

# 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

MARCH 26, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing  
PLEDGE OF ALLEGIANCE – Mayor Tussing  
INVOCATION – Councilmember Ed Ulledalen  
ROLL CALL  
MINUTES – March 12, 2007  
COURTESIES –  
PROCLAMATIONS  
ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 AND # 12 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

### **CONSENT AGENDA:**

**1. A. Bid Awards:**

**(1) Construction of Fire Station #7.** (Opened March 13, 2007).

Recommend CMG and \$1,351,204.00.

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

**(2) W.O. 07-05, Contract #1, 2007 Accessibility Ramps.** (Opened March 13, 2007). Recommend CMG Construction and \$112,650.00.

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

**(3) Airport Improvement Program (AIP) #32 Runway 7/25 Rehabilitation.** (Opened March 13, 2007). Recommend Riverside Sand and Gravel, Inc. and \$778,900.81.  
[\(Corresponding Staff Memo A3\)](#)

**(4) Approval of New Automobile Rental Concession Lease with** the Four Car Rental Companies providing the highest guaranteed revenue bids. (1) Overland West, Inc. dba Hertz, \$1,829,324; (2) Enterprise Rent A Car, \$1,370,845; (3) Corpat Inc. dba Alamo/National, \$1,221,200; (4) Lewis Transportation Group dba Thrifty/Dollar Rent A Car, \$920,007. (Delayed from 3/12/07).  
[\(Corresponding Staff Memo A4\)](#)

**B. Amendment #1,** Professional Services Contract with CTA Architects Engineers for Architectural Services for Airport Improvement Program (AIP) 32, \$68,819.00.  
[\(Corresponding Staff Memo B\)](#)

**C. Contract for Professional Services** with Carl Thuesen ASLA, for design and construction services for Harvest, Olympic and High Sierra Parks Irrigation Renovation, \$41,899.84.  
[\(Corresponding Staff Memo C\)](#)

**D. Agreement** with PM&M, LLC, Max E. Thornton, and the Katherine K. Thornton Testamentary Trust for access across their property to the Briarwood Water Reservoir, \$0.00.  
[\(Corresponding Staff Memo D\)](#)

**E. W.O. 04-26: Zone 4 - Water Reservoir and Zone 5 Water Reservoir and pump station, Professional Services Contract** with HDR Engineering, Inc., \$497,885.00.  
[\(Corresponding Staff Memo E\)](#)

**F. Certified Local Government Program Contract** with the State of Montana Historic Preservation Office, \$4,031.00.  
[\(Corresponding Staff Memo F\)](#)

**G. W.O. 04-36: Briarwood Sanitary Sewer Main Extension Right-of-Way Agreement and Perpetual Right-of-Way Easement** with Gary and Norma Buchanan, \$7,450.00.  
[\(Corresponding Staff Memo G\)](#)

**H. Development Agreement with Stock Naughton LLP,** owner of Lots 6B, 6C, and 6D, Block 2 of Circle Fifty Sub., 0.00 dollars.  
[\(Corresponding Staff Memo H\)](#)

**I. Advertising Agreement** with the Billings Gazette for display, classified, legal, and on-line advertising – two (2) year term, estimated \$43,600/year.

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

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

(1) Parcel 10: Portion of Lot 2, Block 1, Croy Sub., to Andrea D. Baker, Right-of-Way Agreement for temporary construction permit, \$200.00.

[\(Corresponding Staff Memo J1\)](#)

(2) Parcel 33: Portion of Tract 1, C/S No. 2920, to Lorri Ann Hurry, \$3,150.00.

[\(Corresponding Staff Memo J2\)](#)

(3) Parcel 38: Portion of Lot 7, Block 1, Rice Sub., to Cameron James Stefanic and Tanna Marie Stefanic, \$2,200.00.

[\(Corresponding Staff Memo J3\)](#)

(4) Parcel 49: Portion of Lot 21, Block 1, Broadmoor Sub., to Donald L. Nave and Ruth A. Nave, \$6,250.00.

[\(Corresponding Staff Memo J4\)](#)

(5) Parcel 55: Portion of Lot 1, Block 2, Uinta Park Sub., to Dena and Uriah Edmunds, \$1,350.00.

[\(Corresponding Staff Memo J5\)](#)

(6) Parcel 64: Portion of Lot 15, Block 3, Arrowhead Sub., to David E. Harris, \$3,400.00.

[\(Corresponding Staff Memo J6\)](#)

**K. Street Closures:**

(1) Arthritis Foundation Annual Run & Walk, April 28<sup>th</sup>, 2007, 2<sup>nd</sup> Avenue North and 3<sup>rd</sup> Avenue North from North 24<sup>th</sup> Street to North 33<sup>rd</sup> Street.

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

(2) Montana Pride Network, Gay Pride Parade, June 16, 2007, 2<sup>nd</sup> and 3<sup>rd</sup> Avenue North, North 27<sup>th</sup> to North 33<sup>rd</sup>.

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

(3) Chase Hawks Association Burn the Point Parade and Street Dance, August 31, 2007 - Parade: Standard parade route; Street Dance: North 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Avenue North and 2<sup>nd</sup> Avenue North from North 27<sup>th</sup> – North 29<sup>th</sup> Streets.

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

**L. Quarterly Report for Pledged Collateral US Bank, Sterling Savings Bank and Wells Fargo Bank.**

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

**M. Semi-Annual Investment Report.**

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

**N. Resolution #07-18544 of intent to Annex** property located at the northwest corner of 54<sup>th</sup> St. West and Colton Blvd., Tracts 1 & 2 of C/S 1323: Tract 1 of C/S 1815; Tract 2D of Corrected Amended Tract 2 of C/S 1952; Yellowstone Meadows-Phase One Parkland; Yellowstone Meadows-Phase Three Parkland; Lots 33, 34, 63, and 64 of Sunny Cove Fruit Farms, and all adjacent right-of-way of 54<sup>th</sup> St. West, 56<sup>th</sup> St. West and Colton Blvd. and the future site of the Cottonwood Park and a proposed School District #2 elementary school – Annex #07-06, City of Billings, owner, and setting a public hearing for April 23, 2007.

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

**O. Acknowledging receipt of petition for Annex #07-07:** property located SE of King Avenue West and 48<sup>th</sup> Street West and described as Lots 1-5, Block 1, Western Sky Sub., Cal Kunkel and Gareld Krieg owners and petitioners, and setting a public hearing for April 9, 2007.

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

**P. Acceptance of donations:**

(1) Amend Park Development Council donation for seasonal position at Amend Park, \$15,000 per year.

[\(Corresponding Staff Memo P1\)](#)

(2) In-Kind Volunteers and Materials Donations from Harvest Church, estimated value is \$60,000.00.

[\(Corresponding Staff Memo P2\)](#)

**Q. Resolution** authorizing condemnation to acquire utility easements for W.O. 04-36: Briarwood Sanitary Sewer Main Extension.

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

**R. Resolution of Intent** to order improvements under W.O. 06-18: Broadwater Sub., Phase V, curb/gutter and street reconstruction and setting a public hearing for April 23, 2007.

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

**S. Second/final reading ordinance** expanding the boundaries of Ward IV to include recently annexed property described as: Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms. Mary Kramer, owner and petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

**T. Final Plat** of Amended Lot 7, Block 2, Lake Hills Sub., 1<sup>st</sup> Filing.

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



**U. Final Plat** of Amended Normal Subdivision, 3<sup>rd</sup> Filing.  
([Corresponding Staff Memo U](#))

**V. Bills and Payroll.**  
(1) February 23, 2007  
([Corresponding Staff Memo V1](#))

(2) March 2, 2007  
([Corresponding Staff Memo V2](#))

(3) February 1 – February 28, 2007 (Court)  
([Corresponding Staff Memo V3](#))

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

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION** for Annexation #07–03 of 3 parcels and adjacent right-of-way totaling 2.927 acres and described as N 1/2 of Lot 3, Lot 4, and Lot 7 Sandra Subdivision, City of Billings, petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
([Corresponding Staff Memo 2](#))

**3. PUBLIC HEARING AND RESOLUTION** for Annexation #07–04 of a .243 acre property described as C/S 598 in Lot 30, Clark Subdivision and adjacent right-of-way, and located at 307 Garden Ave., Lana Jean Bittner, petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
([Corresponding Staff Memo 3](#))

**4. PUBLIC HEARING AND RESOLUTION** creating expanded Park Maintenance District (PMD) #4025: Rehberg Ranch Estates Sub., 1<sup>st</sup> & 2<sup>nd</sup> Filings. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
([Corresponding Staff Memo 4](#))

**5. PUBLIC HEARING AND RESOLUTION** ordering improvements under W.O. 05-02: 2005 - 2006 Miscellaneous/Developer-Related Improvements. Staff Recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
([Corresponding Staff Memo 5](#))

**6. PUBLIC HEARING AND 1<sup>ST</sup> READING ORDINANCE ZONE CHANGE #799:** A zone change from Residential-15,000 (R-150) to Public on North ½ of Lot 3 and all of Lot 4 and Lot 7, Sandra Subdivision. The property is located at 23, 63 and 65 Charlene Street. The property is owned by the City of Billings. The Zoning Commission recommends approval of Zone Change #799 and adopting the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

**7. PUBLIC HEARING AND 1<sup>ST</sup> READING ORDINANCE ZONE CHANGE #800:** A zone change from Residential Manufactured Home (RMH) to Residential-6,000 (R-60) on Lots 15A, 16B & 16C, Block 1, Pemberton Subdivision and located at 525 N. Lakeview Drive, 532 & 542 Pemberton Lane. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

**8. PUBLIC HEARING AND SPECIAL REVIEW #838:** A special review to construct a 10-plex apartment building on a property legally described as Certificate of Survey 534 in Flanagan Subdivision, Tract 1, Lot 8. The subject property is located at 1048 Foster Lane and is zoned Residential 6000 (r-60). The owner and applicant is Hanser Capital Holdings, LLC. The Zoning Commission forwards no recommendation to the City Council for Special Review #838, as the result of a 2-2 tie vote.

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

**9. PUBLIC HEARING AND SPECIAL REVIEW #839:** A special review to permit the storage of vehicles used for parts in a Highway Commercial (HC) zone, on a property legally described as Lot 3A, Hollar Sub., 2<sup>nd</sup> filing, owners: Edward and Linda Randash. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

**10. PUBLIC HEARING AND SPECIAL REVIEW #840:** A special review to replace an existing beer and wine license with gaming with an all-beverage license for an existing restaurant/bar -- the Gigglin' Grizzly, at 416 Lake Elmo Road, on Tract 1, C/S 2225 in a Highway Commercial zoning district, owner: Charles Schmidt, , agent, Doug Jensen. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

**11. PUBLIC HEARING AND SPECIAL REVIEW #841:** A special review for an all beverage liquor license for a new casino, Palisades Casino, at 1911 King Avenue West, Suite B, on Lots 11A & 12 A, Block 1, CBH Industrial Park Subdivision in a Controlled Industrial (CI) zoning district. KRP, LLC, Jim Kisling, owner; John Herberg, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

**12. Resolution** creating Mayor/City Council Pay Review Committee. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

AGENDA ITEM:



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

TITLE: Award of bid for Construction of Fire Station #7  
 DEPARTMENT: Fire  
 PRESENTED BY: Marv Jochems, Fire Chief

**PROBLEM/ISSUE STATEMENT:** Construction of a 7<sup>th</sup> Fire Station at 1501 54<sup>th</sup> Street West.

The advertisement for sealed bids was announced on March 1 and 8, 2007. A pre-bid meeting was held for all interested parties on March 2 with the bid opening on March 13, 2007.

**FINANCIAL IMPACT:** The City received five (5) responses to the call for sealed bids.

<u>Vendor</u>	<u>Net Bid</u>
General Contractors Construction	\$1,351,204.00
Cucancic Construction	\$1,351,992.00
High Tech Construction	\$1,400,000.00
Fisher Construction	\$1,418,000.00
Hardy Construction	\$1,788,500.00

**RECOMMENDATION:**

Staff recommends that City Council award the contract for construction of Fire Station #7 to General Contractors Construction, the low bidder, for their bid of \$ 1,351,204.00.

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

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## AGENDA ITEM:



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

TITLE: Work Order 07-05, Contract #1, 2007 Accessibility Ramps  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for WO 07-05, Contract #1, 2007 Accessibility Ramps on March 13, 2007. This project will construct Accessibility Ramps on 13<sup>th</sup> Street West and Parkhill Drive. Per the agreement between the Department of Justice and the City Of Billings, the City is required to construct accessibility ramps on all streets that have been reconstructed or overlayed since 1992. The city added \$500,000 of gas tax funds to the CIP each year for the next five years.

#### ALTERNATIVES ANALYZED:

1. Award Work Order 07-05, Contract #1, 2007 Accessibility Ramps, to CMG Construction in the amount of \$112,650.00; or
2. Not award Work Order 07-05, Contract #1, 2007 Accessibility Ramps.

**FINANCIAL IMPACT:** Funding for Work Order 07-05, Contract #1, 2007 Accessibility Ramps, will be provided from Gas Tax. We received three bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 126,148.50
CMG Construction	\$ 112,650.00
H.L. Ostermiller	\$ 115,794.99
J & J Concrete	\$ 114,250.00
<u>CIP Project #ENG ADA</u>	
CIP Budgeted Amount	\$500,000.00
Previous Encumbrances	\$332,227.50
Bid Award Amount	\$112,650.00
Budget Fund Balance (after this award)	\$ 55,122.50

## **RECOMMENDATION**

Staff recommends that Council approve the construction contract for Work Order 07-05, Contract #1, 2007 Accessibility Ramps, with CMG Construction in the amount of \$112,650.00.

**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, March 26, 2007**

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**TITLE:** Approval of the Award of Airport Improvement Program (AIP) 32 Runway 7/25 Rehabilitation

**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 approved Capital Improvement Program, is the Runway 7/25 Rehabilitation project, which is a Federal Aviation Administration (FAA) approved Airport Improvement Program (AIP) project. This is the Airport's crosswind runway and is used by the smaller air carrier jets and prop aircraft when wind conditions are not favorable for using the main Runway 10L/28R. Strong, gusty crosswind conditions can make landings and takeoffs difficult for these smaller aircraft, as they are more susceptible to wind gusts. The asphalt surface on this runway is 15 years old and nearing the end of its expected service life. This project will remove three inches of the surface pavement, and will replace it with a dense graded asphalt that will be grooved to provide better traction in snow and icy conditions. Additionally, this project will replace the old runway lights with new energy efficient fixtures. This project has been advertised in the *Billings Times* for three weeks, and was on the City's Web site. On March 13, 2007, we received the following bids on this project:

**CONTRACTOR**

Riverside Sand and Gravel, Inc.

JTL Group

**ESTIMATE****BID**

\$778,900.81

\$841,668.42

**\$1,500,000**

The bids received were significantly less than the budgeted amount for this project. After reviewing the bid documents, it is staff's opinion that these low bids are the result of the added competition from Riverside Sand and Gravel, Inc., which recently started a paving company in the Billings area and is trying to establish themselves in the local market.

**FINANCIAL IMPACT:** The total cost of the project is \$778,900.81, and will be funded through a 95% FAA AIP entitlement grant with a 5% local match. The FAA's portion will be \$739,955.77, and the City's match is \$38,945.04.

## **RECOMMENDATION**

Staff recommends that City Council approve the award of AIP 32 Runway 7/25 Rehabilitation to the low bidder Riverside Sand and Gravel, Inc. in the amount of \$778,900.81.

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

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## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 2007

TITLE: Approval of New Automobile Rental Concession Lease with the Four Car Rental Companies Providing the Highest Guaranteed Revenue Bids

DEPARTMENT: Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** The existing Automobile Rental Concession Leases to operate at the Billings Logan International Airport are set to expire March 31, 2007. Interested parties submitted bids consisting of the amount of Minimum Annual Guaranteed (MAG) revenue that the individual car rental companies would be willing to pay the City for the opportunity to operate their business out of the Airport's Terminal Building for the next four years. The City received six (6) bids to operate in one of the four (4) available concession positions. The current four Car Rental Concession counters were established during the 1991-1992 Terminal remodel. At that time, only four car rental companies were interested in operating at the Airport under the Concession program. Subsequently, the Terminal counter facilities, wash bays, and detailing facilities were built to accommodate only four car rental companies. Staff will begin analyzing options to possibly expand the facilities to accommodate additional car rental companies for future bids. A copy of the Automobile Concession Lease is on file in the City Clerk's Office and available for review.

**FINANCIAL IMPACT:** With the acceptance and approval of the top four Automobile Rental Concession bids the City will be guaranteed a revenue stream over the next four-year period for the amount of \$5,341,376. The successful bidders were as follows:

	<u>CONCESSIONAIRE</u>	<u>BID AMOUNT</u>
Bidder 1	Overland West, Inc. d.b.a. Hertz	\$1,829,324
Bidder 2	Enterprise Rent A Car	\$1,370,845
Bidder 3	Corpat, Inc. d.b.a. Alamo/National	\$1,221,200
Bidder 4	Lewis Transportation Group d.b.a. Thrifty/Dollar Rent A Car	\$ 920,007



**RECOMMENDATION**

Staff recommends that Council approve the four Automobile Rental Concession Leases with the top four successful concession bidders.

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

**ATTACHMENT**

A.        Summary of bids received broken down by annual guaranteed revenue amount.

ATTACHMENT A

SUMMARY OF BIDS RECEIVED 3/6/07  
ANNUAL GUARANTEED REVENUE

BIDDER	YEAR 1	YEAR 2	YEAR 3	YEAR 4	TOTAL
Overland West, Inc. d.b.a. Hertz	\$435,071.00	\$451,062.00	\$463,194.00	\$479,997.00	\$1,829,324.00
Enterprise Rent A Car	\$291,066.00	\$323,084.00	\$358,623.00	\$398,072.00	\$1,370,845.00
Corpat, Inc. d.b.a. Alamo/National	\$295,000.00	\$300,000.00	\$307,200.00	\$319,000.00	\$1,221,200.00
Lewis Transportation Group d.b.a. Thrifty/Dollar	\$200,001.00	\$215,002.00	\$240,002.00	\$265,002.00	\$920,007.00
Larson Enterprises, Inc. d.b.a. Avis	\$168,917.00	\$188,448.00	\$221,149.00	\$232,207.00	\$810,721.00
Missoula Acceptance Co. d.b.a. Budget	\$111,000.00	\$111,000.00	\$111,000.00	\$111,000.00	\$444,000.00

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## AGENDA ITEM:




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


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**TITLE:** Approval of Amendment One with CTA Architects Engineers for Architectural Services for Airport Improvement Program (AIP) 32

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Due to the specialized nature of architectural services required for airport facilities design and remodel projects, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide architectural services at the Airport. On November 27, 2006, the City approved a five-year contract with CTA Architects Engineers to provide the design, development of project plans, specifications and bidding documents, and contract administration items such as coordination meetings, pay requests, and change orders, etc. The contract also provides the development and submittal of the final project closeout documents, as required for all Federal AIP projects. The base five-year contract is amended each time a new project is undertaken, and Amendment One for \$68,819, includes all of the services indicated above for next summer's AIP 32 project. The scope of work for this project and associated architectural fees have been approved and negotiated by Airport staff, and approved by the FAA. This Amendment One includes the architectural design, planning and contract administration for the demolition of the old Air Traffic Control Tower. The demolition work will be bid once CTA has completed the design and planning for this project. This Amendment will produce an estimated \$500,000 of demolition and asbestos abatement work.

**FINANCIAL IMPACT:** The total cost of architectural Amendment One with CTA Architects Engineers is \$68,819, and will be funded out of a 95% FAA AIP entitlement grant. The FAA's portion will be \$63,378.05 and the City's 5% match is \$3,440.95. This project is included in the current budget.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment One to CTA Architects Engineers Services Contract in the amount of \$68,819 for the architectural work on Airport Improvement Program (AIP) 32 Project.

**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, March 26, 2007**

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**TITLE:** Harvest, Olympic and High Sierra Parks Irrigation Renovation  
**DEPARTMENT:** Parks, Recreation, and Public Lands Department  
**PRESENTED BY:** Mike Whitaker, Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** The City Of Billings budgeted \$218,000 to be used to design and renovate existing irrigation systems at Harvest, Olympic and High Sierra Parks. A portion of the funds appropriated for this project will be used to retain the services of a consultant to prepare plans, specifications and bidding documents, call for bids, and award the construction contract, and then to provide project supervision and construction administration services to the completion and final acceptance of the irrigation renovation project. Requests for Proposals were sent out and 1 firm responded by the December 8, 2006 deadline. The responding firm, Carl Thuesen ASLA, met with staff to develop a scope of services and to negotiate a fee for services (See Appendix A of Contract, Attachment A). The contract with the City will be with Carl Thuesen ASLA.

**FINANCIAL IMPACT:** Funding for the project is through Park Maintenance District Funds as approved in FY 2007 Capital Improvement Program:

**Location of Work:** Harvest and Olympic Parks are located South of Monad Road between 32<sup>nd</sup> Street West and Shiloh Road. High Sierra Park is located at the West end of Wicks Lane.

**Funding Sources:** From Park Maintenance District Funds - \$ 218,000.00

**ALTERNATIVES ANALYZED:**

- Award contract to the recommended finalist, or
- Reject all proposals.

## **RECOMMENDATION**

Staff recommends that Council approve the award of the consultant contract for the Harvest, Olympic and High Sierra Parks Irrigation Renovation to Carl Thuesen ASLA as Follows (See Appendix B of Contract, Attachment A):

• Design Process (Lump Sum)	<b>\$ <u>12,513.00</u></b>
• Construction Period Services(Time and Materials Basis) up to	<b>\$ <u>29,386.84</u></b>
<b>Total</b>	<b>\$ <u>41,899.84</u></b>

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

Contract for Professional Landscape Architectural Services

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**For  
HARVEST, OLYMPIC and HIGH SIERRA PARKS IRRIGATION RENOVATION**

In consideration of the mutual promises herein, City of Billings and Carl Thuesen ASLA agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 5 pages (Basic Services of Consultant);
- Appendix B consisting of 2 pages (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Consultant);
- Appendix D consisting of 2 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of 1 page (Certificate(s) of Insurance); and

**PART I  
SPECIAL PROVISIONS**

**Section 1. Definitions.**

In this Contract:

- A. "Administrator" means the Park Planner of the Planning Division of the Parks, Recreation and Public Lands Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Consultant" and Landscape Architect means Carl Thuesen ASLA.

**Section 2. Scope of Services.**

- A. The Consultant shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.

- B. Billings shall pay the Consultant in accordance with the Schedule of Professional Fees attached as Appendix B and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section, or as authorized pursuant to Appendix C. However, the Consultant may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Consultant shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
  - 1. CAD Files shall be in Auto CAD.DWG file format. All files must be readable by the CITY, any files not readable or corrupted shall be resubmitted. Compressed Files are not acceptable. Drawings using separate reference files, X-ref, shall be bound into one file prior to submission.
  - 2. A copy of the record drawings shall be provided in “jpeg” or “tif” format. Files must be readable by the CITY.
  - 3. Word processing files in Microsoft Word.doc format. Files must be readable by the CITY.

**Section 3. Time for Performance.**

- A. The Consultant shall commence performance of the Work described in Section 2 on a mutually agreed upon date and complete that performance in accordance with the schedule set forth in Appendix E.

**Section 4. Compensation; Method of Payment.**

- A. Billings shall pay the Consultant in accordance with the progress payment schedule attached hereto as Appendix B and incorporated herein by reference.
- B. The Consultant is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Consultant shall have paid all City taxes currently due and owing by the Consultant.

**Section 5. Termination of the Consultant's Services.**

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

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Consultant in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within 30 days after receiving the notice.

## Section 6. Duties Upon Termination

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

## **Section 7. Insurance.**

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



- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

## **Section 8. Assignments.**

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

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

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

**Section 10. Notices.**

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

Billings: Park Planner (Mark Jarvis)  
City of Billings  
Parks, recreation and Public Lands Department  
390 North 23<sup>rd</sup> Street  
Billings, Montana 59101  
FAX: (406) 247-8641

Consultant: Carl Thuesen ASLA  
Carl Thuesen, Owner  
21925 Grand Ave. Suite 105  
Billings, MT 59104  
FAX: (406) 245-9855

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

**Section 11. Contract Budget.**

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

**Section 12. Force Majeure.**

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

### **Section 13. Financial Management System.**

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

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

### **Section 14. Funding Requirements.**

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Consultant agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings. Consultant's cost for compliance, if any, shall be reimbursable.

### **Section 15. Subcontracts.**

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

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefore.
- B. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the sub-consultant relating to the purchase of goods or services pursuant to the subcontract.

## **PART II**

### **GENERAL CONTRACT PROVISIONS**

#### **Section 1. Relationship of Parties.**

The Consultant shall perform its obligations hereunder as an independent Consultant of Billings. Billings may administer the Contract and monitor the Consultant's compliance with its

obligations hereunder. Billings shall not supervise or direct the Consultant other than as provided in this Section.

## Section 2. Nondiscrimination.

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

## Section 3. Permits, Laws, and Taxes.

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

## Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Consultant: Carl Thuesen  
(Owner)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

The parties of this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Thirteenth Judicial District of the State of Montana, Billings and there shall be no other venue for resolution of disputed arising from the contract or the performance of its terms.

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

The Consultant shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Consultant or any sub-consultant as a result of the Consultant's or any sub-consultant's performance pursuant to this Contract.

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

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

Consultant

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City Council or Designee

Date: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST: IRS Tax ID # \_\_\_\_\_

\_\_\_\_\_  
Cam Trudeau,  
Deputy City Clerk

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

STATE OF MONTANA                    )  
  :ss.  
COUNTY OF YELLOWSTONE        )

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

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

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

## Appendix A

### Basic Services of CONSULTANT

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#### Section 1. Consultant's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Consultant's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Consultant shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Consultant's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to all codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- G. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- H. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Consultant. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- I. Name a Task Director who shall be the liaison between Billings and the Consultant. For this project the Task Director designated for the Consultant is Nathan Steiner working under the Principal-in-Charge Carl Thuesen.



## Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Consultant and Billings. For this project, the Task Director designated is Mark Jarvis, Park Planner for the Parks, Recreation and Public Lands Department.

## Section 3. Scope of Work.

This will serve as an outline of our proposed scope of services and fees to provide the assistance you have requested. We propose to provide all services as required by the RFP and attachments.

A major portion of the design will be bid and constructed by a contractor. Site auditing, Configuration of controls, and initial programming will be performed by our office. PRPL staff may perform the remainder of the work, as discussed in our recent meeting. Following is our proposed scope of work for each.

### **Work by Contractor**

- Installation of all new irrigation equipment associated with the point of connection, master valves and flow sensors.
- Installation of all new satellite controllers, associated hardware, and connection to control wiring.
- Installation of all new communication wiring and equipment.
- Installation of any necessary electrical equipment and grounding.
- Installation of new weather station.
- Installation of new pumping equipment.
- Install new control wire between valves and new controller locations as necessary.

### **Work by PRPL**

- Provide all existing as-built information to our office for use in the design.
- Locate existing control wire splices, etc.
- Install new control wire between valves and new controller locations as necessary.
- Assist in determining existing conditions during design phase as necessary.
- Assist with system audits following installation and start-up.

## **DESIGN PROCESS**

The following suggested design process is based on our understanding of the project from recent discussions with you and the Request for Proposals.

### **Survey:**

- Scan all existing as-built information for use in the design process.
- Visit each of the sites with PRPL to investigate and collect any necessary information to aid in the initial evaluation.
- Explore communication options for implementation into the project.
- Observe existing backflow equipment to determine compliance with current codes.
- Develop schematic design recommendations and budget level estimates.

### **Analysis:**

- Initiate preliminary design of the new control systems. The new systems will tie to the existing central computer and will provide individual station control from the field satellites to each solenoid valve.
- Depending on the communication methods chosen, test and evaluate the proposed communications as required. Evaluate any existing CCUs for use in the project and make a determination as to what new infrastructure will be necessary for the project.
- Evaluate hydraulics of existing mainlines and determine locations for new master valves and flow sensing equipment to allow for accurate flow sensing. The 1,500 GPM point of connection at Harvest Park is of particular concern.
- Determine necessary equipment to address pressure spikes on mainlines at Harvest and Olympic Parks.
- Determine the number of new satellite controllers, their locations, and any necessary infrastructure.
- Evaluate booster pump at High Sierra for possible replacement or addition of VFD control.
- Determine the location and feasibility of a new weather station.
- Make recommendations for mainline fittings that are beginning to fail at Harvest and High Sierra.
- Develop recommendations and a cost estimate.

### **Synthesis:**

- Complete the design phase based on available funding.
- Prepare plans, installation details, and specifications for bidding and construction. City standard forms will be used for the project manual front end with technical specifications provided by our office.
- Final cost estimate.
- Two sets of final plan sheets and one project manual will be furnished at the completion of the design phase.

## **CONSTRUCTION PERIOD SERVICES**

Construction period services and level of effort can vary significantly from job to job. Therefore, in fairness to yourself and our firm we propose to provide these services on a time and materials billing basis. You will only be charged for services actually provided, which may be less or more than the budget figure. An anticipated budget for these services is provided in the fee proposal. A copy of our standard billable rates is attached. Not all items shown will be used.

### **Bidding Period Services:**

- Advertisement will be the responsibility of the Owner.
- We will be responsible for printing, plan distribution, and the planholders list.
- Draft and distribute addenda as necessary.
- Participate in one pre-bid conference on the site.
- Evaluate bids and make recommendations for award.
- Assist in contract preparation.
- Schedule and attend a preconstruction meeting with the Contractor.

### **Shop Drawings and Submittals:**

- Review shop drawings and submittals.

### **Periodic Construction Inspection:**

- Periodic inspections during the construction period to check on installation methods, make any judgments necessary for field adjustments, and to monitor work progress.
- Installations that will require inspection and approval prior to backfilling include:
  - Master valve/flow sensor installations.
  - Pressure regulating valves at water mains.
  - Any connections to existing piping.
- Provide field reports documenting each inspection.

### **Project Management:**

- Pay requests will be submitted to our office by the Contractor.
- Requests with our payment recommendations will be forwarded to the Owner for further action.
- Negotiate and document any necessary change orders.

### **Substantial Completion:**

- Conduct a substantial completion inspection on the job site to determine if the project is ready for occupancy by the Owner.
- Prepare "Punch List" of deficiencies in the work

- A Certificate of Substantial Completion will also be prepared to legally transfer ownership of the project from the Contractor to the Owner.

#### **Final Inspection:**

- A final completion inspection will be conducted to be sure the job is 100% complete as specified before issuance of final payment to the Contractor.

#### **Record Drawings:**

- Draft the record drawings from the Contractor's field drawings using CAD methods. Final drawings will be translated from MicroStation to AutoCAD. This could be a bit problematic but we will work with you in order to provide a finished product that is acceptable to you.
- PDF record drawings will be provided.
- Deliver one reproducible copy and digital files on CD-ROM of the record drawings.
- Our office will retain permanent electronic and reproducible copies in our project files.

#### **Central Computer Programming:**

- Following completion of the radio surveys we will complete the application process and submit it with any necessary fees to the FCC coordinator for review and approval of FCC licensing.
- Perform audit of individual zones on each system as necessary following installation and start-up to collect necessary information to allow for programming of the central computer. PRPL provided information will be used as much as possible. Precipitation rates will be based on manufacturer's available information. The time we have figured for this particular task is substantial. Hopefully it can be completed quicker than anticipated resulting in savings to you since this portion of the project is being figured on a Time & Materials basis.
- Enter data obtained from the individual system audits.
- Basic schedule creation at central computer.
  - Irrigation schedule writing.
  - Quick coupler scheduling where applicable.
  - Flow log.
  - Flow watch.
  - Rain watch.

We foresee the potential for a lot of adjustment being required at the initial start-up of the control system at these three parks due to the age of the systems, existing leaks, inconsistencies in heads, etc. We recommend that the new control system be phased in rather than turning all of the features/capabilities on at once. This will allow for time to troubleshoot and locate any existing problems in the systems.

## Appendix B

### Methods and Times of Payment

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#### Section 4. Payments for Basic Services.

Billings shall authorize payment to the Consultant for services performed under Appendix A of this Agreement. Partial payment shall be due the Consultant upon receipt of the Consultant's invoice.

Partial payment shall be made to the Consultant upon receipt of the Consultant's invoice. Billings shall deduct ten percent (10%) from each monthly invoice to be held until the completion of the Design Process and completion of Construction Period Services. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered as contained in Appendix A, the Consultant shall be paid a Lump Sum for the Design Process (noted below).

<u>Design Process (Lump Sum)</u>	<u>Fee</u>
Survey	\$4,093.00
Analysis	\$4,093.00
Synthesis	<u>\$4,327.00</u>
Total	\$12,513.00

- B. Construction Period Services shall be paid on a Time and Materials bases with estimated fees noted below. Actual invoiced amounts shall not exceed the total estimated fee unless written authorization is given by Billings.

<u>Construction Period Services (T&amp;M Budget Amount)</u>	<u>Fee</u>
Bidding Process	\$2,298.00
Shop Drawings and Submittals	\$512.50
Periodic construction Inspection	\$3,097.00

Project Management	\$512.50
Substantial Completion	\$1,252.75
Final Inspection	\$760.75
Record Drawings	\$775.00
Central Computer Programming	\$17,506.81
Contingency (10%)	<u>\$2,671.53</u>
Total	\$29,386.84

Section 5. Payments for Extra Services when Authorized in Writing by Billings.

Requests made or conditions identified, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

Section 6. Corrections.

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

## Appendix C

### Additional Services of Consultant

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Extra Services of the Consultant will be paid only with written prior authorization by Billings.

- A. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.
- B. Work outside of scope will be additional services.

