

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

September 24, 2007

6:30 P.M.

**CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Ronquillo
ROLL CALL
MINUTES – September 10, 2007
COURTESIES
PROCLAMATIONS
ADMINISTRATOR REPORTS – Tina Volek**

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3b, and 17 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. Bid Awards

(1) Purchase of Seven (7) 2008 Truck Cabs and Chassis with Refuse Compactor Bodies for the Solid Waste Division (Opened 9/11/09) Recommend delay of award until October 9, 2007.

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

B. Agreement with Yellowstone County Council on Aging for the senior programs at the Billings Community Center, 7/1/07 – 6/30/08, \$27,202.00 annual.

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

C. Approval of three-month lease with Lynch Flying Service, Inc. dba Edwards Jet Center for Airport Hangar IP-3, \$2,450.01 total revenue, 9/1/07-11/30/07.

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

D. Approval of five-year lease renewal with the Federal Aviation Administration for Garage/Shop Site, \$1,785 annual revenue, 10/1/2007-9/30/2012.

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

E. Approval of assignment of west end hangar ground lease with Steve Vold to First Interstate Bank.

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

F. Approval of amendment to the lease with the Federal Aviation Administration for second floor terminal office and operation space, \$2,961.24 per month for term of lease (decrease of \$533.48 per month), 8/1/2007-9/30/2012.

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

G. Amendment #4, W.O. 04-13, Water Treatment Plant Filter and Maintenance Building Expansion and Improvements. Professional Services Contract, HDR Engineering, Inc., \$125,600.00.

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

H. Acknowledge receipt of petition to annex #07-24: Tract 1B, Certificate of Survey 1335, Amended, 5.0 acres generally located south of Wicks Lane on the east side of Hawthorne Lane, William Hanser, petitioner, and set a public hearing date for 10/09/07.

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

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

(1) Parcel #3: Portion of Tract 2A, Certificate of Survey 1109 Amended, Windsor Mobile Home Park, LLC, \$350.00.

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

(2) Parcel #12: Portion of Tract 1A, Certificate of Survey 1109 Amended, Windsor Mobile Home Park, LLC, \$9,500.00.

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

(3) Parcel #41: Portion of N1/2S1/2N1/2SE1/4NW1/4 of S22, T1N, R26E, P.M.M., F. William Baumann and Kathy L. Baumann, \$10,815.00.

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

(4) Parcel #42: Portion of Tract 3, Certificate of Survey 2866, Kathy Baumann, \$4,200.00.

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

(5) Parcel #62: Portion of the SW1/4NE1/4 of S22, T1N, R26E, P.M.M., Tasneem F. Khaleel and Shafiq Ahmed Khaleel, \$18,165.00.

[\(Corresponding Staff Memo I5\)](#)

(6) Parcel #73: Portion of Lot 7, Block 4, Arrowhead Subdivision, Richard C. Emmons and Diana Emmons, \$2,257.50.

[\(Corresponding Staff Memo I6\)](#)

(7) Parcel #74: Portion of Lot 6, Block 1, McCracken Subdivision, RGP Partnership, \$3,050.00.

[\(Corresponding Staff Memo I7\)](#)

(8) Parcel #75: Portion of Lots 5 and 6, Block 1, McCracken Subdivision, RGP Partnership, \$2,500.00.

[\(Corresponding Staff Memo I8\)](#)

(9) Parcel #76: Portion of Lot 4A, Block 1, McCracken Subdivision, Amended Lots 3 & 4, RGP Partnership, \$2,250.00.

[\(Corresponding Staff Memo I9\)](#)

J. **Resolution of Intent** to expand Downtown Business Improvement District No. 0001, Stockman Bank, petitioner, and set a public hearing date for 10/22/07.

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

K. **Preliminary Plat** of River Rock Estates Subdivision generally located on the west side of 46th Street West, south of Rimrock Road between the Hi-Line Ditch and Big Ditch, conditional approval of the plat and adoption of the Findings of Fact.

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

L. **Final Plat** of amended Lots 1, 2, and 9-14, Block 1; and Lot 1, Block 2, Aspen Gateway Subdivision.

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

M. Bills and Payroll

(1) August 24, 2007

[\(Corresponding Staff Memo M1\)](#)

(2) August 31, 2007

[\(Corresponding Staff Memo M2\)](#)

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

REGULAR AGENDA:

2. **RESOLUTION AUTHORIZING CONDEMNATION** to acquire right-of-way of Parcel 5 and perpetual easement across the BBWA Canal owned by the BBWA for the Aronson Avenue Extension project. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

3. (a) **PUBLIC HEARING AND RESOLUTION** amending the FY2008 Budget to add \$120,000 for Tourism Business Improvement District No. 002. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

(b) **APPROVAL OF THE TOURISM BUSINESS IMPROVEMENT DISTRICT NO. 002 WORK PLAN AND FY2008 BUDGET.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

4. **PUBLIC HEARING AND RESOLUTIONS** for annual encroachment and weed removal assessments for FY 2008.

(a) **RESOLUTION** fixing the amount of the annual rental fee for any encumbrances, obstructions, or encroachments on, over, across, or above any street, avenue, sidewalk, or alley. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

(b) **RESOLUTION** levying a special tax upon property within the City of Billings to defray the cost of cutting and/or exterminating weeds. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

5. **PUBLIC HEARING AND RESOLUTION** relating to petitions for reduction of Arterial Construction Fee assessments. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

6. **PUBLIC HEARING AND RESOLUTION** approving the re-spread of Special Improvement District 1358 based on construction cost. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

7. **PUBLIC HEARING AND RESOLUTION** approving the original spread of Special Improvement District 1375. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

8. **PUBLIC HEARING AND RESOLUTION** approving the original spread of Special Improvement District 1377. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

9. **PUBLIC HEARING AND RESOLUTIONS** approving the re-spread for property being split or combined in various special improvement districts.

(a) **Special Improvement District No. 1358** - Lake Hills Subdivision, Lot 6, Block 13. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

(b) **Special Improvement District No. 1360** - Tierra Yellowstone Industrial Park Subdivision, Lots 3, 4, 5, and 02A, Block 6; and Lots 03A and 05A, Block 2. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

(c) **Special Improvement District Nos. 9606 & 9698** - Suburban Subdivision, Lot 18, Block 12. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

(d) **Special Improvement District No. 1334** - Billings Original Townsite, Lot 5, Block 109. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

(e) **Special Improvement District No. 1327** – Claimstake Subdivision, Lot 5, Block 4. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

(f) **Special Improvement District Nos. 1341 & 1353** - Circle Fifty Subdivision, Lot 7, Block 2. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

10. **PUBLIC HEARING AND SPECIAL REVIEW #853:** A special review to construct and operate a commercial bakery on a 49,000 square foot parcel in the South 27th Street Corridor Zoning District on Lots 1-14, Block 230, Billings Original Town, addressed as 802 S. 26th Street, Gilbert Hornung, Trustee of the Aurthur Hornung Trust; Steven Kenney, representing agent; Kyle Nielsen of Grains of Montana Bakery, proposed owner. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

11. (a) **PUBLIC HEARING AND RESOLUTION** accepting the Urban Planning Study and approving the expansion of the Urban Planning Area boundary to include the Dover Ranch property described as Tract 1, Certificate of Survey 2017. Yellowstone County Board of Planning recommends approval. (**Action:** approval or disapproval of Yellowstone County Board of Planning recommendation.)

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

(b) **PUBLIC HEARING AND RESOLUTION** annexing 400.94-acres located north of the Lake Hills Golf Course and Matador Avenue in the Billings Heights (Annex #07-10). Frank Sindelar, owner. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendations.)

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

12. (a) **PUBLIC HEARING AND RESOLUTION** annexing property legally described as Tract 1C, Certificate of Survey 2991, generally located west of the

intersection of Central Avenue and 29th Street West (Annex #07-21). Raymond and Douglas Kramer for the Lydia Kramer Real Estate Management Trust, owners and petitioners. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

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

(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #824: A zone change of Lot 1C, Certificate of Survey 2991, from Residential 9600 to Neighborhood Commercial, Residential Professional, and Residential Multi-Family Restricted located west of the corner of the intersection of Central Avenue and Brookshire Boulevard, Raymond and Douglas Kramer for the Lydia Kramer Real Estate Management Trust, owners; Engineering, Inc., representative. Zoning Commission recommends approval and adoption of the 12 determinations. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

13. **(a) PUBLIC HEARING AND RESOLUTION** annexing property legally described as Tract 1B, Certificate of Survey 2991, generally located on the southwest corner of the intersection of Central Avenue and 29th Street West (Annex #07-22). Todd Icopini, owner and petitioner. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

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

(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #823: A zone change from Residential 9600 to Neighborhood Commercial, Residential Professional, and Residential Multi-family Restricted located on the southwest corner of the intersection of Central Avenue and Brookshire Boulevard, Legacy Homes, owner; Engineering, Inc., representative. Zoning Commission recommends approval and adoption of the 12 determinations. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

14. **(a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #815:** A zone change from Residential 7000 to Residential 6000 on a 25,273 square foot parcel known as Lots 2 and 3, Carrie E. Smith Subdivision, 2nd Filing, located at 1248 Clark Avenue, Jack L. Robinson and the Estate of Genevieve E. Robinson, owners; Ackerly-Hurlburt Architects, agents. Zoning Commission recommends denial and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

(b) PUBLIC HEARING AND SPECIAL REVIEW #849: A special review to allow a four-plex multi-family dwelling on a 25,273 square foot parcel in a

proposed Residential 6000 zone on Lots 2 and 3, Carrie E. Smith Subdivision, 2nd Filing. Jack L. Robinson and Genevieve E. Robinson, owners; Dave Hurlburt, agent. Zoning Commission recommends denial. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

- 15. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #821:** A text amendment to Sections 27-703, 27-705(c), 27-706(b), and 27-708, Electronic Signs. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

- 16. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #820:** A text amendment to Section 27-705(C), BMCC, Commercial Sign Regulations. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

- 17. PRELIMINARY MAJOR PLAT** of Tuscany Subdivision generally located east of Ironwood Estates and north of Yellowstone Country Club Estates, conditional approval of the plat, approval of the variances, and adoption of the Findings of Fact. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

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

Council Initiatives

ADJOURN



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 24, 2007

TITLE: Approval of Award to Purchase Seven New 2008 Truck Cabs and Chassis with Refuse Compactor Bodies for the Solid Waste Division

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The Solid Waste Division FY08 Budget includes funds to replace three older garbage trucks and add four additional trucks to the fleet. All are included in the approved Equipment Replacement Plan and they are scheduled for purchase this fiscal year.

Public Works is ordering three different styles of trucks. Automated “side load” trucks are used to pick up 90 and 300-gallon residential containers, automated “front load” trucks dump metal commercial dumpsters, and the “low entry drop frame automated/manual side load” trucks will be used to service residential yard waste containers. Additional trucks being added to the fleet include one automated side load truck and the three new trucks for yard waste recycling.

FINANCIAL IMPACT: The Solid Waste Division budgeted funds to purchase the seven garbage trucks. Bids were advertised August 30th and September 6th and ten bid packets were distributed to various truck and refuse compactor vendors. Bids were received and opened on September 11, 2007. A recommendation is being made to delay award until the October 9, 2007 meeting to allow staff to review the bids.

RECOMMENDATION

Staff recommends that Council delay award for purchase of seven new 2008 truck cabs and chassis with refuse compactor bodies until the October 9, 2007 City Council meeting.

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

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

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24th, 2007

TITLE: Yellowstone County Council on Aging Agreement

DEPARTMENT: Parks, Recreation & Public Lands Department

PRESENTED BY: Robin Grinsteiner, Billings Community Center-Recreation Division

PROBLEM/ISSUE STATEMENT: The City of Billings will receive \$27,202.00 this year from Yellowstone County funding which is distributed by the Yellowstone County Council on Aging (YCCOA) for the senior programs at the Billings Community Center. The attached document sets forth the terms of the agreement that is renewed each year. The major change in the agreement is additional funding of \$6,202.00 which will be available to supplement this year's annual base amount of \$21,000.00. Per our request this additional money was given for several items including the purchase of additional fitness equipment, tables and chairs. These additional funds will be available after January 2008 and are from the senior mill levy which was passed last year. The approval of this agreement is necessary to receive these funds.

1. Approve the agreement. (Recommended)
2. Disapprove the agreement.

This funding source comprises almost 14% of the Community Center's total budget.

Staff recommends that Council authorize the Mayor to execute the agreement with the Yellowstone County Council on Aging, Inc.

A: Memorandum of Agreement with Yellowstone County Council on Aging, Inc. (2 pages)

AGREEMENT

This AGREEMENT between the Yellowstone County Council on Aging, Inc (YCCOA) and the City of Billings, is for the provision of the services for persons 60 years of age or older and their spouses according to the following terms.

SECTION 1 GENERAL TERMS

- 1.1 This agreement will be effective from July 1, 2007 through June 30, 2008. Prior to the completion date, the contract will be reviewed for renewal by YCCOA upon submission of a budget and funding request to YCCOA for the upcoming year by the City.
- 1.2 This agreement is for Yellowstone County funding which comes to the Yellowstone County Council on Aging and is distributed to senior service providers by the YCCOA with approval by the County Commissioners. As such, these funds are available to match Federal funds or other grants.
- 1.3 The allocation for this time period will be \$21,000. Payments will be made in four equal quarterly allocations. Those allocations will be made by the 15th of August, November, February and May. This amount includes \$1,800 that is considered rent for the kitchen and dining room space for the Senior Dinner Program meal site. The remainder of the funds will be used to support the Senior Center program expenses. It is understood that YCCOA will pay for ½ of the repairs to the kitchen equipment that it uses. YCCOA will also provide funding of \$2,250 as match for fitness room equipment, \$3,196 for tables, and \$756 for 36 steel folding chairs upon presentation of a copy of the bills for these items after the first of January when the new funds are received. Total allocation is \$27,202.
- 1.4 This agreement may be modified by a written amendment signed by an authorized representative of both parties, and attached to the original of this contract.
- 1.5 Either party, without cause, may terminate this agreement by written notice sixty (60) days in advance.

SECTION 2 REPORTS AND RECORDS

- 2.1 All financial and supporting documents regarding the use of these funds shall be available at anytime to the YCCOA upon request from the YCCOA auditor.
- 2.2 A monthly report of individual senior participants at the senior center will be submitted to the YCCOA office no later than 10 working days into the next month. This will include name and birthdate of each participant.

SECTION 3 REPRESENTATIVE

- 3.1 The YCCOA representative shall be Bea Ann Melichar, YCCOA Executive Director or her representative. The City of Billings representative shall be the Parks Recreation and Public Lands Director or his representative.

SECTION 4 SENIOR NEWS

- 4.1 The monthly YCCOA publication, "Senior News", shall be available to all participants of the Billings Community Center and is not subject to their membership in any organization. News specific to the Billings Community Center shall be included in the publication each month. Guidelines established by YCCOA will be followed for setup, font, size and content with upcoming events, activities and speakers featured. News is subject to review and editing by the YCCOA Executive Director and or her designee. This news is to be submitted by the 15th of each month unless otherwise notified.

SECTION 5 TRAINING/PLANNING MEETINGS

- 5.1 A representative of the Billings Community Center will attend planning or training meetings as necessary in relationship to these funds, provided there is adequate notification of such meetings.

SECTION 6 IDENTIFICATION ON PUBLICATIONS

- 6.1 Any written materials the Billings Community Center Senior Citizens produces that lists the sources of funding for their program shall also include the Yellowstone County Council on Aging.

This Agreement is hereby signed and entered into by both parties:

Bea Ann Melichar Date 8/7/07
Bea Ann Melichar, Executive Director

City of Billings Representative Date

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Short Term Lease of Airport Hangar IP-3 to Lynch Flying Service, Inc.,
DBA Edwards Jet Center

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Limited Commercial Aviation Building and Ground Lease with Lynch Flying Service, Inc. DBA Edwards Jet Center for the use of Airport Business Park Hangar IP-3 expired on July 31, 2006. Several month-by-month extensions were authorized until the hangar use ceased on March 31, 2007. Lynch Flying Service, Inc. DBA Edwards Jet Center has requested a short-term lease for three months to utilize the hangar for storage while conducting some cleaning and maintenance operations on another one of its facilities at the Airport. The term of the new Lease will commence on September 1, 2007, and terminate on November 30, 2007.

FINANCIAL IMPACT: This Lease will generate \$2,450.01 during its brief term.

RECOMMENDATION

Staff recommends that Council approve the short-term Lease with Lynch Flying Service, Inc., DBA Edwards Jet Center, for the use of the City owned Hangar IP-3.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Renewal of Federal Aviation Administration (FAA) Garage/Shop Site Ground Lease

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The City has, over the years, leased an 85-foot by 100-foot parcel of land to the FAA for its combination garage/shop. This facility is on the east end of the Airport, on the airfield side of the fence, and is used by the FAA as a support facility in the maintenance of the numerous FAA-owned navigational aids and equipment that are located in and around the runway complex. This facility is used by the FAA to store equipment/supplies used for the maintenance of the FAA owned navigational and radar equipment on the airfield. The existing Lease #DTFA11-02-L-00418 expires on September 30, 2007. The FAA is interested in extending the Lease for an additional five (5) years.

FINANCIAL IMPACT: This Lease will generate \$1,785 per year for the City. This rate was adjusted up from the previous rate by the Consumer Price Index - Urban (CPI-U).

RECOMMENDATION

Staff recommends that Council approve the renewal of the FAA Garage/Shop Site Lease for an additional five years.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Assignment of Steve Vold's West End Hangar Ground Lease to First Interstate Bank as Security for Financing

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Martin Elshire had a twenty-year West End Hangar Ground Lease with the City dated July 26, 1999, for land located at the west end of the Airport. Mr. Elshire constructed a hangar on this parcel known as Lot 8. On August 13, 2007, Mr. Elshire assigned his interest in the ground lease to Steve Vold and is in the process of selling the hangar to Mr. Vold. As part of the financing package for the sale of this hangar, Mr. Vold desires to do an assignment of his interest in the West End Hangar Ground Lease to First Interstate Bank. The Assignment of the Lease provides the bank with the security needed to issue the financing. The City has approved a number of these arrangements in the past, allowing tenants the ability to secure financing for such purchases.

FINANCIAL IMPACT: There would be no financial impact to the City as Mr. Vold, as successor Lessee, will still be required to pay the ground lease rentals previously approved by Council under the original Lease to Mr. Elshire and subsequently assigned to Mr. Vold.

RECOMMENDATION

Staff recommends that Council approve the Assignment of the West End Hangar Ground Lease with Steve Vold to First Interstate Bank for financing purposes.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Amendment of the Federal Aviation Administration (FAA) Office Lease at the Airport Terminal Building

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Federal Aviation Administration (FAA) currently leases office and operation space on the second floor of the Terminal. The FAA entered into a new Lease – DTAFFNM-07-L-00039, for approximately 1,678 square feet of space on April 9, 2007. The term of the new Lease commenced January 1, 2007, and continues through September 30, 2012, inclusive. The FAA relinquished Room 201 from its leased space, effective August 1, 2007. Supplement #1 modifies the description of the leased premises and the revised rental amount due, effective August 1, 2007.

FINANCIAL IMPACT: The existing lease rate was adjusted for inflation and would have generated \$3,494.72 monthly for the use of 1,678 square feet. Supplement #1 reduces the square footage to 1,436 square feet. This adjusted Lease will now generate \$2,961.24 per month for the term of the Lease. No other terms and conditions of the original Lease have been changed.

RECOMMENDATION

Staff recommends that Council approve Supplement #1 to Lease #DTFANM-07-L-00039 with the FAA for office and operation space on the second floor of the Airport's Terminal Building.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Supplement #1 to FAA Lease No. DTFANM-07-L-00039

**U.S. Department Of Transportation
Federal Aviation Administration
Supplemental Lease Agreement**

Supplement No. 1 to
Lease No. DTFANM-07-L-00039
Billings Logan International Airport
Billings, Montana

SUPPLEMENT NO. 1 made and entered into by the City of Billings, hereinafter referred to as the Lessor, and the Federal Aviation Administration (FAA), hereinafter referred to as the Government.

WITNESSETH

WHEREAS, the Lessor and the Government agree to FAA relinquishing Room 201 effective midnight on July 31, 2007, said space located at Billings Logan International Airport, under Lease No. DTFANM-07-L-00039.

NOW, THEREFORE, the said lease is amended effective August 1, 2007, in the following particulars, but in no others:

Article 2 is amended to read as follows:

2. DESCRIPTION - The LESSOR hereby leases to the GOVERNMENT the following described premises: Rooms 203, 205, 206, and 207 consisting of approximately 1,436 square feet located on the second floor of the Billings Logan International Airport Terminal Building, Billings, Montana. (See Exhibit A attached)

Article 5 is amended to read as follows:

5. RENTAL - Rent in the amount of \$2,961.24 per month (as shown on Exhibit A, Adjusted Rate Summary of FAA Leased Square Footage, as amended in this Supplement to remove Room 201) will be payable to the LESSOR in arrears and will be due on the first workday of each month, without the submission of invoices or vouchers. Subject to available appropriations. Rent will be considered paid on the date a check is dated or an electronic funds transfer is made. Rent for a period of less than a month will be prorated. Checks will be made payable to: City of Billings, Aviation and Transit Department.

ALL OTHER TERMS AND CONDITIONS of said Lease are hereby ratified and, except as amended hereinabove, shall be and remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this supplement and it is effective as of the last date subscribed below.

CITY OF BILLINGS

FEDERAL AVIATION ADMINISTRATION

BY: _____

BY: _____

TITLE: _____

TITLE: Contracting Officer

DATE: _____

DATE: _____

EXHIBIT A
ADJUSTED RATE SUMMARY OF FAA LEASED SQUARE FOOTAGE -- REVISED FOR SUPPLEMENT #1
For

July 30, 2007

Airway Facilities Sector Field Office

A. AIRWAY FACILITIES SECTOR FIELD OFFICE				TOTAL SQ FT	RATE 1	TOTAL \$	Deleted via Supp#1
ROOM #							
201	12.83	X	18.90	242.49	X \$ 26.40	\$ 6,401.74	
ROOM 201 TOTAL				242.49			
203	12.90	X	18.90	243.81	X \$ 26.40	\$ 6,436.58	2nd Floor Office Space
ROOM 203 TOTAL				243.81			
205	12.88	X	13.57	174.78	\$ 26.40	\$ 4,614.19	2nd Floor Office Space
205	7.83	X	4.67	36.55	\$ 22.10	\$ 807.76	2nd Floor System Support Storage Space
ROOM 205 TOTAL				211.33	X \$ -	\$ 5,421.95	
206	6.91	X	13.50	93.29	\$ 26.40	\$ 2,462.86	2nd Floor Office Space
206	12.50	X	13.50	168.75	\$ 26.40	\$ 4,455.00	2nd Floor Office Space
206	20.00	X	25.65	513.00	\$ 22.10	\$ 11,337.30	2nd Floor Office Equipment Space
ROOM 206 TOTAL				775.04	X	\$ 18,255.16	
207	9.88	X	9.25	91.39			2nd Floor Office Space
207	9.88	X	9.21	90.99			2nd Floor Office Space
207	3.03	X	7.58	22.97			2nd Floor Office Space
ROOM 207 TOTAL				205.35	X \$ 26.40	\$ 5,421.24	
TOTAL OF ALL AFS SPACE				1,435.53		\$ 35,534.93	
Total All Office Space				885.98	X \$ 26.40	\$ 23,389.87	
Total All Equipment/Storage Space				549.55	X \$ 22.10	\$ 12,145.06	
Annual Lease Space Rental						\$ 35,534.93	
Monthly Lease Space Rental						\$ 2,961.24	

Page 3 of 3
 Supplement No. 1
 Lease No. DTFANM-07-L-00039

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Professional Services Contract with HDR Engineering—Amendment Four
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Engineering Division recommends an amendment to the Professional Services Contract with HDR Engineering, Inc. This contract, dated February 23, 2004, is for professional design services for the Water Treatment Plant Filter and Maintenance Building Expansion and Improvements project (W.O. 04-13). The changes in Amendment Four will encompass additional tasks associated with State Revolving Fund (SRF) assistance and requirements, O & M Manual preparation, redesign to meet State Historical Preservation Office (SHPO) requirements, construction document preparation and administration of two separate construction contracts, and consultation and design of a new security system for the two new buildings. The approval of this amendment is required to complete this project and close out all associated contracts. A copy of Amendment Four is on file in the City Clerk's office.

FINANCIAL IMPACT: Amendment Four represents an increase in the amount of the contract by \$125,600.00. The approved project budget includes a contingency to pay for additional costs characteristic of those depicted in Amendment Four. There are adequate funds available to cover these additional costs. The table below summarizes the financial impact to the project.

ORIGINAL PROFESSIONAL SERVICES CONTRACT: \$997,960.00

	Amount	% of Contract	Total % of Contract
Amendment No. One	\$ 6,272.00	0.63%	
Amendment No. Two	\$ N/C	-- %	
Amendment No. Three	\$ 933,419.00	93.53%	
Amendment No. Four	\$ 125,600.00	12.59%	
TOTALs to date:		\$ 1,065,291.00	106.75% 106.75%

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment Four to the Professional Services Contract with HDR Engineering, Inc., resulting in a net increase of \$125,600.00.

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

INTRODUCTION

The Engineering Division recommends an amendment to the Professional Services Contract with HDR Engineering, Inc. This contract, dated February 23, 2004, is for professional design services for the Water Treatment Plant Filter and Maintenance Building Expansion and Improvements project. The changes in Amendment Four will encompass additional tasks associated with State Revolving Fund (SRF) assistance and requirements, O & M Manual preparation, redesign to meet State Historical Preservation Office (SHPO) requirements, construction document preparation and administration of two separate construction contracts, and consultation and design of a new security system for the two new buildings. The approval of Amendment Four is recommended and required to complete this project and close out all associated contracts.

BACKGROUND

This project is being funded by a SRF loan and supplemented by the City's Utilities Water Building and Operation Facilities Fund. The SRF loan involves an extensive application process. Some of the additional tasks included in Amendment Four provide assistance with preparing and submitting information for the SRF application. The SRF also requires design drawings, project specifications, all bidding information, change orders, detailed O & M manuals, and as-built drawings to be submitted to and approved by MDEQ. Amendment Four provides for submitting everything and ensuring these items are approved by MDEQ.

Part of changing from a Bond Issue to SRF funding involves having to meet stringent requirements from the State Historical Preservation Office (SHPO). Amendment Four includes the services to meet SHPO standards, including having to redesign the architectural appearance of the Filter and Maintenance Buildings to look more similar to the appearance of the 1934 Filter Building and to revise part of the structural design.

After initial acceptance and preliminary review by the City Building Division, the Building Division required a design change due to the City's policy change regarding ADA requirements. Amendment Four provides the redesign services needed to meet the Building Division requirements.

Prior to bidding the project, there were issues with having approval from SHPO due to the design of the Maintenance Building, meaning SRF funds could not be used. To alleviate this problem and be able to use the SRF funding for the Filter Building (only City funds would be used for the Maintenance Building), the project was split into two schedules—the Filter Building and the Maintenance Building. Contracts were subsequently awarded to different contractors for each schedule. Amendment Four provides the services of bidding and administering two separate contracts. NOTE: After construction began, SHPO approved the design of the Maintenance Building, thus allowing SRF funds to be used on both buildings if necessary.

The construction contract includes an allowance for installation of a security system, but there are no provisions in HDR's contract to design a security system. Amendment Four provides the services to design and implement a security system for the new Filter Building (including the

Operations Building) and Maintenance Building that will work in conjunction with the existing security system at the Water Treatment Plant.

All tasks associated with Amendment Four are additional and out of scope with regards to the original contract and Amendment Three, which provides construction administration services on the project. Approximately \$64,000 (more than half) of the tasks in Amendment Four will be performed at or near the conclusion of the project, projected for the end of October, 2007. The remaining tasks began during the early stages of the project, and some of them will continue through the end of the project. The original contract and subsequent amendments are based on a not-to-exceed amount to be paid to HDR, and it was hoped the expenses for the tasks in progress might be absorbed into the original contract amount if construction was completed sooner than allowed. However, construction is now expected to last nearly the maximum allowable time, meaning all of HDR's original contract amount will be required for the original tasks and Amendment Four is required to compensate for all additional tasks. As of August 4, 2007, HDR has invoiced for essentially all of the original contract amount. There are three to four more months of service needed from HDR, and their monthly invoices are typically \$35,000 to \$40,000, so the approximately \$61,500 in Amendment Four for tasks began previously is justifiable.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment Four to the Professional Services Contract with HDR Engineering, Inc., resulting in a net increase of \$125,600.00.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Annexation Petition #07-24: Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, William Hanser, is requesting annexation of a property 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 subject property is located in the NE 1/4, Section 23, Township 1N, Range 26E, and is just south of the intersection of Wicks Lane and Hawthorne Lane. The petitioners are requesting annexation in order to obtain city water and sewer services for a residential development. The property is currently vacant land and is zoned Residential-7000 (R-70). At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for October 9, 2007; the Council will vote on the petition at that public hearing.

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

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

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

ATTACHMENT A
Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	William Hanser
Purpose of annexation:	To obtain City services for development
Property included:	Tract 1B, Certificate of Survey 1335
Location:	Just south of Wicks Lane, on the east side of Hawthorne Lane
Total area:	5.0 acres
Current zoning:	R-70
Current land use:	Vacant
Future zoning:	R-70
Future land use:	Residential Development

ATTACHMENT B

Annexation Petition

PETITION FOR ANNEXATION TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

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

INSTRUCTIONS

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

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
8-15-07	William P. HAUSER	<i>William P. Hauser</i>	2911q Thunderside AVS Billings MT 59102

(continued on separate page)

07-775
Revised 5/99

EXHIBIT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #3, a Portion of Tract 2A of Certificate of Survey No. 1109 Amended With Windsor Mobile Home Park, LLC

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #3 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$350.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$350.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #3, a Portion of Tract 2A of Certificate of Survey No. 1109 Amended with Windsor Mobile Home Park, LLC in the amount of \$350.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- October 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #3, a Portion of Tract 2A of Certificate of Survey No. 1109 Amended with Windsor Mobile Home Park, LLC in the amount of \$350.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

CITY OF BILLINGS
(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
3	Tract 2A, Certificate of Survey Number 1109	22	1N	26E

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

Windsor Mobile Home Park, L.L.C.
P.O. Box 370
Laurel, MT 59004
586-1141

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

150 square feet by deed \$300.00
3. OTHER COMPENSATION:

150 square feet Temporary Construction Permit \$ 30.00
4. TOTAL COMPENSATION ROUNDED PER THE APPRAISAL (includes all damages to the remainder): \$350.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$350.00, to be made payable to Windsor Mobile Home Park, L.L.C. and mailed to P.O. Box 370, Laurel, MT. 59004.
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors

(Continued from Previous Page)

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

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

Signature: Lynda L. Holland 1/17/07 x
(Date)

Signature: _____ (Date) -

Signature: _____ (Date) -

Tax ID No.

RECOMMENDED FOR APPROVAL:

Boyd Darlow 1/24/07
Boyd Darlow, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicholas J. Bunker 8/29/07
City of Billings, Public Works Department (Date) City Clerk (Date)

LER-003.200 Windsor

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

Project No. W.O. 04-33 Parcel No. 3 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this x 19TH day of January, 2007.

