

# 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

November 26, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ulledalen

ROLL CALL

MINUTES – November 13, 2007

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 4 ONLY.**

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

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

**CONSENT AGENDA:**

1. A. Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Joe Muessig	County Water District of Billings Heights	11/26/07	12/31/09

- Unexpired term of Warren Grass  
[\(Corresponding Staff Memo A\)](#)

**B. Bid Award**

**(1) One Hundred Ton (100-Ton) Static Pipe Bursting System.**

(Opened 11/20/07). Recommend delay of award until December 10, 2007.

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

**(2) LED Traffic Signal Components.** (Opened 11/20/07) Recommend

delay of award until December 10, 2007.

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

**C. Approval of Lease Agreement** (one-year renewable) with BILAW LLC, DBA Mann Mortgage Billings, for space in Park I, first year revenue of \$24,480.00.

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

**D. Approval of Lease Agreement** (two-year renewable) with Conoco/Phillips Pipeline Company for space in Park I, first year revenue \$33,014.10.

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

**E. Approval of Ground Lease** (five-year) for remote parking lot with Edwards Jet Center, first year revenue \$3,664.20.

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

**F. Approval of Grant** from Montana Department of Transportation, State Highway Traffic Safety Division, for DUI/impaired driving and safety belt law enforcement, \$14,000.00.

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

**G. Approval of Recreational Trails Program Grant Amendment Agreement** for the Gabel Road Connector-Heritage Bicycle-Pedestrian Trail Project.

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

**H. Amendment #5, CTA Architects Engineers**, for replacement of Airport Terminal Building's Revolving Doors, \$36,292.00.

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

**I. W.O. 04-33 Lake Elmo Drive (Hilltop Road to Wicks Lane) Right-of-Way Acquisition** for Parcel #33, a portion of Lot 1 and Lot 2, Stevens-Petter Subdivision, with Janet Croy, \$10,550.00.

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

**J. W.O. 04-36, Briarwood Sanitary Sewer Main Extension Right-of-Way Agreement and Perpetual Right-of-Way Easement** for a portion of Tracts 6 and 7, Blue Creek Acreage Tracts Subdivision with Yellowstone Valley Electric Cooperative, Inc., \$5,932.50.

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

**K. Approval of Grant Application** to the Safe Routes to School funding program for the Elementary School Traffic Plan, \$50,000.00.

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

**L. Resolution** amending Resolution #07-18547 annexing property for the Cottonwood Park site located on the northwest corner of the intersection of Colton Boulevard and 54<sup>th</sup> Street West.

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

**M. Second/Final Reading Ordinance** expanding the boundaries of Ward II to include recently annexed property in Annex #07-24: a 5-acre parcel legally described as Tract 1B, Certificate of Survey 1335, Amended, Hanser Capital Holdings, LLC, owner.

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

**N. Preliminary Plat** of Amended Block 4, Evergreen Subdivision, generally located on the south side of Avenue C between 13<sup>th</sup> and 14<sup>th</sup> Streets West, Sieben Ranch Company, owner; conditional approval of the plat and adoption of the Findings of Fact.

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

**O. Preliminary Plat** of Amended Lot 4A, Stardust Acres Subdivision, generally located on the southeast corner of Venus Circle and Southern Hills Drive, Arlin Stutznegger, owner; conditional approval of the plat and adoption of the Findings of Fact.

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

**P. Preliminary Subsequent Minor Plat** of Amended Lot 2, Block 2, Lake Hills Subdivision, 1<sup>st</sup> Filing, generally located southwest of the intersection of Pebble Beach Road and Inverness Drive in Billings Heights, Michael Stock, owner; conditional approval of the plat and adoption of the Findings of Fact.

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

**Q. Final Plat** of Cenex Park Subdivision, Amended Lot 4, Block 4.  
[\(Corresponding Staff Memo Q\)](#)

**R. Bills and Payroll**

(1) October 26, 2007

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

(2) November 5, 2007

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

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

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #826:** allowing small retail services to be developed by special review approval

within existing residential zoning districts. Zoning Commission recommends approval (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

3. **PUBLIC HEARING AND FIRST READING ORDINANCE** adopting a South Billings Boulevard Urban Renewal District. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

4. **CHERRY CREEK ESTATES DEVELOPMENT AGREEMENT** compliance approval of Phase I and conditional approval of Phase II. Delayed from 10/22/07. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

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

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

## **Council Initiatives**

### **ADJOURN**

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

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

A



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

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**SUBJECT:** Boards & Commissions –Appointment

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** wynnette Maddox, Administration

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

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

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Jon Muessig	County Water District of Billings Heights	11/26/07	12/31/09

- Unexpired term of Warren Grass

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

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# B1

AGENDA ITEM:

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

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**TITLE:** Delay Bid Award - 100-Ton Static Pipe Bursting System

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** The Public Works Department will receive bids for a 100-Ton Static Pipe Bursting System in accordance with the approved equipment replacement plan and will be recommending award at the December 10, 2007, meeting.

**FINANCIAL IMPACT:** The contract will be advertised on November 8 and 15, 2007. There is sufficient money in the FY 08 budget for the Construction and Equipment Fund to cover the award. Bids will be received on November 20, 2007.

**RECOMMENDATION**

Staff recommends that Council delay the bid award until the December 10, 2007, City Council meeting.

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

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# B2

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**  
**Monday, November 26, 2007**

**TITLE:** Delay Bid Award – LED Traffic Signal Components  
**DEPARTMENT:** Public Works Department  
**PRESENTED BY:** Dave D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** The Public Works Department has received bids for LED Traffic Signal Components. These components will upgrade the traffic signal incandescent lamps to light emitting diodes (LED). This upgrade will provide increased efficiency and energy savings for the city.

**FINANCIAL IMPACT:** The funding for this work is provided within the operation and maintenance FY08 budget for the Street/Traffic Division for the Public Works Department. The city will be reimbursed for up to \$45,000 of this project from a grant provided by Northwestern Energy for this upgrade from incandescent to LED.

The bid was advertised on November 8 and 15, 2007. Bids were opened on November 20, 2007.

### **RECOMMENDATION**

Staff recommends that Council delay the bid award for the LED Traffic Signal Components project until the December 10, 2007 City Council meeting.

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

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

# C

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, November 26, 2007

**TITLE:** Lease Agreement for BILAW LLC, DBA Mann Mortgage Billings  
**DEPARTMENT:** Administrative Services – Parking Division  
**PRESENTED BY:** Chris Mallow, Parking Supervisor

**PROBLEM/ISSUE STATEMENT:** The ground level of the Park 1 garage has six tenants that lease retail/office space. The current lease agreement for BILAW LLC, DBA Mann Mortgage Billings, will expire on December 31, 2007. This memo shall serve as a request to approve and sign a new space lease agreement with Park 1 Garage tenant, BILAW LLC., DBA Mann Mortgage Billings, for one year with an option to renew the lease for an additional four years. Mann Mortgage has requested an initial one year term as their office and business continues to grow and they may have to relocate to a larger office space if their corporate offices deem it necessary; if that does not happen, they would expect to stay in this leased space for all optional years.

**ALTERNATIVES ANALYZED:** Staff has analyzed the following alternatives: (1) approve lease with BILAW LLC, DBA Mann Mortgage Billings.; (2) seek a different tenant; or, (3) leave space vacant.

**FINANCIAL IMPACT:** The revenues are projected in the FY 2008 budget. The office space consists of 3,060 square feet. Revenue for the first year will be \$24,480.00 (3,060 square feet x \$8.00). Rent for all subsequent years will be the base rent amount plus or minus the percentage change in the Consumer Price Index – all urban consumers.

### **RECOMMENDATION**

Staff recommends Council approval of the lease agreement with Mann Mortgage.

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

### **ATTACHMENT**

One year lease agreement with Mann Mortgage (3 copies)

**PARK ONE  
LEASE AGREEMENT**

THIS INDENTURE, made and entered into this 1<sup>st</sup> day January, 2008, by and between the **CITY OF BILLINGS, MONTANA**, hereinafter referred to as "Landlord" and **BILAW LLC. (comprised of Trina Besel, Roland Iverson, Doug Lovely, Greg Ando, and Jim Weidman), DBA Mann Mortgage Billings**, City of Billings, County of Yellowstone, Montana, hereinafter referred to as "Tenant."

That in consideration of the covenants hereinafter contained on the part of the Landlord and Tenant to be observed and performed, the parties hereby agree:

**1. LEASE**

The Landlord does hereby grant, demise and lease unto the Tenant, for and in consideration of the rents, covenants, and agreements hereinafter specified to be paid, kept and performed by the Tenant, premises at 219 North 30<sup>th</sup> Street consisting of 3,060 square feet of integrated part of building known as "Park I" parking garage located between 29<sup>th</sup> and 30<sup>th</sup> Streets on 3<sup>rd</sup> Ave North, in Billings, Montana. Exact location and size of premises to be shown on Exhibit "A" which is attached and made a part of this agreement.

**2. TERM, POSSESSION, AND RENEWAL**

The term of this lease shall be from January 1<sup>st</sup>, 2008, through December 31<sup>st</sup>, 2008. Landlord grants to Tenant the four (4) consecutive options to renew this lease for a further term of one (1) year commencing on January 1<sup>st</sup>, 2009, and ending December 31<sup>st</sup>, 2012, both inclusive, subject to the provisions of this lease. However, written notice of the exercise of this option shall be given by Tenant to Landlord at least ninety (90) days before expiration of the original term of this lease and provided further, that this option may be exercised by Tenant only in event all rents have been fully paid and that all provisions of this lease on the part of the Tenant to be observed have been fully and faithfully observed.

**3. RENT**

Rent for the first 12 months of this lease shall be \$24,480.00 (3060 square feet x \$8.00) payable in twelve (12) equal monthly installments of \$2040.00.

Rent for the subsequent years, including for any renewal option years, beginning January 1<sup>st</sup>, 2009, shall be the current rent plus or minus the percentage change in the Consumer Price Index – all urban consumers, from June of the previous calendar year to June of the present calendar year. Rent for each year shall be paid in twelve (12) equal monthly installments.

All rents shall be paid in advance by the first day of each month.

#### **4. INSURANCE**

Tenant shall provide fire and hazard property insurance for the protection of the premises and the contents and shall be solely responsible liable for said protection. Provided, however, that in case said premises shall be damaged by fire or other casualty for some cause not related to tenant's business or operation so as to render the premises untenable, in which case the Landlord shall at its cost repair the same. During the period the premises remain untenable, the rent shall not be assessed, and provided further, if such repairs cannot be or are not completed within 120 days, Tenant may elect to terminate its interest in this lease and the premises by giving notice thereof to Landlord. Tenant shall not be required to provide plate glass window insurance coverage.

Tenant shall obtain and maintain at all times during the term hereof, with a responsible insurer, naming the Landlord as an additional insured, comprehensive general liability insurance against any loss or liability, personal injury or property damages, and against any expenses of the parties from any claim, liabilities, demands, payments, suits, actions, recoveries or judgments for damages which might result from the use, occupation or condition of the premises in the minimum amount of \$750,000 for each claim and \$1.5 million per occurrence. Tenant shall furnish a copy of such insurance policy and renewals thereof to the Landlord and such policy shall not be canceled without a 30-day written notice to the Landlord.

#### **5. UTILITIES SERVICES**

Tenant agrees, at his own expense to pay for all utilities used by the Tenant on the premises during the term of this lease.

#### **6. IDEMNIFICATION OF LANDLORD BY TENANT**

Tenant hereby agrees to indemnify and hold the Landlord harmless at all times from and against all actions, claims, liabilities, demands and all costs, expenses and fees, including attorney's fees, incurred by the Landlord, arising from the use, occupancy or non-use of the premises by the Tenant, or arising from the failure of the Tenant to maintain the premises as required by this lease. Such indemnification shall include but not be limited to carelessness, negligence, improper conduct or breach of this lease by Tenant or its agents, employees, customers, suppliers or licensees.

#### **7. ADVERTISING SIGNS**

The Tenant shall be allowed to provide, at his own expense, such advertising displays on the exterior of the building as may be appurtenant to his business, provided however that such displays will be in accordance with the laws and regulations of the State of Montana and the City of Billings, Montana, and that such displays will not deface, damage or devalue the demised property during their use or after their removal, reasonable wear and tear expected. All signs must be approved in writing by the Landlord prior to installation which approval shall not be unreasonably withheld.

## **8. IMPROVEMENTS BY TENANTS**

All improvements, alterations, additions and all such work shall be done at Tenant's expense and shall, unless Landlord elects otherwise, become the property of the Landlord at the conclusion of the lease, and shall remain upon and be surrendered with said premises, as a part thereof, at the end of the term or renewal of this lease. No improvements, alterations or additions shall be made by Tenant without the written consent of Landlord, which consent shall not be unreasonably withheld.

## **9. FIXTURES AND PERSONAL PROPERTY**

All trade fixtures, equipment, signs, cabinets, shelves, showcases, counters, mirrors and other moveable personal property, shall remain the property of the Tenant and may be removed by Tenant at any time during, or at the termination of this lease agreement, provided, however, that the same can be removed without serious injury to the leased premises.

## **10. ASSIGNING AND SUBLETTING**

Landlord accepts Office Lease Agreement between Tenant and Mann Mortgage, LLC, as submitted. Tenant shall not further assign this agreement or sublet the premises in whole or in part without first obtaining the concurrence in writing from Landlord which shall not be unreasonably withheld.

## **11. LANDLORD'S ACCESS TO INSPECT**

Landlord or its agent, at all reasonable times during business hours, shall have free access to the demised premises, for the purpose of examining and inspecting the same and making any needed repairs or alterations thereon which Landlord may see fit to make. In such case Landlord will make every reasonable effort not to interfere with the Tenant's operation of business.

## **12. TENANT TO HAVE PEACEABLE POSSESSION**

Landlord covenants that Tenant shall peaceably hold and enjoy the premises so long as they are in faithful compliance with the terms hereof and the covenants thereof.

## **13. TRASH AND RUBBISH**

The Landlord shall at its expense provide an area for the collection of and pickup of all trash and rubbish. The tenant shall provide containers for the collection of said rubbish. Said area may be a common area within or outside the premises.

## **14. ATTORNEY FEES AND COSTS ON VIOLATION OF LEASE**

In the event that either party shall be required to commence any action, retain an attorney, or use in-house council to enforce the covenants or agreements of this lease, the party whose failure to perform occasioned such action shall pay and discharge all reasonable costs, expenses,

and attorney fees, including fees of in-house council, which shall be made or incurred by the other party.

## **15. DEFAULT AND RE-ENTRY**

If the Tenant shall neglect or fail to perform or observe any of the covenants contained herein on their part to be observed and performed for thirty (30) days after notice by the Landlord of such breach, or if tenant shall be adjudicated bankrupt or insolvent, or shall make an assignment for the benefit of creditors, or permit any mechanics or material man's liens to be filed against the demised premises for labor or material furnished, which Tenant does not in good faith defend against, then and in any of said cases the Landlord may lawfully enter into and upon said premises or any part thereof and repossess the same, and expel the Tenant and those claiming under and through them and remove their effects, forcibly if necessary, without being deemed guilty of any manner of trespass, without prejudice to any remedies which might otherwise be used for arrears of rent or breach of covenant, and upon entry of the aforesaid, this Lease shall terminate and wholly expire.

## **16. CONDUCT OF BUSINESS BY TENANT**

Recognizing that it is in the interest of Tenant's successful operation of his business, Landlord shall allow Tenant at Tenant's election to be open for business daily, including Sundays and Holidays, and Landlord shall not interfere, by regulation or other imposition, with the hours or the days of business operation by the Tenant. The Tenant covenants and agrees that from and after its initial opening for business, it will operate and conduct within the premises the business which it has been licensed and permitted to operate or such other lawful business licensed and permitted by Landlord.

## **17. NOTICES**

All notices to be given hereunder by either party hereto shall be in writing and given by personal service or by first class mailing by registered or certified mail, return receipt requested. Said method of notice is deemed sufficient service thereof, and shall be deemed given as to the date when served or deposited in any post office. Either party may change address by written notice by certified or registered mail to the other. The initial address for receipt of notices is as follows:

BILAW LLC.  
DBA Mann Mortgage  
219 North 30<sup>th</sup> Street  
Billings, MT 59101

Parking Supervisor  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

## **18. MUTUAL RELEASE FOR HAZARDS COVERED BY INSURANCE**

The Landlord and Tenant and all parties claiming under them hereby mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the leased property, or covered by insurance, in connection with the

property on or activities conducted on the leased property, regardless of the cause of the damage or loss to the extent such waiver of subrogation can be reasonably obtained.

**19. COMPLIANCE WITH ALL EXISTING FEDERAL, STATE AND CITY LAWS AND POLICE, FIRE, AND SANITARY MEASURES**

Tenant agrees to use and occupy the above described premises in accordance with all lawful police, fire and sanitary regulations imposed by a municipal, state or federal authority, or made by fire insurance underwriters as the basis for insurance for said Landlord's interest in said building, and will observe and obey the laws, City ordinances and other requirements governing the conduct of Tenant's business with respect to the use of said premises.

**20. SMOKE FREE CITY-OWNED OR LEASED BUILDINGS**

All buildings owned or leased by the City of Billings are being designated as smoke free. The Tenant agrees to comply with all requirements of this ordinance.