## Appendix D

### Schedule of Professional Fees

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Current agreements for consulting services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

#### Section 1. Professional Services.

<u>LABOR</u>	<u>UNIT</u>	<u>RATE</u>
Principal	Hrs	\$77.00
Landscape Architect	Hrs	\$60.00
Landscape Designer	Hrs	\$41.00
CAD Drafting	Hrs	\$45.00
Clerical	Hrs	\$32.00
GPS/GIS Technician	Hrs	\$71.00
Central Computer Programmer	Hrs	\$87.00

<u>COMMON EXPENSES</u>	<u>UNIT</u>	<u>RATE</u>
mileage - automobile	Mi	\$0.45
mileage - 4x4 field vehicle	Mi	\$0.70
airfare	RT	cost + 10%
rental car	Day	\$65.00
motel	Night	\$85.00
meals	Day	\$25.00
soil test & recommendation	EA	\$150.00
water chemistry test & recommendation	EA	\$100.00
photography	roll	\$30.00
laser prints - black	EA	\$0.30
laser prints - color single side	EA	\$0.40
laser prints - color duplex	EA	\$0.76
D/E size plot - BOND	EA	\$8.00
D size plot - FILM/MYLAR	EA	\$24.00



D size plot - FULL COLOR/SPECIAL		
PAPER	EA	\$56.00
diaz prints	SF	\$0.40
oversize engineering copies	SF	\$0.35
telephone	LS	cost + 10%
FAX	PG	\$1.00
xerox copies (8-1/2 x 11")	EA	\$0.15
color copies (8-1/2 x 11")	EA	\$2.00
xerox bond (up to 36"- same size)	SF	\$0.40
CD-ROM 650 MB	EA	\$15.00
miscellaneous art supplies	LS	cost + 10%
foam core mounting	SF	\$5.00
clear UV gloss laminate	SF	\$5.00
postage/shipping	LS	cost + 10%

## Section 2. Materials and Other Direct Costs.

Materials and other direct costs will be invoiced at current rates, plus a ten percent (10%) handling fee. Included as direct costs are the following:

- A. Approved Employee Meals, Lodging, Transportation
- B. Premium Delivery Service (UPS, Federal Express, etc.)
- C. Toll Communication Services (Telephone, Fax, etc.)
- D. Supplies
- E. Premiums for Special Insurance, Performance Bonds, etc.
- F. Other Out-of-Pocket Expenses
- G. Consultants

The cost of Professional Liability Insurance coverage is included in the hourly rates of personnel.

## Appendix E

### Project Schedule

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Based on a mutually acceptable start date, the schedule for Consultant's work through final design shall be:

C. Survey-	3 weeks
D. Analysis	3 weeks
E. Synthesis	2 weeks

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

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

Appendix F

**Certificate(s) of Insurance**

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(Attach Certificate(s) of Insurance)

D

AGENDA ITEM:



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

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**TITLE:** Access Agreement for Briarwood Water Reservoir  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** David Mumford, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The water reservoir serving Briarwood Subdivision and the access road to that reservoir are located on private property owned by two separate parties. When the City acquired these facilities in the Briarwood annexation, access arrangements were informal. The City has been working with the involved owners to establish formal access agreements. The proposed agreement being presented to the Council for approval is with PM&M, LLC, Max E. Thornton, and the Katherine K. Thornton Testamentary Trust, whose land encompasses most of the access road to the reservoir. The agreement takes the form of license for access and has a three year term with provisions for renewal. The form of the agreement and its relatively short term were established for two reasons. The owners intend to develop the property in the near future which could change the access road alignment. Additionally, more water storage will be required as the area develops and we are uncertain at this time about the usefulness of this site in the future. Additional agreements for access with the remaining party will be presented to the Council for approval in the near future.

**FINANCIAL IMPACT:** None

**RECOMMENDATION**

Staff recommends that Council approve the agreement with PM&M, LLC, Max E. Thornton, and the Katherine K. Thornton Testamentary Trust for access across their property to the Briarwood Water Reservoir.

**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, March 26, 2007**


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**TITLE:** W.O. 04-26—Zone 4 Reservoir and Facilities, Professional Services  
Contract with HDR Engineering, Inc.

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The City of Billings has a need to construct water infrastructure improvements for System Zone 4 water storage, Zone 5 West water storage, and Zone 5 West pumping improvements. HDR Engineering, Inc. was selected through the RFP process to provide the professional services for this project. The project will be implemented in various phases. Phase I, a value engineering study, was approved previously and has been completed. Phase II includes follow up on the value engineering study, assistance with additional land acquisition, preliminary layout of facilities, design of new Zone 4 storage reservoir, design of new Zone 5 West Pump Station, design of associated reservoir and pump station pipelines, and design of access roads. The facilities will be constructed on land obtained from Shane Gundlach, located north of Yellowstone Country Club and east of Ironwood Estates Subdivision.

**FINANCIAL IMPACT:** The project is being funded by Water Revenue Funds. The associated CIP, previously approved by the Mayor and City Council, provides approximately \$5.648 million in FY 07 and \$3.335 million in FY 08. The project preliminary budget includes \$1 million for professional services, to include design, bidding, and construction administration. There are funds available to cover the fee for Phase II, \$497,885.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a Professional Services contract with HDR Engineering, Inc., in the amount of \$497,885.00, for W.O. 04-26—Zone 4 Reservoir and Facilities.

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

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

## AGENDA ITEM:




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


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**TITLE:** Certified Local Government Program Contract

**DEPARTMENT:** Planning and Community Services Department

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

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**PROBLEM/ISSUE STATEMENT:** The State of Montana Historic Preservation Office has designated the City of Billings as a Certified Local Government (CLG) for historic preservation activities. As a CLG, the City is eligible to receive state funding to coordinate historic preservation efforts in our area. In January of 2007, the City of Billings applied for these funds through the CLG Program. On March 2, 2007, the City received approval for this grant cycle of April 1, 2007, through March 31, 2008, and 2 original contracts for the Authorized Representative (Mayor) to sign.

**ALTERNATIVES ANALYZED:** Agree or decline to participate in State CLG program and accept CLG grant funding to coordinate historic preservation activities.

**FINANCIAL IMPACT:** City Council approval would provide \$4,031 in State of Montana Certified Local Government funding. The Planning Division will budget funds to cover the matching funds in the amount of \$7,969. The total funding package of \$12,000 will be used to contract with the Western Heritage Center for consulting services that assist with the completion of projects identified in the YHPB Work Plan. The Planning Division provides staff support of approximately 20 hours a week to administer the YHPB Board activities and CLG Grant Administration.

**RECOMMENDATION**

Staff recommends that the City Council authorize the Mayor to sign the Certified Local Government Grant Contracts for a \$4,031 Certified Local Government grant from the Montana State Historic Preservation Office.

**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, March 26, 2007**


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**TITLE:** W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Approval of Right-of-Way Agreement and Perpetual Right-of-Way Easement with Gary and Norma Buchanan

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The preferred alternative identified in the Preliminary Engineering Report (PER) for the above-named project recommended that the new sewer main generally follow a route along Blue Creek Road so that the southerly portion of the new sewer main will drain via gravity from Briarwood to the area of Santiago Boulevard. From the Santiago area, a sewer lift station is needed to convey sewerage via a force main across the Yellowstone River then to the existing sewer in the South Frontage Road of I-90. Due to utility congestion and/or adverse slopes in most places along the Blue Creek Road (MDT) right-of-way, it is necessary to obtain easements from property owners along the proposed sewer route. There are a total of thirteen (13) easements necessary from eleven (11) different property owners; three easements were approved by Council on October 23, 2006. This memo represents one more to be approved. The other outstanding easements are being brought to Council with a recommendation authorizing condemnation (in a separate memo). A copy of each of the right-of-way agreements, easements, appraisals, review appraisals, correspondence, and negotiation histories for the Buchanan and property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total cost of the easement is \$7,450.00. The cost of each easement is the appraised value of the easement. Funding is available from project funds. The budgeted amount for this entire project (CIP# PWB-1), including engineering, right-of-way acquisition, and construction is \$600,000 in FY 2005, and \$4,335,350 in FY 2007.

### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Perpetual Right-of-Way Easement with Gary and Norma Buchanan for \$7,450.00, and authorize the Mayor to execute these documents.

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

**ATTACHMENT**

- A.    Right-of-Way Agreements and Perpetual Right-of-Way Easements (1 set)



**COUNCIL RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, PURSUANT TO BILLINGS CITY CODE CHAPTER 12, EMINENT DOMAIN, DECLARING PUBLIC PURPOSE AND USE, DESCRIBING THE PROPERTIES TO BE TAKEN AND AUTHORIZING CITY OFFICIALS TO PROCEED.**

**WHEREAS**, the City of Billings finds it necessary to acquire certain easements to allow it to utilize for purposes of constructing, operating and maintaining a sanitary sewer main extension to the Briarwood Subdivision in the City of Billings and in Yellowstone County; and

**WHEREAS**, the perpetual easements to be acquired, and the temporary construction easements necessary, to complete these improvements are shown and described in Exhibit "A" attached hereto and by this reference incorporated herein; and

**WHEREAS**, the City officials have attempted to purchase said easements at a mutually agreeable purchase price but have been unable to obtain the consent of all of the owners to purchase said easements; and

**WHEREAS**, pursuant to Chapter 12, Section 12-102 of the Billings City Code, it is necessary to pass a Resolution initiating eminent domain procedures; and

**WHEREAS**, said use is a public use and will benefit the general public and will be used for public purposes; and

**WHEREAS**, it is necessary to condemn said real property by exercise of the right of eminent domain to make land available in the City of Billings and in Yellowstone County for constructing, operating and maintaining a sanitary sewer main extension to the Briarwood Subdivision ; and

**WHEREAS**, it is necessary to condemn the right-of-way in said private real property for perpetual easements and for temporary construction easements as shown in Exhibits "A" and "C" and as described in Exhibit "B" for purposes of constructing, operating and maintaining a sanitary sewer main extension to the Briarwood Subdivision in the City of Billings and in Yellowstone County; and

**WHEREAS**, the City officials should be authorized to proceed with the condemnation proceedings as provided by law.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Billings, Montana, as follows:

1. **PUBLIC USE:** The City hereby declares that the above-described interests in real property shall be condemned at its fair market value under the City's eminent domain powers to enable the City to acquire said perpetual easements and necessary temporary construction easements, for purposes of constructing, operating and maintaining a sanitary sewer main extension to the Briarwood Subdivision in the City of Billings and in Yellowstone County;

2. **PUBLIC PURPOSE AND NECESSITY:** It is hereby declared that said easements are being acquired for a public purpose, for public use and is necessary to the project.

3. **DESCRIPTION OF PROPERTY, EXTENT OF INTEREST:** The right-of-way in the form of perpetual easements and temporary construction easements as shown in Exhibits "A" and "C" and as described in Exhibit "B" shall be taken for public purpose.

4. AUTHORIZATION TO PROCEED: That the appropriate City officials are hereby directed and authorized to proceed with condemnation of said real property as provided by law.

**PASSED AND ADOPTED** by the City Council of the City of Billings, Montana, at a regular session thereof held on the 26th day of March, 2007.

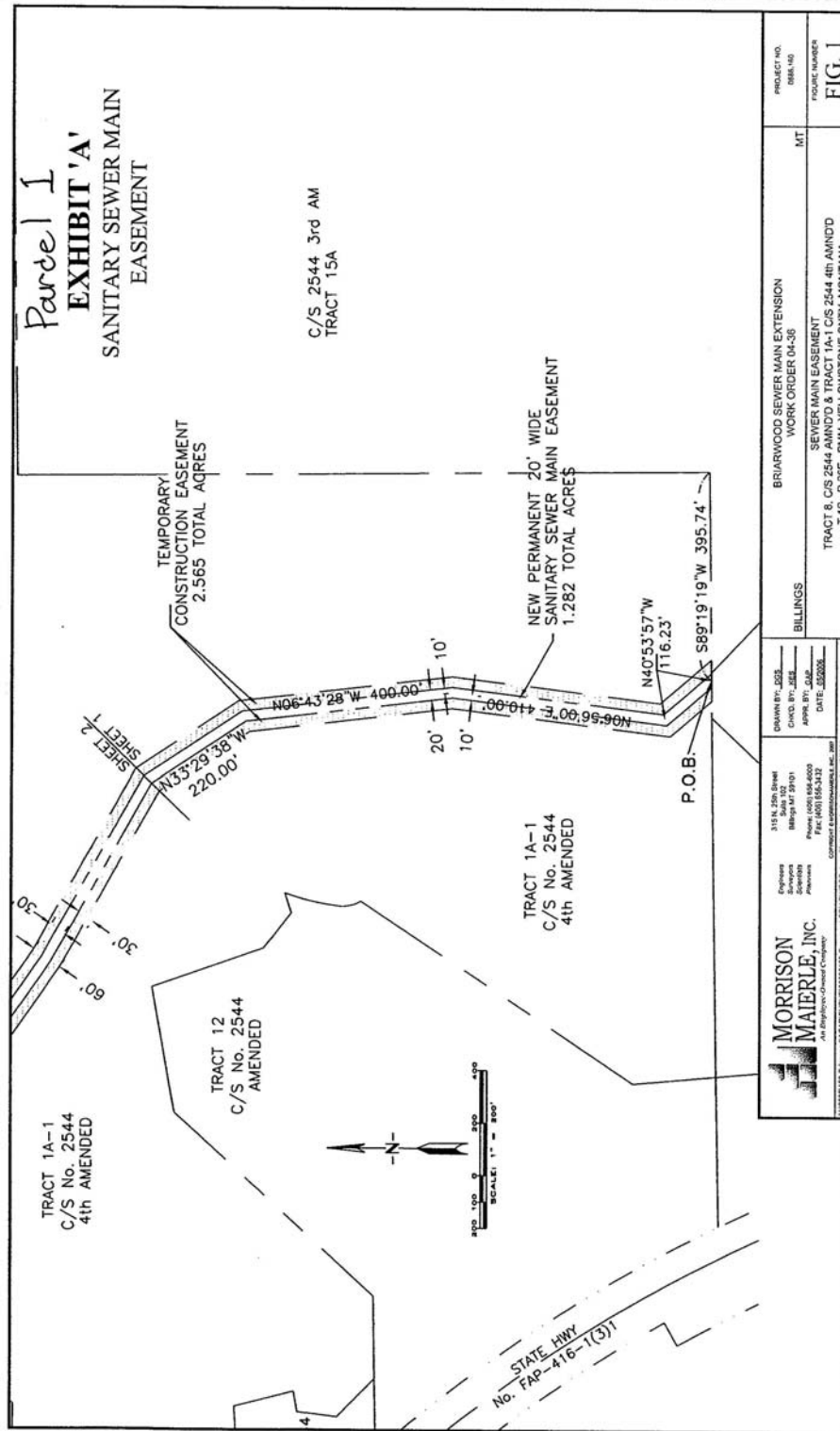
ATTEST:

\_\_\_\_\_  
Mayor

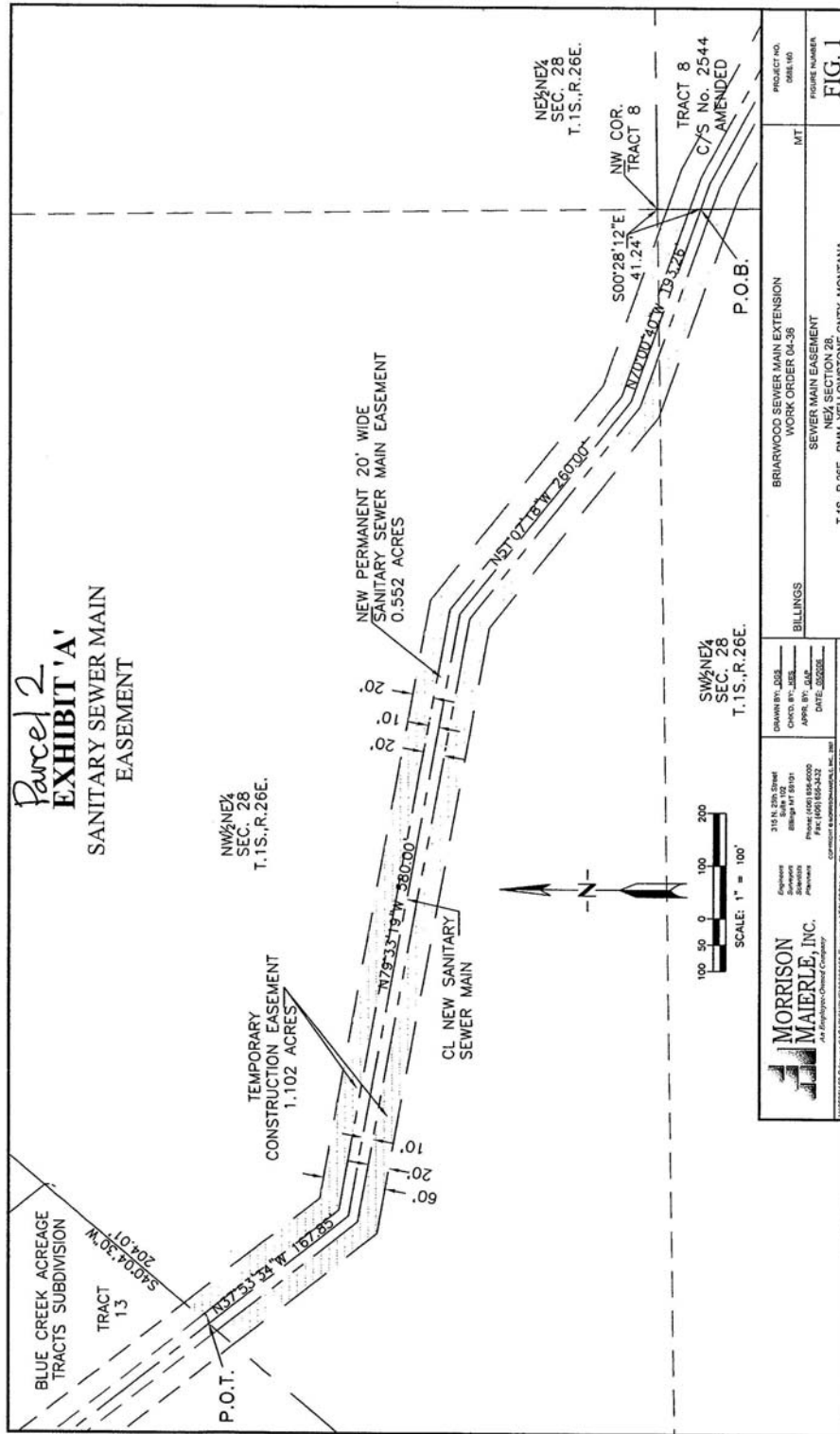
\_\_\_\_\_  
City Clerk

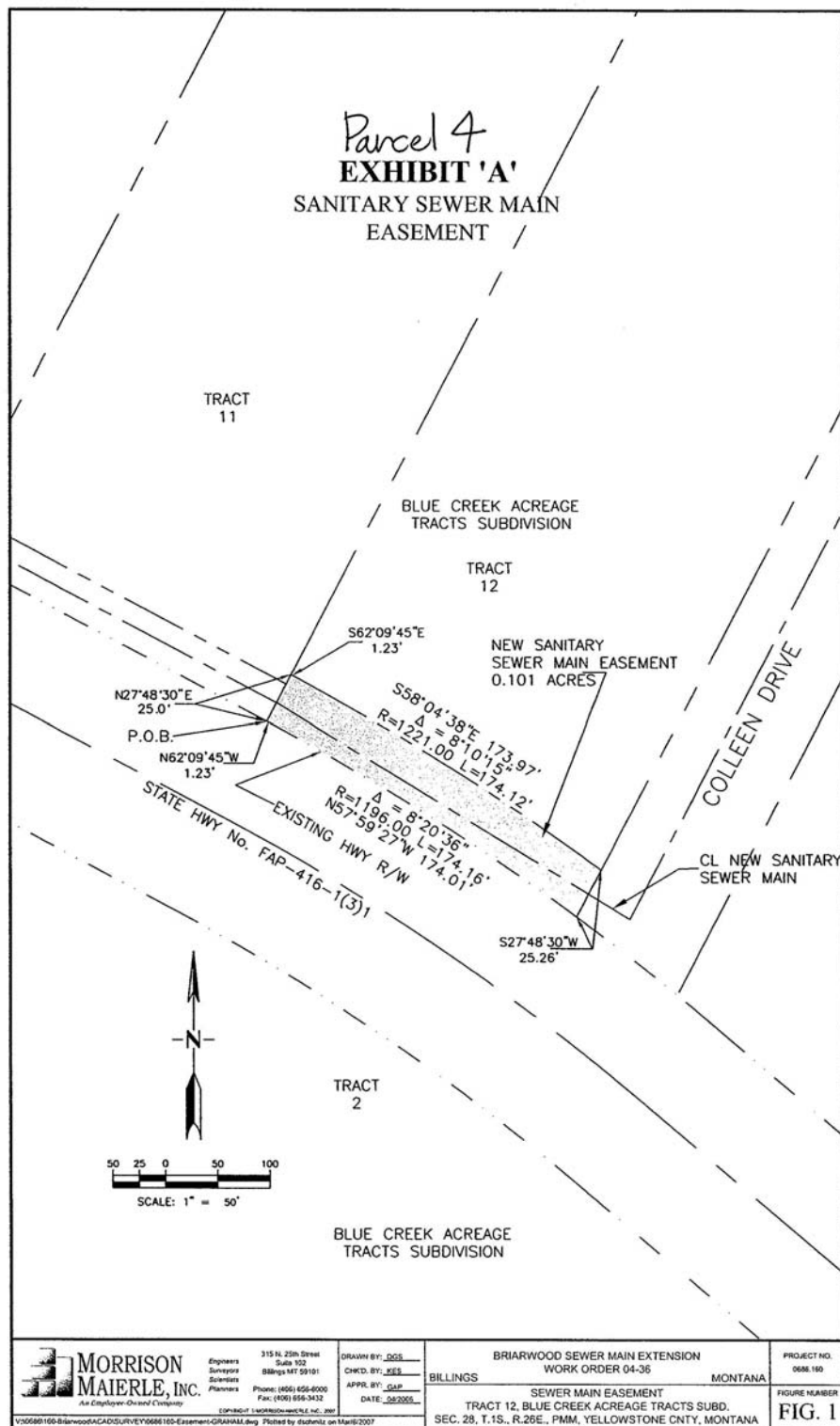
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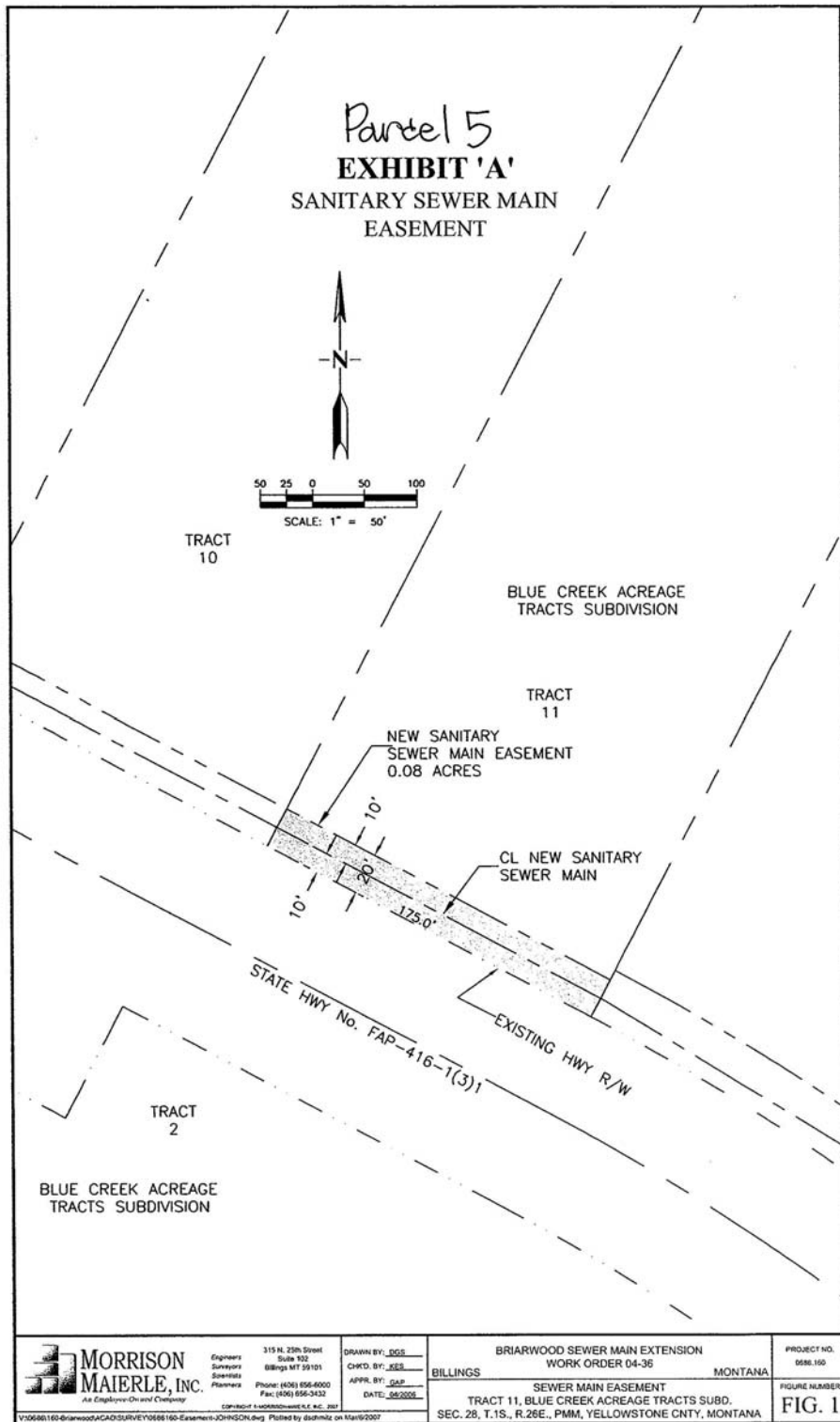
\_\_\_\_\_  
BRENT BROOKS  
City Attorney





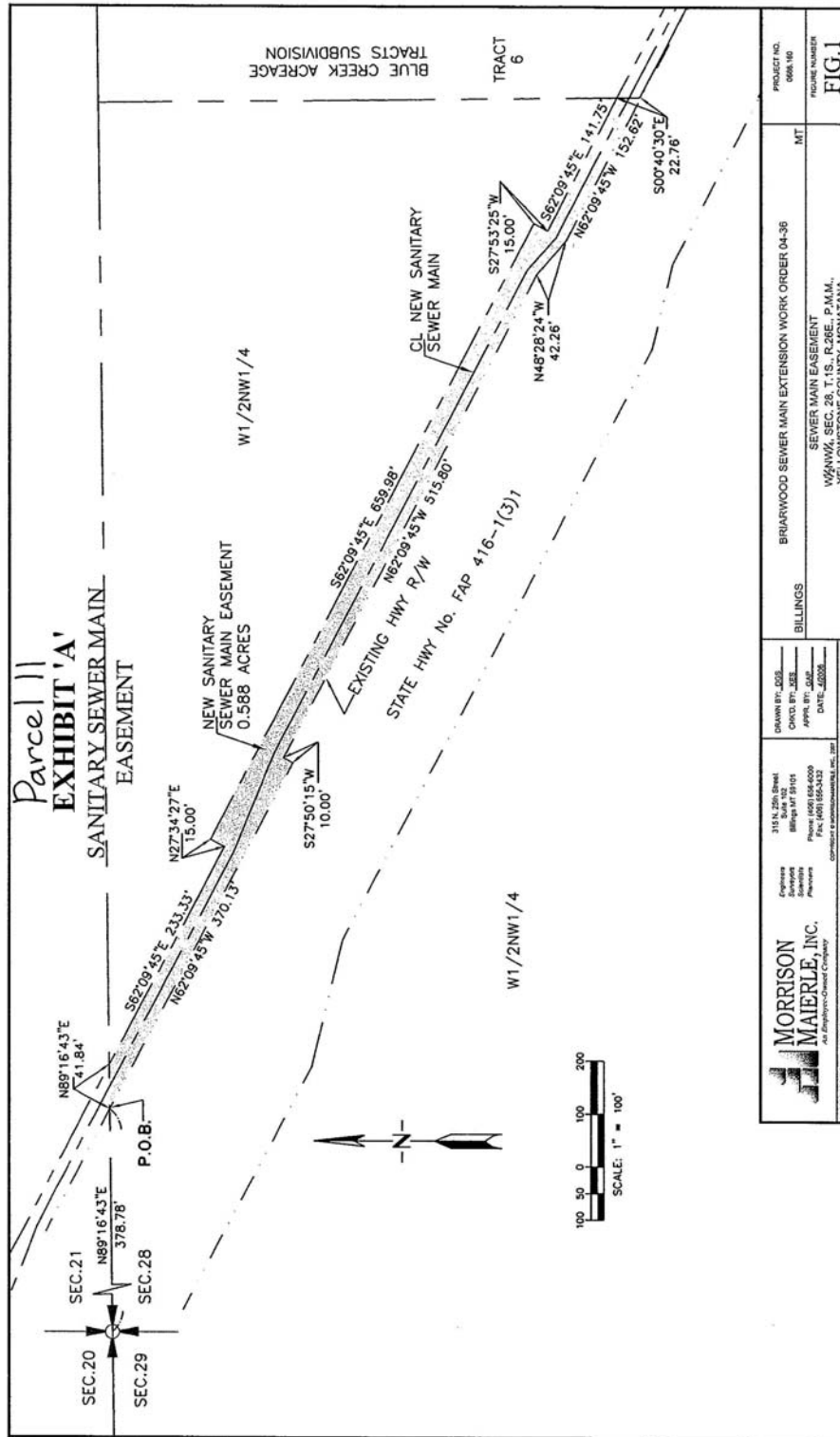




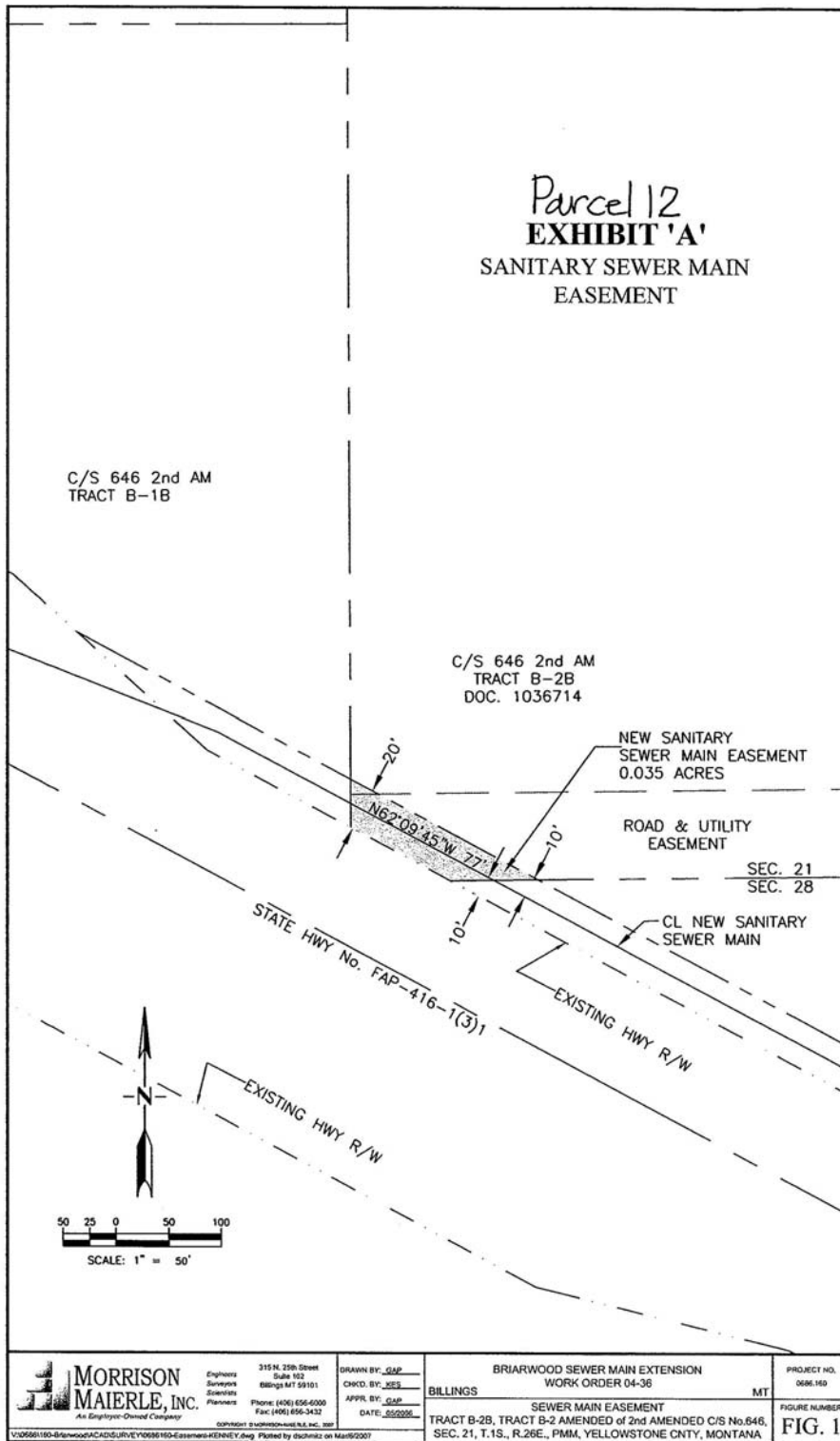








<b>MORRISON MAIERLE, INC.</b> Engineers Surveyors Planners 310 N. 25th Street Billings, MT 59101 Phone: (406) 654-6009 Fax: (406) 654-3432 <small>Corporation in Montana, Inc. DBA          A Montana Limited Liability Company</small>		DRAWN BY: JCB CHECKED BY: JCB APPL. BY: JCB DATE: 6/20/08	BILLINGS BRUIWOOD SEWER MAIN EXTENSION WORK ORDER 04-36 MT	PROJECT NO. 0668-16
SEWER MAIN EASEMENT W1/2NW1/4 SEC. 20 T. 15 N. R. 36 E. P.M.M. YELLOWSTONE COUNTY, MONTANA		FIG. 1		



## **EXHIBIT "B"**

### **LEGAL DESCRIPTIONS OF BRIARWOOD SANITARY SEWER MAIN EXTENSION EASEMENT ACQUISITIONS**

#### **Parcel #1**

##### **DESCRIPTION:**

A permanent 20.0 foot wide sanitary sewer easement across Tract 1A-1, Certificate of Survey No. 2544 4<sup>th</sup> Amended, recorded as document No. 3133911, and Tract 8, Certificate of Survey No. 2544 Amended, recorded as document No. 1746814, located in Sections 27 and 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, being 10 feet on each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Southeast corner of said Tract 1A-1, Certificate of Survey No. 2544 4<sup>th</sup> Amended: thence S89°19'19"W along the South line of said Tract 1A-1, a distance of 395.74 feet, to the Point of Beginning; thence N40°53'57"W, a distance of 116.23 feet; thence N06°56'00"E, a distance of 410.00 feet; thence N06°43'28"W, a distance of 400.00 feet; thence N33°29'38"W, a distance of 220.00 feet; thence N60°36'48"W, a distance of 395.00 feet; thence N54°59'24"W, a distance of 312.00 feet; thence N59°16'28"W, a distance of 588.00 feet; thence N61°04'34"W, a distance of 325.00 feet thence N70°00'40"W, a distance of 26.74 feet, to the Point of Termination on the West line of said Tract 8, Certificate of Survey 2544 Amended, being S00°28'12"E, a distance of 41.24 feet from the Northwest corner of said Tract 8, containing an area of 1.282 acres, more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

Together with a Temporary Easement for construction purposes 20.0 feet wide on each side being contiguous, adjacent and parallel to the previously described easement, containing an area of 2.565 acres, more or less, and all according to Exhibit A (Figures 1 and 2) attached hereto.