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

WINDSOR MOBILE HOME PARK, L.L.C.
P.O. BOX 370
LAUREL, MT 59004

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

Parcel No. 3 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 2A of Certificate of Survey No. 1109, on file under Document No. 870134, 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 150 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 150 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 3

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

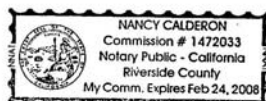
x. Linda L. Holland

State of California)

County of Riverside)

This instrument was acknowledged before me on 1/17/07 (date)

by Linda L. Holland (names)



Nancy Calderon
Notary Signature Line

Nancy Calderon
Notary Printed Name

Notary Public for State of California
Residing at: 19405 Hwy 111 La Grange, CA
My Commission Expires: 2/24/08

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

County of Yellowstone)

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

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

Print Name

EXHIBIT A

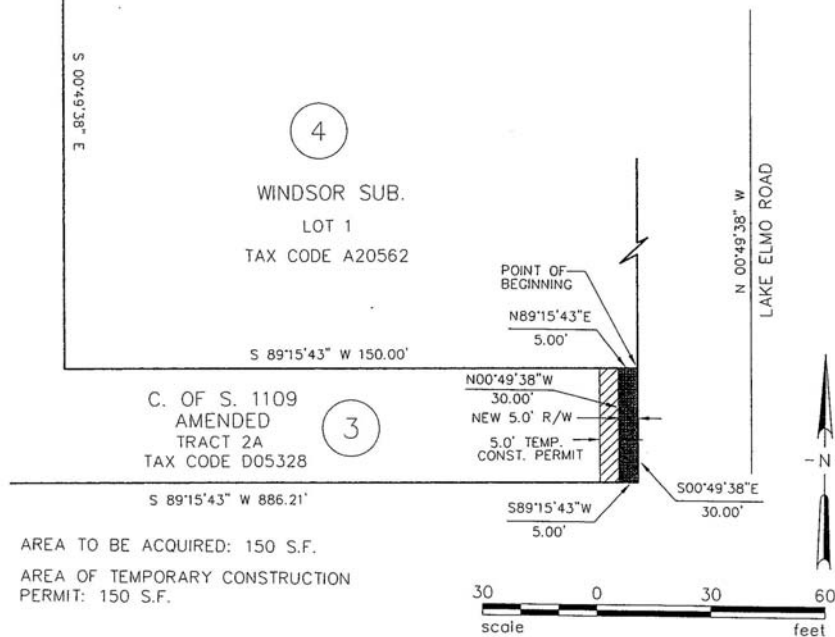
RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT.

SITUATED IN TRACT 2A, CERTIFICATE OF SURVEY NO. 1109, YELLOWSTONE COUNTY, MONTANA

LAKE ELMO DRIVE
RIGHT-OF-WAY
ACQUISITION DESCRIPTION
PARCEL No. 3

A tract of land situated in Tract 2A,
CERTIFICATE OF SURVEY NO. 1109, Amended
Yellowstone County, Montana said tract being
more particularly described as follows, to wit:

Beginning at a point on the west right-of-way line of
Lake Elmo Drive, said point of beginning being the
northeast corner of Tract 2A, C. OF S. NO. 1109, AMENDED,
thence from said point of beginning S. 00°49'38" E. a
distance of 30.00 feet, thence S. 89°15'43" W. a distance
of 5.00 feet, thence N. 00°49'38" W. a distance of 30.00
feet, thence N. 89°15'43" E. a distance of 5.00 feet to the
point of beginning, containing 150 square feet.



AREA TO BE ACQUIRED: 150 S.F.
AREA OF TEMPORARY CONSTRUCTION
PERMIT: 150 S.F.



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

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

LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

PROJECT No. 96-09 PARCEL 3
THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY PLAN.

PARCEL 3.DWG

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #12, a Portion of Tract 1A of Certificate of Survey No. 1109 Amended With Windsor Mobile Home Park, LLC

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #12 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$9,500.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$9,500.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #12, a Portion of Tract 1A of Certificate of Survey No. 1109 Amended with Windsor Mobile Home Park, LLC in the amount of \$9,500.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

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- December 2006 – Right-of-way negotiations began with property owners

Future Items

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- 2008-2009 – Design and construction of street improvements (in approved CIP)

BACKGROUND

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<u>Phase</u>	<u>Status</u>
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Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #12, a Portion of Tract 1A of Certificate of Survey No. 1109 Amended with Windsor Mobile Home Park, LLC in the amount of \$9,500.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Project No. W.O. 04-33 Parcel No. 12 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 17th day of January, 2007.

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

WINDSOR MOBILE HOME PARK, L.L.C.
P.O. BOX 370
LAUREL, MT 59004

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

Parcel No. 12 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 1A of Certificate of Survey No. 1109, on file under Document No. 870134, 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 3,397 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 3,008 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 12

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

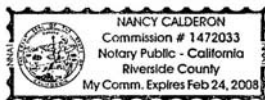
Linda L. Holland

State of California)

County of Riverside)

This instrument was acknowledged before me on 11/12/07 (date)

by Linda L. Holland (names)



Nancy Calderon
Notary Signature Line

Nancy Calderon
Notary Printed Name

Notary Public for State of California
Residing at: 77405 Hwy 111 La Brea, Ca
My Commission Expires: 2/24/08

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

County of Yellowstone)

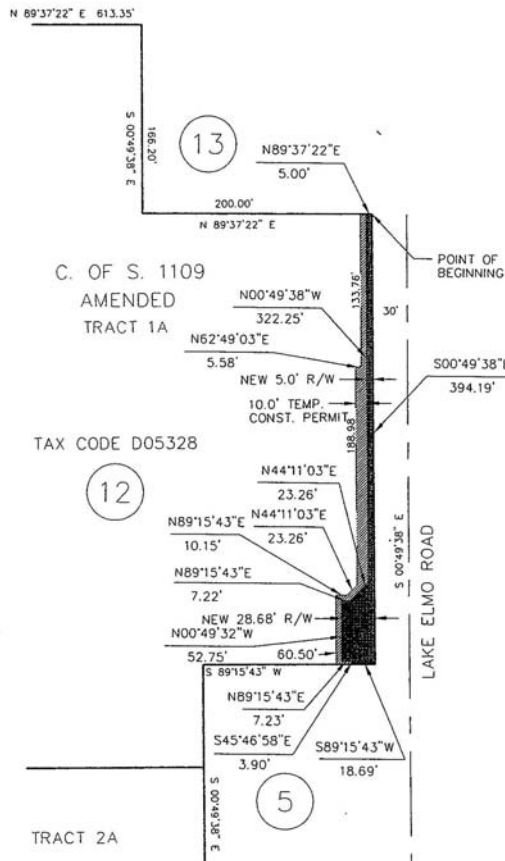
On this _____ day of _____, 200__, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF,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

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

Print Name

EXHIBIT A

RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN TRACT 1A CERTIFICATE OF SURVEY NO. 1109 AMENDED, YELLOWSTONE COUNTY, MONTANA



LAKE ELMO DRIVE
RIGHT-OF-WAY
ACQUISITION DESCRIPTION
PARCEL No. 12

A tract of land situated in tract 1A
CERTIFICATE OF SURVEY NO. 1109,
Yellowstone County, Montana said tract being
more particularly described as follows, to wit:

Beginning at a point on the west
right-of-way line of Lake Elmo Drive, said
point of beginning being the northeast
corner of Tract 1A, CERTIFICATE OF SURVEY
NO. 1109 AMENDED, thence from said point
of beginning S. 00°49'38" E. a distance of
394.19 feet, thence S. 89°15'43" W. a
distance of 18.69 feet, thence S. 45°46'58"
E. a distance of 3.90 feet, thence thence
S. 89°15'43" W. a distance of 7.23 feet,
thence N. 00°49'38" W. a distance of 52.75
feet, thence N. 89°15'43" E. a distance of
7.22 feet, thence N. 44°11'03" E. a
distance of 23.26 feet, thence N. 00°49'38" W.
a distance 322.25 feet, thence N.
89°37'22" E. a distance of 5.00 feet to
the point of beginning, containing 3397
square feet.

AREA TO BE ACQUIRED: 3397 S.F.
AREA OF TEMPORARY CONSTRUCTION
PERMIT: 3008 S.F.



LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 12

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



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

1300 North Tronstad Way
Billings, Montana 59105
Phone (406) 456-9255
www.enrinc.com

PARCEL 12.DWG

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

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
12	Tract 1A, Certificate of Survey Number 1109	22	1N	26E

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

Windsor Mobile Home Park, L.L.C.
P.O. Box 370
Laurel, MT 59004
586-1141

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

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

3,397 square feet by deed	\$5,775.00
Improvements (trees, sod)	\$3,168.00

3. OTHER COMPENSATION:

3,008 square feet Temporary Construction Permit	\$ 511.00
---	-----------

4. TOTAL COMPENSATION ROUNDED PER THE APPRAISAL (includes all damages to the remainder): \$9,500.00.

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

A warrant in the amount of \$9,500.00, to be made payable to Windsor Mobile Home Park, L.L.C. and mailed to P.O. Box 370, Laurel, MT. 59004.

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

7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.

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

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

Reconfigure and repair sprinkler system affected by project.

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

(Continued from Previous Page)

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

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

Signature: Leslie L. Holland 1/17/07 (Date) —

Signature: _____ (Date) —

Signature: _____ (Date) —

Tax ID No. _____

RECOMMENDED FOR APPROVAL:

Signature: Boyd Darlow 1/26/07 (Date)

Boyd Darlow, Olson Land Services

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Signature: Michael R. Darling 8/28/07 (Date)

City of Billings, Public Works Department

City Clerk (Date)

LER-012.200 Windsor

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #41, a Portion of Unplatted Land Within N1/2S1/2N1/2SE1/4NW1/4 of Section 22, Township 1 North, Range 26 East, P.M.M., With F. William Baumann and Kathy L. Baumann

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #41 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$10,300.00. The negotiation history for this parcel notes that the Baumanns felt their property was worth more than the appraised value. The City's Land Acquisition Policy allows staff or consultants the latitude to offer up to five percent (5%) above the appraisal amount for property acquisitions. This higher amount, \$10,815.00, was acceptable to the property owners. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$10,815.00. The cost of this acquisition is equal to five percent (5%) above the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #41, a portion of unplatted land within

N1/2S1/2N1/2SE1/4NW1/4 of Section 22, Township 1 North, Range 26 East, P.M.M., with F. William Baumann and Kathy L. Baumann in the amount of \$10,815.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- October 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #41, a portion of unplatted land within N1/2S1/2N1/2SE1/4NW1/4 of Section 22, Township 1 North, Range 26 East, P.M.M., with F. William Baumann and Kathy L. Baumann in the amount of \$10,815.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #42, a Portion of Tract 3 of Certificate of Survey No. 2866 With Kathy Baumann

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #42 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$4,000.00. The negotiation history for this parcel notes that Mrs. Baumann felt her property was worth more than the appraised value. The City's Land Acquisition Policy allows staff or consultants the latitude to offer up to five percent (5%) above the appraisal amount for property acquisitions. This higher amount, \$4,200.00, was acceptable to the property owner. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$4,200.00. The cost of this acquisition is equal to five percent (5%) above the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #42, a Portion of Tract 3 of Certificate of Survey No. 2866 with Kathy Baumann in the amount of \$4,200.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- October 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #42, a Portion of Tract 3 of Certificate of Survey No. 2866 with Kathy Baumann in the amount of \$4,200.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

CITY OF BILLINGS
(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

<u>Lake Elmo Road Hilltop Road to Wicks Lane</u>	Work Order: 04-33	<u>Yellowstone</u>
DESIGNATION	Project No. 05153	COUNTY
Parcel No. 42	Parcel Description TRACT 3, COS 2866	Section 22
		Township 1N
		Range 26E

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

KATHY BAUMANN
1316 LAKE ELMO DRIVE
BILLINGS, MT 59105
245-8971

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

1,953 square feet by deed	
(651 square feet existing easement)	\$ 130.00
(1,302 square feet new acquisition)	\$2,604.00
Improvements (Fence)	\$1,000.00
- OTHER COMPENSATION:

1,302 square feet Temporary Construction Permit	
<i>ADMINISTRATIVE Settlement</i>	<i>\$4200.00</i>
- TOTAL COMPENSATION (includes all damages to the remainder): ~~\$4,000.00~~ *\$4,200.00*
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of ~~\$4,000.00~~ *\$4,200.00* to be made payable to KATHY BAUMANN and mailed to 1316 LAKE ELMO DRIVE, BILLINGS, MT 59105
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
- 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
- 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 purposes described as:

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

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

(Continued from Previous Page)

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

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

Kathy L. Baumann 8-21-07
Signature: KATHY BAUMANN (Date)

Signature: (Date)

Signature: (Date)

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 8-21-07
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicholas J. Bauman 8/28/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-042.200 Baumann

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

Project No. W.O. 04-33 Parcel No. 42 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 21st day of August, 2007.

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

KATHY BAUMANN
1316 LAKE ELMO DRIVE
BILLINGS, MT 59105

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

Parcel No. 424 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 3 of Certificate of Survey No. 2866, on file under Document No. 1808239, 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 1,953 sq. ft., including 651 sq. ft., which constitutes a part of an existing road easement.

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 1,302 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 42

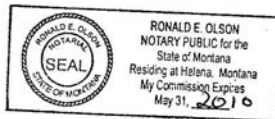
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Kathy Baumann

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on August 21, 2007
(date)

by Kathy Baumann



Ronald E. Olson
Notary Signature Line
Ronald E Olson
Notary Printed Name
Notary Public for State of MONTANA
Residing at: Helena
My Commission Expires: May 31, 2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

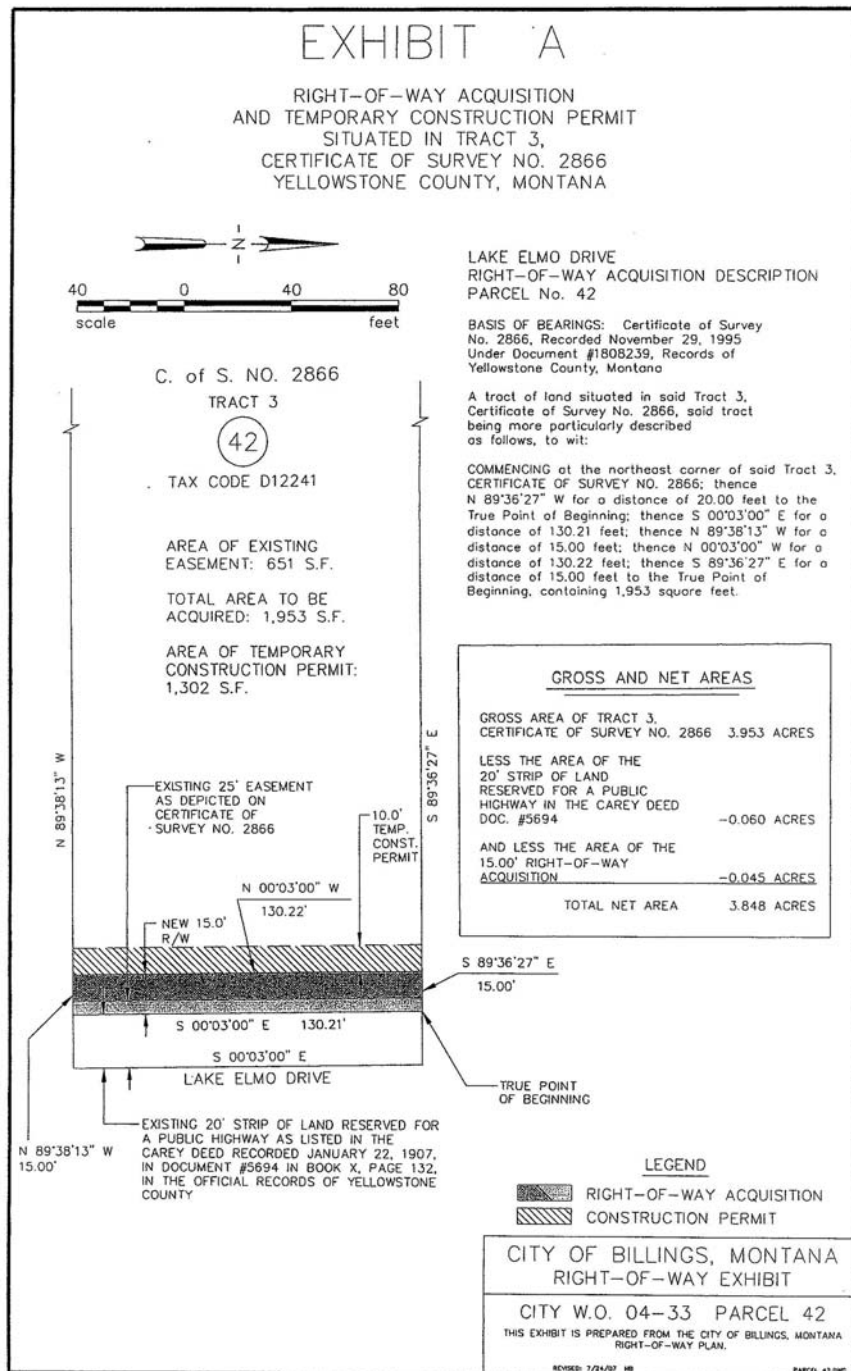
ATTEST: _____
City Clerk

STATE OF MONTANA)
:ss
County of Yellowstone)

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

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

Print Name



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #62, a Portion of the SW1/4NE1/4 of Section 22, Township 1 North, Range 26 East, P.M.M., With Tasneem F. Khaleel and Shafiq Ahmed Khaleel

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #41 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$17,300.00. The negotiation history for this parcel notes that the Khaleels felt their property was worth more than the appraised value. The City's Land Acquisition Policy allows staff or consultants the latitude to offer up to five percent (5%) above the appraisal amount for property acquisitions. This higher amount, \$18,165.00, was acceptable to the property owners. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$18,165.00. The cost of this acquisition is equal to five percent (5%) above the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #62, a Portion of the SW1/4NE1/4 of Section 22, Township 1

North, Range 26 East, P.M.M., with Tasneem F. Khaleel and Shafiq Ahmed Khaleel in the amount of \$18,165.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- October 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #62, a Portion of the SW1/4NE1/4 of Section 22, Township 1 North, Range 26 East, P.M.M., with Tasneem F. Khaleel and Shafiq Ahmed Khaleel in the amount of \$18,165.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
62	SW¼NE¼	22	1N	26E

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

TASNEEM F. KHALEEL AND SHAFIQ AHMED KHALEEL
1349 LAKE ELMO DRIVE
BILLINGS, MT. 59105
252-2040

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

4,620 square feet by deed	\$4,224.00
Improvements (Asphalt, rocks, trees, shrubs, signs, yardlights, sod)	\$12,830.00
3. OTHER COMPENSATION:

1,145 square feet Temporary Construction Permit	\$ 229.00
Administrative settlement (5% of \$17,300.00)	\$865.00
4. TOTAL COMPENSATION PER THE APPRAISAL (ROUNDED)(includes all damages to the remainder): \$18,165.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$18,165.00, to be made payable to TASNEEM F. KHALEEL AND SHAFIQ AHMED KHALEEL and mailed to 1349 LAKE ELMO DRIVE, BILLINGS, MT. 59105
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

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

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

(Continued from Previous Page)

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

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

Shafiq Ahmed Khaleel 222-389332
Signature: SHAFIQ AHMED KHALEEL (Date) Tax ID No.

Tasneem F. Khaleel 8/14/07
Signature: TASNEEM F. KHALEEL (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

N/A

Mayor, City of Billings (Date)

ATTEST:

City of Billings, Public Works Department (Date)

City Clerk (Date)

v.080607

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

Project No. W.O. 04-33 Parcel No. 62 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 2007.

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

TASNEEM F. KHALEEL AND SHAFIQ AHMED KHALEEL
1349 LAKE ELMO DRIVE
BILLINGS, MT. 59105

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

Parcel No. 62 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, Township 1 North, Range 26 East, P.M.M., 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 4,620 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 1,145 sq. ft.

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 62

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Tasneem F. Khaleel
Tasneem F. Khaleel

Shafiq Ahmed Khaleel
Shafiq Ahmed Khaleel

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on Aug. 28, 2007
(date)

by Tasneem F. Khaleel and Shafiq Ahmed Khaleel
(names)

Donna Newell
Notary Signature Line

Donna Newell
Notary Printed Name

Notary Public for State of Montana
Residing at: Billings
My Commission Expires: 7-15-2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____
City Clerk

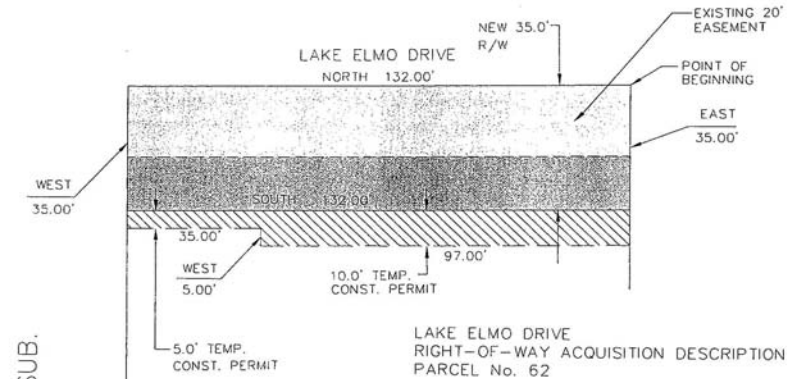
STATE OF MONTANA)
County of Yellowstone)

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

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

Print Name

EXHIBIT A RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN SW1/4NE1/4 SECTION 22 TOWNSHIP 1 NORTH, RANGE 26 EAST, P.M.M., YELLOWSTONE COUNTY, MONTANA



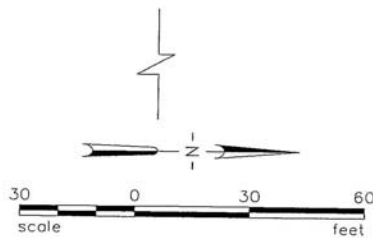
LAKE ELMO DRIVE
RIGHT-OF-WAY ACQUISITION DESCRIPTION
PARCEL No. 62

A parcel of land situated within an unplatted tract of land being located in the SW1/4NE1/4 Section 22, Township 1 North, Range 26 East, P.M.M., as described in the Warranty Deed Recorded July 3, 1979, in Book 1208, Page 4020, Records of Yellowstone County, Montana, said parcel being more particularly described as follows, to wit:

Beginning at the northwest corner of said unplatted tract; thence East for a distance of 35.00 feet; thence South for a distance of 132.00 feet; thence West for a distance of 35.00 feet; thence North for a distance of 132.00 feet to the point of beginning, containing an area of 4,620 square feet.

(62)
TAX CODE D05297
UNPLATTED

AREA OF EXISTING EASEMENT: 2,640 S.F.
AREA TO BE ACQUIRED: 4,620 S.F.
AREA OF TEMPORARY CONSTRUCTION PERMIT: 1,145 S.F.



LEGEND
RIGHT-OF-WAY ACQUISITION
CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 62

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

UPDATED: 8/3/07 NB PARCEL 62.DWG

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #73, a Portion of Lot 7, Block 4 of Arrowhead Subdivision With Richard C. Emmons and Diana Emmons

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #73 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,150.00. The negotiation history for this parcel notes that Mr. and Mrs. Emmons felt their property was worth more than the appraised value. The City's Land Acquisition Policy allows staff or consultants the latitude to offer up to five percent (5%) above the appraisal amount for property acquisitions. This higher amount, \$2,257.50, was acceptable to the property owners. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$2,257.50. The cost of this acquisition is equal to five percent (5%) above the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #73, a Portion of Lot 7, Block 4 of Arrowhead Subdivision with Richard C. Emmons and Diana Emmons in the amount of \$2,257.50, and authorize the Mayor to

execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- October 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #73, a Portion of Lot 7, Block 4 of Arrowhead Subdivision with Richard C. Emmons and Diana Emmons in the amount of \$2,257.50, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
62	SW¼NE¼	22	1N	26E

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

TASNEEM F. KHALEEL AND SHAFIQ AHMED KHALEEL
1349 LAKE ELMO DRIVE
BILLINGS, MT. 59105
252-2040

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

4,620 square feet by deed	\$4,224.00
Improvements (Asphalt, rocks, trees, shrubs, signs, yardlights, sod)	\$12,830.00
3. OTHER COMPENSATION:

1,145 square feet Temporary Construction Permit	\$ 229.00
Administrative settlement (5% of \$17,300.00)	\$865.00
4. TOTAL COMPENSATION PER THE APPRAISAL (ROUNDED)(includes all damages to the remainder): \$18,165.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$18,165.00, to be made payable to TASNEEM F. KHALEEL AND SHAFIQ AHMED KHALEEL and mailed to 1349 LAKE ELMO DRIVE, BILLINGS, MT. 59105
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

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

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

(Continued from Previous Page)

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

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

Shafiq Ahmed Khaleel 222-389332
Signature: SHAFIQ AHMED KHALEEL (Date) Tax ID No.

Tasneem F. Khaleel 8/14/07
Signature: TASNEEM F. KHALEEL (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

N/A

Mayor, City of Billings (Date)

ATTEST:

City of Billings, Public Works Department (Date)

City Clerk (Date)

v.080607

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

Project No. W.O. 04-33 Parcel No. 62 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 2007.

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

TASNEEM F. KHALEEL AND SHAFIQ AHMED KHALEEL
1349 LAKE ELMO DRIVE
BILLINGS, MT. 59105

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

Parcel No. 62 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, Township 1 North, Range 26 East, P.M.M., 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 4,620 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 1,145 sq. ft.

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 62

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Tasneem F. Khaleel
Tasneem F. Khaleel

Shafiq Ahmed Khaleel
Shafiq Ahmed Khaleel

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on Aug. 28, 2007
(date)

by Tasneem F. Khaleel and Shafiq Ahmed Khaleel
(names)

Donna Newell
Notary Signature Line

Donna Newell
Notary Printed Name

Notary Public for State of Montana
Residing at: Billings
My Commission Expires: 7-15-2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings Date

ATTEST: _____
City Clerk

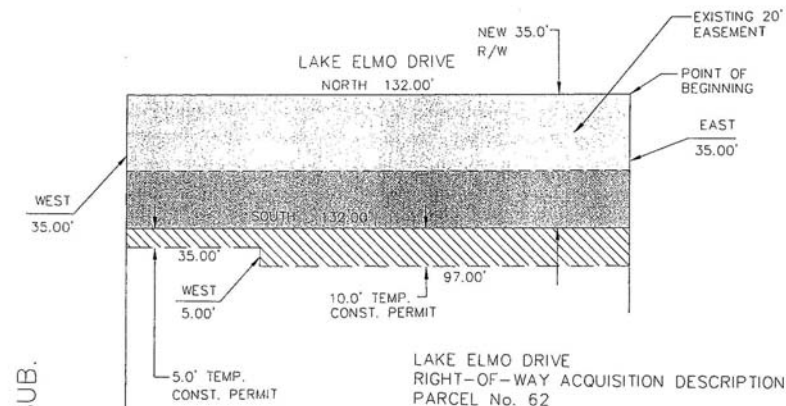
STATE OF MONTANA)
County of Yellowstone)

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

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

Print Name

EXHIBIT A RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN SW1/4NE1/4 SECTION 22 TOWNSHIP 1 NORTH, RANGE 26 EAST, P.M.M., YELLOWSTONE COUNTY, MONTANA



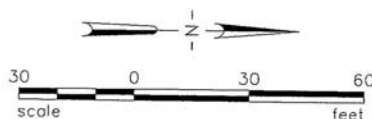
LAKE ELMO DRIVE
 RIGHT-OF-WAY ACQUISITION DESCRIPTION
 PARCEL No. 62

A parcel of land situated within an unplatted tract of land being located in the SW1/4NE1/4 Section 22, Township 1 North, Range 26 East, P.M.M., as described in the Warranty Deed Recorded July 3, 1979, in Book 1208, Page 4020, Records of Yellowstone County, Montana, said parcel being more particularly described as follows, to wit:

Beginning at the northwest corner of said unplatted tract; thence East for a distance of 35.00 feet; thence South for a distance of 132.00 feet; thence West for a distance of 35.00 feet; thence North for a distance of 132.00 feet to the point of beginning, containing an area of 4,620 square feet.

(62)
 TAX CODE D05297
 UNPLATTED

AREA OF EXISTING EASEMENT: 2,640 S.F.
 AREA TO BE ACQUIRED: 4,620 S.F.
 AREA OF TEMPORARY CONSTRUCTION PERMIT: 1,145 S.F.



LEGEND

RIGHT-OF-WAY ACQUISITION
 CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
 RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 62

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

UPDATED: 8/3/07 NB PARCEL 6220C

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #74, a Portion of Lot 6, Block 1 of McCracken Subdivision With RGP Partnership

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #74 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$3,050.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$3,050.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #74, a Portion of Lot 6, Block 1 of McCracken Subdivision with RGP Partnership in the amount of \$3,050.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

- October 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this

stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #74, a Portion of Lot 6, Block 1 of McCracken Subdivision with RGP Partnership in the amount of \$3,050.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

CITY OF BILLINGS
(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
74	Lot 6, Block 1 of McCracken Subdivision	22	1N	26E

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

RGP PARTNERSHIP
P.O. BOX 1496
BILLINGS, MT. 59103-1496

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

690 square feet by deed	\$2,415.00
Improvements (sod)	\$ 385.00
- OTHER COMPENSATION:

690 square feet Temporary Construction Permit	\$ 242.00
---	-----------
- TOTAL COMPENSATION (includes all damages to the remainder): \$3,050.00.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$3,050.00, to be made payable to RGP PARTNERSHIP and mailed to P.O. BOX 1496, BILLINGS, MT. 59103-1496
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
- This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
- At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

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

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

(Continued from Previous Page)

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

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

X  8/16/07
 Signature: (Date)
 X  8/23/07
 Signature: (Date)

Signature: (Date)

Tax ID No.

RECOMMENDED FOR APPROVAL:

 8-22-07
 Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

 Mayor, City of Billings (Date)

ATTEST:

 8/29/07
 City of Billings, Public Works Department (Date)

 City Clerk (Date)

LER-074.200 RGP Partnership

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

Project No. W.O. 04-33 Parcel No. 74 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 20th day of August, 2007.

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

RGP PARTNERSHIP
P.O. BOX 1496
BILLINGS, MT. 59103-1496

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

Parcel No. 74 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 6, Block 1 of McCracken Subdivision, on file under Document No. 842274, 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 690 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 690 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 74

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

x Adam Hickey

x Mike Ross

State of Montana)

County of Yellowstone)

This instrument was acknowledged before me on August 20, 2007
(date)

by Daniel Hickey & Mike Ross as partners in RAP Partnership
(names)

Michelle L. McLoey
Notary Signature Line

Michelle L. McLoey
Notary Printed Name

Notary Public for State of Montana

Residing at: Yellowstone County

My Commission Expires: March 1, 2011

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

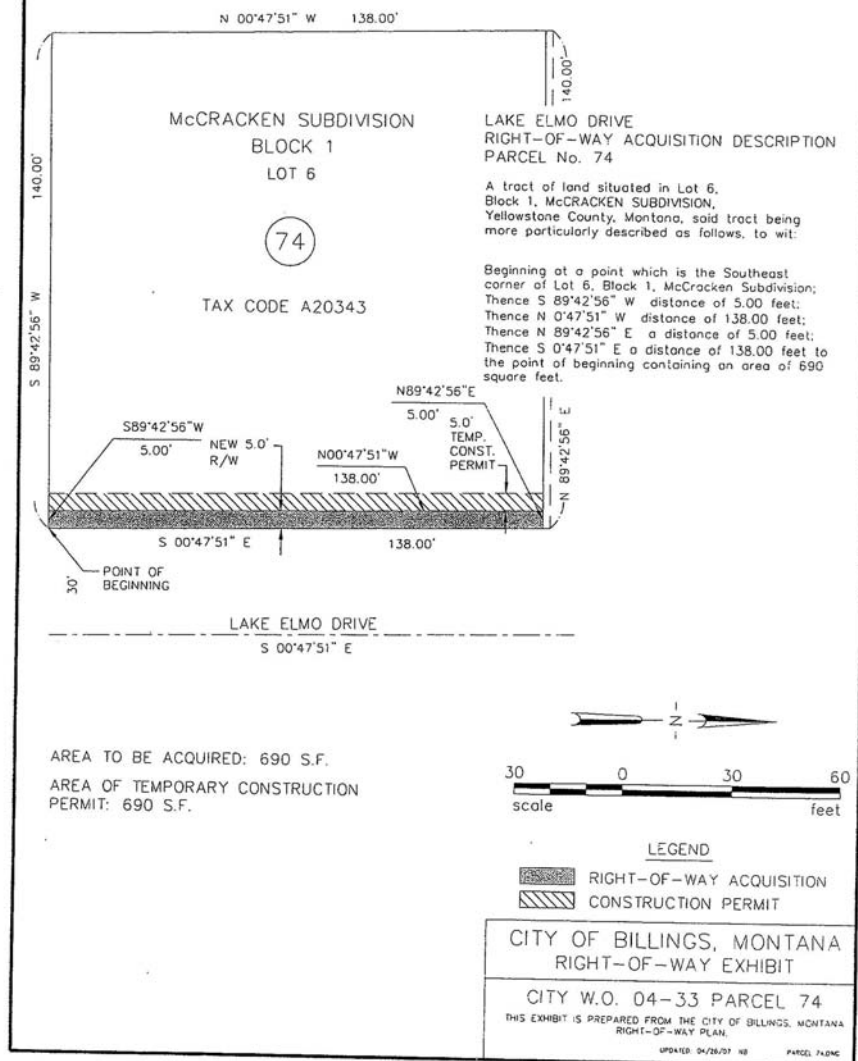
County of Yellowstone)

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

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

Print Name

EXHIBIT A RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 6, BLOCK 1, McCRACKEN SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #75, a Portion of Lots 5 and 6, Block 1 of McCracken Subdivision With RGP Partnership

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #75 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,500.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$2,500.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #75, a Portion of Lots 5 and 6, Block 1 of McCracken Subdivision with RGP Partnership in the amount of \$2,500.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

- October 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #75, a Portion of Lots 5 and 6, Block 1 of McCracken Subdivision with RGP Partnership in the amount of \$2,500.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
75	Lot s 5 & 6, Block 1 of McCracken Subdivision	22	1N	26E

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

RGP PARTNERSHIP
P.O. BOX 1496
BILLINGS, MT. 59103-1496

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

369 square feet by deed	\$1,568.00
Improvements (sod, asphalt)	\$ 729.00
3. OTHER COMPENSATION:

369 square feet Temporary Construction Permit	\$ 157.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$2,500.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$2,500.00, to be made payable to RGP PARTNERSHIP and mailed to P.O. BOX 1496, BILLINGS, MT. 59103-1496
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

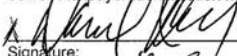

Reconfigure and repair sprinkler system, if any, affected by project.

