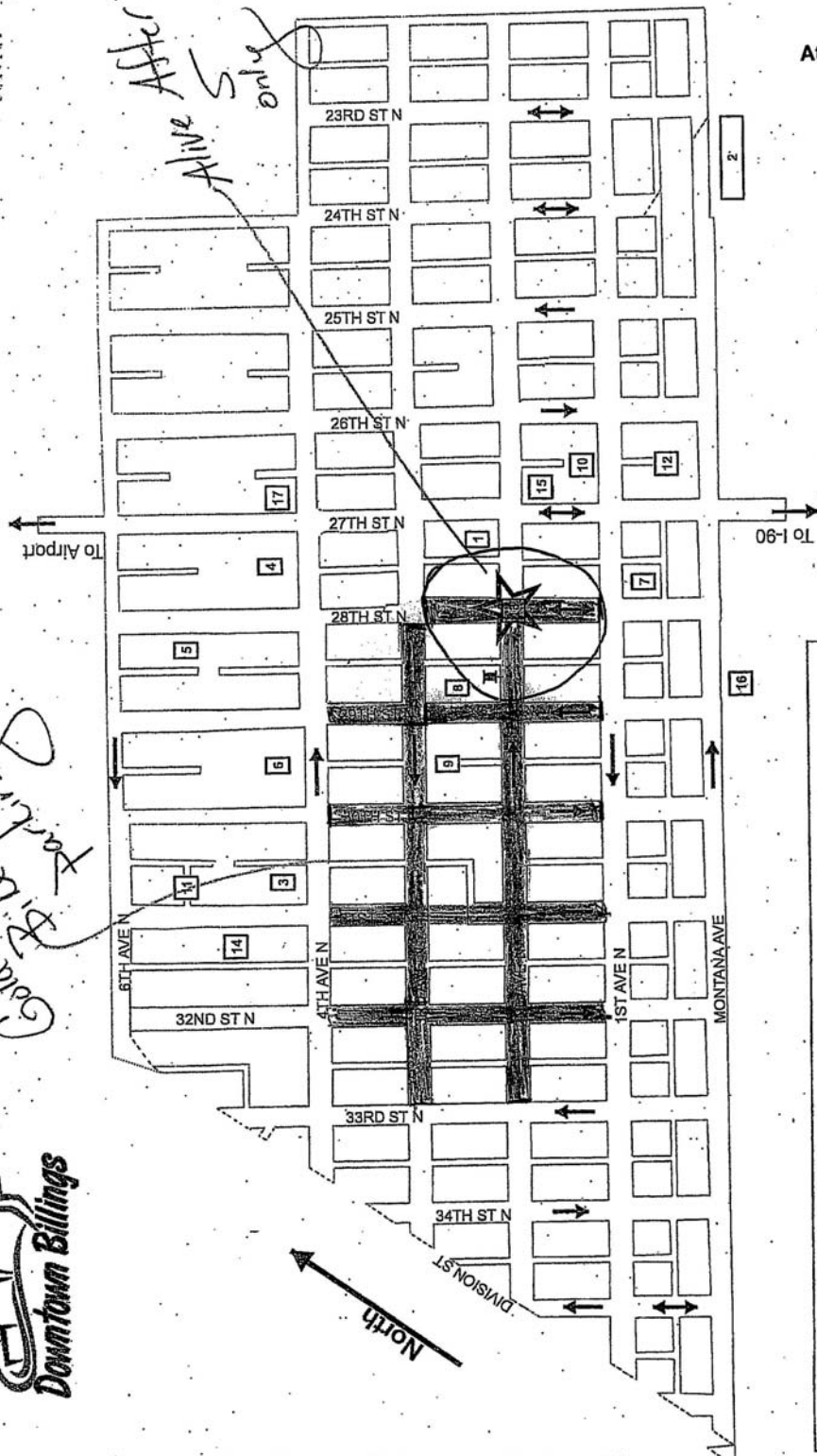
**COPIES TO:**  
CITY ADMINISTRATOR  
POLICE CHIEF  
FIRE CHIEF  
MET MANAGER  
STREET/TRAFFIC SUPERINTENDANT  
TRAFFIC ENGINEER  
CITY ATTORNEY  
PRPL DIRECTOR  
PARKING SUPERVISOR  
DOWNTOWN BILLINGS ASSOCIATION  
CITY COUNCIL  
MAYOR



# Downtown Billings Street Map



*Goldwing  
#16  
Parking*



Attachment B

DBA Offices -- Event Applications Available Here

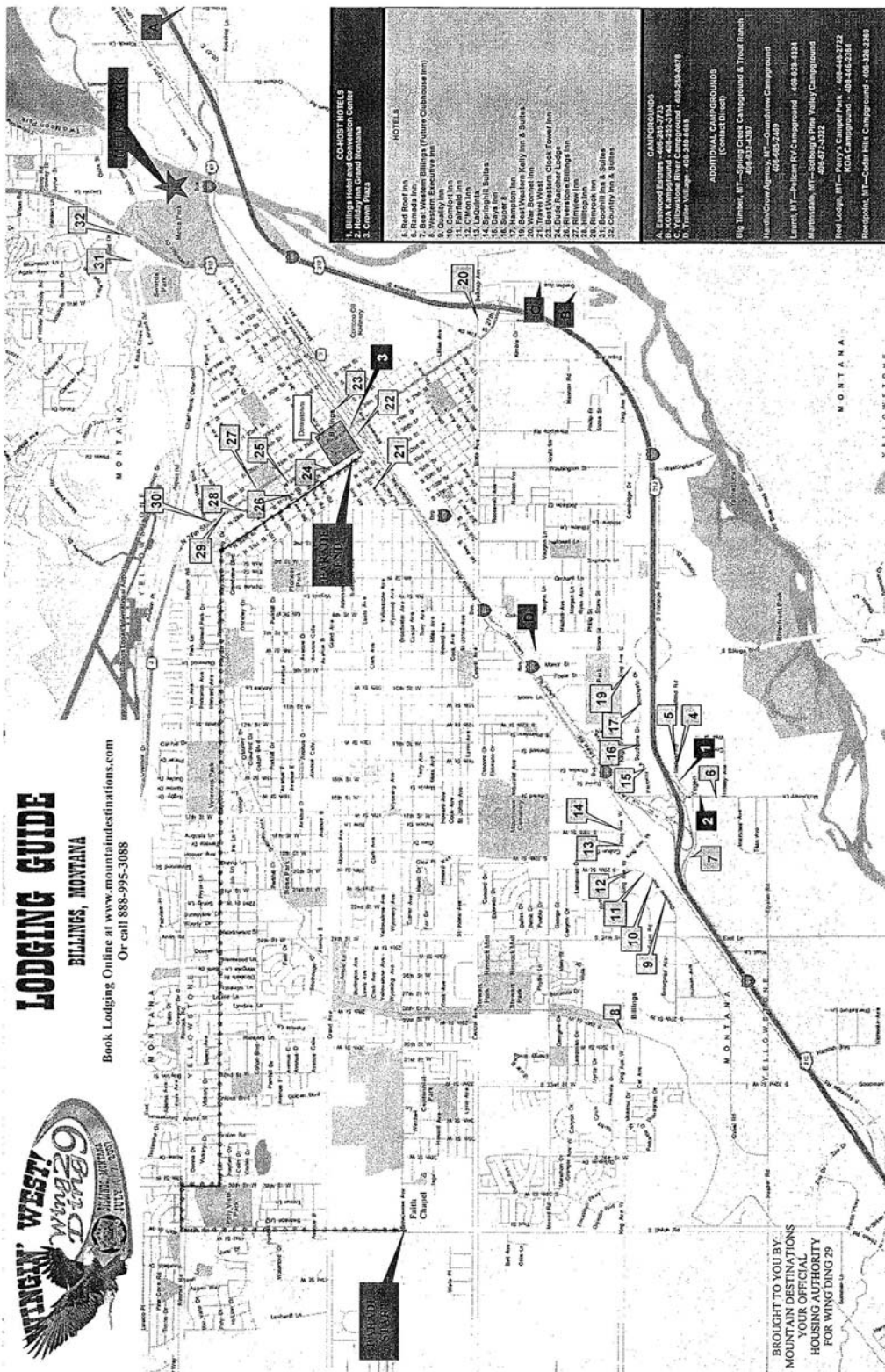
- |                            |                                  |                             |
|----------------------------|----------------------------------|-----------------------------|
| 1. City Hall / Park III    | 6. Lincion Center                | 12. Sheraton Building       |
| 2. Depot Complex           | 7. Northern Hotel                | 13. Sky Point               |
| 3. First Interstate Center | 8. Old Hart-Albin Parking Garage | 14. Transwestern Complex    |
| 4. Gazette Building        | 9. Park I                        | 15. Wells Fargo Building    |
| 5. Library                 | 10. Park II                      | 16. Western Heritage Center |
|                            | 11. Park IV                      | 17. Yellowstone Art Museum  |



# **LODGING GUIDE**

**BILLINGS, MONTANA**

Book Lodging Online at [www.mountaindestinations.com](http://www.mountaindestinations.com)  
Or call 888-995-3088



## **Parade Specifications**

Gold Wing Road Riders Assn.  
29th Annual Rally  
Billings, MT  
July 4-7, 2007

### **Parade**

Date: Thursday, July 5, 2007  
Staging time: 1500  
Arrival time: 1730-1800  
Landing area: downtown - see attached landing map  
Total parade distance: 8 miles  
Total cycles: 1400 max

### **Staging area**

Faith Chapel parking lot corner of Shiloh & Broadwater  
\* begins @ 1500  
\* KBEAR will provide refreshments on site  
\* GWRRA local chapters will assist with staging area and organization of bikes for departure. Russ and Laurie Parpart will be the staging area coordinators.

Departure: 1700

Contact: Ed Price 623-445-2387 (Event Manager)

### **Route**

Exit R onto Shiloh Rd.  
Proceed North to Rimrock Rd thru controlled Xs of: Grand  
East to 38th St W, no controlled Xs  
South to Poly Dr, no controlled Xs  
East to Virginia Lane thru controlled Xs of: 32nd St West, Rehberg,  
17th West, 13th West, Virginia  
South to Grandview  
East to 30th Street North  
South to 1st Ave North thru controlled Xs: 9, 6, 4, 3, 2, 1 Ave's North  
to landing area

**Attachment D**

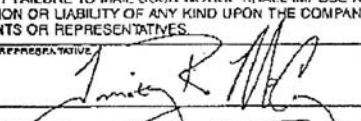
Landing Area

Arrival time appx: 1730-1800

Billings Police Department will be the agency of jurisdiction at the landing area and throughout the route - we worked closely with Capt. TJ Vladic & Comdr. John Bedford on specs.

Volunteers will be assigned and coordinated by GWRRA staff in cooperation with BPD

Weather could be a factor - any decision regarding the cancellation of the parade will be made by Mr. Ed price, Event Manager, and Cmdr. Bedford, BPD

CERTIFICATE OF INSURANCE				1360672	ISSUE DATE (MM/DD/YY) <input type="checkbox"/> 5/15/07
<b>PRODUCER</b> K & K Insurance Group, Inc. 1712 Magnavox Way P.O. Box 2338 Fort Wayne, In 46801			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
<b>INSURED</b> GOLD WING ROAD RIDERS (SEE GAI3001) 21423 N 11TH AVENUE PHOENIX, AZ 85027			<b>COMPANIES AFFORDING COVERAGE</b> COMPANY LETTER <b>A</b> GREAT AMERICAN ASSURANCE COMPA COMPANY LETTER <b>B</b> COMPANY LETTER <b>C</b>		
<b>COVERAGES</b> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO. OR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS (in thousands)
A	<b>General Liability</b> <input checked="" type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occur. <input type="checkbox"/> Owner's & Contractors Prot. <input checked="" type="checkbox"/> 100,000 ERRORS AND OMISSIONS	GLO0925574500	12:01AM 12/31/06	12:01AM 12/31/07	General Aggregate \$ NONE Products-Comp/Ops Aggregate \$ 5000 Personal & Advertising Injury \$ 1000 Each Occurrence \$ 1000 Fire Damage (Any one fire) \$ 300 Medical Expense (Any one person) \$ NONE Participant Legal Liability \$ 1000
					Combined Single Limit \$ 1000 Bodily Injury (per person) \$ Bodily Injury (per accident) \$ Property Damage \$
A	<b>Automobile Liability</b> <input type="checkbox"/> Any auto <input type="checkbox"/> All owned autos <input type="checkbox"/> Scheduled autos <input checked="" type="checkbox"/> Hired autos <input checked="" type="checkbox"/> Non-owned autos <input type="checkbox"/> Garage Liability	PAC0925574700	12:01AM 12/31/06	12:01AM 12/31/07	Each Occurrence \$ 1000 Aggregate \$ 1000
A	<b>Excess Liability</b> <input checked="" type="checkbox"/> STRAIGHT <input type="checkbox"/> Other than Umbrella form	EXC0925574600	12:01AM 12/31/06	12:01AM 12/31/07	Statutory \$ Each Accident \$ Disease-Policy Limit \$ Disease-Each Employee AD&D \$ Primary Medical \$ Excess Medical \$ Weekly Indemnity \$ X
	<b>Workers' Compensation and Employers' Liability</b>				
	<b>Participant Accident</b>				
<b>DESCRIPTION OF OPERATIONS/LOCATIONS/VISITS/RESTRICTIONS/SPECIAL ITEMS</b> EVENT TYPE: RALLY EVENT DATE: 7/5/07 LOCATION: FAITH CHAPEL CHURCH, BILLINGS, MT E SEE ATTACHED ADDENDUM: ADDITIONAL INSURED					
<b>CERTIFICATE HOLDER</b> CITY OF BILLINGS			<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: 		

ADDENDUM PAGE FOR CERTIFICATE  
K & K INSURANCE GROUP, INC.

CERTIFICATE: 1360672 DATE ISSUED: 5/15/07

ACCOUNT NAME: GOLD WING ROAD RIDERS (SEE GAI3001)

TYPE OF INSURANCE:	POLICY NUMBER:
GENERAL LIABILITY	GLO0925574500
AUTOMOBILE LIABILITY	PAC0925574700
EXCESS LIABILITY	EXC0925574600

ADDITIONAL INSURED: PER POLICY

- A. ANY PERSON OR ORGANIZATION ENGAGED IN OPERATING, MANAGING, SANCTIONING, SPONSORING THE "COVERED PROGRAM", OR PROVIDING THE "PREMISES" FOR A "COVERED PROGRAM", INCLUDING OFFICIALS OF THE "COVERED PROGRAM".
- B. ANY "PARTICIPANT" (EXCLUDING DRIVERS), "COMPETITION VEHICLE" OWNER AND "COMPETITION VEHICLE" SPONSOR.
- C. ANY "PARTICIPANT" DRIVER BUT ONLY WITH RESPECT TO "BODILY INJURY" OR "PROPERTY DAMAGE" TO PERSONS OTHER THAN ANY OTHER DRIVER.
- D. FAITH CHAPEL CHURCH, BUT ONLY AS RESPECTS TO THE OPERATIONS OF THE NAMED INSURED.

"REPLACES CERTIFICATE #1360281"

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

---

TITLE: BikeNet Matching Funds for the Big Ditch Trail  
 DEPARTMENT: Planning and Community Services  
 PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

---

**PROBLEM/ISSUE STATEMENT:** The City of Billings is planning to construct the Big Ditch Trail, Phase 2 during this year's construction season. BikeNet has solicited donations from the neighborhood so there will be enough funding to build the ditch crossing at Chandelier and to extend the trail as far as possible to the west, into Rimrock West Park. The BikeNet Board of Directors has voted to provide a 1:1 match with the neighborhood donations, for up to \$5,000. The neighborhood solicitation letter that was drafted by BikeNet and City/County Staff, brought in \$5,100 for the Big Ditch Trail. This trail project is part of the City approved Capital Improvements Program and received funding through the CTEP (Community Transportation Enhancement Program) process. Council approval is needed to accept the BikeNet contribution for this gift of \$10,100.

**ALTERNATIVES ANALYZED:** If the City Council does not approve this gift of \$10,100, there will be less funding available for the Big Ditch Trail project.

**FINANCIAL IMPACT:** There is no financial impact to the City of Billings since this is a financial gift to the City for the Big Ditch Trail.

**RECOMMENDATION**

Staff recommends that Council approve the donation of \$10,100 from BikeNet and the neighborhood fundraising letter for a portion of the Big Ditch Trail project.

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

**ATTACHMENT**

A. BikeNet neighborhood fundraising letter

**BikeNet**

**P. O. Box 81146**

[www.bikenet.org](http://www.bikenet.org)



March 5, 2007

Dear Friends of the Big Ditch (Shiloh Tunnel) Trail,

If you haven't noticed, a new extension (Phase I) of the Bike/Pedestrian Trail was completed this fall along the Big Ditch Trail west of the Shiloh Pedestrian Tunnel. As the weather warms in the coming weeks, we hope you have a chance to finally enjoy the trail by walking, biking, pushing a stroller, skipping...you get the idea!! Soon, construction will begin on Phase II of the Big Ditch Trail, extending it further west.

The vision for this trail project began several years ago with an application for funds from the Federal Community Transportation Enhancement Program (CTEP). While we have gradually expanded the main spine of the trail all across Billings, this area has grown so rapidly, it became obvious that extending the trail to the west and providing connections to neighborhoods will increase overall access and use of the trail and provide a safe route to school.

BikeNet, a local non-profit 501 (c) (3) organization, was contacted by the City Council and the City of Billings to partner together to raise funds for this trail segment. BikeNet is facilitating this fund-raising effort to accomplish this goal. It is our vision to extend the trail to 46<sup>th</sup> St. W., with access connections made to the playground in Rimrock West Park and to neighborhoods and businesses south of the Big Ditch (i.e., Shiloh Point and south). Keep in mind that BikeNet leverages funds from the community to obtain grants for trails. Every dollar you contribute injects an additional \$6 to \$7 in funding matches for trails.

BikeNet, as well as many neighbors and businesses in the area, have already made significant contributions to Phase I by providing about \$21,000. BikeNet will earmark your tax-deductible contribution specifically for Phase II of the Big Ditch Trail. Together, we hope to raise enough funds to complete our vision by the end of summer, 2007.

If you have any questions or would like additional information, please contact any of the following: Darlene Tussing, Alternate Modes Coordinator with City/County Planning Dept. at 247-8637 or [tussingd@ci.billings.mt.us](mailto:tussingd@ci.billings.mt.us), Rob Hunter, BikeNet President at [rhunter@healthinonetmt.com](mailto:rhunter@healthinonetmt.com) or contact Kim Prill, BikeNet Vice President at 655-8241 or [kjetprill@hotmail.com](mailto:kjetprill@hotmail.com).

On behalf of trail users everywhere, thank you for helping trails in your neighborhood.

Happy Trails,

Rob Hunter  
President, BikeNet

**BikeNet**

**P. O. Box 81146**

[www.bikenet.org](http://www.bikenet.org)

## A person wearing a helmet and a dark jacket is riding a bicycle on a paved path. They are passing a large, light-colored stone marker that has the words "MOUNTAIN VIEW" carved into it. In the background, there is a house with a dark roof and a white fence. The ground is dry and brown, suggesting a dry climate.

\_\_\_\_\_ \$25                  \_\_\_\_\_ \$75                  \_\_\_\_\_ \$250\*\*                  \_\_\_\_\_ Other

\_\_\_\_\_ \$50                  \_\_\_\_\_ \$100                  \_\_\_\_\_ \$500\*\*

Make Checks Payable to **BikeNet** and Mail to:

BikeNet  
Big Ditch Trail  
PO Box 81146  
Billings MT 59108

E-mail:

92 of 304

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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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**TITLE:** Acceptance of Donation from St. Vincent's Heart & Sole Run  
**DEPARTMENT:** City Council/City Administrator's Office  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** St. Vincent's has donated \$10,000 of the proceeds from the 2006 and 2007 Heart and Sole Run to the Main Street Underpass project. Administrative Order #103 requires that all donations of more than \$500 be accepted by the City Council.

The donated funds will be used to assist in construction of the Main Street Underpass and the segment of trail connecting the underpass to the MetraPark Trail. The project is funded with CTEP and TSEP monies, but the trail is not yet completely funded.

**ALTERNATIVES ANALYZED:**

- Accept the donation,
- Do not accept the donation.

**FINANCIAL IMPACT:** The funds would be used to help create projects for the Heritage Trail.

**RECOMMENDATION**

Accept the donation and authorize the Mayor to sign a letter of thanks to St. Vincent's.

**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, June 25, 2007**

---

**TITLE:** Continuing Resolution for Park Ball Field Fence Advertising Resolution 06-18421

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

**PRESENTED BY:** Mike Whitaker, Director

---

**PROBLEM/ISSUE STATEMENT:** Resolution No. 06-18421 allowing Park athletic field fence advertising for 1 year was adopted in May of 2006 (See Attachment B). It provides for permits to be issued to non-profit organizations with valid Use Permits for park sports fields to advertise on ball field fences in accordance with its requirements. The resolution further provided that it could be brought back to the City Council for continuation at the end of that period. While sports organizations using park ballfields have expressed interest in the permits, only one has obtained the permit at this time. It is the recommendation of PRPL staff that the time period of Resolution No. 06-18421 be extended indefinitely subject to periodic review by the Billings Park, Recreation and Cemetery Board to better allow the organizations using Billings' parks to obtain ballfield advertising permits and make use of the policy. The PRC Board at its May 9, 2007, meeting recommended approval by the City Council.

**ALTERNATIVES ANALYZED:**

1. Extend Resolution 06-18421 (See Attachment A) to enable organizations that use parks to develop programs to sell advertising space so that both the organizations and the city will benefit through the permit fees and advertising revenues. (Recommended)
2. Make no changes – allow resolution to end.

**FINANCIAL IMPACT:** Resolution No. 06-18421 authorizes a fee of \$100 per ballfield to be charged for permits for non-profit organizations with park use permits for ballfields to sell fence advertising subject to the restrictions and requirements contained in the resolution. While there have been inquiries, only 1 area little league has opted to obtain a permit for a ballfield so far.

**RECOMMENDATION** The Parks, Recreation and Cemetery Board and staff recommends that Council adopt the Resolution (Attachment A) continuing the time period for Resolution No. 06-18421 indefinitely until such a time as it may be desired to discontinue it.

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

**ATTACHMENTS**

A. Proposed Resolution to extend Term of Resolution No. 06-18421

B. Resolution No. 06-18421

RESOLUTION NO. 07 \_\_\_\_\_  
OF THE CITY CONTINUING THE TIME PERIOD FOR RESOLUTION NO. 06-18421 AND PROVIDING FOR RECONSIDERATION AT A FUTURE TIME IF NEEDED.

**WHEREAS**, the City of Billings adopted RESOLUTION NO. 06-18421 on May 22<sup>nd</sup>, 2006, governing advertising at City ball fields; and

**WHEREAS**, the period of time for Resolution No. 06-18421 was limited to one (1) year from the date of enactment, at which time it could be brought back to the City Council for continuation;

**WHEREAS**, the period of one (1) year that was enacted is too short to cover the playing season and becomes an obstacle to the sale of advertising allowed by the resolution. The time limit of the resolution is identified by local athletic organizations as an impediment to fundraising through the sale of sponsor advertising;

**WHEREAS**, the City of Billings also recognizes the importance of monetary sponsorships and fundraising to the operations of non-profit athletic organizations, including their capacity to maintain and improve City ball fields; and

**WHEREAS**, the City of Billings provides certain services to the public through the Parks Division of the Department of Parks, Recreation, and Public Lands; and

**WHEREAS**, it is in the best interests of the citizens of the City of Billings that the City Council continue the policy in Resolution No. 06-18421 to allow non-profit athletic organizations holding valid Park Use Permits at City ball fields to display sponsor signage for an effective period of time;

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

1. Resolution No. 06-18421 is hereby extended and continued;
2. Term of extension: Resolution No. 06-18421 shall continue in full force and effect from the date of approval of Resolution No. 07-\_\_\_\_\_, and shall be automatically renewed on the first day of January each year unless brought back to the City Council for further discussion and discontinuation by staff with the recommendation of the Billings Parks, Recreation, and Cemetery Board.

**PASSED by the Billings City Council and APPROVED this \_\_\_ day of \_\_\_\_\_, 2007.**

**CITY OF BILLINGS:**

**BY:** \_\_\_\_\_  
**MAYOR**

**ATTEST:**

**BY:** \_\_\_\_\_  
**CITY CLERK**

**RESOLUTION NO. 06-18421**

**A RESOLUTION OF THE CITY OF BILLINGS ALLOWING NON-PROFIT ORGANIZATIONS HOLDING VALID PARK USE PERMITS AT CITY BALLFIELDS TO DISPLAY SPONSOR SIGNAGE AS A MEANS OF RAISING FUNDS; SETTING A FEE TO BE CHARGED BY THE CITY FOR SUCH ADVERTISING DISPLAYS; ESTABLISHING AN EFFECTIVE DATE; AND REPEALING RESOLUTION NO. 98-17335.**

**WHEREAS**, the City of Billings adopted RESOLUTION NO. 98-17335 in 1998 governing advertising at City ball fields; and

**WHEREAS**, no advertising permits have been purchased pursuant to said policy, which has been identified by local athletic organizations as an impediment to fundraising by the sale of sponsored advertising; and

**WHEREAS**, the City of Billings recognizes the significant contribution to the maintenance and upkeep of city ball fields provided by area Athletic Organizations; and

**WHEREAS**, the City of Billings also recognizes the importance of monetary sponsorship and fundraising to the operations of non-profit athletic organizations, including their capacity to maintain and improve City ball fields; and

**WHEREAS**, the City of Billings provides certain services to the public through the Park Division of the Department of Parks, Recreation, and Public Lands; and

**WHEREAS**, is in the best interests of the citizens of the City of Billings that the City provides said services and that the City Council allow non-profit athletic organizations holding valid Park Use Permits at City ball fields to display sponsor signage as a means of raising fund for field improvements;

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

1. RESOLUTION NO. 98-17335 is hereby repealed.
2. Advertising Permitted at City Park Ball Fields. Non-profit organizations with valid Park Use Permits for the use of City of Billings Park ball fields shall be allowed to sell advertising and display such advertising at the park ball field to which such Park Use Permit applies, subject to the following limitations and restrictions:
  - (a) No wooden signs are permitted. Only banner signs constructed of polyvinyl or similar material with advertisements on one face and a solid white color on the back are allowed;
  - (b) Advertising signs shall only be placed on sideline and outfield fences with the ad side facing the playing field with only one sign per fence section being allowed

Signs may also be placed on the backs of dugouts;

(c) The size of each sign shall not be longer than any single fence section to which it is affixed and shall not be closer than 6 inches to the ground. It shall be designed and placed in a manner which does not alter, damage or interfere with either City property or City operations, including the maintenance, irrigation patterns and upkeep of the surrounding grounds;

(d) Advertising signs shall be placed no earlier than April 15<sup>th</sup>, and shall be removed from all ball fields no later than the date of the last scheduled league or tournament game at the end of the season;

(e) Advertising signs that are visibly deteriorated shall be immediately removed or replaced upon notice from the PRPL Department so as to preserve the park aesthetics and the advertising values for subscribers;

(f) No advertisements for products or services detrimental or inappropriate to the health or welfare of children including, but not limited to, alcoholic beverages, tobacco products, adult entertainment, gambling, or questionable content will be permitted;

(g) Where field use is shared by a primary and secondary users, the primary user may sell sign space on up to 75% of the available fence panels and the secondary users may sell the remaining 25% of the space unless a mutual agreement is made otherwise between the using organizations;

(h) On Nov. 1<sup>st</sup> of each year organizations who have advertised at fields must provide the PRPL Department with a financial report showing the amount of revenue that was generated from the advertisement sales and what money went into field improvements during the past season.

3. Dispute Resolution. Any section of this resolution being disputed will be reviewed by PRPL Staff who are authorized to make a final binding determination.

4. Advertising Permit Fee and Use. The annual fee paid to place advertising signs at single ball field shall be \$100.00/field.

5. Terms of Fees: Said fee shall continue in full force and effect from the date of approval for one (1) year, or until May 23, 2007, as amended by the City Council during consideration, and may be brought back for further discussion and continuation at that time.

APPROVED by the Billings City Council and this 22nd day of May, 2006.

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AE CITY CLERK

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

---

**TITLE:** Second Reading of an Ordinance Expanding Ward V (Annexation #07-08)  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** On May 29, 2007, the City Council approved the annexation of an approximate 4.27 acre parcel legally described as Tract 3, Certificate of Survey 2298, located in Section 4, Township 1S, Range 25E. (Annexation #07-08) The request for annexation was submitted by Hope Evangelical Church, the owner of the property, with Benjamin Gonzales as agent. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V was conducted on June 11, 2007. The second reading of the ordinance will be conducted on June 25, 2007.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

**A.** Ward Ordinance and Exhibit A

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

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

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

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

Tract 3, of Certificate of Survey 2298, Recorded January 9, 1985, Under Document No. 1336053, Records of Yellowstone County, Montana; including all adjacent right-of-way of Grand Avenue and 56<sup>th</sup> Street West.

Containing 5.619 gross and 4.269 net acres.

(# 07-08 Exhibit "A" Attached)

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

PASSED by the City Council on the first reading this 11th day of June, 2007.

PASSED by the City Council on the second reading this 25th day of June, 2007.

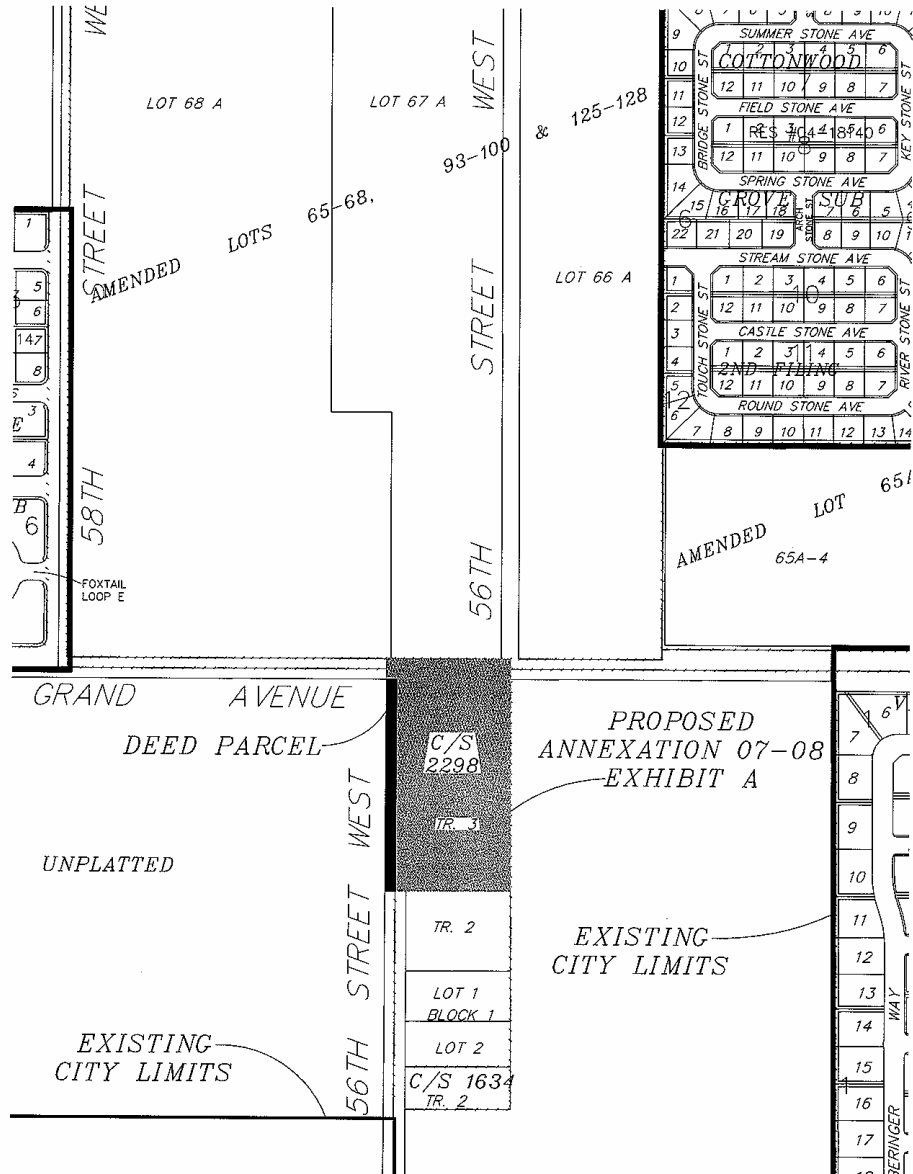
THE CITY OF BILLINGS:

\_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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

# EXHIBIT A



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



AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

---

TITLE: Second Reading of an Ordinance Expanding Ward I (Annexation #07-09)  
DEPARTMENT: Planning and Community Services Department  
PRESENTED BY: David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** On May 29, 2007, the City Council approved the annexation of an approximate 14.08 acre parcel generally located at the southeast intersection of King Avenue East and Calhoun Lane, legally described as; being a portion of the NE1/4 NW1/4 of said Section 16, wholly surrounded by Tract 1, Certificate of Survey No. 2350, Recorded November 18, 1985, Under Document No. 1372518, Records of Yellowstone County to the north; King Avenue East right-of-way and the E1/2 NE1/4 NW1/4 of said Section 16 less Certificate of Survey 3153 to the east; Interstate Highway 90 to the south; and Tract 1, Certificate of Survey No. 2655, Recorded December 10, 1991, Under Document No. 1617045, Records of Yellowstone County, Lot 2A of Amended Plat of Lots 2, 3, 4, and 5, Block 1, Miller Crossing Subdivision Recorded May 28, 2003, Under Document No. 3232279, Records of Yellowstone County and King Avenue East right-of-way to the west.

Including all adjacent Right-Of-Way of King Avenue East, Parcel 7 of Montana Highway Project No. IR 90-8(120)447, Recorded June 14, 1991, Book 1361, Page 2150, Under Document No. 1598191, Records of Yellowstone County, and Parcel 12 of Montana Highway Project No. IR 90-8(120)447, Recorded December 15, 1992 Book 1387, Page 4193, Under Document No. 1664260, Records of Yellowstone County. (Annexation #07-09) The request for annexation was submitted by Miller Trois LLC, the owner of property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward I was conducted on June 11, 2007. The second reading of the ordinance will be conducted on June 25, 2007.

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

**RECOMMENDATION**

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

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

## **ATTACHMENT**

### **A. Ward Ordinance and Exhibit A**

## **ATTACHMENT A**

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

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

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

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

Being a portion of the NE1/4 NW1/4 of said Section 16, wholly surrounded by Tract 1, Certificate of Survey No. 2350, Recorded November 18, 1985, Under Document No. 1372518, Records of Yellowstone County to the north; King Avenue East right-of-way and the E1/2 NE1/4 NW1/4 of said Section 16 less Certificate of Survey 3153 to the east; Interstate Highway 90 to the south; and Tract 1, Certificate of Survey No. 2655, Recorded December 10, 1991, Under Document No. 1617045, Records of Yellowstone County, Lot 2A of Amended Plat of Lots 2, 3, 4, and 5, Block 1, Miller Crossing Subdivision Recorded May 28, 2003, Under Document No. 3232279, Records of Yellowstone County and King Avenue East right-of-way to the west.