**21. WAIVER**

A waiver of any breach or default by either Landlord or Tenant shall not be a waiver of any other breach or default. Landlord or Tenant approval of any act by the other requiring consent or approval shall not be deemed to waive or render unnecessary Landlord or Tenant consent to or approval of any other subsequent similar act by Landlord or Tenant.

**22. PREVENTION OR DELAY**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restriction, governmental regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of either party obligated to perform, shall excuse the performance by such part of its obligation hereunder for a period equal to any such prevention, delay or stoppage, provided that Tenant shall be excused from performance only if the premises are rendered untenable or the Tenant is unable to operate their business because of the delay or stoppage.

**23. PARKING SPACES**

Up to eight (8) covered or basement spaces at the regular monthly rate in the Park 1 Garage are available to Tenant and will be limited to non-reserved and roof spaces. It is Tenant's responsibility to notify Landlord, upon signing the lease, how many parking spaces will be needed by Tenant. If additional spaces are needed during the lease period, Tenant will be placed on a waiting list for that specific garage and spaces will be rented as they are available.

**24. TAXES AND ASSESSMENTS**

Tenant shall pay and discharge all taxes, assessments, penalties, charges, rates, or liens of any nature whatsoever, that may, during the term hereof or any renewal, be levied, assessed, charged, imposed, or claimed on or against the demised premises or any improvements or fixtures thereon or appurtenances thereto, or any part thereof, or against the owner or owners of such land or the improvements, by reason of such ownership or tenancy, by whatsoever authority levied, assessed, charged, imposed, claimed, and whether the same is on or against the property herein leased, its improvements, fixtures, or appurtenances, or any part thereof, or on or against the income from the property or its improvements.

## **25. BINDING EFFECTS**

The Covenants and agreements herein contained shall be binding upon the parties hereto, their successors and assigns.

This Lease Agreement and all terms and conditions established herein supersedes and revokes all previous agreements between the parties. Therefore, all previous agreements between the parties are declared null and void and inapplicable.

IN WITNESS WHEREOF, the parties have executed this Lease on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF BILLINGS (LANDLORD)

BY: \_\_\_\_\_  
ITS (MAYOR)

ATTEST:

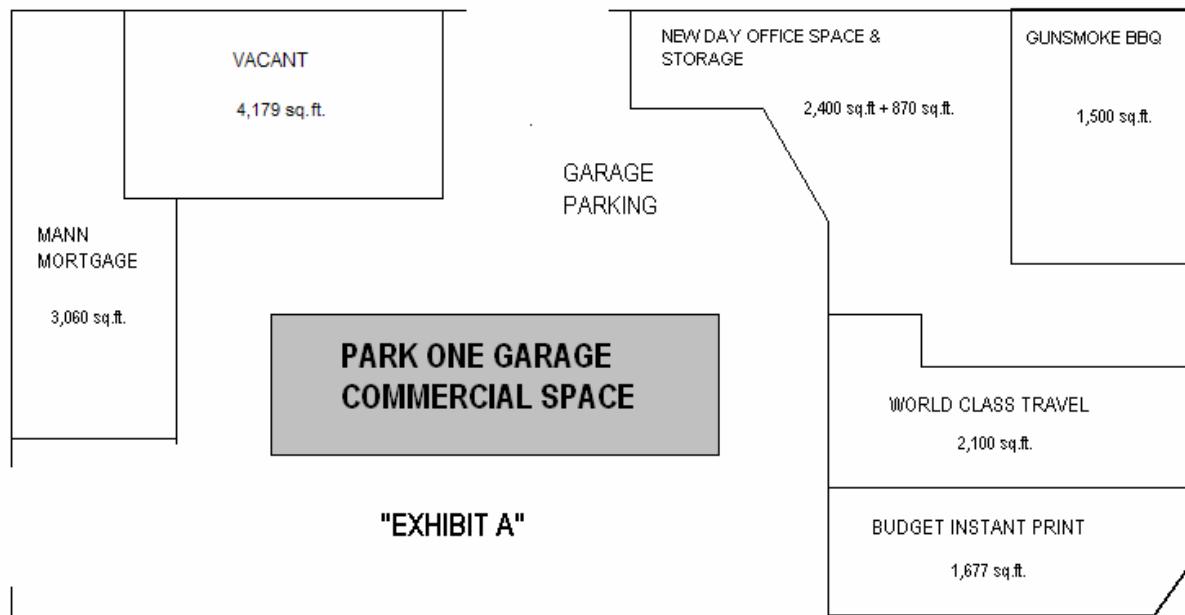
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
(TENANT)  
BY: \_\_\_\_\_  
ITS \_\_\_\_\_

## EXHIBIT A



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

# D

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

#### CITY OF BILLINGS, MONTANA

#### Monday, November 26, 2007

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**TITLE:** Lease Agreement for Conoco/Phillips Pipeline Company  
**DEPARTMENT:** Administrative Services – Parking Division  
**PRESENTED BY:** Chris Mallow, Parking Supervisor

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**PROBLEM/ISSUE STATEMENT:** The ground level of the Park 1 garage has six tenants that lease retail/office space. This space, located at 2910 3<sup>rd</sup> Avenue North, was previously occupied by Associated Employer of Montana and has been vacant for one year. The Council is being asked to approve a new lease agreement with Conoco/Phillips Pipeline Company for two years with one one-year option to renew. The company will use this space for administrative offices.

**ALTERNATIVES ANALYZED:** Staff has analyzed the following alternatives: (1) approve lease with Conoco/Phillips Pipeline Company; (2) seek a different tenant; or, (3) leave space vacant.

**FINANCIAL IMPACT:** The revenues are projected in the FY08 budget. The office space consists of 4179 square feet. Revenue for the first year will be \$33,014.10 (4179 square feet x \$7.90). Rent for the subsequent years, including for any renewal option year, beginning January 1<sup>st</sup>, 2009, shall be the current rent plus or minus the percentage change in the Consumer Price Index – all urban consumers, from June of the previous calendar year to June of the present calendar year.

#### **RECOMMENDATION**

Staff recommends Council approval of a two-year lease agreement with one one-year option to renew with Conoco/Phillips Pipeline Company.

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

#### **ATTACHMENT:**

Lease agreement with Conoco/Phillips Pipeline Company. (3 copies)

**PARK ONE  
LEASE AGREEMENT**

THIS INDENTURE, made and entered into this 1<sup>st</sup> day of January, 2008, by and between the **CITY OF BILLINGS, MONTANA**, hereinafter referred to as "Landlord" and **Conoco/Phillips Pipeline Company**, City of Billings, County of Yellowstone, Montana, hereinafter referred to as "Tenant."

That in consideration of the covenants hereinafter contained on the part of the Landlord and Tenant to be observed and performed, the parties hereby agree:

**1. LEASE**

The Landlord does hereby grant, demise and lease unto the Tenant, for and in consideration of the rents, covenants, and agreements hereinafter specified to be paid, kept and performed by the Tenant, premises at 2910 3<sup>rd</sup> Avenue North consisting of 4,179 square feet of integrated part of building known as "Park I" parking garage located between 29<sup>th</sup> and 30<sup>th</sup> Streets on 3<sup>rd</sup> Ave North, in Billings, Montana. Exact location and size of premises to be shown on Exhibit "A" which is attached and made a part of this agreement.

**2. TERM, POSSESSION, AND RENEWAL**

The term of this lease shall be from January 1<sup>st</sup>, 2008, through December 31<sup>st</sup>, 2009. Landlord grants to Tenant one (1) consecutive option to renew this lease for a further term of one (1) year commencing on January 1<sup>st</sup>, 2010, and ending December 31<sup>st</sup>, 2010, both inclusive, subject to the provisions of this lease. However, written notice of the exercise of this option shall be given by Tenant to Landlord at least ninety (90) days before expiration of the original term of this lease and provided further, that this option may be exercised by Tenant only in event all rents have been fully paid and that all provisions of this lease on the part of the Tenant to be observed have been fully and faithfully observed.

**3. RENT**

Rent for the first 12 months of this lease shall be \$33,014.10 (4179 square feet x \$7.90) payable in twelve (12) equal monthly installments of \$2751.17.

Rent for the subsequent years, including for any renewal option years, beginning January 1<sup>st</sup>, 2009, shall be the current rent plus or minus the percentage change in the Consumer Price Index – all urban consumers, from June of the previous calendar year to June of the present calendar year. Rent for each year shall be paid in twelve (12) equal monthly installments.

All rents shall be paid in advance by the first day of each month.

#### **4. INSURANCE**

Tenant shall provide fire and hazard property insurance for the protection of the premises and the contents and shall be solely responsible liable for said protection. Provided, however, that in case said premises shall be damaged by fire or other casualty for some cause not related to tenant's business or operation so as to render the premises untenable, in which case the Landlord shall at its cost repair the same. During the period the premises remain untenable, the rent shall not be assessed, and provided further, if such repairs cannot be or are not completed within 120 days, Tenant may elect to terminate its interest in this lease and the premises by giving notice thereof to Landlord. Tenant shall not be required to provide plate glass window insurance coverage.

Tenant shall obtain and maintain at all times during the term hereof, with a responsible insurer, naming the Landlord as an additional insured, comprehensive general liability insurance against any loss or liability, personal injury or property damages, and against any expenses of the parties from any claim, liabilities, demands, payments, suits, actions, recoveries or judgments for damages which might result from the use, occupation or condition of the premises in the minimum amount of \$750,000 for each claim and \$1.5 million per occurrence. Tenant shall furnish a copy of such insurance policy and renewals thereof to the Landlord and such policy shall not be canceled without a 30-day written notice to the Landlord.

#### **5. UTILITIES SERVICES**

Tenant agrees, at his own expense to pay for all utilities used by the Tenant on the premises during the term of this lease.

#### **6. IDEMNIFICATION OF LANDLORD BY TENANT**

Tenant hereby agrees to indemnify and hold the Landlord harmless at all times from and against all actions, claims, liabilities, demands and all costs, expenses and fees, including attorney's fees, incurred by the Landlord, arising from the use, occupancy or non-use of the premises by the Tenant, or arising from the failure of the Tenant to maintain the premises as required by this lease. Such indemnification shall include but not be limited to carelessness, negligence, improper conduct or breach of this lease by Tenant or its agents, employees, customers, suppliers or licensees.

#### **7. ADVERTISING SIGNS**

The Tenant shall be allowed to provide, at his own expense, such advertising displays on the exterior of the building as may be appurtenant to his business, provided however that such displays will be in accordance with the laws and regulations of the State of Montana and the City of Billings, Montana, and that such displays will not deface, damage or devalue the demised property during their use or after their removal, reasonable wear and tear expected. All signs must be approved in writing by the Landlord prior to installation which approval shall not be unreasonably withheld.

## **8. IMPROVEMENTS BY TENANTS**

All improvements, alterations, additions and all such work shall be done at Tenant's expense and shall, unless Landlord elects otherwise, become the property of the Landlord at the conclusion of the lease, and shall remain upon and be surrendered with said premises, as a part thereof, at the end of the term or renewal of this lease. No improvements, alterations or additions shall be made by Tenant without the written consent of Landlord, which consent shall not be unreasonably withheld.

## **9. FIXTURES AND PERSONAL PROPERTY**

All trade fixtures, equipment, signs, cabinets, shelves, showcases, counters, mirrors and other moveable personal property, shall remain the property of the Tenant and may be removed by Tenant at any time during, or at the termination of this lease agreement, provided, however, that the same can be removed without serious injury to the leased premises.

## **10. ASSIGNING AND SUBLetting**

Tenant shall not assign this agreement or sublet the premises in whole or in part without first obtaining the concurrence in writing from Landlord which shall not be unreasonably withheld.

## **11. LANDLORD'S ACCESS TO INSPECT**

Landlord or its agent, at all reasonable times during business hours, shall have free access to the demised premises, for the purpose of examining and inspecting the same and making any needed repairs or alterations thereon which Landlord may see fit to make. In such case Landlord will make every reasonable effort not to interfere with the Tenant's operation of business.

## **12. TENANT TO HAVE PEACEABLE POSSESSION**

Landlord covenants that Tenant shall peaceably hold and enjoy the premises so long as they are in faithful compliance with the terms hereof and the covenants thereof.

## **13. TRASH AND RUBBISH**

The Landlord shall at its expense provide an area for the collection of and pickup of all trash and rubbish. The tenant shall provide containers for the collection of said rubbish. Said area may be a common area within or outside the premises.

## **14. ATTORNEY FEES AND COSTS ON VIOLATION OF LEASE**

In the event that either party shall be required to commence any action, retain an attorney, or use in-house council to enforce the covenants or agreements of this lease, the party whose

failure to perform occasioned such action shall pay and discharge all reasonable costs, expenses, and attorney fees, including fees of in-house council, which shall be made or incurred by the other party.

## **15. DEFAULT AND RE-ENTRY**

If the Tenant shall neglect or fail to perform or observe any of the covenants contained herein on their part to be observed and performed for thirty (30) days after notice by the Landlord of such breach, or if tenant shall be adjudicated bankrupt or insolvent, or shall make an assignment for the benefit of creditors, or permit any mechanics or material man's liens to be filed against the demised premises for labor or material furnished, which Tenant does not in good faith defend against, then and in any of said cases the Landlord may lawfully enter into and upon said premises or any part thereof and repossess the same, and expel the Tenant and those claiming under and through them and remove their effects, forcibly if necessary, without being deemed guilty of any manner of trespass, without prejudice to any remedies which might otherwise be used for arrears of rent or breach of covenant, and upon entry of the aforesaid, this Lease shall terminate and wholly expire.

## **16. CONDUCT OF BUSINESS BY TENANT**

Recognizing that it is in the interest of Tenant's successful operation of his business, Landlord shall allow Tenant at Tenant's election to be open for business daily, including Sundays and Holidays, and Landlord shall not interfere, by regulation or other imposition, with the hours or the days of business operation by the Tenant. The Tenant covenants and agrees that from and after its initial opening for business, it will operate and conduct within the premises the business which it has been licensed and permitted to operate or such other lawful business licensed and permitted by Landlord.

## **17. NOTICES**

All notices to be given hereunder by either party hereto shall be in writing and given by personal service or by first class mailing by registered or certified mail, return receipt requested. Said method of notice is deemed sufficient service thereof, and shall be deemed given as to the date when served or deposited in any post office. Either party may change address by written notice by certified or registered mail to the other. The initial address for receipt of notices is as follows:

Conoco/Phillips Pipeline Company

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Parking Division Director

City of Billings

P.O. Box 1178

Billings, MT 59103

## **18. MUTUAL RELEASE FOR HAZARDS COVERED BY INSURANCE**

The Landlord and Tenant and all parties claiming under them hereby mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard

covered by insurance on the leased property, or covered by insurance, in connection with the property on or activities conducted on the leased property, regardless of the cause of the damage or loss to the extent such waiver of subrogation can be reasonably obtained.

**19. COMPLIANCE WITH ALL EXISTING FEDERAL, STATE AND CITY LAWS AND POLICE, FIRE, AND SANITARY MEASURES**

Tenant agrees to use and occupy the above described premises in accordance with all lawful police, fire and sanitary regulations imposed by a municipal, state or federal authority, or made by fire insurance underwriters as the basis for insurance for said Landlord's interest in said building, and will observe and obey the laws, City ordinances and other requirements governing the conduct of Tenant's business with respect to the use of said premises.

**20. SMOKE FREE CITY-OWNED OR LEASED BUILDINGS**

All buildings owned or leased by the City of Billings are being designated as smoke free. The Tenant agrees to comply with all requirements of this ordinance.

**21. WAIVER**

A waiver of any breach or default by either Landlord or Tenant shall not be a waiver of any other breach or default. Landlord or Tenant approval of any act by the other requiring consent or approval shall not be deemed to waive or render unnecessary Landlord or Tenant consent to or approval of any other subsequent similar act by Landlord or Tenant.

**22. PREVENTION OR DELAY**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restriction, governmental regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of either party obligated to perform, shall excuse the performance by such part of its obligation hereunder for a period equal to any such prevention, delay or stoppage, provided that Tenant shall be excused from performance only if the premises are rendered untenable or the Tenant is unable to operate their business because of the delay or stoppage.

**23. PARKING SPACES**

Up to twelve (12) covered spaces at the regular monthly rate in the Park 1 Garage are available to Tenant and will be limited to non-reserved and roof spaces. If tenant requires additional spaces, tenant will be placed on the Park 1 Waiting List and will be rented spaces as they become available.

**24. TAXES AND ASSESSMENTS**

Tenant shall pay and discharge all taxes, assessments, penalties, charges, rates, or liens of any nature whatsoever, that may, during the term hereof or any renewal, be levied, assessed, charged, imposed, or claimed on or against the demised premises or any improvements or fixtures thereon or appurtenances thereto, or any part thereof, or against the owner or owners of such land or the improvements, by reason of such ownership or tenancy, by whatsoever authority levied, assessed, charged, imposed, claimed, and whether the same is on or against the property herein leased, its improvements, fixtures, or appurtenances, or any part thereof, or on or against the income from the property or its improvements.

## **25. BINDING EFFECTS**

The Covenants and agreements herein contained shall be binding upon the parties hereto, their successors and assigns.

This Lease Agreement and all terms and conditions established herein supersedes and revokes all previous agreements between the parties. Therefore, all previous agreements between the parties are declared null and void and inapplicable.