##### **ACCESS EASEMENT 'A' DESCRIPTION**

A strip of land 14 feet wide across Tract 14A of Certificate of Survey No. 2544 5<sup>th</sup> Amended and Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the NW¼SW¼ Section 27, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being 7 feet each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tracts:

Commencing at the Northeast corner of said Tract 14A, thence S43°04'20"W along the line common to said Tract 14A and Lot 8, Block 12, Briarwood Subdivision a distance of 42.79 feet to the True Point of Beginning; thence along a non-tangent curve to the right with a

radius of 100.00 feet, a delta angle of 36°02'04", an arc length of 62.89 feet, and a chord bearing and distance of N02°20'02"E, 61.86 feet; thence N20°21'04"E, a distance of 50.60 feet to the Point of Termination on the southerly easement line of the sanitary sewer main easement, said Point of Termination bears S89°19'19"W, a distance of 395.74 feet, N40°53'57"W, a distance of 116.23 feet and S20°21'04"W, a distance of 11.41 feet from the Southeast corner of said Tract 1A-1. Said described Access Easement 'A' contains 0.037 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 1 of Exhibit 'C' attached hereto.

#### **ACCESS EASEMENT 'B' DESCRIPTION**

A strip of land 14 feet wide across Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the SW¼NW¼ of Section 27, and the SE¼NE¼ of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being 7 feet each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Southeast corner of Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, thence S89°19'19"W along the South line of said Tract 1A-1, a distance of 395.74 feet to the Centerline of the permanent sanitary sewer easement; thence along the following (3) courses of said sanitary sewer easement (1) N40°53'57"W, a distance of 116.23 feet; (2) N06°56'00"E, a distance of 410.00 feet; (3) N06°43'28"W, a distance of 400.00 feet, to the True Point of Beginning; thence N48°58'33"W, a distance of 144.05 feet; thence along a curve to the right with a radius of 50.00 feet, a delta angle of 66°47'02", an arc length of 58.28 feet, a chord bearing and distance of N15°34'52"E, a distance of 55.04 feet; thence N17°48'49"E, a distance of 21.84 feet, thence along a curve to the left with a radius of 32.00 feet, a delta angle of 86°41'15", an arc length of 48.42 feet, and a chord bearing and distance of N25°31'49"W, a distance of 43.93 feet; thence N68°52'26"W, a distance of 41.16 feet; thence along a curve to the right with a radius of 32.00 feet, a delta angle of 30°13'13", an arc length of 16.88 feet and a chord bearing and distance of N53°45'50"W, 16.68 feet; thence N38°39'13"W, a distance of 15.84 feet; thence along a curve to the left with a radius of 32.00 feet, a delta angle of 29°48'58", an arc length of 16.65 feet, and a chord bearing and distance of N53°33'42"W, 16.47 feet; thence N68°28'11"W, a distance of 26.12 feet; thence along a curve to the left with a radius of 32.00 feet, a delta angle of 25°54'06", an arc length of 14.47 feet and a chord bearing and distance of N81°25'14"W, 14.34 feet; thence S85°37'43"W, a distance of 38.70 feet; thence along a curve to the right with a radius of 32.00 feet, a delta angle of 39°22'23", an arc length of 21.99 feet and a chord bearing and distance of N74°40'50"W, 21.56 feet; thence N54°59'24"W, a distance of 188.55 feet to the Point of Termination on the centerline of said sanitary sewer main easement, being N13°42'11"E, a distance of 209.63 feet from the Northerly most angle point on the Southerly boundary of said Tract 1A-1. Said described Access Easement 'B' contains 0.211 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 1 of Exhibit 'C' attached hereto.

#### **ACCESS EASEMENT 'C' DESCRIPTION**

A strip of land 60 feet wide across Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the SE¼NE¼ Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement is to adjoin and extend 20 feet each side of the sanitary sewer main easement being more particularly described as follows:

Commencing from the Northerly most angle point on the Southerly boundary of said Tract 1A-1, thence N23°26'51"W, a distance of 373.33 feet to a point on the centerline of the sanitary sewer main easement and the True Point of Beginning; thence N54°59'24"W along said sanitary sewer easement a distance of 60.00 feet to the Point of Termination, being N82°22'27"E, a distance of 825.77 feet from the Southwest corner of Tract 8, Certificate of Survey No. 2544 Amended. Said described Access Easement 'C' contains 0.055 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 2 of Exhibit 'C' attached hereto.

#### **ACCESS EASEMENT 'D' DESCRIPTION**

A strip of land 14 feet wide across Tract 8 of Certificate of Survey No. 2544 Amended, situated in the SE¼NE¼ of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement is to be 7 feet each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Southwest corner of said Tract 8, thence N57°07'40"E, a distance of 175.24 feet to the True Point of Beginning on the Westerly easement line of an existing access easement granted to the City of Billings, Document #3332999; thence N71°49'32"W, a distance of 86.35 feet; thence along a curve to the right with a radius of 33.96 feet, a delta angle of 154°01'29", an arc length of 91.29 feet, and a chord bearing and distance of N05°10'45"E, 66.18 feet; thence N82°11'20"E, 51.10 feet; thence along a curve to the left with a radius of 100.00 feet, a delta angle of 29°08'33", an arc length of 50.86 feet, and a chord bearing and distance of N67°37'04"E, a distance of 50.32 feet; thence N53°02'47"E, a distance of 48.05 feet; thence along a curve to the left with a radius of 50.00 feet, a delta angle of 50°35'23", an arc length of 44.15 feet, and a chord bearing and distance of N27°45'06"E, 42.73 feet; thence N02°27'24"E, a distance of 69.99 feet; thence along a curve to the right with a radius of 50.00 feet, a delta angle of 26°28'02", an arc length of 23.10 feet and a chord bearing and distance of N15°41'25"E, 22.89 feet; thence N28°55'26"E, a distance of 61.12 feet to the Point of Termination on the southerly line of the sanitary sewer main easement being S00°28'12"E, a distance of 41.24 feet; thence S70°00'40"E a distance of 26.74 feet; thence S61°04'34"E a distance of 285.00 feet; thence S28°55'26"W a distance of 10.00 feet from the Northwest corner of said Tract 8.

Together with a strip of land 60 feet in length 30 feet each side of the intersection of the above access easement and the sanitary sewer main easement, said easement is to adjoin and extend 20 feet each side of the sanitary sewer main easement.

Said described Access Easement 'D' contains 0.217 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 2 of Exhibit 'C' attached hereto.

#### **ACCESS EASEMENT 'E' DESCRIPTION**

A strip of land of varying widths across Tract 8 of Certificate of Survey No. 2544 Amended, situated in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being more particularly described of the following centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Northwest corner of said Tract 8, thence S00°28'12"E along the West line of said Tract 8, a distance of 146.00 feet to the True Point of Beginning; Thence N28°55'26"E, along the centerline of a strip of land 14 feet wide, 7 feet each side, a distance of 65.43 feet; thence continuing N28°55'26" along a strip of land 60 feet wide, 30 feet each side, a distance of 20 feet to the Point of Termination on the sanitary sewer main easement, being S00°28'12"E, a distance of 41.24 feet; thence S70°00'40"E a distance of 26.74 feet; thence S61°04'34"E a distance of 25.00 feet; thence S28°55'26"E a distance of 10.00 feet from the Northwest corner of said Tract 8

Said described Access Easement 'E' contains 0.049 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 2 of Exhibit 'C' attached hereto.

#### **Parcel #2**

#### **DESCRIPTION:**

A permanent 20.0 foot wide sanitary sewer easement across a portion of the Northeast quarter of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, being 10 feet on each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Northwest corner of Tract 8, Certificate of Survey No. 2544 Amended, thence S00°28'12"E along the West line of said Tract 8, a distance of 41.24 feet, to the Point of Beginning; thence N70°00'40"W, a distance of 193.26 feet; thence N51°07'18"W, a distance of 260.00 feet; thence N79°33'19"W, a distance of 580.00 feet; thence N37°53'34"W, a distance of 167.85 feet to the Point of Termination on the Easterly line of Tract 13, Blue Creek Acreage Tracts Subdivision, being S40°04'30"W, a distance of 204.01 feet from the Northeast corner of said Tract 13, containing an area of 0.552 acres, more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

Together with a Temporary Easement for construction purposes 20.0 feet wide on each side being contiguous, adjacent and parallel to the previously described easement, containing an area of 1.102 acres, more or less, and all according to Exhibit A attached hereto.

**Parcel #4**

**LEGAL DESCRIPTION:**

A permanent sanitary sewer easement 25 feet in width located in Tract 12, Blue Creek Acreage Tract Subdivision, Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Beginning at the Southwest corner of said Tract 12, being on the Northerly right of way line of State Highway No. F.A.P. 416-1(3)1; thence N27°48'30"E along the line common to Tracts 11 and 12 of said Blue Creek Acreage Tracts Subdivision, a distance of 25.00 feet; thence S62°09'45"E, a distance of 1.23 feet; thence along a curve to the right with a radius of 1221.00 feet, delta of 8°10'15", arc length of 174.12 feet and chord of S58°04'38"E, a distance of 173.97 feet to the Easterly line of said Tract 12, also being the Westerly right of way of Colleen Drive; thence S27°48'30"W along the Easterly line of said Tract 12 and Westerly right of way of Colleen Drive, a distance of 25.26 feet to the Northerly right of way of said State Highway No. F.A.P. 416-1(3)1; thence along a curve to the left on said Northerly right of way with a radius of 1196.00 feet, delta of 8°20'36", arc length of 174.16 feet and chord of N57°59'27"W, a distance of 174.01 feet; thence continuing along said Northerly right of way, N62°09'45"W, a distance of 1.23 feet to the Point of Beginning, containing 0.101 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

**Parcel #5**

**LEGAL DESCRIPTION:**

A permanent 20 foot wide sanitary sewer easement in Tract 11, Blue Creek Acreage Tracts Subdivision, in Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Being the Southerly 20 feet of said Tract 11 coincident with the Northerly right-of-way of State Highway No. F.A.P. 416 1(3)1, containing 0.080 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.



**Parcels #9 & #10**

**LEGAL DESCRIPTION:**

A permanent 20 foot wide sanitary sewer easement in Tracts 6 and 7, Blue Creek Acreage Tracts Subdivision, in Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Being the Southerly 20 feet of said Tracts 6 and 7, coincident with the Northerly right-of-way of State Highway No. F.A.P. 416 1(3)1, containing 0.136 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

**Parcel #11**

**LEGAL DESCRIPTION:**

A permanent sanitary sewer easement of varying widths across the W $\frac{1}{2}$ NW $\frac{1}{4}$ , Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Northwest corner of said Section 28: thence N89°16'43"E along the line common to Sections 21 and 28, a distance of 378.78 feet, to the Point of Beginning, said point also being on the Northerly right-of-way line of State Highway No. F.A.P. 416-1(3)1; thence continuing N89°16'43"E along the line common to said Sections 21 and 28, a distance of 41.84 feet; thence S62°09'45"E, a distance of 233.33 feet; thence N27°34'27"E, a distance of 15.00 feet; thence S62°09'45"E, a distance of 659.98 feet; thence S27°53'25"W, a distance of 15.00 feet; thence S62°09'45"E, a distance of 141.75 feet to the West line of Tract 6, Blue Creek Acreage Tracts Subdivision; thence S00°40'30"E along the West line of said Tract 6, a distance of 22.76 feet to the Northerly right-of-way line of said State Highway; thence along the following (5) courses of said State Highway, N62°09'45"W, a distance of 152.62 feet; thence N48°28'24"W, a distance of 42.26 feet; thence N62°09'45"W, a distance of 515.80 feet; thence S27°50'15"W, a distance of 10.00 feet; thence N62°09'45"W, a distance of 370.13 feet to the Point of Beginning on the line common to Sections 21 and 28, containing 0.588 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

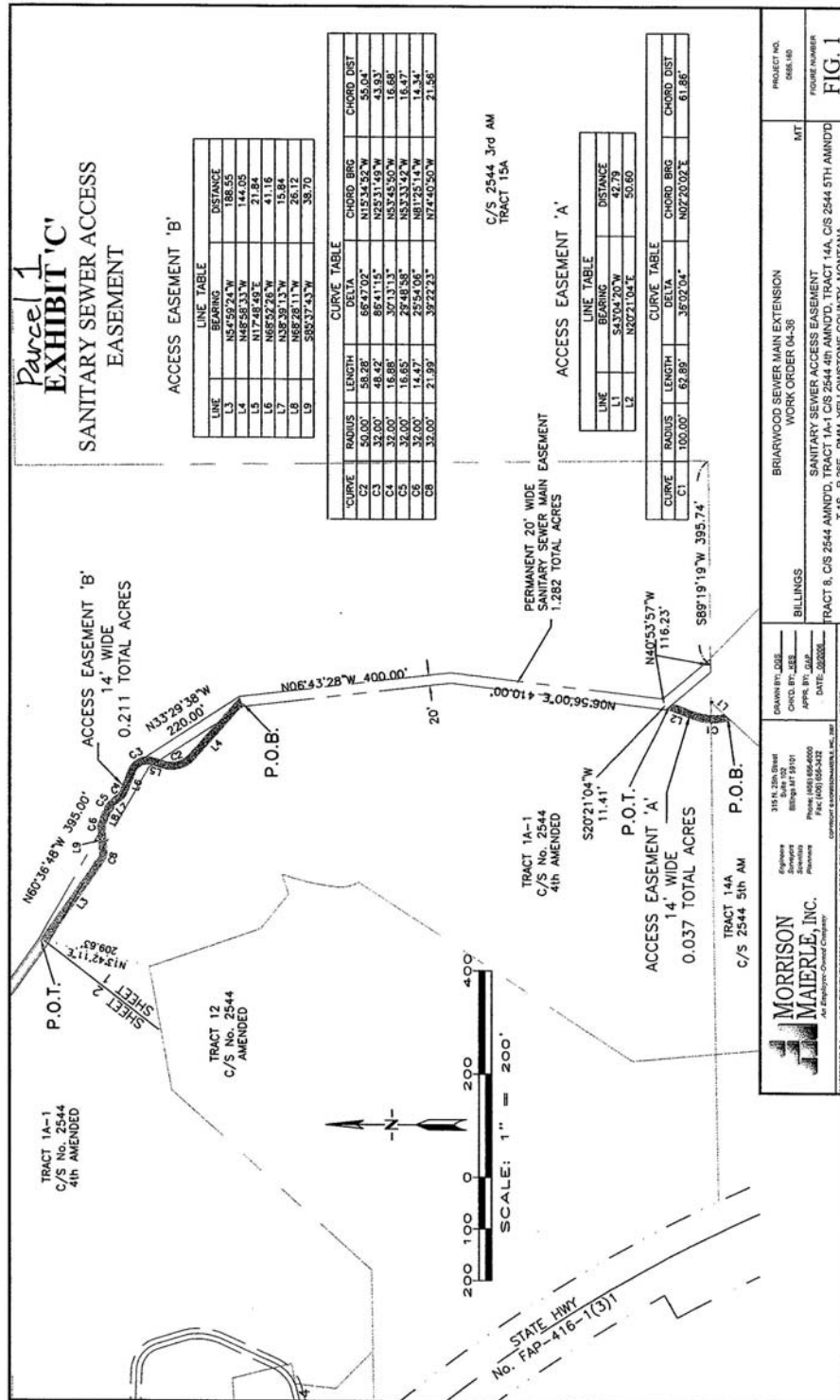
**Parcel #12**

**LEGAL DESCRIPTION:**

A permanent 20 foot wide sanitary sewer easement in Tract B-2B, Tract B-2 Amended of 2<sup>nd</sup> Amended Certificate of Survey No. 646, in Section 21, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Being the Southerly 20 feet of said Tract B-2B, coincident with the Northerly right-of- way of State Highway No. F.A.P. 416 1(3)1, containing 0.035 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.





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

## AGENDA ITEM:




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


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**TITLE:** Development Agreement with Stock Naughton LLP, owner of Lots 6B, 6C, and 6D, Block 2 of Circle Fifty Subdivision

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Stock Naughton LLP has requested a median opening on Grand Avenue between 38<sup>th</sup> Street West and Country Manor Boulevard. Stock Naughton LLP is the owner of Lots 6B, 6C, and 6D, Block 2 of Circle Fifty Subdivision. This opening will allow a left turn into the development on the north side of Grand Avenue. Left turns out of the development will be prohibited. When the development occurs on the south side of Grand Avenue, this median opening will not function properly and will need to be closed. A development agreement is required establishing the details of the closure in the future.

**ALTERNATIVES ANALYZED:**

1. Approve development agreement with Stock Naughton LLP, owner of Lots 6B, 6C, and 6D, Block 2 of Circle Fifty Subdivision.
2. Do not approve development agreement with Stock Naughton LLP, owner of Lots 6B, 6C, and 6D, Block 2 of Circle Fifty Subdivision.

**FINANCIAL IMPACT:** There is no financial impact to the City with this development agreement. The property owner will be responsible for construction of the left turn lane.

**RECOMMENDATION**

Staff recommends that Council approve the development agreement with Stock Naughton LLP, owner of Lots 6B, 6C, and 6D, Block 2 of Circle Fifty Subdivision.

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

**ATTACHMENT**

A. Development Agreement

# DEVELOPMENT AGREEMENT

FOR

## GRAND AVENUE ACCESS

**THIS DEVELOPMENT AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between **THE CITY OF BILLINGS, MONTANA**, a municipal corporation, c/o City Hall, Billings, Montana 59101, hereinafter referred to as the "City," and **Stock Naughton LLP**, a Montana company, 1135 Bluegrass Drive East, Billings, Montana 59106 hereinafter referred to as "OWNER" or "DEVELOPER"; and

**WHEREAS**, Stock Naughton, LLP. is the owner of certain real property situated in Billings, Yellowstone County, Montana, more particularly described as follows:

Amended Lots 6B, 6C, and 6D, Block 2 of Circle Fifty Subdivision;  
according to the official plat thereof on file and of record in the office of the Clerk  
and Recorder of Yellowstone County, Montana; and

**WHEREAS**, the Developer desires to develop a mixed use commercial complex of rental, lease and sale units and the City and Developer desire to place mutually agreeable conditions and restrictions on said development.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. There is attached hereto a conceptual master plan of development for the above noted properties. Said concept anticipates a common access to Grand Avenue. It is hereby agreed by the parties to this agreement that the Developer may, at Developer's sole expense, construct a three quarter movement turn bay in the median which shall be centered upon the subdivision access as detailed on the attached conceptual site plan. This three quarter movement turn bay shall allow for vehicles traveling east on Grand Avenue to turn left into the proposed development. Those exiting the development will not be allowed to turn left onto Grand Avenue.
2. All improvements contemplated under this agreement, including but not limited to a Stop sign at the exit point from the development on to Grand Avenue, shall be constructed in accordance with all applicable City and State Standards.
3. If and when the land located south of Grand Avenue directly across the road from this proposed project is developed for any purposes other than agricultural, the City may elect to, through City Work Order or under other such project as may be deemed appropriate, eliminate or direct the developer of the property located on the south side of Grand Avenue to eliminate the left turn bay by reconstructing the median thus precluding left turn movements to and from the proposed

development on Amended Lots 6B, 6C, and 6D, Block 2, Circle Fifty Subdivision. The owner or owners of the lots then subject to this agreement shall not be responsible for any costs associated with said elimination of the turn bay.

4. Binding Effect. Developer by signature subscribed hereinbelow agrees, consents, and shall be bound by the provisions of this Agreement. The covenants, agreements, and all statements in this Agreement shall run with the land and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties.
5. Attorney's Fees. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
6. Amendments and Modifications. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

“CITY”  
THE CITY OF BILLINGS  
MONTANA

By \_\_\_\_\_  
Mayor

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

STATE OF MONTANA     )  
                                      : ss  
County of Yellowstone     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively of the City of Billings, Montana, whose names are subscribed to in the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at Billings, Montana  
My commission expires: \_\_\_\_\_

“OWNER” or  
“DEVELOPER”

**Stock Naughton, LLP.**, a Montana company

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

Its: \_\_\_\_\_

STATE OF MONTANA     )  
                                      : ss  
County of Yellowstone     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of **Stock Naughton, LLP.**, the company which executed the foregoing instrument and acknowledged to me that said company executed the same. Witness my hand and seal the day and year hereinabove written.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

Approved as to Form

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





**AGENDA ITEM:**



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

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**TITLE:** Approval of Advertising Agreement  
**DEPARTMENT:** Administrative Services - Finance  
**PRESENTED BY:** Liz Kampa-Weatherwax, Purchasing Agent

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**PROBLEM/ISSUE STATEMENT:** The City of Billings regularly advertises with the Billings Gazette for help wanted and public notice display ads. This agreement combines all expenditures into one and allows for the best possible pricing structure for the City - 40% discount off of open rate. The current agreement expires March 31, 2007. Additionally, City staff has determined it would be beneficial to take advantage of the Billings Gazette's on-line advertising, which has shown to increase readership by 25%. The Billings Gazette will increase the City's percentage discount to 42% with the addition of on-line advertising to the agreement.

**ALTERNATIVES ANALYZED:**

- Approve new two-year agreement with the Billings Gazette, which includes on-line advertising and links to the City's website. Readership = 83% of community.
- Approve new two-year agreement with the Billings Gazette without on-line advertising. Readership = 58% of community.
- Pay for advertising on an as-needed basis.

**FINANCIAL IMPACT:** On average, the City spends approximately \$40,000/year in advertising. These expenditures are budgeted in various departmental budgets. By combining the classified advertising with the display advertising, the City of Billings receives the best pricing structure from the Billings Gazette. The addition of on-line advertising will increase the annual cost by approximately \$3,600/year to approximately \$43,600/year.

**RECOMMENDATION**

Staff recommends that Council approve the agreement with the Billings Gazette for both print and on-line advertising for a two-year period. The pricing structure will be reviewed each year to keep current with the City's advertising needs.

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

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

# J1

AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 2007

**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement for a Construction Permit for Parcel #10, a Portion of Lot 2, Block 1 of Croy Subdivision with Andrea D. Baker

**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 #10 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). It is not necessary to acquire any right-of-way in fee from this property owner; the only "right-of-way" necessary is a construction permit. The appraisal for this construction permit made a conclusion of value of \$200.00. A copy of the right-of-way agreement; appraisal; tax documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this construction permit is \$200.00, which is the appraised value of the permit. Funding is available for this permit from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement for Parcel #10, a Portion of Lot 2, Block 1 of Croy Subdivision with Andrea D. Baker in the amount of \$200.00, and authorize the Mayor to execute this document.

**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 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
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 for Parcel #10, a Portion of Lot 2, Block 1 of Croy Subdivision with Andrea D. Baker in the amount of \$200.00, and authorize the Mayor to execute this document.

**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
10	Lot 2, Block 1 of Croy Subdivision	22	1N	26E

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

ANDREA D. BAKER  
311 3<sup>RD</sup> AVENUE NORTH  
GREAT FALLS, MT 59401  
453-5812

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.)  
  
None
3. OTHER COMPENSATION:  
  
400 square feet Temporary Construction Permit \$200.00
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$200.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:  
  
A warrant in the amount of \$200.00, to be made payable to ANDREA D. BAKER and mailed to 311 3RD AVENUE NORTH, GREAT FALLS, MT 59401.
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 the attached Exhibit A, 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 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.
9. At no expense to the Grantor and at the time of street construction, permission is hereby granted the City to enter upon the Grantor's land, where necessary, at the location and for the purpose described as:  
  
Reconfigure and repair sprinkler system, if any, affected by project.  
  
Grantor understands and agrees that upon completion of the construction of this item located upon the Grantor's land, they shall be considered the sole property of the Grantor, and the maintenance and repair of said property shall be the responsibility of the Grantor.

(Continued from Previous Page)

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

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

Signature: Andrea D. Baker 02-17-07 516 66 3291  
(Date) Tax ID No.

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

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

RECOMMENDED FOR APPROVAL:

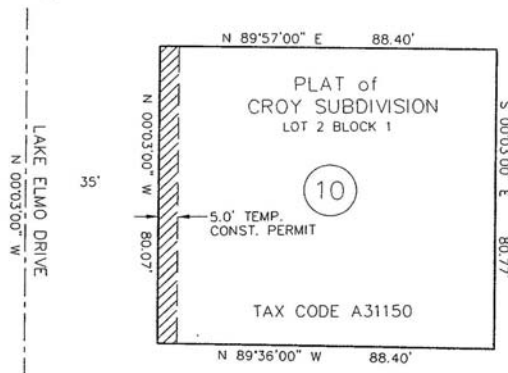
Ronald E. Olson 02-17-07  
Ronald E. Olson, Olson Land Services (Date) Mayor, City of Billings (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

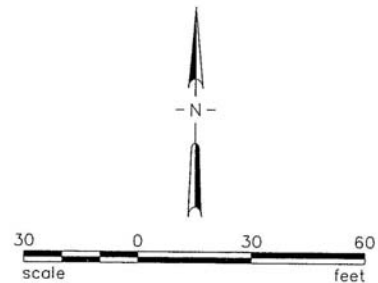
Nicholas J. Pauling 3/3/07  
City of Billings, Public Works Department (Date) City Clerk (Date)

LER-010.200 Baker

EXHIBIT A  
 TEMPORARY CONSTRUCTION PERMIT  
 LOT 2, BLOCK 1  
 PLAT OF CROY SUBDIVISION  
 YELLOWSTONE COUNTY, MONTANA



AREA OF TEMPORARY CONSTRUCTION  
 PERMIT: 400 S.F.



LEGEND

CONSTRUCTION PERMIT



**ENGINEERING, INC.**

Consulting Engineers and Land Surveyors

1300 North Transach Way  
 Billings, Montana 59102  
 Phone (406) 656-9255  
 www.enginc.com

CITY OF BILLINGS, MONTANA  
 RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 10

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

PARCEL 10.DWG

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



## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 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 #33, a Portion of Tract 1 of Certificate of Survey No. 2920 with Lorri Ann Hurry

**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 #33 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 \$3,150.00. 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 \$3,150.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #33, a portion of Tract 1 of Certificate of Survey No. 2920 with Lorri Ann Hurry in the amount of \$3,150.00, 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**

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### Future Items

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- 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:

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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.

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### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #33, a portion of Tract 1 of Certificate of Survey No. 2920 with Lorri Ann Hurry in the amount of \$3,150.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

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

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

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

Project No. W.O. 04-33 Parcel No. 32 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 17th day of January, 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:

LORRI ANN HURRY  
122 REDA LANE  
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. 32 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 1 of Certificate of Survey No. 2920, situated in the SW $\frac{1}{4}$  of Section 22, Township 1 North, Range 26 East, P.M., M., on file under Document No. 1874671, 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 473 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 376 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. 32

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

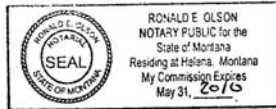
Terri Ann Hurry

State of MONTANA )

County of Yellowstone )

This instrument was acknowledged before me on January 17, 2007  
(date)

by LORRI ANN HURRY  
(names)



[Signature]  
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

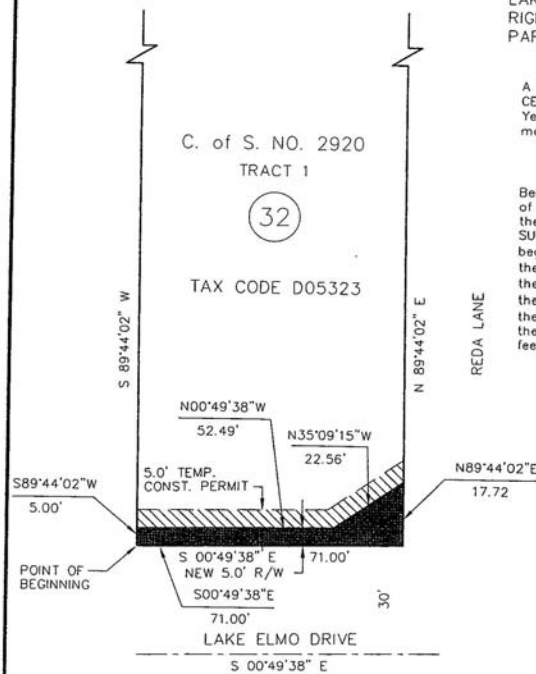
# EXHIBIT A

## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN TRACT 1, CERTIFICATE OF SURVEY NO. 2920, YELLOWSTONE COUNTY, MONTANA

LAKE ELMO DRIVE  
RIGHT-OF-WAY ACQUISITION DESCRIPTION  
PARCEL No. 32

A tract of land situated in Tract 1,  
CERTIFICATE OF SURVEY NO. 2920,  
Yellowstone County, Montana said tract being  
more particularly described as follows, to wit:

Beginning at a point on the west right-of-way  
of Lake Elmo Drive, said point of beginning being  
the southeast corner of Tract 1, CERTIFICATE OF  
SURVEY NO. 2920; thence from said point of  
beginning S. 89°44'02" W. a distance of 5.00 feet,  
thence N. 00°49'38" W. a distance of 52.49 feet,  
thence N. 35°09'15" W. a distance of 22.56 feet,  
thence N. 89°44'02" E. a distance of 17.72 feet;  
thence S. 00°49'38" E. a distance of 71.00 feet to  
the point of beginning, containing 473 square  
feet.



AREA TO BE ACQUIRED: 473 S.F.  
AREA OF TEMPORARY CONSTRUCTION  
PERMIT: 376 S.F.

30 0 30 60  
scale feet

### LEGEND

RIGHT-OF-WAY ACQUISITION  
CONSTRUCTION PERMIT



**ENGINEERING, INC.**  
Consulting Engineers and Land Surveyors  
1300 North Tronchek Way  
Billings, Montana 59102  
Phone (406) 656-5255  
www.eniginc.com

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 32

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

PARCEL 32.DWG

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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 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 #38, a Portion of Lot 7, Block 1 of Rice Subdivision with Cameron James Stefanic and Tanna Marie Stefanic

**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 #38 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 \$2,200.00. 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 \$2,200.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #38, a Portion of Lot 7, Block 1 of Rice Subdivision with Cameron James Stefanic and Tanna Marie Stefanic in the amount of \$2,200.00, 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 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
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 #38, a Portion of Lot 7, Block 1 of Rice Subdivision with Cameron James Stefanic and Tanna Marie Stefanic in the amount of \$2,200.00, 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
38	Lot 7, Block 1 of Rice Subdivision	22	1N	26E

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

CAMERON JAMES STEFANIC AND TANNA MARIE STEFANIC, a minor  
1715 OXBOW CIRCLE  
BILLINGS, MT 59105  
248-4114

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.)

503 square feet by deed	\$1,685.00
Improvements (Gravel)	\$ 327.00
3. OTHER COMPENSATION:

503 square feet Temporary Construction Permit	\$ 169.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$2,200.00
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$2,200.00, to be made payable to CAMERON JAMES STEFANIC AND TANN STEFANIC and mailed to 1715 OXBOW CIRCLE, 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 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

R/W Project: Lake Elmo Road Hilltop Road to Wicks Lane

Parcel No.: 38

(Continued from Previous Page)

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

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

X Cameron James Stefanic 12-20-06 523-51-4762  
Signature: CAMERON JAMES STEFANIC (Date) Tax ID No.