Including all adjacent Right-Of-Way of King Avenue East, Parcel 7 of Montana Highway Project No. IR 90-8(120)447, Recorded June 14, 1991, Book 1361, Page 2150, Under Document No. 1598191, Records of Yellowstone County, and Parcel 12 of Montana Highway Project No. IR 90-8(120)447, Recorded December 15, 1992 Book 1387, Page 4193, Under Document No. 1664260, Records of Yellowstone County.

Containing 24.889 gross acres and 14.838 net acres, more or less.

(# 07-09 Exhibit "A" Attached)

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

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 11th day of June, 2007.

PASSED by the City Council on the second reading this 25th day of June, 2007.

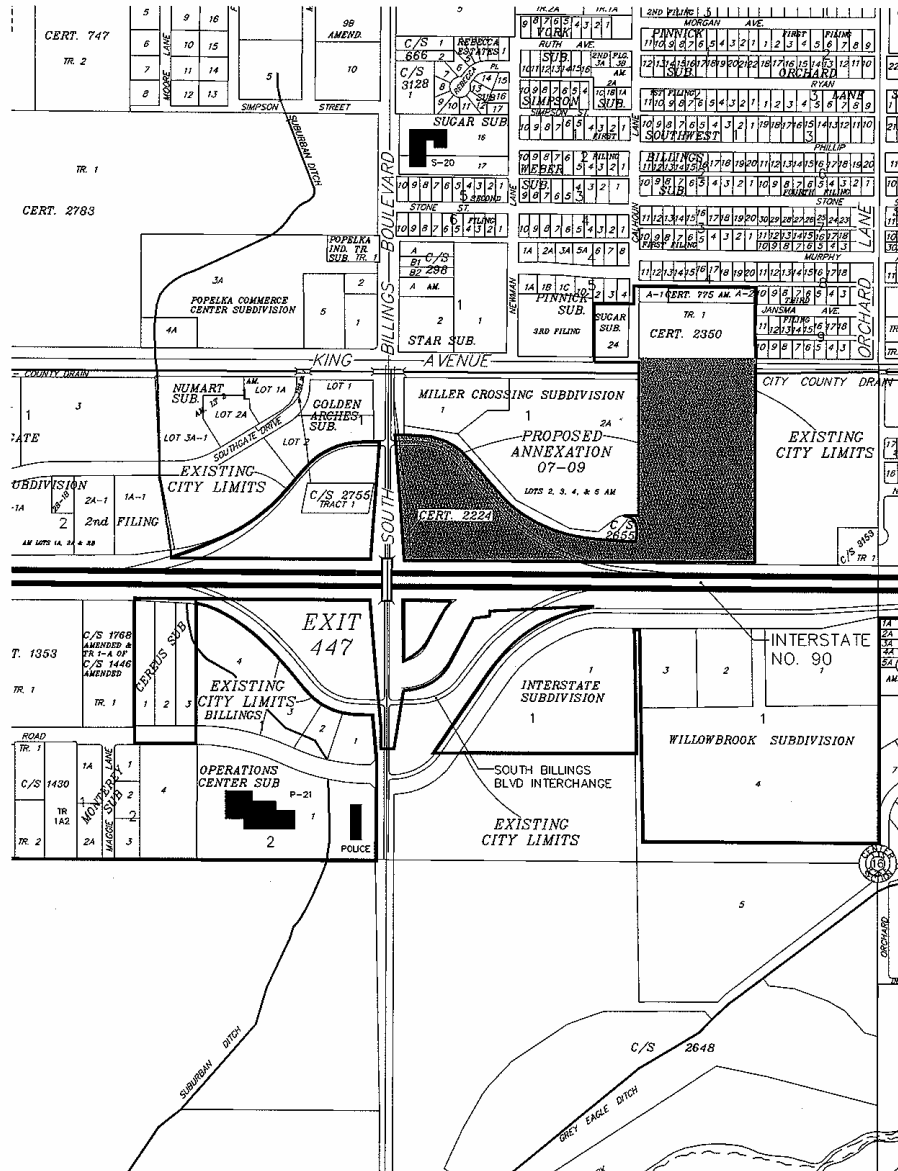
THE CITY OF BILLINGS:

\_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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

# EXHIBIT A



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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**June 25, 2007**

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**TITLE:** Preliminary Subsequent Minor Plat of Amended Lot 1, Block 1, Grand Avenue School Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On May 15, 2007, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 1, Block 1, Grand Avenue School Subdivision, which contains two lots on approximately 16.17 acres for residential development. The subject property is located on the south side of Grand Avenue, between 13<sup>th</sup> St. West and 14<sup>th</sup> St. West. The property is currently the location of Lewis and Clark Middle School, and Crossroads Alternative School. The owner and subdivider is School District #2 and the representing agent is Engineering, Inc.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on July 5, 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**

Planning staff recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 1, Block 1, Grand Ave. School 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 May 15, 2007, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 1, Block 1, Grand Ave. School Subdivision, which contains two lots on approximately 16.17 acres for residential development. The subject property is located on the south side of Grand Avenue, between 13<sup>th</sup> St. West and 14<sup>th</sup> St. West. The property is currently the location of Lewis and Clark Middle School, and Crossroads Alternative School. The owner and subdivider is School District #2 and the representing agent is Engineering, Inc.

## **PROCEDURAL HISTORY**

- A pre-application meeting was conducted between the subdivider's representative and city staff on April 12, 2007.
- The preliminary plat application for this subdivision was submitted to the Planning Department on May 15, 2007.
- The City Council will consider the preliminary plat on June 25, 2007.
- The City Council will also consider a zone change request for Lot 1-B on June 25, 2007.

## **BACKGROUND**

General location:	South of Grand Ave., north of Lewis Ave, between 13 <sup>th</sup> St. West, and 14 <sup>th</sup> St. West.
Legal Description:	Lot 1, Block 1, Grand Ave. School Subdivision
Subdivider/Owner:	School District #2
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	Public
Existing land use:	Lewis & Clark Middle School (Lot 1-A); Crossroads Alternative School (Lot 1-B)
Proposed land use:	Lot 1-A to remain the same; Walgreen's drugstore to develop on Lot 1-B
Gross area:	28,824 square feet
Net area:	16.23 acres
Proposed number of lots:	2
Lot size:	Max: 13.85 acres Min.: 2.15 acres

## **ALTERNATIVES ANALYSIS**

One of the purposes of the City's subdivision review process is to identify potential negative effects of property subdivision. When negative effects are identified it is the subdivider's

responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. The Planning Board develops and recommends conditions of approval that are based on departmental comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat.
2. To minimize effects on local services, the following amendments shall be made to the Subdivision Improvements Agreement (SIA):
  - Section VI.A: Delete the second paragraph that references local and interior construction fees.
  - Section VI.A.1.: strike existing language and replace with: “If sized appropriately and in good condition, Lot 1-B will be served by making connection to an existing four inch water service located along Grand Avenue. If the existing water service is deemed unusable, the service shall be terminated by plugging the tee at the water main. In the case of the existing water service being destroyed, a new water service shall come from the existing water main in 14<sup>th</sup> Street West. Fire hydrants will be provided at all appropriate locations as required by the City of Billings and as subject to approval by the City of Billings.”
3. To minimize effects on local services, right-of-way dedication needs for Grand Avenue and 13<sup>th</sup> Street West shall be provided as requested by City Engineering Division. The final right-of-way dedication shall be shown on the final plat.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
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.

### **VARIANCE REQUESTED**

Variance from Section 23-406.B.1. of the City Subdivision Regulations, which requires a 65-foot half-width right-of-way dedication for Grand Avenue, a principal arterial street. The variance request is to allow a 40-foot half-width right-of-way dedication. City staff is supportive of this variance request as the proposed width is consistent with the adjacent properties and is adequate to accommodate the recently constructed street improvements.

### **STAKEHOLDERS**

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

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

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

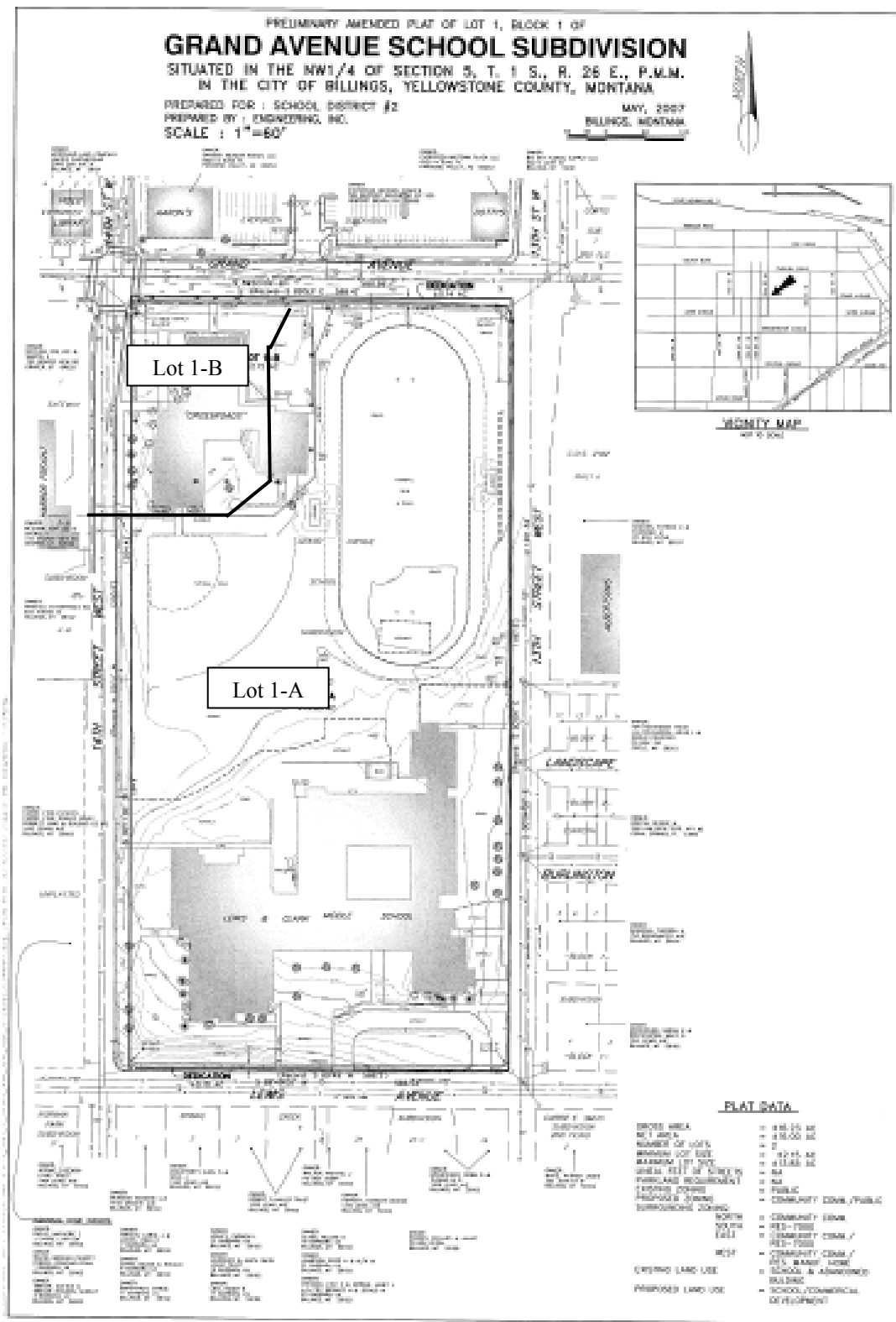
### **RECOMMENDATION**

The Planning Board recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 1, Block 1, Grand Ave. School 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

Preliminary Plat of Amended Lot 1, Block 1, Grand Ave. School Subdivision



## ATTACHMENT B



Figure 1: View from NW corner of proposed Lot 1-B, looking east down Grand Avenue.



Figure 2: View from NW corner of proposed Lot 1-B, looking south down 14<sup>th</sup> Street West.



Figure 3: Aerial view of proposed subdivision.

## **ATTACHMENT C**

### **Findings of Fact**

The Planning Board is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 1, Block 1, Grand Ave. School 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 (23-303(H)(2), BMCC).

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

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

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property.

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

- a. **Utilities** – Water and sewer services exist to both lots within this subdivision. The new construction on Lot 1-B will use the existing four-inch water service located along Grand Avenue, unless it is deemed unusable. If a new service is necessary, it shall come from the existing water main in 14<sup>th</sup> Street West. Condition of approval #2 requires that a statement be added to VI.A of the SIA to clarify this service plan. Private electrical and gas utilities are also currently serving both lots. New perimeter easements for utility maintenance may be required. Condition #1 requires that the easement locations be worked out and shown on the final plat.
- b. **Storm water** – As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department. Storm drains exist in all of the surrounding streets. Managing the storm water flow will be addressed at the time of site development.
- 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 Lot 1-A will remain as it currently is, off of Lewis Avenue. Access to the new development proposed on Lot 1-B will be from one approach off of Grand Avenue, opposite the one serving the plaza on the north side of the street. The remainder of the Grand Avenue frontage will have a 1-foot no-access strip placed on it. Two accesses will also be granted to Lot 1-B off of 14<sup>th</sup> Street West. Specifications on these approaches will be reviewed and approved by City Engineering at the time of site development.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at Parkhill Drive and 17<sup>th</sup> Street West.

- f. **Schools** - The subdivision is located within School District #2. Lot 1-A is the site of the Lewis & Clark Middle School. Lot 1-B is the site of the Crossroads Alternative School. The school district has determined to close down Crossroads, and sell this portion of land. None of the facilities for the middle school will be affected by this subdivision.
- g. **Parks and Recreation** - There is no parkland dedication requirement, as this is a subsequent minor plat.
- h. **Mail Delivery** - Mail service to the lots will likely remain as it currently is. This subdivision will not have an effect on the mail delivery.

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

A geotechnical study will be submitted at the time of lot development for Lot 1-B. Waiting until that time will ensure that the new use is appropriately engineered for the site. This subdivision should have no other effects on the natural environment because it is within an urban setting.

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

There are no known endangered or threatened species on the property. This subdivision should have no negative impacts on wildlife and wildlife habitat because it is within an urban setting.

### **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)**

An Environmental Assessment is not required, as this is a subsequent minor plat.

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

## **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**

A Heritage Trail corridor is not identified within this subdivision.

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

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

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

The property is served by City water, sewer, storm drain 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 currently located within the Public zoning district (being school property) and Lot 1-B is undergoing a concurrent zone change request to Community Commercial. This new zoning will enable the redevelopment of the lot with a neighborhood drugstore. Both lots shall comply with the standards set forth in Section 27-308, BMCC for their respective zoning districts.

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

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

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

Access to the lots will be from Grand Avenue, 14<sup>th</sup> Street West and Lewis Avenue, as approved by City Engineering.

## **CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 1, Block 1, Grand Ave. School 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, June 25, 2007

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Ron Tussing, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

June 26, 2007

Rich Whitney  
School District #2  
101 10<sup>th</sup> Street West  
Billings, MT 59102

Dear Applicant:

On June 25, 2007, the Billings City Council conditionally approved the preliminary plat of Amended Lot 1, Block 1, Grand Avenue School 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.
2. To minimize effects on local services, the following amendments shall be made to the Subdivision Improvements Agreement (SIA):
  - Section VI.A: Delete the second paragraph that references local and interior construction fees.
  - Section VI.A.1.: strike existing language and replace with: "If sized appropriately and in good condition, Lot 1-B will be served by making connection to an existing four inch water service located along Grand Avenue. If the existing water service is deemed unusable, the service shall be terminated by plugging the tee at the water main. In the case of the existing water service being destroyed, a new water service shall come from the existing water main in 14<sup>th</sup> Street West. Fire hydrants will be provided at all appropriate locations as required by the City of Billings and as subject to approval by the City of Billings."
3. To minimize effects on local services, right-of-way dedication needs for Grand Avenue and 13<sup>th</sup> Street West shall be provided as requested by City Engineering Division. The final right-of-way dedication shall be shown on the final plat.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
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 Juliet Spalding with the Planning Division at 247-8684 or by email at [spaldingj@ci.billings.mt.us](mailto:spaldingj@ci.billings.mt.us).

Sincerely,

---

Ron Tussing, Mayor

Cc: Engineering, Inc.

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

Q

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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**TITLE:** Preliminary Major Plat of King Meadows Subdivision  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

---

**PROBLEM/ISSUE STATEMENT:** On April 2, 2007, the subdivider, Land Equity Partners Fund II, L.P, applied for preliminary major plat approval for King Meadows Subdivision, which contains 410 lots on approximately 150 acres of land. The subject property is located on the southeast corner of the intersection of King Avenue West and 48<sup>th</sup> Street West. On April 23, 2007, the City Council annexed the property into the city and rezoned it from Residential 9600 (R-96) to Community Commercial (CC), Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-50), and Residential 7000 (R-70).

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 60 working days to act upon this preliminary major plat. The 60-working day review period for this subdivision will end on June 25, 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 60 day review period, the City Council is required to:

4. Approve;
5. Conditionally Approve; or
6. Deny the Preliminary Plat

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

## **RECOMMENDATION**

The Planning Board recommends that the City Council grant conditional approval of the preliminary plat of King Meadows Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

On April 2, 2007, the subdivider applied for preliminary major plat approval for King Meadows Subdivision, which contains 410 lots on approximately 150 acres of land. The subject property is located on the southeast corner of the intersection of King Avenue West and 48<sup>th</sup> Street West. On April 23, 2007, the City Council annexed the property into the city and rezoned it from Residential 9600 (R-96) to Community Commercial (CC), Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-50), and Residential 7000 (R-70). The subject property is bordered on the north and west by agricultural land (county); on the east by vacant and developing commercial properties within Montana Sapphire Subdivision (city); and on the south by a gravel mining operation (county).

## **PROCEDURAL HISTORY**

- On February 26, 2007, a pre-application meeting was conducted for a proposed major plat.
- On February 21, 2007, the Annexation Petition was submitted to the Planning Department.
- On March 5, 2007, the rezone application was submitted to the Planning Department.
- On April 2, 2007, the preliminary major plat application was submitted to the planning department.
- On April 3, 2007, the City Zoning Commission conducted a public hearing for several zone changes on the subject property including CC, RMF-R, R-50, and R-70, in which they forwarded a recommendation of approval to the City Council on a 4-0 vote.
- On April 9, 2007, the City Council acknowledged the annexation petition and set a public hearing date for April 23, 2007.
- On April 19, 2007, the departmental review meeting for the preliminary plat was conducted.
- On April 23, 2007, the City Council conducted the public hearing for the annexation and the zone change, both were approved.
- On May 14, 2007, a public hearing for the first reading to expand Ward Boundary I was conducted; the second reading of the zone change was conducted.
- On May 15, 2007, the Planning Board will conduct a plat review on the proposed major subdivision.
- On May 29, 2007, the City Council conducted the second and final reading for ward boundary expansion.
- On May 30, 2007, the Planning Board conducted a public hearing on the proposed major subdivision and is forwarding a recommendation of conditional approval to the City Council on an 8-0 vote.
- On June 25, 2007, the preliminary plat will be approved, conditionally approved, or denied by the City Council.

## **BACKGROUND**

General location:	Southeast corner of the intersection of 48 <sup>th</sup> Street West and King Avenue
Legal Description:	Lots 1-5, Block 1, Western Sky Subdivision
Subdivider:	Land Equity Partners Fund II, L.P.
Owner:	Gareld Krieg and Cal Kunkel
Engineer and Surveyor:	Engineering Inc.
Existing Zoning:	CC, RMF-R, R-50, R-70, R-96
Existing land use:	Vacant Agricultural Land
Proposed land use:	Commercial, Multi-Family Residential, Duplexes, and Single-Family Residences
Gross area:	150.863 acres
Net area:	119.245 acres
Proposed number of lots:	410
Lot size:	Max: 13.64 acres Min.: 5,121 square feet
Parkland requirements:	13.117 acres of parkland required, 21 acres proposed as onsite dedication

## **ALTERNATIVES ANALYSIS**

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

## **RECOMMENDED CONDITIONS OF APPROVAL**

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

6. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
7. To minimize effects on public health and safety, the following statement shall be added to Section A.1 of the Subdivision Improvements Agreement (SIA):

*The portion of King Avenue West that abuts the northern boundary of the subdivision is controlled by the Montana Department of Transportation (MDT). Any additional accesses to be located along King Avenue West shall be reviewed and approved by MDT. (Recommended by MDT)*

8. To minimize effects on public health and safety, Section IV.4 of the SIA shall be revised to reflect an alley width of 28-feet instead of 20-feet for the lots fronting on King Avenue. *(Recommended by the Fire Department)*
9. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
10. To minimize effects on public health and safety, information regarding the proposed bridge crossing to connect the Heritage Trail north of the Hogan's Slough with the southern portion of the subdivision shall be included in IV.F of the SIA. *(Recommended by the City-County Planning Department)*
11. To minimize effects on public health and safety and comply with the local subdivision regulations, Section I.A, of the SIA shall include the variance from Appendix O.B, BMCC. *(Recommended by the Yellowstone County Board of Planning)*
12. To minimize effects on public health and safety and to comply with Appendix O, BMCC, prior to final plat, the subdivider shall provide a minimum of four cross sections and a flood profile that runs the length of Hogan's Slough within the subdivision. *(Recommended by the Yellowstone County Board of Planning)*
13. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

14. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

### **VARIANCES REQUESTED**

A variance to permit 60-foot half width rights-of-way for King Avenue West and 48<sup>th</sup> Street West where Section 23-406(b)(6), BMCC, requires a 65-foot half width right-of-way for principal arterial streets. Engineering staff is supportive of this variance, as the 60-foot half width will maintain consistency with other recently developed properties along King Avenue West and 48<sup>th</sup> Street West.

A variance from Appendix O.B which requires that any subdivision within a flood hazard area that has been identified by the city or county shall require a flood study and any land within a 100-year floodway or floodplain be labeled on the plat as a “no build zone.” The subdivider is requesting a variance from the requirement for a flood study by requesting to substitute the PBS & J completed *Draft 2007 West Billings Flood Hazard Assessment* and a variance from the requirement that the floodway or floodplain be labeled on the plat as a “no build” zone. Though the draft study has not been formally adopted by the city or county, the study provides more information than that required by Appendix O. Planning staff is supportive of the variance based on the information provided in the flood study. Staff is also supportive of the variance from labeling the “no build” zone on the plat, as the 100-year floodplain is clearly delineated on the plat and a statement has been added to Section III.H of the SIA under Conditions that Run with the Land, specifying which lots are within the 100-year floodplain to warn future lot owners. The variance criteria required by Section 23-1101, BMCC has been addressed and Condition #6 requires that the requested variance be included in the Subdivision Improvements Agreement (SIA).

### **STAKEHOLDERS**

On May 30, 2007, the Planning Board conducted a public hearing regarding this subdivision. The Planning Board discussion focused on the proposed variance from the floodplain requirements set forth in Appendix O, BMCC. The Planning Board found that even though the *Draft 2007 West Billings Flood Hazard Assessment* provides a complete assessment for flooding in west Billings, the minimum Criteria of Section O does require cross sections and profile sheets for any properties identified within flood prone areas. As such, Condition #7 requires that the subdivider provide a minimum of four cross sections of the property and a flood profile for the entire length of Hogan’s Slough. There was no further discussion.

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

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

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

**RECOMMENDATION**

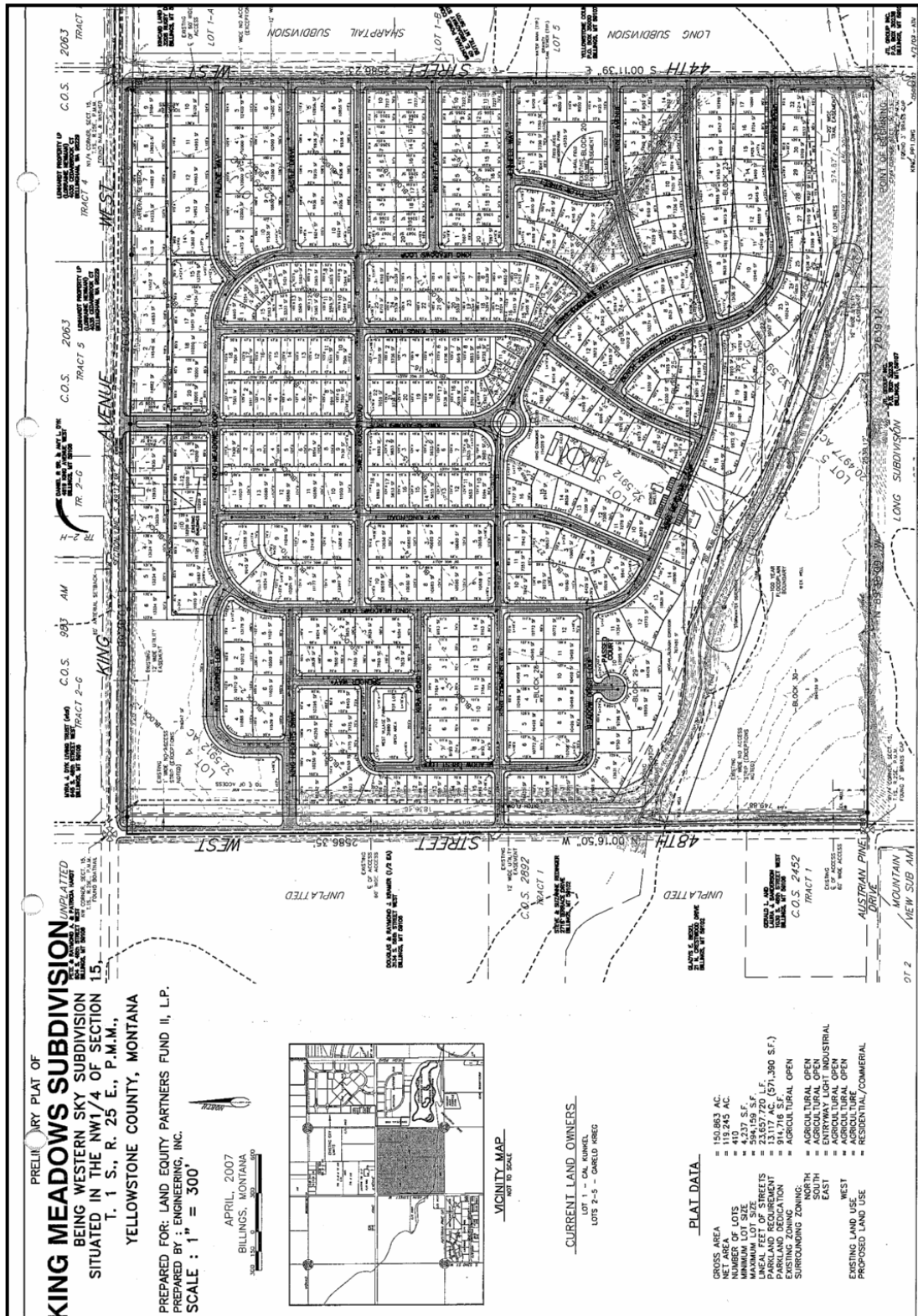
The Planning Board recommends that the City Council grant conditional approval of the preliminary plat of King Meadows Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

**ATTACHMENTS**

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

# F. ATTACHMENT A

## Preliminary Plat



**ATTACHMENT B**  
Site Photographs



Figure 1: View east toward the existing house on the property. The existing farm access road along the western boundary is depicted in the photo.



Figure 2: View west along the northern border of the subdivision, King Avenue West.



Figure 3: View southeast toward Hogan's Slough located along the southern portion of the property.



Figure 4: View south along 44th Street West and the eastern boundary of proposed subdivision.

## ATTACHMENT C

### Variance Criteria



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

May 22, 2007

Ms. Aura Lindstrand  
City of Billings  
Planning and Community Services Department  
510 North Broadway, 4th Floor  
Billings, MT 59101

Reference: King Meadows Subdivision Variance Request  
E.I. No. 05082.02

Dear Ms. Lindstrand:

As per the discussion raised during the May 15, 2007, Planning Board meeting regarding compliance with Flood Hazard Evaluation requirements as outlined in Appendix O, B. of the current City of Billings Subdivision Regulations, the following variance is being requested:

*Variance from the provisions of Appendix O, B of the City of Billings Subdivision Regulations requiring land to not be subdivided if deemed subject to flooding by the City or County; and that land within the 100-year floodway boundary or floodplain be labeled on the plat as a "No-Build Zone;" and that a flood study be completed as outlined in Parts B and C of Appendix O. Building for residential purposes within the 100-year floodplain as delineated by the June 2004 "approximate study" completed by HKM Engineering will be completed in King Meadows Subdivision. However, no building will occur within the 100-year floodplain as delineated by the 2007 West Billings Flood Hazard Assessment completed by PBS&J that has yet to be formally approved by the City or County. We are requesting that the draft 2007 West Billings Flood Hazard Assessment be used for satisfying Appendix O, B.*

Comments addressing the items under Section 23-1101 of the subdivision regulations are provided below:

- I. The granting of the variance would not be detrimental to the public health, safety, or general welfare, or injurious to other adjoining properties, as no residential building will occur within the 100-year floodplain; and that any other improvements built within the 100-year floodplain will be such that these facilities will remain in place, or not be a significant hazard, if inundated by flood waters (i.e., pedestrian bridge, park benches, etc.).

The 100-year floodplain being referenced in the preceding paragraph is that delineated in the recent West Billings Flood Hazard Assessment completed by PBS&J. The findings of this study have not been formally approved by the City or County. However, the approximate study of the area south of Rimrock Road completed by HKM Engineering in June of 2004 was also never formally approved, but was assumed to be the most accurate study available at that time. The findings of the approximate study were referenced by the Planning Board as basis for needing the subject variance.

1300 North Transock Way • Billings, MT 59102 • Phone (406) 656-5255 • Fax (406) 656-9767 • [www.hkm.com](http://www.hkm.com)

Ms. Aura Lindstrand  
May 17, 2007  
Page 2

It is fair to say that the PBS&J study provides a more accurate assessment of the flood hazard in the subject area given the detailed topographic mapping completed as a part of the assessment, and has been accepted, as well as represented, to the developer and this firm by City staff as being the most accurate study currently available. Given the precedence of utilizing the most accurate study available to assess the flood hazard potential of a particular area regardless of whether or not the study was formally approved by the City, the development master plan of King Meadows Subdivision was completed based on the findings of the PBS&J study, and was done so in compliance with the regulations outlined in Appendix O of the City of Billings Subdivision Regulations.

2. The relatively flat topographical conditions existing within the subdivision would result in the 100-year floodplain inundation area occurring over a significant portion of the site as delineated by the 2004 approximate study or by the 2006 Phase I Shiloh Road Corridor Project Hydraulic Analysis completed by Ayers Associates and shown on the minor plat of Western Sky Subdivision. Given that the findings of the previous studies have been credibly replaced by the more accurate PBS&J study, the current property owners and developer would incur unforeseen economic hardship if the majority of the property is deemed unsuitable for residential development as a result of strict enforcement of this regulation based on inaccurate information.
3. The variance would not result in an increase in taxpayer burden, as residential development will only occur outside of the 100-year floodplain, as delineated by the PBS&J study.
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.
5. The master plan development design being proposed under this variance is based on the location of the 100-year floodplain, as delineated by the PBS&J study. The objectives of the flood hazard evaluation items contained in Appendix O of the City of Billings Subdivision Regulations are being satisfied.

Also attached is a brief summary of the hydraulic and hydrologic studies that have been completed to evaluate the flood hazard potential of the West Billings area. This information is provided to support this variance request by establishing that the PBS&J study is the most definitive study on the subject completed to date.

Feel free to contact our office with any questions, or if any additional information is needed.

Sincerely,

Cavin Noddings, PE

CN/dml

Enc.

Px05082\_02\_Lindstrand\_Var\_Req\_Ltr\_051707



## **ENGINEERING, INC.**

Consulting Engineers and Land Surveyors

May 17, 2007  
E.I. No. 05082.02

### **VARIANCE REQUEST SUPPORTING SUMMARY FOR KING MEADOWS SUBDIVISION**

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#### **INTRODUCTION**

The purpose of this Variance Request Supporting Summary is to outline the history of hydrology/hydraulic studies and flood hazard evaluations that have been completed for the west Billings area and discuss why they should be replaced with the current Draft West Billings Flood Hazard Study prepared by PBS&J on April 6, 2007. This summary has been prepared for the Billings City/County Planning Department as requested at the Planning Board meeting on May 15, 2007, and is in support of the variance request outlined in the letter from Cavin Noddings dated May 17, 2007.

There have been a number of hydrology/hydraulic studies and flood hazard evaluations done for the west Billings area; however, only the studies that are most relevant to the variance request for King Meadows Subdivision are summarized below.

#### **U.S. ARMY CORPS OF ENGINEERS (USACE) REPORT**

The USACE report, "Yellowstone River and Tributaries Flood Control Project," dated March 1970, is the first report prepared for the west Billings area, and it provides a good history of flooding along Hogan's Slough and its impact on downtown Billings. The report indicates that Hogan's Slough in its existing condition cannot convey flood flows and requires additional structures and improvements to prevent flood damage. The report discusses the construction of Shiloh Drain to convey flood flows along the west side of Shiloh Road from Broadwater Avenue to Hogan's Slough and recommends that flood flows from Shiloh Drain and Hogan's Slough be diverted to Canyon Creek.

#### **BILLINGS WEST END STORM DRAINAGE MASTER PLAN (WEMP)**

The WEMP was completed in draft form by Engineering, Inc. in May 1991 and provides a detailed study of the area generally extending from Shiloh Road and Zimmerman Trail on the east to the railroad tracks near 72nd Street on the west and from the rimrocks on the north to King Avenue on the south. In general, the WEMP indicates significant flooding along Hogan's Slough under existing

conditions and recommends that a green belt corridor be established along Cove Creek, Birely Drain, and Hogan's Slough, which would form the main backbone trunk system for stormwater management and flood control in west Billings. The WEMP also further analyzed the option of building a detention facility on Hogan's Slough near Shiloh Road and diverting flood flows to Canyon Creek as originally proposed in the USACE report. Although the study has never been finalized or adopted by the City of Billings, it has historically been utilized as the standard for stormwater planning and management for areas west of Shiloh Road.

#### **HKM APPROXIMATE STUDY**

The next study conducted in the area of the proposed King Meadows Subdivision, was an approximate study performed by HKM and Associates, which generated a preliminary map dated June 5, 2004. The map outlines flood zones A and B, which are described by the Federal Emergency Management Agency (FEMA) as follows:

- Zone A: Areas of 100-year flood; base flood elevations and flood hazard factors not determined.
- Zone B: Areas between the limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding with average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected from the base flood by levees.

Similar to the WEMP, this approximate study has also been utilized by the City of Billings for planning and stormwater management purposes, though it has never been finalized or adopted by the City of Billings.