IN WITNESS WHEREOF, the parties have executed this Lease on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF BILLINGS (LANDLORD)**

BY: \_\_\_\_\_  
ITS (MAYOR)

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

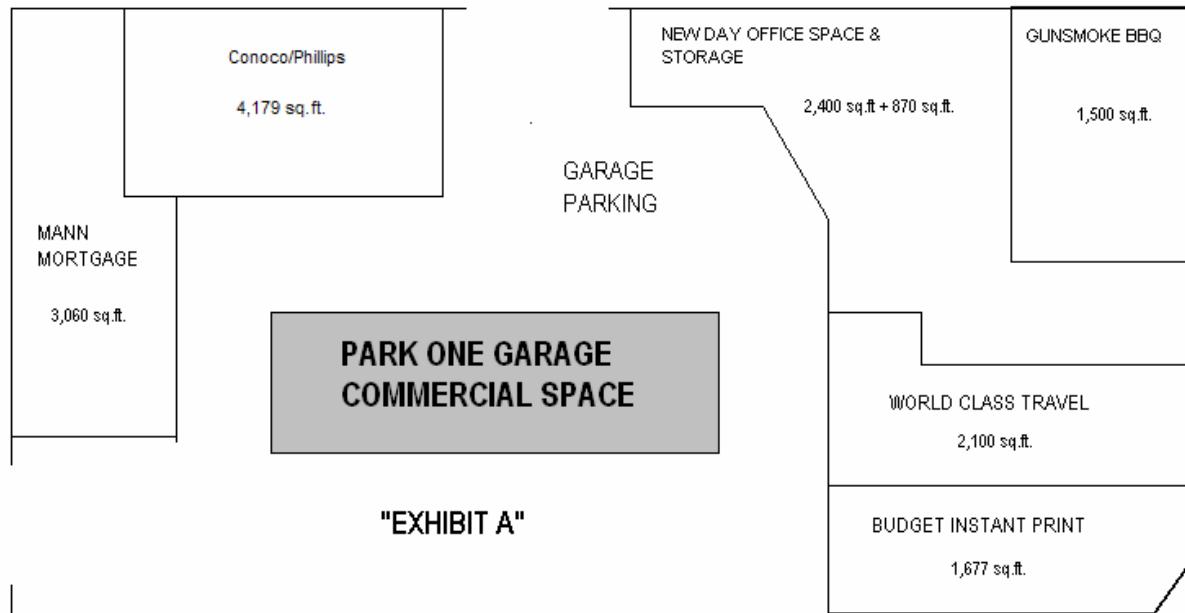
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(TENANT)

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

ITS \_\_\_\_\_

## EXHIBIT "A"



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

E

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 26, 2007**

---

**TITLE:** Council Approval of Limited Commercial Aviation Ground Lease – Remote Parking Lot with Edwards Jet Center

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Edwards Jet Center desires to enter into a new lease for additional ground space to expand parking for its employees and customers. The proposed parking lot will be operated by Edwards Jet Center as a permit-only parking lot and is located west of Edwards' main facility. This five (5) year ground Lease is for 16,285.10 square feet. The Airport averages two or three leases per year using this type of lease, either for a new lease or for a lease renewal. The Lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language.

**FINANCIAL IMPACT:** This ground Lease will generate \$3,664.20 in the first year of the Lease. The ground lease rate of \$0.225 per square foot per annum is in line with the rate being paid by other ground lease tenants located in this area, and is the same rate used for another new lease for Edwards Jet Center on Lot 8, approved by the City Council on August 27. Future lease year rentals will be adjusted annually by the Consumer Price Index for all Urban Consumers (CPI-U).

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a new five-year Limited Commercial Aviation Ground Lease at Billings Logan International Airport with Edwards Jet Center for a parking lot.

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

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

F

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 26, 2007**

---

**TITLE:** Approval and Acceptance of Montana Dept of Transportation, State Highway Traffic Safety Contract 2008-13-13-04 & 2008-09-08-04 in the amount of \$14,000.00 for the period of October 1, 2007, to September 30, 2008.

**DEPARTMENT:** Police Department

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

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**PROBLEM/ISSUE STATEMENT:** The State of Montana, State Highway Traffic Safety Division has awarded the City a \$14,000 grant for deterrence of violations such as drinking and driving, speeding, lack or misuse of safety restraints, and others. The grant will pay for overtime for the officers involved in these traffic details. Council is being asked for the approval and acceptance of this grant and authorize the Mayor to sign the attached Standard Agreement.

**FINANCIAL IMPACT:** None. There is no City match required.

**RECOMMENDATION**

Staff recommends that Council approve and accept the Billings STEP OT grant from the Highway Traffic Safety Division of the State of Montana in the amount of \$14,000 for the period of October 1, 2007, through September 30, 2008, and authorize the Mayor to sign the attached Standard Agreement.

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

**ATTACHMENT:**

A - Billings Enforcement Grant #2008-13-13-04 & 2008-09-08-04 Standard Agreement

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

# G

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 26, 2007

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**TITLE:** Recreational Trails Program Grant Amendment Agreement for a portion of the Gabel Road Connector Trail

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Darlene Tussing, Alternate Modes Coordinator

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**PROBLEM/ISSUE STATEMENT:** The City of Billings Planning Division applied for the Recreational Trails Program grant for the year 2005 for a portion of the trail development along the Bannister Drain from 29<sup>th</sup> Street West to the east edge of the BBWA canal south of King Avenue behind Pierce Flooring. The grant was approved for \$23,500 with a requirement that the project should be completed by October 15, 2007. The City of Billings has requested a year extension for the RTP grant for a number of reasons. The City believes it would be more cost effective to combine this grant with a CTEP project, work with the new land owners for a portion of the trail section so they can best utilize their land for their business and still provide the trail corridor, and so the project can connect to another portion of trail that was built by the McCall Development that needs to be re-worked for ADA compliance. The McCalls needed time to consult with an engineering firm and to make those corrections which can be made by 2008. Fish, Wildlife and Parks has approved the extension and now needs the City of Billings to review this amended agreement and, if it is acceptable, have the Mayor sign both copies and return one copy to the State Trails Program in Helena. The other copy will be retained for the City's records.

**FINANCIAL IMPACT:** The Recreational Trails Program Grant was written to provide funding for a portion of the Gabel Road Connector Trail along the City-owned Bannister Drain from 29<sup>th</sup> Street West to the east edge of the BBWA canal. This grant provides reimbursement after monies have been expended. A 20% match or \$5,875 was approved by the Council in April 2004 to be used from the 1999 GO Bond.

### **RECOMMENDATION**

Staff recommends that Council approve the extension of the grant to October 15, 2008, and authorize the Mayor to sign the Recreational Trails Program Grant Amendment agreement for the Gabel Road Connector Trail.

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

**ATTACHMENT:**

A. Recreation Trails Program Grant Amendment

RECREATION TRAILS PROGRAM GRANT AMENDMENT  
#RT2005-4

THIS AGREEMENT, entered into this 24 day of October, 2007, by and between FISH, WILDLIFE & PARKS, the government agency of the state of Montana, for the purpose of implementing the Recreation Trails Program, with its principal place of business at Helena, Montana, hereafter called the "Department", and the City of Billings hereinafter referred to as the "Sponsor".

WITNESSETH:

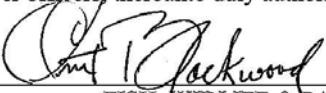
WHEREAS, the sponsor desires to conduct a trail project called the Gabel Road Connector – Heritage Bicycle – Pedestrian Trail, for the purpose of public outdoor recreation, and to qualify for reimbursement of the amount approved by the Department for this trail project; and,

WHEREAS, it is the duty of the Department to share in the responsibility for administration of said project and to determine satisfactory completion and performance;

NOW THEREFORE, in consideration of the covenants to be performed by each party on behalf of the other, as herein set forth, it is hereby understood and agreed by and between the parties hereto as follows:

1. The Sponsor's project will be extended to the agreed upon new completion date of 10/15/2008.
2. This Amendment makes no other changes; all other terms and conditions of this Agreement will stay in full force and effect.

IN WITNESS WHEREOF, the Department has caused its name to be subscribed thereunto duly authorized and the Sponsor has caused its name to be subscribed by its proper officer(s) thereunto duly authorized, on this day and year.

BY:   
FISH, WILDLIFE & PARKS

DATE: 10/25/07

BY: \_\_\_\_\_  
PROJECT SPONSOR

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

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

H

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 26, 2007**

---

**TITLE:** Approval of Amendment Five with CTA Architects Engineers for the Replacement of the Airport Terminal Building's Revolving Doors at the Billings Logan International Airport

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** 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, and processing pay requests and change orders. The base five-year contract is amended each time a new project is undertaken, and this Amendment Five for \$36,292, includes all of the services indicated above for the replacement of the four revolving entrance doors at the Airport's Terminal Building. The scope of work for this project and associated architectural fees have been approved and negotiated by Airport staff. This project is included in the approved Capital Improvement Program. Including Amendment Five, the total cost of the architectural work under this Contract totals \$105,111.00 and has produced an estimated \$1,579,000 of construction work.

**FINANCIAL IMPACT:** The total cost of Amendment Five with CTA Architects Engineers is \$36,292. The source of funding for the Amendment is the Department's Capital Budget.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment Five to the CTA Architects Engineers Services Contract in the amount of \$36,292 for the architectural services for the Replacement of the Airport Terminal Building's Revolving Doors.

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, November 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 Right-of-Way Easement for Parcel #33, a Portion of Lot 1 and Lot 2 of Stevens-Petter Subdivision With Janet Croy

**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 #33 of the parcels to be acquired (there are some numbered parcels within the project limits from which right-of-way does not need to be acquired). The appraisal for this easement made a conclusion of value for the easement, any appurtenant features, and the construction permit at a value of \$10,550. A perpetual easement for right-of-way purposes has the same value as a fee simple acquisition. An easement was negotiated for this parcel because the property owner wanted to maintain a legal lot size on which could be built a 4-plex apartment building. A copy of the right-of-way agreement; easement; 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 acquisition is \$10,550.00. The cost of this easement is equal to the sum of the appraised value of the easement, any appurtenant features, and the construction permit. Funding is available for this easement from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #33, a Portion of Lot 1 and Lot 2 of Stevens-Petter Subdivision with Janet Croy in the amount of \$10,550.00, and authorize the Mayor to execute these documents.

**ATTACHMENT**

A. Right-of-Way Agreement and Right-of-Way Easement (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

- December 2007 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

## **BACKGROUND**

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

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

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

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

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

## **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #33, a Portion of Lot 1 and Lot 2 of Stevens-Petter Subdivision with Janet Croy in the amount of \$10,550.00, and authorize the Mayor to execute these documents.

## **ATTACHMENT**

Right-of-Way Agreement and Right-of-Way Easement (5 pages)

## CITY OF BILLINGS

(hereinafter referred to as City)

### RIGHT-OF-WAY AGREEMENT

<u>Lake Elmo Road Hilltop Road to Wicks Lane</u>	Work Order: 04-33	<u>Yellowstone</u>
DESIGNATION	Project No. 05153	<u>COUNTY</u>
Parcel No.	Parcel Description	Section      Township      Range
33	Lot 1 and Lot 2 of Stevens-Petter Subdivision	22            1N            26E

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

JANET CROY  
P.O. BOX 21120  
BILLINGS, MT 59104-1120  
671-2551

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 and other documents required by the City for all real property interests agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

1,061 square feet by easement	\$4,509.00
Improvements (Trees, fencing, sod)	\$4,993.00
3. OTHER COMPENSATION:

1,634 square feet Temporary Construction Permit	\$ 694.00
Relocate sign	\$ 350.00
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$10,550.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:  
A warrant in the amount of \$10,550.00, less any amount required by the Mortgagee, to be made payable to JANET CROY and mailed to P.O. BOX 21120, BILLINGS, MT 59104-1120
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 Right-of-Way Easement, 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.

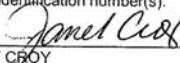
Grantor understands and agrees that upon completion of the construction of this item located upon the Grantor's land, they shall be considered the sole property of the Grantor, and the maintenance and repair of said property shall be the responsibility of the Grantor.

(Continued from Previous Page)

10. It is understood and agreed by and between the parties hereto that included in the amount payable under "Other Compensation" herein is payment in full to compensate the Grantor for the expense of performing the following work: Relocate the on-premise sign outside the new right-of-way on or before April 1, 2008.
11. Permission is hereby granted the City to enter upon the Grantor's land, where necessary and for the purpose of constructing a curb cut approach at the northerly end of the property on Lot 1 of Stevens-Petter subdivision. It is understood and agreed by the parties hereto that the specific location of this approach is subject to adjustment at the time of construction to achieve the best physical location for said approach. The City agrees to contact the Grantor for specifics regarding this approach.

## 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 the correct taxpayer identification number(s).

 10/25/07  
Signature: JANET CROY (Date)

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

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

RECOMMENDED FOR APPROVAL:

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-033.200 CROY

RETURN TO  
City Clerk  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

**RIGHT-OF-WAY EASEMENT**

**THIS INDENTURE**, made and entered into this 25 day of October, 2007, by and between the following:

JANET CROY  
P.O. BOX 21120  
BILLINGS, MT 59104-1120

hereinafter referred to as **GRANTOR** and

**CITY OF BILLINGS**, a Municipal Corporation  
City Hall – 210 North 27th Street  
PO Box 1178  
Billings, Montana 59103-1178,  
hereinafter referred to as **GRANTEE**

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged;

**WITNESSETH THAT GRANTOR** does hereby grant, sell, and convey unto the **GRANTEE**, for the benefit of the public, a perpetual easement and right-of-way to construct, reconstruct, maintain, operate, repair and improve streets, storm drainage, street lights, sidewalks, accessibility ramps, multi-use path, traffic signals, necessary fixtures and appurtenances, and public and private utilities that normally occupying public rights-of-way over, across, under, and through the real property within the boundaries of the easement area as described herein and shown on the attached Exhibit "A":

Parcel No. 33 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 and Lot 2 of Stevens-Petter Subdivision, on file under Document No. 595634, 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 1,061 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 1,634 sq. ft.

**TO HAVE AND TO HOLD** unto **GRANTEE** and to its successors and assigns forever.

**IN WITNESS WHEREOF**, the **GRANTOR** warrants that they have good right to convey, free and clear of all encumbrances; the above-described interests in the real estate described and have hereunto set their hand.

Project No. : W.O. 04-33

Parcel No. 33

Designation : LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

TO HAVE AND TO HOLD all of the above-described property unto the Grantee(s), and its successors and assigns forever.

IN WITNESS WHEREOF

Janet Croy  
State of MT )  
County of Yellowstone )  
ss.

This instrument was acknowledged before me on 10-25-07  
(date)

by Janet Croy (names)



Janet Prevost  
Notary Signature Line  
Janet N. Prevost  
Notary Printed Name  
Notary Public for State of MT  
Residing at: Billings, MT  
My Commission Expires: 12-10-08

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

THIS PERPETUAL EASEMENT is hereby accepted pursuant to Billings City Council approval on \_\_\_\_\_, 2007. The Mayor and City Council of the City of Billings acknowledges receipt of this perpetual easement and hereby accepts the property interest conveyed through this instrument.

CITY OF BILLINGS,  
a Montana Municipal Corporation

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

ATTEST:

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

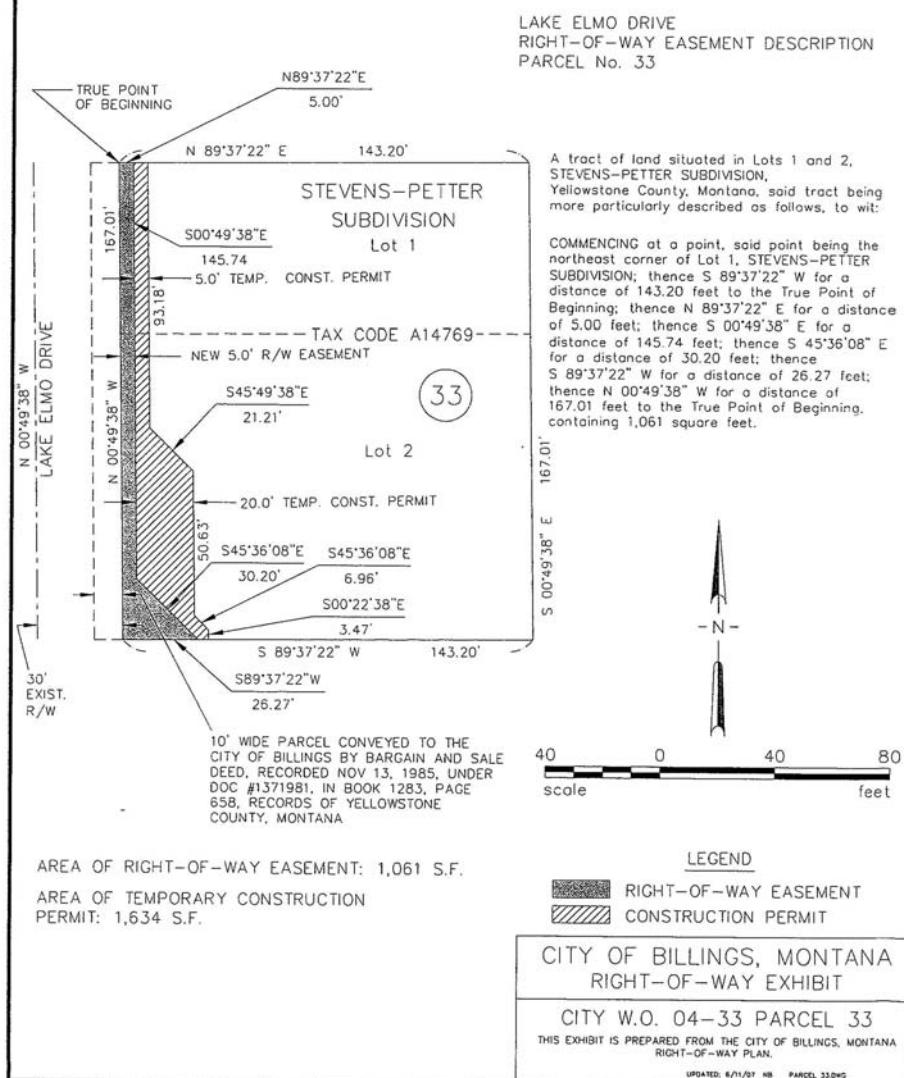
STATE OF MONTANA )  
ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, \_\_\_\_\_, a Notary Public in and for the State of Montana, personally appeared known to me to be \_\_\_\_\_ and acknowledged to me that they executed the foregoing instrument.