X Richard J. Stefanic 12-20-06 517-21-7893  
Signature: Richard J. Stefanic, conservator for the estate (Date) Tax ID No.  
TANNA MARIE STEFANIC

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 12-20-06  
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicholas J. Bailey 1/8/07  
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-038.200 Stefanic

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

Project No. W.O. 04-33 Parcel No. 38 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 20th day of December, 2006

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:

CAMERON JAMES STEFANIC AND TANNA MARIE STEFANIC, a minor  
1715 OXBOW CIRCLE  
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. 38 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, Block 1 of Rice Subdivision, in the City of Billings, on file under Document No. 539205, 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 503 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 503 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. 38

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Cameron James Stefanic  
CAMERON JAMES STEFANIC

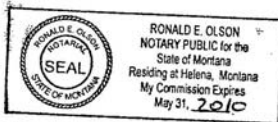
Richard J. Stefanic  
Richard J. Stefanic, conservator for the estate of  
TANNA MARIE STEFANIC, a minor

State of MONTANA )  
County of Yellowstone )

This instrument was acknowledged before me on December 20, 2006  
(date)

by CAMERON JAMES STEFANIC and RICHARD J. STEFANIC, conservator for the estate of  
TANNA MARIE STEFANIC, a minor

(names)



Richard J. Stefanic  
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

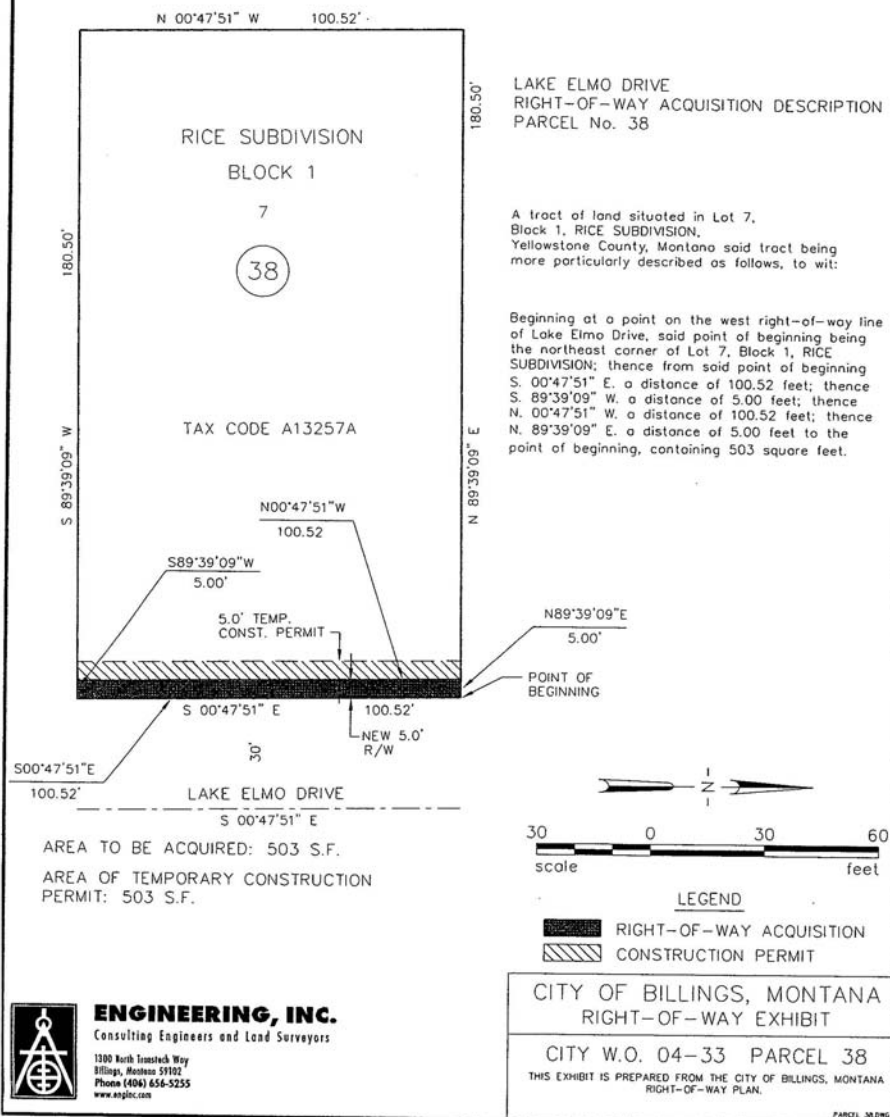
County of Yellowstone )

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 7, BLOCK 1, RICE SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



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



## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 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 #49, a Portion of Lot 21, Block 1 of Broadmoor Subdivision with Donald L. Nave and Ruth A. Nave

**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 #49 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 \$6,250.00. 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 \$6,250.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #49, a Portion of Lot 21, Block 1 of Broadmoor Subdivision with Donald L. Nave and Ruth A. Nave in the amount of \$6,250.00, and authorize the Mayor to execute these documents.

### ATTACHMENT

Appendix A

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

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- 2009-2010 – Design and construction of street improvements (in CIP)

## **BACKGROUND**

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<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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
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 #49, a Portion of Lot 21, Block 1 of Broadmoor Subdivision with Donald L. Nave and Ruth A. Nave in the amount of \$6,250.00, 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
49	Lot 21, Block 1 of Broadmoor Subdivision	22	1N	26E

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

DONALD L. NAVE AND RUTH A. NAVE  
2139 ALKALI CREEK ROAD  
BILLINGS, MT. 59105  
248-6988

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.)

900 square feet by deed	\$3,870.00
Improvements (Trees, sod)	\$2,231.00
3. OTHER COMPENSATION:

300 square feet Temporary Construction Permit	\$ 129.00
---	-----------
4. TOTAL COMPENSATION ROUNDED PER THE APPRAISAL (includes all damages to the remainder): \$6,250.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$6,250.00, to be made payable to DONALD L. NAVE AND RUTH A. NAVE and mailed to 2139 ALKALI CREEK 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 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

R/W Project: Lake Elmo Road Hilltop Road to Wicks Lane

Parcel No.: 49

(Continued from Previous Page)

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

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

X Donald L. Nave 1-24-07 70 201 3945  
Signature: DONALD L. NAVE (Date) Tax ID No.

X Ruth A. Nave 1-24-07 516 20 2194  
Signature: RUTH A. NAVE (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 1-24-07  
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Yvonne A. Bailey 3/5/07  
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-049.200 Nave

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

Project No. W.O. 04-33 Parcel No. 49 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 24th day of JANUARY, 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:**

DONALD L. NAVE AND RUTH A. NAVE  
2139 ALKALI CREEK 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. 49 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 21, Block 1 of Broadmoor Subdivision, in the City of Billings, on file under Document No. 411808, 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 900 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 300 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. 49

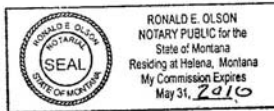
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Ronald L. Nave  
Ruth A. Nave

State of Montana )  
County of Yellowstone )

This instrument was acknowledged before me on JANUARY 24, 2007  
(date)

by Donald L. Nave AND Ruth A. Nave  
(names)



Ruth A. Nave  
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 )

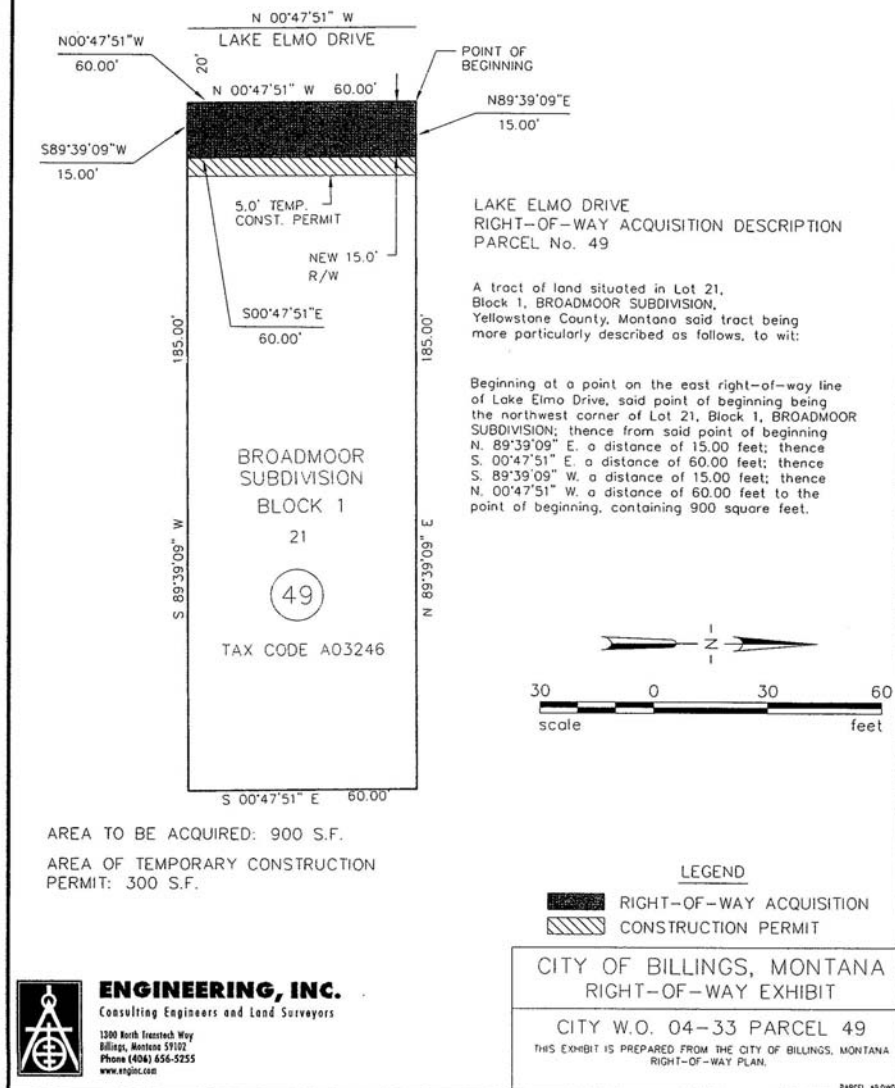
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. 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 21, BLOCK 1, BROADMOOR SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 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 #55, a Portion of Lot 1, Block 2 of Uinta Park Subdivision with Dena and Uriah Edmunds

**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 #55 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 \$1,350.00. 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 \$1,350.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

#### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for parcel #55, a Portion of Lot 1, Block 2 of Uinta Park Subdivision with Dena and Uriah Edmunds in the amount of \$1,350.00, 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 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
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 #55, a Portion of Lot 1, Block 2 of Uinta Park Subdivision with Dena and Uriah Edmunds in the amount of \$1,350.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

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

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

<u>Lake Elmo Road Hilltop Road to Wicks Lane</u> DESIGNATION	Work Order: 04-33 Project No. 05153	Yellowstone COUNTY
Parcel No. 55	Parcel Description Lot 1, Block 2 of Uinta Park Subdivision	Section 22      Township 1N      Range 26E
List Names & Addresses of the Grantors (Contract Purchaser, Contract Seller, Lessee, etc.)		
DENA EDMUNDS AND URIAH EDMUNDS 394 UINTA PARK DRIVE BILLINGS, MT. 59105 252-3040; 206-4715		

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.)

80 square feet by deed	\$520.00
Improvements (Landscaping)	\$150.00
3. OTHER COMPENSATION:

1,009 square feet Temporary Construction Permit	\$656.00
---	----------
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$1,350.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$1,350.00, to be made payable to DENA EDMUNDS AND URIAH EDMUNDS and mailed to 394 UINTA PARK DRIVE, 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 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)

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

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

X		2/17/07	516-23-0964
	Signature: DENA EDMUNDS	(Date)	Tax ID No.
X		2/17/07	525-43-0325
	Signature: URIAH EDMUNDS	(Date)	Tax ID No.

Signature: _____	(Date) _____	Tax ID No. _____
------------------	--------------	------------------

RECOMMENDED FOR APPROVAL:

 2-17-07  
 Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

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

ATTEST:

 3/2/07  
 City of Billings, Public Works Department (Date)

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

LER-055.200 Edmunds

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

Project No. W.O. 04-33 Parcel No. 55 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 17th day of February, 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:

DENA EDMUNDS AND URIAH EDMUNDS  
394 UINTA PARK 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. 55 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 1, Block 2 of Uinta Park Subdivision, in the City of Billings, on file under Document No. 3234621, 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 80 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 1,009 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

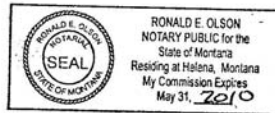
Parcel No. 55

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Dena Edmunds  
Dena Edmunds  
State of MONTANA )  
County of Yellowstone )

This instrument was acknowledged before me on February 17, 2007  
(date)

by Dena Edmunds and Ulrich Edmunds  
(names)



[Signature]  
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 \_\_\_\_\_

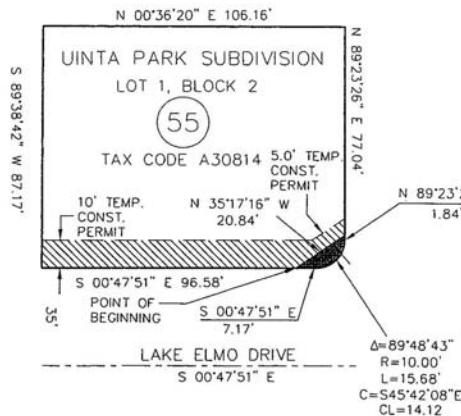
Print Name

# EXHIBIT A

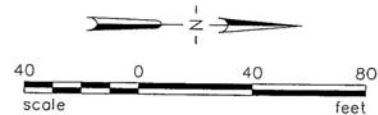
## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 1, BLOCK 2 UINTA PARK SUBDIVISION YELLOWSTONE COUNTY, MONTANA

LAKE ELMO DRIVE  
RIGHT-OF-WAY ACQUISITION DESCRIPTION  
PARCEL No. 55

A tract of land situated in Lot 1,  
BLOCK 2, UINTA PARK SUBDIVISION  
Yellowstone County, Montana said tract being  
more particularly described as follows, to wit:



From a point on the west right-of-way line of Lake Elmo Drive, said point being the southeast corner of Lot 1, Block 2, UINTA PARK SUBDIVISION; thence N. 0° 47'51" W. a distance of 89.41 feet to the TRUE POINT OF BEGINNING, thence N. 35°17'16" W. a distance of 20.84 feet, thence N. 89°23'26" E. a distance of 1.84 feet, thence along a tangent curve to the right having a Radius of 10.00 feet, a Delta of 89°48'43" and a Length of 20.84 feet (said curve being subtended by a chord bearing S. 45°42'08" E. a distance of 14.12 feet); thence S. 0°47'51" E. a distance of 7.17 feet to the TRUE POINT OF BEGINNING, containing 80 square feet.



AREA TO BE ACQUIRED: 80 S.F.  
AREA OF TEMPORARY CONSTRUCTION PERMIT: 1009 S.F.

### LEGEND

RIGHT-OF-WAY ACQUISITION  
 CONSTRUCTION PERMIT



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

1300 North Front Street  
Billings, Montana 59101  
Phone (406) 656-9255  
www.enginc.com

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 55

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

PARCEL 55 01/05

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

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, March 26, 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 #64, a Portion of Lot 15, Block 3 of Arrowhead Subdivision with David E. Harris

**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 #64 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 \$3,400.00. 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 \$3,400.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #64, a Portion of Lot 15, Block 3 of Arrowhead Subdivision with David E. Harris in the amount of \$3,400.00, 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 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
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 #64, a Portion of Lot 15, Block 3 of Arrowhead Subdivision with David E. Harris in the amount of \$3,400.00, 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
64	Lot 15, Block 3 of Arrowhead Subdivision	22	1N	26E

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

DAVID E. HARRIS  
1407 LAKE ELMO DRIVE  
BILLINGS, MT. 59105  
256-7505

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.)

340 square feet by deed  
Improvements (Chain link fence, concrete driveway, lawn)

\$2,125.00

~~\$752.00~~

3. OTHER COMPENSATION:

typo 3/2/07 NB

444 square feet Temporary Construction Permit

\$278.00

4. TOTAL COMPENSATION ROUNDED PER THE APPRAISAL (includes all damages to the remainder): \$3,400.00.

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

A warrant in the amount of \$3,400.00, to be made payable to DAVID E. HARRIS and mailed to 1407 LAKE ELMO DRIVE, 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

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 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.

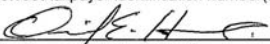
R/W Project: Lake Elmo Road Hilltop Road to Wicks Lane

Parcel No.: 64

(Continued from Previous Page)

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

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

 1-24-07 517-64-7274  
Signature: DAVID E. HARRIS (Date) Tax ID No.

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

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

RECOMMENDED FOR APPROVAL:

 1-24-07  
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-064.200 Harris



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

Project No. W.O. 04-33 Parcel No. 64 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 24th day of January, 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:**

DAVID E. HARRIS  
1407 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. 64 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 15, Block 3 of Arrowhead Subdivision, on file under Document No. 452936, 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 340 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 444 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. 64

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

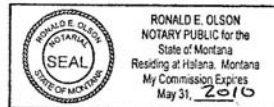
David E. Harris

State of MONTANA )

County of Yellowstone )

This instrument was acknowledged before me on January 24, 2007  
(date)

by DAVID E. HARRIS  
(names)



R. Olson  
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 )

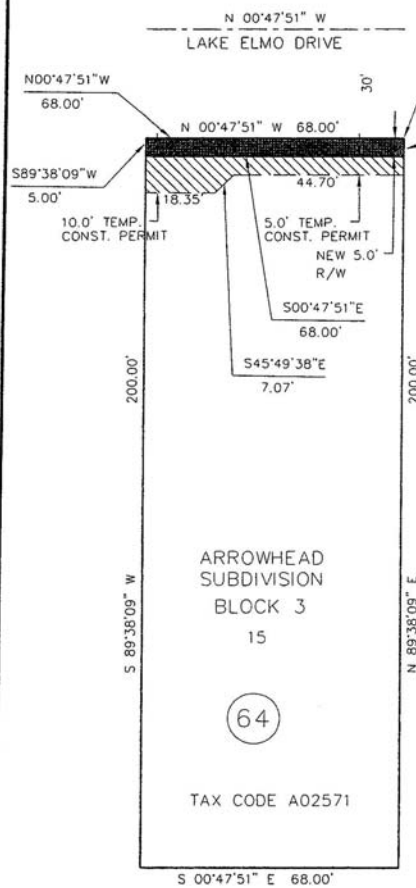
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. 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 15, BLOCK 3, ARROWHEAD SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



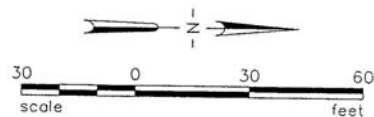
LAKE ELMO DRIVE  
RIGHT-OF-WAY ACQUISITION DESCRIPTION  
PARCEL No. 64

A tract of land situated in Lot 15,  
Block 3, ARROWHEAD 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 of beginning being  
the northwest corner of Lot 15, Block 3, ARROWHEAD  
SUBDIVISION; thence from said point of beginning  
N. 89°38'09" E. a distance of 5.00 feet; thence  
S. 00°47'51" E. a distance of 68.00 feet; thence  
S. 89°38'09" W. a distance of 5.00 feet; thence  
N. 00°47'51" W. a distance of 68.00 feet to the  
point of beginning, containing 340 square feet.

AREA TO BE ACQUIRED: 340 S.F.

AREA OF TEMPORARY CONSTRUCTION  
PERMIT: 444 S.F.



### LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 64

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



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

1100 North Transack Way  
Billings, Montana 59102  
Phone (406) 656-5255  
www.enrinc.com

PARCEL 64 CHC

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

# K1

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 2007

TITLE: Arthritis Foundation Street Closure  
DEPARTMENT: Parks, Recreation and Public Lands  
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

**PROBLEM/ISSUE STATEMENT:** The Arthritis Foundation requests temporary closure of 2<sup>nd</sup> Ave. N. and 3<sup>rd</sup> Ave. N. from N. 24<sup>th</sup> St. to N. 33<sup>rd</sup> St. from 8:00am to 1:00 pm for the 1<sup>st</sup> Annual Run & Walk event on Saturday, April 28<sup>th</sup>, 2007.

Recommended conditions of approval include the Arthritis Foundation:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event 30 days in advance
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 and signs directing motorists around closure
6. Provide 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 for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for by the Arthritis Foundation.

#### RECOMMENDATION

Staff recommends that Council approve closure of the above named streets on Saturday, April 28<sup>th</sup>, 2007 for the Arthritis Foundation 1<sup>st</sup> Annual Run & Walk.

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

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

## AGENDA ITEM:



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

TITLE: Montana Pride Network Parade Closure  
DEPARTMENT: Parks, Recreation and Public Lands  
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

**PROBLEM/ISSUE STATEMENT:** The Montana Pride Network requests street closures at 9:00 am using the standard parade route for the Gay Pride Parade on Saturday, June 16, 2007. The parade will assemble at 9:00 am, begin at 10:00 am and disband by 11:30 am.

Recommended conditions of approval include the Montana Pride Network:

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 a certificate of insurance naming City of Billings as additional insured
6. Provide and install adequate traffic barricades and signs directing motorists around closure

#### **ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** There are no costs to the city other than administrative time to process the application. Police, traffic control and litter removal for are to be paid for by the Montana Pride Network.

#### **RECOMMENDATION**

Staff recommends that Council approve closure of the event route described above on Saturday, June 16, 2007 for the annual Gay Pride Parade.

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

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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 2007

**TITLE:** Chase Hawks Association Burn the Point Parade and Street Dance  
**DEPARTMENT:** Parks, Recreation and Public Lands  
**PRESENTED BY:** Mike Whitaker, Parks, Recreation and Public Lands Director

**PROBLEM/ISSUE STATEMENT:** The Chase Hawks Association requests temporary street closures for a parade and street dance on Friday, August 31, 2007. Event times and locations are as follows:

Parade: Established downtown parade route beginning at 6:00 pm.

Street Dance: To be held immediately following parade under the Skypoint and will end at 1:00 am Saturday morning. The street closure will be located on North 28<sup>th</sup> Street between N. 27<sup>th</sup> Street to N. 29<sup>th</sup> Street and from 1<sup>st</sup> Ave. North to 3<sup>rd</sup> Ave. North.

Recommended conditions of approval include Chase Hawks Association:

1. Provide security for the event to insure there is no alcohol consumed in the public right of way during the street dance.
2. Contact all businesses and make them aware of the event 60 days in advance.
3. Clean the area to be used and provide and empty waste cans after the event.
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event.
5. Have the Billings Fire Department provide inspections of vendors.
6. Provide a certificate of insurance naming the City of Billings as additional insured.
7. Provide and install adequate traffic barricades and signs directing motorists around closure.
8. Provide a 20' emergency vehicle access lane on one side of street that is free of kiosks, cars, or anything other than pedestrians.
9. Obtain proper noise permit from Billings Police Department.

### ALTERNATIVES ANALYZED:

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

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

**RECOMMENDATION**

Staff recommends that Council approve closures for the parade and street dance on Friday, August 31, 2007 subject to the conditions of approval.

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

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, March 26, 2007**

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**TITLE:** Quarterly Report for Pledged Collateral for US Bank, Sterling Bank and Wells Fargo Certificates of Deposit, US Bank Repurchase Account, and US Bank Municipal Investor Account

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** On December 31, 2006, the City had \$4,000,000 invested in certificates of deposit at Wells Fargo Bank, Billings; \$1,000,000 in certificates of deposit at Sterling Savings Bank, Billings; \$5,271,280.41 invested in the U.S. Bank Municipal Investor Account; and \$12,505,075.00 in the US Bank Repurchase Account. The City also has \$2,000,000 in a non compensating certificate of deposit at US Bank, Billings. The earning credits are applied to our bank charges.

Because Wells Fargo's net worth ratio is over 6%, the City is required to have a minimum of 50% of the deposits covered by pledged securities. Wells Fargo has collateralized the City's deposits with 143% in pledged securities.

Because Sterling Savings Bank's net worth ratio is over 6%, the City is required to have a minimum of 50% of the deposits covered by pledged securities. Sterling Savings Bank has collateralized the City's deposits with 106% in pledged securities.

Because US Bank's net worth ratio is in excess of 6%, the City is required to have a minimum of 50% of the deposits covered by pledged securities. US Bank has collateralized the City's Municipal Investor Account with 155.42% in pledged securities and collateralized the Repurchase Account with 102 % in pledged securities.



## **RECOMMENDATION**

Staff recommends that Council approve securities pledged by Wells Fargo Bank, Sterling Savings Bank and US Bank as collateral for their respective certificates of deposit and repurchase accounts.

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

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

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AGENDA ITEM:



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

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TITLE: Semi Annual Investment Report  
DEPARTMENT: Administration-Finance Division  
PRESENTED BY: Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** The City of Billings Investment Policy states the Finance Division shall submit semi-annually, an investment report describing the portfolio in terms of type, interest rate, and maturity date. In addition, the investment policy requires the funds average maturity may not exceed 397 days. On December 31, 2006 the City had the following amounts invested:

Repurchase Agreements	\$ 12,505,075.00
Montana State Short Term Investment Pool	\$ 20,675,806.89
U.S. government and U.S. agency obligations	\$ 61,652,000.00
Certificates of deposit	\$ 5,000,000.00
US Bank Municipal Investor	\$ 5,271,280.41

Total Investments \$105,104,162.30

Funds Average Days to Maturity 254 Days

Effective Rate of Return (7/01/06 to 12/31/06) 5.13%

**RECOMMENDATION**

Staff recommends that Council approve the Semi-Annual Investment Report.

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

## **ATTACHMENT**

A – Investment Detail

<b>Issuer</b>	<b>Par Value</b>	<b>YTM 365 Equiv.</b>	<b>Maturity Date</b>
Federal Farm Credit Bank	510,000.00	2.35	03/26/2007
Federal Farm Credit Bank	325,000.00	5.121	07/14/2008
Federal Farm Credit Bank	1,000,000.00	5.51	11/24/2008
Federal Home Loan Bank	1,000,000.00	4.65	01/17/2007
Federal Home Loan Bank	1,000,000.00	5.11	02/09/2007
Federal Home Loan Bank	300,000.00	4.378	02/16/2007
Federal Home Loan Bank	2,500,000.00	2.551	02/28/2007
Federal Home Loan Bank	300,000.00	4.515	04/16/2007
Federal Home Loan Bank	300,000.00	5.267	04/23/2007
Federal Home Loan Bank	1,000,000.00	3.356	06/13/2007
Federal Home Loan Bank	1,000,000.00	2.25	06/26/2007
Federal Home Loan Bank	2,000,000.00	4.757	06/29/2007
Federal Home Loan Bank	500,000.00	4.953	07/16/2007
Federal Home Loan Bank	200,000.00	5.382	08/15/2007
Federal Home Loan Bank	500,000.00	5.219	08/22/2007
Federal Home Loan Bank	1,190,000.00	5.02	09/14/2007
Federal Home Loan Bank	550,000.00	4.831	10/22/2007
Federal Home Loan Bank	800,000.00	4.814	10/26/2007
Federal Home Loan Bank	855,000.00	5	12/28/2007
Federal Home Loan Bank	145,000.00	5	12/28/2007
Federal Home Loan Bank	300,000.00	5.21	12/28/2007
Federal Home Loan Bank	250,000.00	5.658	01/03/2008
Federal Home Loan Bank	825,000.00	5.372	01/25/2008
Federal Home Loan Bank	700,000.00	5.2	01/25/2008
Federal Home Loan Bank	1,000,000.00	4.875	01/30/2008
Federal Home Loan Bank	1,000,000.00	5.509	02/21/2008
Federal Home Loan Bank	1,500,000.00	5.1	02/28/2008
Federal Home Loan Bank	1,000,000.00	5.307	02/28/2008
Federal Home Loan Bank	1,000,000.00	5.21	03/14/2008
Federal Home Loan Bank	500,000.00	5.185	03/14/2008
Federal Home Loan Bank	500,000.00	5.139	03/28/2008
Federal Home Loan Bank	1,000,000.00	5.25	04/04/2008
Federal Home Loan Bank	500,000.00	5.256	04/04/2008
Federal Home Loan Bank	250,000.00	5.5	04/10/2008
Federal Home Loan Bank	1,000,000.00	5.088	05/12/2008
Federal Home Loan Bank	500,000.00	5.299	05/15/2008
Federal Home Loan Bank	500,000.00	5.25	06/27/2008
Federal Home Loan Bank	1,000,000.00	4.53	06/30/2008
Federal Home Loan Bank	500,000.00	4.836	08/13/2008
Federal Home Loan Bank	1,000,000.00	5.255	08/13/2008
Federal Home Loan Bank	1,000,000.00	5.52	08/14/2008
Federal Home Loan Bank	975,000.00	5.381	09/05/2008
Federal Home Loan Bank	525,000.00	5.313	09/18/2008
Federal Home Loan Bank	5,000,000.00	5.45	10/24/2008

Federal Home Loan Bank	500,000.00	4.555	12/05/2008
Federal Home Loan Bank	500,000.00	4.549	12/12/2008
Federal Home Loan Bank	1,000,000.00	5.178	10/05/2007
Federal Home Loan Mtg Corp	500,000.00	5.387	03/15/2007
Federal Home Loan Mtg Corp	3,000,000.00	5.177	04/24/2007
Federal Home Loan Mtg Corp	2,000,000.00	4.782	10/05/2007
Federal Home Loan Mtg Corp	500,000.00	5.33	05/23/2008
Federal National Mtg Assn	2,012,000.00	4.602	05/23/2007
Federal National Mtg Assn	300,000.00	4.915	07/15/2007
Federal National Mtg Assn	2,500,000.00	5.401	08/10/2007
Federal National Mtg Assn	2,000,000.00	5.2	09/28/2007
Federal National Mtg Assn	500,000.00	5.5	11/23/2007
Federal National Mtg Assn	500,000.00	5.231	02/22/2008
Federal National Mtg Assn	1,000,000.00	5.404	04/03/2008
Federal National Mtg Assn	2,000,000.00	5	06/06/2008
Federal National Mtg Assn	2,000,000.00	5.25	06/18/2008
Federal National Mtg Assn	1,000,000.00	5.25	06/18/2008
Federal National Mtg Assn	500,000.00	5.5	06/26/2008
Federal National Mtg Assn	1,000,000.00	5.25	12/15/2008
U.S. Treasury	5,000.00	6.247	02/15/2007
U.S. Treasury	10,000.00	6.122	08/15/2007
U.S. Treasury	10,000.00	5.498	02/15/2008
U.S. Treasury	10,000.00	5.998	08/15/2009
U.S. Treasury	5,000.00	6.498	02/15/2010
<b>TOTAL</b>	<b>61,652,000.00</b>		
MT Short Term Investment Pool	<b>20,675,806.89</b>		
Wells Fargo Bank-CD	4,000,000.00	4.481	02/25/2007
Sterling Savings-CD	1,000,000.00	5.728	12/22/2007
<b>TOTAL</b>	<b>5000000.00</b>		
US Bank-MIA	<b>5,271,280.41</b>	4.95	
US Bank-Repurchase	<b>12,505,075.00</b>		

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

## AGENDA ITEM:




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


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**TITLE:** Annexation Request #07-06 Acknowledge Request, Approve Resolution of Intent to Annex, and Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The City of Billings, property owner, submitted a letter of request to annex land to the City of Billings under 7-2-4403, MCA. The subject property is located at the northwest corner of 54<sup>th</sup> St. West and Colton Blvd. and is the future site of the Cottonwood Park and a proposed School District #2 elementary school. The approximately 40-acre property is vacant and the City is requesting annexation and a concurrent rezoning of the property in order to proceed with obligations made in a 2002 Development Agreement when the property was donated to the City. The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property.

Concurrent with this annexation, the City Parks, Recreation, and Public Lands Department is requesting a rezoning of the property, to change the zoning from Agricultural-Open Space and Residential-15000 to Public. The City Council may hear the annexation request and zone change request at the same public hearing. Staff is coordinating these two processes to allow the dual hearing to take place.

**ALTERNATIVES ANALYZED:** MCA, Section 7-2-4403 allows government officials to request annexation of city-owned property on behalf of the City. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City already owns the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for April 23, 2007, to consider annexing the property.

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

**ATTACHMENTS**

- A. Property data
- B. Resolution of Intent to Annex and Set Public Hearing
- C. Map

## **ATTACHMENT A**

### **Annexation #07-06 Property Data**

Type of annexation:	Annexation of Contiguous Government Land - MCA 7-2-4403
Request from:	Christina Volek, Billings City Administrator
Purpose of annexation:	Bring property into the City that will be developed as Cottonwood Park and a possible elementary school
Property included:	Tracts 1 & 2 of C/S 1323; Tract 1 of C/S 1815; Tract 2D of Corrected Amended Tract 2 of C/S 1952; Yellowstone Meadows-Phase One Parkland; Yellowstone Meadows-Phase Three Parkland; Lots 33, 34, 63, and 64 of Sunny Cove Fruit Farms, and all adjacent right-of-way of 54 <sup>th</sup> St. W., 56 <sup>th</sup> St. W., and Colton Blvd.
Location:	Northwest corner of 54 <sup>th</sup> St. West and Colton Blvd.
Total area:	42.262 gross acres; 38.334 net acres
Current zoning:	Agricultural-Open Space; Residential-15,000
Current land use:	Vacant
Future land use:	Cottonwood Park; possible elementary school



## **RESOLUTION NO. 07-**

### **A RESOLUTION OF THE CITY OF BILLINGS TO CONSIDER ANNEXING TERRITORY UNDER TITLE 7, CHAPTER 2, PART 44 OF THE MONTANA CODE ANNOTATED, AND FIXING A DATE FOR A PUBLIC HEARING ON THE QUESTION OF ANNEXATION**

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

WHEREAS, the City of Billings is the owner of the territory; and

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

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

Tracts of land situated in the E1/2 of Section 31, and the NW1/4 Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tracts 1 & 2, of Certificate of Survey 1323, Recorded June 27, 1973, under Document No. 9397800, Records of Yellowstone County;

Tract 1, of Certificate of Survey 1815, Recorded September 7, 1978, under Document No. 1103210, Records of Yellowstone County;

Tract 2D, of Corrected Amended Tract 2 of Certificate of Survey 1952, Recorded September 22, 1988, under Document No. 1498658, Records of Yellowstone County;

Park land, Yellowstone Meadows-Phase One, Recorded December 15, 1970, under Document No. 873104, Records of Yellowstone County;

Park land, Yellowstone Meadows-Phase Three, Recorded December 6, 1976, under Document No. 1035948, Records of Yellowstone County;

Lots 33, 34, 63 and 64 of Sunny Cove Fruit Farms, Recorded April 27, 1910, under Document No. 21540, Records of Yellowstone County.

Including that portion of adjoining Yellowstone County Road easement for 54<sup>th</sup> Street West, also described as a portion County Road Petition Number 49, filed April 20, 1892, Notice of Opening Road filed June 14, 1892, and all adjacent right-of-way of 54<sup>th</sup> Street West, 56<sup>th</sup> Street West and Colton Boulevard.

Containing 42.262 gross acres, and 38.334 net acres.

(# 07-06) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in MCA, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on April 23, 2007.
5. PROCEDURE. All procedures as required under MCA, Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 26th day of March, 2007.

THE CITY OF BILLINGS:

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

Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Cam Trudeau, Deputy City Clerk

(AN #07-06)

## EXHIBIT A





AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, March 26, 2007**

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**TITLE:** Annexation Petition #07-07: Acknowledge receipt of Petition and Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** Owners and petitioners, Cal Kunkel and Gareld Krieg, are requesting annexation of a property legally described as Lots 1-5, Block 1, Western Sky Subdivision located in the NW 1/4, Section 15, Township 1S, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the southeast corner of the intersection of King Avenue and 48<sup>th</sup> Street West. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a major commercial and residential subdivision. The subject property is currently vacant agricultural land and is zoned Agricultural Open Space (AO). A concurrent zone change has been submitted for the property from Agricultural Open Space to Community Commercial, Residential Multi-Family Restricted, Residential 5000, and Residential 7000. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for April 23, 2007; the Council will vote on the petition at that public hearing.

**ALTERNATIVES ANALYZED:** Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is bordered on the west and southwest by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next six (6) years.