#### **AYRES ASSOCIATES HYDRAULIC ANALYSIS FOR SHILOH ROAD PROJECT**

As part of the Shiloh Road Corridor Project Phase I, Ayres Associates prepared a hydraulic analysis of the Hogan's Slough west of Shiloh Road dated January 2006 (Ayres Report). The purpose of the analysis was to identify potential flooding of Hogan's Slough at the Shiloh Road crossing. The following is a statement from the Ayres Report: "Results of the analysis indicate that the current Shiloh Road profile is overtopped during most flood events, as low as a 2-year event. However, these results are not consistent with historical flood accounts from Billings' residents. Based on this and other observations through the course of this study, the need for an updated hydrologic study, along with more detailed topographic mapping, became apparent. As a result, the City of Billings has recently initiated a new west Billings study. This study, however, proceeded with the information currently available in the 1991 WEMP." Therefore, the Ayres Report used the WEMP as the basis for that analysis and prepared maps showing the approximate floodplain limits for existing and future developed conditions. The report also identified three preliminary design alternatives to control flooding at Shiloh Road.

The approximate floodplain boundary of Hogan's Slough identified in the Ayres Report was delineated on the final plat of Western Sky Subdivision as a requirement of preliminary plat approval because at the time the Ayres Report was the most current flood study of the west Billings area.

Again, like the WEMP and HKM Approximate Study, the Ayres Report has not been adopted by the City of Billings.

#### **WEST BILLINGS FLOOD HAZARD STUDY (PBS&J REPORT)**

The most current flood study to date for the west Billings area is the West Billings Flood Hazard Study Hydrologic and Hydraulic Analyses Report, which was completed in draft form by PBS&J for the City of Billings on April 6, 2007. This study was prepared to provide more detailed and accurate floodplain mapping of the west Billings area in response to previous studies that acknowledged there was a lack of detailed topographic data necessary to accurately model such a flat drainage area. Furthermore, as discussed in the Ayres Report, historical flood accounts from Billings' residents are not consistent with hydrologic/hydraulic studies conducted prior to the PBS&J Report, which indicated the need for a more detailed study.

The following is a statement from the PBS&J Report discussing the hydraulic analysis methodology used in that study: "To best represent the flooding in the West Billings Flood Hazard Study area, a one dimensional/two dimensional (1D/2D) modeling network was selected. This combined 1D/2D model is best for this study because the defined channels and drains can be accurately modeled using channel cross sections, culvert and bridge data within the 1D network. The 2D network is then used to model water outside the defined channels for over topping of defined channels, split flow conditions, overland flow, or areas where it is not clear the direction of the flow due to flat topography. By using a 1D/2D modeling network, water is allowed to freely enter and exit each system. Therefore, no water is lost from the systems." Previous studies could not accurately model a 2D network due to lack of detailed topographic information.

The PBS&J Report utilized the Cove Creek Flood Plain Study by Allied Engineering Services, Inc. on September 1, 2004, which included floodplain mapping for Cove Creek ending at Rimrock Road. The Allied Engineering report determined a split flow condition at Rimrock Road, which was incorporated into PBS&J's study. This split flow can be seen on Exhibit 5 of the PBS&J Report, which shows this split flow being carried through the west Billings area for the 100-year and 500-year design storms. The PBS&J floodplain mapping is considerably different from previous studies and mapping that have been conducted in the west Billings area as it accounts for the split flow condition at Rimrock Road and the detailed 2D modeling of the flat topography, which is more accurate.

#### **CONCLUSION**

As outlined above, numerous flood studies have been conducted for the west Billings area over the years, which have all been utilized at various times in the development planning of west Billings. In general, all the studies prior to the PBS&J report acknowledged the need for more detailed topographic information to accurately map the floodplain in west Billings. It is understood that although the PBS&J Report is not formally adopted by the City of Billings, it is accepted as the most detailed and accurate study available for the west Billings area to date. Therefore, the 100-year floodplain for the proposed King Meadows Subdivision should be based on the PBS&J Report and associated floodplain mapping, which shows the 100-year floodplain being confined to the Hogan's Slough drainage channel and not spreading out across the site.

**ATTACHMENT D**  
**Findings of Fact**

The Planning Board is forwarding the recommended Findings of Fact for King Meadows Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Article 23-100, BMCC).

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

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

The subject property has historically been utilized for crop production. The proposed subdivision will take approximately 150 acres out of agricultural production, which could have a cumulative effect as more subdivisions on the west end occur.

Hogan's Slough is located along the southern portion of the site and provides for overflow from Cove Creek to the north, as depicted on the Draft West Billings Flood Hazard Study Map. The subdivider has proposed the slough as a parkland dedication with a trail corridor that follows the 100-year floodplain. The subdivider is not proposing any alterations to the slough with the exception of trail construction and minor landscaping.

Along the western border of the site is the 48<sup>th</sup> Street Drain, which will not be altered with the exception of culverts and crossings for access to the subdivision. The King Drain runs diagonally through the eastern portion of the site to 44<sup>th</sup> Street West. This drain will be replaced by a slotted drain and located within the 44<sup>th</sup> Street right-of-way and dedicated parkland.

**2. Effect on local services**

- a. **Utilities** – Water to the subject property will be extended from the 24-inch main located in King Avenue West northeast of King Meadows Subdivision and a new 12-inch water main will be constructed within 44<sup>th</sup> Street West along the eastern border of the subdivision. A cash contribution will be provided for the construction of a new water main within King Avenue West between 44<sup>th</sup> Street West and 48<sup>th</sup> Street West for future development. Eight inch water mains will be constructed within the interior subdivision streets.

Sanitary sewer will be extended from the 27-inch main within King Avenue West northeast of the proposed subdivision and a new 12-inch main will be constructed within 44<sup>th</sup> Street West. A cash contribution will be provided for the construction of a new sewer main within King Avenue West between 44<sup>th</sup> Street West and 48<sup>th</sup> Street West for future development. Eight inch sanitary sewer lines will be installed within the interior subdivision streets.

- b. **Stormwater** – Storm drainage for the proposed subdivision will be provided by a combination of surface drainage and curbs and gutters drained to new detention areas to be constructed within Hogan’s Slough.

A new 18-inch storm drain will also be constructed within King Avenue West from the intersection of 44<sup>th</sup> Street West to the existing 18-inch storm drain located within King Avenue West east of the subdivision. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision will be via internal streets from King Avenue West to the north, 44<sup>th</sup> Street West to the east, and 48<sup>th</sup> Street West to the west. All internal streets will be constructed to city standards with 56-feet of right-of-way and 34-feet back to back of curb pavement width and 5-foot wide boulevard style sidewalks on both sides of the street; these sidewalks will be constructed at the time of lot development. The subdivider will provide a cash contribution for boulevard sidewalks with a minimum boulevard width of 10-feet along both 48<sup>th</sup> Street West and King Avenue.

King Avenue West is controlled by the Montana Department of Transportation (MDT) at this location. The existing farmhouse access is the proposed entrance for the subdivision and future King Meadows Drive. This access was approved by MDT when Western Sky Subdivision was approved by the Board of County Commissioners in 2005. Any additional accesses along this frontage will need to be reviewed and approved by MDT. This shall be specified in the SIA, as required by Condition #2.

King Avenue West and 48<sup>th</sup> Street West are classified as a principal arterial streets, which require a 65-foot wide half width dedication for a full width of 130-feet per Section 23-406(B)(6). The subdivider has requested a variance to permit a 60-foot half width dedication for King Avenue West and 48<sup>th</sup> Street West. Engineering staff is supportive of this variance, as the 60-foot half width will maintain consistency with other recent developments along King Avenue West and 48<sup>th</sup> Street West. The subdivider will provide a cash contribution for an additional 11-feet of asphalt required along the southern portion of King Avenue West fronting the subdivision and 11-feet along the eastern portion of 48<sup>th</sup> Street West fronting the subdivision. This contribution will include the asphalt, as well as left turn widening along King Avenue, as specified within the SIA.

At this location, 44<sup>th</sup> Street West is classified as a proposed collector which requires a 74-foot right-of-way dedication and a minimum of 39-feet back to back of curb width per Section 23-406(B)(6). The subdivider will construct the western 30-feet of 44<sup>th</sup> Street West fronting the subdivision.

The subdivider is proposing alley accesses for the northern lots along King Avenue. The proposed residences will face King Avenue West and garages will be accessed from the rear alleys. During the review process, the Fire Department raised concerns regarding the ability to access these residences during an emergency, as there are currently no sidewalks and fences and berms may not allow for emergency equipment to access from King Avenue. Therefore, the alleys along these lots were required to be widened to 28-feet of pavement width to adequately allow for emergency vehicles to access the residences. While this has been depicted on the plat, Section IV.4 still specifies that the alleys will be 20-feet in width. Condition #3 requires this section to be revised to reflect the 28-foot width for lots fronting King Avenue West.

The subject property is to be developed in five phases essentially following lot lines of the 5-lot minor subdivision that was platted in 2005. The subdivider is purchasing each lot (or phase) once a phase is complete. Specific street and park improvements are included within the phasing section of the SIA.

A Traffic Accessibility Study (TAS) was submitted to the Engineering Department for review and approval. The TAS determined the traffic generation for King Meadows Subdivision will be approximately 6,485 trips per day. The applicant will be required to provide a monetary contribution for the surface improvements and the construction of left turn lanes on King Avenue West in the future.

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24<sup>th</sup> Street West (Station #5). Once constructed, the fire station on 54<sup>th</sup> Street West will serve this property. The subdivision is located within the ambulance service area of American Medical Response (AMR); no comments were received.
- f. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review by the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend Elder Grove Elementary and Middle Schools, and West High School. Comments were received from Elder Grove School stating that the maximum enrollment for the school is 170 students and that they currently have 136 students enrolled. They also stated that this subdivision is already located on a bus route.
- g. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 13.117 acres of dedicated parkland. The subdivider is proposing a land dedication in the form of two small pocket parks, one large main park, and the Hogan's Slough, which will include the Heritage Trail easement. The total proposed parkland dedication for this subdivision is approximately 21 acres. Upon several discussions between the subdivider and Parks Department, it has been determined that the parks will be accepted as dedication with maintenance provided through a private Homeowner's Association and an underlying Park Maintenance District (PMD). The Parks Department has stated that the maintenance costs are too high for them to maintain small pocket parks, therefore they have been allowing small parks within subdivisions to be dedicated, provided that

they are maintained through private Homeowner's Associations. If the Homeowner's Association dissolves, the underlying PMD will be assessed to the owners for the maintenance of these parks.

The subdivider will provide a Park Master Plan for the development of the parks within the subdivision, which will specify the types and timing of improvements with each phase of the subdivision. This Master Plan will be reviewed by the Parks Department and approved by the City Council.

- h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #4. The location of the mail boxes shall be reviewed and approved by the post office.

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

A geotechnical report was submitted with this application and indicates that there are variable soil conditions throughout the subdivision with a potential for collapsible soils. As specified by the Building Official's review of the submitted geotechnical report, verification from a qualified engineer regarding structural designs and preparation of the building site are required prior to installing footings. A compaction test will be required prior to framing. These requirements will be satisfied with the submission of building permits on the property.

Hogan's Slough and the 48<sup>th</sup> Street Drain are located within the 100-year floodplain, as depicted within the Draft West Billings Flood Hazard Study Map. The 100-year floodplain has been depicted on the plat, as well as stated within the SIA. However, based on the Planning Board plat review discussion, the subdivider is requesting a variance from the requirement for a flood study by requesting to substitute the PBS & J completed *Draft 2007 West Billings Flood Hazard Assessment* and a variance from the requirement that the floodway or floodplain be labeled on the plat as a "no build" zone. Though the draft study has not been formally adopted by the city or county, the study provides more information than that required by Appendix O, BMCC. Condition #6 requires that the requested variance be included in the Subdivision Improvements Agreement (SIA). Furthermore, during the public hearing, the Planning Board found that even though the *Draft 2007 West Billings Flood Hazard Assessment* provides a complete assessment for flooding in west Billings, the minimum Criteria of Section O does require cross sections and profile sheets for any properties identified within flood prone areas. As such, Condition #7 requires that the subdivider provide a minimum of four cross sections of the property and a flood profile for the entire length of Hogan's Slough within the subdivision.

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

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

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

There are four conditions that exist on the subject property that may potentially create problems for future landowners: collapsible soils, interactions with wildlife, the existing 100-year floodplain depicted on the plat, and the gravel mining operation located to the south. These issues have been addressed within the Conditions that Run with the Land portion of the SIA to warn future lot owners.

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

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

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

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

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

- d. **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

*The proposed subdivision would provide for more housing and business choices within this portion of the City.*

- b. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).**

*The proposed subdivision will provide public streets improved to city standards that connect with existing streets, thus creating more efficient transportation connections and ease of traffic flow.*

The subdivision is inconsistent with the following goal of the Growth Policy:

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

*While the subject property is adjacent to the west of annexed portions of the City, the property is not located within an area surrounded by an existing population center and could be considered sprawl.*

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

*With the extension of the City limits and as surrounding properties develop with similar densities within this area, the proposed subdivision is compatible with the character of the neighborhood. However, there are still agricultural lands and low density housing located to the north, south, and west of this property.*

- c. **Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land (Natural Resources Goal, Page 8).**

*The subject property has historically been utilized for crop production. The proposed subdivision will take approximately 150 acres out of agricultural production, which could have a cumulative effect as more subdivisions on the west end occur.*

## **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**

Hogan's Slough is depicted as a trail corridor within the Heritage Trail Plan. As such, the subdivider is proposing a 20-foot wide trail easement along the northern boundary of the slough. Within the 20-foot wide easements, 10-foot wide pedestrian accesses will be constructed to City Trails and Bikeways Design Standards, as specified within the SIA. The subdivider will be responsible for the construction of the trail and the proposed bridge to connect the north and south portions of the subdivision, as specified within the SIA. Information regarding the proposed bridge crossing shall be included in the SIA, as required by Condition #3.

## **4. West Billings Plan**

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

- Development in the West End planning area shall provide for a variety of residential types and densities.
- Condition approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.
- The West Billings Plan identifies the intersection of King Avenue West and 48<sup>th</sup> Street West as a Neighborhood Commercial Center with 5-acre commercial nodes depicted on each corner. The proposed subdivision has provided approximately 5-acres on the northwest corner of the subdivision as a small commercial node. It is anticipated that as each corner of the intersection is annexed and developed within the city, an additional 5-acres will be added to the neighborhood commercial center.

The proposed subdivision is in conflict with the following goals of the West Billings Plan:

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks. This subdivision will be close to these amenities once Shiloh further develops.
- Development of non-irrigated farmland (generally lands located north of the Big Ditch) within the appropriate zoning designation is considered a priority.

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

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

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

The subdivision will utilize city water, sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The subject property shall conform to the requirements set forth by Article 27-300 of the Unified Zoning Regulations for the CC, RMF-R, R-50, R-70, and R-96 zoning districts.

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

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

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

Legal and physical access to the proposed subdivision will be via internal subdivision streets from King Avenue, 44<sup>th</sup> Street West, and 48<sup>th</sup> Street West.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of King Meadows Subdivision does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, June 25, 2007.

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Ron Tussing, Mayor

**ATTACHMENT E**  
Mayor's Approval Letter

February 12, 2007

Land Equity Partners Fund II, L.P.  
Attn: Spencer Thunell  
1777 Sun Peak Drive  
Park City, UT 84098

Dear Mr. Thunell:

On June 25, 2007, the Billings City Council conditionally approved the preliminary plat of Grand Peaks Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
2. To minimize effects on public health and safety, the following statement shall be added to Section A.1 of the Subdivision Improvements Agreement (SIA):

*The portion of King Avenue West that abuts the northern boundary of the subdivision is controlled by the Montana Department of Transportation (MDT). Any additional accesses to be located along King Avenue West shall be reviewed and approved by MDT. (Recommended by MDT)*

3. To minimize effects on public health and safety, Section IV.4 of the SIA shall be revised to reflect an alley width of 28-feet instead of 20-feet for the lots fronting on King Avenue. *(Recommended by the Fire Department)*
4. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
5. To minimize effects on public health and safety, information regarding the proposed bridge crossing to connect the Heritage Trail north of the Hogan's Slough with the southern portion of the subdivision shall be included in IV.F of the SIA. *(Recommended by the City-County Planning Department)*
6. To minimize effects on public health and safety and comply with the local subdivision regulations, Section I.A, of the SIA shall include the variance from Appendix 0.B, BMCC. *(Recommended by the Yellowstone County Board of Planning)*

7. To minimize effects on public health and safety and to comply with Appendix O, BMCC, prior to final plat, the subdivider shall provide a minimum of four cross sections and a flood profile that runs the length of Hogan's Slough within the subdivision. *(Recommended by the Yellowstone County Board of Planning)*
8. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
9. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

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

- *A variance to permit a 60-foot half width right-of-way for King Avenue West and 48<sup>th</sup> Street West, where Section 23-406(b)(6), BMCC, requires a 65-foot half right-of-way for principal arterial streets.*
- *A variance from Appendix O.B which require that any subdivision within a flood hazard area that has been identified by the city or county shall require a flood study and any land within a 100-year floodway or floodplain be labeled on the plat as a "no build zone."*

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

Sincerely,

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Ron Tussing, Mayor

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

# R1

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$782,479.01 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 25, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$2,038,044.25 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 1, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 25, 2007**

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**SUBJECT:** Approval of the Resolution Approving and Adopting the Budget  
for FY 2008

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** This resolution provides for the formal adoption of the budget. The proposed budget has been available for review since May 2, 2007. Five (5) public presentations have been made regarding the proposed budget. Section 2 of this resolution allows the City Administrator to amend this budget for Debt Service Funds, Federal and State Grants Special Assessment and donations accepted and approved by the City Council. The City Council authorizes issuing debt, acceptance of grants and donations, with the possible exception of donations which are handled per administrative order, which means that also needing to approve budget amendments to allow the expenditures is redundant. This delegation of authority is allowed by State Statutes.

**RECOMMENDATION**

Staff recommends that City Council approve the resolution approving and adopting the Budget for the City of Billings for fiscal year 2007-2008.

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

**ATTACHMENTS:**

A-Resolution Approving & Adopting the Budget for the City of Billings, MT for FY 2007-2008  
Includes Exhibit A-City of Billings Expenditure Budget for Fiscal Year 2007-2008

***Attachment A***

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION APPROVING AND ADOPTING THE BUDGET FOR  
THE CITY OF BILLINGS, MONTANA FOR FISCAL YEAR 2007-2008**

WHEREAS, the City Administrator of the City of Billings has regularly and lawfully submitted to the City Council of the City of Billings, Montana, the budget for Fiscal Year 2007-2008; and

WHEREAS, the proper notice was published stating that said City Council has completed the PRELIMINARY MUNICIPAL BUDGET for said Fiscal Year, and that said budget has been placed on file and is open to inspection in the office of the City Clerk; and that said City Council would meet for the purpose of annually determining, approving and adopting the budget, and any taxpayer might appear and be heard.

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

Section 1: That the Revenue Budget for Fiscal year 2007-2008, as detailed in the Budget Report, and as amended by the City Council, and the Expenditure Budget for Fiscal year 2007-2008 as detailed in the budget report and as amended by the City Council and further detailed on EXHIBIT "A", be, and the same is hereby finally determined, approved, and adopted.

Section 2: That the City Administrator is authorized to amend this budget for the expenditure of additional funds from the following: Debt Service Funds, Federal, State Grants, special assessments and donations accepted and approved by the City Council.

PASSED AND APPROVED by the City Council this 25th day of June, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cari Martin City Clerk

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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TITLE: Resolution Setting Mill Levy Rates  
DEPARTMENT: Administration – Finance Division  
PRESENTED BY: Patrick Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** This resolution establishes the city property tax mill levy rates for General, Transit, Library, and Public Safety I for fiscal year 2008. These mill levy rates have remained the same since 2001.

The mill levy rates for general obligation debt service funds for PRPL and Streets, Ballpark, and Public Safety II will be established when the City has received the certified taxable valuation information from the Montana Department of Revenue.

**RECOMMENDATION**

Staff recommends that the City Council approve the resolution setting the mill levy rates for fiscal year 2008.

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

**ATTACHMENT**

A- A Resolution Making the Annual All-Purpose Mill Levy and Mill Levies for Library Operating, Transit Operating, Public Safety Funds for the Fiscal Year 2007-2008.

**Attachment A**

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

A RESOLUTION MAKING THE ANNUAL ALL-PURPOSE MILL LEVY AND MILL LEVIES FOR LIBRARY OPERATING, TRANSIT OPERATING, AND PUBLIC SAFETY FUNDS FOR THE FISCAL YEAR 2007-2008.

WHEREAS, pursuant to law, the City of Billings is required to make annual mill levies.

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

1. That an All-Purpose Annual Mill Levy in the amount of 69.50 Mills is hereby imposed on all taxable property within the City of Billings, Montana, for the Fiscal Year **July 1 2007 through June 30 2008.**

2. That additional Mill Levies in the amounts stated are hereby imposed on all taxable property within the City of Billings, Montana, to provide payment for the following:

- A. 10.00 Transit Operating Fund
- B. 9.50 Library Operating Fund
- C. 20.00 Public Safety Fund

3. That upon passage of this Resolution, the City Clerk shall certify that same to the County Treasurer of Yellowstone County, Montana, who shall collect said taxes in the manner as provided by law.

4. That this Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED by the City Council this 25<sup>th</sup> day of June, 2007.**

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, City Clerk

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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**SUBJECT:** Resolution Relating to \$10,700,000 General Obligation Bonds, Series 2007A and \$1,800,000 General Obligation Bonds, Series 2007B; Determining the form and details and authorizing the execution and delivery of the bonds.

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** On June 11, 2007, the council awarded the sale of the Series 2007A bonds to Stifel Nicolaus at an interest rate of 4.4567% and Series 2007B bonds to RBC Capital Markets at an interest rate of 4.1829%. The bonds will pay for the cost of designing, construction, and equipping a new baseball stadium. This resolution outlines the form and details and authorizes the execution and delivery of the bonds

**RECOMMENDATION**

It is recommended that the City Council approve the attached resolution.

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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TITLE: Approval to Purchase Thirteen (13) Police Vehicles  
 DEPARTMENT: Administrative Services - Finance Division  
 PRESENTED BY: Liz Kampa-Weatherwax, Purchasing Agent  
 Larry Deschene, Motor Vehicle Maintenance Manager

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**PROBLEM/ISSUE STATEMENT:** The Police Department has thirteen patrol vehicles to replace in the FY08 Equipment Replacement Plan (ERP), pending Council approval for replacement and purchase in the FY08 budget process. The State of Montana does an RFP for law enforcement vehicles annually. Local government agencies are allowed to use the same vendor that the State chooses for its highway patrol cars. Bison Ford Motor Company, of Great Falls, Montana, was selected in 2006 as the approved vendor by the State and their prices were carried over to 2007. Bison Ford Motor Company was again selected by the State as the approved vendor for 2007 and now for 2008. Bison Ford Motor Company and the State have once again agreed to roll over the 2006-07 contract prices on Special Service vehicles to 2008 models, but only until June 28, 2007. Therefore, staff is requesting Council approval for a purchase to be made in FY08. If approved, the receipt of the invoice and remittance of payment shall occur in FY08. Staff estimates saving \$5,000-\$6,000 on this purchase.

**FINANCIAL IMPACT:** As per State bid the vehicle replacement will be through Bison Motor Company at \$21,908 per Crown Victoria. The total cost will be \$284,804. This expense has been budgeted for FY08 in the Capital Replacement Fund.

**RECOMMENDATION**

Staff recommends that City Council give approval to purchase the Police patrol vehicles from Bison Motor Company for \$284,804 as determined per State bid.

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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**TITLE:** Purchase of Lots 1-6, Block 1, Rolle Subdivision; Tract 1A, C/S 1434; and Tract 1B-1 of Amended Tract 1B of C/S 1434 (Less 1B-1A and Black Otter Subdivision)

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The State of Montana has requested that the City of Billings review all utility improvements that would need to be constructed in Airport Road prior to or during the reconstruction of Airport Road by the Montana Department of Transportation. The Public Works Department has identified the need to construct both water and sanitary sewer improvements in Airport Road for future service to Lots 1-6, Block 1, Rolle Subdivision; Tract 1A, C/S 1434; and Tract 1B-1 of Amended Tract 1B of C/S 1434 (Less 1B-1A and Black Otter Subdivision). The estimated cost of these improvements is \$1.2 million. These improvements are only needed to serve these parcels. An alternative to constructing the improvements would be to purchase the property and leave it undeveloped. A portion of the property could be included into Swords Parks and would complete ownership of Black Otter Trail. The existing building could be used as a staging site for utility and street maintenance equipment serving the Heights area.

**ALTERNATIVES ANALYZED:**

- 1) Approve the purchase of the property for \$631,806:
 

Appraisal Price	\$592,000
5% premium	29,600
Repayment of 2 <sup>nd</sup> half Assessments	10,206
- 2) Do not approve the purchase and construct the water and sanitary sewer mains with the Airport Road Project for an estimated cost of \$1.2 million.

**FINANCIAL IMPACT:** A summary of the net present worth of the cost savings and the estimated future sales price of the remainder tract exceeds the purchase price for the property.

Estimated cost of utility design & construction	\$1,200,000
Proposed purchase cost	631,806
<b>Estimated Savings</b>	<b>\$568,194</b>

Funding for this purchase is available from the water and wastewater Rehabilitation Program.

### **RECOMMENDATION**

Staff recommends that the City Council authorize staff to complete the purchase of Lots 1-6, Block 1, Rolle Subdivision, Tract 1A, C/S 1434, and Tract 1B-1 of Amended Tract 1B of C/S 1434 (Less 1B-1A and Black Otter Subdivision) and authorize the Mayor to execute the warranty deed.

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

### **ATTACHMENTS:**

A – Buy-Sell Agreement

B – Map of the Proposed Property Acquisition

# **ATTACHMENT A**

## **PURCHASE AND SALE AGREEMENT**

### **SELLER:**

BRIAN KURTH and BLACK OTTER VENTURES, LLC

### **BUYER:**

CITY OF BILLINGS, MONTANA

DATE: \_\_\_\_\_, 2007

## **PURCHASE AND SALE AGREEMENT**

**SELLER:** BRIAN KURTH and BLACK OTTER VENTURES, LLC

**BUYER:** CITY OF BILLINGS, MONTANA, a Montana municipal corporation

**PROPERTY:** Lots 1-6, Block 1, Rolle Subdivision;  
Tract 1A, C/S 1434;  
Tract 1B-1 of Amended Tract 1B of C/S 1434 (Less Tract 1B-1A and Black Otter Subdivision)

**PURCHASE PRICE:** \$631,806 for the parcels together

**DUE DILIGENCE PERIOD:** From the Effective Date until \_\_\_\_\_, 2007

**LATEST CLOSING DATE:** July 6, 2007

**EFFECTIVE DATE:** \_\_\_\_\_, 2007

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, 2007, is made between **BRIAN KURTH and BLACK OTTER VENUTRES, LLC** ("Seller"), and the **CITY OF BILLINGS, MONTANA**, a Montana municipal corporation ("Buyer"), who for valuable consideration received, agree as follows:

### 1. Definitions.

For the purposes of this Agreement, the following terms shall be defined as follows:

1.1 Buyer Inspection. The term "Buyer Inspection" shall have the meaning given thereto in Section 5.2, below.

1.2 Closing; Close of Escrow; Closing Date. The "Closing" or the "Close of Escrow" shall mean the consummation of the purchase and sale of the Property in accordance with this Agreement, as evidenced by the recording of the Deed in the official records of the county in which the Property is located. Closing and Close of Escrow are terms used interchangeably in this Agreement. The "Closing Date" shall be the date that Close of Escrow occurs, which shall not be later than July 6, 2007. The Closing Date may not be extended beyond July 1, 2006

1.3 Deed. The term "Deed" shall have the meaning given thereto in Section 7, below.

1.4 Due Diligence Materials. The term "Due Diligence Materials" means the reports, surveys and other materials listed on Exhibit C, attached hereto.

1.5 Due Diligence Period. The "Due Diligence Period" is the period commencing on the Effective Date and ending on July 6, 2007, during which Buyer must complete its due diligence as described in Section 5, below.

1.6 Effective Date. The "Effective Date" is the date set forth below the signature(s) of the party which is the last to sign this Agreement.

1.7 Environmental Law. The term "Environmental Law" means any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and the Resources Conservation and Recovery Act of 1976, as amended.

1.8 Escrow. The term "Escrow" shall have the meaning given thereto in Section 3.1, below.

1.9 Escrow Holder. The "Escrow Holder" is:

American Title & Escrow  
1001 South 24<sup>th</sup> Street West, #21  
Billings, MT 59102  
Telephone: (406) 248-7877  
Facsimile: (406) 248-7875

1.10 Exhibits. The term "Exhibits" means the following, each of which is attached hereto and incorporated herein by this reference:

Exhibit A - Legal Description of Real Property  
Exhibit B - Form of Deed  
Exhibit C - Due Diligence Materials

1.11 Hazardous Substance. The term "Hazardous Substance" means any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products.

1.12 Non-Foreign Certificate. The term "Non-Foreign Certificate" shall have the meaning given thereto in Section 9.2.1.3, below.

1.13 Notices. The term "Notices" means all notices or other communications required or permitted hereunder, which Notices shall be sent as follows to:

Seller: Brian Kurth and Black Otter Ventures, LLC  
2203 Losekamp Street  
Billings, Montana 59102

Buyer: City of Billings, Montana  
P.O. Box 1178  
Billings, MT 59103  
Attn: Tina Volek, City Administrator  
Telephone: (406) 657-8430  
Fax: (406) 657-8390

With a copy to: City of Billings, Montana  
Attn: Brent Brooks, City Attorney  
PO Box 1178  
Billings, MT 59103

Telephone: (406) 657-8205  
Fax: (406) 657-3067

1.14 Permitted Exceptions. The term "Permitted Exceptions" shall have the meaning given thereto in Section 8.2.1.2, below, and as shown on the Warranty Deed (Exhibit B hereto).

1.15 Property. The term "Property" shall have the meaning given thereto in Section 2, below.

1.16 Proration Date. The term "Proration Date" shall have the meaning given thereto in Section 9.5.2, below.

1.17 Purchase Price. The "Purchase Price" for the Property is Five hundred fifty-thousand and no/100 dollars (\$631,806.00).

1.18 Real Property. The term "Real Property" means Lots 1-6, Block 1, Rolle Subdivision, Tract 1A, C/S 1434, and Tract 1B-1 of Amended Tract 1B of C/S 1434 (less Tract 1B-1A and Black Otter Subd.). The Real Property is more particularly described in Exhibit A, attached hereto.

1.19 Seller's Account. The term "Seller's Account" means the account to which the Purchase Price (less Seller's share of closing costs and prorations) shall be wired pursuant to written instructions to be furnished to Escrow Holder by Seller prior to Close of Escrow.

1.20 Termination Notice. The term "Termination Notice" shall have the meaning given thereto in Section 5.3, below.

1.21 Title Company. The "Title Company" is:

American Title & Escrow  
1001 South 24<sup>th</sup> Street West #21  
Billings, MT 59102  
Telephone: (406) 248-7877  
Fax: (406) 248-7875

1.22 Title Policy. The term "Title Policy" shall have the meaning given thereto in Section 7, below.

## 2. Purchase and Sale of Property.

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller on the terms hereinafter set forth all of Seller's right, title and interest in the Real Property, including all improvements located on the Real Property, together with all rights and appurtenances pertaining thereto (collectively, the "Property").

3. Purchase Price.

Not later than two (2) days immediately prior to Close of Escrow, Buyer shall deposit with Escrow Holder, by immediately available federal wire transfer or cashier's check, the Purchase Price of \$631,806.00, plus or minus the closing adjustments and prorations described in Section 9.5.

4. Remedies.

4.1 SELLER DEFAULT. IF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT DOES NOT CLOSE SOLELY AS A RESULT OF A DEFAULT BY SELLER, BUYER MAY PURSUE ALL RIGHTS AND REMEDIES AVAILABLE TO IT IN LAW AND EQUITY AND MAY IMMEDIATELY TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO SELLER AND WITHOUT FURTHER OBLIGATION TO SELLER.

4.2 BUYER DEFAULT. IF THE TRANSACTION CONTEMPLATED HEREUNDER IS NOT CONSUMMATED DUE TO A DEFAULT BY BUYER, SELLER MAY PURSUE ALL RIGHTS AND REMEDIES AVAILABLE TO IT IN LAW AND IN EQUITY, AND IN ADDITION, SELLER MAY IMMEDIATELY TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO BUYER AND WITHOUT FURTHER OBLIGATION TO BUYER.

5. Due Diligence.

5.1 Due Diligence Materials. To the extent Seller has not already done so, Seller shall make available to Buyer the Due Diligence Materials for use by Buyer in connection with Buyer's investigation of the Property. Notwithstanding the foregoing, Seller shall not make available to Buyer (i) any appraisals of the Real Property, (ii) any financial projections relating to the Real Property, (iii) correspondence relating to routine management and maintenance matters, and (iv) any reports or studies prepared or commissioned by Seller concerning the extent to which the improvements located on the Real Property are in compliance with the Americans With Disabilities Act.

5.2 Buyer Inspections. During the Due Diligence Period, provided that Buyer is not in default hereunder, Buyer shall have the right to enter and inspect the Real Property (each, a "Buyer Inspection") pursuant to the following terms and conditions:

5.2.1 Expenses. Each Buyer Inspection shall be at Buyer's sole cost and expense.

5.2.2 License; Insurance. The persons or entities performing the Buyer Inspection shall be properly licensed and qualified, shall have obtained all of the

appropriate permits for performing relevant tests and shall have delivered to Seller, prior to performing any tests or entering the Real Property, evidence of proper and adequate insurance reasonably satisfactory to Seller.

5.2.3 No Interference. Buyer and its representatives, agents or designees shall not interfere with Seller's or its tenants' business operations on, or use of, the Real Property.

5.2.4 Liens. Buyer shall not cause or suffer any lien or other encumbrance to be recorded against the Real Property, and shall promptly cause any lien or other encumbrance caused or suffered by Buyer (including mechanics' liens arising out of Buyer's activities under this Section 5.2) to be immediately discharged or bonded over, to Seller's satisfaction.

5.2.5 Restoration. If any portion of the Real Property is damaged due to Buyer's entry on the Real Property, Buyer shall, at its sole cost and expense, immediately repair and restore the Real Property to the same condition the Real Property was in immediately prior to the date the damage occurred.

5.2.6 Indemnity. Buyer shall indemnify, protect and defend (by counsel reasonably acceptable to Seller) and hold harmless Seller for, from and against any and all claims, damages, costs, liabilities and losses and expenses arising out of any entry, investigations, inspections, tests and other activities undertaken by Buyer or its agents, designees or representatives, including (A) reasonable attorneys' fees and expenses and other reasonable costs and expenses incurred by Seller in connection with investigating or defending any such matters, (B) any and all costs or expenses incurred by Seller resulting from or arising out of the aggravation of physical defects or conditions regarding hazardous, toxic or contaminated substances or materials and (C) any and all costs or expenses incurred by Seller in defending, discharging or bonding over any liens or encumbrances against the Property resulting from Buyer's activities with respect thereto.