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

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

**EXHIBIT A**  
**RIGHT-OF-WAY EASEMENT**  
**AND TEMPORARY CONSTRUCTION PERMIT**  
**SITUATED IN LOTS 1 AND 2,**  
**STEVENS-PETTER SUBDIVISION,**  
**YELLOWSTONE COUNTY, MONTANA**



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

J

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, November 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 for a Portion of Tract 6 and Tract 7, Blue Creek Acreage Tracts Subdivision, With Yellowstone Valley Electric Cooperative, Inc.

**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 in 2006; one easement was approved by Council on March 26, 2007; and one easement was approved by Council on May 29, 2007. Council approved a resolution authorizing condemnation for all of the other necessary easements, also on March 26, 2007. The total cost of this easement is \$5,932.50. This cost represents five percent (5%) above the appraised value of the easement area. A copy of the right-of-way agreement, easement, appraisal, review appraisal, correspondence, and negotiation history for the Yellowstone Valley Electric Cooperative, Inc. property is on file with the City Clerk.

**FINANCIAL IMPACT:** 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 Perpetual Right-of-Way Easement for a Portion of Tract 6 and Tract 7, Blue Creek Acreage Tracts Subdivision, with

Yellowstone Valley Electric Cooperative, Inc. for \$5,932.50, and authorize the Mayor to execute these documents.

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

**ATTACHMENT**

A. Right-of-Way Agreement and Perpetual Right-of-Way Easement (7 pages)

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

<u>Briarwood Sewer Main Extension</u> DESIGNATION	Work Order: 04-36 MMI Project No. 0686.170-0211	<u>Yellowstone</u> <u>COUNTY</u>
Subdivision Tracts 6 and 7, Blue Creek Acreage Tracts Subdivision	Section 28	Township 1S
		Range 26E

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

YELLOWSTONE VALLEY ELECTRIC COOPERATIVE, INC.  
P.O. BOX 249  
HUNTLEY, MT 59037  
800 736-5323

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 and other documents (e.g., W-9 form) required by the City for all real property or property interests agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

0.136 acres by easement	\$5932.50
-------------------------	-----------

3. OTHER COMPENSATION:

None

4. TOTAL COMPENSATION (includes all damages to the remainder): \$5932.50.

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

A warrant in the amount of \$5932.50, to be made payable to YELLOWSTONE VALLEY ELECTRIC COOPERATIVE, INC. and mailed to P.O. BOX 249, HUNTLEY, MT 59037 within ten (10) days from the date the Right of Way Easement have been accepted for recording by the Yellowstone County Clerk and Recorder.

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 by the City if needed for access.

8. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer by the City of Billings, shall be limited to the following:

- a) Trench backfill, compaction and placement of backfill material to existing grade;
- b) Repair or replacement of any gravel, concrete or asphalt driveway which would connect either Tract 6 or Tract 7 described on Exhibit A to the existing Highway Right-Of-Way being State Hwy No. FAP-416-1(3);
- c) Reseed the disturbed area and conduct weed spraying for one calendar year from the date of the completion of the sewer main construction.

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).

Yellowstone Valley Electric Cooperative, Inc. 81-0211565  
Signature: 10/30/07 (Date) Tax ID No.

Daniel R. Stewart Pres.  
Signature: 10/30/07 (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:  
CITY OF BILLINGS:

N/A	(Date)	Mayor, City of Billings	(Date)
City of Billings Public Works Dept.	(Date)	City Clerk	(Date)

B-Yellowstone.200

APPROVED FOR AND ON BEHALF OF THE

**PERPETUAL RIGHT-OF-WAY EASEMENT**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on  
this 30th day of October, 2007, the undersigned,

YELLOWSTONE VALLEY ELECTRIC COOPERATIVE, INC.  
P.O. BOX 249  
HUNTLEY, MT 59037

hereinafter called "Grantor(s)", hereby grant and convey unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under and through the following described tracts of real property in Yellowstone County Montana:

**SEE ATTACHED EXHIBIT "A" AND EXHIBIT "B"**

This Perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing sanitary sewers over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said sanitary sewers and appurtenances, and adding additional sanitary sewer.

Grantors shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

- 1) Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as may be licensed by Grantee.
- 2) Grantors agree not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
- 3) Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
- 4) Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the City.

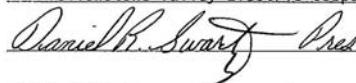
5) Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer by the City of Billings, shall be limited to the following:

- Trench backfill, compaction and placement of backfill material to existing grade;
- Repair or replacement of any gravel, concrete or asphalt driveway which would connect either Tract 6 or Tract 7 described on Exhibit A to the existing Highway Right-Of-Way being State Hwy No. FAP-416-1(3);
- Reseed the disturbed area and conduct weed spraying for one calendar year from the date of the completion of the sewer main construction.

6) **HOLD HARMLESS AGREEMENT:** GRANTORS acknowledge that conveyance of the Easement confers upon GRANTEE the right to conduct within the Easement all activities that are reasonable and appropriate to construct, reconstruct, maintain, operate, service, repair and replace one or more sanitary sewers within the Easement, subject only to the specific limitations and requirements set forth in writing herein. GRANTORS therefore waive any right to assert that any activity of GRANTEE within the Easement that is conducted in a non-negligent manner and in strict accordance with all of the terms and conditions of this Perpetual Easement and Right-of-Way have caused damage to GRANTORS' Real Property. PROVIDED, HOWEVER, that the waiver contained in this paragraph shall not apply to any damage to GRANTORS that is caused by activities of GRANTEE or its representatives that are conducted negligently or in a manner that is not in strict accordance with all of the terms and conditions of this Perpetual Easement and Right-of-Way, or to any claims for any damage to GRANTORS other than damages to GRANTORS' Real Property. GRANTEE shall indemnify and hold GRANTORS harmless from any cost, expense or liability that GRANTORS are or may become liable for, including reasonable attorney's fees, arising from or in any way related to GRANTEE's construction, reconstruction, maintenance, operation, service, repair or replacement of any sanitary sewers and related facilities of which any portion thereof is located within the Easement.

7) The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.

Yellowstone Valley Electric Cooperative, Inc.

 Pres

State of MONTANA )  
County of YELLOWSTONE )

This instrument was acknowledged before me on October 30, 2007 (date)

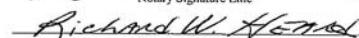
by Daniel R. Swartz (name of person(s))

as President (type of authority, e.g., officer, trustee, etc.)

of YELLOWSTONE VALLEY ELECTRIC COOPERATIVE, INC. (name of party on behalf of whom instrument was executed)

(Seal)

 Notary Signature Line

 Notary Printed Name

Notary Public for State of MONTANA

Residing at: Columbus mt

My Commission Expires: 12/27/2007

THIS EASEMENT is hereby accepted pursuant to City Council approval on

March 26, 2007.

**CITY OF BILLINGS, a Montana Municipal Corporation**

By: \_\_\_\_\_  
RON TUSSING, MAYOR

ATTEST:

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CARI MARTIN, City Clerk

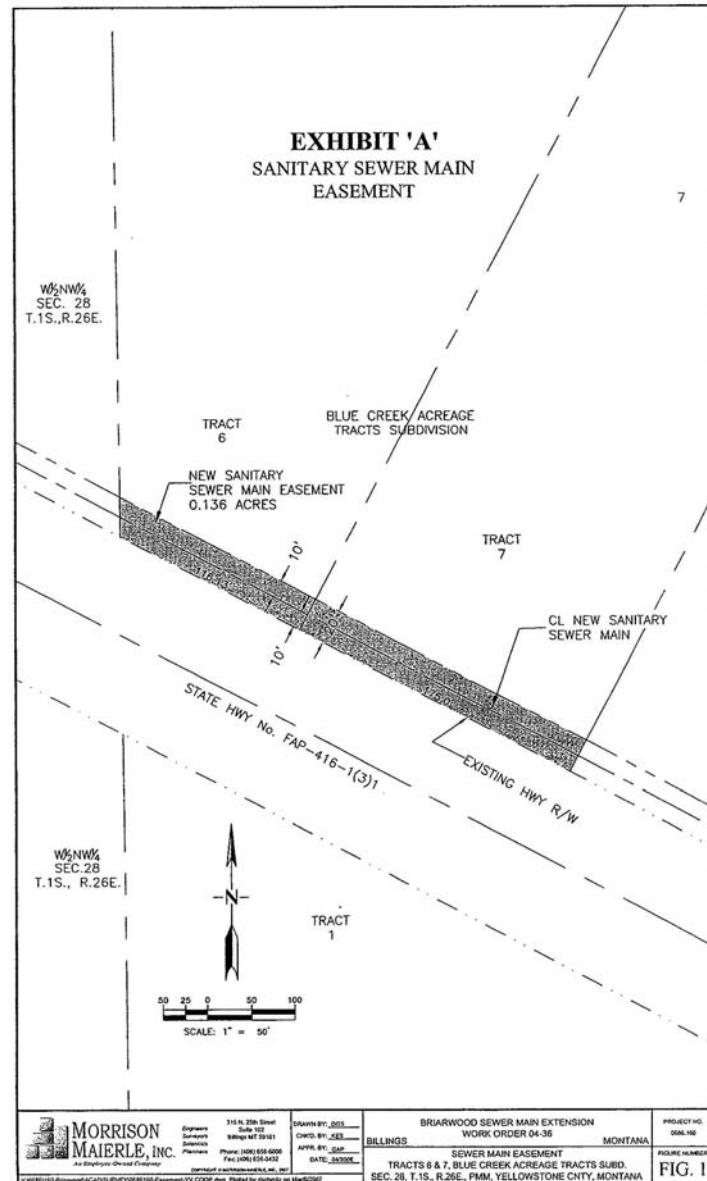
STATE OF MONTANA )  
County of Yellowstone )

On this \_\_\_\_ day of \_\_\_\_\_, 2007 before me a Notary Public for the State of Montana, personally appeared RON TUSSING and CARI MARTIN, known to me to be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they executed the foregoing instrument.

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

(SEAL)

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



## **EXHIBIT 'B'**

### **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.

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

## AGENDA ITEM:



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

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**TITLE:** Safe Route to School Program Application for Elementary School Traffic Plan

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Darlene Tussing, Alternate Modes Coordinator

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**PROBLEM/ISSUE STATEMENT:** The City of Billings is seeking Safe Routes to School grant monies to provide a traffic assessment of the existing conditions in the vicinity of the public elementary schools in Billings. This information can be utilized so traffic engineering principles can be identified for short, medium and long term solutions to create a safe and efficient school related traffic plan for pedestrian, vehicle and bus traffic. The deadline for the grant application is December 31, 2007.

**ALTERNATIVES ANALYZED:** Safe Routes to School grants are made available through the Montana Department of Transportation to ultimately help encourage walking and biking to and from school. Applying for this grant would give the community an opportunity to assess the traffic conditions around the 23 public elementary school sites and offer solutions to create a safer and more efficient environment for pedestrian, vehicle and bus traffic. If we do not submit a grant application to the Safe Routes to School Program, the City will not be able to do the school traffic assessment plan unless other funding is sought from another source.

**FINANCIAL IMPACT:** The Safe Routes to School grant requires no local match. The grant application is for \$50,000. If the grant is approved and additional funding is needed to assess all 23 public elementary schools, other planning dollars or District #2 funds will need to be sought or an additional SRTS grant will be requested next year to complete the study.

**RECOMMENDATION**

Staff recommends that Council approve the application submittal to the Safe Routes to School funding program for the Elementary School Traffic Plan.

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

**ATTACHMENT**

A. Application Signature Section

## Section C Signatures

### I. Reimbursement

The Safe Routes to School Program is a reimbursable funding program, meaning that recipients of the funds will front the cost of the project and will be reimbursed during the course of the project. All costs submitted for reimbursement are subject to eligibility requirements. Any costs incurred before a project's authorization in writing are not eligible for reimbursement.

Funding for the SRTS Program is flexible to encourage innovative solutions; however, applicants are advised that certain projects are ineligible. Ineligible projects include the following:

- Projects that do not specifically serve the stated purposes of the SRTS Program.
- Recurring costs such as crossing guard salaries unless there are plans in place for alternative sources of funding to perpetuate the program in the future.
- Projects that reorganize pick-up and drop-off primarily for the convenience of drives rather than to improve the safety of walking and bicycling for students.
- Education programs that are primarily focused on bus safety.
- Improvements to bus stops.

### II. Certifications and Assurances

#### We, the undersigned:

- Submit this project to the Montana Department of Transportation (MDT) for approval of the project concept.
- Assure MDT that the local government(s) or school district will maintain (or cause to be maintained) this project in a safe and serviceable condition and that the MDT will not be responsible for maintenance of this project.
- Assure that all minority groups, as well as the general public within the appropriate jurisdiction, have been provided adequate opportunity to participate in the process of identifying and selecting this project for SRTS funding.
- Understand the project costs in this proposal are preliminary estimates only and that actual final costs may be more than or less than those reflected herein. If there is any variance from the proposed cost, we are prepared to accommodate any additional SRTS requirements.
- Understand the SRTS Program is not a grant program.

- Understand SRTS payments will be reimbursed by MDT on a work-progress basis; i.e., no payments will be made for any work until it has been completed and proper documentation submitted to MDT.

- Understand because this is a Federal-aid project, it must conform to all federal and state laws and regulations pertaining to procedures for design, the National Environmental Policy Act (NEPA), Americans with Disabilities Act (ADA), rights-of-way, contract letting, and construction standards, including the proper and applicable payment of Federal-aid prevailing wage rates, Disadvantaged Business Enterprise (DBE) regulations, and Equal Employment Opportunity (EEO) contract compliance. We understand failure to meet these requirements may, by law or policy, render this project ineligible for SRTS funding.
- SRTS is a Federal-aid program. The entire SRTS project must meet federal requirements regardless of funding source.
- Understand the information contained herein indicates the general concepts of the project and does not constitute in any way a final plan for project implementation.
- Understand there will be written agreements between MDT and the sponsor to complete certain activities, and the sponsor may not proceed with any activity to be funded with SRTS funds prior to written MDT approval.
- Understand the sponsor is responsible for completing all phases of project development and implementation (except in some cases where SRTS projects may be included with a planned MDT highway project).

### **III. Required Signatures**

Project Sponsor/Title	Date
-----------------------	------

Project Manager/Title	Date
-----------------------	------

Local Government/CTEP Administrator (if applicable)	Date
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**Please make sure you've included the following in your application:**

**g** A timeline for the project. Include schedule for submitting progress reports on the project. (Attachment(s) 1A and/or 1B)

- g An assessment demonstrating the need for the project. Include tallies from surveys completed by students and parents.
- g A list of members on your SRTS project team. Please include their roles in the local school, school system, and/or community as well as contact information. (Attachment 3A or 6B)
- g Letters of intention of support and/or to maintain facilities from a governing body. (Attachment 6A or 3B)
- g Evidence of the public participation process used (flyers, letters, etc.). (Attachment 4A or 7B)
- g A general map showing the location of all proposed improvements and their proximity to the school and school routes. (Attachment 4B)
- g Completed application narrative from Section A or B.
- g A map of the school area and/or pictures of school or safety issues being addressed. (Attachment 2A) (Photographs supplementing Attachment 4B are highly recommended)
- g A statement of ADA compliance (Attachment 5A or 8B)
- g Environmental documentation (for infrastructure projects)

**Send 3 copies of your application to:**

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

For additional information, call toll free 1-877-935-SAFE (7233).

For additional resources go to [www.mdt.mt.gov/pubinvolv/saferoutes](http://www.mdt.mt.gov/pubinvolv/saferoutes).

**Application Deadline: December 31, 2007**

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information call (406)444-3423 or TTY (800)335-7592, or the Montana Relay at 711.

August 2007



AGENDA ITEM:

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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 26, 2007**

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**TITLE:** Resolution Amending Resolution 07-18547 – Annexing Territory in the City (Annexation #07-06)

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On April 23, 2007, the City Council conducted a public hearing and passed a Resolution annexing a property for the Cottonwood Park site located on the northwest corner of the intersection of Colton Boulevard and 54<sup>th</sup> Street West. Upon receipt of the resolution, the Department of Revenue found an error in the legal description for the property. A new resolution has been prepared amending the previous resolution.

**ALTERNATIVES ANALYZED:**

- Approve the amended resolution annexing the property for the Cottonwood Park site.
- Deny the amended resolution annexing the property for the Cottonwood Park site.