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

(Continued from Previous Page)

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

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

Signature: 	8/16/07	-
	(Date)	
Signature: 	8/23/07	-
	(Date)	
Signature: _____	(Date) _____	-

Tax ID No.


RECOMMENDED FOR APPROVAL:

 8-22-07
 Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

 Mayor, City of Billings (Date)

ATTEST:

 8/28/07
 City of Billings, Public Works Department (Date) City Clerk (Date)

LER-075.200 RGP Partnership

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

Project No. W.O. 04-33 Parcel No. 75 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 20th day of August, 2007.

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

RGP PARTNERSHIP
P.O. BOX 1496
BILLINGS, MT. 59103-1496

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

Parcel No. 75 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 Lots 5 and 6, Block 1 of McCracken Subdivision, on file under Document No. 842274, 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 369 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 369 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 75

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE






State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on August 20, 2007
(date)

by Dan Herley & Mike Ross as partners in RGP Partnership
(names)


Notary Signature Line
Michelle L. McCoy
Notary Printed Name

Notary Public for State of MT
Residing at: Yellowstone County
My Commission Expires: MARCH 1, 2011

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____
City Clerk

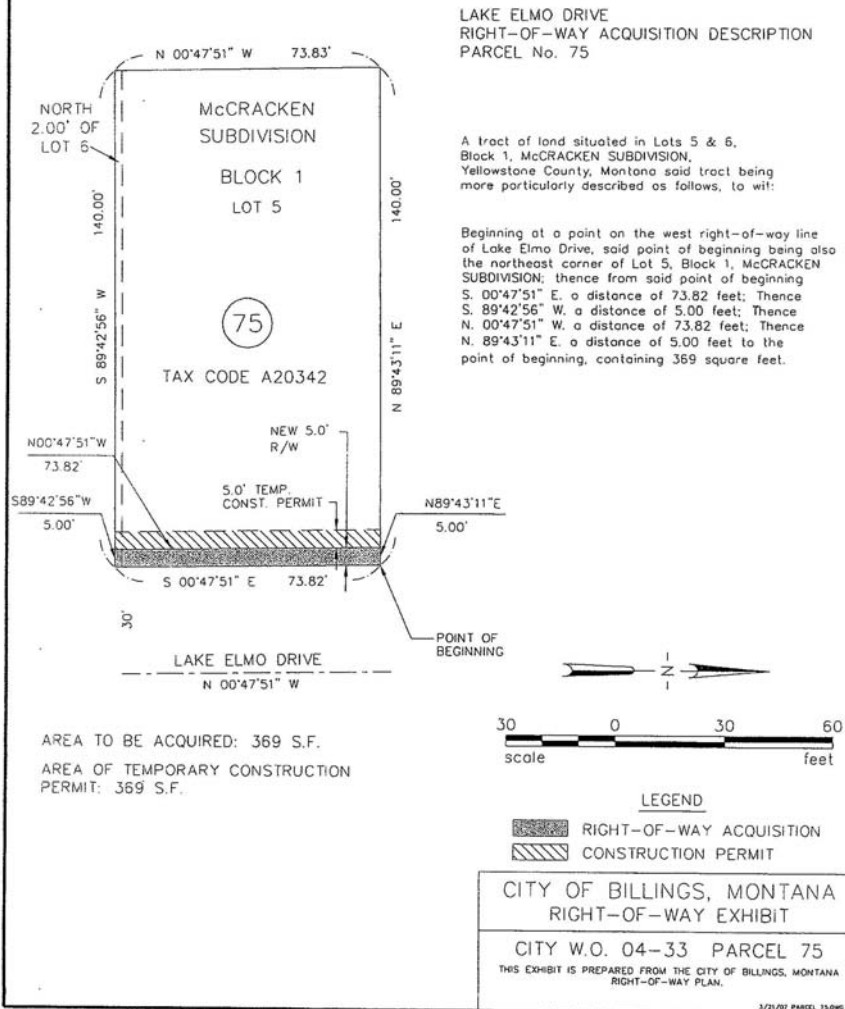
STATE OF MONTANA)
:ss
County of Yellowstone)

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

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

Print Name

EXHIBIT A RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOTS 5 & 6, BLOCK 1 McCRACKEN SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #76, a Portion of Lot 4A, Block 1 of McCracken Subdivision, Amended Lots 3 & 4, With RGP Partnership

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #76 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,250.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$2,250.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #76, a Portion of Lot 4A, Block 1 of McCracken Subdivision, Amended Lots 3 & 4, with RGP Partnership in the amount of \$2,250.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

- October 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 (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this

stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #76, a Portion of Lot 4A, Block 1 of McCracken Subdivision, Amended Lots 3 & 4, with RGP Partnership in the amount of \$2,250.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
76	Lot 4A, Block 1 of McCracken Subdivision	22	1N	26E

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

RGP PARTNERSHIP
P.O. BOX 1496
BILLINGS, MT. 59103-1496

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

468 square feet by deed	\$1,803.00
Improvements (sod)	\$ 257.00
3. OTHER COMPENSATION:

468 square feet Temporary Construction Permit	\$ 180.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$2,250.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$2,250.00, to be made payable to RGP PARTNERSHIP and mailed to P.O. BOX 1496, BILLINGS, MT. 59103-1496
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

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

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

(Continued from Previous Page)

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

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

X [Signature] 8/16/07
 Signature: (Date)
 X [Signature] 8/20/07
 Signature: (Date)

Signature: (Date)

Tax ID No.

RECOMMENDED FOR APPROVAL:

[Signature] 8-22-07
 Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

 Mayor, City of Billings (Date)

ATTEST:

[Signature] 8/28/07
 City of Billings, Public Works Department (Date)

 City Clerk (Date)

LER-076.200 RGP Partnership

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

Project No. W.O. 04-33 Parcel No. 76 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 20th day of August, 2007.

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

RGP PARTNERSHIP
P.O. BOX 1496
BILLINGS, MT. 59103-1496

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

Parcel No. 76 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 4A, Block 1 of (Amended Plat of Lots 3 & 4, Block 1) of McCracken Subdivision, on file under Document No. 1660277, 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 468 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 468 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 76

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

x [Signature] x [Signature]

State of Montana)

County of Yellowstone)

This instrument was acknowledged before me on August 20, 2007
(date)

by Daniel Hickey & Mike Ross as partners in RLP Partnership
(names)

[Signature]
Notary Signature Line

Michelle L. McCoy
Notary Printed Name

Notary Public for State of Montana

Residing at: Yellowstone County

My Commission Expires: March 1, 2011

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

County of Yellowstone)

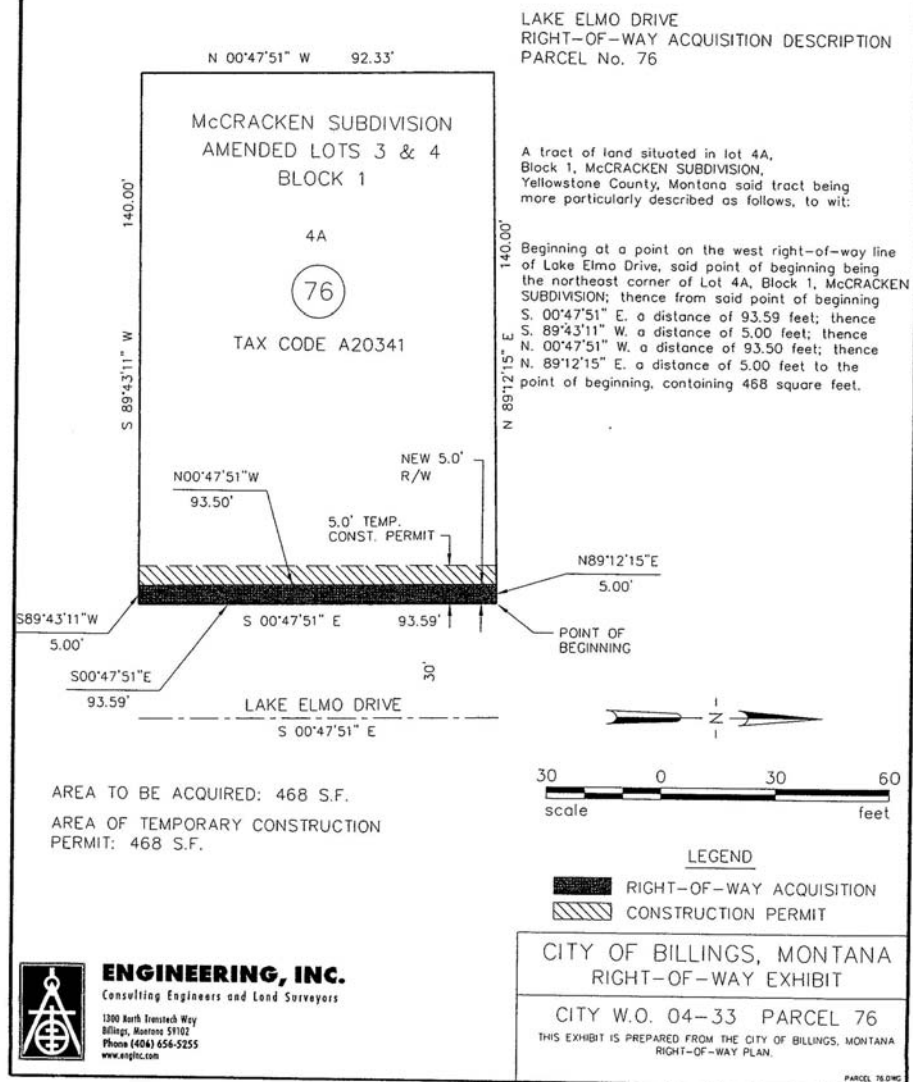
On this _____ day of _____, 200__, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF,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

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

Print Name

EXHIBIT A

RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 4A, BLOCK 1, McCRACKEN SUBDIVISION, AMENDED LOTS 3 & 4 YELLOWSTONE COUNTY, MONTANA



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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Resolution of Intent to Expand Downtown Business Improvement District No. 0001

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: On August 30th the City received a petition from Stockman Bank to expand the boundaries of Downtown Business Improvement District (BID) No. 0001 to include its property at the corner of 4th Avenue North and North Broadway. State law requires that BID boundaries be expanded in the same way that they are created; 1) resolution of intent to create or expand a district; 2) notice of public hearing and mailed notice to affected property owners; 3) public hearing; and 4) resolution to create or expand the district. The Council will decide whether to adopt the resolution of intent to expand the district and set a public hearing for October 22.

ALTERNATIVES ANALYZED: The Council may approve or disapprove the resolution.

FINANCIAL IMPACT: There is little or no financial impact on the City. The City does not charge for its oversight or for assessing the BID properties.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to expand the Downtown Business Improvement District No. 0001.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Resolution of Intent
 B: Stockman Bank petition

Resolution No. 07- _____

A RESOLUTION DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO EXPAND THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT NO. 0001 FOR THE PURPOSE OF MAINTAINING THE COMMON AREA IMPROVEMENTS AND OTHER PORTIONS OF IMPROVEMENTS MADE IN DOWNTOWN, CITY OF BILLINGS, MONTANA

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

Section 1. Downtown Business Improvement District (B.I.D.) No. 0001; Intention To Expand Business Improvement District. The B.I.D. maintains certain special improvements to benefit certain property located in the City of Billings, Montana. The purpose of this B.I.D. is to provide funding for the purposes and powers that will serve a public use; will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; and will be of special benefit to the property within the boundaries of any district created pursuant to the provisions of Montana Code annotated, Title 7, Chapter 12, Part 11, as amended.

Section 2. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as "Exhibit A" hereto (which is hereby incorporated herein and made a part hereof) and the expansion area is more particularly described on "Exhibit B" hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District.

Section 3. Benefited Property. The District and territory included within the limits and boundaries described in Section 2 and as shown on Exhibit "A" are hereby declared to be the Business Improvement District and the territory which will benefit and be benefited by and will be assessed for a portion of the costs of the maintenance as described in Section 1.

Section 4. General Character of the Maintenance to be Performed. The general character of the maintenance includes public sidewalk sweeping, security, public sidewalk snow removal and graffiti removal and abatement and maintaining other sidewalk furniture, equipment and improvements installed in the public areas NOT including city streets, private property or alleyways.

Section 5. Assessment Methods; Property to Be Assessed. All properties within the District are to be assessed for a portion of the costs of maintaining the sidewalk Public Area Improvements in Business Improvement District, as specified herein. The costs of maintaining the Improvements shall be assessed against the property in the District benefiting from the improvements.

Section 6. Assessable Area. All properties in the District will be assessed for their proportionate share of the costs of maintaining the activities of the Business Improvement District. Public Area Improvements as prescribed in Section 7-12-1133 subsection (e), M.C.A. **The assessments to fund the work plan for the current fiscal are to be a total amount derived by adding: \$0.045 for each square foot of lot as prescribed in Section 7-12-1133, subsection (b); AND \$0.00065 per dollar of taxable value as prescribed in Section 7-12-1133, subsection (c); AND \$0.022 per square foot of the building above the first floor as prescribed in Section 7-12-1133, subsection (d), M.C.A.**

Section 7. Payment of Assessments. The assessments for the costs of maintaining the services provided by the Business Improvement District shall be payable, as prescribed in Section 7-12-1133 subsection (e), M.C.A.

Section 8. Public Hearing; Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, the owner of real property within the proposed District expansion subject to assessment and taxation for the cost and expense of maintaining the Business Improvement District may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period from September 27, 2007, through October 12, 2007, written protest against the proposed Business Improvement District expansion, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on Monday, October 22, 2007 at 6:30 p.m., in the Council Chambers, located on the Second Floor of the City Hall at 220 North 27th Street, in Billings, Montana.

Section 9. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the Billings Times, a newspaper of general circulation in the County on Thursday, September 27, and Thursday, October 4, 2007, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said Notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the proposed district expansion listed in his or her name upon the last completed assessment roll for State, County, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 24th day of September, 2007.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT A



EXHIBIT B

PROPERTY TO BE ADDED TO BID NO. 0001

Lots 1, 2, 3, 4, 5, and 6 in Block 53, Foster's Addition in the City of Billings, Yellowstone County, Montana according to the official plat thereof on file and of record in the office of Clerk and Recorder of said county, under Document No. 012383.

ATTACHMENT B

PETITION TO AMEND THE BOUNDARIES FOR BUSINESS IMPROVEMENT DISTRICT 0001 IN DOWNTOWN BILLINGS

In accordance with Title 7, Chapter 12, Part 11. *Business Improvement Districts*, of the Montana Code Annotated 2005, the undersigned hereby petition the *Governing Body* of the City of Billings to amend the Boundaries of the District as described in Section 3 of Resolution 05-18328 as approved by the Governing Body of the City of Billings on August 22, 2005 with a Duration as stated in Section 9 for a period of 10 years. All of the properties listed below are to be added to Business Improvement District #0001 and such addition is in accordance with Title 7, Chapter 12, Part 11, and are contiguous to the properties previously assembled.

[illegible]

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Preliminary Plat of River Rock Estates Subdivision
 DEPARTMENT: Planning and Community Services
 PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On July 2, 2007, the subdivider and owner, Boyer Land, LLC, applied for preliminary major plat approval for River Rock Estates Subdivision, which contains 67 lots on approximately 36.36 acres of land. The subject property is generally located on the west side of 46th Street West, south of Rimrock Road between the Hi-Line Ditch and Big Ditch and is zoned Residential 9600 (R-96). The Planning Board held a public hearing at its meeting on August 28, 2007. The City Council will review the preliminary plat and approve, conditionally approve, or deny the proposed subdivision at the September 24, 2007 meeting. The representing agent is Allied Engineering, Inc.

ALTERNATIVES ANALYZED: State and City subdivision regulations 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.

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

RECOMMENDATION

The Planning Board on a 8-0 vote recommends conditional approval of the preliminary plat of River Rock Estates 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 (available for viewing in the City Clerk's Office)
- C. Figure A—Park Parking Option
- D. Findings of Fact
- E. Mayor's Approval Letter

INTRODUCTION

On July 2, 2007, Boyer Land, LLC applied for preliminary major plat approval for River Rock Estates Subdivision, which contains 67 lots on approximately 36.36 acres of land. The subject property is generally located on the west side of 46th Street West, south of Rimrock Road between the Hi-Line Ditch and Big Ditch and is zoned R-96.

PROCEDURAL HISTORY

- The subject property was annexed on August 14, 2006.
- The subdivision proposal was originally submitted for review in August 2006, and later withdrawn in September 2006 prior to City Council review.
- The current subdivision proposal was submitted on July 2, 2007.
- The Planning Board reviewed the plat on August 14, 2007.
- The Planning Board conducted a public hearing on August 28, 2007, and forwarded a recommendation to the City Council.
- The City Council will consider the preliminary plat on September 24, 2007.

BACKGROUND

The subject property is located on the west side of 46th St. West, south of Poly Drive. The Hi-Line ditch forms the northern border of the property and the Big ditch partially borders the southern property line. The property is zoned for single-family houses only.

General location:	On the west side of 46 th Street West, south of Rimrock Road
Legal Description:	Tract 1, Certificate of Survey Number 3273 located in the W1/2, Section 32, T1N, R25E
Subdivider/owner:	Boyer Land, LLC (Jim Boyer)
Engineer and Surveyor:	Allied Engineering Services, Inc.
Existing Zoning:	R-96
Existing land use:	Irrigated Ag. Land
Proposed land use:	Single-Family Residences
Gross area:	36.36 acres
Net area:	23.56 acres
Proposed number of lots:	67
Lot size:	Max: 33,003 square feet Min.: 11,389 square feet

Parkland requirements: 2.59 acres required; 6.8 acres provided (excess proposed to be used to meet requirements for the future adjacent subdivision to the north).

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To minimize effects on local services, the following amendments shall be made to the Subdivision Improvements Agreement (SIA) prior to final plat approval:
 - a. Section III.A.3. shall indicate that the 11% cash contribution for Poly Drive completion shall be made prior to final plat approval.
 - b. Section III.B. second paragraph shall indicate when the sidewalk improvements along the west side of 46th St. W. will be installed.
 - c. Section III.F. shall indicate that slopes outside the 20-foot linear park shall be constructed and maintained so that they will in no way cause erosion or deterioration that would affect the integrity and function of the linear park and future trail system.
 - d. Section VII. Second paragraph shall be deleted and replaced with the following:

“A detailed park master plan shall be submitted to PRPL for review and approval by City Council prior to final plat approval. Items in the master plan shall include but not be limited to:

 - The final configuration of the detention basin and what percentage the maximum pool will occupy.
 - How nuisance flows will be handled.
 - Pedestrian circulation and park amenities.
 - Illustrate how River Rock Park will be integrated with Rimrock West Park to provide a seamless transition between the two parks.
 - Provide a detailed engineers' cost estimate of improvements with factors adjusting for inflation for five years.

Park improvements detailed in the approved park master plan shall be funded by the creation of a special improvement district (SID). The SID shall be created upon the sale of 60% of the lots in River Rock Subdivision and shall include all lots within River Rock Subdivision.

The construction of any detention ponds and associated design requirements, including necessary ground cover/grass shall be completed by the subdivider at the time of initial construction.”

- e. All references within the SIA to “Silvercreek Subdivision” shall be replaced with the appropriate legal description for the amended Tract 1, C/S 3295.
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 final plat.
3. To minimize effects on local services, the 20-foot wide linear park trail corridor shall be shown on the final plat all along the Hi-Line Ditch connecting to the 46th St. West right-of-way.
4. In order to conform to the Montana Subdivision and Platting Act and local regulations, the lot line relocation survey between the subject property and the parcel to the north shall be recorded prior to final plat approval.
5. To minimize effects on local services and public health and safety, the subdivider shall make a cash contribution for the proportionate share of the construction of Poly Drive between Aspen Way and Westfield Drive prior to final plat approval. The proportionate share amounts to 11% of the total cost and the cash contribution shall be determined from an updated cost estimate for Poly Drive submitted by the subdivider and approved by City Engineering. The cost estimate shall include Engineering design, construction administration and the construction costs associated with the construction of Poly Drive.
6. To minimize effects on local services, a detailed Park Master Plan shall be prepared by the developer and reviewed and approved by the Parks, Recreation, and Public Lands Department and City Council prior to final plat approval.
7. To minimize effects on local services and public health and safety, the park area shall be redesigned by moving Lots 1 & 2, Block 6 to the west so they are adjacent to Lot 15, Block 8 and placing the park access adjacent to the east property line. Furthermore, the parking area layout shall conform to the configuration found on “Figure A”, dated 08/24/07. Also, if possible the developer and PRPL shall consider designing the parking area to coordinate with the existing parking area for the Rimrock West Park.
8. To minimize effects on local services, the subdivider 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 USPS prior to final plat approval.
9. In order to conform to the zoning requirements, clear vision triangles, as required by Section 27-618, BMCC, shall be depicted on the face of the final plat.

10. 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.
11. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

None

STAKEHOLDERS

A neighborhood meeting was hosted by the developer on August 21, 2007 at the Arrowhead Elementary School cafeteria. There were approximately 20 neighbors in attendance who asked numerous questions about the proposal. The main topics of discussion were in regard to traffic and what impact the subdivision will have on the existing Rangeview Drive, the lot sizes and proposed housing, construction timing, and storm water management. The meeting lasted nearly 2 hours and most neighbors left with their concerns and questions answered.

A public hearing was advertised and held by the Planning Board on August 28, 2007. No one spoke in opposition to the project, though 2 neighbors asked questions about the project in regard to the storm water management plan. The proposed storm water management plan directs all storm water to the southern portion of the proposed parkland, and detains it and slowly discharges it at historic rates into the Big Ditch. The developer's engineer has been working with the ditch company to acquire the necessary permits.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

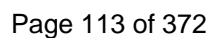
RECOMMENDATION

The Planning Board recommends conditional approval of the preliminary plat of River Rock Estates Subdivision and adoption of the Findings of Fact as presented in the staff report to the City Council.

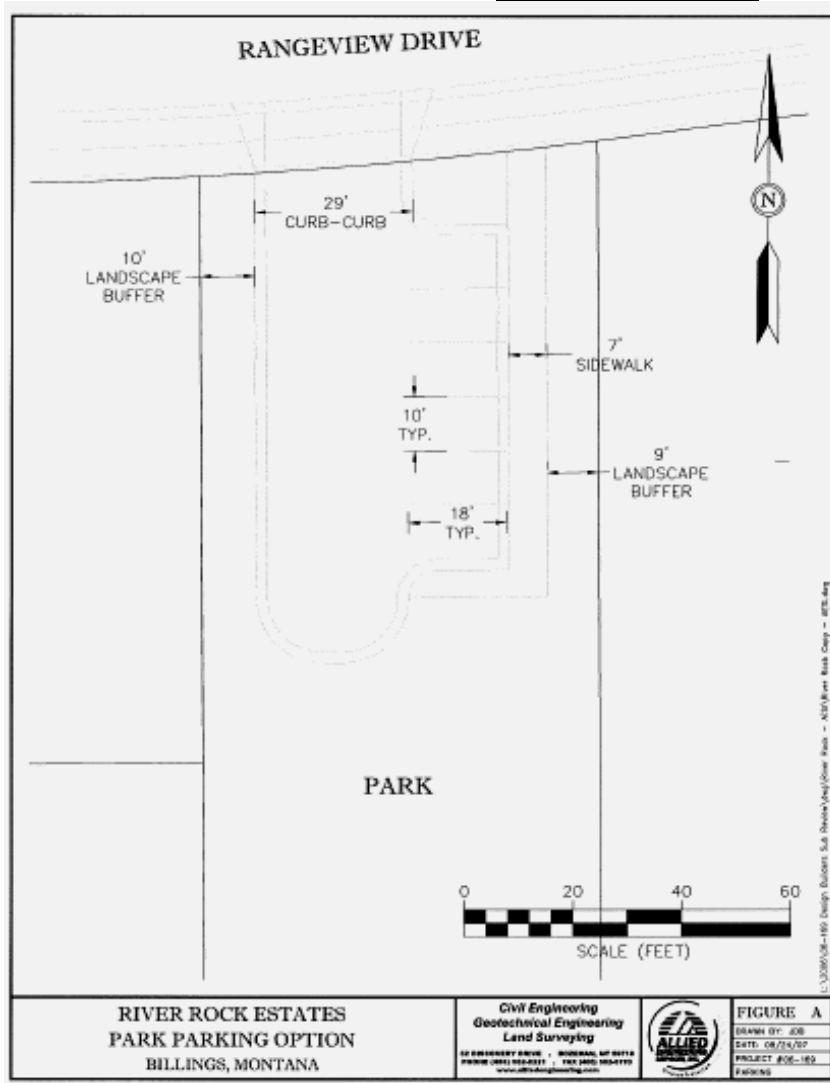
ATTACHMENTS

- A. Preliminary Plat
- B. Site photographs (available for viewing at the City Clerk's Office)
- C. Figure A—Park Parking Option
- D. Findings of Fact
- E. Mayor's approval letter

Preliminary Plat of River Rock Estates Subdivision



ATTACHMENT B



ATTACHMENT D

Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for River Rock Estates Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The subject property has been most recently used for irrigated crop production. The proposed subdivision will take approximately 36 acres out of agricultural production, which could have a cumulative effect as more subdivisions on the west end occur.

The Hi-Line Ditch is located on the northern boundary of the property running from the east to west, and a 15-foot easement has historically been maintained on its south side for maintenance. Within and beyond the existing 15-foot ditch easement there is a proposed 20-foot wide trail corridor park dedication. The ditch company and City staff have agreed that the two uses can coexist.

The Big Ditch is located along the southern border of the property. Similarly, a trail corridor is proposed within and adjacent to its maintenance easement as well. Again the ditch company and City staff have reviewed and approved the proposal for shared space.

2. Effect on local services

- a. **Utilities** – Water to the subject property will be extended through an 8-inch main line within 46th Street West and a 12-inch main in Rangeview Drive. Additional 8-inch water lines will be installed within the interior subdivision streets and the 12-inch main will be extended in Rangeview to the west boundary.

Sanitary sewer will be extended from the 24-inch main within Rangeview Drive. Additional 8-inch sanitary sewer lines will be installed within the interior subdivision streets.

- b. **Stormwater** – Storm drainage for the proposed subdivision will be provided by a combination of surface drainage and curbs and gutters drained to an underground system to discharge to a stormwater detention facility located within the parkland dedication at the southeast corner of the subject property. In an effort to maintain the viability of the parkland as a usable dry lot, the subdivider's engineer proposes a stormwater management system that will slowly discharge the historic pre-development flow into the Big Ditch after storm events. The Big Ditch has reviewed this proposal and has given the initial approval.

All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual*. The final stormwater management plan will be subject to review and approval by the Engineering Division and the Parks Department.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** - Access to the subdivision as proposed will be from 46th Street West to a network of internal streets. There will be two (2) access points to the subdivision from 46th St. West-- via Hollow Brook Drive and the extension of Rangeview Drive. Because 46th Street West and the portion of Rangeview Drive, west of 46th St. W., are considered Collector streets on the Transportation Classification map, 74-foot rights-of-way dedications and 39 feet back to back of curb pavement widths are required. This portion of 46th Street West, south of Rimrock Road, was partially constructed with Rimrock West Estates at 34.5 feet of pavement width. The subdivider will be required to pave the additional 4.5 feet along the frontages of both Silver Creek Estates and River Rock Estates. Rangeview Drive shall be built to 39 feet back to back of curb pavement width.

All remaining internal streets will be constructed to city standards with 34 foot back to back of curb pavement widths within 56-foot right-of-way dedications. Sidewalks for all streets within the subdivision will be 5-foot wide boulevard style sidewalks on both sides of the street built at the time of lot construction. The sidewalk along the west side of 46th St. W. shall be a 5-foot wide meandering sidewalk separated from the street by a boulevard. Timing on sidewalk construction shall be clarified in the final SIA (**Condition #1**).

A Traffic Accessibility Study (TAS) was submitted to the Engineering Department for review and approval with the first submittal in September of 2006. The TAS determined the eventual need for the construction of the Poly Drive extension between Aspen Way and Westfield Drive. Increased connections for safe and efficient traffic flow and provision of emergency services is encouraged in both the City Subdivision Regulations and in the 2003 Growth Policy. Additionally, “cut-through” neighborhood traffic has long been a concern to many neighborhoods that happen to be in the path of where an appropriate Collector status street should be, but does not exist. For these reasons, staff is recommending that the subdivider contribute a proportionate share of 11%, based on the TAS calculations, for the construction of the Poly Drive extension between Aspen Way and Westfield Drive. The cash contribution shall be determined from an updated cost estimate for Poly Drive submitted by the subdivider and approved by City Engineering. The cost estimate shall include Engineering design, construction administration and the construction costs associated with the construction of Poly Drive (**Condition #5**).

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5) but the new station on 54th and Grand is projected to be completed soon. The Fire Department had no concerns with the proposal at this time.

The subdivision is located within the ambulance service area of American Medical Response (AMR); no comments were received.

- f. **Schools** – The subdivision is located within School District #2. The school district representative reported that students from the proposed subdivision will attend Boulder Elementary School, Lewis and Clark Middle School and Senior High School. It should be noted that all of these schools are not the most nearby schools to the subdivision, but due to current enrollments at Arrowhead, Will James and West, the school district is redistributing students of new subdivisions to schools with enrollment capacity. This requires bussing of students.
- g. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 2.59 acres of dedicated parkland. The subdivider is proposing to dedicate 6.8 acres of parkland; 5.59 acres of parkland is proposed in the southeast corner of the subject property. This park will be an extension of the Rimrock West Park to the east, and will be used to credit a portion (approximately 3 acres) of the required parkland dedication for the proposed eventual subdivision to the north. The park is also proposed to function as a stormwater detention facility for this subdivision. Design of the detention facility shall be in compliance with Section 32-1005 Stormwater Detention/Retention Ponds in Parks in order to satisfy parkland dedication. It is recommended as a condition of approval that a Park Master Plan with the detention facility design be reviewed and approved by PRPL prior to final plat approval (**Condition #1 & #6**). Park improvements detailed in the master plan shall be funded by the creation of a Special Improvement District (SID) to be established upon the sale of 60% of the lots within this subdivision (**Condition #1**).

The remaining parkland dedication is provided with two 20-foot wide trail corridor/park dedications located along the Hi-Line Ditch on the northern property boundary and the Big Ditch on the southeast property line. The subdivider will be responsible for preparing the 20-foot wide corridor along the ditch prior to final plat approval (**Condition #1**). The trails within the dedicated corridors are proposed to be built at a later date.

A park maintenance district (PMD) shall be established prior to final plat approval for the parkland and trail corridor.

- 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 #8**. The location of the mail box shall be reviewed and approved by the post office prior to final plat approval.

3. Effect on the natural environment

A geotechnical report was submitted with the original subdivision proposal on 10/10/06. It indicated that there are variable soil conditions throughout the subdivision with a potential for collapsible soils. These conditions can be mitigated if the recommendations in the geotechnical

report are followed during construction. Some of these recommendations include, but are not limited to, fill compaction to 98%, and rain gutters with extended downspouts.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

5. Effect on the public health, safety and welfare

The new fire station with its police precinct located at 54th St. West and Grand Ave. should provide adequate response times for public health and safety concerns.