5.2.7 Assessment for Environmental Hazards and Building Condition. Purchase is contingent on a favorable environmental assessment, including geophysical exploration(s). Seller shall allow and cooperate with the City in securing an environmental hazards/assessment and building condition report on the property. The City will pay for the full cost of the environmental hazards assessment and building condition report. After completion of and review of the environmental assessment, if any further analysis or remediation of the property is recommended, either party may request negotiations of the terms and conditions of this Agreement. However, Buyer may in its discretion withdraw from any further negotiations and terminate this agreement

5.3 Disapproval of Due Diligence Materials or Buyer Inspections. Buyer shall have the right, at any time during the Due Diligence Period, to reasonably disapprove the results of (i) Buyer's review of the Due Diligence Materials, or (ii) the Buyer Inspections of the Real Property, or (iii) Buyer's investigation and review of all other physical, environmental, legal and any other matters relating to the Property as Buyer may elect to investigate and review. If Buyer disapproves of any of the foregoing,

Buyer may terminate this Agreement by providing Seller and Escrow Holder with written notice thereof (a "Termination Notice") on or prior to the last day of the Due Diligence Period. If Buyer delivers a Termination Notice to Seller and Escrow Holder during the Due Diligence Period, then (a) this Agreement, and all of the obligations, rights and liabilities of the parties to each other hereunder (except for Buyer's indemnification obligations under Section 5.2.6 and Buyer's restoration obligations under Section 5.2.5, shall terminate and be of no further effect, and (b) Buyer shall immediately return to Seller the Due Diligence Materials and, if requested by Seller, deliver to Seller any written reports, tests or memoranda in Buyer's possession relating to the Buyer Inspections of the Real Property. If Buyer fails to provide Seller and Escrow Holder with a Termination Notice prior to the expiration of the Due Diligence Period, then (i) Buyer shall be deemed to have approved the results of Buyer's review of the Due Diligence Materials and the Buyer Inspections of the Real Property and waived Buyer's right to terminate this Agreement due to a failure of the conditions precedent described in Section 8.2.1 of this Agreement, and (ii) the parties shall proceed with Close of Escrow in accordance with the terms of this Agreement. If Buyer objects to any exceptions to title shown in the preliminary report referred to in Section 8.2.1.2, then unless such exception is of the type described in Section 8.2.2.1 (other than a "Permitted Exception"), Buyer may deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period that will be effective unless Seller commits to Buyer, before ten (10) days following expiration of the Due Diligence Period, to removing the exceptions or defects objected to by Buyer at Close of Escrow. In any event, the parties' participation in Close of Escrow shall be deemed a waiver of (i) each party's ability to terminate this Agreement on the basis of any failure of any conditions precedent and (ii) each party's right to seek damages from the other party for the breach of any representations, warranty or covenant of which the non-breaching party had actual knowledge prior to Close of Escrow.

## 6. Status.

6.1 As Is Purchase. Buyer shall examine, inspect and conduct its own investigation of all matters with respect to taxes, bonds, environmental conditions, the availability of permits, variances and other governmental approvals for any demolition and improvements contemplated by Buyer, the condition of improvements, tax and utility costs, permissible uses, title, zoning, covenants, conditions and restrictions and all other matters which, in Buyer's judgment, bear upon the value and suitability of the Property for Buyer's purposes. Except as otherwise specifically stated in Section 11.2, Seller hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to or concerning: (i) the nature and condition of the Property, including the water, soil, geology, environmental conditions (including the presence or absence of any Hazardous Substance), and the suitability thereof for any and all activities and uses which Buyer may elect to conduct thereon; (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; (iii) the compliance of the Property or its operation with any laws, ordinances or regulations of any government or other body (including the Americans With Disabilities Act); (iv) the availability of permits, variances and other governmental

approvals for any demolition and improvements contemplated by Buyer; or (v) the status of any of the Leases. The sale of the Property as provided for herein is made on an "AS IS" basis, and Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, except as otherwise expressly specified in this Agreement, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY.

6.2 Release. Except for any breach by Seller of any disclosure, representation or warranty of Seller contained in Section 11.2, Buyer hereby specifically acknowledges that Buyer has carefully reviewed this Section, and discussed its import with legal counsel, is fully aware of its consequences, and that the provisions of this Section are a material part of this Agreement.

### 6.3 Indemnity.

6.3.1 Seller's Indemnity. Seller shall indemnify, protect and defend by counsel reasonably acceptable to Buyer and hold harmless Buyer from and against any and all claims, damages, losses, costs, expenses and liabilities (including all reasonable attorneys' fees and court costs paid or incurred by Buyer) which arise out of or are in any way connected with any misrepresentation or breach of warranty or covenant by Seller in this Agreement. This indemnity does not apply, however, to any item, matter, occurrence or condition which was known to or reasonably discoverable by Buyer prior to the Closing Date.

6.3.2 Buyer's Indemnity. Buyer shall indemnify, protect and defend by counsel reasonably acceptable to Seller and hold harmless Seller from and against any and all claims, damages, losses, costs, expenses and liabilities (including all reasonable attorneys' fees and court costs paid or incurred by Seller) which arise out of or are in any way connected with the ownership and/or operation of the Property after the Closing Date or any misrepresentation or breach of warranty or covenant by Buyer in this Agreement or any document delivered to Seller pursuant to this Agreement. However, any future or pending claim, damage, loss, costs, expenses and liabilities which arise, solely or in part, from sellers previous and exclusive ownership and/or operation of the property shall not be covered by buyer's indemnity.

6.3.3 Indemnified Parties. For purposes of this Section 6.3, all references to "Buyer" or "Seller" as an indemnified party shall include (A) their parent, subsidiary or affiliate corporations and (B) their directors, officers, shareholders, employees and agents.

6.4 Survival. The provisions of this Section 6 shall survive the Closing Date.

## 7. Warranty Deed.

Seller shall convey the Real Property to Buyer by a warranty deed (the "Deed"), in the form of Exhibit B, attached hereto. The conclusive evidence of delivery of title to the Real Property by Seller to Buyer shall be the willingness of Title Company to issue, upon payment of Title Company's regularly scheduled premium, an owner's standard form title insurance policy (the "Title Policy") in the amount of the Purchase Price, showing title to the Real Property vested of record in Buyer, subject only to such exceptions as are recited in Section 8.2.2.1 below, and as shown on the Warranty Deed (Exhibit B hereto).

8. Conditions Precedent to Close of Escrow.

In addition to the documents and funds that must be deposited into Escrow prior to Close of Escrow as detailed in Section 9.2, the following are conditions precedent to Close of Escrow:

8.1 Seller. Seller's obligation to proceed with Close of Escrow is conditioned on the satisfaction of each of the following by not later than the Closing Date:

8.1.1 No Suit. As of Close of Escrow, no suit, action or other proceeding shall be pending or threatened which seeks, nor shall there exist any judgment the effect of which is, to restrain the purchase and sale of the Property.

8.1.2 Buyer's Representations. Buyer's representations and warranties set forth herein shall be true and correct as of Close of Escrow.

8.1.3 Buyer's Covenants. Buyer shall have performed all of Buyer's covenants and agreements contained herein which are required to be performed by Buyer on or prior to Close of Escrow.

8.2 Buyer. Buyer's conditions precedent to Close of Escrow are the following:

8.2.1 Due Diligence Period. During the Due Diligence Period:

8.2.1.1 Inspection. Buyer's approval of the Buyer Inspections, the Due Diligence Materials, and all other geophysical, physical, environmental, legal and any other matters relating to the Property as Buyer may elect to investigate.

8.2.1.2 Preliminary Report. Buyer's inspection and approval of a current preliminary report issued by Title Company for the Real Property and all of the exceptions contained in such report. All of the exceptions contained in the preliminary report which are approved or deemed approved by Buyer (as provided in Section 5.3) are hereinafter referred to as the "Permitted Exceptions."

8.2.1.3 Appraisal. Pursuant to Resolution 93-16740 of the Billings City Council, Buyer shall have an appraisal done for the property at the Buyer's cost. The purpose of the appraisal shall be to establish the current fair market value for the Real Property based on established appraisal standards. After receipt and review of the appraisal, Buyer may elect to rescind the offer made in this agreement for purchase of the Real Property, without compensation to or other recourse to the Seller.

8.2.1.4 Approval of the City Council. The City Council of the City of Billings, Montana (Council) shall have the final approval on behalf of the Buyer for the purchase of the Real Property. Council approval shall include approval of all terms and conditions on behalf of the Buyer. Should Council elect to rescind the offer or change the terms and conditions made in this agreement that are disagreeable to the Seller, Buyer may withdraw this offer to purchase the Real Property without compensation to or other recourse to the Seller.

8.2.2 Close of Escrow. As of Close of Escrow:

8.2.2.1 Title Policy. The willingness of Title Company to issue, upon the payment of its regularly scheduled premium, a Title Policy for the Real Property, subject only to (i) a lien for real property taxes and assessments not then delinquent; (ii) the Permitted Exceptions; (iii) matters affecting the condition of title to the Real Property created by or with the written consent of Buyer; (iv) any matters that would be shown by any survey of the Real Property or by inquiry of persons in possession of the Real Property; (v) the Leases; (vi) the WFB Garage Drive-Through Lease; (vii) any covenants, conditions, declarations, and restrictions recorded as an interest affecting the Real Property; (viii) reservations and exceptions and patents from the United States or the State of Montana; (ix) all building, use, zoning restrictions and ordinances, and sanitary and environmental restrictions; and (x) all minerals and prior conveyances, leases, transfers of any interest in minerals, including oil, gas, and other hydrocarbons.

8.2.2.2 No Suit. No suit, action or other proceeding shall be pending or threatened which seeks, nor shall there exist any judgment the effect of which is, to restrain the purchase and sale of the Property.

8.2.2.3 Seller's Representations. Seller's representations and warranties set forth herein shall be true and correct.

8.2.2.4 Seller's Covenants. Seller shall have performed all of Seller's covenants and agreements contained herein which are required to be performed by Seller on or prior to Close of Escrow.

8.3 Failure of Conditions. If any of the conditions set forth above in Section 8.1 remain unsatisfied as of the deadline for Close of Escrow, then Seller may terminate this Agreement by giving written notice of termination to Buyer within ten (10) days following such deadline, whereupon all rights and obligations

of the parties one to the other shall cease and terminate (except for Buyer's indemnification obligations under Section 5.2.6, and Buyer's restoration obligations under Section 5.2.5. If any of the conditions set forth above in Section 8.2.2 remain unsatisfied as of the deadline for Close of Escrow, then this Agreement shall terminate automatically, unless Buyer immediately waives the condition(s) precedent that remain unsatisfied and immediately proceeds to Close Escrow. If this Agreement terminates for failure of one or more conditions set forth in Section 8.2.2, all rights and obligations of the parties one to the other under this Agreement shall cease and terminate (except for Buyer's indemnification obligations under Section 5.2.6, and Buyer's restoration obligations under Section 5.2.5.

8.4 Buyer's Pre-Closing Planning and Development Efforts. If Buyer intends, prior to Close of Escrow, to apply for use permits, zoning variances or other governmental approvals for new uses of prospective tenants of the Property, Buyer hereby acknowledges that Seller shall be under no obligation to render assistance to Buyer in such efforts, and all such undertakings shall be commenced and prosecuted without obligating Seller or encumbering the Property in any manner. Without limiting the generality of the foregoing, Seller shall have no obligation to submit or sign applications for use permits, zoning variances or similar governmental approvals sought by Buyer, and Buyer shall not represent itself as authorized to speak on behalf of Seller in connection with Buyer's planning or development efforts for the Property. Notwithstanding the foregoing, upon request from Buyer, Seller shall sign and deliver a letter to any applicable governmental authority or lending institution confirming that this Agreement is in effect and the anticipated Closing Date.

## 9. Closing.

9.1 Time. Escrow shall close ("Close of Escrow") when all documents and funds specified in this Section 9 have been deposited into Escrow. The failure of Seller or Buyer to be in a position to close Escrow by the Closing Date shall constitute a default under this Agreement.

9.2 Documents. Not less than two (2) days prior to Close of Escrow, which shall occur on or before July 1, 2006, the parties shall deposit into Escrow the funds and the documents described below.

9.2.1 Seller. Seller shall deposit the following:

9.2.1.1 Deed. The duly executed and acknowledged Deed, conveying the Real Property to Buyer; along with a duly executed Montana Realty Transfer Certificate.

9.2.1.2 Non-Foreign Certificate. A duly executed certificate (the "Non-Foreign Certificate") from Seller certifying that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code;

9.2.1.3 Additional Documents. Such other documents, including escrow instructions, as may be reasonably required of Seller to close the transaction in accordance with this Agreement.

9.2.2 Buyer. Buyer shall deposit the following:

9.2.2.1 Remainder of Purchase Price. The remainder of the Purchase Price;

9.2.2.2 Additional Funds. Additional cash in the amount necessary to pay Buyer's share of the closing costs and prorations, as hereinafter set forth; and

9.2.2.3 Additional Documents. Such other documents and funds, including escrow instructions, as may be reasonably required of Buyer to close the transaction in accordance with this Agreement.

9.3 Procedure. Escrow Holder shall close Escrow as follows:

9.3.1 Deed and Lease Memorandum. Record the Deed and the Lease Memorandum in the Official Records of the County in which the Real Property is located and deliver conformed copies thereof to Buyer and Seller.

9.3.2 Purchase Price. Deliver the Purchase Price to Seller (less Seller's share of the closing costs and prorations) via wire transfer of U.S. federal funds to Seller's Account, or as otherwise directed by Seller, in accordance with Seller's instructions provided to Escrow Holder prior to Close of Escrow:

9.3.3 Deliveries to Buyer. Deliver to Buyer (i) the original Non-Foreign Certificate, (ii) the original Title Policy, and (v) Buyer's closing statement.

9.3.4 Deliveries to Seller. Deliver to Seller (i) conformed copies of the recorded Deed, and (iii) Seller's closing statement.

9.4 Escrow Instructions. This Agreement shall serve as escrow instructions and an executed copy of this Agreement shall be deposited by Seller and Buyer with Escrow Holder following the execution and delivery hereof. The parties agree to execute for the benefit of Escrow Holder such additional escrow instructions as are necessary to close the Escrow, provided that the additional escrow instructions do not change the terms of this Agreement but merely offer protection to Escrow Holder. Seller and Buyer hereby designate Escrow Holder as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Internal Revenue Code.

9.5 Closing Costs and Prorations.

9.5.1 Closing Costs.

9.5.1.1 Seller's Responsibility. Seller shall be responsible for the following closing costs: (i) fifty percent (50%) of the standard insurance premium for the Title Policy; and (ii) Seller's attorneys' fees. In addition, Seller shall pay the Real Estate Compensation described in Section 10.

9.5.1.2 Buyer's Responsibility. Buyer shall be responsible for the following closing costs: (i) fifty percent (50%) of the standard insurance premium for the Title Policy; (ii) costs for any endorsements to the Title Policy requested by Buyer; (iii) all costs associated with any financing obtained by Buyer; and (iv) Buyer's attorneys' fees.

9.5.1.3 Other Charges. Other charges of the Closing, including any governmental impositions incurred as a result of the transfer of title to Buyer (e.g., transfer, sales or excise taxes), Escrow fees and recording costs, shall be apportioned between Buyer and Seller in accordance with the usual custom and practice of the County in which the Real Property is located.

9.5.2 Prorations. The adjustments and prorations set forth below shall be made at Close of Escrow. For purposes of this Section 9.5.2, the term "Proration Date" shall be defined as 11:59 p.m. on the day preceding Close of Escrow.

9.5.2.1 Rents. All rents from Leases shall be prorated as of the Proration Date based on a 30-day month.

9.5.2.2 Real Estate Taxes. All real and personal property taxes, installments of bonds and special taxes and assessments attributable to the Property shall be prorated as of the Proration Date based on a 365-day year and the assessed value of the Property in effect at Close of Escrow. Seller shall pay all such real estate taxes which are due for the period of Seller's ownership of the Property through and including the Proration Date.

9.5.2.3 Re-proration of Real Estate Taxes. If at any time after Close of Escrow additional or supplemental real estate taxes are assessed against the Real Property by reason of any event occurring prior to or including Close of Escrow, or there is any rebate of such taxes, Buyer and Seller shall promptly re-prorate such taxes, and any amounts due from one party to the other shall be paid in cash at that time.

9.5.2.4 Utilities. Buyer shall arrange with all utility services and companies serving the Real Property to have accounts started in the name of Buyer or its property manager beginning as of the Proration Date. Seller shall not assign to Buyer any deposits Seller has with any utility services or companies. Buyer and Seller shall cooperate to have the utility services and companies make utility readings as of the Proration Date. If readings cannot be made, utility charges shall be prorated as of the Proration Date based on estimates from the latest bills available; provided, in any event, Seller shall pay, through and including the Proration Date, all utility charges attributable to the Property.

9.5.2.5 Refunds of Real Estate Taxes. Buyer specifically acknowledges that Seller shall be entitled to any refund of real and personal property taxes, installments of bonds and special taxes and assessments attributable to the Property and allocable to the period prior to Close of Escrow. Any such refunds shall be paid to Seller regardless of when they are received.

9.5.2.6 Additional Costs. Buyer and Seller each shall pay their own legal, lending and other fees and expenses incurred in connection with the negotiation, documentation and closing of the transactions contemplated by this Agreement.

10. Brokerage Commission.

Each party to this Agreement warrants to the other that no person or entity can properly claim a right to a real estate commission, finder's fee or other real estate brokerage-type commission based upon the acts of that party with respect to the transactions contemplated with respect to this Agreement. Each party hereby agrees to indemnify, protect and defend the other (by counsel acceptable to the party seeking indemnification) against and hold the other harmless from and against any and all damages, liabilities, loss, cost and expense, including, but not limited to, reasonable attorneys' fees and court costs, resulting from any claims for a real estate commission, finder's fee or other real estate brokerage-type commission by any person or entity based upon such acts. This indemnity shall survive Close of Escrow or any earlier termination of this Agreement.

11. Representations and Warranties.

11.1 Buyer. Buyer represents and warrants to Seller, which representations and warranties shall survive the execution of this Agreement and Close of Escrow, the following:

11.1.1 Binding. This Agreement constitutes a valid and legally binding obligation of Buyer, enforceable in accordance with its terms.

11.1.2 Authority. Buyer has the full power and authority to execute and deliver and fully perform its obligations under this Agreement.

11.1.3 Buyer's Independent Investigation. Buyer warrants and represents to Seller that Buyer is purchasing the Property based exclusively upon Buyer's independent investigation, analysis, and due diligence. Buyer warrants and represents that (a) Buyer has had the opportunity to consult with appraisers, experts, lawyers, environmental consultants, accountants, and others as Buyer deemed prudent and advisable; (b) that Buyer enters into this Agreement based upon Buyer's own investigation and knowledge; and (c) that Buyer is not relying upon any statement or representation of Seller (or anyone on behalf of Seller), except as expressly set forth in this Agreement. Buyer acknowledges receipt of a Phase I Environmental Assessment of the Property and

accepts the Property "AS IS". Buyer acknowledges that Buyer is purchasing the Property WITHOUT ANY WARRANTY OR REPRESENTATION from Seller, of any kind whatsoever, except as expressly set forth in this agreement. Buyer acknowledges that Seller is making no warranties EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11.2 Seller. Whenever the existence or absence of facts or circumstances is qualified by the expression "to be best of Seller's actual knowledge" or "to Seller's knowledge", or words to like effect, it is based solely on the actual knowledge of Seller's employees who have direct involvement in this transaction. Seller has not undertaken any other investigation except as expressly stated herein, and is relying upon Buyer to complete Buyer's own due diligence investigation. Subject to the foregoing, Seller represents and warrants to Buyer, which representations and warranties shall survive the execution of this Agreement and Close of Escrow, the following:

11.2.1 Binding. This Agreement constitutes a valid and legally binding obligation of Seller, enforceable in accordance with its terms.

11.2.2 Authority. Seller has the full power and authority to execute and deliver and fully perform its obligations under this Agreement.

#### 11.2.3 Encumbrances

11.2.3.1 No Liens. To the best of Seller's actual knowledge, there are no unrecorded liens, financing statements, encumbrances or agreements affecting the Property that will survive the closing, and Seller has committed no acts which would result in the creation of such liens, financing statements, encumbrances or agreements affecting the Property. No work has been done on, and no materials have been furnished to, the Property for which full payment has not been made and for which a lien could be filed against the Property.

11.2.3.2 Encroachments. To the best of Seller's actual knowledge, there are no encroachments upon the Property, nor does any improvement on the Property encroach upon any property owned by others.

11.2.3.3 Easements. To the best of Seller's actual knowledge, there are no easements, rights-of-way, or claims thereof over or across the Property which are not recorded in the office of the Clerk and Recorder of Yellowstone County, Montana.

11.2.3.4 Disputes: Use of Property. Seller, to the best of Seller's actual knowledge, knows of no existing disputes concerning the Property, and no portion of the Property is possessed by any third party, nor does any third party have any right to use the Property.

11.2.4 Hazardous Substances. To the best of Seller's actual knowledge, the Property has not been used as a landfill or dump and has not been used for the production, release, or disposal of petroleum, asbestos, or hazardous wastes or substances, as defined under federal, state, and local laws, regulations, and ordinances affecting the Property (referred to collectively herein as "Hazardous Substances"). To the best of Seller's actual knowledge, Seller has no records revealing that any Hazardous Substances have been dumped, deposited, spilled, leaked, discharged, or disposed of on, or escaped from, the Property.

## 12. Miscellaneous.

12.1 Successors and Assigns. This Agreement shall be binding upon the heirs, executors, administrators, and successors and assigns of Seller and Buyer; provided, however, Buyer shall not assign any or all of Buyer's rights and obligations hereunder to any party without the prior written consent of Seller, which consent Seller shall have the right to withhold in its sole discretion. Any such assignment in violation of this provision shall be void. If Seller consents to an assignment, the assignment will not be effective against Seller until Buyer delivers to Seller a fully executed copy of the assignment instrument, which instrument must be satisfactory to Seller in both form and substance and pursuant to which the assignee assumes and agrees to perform for the benefit of Seller the obligations of Buyer under this Agreement, and pursuant to which the assignee makes the warranties and representations required of Buyer under this Agreement.

12.2 Entire Agreement. This Agreement contains all of the covenants, conditions and agreements between the parties and shall supersede all prior correspondence, agreements and understandings, both oral and written.

12.3 Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, or to recover damages for breach of this Agreement, or to enforce any judgment relating to this Agreement and the transaction contemplated hereby, the prevailing party shall be entitled to attorneys' fees and court costs, including those incurred with respect to bankruptcy, insolvency, and receivership proceedings.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District Court for Yellowstone County, Montana, and no other venue.

12.5 Further Assurances. Seller or Buyer shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered at or after Close of Escrow any and all acts, deeds and assurances as either party or Escrow

Holder may reasonably require in order to carry out the intent and purpose of this Agreement.

12.6 Severability. In case any one or more of the provisions contained in this Agreement for any reason is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12.7 Notices. All notices required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, national overnight courier service or facsimile to the addresses stated above. Notices and other communications shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business days after the posting by the United States Post Office, (iii) if sent by national overnight courier service, one (1) business day after delivery to such courier service, or (iv) if given by facsimile, when sent and receipt is confirmed. Any notice, request, demand, direction or other communication sent by facsimile must be confirmed within twenty-four (24) hours by a letter mailed or delivered in accordance with the foregoing.

12.8 Counterparts. This Agreement may be executed in one (1) or more counterparts, and all of the counterparts shall constitute but one and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

12.9 Time. Time is of the essence of every provision herein contained.

12.10 Nonwaiver. Unless otherwise expressly provided herein, no waiver by a party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the party waiving the provision. No delay or omission in the exercise of any right or remedy accruing to a party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition. All rights or remedies afforded to a party hereunder or by law shall be cumulative and not alternative, and the exercise of one right or remedy shall not bar other rights or remedies allowed herein or by law.

12.11 Captions. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

12.12 Survival. Except as expressly set forth in this Agreement, upon Close of Escrow, each of the terms, covenants and conditions of this Agreement shall be deemed to have merged into the Deed.

12.13 Exhibits. Any exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

12.14 Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

12.15 Not Offer. The submission of this Agreement to Buyer shall not constitute an offer and neither Buyer nor Seller shall be obligated to purchase or sell the Property until this Agreement is executed by Buyer and Seller. Prior to execution of this Agreement by Buyer and Seller, Seller expressly reserves the right to negotiate with other prospective buyers of the Property or to decline to sell or dispose of the Property without penalty or any obligation to Buyer.

13. Delivery of Possession.

Seller shall deliver possession of the Real Property to Buyer at Closing.

---

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in one or more counterparts, on the date(s) set forth below, effective as of the Effective Date.

**Seller:**

**Brian Kurth and Black Otter Ventures,  
LLC**

**Buyer:**

**City of Billings, Montana**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2007

Date: \_\_\_\_\_, 2007

## **EXHIBIT A**

### **Real Property**

The land referred to herein is situated in the State of Montana, and is more particularly described as follows:

Lots 1-6, Block 1, Rolle Subdivision;

Tract 1A, C/S 1434;

Tract 1B-1 of Amended Tract 1B of C/S 1434 (Less Tract 1B-1A and Black Otter Subdivision)

## EXHIBIT B

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

City of Billings, Montana  
Attn: Cari Martin, City Clerk  
PO Box 1178  
Billings, MT 59103

MAIL ALL TAX STATEMENTS TO:  
Same as above.

FOR RECORDER'S USE ONLY

APN: \_\_\_\_\_  
Transfer Tax: See separate statement not for public record

After recording return to:  
City of Billings, Montana  
Attn: Cari Martin, City Clerk  
PO Box 1178  
Billings, MT 59103

## WARRANTY DEED

**FOR VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, **BRIAN KURTH and BLACK OTTER VENTURES, LLC** ("Grantor"), hereby grants unto to the **CITY OF BILLINGS, MONTANA** of PO Box 1178, Billings, MT 59103 ("Grantee"), that certain real property located in the County of Yellowstone, State of Montana, more particularly described below:

Lots 1-6, Block 1, Rolle Subdivision; Tract 1A, C/S 1434; Tract 1B-1 of Amended Tract 1B of C/S 1434 (Less Tract 1B-1A and Black Otter Subdivision)

TO HAVE AND TO HOLD unto the Grantee, its personal representatives, heirs, and assigns forever, subject to the following:

- (a) Reservations and exceptions in patents from the United States or the State of Montana;
- (b) Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose, and which are not shown by the public records;
- (c) All declarations, restrictions, covenants, and conditions of record;
- (d) All existing easements or claims of easements and rights-of-way of record and apparent from an examination of the property;

- (e) All building, use, zoning restrictions and ordinances, and sanitary and environmental restrictions;
- (f) Taxes and assessments for 2006 and subsequent years (pro-rated as of the closing date;
- (g) All mineral rights and prior conveyances, leases, transfers of any interest in minerals, including oil, gas and other hydrocarbons;

EXCEPT with reference to the items referred to in paragraphs (a) through (g), inclusive, this Deed is given with the usual covenants expressed in Section 30-11-110, Mont. Code Ann.

IN WITNESS WHEREOF, this the Grantor has executed this Warranty Deed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**BRIAN KURTH and BLACK OTTER  
VENTURES, LLC**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be \_\_\_\_\_ of the entity executing the within instrument, and acknowledged to me that he/she executed the same in upon behalf of said entity, having first been authorized so to do.

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

(SEAL)

\_\_\_\_\_  
(signature)  
Printed name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Mm/dd/yyyy

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:

\_\_\_\_\_  
Cari Martin, City Clerk, City of Billings

STATE OF MONTANA                    )  
  : ss  
County of Yellowstone                )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me a Notary Public for the State of Montana, personally appeared

\_\_\_\_\_ AND  
\_\_\_\_\_, known to me to be the Mayor and City Clerk of the City of Billings, respectively, and acknowledged to me that they executed the foregoing instrument.

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

Notarial Seal

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

## **EXHIBIT C**

### **DUE DILIGENCE MATERIALS**

Title Report.

.

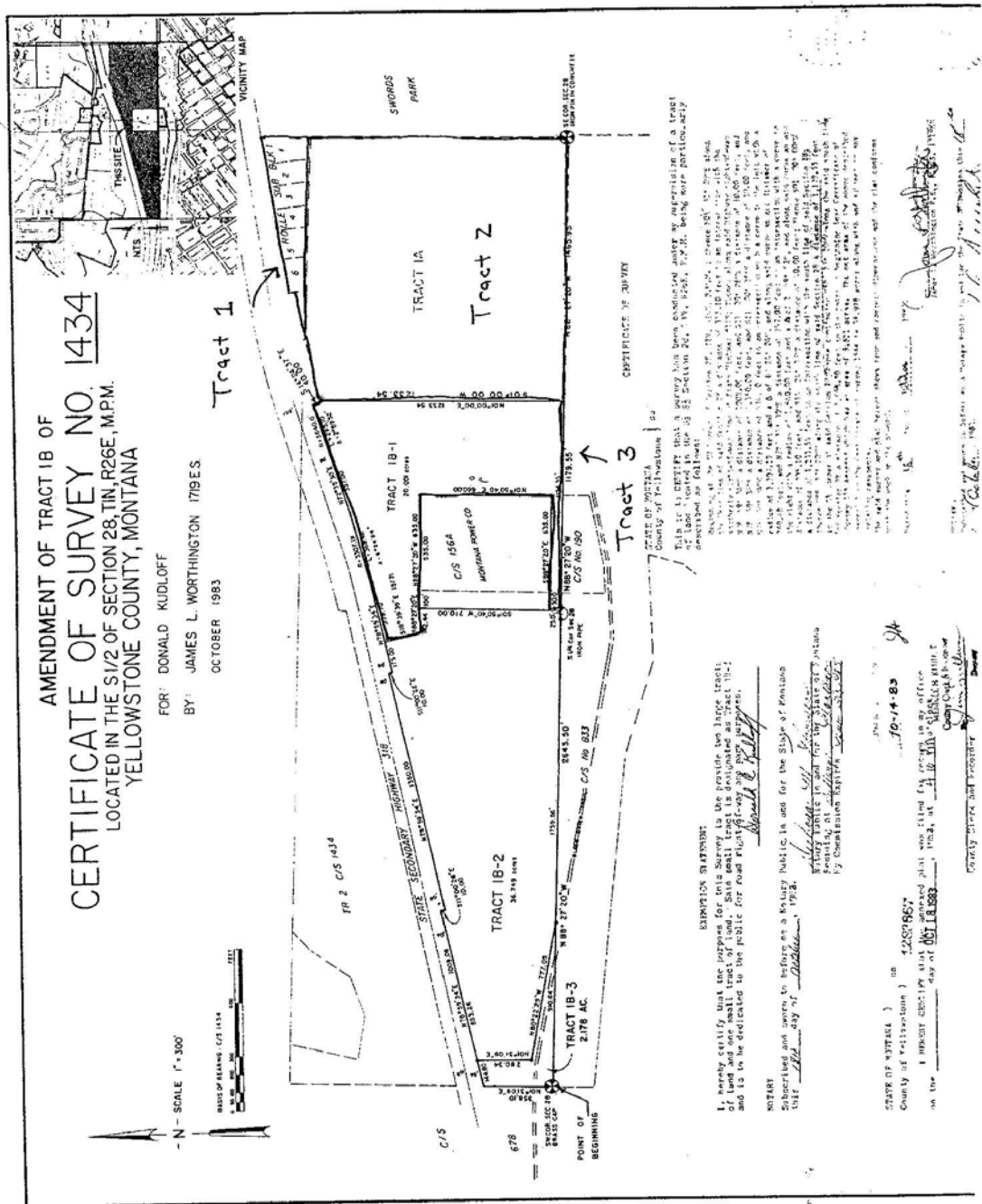
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## Exhibits

Exhibit A - Real Property

Exhibit B - Warranty Deed

Exhibit C - Due Diligence Materials



**AMENDMENT OF TRACT 1B OF  
CERTIFICATE OF SURVEY NO. 1434  
LOCATED IN THE S1/2 OF SECTION 28, T1N, R26E, M.P.M.  
YELLOWSTONE COUNTY, MONTANA**

FOR: DONALD KUDLOFF  
BY: JAMES L. WORTHINGTON 1719 ES  
OCTOBER 1983

Tract 1  
Tract 2  
Tract 1B-1  
Tract 1B-2  
Tract 1B-3

**EXPLANATION OF MAP**  
I, hereby certify that the purpose for this survey is to provide two large tracts of land and one small tract of land, said small tract is designated as Tract 1B-3 and is to be dedicated to the public for road right-of-way and purposes.

**NOTARY**  
Subscribed and sworn to before me a Notary Public in and for the State of Montana this 10th day of October, 1983.  
James L. Worthington, Notary Public  
My Commission Expires 10/10/85

STATE OF MONTANA )  
County of Yellowstone ) ss. JAMES L. WORTHINGTON, Notary Public  
on the 10th day of October, 1983, at 10:14 A.M. I have seen the above described plat and the same is correct and true to the original and I have signed this certificate of acknowledgment.

County Clerk and Recorder

*[Handwritten signature]*  
10/14/83

ATTACHMENT B

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
CITY OF BILLINGS, MONTANA  
Monday, June 25, 2007

TITLE: FY 2008 Agreement & Work Plan -- Downtown Billings Partnership  
DEPARTMENT: City Administrator's Office  
PRESENTED BY: Tina Volek, City Administrator

**PROBLEM/ISSUE STATEMENT:** At a June 4 work session, the FY 2008 work plan and agreement for the Downtown Billings Partnership (DBP) were reviewed with the City Council. This will be the final year for 1976 Downtown Tax Increment Financing (TIF) District, which expires in March 2008. The agreement proposes that DBP also manage the Urban Renewal plans of the North 27<sup>th</sup> Street Urban Renewal District and the East Tax Increment District, as well as the Downtown Billings Framework Plan.

**ALTERNATIVES ANALYZED:**

- Approve the agreement and work plan;
- Amend the agreement and work plan;
- Do not approve the agreement and work plan, and find another agency to operate the TIF Districts for 2008.

**FINANCIAL IMPACT:** The FY 2008 budget, funded from City Fund 202, is as follows:

DBP Operations Support	\$ 338,231
Final TIFD bond payment	\$1,396,110
City fee for services	\$ 66,627
Urban Design projects	\$ 120,000
1976 TIFD Legacy Projects	<u>\$2,035,000</u>
TOTAL	\$3,955,968

**RECOMMENDATION**

Approve the FY2008 Agreement and Work Plan with the DBP.

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

**ATTACHMENT:**

A – Agreement with Exhibit “A” Work Plan

---

## **Downtown Billings BOARD Action Item**

*May Meeting – May 25, 2007*

---

TITLE: Annual Work Plan & Contract with City

COMMITTEE: DBP Executive

PRESENTED BY: DBP Executive Director

---

**PROBLEM/ISSUE STATEMENT:** Annually, the Downtown Billings Partnership is required to submit a work plan to Council as part of our annual contract. For FY2008, we need to add language that gives us the authority to manage all TIFDs, old and new. All documents related to our contract, budgets, and work plan will be forwarded to Council on May 29, 2007 and open to **Council discussion at the June 4<sup>th</sup> Work Session.**

**Further, since this is a change in the contract (management of East and N. 27<sup>th</sup> TIFD), we request Council Action be taken at the earliest available Council Meeting.**

**FINANCIAL IMPACT:** \$338,231 From City of Billings TIFD funds to be paid to DBP for FY2008 Operations

**Board Action Taken:**

Approved by Board – Forward to City of Billings for City Council Approval

## AGREEMENT

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Billings, a Montana Municipal Corporation, hereinafter referred to as the "City", and the Downtown Billings Partnership, Inc., a Montana not-for-profit Corporation, hereinafter referred to as the "Partnership".