**FINANCIAL IMPACT:** None

**RECOMMENDATION**

Staff recommends that the City Council approve the amended resolution annexing property legally described as Tracts 1 & 2, Certificate of Survey 1323; Tract 1, Certificate of Survey 1815, Tract 2D, Certificate of Survey 1952; Parkland from Yellowstone Meadows Phases 1 and 3; and unplatte land being the SE ¼ NE ¼ of Section 31, Township 1N, Range 25E, less previous described tracts of land; and including all adjacent right of way of 54<sup>th</sup> St. West and Colton Blvd.

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

**ATTACHMENT**

A. Amended Resolution

**K. ATTACHMENT A**  
**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 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;

Unplatted land being the SE1/4 NE1/4 of said Section 31 less previous described tracts of land.

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 and Colton Boulevard.

Containing 41.481 gross acres, and 37.553 net acres.

(# 07-06) 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 26<sup>th</sup> day of November, 2007.

THE CITY OF BILLINGS:

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

Ron Tussing, MAYOR

ATTEST:

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

CITY CLERK

(AN #07-06)

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

# M

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 26, 2007

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**TITLE:** Annexation #07-24: Second Reading of an Ordinance Expanding Ward II  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** On October 22, 2007, the City Council approved the annexation of a 5-acre parcel legally described as Tract 1B, Certificate of Survey 1335, Amended, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The request for annexation was submitted by Hanser Capital Holdings, LLC, owner of the 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 II was conducted on November 13, 2007. The second reading of the ordinance will be conducted at this meeting.

**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 II.

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

**ATTACHMENT**

**A.** Ward Ordinance and Exhibit A

**ATTACHMENT A**

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

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD II 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:

A tract of land situated in the NW1/4 of Section 12, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

A tract of land situated in the NE1/4 of Section 23, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1B, Amended Tract 1 of Certificate of Survey No. 1335, Recorded March 1, 1978, Under Document No. 1080869, Records of Yellowstone County, Montana.

Said Tract containing 5.000 acres.

(# 07-24) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 13th day of November, 2007.

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

THE CITY OF BILLINGS:

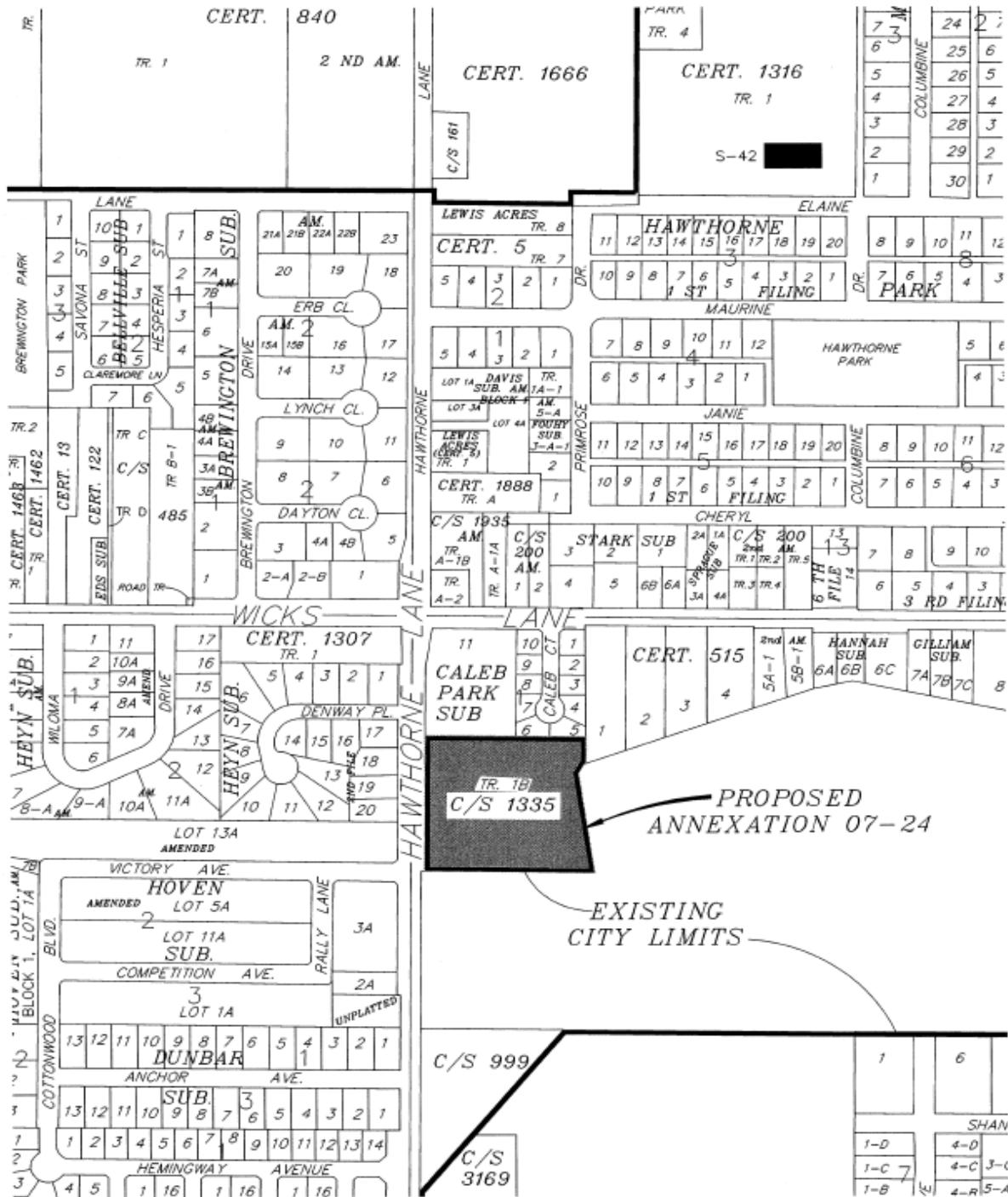
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Ron Tussing, MAYOR

ATTEST:

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

## EXHIBIT A



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

N

AGENDA ITEM:



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**TITLE:** Preliminary Plat of Amended Block 4, Evergreen Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On October 15, 2007, the Planning Division received an application for subsequent minor plat approval for Amended Block 4, Evergreen Subdivision. The proposed subdivision contains two lots on approximately 194,544 square feet (4.47 acres) of land. The proposed subdivision is already developed as a commercial site with existing businesses on the lot. The proposed subdivision is located on the south side of Avenue C between 13<sup>th</sup> and 14<sup>th</sup> Street West. The owner is Sieben Ranch Company and the representing agent is Peter Knapp with Engineering Incorporated.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on December 4, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

**FINANCIAL IMPACT:** Should the City Council approve the preliminary plat, the subject property will continue providing tax revenues as developed.

**RECOMMENDATION**

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

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

**ATTACHMENTS**

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

## **INTRODUCTION**

On October 15, 2007, the Planning Division received an application for subsequent minor plat approval for Amended Block 4, Evergreen Subdivision. The proposed subdivision contains two lots on approximately 194,544 square feet (4.47 acres) of land. The proposed subdivision is already developed as a commercial site with existing businesses on the lot. The proposed subdivision is located on the south side of Avenue C between 13<sup>th</sup> and 14<sup>th</sup> Street West. The surrounding property zoning is; North, Residential 6000 (R-60), South, Community Commercial (CC), East, CC, and West, R-60.

## **PROCEDURAL HISTORY**

- The pre-application meeting was conducted by the Planning Division on September 20, 2007.
- The preliminary plat application was submitted to the Planning Division on October 15, 2007.
- The City Council will consider the preliminary plat application on November 26, 2007.

## **BACKGROUND**

General location:	South side of Avenue C between 13 <sup>th</sup> and 14 <sup>th</sup> Street West
Legal Description:	Lots 2 through 46, 47A and 48A-1, Block 4, Evergreen Subdivision and Adjacent Vacated Alley and North ½ Vacated Avenue B
Subdivider:	SBC Realty Partners (agent for owner)
Owner:	Sieben Ranch Company
Engineer and Surveyor:	Engineering Incorporated
Existing Zoning:	Community Commercial (CC)
Existing land use:	Commercial Property
Proposed land use:	Continue as developed
Gross area:	194,544 square feet
Net area:	194,544 square feet
Proposed number of lots:	2
Lot size:	Max: 122,650 square feet (2.8 acres) Min.: 71,900 square feet (1.65 acres)

Parkland requirements:

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

### **ALTERNATIVES ANALYSIS**

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

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. To minimize the effects to public health and safety, prior to final plat approval, the subdivider shall meet all required current building codes for fire resistant construction at property lines and all other applicable codes for the City of Billings for the existing building. (*Recommended by the Building Division*)
3. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

### **VARIANCES REQUESTED**

None requested

### **STAKEHOLDERS**

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

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

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

### **RECOMMENDATION**

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

### **ATTACHMENTS**

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

**ATTACHMENT A**

Preliminary Plat of Amended Block 4 Evergreen Subdivision

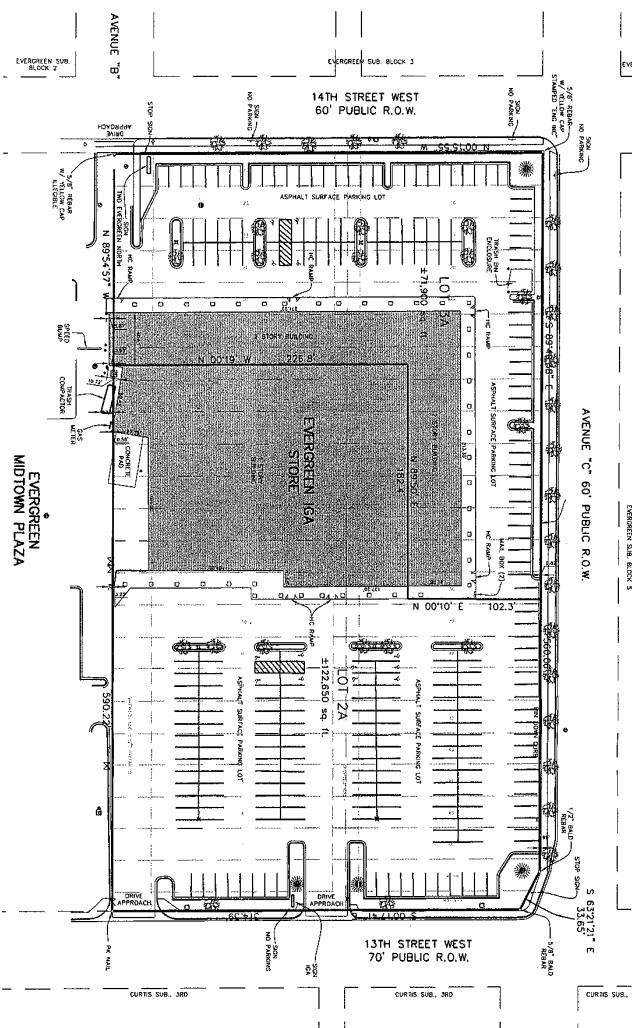
PROPOSED PLAT OF AMENDED BLOCK 4,  
**EVERGREEN SUBDIVISION**

INCLUDING LOTS 2 THROUGH 46, LOT 47-A, LOT 48-A-1, THE VACATED ALLEY AND THE NORTH 1/2 OF VACATED AVENUE B  
 SITUATED IN THE SE 1/4 OF SECTION 36 T1N, R25E, P.M.M.  
 CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

SEPTEMBER, 2007

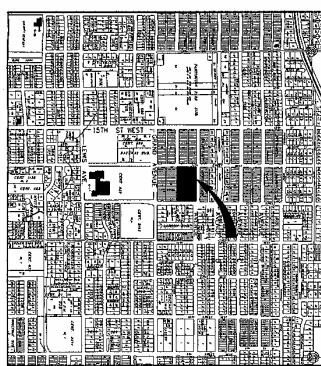
BILLINGS, MONTANA

PREPARED FOR : EXECUTIVE PROPERTY SERVICES  
 PREPARED BY : ENGINEERING, INC.  
 SCALE : 1"=40'



PLAT DATA.

GROSS AREA	= 194,544 SQ.FT.
NET AREA	= 194,344 SQ.FT.
NUMBER OF LOTS	= 46
MINIMUM LOT SIZE	= 7,900 SQ.FT.
MAXIMUM LOT SIZE	= 122,650 SQ.FT.
LINEAL FEET OF STREETS	= 0
PARKLAND REQUIREMENT	= NONE
EXISTING ZONING	= COMMUNITY COMMERCIAL
SURROUNDING ZONING	= COMMUNITY COMMERCIAL
EAST	= COMMUNITY COMMERCIAL
SOUTH	= COMMUNITY COMMERCIAL
WEST	= RESIDENTIAL
EXISTING LAND USE	= NO CHANGE
PROPOSED LAND USE	= RETAIL STORES, OFFICES



## Site Photographs



East side of existing building.



South side of existing building along south property line.



West side of existing building



North side of existing building

## **ATTACHMENT C**

### **Findings of Fact**

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

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

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

The subject property is currently fully developed for commercial uses. There is no effect on agricultural uses.

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

- a. **Utilities** – Water and sanitary sewer for Lots 2A and 3A shall remain as installed. The necessary agreements and easements shall be created to meet the requirements of the City of Billings. The property owner will be responsible for all fees and improvement costs as stated in the SIA.
- b. **Storm water** – As specified in the submitted SIA, storm drainage complies with the provision of the Stormwater Management Manual and Section 23-706, BMCC. Analysis of the drainage system and storm water management plan will be conducted as part of the planned architectural analysis. All drainage improvements shall comply with the provisions of the Stormwater Management Manual and Section 23-706, BMCC.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision exists off of 13<sup>th</sup> and 14<sup>th</sup> Street West. There are sidewalks, curbs and gutters already existing on the surrounding streets. As stated in the SIA the subdivider agrees to improve sidewalks on the property as necessary to comply with code requirements as determined by the City.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1928 17<sup>th</sup> Street West (Station #3). The subdivision is located within the ambulance service area of American Medical Response.
- f. **Schools** –Schools will not be affected by this subdivision as it is an existing commercial use.
- g. **Parks and Recreation** - A parkland dedication is not required, as this is a commercial development.

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

The proposed subdivision should have no effect on the natural environment as the building already exists.

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

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

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

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare. As with all subdivisions of land Section 23-301 of the subdivision regulations requires compliance with local regulations and state law. With the subdivision of the property, the existing building must meet current Building Codes for fire wall separation in order to proceed with final platting. See Condition #2.

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

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA and 23-901, BMCC.

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

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

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

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

*The proposed subdivision is on a site that is already developed and keeps the development in place in the neighborhood.*

- b. Coordinated economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, Page 6)

*The proposed subdivision is for an existing development. Keeping it in the area will retain what is already in the neighborhood.*

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

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

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

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

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

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

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

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

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

The subject property is located within a CC zoning district and complies with the standards set forth in Section 27-309, BMCC.

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

This site has existing utilities that currently service the commercial development on the site. The subdivider will work with the City Engineering departments and utility companies to provide utility easements to accommodate existing conditions and make any changes that are necessary. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

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

Existing accesses from 13<sup>th</sup> and 14<sup>th</sup> Street West will provide legal and physical access to the lots.

## **CONCLUSIONS OF FINDING OF FACT**

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

Approved by the Billings City Council, November 26, 2007

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Ron Tussing, Mayor

**ATTACHMENT E**  
Mayor's Approval Letter

November 26, 2007

Sieben Ranch Company  
P.O. Box 1683  
Helena, MT 59624

Dear Applicant:

On November 26, 2007, the Billings City Council conditionally approved the preliminary plat of Amended Block 4, Evergreen Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. To minimize the effects to public health and safety, prior to final plat approval, the subdivider shall meet all required current building codes for fire resistant construction at property lines and all other applicable codes for the City of Billings for the existing building. (*Recommended by the Building Division*)
3. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

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Ron Tussing, Mayor

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

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AGENDA ITEM:



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

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**TITLE:** Preliminary Plat of Amended Lot 4A, Stardust Acres, Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On October 15, 2007, the Planning Division received an application for subsequent minor plat approval for Amended Lot 4A, Block 1, Stardust Acres Subdivision. The proposed subdivision contains two lots on approximately 31,505 square feet (.72 acres) of land. The proposed subdivision is creating two residential lots. The proposed subdivision is located on the south east corner of Venus Circle and Southern Hills Drive. The owner is Arlin Stutznegger and the representing agent is Jim Hahn with Atlas Engineering Incorporated.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on December 4, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

**RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of Amended Lot 4A, Block 1, Stardust Acres Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

On October 15, 2007, the Planning Division received an application for subsequent minor plat approval for Amended Lot 4A, Block 1, Stardust Acres Subdivision. The proposed subdivision contains two lots on approximately 31,505 square feet (.72 acres) of land. The proposed subdivision is creating two residential lots. The proposed subdivision is located on the south east corner of Venus Circle and Southern Hills Drive. The property is surround by single family residences in the Residential 9600 (R-96) zoning district.

## **PROCEDURAL HISTORY**

- The first pre-application meeting was conducted by the Planning Division on December 29, 2006.
- The subsequent pre-application meeting was conducted by the Planning Division on October 11, 2007.
- The preliminary plat application was submitted to the Planning Division on October 15, 2007.
- The City Council will consider the preliminary plat application on November 26, 2007.