In regard to soil conditions, if measures outlined in the submitted geotechnical analysis are followed, public health and safety concerns from that aspect should be mitigated. Other potential health and safety concerns could be the existence of the Hi-Line and Big ditches on the north and south boundaries.

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

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- a. **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

The proposed subdivision would provide for more housing choices within this portion of the City.

- b. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).**

If approved with the recommended conditions, the proposed subdivision will provide public streets improved to city standards that connect with existing streets, thus creating more efficient transportation connections and ease of traffic flow.

- c. **Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (p. 9).**

The subdivider has provided trail easements along the Hi-Ditch and the Big Ditch within subdivision. These are critical pieces of the Heritage Trail network.

The subdivision is inconsistent with the following goal of the Growth Policy:

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

While the subject property is adjacent to a City neighborhood, the property is not located within an area surrounded by an existing population center and could be considered sprawl.

2. Urban Area 2005 Transportation Plan Update

If approved with the recommended conditions, the proposed subdivision will adhere to the goals and objectives of the 2005 Transportation Plan Update and preserve the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. The south side of the Hi-Line Ditch is designated within the plan as a trail corridor and a 20-foot wide easement for a future trail will be dedicated with this subdivision. As a condition of approval, the developer shall prepare the surface adjacent to the Hi-Line ditch to ensure that there is a 20-foot wide corridor and that will not erode or deteriorate in the future (**Condition #1**). Also, the trail corridor dedication shall be shown on the final plat connect to the 46th St. West right-of-way to prevent a break in the trail (**Condition #3**). The north side of the Big Ditch is also designated in the plan as a trail corridor and a 20-foot wide easement for a future trail will be provided with this subdivision.

4. West Billings Plan

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

- a. Development in the West End planning area shall provide for a variety of residential types and densities.
- b. Approval of new development in the West Billings Plan area should be conditioned on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.

The proposed subdivision is in conflict with the following goal of the West Billings Plan:

- a. Development of non-irrigated farmland (generally lands located north of the Big Ditch) within the appropriate zoning designation is considered a priority.

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

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

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

The subdivision will utilize city water, sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The subject property is located within the R-96 zoning district and shall comply with the standards set forth in Section 27-308, BMCC. Only single-family residences are permitted. Also, corner lots are required to maintain a clear vision triangle that prevents structures or anything greater than 36" in height from obstructing vision at the intersection. It is recommended as a condition of approval that these triangles are accurately shown on the face of the final plat to avoid future oversight of the restrictions (**Condition #9**).

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 create conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. **Condition #2** requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

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

Legal and physical access to the proposed subdivision will be provided by 46th Street West, the extension of Rangeview Drive, N. Hollow Brook Drive, and Pine Creek Avenue, and 3 other interior streets that are yet to be named.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of River Rock Estates Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, September 24, 2007.

Ron Tussing, Mayor

ATTACHMENT E
Mayor's Approval Letter

September 25, 2007

Boyer Land, LLC
2810 Central Ave., Unit C
Billings, Montana 59102

Dear Mr. Boyer:

On September 24, 2007, the Billings City Council conditionally approved the preliminary plat of River Rock Estates Subdivision. The conditions of approval are as follows:

1. To minimize effects on local services, the following amendments shall be made to the Subdivision Improvements Agreement (SIA) prior to final plat approval:
 - a. Section III.A.3. shall indicate that the 11% cash contribution for Poly Drive completion shall be made prior to final plat approval.
 - b. Section III.B. second paragraph shall indicate when the sidewalk improvements along the west side of 46th St. W. will be installed.
 - c. Section III.F. shall indicate that slopes outside the 20-foot linear park shall be constructed and maintained so that they will in no way cause erosion or deterioration that would affect the integrity and function of the linear park and future trail system.
 - d. Section VII. Second paragraph shall be deleted and replaced with the following:

“A detailed park master plan shall be submitted to PRPL for review and approval by City Council prior to final plat approval. Items in the master plan shall include but not be limited to:

 - The final configuration of the detention basin and what percentage the maximum pool will occupy.
 - How nuisance flows will be handled.
 - Pedestrian circulation and park amenities.
 - Illustrate how River Rock Park will be integrated with Rimrock West Park to provide a seamless transition between the two parks.
 - Provide a detailed engineers' cost estimate of improvements with factors adjusting for inflation for five years.

Park improvements detailed in the approved park master plan shall be funded by the creation of a special improvement district (SID). The SID shall be created upon the sale of 60% of the lots in River Rock Subdivision and shall include all lots within River Rock Subdivision.

The construction of any detention ponds and associated design requirements, including necessary ground cover/grass shall be completed by the subdivider at the time of initial construction.”

- e. All references within the SIA to “Silvercreek Subdivision” shall be replaced with the appropriate legal description for the amended Tract 1, C/S 3295.

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 final plat.
3. To minimize effects on local services, the 20-foot wide linear park trail corridor shall be shown on the final plat all along the Hi-Line Ditch connecting to the 46th St. West right-of-way.
4. In order to conform to the Montana Subdivision and Platting Act and local regulations, the lot line relocation survey between the subject property and the parcel to the north shall be recorded prior to final plat approval.
5. To minimize effects on local services and public health and safety, the subdivider shall make a cash contribution for the proportionate share of the construction of Poly Drive between Aspen Way and Westfield Drive prior to final plat approval. The proportionate share amounts to 11% of the total cost and the cash contribution shall be determined from an updated cost estimate for Poly Drive submitted by the subdivider and approved by City Engineering. The cost estimate shall include Engineering design, construction administration and the construction costs associated with the construction of Poly Drive.
6. To minimize effects on local services, a detailed Park Master Plan shall be prepared by the developer and reviewed and approved by the Parks, Recreation, and Public Lands Department and City Council prior to final plat approval.
7. To minimize effects on local services and public health and safety, the park area shall be redesigned by moving Lots 1 & 2, Block 6 to the west so they are adjacent to Lot 15, Block 8 and placing the park access adjacent to the east property line. Furthermore, the parking area layout shall conform to the configuration found on "Figure A", dated 08/24/07. Also, if possible the developer and PRPL shall consider designing the parking area to coordinate with the existing parking area for the Rimrock West Park.
8. To minimize effects on local services, the subdivider 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 USPS prior to final plat approval.
9. In order to conform to the zoning requirements, clear vision triangles, as required by Section 27-618, BMCC, shall be depicted on the face of the final plat.
10. 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.
11. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding with the Planning Department at 247-8684 or by email at spaldingj@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

Pc: Jason Burke, Allied Engineering, Inc.

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

L

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Final Plat of Amended Lots 1, 2, and 9-14, Block 1 and Lot 1, Block 2, Aspen Gateway Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat of Amended Lots 1, 2, and 9-14, Block 1 and Lot 1, Block 2, Aspen Gateway Subdivision is being presented to Council for approval. On June 26, 2006, the City Council conditionally approved the subdivision that combines nine (9) lots within the original Aspen Gateway Subdivision to create four (4) lots ranging in size from 11,421 square feet to 54,534 square feet (1.25 acres) on approximately 3.72 acres for residential development. The subject property is zoned Residential 7000 and is generally located on the southeast corner of the intersection Bitterroot Drive and Wicks Lane. The property owner is Lloyd Detienne and his representative is Engineering, Inc. The City Legal Department has reviewed the plat and supporting documents and upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Amended Lots 1, 2, and 9-14, Block 1 and Lot 1, Block 2, Aspen Gateway Subdivision.

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

ATTACHMENT

A: Plat

ATTACHMENT A

PRELIMINARY AMENDED PLAT OF LOTS 1, 2, & 9-14, BLOCK 1 AND LOT 1, BLOCK 2 OF

ASPEN GATEWAY SUBDIVISION

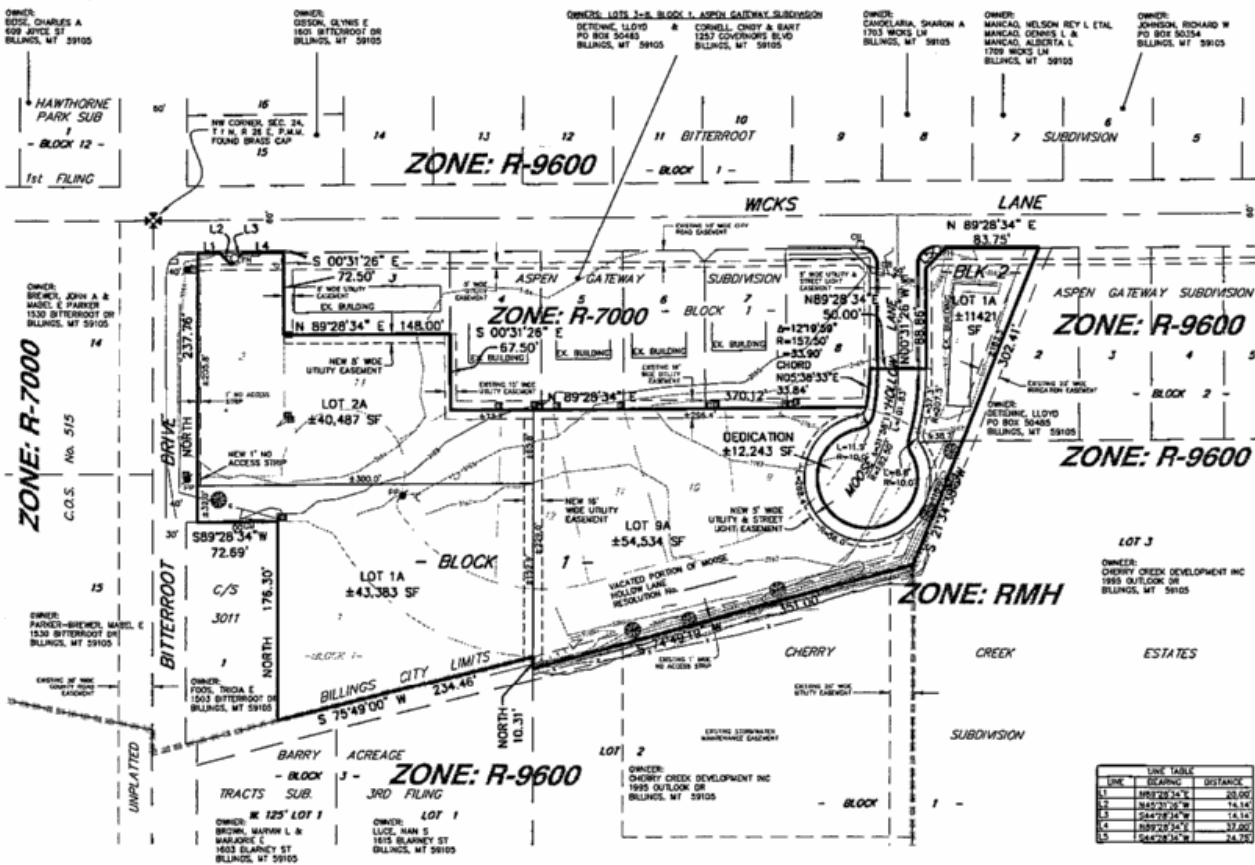
SITUATED IN THE NW1/4 OF SECTION 24, T. 1 N., R. 26 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : LLOYD DETIENNE

PREPARED BY : ENGINEERING, INC.

SCALE : 1" = 60'

APRIL, 2006
BILLINGS, MONTANA



LINE	BEARING	DISTANCE
1	N89°28'34" E	20.00
2	N45°21'26" W	14.14
3	S24°28'34" W	14.14
4	S89°28'34" E	37.00
5	S44°28'34" W	24.75

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

M1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,144,674.09 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 24, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

M2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,199,228.81 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 31, 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:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: W.O. 05-20 – Aronson Avenue Extension, Resolution Authorizing
 Condemnation to Acquire Right-of-Way and Perpetual Easement

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The purpose of this memo is to request Council approval of a resolution authorizing condemnation to obtain right-of-way necessary for construction of the proposed Aronson Avenue Extension. The City of Billings has been negotiating for almost five months to purchase the necessary right-of-way with the property owners along the proposed Aronson Avenue Extension. Each of the property owners has been offered the full appraisal price from the beginning of negotiations. There are two outstanding properties. Staff also obtained a review appraisal for one of the outstanding parcels. The outstanding parcels are Parcel No. 5 and Parcel No. 6. The Billings Bench Water Association owns parcel No. 5 and the Axlines own Parcel No.6. In addition to acquiring the right-of-way, the City must also get an encroachment permit for the bridge over the BBWA Canal and for the replacement of a water main under the BBWA Canal. The encroachment permit gives the City a perpetual easement across the BBWA Canal. At this time, the BBWA does not wish to grant the encroachment permit until they get the paid for the amount they think Parcel #5 is worth. If the right-of-way and perpetual easement cannot be obtained by this fall, the City will have to delay the construction of Aronson Avenue for a year since work in the canal can only take place while the BBWA Canal is off.

ALTERNATIVES ANALYZED:

1. Approve the resolution authorizing condemnation for right-of-way of Parcel No. 5, Parcel No. 6, and perpetual easement across the BBWA Canal owned by the BBWA for the Aronson Avenue project. Under this option, Staff would proceed with the eminent domain process.
2. Do not approve the resolution authorizing condemnation for right-of-way of Parcel 5, Parcel No. 6, and perpetual easement across the BBWA Canal owned by the BBWA for the Aronson Avenue project. Under this option, the City would need to reconsider the nature and scope of the project.

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

The budgeted amount for this entire project (CIP# ENG03), including engineering, right-of-way acquisition, and construction is \$4,500,000 in FY 2008.

RECOMMENDATION

Staff recommends that Council approve the resolution authorizing condemnation for right-of-way of Parcel 5 and perpetual easement across the BBWA Canal owned by the BBWA for the Aronson Avenue project.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A. Resolution Authorizing Condemnation of Properties for the Aronson Avenue project.

INTRODUCTION

Aronson Avenue is classified as a minor arterial street within the Billings Urban Area Functional Classification Map. The City of Billings Transportation Plan shows Aronson Avenue traveling from Hilltop Road to Airport Road. Currently, the street is constructed from Hilltop Road to just north of the BBWA Canal. Work Order 05-20 will construct Aronson Avenue from just north of the BBWA Canal to Airport Road.

The City has been negotiating for the necessary right-of-way for the road construction for almost 5 months. The right-of-way and temporary construction easements were identified on the design plans, and appraisals were obtained for the necessary areas.

The City of Billings has been unable to reach an agreement for Parcel No. 5 with the BBWA for the necessary right-of-way. This is an unimproved agricultural parcel which is not a candidate for development into a residential lot due to its location and the slope of the ground. This parcel is also encumbered by a very low annual rental life-estate lease, with the lessees using the land as unimproved wildlife habitat adjacent to their residential property, all of which depreciates the value of the property. In addition, the BBWA will not authorize the required encroachment permit granting the City a perpetual easement for the BBWA Canal crossing unless and until the City pays them an amount of money equivalent to a per square foot rate for a developed residential lot.

Parcel #6 is owned by the Axlines. City Staff has been in negotiations with the Axlines and are very close to reaching an agreement. Value of the right-of-way does not seem to be an issue. The Axlines are planning to have an attorney review the agreement and then they have indicated they plan to sign the agreement.

PROCEDURAL HISTORY

Completed Items

- July 24, 2006 – 30% Design Study awarded to HKM Engineering, Inc.
- February 12, 2007 – Professional Services Contract Amendment for 100% Design
- February 2007 – Services Agreement for Right-of-Way Appraisals
- April 6, 2007 – Right-of-Way Appraisals complete
- April 2007 – Right-of-Way negotiations begin
- August 2007 – Review Appraisal for Parcel 5 completed

Future Items

- Fall 2007 – Final plans approved by the City
- Fall 2007 – Necessary right-of-way obtained
- Fall 2007 – Advertising for bids and bid opening
- Fall/Winter 2007 – Construction contract award
- Fall/Winter 2007 – Construction begins
- Fall 2008 – Construction complete

BACKGROUND

The overall purpose of the project is to connect Aronson Avenue from near its current terminus to Alkali Creek Road.

During the 30% Design Study, the consultant evaluated several road alignments and alternative means for crossing the BBWA Canal and Alkali Creek. The beginning and endpoints of the project are fixed. The beginning of the project will be near the current terminus of Aronson Avenue and the end point of the project will be installed with the MDT Airport Road Project. The preferred road alignment will require right-of-way acquisition of 6 parcels. Staff expects to complete all other right-of-way acquisition without the need to resort to the eminent domain process.

A summary of the outstanding parcel and the negotiations to date are as follows:

Parcel No. 5 The Billings Bench Water Association

Negotiations have reached an impasse over price. In accordance with the appraisal, the City has offered to pay the BBWA \$1,050.00 for the 10,528 square feet of property that is required for the right-of-way for Aronson Avenue. The right-of-way appraisal places the value of the entire parcel at \$7,550.00 if it is unencumbered and \$3,800.00 if the parcel is encumbered by the life-estate lease. The BBWA wants the City to purchase the entire 41,736 square foot parcel for \$49,248.48.

BBWA Canal Crossing

When the City crosses under the BBWA with a waterline or crosses over the BBWA with a bridge, an encroachment permit is typically issued. In this case, the BBWA does not want to issue the encroachment permit until negotiations for Parcel #5 are completed. An encroachment permit or perpetual easement is required to cross the canal with the waterline and bridge. The City has agreed to pay the fees associated and required by the BBWA. The City will need to proceed with eminent domain to acquire the perpetual easement across the canal unless BBWA decides to consent to issuing an encroachment permit.

Parcel No. 6 Axline

Negotiations are almost complete for this right-of-way. Staff expects to have this right-of-way completed outside of eminent domain; this parcel is included in this memo because Staff wanted to bring all outstanding parcels to Council at once. Due to the project timeframe and the fact that the agreement is not signed, it would be beneficial for this parcel to approved for condemnation at this time while we continue to work out the final details with the Axlines. It may be necessary to proceed with right of entry to keep the project on schedule.

RECOMMENDATION

Staff recommends that Council approve the resolution authorizing condemnation for right-of-way of Parcel No. 5, Parcel No. 6, and perpetual easement across the BBWA Canal owned by the BBWA for the Aronson Avenue project.

ATTACHMENT

- A. Resolution Authorizing Condemnation of Properties for the Aronson Avenue project.

COUNCIL RESOLUTION NO. _____

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

WHEREAS, the City of Billings finds it necessary to acquire certain real property to allow it to utilize such property for purposes of constructing Aronson Avenue improvements in the City of Billings; and

WHEREAS, the real property to be acquired, and the temporary construction easements necessary, to complete these improvements is described in Exhibit "A" and Exhibit "B" attached hereto and by this reference incorporated herein; and

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

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

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

WHEREAS, it is necessary to condemn said real property by exercise of the right of eminent domain to make land available for said completion of Aronson Avenue in Billings; and

WHEREAS, it is necessary to condemn the right of way in said private real property in fee simple and for a temporary construction easement as described in Exhibit "A" and Exhibit "B" for the purpose of construction of Aronson Avenue in the City of Billings; and

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

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

1. **PUBLIC USE:** The City hereby declares that the above-described interests in real property shall be condemned at its fair market value under the City's eminent domain powers to enable the City to acquire said property, and necessary construction easements, for the purposes of constructing Aronson Avenue in the City of Billings;

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

3. **DESCRIPTION OF PROPERTY, EXTENT OF INTEREST:** The right of way in fee simple, a perpetual easement and temporary construction easement described in Exhibit "A" and Exhibit "B" shall be taken for public purpose.

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

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, at a regular session thereof held on the 12th day of June, 2006.

ATTEST:

RON TUSSING, Mayor

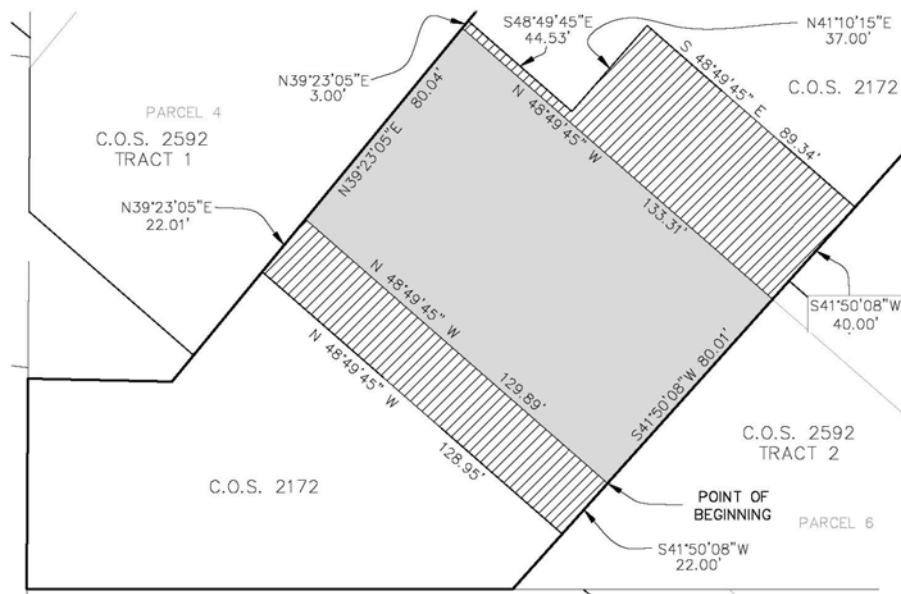
CARI MARTIN
City Clerk

APPROVED AS TO FORM:

BRENT BROOKS
City Attorney

EXHIBIT A

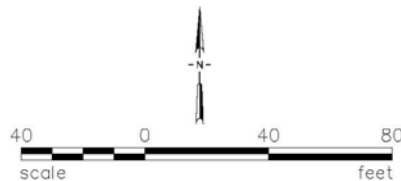
RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT CERTIFICATE OF SURVEY 2172 YELLOWSTONE COUNTY, MONTANA



ARONSON AVENUE RIGHT-OF-WAY ACQUISITION DESCRIPTION PARCEL No. 5 TAX CODE D05588B

Beginning at a point on the Easterly line of Certificate of Survey 2172, said point being N 41°50'08" E a distance of 46.09 feet from the Southeast corner of said Certificate of Survey; Thence N 48°49'45" W a distance of 129.89 to the Northwestern line of said Certificate of Survey; Thence N 39°23'05" E and coincident with said Northwestern line a distance of 80.04 feet; Thence leaving said Northwestern line S 48°49'45" E a distance of 133.31 feet to the Southeast line of said Certificate of Survey; Thence S 41°50'08" W and coincident with said Southeast line a distance of 80.01 feet to the point of beginning containing 10,528 sq. ft., or 0.242 acres.

AREA TO BE ACQUIRED: 10,528 S.F.
AREA OF TEMPORARY CONSTRUCTION
PERMIT: 6,545 S.F.



LEGEND

RIGHT-OF-WAY ACQUISITION
 CONSTRUCTION PERMIT



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

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

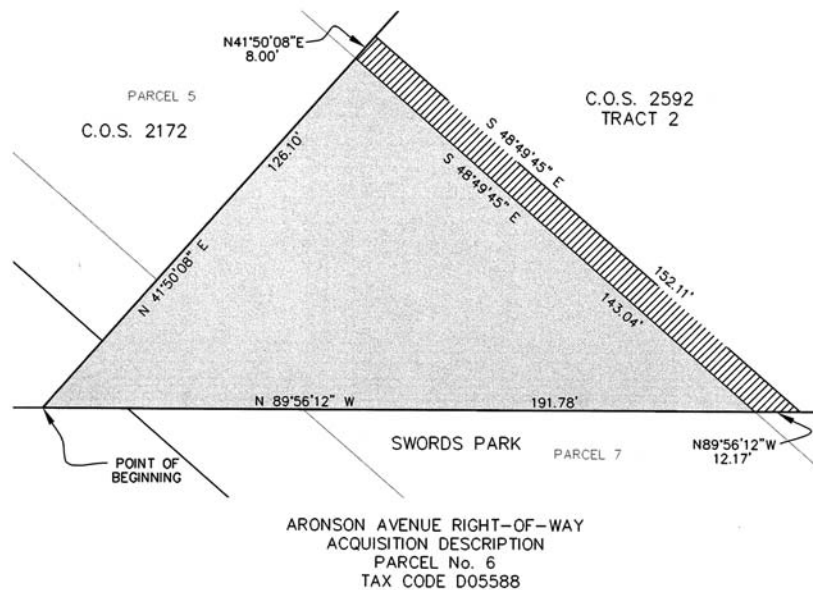
CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 05-20 PARCEL 5

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

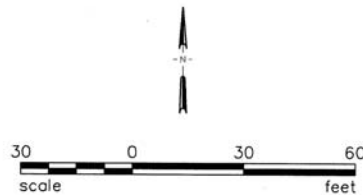
R05_EXHIBIT.DWG 3/5/07

EXHIBIT B **RIGHT-OF-WAY ACQUISITION** **AND TEMPORARY CONSTRUCTION PERMIT** **COS 2592 TRACT 2** **YELLOWSTONE COUNTY, MONTANA**



Beginning at a point on the Westerly line of Certificate of Survey 2592, said point being the Southwest corner of Certificate of Survey 2592, Tract 2; Thence N 41°50'08" E coincident with the Westerly line of said Tract a distance of 126.10 feet; Thence leaving said Westerly line S 48°49'45" E a distance of 143.04 feet to the mid section line and Southerly line of said Tract; Thence N 89°54'57" W coincident with said Southerly line a distance of 191.78 feet to the point of beginning, containing an area of 9,018 sq. ft., or 0.207 acres.

AREA TO BE ACQUIRED: 9,018 S.F.
 AREA OF TEMPORARY CONSTRUCTION PERMIT: 1,181 S.F.



LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 05-20 PARCEL 6

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



ENGINEERING, INC.
 Consulting Engineers and Land Surveyors
 1500 North Townsend Way
 Billings, Montana 59105
 Phone (406) 656-5255
 www.enginc.com

ROW_EXHIBITS.DWG 3/25/07

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Public Hearing and FY 2008 Budget Amendment – Tourism Business Improvement District

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The City Council will conduct a public hearing and consider amending the FY 2008 budget to include the proposed budget for the Tourism Improvement District (TBID) No. 0002. The Council created the TBID on August 27 and will consider its annual work plan and budget at this meeting. These initial assessments will be collected by the County Treasurer, remitted to the City and the City will pay the TBID expenses for the fiscal year or reimburse it for funds already spent. In order to expend these funds in May or June, 2008, the City's budget must be amended.

FINANCIAL IMPACT: If the Council approves the budget amendment, the City's budget will increase by \$120,000. This does not increase spending authority for any City department but because the City created the TBID and the funds flow through the City's books, the budget must provide for the expenditure.

RECOMMENDATION

Staff recommends that Council conduct a public hearing and amend the FY 2008 budget by adding \$120,000 for the TBID No. 0002.

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

ATTACHMENT

A: Resolution amending FY 2008 budget

ATTACHMENT A

Resolution No. 07-_____

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

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

WHEREAS, the City Council desires to provide sufficient funding to operate the recently created Tourism Business Improvement District No. 0002 and to alter and change Fiscal Year 2008 appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT)

APPROVED by the City Council, this 24th day of September, 2007.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT

FY 2008 BUDGET AMENDMENTS
Tourism Business Improvement District No. 0002
9-24-07

ACCOUNT #	REVENUE	EXPENSE
	\$120,000	
		\$120,000

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Tourism Business Improvement District Work Plan and FY 08 Budget
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The City Council created the Billings Tourism Business Improvement District (TBID) No. 0002 and appointed a Board of Trustees on August 27th. State statute requires that the Council annually adopt a work plan and budget for the district. The Board of Trustees has submitted its work plan and FY 08 budget and the Council will consider adopting them. Assessments are scheduled to begin on October 1st and it is important that the work plan and budget be adopted before the assessments begin.

ALTERNATIVES ANALYZED: There are no viable alternatives because state law requires an annual work plan and budget. The Council could amend the work plan and budget but it must approve them in some form.

FINANCIAL IMPACT: The TBID funding is a pass-through. The Council adopts the budget and assessments, the County Treasurer levies the assessments, collects them and remits them to the City and the City passes the funding to the TBID. The TBID uses those funds to implement its work plan. Neither the City nor the County charge an administrative or handling fee for the assessment and collection process, so there will be a small, uncompensated administrative cost to the City.

RECOMMENDATION

Staff recommends that Council approve the TBID No. 002 FY 2008 work plan and budget.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Work Plan
 B: Budget

INTRODUCTION

The City Council created the Billings Tourism Business Improvement District (TBID) No. 0002 and appointed a Board of Trustees on August 27th. State statute requires that the Council annually adopt a work plan and budget for the district. The Board of Trustees has submitted its work plan and FY 08 budget and the Council will consider adopting them.

PROCEDURAL HISTORY

- July 5: Chamber of Commerce and Yellowstone County Lodging Association submit petition to create TBID
- July 23: Council adopts Resolution of Intent to create TBID
- August 27: Council conducts a public hearing and approves resolutions creating the TBID and appointing a Board of Trustees
- September 24: Council adopts annual work plan and budget
- October 1: Hotels/Motels begin collecting assessments
- May, 2008: County Treasurer assesses hotels/motels for Oct. – Dec. 2007 assessment period and remits those funds to the City

BACKGROUND

The state law that enables business improvement districts also requires that the governing body adopt an annual work plan and budget. Since the TBID No. 002 was created in August, two months after the fiscal year began, the TBID's first work plan and budget will be for a partial year. Also, while the hotels/motels will begin collecting assessments on October 1, the County Treasurer's first billing cycle will be in May, 2008 and will apply to the last quarter of calendar year 2007. Approximately \$120,000 will be collected in FY 2008 but the funds will not be fully expended, so there will be a cash carryover to next year's budget. The TBID directors may seek a loan from a bank or other source so that it may start operations during the fiscal year. It would use the assessments collected next May to repay the loan.

The same constraints apply to the work plan. This partial year plan includes the following major work elements: hire two staff members, equip an office and attend trade shows, recruit events, etc. The TBID Board is developing measurable objectives such as occupancy increases that result from specific marketing or recruiting efforts and progress will be reported as part of future work plan and budget requests.

After this first, partial year work plan and budget, the assessments will be made semi-annually and the work plan and budget will be presented by May 1 for each successive fiscal year.

ALTERNATIVES ANALYSIS

There are no viable alternatives because state law requires an annual work plan and budget. The Council could amend the plan and budget amount but it must approve some form of the documents.

STAKEHOLDERS

The Yellowstone County Lodging Association supports the TBID. The Board of Trustees members are hotel owners/managers. As Council heard during the creation public hearing, some motels may object to the assessments because they do not perceive that the TBID will benefit their businesses and those protests may carry over to the work plan and budget.

RECOMMENDATION

Staff recommends that Council approve the TBID No. 0002 FY 2008 work plan and budget.

ATTACHMENTS

- A. Work Plan
- B. Budget

ATTACHMENT A

Tourism Business Improvement District Work Plan

October 1, 2007-June 30, 2008

PURPOSE: The Tourism Business Improvement District (TBID) was formed as a mechanism to fund marketing programs to increase visitation to Billings and fill hotel rooms. The TBID may be used for the marketing of convention and trade shows that benefit local tourism and lodging businesses in Billings; the marketing of Billings to the travel industry in order to benefit local tourism and the lodging businesses located within the Billings Tourism Business Improvement District; and the marketing of Billings to recruit major sporting events in order to promote local tourism and to benefit the lodging businesses within the Billings Tourism Business Improvement District.

TARGET MARKETS: Recruit statewide and national conventions and meetings; market to regional drive audience; recruit statewide and national sporting events; and tap into other markets on a smaller scale (motorcoach and film primarily).

GOALS: During this inaugural year the TBID's primary goals will be to:

- 1) Build a foundation through the hiring and training of sales and marketing staff and the purchasing of equipment and software needed. Increase effectiveness in existing areas while exploring new markets;
- 2) Focus efforts on need periods of shoulder season and weekday travel while targeting in-state meetings, conventions and sporting events. Existing funding (lodging tax) cannot be used for this purpose so this would create a statewide niche for Billings;
- 3) Partner actively with the Montana Society of Association Executives to recruit their member-meetings to Billings;
- 4) Develop a series of sales blitzes to Helena or other regional target cities;
- 5) Leverage TBID dollars with lodging tax dollars to have a greater presence at national trade shows and on national sales missions.