## WITNESSETH

WHEREAS, the City has duly adopted urban renewal plans for several Urban Renewal Areas pursuant to Title 7, Chapter 15, Part 42, MCA, the Urban Renewal Plan; and,

WHEREAS, the City has duly approved the use of tax increment financing for the Urban Renewal Areas pursuant to Title 7, Chapter 15, Part 42, MCA, the Tax Increment District; and,

WHEREAS, the City has approved the Downtown Billings Framework Plan, has or will amend the Urban Renewal Plan to incorporate all or a part of the Framework Plan, and is a voting member of the Partnership which was formed to oversee, coordinate and implement the Framework Plan; and,

WHEREAS, the City wishes to contract with the Partnership for the performance of certain services and tasks related to the Urban Renewal Plans of the Downtown Urban Renewal District, the North 27<sup>th</sup> St. Urban Renewal District and the Downtown Billings Framework Plan.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **Work Plan.**

The Partnership shall perform the work plan described in Exhibit A, which is attached hereto and by this reference incorporated herein. The work plan may be amended annually as mutually agreed to by the parties.

2. **Term of Agreement.**

This Agreement is for the period July 1, 2007 through June 30, 2008.

3. **Compensation.**

The City shall budget and pay to the Partnership for services rendered, as outlined in Exhibit B - "Expenditures DBP Operations". Payment shall be made from tax increment fund accounts and shall be paid quarterly, in advance. The City shall have authority to approve the annual Operations Budget of the Partnership.

4. **Reports.**

The Partnership shall provide verbal and written progress reports to the City in September, 2007, January, 2008, April, 2008 and July, 2008 and will provide additional copies of the written report to School District 2 and Yellowstone County.

5. **Grants and Loans of TIF Moneys.**

The Partnership may approve grants or loans up to a cumulative total of \$49,999 per property or project that are awarded pursuant to grant or loan programs and guidelines that have been approved by the City Council.

All grants or loans for a cumulative total of \$50,000 or more recommended for approval by the DBP shall be subject to City Council approval.

All grants and loans shall be itemized in the Partnership's quarterly reports.

6. **Political Activity.**

No City Funds may be used for political purposes including support or opposition of political candidates or support or opposition of any legislative action.

7. **Project Administration.**

Any project to be funded by TIF dollars which, in the opinion of the City Administrator or designee, will become the responsibility of the City through ownership, maintenance or any other reason, shall involve the appropriate City departments beginning at the planning phase and through completion. Where practical, such projects shall be administered by the City with input and guidance from the Partnership.

The Partnership shall administer all grant, loan, incentive and funding programs in accordance with the program guidelines approved by the City Council and is authorized to execute agreements and documents **in accordance with the approved program guidelines related to specific Urban Renewal Districts and each corresponding Urban Renewal Plan.**

Subject to the monetary limits in Paragraph 6 of this Agreement, the Partnership has been approved to administer the following programs, in accordance with the applicable program guidelines, without City Council approval of each project:

*Urban Design Projects (Façade, Parking, Streetscapes, Technical Assistance)*

The Partnership is authorized to administer certain of the following programs, as provided in applicable program guidelines; however, City Council approval is required for program or project expenditures:

*The Revolving Loan Fund  
Large Project Gap Funding Grant Program  
Railroad Crossing and Quiet Zone Programs and Projects  
Development of Business Improvement Districts  
Wayfinding and signage plans and projects  
Traffic Calming and Pedestrian Enhancement*

City of Billings

Downtown Billings Partnership, Inc.

\_\_\_\_\_  
Ron Tussing Mayor  
Attest:

\_\_\_\_\_  
Board President

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



## EXHIBIT A

FY 2008

**DOWNTOWN BILLINGS PARTNERSHIP, INC.  
DOWNTOWN DEVELOPMENT CORPORATION, INC.  
BILLINGS INDUSTRIAL REVITALIZATION DISTRICT, INC.  
JULY 1, 2007 – JUNE 30, 2008**

**URBAN RENEWAL WORK PLAN  
1976 Tax Increment District – Fund 202  
N. 27<sup>th</sup> Tax Increment District  
East Tax Increment District**

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## **EXECUTIVE SUMMARY**

### **Description of the Corporation**

In November 1998 the DBP executed a contract with the City of Billings to perform numerous revitalization activities and services within the City's Tax Increment Financing District (TIFD). That TIFD is approximately bounded by 6<sup>th</sup> Avenue North, North 33<sup>rd</sup> Street, Second Avenue South and North 22<sup>nd</sup> Street. It also includes the South 27<sup>th</sup> Street corridor to the I-90 interchange. In August of 2004 the contract was revised and has been in force to date. For performing these services, the City annually provides for an administrative fee in the form of the DBP's Operations Budget. Additional funds are available for projects that are nominated by the DBP and approved by the City Council. The contract requires that an annual report be prepared and provided to the City and the other two local taxing jurisdictions: Yellowstone County and School District 2.

In 2005, the Billings City Council approved the creation of a new Urban Renewal Tax Increment District known as the N. 27<sup>th</sup> Tax Increment District. This TIFD was expanded in 2007 and Council created a third TIFD known as the East Tax Increment District. The DBP proposes to add the management of these two new districts to its list of contractual responsibilities. The management of the East TIFD shall be via a separate agreement between the DBP/DDC and the Billings Industrial Revitalization District (BIRD).

The DBP continues to focus on the administration of a functioning organization and the promotion of downtown as a safe, attractive, affordable and desirable neighborhood in which to conduct business, shop, celebrate the community and live. It has also worked diligently to provide opportunities for involvement by individuals and groups that have an interest in downtown.

The Board of Directors of the Downtown Billings Partnership may contain up to 15 members; and the Executive Committee of the DBP serves as the Board of Directors for the Downtown Development Corporation. The board members represent eight downtown organizations and there are five at-large members. The downtown property owners are organized via the Council approved Business Improvement District and have promoted specific actions or projects and continue to provide "Clean, Safe and Vibrant" services to our downtown. The East TIFD property

owners are represented by the Billings Industrial Revitalization District, Inc., a 501 (c) (6) not-for-profit Montana corporation. The downtown cultural institutions continue to work together, under the umbrella of the Billings Cultural Partners, and the merchants are organized by the Downtown Billings Association. The media continue their coverage of downtown events and people. Enthusiasm for the downtown seems to be building and with organizational issues now clearer, the DBP plans a fruitful fiscal year that will result in the wrap-up and sunset of the original 1976 Tax Increment District.

### **Mission Statement**

The mission of the DBP is simply stated, "Revitalize Downtown Billings!" Our goal requires us to serve as an umbrella organization covering the member partners and a liaison between the private sector and the City of Billings and other governments and organizations.

### **Products and Services**

The DBP serves the community and works towards the ultimate goal of increasing the taxable value of all of our Tax Increment Districts. Via the Urban Renewal Law the DBP proposes that Fiscal Year 2008 will see at least the beginning of implementation of at least three **Legacy**

#### **Projects from the 1976 TIFD**

- A new Federal Courthouse
- A renovated Northern Hotel
- A renovated Babcock Theater Building
- Projects and programs that will enhance the start-up of the N. 27<sup>th</sup> TIFD and the East TIFD

#### **For the N. 27<sup>th</sup> TIFD**

- A substantial Stockman Bank Building at 4<sup>th</sup> and Broadway
- Additional Parking at 4<sup>th</sup> and Broadway
- A possible relocation of the Library and city offices
- A possible lodging property at 6<sup>th</sup> and Broadway
- Continued facilitation of the New Courthouse Project
- New and expanded parking near the Courthouse
- A renovated MDU Building and possible Sheriff relocation
- Continued revitalization projects via the Urban Renewal Law

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#### **For the East TFD**

- Public Infrastructure improvements to upgrade and anticipate annexation requests from various County islands.
- Conversion of all north/south streets as well as 2<sup>nd</sup> N. and 3<sup>rd</sup> N., east of N. 27<sup>th</sup>, to 2-way traffic.
- Possible land assemblage for a major mixed income housing project
- A new Federal leased office building

#### **Financial Forecast**

Since 1998, the DBP has invested 1976 TIFD dollars (City Fund 202) and reaped a return that has resulted in private investment exceeding \$40 million. Through this next fiscal year, the DBP intends to administer programs and incentives in the Urban Design (See the Framework Plan and Urban Design Sketchbook – 3 year plan) Committees, the Business Improvement District and Property Owners, the Downtown Billings Association and other groups and committees that will attempt to generate five or more private sector dollars of investment for every single TIFD dollar. Further, the DBP/DDC will work with the City of Billings to engage private sector development that will allow for the issuance of new Tax Increment Financing Bonds in both the N. 27<sup>th</sup> TIFD and the East TIFD. The funds from these bonds may be used for public parking, public infrastructure improvements, land acquisition and other projects in the public interest and approved by City Council.

#### **Funding Requirements**

For FY '08, Fund 202 supports a total budget of \$3,955,968. This includes operational support for the DBP of \$338,231 (this includes a reimbursement from the increment funds of the N. 27<sup>th</sup> TIFD in the amount of \$20,000 or 8.4% of the undesignated increment, whatever is smaller and \$10,000 from the East TIFD or 8.4%, whatever is smaller), final TIFD Bond payment of \$1,396,110, a fee for services paid to the City of \$66,853, Urban Design projects totaling \$120,000 and \$2,035,000 for 1976 TIFD Legacy Projects. The annual investment into downtown of the Downtown Billings Association, through the management of their annual \$300,000+ budget

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as well as the self assessment and enterprise activities of the Billings Downtown Business Improvement District totaling over \$140,000 annually, are not included in DBP's TIFD funding total and are managed separately from the DBP/DDC.

The Operations Budget of FY'08 does represent an increase of about 24% over FY'07 but that amount includes about \$75,000 to be kept in our reserve in order to facilitate a financial transition into FY'09 when Fund 202 and the 1976 TIFD will no longer exist and the increment from the N. 27<sup>th</sup> TIFD and the East TIFD may be inadequate to fully fund administrative expenses. It should be noted that the proposed FY'08 Operations Budget is still about 18% LOWER than it was in FY '06.

The DBP also facilitates the budget of our 501 (c) (3) Downtown Development Corporation. That organization receives about \$16,000 per year in donations and about \$10,000 per year from the DBA/City Green Meter program. The DDC uses those funds to implement the annual holiday decorations and the annual hanging flower baskets as well as various other street beautification projects. In the past, the DDC has served as a deposit and expense account for various grants received from various sources. The DDC will continue to seek grant funding in FY'08.

## **HISTORY AND POSITION TO DATE**

Since 1998 the Downtown Billings Partnership has been implementing and tracking the progress of the 1976 Urban Renewal Plan, the Downtown Framework Plan and the Urban Design Sketchbook. In 2006 the DBP/DDC entered into a management agreement with the Billings Industrial Revitalization District (BIRD) to facilitate and manage their urban renewal activities and projects. In FY'08 the DBP plans to add the Urban Renewal Plan of the N. 27<sup>th</sup> TIFD to the list.

### **The Partnership's Activities**

In order to continue the implementation of the Downtown Framework Plan, leverage investment of the Tax Increment Funds, and establish a new organization that will administer the activity and public sector improvements in the Downtown area beyond 2008, within the timeframe of FY '08 the DBP will:

- Administer, manage and develop programs that will increase property values within all three Billings Urban Renewal Tax Increment Districts (TIFDs).

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- Attract and locate new or relocated businesses within the TIFDs.
- Support and implement the creation of new housing units within the TIFDs.
- Support and maintain the current events and activities that take place within the TIFDs and develop new regional and local events that attract conventions, tourists and visitors through the implementation of the Streets and Events Kit of Parts as outlined in the Framework Plan.
- Work with the Parking Advisory Board and the City of Billings Parking Division to create new parking spaces and parking structures within the TIFDs
- Assist the Business Improvement District.
- Assist the City of Billings with the installation of the 27<sup>th</sup> St. Wayfinding Signage project.
- Assist and facilitate the creation of a Master Plan for the downtown Civic District.
- Assist GSA with the development of a new Federal Courthouse and leased office building.
- Assist the County with parking replacement needs as we attempt to relocate some of their existing parking spaces.
- Manage and implement development agreements to allocate Tax Increment Funds to one or more Legacy Projects.
- Assist the City of Billings with the sunset of the 1976 Tax Increment District on March 1, 2008.
- Work with City Council to expand the N. 27<sup>th</sup> TIFD by the end of calendar year 2007 to incorporate blighted areas remaining in downtown Billings.
- Work with City Council to expand the East TIFD by the end of calendar year 2007 to incorporate blighted areas remaining in the East Transition Zone and adjacent areas.
- Involve the City of Billings staff in the creation and implementation of Requests for Proposals and TIFD funded projects.
- Work with the City of Billings to develop a funding plan for the N. 27<sup>th</sup> TIFD that could include Tax Increment Financing Bonds issued by the City of Billings.

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- Work with the City of Billings to develop a funding plan for the East TIFD that could include Tax Increment Financing Bonds issued by the City of Billings.
- Market the programs, projects and potential investment opportunities found within the TIFDs to the local, state, and regional audience and beyond.
- Work with the City of Billings to begin the implementation of public infrastructure improvements in the East TIFD.
- Begin to implement the conversion of 2<sup>nd</sup> Ave. N. and 3<sup>rd</sup> Ave. North and all of the north/south streets EAST of N. 27<sup>th</sup> St. to two-way traffic.
- Begin to develop a plan to assemble land to create new workforce and mixed income housing projects in the East TIFD that would include a neighborhood relocation plan for residents and businesses.
- Continue to implement and develop program applications, formats, materials and criteria that adhere to the Framework Plan, the Urban Renewal Plans of all three TIFDs and practice a fair, unbiased approach that identifies and addresses any potential conflicts of interest.

### **Management Team and Key Personnel**

The DBP will continue to maintain an "Info-Hub" office at 2815 2<sup>nd</sup> Ave. North and attempt to become the "one-stop-shop" for downtown revitalization and redevelopment. In addition, the DBP will assist with the facilitation of services, activities and responsibilities of all partner organization staff members as it relates to the implementation of the Framework Plan and this Work Plan. This requires working closely with and possible financial support for the operational budgets of partner organizations and examination of all TID funds that are channeled to operations. In an effort to maximize staffing management and potential while maintaining streamlined operations, the DBP will assist the operations of the Business Improvement District, as planned, for this fiscal year.

The following positions will be funded, at least in part by TIFD funds for FY '08:

- DBP Executive Director, (DBP payroll)
- \$35,000 Operational Support for the BID will supplement their annual budget to fund *(as presented to property owners in FY2006 as part of a declining annual investment by the TIFD)*
  - BID Executive Director
  - BID Street Team Supervisor

- o BID Street Team (1 full time & 1 part time)

The DBP staffing requirements indicated represent a 50% decrease in personnel expenditures since FY'06 and a 75% decrease from FY'05. The DBA maintains an independent staff of 2 full time positions and shares in the office expenses.

## Services

The Downtown Billings Partnership will serve the Community of Billings through the implementation of the Downtown Framework Plan including (but not limited to) the following:

- The Revolving Loan Fund

- Railroad Crossing and Quite Zone Programs and Historic District expansion Projects

- Downtown Educational Programs including the Urban Institute and School District 2

- Traffic Calming, Pedestrian Enhancement and Public Transportation

- Exploration of Feasibility and Development Opportunities

- 4<sup>th</sup> & Broadway

- East Transition Zone

- Northern Hotel

- Babcock Building

- Civic District

- Expand Business Improvement District

- Land Assemblage

- New Parking Structures

- Additional Green Space development

- Continue Grant writing and explore alternative funding options

- Marketing of Urban Renewal, BID activities, events, and downtown as a destination

- Utilization of Resources

- City Council

- Billings Industrial Revitalization District, Inc.

- City of Billings Staff

- Yellowstone County

- Big Sky EDA

- The Billings Area Chamber of Commerce

- Downtown BID and Property Owners

- DBA and Downtown Merchants and Businesses

Billings Cultural Partners  
Downtown Workers and Adjacent Neighborhoods  
Downtown Faith Leaders  
MSU-Billings Downtown and the Urban Institute

### **Business Structure**

The Downtown Billings Partnership, Inc. (DBP) was incorporated and began functioning in June 1998. It was incorporated in the State of Montana as a 501 (c) (4) not-for-profit corporation. Its primary purpose is "To provide leadership in revitalizing downtown Billings by communicating and coordinating group efforts and resources for the good of the greater community." The partner organizations include:

- The Downtown Billings Association, Inc., a 501 (c) (6) not-for-profit Montana corporation
- The Business Improvement District (currently in the process of becoming a 501 (c) (3) not-for-profit Montana corporation)
- The Downtown Development Corporation, Inc., a 501 (c) (3) not-for-profit Montana corporation

### **RESEARCH AND PLANNING**

The DBP continues to implement and follow the plans, timetables, and observations detailed in the following documents:

The Downtown Framework Plan, 1997  
The Urban Design Sketchbook, 1998  
The Market Potential For Housing in Downtown Billings, 2001  
Downtown Billings Retail Market Thematic and Spatial Retail Clusters, 2002  
Railroad Quiet Zone Study, 2005-2006  
Downtown Billings Partnership Report of Goal Planning, 2004  
Wayfinding Plan, 2006

## **Economic and Social Factors**

Globally, people are locating in and relocating to cities that offer the best living experiences and diverse amenities. Vibrant city centers with a neighborhood feel, mix of businesses, civic and government outlets, and cultural and entertainment adventures are a must. The demographics that comprise this "Urban Tribe" are projected to grow by over 12 Million people in the next 10 years.

## **Competitive Environment**

As the City of Billings continues to expand, promotion of and development within the core of the community becomes increasingly unattractive and unaffordable without projects and programs designed to "level the playing field." Projects and programs offered by the DBP in no way discourage development outside of the TIFD. Instead, they offer competitive options that will attract all levels of development. The economic impact of a valuable and productive and densely populated downtown has a multi-fold impact on the community as a whole. As downtown property values rise, revenue increases to the community overall without much increase in demand for services and infrastructure. Conversely, as downtown property values decrease, the strain on a growing city budget prompted by service requirements and infrastructure demands of growth areas, are not supported. Downtown has been financially supporting our City government for 125 years and with caring management of resources, it can sustain that high level of support for another 125!

## **Long-Term Opportunities**

By the end of the legal life of the 1976 Downtown Tax Increment District, through the calculated implementation of the Framework Plan and organizational transformation of the DBP, Downtown Billings will add almost \$4 Million to the general funds of the taxing entities. Beyond 2008, the redevelopment of the East TIFD will provide housing, lodging, entertainment and industrial opportunities that can enhance the economic viability of the entire region. The remaining blight in the core of downtown will be tackled by the N. 27<sup>th</sup> TIFD and could, over time, double the overall taxable value of downtown again. The DBP/DDC has the opportunity to "fine-tune" a management and administration structure that will maintain the public improvements to the downtown and continue to manage the assets developed through public and private investment.

# **FUND 202 BUDGET**

**EXHIBIT B  
UPDATED**

5/29/2007

**AMENDED**

Expenditures

are Board

Approved

**Pending**

**Approval**

**FY08**

FY08 approved by

DBP Board

3/23/2007

City Council Approval

Pending

**2006 INCREMENT TV**  
\$ 4,821,134.00  
0.5540

**FUND BALANCE BEGINNING** FY2006 \$920,931 FY07 \$100,452 FY08 \$1,064,392  
**UPDATED REVENUE** 5/29/2007 14:03

Real Property Taxes	\$1,623,110	\$2,330,000	\$2,430,000
Delq. Real Property Taxes	\$40,021	\$0	\$0
Personal Property Taxes	\$174,541	\$100,000	\$0
P & I Delq Real Tax	\$4,438	\$0	\$0
SB 417 Per Tax Reimburse	\$60,086	\$0	\$0
HB 124 State Entitlement	\$436,815	\$484,883	\$499,429
Interest on Investments	\$40,834	\$42,214	\$0
Funds from Sale of 4th and Broadway	\$0	\$0	\$0

**TOTAL REVENUE 1976 TIFD** \$3,300,776 \$3,057,549 \$3,993,821

1 Admin. Reimbursement from N. 27th St. TIFD			\$20,000
2 Admin. Reimbursement from East TIFD			\$10,000

**TOTAL TIFD REVNUUE** \$3,300,776 \$3,057,549 \$4,023,821

## **EXPENDITURES**

	<b>Transfers - Debt Service</b>	\$1,394,502	\$1,395,650	\$1,396,110
3 202-1503-466-79-46	DBP Operations (annual Contract)	\$412,870	\$254,714	\$338,231
4 202-1503-466-79-71	DBP Partner Support	\$75,000	\$0	\$0
5 202-1503-466-79-72	DBP Urban Design Projects	\$354,754	\$272,000	\$120,000
6 202-1503-466-79-73	DBP Development Incentives	\$762,000	\$0	\$2,035,000
7 202-1503-466-79-74	DBP Property Owners Incentives	\$170,400	\$0	\$0
	School District #2	\$0	\$34,420	\$0

Arbitrage Calculation Costs \$0 \$0 \$0

**Charges For Services** \$30,798 \$36,373 \$66,627

**TOTAL EXPENDITURES** \$3,200,324 \$1,993,157 \$3,955,968

To balance with city \$0 \$0 \$0

**FUND BALANCE ENDING** \$100,452 \$1,064,392 \$67,853

**LESS RESERVE/DESIGNATED** \$67,853 \$67,853 \$67,853

**UNDESIGNATED FUND BALANCE ENDING** \$32,599 \$996,539 \$0

## **Budget Lines - Internal Sub-Categories**

- 1 \$20k or 8.4% of undesignated increment from N. 27th TIFD, whatever is SMALLER
- 3 \$10k or 8.4% of undesignated increment from East TIFD, whatever is SMALLER
- 3 Annual Contract with City Paid IN ADVANCE quarterly
- 4 DBA, BID, BCP, MSU-B-Downtown, Partner Projects, Grant and Consulting, Other Partner Support
- 5 Downtown Signage, Technical Assistance, Façade Improvement, Quiet Zone
- 6 Legacy Projects Development Grants
- 7 Other Property Owner Projects

The projects and programs listed above have Council Approved Guidelines and/or required ultimate Council approval

## Operations Budget DBP FY 08

(\$7,361)

Personnel	Proposed FY2008	FY2007	Difference	FY06 For Comparison
<i>DBP Salaries &amp; Benefits</i>	<b>\$103,653</b>	\$111,014	(\$7,361)	\$179,177
<i>Travel &amp; Training</i>	<b>\$8,000</b>	\$5,300	\$2,700	\$5,300
<i>BID Salaries &amp; Benefits</i>	<b>\$152,972</b>	\$0	\$152,972	\$67,363
<b>Total FY08 STAFFING</b>	<b>\$264,625</b>	\$116,314	\$148,311	\$251,840

	Proposed FY2008	FY2007	Difference	DBP FY06 for comparison
<b>TOTAL PERSONNEL</b>	<b>\$264,625</b>	\$116,314	\$148,311	\$251,840
<b>TOTAL MARKETING</b>	<b>\$65,500</b>	\$39,600	\$25,900	\$26,800
<b>TOTAL OCCUPANCY</b>	<b>\$22,500</b>	\$13,800	\$8,700	\$14,100
<b>TOTAL B.I.D. SUPPORT</b>	<b>\$35,000</b>	\$75,921	(\$40,921)	\$153,230
<b>TOTAL OVERHEAD</b>	<b>\$30,000</b>	\$20,000	\$10,000	\$26,700
<b>TOTAL RESERVE</b>	<b>\$73,578</b>	\$0	\$73,578	\$0
<b>Total Expense</b>	<b>\$491,203</b>	\$265,635	\$225,568	\$472,670

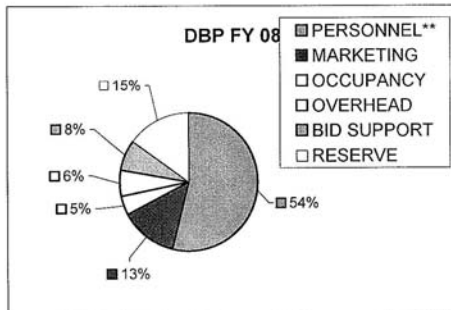
Revenue From BID	<b>\$152,972</b>	Does NOT show up on exhibit B
Revenue From TIFDs	<b>\$338,231</b>	Flows to Exhibit B

**Total Revenue** \$491,203

**TID Balance Due** \$338,231

**\$84,557.75**

**Quarterly Contract Payments**



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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**TITLE:** City Hall Chiller System (Rooftop HVAC) Upgrade

**DEPARTMENT:** Administrative Services/ Facilities Management

**PRESENTED BY:** Saree Couture, Facilities Manager

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**PROBLEM/ISSUE STATEMENT:** The existing Rooftop Cooling and Ventilation System that services the First and Second Floors of the older side of City Hall is a 1978 installation. The age and current condition of the equipment warrants replacement. Bids for replacement equipment will be opened on June 19, 2007.

**ALTERNATIVES ANALYZED:** The alternatives over the years have included replacement of parts and rebuilding components in the system. The system consists of three major components, including the 60 ton chiller unit, the condensing unit and the return air fan/economizer unit. It is possible to replace this system by replacing components only at a little less cost upfront, but the current system replacement options offer more efficiency for future use. The existing system is laid out in three separate components, while the replacement system is a one more fully-contained unit with a return air path. The condensing unit is currently worn out and needing replacement. The compressor was partially rebuilt last year. The return air fan and old fan needs replacing and has been rebuilt twice that we know of, and currently has no variable speed or other current efficiency options with very inefficient large ducting that has had numerous leaks repaired.

**FINANCIAL IMPACT:** The funds are budgeted in the FY 2007 for \$85,000, including engineering costs in the Facilities budget. The cost will be recovered through rent charges for service to those City Hall tenants.

## **RECOMMENDATION**

Bids were opened on June 19, 2007. Staff recommendation to be made at the June 25, 2007, City Council meeting.

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

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, June 25, 2007**


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**TITLE:** Public Hearing and Council Resolution to File for the Annual Federal Transit Administration Section 5307 Grant

**DEPARTMENT:** Aviation and Transit Department

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

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**PROBLEM/ISSUE STATEMENT:** Each year the City of Billings' MET Transit Division applies for a Federal Transit Administration (FTA) Section 5307 formula grant through the U.S. Department of Transportation's Federal Transit Act. Through this Act, grant funds are allocated each year for the MET, which can be utilized for both operating costs and capital assistance. For FY 07/08, as we have for a number of years, the MET is intending to utilize this grant for assistance with operating costs. This grant is funded on a 50% Federal, 50% local basis. The FTA will reimburse the City for 50% of MET's eligible operating expenses up to the apportioned allocation for the year, which will be \$1,230,011 for FY 07/08.

In order to apply for this grant, it is necessary to include with the grant application, a resolution formally authorizing the Mayor to execute the grant agreement with the Department of Transportation (DOT). There is also a requirement for a public hearing for this grant application. Public hearing notices were published in the Billings Times on May 24 and June 7, advertising a public hearing on June 25, 2007.

**FINANCIAL IMPACT:** For FY 07/08, the Section 5307 Federal grant application for operating assistance is \$1,230,011, which represents approximately 30% of the MET's operating revenue. Without this grant revenue to offset operating costs, the MET would need to drastically reduce the service it provides to the community. This amount was budgeted in our proposed FY 07/08 budget.

### **RECOMMENDATION**

Staff recommends that following the public hearing, Council approve a resolution authorizing the filing of a grant application and the execution, by the Mayor, of a grant agreement with the Department of Transportation, Federal Transit Administration, upon receipt of the grant offer provided under the authorization of the Federal SAFETEA-LU Act.

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

### **ATTACHMENT**

A - Authorizing Resolution (2 pages).

Attachment A

AUTHORIZING RESOLUTION

RESOLUTION NO. 07-

A RESOLUTION AUTHORIZING THE FILING OF ALL APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION PLANNING, CAPITAL, TRAINING, DEMONSTRATION, AND/OR OPERATING ASSISTANCE GRANTS AUTHORIZED BY 49 U.S.C. CHAPTER 53, TITLE 23 UNITED STATES CODE, AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION

WHEREAS, the City of Billings has the power to enter into agreements with the Federal Transit Administration; and,

WHEREAS, the Federal Transportation Administration has been delegated authority to award Federal financial assistance for mass transportation projects;

WHEREAS, all contracts for financial assistance will impose certain obligations upon the applicant, including the provision by it of the local share of project costs;

WHEREAS, the applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project;

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

1. That the City of Billings Mayor is authorized to execute and file all applications on behalf of the City of Billings with the U.S. Department of Transportation, Federal Transit Administration to aid in the financing of all planning, capital, training, demonstration and/or operating assistance projects authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration.
2. That the City of Billings Mayor is authorized to execute and file with such applications the annual certifications and assurances, and any other documents required by the U.S. Department of Transportation, Federal Transit Administration effectuating the purpose of the proposed projects, including the local share.

3. That the City of Billings Mayor is authorized to execute grant and cooperative agreements with the U.S. Department of Transportation, Federal Transit Administration, on behalf of the City of Billings.
4. That the Transit Manager is designated to furnish such additional information as the U.S. Department of Transportation, Federal Transit Administration may require in connection with all the applications.

APPROVED this 25th day of June 2007.

THE CITY OF BILLINGS:

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

ATTEST:

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

-----

CERTIFICATE

The undersigned duly qualified and acting City Clerk of the City of Billings certifies that the foregoing is a true and correct copy of a Resolution, adopted at a legally convened meeting of the Billings City Council held on June 25, 2007.

If applicant has an Official Seal, impress here.

(Seal)

\_\_\_\_\_  
Signature of Recording Officer

\_\_\_\_\_  
Title of Recording Clerk

\_\_\_\_\_  
Date

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## AGENDA ITEM:




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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, June 25, 2007

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TITLE: W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48), Public Hearing and Resolution Ordering Improvements

DEPARTMENT: Public Works

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

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**PROBLEM/ISSUE STATEMENT:** This project will construct sidewalks and associated public improvements along 11<sup>th</sup> Street West, O'Malley Drive, and Azalea Lane between Poly Drive and Delphinium Drive. Associated with this project are two other enhancements: (1) a permanent crossing at 11<sup>th</sup> St W & Poly Drive, and (2) sidewalks along Beverly Hills Boulevard, funded through a Safe Routes to School (SR2S) grant. The proposed sidewalk assessments follow the SID Policy adopted by Council in 2004, as the missing public improvements will be assessed to adjoining property owners on the basis of actual construction cost plus applicable fees. The permanent crossing enhancements at 11<sup>th</sup> Street West and Poly Drive are funded through Arterial Street fees. The sidewalks along Beverly Hills Boulevard are funded through a Safe Routes to School (SR2S) grant. On May 29, 2007, Council passed a Resolution of Intent for this project and established a Public Hearing date of June 25, 2007. After conducting the Public Hearing, in order to proceed with construction of the project, Council must pass a resolution ordering construction of the improvements.

**FINANCIAL IMPACT:** Sidewalk assessments for this project are an integral part of the entire project's budget that has already been authorized in the City's Capital Improvement Plan (CIP). The funding information for the sidewalk assessments is as follows:

Construction Costs	\$27,114.00
Contingency (3.3%)	<u>\$ 886.00</u>
Subtotal to be Assessed to Property Owners	\$28,000.00
Engineering and Administration (12.5%)	\$ 4,625.00
Bond Revolving Fund (5%)	\$ 1,850.00
Bond Discount and Issuance Costs (5%)	\$ 1,850.00
Bank Fees	\$ 750.00
Roundoff	<u>\$ (75.00)</u>

TOTAL ASSESSED COSTS

\$37,000.00

**RECOMMENDATION**

Staffs recommends that Council hold a Public Hearing and pass a Resolution Ordering Construction of the sidewalk and related improvements identified in W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48).

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

**ATTACHMENT**

- A. W.O. 05-17 Highland School Sidewalks-Billings, Resolution Ordering Improvements with Exhibits A and B (8 pages)

## **INTRODUCTION**

The City of Billings submitted a Montana Department of Transportation (MDT) Community Transportation Enhancement Program (CTEP) grant funding application for the Highland School Sidewalks project in 2004. The Highland School Sidewalks project was approved through the local CTEP selection process and approved by MDT. Council approved the CTEP Project Specific Agreement (PSA) for this project on January 9, 2006. This project will construct sidewalks and associated public improvements along 11<sup>th</sup> Street West, O'Malley Drive, and Azalea Lane between Poly Drive and Delphinium Drive; will construct permanent crossing improvements at the 11<sup>th</sup> Street West and Poly Drive intersection; and along Beverly Hills Boulevard between Highland Elementary School and 7<sup>th</sup> Street West. This project will enhance accessibility for students attending Highland School. Property assessments for missing public improvements (e.g. sidewalks) along the east side of 11<sup>th</sup> Street West, north side of O'Malley Drive, and east side of Azalea Lane are an integral part of the project's funding. The proposed sidewalk assessments follow the Special Improvement District (SID) Policy adopted by Council in 2004, as the missing public improvements will be assessed to adjoining property owners on the basis of actual construction cost plus applicable fees. The permanent crossing enhancements (to replace the temporary improvements installed in 2005) at 11<sup>th</sup> Street West and Poly Drive are funded through Arterial Street fees. The sidewalks along Beverly Hills Boulevard are funded through a Safe Routes to School (SR2S) grant.

## **PROCEDURAL HISTORY**

- Completed Items
  - CTEP Project Specific Agreement Signed by City Council – January 2006
  - Public input meetings held – July and August 2006
  - Resolution of Intent – May 29, 2007
  - Notice of Passage Published in *The Billings Times* – May 31 and June 7, 2007
  - Notify affected property owners of proposed project – June 1, 2007
- Future Items
  - Public Hearing for proposed project – June 25, 2007 (**This memo**)
  - Resolution ordering construction of the improvements – June 25, 2007 (**This memo**)
  - Bid advertisement and bid award – July/August 2007
  - Construction begins – August 2007

## **BACKGROUND**

With passage of the Resolution of Intent, staff notified each property owner within the proposed project area. This notice included a detailed listing of the proposed work fronting each property, the estimated direct property assessment, and the date, time and place of the Public Hearing. If Council orders the improvements after the Public Hearing, property owners will receive a 30-day notice to complete the improvements prior to construction of this project.

The average estimated assessment (including administrative fees) for the proposed project is \$1,787, the median assessment is \$1,615, the highest assessment is \$4,553, and the lowest assessment is \$0.00. The total estimated assessed cost of the missing sidewalks is approximately \$37,000, including all administrative fees, but exclusive of interest charges.

### **STAKEHOLDERS**

There are two groups affected by the proposed project. The first group is the public-at-large, which would benefit from construction of the improvements. The Highland Neighborhood Task Force is strongly in favor of this project as are the staff and Parent-Teacher Association of Highland School. The second group is the property owners within the proposed project area, who would benefit directly from construction of the improvements, but who would also receive direct property assessments for the construction costs.