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

### **RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for April 9, 2007, to consider annexing this property.

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

### **ATTACHMENTS**

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

**ATTACHMENT A**

Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Cal Kunkel and Gareld Krieg
Purpose of annexation:	To obtain City Services
Property included:	Lots 1-5, Block 1, Western Sky Subdivision
Location:	The southeast corner of the intersection of King Avenue and 48 <sup>th</sup> Street West
Total area:	150 acres
Current zoning:	Agricultural Open Space
Current land use:	Vacant
Future zoning:	Community Commercial, Residential Multi-Family Restricted, Residential 5000, and Residential 7000
Future land use:	Commercial and Residential Development

## **ATTACHMENT B**

### **Annexation Petition**

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

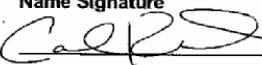
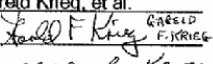
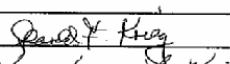
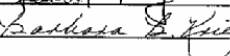
##### **NOTICE TO PETITIONER**

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

##### **INSTRUCTIONS**

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.  
The map must show:
  - a. The present and proposed boundaries of the municipality;
  - b. The present streets, major trunk water mains and sewer mains;
  - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parnly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

##### **RESIDENT FREEHOLDER ELECTORS**

Date	Print Name	Name Signature	Address
2-2-07	Cal Kunkel		3810 Laredo Place Billings, MT 59102
	Gareld Krieg, et al.		3115 Sycamore Lane Billings, MT 59102
1/2/07			Billings, MT 59102
1/2/07	BARBARA B. KRIEG		" "

(continued on separate page)

(Should be completed prior to obtaining signatures of resident freeholder electors)

**DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS**

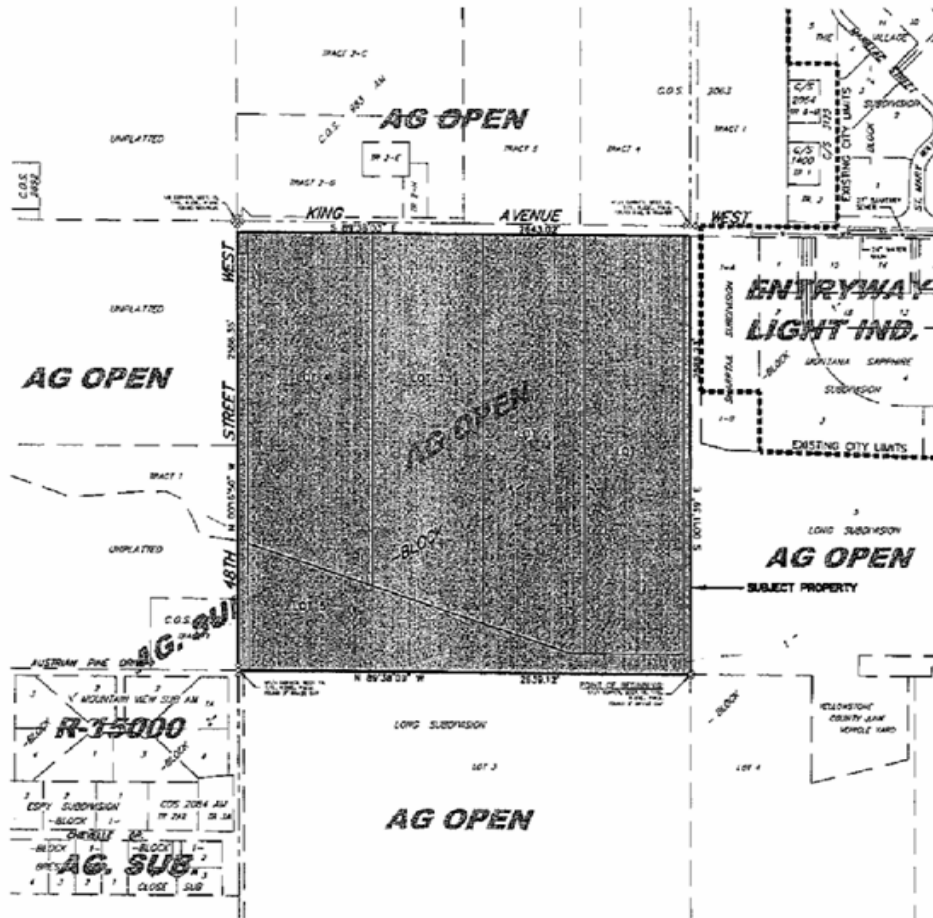
Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
Lot 1, Block 1, Western Sky Subdivision	Pending	Pending	Agriculture	Cal Kunkel	3310 Laredo Place Billings, MT 59102	406/248-2670
Lot 2, Block 2, Western Sky Subdivision	Pending	Pending	Agriculture	Gareld Krieg, et al.	3115 Sycamore Lane Billings, MT 59102	406/656-5329
Lot 3, Block 1, Western Sky Subdivision	Pending	Pending	Agriculture	Gareld Krieg, et al.	3115 Sycamore Lane Billings, MT 59102	406/656-5329
Lot 4, Block 1, Western Sky Subdivision	Pending	Pending	Agriculture	Gareld Krieg, et al.	3115 Sycamore Lane Billings, MT 59102	406/656-5329
Lot 5, Block 1, Western Sky Subdivision	Pending	Pending	Agriculture	Gareld Krieg, et al.	3115 Sycamore Lane Billings, MT 59102	406/656-5329

**ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF**

Date Submitted: 2/6/07 Received By: [Signature] Petition Number: BA07 - 067  
 Fee Paid: 2/21/07 (application start date)



**ATTACHMENT C**  
**Annexation Map**



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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 2007

**TITLE:** Soccer Contribution for a Seasonal Position at Amend Park

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

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

#### PROBLEM/ISSUE STATEMENT:

The City of Billings Park, Recreation, and Public Lands has received a commitment from the Billings Soccer organizations that play at Amend Park to fund a 6 month seasonal position for the PRPL – Parks crew that will start on or about April 1<sup>st</sup> for a 6 months work period. There is a strong need to provide better maintenance for the playing field area at Amend Park but city funding is not available. The Billings Soccer organizations realize this and will fund the position to improve the ongoing maintenance there. The position will be dedicated to the playing field maintenance at Amend Park. The person will be part of the Parks Division Seasonal Staff but will work closely with a Field Maintenance Committee in the Amend Park Development Council during the playing seasons. The Parks Division will continue with the current Full-time and Seasonal staffing assigned to the park in addition to this position. The Amend Park Development Council and Soccer organizations will continue to administer Use Permits for the park, layout and paint the fields, and operate the concession stand. The Billings Park, Recreation and Cemetery Board reviewed the contribution proposal for the position at the March 14, 2007 regular meeting and recommends that it be accepted by City Council.

#### ALTERNATIVES ANALYZED:

- Accept the funding for the position and add the seasonal position it will pay for to the seasonal staff. Staff recommendation.
- Decline the donation.

#### FINANCIAL IMPACT:

The position will be funded at a pay rate starting at \$12.00 per hour, which should be high enough to attract a qualified Seasonal Worker with landscape maintenance experience. The City will be reimbursed for all personnel costs incurred for the position up to \$15,000 per year. The amount for the spring of 2007 will be \$6,934. There will be no financial impact to the City.

### **RECOMMENDATION**

Staff recommends that Council accept the donation of \$15,000 per year from the Amend Park Development Council for a seasonal position at Amend Park.

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

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

## Compassion Weekend

March 31<sup>st</sup> – April 1<sup>st</sup>  
City Projects

General Manager: George Burgin  
Coaches:

Craig and Lisa Hazen: 245-6649 (Riverfront Park)  
Tim Milam: 208-3989 (Riverfront Park)  
Tim Davis: 861-9928 (Central Park)  
Dennis Forleo: 591-2864 (Castle Rock Park)  
Russ Carlson: 671-7253 (Mountview Cemetery)  
Wes Fangsrud: 655-1905 (Tree Planting)  
Doug McGrail: 591-0769 (Rim Rock West Park)  
John Wilson: 861-3235 (South Park)  
Chad Richards: 672-0518 (South Park ball diamond)

### Projects:

1. Demo of play structure at Central (Tim Davis)
2. Riverfront Park (C. Hazen, T. Milam)
3. Mountview Cemetery (Russ Carlson)
4. Rim Rock West Park (Doug McGrail)
  - a. Install climbing structure
  - b. Install 2 swings
5. Tree planting in various parks (Wes Fangsrud)
6. Castle Rock Park (Dennis Forleo)
  - a. Anchor picnic tables
  - b. Install shade structure (needs concrete work – 8 yds)
7. Re-roof bath house at South Park (John Wilson)
8. South Park ball diamond repair (Chad Richards)

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, March 26, 2007**

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**TITLE:** W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Resolution  
Authorizing Condemnation to Acquire Utility Easements

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The purpose of this memo is to request Council approval of a resolution authorizing condemnation to obtain eight (8) easements necessary for construction of the proposed sanitary sewer main extension to Briarwood. The City of Billings has been negotiating for almost a year to purchase the necessary easements with the property owners along the route of the proposed sanitary sewer extension to Briarwood. Four (4) of the necessary thirteen (13) easements have been purchased, and one easement (Buchanan) is a separate item for Council approval. Each of the property owners has been offered the full appraisal price from the beginning of negotiations. Staff also obtained a review appraisal for each of the outstanding parcels. The Review Appraiser, in his report, stated, “It is my opinion that the appraiser’s analysis, opinions and conclusions are appropriate and reasonable and represent the highest compensation supportable by the available market evidence. In addition, it appears the appraisal was conducted with constant regard to the rights of the property owner and the taxpayers of Billings, Montana.” A copy of each of the Right-of-Way Agreements, Perpetual Easements, appraisals, review appraisals, any file memoranda, and negotiation histories for the eight properties are on file with the City Clerk.

**ALTERNATIVES ANALYZED:**

3. Approve the resolution authorizing condemnation of the eight properties for the Briarwood Sewer Main Extension project. Under this option, Staff would proceed with the eminent domain process.
4. Do not approve the resolution authorizing condemnation of the eight properties for the Briarwood Sewer Main Extension project. Under this option, the City would need to reconsider the nature and scope of the project.

**FINANCIAL IMPACT:** Final values will be presented to City Council if the values exceed Staff’s allowable negotiating value.

The budgeted amount for this entire project (CIP# PWB-1), including engineering, right-of-way acquisition, and construction is \$600,000 in FY 2005, and \$4,335,350 in FY 2007.

**RECOMMENDATION**

Staff recommends that Council approve the resolution authorizing condemnation of eight (8) properties for the Briarwood Sewer Main Extension project.

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

ATTACHMENT

B.    Resolution Authorizing Condemnation of Properties for the Briarwood Sewer Main Extension

## INTRODUCTION

The Preliminary Engineering Report (PER) for this project recommended that the new sewer follow a route generally along Blue Creek Road as the preferred alternative. The preferred alternative allowed the southerly portion of the sewer to drain via gravity from Briarwood to the area of Santiago Boulevard. From the Santiago area, a sewer lift station is needed to convey sewerage via a force main across the Yellowstone River to the existing gravity sewer infrastructure in the South Frontage Road.

The City has been negotiating for the easements necessary for construction of the sewer main for almost a year. The perpetual and temporary construction easements were identified on the design plans, and appraisals were obtained for the necessary areas. The City's hired Right-of-Way Negotiator was able to negotiate the necessary easements for five (5) of the thirteen (13) necessary easements.

## PROCEDURAL HISTORY

### Completed Items

- February 28, 2005 – Services Contract awarded to Morrison-Maierle, Inc.
- October 24, 2005 – Council authorized submittal of State Revolving Fund (SRF) backed loan application
- April 2006 – Appraisals completed for the necessary easements
- May 2006 – Easement negotiations began
- May 2006 – Preliminary Engineering Report (PER) accepted by SRF
- June 26, 2006 – Council approved property purchase on Blue Creek Road
- July 25, 2006 – 85% Plans and specs submitted to the City and SRF for approval
- October 23, 2006 – Council approved four (4) easements for this project
- March 2, 2007 – Review appraisals completed on the outstanding parcels

### Future Items

- Summer 2007 – Final plans approved by the City and SRF
- Fall 2007 – Necessary easements obtained
- Fall 2007 – Advertising for bids and bid opening
- Fall/Winter 2007 – Construction contract award/DNRC concurrence
- Winter 2007 – Construction begins
- Fall 2008 – Construction complete

## BACKGROUND

The overall purpose of this project is to replace the Briarwood WWTF with a sanitary sewer main that connects to existing trunk sewer in the South Frontage Road area.

The project is to be financed using wastewater capital funding from a State Revolving Fund (SRF) backed loan. The budgeted amount for this project, including engineering, right-of-way acquisition,

and construction is \$600,000 in FY 2005, and (proposed) \$4,335,350 in FY 2007.

During the Preliminary Engineering Report (PER) phase of design, the consultant evaluated several alternative means for crossing the Yellowstone River (siphon, gravity, lift station, or bridge appurtenance), several methods for constructing the river crossing (open cut, bore and jack or directional drilling), and several ways to connect to the existing sewer infrastructure (force main or gravity). The preferred alternative identified in the Preliminary Engineering Report (PER) for the above-named project recommended that the new sewer main generally follow a route along Blue Creek Road so that the southerly portion of the new sewer main will drain via gravity from Briarwood to the area of Santiago Boulevard. From the Santiago area, a sewer lift station is needed to convey sewerage via a force main across the Yellowstone River then to the existing gravity sewer infrastructure in the South Frontage Road. It became apparent during detailed design that the property lying southeast of the Santiago Boulevard –Blue Creek Road intersection was a better lift station site than the existing City-owned property south of Santiago Boulevard). Council authorized the purchase of approximately 11 acres along Blue Creek Road in order to place the lift station. The preferred route also requires obtaining utility easements in thirteen different properties.

The eight properties from which easements are still outstanding and a summary of the negotiations to date are as follows:

Parcel #1 The Briarwood (Golf Course)

Negotiations are almost complete for this easement. Details of the hold harmless clauses are being worked out between the City's legal staff and the golf course's attorney. Staff expects to have this easement completed outside of eminent domain; this parcel is included in this memo because Staff wanted to bring all outstanding parcels to Council at once.

Parcel #2 Atchison

Negotiations have reached an impasse over price. The Atchisons delegated negotiations to their grandson, Scott Chesarik. Mr. Chesarik wants \$22,500 for the easement, and the City's best offer was \$20,650 (which is 5% above the appraised value).

Parcel #4 Graham

Negotiations have reached an impasse. The owner of this parcel has not accepted the City's offer. Ms. Graham has stated that she will follow the actions of the Buchanans as far as agreeing to an easement.

Parcel #5 Johnson

Negotiations have reached an impasse with these property owners over necessity and price. The owners of this parcel have not accepted the City's offer of 5% above the appraisal amount of \$3,350.00. Owners are also not in agreement over the width of the easement.



Parcels #9 & #10 Yellowstone Valley Electric Cooperative (YVEC)

Negotiations with this property owner have reached an impasse. The attorney for YVEC responded to the City's last request to negotiate with a response that YVEC believes "it is not in their best interest to enter into any type of easement agreements at this time."

Parcel 11 Hoff

Negotiations have reached an impasse. The last time Staff met with him, Mr. Hoff wanted to wait until the YVEC agreed to an easement before continuing any negotiations. Also, Mr. Hoff stated that "whatever the City is offering, I want twice that" in regards to compensation for the easement.

Parcel 12 Kenney

Negotiations have reached an impasse. The property owners have deferred numerous requests to meet to negotiate. They note that they are still upset that their driveway was left in poor condition after the water main was extended in the highway right-of-way.

A copy of each of the Right-of-Way Agreements, Utility Easements, appraisals, review appraisals, correspondence, any file memoranda, and negotiation histories for the eight properties are on file with the City Clerk.

**RECOMMENDATION**

Staff recommends that Council approve the resolution authorizing condemnation of eight (8) properties for the Briarwood Sewer Main Extension project.

**ATTACHMENT**

- A. Resolution Authorizing Condemnation of Properties for the Briarwood Sewer Main Extension

## CITY OF BILLINGS

(hereinafter referred to as City)

### RIGHT-OF-WAY AGREEMENT

Briarwood Sewer Main Extension  
DESIGNATION

Work Order: 04-36  
MMI Project No. 0686.170-0211

Yellowstone  
COUNTY

Subdivision  
Tract 13, Blue Creek Acreage Tract  
Subdivision

Section  
28

Township  
1S

Range  
26E

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

GARY BUCHANAN AND NORMA BUCHANAN  
201 BORTH BROADWAY  
BILLINGS, MT 59101  
294-3000

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 an easement 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.)  
  
0.148 acre by easement \$6,117.00
3. OTHER COMPENSATION:  
  
0.297 acre temporary construction easement \$1,333.00
4. TOTAL COMPENSATION (includes all damages to the remainder) = ~~\$7,450.00~~.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:  
  
A warrant in the amount of \$7,450.00 to be made payable to GARY BUCHANAN AND NORMA BUCHANAN and mailed to 201 BORTH BROADWAY, BILLINGS, MT 59101
6. 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.
7. All fencing will be replaced in kind. Metal gates to be placed between property owners. All fencing to be constructed to Montana Department of Transportation specifications
8. City of Billings agrees to provide water tee/services to property of Grantor and property line of property located at 2429 Colleen Drive, Billings, MT 59101.
9. City of Billings agrees to provide sewer tee/services to property of Grantor.

(Continued from Previous Page)

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

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

Signature: GARY BUCHANAN \_\_\_\_\_ (Date)

Tax ID No. \_\_\_\_\_

Signature: NORMA BUCHANAN \_\_\_\_\_ (Date)

Tax ID No. \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Ronald E. Olson, Olson Land Services \_\_\_\_\_ (Date)

Public Works Department \_\_\_\_\_ (Date)

Consultant – Morrison-Maierle, Inc. \_\_\_\_\_ (Date)

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

B-Buchanan.200

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, March 26, 2007

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

**DEPARTMENT:** Public Works - Engineering

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

**PROBLEM/ISSUE STATEMENT:** The residents in and around Broadwater Subdivision, the area between Central Avenue and Broadwater Avenue from 8<sup>th</sup> Street West to 16<sup>th</sup> Street West, requested a phased program to reconstruct the curbs/gutters, sidewalks, drive and alley approaches and streets. Phases I through IV have been completed with Phase V being the only phase left to be constructed. In order to construct these improvements, Council must pass a Resolution of Intent and set a Public Hearing for the project in order to allow adjacent property owners to be assessed.

**FINANCIAL IMPACT:** The proposed project is funded through multiple sources, including direct property assessments for a total estimated project cost of \$721,047, as follows:

Estimated Assessed Costs	\$251,000
Curb and Gutter Funds	\$ 92,390
Corner Lot Funds	\$146,728
Gas Tax Funds	\$227,929
Public Works Belknap Funds	\$ 3,000

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

**RECOMMENDATION**

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 06-18, Broadwater Subdivision – Phase V, Curb/Gutter and Street Reconstruction, and establish a Public Hearing date of April 23, 2007.

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

ATTACHMENT

A.        Resolution of Intent

## **INTRODUCTION**

This project, Broadwater Subdivision – Phase V, as further described in Attachment A, was part of comprehensive plan between the residents in and around Broadwater Subdivision and the City of Billings to improve curbs/gutters, sidewalks and streets within their area. Phase V is the final phase of this comprehensive plan and is identified as an area where the streets are in poor condition and non-maintainable. Furthermore, various concrete improvements such as curbs/gutters, drive approaches, alley approaches and sidewalks are needed to replace damaged, deteriorated, displaced, missing or generally non-ADA compliant sections, which are considered present walking hazards to the public. This project would improve the streets to a maintainable condition and eliminate hazards. In order to construct these improvements, Council must pass a Resolution of Intent and set a Public Hearing for the project in order to allow adjacent property owners to be assessed.

## **PROCEDURAL HISTORY**

- Project requested by property owners – Fall 1997 (All Phases)
- Field inventory completed and estimated project cost calculated – 2000 & 2001
- Resolution of Intent – March 26, 2007
- Notify affected property owners of proposed project – April 5, 2007
- Public Hearing and Resolution Ordering Improvements – April 23, 2007
- Construction – Summer 2007

## **BACKGROUND**

Consistent with the previous phases, various City funding, as described above, will be utilized to reduce the amount of direct property assessment. This project is identified in the Fiscal Year 2007 approved budget.

This project will benefit both the general public and the individual property owners, as both parties will receive drivable streets and walkable sidewalks. Feedback from the previous four phases has been positive and residence of this phase are eager to get their improvements as well.

With the passage of this Resolution of Intent, staff will notify each property owner within the assessed project area. This notification shall include 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. The average estimated assessment for the proposed project is \$5,980.60 assessed over a 12-year period.

## **RECOMMENDATION**

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 06-18, Broadwater Subdivision – Phase V, Curb/Gutter and Street Reconstruction, and establish a Public Hearing date of April 23, 2007.

## **ATTACHMENT**

A. Resolution of Intent

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

A RESOLUTION RELATING TO W.O. 06-18, BROADWATER SUBDIVISION – PHASE V IMPROVEMENTS; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN 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.

WHEREAS, the city is granted the power pursuant to M.C.A. 7-14-4109 to order certain improvements without creation of a special improvement district and certain sections of curb and gutter, sidewalks, drive approaches, alley approaches and/or appurtenant features have deteriorated, settled and cracked, or none exist, or some of the foregoing do not exist; and

WHEREAS, the safety and convenience of the public require installation, construction, reconstruction, repair or replacement of curbs and gutters, sidewalks, drive approaches, alley approaches, and/or appurtenant features or combinations thereof; and

WHEREAS, said improvements should be ordered as provided by law.

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

1. INTENTION TO ORDER IN. It is the intention of the Council to order the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, alley approaches and appurtenant improvements in certain locations, which improvements and locations are more fully described in Exhibits “A” and “B” attached hereto.
2. 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 on Exhibit “B” attached hereto.
3. ESTIMATED COSTS. The estimated assessed costs of the proposed improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative fees and bond issuance costs, but exclusive of interest charges, will be \$251,000.00 as described below:

Construction Costs	\$194,800.04
Engineering & Administration	\$31,375.00
Bond Revolving Fund (5%)	\$12,550.00
Bond Discount Costs (2%)	\$5020.00
Legal Fees (1.7%)	\$4267.00
Bank Fees	\$3350.00
<u>Roundoff</u>	<u>\$(362.04)</u>
TOTAL ASSESSED COSTS	\$251,000.00

**Estimated unit costs for construction only, not including engineering, legal, administrative and bond costs as follows:**

<u>Removal and Replacement of:</u>	<u>Unit Price:</u>
Remove and Replace Sidewalk	\$ 6.50/sq. ft.
Remove and Replace Curb Gutter	\$24.00/lin. ft.
Remove and Replace Drive Approach	\$ 8.50/sq. ft.
Remove and Replace Alley Approach	\$ 8.50/sq. ft.
Street Reconstruction	\$42.00/sq. yd.
 <u>New Construction:</u>	
New Sidewalk	\$ 5.00/sq. ft.
New Curb and Gutter	\$14.00/lin. ft.
New Drive Approach	\$ 7.00/sq. ft.
New Alley Approach	\$ 7.00/sq. ft.
Street Reconstruction	\$42.00/sq. yd.

The actual cost to be assessed against any benefited property will be determined by the actual amount of work done adjacent to the property.

4. ASSESSMENT OF COSTS. All costs of constructing the curbs, gutters, sidewalks, and drive approaches, including engineering, administrative and bond costs will be assessed against the properties which are adjacent to the improvements installed. As shown on Exhibit “B”, assessments will be levied against 42 separate lots, parcels, or tracts.

The costs for each property will vary depending upon the actual construction that is required adjacent to each property. The average total assessment, including engineering, administrative, and bond costs is estimated to be \$5,980.60, with a high of \$14,898.02, low of \$0.00, and a median of \$5,978.85.

5. PERIOD OF ASSESSMENT. The assessments for all improvements and costs shall be paid in not more than twelve (12) annual installments, plus interest, provided however, that payment of one-half of each annual installment, plus interest, may be deferred to May 31 of the year following the assessment.
6. PROPERTY OWNER OPTION TO CONSTRUCT IMPROVEMENTS. In the event that the City Council orders in the above-described improvements following the public hearing, then the owners of all properties to be assessed for the costs of said improvements will be notified of such action in writing. Said owners will have thirty (30) days from the date of said notice in which to install the required improvements at their own expense. In the event the owners do not install these improvements, the City will do so and will assess the costs against the benefited properties as described herein.



7. METHOD OF FINANCING; PLEDGE OF REVOLVING FUND; FINDINGS AND DETERMINATIONS.

The City will issue **Sidewalk, Curb, and Gutter Improvement Bonds** in an aggregate principal amount not to exceed \$251,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the Project. This Council further finds it is in the public interest, and in the best interest of the City and the Project, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect to the Bonds.

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

- (a) Estimated Market Value of Parcels. The estimated total market value of the lots, parcels, or tracts in the Project, as of the date of adoption of this resolution, as estimated by the County Assessor, is \$2,787,091.00. The average market value is \$66,359.31, with a high of \$200,346.00, a low of \$12,536.00, and median value of \$58,560.00. The special assessments to be levied against each lot, parcel, or tract are less than the increase in the estimated market value of the properties as a result of the construction of the improvements.
- (b) Diversity of Property Ownership. For the 42 Tax codes in this project, there are 41 separate owners. One owner, David and Phyllis Sanchez owns (2) parcels. All other parcels are under separate individual ownership. It is unlikely that financial difficulties would arise that would require a loan to be made from the Revolving Fund.
- (c)
- (d) Comparison of Special Assessments, Property Taxes and Market Value. Currently, one (1) parcel has an SID levied against it. Parcel A-13782 is being assessed under the Broadwater Subdivision Improvement Phase IV, Schedule A Project, with a payoff amount of \$1891.65, with a payoff date of 2015; and is being assessed under the Broadwater Subdivision Improvement Phase IV, Schedule B Project, with a payoff amount of \$1719.73, with a payoff date of 2015.

As noted in Section 4, the estimated average assessment levied by this project will be \$5,980.60. With an average market value of \$66,359.31, and an average yearly principal payment of \$498.38 (monthly principal of \$41.53), the amount of assessment versus the value of the property would appear acceptable. As such, no unusual need for loans from the Revolving Fund would be expected. Further information comparing the total cost (estimate) to the market value for each parcel is listed in Exhibit "C".

- (e) Delinquencies. For tax year 2006, Zero (0) parcels were delinquent. This rate is above the average city collection rate of 95%.

Therefore, given the delinquency history of this Project area, no unusual need for loans from the Revolving Fund would be expected.

- (f) The Public Benefit of the Improvements. The subject sections of the various city streets are identified as streets in poor condition and non-maintainable; Various concrete improvements such as curbs and gutters and approaches are missing, damaged, deteriorated, displaced; and sidewalks are missing, damaged, deteriorated, displaced, out of ADA compliance and these in general present walking hazards to the public. This project would improve the streets to a maintainable condition and eliminate walking hazards to the public. The cost of eleven (11) feet of street construction along the property frontage and improvements to sidewalks and approaches will be borne by the adjoining property owners. The remaining eleven (11) to fifteen (15) feet of street construction will be funded by Gas Tax funding and repairs to existing curb and gutter, and the gutter portion of approaches will be funded by Street Maintenance funding.

#### 8. REIMBURSEMENT EXPENDITURES.

- (a) 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.
- (b) 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.
- (c) 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 \$251,000.00 after the date of payment of

all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

(d) 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.

(e) 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.

9. PUBLIC HEARING. On Monday, April 23, 2007, at 6:30 p.m., in the Council Chambers located on the Second Floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, MT, the City Council will conduct a public hearing concerning this project and all interested parties will be allowed to testify. The City Council will also consider all written comments submitted to the City Clerk prior to the hearing or submitted to the Council during the hearing.

10. NOTICE OF PASSAGE OF RESOLUTION OF INTENTION. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the BILLINGS TIMES, a newspaper of general circulation in the county on April 5 and April 12, 2007, in the form and manner prescribed by law, and to mail or cause to be mailed, a copy of said Notice to every person, firm corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county and school district taxes, at his last-known address, on or before the same day such notice is published.

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

CITY OF BILLINGS:

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

ATTEST:

\_\_\_\_\_  
Cam Trudeau, Deputy City Clerk

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, March 26, 2007

TITLE: Second Reading of an Ordinance Expanding Ward IV

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** On February 26, 2007, the City Council approved the annexation of an approximate 13.01 acre parcel legally described as Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms. The request for annexation was submitted by Mary Kramer, 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 IV was conducted on March 12, 2007. The second reading of the ordinance will be conducted on March 26, 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 IV.

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 IV 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:

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

Containing 13.008 gross and 11.592 net acres.

(# 07-02 Exhibit "A" Attached)

2. 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 12th day of March, 2007.

PASSED by the City Council on the second reading this 26th day of March, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

BY:\_\_\_\_\_  
Cam Trudeau, DEPUTY CITY CLERK

61 COVE 62 63 64 TR. 2B

COLTON BLVD

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 9

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, March 26, 2007**

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**TITLE:** Final Plat of Amended Lot 7, Block 2, Lake Hills Subdivision, 1<sup>st</sup> Filing

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The final plat for Amended Lot 7, Block 2, Lake Hills Subdivision, 1<sup>st</sup> Filing is being presented to Council for approval. On September 25, 2006, the City Council conditionally approved the 2-lot subsequent minor plat on a 60,735 square foot property. The subject property is located at the northwest corner of the intersection of Wicks Lane and Inverness Drive in the Heights and is zoned Community Commercial (CC). The owner and subdivider is DJ Properties, LLC and the representing agent is Engineering, Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

**RECOMMENDATION**

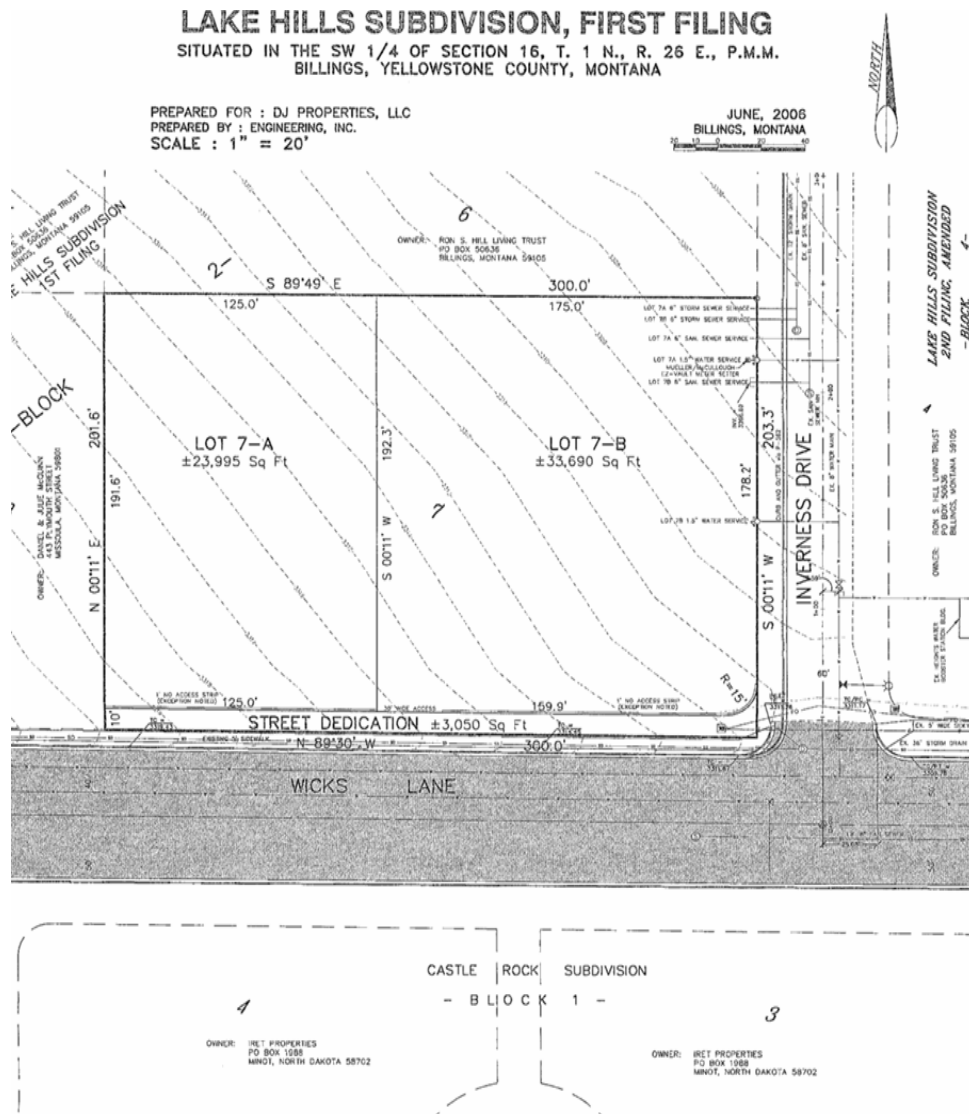
Staff recommends that the City Council approve the final plat of Amended Lot 7, Block 2, Lake Hills Subdivision, 1<sup>st</sup> Filing.

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

**ATTACHMENT**

A: Plat

## ATTACHMENT A



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

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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, March 26, 2007**

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**TITLE:** Final Plat of Normal Subdivision, 3<sup>rd</sup> Filing

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The final plat for Normal Subdivision, 3<sup>rd</sup> Filing is being presented to Council for approval. On September 25, 2006, the City Council conditionally approved the 2-lot minor subdivision on approximately 1-acre of a vacated portion of North 28<sup>th</sup> Street. The subject property is located west of North 27<sup>th</sup> Street between Poly Drive and 12<sup>th</sup> Avenue North. The property is being subdivided to clarify the ownership for the vacated portion of North 28<sup>th</sup> Street (vacated by Resolution 99-17476). The owners and subdividers are St. Vincent Hospital and MSU-B Foundation, and the representing agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Normal Subdivision, 3<sup>rd</sup> Filing.