FUNDING: In order to show the immediate value to the TBID investors and to show an immediate return on investment, the TBID board is recommending securing a loan for \$74,500 for this fiscal year. The loan interest will be paid monthly and the entire loan principle will be paid upon receipt of the first TBID check in June, 2008.

BUDGET DETAIL:

Sales and Marketing Staff: Hire one full-time sales professional in October and one full-time marketing support professional in January. Professional sales and CVB training will take place within the first two months of hiring.

FFE (Furniture, Fixtures and Equipment): Computers, phones, software, furniture and other work station needs will be purchased in October/November.

Prospect & Recruitment: Throughout the nine-month fiscal year, funds will be allocated to trade show attendance, travel, Montana Society of Association Executives dues and sales missions, blitzes to Helena, sports recruitment, and other marketing and sales opportunities.

Interest Expense: These are the funds estimated to be used to pay the monthly compound interest of the initial loan.

ATTACHMENT B

FY 2008 TBID Budget
October 1, 2007-June 30, 2008

Revenue: (assessment @ \$.75 per occupied room) \$120,000

Expenses:

Sales/Marketing Staff (includes training)	\$55,000
FFE:	\$9,000
Prospect & Recruitment	\$8,000
Interest Expense	\$2,500
 Total Expenses	 \$74,500

*Anticipated Carryover: \$45,500

*Carryover will be budgeted for and used during the following FY (July 1, 2008-June 30, 2009) in addition to new collections during that period.

Anticipated revenues received:

June, 2008	\$120,000
December, 2008	\$310,000
June, 2009	\$300,000

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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

SUBJECT: Annual Assessments for Fiscal Year 2008
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following annual assessment resolutions have been completed by the Finance Division and are ready to spread on the tax rolls.

Encroachment – Pursuant to BMCC Section 13-301, every person maintaining or owning any structure, encumbrance, obstruction or encroachment, in or upon or extending or projecting on, over, across or above and within seven (7) feet of the grade of any public property, public street, avenue, sidewalk or alley in the city, shall obtain an encroachment permit and shall pay to the city an annual encroachment rental fee.

Weed – Pursuant to City code 25-304, the property owner is notified in writing and given seven (7) days from the date of the notice of noncompliance to exterminate or remove the weeds. Upon failure to comply to the written notification the city may by its own work forces or by contract cause the weeds to be exterminated, removed or cut and the cost therefore shall be assessed against the non complying real property together with an additional administrative cost equal to 25% of the cost of removal and a \$25 penalty. If the charges are not paid within a given time the costs with penalties shall constitute a lien on the non complying real property and will be taxed as a special assessment against the real property.

The attached list of properties had weed removal done with the General Fund bearing the cost.

RECOMMENDATION

Staff recommends that a public hearing be held and that Council passes the resolutions on September 24, 2007.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A-Encroachment Annual Assessment Resolution

B-Weed Cutting & Removal Annual Assessment Resolution

EXHIBITS

A-Encroachment Properties

B-Weed Removal Properties

RESOLUTION 07 _____

A RESOLUTION FIXING THE AMOUNT OF THE ANNUAL SPECIAL ASSESSMENT TAX FOR THE FISCAL YEAR 2008 TO BE PAID BY PERSONS, FIRMS, AND CORPORATIONS, MAINTAINING ENCUMBRANCES, OBSTRUCTIONS, OR ENCROACHMENTS ON, OVER, ACROSS, OR ABOVE THE STREETS, AVENUES, SIDEWALKS, OR ALLEYS OF THE CITY OF BILLINGS AND LEVYING AND ASSESSING SAID SPECIAL ASSESSMENT TAX.

WHEREAS, Chapter 13 of the Billings, Montana City Code provides that every person, firm, or corporation that has or maintains any encumbrances, obstructions, or encroachments on, over, across, or above any street, avenue, sidewalk, or alley shall pay an annual rental, and

WHEREAS, Billings, Montana City Code, Section 13-303 provides that the City Council shall annually, by resolution, make a special assessment for such rental upon certain lots abutting on that part of the street, avenue, sidewalk, or alley upon which encumbrance, obstruction, or encroachment on the owner of such abutting lot or lots.

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

1. ANNUAL ASSESSMENT FOR RENTAL: That for the purposes of collecting said rents for the fiscal year 2008 for said encumbrances, obstructions, and encroachments on, over, across, or above the streets, avenues, alleys, and sidewalks of the City of Billings, there is hereby fixed, levied and assessed a special assessment tax upon the lots or parcels of land provided in the schedule attached, described as EXHIBIT "A" and by this reference made a part hereof.

2. DISPOSITION OF COLLECTIONS. All monies collected from said taxes shall be paid to the General Fund of the City of Billings, Montana.

3. NOTICE OF HEARING. That on Monday the 24th day of September, 2007 at 6:30 p.m. or as soon thereafter as the matter may be considered on the agenda in the council chambers of the city hall, billings, Montana, the council will hear objections to the final adoption of this resolution. The City Clerk published notice hereof twice, on September 6th and September 13th, 2007 in the Billings Times.

4. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the city administrator of the city of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

5. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **24th** day of **September, 2007**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit A

Property Address Owner Name -----	CS)/Block/Lot/Unit Location ID -----			Tax Code Roll Code -----	Present Current -----
EGGEBRECHT FAMILY LIMITED PT	008	000	PARK#2	C08660	1.00
11 ANTELOPE TRL			30866000	RE	
FRIED, WILLIAM JR & SALLY AN	014	001		A09148	220.00
1443 AVE D			10914800	RE	
DYE, CINDY D	007	023	W15' &	A06751	6.50
2720 BEARTOOTH DR			10675100	RE	
COFFMAN, STEPHEN L & VICTOR	002	013		A02920	5.00
2840 BETH DR			10292000	RE	
THOMAS, FRANK E & MARGARET G	000	001		A13885	1.00
512 BEVERLY HILL BLVD			11388500	RE	
WILGUS, MARK A & JOSI D	004	039		A04983A	25.00
430 S BILLINGS BLVD			10498301	RE	
HANSER AUTOMOTIVE CO INC	000	008	S326'	D01389	675.00
928 BROADWATER AVE			40138900	RE	
ZIMMERER, STEPHEN L & BRENDA	002	028		A03302	12.00
1127 CALICO AVE			10330200	RE	
KOHN, JAY A & JUDY K	009	024		A24843	50.00
322 CAMEL PL			12484300	RE	
VALKENBURG, CORNELIUS A & LI	001	061		A23703	58.50
CENTRAL AVE			12370300	RE	
JEWEL FOOD STORES INC	026	001-11 &		A19326	10.00
3040 CENTRAL AVE			11932600	RE	
HUNTERS POINTE APARTMENTS LL	000	002		A31495	30.00
1301 DIVISION ST			14610	RE	
ATWOOD, SCOTT	003	017-20 &		A00028	10.00
2300 ELIZABETH ST			10002800	RE	
SCHAEFER, JOSHUA T & COREY R	003	001		A13999	25.00
141 FLORINE LN			639	RE	
JACOBSON, RICHARD LEE &	000	007	14&15A	A07017	15.00
4148 FRANCES AVE			10701700	RE	
BRYSON, JEFFERY A	000	001		A08646	25.00
828 GOVERNORS PL			10864600	RE	
WICKUM, LANCE D	021	011		A20220	34.00
2500 GRAND AVE 001			12022000	RE	
BOGGS, JUSTIN DALE	002	002	001	A20713	1.00
2700 GRAND AVE A			13300	RE	
GRAND AVE INVESTOR LLC	001	001		A28233	147.00
1323 GRANITE AVE			12823300	RE	
STOUGHTON, ALICE CASADY	000	013		A10613	102.00
2760 GREGORY DR S			11061300	RE	
COZZENS, LAWRENCE B & JEANNI	002	010		A19680	50.00
			11968000	RE	

4103 JANSMA AVE	012	011	A22975	50.00
MOFFETT, DAVE		12297500	RE	
4780 KING AVE E	001	001	A28994	25.00
RYAN, WILLIAM O & BEVERLY R		1874	RE	
2883 KING AVE W	000	000	D00527	1000.00
RYAN, WILLIAM O		11622	RE	
4009 LAREDO PL	004	002	C06176	112.50
ZIMNY, GERARD P & MICHELLE A		30617600	RE	
3218 LEEANN BLVD	003	014A1	A20842	10.00
TEICHERT, LYLE W & VALERIE R		12084200	RE	
595 MAIN ST	000	001	W10' & A09171	50.00
MAIN STREET PARTNERS		10917100	RE	
5435 MIDLAND RD	001	001	C07319	706.00
MANNY 422 LLC		30731900	RE	
1117 MILES AVE	012	009	A03492	10.00
MILLER, JANEL R		10349200	RE	
2622 MINNESOTA AVE	189	017	A01272	88.00
CITY OF BILLINGS		10127200	RE	
2624 MINNESOTA AVE	189	018	A01273	207.00
L & L DEVELOPMENT VENTURE LP		10127300	RE	
2702 MINNESOTA AVE	190	007,8	A01281	27.00
MORLEDGE, KARL		10128100	RE	
2712 MINNESOTA AVE	190	012A	A01285	46.00
MCKAY, TERRY & BARBARA J		10128500	RE	
2804 MINNESOTA AVE	191	007-16	A01294	421.00
LJR, LLC		10129700	RE	
2319 MONTANA AVE	113	005-8	A00833	442.00
COMPUTERS UNLIMITED		10083300	RE	
2401 MONTANA AVE	112	001	A00817	50.00
REX HOTEL PARTNERSHIP		10081700	RE	
2413 MONTANA AVE	112	007	A00822	114.00
SAHALEE LLC		10082200	RE	
2415 MONTANA AVE	112	008	A00823	25.00
COMPUTERS UNLIMITED		10082300	RE	
2501 MONTANA AVE	111	001,2	A00806	1261.00
COMPUTER UNLIMITED		10080600	RE	
2505 MONTANA AVE	111	003	A00807	53.00
RPS, LLC		10080700	RE	
2705 MONTANA AVE	109	001	A00789	66.00
TG & F PROPERTIES INC		10078900	RE	
2713 MONTANA AVE	109	005-7	A00792	16.00
T G & F PROPERTIES INC		10079300	RE	
2817 MONTANA AVE	108	008	A00781	126.00
NELSON, BERT A & ANDREW		10078100	RE	
2911 MONTANA AVE	107	006A	A00765	224.34
MIGNONE, FRANCIS J		10076500	RE	
3217 MONTANA AVE	104	009-12 101	A00735A	25.00
MONTANA AVE LOFTS LLC		12144	RE	
3517 MONTANA AVE	101	008	A00708	5.00

RIMROCK II LLP			10070800	RE	
1159 MOON VALLEY RD	000	034		A11091	50.00
DARBY, RONALD L			11109100	RE	
533 PARK LN	001	001		A11193	5.00
EREKSON, MATTHEW L			11119300	RE	
1918 PARKHILL DR	005	001		A09085	3.00
DEAVER, FRANKLIN KENNEDY JR			10908500	RE	
4015 POLY DR	000	002		D04718	20.00
ELLIS, SHELLEY M			40471800	RE	
QWEST CORPORATION TAX	000	000		E00018A	50.00
QWEST CORPORATION			13594	RE	
127 REGAL ST	000	003		A20357	30.00
JONES, JAMES W & JOHN T TRUS			12035700	RE	
801 RIMROCK RD	R26E	SEC 30 E 75'		D05641	5.00
LE BAR, JAMES H & ELINOR J			40564100	RE	
2953 ROCKRIM LN	000	007C		A17196	25.00
MCISAAC, DOUGLAS N &			11719600	RE	
2901 SHADOW OAKS PL	004	001		A24268	25.00
COLLETT, GORDON C & SIV D			1207	RE	
2902 SILVERWOOD ST	001	022		A21196	10.00
KOCH, BRENT D			12119600	RE	
1490 SOURDOUGH LN	003	021		A20913	5.00
STINE, CAROL J			12091300	RE	
2706 TREASURE DR	004	029		A12971A	25.00
POPP, GREGORY A & SHELLY			11297101	RE	
3815 WAR BONNET TRL	003	011A		C03210	25.00
DAVIES, WILLIAM L & NANCY A			30321000	RE	
230 WYOMING AVE	015	031		A17942	9.00
HUSCHKA, MICHAEL J & LISA J			11794200	RE	
1105 1 AVE N	000	001		D05903	100.00
ROOKHUIZEN, EDWARD J & DIANN			40590300	RE	
1123 1 AVE N	000	000	FRAC	D05900	1440.00
B WHO U R, LLC			40590000	RE	
1617 1 AVE N	081	001-24		A00537	220.00
J & S PROPERTIES INC			10053700	RE	
2442 1 AVE N	112	018		A00827	17.00
FOXLEY, SANDRA M TRUSTEE			10082700	RE	
2511 1 AVE N	090	015-24		A00618	362.00
THUNDERBIRD PROPERTIES INC (90015300	RE	
2708 1 AVE N BSMT	109	019,20 BSMT		A00796A	4.50
SECURITIES BUILDING LLC			20420	RE	
2708 1 AVE N 004A	109	019,20 004A		A00796H	.69
SECURITIES BUILDING LLC			20427	RE	
2708 1 AVE N 004B	109	019,20 004B		A00796I	.67
SECURITIES BUILDING LLC			20428	RE	
2708 1 AVE N 004C	109	019,20 004C		A00796J	.70
SECURITIES BUILDING LLC			20429	RE	
2708 1 AVE N 004D	109	019,20 004D		A00796K	.45
SECURITIES BUILDING LLC			20430	RE	

2708 1 AVE N 004E	109	019,20	004E	A00796L	.63
SECURITIES BUILDING LLC			20431	RE	
2708 1 AVE N 004F	109	019,20	004F	A00796N	.61
SECURITIES BUILDING LLC			20432	RE	
2708 1 AVE N 005A	109	019,20	005A	A00796O	.69
SECURITIES BUILDING LLC			20433	RE	
2708 1 AVE N 005B	109	019,20	005B	A00796P	.67
SECURITIES BUILDING LLC			20434	RE	
2708 1 AVE N 005C	109	019,20	005C	A00796Q	.70
SECURITIES BUILDING			20435	RE	
2708 1 AVE N 005D	109	019,20	005D	A00796R	.45
SECURITIES BUILDING LLC			20436	RE	
2708 1 AVE N 005E	109	019,20	005E	A00796S	.63
SECURITIES BUILDING LLC			20437	RE	
2708 1 AVE N 005F	109	019,20	005F	A00796T	.61
SECURITIES BUILDING LLC			20438	RE	
2708 1 AVE N 101	109	019,20	101	A00796B	3.17
SECURITIES BUILDING LLC			20421	RE	
2708 1 AVE N 102	109	019,20	102	A00796C	1.33
SECURITIES BUILDING LLC			20422	RE	
2708 1 AVE N 200	109	019,20	200	A00796D	2.39
SECURITIES BUILDING LLC			20423	RE	
2708 1 AVE N 201	109	019,20	201	A00796E	1.35
SECURITIES BUILDING LLC			20424	RE	
2708 1 AVE N 300	109	019,20	300	A00796F	2.22
WEBHEN LLC			20425	RE	
2708 1 AVE N 301	109	019,20	301	A00796G	1.54
SECURITIES BUILDING LLC			20426	RE	
2902 1 AVE N	107	019,20		A00774	1720.00
LAFEVER, NEAL C & DIANNE M			10077400	RE	
2925 1 AVE N	094	021		A00656	59.58
FINK, TED G TRUSTEE			10065600	RE	
3220 1 AVE N	104	014		A00737	10.00
RIDER, THEODORE J & MARIAN C			10073700	RE	
3303 1 AVE N	098	001		A00687	3.00
HOLIDAY FURNATURE CO INC			10068700	RE	
3520 1 AVE N	101	013		A00710	5.00
RIMROCK II LLP			10071000	RE	
2921 1 AVE S	001	019		A00010	16.00
SEAL, LAVERN AKA LEVERN			10001000	RE	
1340 15 ST W	000	001		A19570	56.00
SIEMENS FAMILY LP			11957000	RE	
1201 2 AVE N	073	001		A00510	960.00
FRANK FAMILY LIMITED PARTNER			10051000	RE	
2520 2 AVE N	090	013		A00616	24.00
BAD OSPREY INC			10061600	RE	
810 2 ST W	016	001-4	N54'	A17949	12.00
NEYRINCK, ORVILLE L & JEAN M			11794900	RE	
1108 24 ST W	001	001		A10202	2813.00

LUTHERAN CHURCH OF THE GOOD		11020200	RE	
1211 24 ST W	000	006,7 N277.3	A02434A	15.00
BIG SKY FLORAL SUPPLY LLC		10243401	RE	
124 N 24 ST	089	011	A00604	7.00
LEE, DONALD R 37% INT		10060400	RE	
420 N 24 ST	011	007-12	A00068A	10.00
B L M TIRE CO		10006801	RE	
124 S 24 ST	143	001-3 &	A00964	40.00
HATZELL, PAUL H		10096400	RE	
322 N 25 ST	042	011	A00243	120.00
BLGS U S EMPLOYEES FED CR UN		10024300	RE	
219 N 26 ST	090	014	A00617	24.00
BAD OSPREY INC		10061700	RE	
10 S 26 ST	189	007	A01264	42.00
CITY OF BILLINGS		10126400	RE	
24 S 26 ST	189	001-6	A01259	6.00
CITY OF BILLINGS		10125900	RE	
724 S 26 ST	227	001-24 &	A01699	25.00
STATE OF MT DEPARTMENT OF AD		10169900	RE	
27 N 27 ST	110	007-18	A00804	130.00
MAKENNA HOTEL INVESTMENTS LL		4323	RE	
210 N 27 ST	058	001-12	A00368	28.00
CITY OF BILLINGS		1602	RE	
515 N 27 ST	051	018	A07362	47.26
SOUTH CENTRAL MONTANA REGION		10736200	RE	
1315 N 27 ST	021	002 N100'	A16557	15.00
MORSE, RODNEY L		11655700	RE	
13 S 27 ST	189	019-24	A01274	134.00
CITY OF BILLINGS		10127400	RE	
101 S 27 ST	141	001-12 AND	A00949	10.00
YELLOWSTONE HEALTH PARTNERSH		10094900	RE	
8 N 28 ST	108	001,2	A00777	602.00
CITY OF BILLINGS		8570	RE	
11 N 28 ST	108	023	A00788	160.00
FIRST CITIZENS BANK		10078800	RE	
101 N 28 ST	092	023	A00639	48.00
DAVIDSON, LARRY		4330	RE	
111 N 28 ST	092	019	A00637	388.00
ACME LIMITED PARTNERSHIP		10063700	RE	
124 N 28 ST	093	006-12	A00642	162.00
BABCOCK BUILDING CO		10064200	RE	
213 N 28 ST	058	017	A00374	48.00
LO, CHIA WEI		10037400	RE	
218 N 28 ST	057	009	A00363	500.00
CORMIER, PATRICK C-TRSTE		10036300	RE	
313 N 28 ST	056	019,20 W62.72	A00260	273.00
RUFF, BILLIE		10026000	RE	
20 S 28 ST	191	001	A01293	30.00

YELLOWSTONE PAPER COMPANY		10129300	RE	
101 S 28 ST	140	001-24	A00939	126.00
SOUTHERN FOODS GROUP LP		10093900	RE	
14 N 29 ST	107	023	A00776	105.00
BARBAZON APARTMENTS LP		10077600	RE	
15 N 29 ST	108	014A	A00783	108.00
LAFAEVER, NEAL C & DIANNE M		10078300	RE	
223 N 29 ST	057	013	A00365	20.00
TWO VALLEYS REALTY INC		10036500	RE	
415 N 29 ST	053	013-20	A07370	17.00
KARLSEN, VIRGINIA G		10737000	RE	
716 N 29 ST	035	007-9	A07194	20.00
BILLINGS CLINIC		13240	RE	
1245 N 29 ST	002	032	A11354	9.00
STATE OF MT - DEPT OF INSTIT		11135400	RE	
24 S 29 ST	001	001-6	A00001	11.00
SEAL, LEVERN D		10000100	RE	
1190 S 29 ST W	001	005B	C10469A	10.00
WEBER PROPERTIES LLC		31046901	RE	
2812 3 AVE N	057	011,12	A00364	334.00
GRAY, MICHAEL J		10036400	RE	
2825 3 AVE N	045	013-24 &	A00264	125.00
MILLER TROIS LLC		2852	RE	
2922 3 AVE N	056	007	A00352	18.00
BILLINGS MONTANA PARKING COM		4454	RE	
804 N 30 ST	028	001-3	A07152	160.00
DEACONESS MEDICAL CENTER OF		10715200	RE	
1145 N 30 ST	006	022	A11592	15.00
SISTERS OF CHARITY OF LVNWRT		11159200	RE	
1233 N 30 ST	004	025-48 &	A11565	33.34
SISTERS OF CHARITH OF LVNWRT		11156500	RE	
217 N 31 ST	055	013-18	A00349	137.00
ROMAN CATHOLIC BISHOP OF GRT		10034900	RE	
924 S 31 ST	239	001	A01809	50.00
COMMUNITY LEADERSHIP				
DEVELOP		10180900	RE	
1305 4 AVE N	022	001-6	A00096	213.32
W B Y -LLC		10009600	RE	
3000 7 AVE N	044	010	A07297	60.00
MILLER LAND CO		10729700	RE	
2323 7 ST W	006	001	A05812	25.00
ARAGON, KATHLEEN J		10581200	RE	

Attachment B

RESOLUTION NO. 07-_____

A RESOLUTION LEVYING A SPECIAL TAX UPON PROPERTY WITHIN THE CITY OF BILLINGS, MONTANA, TO DEFRAY THE COST OF CUTTING AND/OR EXTERMINATING WEEDS.

WHEREAS, Billings, Montana City Code, Section 25-307, provides that the City Clerk shall prepare and present a resolution containing a list of all parcels of land in the City, from which and adjacent to which, the weeds were cut, exterminated and/or removed, and such list shall contain opposite the number of such lots or description of such parcels of land, the name of the owner, if known, and the amount of cost for cutting and removing such weeds.

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

1. LEVYING OF SPECIAL TAX. That for the purpose of collecting funds to defray the cost of cutting and removing of weeds, there is hereby levied and assessed a special tax upon the owners and the lots or parcels described on the list attached hereto.

2. ASSESSMENT AND COLLECTION. Said tax shall be placed upon the assessment rolls and collected in the same manner as other taxes.

3. DISPOSITION OF COLLECTIONS. All monies collected from taxes shall be paid to the General Fund of the City of Billings.

4. NOTICE OF HEARING. On Monday, **September 24, 2007**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the final adoption of

this resolution. The City Clerk published notice hereof twice, on September 6th and September 13th, 2007 in the Billings Times.

5. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

5. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **24th** day of **September, 2007**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit B

ASSESSED TO TAXES SEPTEMBER 2007

SEPT/OCT 2006 ASSESSMENTS:

<u>NAME</u>	<u>ADDRESS</u>	<u>AR #</u>	<u>TAX CODE</u>	<u>AMOUNT</u>
Corp/Presiding Bishop Church	1065 Siesta Ave.	18640	A 27076	417.16
Farioli, Dennis M. & Rosemary L.	3530 Prestwick Rd.	18632	C 11224	703.90
Ferguson, Raeann Marie	661 Tumbleweed Dr.	18636	A 21437	513.65
Gauger, Steven	3423 Prestwick Rd.	18631	C 11266	1,161.66
Gutierrez, Vincent A. & Cecilia	912 S. 28th St.	18634	A 01843	417.16
Hopkins, Melody	113 S. 31st St.	18638	A 01309	423.41
Menholt, Paul	2730 Torrey Pines Dr.	16891	C 13338	347.67
Nyberg, Nancy R.	206 S. 33rd. St.	18635	A 18777	423.41
Paragon Homes Inc.	653 Aubrey Ln.	18641	A 02247	937.36
Poppler, Blaine	419 S. 35th St.	18637	A 14071	423.41
Price, Carol J. (RLE)	605 S. 35th St.	18633	A 01624 A	509.66
Richards, Chad & Tricia	4426 Murphy Ave.	18639	A 12447	347.67
Schneider Enterprises	St. Andrews Dr.	18629	A 22508	347.67
Schneider Enterprises	2264 Greenbriar Rd.	18629	A 22636	<u>509.66</u>
Total Assessments from Oct '06				7,483.45

=====

JUNE-AUG 2007 ASSESSMENTS:

<u>NAME</u>				
Barrow, Brenda	919 S. 29th St.	19465	A 01849	323.75
Bergeson, Robert R.	5995 Ironwood Dr.	19497	A 30530	511.25
Billings Builders	5428 Cobble Stone Ave.	19493	A 31911	391.25
Brabec, Jerry L. & Margaret	4623 Bruce Ave.	19486	A 04050	340.62
Brady, Sean D.	6089 Sandalwood Dr.	19494	A 31683	511.25
Brewhinds Inc.	1720 Brewington Dr.	7861	A 22998	461.25
Briese, David L.	1423 Main St.	19425	A 02549	511.25
Brown, James R.	1404 Barrett Rd.	19439	C 01217	538.75
BTS Inc.	428 Tamarisk Dr.	19355	A 22718	511.25
Buckley, Daniel F. & Eileen	1843 St. Andrews Dr.	19437	A 22344	391.25
Burney, Kelly I.	814 S. 28th St	10883	A 01746	403.75
Carroll, Jim	1923 Country Stone St.	19492	A 31903	391.25
Church of Jesus Christ of LDS	3585 Rachelle Cir.	19495	A 25150	1,248.75
Corp/Presiding Bishop Church	1065 Siesta Ave.	18640	A 27076	511.25
Cox, Monette	1413 18th St. W.	19502	A 09751	357.50
Creative Real Estate Solutions	338 Monroe St.	19443	A 14811 T	323.75
Demello, Hans C.	109 Jackson St.	19483	A 14692	357.50
Doffinger, Kurt D. & Cindy D.	5915 Ironwood Dr.	19496	A 30522	511.25

Ferraro, Nancy	2518 Interlachen Dr.	19427	C 08201	425.00
Ferraro, Nancy	6118 Ironwood Dr.	19427	A 30554	511.25
Gallagher, Frank L.	216 Westlake Cir.	19354	A 22745	511.25
Gancze, Betty Lou	930 N. 23th St.	19503	A 16417	357.50
Gerber, Ronald	2818 8th Ave. S.	18194	A 01751	403.75
Giacomini, Ralph A.	3714 5th Ave. S.	19395	A 14126	646.25
Glock, Kenneth	217 S 30th St	9670	A 01097	391.25
Glock, Kenneth	213 S 30th St	9670	A 01096	391.75
GMS Devco LLC	818 N. 16th St.	19429	A 03140	425.00
Goff, Brenda K.	602 Valle Vista Ave.	19428	A 09132 B	391.25
Gutierrez, Vincent & Cecilia	912 S. 28th St.	18634	A 01843	403.75
Handley, Partick	5983 Ironwood Dr.	19498	A 30529	511.25
Hanser, Donald	1317 Mirror Lake Ln.	19487	A 30834	391.25
Hofstad, David	2019 13 St. W.	19468	A 05868	323.75
Hook, Tina R.	1462 Westchester Sq W.	19438	A 24197	323.75
J. L. Land LLP	329 Monroe St.	15992	A 14812 F	323.75
Jensen, Pat	211 S. 36th St.	19478	A 08733	323.75
Jones, James O. & Kathy L.	339 Jefferson St.	19442	A 24321	323.75
Kangas, John Martin & Tracy L.	120 Lakewood Ln.	11507	A 22522	511.25
Kenney, Patrick E.	713 S. Billings Blvd	19466	D 01585	511.25
Kilwein, Leslie	23 Monroe St.	19482	A 14633	357.50
King Place LLC	830 Wicks Ln.	19386	A 31132	647.50
King Place LLC	810 Wicks Ln.	19386	A 32299	647.50
Kraft, Tamara	513 Broadwater Ave.	19501	A 15354	323.75
Lane, Kelly J.	316 Jefferson St.	19392	A 24308	391.25
LNR Architects Drafting & Design	3546 Prestwick Rd.	18630	C 11222	391.25
LNR Architects Drafting & Design	Prestwick Rd.	18630	C 11282	511.25
Luptak, Dean A.	2321 Lewis Ave.	19436	A 02425	357.50
Lyndes, Jay C.	560 Neptune	12070	A 24489	511.25
Lyndes, Jay C.	990 Neptune	12070	A 24488	511.25
Lyndes, Jay C.	1010 Neptune	12070	A 24487	511.25
Lyndes, Jay C.	1030 Neptune	12070	A 24486	511.25
Lyndes, Jay C.	1050 Neptune	12070	A 24485	511.25
Lyndes, Jay C.	3345 Tahoe Dr.	12070	A 25118	511.25
Lyndes, Jay C.	3358 Crater Lake Dr.	12070	A 25128	511.25
Matt, Yolanda	4123 Buchanan Ave.	12043	A 06924	367.50
McCormick, O. John	914 S. 28th St.	19387	A 01842	511.25
Miller, Jennifer S. & Laverne E.	3237 Aljema Ave.	19499	A 06410	550.62
MLZ LLP	176 S. 32nd St. W.	19500	A 31552	511.25
O E Lee Company	S. 27th St.	19440	A 16015	511.25
Olson, James L. & Judy F.	3441 Prestwick Rd.	19479	C 11263	511.25
Orelup, Wade & Debora K.	3350 Crater Lake Ave.	19391	A 25129	511.25

Peterson, Robert S.	508 S. 26th St.	19485	A 01236	323.75
Pulver, Robert	3340 Tahoe Dr.	11521	A 25078	511.25
Richards, Chad & Tricia	4426 Murphy Ave.	18639	A 12447	391.25
Romee, Carolyn Jo	224 S. 35th St.	19467	A 08725	323.75
Rowe, Aldo	3611 5th Ave. S.	19393	A 14095	391.25
Schillinger, Joseph	537 Alderson Ave.	18192	A 15221	323.75
Schneiter Enterprises	220 Westlake Cir.	18629	A 22746	511.25
Schneiter Enterprises	408 Tamarisk Dr.	18629	A 22721	511.25
Schneiter Enterprises	308 Eastlake Cir.	18629	A 22750	511.25
Schneiter Enterprises	St. Andrews Dr.	18629	A 22508	511.25
Schneiter Enterprises	St. Andrews Dr.	18629	A 22360	511.25
Schneiter Enterprises	2264 Greenbriar Rd.	18629	A 22636	511.25
Schneiter Enterprises	780 Pinehurst	18629	A 22067	511.25
Schneiter Enterprises	Club House Way	18629	A 22188	511.25
Schneiter Enterprises	657 Pinehurst	18629	A 22081	511.25
Schneiter Enterprises	Club House Way	18629	A 22175	511.25
Schneiter Enterprises	1944 Lake Hills	18629	A 22106	578.75
Schneiter Enterprises	546 Clairemont Rd.	18629	A 22044	605.00
Schneiter Enterprises	2326 Riveroaks	18629	A 22542	511.25
Shepard, Angelica M.	516 S 35th St.	15661	A 14076	391.25
Sorenson, Tait R.	2725 Howard Dr.	19431	A 20436	391.25
Stefanic, Cameron James & Tann	1240 Lake Elmo Rd.	19488	A 13257 A	323.75
Stevenson, Carol J.	2001 Lake Hills Dr.	19388	A 22151	511.25
Stevenson, Carol J.	1943 Lake Hills Dr.	19388	A 22149	511.25
Stockton, Dan	Wicks Lane	16740	D 05173 B	605.00
Stompro, Sharron	2232 Poly Dr.	19430	A 13228 A	391.25
Straw, James & Helen	Misc	19480	A 14808	511.25
Veatch, Wendy J.	148 Jefferson St.	11531	A 14701	391.25
Wardrip, Douglas & Cindy	1011 S. 29th St.	19509	A 01879	511.25
Wedel, Holly R.	Bitterroot Dr.	19441	C 00227 A	511.25
Wilson, Gary W.	408 Kuhlman Dr.	19489	A 09956	323.75
Wilson, Gary W. & Brian S.	3 Jefferson St.	19481	A 14651	<u>492.50</u>

				-
Total Assessments JUN-AUG '07				42617.99
				=====
GRAND TOTAL ASSESSED SEPT 2007				50,101.44

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 24, 2007

TITLE: Public Hearing and Resolution Relating to Petitions for Reduction of Arterial Construction Fee Assessments

DEPARTMENT: Public Works Department

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

PROBLEM / ISSUE STATEMENT: The City Council adopted Ordinance 05-5322 on April 11, 2005, in part to provide relief to commercially-zoned properties being used solely as owner-occupied single family residences. The ordinance states *“The City Council may provide an exemption to commercially zoned properties that are currently owner-occupied as a single-family residence. The property owner must annually request the exemption through the Public Works Department by August 31 of each year.”* The relief may be in the form of capping the parcel square footage at 9,600 square feet and calculating the assessment based on the R-9600 zoning rate instead of commercial zoning rates.