Several public meetings have been held regarding this project.

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

In 2004, Council adopted the SID Policy to address the issue of assessments for missing sidewalks and other public improvements along streets in the community. The proposed sidewalk assessments follow this SID Policy in that missing public improvements will be assessed to adjoining property owners.

### **RECOMMENDATION**

Staffs recommends that Council hold a Public Hearing and pass a Resolution Ordering Construction of the sidewalk and related improvements identified in W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48).

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

### **ATTACHMENT**

A.     W.O. 05-17 Highland School Sidewalks-Billings, Resolution Ordering Improvements with Exhibits A and B (8 pages)

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

A RESOLUTION RELATING TO **W.O. 05-17 HIGHLAND SCHOOL SIDEWALKS-BILLINGS**; ORDERING THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

**Section 1. Passage of Resolution of Intention.** This Council, on **May 29, 2007**, adopted Resolution No. **07-18553** (the "Resolution of Intention"), pursuant to which this Council declared its intention to order in certain sidewalks, curb, gutter and street improvements, designated as **W.O. 05-17 HIGHLAND SCHOOL SIDEWALKS-BILLINGS** (the "Project") of the City, under Montana Code Annotated, Title 7, Chapter 14, Part 41, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of sidewalk, curb and sidewalk, curb and gutter improvement bonds drawn on the Project (the "Bonds"), the creation and administration of the Project, and the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

**Section 2. Notice and Public Hearing.** Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with law, and on **June 25, 2007**, this Council conducted a public hearing on the ordering in of the Project and the making of the Improvements.

**Section 3. Order.** It is hereby ordered that the following improvements shall be constructed, reconstructed, repaired, or replaced:

See Exhibit "A" attached hereto.

**Section 4. Affected Properties.** All properties which will be required to pay any portion of the costs of the improvements identified herein are listed and the owners of those properties are identified in Exhibit "B" attached hereto.

**Section 5. Reimbursement Expenditures.**

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

5.02. **Prior Expenditures.** Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provisions

contained in Section 1.150-2(j) (2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$37,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are 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.

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

**Section 6. Property Owner Option to Construct Improvements.** Notice of passage of this Resolution shall be mailed to all affected property owners and said owners shall have thirty (30) days from the date of said Notice in which to install the ordered improvements at their cost and expense. In the event the owners do not take said action within the said thirty (30) day period, the City will install the improvements and will assess the costs thereof, all costs of administration and engineering and all bond issuance costs against the real property.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 25th day of June 2007.

THE CITY OF BILLINGS:

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

ATTEST:

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

**Exhibit "A"**

**Locations of Work**

**W. O. 05-17 – Highland School Sidewalks, Federal Aid No. STPE 1099(48)**

- A) **Sidewalks, Drive Approaches, Accessibility Ramps, and Miscellaneous Related Improvements:** The east side of 11<sup>th</sup> Street West between Poly Drive and O'Malley Drive; the north side of O'Malley Drive between 11<sup>th</sup> Street West and Azalea Lane; and the east side of Azalea Lane between O'Malley Drive and Delphinium Drive;



EXHIBIT B  
**OWNERSHIP REPORT**  
WO 05-17  
Highland School Route Improvements



Tax Account Tax Owner		Lot Block Subdivision	Alley Approach Information	
<b>A08062</b>			<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
BUCHANAN, JUDITH K		6		
Physical Address: 2315 AZALEA LN		2		
Billing Address: BILLINGS MT		GRAHAM SUB		
		59102		
Legal Description: LT 6 BLK 2 GRAHAM SUB				
Taxable Sq. Ft. 9,600				
Billing Address: 2315 AZALEA LN		MT		
Billing Address: BILLINGS MT		59102		
Engineer's Estimate: \$1,143.45				
Final Cost: \$0.00				
<b>A08059</b>			<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
KRESSLEIN, JANET & JOSEPH G		1 & 2		
Physical Address: 2211 AZALEA LN		2		
Billing Address: BILLINGS MT		GRAHAM SUB		
		59102		
Legal Description: LT 1&2 BLK 2 GRAHAM SUB				
Taxable Sq. Ft. 21,600				
Billing Address: 2211 AZALEA LN		MT		
Billing Address: BILLINGS MT		59102		
Engineer's Estimate: \$1,706.10				
Final Cost: \$0.00				
<b>A08060</b>			<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
DONLIN, CHARLOTTE M		3		
Physical Address: 2215 AZALEA LN		2		
Billing Address: BILLINGS MT		GRAHAM SUB		
		59102		
Legal Description: LOT 3 BLK 2 GRAHAM SUB				
Taxable Sq. Ft. 10,800				
Billing Address: 2215 AZALEA LN		MT		
Billing Address: BILLINGS MT		59102		
Engineer's Estimate: \$1,420.24				
Final Cost: \$0.00				
<b>A08060A</b>			<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
HANSON, EARL J & PEGGY L		4		
Physical Address: 2301 AZALEA LN		2		
Billing Address: BILLINGS MT		GRAHAM SUB		
		59102		
Legal Description: L:4 B:2 GRAHAM SUB				
Taxable Sq. Ft. 10,800				
Billing Address: 2301 AZALEA LN		MT		
Billing Address: BILLINGS MT		59102		
Engineer's Estimate: \$2,223.21				
Final Cost: \$0.00				

Tax Account Tax Owner		Lot Block Subdivision		Alley Approach Information	
<b>A08061</b>		5 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
JARRATT, JEANETTA L		Legal Description: LT 5 BLK 2 GRAHAM SUB		Engineer's Estimate: \$1,335.23	
Physical Address 2313 AZALEA LN BILLINGS MT 59102		Taxable Sq. Ft. 10,800		Final Cost: \$0.00	
Mailing Address 2313 AZALEA LN BILLINGS MT 59102					
<b>A08063</b>		7 & 8 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
ELIASON, JIM & DEBBIE FAMILY TRUST		Legal Description: LTS 7 & 8 BLK 2 GRAHAM SUB		Engineer's Estimate: \$1,884.30	
Physical Address 2323 AZALEA LN BILLINGS MT 59102		Taxable Sq. Ft. 20,620		Final Cost: \$0.00	
Mailing Address 2323 AZALEA LN BILLINGS MT 59102					
<b>A08064</b>		9 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
OKON, NICHOLAS		Legal Description: LT 9 BLK 2 GRAHAM SUB		Engineer's Estimate: \$181.50	
Physical Address 947 O MALLEY DR BILLINGS MT 59102		Taxable Sq. Ft. 17,400		Final Cost: \$0.00	
Mailing Address 947 O MALLEY DR BILLINGS MT 59102					
<b>A08065</b>		10 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
ALLEN, GLADYS I		Legal Description: LT 10 BLK 2 GRAHAM SUB		Engineer's Estimate: \$2,313.30	
Physical Address 1005 O MALLEY DR BILLINGS MT 59102		Taxable Sq. Ft. 10,950		Final Cost: \$0.00	
Mailing Address 1005 O MALLEY DR BILLINGS MT 59102					
<b>A08066</b>		11 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
ELLETSON, JOHANNAH		Legal Description: LT 11 BLK 2 GRAHAM SUB		Engineer's Estimate: \$4,808.10	
Physical Address 1011 O MALLEY DR BILLINGS MT 59102		Taxable Sq. Ft. 10,517		Final Cost: \$0.00	
Mailing Address 1011 O MALLEY DR BILLINGS MT 59102					

Tax Account Tax Owner		Lot Block Subdivision		Alley Approach Information	
<b>A08067</b>		12 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
PUMPHREY, ROBERT M JR		59102		Legal Description: LT 12 BLK 2 GRAHAM SUB Taxable Sq. Ft. 10,288 Engineer's Estimate: \$2,824.80 Final Cost: \$0.00	
Physical Address 1017 O MALLEY DR BILLINGS MT					
Mailing Address 1017 O MALLEY DR BILLINGS MT		59102			
<b>A08068</b>		13 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
NICHOL, JACK & LOIS B		59102		Legal Description: LT 13 BLK 2 GRAHAM SUB Taxable Sq. Ft. 10,376 Engineer's Estimate: \$3,357.21 Final Cost: \$0.00	
Physical Address 1035 O MALLEY DR BILLINGS MT					
Mailing Address 1035 O MALLEY DR BILLINGS MT		59102			
<b>A12918</b>		2, E50F1 & E72.76 OF N5'		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
COPPLE, C ROCKNE & REBECCA JO		POLY ADDN		Legal Description: LT 2 E5 FT LT 1 E72.76 FT N5 FT LT 8 POLY Taxable Sq. Ft. 9,627 Engineer's Estimate: \$0.00 Final Cost: \$0.00	
Physical Address 2428 11TH ST W BILLINGS MT		59102			
Mailing Address 2428 11TH ST W BILLINGS MT		59102			
<b>A12919</b>		N90' OF 3 TO 4		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
KOCH, ZENDA N		POLY ADD		Legal Description: N90 FT LT 3-4 POLY ADD Taxable Sq. Ft. 12,174 Engineer's Estimate: \$925.65 Final Cost: \$0.00	
Physical Address 2421 11TH ST W BILLINGS MT		59102			
Mailing Address 2421 11TH ST W BILLINGS MT		59102			
<b>A12920</b>		S 30' 3 TO 5		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
SANDER, SILVY KURTH & GEORGIA W		POLY ADD		Legal Description: S30 FT 3-5 POLY ADD Taxable Sq. Ft. 12,141 Engineer's Estimate: \$1,288.65 Final Cost: \$0.00	
Physical Address 2417 11TH ST W BILLINGS MT		59102			
Mailing Address 2417 11TH ST W # T BILLINGS MT		59102			

Tax Account Tax Owner	Lot Block Subdivision	Alley Approach Information
<b>A12921</b> HAWKINS, MARY E TRUSTEE Physical Address: 2411 11TH ST W BILLINGS MT 59102 Mailing Address: 2411 11TH ST W BILLINGS MT 59102	6 & N 11' OF 7  POLY ADD Legal Description: LT 6 N11 FT LT 7 POLY ADD Taxable Sq. Ft. 13,599	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:  Engineer's Estimate: \$1,406.63 Final Cost: \$0.00
<b>A12922</b> CUFF, HARRY A & JUDITH B Physical Address: 2405 11TH ST W BILLINGS MT 59102 Mailing Address: 2405 11TH ST W BILLINGS MT 59102	7 LESS N 11'  POLY ADD Legal Description: LT 7 LESS N11 FT POLY ADD Taxable Sq. Ft. 10,882	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:  Engineer's Estimate: \$1,025.47 Final Cost: \$0.00
<b>A12941</b> SPALDING, PAIGE L Physical Address: 1055 O MALLEY DR BILLINGS MT 59102 Mailing Address: 1055 O MALLEY DR BILLINGS MT 59102	28A-1  POLY ADD 2ND Legal Description: LT 28A+28B AMEND LT 28A-1 POLY ADD 2ND Taxable Sq. Ft. 8,502	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:  Engineer's Estimate: \$2,087.25 Final Cost: \$0.00
<b>A12941A</b> VENTRELL, LOUIS & CAROL L Physical Address: 1065 O MALLEY DR BILLINGS MT 59102 Mailing Address: 1065 O MALLEY DR BILLINGS MT 59102	28A & 28B, AMEND 28B-  POLY ADDN 2ND Legal Description: LOTS 28A & 28B AMEND LT 28B-1 Taxable Sq. Ft. 9,359	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:  Engineer's Estimate: \$3,555.58 Final Cost: \$0.00
<b>A16107</b> CASHMORE, CHARLES R & KATHLEEN A Physical Address: 955 DELPHINIUM DR BILLINGS MT 59102 Mailing Address: 955 DELPHINIUM DR BILLINGS MT 59102	9 5 SUNCREST ACRES 1ST Legal Description: LT 9 BLK 5 SUNCREST ACRES SUB 1ST Taxable Sq. Ft. 10,610	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:  Engineer's Estimate: \$2,304.22 Final Cost: \$0.00

Tax Account Tax Owner	Lot Block Subdivision	Alley Approach Information
<b>A18688</b> SCHOOL DISTRICT NO 2 Physical Address: 729 PARKHILL DR BILLINGS Mailing Address: 415 N 30TH ST BILLINGS MT 59101	Legal Description: LT 4A 5-7 W41 FT LT 8 FRAC NENWSW BLK 2 Taxable Sq. Ft. 186,088	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:  Engineer's Estimate: \$0.00 Final Cost: \$0.00
<b>Z123</b> CITY OF BILLINGS Physical Address: VARIOUS BILLINGS MT 59102 Mailing Address: PO BOX 1178 BILLINGS MT 59103	1 1 WRIGHT SUBD & CLANTON SUBD Legal Description: 7TH STREET WEST ROW Taxable Sq. Ft. 1	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:  Engineer's Estimate: \$0.00 Final Cost: \$0.00

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, June 25, 2007**


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TITLE: SID 1378 Clevenger Avenue Public Hearing and Resolution Creating District

DEPARTMENT: Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** The residents along Clevenger Avenue have the desire to construct public improvements to their street. These improvements generally consist of street, sidewalk, drive approach and curb/gutter improvements to Clevenger Avenue as shown on the attached exhibit. Storm drain improvements will consist of extending the main in Hallowell Lane from the intersection of Bruce Avenue to the intersection of Clevenger Avenue. The protest period for SID 1378 will end on June 22nd. The protest count will be announced at the Council Meeting.

**ALTERNATIVES ANALYZED:**

1. After holding a public hearing, approve Resolution Creating SID 1378; or
2. After holding a public hearing do not approve the Resolution Creating SID 1378.

**FINANCIAL IMPACT:** The total estimated costs of the improvements are \$235,000. All costs associated with the improvements will be paid for by assessments levied against the properties addressing off of Clevenger Avenue. A total of 16 properties will be assessed in the SID. Each property will be assessed on a per each basis for street and storm drain improvements and on a lineal footage basis for curb/gutter and sidewalk improvements.

**RECOMMENDATION**

Staff recommends that Council approve the Resolution Creating SID 1378.

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

## **ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1378 Clevenger Avenue Resolution Creating District

## **INTRODUCTION**

The residents along Clevenger Avenue have the desire to construct public improvements to their street. These improvements generally consist of street, sidewalk, drive approach and curb/gutter improvements to Clevenger Avenue as shown on the attached exhibit. Storm drain improvements will consist of extending the main in Hollowell Lane from the intersection of Bruce Avenue to the intersection of Clevenger Avenue.

## **PROCEDURAL HISTORY**

- May 29, 2007 – Resolution of Intent to Create SID 1378.
- June 25, 2007 – Public Hearing and Resolution Creating SID 1378.
- Summer 2007 – Resolution Authorizing for Construction Bids and Construction Contract Award.

## **BACKGROUND**

A majority of the homeowners along Clevenger Avenue have approached the City with a desire to create and SID to obtain a paved street and a fix to their current storm drain problem at the intersection of Clevenger Avenue and Hollowell Lane. 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 street, curb/gutter, sidewalk and drive approach improvements. Storm drainage will most likely consist of extension of the main in Hollowell Lane from the intersection of Bruce Avenue to the intersection of Clevenger Avenue.

The public hearing will be held at the June 25, 2007, Council Meeting. If approved, it is anticipated that construction of SID 1378 will begin in the summer of 2007 and be completed by the fall of 2007.

## **RECOMMENDATION**

Staff recommends that Council approve the Resolution Creating SID 1378.

## **ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1378 Clevenger Avenue Resolution Creating District

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 07-\_\_\_\_\_, entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1378**; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on **June 25, 2007**, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

\_\_\_\_\_

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

\_\_\_\_\_ ; abstained from voting thereon: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_.

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

\_\_\_\_\_  
Cari Martin CITY CLERK

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

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1378**; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

**Section 1. Passage of Resolution of Intention.** This Council, on **May 29, 2007**, adopted Resolution No. **18555** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. **1378** of the City, under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds drawn on the District (the "Bonds"), the creating and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

**Section 2. Notice and Public Hearing.** Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with the law, and on **June 25, 2007**, this Council conducted a public hearing on the creation or extension of the District and the making of the Improvements. The meeting of this Council at which this resolution was adopted is the first regular meeting of the Council following the expiration of the period ended 15 days after the first date of publication of the notice of passage of the Resolution of Intention (the "Protest Period").

**Section 3. Protests.** Within the Protest Period, \_\_\_\_\_ protest was filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for 100% of the total costs of the Improvements or representing 100% of the area of the District to be assessed for the cost of the Improvements. **The protest represents \_\_\_\_% of the assessed cost.**

**Section 4. Creation of the District; Insufficiency of Protests.** The District is hereby created on the terms and conditions set forth in, and otherwise in accordance with, the Resolution of Intention. The protests against the creation or extension of the District or the making of the Improvements filed during the Protest Period, if any, are hereby found to be insufficient. The

findings and determinations made in the Resolution of Intention are hereby ratified and confirmed.

## **Section 5. Reimbursement Expenditures.**

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

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

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs for the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$235,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2 (d) (3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are not City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

5.05. Reimbursement Allocations. The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source

of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this **25<sup>th</sup> Day of June, 2007.**

THE CITY OF BILLINGS:

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

ATTEST:

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

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

AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 25, 2007

SUBJECT: Zone Change #807, Southeast corner of Zimmerman Trail and Avenue E  
Public Hearing and 1<sup>st</sup> Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting to rezone Tract C1, Certificate of Survey (COS) 1011 Amended Section 34, T.1N, R.25E, from Residential 6,000 Restricted (R-60R) to Community Commercial (CC) and Residential Professional (RP). The subject property is generally located on the southeast corner of Zimmerman Trail and Avenue E and is currently vacant agricultural land with an existing home at the corner of Zimmerman Trail and Avenue E. The Zoning Commission conducted a public hearing on June 5, 2007, and is forwarding a recommendation for approval with a vote of 4-0.

**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 development of the property should increase the City's tax base.

### RECOMMENDATION

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #807 and adopt the determinations of the 12 criteria, as discussed within this report.

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

## **ATTACHMENTS**

- A: Site Map
- B: Surrounding zoning
- C: Site Photographs
- D: Opposition Letter
- E: Ordinance

## **INTRODUCTION**

The applicant is requesting to rezone Tract C1, COS 1011 Amended Section 34, T.1N, R.25E, from R-60R to CC and RP. The subject property is generally located on the southeast corner of Zimmerman Trail and Avenue E and is currently vacant agricultural land with an existing home at the corner of Zimmerman Trail and Avenue E. The prospective purchaser is seeking a zone change to increase usable property for a proposed Ace Hardware store which will increase the useable property between the proposed Ace Hardware and the Walgreens that is currently under construction on the corner of Grand Avenue and Zimmerman Trail.

The Zoning Commission conducted a public hearing on June 5, 2007, and is forwarding a recommendation for approval with a vote of 4-0.

## **PROCEDURAL HISTORY**

- A zone change request was received on May 7, 2007, for the subject properties.
- The Zoning Commission conducted a public hearing on June 5, 2007, and recommended approval to the City Council by a 4-0 vote.
- The City Council will conduct a public hearing and first reading on June 25, 2007, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on July 9, 2007.

## **BACKGROUND**

The applicant is requesting to rezone Tract C1, COS 1011 Amended Section 34, T.1N, R.25E, a 4.102 acre parcel, from R-60R to CC and RP. The proposed zoning will allow for commercial uses on the southern portion of the property with residential professional uses on the remaining northern portion.

Lot 1 of E. D. King Subdivision is the proposed building site for a new Ace Hardware store. If this property is rezoned, the owner of Ace Hardware is proposing to purchase this property and place a new building on the southern portion of this property. The remaining northern portion of this site would be developed into a residential professional neighborhood with professional offices as a buffer between the retail activities to the south and the existing residential to the north.

Skip King, the owner of Lot 1, E. D. King Subdivision, has submitted a letter saying he has had contact with the surrounding property owners about this proposed zone change. (See Attachment E) On Wednesday, April 18<sup>th</sup>, there was a neighborhood meeting about this zone change at Will James Middle School where the proposed zone change and possible layout of buildings was shown and discussed with surrounding property owners. If the zone change takes place and Skip King purchases the property, he has stated the he will continue the 6 foot tall block wall from the E. D. King subdivision up to Avenue E and also provide a 20 foot bufferyard behind the proposed buildings on the east side of the property. See Attachment A.

## **ALTERNATIVES ANALYSIS**

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

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

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

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

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

This property is in an area of Billings that is experiencing growth. This parcel will focus new commercial growth and professional offices in an area along roads that see high traffic volumes where residential uses may not be the best use of the land.

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

The proposed zone change would allow the property to be developed with commercial uses and professional offices that will provide services to the surrounding residential neighborhoods.

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

The proposed zoning will permit commercial uses intended to serve the local neighborhoods. It will also provide professional office space that will also provide services to the surrounding neighborhoods.

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

Traffic on Zimmerman Trail and Grand Avenue, with the new zoning, may increase but both streets are identified as principle arterials and currently carry large amounts of traffic.

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

When the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department will be able to review what the developer is proposing to build and have input to insure that it is designed to meet city requirements.

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

The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks, landscaping and screening requirements for any new developments.

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

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

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

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

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

The proposed zoning is for commercial use which will not cause a concentration of population.

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

<i>Transportation:</i>	When the property owner submits for design development review or subdivision, the Engineering Division will be able to review the proposed access points and make recommendations for dealing with potential problem areas.
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<i>Water and Sewer:</i>	The City will provide water and sewer to the entire property through existing lines from Avenue E and Zimmerman Trail.
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<i>Schools and Parks:</i>	The proposed commercial zoning is not required to contribute park land and will have no effect on the school system.
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<i>Fire and Police:</i>	The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service will be reviewed with a subdivision or site development plan application.
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9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will provide commercial uses on a major intersection and will provide a buffer from traffic for the existing residential areas along Zimmerman Trail. With Residential Professional zoning on the northern end of the property there will be a buffer between the existing residential to the north and the commercial uses proposed on the southern portion of the property in E. D. King Subdivision.

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. With the Residential Professional zoning on the north end of the property, it will buffer the existing housing across Avenue E from the more intense commercial uses. If the purchaser of this property installs the proposed 6 foot block wall on the east property line, it will provide a site obscuring barrier between the existing residential properties and the proposed development.

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

The property currently has a single family residence on it which the prospective owner wishes to relocate. The proposed zoning is not being sought to conserve the value of buildings on the site. If this property is rezoned and the property is sold, the potential purchaser of the property has stated that they will install a 6 foot block wall on the east property line. The wall will help to conserve the value of the existing residential properties to the east.

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

The proposed zoning will permit smaller commercial development in the Community Commercial zoning area and provide smaller professional office spaces in the Residential Professional zoned area.

**CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

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

**STAKEHOLDERS**

Rick Leuthold provided an overview of the E. D. King subdivision and the way that it would work with the Cover Property that was before the Zoning Commission for a zone change. The proposed Ace Hardware store would be placed on the south end of the Cover Property where the Community Commercial zoning is proposed and would allow more room between the Ace and the Walgreens store for a proposed restaurant. The north end of the Cover property where they are asking for Residential Professional zoning would have smaller office buildings and would be

a better buffer between the commercial uses to the south and the residential on the north. They are also proposing to continue the 6' block wall on the east property boundary from the E.D. King subdivision up to Avenue E and along Avenue E to provide separation between the residential uses and commercial uses.

Charles 'Skip' King spoke to answer a question about the height of the Ace Hardware building stating that it would be a maximum height of 40 feet.

Lou Morris, a resident from the surrounding neighborhood, spoke in favor of the proposed zone change. The developer has been very good to work with and they have worked through some frustrations and the majority of the people in the neighborhood think it is a great deal and happy with what is happening.

Gayle Ottman spoke in opposition to the zone change see Attachment D.

Rick Leuthold provided a rebuttal to the comments stating that the traffic along Zimmerman Trail is already at approximately 25,000 vehicles a day. The new development is not a regional service center but meant to be a neighborhood service provider. They are not planning on providing any access onto Avenue E to minimize people from driving through the surrounding neighborhood but get them back out onto Zimmerman Trail. The parking requirements for the proposed development exceed what is required by code so the developer feels they will have enough parking for both employees and customers at all times.

### **RECOMMENDATION**

The Zoning Commission forwards a recommendation of approval to the City Council for Zone Change #807 with a vote of 4-0.

### **ATTACHMENTS:**

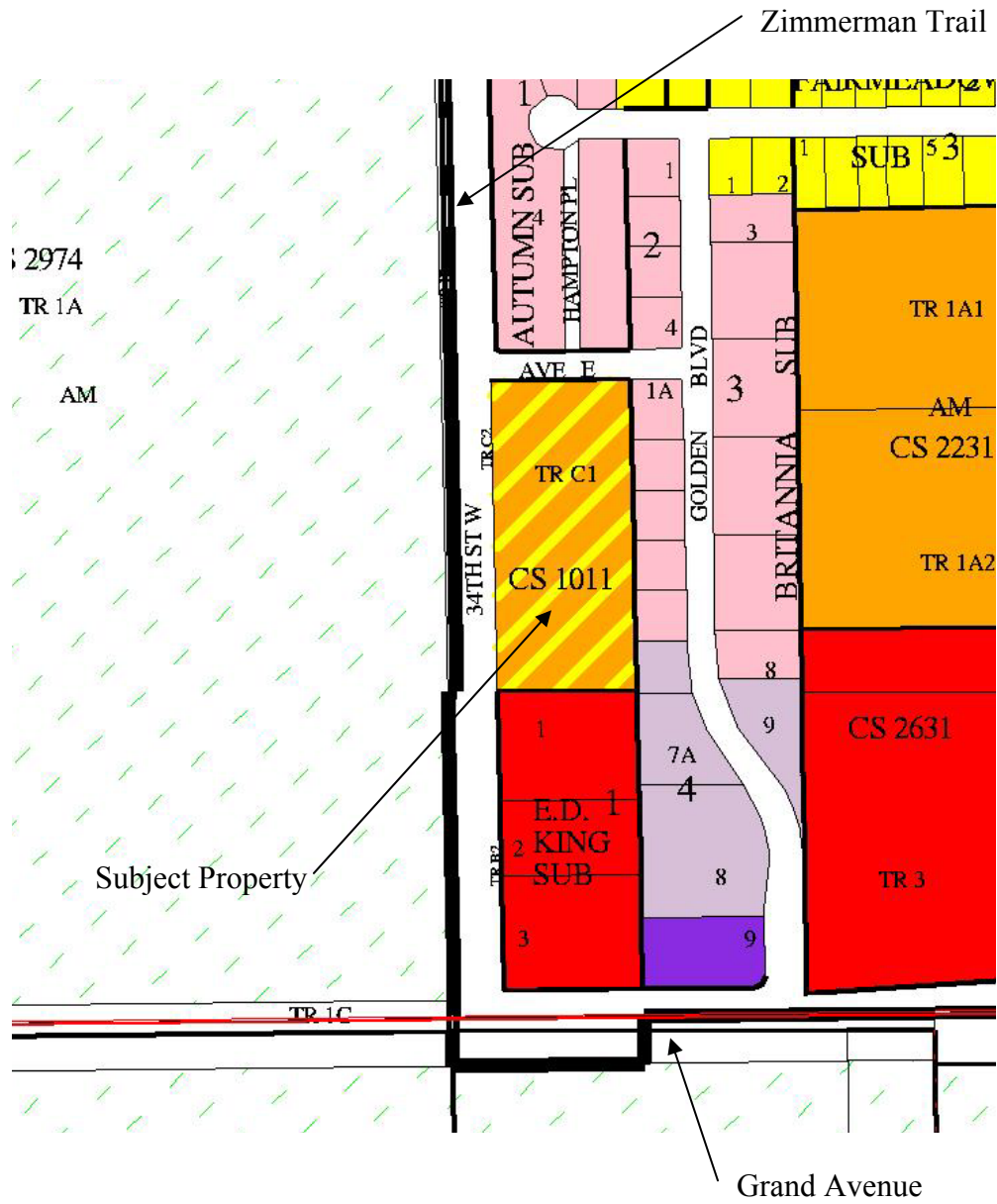
- A: Site Map
- B: Surrounding zoning
- C: Site Photographs
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- E: Ordinance

# ATTACHMENT A

## Site Map



**ATTACHMENT B**  
Surrounding Zoning Map



**ATTACHMENT C**  
Site Photographs



Looking east from across subject property from Zimmerman Trail



Looking west across Zimmerman Trail from subject property.



Looking north up Zimmerman Trail.



Looking south to E. D. King subdivision and current commercial construction.

## ATTACHMENT D

June 5, 2007

I wish to congratulate and commend the city for the thoughtfulness that went into the new Zimmerman Trail project. From the beginning it has been a project that has enhanced the beauty and quality of Billings life. For many arriving from the Airport, it is a wonderful first view of our city. I live just off of it on Golden Blvd. All ages use the trails along this street. Every morning there are walkers and bicyclists then later come the families with small preschoolers in strollers and other small children walking with parents. Every evening it is filled with every age group plus pets. Many families can be seen every evening walking between Poly Drive and Broadwater Avenue.

I preface my remarks with this because I feel the Aesthetic value as well as family safety will be impacted as the retail and business developers continue to press for projects that will certainly increase the level of traffic, thus making it less desirable for everyone who uses Zimmerman Trail as a walk and bikeway. I have seen development of the properties along Grand Avenue become safety and traffic hazards for the people who live off of Golden Blvd. Case in point—the businesses in the Hawkins development just W. of Golden. Supposedly this is low impact business development however, no way is there enough parking for these businesses and now they are using Golden Blvd as a parking lot. There are cars parked along Golden into the residential area just north of Grand. In addition, there are often construction trucks associated with the Hawkins businesses that are larger and take up even more space on Golden.

Also, just to the E. of Golden on Grand Avenue is a car rental place who were parking the rental cars 10-12 cars deep up Golden, except when confronted by the city, now, are parking the employee cars up the street so that the net is the same.

Between the Hawkins owned business development and the rental cars employees there is only a very dangerous opening onto Grand Avenue for the many, mostly elderly people who live up and down Golden in patio homes and duplexes. This parking congestion goes on all weekend, and even on weekends. (please refer to pictures, attached)

I bring these specific examples up because I am concerned that the same thing will most likely develop along Zimmerman Trail between Grand Avenue and Avenue E. I can see Avenue E being the overflow lot for any businesses developing along that street on Zimmerman trail.

The Walgreens and other already approved businesses are going to bring a lot of traffic to the area, which was—as planned—a wonderful walkway. It is going to be a very dangerous intersection for walkers, bikers, and families to

move from one section of Zimmerman north of Grand Avenue to the other section south of Grand Avenue that borders the golf course.

I have no reason to trust that any retail or business development along Zimmerman would do anything but reduce the value of Zimmerman Trail as a family friendly, beautiful access to the city of Billings.

Please consider the increase of traffic turning off and on Zimmerman Trail so close to Grand Avenue. For there to be such a high profile business as Walgreens, and then Ace Hardware—this area is beginning to resemble a busy street like 24<sup>th</sup> street which I cannot believe was in the concept of Zimmerman Trail when it was developed. I sincerely believe you will see traffic backed up as people try to turn into these businesses, causing further safety hazards along Grand and Zimmerman Trail.

I have to say that I was appalled after being away from Billings for a number of months to discover what has happened to Zimmerman Trail.

The Bozeman development speculator has pushed this to be a high impact area since he first made his investment. He has never been interested in quality of life of this area. From the time he bought this agricultural field he has brought one zone change after another to the city. He pushed for high-rise apartments, then low income housing, then retail, and now more business. Now I understand he has sold most or perhaps all of this property to local developers thus realizing his interest in gaining millions from his purchase without any commitment or interest in this community.

This would have been a perfect area for more patio homes and/or duplexes, however he considered only high density, high traffic development. I cannot see that this is in the interest of any of the current residents, mostly older, or those who the city developed the walking and bike path for which include many families.

I would hate to see accidents, and children injured with commercial development along Zimmerman trail, however, I can see this danger coming.

I am opposed to any further zone changes, and am opposed to any retail and/or business development along Zimmerman Trail. I am very concerned for the citizens who live in this area, and for the safety hazard all this development presents. Traffic will increase in this already busy intersection. I plead with the City to maintain Zimmerman Trail as it was originally developed to be—a wonderful cross-city auto parkway with a park like and family/user friendly atmosphere.

Thank you for giving consideration to my concerns.

Gayle Ottman 1787 Golden Blvd. 652-7360

copy to applicant  
and agent.

## ATTACHMENT E

### **ORDINANCE NO. 07-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Tract C1, Certificate of Survey (COS) 1011 Amended  
Section 34, T.1N, R.25E, containing approximately 4.102  
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 C1, Certificate of Survey (COS) 1011 Amended Section 34, T.1N, R.25E, containing approximately 4.102 acres and is presently zoned Residential 6000 Restricted 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 6000 Restricted to Community Commercial and Residential Professional** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial and 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 June 25, 2007.

PASSED, ADOPTED AND APPROVED on second reading July 9, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY: Cari Martin, City Clerk

ZC #807

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

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 25, 2007

TITLE: Zone Change #808 Public Hearing and 1<sup>st</sup> Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

**PROBLEM/ISSUE STATEMENT:** This is a zone change application from Residential Multi-family (RMF) to Planned Development. The property is located on North 26<sup>th</sup> Street and is bordered by 7<sup>th</sup> Avenue North, North 25<sup>th</sup> Street and North 26<sup>th</sup> Street. The primary development will be multi-family townhome construction with the Planned Development Agreement allowing for home occupation with no more than three (3) full-time employees or equivalent. The owners are Thomas Towe and Court E. Ball Partnership and the agent is Susan Lovely. The Zoning Commission conducted a public hearing on June 5, 2007, and voted 4-0 to recommend approval to the City Council. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

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

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

**FINANCIAL IMPACT:** If the zone change is approved, future development of the property should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council **approve** Zone Change #808 and adopt the determinations of the 12 criteria, as discussed within this report.

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

**ATTACHMENTS:**

- A: Surrounding Zoning
- B: Site Photographs
- C: Site Plan
- D: Ordinance
- E: Planned Development Agreement

## **INTRODUCTION**

The applicant is requesting a zone change from RMF to PD. The property is located on North 26<sup>th</sup> Street and is bordered by 7<sup>th</sup> Avenue North, North 25<sup>th</sup> Street and North 26<sup>th</sup> Street. The primary development will be multi-family townhome construction with the Planned Development Agreement allowing for home occupation with no more than three (3) full-time employees or equivalent. The owners are Thomas Towe and Court E. Ball Partnership and the agent is Susan Lovely. The Zoning Commission conducted a public hearing on June 5, 2007, and voted 4-0 to recommend approval to the City Council. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

## **PROCEDURAL HISTORY**

- On May 7, 2007, the Planning Department received an application for a zone change on the subject property.
- On May 23, 2007 a neighborhood meeting was held to invite residents to review, discuss and answer questions regarding the Planned Development.
- The Zoning Commission conducted a public hearing on June 5, 2007, and recommended approval to the City Council by a 4-0 vote.
- The City Council will conduct a public hearing and first reading on June 25, 2007, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on July 9, 2007.