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

**ATTACHMENT**

A: Plat

# NORMAL SUBDIVISION, 3RD FILING

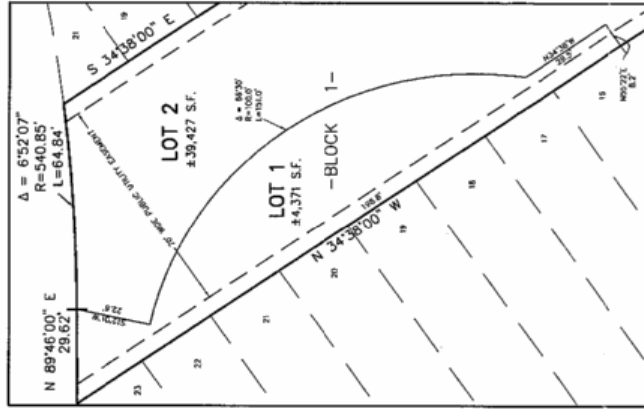
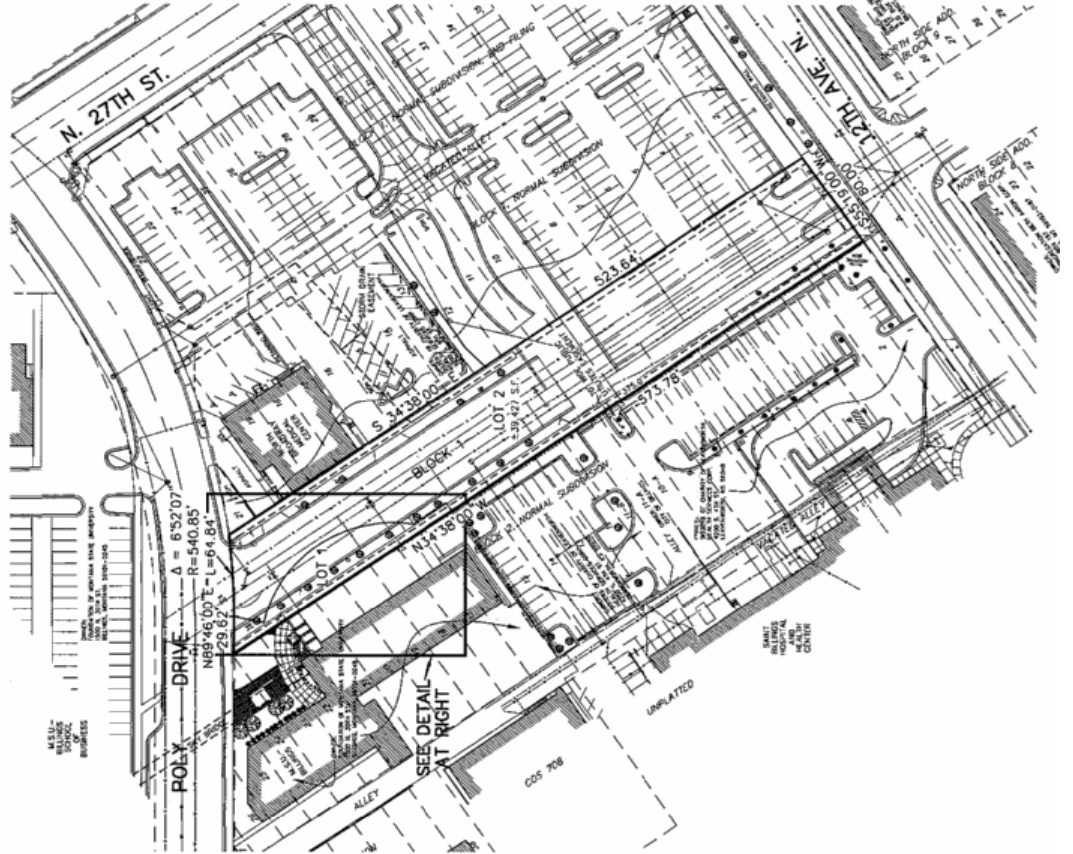
BEING A VACATED PORTION OF NORTH 28TH STREET,  
SITUATED IN THE NE 1/4 AND THE NW 1/4 OF SECTION 32, T. 1 N., R. 26 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : SISTERS OF CHARITY OF LEAVENWORTH HEALTH SERVICES CORPORATION  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 50'

MAY, 2006  
BILLINGS, MONTANA



BASE OF BEARINGS = PLAT OF NORMAL SUBDIVISION  
CONTOUR INTERVAL = 1'



DETAIL

## PLAT DATA

GROSS AREA = 43,797 S.F.  
NET AREA = 43,797 S.F.  
NUMBER OF LOTS = 2  
MAXIMUM LOT SIZE = 39,427 S.F.

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V1

AGENDA ITEM:



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

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$795,334.61 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 23, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

# V2

**AGENDA ITEM:**



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

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$783,328.21 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 2, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

# V3



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, March 26, 2007

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**SUBJECT:** Payment of Claims  
**DEPARTMENT:** Municipal Court  
**PRESENTED BY:** Nikki R. Schaubel, Municipal Court Administrator

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$184,905.28 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 1, 2007 to February 28, 2007 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

### RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

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## AGENDA ITEM:




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


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**TITLE:** Public Hearing and Resolution for Annexation #07-03

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** The City of Billings, property owner, submitted a letter of request to annex land to the City of Billings under 7-2-4403 MCA. There are three parcels of land the City wishes to annex. The properties total 2.44 acres and are located at 23 Charlene Street, 63 Charlene Street and 65 Charlene Street, east of the Interstate 90 Corridor and west of the City of Billings Water Treatment Plant property. The property is vacant with the exception of one storage building the City has constructed on the site. The City is requesting annexation in order to rezone the property to Public zoning and further utilize the property as part of the Water Treatment Plant facilities and plan for future Plant expansion. The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on February 12, the Council acknowledged the annexation request and approved a resolution of intent (Resolution No. 07-18526) to annex the property, and set a public hearing date for March 26, 2007.

To comply with State Law in also requesting a rezoning of the property, the City has filed a zone change application to rezone the properties from Residential-15,000 to Public. The City Council may hear the annexation request and zone change request at the same public hearing. Staff is coordinating these two processes to allow the dual hearing to take place. The Council will conduct a public hearing on March 26, to decide if it will annex the property. This public service report describes the City's capacity to serve the property.

**ALTERNATIVES ANALYZED:** MCA, Section 7-2-4403 allows government officials to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to conduct a public hearing and review the request before taking action.



**FINANCIAL IMPACT:** Since the City already owns the subject properties, and the City plans to retain ownership of the properties for its own use, there is not expected to be any negative financial impact to the City.

**RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Annexation.

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

## **INTRODUCTION**

The City of Billings on January 11, 2007, submitted a request for annexation of property totaling 2.44 acres located at 23, 63 and 65 Charlene Street. The property is currently zoned R-15,000. The City is pursuing a zone change for the property in conjunction with this annexation request. The City is requesting the property be rezoned to Public zoning if it is annexed. This property is in an area that has been specified in the City's Annexation Policy for annexation in the short term. The property is bordered by the City Limits on the east side along Charlene Street and is eligible for annexation.

## **PROCEDURAL HISTORY**

- January 11, 2007 – The Planning and Community Services Department received a signed letter of request to annex the subject property into the City of Billings.
- February 12, 2007 – The City Council acknowledged the request to annex, approved a resolution of intent to annex the property, and set a public hearing date for the City Council meeting on March 26, 2007.
- March 26, 2007 – City Council holds public hearing and acts on the request to annex the subject property.

## **ALTERNATIVES ANALYSIS**

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

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services at this time.
3. Any proposed improvements would meet City standards.
4. Given the size of the property and the request to zone the property to Public, it is the City's intention to use the property for further expansion of the City Water Treatment Plant.
5. The proposed annexation meets several goals of the City-County Growth Policy.

Although MCA 7-2-4400-4407 does not specify the need to prepare a public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. Since this property is owned by the City, staff has abbreviated this report to reflect the City's ownership and proposed use of the property.

**Departmental Response:** City departments, Yellowstone County Departments and the Board of County Commissioners were given the opportunity to comment on this annexation. School District #2 also was notified of this annexation. All City departments responded favorably. No comments were received from School District #2 or Yellowstone County.

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

**Water:** Water service will be provided by water lines from the Water Treatment Plant to the east of the subject properties.

**Sewer:** The City does not have plans to provide sewer service to this property at this time. If the City does decide to serve the property with sewer, it is expected that it will be provided through existing service at the Water Treatment Plant.

**Stormwater:** There are no City stormwater facilities directly adjacent to the property. The property will have to detain stormwater on site at this time. Future stormwater system development in this area by the City may require this property to participate in construction costs of stormwater infrastructure in the area of this property.

**Transportation:** The subject property is adjacent to Charlene Street, an unclassified residential-type-street. Under the proposed Public zoning for the property, it is possible that the City could consider an access from the Water Plant onto Charlene Street through the subject properties. While the connecting street system appears to have sufficient capacity for the traffic from this property, any new major access to serve the Water Plant across these properties would have to be reviewed by the City Traffic Engineer.

**General City Services:** These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property. Since the City owns the property and plans to continue to use it as part of the Water Plant facilities, some of these services would not be necessary or experience any change in service needs.

**Transit:** MET Transit had no negative comments on this annexation request.

**Fire:** The property is within the Billings Urban Fire Service Area and is currently served by the Billings Fire Department. Fire protection will be provided to this property after annexation most directly from Fire Station No. 2 at 501 South 28<sup>th</sup> Street.

**Police:** The Police Department staff stated that this property is adjacent to an area that is already served by the Police.

**Ambulance Service:** This annexation is within the area of acceptable response time.

**Legal and Finance:** No negative impact.

**Other Departments:** City/County services such as Library, Planning, and Environmental Health foresee no negative impact.

## **STAKEHOLDERS**

This annexation request process by a municipality does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Times to provide the legally required 20-day comment period on this annexation request.

The Planning Division has received two visits in person from neighbors of the property inquiring as to the

plans for the property and the allowed uses in the Public zoning district. There was some concern that the City might be planning to force other property owners to sell their land for additional property to be purchased for the Water Plant. These neighbors were informed that the City has no plans to acquire additional property along Charlene Street unless owners decide to put their property up for sale. Neither neighbor provided any comments in writing.

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

This annexation petition meets the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- Contiguous development focused in and around existing population centers (Land Use Element Goal, Pg. 6). *This property is in an area that is in close proximity to urban services and is a logical area to include within the City of Billings service area*
- Protect public health and reduce the cost of groundwater remediation (Natural Resources Goal, Pg. 8). *The property will be served by municipal water service, if needed. The property is not expected to require sewer service in the near future.*
- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City property and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*

### **RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Annexation to annex this property.

### **ATTACHMENTS**

- A. Resolution
- B. Exhibit A Map

**RESOLUTION NO. 07-**

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

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

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council has considered annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated.

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

1. TERRITORY ANNEXED. Pursuant to Request filed as provided M.C.A., Title 7, Chapter 2, Part 44, the following territory is hereby annexed to the City of Billings:

Tracts of land situated in the SW1/4 of Section 2, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

The N ½ Lot 3, Lots 4 and 7, of Sandra Subdivision, Recorded December 13, 1946, Under Document No. 421189, Records of Yellowstone County, Montana. Including all adjacent Right-Of-Way of Charlene Street. Containing 2.927 gross acres, and 2.440 net acres.

(# 07-03) See Exhibit "A" Attached

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

PASSED by the City Council and APPROVED this 26th day of March, 2007.

THE CITY OF BILLINGS:

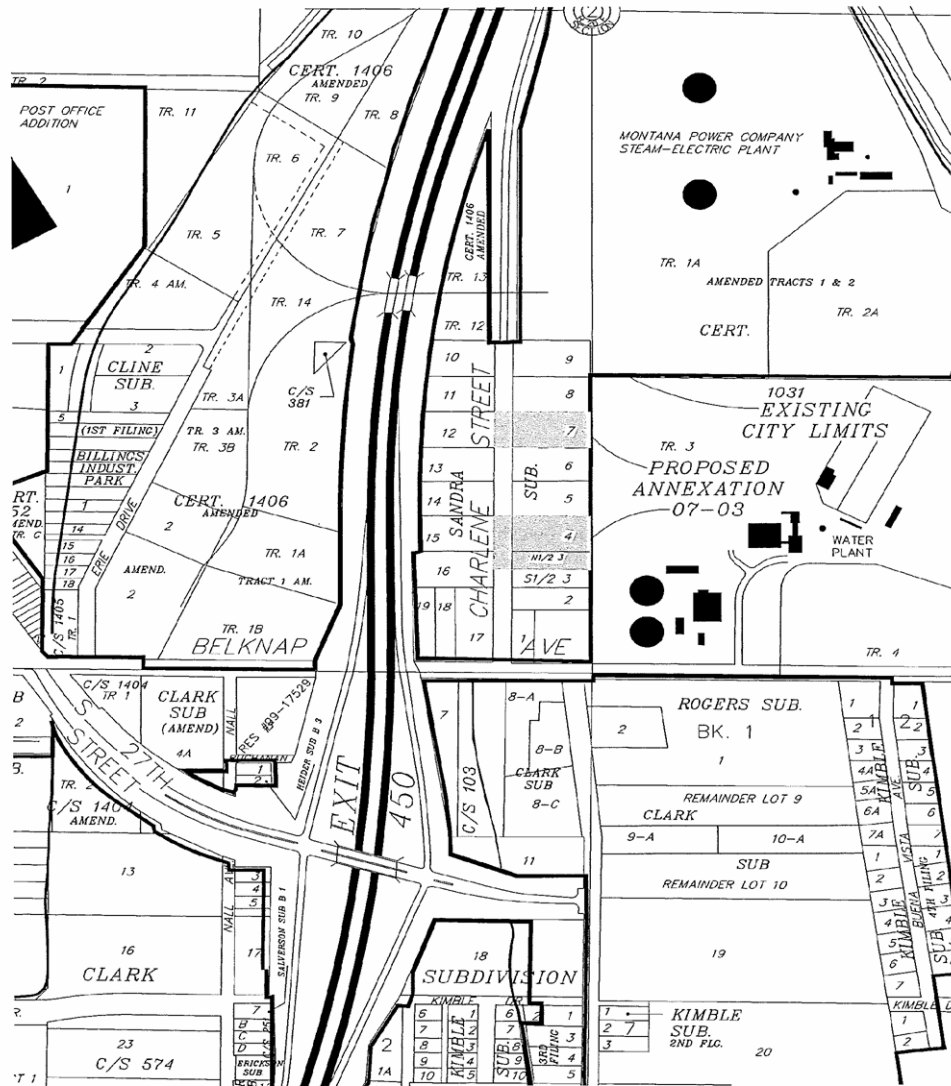
BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Cam Trudeau, DEPUTY CITY CLERK

## ATTACHMENT B

### EXHIBIT A



## AGENDA ITEM:




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


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**TITLE:** Public Hearing and Resolution for Annexation #07-04

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** Lana Jean Bittner, property owner, submitted a petition to annex land to the City of Billings under 7-2-4600 MCA. The 10,454-square-foot property is located at 307 Garden Avenue between the Interstate 90 Corridor and the Yellowstone River. The property has one residence on it. The property owner is requesting annexation in order to obtain city water service and be included under the City of Billings process for replacing the water line in Garden Avenue. The property would be subject to a County-instituted Rural Special Improvement District for the water line replacement if the property remained in the County. The City Council's policy is to consider annexations at two separate meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property. This public service report describes the City's capacity to serve the property.

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

**FINANCIAL IMPACT:** The City can provide services to this property. While the annexation will increase the City's tax base, in general, the costs of providing service to residential properties exceed the revenues generated from property tax.

**RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Annexation contingent upon the following condition:

1. A Waiver of Right to Protest the Creation of SIDs shall be signed by the property owner.

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



## **INTRODUCTION**

The owner on January 31, 2007, submitted a petition for annexation of an approximately 10,454-square-foot property located at 307 Garden Avenue. The property is currently zoned R-15000. The property will automatically be zoned R-9600 if it is annexed into the City. This property is in an area that has been specified in the City's Annexation Policy for annexation in the short term. The property is bordered by the City Limits on the west side along Garden Avenue and is eligible for annexation.

## **PROCEDURAL HISTORY**

- January 31, 2007 – The Planning and Community Services Department receives signed petition to annex the subject property into the City of Billings.
- March 12, 2007 – The City Council acknowledges the petition to annex and sets a public hearing date for the City Council meeting on March 26, 2007.
- March 26, 2007 – City Council holds public hearing and acts on the petition to annex the subject property.

## **ALTERNATIVES ANALYSIS**

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

6. The area is located within the Limits of Annexation and within the Urban Planning Area.
7. The City is able to provide adequate services, except for sewer service at this time.
8. Any proposed improvements would meet City standards.
9. The property owners have sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
10. Given the size of the property and the zoning, residential densities will be approximately 4 dwelling units per acre.
11. The proposed annexation meets several goals of the City-County Growth Policy.

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

**Departmental Response:** City departments, Yellowstone County Departments and the Board of County Commissioners were given the opportunity to comment on this annexation. School District #2 also was notified of this annexation. All City departments responded favorably. No comments were received from School District #2 or Yellowstone County.

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

**Water:** Water service will be provided by a water line in Garden Avenue. The property already is served by the water line in Garden Avenue. A replacement project for this water line is currently in process through a City-County cost-share arrangement. This property, if annexed, will enjoy the same benefits that existing annexed properties on the west side of Garden Avenue enjoy now – no additional cost from the water line replacement beyond current utility billing procedures. The subject property is being included in a County Rural Special Improvement District to fund the County's cost of the water line replacement. If this property is annexed into the City, the City will pay off the RSID assessment for this property. That assessment totals about \$9,300.

**Sewer:** There is no municipal sewer service to this property at this time, or in the Garden Avenue right-of-way. The closest sewer line is about 1,200 feet to the west in Nall Avenue across the Interstate 90 corridor. Connection of this property to City sewer service is not expected in the near future. However, the property owner has signed a Waiver of Right to Protest creation of future special improvement districts that allows the City to create an improvement district for sewer installation in the future.

**Stormwater:** There are no City stormwater facilities directly adjacent to the property. The property will have to detain stormwater on site at this time. Future stormwater system development in this area by the City may require this property to participate in construction costs of stormwater infrastructure in the area of this property. The property owner has signed a Waiver of Right to Protest creation of future special improvement districts that allows the City to create an improvement district for stormwater infrastructure installation in the future.

**Transportation:** The subject property is adjacent to Garden Avenue, classified as a collector road. Under the R-9600 zoning, only one residence would be allowed on the property. There is one residence on the property at this time. Garden Avenue and the connecting street system have sufficient capacity for the traffic from this property.

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

**Transit:** MET Transit does not currently serve this area. The closest bus route is about 15 blocks north of the property across the Interstate 90 corridor. MET Transit had no negative comments on this annexation petition.

**Fire:** The property is within the Billings Urban Fire Service Area and is currently served by the Billings Fire Department. Fire protection will be provided to this property after annexation most directly from Fire Station No. 2 at 501 South 28<sup>th</sup> Street. The Fire Department had no problems with this petition to annex.

**Police:** The Police Department staff stated that this property is an area that is already served by the Police. There already is City property on the west side of Garden Avenue in this area so the ability to deliver services to this property is no different from current service practices.

**Ambulance Service:** The City does not provide ambulance service but dictates the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes. This annexation is within the area of acceptable response time.

**Legal and Finance:** General Fund services such as Legal and Finance have indicated that they will not be negatively impacted. However, the Finance Department indicated that it would be preferable to annex larger portions of land in this area at the same time since this property is small and is unlikely to individually support the City services required to serve it on its own.

**Other Departments:** City/County services such as Library, Planning, and Environmental Health are only slightly affected by the annexation since they will serve new development if it is in the City or if it remains in the County.

## **STAKEHOLDERS**

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Times more than 15 days prior to the Council hearing as required. The Planning Division has received no comments on this proposed annexation.

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

This annexation petition meets the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- Contiguous development focused in and around existing population centers (Land Use Element Goal, Pg. 6). *This property is in an area that is in close proximity to urban services and is a logical area to include within the City of Billings service area*
- Protect public health and reduce the cost of groundwater remediation (Natural Resources Goal, Pg. 8). *The property is going to be served by municipal water service. While the property will continue to use a septic system for the present, having the property annexed into the City increases the likelihood and ability for the property to be served by municipal sewer service in the future.*
- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City property and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*

## **RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Annexation contingent upon the following condition: Waiver of Right to Protest the Creation of SIDs shall be signed by the property owners.

## **ATTACHMENTS**

- A.** Resolution
- B.** Exhibit A Map
- C.** Waiver of Right to Protest (Signed)

**RESOLUTION NO. 07 \_\_\_\_\_**

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

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

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

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

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

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

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

Yellowstone County, Montana, more particularly described as:

Certificate of Survey 598, Recorded June 8, 1953, Under Document No. 508159, Records of

Yellowstone County, Montana. Including all adjacent Right-Of-Way of Garden Avenue.

Containing 0.243 gross acres, and 0.172 net acres.

(# 07-04) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved contingent upon the following condition:
  1. A Waiver of Right to Protest the Creation of SIDs shall be signed by the property owners.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 26th day of March, 2007.

THE CITY OF BILLINGS:

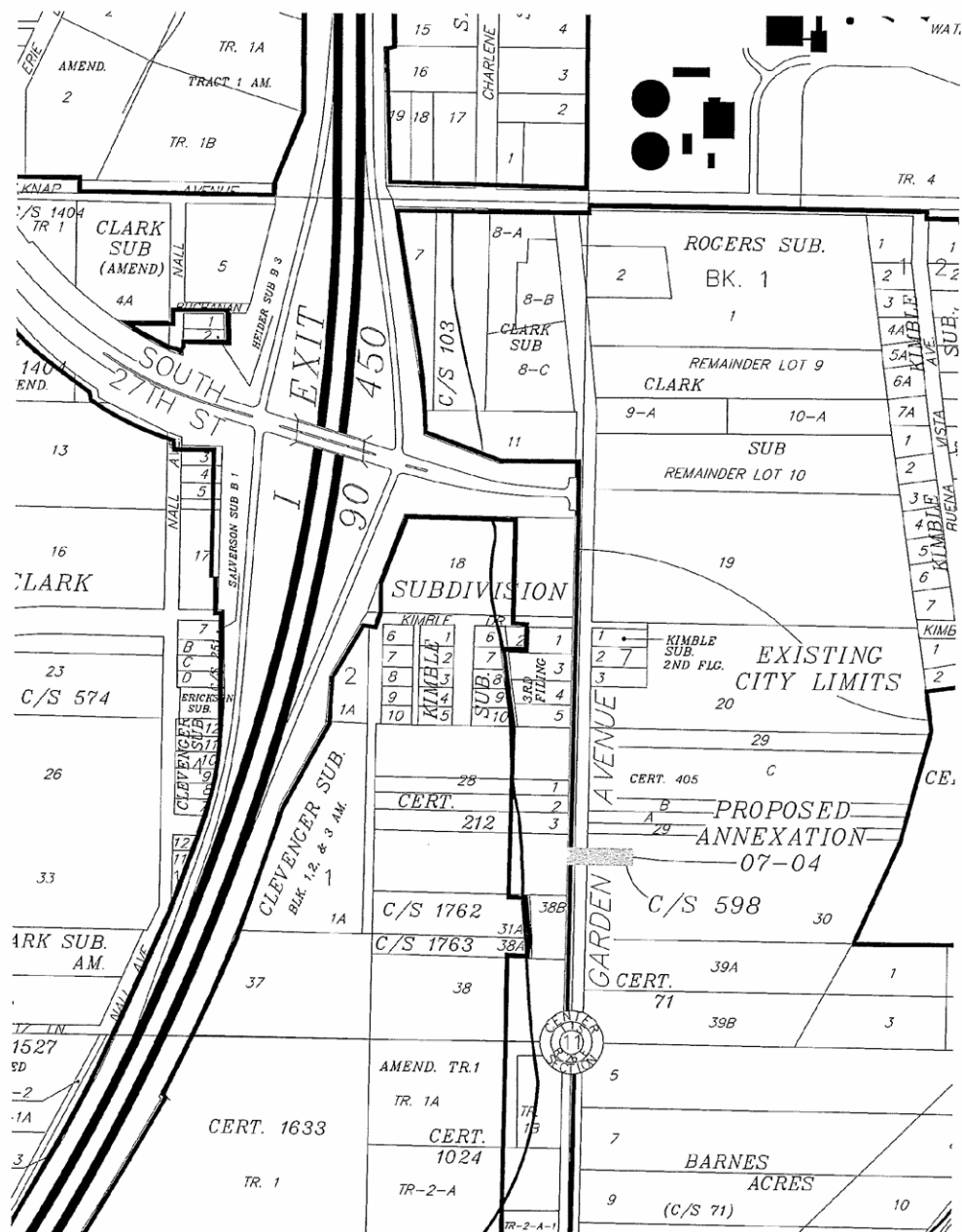
BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Cam Trudeau, DEPUTY CITY CLERK

(AN #07-04)

## EXHIBIT A



## Waiver of Right to Protest

FOR VALUABLE CONSIDERATION, the undersigned, being the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

*Certificate of Survey 598, in Lot 30, Clark Subdivision*

Signed and dated this 6<sup>th</sup> day of March, 2007.

*Lana Jean Bittner* <sup>9<sup>th</sup></sup> & <sup>13</sup>  
By: Lana Jean Bittner Owners  
By: Harold Paulis will be  
Future owner of House  
Brother

STATE OF MONTANA )  
                                  : ss  
County of Yellowstone )

On this 9 day of March, 2007, before me, a Notary Public in and for the State of Montana, personally appeared Lana Jean Bittner, known to me to be Lana Jean Bittner, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

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



Shyla Marie Henry  
Notary Public in and for the State of Montana  
Printed name: Shyla Marie Henry  
Residing in Billings, Montana  
My commission expires: April 4, 2007

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



## AGENDA ITEM:




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


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**TITLE:** Resolution to Create Expanded Park Maint. District No. 4025, Rehberg Ranch Estates Subdivision, First Filing and Second Filings

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

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

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**PROBLEM/ISSUE STATEMENT:** The Rehberg Ranch Estates Subdivision Park Maintenance District No. 4025 currently includes only the First Filing park area and properties. This action will expand the PMD to include the recently approved Second Filing in the Park Maintenance District. The Second Filing adds approximately 22.47 acres of dedicated park and public open space to the area to be maintained, and 705,138 square feet of assessable property to the district. Development and improvement of the park areas will be by the developer through private contract. The Park Maintenance District needs to be expanded at this time to provide for the maintenance of the public area and improvements in the Second Filing. As a condition of the Rehberg Ranch Estates Subdivision, Second Filing final plat approvals, the Subdivision Second Filing must be included in the subdivision park maintenance district. The Resolution to Create the District is the final step in the process to include all lots of Rehberg Ranch Estates Subdivision Second Filing in Park Maintenance District No. 4025. The required Notice of Passage of the Resolution of Intention to Create the Expanded District was published and mailed out to property owners within the 2<sup>nd</sup> Filing of Rehberg Ranch Estates, Subdivision. Waivers of Protest are on file for all properties within the proposed district. A report of protest and comments received will be provided to the City Council at the start of the Public Hearing.

**ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** The maintenance costs for the maintenance of the public area and improvements are estimated to be \$22,149.00 for the expanded district. The assessment rate for this amount is \$00.00713 per square foot in District 4025. The first year assessment for the 2<sup>nd</sup>

Filing lots is shown in “Exhibit D” of the attached PMD documents for the coming year, and ranges from \$72 to \$130 for the single family residential lots.

**RECOMMENDATION**

Staff recommends Council approve the Resolution to Create the Expanded Park Maintenance District No. 4025 as recommended.

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

**ATTACHMENT**

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

## **INTRODUCTION**

Approval of the Resolution to Create the Expanded Park Maintenance District No. 4025 for the maintenance of Rehberg Ranch Estates, First Filing and Second Filing public areas is the final step in creating the expanded Park Maintenance District

## **PROCEDURAL HISTORY**

- The Rehberg Ranch Estates Subdivision, Second Filing plat has been approved and filed.
- The process to expand the Rehberg Ranch Estates Subdivision Park Maintenance District was started in the Summer of 2006, and a Resolution of Intention To Create the Expanded District was considered and approved by the City Council on July 24<sup>th</sup>, 2006. The required Notice of Passage for the Resolution of Intent, Number 06-18454, was not available for publication as required and the process had to be discontinued.
- The Resolution of Intention to Create the Expanded District was brought forward a second time to be considered and was approved by the City Council on February 26<sup>th</sup>, 2007. The resolution included the repeal of the Resolution of Intent Number 06-18454 that was approved on July 24<sup>th</sup>, 2006.
- The required Public Notice of the Resolution of Intent was advertised as required on Thursday March 1<sup>st</sup> and on Thursday, March 8<sup>th</sup>, 2007, and the Public Notice was mailed to all owners of record in the proposed maintenance district expansion area. The Notice of Intent provides for a protest and comment period of 15 days from March 2<sup>nd</sup> to March 16<sup>th</sup>, 2007, and sets a date for a Public Hearing and consideration of the Resolution Creating the Expanded District for the regular City Council meeting of March 26<sup>th</sup>, 2007.

## **BACKGROUND**

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

Approval of the Resolution of Intent to Create Expanded Park Maintenance District No. 4025 for Rehberg Ranch Estates, First Filing, is the first step in the creation process. The Resolution of Intent to Create the district provides for advertisement and mailing of a public notice to affected

property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create the district will take place at the March 26<sup>th</sup>, 2007, City Council Meeting.

### **ALTERNATIVES ANALYSIS**

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

### **STAKEHOLDERS**

- The developers have agreed to the development and maintenance of the public areas in Rehberg Ranch Estates, First Filing and Second Filing. Waivers of Protest to the creation of a park development districts or a park maintenance district for the property were included in the Subdivision Improvement Agreement for the 2<sup>nd</sup> Filing and are on file.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide parks and improvements for their residents to mitigate that problem as they are built out.

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

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

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

year.

**RECOMMENDATION**

Staff recommends Council approve the Resolution to Create the Expanded Park Maintenance District No. 4025 as recommended.

**RESOLUTION NUMBER 07-\_\_\_\_\_**  
**A RESOLUTION TO EXPAND THE BOUNDARIES OF EXTENDED  
SPECIAL IMPROVEMENT MAINTENANCE DISTRICT NO. 4025 FOR  
THE PURPOSE OF MAINTAINING THE EXISTING AND FUTURE  
PUBLIC AREA IMPROVEMENTS IN REHBERG RANCH ESTATES  
SUBDIVISION, FIRST FILING TO INCLUDE REHBERG RANCH  
ESTATES SUBDIVISION, SECOND FILING.**

WHEREAS, City Council of Billings, Montana hereby finds, determines and declares that:

1. The public interest and convenience require expanding the boundaries of Special Improvement Maintenance District No. 4025 created by *Resolution 04-18152 on June 28, 2004*.
2. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the cost and expenses of the district.

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

1. *Jurisdiction and Creation:* Extended Special Improvement Maintenance District No.4025 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the improvements and it does hereby expand the boundaries of Special Improvement Maintenance District No. 4025. All lands included in the expanded boundaries of Extended Special Improvement Maintenance District No. 4025 are benefited and no lands that are not benefited have been included in said district.
2. *General Character of Improvements and Maintenance:* The general character of the improvements to be maintained is as follows: native grasses, trees, shrubs, trails, irrigation system, irrigation system water services, drainageways, storm detention facilities, street lighting and signage, weed control, pest control, and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District.
3. *Boundaries:* The boundaries of the district are described and designated on Exhibit "A" attached hereto.
4. *Maintenance Estimate:* The estimated cost of the proposed expansion maintenance for the current year shall be \$0.00713 per square foot of lot area as described in the Maintenance Estimate attached hereto as Exhibit "D".
5. *Assessment Method:* All of the costs and expenses of the district will be assessed against the entire district, and each lot or parcel of land within the district will be assessed for that part of

the whole cost which its assessable area bears to the total assessable area in the entire district, exclusive of streets, avenues, alleys and public places. Assessments for each lot during the current year will be approximately \$0.00713 per square foot of lot area. In accordance with 7-1-1479 MCA, the assessment for each lot in each ensuing year will be set by the City Council by resolution.

6. *Payment of Assessment:* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that the payment of one-half of said annual assessment may be deferred to May 31 of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute the existing fund known as Fund of Special Improvement Maintenance District No. 4025.
7. *Bonds for Improvements:* There will be no bonds sold for this district as it is for maintenance only.
8. *Engineering:* No engineering will be required for the maintenance of the district.
9. *District Accounts:* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

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

CITY OF BILLINGS

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

ATTEST:

By: \_\_\_\_\_  
Cam Trudeau, Deputy City Clerk

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

## AGENDA ITEM:




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


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

**DEPARTMENT:** Public Works - Engineering

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

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**PROBLEM/ISSUE STATEMENT:** On February 26, 2007, Council passed a Resolution of Intent for this project and established a Public Hearing date of March 26, 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:** The proposed project is funded through multiple sources, including direct property assessments for a total project cost of \$616,020, as follows:

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

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

### **RECOMMENDATION**

Staff recommends that Council pass a resolution ordering construction of the improvements identified in Work Order 05-02, 2005 and 2006 Miscellaneous/Developer Related Project.

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

### **ATTACHMENT**

A. Resolution Ordering Improvements



## **INTRODUCTION**

The proposed project represents curb, gutter, and sidewalk improvements at various locations in the city. This is a continuation of a long-standing annual program to deal with these various improvements.

## **PROCEDURAL HISTORY**

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

## **BACKGROUND**

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

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

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

## **RECOMMENDATION**

Staff recommends that Council pass a resolution ordering construction of the improvements identified in Work Order 05-02, 2005 and 2006 Miscellaneous/Developer Related Project.

## **ATTACHMENT**

- A. Resolution Ordering Improvements



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

A RESOLUTION RELATING TO W.O. 05-02, MISCELLANEOUS /DEVELOPER-RELATED IMPROVEMENTS; 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 February 26, 2007, adopted Resolution No. 07-18529 (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. 05-02 (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 March 26, 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 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 \$343,000 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 26<sup>th</sup> day of March 2007.