## **BACKGROUND**

General location:	South side of Venus Circle east of Southern Hills Drive
Legal Description:	Lot 4A, Block 1, Stardust Acres Subdivision
Subdivider:	Arlin Stutznegger
Owner:	Arlin Stutznegger
Engineer and Surveyor:	Atlas Engineering Incorporated
Existing Zoning:	Residential 9600 (R-96).
Existing land use:	Vacant
Proposed land use:	Residential Development
Gross area:	31,505 square feet
Net area:	31,505 square feet
Proposed number of lots:	2
Lot size:	Max: 15,755 square feet (.36 acres) Min.: 15,750 square feet (.36 acres)
Parkland requirements:	A parkland dedication is not required, as this is a subsequent minor subdivision.

## **ALTERNATIVES ANALYSIS**

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

## **RECOMMENDED CONDITIONS OF APPROVAL**

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

5. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
6. To minimize the impact on local services the final SIA document shall be revised to include street and utility improvements including, but not limited to, curb and gutter, sidewalk, street paving, and storm drain improvements. The SIA shall state the improvements required. They will not need to be constructed at this time, but will be included in the attached Waiver of Right to Protest. *(Recommended by the Public Works, Engineering Division)*
7. To minimize effects on public health and safety, in the SIA under Conditions That Run With The Land, wording shall be included that states; "This proposed subdivision is on a curve and the proposed drive access from Lot 4A-1 will have poor visibility to the east. In an effort to maximize visibility for the future lot owner it has been proposed that the front setback of 20 feet cannot have anything put in it over 3 feet tall that will further impair visibility from the drive access of Lot 4A-1". *(Recommended by the Engineering Division, Traffic)*
8. To minimize effects on public health and safety, the utility easement along the west property line of proposed Lot 4A-1 shall be increased from 6 feet wide to 8 feet wide. *(Recommended by Northwestern Energy)*
9. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
10. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

## **VARIANCES REQUESTED**

None requested

### **STAKEHOLDERS**

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

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

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

### **RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of Amended Lot 4A, Block 1, Stardust Acres Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

### **ATTACHMENTS**

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



**ATTACHMENT B**  
Site Photographs



Looking south across proposed subdivision from Venus Circle.



Looking north from subject property up Southern Hills Drive



Looking east at Venus Circle

## **ATTACHMENT C**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for Amended Lot 4A, Block 1, Stardust Acres Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

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

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

The subject property is currently residentially zoned vacant land. There is no anticipated effect on wildlife habitat.

**2. Effect on local services**

- e. **Utilities** – Water and sanitary sewer for Lots 4A-1 and 4A-2 shall be provided from existing water and sanitary sewers lines in Venus Circle. The necessary agreements and easements shall be created to meet the requirements of the City of Billings. The current or future property owners, when developing the lots, will be required to meet all Heights Water District installation requirements for water hook up on the lots. The property owner will be responsible for all fees and improvement cost as stated in the SIA.
- f. **Storm water** – As specified in the submitted SIA, there is currently no storm water management system in the neighborhood. This item will be addressed with the Waiver of Right to Protest when at a future date a Special Improvement District (SID) is created. (See Condition #2)
- g. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- h. **Streets** - Access to the proposed subdivision will be off of Venus Circle. The subdivider will also provide a Waiver of Right to Protest any future street improvements in the area and note all improvements required in the (SIA). (See Condition #2)
- h. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews (Station #6). The subdivision is located within the ambulance service area of American Medical Response.
- i. **Schools** – Schools for this subdivision are: High School, Skyview; Middle School, Castle Rock; Elementary School, Bench. The schools were sent requests for comments, but there were no comments received back from them.
- j. **Parks and Recreation** - A parkland dedication is not required, as this is a subsequent minor subdivision.

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

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

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

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

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

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. This proposed subdivision is on a curve and the proposed drive access from Lot 4A-1 will have poor visibility to the east. In an effort to maximize visibility for the future lot owner it has been proposed that the front setback of 20 feet cannot have anything put in it over 3 feet tall that will further impair visibility from the drive access of Lot 4A-1, see Condition #3.

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

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA and 23-901, BMCC.

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

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

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

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

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

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

*The subject property is zoned R-96 and is surrounded by R-96; the proposed development is consistent with the neighborhood as single-family residential.*

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

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

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

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

## **3. Heritage Trail Plan**

The Heritage Trail Master Plan has no trails identified within this subdivision.

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

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

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

The property is served by the County Water District of the Billings Heights, and City of Billings sewer and solid waste services.

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

The subject property is located within R-96 zoning and complies with the standards set forth in Section 27-308, BMCC.

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

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat, see Condition #4.

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

Accesses from Venus Circle will provide legal and physical access to the lots.

### **CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 4A, Block 1, Stardust Acres Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to some goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, November 26, 2007

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Ron Tussing, Mayor

**ATTACHMENT E**  
Mayor's Approval Letter

November 26, 2007

Arlin Stutznegger  
3639 Quimet Circle  
Billings, MT 59106

Dear Applicant:

On November 26, 2007, the Billings City Council conditionally approved the preliminary plat of Amended Lot 4A, Block 1, Stardust Acres Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. To minimize the impact on local services the final SIA document shall be revised to include street and utility improvements including, but not limited to, curb and gutter, sidewalk, street paving, and storm drain improvements. The SIA shall state the improvements required and they will not be done at this time but will be included in the attached Waiver of Right to Protest. (*Recommended by the Public Works, Engineering Division*)
3. To minimize effects on public health and safety, in the SIA under Conditions That Run With The Land, wording shall be included that states; "This proposed subdivision is on a curve and the proposed drive access from Lot 4A-1 will have poor visibility to the east. In an effort to maximize visibility for the future lot owner it has been proposed that the front setback of 20 feet cannot have anything put in it over 3 feet tall that will further impair visibility from the drive access of Lot 4A-1". (*Recommended by the Engineering Division, Traffic*)
4. To minimize effects on public health and safety, the utility easement along the west property line of proposed Lot 4A-1 shall be increased from 6 feet wide to 8 feet wide. (*Requested by Northwestern Energy*)
5. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
6. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

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Ron Tussing, Mayor

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

## AGENDA ITEM:



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

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**TITLE:** Preliminary Subsequent Minor Plat of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On October 15, 2007, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing, which contains three lots on approximately 0.8953 acres (38,999 square feet) for multi-family residential development. The subject property is located southwest of the intersection of Pebble Beach Road and Inverness Drive in the Heights and is zoned Community Commercial (CC). The owner and subdivider is Michael Stock and the representing agent is Blueline Engineering, LLC.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on December 4, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

7. Approve;
8. Conditionally Approve; or
9. Deny the Preliminary Plat

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

**RECOMMENDATION**

The Planning Board recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing, approval of the variance, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

On October 15, 2007, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing, which contains three lots on approximately 0.8953 acres (38,999 square feet) for multi-family residential development. The subject property is located southwest of the intersection of Pebble Beach Road and Inverness Drive in the Heights and is zoned CC.

## **PROCEDURAL HISTORY**

- A pre-application meeting was conducted between the subdivider's representative and city staff on June 26, 2006.
- A second pre-application meeting was conducted between the subdivider's representative and city staff on October 4, 2007.
- The preliminary plat application for this subdivision was submitted to the Planning Department on October 15, 2007.
- The City Council will consider the preliminary plat on November 26, 2007.

## **BACKGROUND**

General location:	Southwest of the intersection of Pebble Beach Road and Inverness Drive in the Heights
Legal Description:	Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing
Subdivider/Owner:	Michael Stock
Engineer and Surveyor:	Blueline Engineering, LLC
Existing Zoning:	CC
Existing land use:	Vacant
Proposed land use:	Multi-Family Residential
Gross area:	38,999 square feet
Net area:	38,999 square feet
Proposed number of lots:	3
Lot size:	Max: 9,624 square feet Min.: 9,600 square feet
Parkland requirements:	0.098 acres of parkland dedication will be provided as a cash-in-lieu.

## **ALTERNATIVES ANALYSIS**

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

## **RECOMMENDED CONDITIONS OF APPROVAL**

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

2. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
3. To minimize effects on local services, Section VI.A of the SIA shall specify that water services have been installed to Lots 2A and 2B. The existing water service to Lot 2C will need to be removed to the Heights Water specifications and a new service installed; all valve and valve boxes shall be retained by the district. This shall be specified in the SIA. *(Recommended by the County Water District of Billings Heights)*
4. To minimize effects on local services, a document shall be provided for the reciprocal stormwater easement prior to final plat. *(Recommended by City-County Planning)*
5. To comply with the subdivision regulations, Section VII of the SIA shall specify that a cash-in-lieu will be provided for the required 0.098 acres of parkland dedication. *(Recommended by the Parks, Recreation, and Public Lands Department)*
6. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

## **VARIANCES REQUESTED**

Based on a requirement from City Engineering, specified in their subdivision review dated October 18, 2007, the subdivider is requesting a variance from Section 23-406.B.13, BMCC. This section requires boulevard walks to be constructed on both sides of the street; the applicant is requesting 5-foot wide curbwalls. The City Engineering Division is requiring this variance in order to remain consistent with the surrounding properties, where curbwalls have already been constructed. Since this request was required by the City, the subdivider is not required to provide the variance findings or provide the variance processing fee.

### **STAKEHOLDERS**

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

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

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

### **RECOMMENDATION**

The Planning Board recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing, approval of the variance, and adoption of the Findings of Fact as presented in the staff report to the City Council.

### **ATTACHMENTS**

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

## ATTACHMENT A

### Preliminary Plat of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing

#### PRELIMINARY PLAT OF AMENDED LOT 2, BLOCK 2 LAKE HILLS SUBDIVISION, 1ST FILING

SITUATED IN THE SW 1/4, SW 1/4, SECTION 16, T. 1 N., R. 26 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA



VICINITY MAP

NOT TO SCALE

IRON ANGOT DEVELOPMENT LLC

2510 LYNCHBURG LANE

BILLINGS, MT 59106

8

FIRST FILING

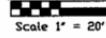
GREGORY L. DUNN

4812 RIBBLE ROAD

BILLINGS, MT 59106

7

PREPARED FOR: MICHAEL D. STOCK  
SURVEYOR: NORTH STAR LAND SERVICES, P.C.  
ENGINEER: BLUELINE ENGINEERING LLC  
OCTOBER, 2007  
BILLINGS, MONTANA



Scale 1' = 20'

#### SUBDIVISION DETAILS:

OFFICE AREA	= 0.0003 ACRES
NET AREA	= 0.8953 ACRES
ROAD AREA	= 0.00 ACRES
NUMBER OF LOTS	= 3
MINIMUM LOT SIZE	= 0.2865 ACRES
MAXIMUM LOT SIZE	= 0.3044 ACRES
EXISTING ZONING	= CC
SURROUNDING ZONING	
NORTH	= RMP
SOUTH	= CC
EAST	= R-9600
WEST	= CC
EXISTING LAND USE	= VACANT
PROPOSED LAND USE	= RESIDENTIAL

6

- BLOCK 3 -

KAREN M. PETERSON

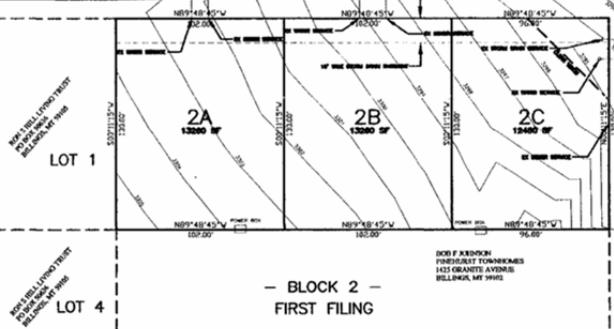
1012 PARKER DRIVE

BILLINGS, MT 59106

4

- BLOCK 5 -  
THIRD FILING

#### PEBBLE BEACH ROAD



- BLOCK 2 -  
FIRST FILING

LOT 1  
LOT 4

RON SHELL LIVING TRUST  
1012 PARKER DRIVE  
BILLINGS, MT 59106

4  
- BLOCK 4 -  
SECOND FILING  
AMENDED

**ATTACHMENT C**  
Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

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

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

**2. Effect on local services**

- i. **Utilities** – The subject property is located within the County Water District of Billings Heights and is served by City sewer. Water and sanitary sewer services have been installed to Lots 2A and 2B. The existing water service location for Lot 2C has been requested to be relocated. Condition #2 requires the relocation of the water service to be completed to Heights Water District standards and all valve and valve boxes shall be retained by the District; this shall be stated in the SIA. Sanitary sewer to Lot 2C will be extended from Inverness Drive through a new 6-inch sewer service.
- j. **Stormwater** – As specified in the submitted SIA, the required drainage improvements have already been completed for the subdivision. A 6-inch storm drain exists from the main in Inverness Drive. A 15-foot wide storm reciprocal storm drain easement has been provided along Pebble Beach Road. Condition #3 requires that a reciprocal stormwater easement document be provide prior to final plat. All drainage improvements shall comply with the provisions of the Billings Stormwater Management Manual.
- k. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- l. **Streets** – Access to lots will be from individual private driveways from Pebble Beach Road. No improvements are required for Inverness Drive or Pebble Beach Road, as they have already been constructed. Sidewalks will be installed at the time of construction. Based on a requirement from City Engineering, specified in their subdivision review dated October 18, 2007, the subdivider is requesting a variance from Section 23-406.B.13, BMCC. This section requires boulevard walks to be constructed on both sides of the street; the applicant is requesting 5-foot wide curbwalls. The City Engineering Division is requiring this variance in order to remain consistent with the surrounding properties, where curbwalls have already been constructed.

- k. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6).
    - l. **Schools** - The subdivision is located within School District #2. Sandstone Elementary, Castle Rock Middle School and Skyview High School will serve the children in this subdivision. No responses were received from the schools.
    - m. **Parks and Recreation** - Pursuant to Section 23-1002.B.1, BMCC, subdivisions that provide for multi-family and condominium developments shall provide 11% of the net area of land to be subdivided into parcels  $\frac{1}{2}$  acre or smaller as a parkland dedication. The parkland dedication for this subdivision is 0.098 acres, which will be provided in a cash-in-lieu. Condition #4 requires that the cash-in-lieu be specified within the SIA.
    - h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #5. The location of the mail boxes shall be reviewed and approved by the post office.

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

A geotechnical study was submitted with this application and there were several deficiencies with the report noted by the Building Official. These issues will need to be resolved prior to construction on the property:

- Written verification from the engineer that soil and rock conditions are in accordance with this report shall be provided.
- Footing drains shall be provided for below grade habitable space.
- A test to verify compaction will need to be performed.
- Rain gutters with downspouts are required.

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

There are no known endangered or threatened species on the property; however the property is located near open lands, where the likelihood of wildlife interaction is high. A note has been added to the SIA under general conditions that run with the land that future property owners should be aware that the proposed subdivision is located within prime deer and antelope habitat. Any damage caused by wildlife is the responsibility of the owner.

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

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

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

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

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

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

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

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

*The proposed subdivision is consistent with the surrounding residential and commercial uses.*

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

*The subject property is compatible with the surrounding multi-family and commercial uses.*

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

*The property is located within an existing subdivision in an urbanized portion of the city and is considered infill development.*

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

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

**3. Heritage Trail Plan**

A Heritage Trail corridor is not identified within this subdivision.

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

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

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

The property is served by Heights water and city sewer, storm drain and solid waste services.

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

The subject property is located within the CC zoning district and shall comply with the standards set forth in Section 27-308, BMCC. Since multi-family residential units are proposed for the property, the development will be subject to the requirements set forth by the Residential Multi-Family Restricted zoning district, as specified in Section 27-310(e)(1), BMCC, for dwelling units in commercial and industrial zones.

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

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

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

Access to the lots will be through private driveways from Pebble Beach Road.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, November 26, 2007

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Ron Tussing, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

November 26, 2007

Michael D. Stock  
1135 Bluegrass Drive East  
Billings, MT 59106

Dear Applicant:

On November 26, 2007, the Billings City Council conditionally approved the preliminary plat of Amended Lot 2, Block 2, Lake Hills Subdivision, 1st Filing, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, Section VI.A of the SIA shall specify that water services have been installed to Lots 2A and 2B. The existing water service to Lot 2C will need to be removed to the Heights Water specifications and a new service installed; all valve and valve boxes shall be retained by the district. This shall be specified in the SIA. *(Recommended by the County Water District of Billings Heights)*
3. To minimize effects on local services, a document shall be provided for the reciprocal stormwater easement prior to final plat. *(Recommended by City-County Planning)*
4. To comply with the subdivision regulations, Section VII of the SIA shall specify that a cash-in-lieu will be provided for the required 0.098 acres of parkland dedication. *(Recommended by the Parks, Recreation, and Public Lands Department)*
5. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
6. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

- *A variance from Section 23-406.B.13, BMCC, to permit 5-foot wide curbwalks instead of boulevard sidewalks for this subdivision.*

Should you have questions please contact Aura Lindstrand with the Planning Division at 247-8663 or by email at [lindstranda@ci.billings.mt.us](mailto:lindstranda@ci.billings.mt.us).