Public Works Administration staff developed a form for property owners meeting the criteria specified in Ordinance 05-5322 to annually petition the City Council for a reduction of their Arterial Construction Fee assessments. A copy of the form is available at the Public Works front counter, at the Finance Division front counter, at the City Administrator’s Office front counter, or by calling any of these offices.

As of August 31, 2007, the Public Works Department received nine (9) completed and signed petitions. Six (6) of the parcels meet the criteria specified in Ordinance 05-5322 and three (3) of the parcels do not meet the criteria.

FINANCIAL IMPACT: Reducing the Arterial Construction Fee assessments on the six parcels meeting the criteria of Ordinance 05-5322 means the City will collect \$1,879.91 less than if the City Council denied the petitions. If the City Council approves the denial of the three parcels that do not meet the criteria of Ordinance 05-5322, the City will collect \$724.73 more in Arterial Construction Fees than if the reductions were approved.

RECOMMENDATION

Staff recommends that the City Council approve a Resolution reducing the Arterial Construction Fee assessments for the six commercially-zoned parcels meeting the criteria of the ordinance by capping the parcel square footage at 9,600 square feet and calculating the assessments based on the R-9600 zoning rate instead of commercial zoning rates. We recommend no reduction to the Arterial Construction Fee assessments for the three parcels that do not meet the criteria.

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

ATTACHMENTS:

- A – List of 2007 Petitions for Reduction of Arterial Construction Fee Assessments (1 pg)
(available for viewing in City Clerk's Office)
- B – Copy of Petition for Reduction of Arterial Const. Fee Assessments Form (1 pg)
- C – Resolution (2 pgs)
- D – Pictures of property associated with Tax Code #D05199 (1 pg)
(available for viewing in City Clerk's Office)



Petition for Reduction of Arterial Construction Fee Assessments

The City Council adopted Ordinance 05-5322 on April 11, 2005, in part to provide relief to commercially zoned properties being used as owner-occupied single family residences. The ordinance states *"The City Council may provide an exemption to commercially zoned properties that are currently owner-occupied solely as a single-family residence. The property owner must annually request the exemption through the Public Works Department by August 31 of each year."* The relief will be in the form of capping the parcel square footage at 9,600 square feet and calculating the assessment based on R-9600 zoning rates instead of commercial zoning rates. This ordinance change is not retroactive.

If your property meets the criteria above, and you wish to petition the City Council for a reduction of your Arterial Construction Fee assessments, please complete this form and return it to the Public Works Department, 510 N Broadway-4th Floor, Billings, MT 59101 **by August 31.**

.....

Date _____ Tax Code # _____ Taxable Year _____

Parcel street address _____

Parcel legal description _____

Parcel zoning classification _____

By signing below, I certify that I own the parcel identified above, that it is my primary residence, that I use the parcel solely as a single-family residence, and that all information provided on this form is true and correct. I understand that if the information supplied on this form is found to be false, I agree to pay back to the City of Billings the amount of the reduction to the Arterial Construction Fees on this parcel as a result of the false information PLUS penalty and interest. I further understand that I must apply annually for a reduction to the Arterial Construction Fee assessment by August 31. I agree to notify the Billings Public Works Department immediately should any information provided on this form change.

Property Owner Signature _____ Date _____

Property Owner Name (print legibly) _____

Mailing address _____

City _____ State _____ ZIP _____

Phone Number (optional) _____

COUNCIL RESOLUTION NO. _____

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

WHEREAS, the City of Billings finds it necessary to acquire certain real property to allow it to utilize such property for purposes of constructing Aronson Avenue improvements in the City of Billings; and

WHEREAS, the real property to be acquired, and the temporary construction easements necessary, to complete these improvements is described in Exhibit "A" and Exhibit "B" attached hereto and by this reference incorporated herein; and

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

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

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

WHEREAS, it is necessary to condemn said real property by exercise of the right of eminent domain to make land available for said completion of Aronson Avenue in Billings; and

WHEREAS, it is necessary to condemn the right of way in said private real property in fee simple and for a temporary construction easement as described in Exhibit "A" and Exhibit "B" for the purpose of construction of Aronson Avenue in the City of Billings; and

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

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

1. **PUBLIC USE:** The City hereby declares that the above-described interests in real property shall be condemned at its fair market value under the City's eminent domain powers to enable the City to acquire said property, and necessary construction easements, for the purposes of constructing Aronson Avenue in the City of Billings;

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

3. **DESCRIPTION OF PROPERTY, EXTENT OF INTEREST:** The right of way in fee simple, a perpetual easement and temporary construction easement described in Exhibit "A" and Exhibit "B" shall be taken for public purpose.

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

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, at a regular session thereof held on the 12th day of June, 2006.

RON TUSSING, Mayor

ATTEST:

Cari Martin
City Clerk

APPROVED AS TO FORM:

BRENT BROOKS
City Attorney

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, SEPTEMBER 24, 2007

SUBJECT: Public Hearing regarding the Re-Spread Resolution Special Improvement District 1358

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following assessment resolution SID 1358 has been completed by the Finance Division and is ready to spread on the tax rolls. SID 1358 was originally spread based on estimates and is now being re-spread based on a lower construction cost. This project is for the construction of curb and gutter, sidewalks, sanitary sewer mains, sanitary sewer services, water mains, water services, and necessary street improvements located within the Lakehills Subdivision and Deep Powder Subdivision.

FINANCIAL IMPACT: The costs associated with SID 1358 are assessed per lot. The net effective interest rate is 3.929%. Under the State statute 7-12-4189, the City is required to add ½ of 1% for a total rate of 4.429%. The ½ of 1% will be used as additional security on bond issues, as stated in the final bond resolution. Interest earnings and prior collections are subtracted from the final construction cost and spread to the appropriate properties. Any remaining fund balances are used to call bonds.

RECOMMENDATION

Staff recommends that a public hearing be held and Council passes the proposed resolution on September 24, 2007.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A-Resolution

RESOLUTION NO. _____

A RESOLUTION RELEVYING AND REASSESSING A SPECIAL
ASSESSMENT TAX UPON BENEFITED PROPERTY IN A SPECIAL
IMPROVEMENT DISTRICT OR PROJECT KNOWN AS 1358, IN THE
CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as
1358 and;

WHEREAS, it is necessary to relevy and reassess a special assessment tax
upon benefited property in the district or project area to defray the cost and expenses of
said district/project. The original assessment was calculated on the bond sale cost.
After construction was completed, the City adjusted the assessment by using the project
cost; and

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

SECTION 1: RELEVY AND REASSESSMENT. That for the purpose of
defraying the cost and expense of making improvements in a special improvement
district or project known as 1358 of the City of Billings, Montana, there is hereby re-
levied and reassessed upon each lot or parcel of land described below, owned by
persons respectively indicated, a special assessment tax payable in semi-annual
installments with interest. Each lot and parcel assessed and the owner thereof is
hereinafter described:

Tax Code /Owner Name /Legal Description	Assessment Amount	Interest Rate	Years Assessed
A22014	\$23,242.51	4.429	13
TERUNUMA, TSUTOMU & LORI			
LT 4 BLK 3 LAKE HILLS SUBD 1ST FILING			
A22015	\$15,565.81	4.429	13
TERUNUMA, LORI			
LT 5 BLK 3 LAKE HILLS 1ST FILING			
A22017	\$23,242.51	4.429	13
DEPNER, GREGORY L			
LT 7 BLK 3 LAKE HILLS SUBD 1ST FILING			
A22018	\$23,242.51	4.429	13
BON ANGST DEVELOPMENT LLC			

LT 8 BLK 3 LAKE HILLS SUBD 1ST FILING			
A22022	\$15,565.81	4.429	13
HOLMGREN, PAUL N & GINA A			
LT 1 BLK 5 LAKE HILLS SUBD 3RD FILING			
A22023B	\$2,594.30	4.429	13
PETERS, JAMES R & TWILA			
SKYVIEW CONDO UNIT #2		1/6TH INT IN COMMON ELEMENTS	
A22023C	\$2,594.30	4.429	13
MCCALLA, JOHN P			
UNIT 3 SKYVIEW CONDO		1/6TH INT IN COMMON ELEMENTS	
A22023F	\$2,594.30	4.429	13
MCCALLA, ROGER O			
SKYVIEW CONDO UNIT #6		1/6TH INT IN COMMON ELEMENTS (94)	
A22024	\$15,565.81	4.429	13
BYPASS TRUST OF THE WEGNER FAMILY T			
LT 3 BLK 5 LAKE HILLS SUBD 3RD FILING			
A22025	\$15,565.81	4.429	13
MCCULLOUGH, KENNETH W &			
LT 4 BLK 5 LAKE HILLS SUBD 3RD FILING			
A22027	\$15,565.81	4.429	13
BOYD,P L "JOE" & SHARON E			
LT 6 BLK 5 LAKE HILLS SUBD 3RD FILING			
A22028	\$15,565.81	4.429	13
ROSE, DAVID L & SUNNAM			
LT 7 BLK 5 LAKE HILLS SUBD 3RD FILING			
A22047	\$23,242.51	4.429	13
BON ANGST DEVELOPMENT LLC			
LT 11 BLK 7 LAKE HILLS SUBD 3RD FILING			
A22048	\$23,242.51	4.429	13
SCHNEITER ENTERPRISES			
LT 12 BLK 7 LAKE HILLS SUBD 3RD FILING			
A22049	\$23,242.51	4.429	13
BON ANGST DEVELOPMENT INC			
LT 13 BLK 7 LAKE HILLS SUBD 3RD FILING			

A22050	\$15,565.81	4.429	13
SHIPP, DOUGLAS J & MAUREEN P			
LT 14 BLK 7 LAKE HILLS SUBD 3RD FILING ** NEED NEW ADDRESS 4 SHIPP, DOUGL			
A22051	\$15,565.81	4.429	13
SILLS, NORM & TERRI			
LT 15 BLK 7 LAKE HILLS SUBD 3RD FILING			
A22052	\$15,565.81	4.429	13
BENNETT, WENDELL E JR & KATHRYNE L			
LT 16 BLK 7 LAKE HILLS SUBD 3RD FILING			
A22053	\$15,565.81	4.429	13
BYPASS TRUST OF THE WEGNER FAMILY T			
LT 17 BLK 7 LAKE HILLS SUBD 3RD FILING			
A22054	\$15,565.81	4.429	13
SCHNEITER ENTERPRISES			
LT 18 BLK 7 LAKE HILLS SUBD 3RD FILING			
A22105	\$23,279.91	4.429	13
SAN JUAN, LILIA C			
LT 11 BLK 10 LAKE HILLS SUBD 18TH FILING			
A22106	\$23,279.91	4.429	13
SCHNEITER ENTERPRISES			
LT 12 BLK 10 LAKE HILLS SUBD 18TH FILING			
A22116	\$23,279.91	4.429	13
BOUCHER, ANN &			
LT 10 BLK 11 LAKE HILLS SUBD 16TH FILING			
A22141	\$23,279.91	4.429	13
VENGLER, DANIEL W			
LT 10 BLK 12 LAKE HILLS SUBD 17TH FILING			
A22143	\$23,279.91	4.429	13
VENGLER, DANIEL W			
LT 12 BLK 12 LAKE HILLS SUBD 17TH FILING			
A22144	\$23,279.91	4.429	13
CADABES, ENRIQUE G			
LT 12A BLK 12 LAKE HILLS SUBD 18TH			

A22145	\$23,279.91	4.429	13
SCHNEITER, GEORGE M			
LT 13 BLK 12 LAKE HILLS SUBD 18TH FILING			
A22149	\$23,279.91	4.429	13
STEVENSON, CAROL J			
LT 2 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22150	\$23,279.91	4.429	13
LEWIS, VERNAL F - TRUSTEE			
LT 3 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22151	\$23,279.91	4.429	13
STEVENSON, CAROL J			
LT 4 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22152	\$23,279.91	4.429	13
LOFHOLM, PAUL, REBECCA & ERIC			
LT 5 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22154A	\$5,819.98	4.429	13
JURIST, JUDITH K			
UNIT 2033 THE BALCONIES TOWNHOMES AT LAKE HILLS (07) 1/4% INT COMMON EL			
A22154B	\$5,819.98	4.429	13
CUNNINGHAM, DAVID S			
UNIT 2035 THE BALCONIES TOWNHOMES AT LAKE HILLS (07) 1/4% INT COMMON EL			
A22154C	\$5,819.98	4.429	13
CUNNINGHAM, DAVID S			
UNIT 2037 THE BALCONIES TOWNHOMES AT LAKE HILLS (07) 1/4% INT COMMON EL			
A22154D	\$5,819.98	4.429	13
CUNNINGHAM, DAVID S			
UNIT 2039 THE BALCONIES TOWNHOMES AT LAKE HILLS (07) 1/4% INT COMMON EL			
A22157	\$9,575.66	4.429	13
HOFER, RICHARD G & SUSAN E			
LT 16 BLK 13 LAKE HILLS SUBD 18TH FILING			

A22158	\$9,575.66	4.429	13
RICHARDS, SARA & CHAD			
LT 17 BLK 13 LAKE HILLS SUB 18TH			
A22159	\$9,575.66	4.429	13
BENSON, THEODORE J JR			
LT 18 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22160	\$9,575.66	4.429	13
SOELTER PROPERTIES LLC			
LT 19 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22161	\$9,575.66	4.429	13
SOELTER PROPERTIES LLC			
LT 20 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22162	\$9,575.66	4.429	13
MAYFIELD, JOHN B & JANICE M			
LT 21 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22163	\$11,171.60	4.429	13
WILLIAMS, JOHN E			
LT 22 BLK 13 LAKE HILLS SUBD 18TH FILING			
A22164	\$10,373.63	4.429	13
BETTISE, PATRICIA A TRUSTEE			
LT 1 BLK 14 LAKE HILLS SUBD 18TH FILING			
A22165	\$10,373.63	4.429	13
HUDSON, MELODY L			
LT 2 BLK 14 LAKE HILLS SUBD 18TH FILING			
A22166	\$1,037.36	4.429	13
SCHNEITER ENTERPRISES			
LT 3 BLK 14 LAKE HILLS SUBD 18TH FILING UNIT 1 CLUBHOUSE CONDO			
A22166A	\$1,037.36	4.429	13
SCHEITER ENTERPRISES			
UNIT 2 UNDIV 10% INT COM ELEM		CLUBHOUSE CONDOS	
A22166B	\$1,037.36	4.429	13
SCHNEITER ENTERPRISES			
UNIT 3 UNDIV 10% INT.COM ELEM		CLUBHOUSE CONDOS	
A22166C	\$1,037.36	4.429	13

SCHNEITER ENTERPRISES			
UNIT 4 UNDIV 10% INT COM ELEM		CLUBHOUSE CONDOS	
A22166D	\$1,037.36	4.429	13
SCHNEITER ENTERPRISES			
UNIT 5 UNDIV 10% INT COM ELEM		CLUBHOUSE C ONDOS	
A22166E	\$1,037.36	4.429	13
SCHNEITER ENTERPRISES			
UNIT 6 UNDIV 10% INT COM ELEM		CLUBHOUSE C ONDOS	
A22166F	\$1,037.36	4.429	13
SCHNEITER ENTERPRISES			
UNIT 7 UNDIV 10% INT COM ELEM		CLUBHOUSE C ONDOS	
A22166G	\$1,037.36	4.429	13
SCHNEITER ENTERPRISES			
UNIT 8 UNDIV 10% INT COM ELEM		CLUBHOUSE C ONDOS	
A22166H	\$1,037.36	4.429	13
SCHNEITER ENTERPRISES			
UNIT 9 UNDIV 10% INT COM ELEM		CLUBHOUSE CONDOS	
A22166I	\$1,037.36	4.429	13
SCHNEITER ENTERPRISES			
UNIT 10 UNDIV 10% IN T COM ELE		M CLUBHOUSE CONDOS	
A22167	\$2,593.41	4.429	13
SCHLENKER, MILTON W & NORMA			
LT 4 BLK 14 LAKE HILLS SUBD 18TH FILING UNIT A LAKE HILLS TOWNHOUSES			
A22168	\$2,593.41	4.429	13
JESSEN, RICHARD D & JANICE M			
LT 4 BLK 14 LAKE HILLS SUBD 18TH FILING UNIT B LAKE HILLS TOWNHOUSES			
A22169	\$2,593.41	4.429	13
SAUNDERS, RICHARD L			
LT 4 BLK 14 LAKE HILLS SUBD 18TH FILING UNIT C LAKE HILLS TOWNHOUSES			
A22170	\$2,593.41	4.429	13
HOFFERBER, WAYNE			
UNIT D LAKE HILLS TOWNHOUSES		UNDIV 25% INT IN COMMON ELEM	
A22171	\$2,593.41	4.429	13
SCHNEITER, GEORGE M			

LT 5-6 BLK 14 LAKE HILLS SUBD 18TH PH	UNIT 2003 LAKE HILLS TOWNHOUSED PH		
A22172	\$2,593.41	4.429	13
LESSER, BRIAN L & JUDITH A			
LT 5-6 BLK 14 LAKE HILLS SUBD 18TH PH	UNIT 2005 LAKE HILLS TOWNHOUSES PH		
A22173	\$2,593.41	4.429	13
MONICAL, WALTER E & LOUISE			
LT 5-6 BLK 14 LAKE HILLS SUBD 18TH PH	UNIT 2007 LAKE HILLS TOWNHOUSES PH		
A22174	\$2,593.41	4.429	13
JOYCE, CASEY J & LENNY J			
LT 5-6 BLK 14 LAKE HILLS SUBD 18TH PH	UNIT 2009 LAKE HILLS TOWNHOUSES PH		
A22175	\$10,373.63	4.429	13
SCHNEITER ENTERPRISES			
LT 5-6 AMND LT 6A BLK 14 LAKE HILLS	SUBD 18TH FILING COS 1476		
A22176	\$10,373.63	4.429	13
ABRAMS, ALAN C			
LT 7 BLK 14 LAKE HILLS SUBD 18TH FILING			
A22178	\$10,373.63	4.429	13
DALLNER, ROGER F TRUST			
LT 1 BLK 15 LAKE HILLS SUBD 16TH FILING			
A22185	\$10,255.53	4.429	13
LANGE, FREDERICK & KARLA			
LT 8 BLK 15 LAKE HILLS SUBD 17TH FIL &	LOT 8A BLK 14 18TH FIL	(2003 COM	
A22186	\$9,460.75	4.429	13
BENNETT, WENDELL E JR & KATHRYNE L			
LT 9 BLK 15 LAKE HILLS SUBD 17TH FILING			
A22187	\$10,248.35	4.429	13
CORCORAN, PAUL T			
LT 10 BLK 15 LAKE HILLS SUBD 17TH FILING			
A22188	\$10,373.63	4.429	13
SCHNEITER ENTERPRISES			
LT 11 BLK 15 LAKE HILLS SUBD 17TH FILING			

A22209	\$10,373.63	4.429	13
WOLF, JERRY			
LT 21 BLK 16 LAKE HILLS SUBD 16TH FILING			
A22210	\$23,279.91	4.429	13
ALTIPLANO LLC			
LT 8 BLK 16 LAKE HILLS SUBD 17TH FILING			
A22211	\$23,279.91	4.429	13
ALTIPLANO LLC			
LT 9 BLK 16 LAKE HILLS SUBD 17TH FILING			
A22212	\$23,279.91	4.429	13
ALTIPLANO LLC			
LT 10 BLK 16 LAKE HILLS SUBD 17TH FILING			
A22213	\$23,279.91	4.429	13
BOUCHER, ANN			
LT 11 BLK 16 LAKE HILLS SUBD 17TH FILING			
A22214	\$9,575.66	4.429	13
MCKENZIE, CHERI			
LT 12 BLK 16 LAKE HILLS SUBD 17TH FILING			
A22215	\$9,804.68	4.429	13
HAYS, JOHN T & SANDRA B			
LT 13 BLK 16 LAKE HILLS SUBD 17TH FILING			
A22216	\$10,985.68	4.429	13
SCHNEITER ENTERPRISES			
LT 14 BLK 16 LAKE HILLS SUBD 17TH FILING			
A22217	\$9,414.47	4.429	13
LYLE, TERRY L			
LT 15 BLK 16 LAKE HILLS SUBD 17TH FILING & LT 15A BLK 13 LAKE HILLS SUBD 18			
A22251	\$7,592.89	4.429	13
BRENDEN, KRISTINE J			
LT 5 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22252	\$7,592.89	4.429	13
CLEMMONS, ROGER D & ANTONIA			
LT 6 BLK 20 LAKE HILLS SUBD 4TH FILING			

A22253	\$7,592.89	4.429	13
HAND, CHERYL L			
LT 7 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22254	\$7,592.89	4.429	13
HILARIO, CHAD ROBERT & MELISSA			
LT 8 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22255	\$7,592.89	4.429	13
JAY & JOAN SCHAAF LIVING TRUST			
LT 9 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22256	\$7,592.89	4.429	13
FRY, JONATHON P & TRINA M			
LT 10 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22258	\$15,297.21	4.429	13
BOYD, DENNIS M &			
LT 12 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22259	\$15,297.21	4.429	13
HOWICK, BRUCE & CLAUDETTE AKA			
LT 13 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22260	\$2,044.39	4.429	13
GUESS, LARRY C & KIM L			
LT 14 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22261	\$2,044.39	4.429	13
PEDERSON, BEN P JR & PATRICIA L			
LT 15 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22262	\$15,297.21	4.429	13
NOVOTNY, JAMES A			
LT 16 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22264	\$2,044.39	4.429	13
BALLARD, WILLIAM G & MARY ANN			
LT 18 BLK 20 LAKE HILLS SUBD 4TH FILING			
A22267	\$7,592.89	4.429	13
WHITE, GEORGE R JR			
LT 3 BLK 21 LAKE HILLS SUBD 4TH FILING			

A22269	\$15,565.81	4.429	13
AUSTIN, CINDI L			
LT 5 BLK 21 LAKE HILLS SUBD 4TH FILING			
A22270	\$15,297.21	4.429	13
MASON, TED J & SUSAN OK CHA			
LT 6 BLK 21 LAKE HILLS SUBD 4TH FILING			
A22271	\$15,297.21	4.429	13
BOTT, JO A			
LT 7 BLK 21 LAKE HILLS SUBD 4TH FILING			
A22272	\$15,297.21	4.429	13
CHILTON, WILLIAM H			
LT 8 BLK 21 LAKE HILLS SUBD 4TH FILING			
A22273	\$15,297.21	4.429	13
FURSTENBERG, BETTY JO			
LT 9 BLK 21 LAKE HILLS SUBD 4TH FILING			
A22275	\$15,297.21	4.429	13
MILLER, DALE F & ROBERTA L & PAUL J			
LT 2 BLK 22 LAKE HILLS SUBD 4TH FILING			
A22276	\$15,297.21	4.429	13
BORNER, JAMES D & DURENEE J			
LT 3 BLK 22 LAKE HILLS SUBD 4TH FILING			
A22279	\$9,139.97	4.429	13
MCCLELLAN, RICHARD W			
LT 6 BLK 22 LAKE HILLS SUBD 4TH FILING			
A22280	\$9,139.97	4.429	13
MEADOR, CHARLES E SR			
LT 7 BLK 22 LAKE HILLS SUBD 4TH FILING			
A22281	\$9,207.00	4.429	13
MARIC PROPERTIES LLC			
LT 8 BLK 22 LAKE HILLS SUBD 4TH FILING			
A22309	\$15,297.21	4.429	13
SLOVARP, GORDON & PATRICIA			
LT 14 W120.28 FT LT 13 BLK24 LAKE HILLS SUBD 26TH FILING & TR B2 COS 793 A			

A22309B	\$2,044.39	4.429	13
MARTIN, DWIGHT J & VICKIE J			
LT 15B BLK 24 LAKE HILLS SUB 26TH FILING AMND LT 15 IN SW4			
D11957	\$76,128.83	4.429	13
LAKE HILLS GOLF CLUB			
TR A,B1 & D COS 793		(LESS LAKE HILLS 27TH,29TH,30TH)	

SECTION 2: DISPOSITION OF COLLECTION. All monies collected from the assessment shall be paid into a special improvement district or project Fund. Assessments become delinquent based on the semi-annual due dates of the real property taxes, currently December 1 and June 1 of each year.

SECTION 3: NOTICE AND HEARING. On Monday, 09/24/2007 , at 6:30 p.m., or as soon thereafter as the matter was considered on the agenda of the City Council at a regular meeting held in the Council Chambers of the Police Facility, 220 N. 27th St., Billings, Montana, the City Council held a public hearing to hear comments and/or objections to the adoption of this resolution. The City Clerk published notice of the public hearing twice with at least six (6) days separating each publication in a newspaper of general paid circulation with a periodicals mailing permit. The final publication was made at least 10 days prior to the public hearing per MCA 7-12-4177.

SECTION 4: CERTIFICATION. The City Clerk is hereby directed upon approval of this resolution to certify a copy to the Finance Manager of the City of Billings, Montana, who shall certify a copy of this resolution to the Yellowstone County Clerk and Recorder and a copy to the Yellowstone County Assessment Office.

SECTION 5: EFFECTIVE DATE. This resolution shall be effective immediately upon approval.

PASSED AND APPROVED this _____ day of _____, _____.

CITY OF BILLINGS:

BY: _____
Mayor

ATTEST:

BY: _____
City Clerk

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, SEPTEMBER 24, 2007

SUBJECT: Public Hearing and Approval of the Original Spread Resolution Special Improvement District 1375

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following assessment resolution SID 1375 has been completed by the Finance Division and is ready to spread on the tax rolls. This project is for the construction of curb and gutter, sanitary sewer mains, sanitary sewer services, water mains, water services, and necessary street improvements and widening the lots fronting on Claremont Road. This project and bond sale has previously been approved by council.

FINANCIAL IMPACT: The costs associated with SID 1375 are assessed per lot. The net effective interest rate is 5.05%. Under the State statute 7-12-4189, the City is required to add ½ of 1% for a total rate of 5.55%. The ½ of 1% will be used as additional security on bond issues, as stated in the final bond resolution. Interest earnings and prior collections are subtracted from the final construction cost and spread to the appropriate properties. Any remaining fund balances are used to call bonds.

RECOMMENDATION

Staff recommends that a public hearing be held and Council passes the proposed resolution on September 24, 2007.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A-Lot & Block Description
B-Resolution

Attachment A

SID #1375

Description of Property:

Lake Hills Sub., 3rd Filing	6	2	A22030
Lake Hills Sub., 3rd Filing	7	1	A22037
Lake Hills Sub., 3rd Filing	7	2	A22038
Lake Hills Sub., 3rd Filing	7	3	A22039
Lake Hills Sub., 3rd Filing	7	4	A22040
Lake Hills Sub., 3rd Filing	7	5	A22041
Lake Hills Sub., 3rd Filing	7	6	A22042
Lake Hills Sub., 3rd Filing	7	7	A22043
Lake Hills Sub., 19th Filing	8	2	A22057
Lake Hills Sub., 19th Filing	8	3	A22058
Lake Hills Sub., 19th Filing	8	4	A22059
Lake Hills Sub., 19th Filing	8	5	A22060
Lake Hills Sub., 19th Filing	8	6	A22061
Lake Hills Sub., 19th Filing	8	7	A22062
Lake Hills Sub., 19th Filing	8	8	A22063
Lake Hills Sub., 19th Filing	8	9	A22064
Lake Hills Sub., 19th Filing	8	10	A22065

RESOLUTION NO. _____

A RESOLUTION LEVYING A SPECIAL ASSESSMENT TAX UPON ALL
BENEFITED PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT OR
PROJECT KNOWN AS 1375, IN THE CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as
1375 and;

WHEREAS, it is necessary to levy a special assessment tax upon each benefited
property in the district or project area to defray the cost and expenses of said district or
project; and

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

SECTION 1: LEVY AND ASSESSMENT. That for the purpose of defraying the
cost and expense of making improvements in a special improvement district or project
known as 1375 of the City of Billings, Montana, there is hereby levied and assessed
upon each lot or parcel of land described below, owned by persons respectively
indicated, a special assessment tax payable in semi-annual installments with interest.
Each lot and parcel assessed and the owner thereof is hereinafter described:

Tax Code /Owner Name /Legal Description	Assessment Amount	Interest Rate	Years Assessed
A22037 PERALTA, DAVINA LT 1 BLK 7 LAKE HILLS SUBD 3RD FILING	\$27,500.00	5.550	15
A22038 SCHNEITER ENTERPRISES LT 2 BLK 7 LAKE HILLS SUBD 3RD FILING	\$27,500.00	5.550	15
A22043 BENNETT, KATHRYNE L & WENDELL E JR LT 7 BLK 7 LAKE HILLS SUBD 3RD FILING	\$27,500.00	5.550	15
A22062 D & M PROPERTIES LT 7 BLK 8 LAKE HILLS SUBD 19TH FILING	\$27,500.00	5.550	15

SECTION 2: DISPOSITION OF COLLECTION. All monies collected from the assessment shall be paid into a special improvement district or project Fund. Assessments become delinquent based on the semi-annual due dates of real property taxes, currently December 1 and June 1 of each year.

SECTION 3: NOTICE AND HEARING. On Monday, 09/24/2007, at 6:30 p.m., or as soon thereafter as the matter was considered on the agenda of the City Council at a regular meeting held in the Council Chambers of the Police Facility, 220 N. 27th St., Billings, Montana, the City Council held a public hearing to hear comments and/or objections to the adoption of this resolution. The City Clerk published notice of the public hearing twice with at least six (6) days separating each publication in a newspaper of general paid circulation with a periodicals mailing permit. The final publication was made at least 10 days prior to the public hearing per MCA 7-12-4177.

SECTION 4: CERTIFICATION. The City Clerk is hereby directed upon approval of this resolution to certify a copy to the Finance Manager of the City of Billings, Montana, who shall certify a copy of this resolution to the Yellowstone County Clerk and Recorder and a copy to the Yellowstone County Assessment Office.

SECTION 5: EFFECTIVE DATE. This resolution shall be effective immediately upon approval.

PASSED AND APPROVED this _____ day of _____, _____.

CITY OF BILLINGS:

BY: _____
Mayor

ATTEST:

BY: _____
City Clerk

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, SEPTEMBER 24, 2007

SUBJECT: Public Hearing and Approval of the Original Spread Resolution Special Improvement District 1377

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following assessment resolution SID 1377 has been completed by the Finance Division and is ready to spread on the tax rolls. This project is for the construction of curb and gutter, sanitary sewer mains, sanitary sewer services, water mains, water services, and necessary street improvements and widening the lots fronting on Greenbriar Road. This project and bond sale has previously been approved by council.

FINANCIAL IMPACT: The costs associated with SID 1377 are assessed per lot. The net effective interest rate is 5.05%. Under the State statute 7-12-4189, the City is required to add ½ of 1% for a total rate of 5.55%. The ½ of 1% will be used as additional security on bond issues, as stated in the final bond resolution. Interest earnings and prior collections are subtracted from the final construction cost and spread to the appropriate properties. Any remaining fund balances are used to call bonds.