## **BACKGROUND**

This is a zone change request from RMF to PD for the Skyline Court Condominium Project. Thomas Towe and Court E. Ball, Partnership intend to develop the parcel as primarily residential use, but with flexibility to allow homeowners to use their property for some business and commercial ventures operated within their homes. Skyline Court Condominium shall maintain and conform to all of the use restrictions of the current RMF-R zoning with the exception from BMCC 27-602 Home Occupations. The subject property is located on North 26<sup>th</sup> Street and is bordered by 7<sup>th</sup> Avenue North and North 25<sup>th</sup> Street and currently has 5 developed townhomes, the remaining parcel is partially vacant, there are existing residential units fronting North 25<sup>th</sup> Street that will be removed prior to future phases. Some of these units are occupied. The total area for the zone change is 2.73 acres. The owner of this property is Thomas Towe and Court E. Ball Partnership. The agent is Susan Lovely.

The owner is proposing to construct townhomes that provide the future homeowner the option of a home occupation with up to 3 fulltime employees or equivalent. The draft Planned Development Agreement was reviewed at a neighborhood meeting on May 23, 2007. Surrounding property owners were invited to this neighborhood meeting to review the agreement and comment on any changes. No surrounding property owners attended this meeting.

The Building Department forwarded a comment concerning this application. The comment stated that this zone change request would result in an allowance to change the use from strictly

residential to limited business use. A use that would permit employees would be regulated by the building code as a service industry, and certain commercial regulations would come into effect. An analysis would need to be conducted by the owner or agent, but would likely include changes to the structure for accessibility, as well as other possible modifications. This analysis would be completed at time of occupancy.

Planning staff reviewed the application and recommended approval to the Zoning Commission based on the attached 12 criteria for zone changes. The subject property is adjacent to Community Commercial, Residential Professional and Residential Multi-family. The proposed zone change will have to comply with all applicable requirements adopted through the Planned Development Agreement and applicable building codes.

### **ALTERNATIVES ANALYSIS**

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

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?*  
Yes, the new zoning will increase more housing and business choices within each neighborhood. The 2003 Growth Policy supports mixed-uses within neighborhoods. This is an appropriate development of an area with a mix of zoning districts including Residential Multi-family, Community Commercial, Residential Professional and Neighborhood Commercial.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The development currently provides two off-street parking spaces per unit and additional traffic should not impact the streets in this area.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This parcel has public street frontage on North 26<sup>th</sup> Street, North 25<sup>th</sup> Street and 7<sup>th</sup> Avenue North and is served by the City Fire and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.
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 applicant is requesting within the Planned Development Agreement that the following variances from zoning and engineering site development be included:

1. There shall be a 1 foot, 6 inch encroachment into the 25 by 25 foot clear vision triangle allowed for any building.
2. The 10 foot side adjacent to street setback shall be reduced to 5 feet.
3. The required side yard setback for a 3 story structure shall be reduced from 9 feet to 5 feet.
4. The 20 foot front yard setback for a garage entrance shall be reduced to 18 feet, 6 inches.
5. The minimum lot area in the Residential Multi-family-Restricted zone on Lots 4 to 21, Block 59 of Fosters Addition shall be reduced from 49,000 to 31,500 square feet.
6. There shall be up to but not more than 7 curb cuts on 26<sup>th</sup> Street North and 25<sup>th</sup> Street North.

The variance requests from zoning and engineering site development are consistent with the variances granted in June 2004. All remaining zoning requirements for that portion of the area, yard, and height requirements of the BMCC 27-308 affecting Multi-family Residential shall apply.

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

The applicants are proposing to construct new dense 3-story single-family attached structures with each ½ block containing two 6-plexes and two 5-plexes. Currently within the 1<sup>st</sup> phase, 5 units have been constructed.

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

*Transportation:* The development currently provides two off street parking spaces per unit and additional traffic should not impact the streets in this 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 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?*

There are several varying zoning districts in this area including Community Commercial, Neighborhood Commercial, Residential Professional, and Residential Multi-family. The existing neighborhood consists of a mix of single-family, multi-family and commercial development. The proposed Planned Development zone should blend in with the neighborhood. The new zoning should not impact the character of the neighborhood.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The subject property is located in a mixed zoning area and is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
The new zoning is not expected to appreciably alter the value of buildings in the area.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*  
Yes, the new zoning will encourage the most appropriate use of this land in an area of transition between more intense commercial uses and the residential neighborhood.  
Yes, the new zoning will encourage the most appropriate use of this land in an area of transition between more intense commercial uses and the residential 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**

The Zoning Commission conducted a public hearing on June 5, 2007, and forwarded a recommendation of approval to the City Council by a 4-0 vote. Applicant Thomas Towe was present and gave an overview of the project; agent Susan Lovely and architect Randy Hafer were present to request a favorable recommendation from the Zoning Commission to City Council.

There were two surrounding property owners present at the public hearing and they raised concerns regarding the proposed zone change. The first spoke of concerns regarding the 3-story townhomes being constructed near his family's property. The single family rental unit is located between the laundry facility along North 25<sup>th</sup> Street between 6<sup>th</sup> Avenue North and the subject property. In addition, the applicant raised concerns about this property going from residential to commercial. The second opponent spoke about a concern of whether or not the existing sewer line is adequate for the development. The opponent was also concerned about the number of variances from code that were included in the PD Agreement. He raised the concern that the applicant is trying to turn this lot into a commercial lot and finally concerns were raised by the opponent over neighborhood parking.

The applicant in rebuttal addressed the parking issue with a statement the units currently provide a 2-car garage with driveway parking for 2 vehicles. Additionally, on-street parking is available directly around the development.

### **RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council **approve** Zone Change #808.

### **ATTACHMENTS:**

- A: Surrounding Zoning
- B: Site Photographs
- C: Site Plan
- D: Ordinance
- E: Planned Development Agreement

## Attachment A

### Surrounding Zoning



**Attachment B**  
Site Photos – Zone Change #808



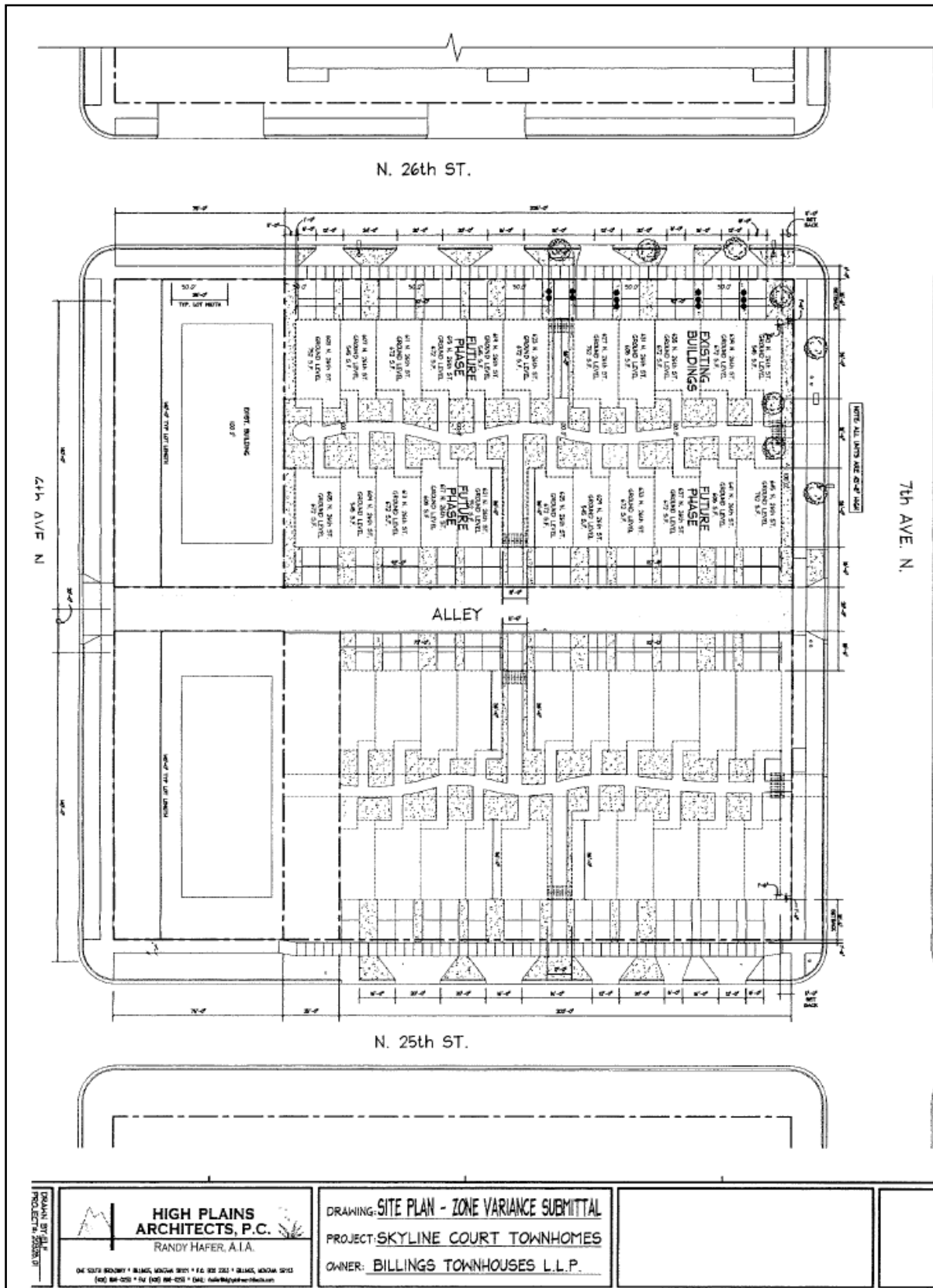
View southwest from alley to existing development



View east towards properties included in the PD request

# ATTACHMENT C

## Site Plan



**Attachment D**

Zone Change #808

**ORDINANCE NO. 07-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Lots 5 – 21, Block 29, Billings Original Town, containing  
approximately 119,000 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 Lots 5 – 21, Block 29, Billings Original Town, containing approximately 119,000 square feet and is presently zoned Residential Multi-family Restricted and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential Multi-family Restricted** to **Planned Development** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to the **Planned Development Agreement** 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 June 25, 2007.

PASSED, ADOPTED AND APPROVED on second reading July 9, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY:

Cari Martin, City Clerk

ZC#808

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, June 25, 2007**


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TITLE: Zone Change #809 Public Hearing and 1<sup>st</sup> Reading of Ordinance  
 DEPARTMENT: Planning and Community Services  
 PRESENTED BY: Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Public (P) to Community Commercial (CC) on a 2.01-acre property at the southeast corner of 14<sup>th</sup> St. West and Grand Ave. School District #2 is the owner; Engineering, Inc. is the agent. The Zoning Commission conducted a public hearing on June 5, 2007, and voted 4-0 to recommend approval to the City Council.

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

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

**FINANCIAL IMPACT:** The proposed zone change should increase the City's tax base because the subject property is currently exempt from taxes, but will be redeveloped as a commercial property.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #809 and adopt the determinations of the 12 criteria, as discussed within this report.

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

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning and Site Plan
- C: Ordinance

## **INTRODUCTION**

This is a zone change request from P to CC on a 2-acre parcel of land owned by School District #2. It is currently the site of the Crossroads School which is no longer in use. The property currently has a sale pending on it to the Walgreen's drugstore.

## **PROCEDURAL HISTORY**

- A zone change request was received on May 7, 2007, for the subject property.
- The Zoning Commission conducted a public hearing on June 5, 2007, and recommended approval to the City Council by a 4-0 vote.
- The City Council will conduct a public hearing and first reading on June 25, 2007, and take action on the zone change application.
- Also at the June 25, 2007 meeting, Council will act on the preliminary plat application to create the subject parcel.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on July 9, 2007.

## **BACKGROUND**

The subject property is located at the southeast corner of 14<sup>th</sup> St. West and Grand Ave. The existing Crossroads School will be demolished and a new drugstore erected. There is a concurrent subdivision in process at this time to create the 2-acre lot. CC zoning surrounds the property to the north, east and west, so it seems appropriate for this site.

The Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The new zoning will facilitate the redevelopment of the site; all site development issues will be addressed at the time of subdivision and building permit review. The Zoning Commission conducted a public hearing on June 5, 2007, and recommended approval of the zone change on a 4-0 vote.

## **ALTERNATIVES ANALYSIS**

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

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The new zoning will support many of the land use goals and objectives of the Growth Policy. The proposed zoning will allow the land to be redeveloped in a way that is consistent with the surrounding neighborhood, will discourage urban sprawl by supporting an infill commercial business, and will improve the aesthetics of the site as it exists.
2. *Is the new zoning designed to lessen congestion in the streets?*  
Simply rezoning the site to CC will not increase street congestion; development will. As with any development of the property, traffic to and from the site will increase.

However, a Traffic Accessibility Study (TAS) will be completed upon site development to identify necessary mitigation measures for the increased traffic flow.

3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This property has public street frontage on 14<sup>th</sup> St. West and Grand Avenue. The nearest fire station is located nearby at 17<sup>th</sup> and Parkhill. 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 will allow the redevelopment of the property which will hopefully promote the health and welfare of the surrounding community.
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 will allow the development of a Walgreen's drugstore on the site. At the time of site development, traffic will be analyzed through a Traffic Accessibility Study, and lot coverage and landscaping requirements will also help to prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*  
No residences are proposed on the site with the new zoning, just a new business. It should not provide for undue concentrations of people.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*  
All of the public requirements will be provided as necessary, as the site develops.
9. *Does the new zoning give reasonable consideration to the character of the district?*  
The new zoning will allow redevelopment of the site in a way that is positive for the surrounding neighborhood.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The Community Commercial zoning district is suitable for the proposed use as a Walgreen's drugstore.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
The existing Crossroads School site was determined to be a liability to the School District, and redevelopment of the site should conserve the value of the surrounding properties.

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.

Development of this parcel for a community drugstore will be an appropriate in-fill use of the site.

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

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

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on June 5, 2007, and forwarded a positive recommendation to the City Council by a 4-0 vote. Mr. Rick Leuthold of Engineering, Inc. appeared and testified on behalf of applicant. He stated the project is on the fast track and that Walgreen's anticipates beginning construction as soon as all the approvals are in place. No one spoke in opposition to the application.

### **RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #809 and adopt the determinations of the 12 criteria, as discussed within this report.

### **ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning and Site Plan
- C: Ordinance

**ATTACHMENT A**

**Site photographs – Zone Change #809**



Figure 1: View looking east down Grand Ave. Subject property on right.



Figure 2: Looking south down 14<sup>th</sup> St. West.



Figure 3: Looking west at intersection of 14<sup>th</sup> St. West and Grand Ave.

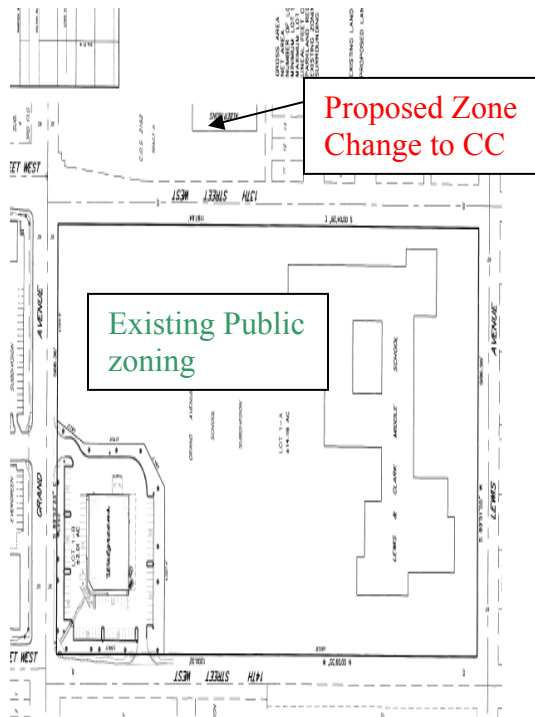
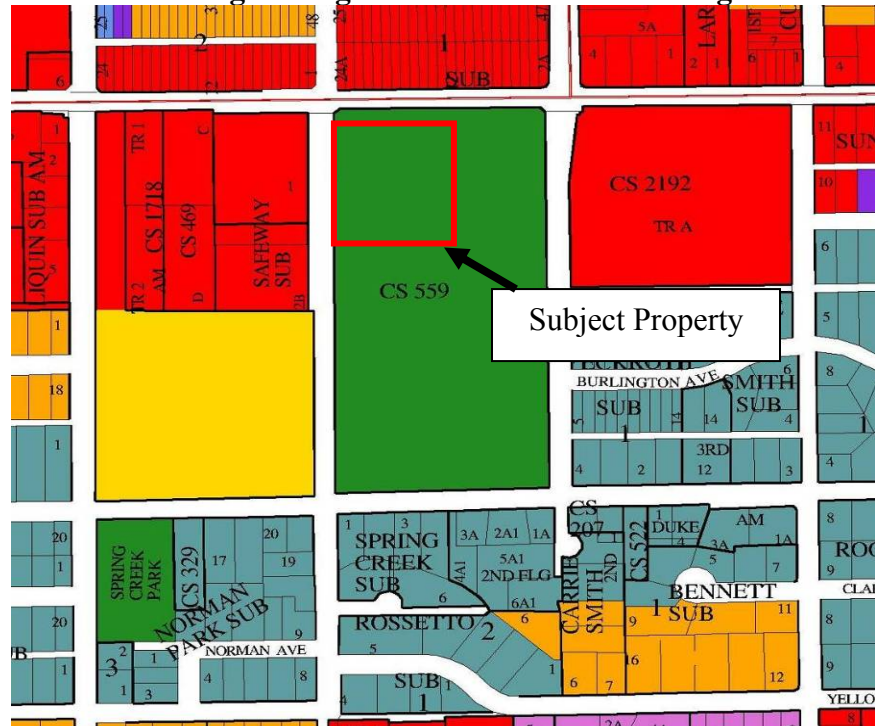


Figure 4: Looking north across Grand Ave. at 14<sup>th</sup> St. West.



Figure 5: Looking northwest at 14<sup>th</sup> St. West and Grand Ave. intersection.

# **ATTACHMENT B** **Surrounding Zoning and Site Plan– Zone Change #809**



**ATTACHMENT C**

Zone Change #809

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

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Lot 1-B, Grand Avenue School Subdivision, Amended  
containing approximately 2 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 1-B, Grand Avenue School Subdivision, Amended, containing approximately 2 acres of land and is presently zoned Public 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 **Lot 1-B, Grand Avenue School Subdivision, Amended** is hereby changed from **Public** to **Community Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading June 25, 2007.

PASSED, ADOPTED AND APPROVED on second reading July 9, 2007.

CITY OF BILLINGS:

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

ATTEST:

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

Cari Martin, City Clerk

ZC#809 – Lot 1-B, Grand Ave. School Subdivision, Amended

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, June 25, 2007**


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**TITLE:** Zone Change #810 Public Hearing and 1<sup>st</sup> Reading of Ordinance –Text Amendment to Section 27-601 Parking and Storage Regulations

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** Section 27-601 of the Unified Zoning Regulations defines and regulates the types of parking and outside storage allowed in residential and some commercial zoning districts. This section of the code has been modified numerous times since first adopted in 1972. Recent court cases have highlighted deficiencies, ambiguities and contradictions within this section of the code. The Billings City Council and Board of County Commissioners agreed to initiate this amendment to Section 27-601. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on June 5, 2007, and voted 4-0 to recommend approval to the City Council of the amendment with the exception of proposed Section 27-601(a)7. and 27-601(b)7. The Zoning Commission voted 4-0 to recommend Section 27-601(a)7. be adopted if a permitting system or similar system to control the use of personal recreational vehicles on residential property is developed. The Zoning Commission voted 4-0 to recommend not adopting Section 27-601(b)7.

**ALTERNATIVES ANALYZED:** The City Zoning Commission held a public hearing on the proposed text amendment on June 5, 2007. No one testified in favor or in opposition to the proposed zone change. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

**FINANCIAL IMPACT:** There should be no direct financial impact to the City as a result of the new zoning regulation.

**RECOMMENDATION**

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #810 with the exception of Section 27-601(a)7. and 27-601(b)7. The Zoning Commission on a 4-

0 vote recommends that the City Council approve Section 27-601(a)7. if a permitting system or similar system to control the use of personal recreational vehicles on residential property is developed. The Zoning Commission voted 4-0 to recommend not adopting Section 27-601(b)7.

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

**ATTACHMENTS:**

A:     Ordinance

## **INTRODUCTION**

On November 20, 2006, the City Council reviewed the proposed text amendment to Section 27-601 and agreed to initiate this zone change. On January 17, 2007, the Board of County Commissioners also agreed to initiate this zone change. The Planning Department developed the proposed amendment based on the deficiencies and ambiguities in the existing code and reviewed the draft amendment with the City Council and Board of County Commissioners in March 2007. In addition, the City and County Attorneys have reviewed the draft amendment.

## **PROCEDURAL HISTORY**

- On November 20, 2006, the City Council initiated the process to amend the parking and storage regulations in Section 27-601 of the Unified Zoning Regulations.
- On January 17, 2007, the Board of County Commissioners also initiated the process to amend the parking and storage regulations in Section 27-601 of the Unified Zoning Regulations.
- On March 13, 2007, the Board of County Commissioners reviewed the draft changes to Section 27-601 and made corrections and comments
- On March 19, 2007, the City Council met in a Work Session and reviewed the draft changes to Section 27-601 and made corrections and comments.
- On June 5, 2007, City Zoning Commission conducted the public hearing for the change to the parking and storage regulations.
- The City Council will hold a public hearing and 1<sup>st</sup> reading of the ordinance on June 25, 2007, and make a decision on the change to the parking and storage regulations.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on July 9, 2007.

## **BACKGROUND**

The primary ambiguity in the existing code is the inclusion of specific definitions not used throughout the Unified Zoning Regulations. This may be appropriate for special code sections such as the City Sign Code, but this section applies or should apply to all zoning districts in the city and county. The Planning Department proposes to refine the existing definitions and move them to Section 27-201, the section where most definitions are located. There are included two new definitions; one for “salvage” and one for “trash”. In most cases where terms are not specifically defined, the common definition in a dictionary is used.

The Planning Department has also proposed to create two separate sections within the existing code. One will address parking and storage in residential zoning districts and one will regulate parking and storage in commercial or industrial zoning districts. These new sections will not only contain prohibitions but will state what is allowed and under what circumstances. The existing code does not state what type of storage or parking allowed with the exception of recreational vehicles.

The Planning Department in response to request from the City Council and Board of County Commissioners has proposed to increase the maximum business or commercial vehicle weight

allowed in a residential zone from 8,000 lbs to 12,000 lbs. In addition, the Board of County Commissioners is proposing to eliminate this commercial vehicle weight restriction from property that is equal to or greater than one (1) acre in size in the County's 4 ½ mile jurisdictional zoning area.

The section regarding parking and storage of recreational vehicles in residential areas is identical with existing code with one exception. The City Council and Board of County Commissioners are proposing that a recreational vehicle parked in a residential area may be used for living or sleeping purposes for up to five consecutive days. The current code does not allow a recreational vehicle to be used for living or sleeping purposes for any period of time within a residential area. The Zoning Commission was concerned about the potential for abuse of this new provision including property owners that may be inclined to "rent" out space in the driveway or backyard for semi-permanent use of an RV for living purposes. The Commission was also concerned about the enforceability of the provision. It may be difficult to prove that an RV has been occupied for more than five consecutive days without a tracking or permitting system in place. The Commission recommends the City Council not adopt this provision for residential districts unless such a permitting system is adopted.

The new section that regulates parking and storage in commercial and industrial zoning districts clarifies what is allowed and what may be allowed by special review approval in certain districts. The proposed amendment would allow the parking and storage of inoperable vehicles for more than five (5) days at automotive repair shops as long as those vehicles are stored in a rear or side yard and are enclosed by a sight-obscuring fence. It also clarifies the section concerning the outside display of merchandise by allowing certain types of businesses to display merchandise on a continuous basis. This includes lumber yards, construction suppliers, nurseries, lawn and garden suppliers and temporary uses.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, or delay the adoption of the changes to the parking and storage regulations.

### **STAKEHOLDERS**

The Zoning Commission held a public hearing on June 5, 2007, on the proposed changes to the parking and storage regulations. No one spoke in favor or in opposition to the proposed ordinance. Planning Staff explained the proposed changes to the Zoning Commission.

### **RECOMMENDATION**

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #810 with the exception of Section 27-601(a)7. and 27-601(b)7. The Zoning Commission on a 4-0 vote recommends that the City Council approve Section 27-601(a)7. if a permitting system or similar system to control the use of personal recreational vehicles on residential property is developed. The Zoning Commission voted 4-0 to recommend not adopting Section 27-601(b)7.

**ATTACHMENTS:**

A: Ordinance

**ATTACHMENT A  
ORDINANCE NO. 07-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-201; DEFINITIONS AND SECTION 27-601; ABANDONED VEHICLES AND STORAGE, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.*

**Section 2. DESCRIPTION.** The zoning regulation shall apply to all land within the City of Billings.

**Section 3.** That the Billings, Montana City Code be amended by revising Section 27-201 to add new language in alphanumeric order to the existing list of definitions to read as follows:

**SEC. 27-201. DEFINITIONS.**

**Enclosed structure** means a building that protects the contents thereof from the elements, including sight obscuring walls on all sides and a roof.

**Inoperable vehicle** means any vehicle incapable of immediate operation under its own power safely and in concurrence with governing and applicable traffic ordinances and statutes or any vehicle not having current license plates lawfully affixed thereto.

**Junk** means any worn out cast off or discarded article or material which is ready for destruction or has been collected or stored as salvage, for conversion to some other use or for reduction into components. Junk includes but is not limited to old or scrap brass, rope, rags, batteries, paper, tires, rubber debris or waste, iron, steel and other old or scrap ferrous or non-ferrous material.

**Merchandise** means all items of movable personal property offered for sale to the public for which no title is required to be registered with or issued by the state.

**Motor Vehicle** means a two (2) or more wheeled or track vehicle designed to transport one (1) or more persons or properties from one (1) location to another including without limitation: trucks, buses, cars, motorcycles, scooters, farm and industrial equipment.

**Open storage** means the storage for a period of five (5) consecutive days or more of junk, salvage, trash, inoperable vehicles and/or merchandise outside of an enclosed structure.

**Salvage** means something saved as valuable or useful from trash, rubbish, worn out equipment, or junk.

**Trash** means something worth little or nothing.

**Section 4.** That the Billings, Montana City Code be amended by revising Section 27-601 to delete existing language and add new language as follows:

**Sec. 27-601. Abandoned Vehicles Parking and Storage Restrictions.**

(a) ~~Definitions.~~ For the purposes of this section, the terms used above shall be defined as follows:

~~**Automobile** means a two (2) or more wheeled or track vehicle designed to transport one (1) or more persons or properties from one (1) location to another including without limitation: trucks, buses, cars, motorcycles, scooters, farm and industrial equipment.~~

~~**Enclosed structure** means a building that protects the contents thereof from the elements, including sight obscuring walls on all sides and a roof.~~

~~**Inoperable vehicle** means any automobile incapable of immediate operation under its own power safely and in concurrence with governing and applicable traffic ordinances and statutes or any automobile not having current license plates lawfully affixed thereto.~~

~~**Junk** means any worn out, cast off or discarded article or material which is ready for destruction or has been collected or stored as salvage, for conversion to some other use or for reduction into components. Junk includes but is not limited to old or scrap brass, rope, rags, batteries, paper, tires, rubber debris or waste, iron, steel and other old or scrap ferrous or non-ferrous material.~~

~~**Junk vehicle** means any automobile which is ruined, wrecked, partially dismantled and which is not lawfully and validly licensed.~~

~~**Merchandise** means all items of movable personal property offered for sale to the public for which no title is required to be registered with, or issued by, the state.~~

~~**Open storage** means the storage for a period of five (5) days or more of an unlicensed or inoperable vehicle, appliance, implement or machinery, or any part thereof, outside of an enclosed structure.~~

~~**Permanent storage** means storage of chattel, salvage, rubbish or junk for a period exceeding five (5) days without moving~~

(a) **Residential.** The following standards for off-street parking and storage shall apply in all residential zoning districts and on property that is developed for residential use.

- (1) Open storage and off-street parking of licensed and operable motor vehicles is an allowed accessory use as defined in Section 27-201.
- (2) Open storage and off-street parking of inoperable motor vehicles for more than five (5) consecutive days is a prohibited use.
- (3) Within the Billings city limits open storage and off-street parking of licensed and operable motor vehicles in any front or side yard shall be on a surface prepared with asphalt or concrete. Open storage and off-street parking of licensed and operable motor vehicles in any rear yard may be on any type of surface. (See also BMCC Sections 6-1203, 24-401 and 27-1201)
- (4) Open storage and off-street parking of one (1) licensed and operable motor vehicle used for commercial or business purposes is an allowed accessory use provided it does not exceed twelve thousand (12,000) pounds in G.V.W. (gross vehicle weight). Outside the Billings city limits on property of one (1) acre or more in lot area this motor vehicle weight limitation shall not apply.
- (5) Display of merchandise other than for a garage sale or a use allowed by permit under the Temporary Use section of this code (Section 27-614) is prohibited.
- (6) Open storage and off-street parking of licensed and operable recreational vehicles including but not limited to snowmobiles, boats, and campers, all-terrain vehicles, off-road motorcycles, and sport/utility trailers is an allowed accessory use in any rear yard. Open storage and off-street parking of licensed and operable recreational vehicles is an allowed accessory use in a front or side yard only if there is no access to a rear yard. Within the Billings city limits open storage and off-street parking of licensed and operable recreational vehicles in a front or side yard shall be on a surface prepared with asphalt or concrete. Open storage of licensed and operable recreational vehicles in a rear yard may be on any type of surface. Open storage and off-street parking of licensed and operable recreational vehicles in any yard shall provide at least a five (5) foot separation between such recreational vehicle and any door, window or other opening of a dwelling or accessory building that provides ventilation or access to the structure. Open storage and off-street parking of licensed and operable recreational vehicles in any yard shall provide setbacks to property lines equal to or greater than accessory building zoning code setback requirements.
- (7) The use of any recreational vehicle for living or sleeping purposes for more than five (5) consecutive days is prohibited when parked off-street or stored in any residential zoning district or in an area developed for residential use.
- (8) Open storage for more than five (5) consecutive days of junk, salvage and trash is prohibited.

(b) ~~**Storage and display of merchandise in residential districts.**~~ Outside display of merchandise is prohibited in all residential zoning districts.

(b) **Commercial and Industrial** The following standards for off-street parking and storage shall apply in all commercial and industrial zoning districts.

- (1) Open storage for more than five (5) consecutive days of junk, salvage and trash is prohibited.
- (2) Open storage for more than five (5) consecutive days of material collected as salvage for recycling, re-use, dismantling to remove parts for re-use or for separation prior to recycling or destruction is a Special Review use of property only in Highway Commercial (SIC 5015), Controlled Industrial (SIC 5093) and Heavy Industrial (SIC5093).
- (3) Open storage and off-street parking of inoperable motor vehicles for more than five (5) consecutive days is a Special Review use of property only in Highway Commercial (SIC 5015), Controlled Industrial (SIC 5093) and Heavy Industrial (SIC5093).
- (4) Open storage and off-street parking of inoperable motor vehicles for more than five (5) consecutive days is an allowed accessory use of property for principal uses classified as Automotive Repair Shops (SIC 753). The open storage and off-street parking area shall be located in the rear or side yard, and inoperable motor vehicles or vehicle parts shall not be visible from any right of way or adjoining property. A sight obscuring fence of at least six (6) feet in height from grade shall be required to enclose the storage or off-street parking area for inoperable motor vehicles. Chain link fence may be allowed as a sight obscuring fence if opaque slat inserts are used.
- (5) Outside display of merchandise is permitted in residential professional, neighborhood commercial, community commercial, highway commercial, and controlled industrial zoning districts only if the merchandise is related to the principal use of the property, and such merchandise is removed each night into an enclosed structure. The continuous outside display of merchandise is permitted when the principal use of property is for lumber and construction materials (SIC 503, 521 and 525), wholesale and retail nurseries, lawn and garden supply (SIC 078, 081, 5191, 5193, and 526) or for temporary uses and structures regulated by section 27-614.
- (6) Bufferyards and required landscaping shall not be used for the displaying of merchandise in any commercial or industrial zoning district.
- (7) The use of any recreational vehicle for living or sleeping purposes for more than five (5) consecutive days is prohibited when parked off-street or stored on property zoned for commercial or industrial uses or on property developed for commercial or industrial uses.

(c) ~~**Storage and display of merchandise in certain commercial districts.**~~ Outside display of merchandise is permitted in residential professional, neighborhood commercial, community commercial, highway commercial, and controlled industrial zoning districts only if the merchandise is new and not used, is related to the principal use of the property, and such merchandise is removed each night

~~into an enclosed structure. This section shall not apply to retail nurseries or temporary uses and structures regulated by section 27-614. Bufferyards and required landscaping shall not be used for the displaying of merchandise in any zoning districts.~~

- ~~(d) — **Storage or parking of vehicles.** In all residential zoning districts, storage or parking of commercial vehicles shall be limited to one (1) delivery vehicle not to exceed eight thousand (8,000) pounds G.V.W. (gross vehicle weight).~~
- ~~(e) — **Abandoned vehicles.** All inoperable automobiles, or parts thereof, parked or stored for a period exceeding five (5) days shall be considered abandoned. Any such automobile that in the judgment of the zoning enforcement officer appears to be abandoned, including parts thereto, shall be removed and disposed of in a manner set forth by the zoning enforcement officer.~~
- ~~(f) — **Storage of trailers and recreational vehicles.** Snowmobiles, boats, or other recreational vehicles and campers, camper trailers or motor homes, and utility/sport trailers may be parked or stored on private property provided that all current accessory building zoning code setback requirements are observed. In addition to accessory building setback requirements, such items shall not be parked any nearer than five (5) feet from any door, window or other opening of a dwelling which provides light, air, entrance to, or exit from the dwelling as needed to preserve the health, safety and general welfare of the occupants of the dwelling.~~

~~However, it shall be unlawful for any person or firm to park or store such vehicles in any front yard or to occupy campers, camping trailers or motor homes for living or sleeping purposes.~~

- ~~(g) — **Storage of salvage.** Permanent open storage of salvage, inoperable vehicles, rubbish or other chattel shall not be permitted in any zoning district. Exceptions to this restriction are principal uses of property (e.g., auto wrecking) which may be permitted in the highway commercial, controlled industrial or heavy industrial zoning districts, as regulated by the commercial/industrial district regulations in BMCC section 27-306.~~
- ~~(h) — **Inoperable vehicle or junk vehicle.** Storage, parking or leaving any inoperable vehicle or junk vehicle shall not be permitted in any district. This section shall not apply to:~~
  - ~~1. Automobiles stored in commercial or industrial districts which are regulated by BMCC sections 27-301, et seq.; or~~
  - ~~2. An automobile or part thereof which is completely enclosed within a building in a lawful manner and where it is not visible from the street or other public or private property.~~

**Section 5. REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 6. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 7. 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 June 25, 2007.