THE CITY OF BILLINGS:

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

ATTEST:

BY \_\_\_\_\_  
Cam Trudeau, Deputy City Clerk

**Location of Work**  
**Work Order 05-02**  
**Miscellaneous and Developer Related**  
**Exhibit "A"**

- A) Sidewalk: 2308 thru 2328 Pine Street \* North side of City Hall Hand-I-cap parking space \* 543 Lewis Avenue \* 503 Avenue F \* 44 Nimitz Drive \* 2528 Poly Drive \* 623 Park Lane \* 2322 Wyoming Avenue \* 2413 Montana Avenue \* 1745 Deep Powder Drive \* East side of Veterans Park (parks dept.) \* Muirwood Drive (Parkland West sub R-O-W) \* 2532 Broadwater Avenue \* 721 to 733 Avenue F \* 730 to 746 Avenue F \* 501 Avenue C \* 2235 Fox Drive \* 1624 Avenue D \* 175 North 27<sup>th</sup> Street (wells fargo bldg) \* 741 Avenue C \*
- B) Sidewalk, Curb and Gutter: South side of Avenue F between 6<sup>th</sup> Street West and 7<sup>th</sup> Street West \* 4229 Clevenger Avenue \* 1432 Crawford Drive \* 1229 to 1243 Poly Drive \* 1227 Avenue D \* 140 Wyoming Avenue \* 1621 6<sup>th</sup> Street West \* 2326 Hewitt Drive \* 2104 Hewitt Drive \* Both sides of 19<sup>th</sup> Street West from Colton Drive to the BBWA canal \* 1748 4<sup>th</sup> Avenue North \* 114 Adams Street \* 108 Adams Street \* 1706 St. Andrews Drive \*
- C) Sidewalk, Drive Aprons: 1400 Kootenai Avenue \* 1870 High Sierra Boulevard \* 452 Katherine Ann Boulevard \* 2790 Gabel Road \* 1911 King Avenue West \*
- D) Sidewalk, curb & Gutter, Drive Aprons: 2270 George Street \* 4603 to 4615 Phillip Street \* Intersection of Lexington Drive & Santa Fe Drive all directions 150' +/- \* 1911 & 1915 Belvedere Drive \* #1 South Broadway \* 829 to 845 Yellowstone Avenue \* 1510 & 1520 Virginia Lane \* South side of Avenue D between Virginia Lane and 6<sup>th</sup> Street West \* 2116 Fox Drive \* 426 Nelson Drive \* 2714 & 2718 Hoover Drive \* 3695 Rimrock Road (Lot 16 Blk 2 Reimers Park sub ) \* West side of South 31<sup>st</sup> Street between 3<sup>rd</sup> Avenue South and 4<sup>th</sup> Avenue South (blk #197) \* East side of South 32<sup>nd</sup> Street between 3<sup>rd</sup> Avenue South and 4<sup>th</sup> Avenue South (blk #197) \*
- E) Sidewalk, curb & gutter Drive Aprons & Alley Aprons: Both side of 2<sup>nd</sup> Avenue South between South 36<sup>th</sup> Street and South 37<sup>th</sup> Street \* South side of 5<sup>th</sup> Avenue South between South 37<sup>th</sup> Street and State Avenue (R/R R-O-W) \* South side of 3<sup>rd</sup> Avenue South between S 31<sup>st</sup> Street and S 32<sup>nd</sup> Street \* North side of 4<sup>th</sup> Avenue South between South 31<sup>st</sup> Street and South 42<sup>nd</sup> Street \*
- F) Curb & Gutter: 2115 11<sup>th</sup> Street West \* 524 Clark Avenue \* 331 Burlington Avenue \* Intersection of Greenbriar Road and Lake Heights Drive \* 1306 Avenue F \*
- G) Curb, Gutter, Drive Aprons: 631 Custer Avenue \*
- H) Drive Aprons: 2033 Main Street \* 4310 North Carlton Avenue \* 4207 North Carlton Avenue \* 3195 Mac Masters Road \*
- I) Alley Aprons: East side of Lexington Drive between Dallas Drive and Beloit Drive \* North side of Beloit Drive between Lexington Drive and South Santa Fe Drive \* West side of 7<sup>th</sup> Street West (400 block) \* East side of 6<sup>th</sup> Street West between Avenue C and Avenue D \* South side of Avenue D between Virginia Lane and 6<sup>th</sup> Street West. \* North side of Avenue C between Virginia Lane and 6<sup>th</sup> Street West. \* West side of Woody

- Drive between Cohagen Drive and Solomon Drive \* East side of 24<sup>th</sup> Street West  
between Cohagen Drive and Solomon Drive \*
- J) ADA Ramps only : S/W corner of South 26<sup>th</sup> Street & 3<sup>rd</sup> Avenue North \* 3145 Avenue  
F \* 1902 32<sup>nd</sup> Street West \*
- K) Asphalt Restoration: 400 & 402 Sharon Lane \* 401 & 403 Sharon Lane \*

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

## AGENDA ITEM:




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

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**TITLE:** Zone Change #799 Public Hearing and 1<sup>st</sup> Reading of Ordinance

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Residential-15,000 (R-150) to Public on the North ½ of Lot 3 and all of Lot 4 and Lot 7, Sandra Subdivision. The property is located at 23, 63 and 65 Charlene Street. The property is owned by the City of Billings. The Zoning Commission conducted a public hearing on March 6, 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 have no effect on the City's tax base since the property is owned by the City.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #799 and adopt the determinations of the 12 criteria, as discussed within this report.

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

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance



## **INTRODUCTION**

This is a zone change request from R-150 to Public on the North ½ of Lot 3 and all of Lot 4 and Lot 7, Sandra Subdivision. The property is located at 23, 63 and 65 Charlene Street. The City of Billings owns the properties and is requesting annexation and a zone change on these properties to bring them into the City and to make the zoning fit with the planned uses for the property. The property is adjacent to the City Water Treatment Plant and is to be utilized in the future for plant expansion. To comply with state and local regulations for annexation of City-owned property and a zone change, the City Council approved a resolution of intent to annex the properties on February 12 and scheduled a joint public hearing on March 26 to consider the annexation and the zone change. The City Zoning Commission conducted a public hearing on this application on March 6, 2007, and is forwarding a recommendation of approval.

## **PROCEDURAL HISTORY**

- A zone change request was received on February 5, 2007, for the subject properties.
- The City Council On February 12, 2007, passed Resolution #07-18526, a resolution of intent to annex the subject property, and set a joint public hearing for the question of annexation and the zone change for March 26, 2007.
- The Zoning Commission conducted a public hearing on March 6, 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 March 26, 2007, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on April 9, 2007.

## **BACKGROUND**

This is a zone change request from R-150 to Public on the North ½ of Lot 3 and all of Lot 4 and Lot 7, Sandra Subdivision. The property is located at 23, 63 and 65 Charlene Street. The City of Billings owns the properties and is requesting annexation and a zone change on these properties to bring them into the City and to make the zoning fit with the planned uses for the property. To comply with state and local regulations for annexation of City-owned property and a zone change, the City Council has approved a resolution of intent to annex the properties and scheduled a joint public hearing on March 26 to consider the annexation and the zone change.

The property is adjacent to the City Water Plant property and the City is planning to use the property for future expansion of the water treatment facility. The City currently uses a storage shed on the North ½ of Lot 3 and has a water line running under a portion of the property. City Water Plant Superintendent Mike Rubich states that the City is planning to purchase property along the east side of Charlene as land owners decide to sell to add more property to the water plant facility. The City's goal in this zone change application is to bring the property into the proper zoning jurisdiction with its current and future use as part of the Water Plant facility. Since the City already owns the property, it could continue to use the property contrary to local zoning regulations as authorized under MCA 76-2-402. However, the City is interested in having the property within the City Limits and zoned correctly for public uses.

The lots directly to the north, south and west of these properties are zoned R-150. The lots east of the subject property are zoned Public and are part of the City of Billings Water Plant facility. About half a block to the north, the PPL Montana coal-fired power plant is located on property zoned Heavy Industrial. Half a block to the south across Belknap Avenue is a cluster of properties zoned Community Commercial with several small businesses on the site. The South 27<sup>th</sup> Street/Interstate 90 interchange is located southwest of the subject properties. While this area has residentially zoned property and residential uses, it is an area that is surrounded by very intense commercial and industrial activities. The R-150 zoning along both sides of Charlene Street where these properties are located stretches for about one block and is surrounded on three sides by industrial uses and the Interstate 90 corridor. While there is no expectation that the residential zoning and uses will be eliminated in any specific time period, this area is expected to see a reduction in residential uses over time given its location, and the uses and zoning surrounding it.

The Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The Zoning Commission conducted a public hearing on March 6, 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. *1. Is the new zoning designed in accordance with the Growth Policy?*  
The proposed zoning is consistent with the following goals of the Yellowstone County and City of Billings 2003 Growth Policy:
  - Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6). *This property is in a very urbanized area and has many existing commercial and industrial uses around it.*
  - Goal: Predictable land use decisions that are consistent with the neighborhood character and land use patterns (Land Use Element Goal, Page 5). *This area of the City has a mix of residential, commercial and industrial uses. The subject properties are surrounded on three sides by industrial uses and the Interstate 90 corridor. It is expected that this neighborhood area will continue to shift toward more of the same types of commercial and industrial uses that are already there.*
  - Goal: New developments that are sensitive to and compatible with the character of the adjacent City neighborhoods and County townsites (Land Use Element, Page 6). *This zone change will bring this City-owned property into compliance with the intended use of the property as part of the Water Plant facility. However, a multi-use trail already runs through the Water Plant property just east of the subject properties and the Water Plant continues to maintain open space areas on its grounds.*

2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning is not expected to increase street congestion. The existing traffic that accesses the Water Plant from Belknap is expected to remain the same with the addition of these properties, since there is no immediate plan to develop the subject properties. Any future access roads that connected to Charlene Street would be reviewed by the City Engineering Department.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
These lots have access to Charlene Street and have access directly to the Water Plant property to the east. The property, if annexed, will be served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
Public zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks and landscaping requirements for any new developments. While the City is allowed to use land contrary to zoning, it is expected that the City would follow the Public zoning requirements as applicable.
5. *Will the new zoning provide adequate light and air?*  
Public zoning provides for sufficient structural setbacks to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
Public zoning, as in all districts, has limits on the maximum percentage of lot that may be covered with structures. The Public zone allows 50% lot coverage. This limitation should prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*  
Public zoning does not allow residential development, so all uses would be of a non-residential nature and will avoid undue concentration of population.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*  

<i>Transportation:</i>	The new zoning should have not have a significant effect on the adjacent streets or traffic patterns. However, any proposed new accesses to Charlene Street would be reviewed by the City Engineering Department.
<i>Water and Sewerage:</i>	The City owns the property and may provide water and sewer service to the property if it is desired.
<i>Schools and Parks:</i>	There should be no immediate effect on parks or schools from this rezoning since Public zoning does not allow residential development.

*Fire and Police:* The property will be served by the City Fire Department and Police Department and there should be no problems with access.

9. *Does the new zoning give reasonable consideration to the character of the district?*  
The zoning in this area is a mixture of commercial, industrial and residential districts with various uses and densities. The area is primarily industrial to the east, north, and west. The subject properties are in close proximity to the Interstate 90 corridor, a power plant and the Water Plant. The new zoning gives reasonable consideration to the character of the district.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The subject property is level, has good legal and physical access and appears suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
The new zoning is not expected to appreciably alter the value of buildings on the property or within the area. However, the gradual change in zoning and uses in this neighborhood could reduce residential property values over time.
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. This area has significant industrial activity and uses, and is in close proximity to the Interstate 90 corridor. It is expected that this area will continue to transition over time from a mix of residential, commercial and industrial uses, to more of a commercial and industrial area.

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

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

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on March 6, 2007, and is forwarding a recommendation of approval to the City Council by a 4-0 vote. City Water Plant Superintendent Mike Rubich attended the meeting and represented the City for the application.

Three neighboring property owners spoke at the public hearing. Rodney Riplett of 62 Charlene Street, Joyce Baker of 83 Charlene, and Jerry Jackson, property owner, at 85 and 87 Charlene Street all spoke at the hearing. Rodney Riplett was asked if the property is used for park land now and whether the trail to the east of the property would be moved along Charlene if the City eventually acquired all of the property along the east side of Charlene. Riplett also expressed concern that City trucks hauling solids from the Water Treatment Plant to Coulson Park are traveling too fast on Charlene for the residential nature of the neighborhood.

Joyce Baker said she was concerned that the City would force property owners along Charlene to sell if the City planned an expansion of the Water Treatment Plant. She said she had lived at the property for many years and did not plan to move.

Jerry Jackson said he did not understand why the City was asking for a zone change now instead of when it had acquired all of the property along Charlene adjacent to the Water Treatment Plant. Jackson said he was afraid that the City will get the zoning changed and then put some plant equipment on the property between the existing residential properties and reduce the property values of the neighborhood.

Mike Rubich explained that the City is concerned that it could be land locked in the future if it does not acquire property along the Charlene Street frontage. He said the City wanted to have these properties properly zoned and annexed to fit with the rest of the Water Plant property. He said that the new 2006 Water and Wastewater Facilities Master Plan, which covers the next 25 years of planning for the City, does not identify any specific plans for the subject property. Rubich said the City had sent a letter to property owners along Charlene informing them that if they wished to sell their property, the City was interested. He said there had been one response from that letter so far and the City had no plans to take any other action on purchasing property unless approach by property owners. Rubich said he would look into the City's truck traffic on Charlene regarding speeds. He said once a year for about three weeks the Water Plant hauls solids to Coulson Park as part of a landfill reclamation project in the Park.

Planner Wyeth Friday clarified for the Zoning Commission and members of the public that the City could continue to use the property zoned Residential-15,000 under the state law allowing government entities to use land contrary to zoning. He said the City wanted to get the property zoned correctly and into the City Limits since it was being used by the City Water Plant.

No other public comment was taken at the Zoning Commission meeting.

### **RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #799 and adopt the determinations of the 12 criteria, as discussed within this report.

### **ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

**Attachment A**  
Site photographs



**Figure 1.**  
Looking East at  
Lot 7 from  
Charlene Street.  
The Water Plant  
property is  
visible in the  
background.



**Figure 2.**  
Looking north  
along the Lot 7  
frontage on  
Charlene Street.  
There are  
existing  
residential  
structures on the  
neighboring lots  
in this area.



**Figure 3.**  
Looking south  
along the Lot 7  
frontage on  
Charlene Street.





**Figure 4.**  
Looking East at  
Lot 3 and Lot 4  
from Charlene  
Street. Some of  
the existing  
Water Plant  
facilities are  
visible in the  
background.

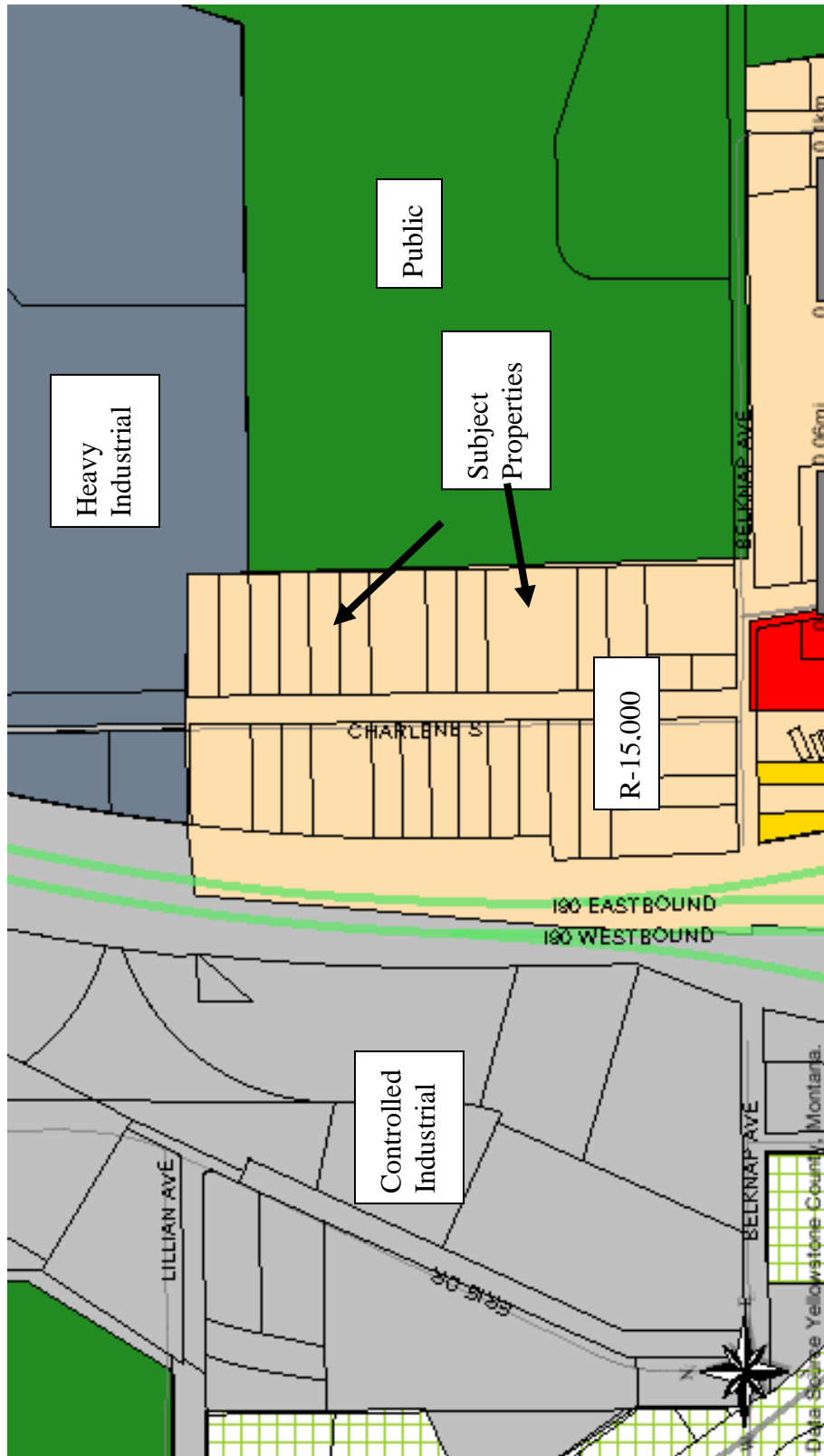


**Figure 5.**  
Looking north  
along the Lot 3  
and Lot 4  
Charlene Street  
frontage.  
Residential  
property is  
located to the  
north of these  
lots.



**Figure 6.**  
Looking south  
along the Lot 3  
and Lot 4  
Charlene Street  
frontage.

**Attachment B**  
**Zoning Map**





## ATTACHMENT C

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

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR N1/2 of Lot 3, and all of Lot 4 and Lot 7, Sandra Subdivision,  
containing approximately 2.9 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. Tracts of land known as the north ½ of Lot 3, and all of Lot 4 and Lot 7, Sandra Subdivision, containing approximately 2.9 acres of land and is presently zoned Residential-15,000 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for the **north ½ of Lot 3, and all of Lot 4 and Lot 7, Sandra Subdivision**, is hereby changed from **Residential-15,000** to **Public** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Public** zoning 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 March 26, 2007.

PASSED, ADOPTED AND APPROVED on second reading April 9, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cam Trudeau, Deputy City Clerk

ZC#799 – Sandra Subdivision, N1/2 of Lot 3, and all of Lot 4 and 7

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## AGENDA ITEM:




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


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TITLE: Zone Change #800 Public Hearing and 1<sup>st</sup> Reading of Ordinance  
 DEPARTMENT: Planning and Community Services  
 PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Residential Manufactured Home (RMH) to Residential-6,000 (R-60) on Lots 15A, 16B & 16C of Block 1 of Pemberton Subdivision located at 525 N. Lakeview Drive, 532 and 542 Pemberton Lane. The Zoning Commission conducted a public hearing on March 6, 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 will increase the City's tax base when the property is re-developed.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #800 and adopt the determinations of the 12 criteria, as discussed within this report.

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

**ATTACHMENTS:**

- A: Site Photographs  
 B: Surrounding Zoning  
 C: Ordinance

## **INTRODUCTION**

This is a zone change request from RMH to R-60 on a 1.63 acre parcel of land owned by Marc and Winchester McKell. The property is three separate lots – two have access on Pemberton Lane and one has access on North Lakeview Drive. Two of the lots have manufactured homes and Lot 16C has a home built in 1926 (532 Pemberton Lane). The applicants are preparing to re-develop the property with duplex units that will be similar to the units under construction west of the site. The subject properties are located on the south side of Pemberton Lane between Main Street and Lake Elmo Drive. A concept site plan submitted with application shows four duplex dwelling units.

## **PROCEDURAL HISTORY**

- A zone change request was received on February 5, 2007, for the subject properties.
- The Zoning Commission conducted a public hearing on March 6, 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 March 26, 2007, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on April 9, 2007.

## **BACKGROUND**

The subject properties are located south of Pemberton Lane and west of the intersection of Main Street. The property owner plans to redevelop the property for several duplex condominium units in the future and the current zoning district does not allow two-family dwellings.

The lots to the north are zoned CC and are not developed at this time. American Pharmaceutical is just north and east in the re-developed K-mart building. The property east and south of the site is RMH and is developed for single family dwellings. This area is a mixture of site built homes, modular homes and manufactured homes. West of the site the zoning is R-60 and RMH, and duplex homes are under construction on North Lakeview Drive and a mobile home park is located on Lots 19 and 20. Property to the south is zoned RMH and is developed with modular single family homes. Pemberton Lane and Lake Elmo Drive are both collector streets and currently handle about 1,700 vehicle trips per day. As property north of Pemberton Lane develops, this traffic volume will increase. The Billings Heights Neighborhood Plan indicates this area should develop at a medium residential density. The proposed R-60 zoning district could allow a medium density residential development. Single family homes and duplexes could be developed that would allow a density of 11 to 20 dwelling units on the total parcel. An irrigation ditch bisects the property that will limit the development of the parcels. In addition, easements for existing sanitary sewer and utilities further restrict development. It is likely the property could develop as many as four duplex units as shown on the concept site plan. The proposed R-60 would mirror zoning to the west of the property and allow a greater variety of housing choices in the neighborhood. Any development of the property would require adequate off-street parking and landscaping to buffer the adjacent residential uses.

The Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The new zoning will not increase urban sprawl by utilizing existing city services. Any redevelopment will have to comply with all applicable zoning

requirements including screening and buffering from adjacent single family residential land uses. The new zoning gives reasonable consideration to the character of the district. The Zoning Commission conducted a public hearing on March 6, 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 not increase urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers. The proposed zoning conforms to the land use plan adopted in the Billings Heights Neighborhood Plan. The proposed zoning will provide more housing choices in this area and is consistent with zoning in the area.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning will not increase street congestion. The existing traffic of 1,700 vehicle trips per day will not be substantially increased.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on Pemberton Lane and North Lakeview Street. The property is served by the City Fire Department and Police Departments. The property is served by Billings Heights Water and has public sanitary sewer services. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks, landscaping and screening requirements for any new developments.
5. *Will the new zoning provide adequate light and air?*  
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The new zoning, as do all districts, has limits on the maximum percentage of lot that can be covered with structures. The R-60 zone allows 40% lot coverage. This limitation should prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*  
The new zoning of R-60 allows the development of single family and two-family residential dwelling units. If the entire parcel were developed at the maximum density,

there could be 20 dwelling units on this parcel or up to 8 dwelling units per acre. Restrictions on lot coverage (40%), building height (34 feet), setbacks from property lines, drainage ditches, utility easements and required off-street parking (2 spaces per dwelling unit) would restrain the development of this number of dwelling units. The new zoning will avoid undue concentration of population.

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

*Transportation:* The new zoning should have no effect on the adjacent streets or traffic patterns.

*Water and Sewerage:* The City provides water (through Billings Heights Water District) and sewer service to the property and has adequate facilities to serve this property.

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

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

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

The zoning in this area is a mixture of commercial and residential districts with various densities. The area is primarily residential with commercial uses and zoning within 500 feet of the intersection. The new zoning gives reasonable consideration to the character of the district.

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

The subject property is suitable for the requested zoning district.

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

The new zoning is not expected to appreciably alter the value of buildings on the property or within the area. The two existing manufactured homes will become nonconforming uses of property. Under existing regulations, these dwelling units can remain or be replaced by another manufactured home as long as it is not substantially larger than the existing home and meets all other required setbacks of the new zoning district.

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

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

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

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

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on March 6, 2007, and forwarded a positive recommendation to the City Council by a 4-0 vote. Mr. Marc McKell attended the public hearing and explained the proposed zone change to the Zoning Commission. No other property owners attended the public hearing or registered concerns about the zone change with the Zoning Commission or Planning Department.

### **RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #800 and adopt the determinations of the 12 criteria, as discussed within this report.

### **ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

**ATTACHMENT A**  
**Site photographs – Zone Change #800**



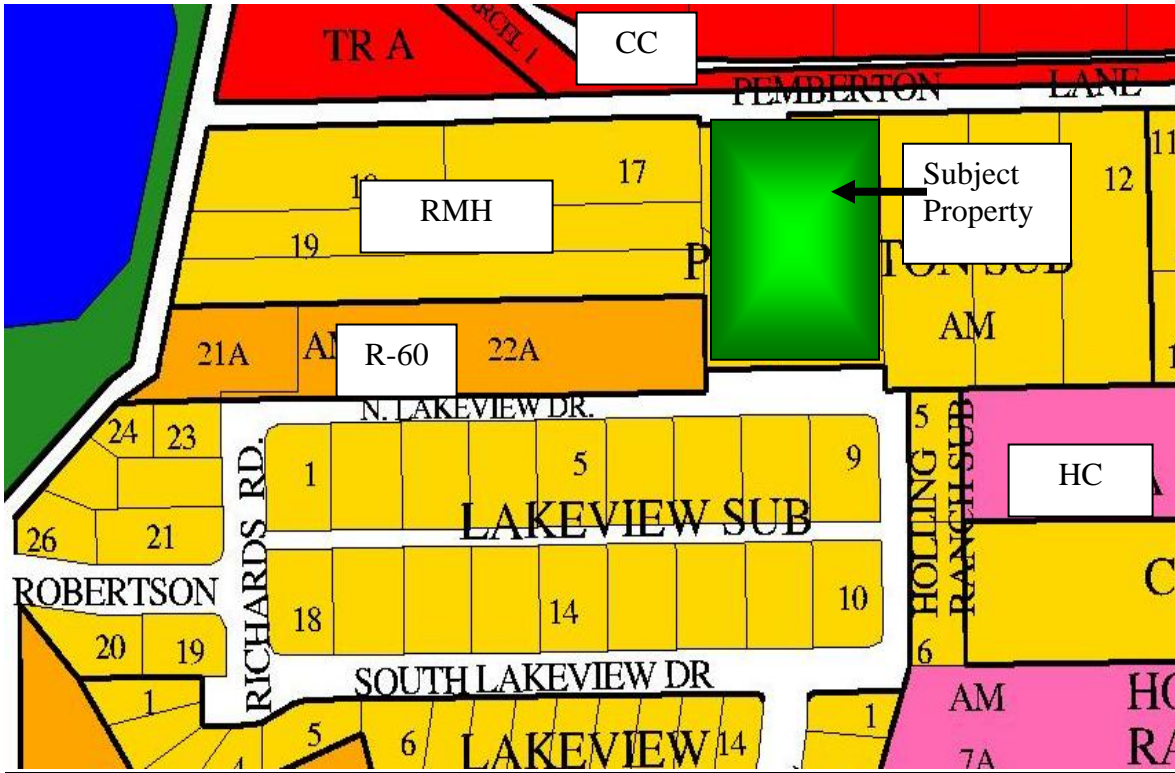
Subject property – 532 Pemberton Lane, Lot 16C, Block 1



View east to adjacent subject property – 542 Pemberton Lane, Lot 15A, Block 1



**ATTACHMENT B**  
**Surrounding Zoning – Zone Change #800**



**ATTACHMENT C**

**Zone Change #800**

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

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Lots 15A, 16B and 16C, Block 1 of Pemberton Subdivision,  
containing approximately 1.63 acres.

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

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

2. DESCRIPTION. A tract of land known as Lots 15A, 16B and 16C, Block 1 of Pemberton Subdivision, containing approximately 1.63 acres of land and is presently zoned Residential Manufactured Home and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning **for Lots 15A, 16B and 16C, Block 1 of Pemberton Subdivision** is hereby changed from **Residential Manufactured Home** to **Residential-6,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential-6,000** as set out in the Billings, Montana City Code.

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

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

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

PASSED, ADOPTED AND APPROVED on second reading April 9, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cam Trudeau, Deputy City Clerk

ZC#800 – Pemberton Subdivision, Block 1, Lots 15A, 16B and 16C

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

## AGENDA ITEM:




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

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**TITLE:** Public Hearing for Special Review #838  
**DEPARTMENT:** Planning & Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a special review to construct a 10-plex apartment building on a property legally described as Certificate of Survey 534 in Flanagan Subdivision, Tract 1, Lot 8. The subject property is located at 1048 Foster Lane and is zoned Residential 6000 (R-60). The owner and applicant is Hanser Capital Holdings, LLC. The Zoning Commission conducted a public hearing on March 6, 2007, and is forwarding no recommendation, as the motion resulted in a 2-2 tie vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a special review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission forwards no recommendation to the City Council for Special Review #838, as the result was a 2-2 tie vote.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

This is a special review to construct a 10-plex apartment building on a property legally described as Certificate of Survey 534 in Flanagan Subdivision, Tract 1, Lot 8. The subject property is located at 1048 Foster Lane and is zoned Residential 6000 (R-60).

## **PROCEDURAL HISTORY**

- On February 5, 2007, the special review application was submitted to the Planning Department.
- On March 6, 2007, the Zoning Commission conducted a public hearing on this request and forwarded no recommendation to the City Council, as the result was a 2-2 tie vote.
- On March 26, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

## **BACKGROUND**

The applicant is requesting a Special Review to construct a 10-plex on a lot containing 21,300 square feet on an R-60 zoned property. The subject property is located mid-block on Foster Lane and is bordered on the east by 12<sup>th</sup> Street West and on the west by Foster Lane, thereby creating two entrances to the property. The applicant is proposing 10, three bedroom apartments within the structure as rental units.

Pursuant to Section 27-308 of the Billings City Code, the R-6000 zoning district permits single-family residences and duplexes with the required square footage and permits residential structures containing 3-10 units with a Special Review. The minimum square footage required for a 10-plex is 19,000 square feet; the subject property contains approximately 21,300 square feet. The applicant could construct three duplexes by right on the subject property without the Special Review.

Parking for the proposal is being provided at both entrances to the property. Section 6-1203 of the Billings City Code specifies that 1.5 parking spaces are required for multi-family residential units containing one or more bedrooms. The applicant has provided the required 15 parking spaces including one handicapped space and an additional five spaces for overflow parking. While the parking requirement has been met, concerns were raised by the Building Department that the anticipated parking may exceed the available spaces due to the number of bedrooms in each unit. The Building Department also noted that an additional handicapped accessible space would be required on the side of the property bordered by 12<sup>th</sup> Street West, as all of the ground floor apartment units are required to be handicapped accessible.

The Engineering Division also reviewed this application and found that the current property lines extend to the west into the 12<sup>th</sup> Street West right-of-way. As such, the Engineering Division is requiring a road dedication of 30-feet along the subject property frontage on 12<sup>th</sup> Street West (Condition #6). This would eliminate approximately four parking spaces within the development. In addition to the eliminated parking spaces, the applicant would lose approximately 2,250 square feet of lot area. The lot would then contain 19,050 square feet and still satisfy the requirement for a 10-plex.

In regard to landscaping, the applicant will be required to provide approximately 1,461 square feet of landscaping per Section 27-1105(a), BMCC. The applicant is proposing 5,065 square feet along the north and south property lines. Fifty percent (50%) of the required landscaping shall be located along the street frontages in order to provide for a positive street presence, as well as break up the bulk and scale of the proposed structure. Furthermore, a site obscuring fence or hedge is required as a buffer between the proposed structure and the adjacent residential uses to the north and the south.

The Planning Department has reviewed this application and is recommending **denial**. The surrounding properties are primarily single-family residences with the only exception being the commercial structures located along Central Avenue to the north, a multi-family structure located approximately one block to the south, and the manufactured home park at the terminus of Foster Lane. Staff finds that the bulk and scale of the proposed building at approximately 6670 square feet and 30-feet in height would be contrary to the neighboring owner occupied, single-story residences. While the applicant has provided the parking required by the regulations, the anticipated parking need for 30 bedrooms exceeds the number provided. In addition, the applicant would be required to provide another handicapped space, as well as right-of-way dedication, which would decrease the overall parking for the site. The landscaping provided does exceed the required amount; however, there is no functional outdoor space for the residents of the apartment complex. The landscaping is provided only as a buffer area on the north and south portions of the property. The applicant could construct three duplexes on the property without a special review. Duplexes would break up the bulk and scale of the proposed building by creating units that appear to be more single-family in nature with less parking, a lowered height, and more useable outdoor space for the residents.

While staff is recommending denial of this application, the Conditions of Approval have been provided and are recommended if the City Council finds for approval.

### **ALTERNATIVES ANALYSIS**

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

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

*While this application does comply with the requirements of the zoning regulations, it is contrary to the character of the surrounding single-family residences.*

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

*The proposed 10-plex is not compatible with the surrounding neighborhood, which are primarily single-family residences.*

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

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

#### **CONDITIONS OF APPROVAL**

The following conditions are recommended if the Zoning Commission recommends approval to the City Council:

1. The special review approval shall be limited to Certificate of Survey 534 in Flanagan Subdivision, Tract 1, Lot 8.
2. Development of the site shall be in substantial conformance with the submitted site plan. Deviations from the approved site plan that change the location of buildings, parking lot access or parking areas will require additional special review approval.
3. An additional handicapped parking space is required for the parking lot accessed from 12<sup>th</sup> Street West. Additionally, all ground floor units shall be handicapped accessible.
4. A site obscuring fence at least 6-feet in height shall be installed between the proposed parking spaces along the southern property line and the proposed structure. Said fence shall be constructed of wood, stone, vinyl, brick or block; wire or chain link fencing is not permitted. A continuous hedge may be substituted for the required fence, provided that the proposed hedge bushes are at least 3-feet tall when planted and reach a mature height of 6-feet. *(Required by Section 27-1105.A.2 of the BMCC)*
5. The applicant shall provide a minimum of 365 square feet of landscaping along 12<sup>th</sup> Street West and Foster Lane. *(Required by Section 27-1105.A.1, BMCC)*
6. The applicant shall dedicate 30-feet of right-of-way along 12<sup>th</sup> Street West. *(Recommended by the Engineering Division)*

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

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on March 6, 2007, and forwarded no recommendation to the City Council based on a 2-2 tie vote. Bill Hanser, the property owner was present at the meeting.