Sincerely,

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Ron Tussing, Mayor

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

Q

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 26, 2007**

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**TITLE:** Final Plat of Cenex Park Subdivision, Amended Lot 4, Block 4

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The final plat for Cenex Park Subdivision, Amended Lot 4, Block 4, is being presented to the City Council for approval. On May 10, 2004, the City Council conditionally approved the 3-lot commercial subdivision on approximately 4.5 acres located at the southwest corner of the intersection of Overland Avenue and Gabel Road. The City Council on February 26, 2007, approved a one year extension of the time allowed for final plat approval. The owner originally was required to file the final plat by May 10, 2007. The Council approved a one year extension until May 10, 2008. The owner is Jon Negu, and the representing agent, Engineering, Inc., are now bringing the final plat forward for approval. 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 be redeveloped, resulting in additional tax revenues for the City.

**RECOMMENDATION**

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

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

**ATTACHMENT**

A: Plat

**ATTACHMENT A**

(Back to Consent Agenda)

# R1

AGENDA ITEM:

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, November 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 \$2,875,677.11 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 26, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:** City Administrator        City Attorney       

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

R2

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, November 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 \$926,371.82 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 5, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:** City Administrator        City Attorney       

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

**AGENDA ITEM:**

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

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**TITLE:** Zone Change #826, Public Hearing and 1<sup>st</sup> Reading of Ordinance – Neighborhood Convenience Stores Amending Section 27-201, 27-305 and 27-612

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** Section 27-305 of the Unified Zoning Regulations defines and regulates the types of uses allowed within residential zoning districts in the City of Billings and the jurisdictional zoning area in Yellowstone County. The 2003 Growth Policy recommended several goals to direct changes to city land use regulations including more housing and business choices within each neighborhood, contiguous development focused in and around existing neighborhoods, reducing traffic congestion and adaptive reuse of vacant property. The proposed amendment would allow small retail services to be developed by special review approval within existing residential zoning districts. The Billings City Council and Board of County Commissioners agreed to initiate this amendment to Sections 27-201, 27-305 and 27-612. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on November 6, 2007, and voted 4-0 to recommend approval to the City Council.

**ALTERNATIVES ANALYZED:** The City Zoning Commission held a public hearing on the proposed text amendment on November 6, 2007. One person testified in favor of the amendment and three persons testified in opposition. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

**FINANCIAL IMPACT:** There should be no direct financial impact to the City as a result of the new zoning regulation.

**RECOMMENDATION**

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #826.

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

**ATTACHMENTS:**

- A: Ordinance
- B: Photographs of existing neighborhood convenience stores in residential zones

## **INTRODUCTION**

On November 20, 2006, the City Council reviewed the proposed text amendment to Sections 27-201, 27-305 and 27-612, and agreed to initiate this zone change. On January 17, 2007, the Board of County Commissioners also agreed to initiate this zone change. The Planning Department developed the proposed amendment based on similar provisions in other cities in Montana and local preferences for retail services in neighborhoods. The draft amendments were reviewed with the Board of County Commissioners in August, 2007 and with the City Council at a work session on September 17, 2007. In addition, the City and County Attorneys have reviewed the draft amendment.

## **PROCEDURAL HISTORY**

- On November 20, 2006, the City Council initiated the process to amend the zoning regulations to allow neighborhood convenience stores in some residential zones.
- On January 17, 2007, the Board of County Commissioners also initiated the process to amend the zoning regulations to allow neighborhood convenience stores in some residential zones.
- On August 13, 2007, the Board of County Commissioners reviewed the draft changes to Sections 27-201, 27-305, and 27-612.
- On September 17, 2007, the City Council met in a Work Session and reviewed the draft changes to Sections 27-201, 27-305, and 27-612.
- On November 6, 2007, the City Zoning Commission conducted the public hearing.
- The City Council will hold a public hearing and 1<sup>st</sup> reading of the ordinance on November 26, 2007, and make a decision on the change to allow neighborhood convenience stores in residential zones.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on December 10, 2007.

## **BACKGROUND**

The 2003 Growth Policy goals indicates the need for more services in existing neighborhoods. Standard re-zoning to allow commercial uses in existing neighborhoods would allow these types of uses but also allow uses that may be detrimental to the residential character of the area. The city could allow these types of retail developments on a small scale in residential zoning districts through the special review process. The amendments may also benefit existing “corner stores” within established neighborhoods that have been abandoned or not maintained because the underlying zoning is designated for residential use. Past efforts to re-zone or create special zoning districts for these properties have been unsuccessful leading to further disinvestment at these locations. Instead of a benefit to the neighborhood, the property becomes a burden. These abandoned corner stores tend to attract transients, graffiti and criminal activity.

The proposed regulation excludes uses such as gasoline or fueling stations but would include small bakeries, restaurants, coffee shops and laundromats. The maximum proposed size of these convenience stores will be 3,000 square feet. There are other standards including limitations on deliveries, signage and site lighting. Off-street parking is also addressed in the proposed

standards. The amendment would allow neighborhood convenience services without special review approval in Residential Multi-Family (RMF) and Residential Multi-Family-Restricted (RMF-R) zoning districts. This would allow small retailers to be located near apartments and other higher density residential zones. The proposed standards would apply to all new locations as well as existing locations. Existing locations could remain as developed until a remodeling or expansion project changed the existing conditions of the property. At the time of expansion, the new code would apply.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, or delay the adoption of the changes to allow neighborhood convenience stores.

### **STAKEHOLDERS**

The Zoning Commission held a public hearing on November 6, 2007, on the proposed changes. Planning Staff explained the proposed changes to the Zoning Commission. Connie Wardell of 1302 24<sup>th</sup> St West spoke in favor of the proposed regulations. She stated she thought this would create walkable neighborhoods and added convenience for our aging population.

Marion Dozier of 3923 3<sup>rd</sup> Ave South testified in opposition to the proposed regulations. She stated that many older neighborhoods could not support these types of businesses. In the past 10 to 15 years, the South Side neighborhood has seen many of these corner stores close because people could not afford the prices. Ms. Dozier expressed concern that if a new business were to be allowed by special review but then failed in a year, the neighborhood would still end up with a vacant building. She expressed concern with what type of business could move in where an existing store had failed such as a tattoo parlor or similar uses that may not be so neighborhood friendly.

Shauna Kerr of 907 N 31<sup>st</sup> Street testified in opposition to the proposed regulations. Ms. Kerr stated the older neighborhoods have been fighting hard to keep out commercial uses and this would create more jeopardy for her neighborhood. Ms. Kerr stated she thought a special review should be required across the board and shouldn't be allowed by right in multi-family zoning districts. Ms. Kerr thought the proposal would be too tempting to some commercial developers to try for commercial zone changes in multi-family areas.

Mary Westwood of 2808 Montana testified in opposition to the regulations. Ms. Westwood testified that she already had two tattoo shops within a few blocks of her home. More are not needed in her neighborhood. Ms. Westwood testified that multi-family neighborhoods are more threatened than other residential zones, but these convenience stores would be allowed by right in the multi-family areas. She stated that the regulations should require special review approval for all residential zones.

### **RECOMMENDATION**

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #826.

**ATTACHMENTS:**

- A:      Ordinance
- B:      Photographs of existing neighborhood convenience stores in residential zones

**ATTACHMENT A**  
**ORDINANCE NO. 07-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-202, DEFINITIONS; SECTION 27-305, DISTRICT REGULATIONS, RESIDENTIAL USES AND SECTION 27-612, SUPPLEMENTAL COMMERCIAL DEVELOPMENT STANDARDS TO ALLOW NEIGHBORHOOD CONVENIENCE SERVICES IN CERTAIN DISTRICTS BY SPECIAL REVIEW APPROVAL, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.*

**Section 2. DESCRIPTION.** The zoning regulation shall apply to all land within the City of Billings.

**Section 3.** That the Billings, Montana City Code be amended by revising Section 27-201 to add new language in alphanumeric order to the existing definitions to read as follows:

*Neighborhood Convenience Store means a retail establishment of 3,000 square feet or less in gross floor area not including any outdoor seating area, located in a residential zoning district, offering for sale a relatively limited selection of prepackaged food products, household items, and other related goods, not including gasoline or fuel sales. Included in this definition are coffee, soup, and sandwich shops, bakeries, mail packaging and delivery services, laundromats and similar retail establishments.*

**Section 4.** That the Billings, Montana City Code be amended by revising Section 27-305 to add new language in alphanumeric order to the existing uses to read as follows:

## Sec. 27-305. District Regulations: Residential Uses.

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>		Agricultural -Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
<b>SR - SPECIAL REVIEW A - ALLOWED</b>				SR	SR	SR	SR	SR	SR	SR	SR	A	A	SR

**Section 5.** That the Billings, Montana City Code be amended by revising Section 27-612 to add new language to read as follows:

(d) Neighborhood Convenience Store. Any person desiring to construct or remodel an existing structure for use as a Neighborhood Convenience Store in a residential zoning district shall apply for special review approval as shown in Section 27-305 of this chapter. In RMF-R and RMF districts a special review approval is not required to establish a Neighborhood Convenience Store. In addition to conditions that maybe imposed as part of a special review approval the following standards shall apply to every Neighborhood Convenience Store in a residential zoning district:

- (1) Limited to 3,000 square feet or less of gross floor area not including any outdoor seating area.
- (2) Located no closer than 1,500 feet from another Neighborhood Convenience Store.
- (3) Comply with the underlying zoning district setbacks, building height and lot area per dwelling unit if dwelling units are included as part of the store development.
- (4) Lot coverage may be up to 55% regardless of the underlying zoning district.
- (5) Shall include one off-street parking space per 500 square feet of gross floor area of retail space, one of which will be a handicapped accessible space.
- (6) If a dwelling unit is included in a store development, one additional off-street parking space shall be provided per dwelling unit.
- (7) The off-street parking requirements in subsections d(5) and d(6) supersedes and replace the off-street parking standards in Section 6-1203

and Sections 27-1202 through 27-1211 of the BMCC. Design and construction standards for curb cuts, driveways, size of off-street parking spaces, storm water control and paving standards shall otherwise apply.

(8) No such store shall take delivery of goods before 8:00 am or after 8:00 pm.

(9) At least two trash receptacles shall be provided per store that are accessible to the public on the store property. These trash receptacles will be emptied daily near the time of close of business.

(10) Lighting on the building, in the parking lot or other yard area shall have full cut-off shields.

(11) No light fixture shall exceed 15 feet in height from grade to the top of the fixture.

(12) Signage shall be limited to one non-illuminated wall sign of 24 square feet or less per retail business.

(13) No store shall have an outdoor announcement or music system.

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

**Section 5. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 6. EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

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

PASSED, ADOPTED AND APPROVED on second reading December 10, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY:

Cari Martin, City Clerk

Zone Change #826 - Neighborhood Convenience Stores

**ATTACHMENT B – Zone Change #826**



Former grocery 802 Yellowstone Ave – zoned R 7,000



Koinonia Laundromat 302 S. 29<sup>th</sup> – zoned Residential Multi-Family-Restricted

**ATTACHMENT B, continued – Zone Change #826**



Abbey's Catering 909 4<sup>th</sup> St West – zoned R 7,000



Blanco Blanco Hair Salon 1840 Virginia Lane – zoned R 9,600

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## AGENDA ITEM:



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

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**TITLE:** Public Hearing and First Reading Ordinance for the South Billings Boulevard Urban Renewal District

**DEPARTMENT:** Planning and Community Services Department

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

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**PROBLEM/ISSUE STATEMENT:** The Council will consider adopting an ordinance creating a South Billings Boulevard Urban Renewal District. On November 13, 2007, Council adopted a resolution of intent to create the district, which also included tax increment authority, a description of the property involved and the blighted conditions. The next step is to create the district by Ordinance and establish the boundary for the new district.

**ALTERNATIVES ANALYZED:** Creating this district is discretionary. The City Council may:

- reject the ordinance
- modify the proposed boundary
- adopt the ordinance with the proposed boundary

**FINANCIAL IMPACT:** The financial impact is unknown. However, the current taxable market value in the proposed TIFD is approximately \$251,730,757 and is stagnant. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus there is no "loss" of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

**RECOMMENDATION**

Staff recommends that City Council adopt the Ordinance creating the South Billings Boulevard Urban Renewal District.

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

**ATTACHMENT**

A.      Ordinance

## **INTRODUCTION**

The City Council will hold a public hearing and consider the ordinance that adopts the plan and allows the City to use tax increment financing for public improvements.

## **PROCEDURAL HISTORY**

- On April 26, 2007, Planning Division staff attended the Southwest Corridor Task Force to discuss and answer questions on urban renewal districts and tax increment financing.
- May through August, 2007, Planning Division staff attended monthly Southwest Corridor Task Force meetings to continue discussions on the urban renewal district and to gather input from residents on potential public improvement projects.
- On August 30, 2007, Planning Division staff mailed 2,032 letters of invitation to property owners to two public meetings on the urban renewal district.
- On September 13, 2007, the first public meeting was held to discuss the urban renewal district and tax increment financing to property owners. In addition, property owners identified potential public improvement projects within the district
- On October 11, 2007, the second public meeting was held to review the draft urban renewal plan for the district.
- On October 23, 2007, Yellowstone Planning Board voted on a 6-0 vote to recommend approval of the South Billings Urban Renewal Plan with corrections to the Billings City Council.
- On November 5, 2007, City Council at its work session heard a presentation and discussion on the South Billings Boulevard Urban Renewal Plan and District.
- On November 13, 2007, City Council considered and passed a Resolution on South Billings Boulevard Urban Renewal District, Declaring Blight, Intent to Create the District and Setting a Public Hearing
- On November 26, 2007, City Council will conduct a public hearing and first reading of an ordinance to create the district.
- On December 10, 2007, City Council will consider the ordinance on second and final reading. The ordinance becomes effective 30 days later unless appealed.

## **BACKGROUND**

Efforts began the spring of 2007 to create a tax increment finance district and an urban renewal plan for the South Billings Boulevard Urban Renewal District (SBBURD). Through public meetings and participation with the City of Billings, the Southwest Corridor Neighborhood Task Force, residents and property owners, Downtown Billings Partnership, and Big Sky Economic Development Authority the boundaries of the tax increment finance district were settled upon.

Working with area property owners, the Planning Division developed a plan that identifies conditions that create blight, opportunities for growth and development and the infrastructure improvements that need to occur to support private development. In order to create an urban renewal district and use tax increment financing for some or all of the public improvements, the city must adopt a resolution that describes the area, identify the conditions that create blight, state its intention to create a new district and set a public hearing on the plan. The attached

resolution satisfies that requirement. If the resolution is approved, staff will publish the notice of public hearing and send it to all property owners in the proposed district. On November 26, 2007, the Council will consider the ordinance that adopts the plan and allows the City to use tax increment financing for public improvements.

The Urban Renewal Plan was reviewed by the City Attorney and City Administration. Comments and recommendations were taken into account and incorporated into the plan.

The plan was sent to the Planning Board at its October 23, 2007 meeting for its review and recommendation regarding the plan's conformity to the 2003 Growth Policy. The Planning Board recommends approval with corrections to the City Council.

A resolution on blight for the district was prepared for the City Council. On November 13, 2007, the City Council approved the resolution on blight, paving the way for adoption of the urban renewal plan.

### **ALTERNATIVES ANALYSIS**

Creating this district is discretionary. The City Council may:

- reject the ordinance
- modify the proposed boundary
- adopt the ordinance with the proposed boundary

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

The Yellowstone County Planning Board voted to recommend approval of the South Billings Boulevard Urban Renewal Plan with corrections on October 23, 2007. The Board determined that the plan was consistent with the 2003 Growth Policy. The Board also recommended minor changes to the draft plan in order to improve clarity. These changes, where appropriate, have been made to the final plan.

### **RECOMMENDATION**

Staff recommends that City Council adopt the Ordinance creating the South Billings Boulevard Urban Renewal District.

### **ATTACHMENT**

A. Ordinance

ORDINANCE NO. 07 \_\_\_\_\_

AN ORDINANCE RELATING TO THE CREATION OF THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL AREA; AND ADOPTING AN URBAN RENEWAL PLAN, INCLUDING A TAX INCREMENT PROVISION.

Recitals:

WHEREAS, this Council on November 26, 2007, conducted a public hearing on a proposal to establish a new urban renewal area on specified property (as hereinafter defined, the "Property") to be designated "The South Billings Boulevard Urban Renewal Area", and to adopt an urban renewal plan, as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act").

WHEREAS, the Property is depicted on the attached Exhibit A and legally described on the attached Exhibit B (each of which is hereby incorporated herein and made a part hereof).

WHEREAS, opportunities have been presented to the City that make it desirable for the City to consider an urban renewal project within the District consisting of the acquisition of certain vacant or blighted properties, demolishing the blighted structures thereon, improving such properties with, landscaping, utilities, and other similar improvements, assembling such properties, and making the properties so improved available for private redevelopment in accordance with the Act.

WHEREAS, an urban renewal plan entitled the South Billings Boulevard Urban Renewal Plan is attached hereto as Exhibit C (which is hereby incorporated herein and made a part hereof) (the "Plan"). The Plan contains a tax increment provision and will govern the operation and administration of the District.

WHEREAS, the Plan has been reviewed and approved by the Yellowstone County Planning Board, as evidenced by the Board meeting minutes of October 23, 2007.