PASSED, ADOPTED AND APPROVED on second reading July 9, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY:  
Cari Martin, City Clerk

ZC#810 – Amending Section 27-201 Definitions and Section 27-601 Abandoned Vehicles and Storage Restrictions

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, June 25, 2007**


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**TITLE:** Zone Change #811 Public Hearing and 1<sup>st</sup> Reading of Ordinance –Text Amendment to Section 27-1502(b) Amendments to Chapter, Applications for map amendments

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** Section 27-1502 of the Unified Zoning Regulations regulates how amendments to the official zoning map are processed and how surrounding property owners may be notified. Zone change applications do not require notification of surrounding property owners or neighborhoods prior to the application to amend the zoning map. This has created in some cases neighborhood conflict that can not always be resolved through the public hearing process. The public hearing process adheres to a calendar schedule that is not conducive to negotiation or conflict resolution. The Billings City Council and Board of County Commissioners agreed to initiate this amendment to Section 27-1502 (City) and Section 27-1508 (County). The City Zoning Commission held a public hearing on the amendment to the zoning regulation on June 5, 2007, and voted 4-0 to recommend approval to the City Council of the amendment.

**ALTERNATIVES ANALYZED:** The City Zoning Commission held a public hearing on the proposed text amendment on June 5, 2007. No one testified in favor or in opposition to the proposed zone change. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

**FINANCIAL IMPACT:** There should be no direct financial impact to the City as a result of the new zoning regulation.

**RECOMMENDATION**

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #811 amending Section 27-1502(b) of Billings, Montana City Code.

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

**ATTACHMENT:**

A:     Ordinance

## **INTRODUCTION**

On November 20, 2006, the City Council reviewed the proposed text amendment to Section 27-1502 and agreed to initiate this zone change. On January 17, 2007, the Board of County Commissioners also agreed to initiate this zone change.

## **PROCEDURAL HISTORY**

- On November 20, 2006, the City Council initiated the process to amend the zone change application regulations in Section 27-1502 of the Unified Zoning Regulations.
- On January 17, 2007, the Board of County Commissioners also initiated the process to amend the zone change application regulations for the County in Section 27-1508 of the Unified Zoning Regulations.
- On March 13, 2007, the Board of County Commissioners reviewed the draft changes to Section 27-1508 and made corrections and comments.
- On March 19, 2007, the City Council met in a Work Session and reviewed the draft changes to Section 27-1508 and made corrections and comments.
- On June 5, 2007, City Zoning Commission conducted the public hearing for the change to the zone change application regulations.
- The City Council will hold a public hearing and 1<sup>st</sup> reading of the ordinance on June 25, 2007, and make a decision on the change to the zone change application regulations.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on July 9, 2007.

## **BACKGROUND**

The Planning Department developed the proposed amendment based on the goals and policies outlined in the 2003 Growth Policy. One of the goals of the policy is to make land use decisions that are predictable and consistent with neighborhood character and land use patterns. These goals also list objectives that include reducing conflicts between neighbors, maintaining a high quality of life, preserving neighborhood integrity and empowering neighborhood groups. Under current zoning regulations, any property owner with funds for the application fee may propose any zone change they choose for their property. The owner is not required to present the proposal to anyone other than the Zoning Commission and City Council or Board of County Commissioners for approval or denial. This method quite often leads to neighborhood conflict and zone change decisions may or may not be in accordance with the 2003 Growth Policy.

Cities and counties can adopt application requirements relative to zone changes. The Planning Department has developed this amendment to require prior notification to property owners within 300 feet of a proposed zone change. This will require property owners to communicate with the surrounding property owners prior to making a zone change application. This application requirement will achieve some of the goals of the 2003 Growth Policy by reducing neighborhood conflict and empowering neighborhood groups.

The Planning Department developed amendments to the code to address the 2003 Growth Policy goals and reviewed the draft amendment with the City Council and Board of County

Commissioners in March 2007. In addition, the City and County Attorneys have reviewed the draft amendment.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, or delay the adoption of the changes to the parking and storage regulations.

### **STAKEHOLDERS**

The Zoning Commission held a public hearing on June 5, 2007, on the proposed changes to the zone change application regulations. No one spoke in favor or in opposition to the proposed ordinance. Planning Staff explained the proposed changes to the Zoning Commission.

### **RECOMMENDATION**

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #811 amending Section 27-1502(b) of Billings, Montana City Code.

### **ATTACHMENT:**

A: Ordinance

**ATTACHMENT A  
ORDINANCE NO. 07-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-1502(b); AMENDMENTS TO CHAPTER, APPLICATIONS FOR MAP AMENDMENTS, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.*

**Section 2. DESCRIPTION.** The zoning regulation shall apply to all land within the City of Billings.

**Section 3.** That the Billings, Montana City Code be amended by revising Section 27-1502(b) to add new language to read as follows:

**SEC. 27-1502. AMENDMENTS TO CHAPTER.**

(b) *Applications for map amendments.* Unless initiated by the city council or board of planning, all applications for official map amendments must be submitted by the owner of such property, the contract purchaser, or the authorized agent of the owner. An application for an amendment affecting the same property shall not be submitted more often than once every twelve (12) months. Each application to amend the official map shall be filed with the zoning coordinator, and each application shall be submitted under the following conditions:

(1) The applicant or his/her authorized agent shall submit the following pre-application information to the planning department to begin the zone change process:

- a. Legal description of the subject parcel(s), along with a map showing the dimensions, acreage and location of the parcel(s);
- b. The names and addresses of the owner(s) and contract purchasers, if any, of the subject property and their agent(s), if any, along with the recorded property owner's signature;
- c. A zone change plan which shall consist of the following:

- i. A written description of the proposed zone change including the area in square footage or acres to be included in the zone change.
- ii. If there are multiple zone changes proposed, the location and area of each specific new zoning district.

(2) The planning department shall provide a list of surrounding property owners within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s) to the applicant or his/her agent based on the submitted information.

(3) The applicant or his/her agent shall conduct a pre-application neighborhood meeting to explain the proposed new zoning and receive comment from the surrounding property owners. The applicant or his/her agent shall notify in writing the persons on the surrounding property owner list as provided in subsection (2) and the planning department of the date, time and location of the pre-application neighborhood meeting. The written notification shall be mailed at least seven (7) calendar days prior to the scheduled meeting. The written notification shall include all the materials noted in subsection 27-1502 (b) 1. The pre-application neighborhood meeting shall be conducted at least seven (7) calendar days prior to the submittal of the proposed zone change to the planning department. The applicant shall obtain a roster of the names of the persons that attend the pre-application neighborhood meeting and make a record of the minutes of the meeting.

(4) (4) Once the pre-application neighborhood meeting has been conducted the applicant or his/her agent may submit a zone change application and it shall include but not be limited to the following information:

- a. A legal description of the tract(s) proposed to be rezoned;
- b. A map showing the dimensions, acreage and location of the tract(s) being changed;
- c. The names and addresses of the owner(s) of the land and their agents, if any, along with the recorded property owner's signature;
- d. A certified list of the names, addresses and legal descriptions of the owners of property within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s);
- e. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list; and
- f. Payment of all applicable fees.

- g. A signed statement affirming the pre-application neighborhood meeting was conducted in conformance with the requirements of Section 27-1502(b) 3, and the zone change application is based on material presented at the meeting. The signed statement shall include a copy of the meeting notice, any written materials provided to the surrounding property owners, a brief synopsis of the meeting results, a roster of the persons attending the meeting and audio or written minutes of the meeting.
- (2) (5) An application for amendment to the official map shall be submitted at least twenty (20) days prior to the date of the public hearing before the city zoning commission.
- (3) (6) An application for a zone change may be withdrawn or amended as follows:

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

**Section 5. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 6. 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 June 25, 2007.

PASSED, ADOPTED AND APPROVED on second reading July 9, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY:

Cari Martin, City Clerk  
ZC#811 – Amending Section 27-1502(b) Amendments to Chapter, Applications for Map Amendments

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 25, 2007**

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**TITLE:** Zone Change #812 Public Hearing and 1<sup>st</sup> Reading of Ordinance –Text Amendment to Special Review Uses – Amending Section 27-306, 27-601, 27-612 and 27-613

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The Unified Zoning Regulations specifies many land uses that are allowed only by special review approval of the City Council. Some of these special review uses could be allowed by right if it meets certain standard development criteria. Many uses are allowed by right in many districts. This section of the code may unnecessarily restrict certain types of uses. One specific use – a restaurant that serves beer and wine but does not have gaming and meets the required 600-foot separation from churches, schools and parks with play ground equipment – may not need a special review approval from the governing body. In addition, retail uses greater than 3,000 square feet in a Neighborhood Commercial zone and construction trades in Highway Commercial zones may not need a special review approval. The Billings City Council and Board of County Commissioners agreed to initiate this amendment to Section 27-306, 27-601, 27-612 and 27-613. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on June 5, 2007, and voted 3-1 to recommend approval to the City Council of the amendment.

**ALTERNATIVES ANALYZED:** The City Zoning Commission held a public hearing on the proposed text amendment on June 5, 2007. No one testified in favor or in opposition to the proposed zone change. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

**FINANCIAL IMPACT:** There should be no direct financial impact to the City as a result of the new zoning regulation.

**RECOMMENDATION**

The Zoning Commission on a 3-1 vote recommends that the City Council approve Zone Change #812 amending Sections 27-306, 27-601, 27-612 and 27-613 of the Billings, Montana City Code.

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

**ATTACHMENTS:**

A:        Ordinance

## **INTRODUCTION**

On November 20, 2006, the City Council reviewed the proposed text amendment to the Unified Zoning Regulations that pertain to allowed and special review uses in commercial and industrial zoning districts and agreed to initiate this zone change. On January 17, 2007, the Board of County Commissioners also agreed to initiate this zone change.

## **PROCEDURAL HISTORY**

- On November 20, 2006, the City Council initiated the process to amend the commercial and industrial use regulations in Sections 27-306, 27-601, 27-612 and 27-613 of the Unified Zoning Regulations.
- On January 17, 2007, the Board of County Commissioners also initiated the process to amend the zone change application regulations for the County in Sections 27-306, 27-601, 27-612 and 27-613 of the Unified Zoning Regulations.
- On March 13, 2007, the Board of County Commissioners reviewed the draft changes to Sections 27-306, 27-601, 27-612 and 27-613 of the Unified Zoning Regulations.
- On March 19, 2007, the City Council met in a Work Session and reviewed the draft changes to Sections 27-306, 27-601, 27-612 and 27-613 of the Unified Zoning Regulations and made corrections and comments.
- On June 5, 2007, City Zoning Commission conducted the public hearing for the change to the commercial and industrial use regulations.
- The City Council will hold a public hearing and 1<sup>st</sup> reading of the ordinance on June 25, 2007, and make a decision on the change to the commercial and industrial use regulations.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on July 9, 2007.

## **BACKGROUND**

The Planning Department reviewed Section 27-306 – District Regulations, Commercial and Industrial Uses to evaluate each special review use currently required in the various zoning districts. The City Council and Board of County Commissioners want to focus their efforts on uses that need to be evaluated on a case by case basis but do not want to over-regulate uses that are compatible within the zoning district. If development standards are met such as adequate landscaping and screening from adjacent land uses, these uses could be reviewed and approved when a building permit is issued.

One of the goals of the 2003 Growth Policy is to encourage economic development especially within areas that have infill potential and access to public utilities. One area that may be overly restrictive is the special review requirement for restaurants that serve alcohol but do not offer gaming and meet all of the required separation distances from schools, parks and churches. Another area that has hindered development is the limitation on square footage of uses in the Neighborhood Commercial zoning district. Many retail uses are limited to 3,000 square feet. A retail use over 3,000 square feet requires a special review approval. Many of the existing Neighborhood Commercial zones are located along arterial streets that retailers find desirable.

The square foot limitation has discouraged development of these zones for retail services. Another use that may be over-regulated is construction contractors, miscellaneous small manufacturers, wholesale and retail trades and several service industries.

The Planning Department developed amendments to the code to address the 2003 Growth Policy goals and reviewed the draft amendment with the City Council and Board of County Commissioners in March 2007. In addition, the City and County Attorneys have reviewed the draft amendment.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, or delay the adoption of the changes to the parking and storage regulations.

### **STAKEHOLDERS**

The Zoning Commission held a public hearing on June 5, 2007, on the proposed changes to the zone change application regulations. No one spoke in favor or in opposition to the proposed ordinance. Planning Staff explained the proposed changes to the Zoning Commission. Zoning Commission Chair Angela Cimmino voted against the proposed amendment primarily due to the elimination of a Special Review for restaurants that serve beer and wine without gaming. Chair Cimmino believes the Special Review requirement for these establishments should remain in place.

### **RECOMMENDATION**

The Zoning Commission on a 3-1 vote recommends that the City Council approve Zone Change #812 amending Sections 27-306, 27-601, 27-612 and 27-613 of the Billings, Montana City Code.

### **ATTACHMENTS:**

A: Ordinance

**ATTACHMENT A  
ORDINANCE NO. 07-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 27-306; COMMERCIAL AND INDUSTRIAL USES; 27-601; PARKING AND STORAGE RESTRICTIONS; 27-612; SUPPLEMENTAL COMMERCIAL DEVELOPMENT STANDARDS AND 27-613; SUPPLEMENTAL SPECIAL REVIEW STANDARDS, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.*

**Section 2. DESCRIPTION.** The zoning regulation shall apply to all land within the City of Billings.

**Section 3.** That the Billings, Montana City Code be amended by revising Section 27-306 to add new language to read as follows:

TITLES AND DESCRIPTION OF INDUSTRIES  SR - SPECIAL REVIEW A - ALLOWED	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
DIVISION C - CONSTRUCTION  15 BUILDING CONSTRUCTION - GENERAL CONTRACTORS AND OPERATIVE BUILDERS: – Offices only 152, 153, 154 Residential, operative, and nonresidential builders with open storage of equipment and supplies <u>Restricted to open storage as allowed by Sec 27-601</u>	A	A	A  <u>A</u>	A  <del>SR-A</del>	A	A  A	A  A		A  <u>A</u>
16 HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION - CONTRACTORS: – Offices only – <u>Open storage of equipment and supplies</u> <u>Restricted to open storage as allowed by Sec 27-601</u>	A	A	A	A  <del>SR-A</del>	A	A  A	A  A		A  <u>A</u>
17 CONSTRUCTION - SPECIAL TRADE CONTRACTORS: – Offices only – Shop with <del>no outside enclosed</del> storage of equipment or supplies – <u>Open</u> storage of equipment and supplies; <del>wholesale sales</del> – <del>Retail sales of supplies;</del> 1711, 1721, 1731 (3,000 SF GFA MAX) – <del>Over 3,000 SF GFA MAX</del> – <del>Retail sales of supplies not above classified</del> <u>See Division F and G for Wholesale and retail sales of equipment and supplies</u> <u>Restricted to open storage as allowed by Sec 27-601</u>	A	A      A	A  <u>A</u>  A A  SR	A  A  <del>SR-A</del>  A A  A	A  A  A  A	A  A  A  A	A  A  A  A	A  A   A SR  SR	

**Sec. 27-306. District Regulations: Commercial and Industrial Uses.**

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>34</b> FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT (EXCEPT BELOW): – Offices only – 348 Ordnance and accessories, except vehicles and guided missiles	A	A	A	A	A	SR A	A A  SR		A
<b>35</b> INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT: – Offices only	A	A	A	A	A	SR A	A A		A
<b>36</b> ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS, EXCEPT COMPUTER EQUIPMENT: – Offices only	A	A	A	A	A	SR A	A A		A
<b>37</b> TRANSPORTATION EQUIPMENT: – Offices only	A	A	A	A	A	A	A A		A
<b>38</b> MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL, AND OPTICAL GOODS; WATCHES AND CLOCKS <del>(3,000 SF GFA MAX):</del> – <del>Over 3,000 SF GFA MAX</del> – Offices only – <del>3861 Photographic equipment and supplies</del>	A	A	A	A	A	A  A A SR	A  A A A		A  SR A

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>	<b>Residential Professional</b>	<b>Neighborhood Commercial</b>	<b>Community Commercial</b>	<b>Highway Commercial</b>	<b>Central Business District</b>	<b>Controlled Industrial</b>	<b>Heavy Industrial</b>	<b>Public</b>	<b>South 27th Street Corridor</b>
<b>SR - SPECIAL REVIEW A - ALLOWED</b>									
<b>39 MISCELLANEOUS MANUFACTURING INDUSTRIES:</b> <ul style="list-style-type: none"> <li>– Offices only</li> <li>– 391, 393, 394 Jewelry, silverware, plated ware; musical instruments; dolls, toys, games, sporting, and athletic goods (<del>3,000 SF GFA MAX</del>)</li> <li>– <del>Over 3,000 SF GFA MAX</del></li> <li>– 395, 396, 399 Pens, pencils, and artists materials; costume jewelry and novelties; miscellaneous manufacturing industries (<del>3,000 SF GFA MAX</del>)</li> <li>– <del>Over 3,000 SF GFA MAX</del></li> </ul>	A	A	A	A	A	<u>A</u> A	<u>A</u> A		A
				A		A	A		A
				A		A	A		SR
				SR-A		A	A		A
				SR		A	A		SR
<b>DIVISION E - TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SEWER</b>									
<b>40 RAILROAD TRANSPORTATION:</b> <ul style="list-style-type: none"> <li>– Offices only</li> <li>– Switching yards</li> <li>– Passenger and freight terminals</li> </ul>	A	A	A	A	A	A	A A		A
					A	A	A		
<b>41 LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION:</b> <ul style="list-style-type: none"> <li>– Offices only</li> <li>– 4173 Bus terminal operation only, without maintenance facilities</li> </ul>	A	A	A	A A	A A	A A	A A	A A	<u>A</u> A
				A	A	A	A	A	A

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>DIVISION F - WHOLESALE TRADE</b>  <b>50 WHOLESALE TRADE - DURABLE GOODS:</b> <ul style="list-style-type: none"> <li>- Offices only</li> <li>- Warehouses with <del>no</del> outside enclosed storage (3,000 SF GFA MAX)</li> <li>- <del>Over 3,000 SF GFA MAX</del></li> <li>- <u>Open</u> Outside storage</li> <li>- 5093 Scrap and waste materials (auto wrecking)</li> </ul> <u>Restricted to open storage as allowed by Sec 27-601</u>	A	A	A	A	A	A	A		A
				A		A	A		A
				A		A	A		
			SR	<del>SR</del> A		A	A		SR
						SR	SR		

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>	<b>Residential Professional</b>	<b>Neighborhood Commercial</b>	<b>Community Commercial</b>	<b>Highway Commercial</b>	<b>Central Business District</b>	<b>Controlled Industrial</b>	<b>Heavy Industrial</b>	<b>Public</b>	<b>South 27th Street Corridor</b>
<b>SR - SPECIAL REVIEW A - ALLOWED</b>									
<b>51 WHOLESALE TRADE - NONDURABLE GOODS:</b> – Offices only – 511, 512, 513 Paper, drugs and apparel – 514, 518 Groceries; beer, wine and distilled beverages – 515 Farm product raw materials (except below): – 5154 Livestock auctions – 516 Chemicals and allied products – 517 Petroleum and petroleum products – <del>518 Beer, wine, and distilled alcoholic beverages</del> – 5191, 5198 Farm supplies; paints, varnishes, and supplies – 5192, 5193, 5194, 5199 Books, periodicals, and newspapers; flowers, nursery stock and florists' supplies; tobacco and tobacco products; non-durables not elsewhere classified	A	A	A	A  A  SR	A	A  A  A  SR  A  A	A  A  A  A  A  A		A
				SR		A	A		

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>DIVISION G - RETAIL TRADE</b>  * Under <del>3,000</del> 10,000 square feet gross floor area (GFA). A special review is required if over <del>3,000</del> 10,000 square feet GFA. <del>No outside storage and</del> <u>No</u> warehousing of storage in excess of twenty-five (25) percent of total GFA. <u>Restricted to open storage as allowed by Sec 27-601</u> <b>52 BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS:</b> <ul style="list-style-type: none"> <li>– 521 Lumber and other building materials stores</li> <li>– 523, 525 Paint, glass and wallpaper; hardware stores</li> <li>– 526 Nurseries, lawn and garden supply stores</li> <li>– 527 Mobile home dealers (manufactured homes)</li> </ul>			SR	A		A	A		<b>SR A</b>
		A*	A	A	A	A	A		A
			A	A	A	A	A		A
				A		A	A		
<b>53 GENERAL MERCHANDISE STORES</b>		A*	A	A	A	A	A		A
<b>54 FOOD STORES</b>		A*	A	A	A	A	A		A
– Convenience store with gas pump islands		A*	A	A	A	A	A		A
<b>55 AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS (EXCEPT BELOW):</b>			A	A	A	A	A		A
– 553 Auto supply		A*	A	A	A	A	A		A
– 554 Gasoline service stations									
– Convenience store		A*	A	A	A	A	A		A
– Service station		SR	A	A	A	A	A		A
– Accessory car wash with above two uses									
– Truck stop		SR	A	A	A	A	A		A
– 556 Recreational vehicle				A		A	A		

dealers			A	A		A	A		A
<b>56</b> APPAREL AND ACCESSORY STORES		A*	A	A	A	A	A		A

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>57</b> HOME FURNITURE, FURNISHINGS, AND EQUIPMENT STORES		A*	A	A	A	A	A		A
<b>58</b> EATING AND DRINKING PLACES (SEE BMCC SECTION 27-612) <ul style="list-style-type: none"> <li>Without the sale of alcoholic beverages</li> <li>With the sale of beer and wine only for on-premise consumption, without gaming</li> <li>With the sale of beer and wine only for on-premise consumption, with gaming</li> <li>With the sale of all alcoholic beverages for on-premise consumption, with gaming</li> </ul>		A	A	A	A	A	A		A
			<del>SR A</del>	<del>SR A</del>	<del>SR A</del>	<del>SR A</del>	<del>SR A</del>		<del>SR A</del>
			SR	SR	SR	SR	SR		SR
			SR	SR	SR	SR	SR		SR
* Establishments with drive-in service shall comply with BMCC Section 27-612.									
<b>59</b> MISCELLANEOUS RETAIL (STRICTLY CARRYOUT), (EXCEPT BELOW): <ul style="list-style-type: none"> <li>598 Fuel dealers</li> </ul>		A*	A	A	A	A	A		A
			A	A	A	A	A		A
* Fireworks stands shall comply with BMCC Section 27-614.									
** Sexually oriented business, as classified and defined in BMCC Section 27-611.									

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>DIVISION H - FINANCE, INSURANCE, AND REAL ESTATE (See BMCC Section 27-612).</b>									
<b>60</b> DEPOSITORY INSTITUTIONS	A	A	A	A	A	A	A		A
<b>61</b> NONDEPOSITORY CREDIT INSTITUTIONS	A	A	A	A	A	A	A		A
<b>62</b> SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES	A	A	A	A	A	A	A		A
<b>63</b> INSURANCE CARRIERS	A	A	A	A	A	A	A		A
<b>64</b> INSURANCE AGENTS, BROKERS, AND SERVICE	A	A	A	A	A	A	A		A
<b>65</b> REAL ESTATE (EXCEPT BELOW): – 6515 Operators of residential mobile home sites – 6553 Cemetery subdividers and developers	A	A	A	A	A	A	A	A	A
<b>66</b> COMBINATIONS OF REAL ESTATE, INSURANCE, LOANS, OR LAW OFFICES	A	A	A	A	A	A	A		A
<b>67</b> HOLDING AND OTHER INVESTMENT OFFICES	A	A	A	A	A	A	A		A
<b>DIVISION I - SERVICES</b>									
<b>70</b> HOTELS, ROOMING HOUSES, CAMPS AND OTHER LODGING PLACES: – 701 Hotels and motels – 702, 704 Rooming, boarding houses; organization hotels and lodging houses, on a membership basis – 703 Camps and			A	A	A	A	A		A
		A	A	A	A	A	A		A

recreational vehicle parks			<del>SR</del> -A	A		A	A	<del>SR</del> -A	
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<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>72 PERSONAL SERVICES:</b> – 7211, 7213, 7217, 7218 Power laundries, family and commercial; linen supply; carpet and upholstery cleaning; industrial launderers – 7212, 7216, 7219 Garment pressing, and agents for laundries and drycleaning; drycleaning plants, except rug cleaning; laundry and garment services, not elsewhere classified; (3,000 <u>10,000</u> SF GFA MAX) – Over <del>3,000</del> <u>10,000</u> SF GFA MAX	SR	A          SR	A          A	A          A	A          A	A          A	A          A		A          <del>SR</del> -A

– 7215 Coin-operated laundries and drycleaning		A*	A	A	A	A	A		A
– 722 Photographic studios	A	A	A	A	A	A	A		A
– 723, 724 Beauty and barber shops	A	A	A	A	A	A	A		A
– 725 Shoe repair shops and shoeshine parlors		A	A	A	A	A	A		A
– 726 Funeral service and crematories	A	A	A	A	A	A	A	A	A
– 729 Miscellaneous personal services, except 7291			A	A	A	A	A		A
– <del>Under 1,500 square feet GFA</del>		<del>A</del>	<del>A</del>	<del>A</del>	<del>A</del>	<del>A</del>	<del>A</del>		<del>A</del>
– 7291 Tax return preparation services	A	<u>A</u>	A	A	A	A	A		A
– <del>Under 1,500 square feet GFA</del>	<del>A</del>	<del>A</del>	<del>A</del>	<del>A</del>	<del>A</del>	<del>A</del>	<del>A</del>		<del>A</del>

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>									
<b>73 BUSINESS SERVICES:</b> – Offices only – With retail sales – With use of vehicles of <del>two tons or over 8,000</del> GVW <del>– Without inside storage over 3,000 square feet GFA or outside storage</del> – With research, testing, and development laboratories (See also manufacturing industries)	A	A A*	A A <u>A</u>  SR	A A A  A	A A   	A A A  A	A A A  A		A A <u>A</u>  SR
<b>75 AUTOMOTIVE REPAIR, SERVICES, AND PARKING</b>									

(EXCEPT BELOW):			A	A	A	A	A		A
– 7513, 7519 Truck rental and leasing; utility trailer and recreational vehicle rental			A	A		A	A		SR
– 752 Automobile parking	A	A	A	A	A	A	A		A
– 7542 Car washes		SR	<del>SR</del> <u>A</u>	A	A	A	A		<del>SR</del> <u>A</u>
<b>76 MISCELLANEOUS REPAIR SERVICES (EXCEPT BELOW):</b>			A	A	A	A	A		A
– 763 Watch, clock, and jewelry repair	<u>A</u>	A	A	A	A	A	A		A

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>78</b> MOTION PICTURES (EXCEPT BELOW): – 7833 Drive-in motion picture theaters			A	A SR	A	A SR	A		A
<b>79</b> AMUSEMENT AND RECREATION SERVICES*: – 791, Dance studios, schools, and halls – 792 theatrical producers, bands, orchestras, and entertainers – 793, 799 Bowling centers; miscellaneous amusement and recreation services, and gambling operations* (except below): – Public swimming pools – Riding stables – Martial arts instruction – 7992 Public golf courses – 794 Commercial sports	A      A	A  A   A	A  A  A  SR	A  A  A  A	A  A  A  SR	A  A  A  A SR A	A  A  A  SR A	A   A  A A	A  A  A  A SR
* See BMCC Section 27-612.									
<b>80</b> HEALTH SERVICES (EXCEPT BELOW): – Establishments where retail sales constitutes more than an accessory use	A	A  A	A  A	A  A	A  A	A  A	A  A	A	A  A
<b>81</b> LEGAL SERVICES	A	A	A	A	A	A	A		A
<b>82</b> EDUCATIONAL SERVICES (EXCEPT BELOW): – 821 Elementary and secondary schools – 822 Colleges, universities, professional schools, and junior colleges	A  SR	A  SR	A  SR	A  SR	A  SR	A  SR	A  SR	A  A	A  SR
<b>83</b> SOCIAL SERVICES (EXCEPT BELOW): – 833 Job training and vocational rehabilitation services –	A  SR	A  SR	A  A	A  A	A  A	A  A	A  A	A  A	A  A

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>84</b> MUSEUMS, ART GALLERIES, AND BOTANICAL AND ZOOLOGICAL GARDENS: <ul style="list-style-type: none"> <li>– 841 Museums and art galleries</li> <li>– 842 Arboreta and botanical or zoological gardens</li> </ul>		A	A	A	A	A	A	A	A
								A	SR
<b>86</b> MEMBERSHIP ORGANIZATIONS (EXCEPT BELOW): <ul style="list-style-type: none"> <li>– 864 Civic, social, and fraternal associations*</li> </ul> <p>* See also BMCC Section 27-612.</p>	A	A	A	A	A	A	A		A
			A	A	A	A	A		A
<b>87</b> ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED SERVICES (EXCEPT BELOW): <ul style="list-style-type: none"> <li>– 871, 872 Engineering, architectural and surveying services; accounting, auditing and bookkeeping services</li> <li>– 8731 Commercial physical and biological research</li> <li>– 8733 Noncommercial research organizations</li> <li>– 8734 Testing laboratories</li> <li>– 8744 Facilities support management services</li> </ul>	A	A	A	A	A	A	A		A
			SR	A	A	A	A		A
			SR	A	A	A	A		A
			SR	A	A	A	A		A
						SR		SR	SR
<b>88</b> PRIVATE HOUSEHOLDS	A	A	A	A	A	<u>SR</u>			<u>SR-A</u>
<b>89</b> SERVICES, NOT ELSEWHERE CLASSIFIED	A	A	A	A	A	A	A	A	A

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>									
<b>DIVISION J - PUBLIC ADMINISTRATION</b>									
<b>91</b> EXECUTIVE, LEGISLATIVE, AND GENERAL GOVERNMENT, EXCEPT FINANCE	A	A	A	A	A	A	A	A	A
<b>92</b> JUSTICE, PUBLIC ORDER, AND SAFETY (EXCEPT BELOW): – 9223 Correctional institutions	A	A	A	A	A	A SR	A	A SR	A SR
<b>93</b> PUBLIC FINANCE, TAXATION, AND MONETARY POLICY	A	A	A	A	A	A	A	A	A

<b>94</b> ADMINISTRATION OF HUMAN RESOURCE PROGRAMS	A	A	A	A	A	A	A	A	A
<b>95</b> ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS	A	A	A	A	A	A	A	A	A
<b>96</b> ADMINISTRATION OF ECONOMIC PROGRAMS	A	A	A	A	A	A	A	A	A
<b>97</b> NATIONAL SECURITY AND INTERNATIONAL AFFAIRS	A	A	A	A	A	A	A	A	A
<b>DIVISION K – NONCLASSIFIABLE ESTABLISHMENTS</b>									
<b>99</b> NONCLASSIFIABLE ESTABLISHMENTS: THE ZONING DISTRICT AND REQUIREMENTS OF THESE ESTABLISHMENTS WILL BE DETERMINED BY THE PLANNING DIRECTOR									
DWELLINGS									
– SINGLE-FAMILY	A	A	A	A	A	SR			
– TWO-FAMILY		A	A	A	A				
– MULTIPLE-FAMILY		A	A	A	A				
– MODULAR HOME	A	A	A	A	A	SR			SR <del>A</del> SR <del>A</del>

- ROWHOUSE/TOWNHOUSE		SR	SR	SR	SR				SR
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**Section 4.** That the Billings, Montana City Code be amended by revising Section 27-601 to add new language to read as follows:

**SEC. 27-601. PARKING AND STORAGE RESTRICTIONS.**

- (b) **Commercial and Industrial.** The following standards for parking and storage shall apply in all commercial and industrial zoning districts.  
(8) Open storage of equipment and supplies is an allowed accessory use of property as limited in Section 27-306. Any property where open storage of equipment and supplies is an allowed accessory use, the open storage area shall be located in the rear or side yard. A sight obscuring fence of at least six (6) feet in height from finished grade shall be required to enclose the storage area. Chain link fence may be allowed as a sight obscuring fence if opaque slat inserts are used.

**Section 5.** That the Billings, Montana City Code be amended by revising Section 27-612 to add new language to read as follows:

**SEC. 27-612. SUPPLEMENTAL COMMERCIAL DEVELOPMENT STANDARDS.**

**Certain commercial uses shall be specifically restricted as follows:**

- ~~(a) Bars, Taverns and Lounges.~~ (a) Eating And Drinking Places. Any person desiring ~~to The use of any premises or to erect, construct or the construction or alteration of any new or existing building or structure for use as a bar, tavern, lounge or any commercial establishment which serves where~~ alcoholic beverages are served for on-premise consumption as a primary or accessory use shall only be allowed in commercial or industrial zoning districts as regulated by Section 27-306. first make application for Special Review as regulated in BMCC Sections 27-1503 and 27-1509. No building, structure or premises shall be used for the on-premise consumption of alcoholic beverages unless: ~~retail alcoholic beverage sales unless:~~

- (1) A distance of six hundred (600) feet between property lines, measured in a straight line, is maintained from any building that is predominantly used as a church or school or from a public park that contains a children's playground or playfield.

- (a) Properties or establishments which are located in the Central Business District zoning district are exempt from subsection 1.
- (b) Properties may be granted a waiver from the 600 foot separation required in subsection 1. if the governing body finds that a physical barrier exists between the proposed use and the use requiring the 600 foot separation. These barriers include, but are not limited to, the following:
  - 1. An arterial street with no existing or proposed signalized pedestrian crossing;
  - 2. A building or buildings that entirely obstruct the view between the separated uses; and/or
  - 3. No direct physical access exists between the separated uses. The person applying for the Special Review must provide the governing body with proof that the proposed property or establishment meets one of the above described physical barriers or that other types of physical barriers exist that warrant the waiving of the 600-foot separation.

**Exemptions to above subsection A. for establishments previously granted a Special Review are located in BMCC Section 27-613.**

**Section 6.** That the Billings, Montana City Code be amended by revising Section 27-613 to add new language to read as follows:

SEC. 27-613. SUPPLEMENTAL SPECIAL REVIEW STANDARDS.

~~(a) Bars, Taverns and Lounges.~~ **(a) Eating And Drinking Places.** The following exemptions from the Special Review requirements, as regulated by Section 27-306, shall apply to those establishments ~~serving where~~ **alcoholic beverages are served for on-premise consumption,** which have previously been approved pursuant to a Special Review by the City Council or Board of County Commissioners:

- 1. Such an establishment shall be allowed to remodel, expand or relocate within the same structure without an additional Special Review, as regulated by Section 27-306 provided that:
  - a. The gross floor area of the remodeled, expanded or relocated establishment is not over ten (10) percent greater than the gross floor area originally occupied by the establishment;
  - b. The number of potential occupants is not increased by more than ten (10) percent, than the number that is currently allowed;
  - c. The number of new parking stalls is not more than ten (10) percent greater than the original number of spaces; and
  - d. All other requirements of this resolution/ordinance and/or the Billings, Montana City Code are met.

2. **Such an establishment in which additions and/or remodels include an outdoor patio lounge shall be required to obtain Special Review approval, as regulated by Section 27-306 and as outlined in BMCC Sections 27-1503 and 27-1509.**

**Section 7. REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 8. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 9. 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 June 25, 2007.

PASSED, ADOPTED AND APPROVED on second reading July 9, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY:  
Cari Martin, City Clerk

ZC#812 – Amending Section 27-306, 27-601, 27-612 and 27-613, Commercial and Industrial Uses, Parking and Storage Restrictions, Supplemental Commercial Development Standards and Supplemental Special Review Standards

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