RECOMMENDATION

Staff recommends that a public hearing be held and Council passes the proposed resolution on September 24, 2007.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A-Lot & Block Description
B-Resolution

SID #1377

Description of Property:

Lake Hills Sub., 18th Filing	12	5	A22135
Lake Hills Sub., 18th Filing	12	6	A22136
Lake Hills Sub., 18th Filing	12	7	A22138
Lake Hills Sub., 18th Filing	12	8	A22139
Lake Hills Sub., 17th Filing	11	5	A22111
Lake Hills Sub., 17th Filing	11	6	A22112
Lake Hills Sub., 17th Filing	11	7	A22113
Lake Hills Sub., 17th Filing	11	8	A22114

RESOLUTION NO. _____

A RESOLUTION LEVYING A SPECIAL ASSESSMENT TAX UPON ALL
BENEFITED PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT OR
PROJECT KNOWN AS 1375, IN THE CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as
1375 and;

WHEREAS, it is necessary to levy a special assessment tax upon each benefited
property in the district or project area to defray the cost and expenses of said district or
project; and

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

SECTION 1: LEVY AND ASSESSMENT. That for the purpose of defraying the
cost and expense of making improvements in a special improvement district or project
known as 1375 of the City of Billings, Montana, there is hereby levied and assessed
upon each lot or parcel of land described below, owned by persons respectively
indicated, a special assessment tax payable in semi-annual installments with interest.
Each lot and parcel assessed and the owner thereof is hereinafter described:

Tax Code /Owner Name /Legal Description	Assessment Amount	Interest Rate	Years Assessed
A22037 PERALTA, DAVINA LT 1 BLK 7 LAKE HILLS SUBD 3RD FILING	\$27,500.00	5.550	15
A22038 SCHNEITER ENTERPRISES LT 2 BLK 7 LAKE HILLS SUBD 3RD FILING	\$27,500.00	5.550	15
A22043 BENNETT, KATHRYNE L & WENDELL E JR LT 7 BLK 7 LAKE HILLS SUBD 3RD FILING	\$27,500.00	5.550	15
A22062 D & M PROPERTIES LT 7 BLK 8 LAKE HILLS SUBD 19TH FILING	\$27,500.00	5.550	15

SECTION 2: DISPOSITION OF COLLECTION. All monies collected from the assessment shall be paid into a special improvement district or project Fund. Assessments become delinquent based on the semi-annual due dates of real property taxes, currently December 1 and June 1 of each year.

SECTION 3: NOTICE AND HEARING. On Monday, 09/24/2007, at 6:30 p.m., or as soon thereafter as the matter was considered on the agenda of the City Council at a regular meeting held in the Council Chambers of the Police Facility, 220 N. 27th St., Billings, Montana, the City Council held a public hearing to hear comments and/or objections to the adoption of this resolution. The City Clerk published notice of the public hearing twice with at least six (6) days separating each publication in a newspaper of general paid circulation with a periodicals mailing permit. The final publication was made at least 10 days prior to the public hearing per MCA 7-12-4177.

SECTION 4: CERTIFICATION. The City Clerk is hereby directed upon approval of this resolution to certify a copy to the Finance Manager of the City of Billings, Montana, who shall certify a copy of this resolution to the Yellowstone County Clerk and Recorder and a copy to the Yellowstone County Assessment Office.

SECTION 5: EFFECTIVE DATE. This resolution shall be effective immediately upon approval.

PASSED AND APPROVED this _____ day of _____, _____.

CITY OF BILLINGS:

BY: _____
Mayor

ATTEST:

BY: _____
City Clerk

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, SEPTEMBER 24, 2007

SUBJECT: Re-spread Resolution for a Property being Split or Combined in Various Special Improvement Districts

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following assessments have been completed by the Finance Division and are ready to spread on the tax rolls. Various parcels with an SID are being split and combined as requested by the property owners.

FINANCIAL IMPACT: The original assessment is re-spread over the new parcel for the same cost and interest rate.

RECOMMENDATION

Staff recommends that a public hearing be held and that Council passes the proposed resolutions on September 24, 2007.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A-Tax Codes Descriptions
 B- Assessment Resolution
 C-Assessment Resolution
 D-Assessment Resolution
 E- Assessment Resolution
 F-Assessment Resolution
 G-Assessment Resolution

Split

Lake Hills Subdivision- SID 1358

Original tax code	A22154
New tax codes	A22154A A22154B A22154C A22154D

Combines

Tierra Yellowstone Industrial Park Subdivision- SID 1360

Original tax code	C11808
Combined with tax codes	A33295 A33296 A33297 C11813

Gabel Subdivision-SID 1360

Original tax code	A29221
Combined with tax codes	A29220 A29222

Suburban Subdivision-SID 9606 & 9698

Original tax codes	A15954 A15955
Combined with tax code	A15956

Billings Original Townsite-SID 1334

Original tax code	A00791
Combined with tax code	A00792

Claimstake Subdivision-SID 1327

Original tax code C11673

Combined with tax code C11672

Circle Fifty Subdivision-SID 1341 & 1353

Original tax code A26437

Combined with tax code A26436

Original tax codes A26438
 A26439
 A26440

Combine with tax code C14724

RESOLUTION 07-_____

A RESOLUTION RE-LEVYING AND RE-ASSESSING A TAX UPON A PORTION OF THE PROPERTY IN SID 1358, IN THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF RE-LEVYING AND RE-ASSESSING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS THEREIN.

WHEREAS, THE CITY CREATED IMPROVEMENTS AND

WHEREAS, IT IS NECESSARY TO RE-LEVY AND RE-ASSESS A TAX TO DEFRAY A PORTION OF THE COST AND EXPENSES OF SAID DISTRICT, NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

1. RE-LEVY AND RE-ASSESSMENT

THAT FOR THE PURPOSE OF DEFRAYING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS IN SID 1358 OF THE CITY OF BILLINGS, MONTANA, THERE IS HEREBY LEVIED AND ASSESSED UPON EACH LOT OR PARCEL OF LAND DESCRIBED BELOW, OWNED BY PERSONS RESPECTIVELY INDICATED A TAX OR SPECIAL ASSESSMENT PAYABLE IN SEMI-ANNUAL INSTALLMENTS WITH INTEREST.

EACH LOT AND PARCEL ASSESSED AND THE OWNER THEREOF IS HEREINAFTER DESCRIBED:

Lot 6 Blk 13 Lakehills Subdivision

2. DISPOSITON OF COLLECTION

ALL MONIES COLLECTED FROM THE TAX SHALL BE PAID INTO SID 1358

3. NOTICE AND HEARING.

THAT ON MONDAY THE 24TH DAY OF SEPTEMBER, 2007 AT 6:30 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE CONSIDERED ON THE AGENDA IN THE COUNCIL CHAMBERS OF THE CITY HALL, BILLINGS, MONTANA, THE COUNCIL WILL HEAR OBJECTIONS TO THE FINAL ADOPTION OF THIS RESOLUTION. THE CITY CLERK PUBLISHED NOTICE HEREOF TWICE, ON SEPTEMBER 6 AND SEPTEMBER 13, 2007, IN THE BILLINGS TIMES.

4. CERTIFICATION.

THE CITY CLERK IS HEREBY DIRECTED UPON FINAL PASSAGE AND APPROVAL OF THIS RESOLUTION TO CERTIFY A COPY THEREOF TO THE CITY ADMINISTRATOR OF THE CITY OF BILLINGS, MONTANA, WHO SHALL CERTIFY A COPY TO THE YELLOWSTONE COUNTY CLERK AND A COPY TO THE YELLOWSTONE COUNTY ASSESSOR.

5. EFFECTIVE DATE.

THIS RESOLUTION SHALL BE EFFECTIVE UPON ADOPTION.

ADOPTED and APPROVED by the City Council on the **24th** day of **September, 2007**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

RESOLUTION 07-_____

A RESOLUTION RE-LEVYING AND RE-ASSESSING A TAX UPON A PORTION OF THE PROPERTY IN SID 1360, IN THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF RE-LEVYING AND RE-ASSESSING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS THEREIN.

WHEREAS, THE CITY CREATED IMPROVEMENTS AND

WHEREAS, IT IS NECESSARY TO RE-LEVY AND RE-ASSESS A TAX TO DEFRAY A PORTION OF THE COST AND EXPENSES OF SAID DISTRICT, NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

1. RE-LEVY AND RE-ASSESSMENT

THAT FOR THE PURPOSE OF DEFRAYING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS IN SID 1360 OF THE CITY OF BILLINGS, MONTANA, THERE IS HEREBY LEVIED AND ASSESSED UPON EACH LOT OR PARCEL OF LAND DESCRIBED BELOW, OWNED BY PERSONS RESPECTIVELY INDICATED A TAX OR SPECIAL ASSESSMENT PAYABLE IN SEMI-ANNUAL INSTALLMENTS WITH INTEREST.

EACH LOT AND PARCEL ASSESSED AND THE OWNER THEREOF IS HEREINAFTER DESCRIBED:

Lot 3 Blk 6	Tierra Yellowstone Industrial Park Subdivision
Lot 4 Blk 6	Tierra Yellowstone Industrial Park Subdivision
Lot 5 Blk 6	Tierra Yellowstone Industrial Park Subdivision
Lot 02A Blk 6	Tierra Yellowstone Industrial Park Subdivision
Lot 03A Blk 2	Tierra Yellowstone Industrial Park Subdivision
Lot 05A Blk 2	Tierra Yellowstone Industrial Park Subdivision

2. DISPOSITION OF COLLECTION

ALL MONIES COLLECTED FROM THE TAX SHALL BE PAID INTO SID 1360

3. NOTICE AND HEARING.

THAT ON MONDAY THE 24TH DAY OF SEPTEMBER, 2007 AT 6:30 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE CONSIDERED ON THE AGENDA IN THE COUNCIL CHAMBERS OF THE CITY HALL, BILLINGS, MONTANA, THE COUNCIL WILL HEAR OBJECTIONS TO THE FINAL ADOPTION OF THIS RESOLUTION. THE CITY CLERK PUBLISHED NOTICE HEREOF TWICE, ON SEPTEMBER 6 AND SEPTEMBER 13, 2007, IN THE BILLINGS TIMES.

4. CERTIFICATION.

THE CITY CLERK IS HEREBY DIRECTED UPON FINAL PASSAGE AND APPROVAL OF THIS RESOLUTION TO CERTIFY A COPY THEREOF TO THE CITY ADMINISTRATOR OF THE CITY OF BILLINGS, MONTANA, WHO SHALL CERTIFY A COPY TO THE YELLOWSTONE COUNTY CLERK AND A COPY TO THE YELLOWSTONE COUNTY ASSESSOR.

5. EFFECTIVE DATE.

THIS RESOLUTION SHALL BE EFFECTIVE UPON ADOPTION.

ADOPTED and APPROVED by the City Council on the **24th** day of **September, 2007**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

RESOLUTION 07-_____

A RESOLUTION RE-LEVYING AND RE-ASSESSING A TAX UPON A PORTION OF THE PROPERTY IN SID 9606 & 9698, IN THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF RE-LEVYING AND RE-ASSESSING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS THEREIN.

WHEREAS, THE CITY CREATED IMPROVEMENTS AND

WHEREAS, IT IS NECESSARY TO RE-LEVY AND RE-ASSESS A TAX TO DEFRAY A PORTION OF THE COST AND EXPENSES OF SAID DISTRICT, NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

1. RE-LEVY AND RE-ASSESSMENT

THAT FOR THE PURPOSE OF DEFRAYING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS IN SID 9606 & 9698 OF THE CITY OF BILLINGS, MONTANA, THERE IS HEREBY LEVIED AND ASSESSED UPON EACH LOT OR PARCEL OF LAND DESCRIBED BELOW, OWNED BY PERSONS RESPECTIVELY INDICATED A TAX OR SPECIAL ASSESSMENT PAYABLE IN SEMI-ANNUAL INSTALLMENTS WITH INTEREST.

EACH LOT AND PARCEL ASSESSED AND THE OWNER THEREOF IS HEREINAFTER DESCRIBED:

Lot 18 Blk 12 Suburban Subdivision

2. DISPOSITION OF COLLECTION

ALL MONIES COLLECTED FROM THE TAX SHALL BE PAID INTO SID 9606 & 9698

3. NOTICE AND HEARING.

THAT ON MONDAY THE 24TH DAY OF SEPTEMBER, 2007 AT 6:30 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE CONSIDERED ON THE AGENDA IN THE COUNCIL CHAMBERS OF THE CITY HALL, BILLINGS, MONTANA, THE COUNCIL WILL HEAR OBJECTIONS TO THE FINAL ADOPTION OF THIS RESOLUTION. THE CITY CLERK PUBLISHED NOTICE HEREOF TWICE, ON SEPTEMBER 6 AND SEPTEMBER 13, 2007, IN THE BILLINGS TIMES.

4. CERTIFICATION.

THE CITY CLERK IS HEREBY DIRECTED UPON FINAL PASSAGE AND APPROVAL OF THIS RESOLUTION TO CERTIFY A COPY THEREOF TO THE CITY ADMINISTRATOR OF THE CITY OF BILLINGS, MONTANA, WHO SHALL CERTIFY A COPY TO THE YELLOWSTONE COUNTY CLERK AND A COPY TO THE YELLOWSTONE COUNTY ASSESSOR.

5. EFFECTIVE DATE.

THIS RESOLUTION SHALL BE EFFECTIVE UPON ADOPTION.

ADOPTED and APPROVED by the City Council on the **24th** day of **September, 2007**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

RESOLUTION 07-_____

A RESOLUTION RE-LEVYING AND RE-ASSESSING A TAX UPON A PORTION OF THE PROPERTY IN SID 1334, IN THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF RE-LEVYING AND RE-ASSESSING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS THEREIN.

WHEREAS, THE CITY CREATED IMPROVEMENTS AND

WHEREAS, IT IS NECESSARY TO RE-LEVY AND RE-ASSESS A TAX TO DEFRAY A PORTION OF THE COST AND EXPENSES OF SAID DISTRICT, NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

1. RE-LEVY AND RE-ASSESSMENT

THAT FOR THE PURPOSE OF DEFRAYING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS IN SID 1334 OF THE CITY OF BILLINGS, MONTANA, THERE IS HEREBY LEVIED AND ASSESSED UPON EACH LOT OR PARCEL OF LAND DESCRIBED BELOW, OWNED BY PERSONS RESPECTIVELY INDICATED A TAX OR SPECIAL ASSESSMENT PAYABLE IN SEMI-ANNUAL INSTALLMENTS WITH INTEREST.

EACH LOT AND PARCEL ASSESSED AND THE OWNER THEREOF IS HEREINAFTER DESCRIBED:

Lot 5 Blk 109 Billings Original Townsite

2. DISPOSITION OF COLLECTION

ALL MONIES COLLECTED FROM THE TAX SHALL BE PAID INTO SID 1334

3. NOTICE AND HEARING.

THAT ON MONDAY THE 24TH DAY OF SEPTEMBER, 2007 AT 6:30 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE CONSIDERED ON THE AGENDA IN THE COUNCIL CHAMBERS OF THE CITY HALL, BILLINGS, MONTANA, THE COUNCIL WILL HEAR OBJECTIONS TO THE FINAL ADOPTION OF THIS RESOLUTION. THE CITY CLERK PUBLISHED NOTICE HEREOF TWICE, ON SEPTEMBER 6 AND SEPTEMBER 13, 2007, IN THE BILLINGS TIMES.

4. CERTIFICATION.

THE CITY CLERK IS HEREBY DIRECTED UPON FINAL PASSAGE AND APPROVAL OF THIS RESOLUTION TO CERTIFY A COPY THEREOF TO THE CITY ADMINISTRATOR OF THE CITY OF BILLINGS, MONTANA, WHO SHALL CERTIFY A COPY TO THE YELLOWSTONE COUNTY CLERK AND A COPY TO THE YELLOWSTONE COUNTY ASSESSOR.

5. EFFECTIVE DATE.

THIS RESOLUTION SHALL BE EFFECTIVE UPON ADOPTION.

ADOPTED and APPROVED by the City Council on the **24th** day of **September, 2007**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

RESOLUTION 07-_____

A RESOLUTION RE-LEVYING AND RE-ASSESSING A TAX UPON A PORTION OF THE PROPERTY IN SID 1327, IN THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF RE-LEVYING AND RE-ASSESSING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS THEREIN.

WHEREAS, THE CITY CREATED IMPROVEMENTS AND

WHEREAS, IT IS NECESSARY TO RE-LEVY AND RE-ASSESS A TAX TO DEFRAID A PORTION OF THE COST AND EXPENSES OF SAID DISTRICT, NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

1. RE-LEVY AND RE-ASSESSMENT

THAT FOR THE PURPOSE OF DEFRAIDING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS IN SID 1327 OF THE CITY OF BILLINGS, MONTANA, THERE IS HEREBY LEVIED AND ASSESSED UPON EACH LOT OR PARCEL OF LAND DESCRIBED BELOW, OWNED BY PERSONS RESPECTIVELY INDICATED A TAX OR SPECIAL ASSESSMENT PAYABLE IN SEMI-ANNUAL INSTALLMENTS WITH INTEREST.

EACH LOT AND PARCEL ASSESSED AND THE OWNER THEREOF IS HEREINAFTER DESCRIBED:

Lot 5 Blk 4 Claimstake Subdivision

2. DISPOSITON OF COLLECTION

ALL MONIES COLLECTED FROM THE TAX SHALL BE PAID INTO SID 1327

3. NOTICE AND HEARING.

THAT ON MONDAY THE 24TH DAY OF SEPTEMBER, 2007 AT 6:30 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE CONSIDERED ON THE AGENDA IN THE COUNCIL CHAMBERS OF THE CITY HALL, BILLINGS, MONTANA, THE COUNCIL WILL HEAR OBJECTIONS TO THE FINAL ADOPTION OF THIS RESOLUTION. THE CITY CLERK PUBLISHED NOTICE HEREOF TWICE, ON SEPTEMBER 6 AND SEPTEMBER 13, 2007, IN THE BILLINGS TIMES.

4. CERTIFICATION.

THE CITY CLERK IS HEREBY DIRECTED UPON FINAL PASSAGE AND APPROVAL OF THIS RESOLUTION TO CERTIFY A COPY THEREOF TO THE CITY ADMINISTRATOR OF THE CITY OF BILLINGS, MONTANA, WHO SHALL CERTIFY A COPY TO THE YELLOWSTONE COUNTY CLERK AND A COPY TO THE YELLOWSTONE COUNTY ASSESSOR.

5. EFFECTIVE DATE.

THIS RESOLUTION SHALL BE EFFECTIVE UPON ADOPTION.

ADOPTED and APPROVED by the City Council on the **24th** day of **September, 2007**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

RESOLUTION 07-_____

A RESOLUTION RE-LEVYING AND RE-ASSESSING A TAX UPON A PORTION OF THE PROPERTY IN SID 1341 & 1353, IN THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF RE-LEVYING AND RE-ASSESSING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS THEREIN.

WHEREAS, THE CITY CREATED IMPROVEMENTS AND

WHEREAS, IT IS NECESSARY TO RE-LEVY AND RE-ASSESS A TAX TO DEFRAY A PORTION OF THE COST AND EXPENSES OF SAID DISTRICT, NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

1. RE-LEVY AND RE-ASSESSMENT

THAT FOR THE PURPOSE OF DEFRAYING A PORTION OF THE COST AND EXPENSE OF MAKING IMPROVEMENTS IN SID 1341 & 1353 OF THE CITY OF BILLINGS, MONTANA, THERE IS HEREBY LEVIED AND ASSESSED UPON EACH LOT OR PARCEL OF LAND DESCRIBED BELOW, OWNED BY PERSONS RESPECTIVELY INDICATED A TAX OR SPECIAL ASSESSMENT PAYABLE IN SEMI-ANNUAL INSTALLMENTS WITH INTEREST.

EACH LOT AND PARCEL ASSESSED AND THE OWNER THEREOF IS HEREINAFTER DESCRIBED:

Lot 7 Blk 2	Circle Fifty Subdivision
Lot 9 Blk 2	Circle Fifty Subdivision
Lot 10 Blk 2	Circle Fifty Subdivision
Lot 11 Blk 2	Circle Fifty Subdivision
Lot 6C Blk 2	Circle Fifty Subdivision

2. DISPOSITON OF COLLECTION

ALL MONIES COLLECTED FROM THE TAX SHALL BE PAID INTO SID 1341 & 1353

3. NOTICE AND HEARING.

THAT ON MONDAY THE 24TH DAY OF SEPTEMBER, 2007 AT 6:30 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE CONSIDERED ON THE AGENDA IN THE COUNCIL CHAMBERS OF THE CITY HALL, BILLINGS, MONTANA, THE COUNCIL WILL HEAR OBJECTIONS TO THE FINAL ADOPTION OF THIS RESOLUTION. THE CITY CLERK PUBLISHED NOTICE HEREOF TWICE, ON SEPTEMBER 6 AND SEPTEMBER 13, 2007, IN THE BILLINGS TIMES.

4. CERTIFICATION.

THE CITY CLERK IS HEREBY DIRECTED UPON FINAL PASSAGE AND APPROVAL OF THIS RESOLUTION TO CERTIFY A COPY THEREOF TO THE CITY ADMINISTRATOR OF THE CITY OF BILLINGS, MONTANA, WHO SHALL CERTIFY A COPY TO THE YELLOWSTONE COUNTY CLERK AND A COPY TO THE YELLOWSTONE COUNTY ASSESSOR.

5. EFFECTIVE DATE.

THIS RESOLUTION SHALL BE EFFECTIVE UPON ADOPTION.

ADOPTED and APPROVED by the City Council on the **24th** day of **September, 2007**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, SEPTEMBER 24, 2007

TITLE: Public Hearing for Special Review #853

DEPARTMENT: Planning & Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: This is a special review request to construct and operate a commercial bakery on a 49,000 square foot parcel of land in the South 27th Street Corridor Zoning District on Lots 1-14, Block 230, Billings Original Town, 802 S. 26th St. The owner is Gilbert Hornung, Trustee of the Aurthur Hornung Trust, the representing agent is Steven Kenney, and the proposed owner is Kyle Nielsen of Grains of Montana Bakery. The Zoning Commission conducted a public hearing on September 4, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a special review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: Approval of the proposed use will allow this vacant property to be developed which will increase the City's tax revenues on the property.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #853 on a 5-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Zoning/Location Map

B: Site Plan

C: Concept Building Elevations

D: Pictures of the Site

INTRODUCTION

This is a special review request to construct and operate a commercial bakery on a 49,000 square foot parcel of land in the South 27th Street Corridor Zoning District on Lots 1-14, Block 230, Billings Original Town, 802 S. 26th St.

PROCEDURAL HISTORY

- On August 6, 2007, the special review application was submitted to the Planning Division.
- On September 4, 2007, the Zoning Commission conducted a public hearing on this request and forwarded a recommendation of conditional approval to the City Council on a 5-0 vote.
- On September 24, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

BACKGROUND

This is a special review request to allow the construction of a wholesale bakery, warehouse and mill for the Grains of Montana Bakery. The subject property is located at 802 S. 26th St. and is within the South 27th Street Corridor Zoning District. The property is currently vacant, and is surrounded by the Billings Chamber of Commerce on the west, the US Post Office on the east, the Montana Women's Prison on the north, and Passages treatment facility on the south. The potential owners intend to construct the bakery facility in order to provide bread products for their franchising operation.

Construction is proposed in three phases (see Attachment B for site plan and phasing); Phase 1 would include a 2,000 square-foot office space, a 7,200 square-foot bakery, a 1,000 square-foot loading dock area, and all landscaping and parking proposed for the site; Phase 2 includes a 3,762 square foot warehouse area; and Phase 3 adds a 5,000 square foot mill. The applicant indicated that they would like to have all three phases complete within 2 years.

The intent of the South 27th Street Corridor Zoning District (Sec. 27-801, BMCC) is to promote attractive, high quality development within this corridor that will provide an appealing image of the City of Billings to the traveling public and community. Furthermore, objectives of the regulations are to promote creativity in design, quality and character of new development, promote a unique, attractive, water-conserving landscaped corridor, promote compatible land use transitions with high sensitivity towards existing and future residential uses, promote and assist in the orderly development of vacant land within the S. 27th St. Corridor, and promote development patterns which are in harmony with the goals of the South Side Neighborhood Plan and the 2003 Growth Policy.

The applicants' agent has stated it is their intention to provide an attractive showcase building for potential franchise owners. The plans provided with the application are consistent with these intentions, however there is some uncertainty as to the final building elevation plans at this time. Staff is recommending a few conditions of approval to clarify final site plan requirements. First,

Sec. 27-805, BMCC requires that for every 20 feet of street frontage, the site must have one canopy tree. The proposed site plan indicates the correct number of trees (28) however, there are 8 columnar junipers indicated on the site plan, which would not qualify as canopy trees. The applicant can either replace the proposed junipers, or add 8 additional canopy trees to the landscaping plan.

The second recommended condition of approval relating to the site plan design is in reference to the west elevation which faces the Chamber of Commerce building and its parking lot across the alley between S. 26th St. and S. 27th St. This proposed wall spans 204 feet with little or no break in the façade. As is required in other entryway zoning districts, staff is recommending that the final building elevations shall be amended to break up any long flat façades of more than 100 feet with a suitable architectural and/or landscape feature of a minimum of 8 feet in length.

Otherwise, staff finds that the proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging uses that are compatible with the character of the adjacent land use patterns and by encouraging new businesses to grow and expand in Billings. A new, attractive, productive business is certainly an improvement over the vacant block that exists now.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all special reviews shall comply with the following three (3) criteria: 1) The application complies with all parts of the Unified Zoning Regulations, 2) The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) The application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

This application conforms to these criteria in the ways addressed in the background section above.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 1-14, Block 230, Billings Original Town located at 802 S. 26th St.
2. Development of the site shall be in substantial conformance with the site plan dated August 24, 2007. Deviations from the approved site plan that change the location of

buildings, parking lot access or parking areas will require additional special review approval.

3. Final building elevations shall be amended to break up any long flat façades of more than 100 feet with a suitable architectural and/or landscape feature of a minimum of 8 feet in length.
4. Landscaping shall be as required by Section 27-805 of the Unified Zoning Regulations. It shall be in substantial conformance with the site plan but shall include a minimum of 28 canopy trees.
5. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
6. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The City Zoning Commission conducted a public hearing on September 4, 2007. Kyle Nielsen, the potential buyer, was present at the hearing to answer any questions from the Zoning Commission. There was also supportive testimony from the Billings Chamber of Commerce representative, Bruce McIntire, and the applicant's architect, Craig Frolicht of Designlab Architects. Everyone was supportive of the proposal and agreed it would be a positive addition to the neighborhood.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- Coordinate economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of special review #853 on a 5-0 vote.

ATTACHMENTS

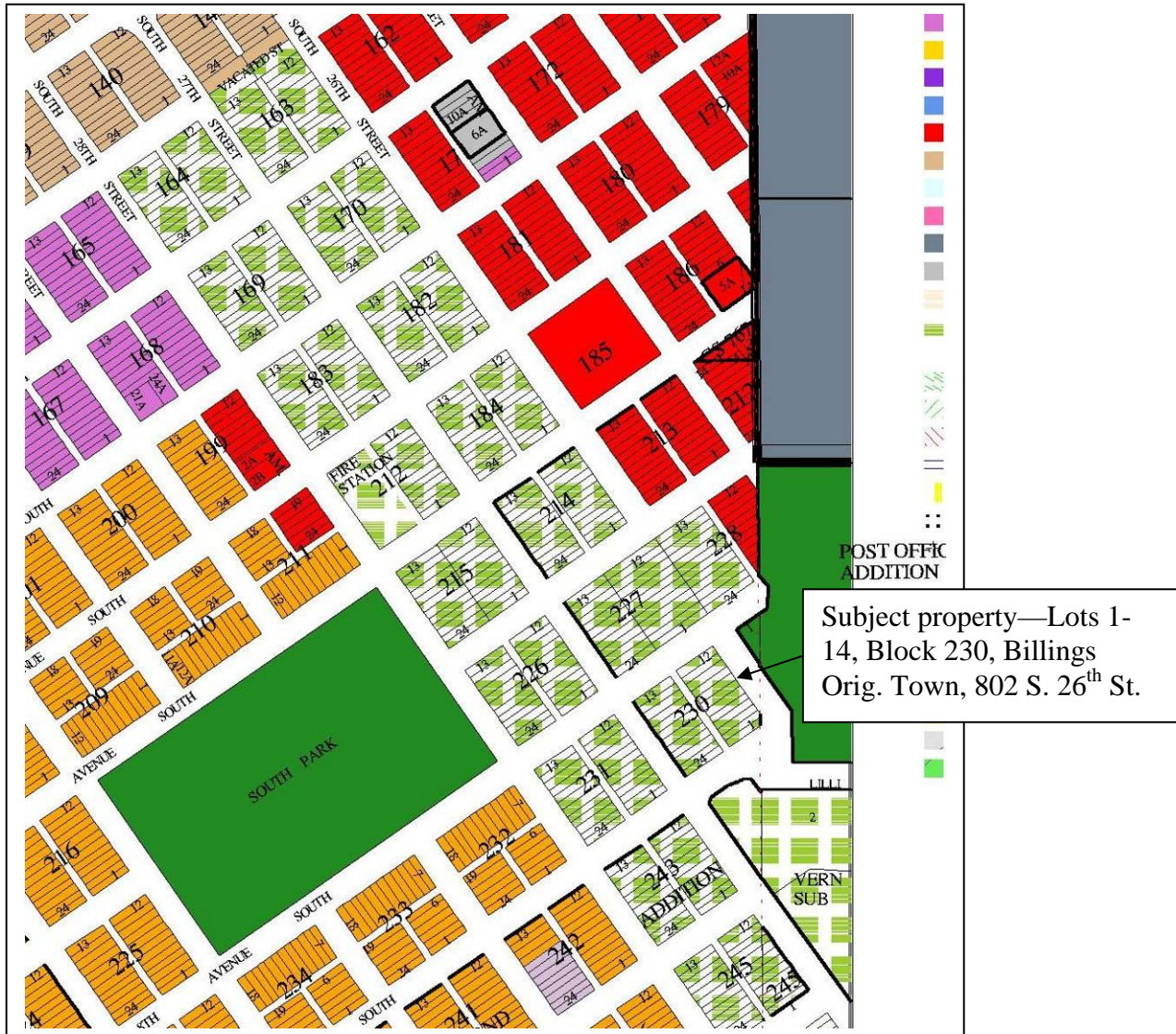
A: Zoning/Location Map

B: Site Plan

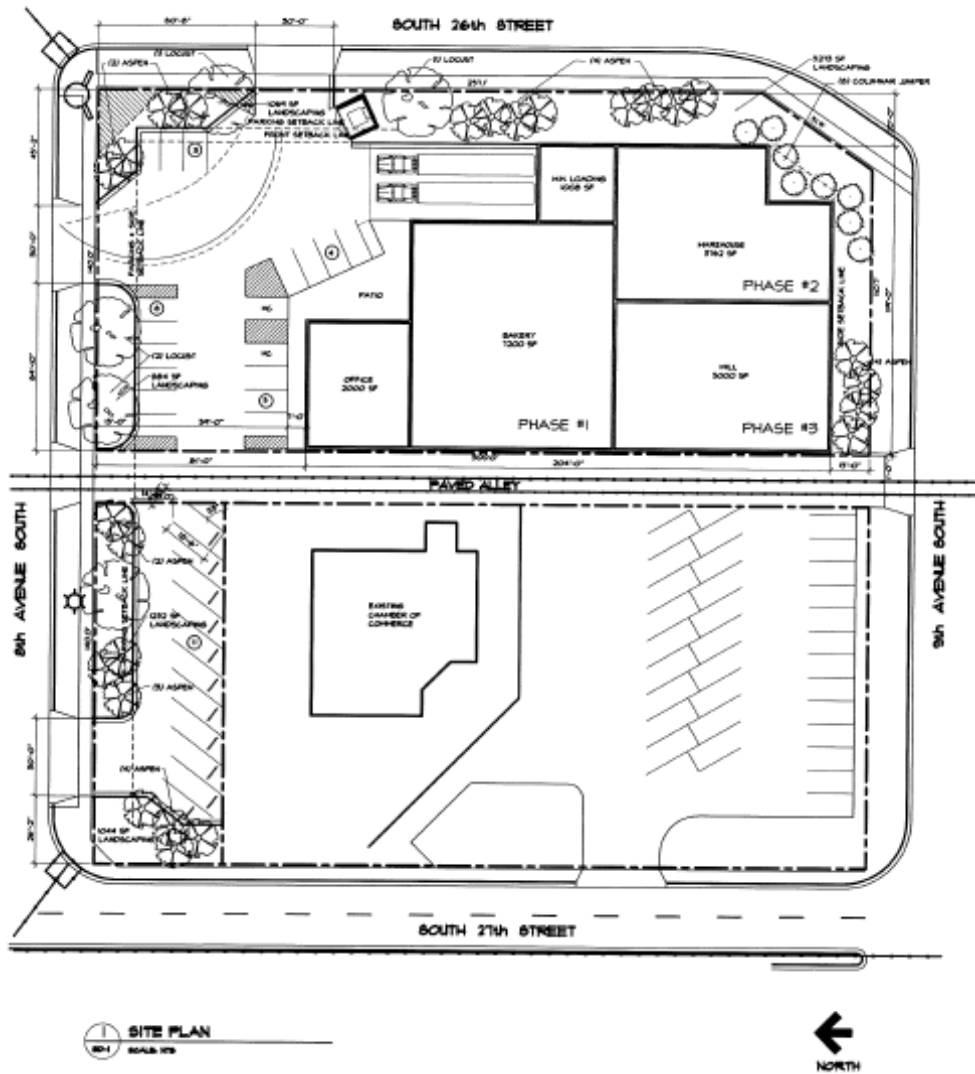
C: Concept Building Elevations

D: Pictures of the Site (available for viewing at the City Clerk's Office)