Ordinance:

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

1. Findings. This Council hereby finds, determines and declares, based on the comments received at the public hearing and other studies and information available to this Council, that:

a. The Property presently contains structures and property that are in a state of substantial deterioration, are obsolete or defective, pose unsanitary or unsafe conditions, are vacant and unused, and have inappropriate uses, the present condition of the Property substantially impairs the sound functioning of the South Billings Boulevard area of the City and its environs, is conducive to juvenile delinquency and crime, poses the threat of vandalism or mischief and fire or loss, constitutes an economic and social liability, and is a menace to the public health, safety, and welfare of the residents of the City. Accordingly, the Council finds that the Property is a blighted area within the meaning of Section 7-15-4210 of

the Act. This Council finds that the rehabilitation, redevelopment or a combination thereof of the Property is necessary in the interest of the public, health, safety, morals or welfare of the residents of the City. This Council finds that undertaking measures to eradicate or diminish the blight affecting the Property will help to foster a more dynamic, livable, and vibrant area.

- b. No housing element or structure is disturbed by this District making no relocation necessary;
- c. The Plan conforms to the Growth Policy or parts thereof of the City for the municipality as a whole;
- d. The Plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise;

2. Plan Adoption. The Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein.

3. Conditional Commitment. The adoption of the Plan does not constitute a guarantee or a firm commitment that the City will issue the Bonds or undertake the Project. If, based on comments or information made available to or obtained by the City, it appears that the issuance of the Bonds or the Project is not in the public interest or consistent with the purposes of the Act, the City reserves the right not to issue the Bonds or undertake the Project.

4. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

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

PASSED, ADOPTED AND APPROVED on second reading December 10, 2007.

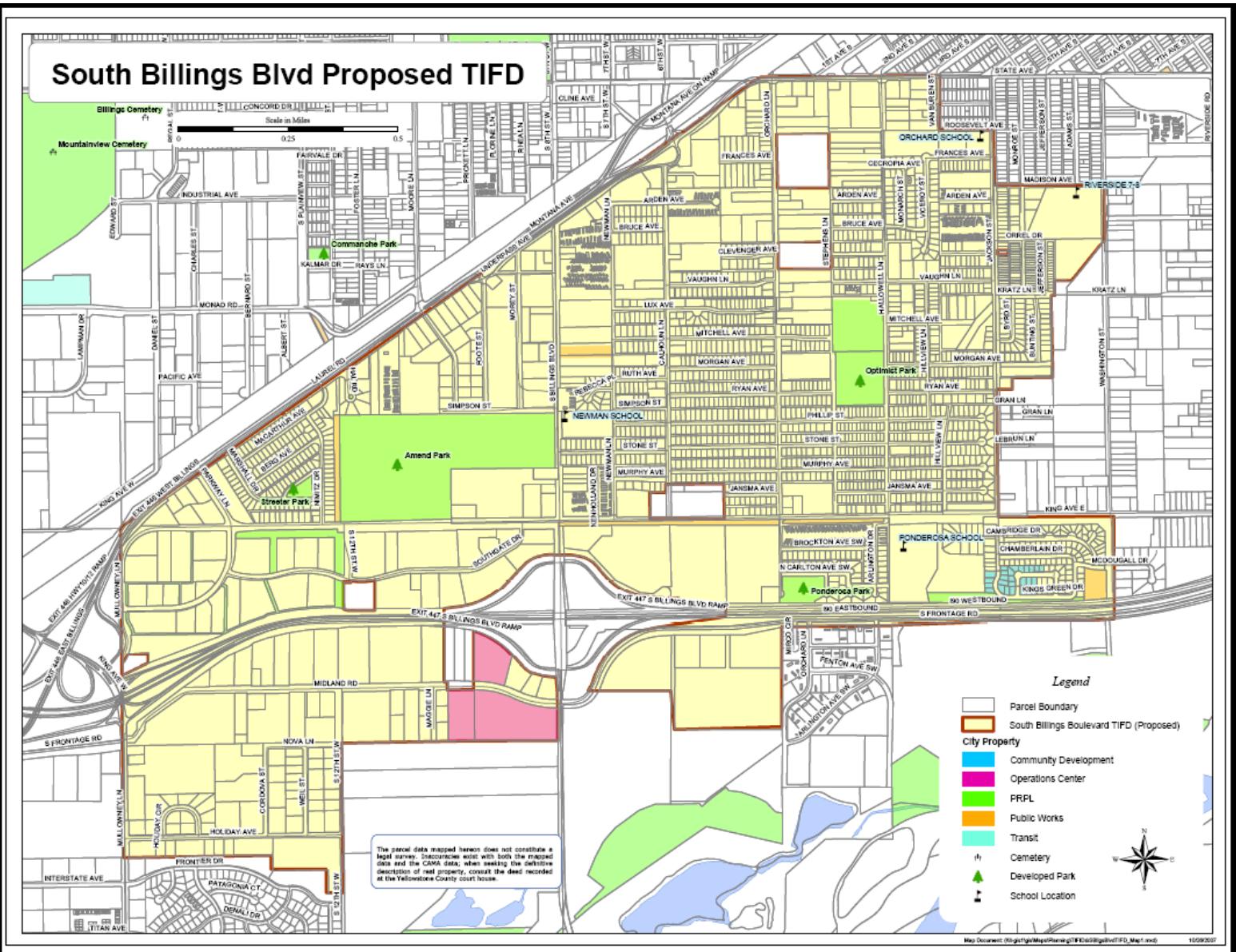
CITY OF BILLINGS:

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

ATTEST:

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

**EXHIBIT A**  
**MAP OF URBAN RENEWAL AREA**



**EXHIBIT B**  
**LEGAL DESCRIPTION OF URBAN RENEWAL AREA**

*Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to Orrel Drive, extending south along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street to South Frontage Road (including Interstate 90 corridor), extending west along the south edge of South Frontage Road to the intersection of South Frontage and Orchard Lane, extending south along the centerline of Orchard Lane to the existing city limit boundary, extending west along the existing city limit boundary to the intersection of South 12<sup>th</sup> Street West and Nova Lane, extending south along the centerline of South 12<sup>th</sup> Street West to intersection of South 12<sup>th</sup> Street West and the southern boundary of Tract 1, Certificate of Survey 2834, then continuing west along the southern boundaries of Lot 6, Block 4 of Weil Subdivision and Lot 5C of Block 4 of Weil Subdivision amended and Lot 4 of Block 4 of Weil Subdivision and Lot 3 of Block 4 of Weil Subdivision and Lot 2 of Block 4 of Weil Subdivision and Lot 1 of Block 4 of Weil Subdivision and its intersection with the centerline of Mullowney Lane, extending north along the centerline of Mullowney Lane to the intersection of Mullowney Lane and Underpass Avenue, extending northeast along the centerline of Underpass Avenue to the intersection of Underpass Avenue and State Avenue, extending east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all nonincorporated land within the boundary.*

**EXHIBIT C**  
**SOUTH BILLINGS BOULEVARD URBAN RENEWAL PLAN**

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## AGENDA ITEM:



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**CITY COUNCIL WORKSESSION AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, November 19, 2007**

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**TITLE:** Cherry Creek Estates Manufactured Home Park, Phase I Compliance Report Update and Recommendation for Phase II

**DEPARTMENTS:** City Administrator/City Attorney/Planning

**PRESENTED BY:** Bruce McCandless, Assistant City Administrator

Brent Brooks, City Attorney

Juliet Spalding, Planner II

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**PROBLEM/ISSUE STATEMENT:** The final plat of Cherry Creek Estates Subdivision was approved by the City Council in April of 2003. Lots 3 and 4 were Master Planned as a manufactured home park known as Cherry Creek Estates Manufactured Home Development. The manufactured home park was planned in two phases, and specific requirements were placed on its development through a Development Agreement signed by the developers, Roy and Jock Clause, and the City of Billings. The Development Agreement stipulated that in order for Phase II of the manufactured home park to be developed, a review of Phase I would need to be done to ensure its compliance with the provisions of the agreement. The Council reviewed a staff presentation on the Phase I development at its October 22, 2007 meeting and delayed action until November 26, 2007 to further evaluate the development agreement.

**ALTERNATIVES ANALYZED:** In accordance with the provisions of the recorded Development Agreement, when Phase I is developed in compliance with the Development Agreement, the City Council shall give approval to the 174 proposed units of Phase II. If compliance criteria are not followed in Phase I, the City Council may restrict the total number of the units in the development to no less than 300 units (which equates to no less than 111 units in Phase II).

**FINANCIAL IMPACT:** Should the City Council approve the full development of Phase II of Cherry Creek Manufactured Home Park, the subject property will further develop, and may result in additional tax revenues for the City.

**RECOMMENDATION**

Staff recommends that the City Council consider the provided information regarding compliance in Phase I, and conditionally approve the full development of Phase II of Cherry Creek Manufactured Home Park.

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

**ATTACHMENT:**

A:      Photos of existing storm water retention facilities

## **INTRODUCTION**

Owners, Roy and Jock Clause, have requested a compliance review of Phase I of the Cherry Creek Manufactured Home Park development in order to proceed with full development of Phase II. During the City Council meeting on October 22, 2007, staff presented findings on the Phase I development with regard to the owner's compliance with the Development Agreement. The Council expressed concern over the storm water management facilities, the street trees that were not yet planted, the required fence and emergency access gate, and the updated Traffic Accessibility Study (TAS). Council directed staff to further evaluate the areas of concern and report back on November 26, 2007 with options for the Council.

Cherry Creek Development started its development proposals in 1998 in the County. Most of the east Billings Heights is zoned R-7000 but the developer was able to achieve a rezone of the property for manufactured homes as granted by the County. The City twice denied annexation of the property, before granting annexation in June, 2002. The City council almost immediately initiated rezoning to R-9600 but it was ultimately not approved by the City Council in September 2002. The annexation was approved on condition of a development agreement and subdivision improvements agreement.

The City council approved both in May 2003. The development agreement was a compromise between the City and the developer/owner, because the zoning could have allowed a significantly greater density with development of over 500 dwelling units. The developer/owner agreed to limit itself to no more than 363 units, but as further explained within in this memorandum, is guaranteed at least 300 total units in Phase I and II combined.

In exchange for the approval of annexation, the City received the developer's commitment in the Development Agreement to install landscaping and fencing, greater spacing between homes and between homes and accessory buildings and the ability to review placement and building applications.

## **PROCEDURAL HISTORY**

- June 5, 2003, Development Agreement for Cherry Creek Manufactured Home Park recorded with Clerk and Recorder.
- February 1, 2007, request from Cherry Creek Development to review Phase I for compliance received.
- February 15, 2007, City staff met to discuss Phase I compliance.
- May 21, 2007, developer submitted updated TAS and other information for review.
- The City Council considered the Phase I compliance on October 22, 2007 and delayed action until November 26, 2007.
- November 13, 2007, City Legal, Engineering and Planning staff met with the owners and their legal representation to discuss the outstanding issues. The owners agreed to address the issues as summarized later in this memorandum.

## **BACKGROUND**

In order to proceed with development of Phase II of Cherry Creek Manufactured Home Park, City Council must review the development of Phase I for compliance with the Development Agreement.

### **Remaining Phase I Issues:**

Section VII.6. of the Development Agreement states that the criteria for the Phase I compliance review are as follows:

A: Whether or not the developer has complied with the provisions of plat approval and with the provisions of this Development Agreement in terms of required site review, building permit review, the installation, maintenance and/or financial guarantee of landscaping and the installation of and/or financial guarantee of any infrastructure or improvements required under the recorded SIA and Traffic Accessibility Study (TAS).

B: Whether or not the actual traffic generation is not more than ten percent greater than estimated by the TAS.

Based on discussion at the October 22, 2007 Council meeting, staff has prepared this update on a number of areas of concern to the Council.

**1) Storm water facilities:** There was a concern that the developers created a third storm water retention pond, contrary to their original approved plan. An additional site visit was conducted and a meeting with the owners held to discuss the situation. As shown in photos contained in Attachment A, there are two main ponds one in the northwest corner of the development and one in the southeast corner, as originally proposed. Additionally there is a swale along the north boundary of the development that is supposed to collect street runoff and directed it to the northwest pond. This swale is not properly graded at this time to drain, therefore appears to be a third pond. When discussed with the developers, they mentioned that they will install a sump pump to move water from the swale to the north pond this winter. They are coordinating with Northwestern Energy to install the electric lines to the pump location. The owners were willing to provide a financial security at this time to guarantee this occurs. Engineering staff is satisfied with this solution.

**2) Street trees:** As part of the Development Agreement, the owners were to plant one street tree per home site. Staff revisited the park and determined that there are 58 missing trees at this time, which makes up 30% of the required trees. When questioned about this figure, the developers indicated that they have been placing the trees on the sites after they were occupied so that they would be watered and maintained, and so the concrete trucks who install the sidewalks wouldn't damage the trees. They were willing to financially secure the missing trees at this time, and ensure their installation by May 1, 2007 as a solution.

3) Fence: A neighbor indicated at the Council meeting that there are breaks in the fence line around Phase I, most significantly along a portion of the north side of Erin Street. The developers indicated that this was left open for access to the undeveloped lot there, as well as for maintenance of the storm water maintenance pond in the northwest corner of the development. The developers indicated that they would repair any damaged fence and close the gap along Erin Street, with a new locked gate. They were hoping to have these improvements completed by the November 26, 2007 meeting.

4) Emergency Access Gate: There was discussion at the Council meeting that the emergency access gate on the eastern side of the development has been used as an access for construction equipment. When questioned about this, the developers indicated they do not use this gate for access, and will not in the future.

5) Updated TAS: The measured and reported PM peak hour trip generation rates provided in the updated TAS indicate a 27% increase in *originally predicted* PM peak hour trip generation. The City Traffic Engineer states “based on the level of service predictions in the original TAS, I would not expect adverse impacts from the additional 55 PM peak hour trips at any locations other than those identified in the original TAS as requiring mitigation.” The mitigation measures identified in the original TAS were pro-rata financial contributions for a traffic signal at Hilltop and Bench, and a left-hand turn bay at Yellowstone River Road and Hawthorne Lane.

The approved development agreement establishes “traffic generation . . . not more than **ten percent** greater than estimated by the original TAS” (emphasis added) as one of the criteria for review prior to Phase II development. Because the predicted PM peak hour trip generation rate exceeds the originally predicted rate by more than 10%, the City Traffic Engineer recommends one of two courses of action:

- A. Recalculate the off-site cash contributions associated with the development of Lots 3 & 4 based on the higher trip generation rate using the same methodology as used at the time of the original subdivision approval.
- B. Per section VII. 5. of the approved Development Agreement, cap the mobile home portion of the subdivision (lots 3 & 4) at 300 units.

Staff is still supportive of course of action A. which would result in the developers contributing additional cash for off-site intersection improvements.

### **ALTERNATIVES ANALYSIS and OPTIONS**

As previously noted in the background section in this memorandum, the current development agreement was a compromise between the City and the owner/developer to limit the total number of lots or units that could be developed. The Development Agreement Section VII as amended and approved by the City Council in April 2003 guarantees a minimum of 111 lots for development in Phase II of the Cherry Creek subdivision. An additional 63 lots may be

developed by the owner if the owner complies with all Phase I development criteria as previously referenced in Section VII(6)(A) and (B) of the Agreement.

In accordance with the provisions of the Development Agreement, if Phase I is developed in compliance with the Agreement Section VII (A) and (B), the City Council must give approval to the 174 proposed units of Phase II. If compliance criteria are **not** followed in Phase I, the City Council may restrict the total number of the units in both Phase I and II in the development to no less than 300 units (which equates to no less than 111 units in Phase II). There is no deadline in the Development Agreement for compliance with Phase I criteria. However, the City Council's control is limiting the number of Phase II lots as previously described.

The options available to the City Council are as follows:

**Option 1:** Conditionally approve all 363 dwelling units in both Phase I and II upon satisfaction of the conditions listed below as follows:

1. All required sewer, water, storm water, street, sidewalk, park, landscaping, and fencing improvements, and any other improvements stipulated in the recorded SIA for Phase II shall be installed or financially guaranteed prior to issuance of any home placement or building permits for Phase II.
2. The 58 missing street trees for Phase I shall be installed and any required street trees that are dead shall be replaced by May 1, 2008 or financially guaranteed. One of these actions must occur prior to issuance of any home placement or building permits for Phase II.
3. Any damaged or missing portions of the fence line for Phase I shall be repaired or installed prior to issuance of any home placement or building permits for Phase II.
4. An updated cost estimate for off-site intersection contributions for both Phase I and II shall be submitted by the developer, and reviewed and approved by City Engineering based on the updated TAS provided on May 21, 2007. The outstanding contribution amounts shall be made to the City prior to issuance of any home placement or building permits for Phase II.

Staff recommends that the conditions be met prior to the issuance of any building or home placement permits through the City Building and Planning divisions.

Upon additional review of the questioned areas, City staff still believes that the outstanding issues can be completed with these conditions so that the developer may move forward with Phase II development in its entirety.

**Option 2.** If the owner fails to satisfy the conditions in Option 1, limit total development in both Phase I and II to 300 dwelling units.

**Option 3.** Allow owner to withdraw application for Phase II development and complete Phase 1 conditions under Option 1 above before proceeding with Phase II development.

## **RECOMMENDATION**

Staff recommends that the City Council consider the provided information regarding compliance in Phase I, and conditionally approve the development of Phase II of Cherry Creek Manufactured Home Park under Option 1.

### **ATTACHMENT:**

A: Photos of existing storm water retention facilities

### Attachment A



Cherry Creek Pond #2 (11/6/07)



Cherry Creek Pond #1 (11/6/07)



Cherry Creek Swale north of Court (11/6/07)



Diked portion of Cherry Creek Swale north of Court (11/6/07)

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