The property owners to the north and south of the subject property were present at the public hearing and raised concerns regarding the potential density of the proposed 10-plex. The adjacent owners felt that the proposed 10-plex is too dense for the existing neighborhood, which are primarily single-family residences. They stated that the existing multi-family uses further south on Foster Lane and on 12<sup>th</sup> Street West to the southwest have become a nuisance with parking issues, trash disposal issues, and noise, which is of concern with the proposed 10-plex. In addition, the residents expressed concerns regarding stormwater and drainage of the site, since neither Foster Lane nor 12<sup>th</sup> Street West have curb, gutter, or storm sewers at this time. Staff did clarify that through the site plan review of this property, the Engineering Division would review the site for compliance with the Stormwater Management Manual and that all stormwater created by the development would need to be retained onsite. However, the developer is not responsible for mitigation of excess stormwater from adjacent properties.

Zoning Commission discussion focused on consistency with the surrounding residential uses. Two Commission members (Thomas Grimm and Michael Larson) felt that the density was much more than the surrounding properties and that there could be potential parking issues based on the proposed 3-bedroom units. The applicant did state that he would be willing to limit either the east or west units within the complex to 2-bedrooms each in order to provide enough parking spaces for the anticipated need of the 10-plex. Two members of the Commission (Angela Cimmino and Leonard Dailey) felt that the conditions proposed by staff and the reduction of the number of bedrooms within a portion of the units would mitigate any negative impacts to the surrounding properties. Based on the discussion, the vote was a 2-2 tie with no recommendation forwarded to the City Council.

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

In addition to the above discussion in the Alternatives Analysis section, this application does not conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

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



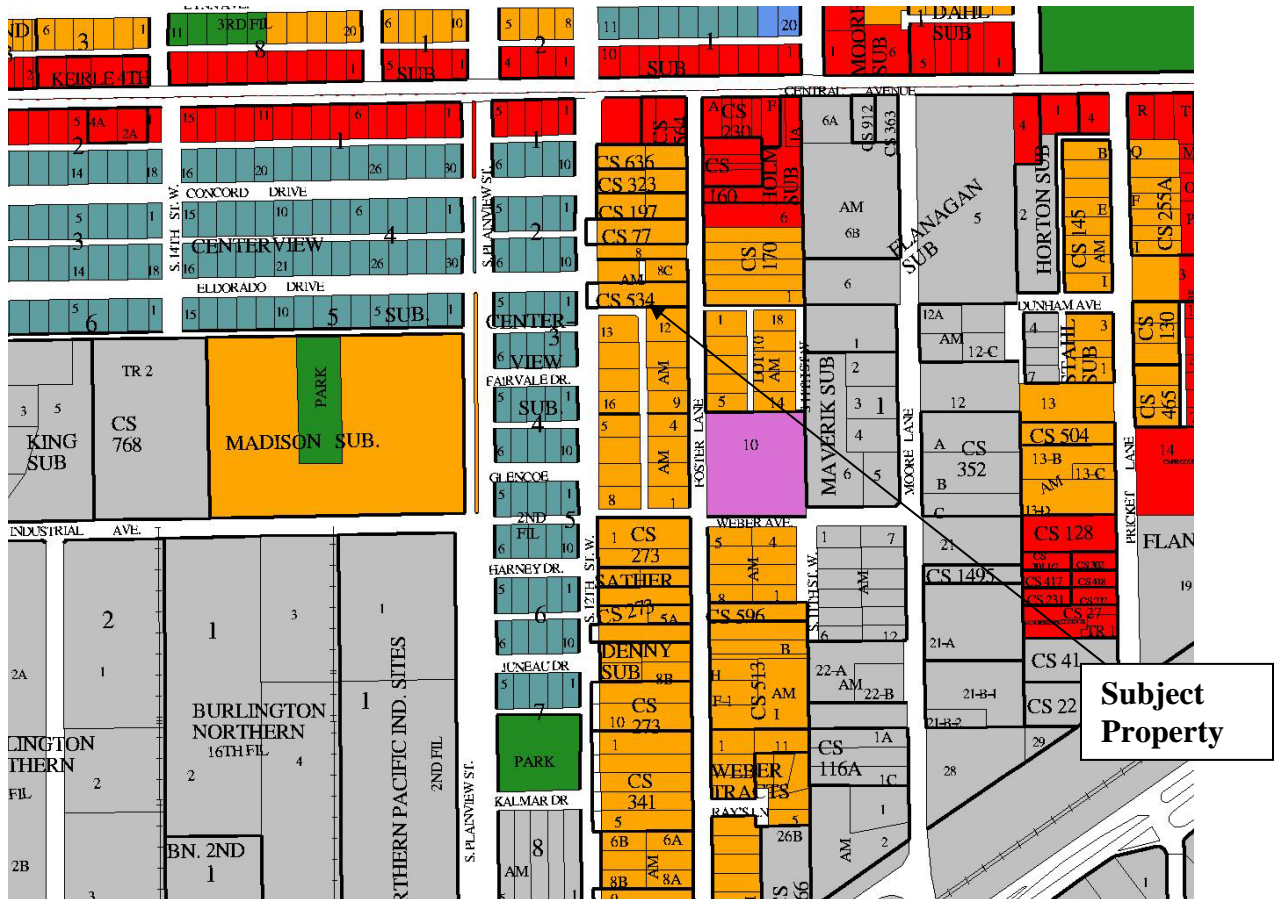
### **RECOMMENDATION**

The Zoning Commission forwards no recommendation to the City Council for Special Review #838, as the result was a 2-2 tie vote.

### **ATTACHMENTS**

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

# **ATTACHMENT A** **Zoning Map – Special Review #838**



**ATTACHMENT B**  
Site photographs –Special Review #838



Photo 1: View west from Foster Lane across the subject property.



Photo 2: View north along Foster Lane toward its intersection with Central Avenue.



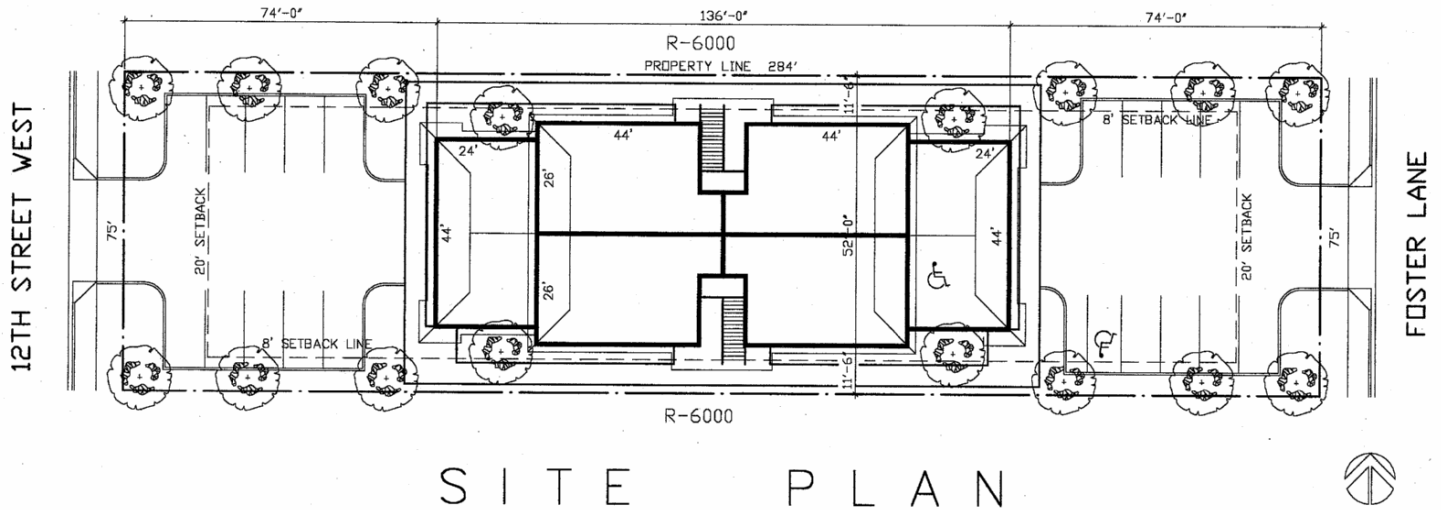


Photo 3: View east from the subject property.



Photo 4: View south along Foster Lane.

**ATTACHMENT C**  
**Proposed Site Plan**



S I T E      P L A N

LOT ZONING: R-6000  
 LOT AREA: 21,300 SF  
 LOT COVERAGE: 6668 SF = 31%  
 LANDSCAPING REQUIRED: 1464 SF - 5056 SF PROVIDED  
 PARKING REQUIRED: 20 CARS  
 OCCUPANCY: GROUP R-1 - 3 BEDROOM APARTMENTS  
 LEGAL DESCRIPTION: LOT 8, FLANAGAN SUBD.  
 MAXIMUM BUILDING HEIGHT: 30' +OR-

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## AGENDA ITEM:




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

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TITLE: Public Hearing for Special Review #839  
 DEPARTMENT: Planning & Community Services  
 PRESENTED BY: Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a special review to permit the storage of vehicles used for parts in a Highway Commercial (HC) zone, on a property legally described as Lot 3A, Hollar Subdivision, 2<sup>nd</sup> Filing. The owners and applicants are Edward and Linda Randash. The Zoning Commission conducted a public hearing on March 6, 2007, and is forwarding a recommendation of conditional approval on a 4-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a special review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #839 on a 4-0 vote.

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

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs

## **INTRODUCTION**

This is a special review to a Special Review to permit the storage of vehicles used for parts in a Highway Commercial (HC) zone, on a property legally described as Lot 3A, Hollar Subdivision, 2<sup>nd</sup> Filing. The owners and applicants are Edward and Linda Randash.

## **PROCEDURAL HISTORY**

- On February 5, 2007, the special review application was submitted to the Planning Department.
- On March 6, 2007, the Zoning Commission conducted a public hearing on this request and the City Zoning Commission forwarded a recommendation of Conditional Approval on a 4-0 vote.
- On March 26, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

## **BACKGROUND**

The applicants are requesting a Special Review to permit the storage of vehicles used for parts in a HC zone, on a property legally described as Lot 3A, Hollar Subdivision, 2<sup>nd</sup> Filing. The subject property is located mid-block on Liberty Street directly west of Main Street in the Heights. The property is currently being utilized as a storage area for “parts” cars and contains a steel 8-foot high site obscuring fence around the perimeter of the property. The automobiles stored in the enclosed area are inoperable and are used for parts on cars sold at the applicant’s dealership until they are no longer useable. They are then sold to salvage yards.

The Zoning Commission has reviewed the Special Review and is recommending **conditional approval**. In discussions with the state compliance office for wrecking licensure, planning staff found that the applicant has not obtained a state Motor Vehicle Wrecking Facility License; Condition #5 requires a state license be obtained. This license is required for dealers or wrecking yard owners who pull parts from inoperable vehicles. Under the purview of the state license, a lot owner could sell used vehicle parts from the lot and crush vehicles onsite. However, the city has the ability to place restrictions on the use of the state license. In this case, the restrictions would include that there shall be no sale of individual parts from the vehicles and vehicle parts shall only be used to recondition vehicles sold at the Randash dealership. These conditions are necessary due to the location of the property in close proximity to a residential use located to the south. In addition to the state licensing requirements, there shall be no outdoor lighting permitted onsite, no delivery of vehicles before 7:00 am or after 7:00 pm, and the automobiles shall not be stacked in such a way that they are visible above the fence line (required by Conditions 2, 3, and 4).

## **ALTERNATIVES ANALYSIS**

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

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

*This application, with the proposed restriction on the state license, does comply with the requirements of the zoning regulations.*

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

*The use is already in existence and is compatible with the surrounding auto body shop adjacent to the north. The existing 8-foot high mitigates the view for the residential use to the south.*

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

9. Street and road capacity;
10. Ingress and egress to adjoining streets;
11. Off-street parking;
12. Fencing, screening and landscaping;
13. Building bulk and location;
14. Usable open space;
15. Signs and lighting; and/or
16. Noise, vibration, air pollution and similar environmental influences.

#### **CONDITIONS OF APPROVAL**

The following conditions are recommended if the Zoning Commission recommends approval to the City Council:

7. The special review approval shall be limited to Amended Lot 3A, Hollar Subdivision, 2<sup>nd</sup> Filing.
8. There shall be no outdoor lighting of the salvage yard area.
9. The automobiles shall be stored within the fenced area and shall not be stacked in such a way that they are visible above the fence line.
10. There shall be no delivery of vehicles before 7:00 am or after 7:00 pm.
11. A state Motor Vehicle Wrecking License shall be obtained within four months of the approval of this special review. A copy of the license shall be provided to the Planning Department. There will be special restrictions placed on the state licensure during the



written document period of the state application process, which can take up to 120 days, as follows:

- Vehicle parts shall be used for reconditioning of the dealer's used car lot only.
- There shall be no sale of individual parts permitted.
- There shall be no crushing of vehicles. They shall be hauled to a licensed wrecking yard when no longer needed.

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

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on March 6, 2007, and forwarded a recommendation of conditional approval to the City Council on a 4-0 vote. Edward Randash, the property owner, was present at the meeting.

There were several property owners who reside on Lincoln Lane, located to the east of the subject property, present at the public hearing. They had concerns regarding the proposed use and how the owner handles the disposal of fluids from the inoperable vehicles. The owner stated that the vehicles are removed from the site and taken to the repair shop across the street for any parts that involve motor oil, antifreeze, Freon, or other fluids and are removed and disposed of according the auto repair shop licensure requirements for storage and disposal. Additional concerns were raised regarding the stormwater runoff for the site. This property, along with the vacant property to the east, has a slight elevation change, which creates a natural stormwater detention area. Once the subject property was graded and improved with a gravel surface, stormwater was more prevalent on adjacent properties. Planning staff has discussed this issue with the Engineering Division and they find that the grading and adding of a gravel surface to the site has not significantly increased the stormwater runoff for the site. There was no additional discussion by the Zoning Commission, except for clarification on the state licensing process.

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

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

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

### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #839 on a 4-0 vote.

### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs

**ATTACHMENT A**

Zoning Map – Special Review #839



**ATTACHMENT B**  
Site photographs –Special Review #839



Photo 1: View east along Liberty Street, the subject property is located to the right in the photo.



Photo 2: View west along Liberty Street toward its intersection with Main Street.



Photo 3: View north toward adjacent commercial uses.

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

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TITLE: Public Hearing for Special Review #840  
 DEPARTMENT: Planning & Community Services  
 PRESENTED BY: David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** This is a special review to replace an existing beer and wine license with gaming to an all beverage license with gaming for Gigglin' Grizzly, at 416 Lake Elmo Road, Tract 1, Certificate of Survey 2225 in a Highway Commercial zoning district. With the all beverage license the Gigglin' Grizzly will remodel their building to remove the kitchen, no longer serving food, and will be a full service bar only. The owner is Charles Schmidt and the representing agent is Doug Jensen. The Zoning Commission conducted a public hearing on March 6, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a special review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #840 on a 4-0 vote.

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

**ATTACHMENTS**

A: Zoning/Location Map  
 B: Pictures of the Site

## **INTRODUCTION**

This is a special review to replace an existing beer and wine license with gaming with an all beverage license with gaming on a property described as Tract 1, Certificate of Survey 2225, addressed as 416 Lake Elmo Road and zoned Highway Commercial (HC).

## **PROCEDURAL HISTORY**

- Special Review #175 – 416 Lake Elmo Road, for drive-up window on Tracts A and B Certificate of Survey 949, was conditionally granted January 1, 1984.
- On February 5, 2007, the special review application was submitted to the Planning Department.
- On March 6, 2007, the Zoning Commission conducted a public hearing on this request and forwarded a recommendation of Conditional Approval to the City Council on a 4-0 vote.
- On March 26, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

## **BACKGROUND**

This is a request for a special review to locate an all beverage license with gaming for The Gigglin' Grizzly, on Tract 1, Certificate of Survey 2225, located at 416 Lake Elmo Road. The property is zoned Highway Commercial and on-premise consumption of alcoholic beverages can be allowed only by special review approval. The property is currently developed as a casino bar and grill with a beer and wine license, there is currently an enclosed outdoor patio on the building. While researching the property, the Planning Division and Building Division were not able to find a building permit for the enclosing structure over the patio. The owner proposes to re-model the interior of the building and remove all kitchen facilities to no longer serve meals. They propose to install ADA compliant restrooms and a full service bar. The property surrounding this site has developed with services such as the Main Street Casino Bar and Grill to the east, Heights Eye Care to the north, and Lake Elmo Coin-op Laundry to the south. The property to the west is vacant.

There are two all beverage licenses within the immediate area that were approved at existing locations, MacKenzie River Pizza Company and Main Street Casino Bar and Grill. There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all special reviews shall comply with the following three (3) criteria: 1) The application complies with all parts of the Unified Zoning Regulations, 2) The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) The application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within a Highway Commercial zoning

district where on premise consumption of alcoholic beverages may be allowed by special review approval. The form of the application is correct, the property is an existing bar and restaurant currently serving beer and wine.

The application does conform to the second and third criteria. The zoning regulations adopted by the City Council have designated several zoning districts where on premise consumption of alcoholic beverages may be allowed. The Gigglin' Grizzly at 416 Lake Elmo Road would be the third all beverage license within the immediate area. The other two locations are Main Street Bar and Grill and MacKenzie River Pizza Company. There is existing residential development northeast of this property. The Highway Commercial zone is intended *"to provide areas for commercial and service enterprises which are intended primarily to serve the needs of the tourist, traveler, recreationist or the general traveling public. Areas designated as Highway Commercial should be located in the vicinity of, and accessible from interstate interchanges, intersections on limited access highways, or adjacent to primary or secondary highways. The manner in which the services and commercial activities are offered should be carefully planned in order to minimize the hazard to the safety of the surrounding community and those who use such facilities."*

The existing use has been at this location for many years. Originally it was a Suds Hut, then Bugzies 2 and its now current name The Gigglin' Grizzly. The addition of an all beverage license will fit in with the intention to provide a service to travelers to this area and the local population of Billings Heights. The proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging uses that are compatible with the character of the adjacent land use patterns. The Highway Commercial district of this area is intended for concentration of commercial and service-oriented businesses.

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

17. Street and road capacity;
18. Ingress and egress to adjoining streets;
19. Off-street parking;
20. Fencing, screening and landscaping;
21. Building bulk and location;
22. Usable open space;
23. Signs and lighting; and/or
24. Noise, vibration, air pollution and similar environmental influences.

#### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Tract 1, Certificate of Survey 2225 located at 416 Lake Elmo Road.
2. The property owner will acquire a permit for the outdoor patio enclosure structure and bring it up to code by October 1, 2007, or remove the enclosure structure by October 1, 2007.
3. The owner is allowed to have background music on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge. Also

the owner is allowed live music, non-amplified, not audible beyond the outdoor patio lounge.

4. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
5. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

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

### **STAKEHOLDERS**

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

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

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

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)
- Coordinate economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)

### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of special review #840 on a 4-0 vote.

### **ATTACHMENTS**

A: Zoning/Location Map

B: Pictures of the Site





**Attachment B**  
**Site photos –Special Review 840**



Subject property at 416 Lake Elmo Road



View north from subject property – Heights Eyecare





View east from subject property – Main Street Casino, Bar and Grill



View south from subject property – Lake Elmo Coin-Op Laundry

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## AGENDA ITEM:




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


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TITLE: Public Hearing for Special Review #841  
 DEPARTMENT: Planning & Community Services  
 PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a request for a special review for an all beverage liquor license for a new casino, Palisades Casino, at 1911 King Avenue West, Suite B, Lots 11A & 12A, Block 1, CBH Industrial Park Subdivision in a Controlled Industrial (CI) zoning district. The owner is KRP, LLC Jim Kisling and Jon Herberg is the agent. The Zoning Commission conducted a public hearing on March 6, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #841 on a 4-0 vote.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

This is a request for a special review to locate an all beverage license with gaming for a proposed new casino, Palisades Casino, on Lots 11A and 12A, Block 1 of CBH Industrial Park Subdivision located at 1911 King Avenue West, Suite B. The property is zoned CI and on-premise consumption of alcoholic beverages and gaming can be allowed only by special review approval. The property is currently developed as an ATM Express business. The new owner proposes to re-develop the property with a multi-tenant commercial building. Suite B, one of the tenant spaces, would have the 1,980 square foot Palisades Casino. The Zoning Commission heard another special review request for a beer and wine license with gaming on February 6, 2007, for the proposed Silver City Casino in Suite F and recommended conditional approval to the City Council. The City Council approved this special review request on February 26, 2007.

## **PROCEDURAL HISTORY**

- A special review application to locate an all beverage license with gaming for a new casino was received on February 5, 2007.
- The City Zoning Commission held a public hearing on March 6, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.
- The City Council will conduct a public hearing and consider this application on March 26, 2007.

## **BACKGROUND**

State regulations allow multiple casinos in the same structure as long as they are separated by 150 feet and are under separate ownership. Most of the property surrounding this site has been developed for services such as the Holiday gas station to the west, the Springhill Suites Hotel, the Texas Roadhouse restaurant, the Hu Hot Mongolian Grill as well as several car dealerships and other service oriented commercial establishments. The Palisades Casino at this proposed location will be located in Suite B, a 1,980 square foot space within a new multi-tenant building. There is no proposed outdoor patio lounge.

The City Council has proposed to develop a casino overlay zoning district that would provide further regulation of casinos and gaming establishments. There are four liquor licenses within the immediate area that were approved at existing or proposed restaurant locations – the Texas Roadhouse, the Hu Hot Mongolian Grill, a new restaurant and casino east of this location and the Silver City Casino in Suite F of this proposed new building. There are no schools, churches, or play grounds with equipment within 600 feet of the proposed location.

The Planning Department reviewed this application and recommended conditional approval. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within a Controlled Industrial zoning district where on premise consumption of alcoholic beverages and gaming may be

allowed by special review approval. The form of the application is correct and the proposed development of the property for the casino in the multi-tenant building appears to conform to site development standards. More detailed landscaping and parking plans are normally reviewed at the time of building permit submittal.

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

### **ALTERNATIVES ANALYSIS**

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

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

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

4. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.

5. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

*The proposed location of the all beverage license with gaming at this location is appropriate and conditions of approval are recommended.*

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

25. Street and road capacity;
26. Ingress and egress to adjoining streets;
27. Off-street parking;
28. Fencing, screening and landscaping;
29. Building bulk and location;
30. Usable open space;
31. Signs and lighting; and/or
32. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #841 on a 4-0 vote.

#### CONDITIONS OF APPROVAL

6. The special review approval shall be limited to Lots 11A and 12A of Block 1 of CBH Industrial Park Subdivision as shown on the site plan dated February 5, 2007. The location of this special review approval shall be for Suite B as shown on the site plan.
7. Development of the site shall be in substantial conformance with the site plan dated February 5, 2007. Deviations from the approved site plan that change the location of proposed casino, landscaping, parking lot access or parking areas will require additional special review approval.
8. There shall be no outdoor patio lounge developed for this casino.
9. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
10. Landscaping shall be provided as shown on the site plan dated February 5, 2007, and as required by Section 27-1101 (Landscaping) of the Unified Zoning Regulations.
11. There shall be wheel stop curbing provided at the western terminus of the proposed drive aisle north of the new building to prevent cut-through traffic to adjacent property west of the site.
12. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
13. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

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

## **STAKEHOLDERS**

The public hearing was held on March 6, 2007, before the City Zoning Commission. Jon Herberg as agent was present at the hearing and explained the proposal to the Zoning Commission. Pam Havig of 1944 Still Meadow Drive and owner of Perfect Balance Yoga at 712 Carbon Street attended the hearing and explained her concerns as a business owner to the Zoning Commission. Ms. Havig was concerned that her business would end up directly facing the back side of the new multi-tenant building. Her classes are conducted in the front of her business with a direct view to the south. Ms. Havig expressed her concern this new structure would be unattractive and not well landscaped along the employee parking. Mr. Herberg, agent, did not know exactly how the rear (north side) of the building would be finished but explained that each unit was being constructed to be a dual entryway space. Each space would have an entrance on the north and south side of the building. The Zoning Commission explained to Ms. Havig the applicant may not be the responsible party for the design of the north side of the building. The Planning Staff agreed to forward information to Ms. Havig on the project architect and property ownership so her concerns with the building and site design could be addressed. There were no other surrounding property owners present and no letters in favor or opposed to the application were received by the Planning Department.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission moved to recommend conditional approval of the special review request and voted 4-0 to forward this recommendation to the City Council.

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

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

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

## **RECOMMENDATION**

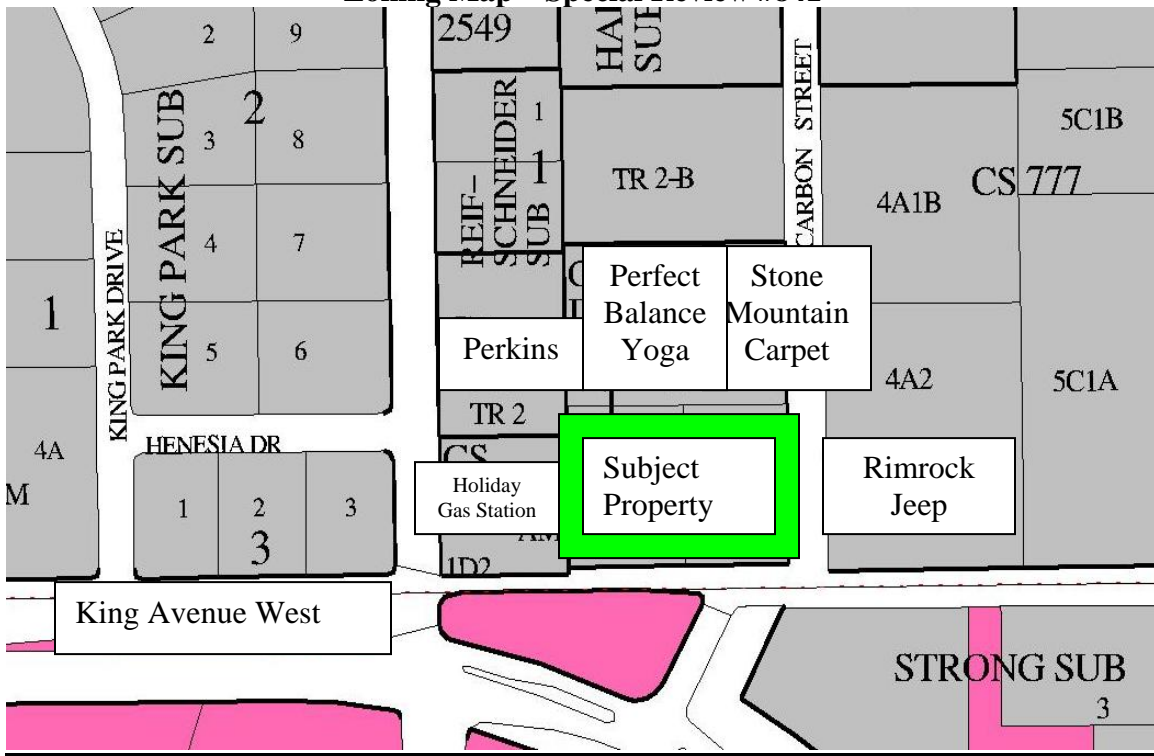
The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #841 on a 4-0 vote.

## **ATTACHMENTS**

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



**ATTACHMENT A**  
**Zoning Map – Special Review #841**



1911 King Avenue West

**ATTACHMENT B**  
**Site photographs –Special Review #841**



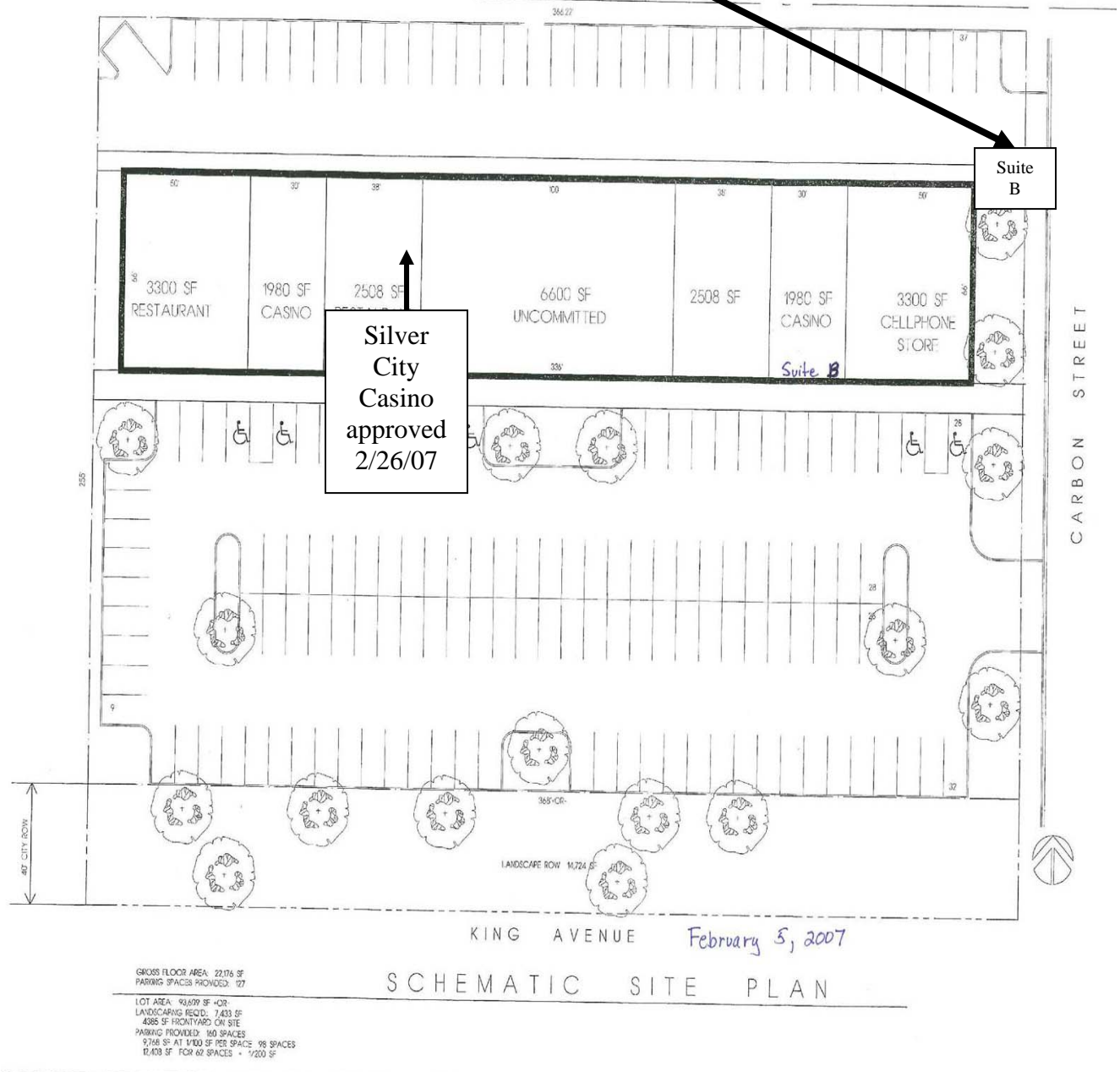
Subject property at 1911 King Avenue West



View east from subject property – Rimrock Jeep

**Attachment C**  
**Site Plan –Special Review #841**

Proposed Palisades Casino – 1911 King Avenue West – Suite B



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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 26, 2007

**TITLE:** Resolution—Creating a Council Subcommittee on Future Mayor/Council Compensation

**DEPARTMENT:** City Council/City Administrator's Office

**PRESENTED BY:** Tina Volek, City Administrator

**PROBLEM/ISSUE STATEMENT:** During a recent work session, the Mayor and City Council discussed creating a Council subcommittee to examine the compensation for future members of the governing body. The last increases in compensation were approved in November 1995, following a class and compensation study of the entire City that showed the governing body's salaries were ranked 13<sup>th</sup> of 14 cities surveyed. Those raises, which brought the salaries of Councilmembers from \$300 to \$600 a month, and the Mayor from \$400 to \$800 a month, became effective for the Mayor and all Councilmembers in January 1998.

City Charter Section 3.11 Compensation provides that the Council may establish by ordinance its salaries and that of the Mayor, but neither the Mayor's nor a Councilmember's compensation may be increased during his or her term of office. The Council serves staggered, 4-year terms, so five Councilmembers to be elected later in 2007 could receive increases in 2008. However, the Mayor and Councilmembers elected in 2009 would not be eligible for increases until 2010.

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

- Create the subcommittee;
- Create an ad-hoc committee of citizens and Councilmembers to review the issue; or
- Take no action at this time.

**FINANCIAL IMPACT:** The financial impact would depend on any recommended changes in salary. Salary increases made in future years could be budgeted.

### RECOMMENDATION

Based on the work session discussion, Staff recommends that Council appoint a subcommittee to look at the issue, as discussed at the work session.

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

### **ATTACHMENTS:**

A: Resolution creating a Council subcommittee on compensation

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF BILLINGS, MONTANA,  
CREATING A COUNCIL SUBCOMMITTEE TO EXAMINE  
FUTURE COMPENSATION FOR THE CITY COUNCIL AND MAYOR**

**WHEREAS,** City Charter Section 3.11 Compensation allows the City Council to establish by ordinance the compensation of its members, including the Mayor but no compensation may be increased during the voting members' current terms; and

**WHEREAS,** City Councilmembers serve staggered, 4-year terms, with five City Councilmembers scheduled to begin new terms in 2008, and the Mayor and remaining five City Councilmembers scheduled to begin new terms in 2010; and

**WHEREAS,** the salaries of the City Council and Mayor last were amended in 1995, with the current salaries of \$600 per month for each Councilmember and \$800 per month for the Mayor becoming effective in January 1998; and

**WHEREAS,** the Mayor and City Councilmembers have discussed reviewing their compensation in time for candidates for five Council seats to be seated in January 2008 to know what changes, if any, would be made in that compensation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA,** that a five-member Council subcommittee of members to be appointed by the Mayor is hereby created to review and make recommendations on proposed changes in the compensation of the Mayor and City Council no later than May 1, 2007.

**PASSED** by the City Council of the City of Billings, Montana, and **APPROVED** this 26th day of February 2007.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cam Trudeau, DEPUTY CITY CLERK

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