Attachment A
Zoning Map – Special Review #853



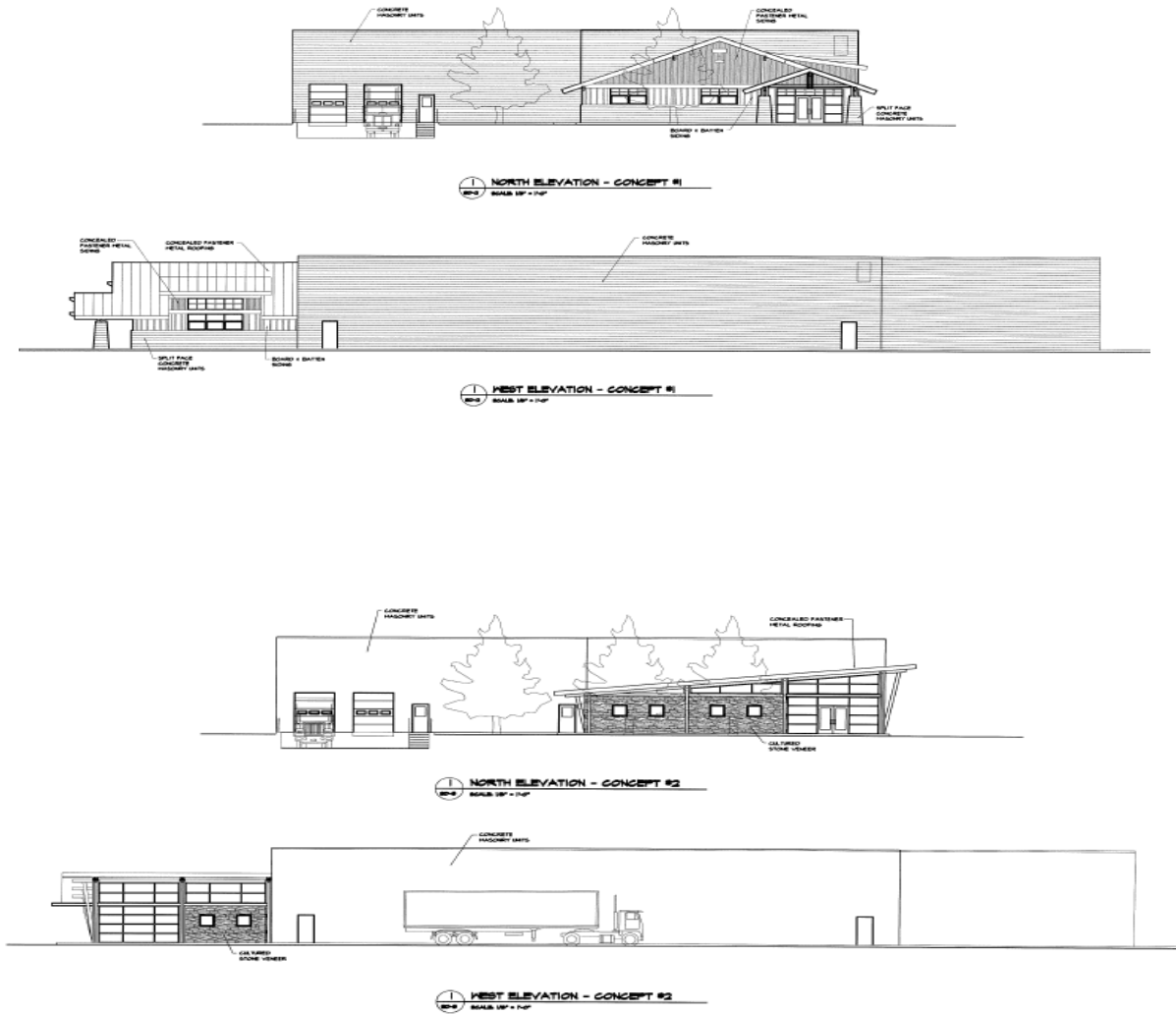
Site Plan – Special Review #853



DESIGN LAB	SITE PLAN	PROJECT #	DATE	BY
		PROJECT #	DATE	BY
		PROJECT #	DATE	BY
		PROJECT #	DATE	BY
<p>GRAINS OF MONTANA BAKERY</p> <p>803 SOUTH 26TH STREET BILLINGS, MT</p>				
<p>COPYRIGHT STATEMENT</p> <p>This drawing is the property of the Designer and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the Designer.</p> <p>THIS DRAWING IS THE PROPERTY OF THE DESIGNER AND IS NOT TO BE REPRODUCED, STORED IN A RETRIEVAL SYSTEM, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC, MECHANICAL, PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE PRIOR WRITTEN PERMISSION OF THE DESIGNER.</p>				

Attachment C

Concept Building Elevations (2 possible options)



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Public Hearing and Resolution for High Sierra 5th through 12th Filings (Dover Ranch) Urban Planning Study – Urban Planning Boundary Amendment

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Frank Sindelar of Dover Ranch submitted an Urban Planning Study (UPS) to the City of Billings for property described as Tract 1, Certificate of Survey 2017; S1/2 SE1/4, Section 8, T1N, R26E; S1/2 SW1/4, Section 9, T1N, R26E. High Sierra Subdivision, 5th through 12th Filings is proposed for the 400.94-acre property. The Yellowstone County Board of Planning reviewed the UPS at its August 28, 2007, meeting and is recommending the City Council accept the Urban Planning Study and approve expansion of the Urban Planning Area (UPA) to include the subject property.

ALTERNATIVES ANALYZED: The City Council may approve or disapprove the study. If the study is approved, the UPA will be expanded to include the property and the Council may consider annexing the land and providing municipal services. The property may not be annexed if the study is disapproved.

FINANCIAL IMPACT: There are no financial impacts from approving the study and expanding the UPA. Financial impacts will be discussed in a public services report that will be prepared for the petitioned annexation.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council accept the Urban Planning Study and adopt the resolution approving the expansion of the UPA boundary to include the Dover Ranch property described as Tract 1, Certificate of Survey 2017; S1/2 SE1/4, Section 8, T1N, R26E; S1/2 SW1/4, Section 9, T1N, R26E.

Approved by: **City Administrator** ____ **City Attorney** ____

ATTACHMENTS

A: Resolution

B: Urban Planning Study (available for viewing in the City Clerk's Office)

INTRODUCTION

Frank Sindelar of Dover Ranch submitted a UPS to the City of Billings for property described as Tract 1, Certificate of Survey 2017; S1/2 SE1/4, Section 8, T1N, R26E; S1/2 SW1/4, Section 9, T1N, R26E. High Sierra Subdivision, 5th through 12th Filings is proposed for the property. The Yellowstone County Board of Planning reviewed the UPS at its August 28, 2007, meeting and recommends that the City Council approve the UPS and include the subject property in the UPA.

PROCEDURAL HISTORY

- Winter 2005 – Property requested inclusion in the immediate area for annexation when the Limits of Annexation Map was reviewed for amendments in winter 2005. The City denied the request at that time and a portion of the property remained in the area expected to annex between “2013-2023” and a portion remained in the “Uncertain” area for future annexation on the Limits of Annexation Map.
- Winter 2006 – Property requested inclusion in the immediate area for annexation when the Limits of Annexation Map was reviewed for amendments in winter 2006. The City approved the request and included in immediate area for annexation when Limits of Annexation Map was amended in February 2007
- June 12, 2007 – Annexation Petition submitted to Planning Division
- August 3, 2007 – The UPS was submitted to Planning Division
- August 28, 2007 – The Planning Board reviewed the UPS and made a recommendation to the City Council to approve the request
- September 24, 2007 – The City Council will review the UPS and act on the resolution to include the subject property within the Urban Planning Area

BACKGROUND

The Urban Planning Area is a mechanism that the City of Billings uses to plan for future growth of the City within a ten (10) year period. Urban Planning Studies are prepared in order for the City to determine the impacts of annexing the property and providing services. City departments review the Urban Planning Studies for conformance with operating policies, the Capital Improvement Plan, the Growth Policy, neighborhood plans and any other applicable plans. The Planning Board is responsible for making a recommendation to the City Council whether to add the subject property to the Urban Planning Area.

This UPS is occurring out of sequence with usual requests to amend the UPA. The UPA, annexation and provision of water/wastewater services are intertwined in the City Code. BMCC 20-301 requires that land must be in the UPA before it can be annexed. BMCC 26-200 requires that property being considered for water and wastewater services must be in the utility service area. In order to be included in the utility service area, the subject land must be annexed or attempt annexation. The typical process is for a UPS to be completed and approved, the UPA to be expanded, annexation to occur, and finally utility extensions made at time of development.

In February, the subject property was brought into the Limits of Annexation area that allows petition for immediate annexation to the City of Billings. This was done through an amendment

to the Limits of Annexation Map that was reviewed and approved by the City Council February 26, 2007. Normally, this property would have submitted its UPS and request to amend the UPA boundary at that time. However, planning staff has been working on some clarifications and updates to the UPA boundary and this area was not evaluated for the UPA at the time the Limits of Annexation Map was amended. Therefore, the Planning Board and City Council are reviewing this UPS and request to amend the UPA boundary along with a petition to annex the property.

The subject property is located north of Lake Hills Golf Course and Matador Avenue in the northern Billings Heights area. The property abuts the existing UPA boundary all along its south and east sides. The UPA boundary must be extended to include the entire 400.94 acres of property that includes Tract 1, Certificate of Survey 2017; S1/2 SE1/4, Section 8, T1N, R26E; S1/2 SW1/4, Section 9, T1N, R26E. There are no residences on the property. It has been in agricultural use for many years. The development proposed for the property would include single-family residential development at urban densities of approximately four or five dwelling units per acre.

ALTERNATIVES ANALYSIS

The UPS discusses existing conditions and the predicted impact on services and facilities if the property is annexed. The following descriptions summarize the UPS findings are supplemented with staff information as applicable.

Staff originally supported reclassifying this property on the Limits of Annexation Map because it is able to be served by water and sewer infrastructure and will provide some needed transportation connections and circulation in the north-central portion of the Heights. Staff comments on the UPS were generally favorable. City staff had concerns that some information within the study was not up to date, did not reflect current conditions and was missing important details regarding provision of services to the property. Since submission of the UPS, staff has added to the information within this report and had further discussions with the developer's agent regarding the preparation of UPS documents.

1. **Topography and soils:** The property is generally flat. Soils are loams and silts that contain varying levels of clay. Bedrock is present between eight inches and 40 inches below the surface in some areas. There are sandstone outcrops in some areas.
2. **Effects on agriculture:** There will be some effect on agriculture because this property has been used for grazing land for many years. The UPS states that land in close proximity to the City has been found to be of a higher value for development than for ongoing agricultural operations.
3. **Historic sites:** The property contains no known historical or cultural sites.
4. **Wildlife:** There are no known threatened or endangered wildlife species on the property and there is no critical habitat. Montana Fish, Wildlife and Parks did indicate that the property and the area contains good deer habitat.

5. **Public services:**

- a. **Water:** There is no water service on the property. There is a 12 inch City water main at the edge of the property to the south at the intersection of Annandale Road and Cherry Hills Road near the southeast corner of the subject property. Smaller diameter lines will be installed to serve the property and additional connections to existing City water mains are expected as the property develops. The developer will pay for extension of existing mains and internal infrastructure to serve the property.
- b. **Sewer:** There are sanitary sewer mains in Matador Avenue, Morocco Drive, Cherry Hills Road and Annandale Road. Smaller diameter lines will be installed to serve the property. An existing lift station northeast of the subject property may need to be upgraded to assist in serving portions of the property due to the terrain. The developer will pay for any upgrades to the lift station and any extension of existing mains and internal infrastructure to serve the property.
- c. **Stormwater:** There are no City stormwater facilities directly adjacent to the property. A large portion of this area is within the boundary of the Lake Hills storm drain area and the developer will make a cash contribution to the Lake Hills storm drain system at time of platting. Also, the developer already knows that the development will be required to construct its portion of Gleneagles Boulevard and Annandale Road. The property owner will sign a Waiver of Right to Protest creation of future SIDs that allows the City to create an improvement district for stormwater infrastructure installation in the future.
- d. **Solid waste:** Since there are no residences on the property, the City will provide solid waste collection and disposal at the City's landfill. The landfill has capacity for this additional development.
- e. **Parks and Recreation:** There are several City parks in the area. Sally Ann Park is a 2.8-acre park located at the northeast corner of the subject property and High Sierra Park is a 14.3-acre park located about half a mile south of the subject property along Wicks Lane. Additional parkland or recreation facilities are needed for a development of this size and such facilities will be planned if the property is annexed and subdivided.
- f. **Schools:** Elementary school age children will attend Eagle Cliff Elementary School, Castle Rock Middle School and Skyview High School. While the Billings School District is facing overcrowding at several of its schools and is working to address these problems, District 2 staff was involved in the review of this property for inclusion in the Limits of Annexation Map amendments last winter. There is a potential that development of subject property could compliment a vacant property owned by School District 2 along Matador Avenue by providing additional school property within the development.
- g. **Public safety:** The property is already within the Billings Urban Fire Service Area and is served by the Billings Fire Department. There is only one fire station in the Heights located at St Andrews Drive and Wicks Lane. While the Fire Department was supportive of annexation of this property, it is likely that future

emergency service planning for the Heights will be necessary to handle large developments like this one. The build out for a development of this size is estimated at about 10-12 years, which allows some time for long-term emergency service planning. American Medical Response provides emergency medical transport for the City. The main change if the land is annexed is that the City Police Department will respond instead of the Sheriff. AMR must comply with the City's mandate that 90% of calls be answered within 8 minutes. The UPS does not identify how AMR's service may be affected by this development.

6. **Transportation:** Gleneagles Boulevard is classified as a principal arterial and runs along the east edge of the property. Matador Avenue is classified as a minor arterial and runs along about half the southern portion of the property. High Sierra Boulevard intersects the property at about the half way point. All of these streets are likely to provide traffic access to this property. It is expected that a Traffic Accessibility Study will be required prior to master planning and development of the property. The owner will waive the right to protest creating SIDs when they are necessary to make area-wide transportation infrastructure improvements.
7. **Development:** The property is zoned Agricultural-Open Space. The development proposal would rezone the property to Residential-7000 Restricted. This zoning is different from surrounding properties in regard to the potential lot sizes but not the existing single family residential development in the area. The property's proximity to the proposed corridors for the Inner Belt Loop and the North Bypass make it a likely area for further urban development in the future. City services will allow more urban type and density of development than if the property was developed in the county.

STAKEHOLDERS

The most directly affected stakeholders are the residents of this area. There is higher density urban development to the south and west, and agricultural uses and very low density residential development to the north and west. The developer of this property, Gary Oakland, has indicated that many residential properties to the south of the subject property are not fully built out. He has stated that he owns some of the property to the south and has talked to at least one other developer of property to the south regarding this new proposed annexation and development.

There was no public comment at the Planning Board meeting to review this UPS. However, aside from the Planning Board meeting, there will be four public hearings before the City Zoning Commission and City Council as this property is reviewed for its UPS, petition to annex and proposed zone change for the property to Residential-7000 Restricted. The Yellowstone County Commissioners and County staff were informed of the proposed annexation plans for this property but did not submit comments.

The Planning Board did express some concerns during its review of the UPS on August 28th, 2007. The Board suggested that traffic circulation would be a major issue that would need to be addressed during the development of the subject property. The Board also thought that detailed

analysis of whether adequate water pressure and water volumes would be available to serve the development should be researched prior to moving forward with subdivision of the property. Planning staff explained that both transportation and infrastructure issues will be addressed during the subdivision review process for the property.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Adding this area to the UPA and annexing it is inconsistent with some goals and consistent with other goals of the Yellowstone County and City of Billings 2003 Growth Policy. The development of this property will improve the road connectivity in this area of the Heights and will provide similar housing types to those already in the neighborhoods to the south. It also is likely to provide additional park land and potentially compliment a vacant property owned by School District 2 along Matador Avenue. The development is not infill as it extends the City Limits into an area that is now in the County and provision of City services to the property will provide some challenges.

Expanding the UPA for this property is mostly consistent with the Billings Heights Neighborhood Plan, which identifies a portion of the subject property to develop at low residential densities, similar to the existing single-family residential development already in the City south of this property. The developer of this property is proposing single-family residential development similar to the residences already developing to the south within the City Limits.

The property has already been found to be in compliance with the City's Annexation Policy when the property was reviewed by the City Annexation Committee and City Council last winter.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council adopt the resolution approving the Urban Planning Study for the Dover Ranch property described as Tract 1, Certificate of Survey 2017; S1/2 SE1/4, Section 8, T1N, R26E; S1/2 SW1/4, Section 9, T1N, R26E.

ATTACHMENTS

A: Resolution

B: Urban Planning Study (available for viewing in the City Clerk's Office)

ATTACHMENT A

RESOLUTION NO. 07-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, EXPANDING THE
BOUNDARIES OF THE BILLINGS URBAN PLANNING AREA TO INCLUDE TRACT 1,
CERTIFICATE OF SURVEY 2017; S1/2 SE1/4, SECTION 8, T1N, R26E; S1/2 SW1/4,
SECTION 9, T1N, R26E.

WHEREAS, an Urban Planning Study was conducted on properties described as Tract 123, Sunny Cove Fruit Farms and was submitted to the City for review and approval, and

WHEREAS, the Billings Urban Planning Area is the area established by the City for the purpose of planning for growth of the City within the next 10 years, and

WHEREAS, the purpose of the study is to determine impacts on city services, the natural environment, and the feasibility of extending City services within the proposed area, and

WHEREAS, the Yellowstone County Board of Planning reviewed the Urban Planning Study at its regular meeting on August 28, 2007, and

WHEREAS, the Yellowstone County Board of Planning has recommended approval of inclusion of the subject area in the Billings Urban Planning Area, finding that municipal services can safely and efficiently be extended to this area and its existing and planned growth and development are consistent with existing and proposed land use and transportation plans, and

WHEREAS, a public hearing was properly noticed and held by the Billings City Council as required by law.

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

1. URBAN PLANNING STUDY. The Urban Planning Study for Tract 1, Certificate of Survey 2017; S1/2 SE1/4, Section 8, T1N, R26E; S1/2 SW1/4, Section 9, T1N, R26E is hereby approved by the Billings City Council.
2. URBAN PLANNING AREA. The boundaries of the Billings Urban Planning Area are hereby extended to include Tract 1, Certificate of Survey 2017; S1/2 SE1/4, Section 8, T1N, R26E; S1/2 SW1/4, Section 9, T1N, R26E

PASSED AND APPROVED by the City Council this 24th day of September, 2007.

THE CITY OF BILLINGS:

Ron Tussing

BY: _____
Mayor

ATTEST:

BY: _____
Cari Martin City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Public Hearing and Resolution for Annexation #07-10

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Frank Sindelar, property owner, has submitted a petition for annexation of property to the City of Billings under 7-2-4600 MCA. The 400.94-acre property is located north of the Lake Hills Golf Course and Matador Avenue in the Billings Heights. The property owner is requesting annexation in order to obtain city services and move forward with development of the property at urban densities. The property owner also has submitted a request to expand the Urban Planning Area boundary that the Council is considering at this meeting and a zone change application that will come before the Council at a later date. The City Council's policy is to consider annexations at two separate meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property. This public service report describes the City's capacity to serve the property.

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

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

RECOMMENDATION

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

1. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
2. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

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

ATTACHMENTS

- A.** Resolution
- B.** Petition for Annexation
- C.** Exhibit A Map

INTRODUCTION

The property owner on June 12, 2007, submitted a petition for annexation of a 400.94-acre property located north of the Lake Hills Golf Course and Matador Avenue in the Billings Heights. The property is currently zoned Agricultural Open Space. The property will automatically be zoned Residential-9600 (R-96) if it is annexed into the City. The property owner has submitted an application for a zone change for the property to rezone it to Residential-7000 Restricted (R-70-R). This property is within the Limits of Annexation Map area that is specified for annexation in the short term. The property is bordered by the City Limits along its entire southern boundary and its eastern boundary. As per the requirements of the City's Annexation Policy, the property owner also has submitted a request to expand the Urban Planning Area boundary to include this property. The City Council also is hearing this request at this meeting.

PROCEDURAL HISTORY

- Winter 2005 – Property requested inclusion in the immediate area for annexation when the Limits of Annexation Map was reviewed for amendments in winter 2005. The City denied the request at that time and a portion of the property remained in the area expected to annex between “2013-2023” and a portion remained in the “Uncertain” area for future annexation on the Limits of Annexation Map.
- Winter 2006 – Property requested inclusion in the immediate area for annexation when the Limits of Annexation Map was reviewed for amendments in winter 2006. The City approved the request and included in immediate area for annexation when Limits of Annexation Map was amended in February 2007
- June 12, 2007 – The Planning Division received the signed petition to annex the subject property into the City of Billings.
- August 3, 2007 – The property owner submitted an Urban Planning Study and request to amend the Urban Planning Area Boundary to include the subject property. This process is required prior to approving annexation of the property into the City.
- September 10, 2007 – The City Council acknowledged the petition to annex and sets a public hearing date for the City Council meeting on September 24, 2007.
- September 24, 2007 – City Council holds public hearings to act on the expansion of the Urban Planning Area boundary and on the petition to annex the subject property.

ALTERNATIVES ANALYSIS

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

1. The area is located within the Limits of Annexation and within the Urban Planning Area (pending approval of the City Council at its September 24th Meeting).
2. The City is able to provide adequate services and the developer is planning a phased development over the course of about 10 years.

3. Any proposed improvements would meet City standards.
4. The property owners will have to sign a Development Agreement or SIA and a Waiver of Right to Protest the Creation of SIDs prior to development of the property.
5. Given the size of the property and the proposed zoning of R-70-R residential densities will be approximately 5 dwelling units per acre.
6. The proposed annexation meets several goals of the City-County Growth Policy as outlined in this report.

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

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

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

Water: There is no water service on the property. There is a City water main at the edge of the property to the south at the intersection of Annandale Road and Cherry Hills Road near the southeast corner of the subject property. Smaller diameter lines will be installed to serve the property and additional connections to existing City water mains are expected as the property develops. The developer will pay for extension of existing mains and internal infrastructure to serve the property. Water can connect to the Fox pump station and/or the Fox reservoir. Water lines will likely be 12" or less in size (not local main).

Sewer: The City's 2006 Water and Sewer Master Plan projects a need for extension of 15" sewer lines (local mains) related to this development. Therefore, the developers can either wait to be included in the Capital Improvement Plan or he can build the infrastructure as it is needed, pay the cost, and enter into a reimbursement agreement with the City.

Stormwater: There are no City stormwater facilities directly adjacent to the property. A large portion of this area is within the boundary of the Lake Hills storm drain area and the developer will have to make a cash contribution to the Lake Hills storm drain system at time of platting. Also, the developer already knows that the development will have to build its portion of Gleneagles Boulevard and Annandale Road. The property owner will signed a Waiver of Right to Protest creation of future SIDs that allows the City to create an improvement district for stormwater infrastructure installation in the future.

Transportation: Gleneagles Boulevard is classified as a principal arterial and runs along the east edge of the property. Matador Avenue is classified as a minor arterial and runs along about half the southern portion of the property. High Sierra Boulevard intersects the property at about the half way point. All of these roads are likely to provide traffic access to this property. It is impossible to comment on any detailed traffic issues without knowing how this area will develop and having some idea of a basic street layout. Traffic impacts will be identified during the subdivision and site development process and mitigating measures developed at that time. It is expected that a Traffic Accessibility Study will be required prior to master planning and development of the property. The owner will waive the right to protest creating SIDs when they are necessary to make area-wide transportation infrastructure improvements.

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

Transit: MET Transit does not currently serve this area. The closest bus route is about half a mile south of the subject property on Wicks Lane. MET Transit had no negative comments on this annexation petition but did not indicate any immediate plans to serve this area of the Billings Heights.

Fire: The property is within the Billings Urban Fire Service Area and is currently served by the Billings Fire Department. Fire protection will be provided to this property after annexation most directly from Fire Station No. 6 at 1601 St. Andrews, about one mile south of the subject property. The Fire Department had no problems with this petition to annex, although the Department did express concerns about providing service to all of the Billings Heights with only one station in the Heights.

Police: The Police Department staff stated that this property could be served by the Police Department but it would likely require more patrol officers in the future when the development is closer to being fully built out.

Ambulance Service: The City does not provide ambulance service but dictates the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes. AMR must comply with the City's mandate and it is not clear if AMR will have to make service changes in the future to accommodate the demands of this development.

Legal and Finance: General Fund services such as Legal and Finance have indicated that they will not be negatively impacted.

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

STAKEHOLDERS

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Times more than 15 days prior to the Council hearing as required. The Planning Division had not received comments on this proposed annexation at the time this staff report was submitted to the Council.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Contiguous development focused in and around existing population centers (Land Use Element Goal, Pg. 6). *This property is in an area that is in close proximity existing urban development in the Billings Heights and the area is expected to grow with significant transportation infrastructure, commercial and residential development in the future.*
- Protect public health and reduce the cost of groundwater remediation (Natural Resources Goal, Pg. 8). *The property is going to be served by municipal water and sewer services and develop to urban densities which will prevent the use of septic systems and large-lot rural development that could be harmful to groundwater in the area.*
- Efficient cross-town and in-town traffic (Transportation Goal, Page 9). *Development of this property is expected to provide additional connections for traffic in the western portion of the Heights and potentially play a role in traffic circulation for the future Inner Belt Way and North Bypass.*
- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City limits and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*

This annexation petition is generally consistent with the *Heights Neighborhood Plan*:

Annexation of this property is mostly consistent with the Billings Heights Neighborhood Plan, which identifies a portion of the subject property as expected to develop at low residential densities. The developer of this property is proposing single-family residential development in R-70-R zoning at densities similar to the residences already developing to the south within the City Limits.

RECOMMENDATION

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

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

2. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

ATTACHMENTS

- A.** Resolution
- B.** Exhibit A Map
- C.** Annexation Petition

ATTACHMENT A

RESOLUTION NO. 07-

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

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

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

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

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

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

Tracts of land situated in the SE1/4 of Section 8, the SW1/4 of Section 9 and the N1/2 of Section 17, T.1N., R.26E., P.M.M., Yellowstone County, Montana, described as follows: Being the S1/2 of the SE1/4 of Section 8, T.1N., R.26E., P.M.M., Yellowstone County, Montana; the S1/2 of the SW1/4 of Section 9, T.1N., R.26E., P.M.M., Yellowstone County, Montana; Tract 1 of Certificate of Survey 2017, Recorded September 30, 1980, Under Document No. 1178050, Records of Yellowstone County. Containing 400.944 gross and net acres, more or less. (# 07-10) See Exhibit "A" Attached

2. **CONDITIONS.** The annexation is approved contingent upon the following conditions:
 1. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 2. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure

improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 24th day of September, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

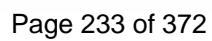
ATTEST:

BY: _____

CITY CLERK

(AN #07-10)

EXHIBIT A



ATTACHMENT C

PETITION FOR ANNEXATION TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

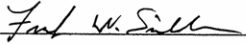
This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder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

INSTRUCTIONS

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

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

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
<u>06/06/2007</u>	<u>DOVER RANCH</u>	<u></u>	<u>633 SINDELAR ROAD</u>
<u> </u>	<u> </u>	<u> </u>	<u>Billings, MT 59105</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>

(continued on separate page)

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

[illegible]

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 5/12/07 Received By: Tommy Dares Petition Number: 07-10

Fee Paid: \$700.00

Fee Paid: \$800.00

P.82061 54 Annex Pet

(06/06/07) iss

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Public Hearing and Resolution for Annexation #07-21

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: Owners and petitioners, Raymond and Douglas Kramer (Power of Attorney for the Lydia Kramer Real Estate Management Trust), are requesting annexation of a property legally described as Tract 1C, Certificate of Survey 2991 located in the NW 1/4, Section 12, Township 1S, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located west of the intersection of Central Avenue and 29th Street West. The petitioners are requesting annexation in order to obtain city water and sewer services for commercial and residential development. The subject property is currently vacant land and is zoned Residential 9600 (R-96). A concurrent zone change has been submitted for the property from R-96 to Neighborhood Commercial (NC), Residential Professional (RP), and Residential Multi-Family Restricted (RMF-R).

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

FINANCIAL IMPACT: The City can provide municipal services to the subject property. The property can develop with single-family residences under the current zoning. If the proposed zone change is approved, the property could further develop as commercial and residential, thereby increasing the tax revenue for the city.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution Annexing Tract 1C, Certificate of Survey 2991, subject to the following conditions of approval:

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

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

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

ATTACHMENT

- A. Resolution and Annexation Map

INTRODUCTION

Owners and petitioners, Raymond and Douglas Kramer (Power of Attorney for the Lydia Kramer Real Estate Management Trust), are requesting annexation of a property legally described as Tract 1C, Certificate of Survey 2991 located in the NW 1/4, Section 12, Township 1S, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located west of the intersection of Central Avenue and 29th Street West. The petitioners are requesting annexation in order to obtain city water and sewer services for commercial and residential development. The subject property is currently vacant land and is zoned Residential 9600 (R-96). A concurrent zone change has been submitted for the property from R-96 to Neighborhood Commercial (NC), Residential Professional (RP), and Residential Multi-Family Restricted (RMF-R).

PROCEDURAL HISTORY

- On August 6, 2007, the Annexation Petition and rezone application were submitted to the Planning Department.
- On September 4, 2007, the City Zoning Commission conducted a public hearing on a zone change from R-96 to NC, RP, and RMF-R on the subject property, in which they forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On September 10, 2007, the City Council acknowledged the annexation petition and set a public hearing date for September 24, 2007.
- On September 24, 2007, the City Council will conduct the public hearing for the annexation and the zone change.
- On October 9, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted; if approved on the first reading, the second reading of the zone change will be conducted.
- On October 22, 2007, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

The subject property is wholly surrounded by properties within the City limits and is depicted on the updated Annexation Map adopted by the City Council on February 26, 2007, in an area proposed to be annexed within the next six (6) years.

ALTERNATIVES ANALYSIS

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

7. The area is located within the Limits of Annexation and within an area identified to be included in the Urban Planning Area.
8. The City is able to provide adequate services.

9. The proposed improvements for the subdivision, including streets, satisfy City standards.

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

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

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

- **Water:** Water to the subject property will be extended from the main line within Central Avenue located along the northern boundary of the subject property.
- **Sewer:** Sanitary sewer will be extended from the main line within Central Avenue located along the northern boundary of the subject property.
- **Stormwater:** All stormwater improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- **Transportation:** Access to the property will be via a shared access between this Tract and Tract 1B to the east of the property. This and any other accesses, as well as street improvements will be reviewed during site development.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 604 S 24th Street West (Station #5).
- **Parks:** Millice Park is located directly across Central Avenue (north) of the subject property. Stewart Park is located approximately ¼ mile to the east of the subject property on the south side of Central Avenue.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. Sidewalks along Central Avenue will be required at the time of construction. Internal sidewalks will not be required unless a subdivision is proposed.

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

- **Transit:** The MET transit system had no objection with the annexation request.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The police department did state that continued annexations without an increase in assets will affect their ability to respond to calls in a timely manner.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Engineering Division (Street and Traffic):** The Street and Traffic Division did specify that they have concerns regarding the ability for service to these annexed areas after 2008, due to budget cuts.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively impacted.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on September 7, 2007, and published in the Billings Times on September 6, 2007. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

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

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)
- More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)

The proposed subdivision satisfies the following policies of the *West Billings Plan*:

- Development in the West End planning area shall provide for a variety of residential types and densities.
- Conditional approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution Annexing Tract 1C, Certificate of Survey 2991, subject to the following conditions of approval:

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

ATTACHMENT

- A. Resolution and Annexation Map

RESOLUTION NO. 07-

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

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

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

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

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

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

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

Tract 1-C, Certificate of Survey No. 2991, Recorded December 29, 1998, Under Document No. 3033373, Records of Yellowstone County, Montana.

Including all adjacent right-of-way of Central Avenue.

Said Tract containing 8.869 acres.

(# 07-21) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following conditions:
 - a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

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

PASSED by the City Council and APPROVED this 24th day of September, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

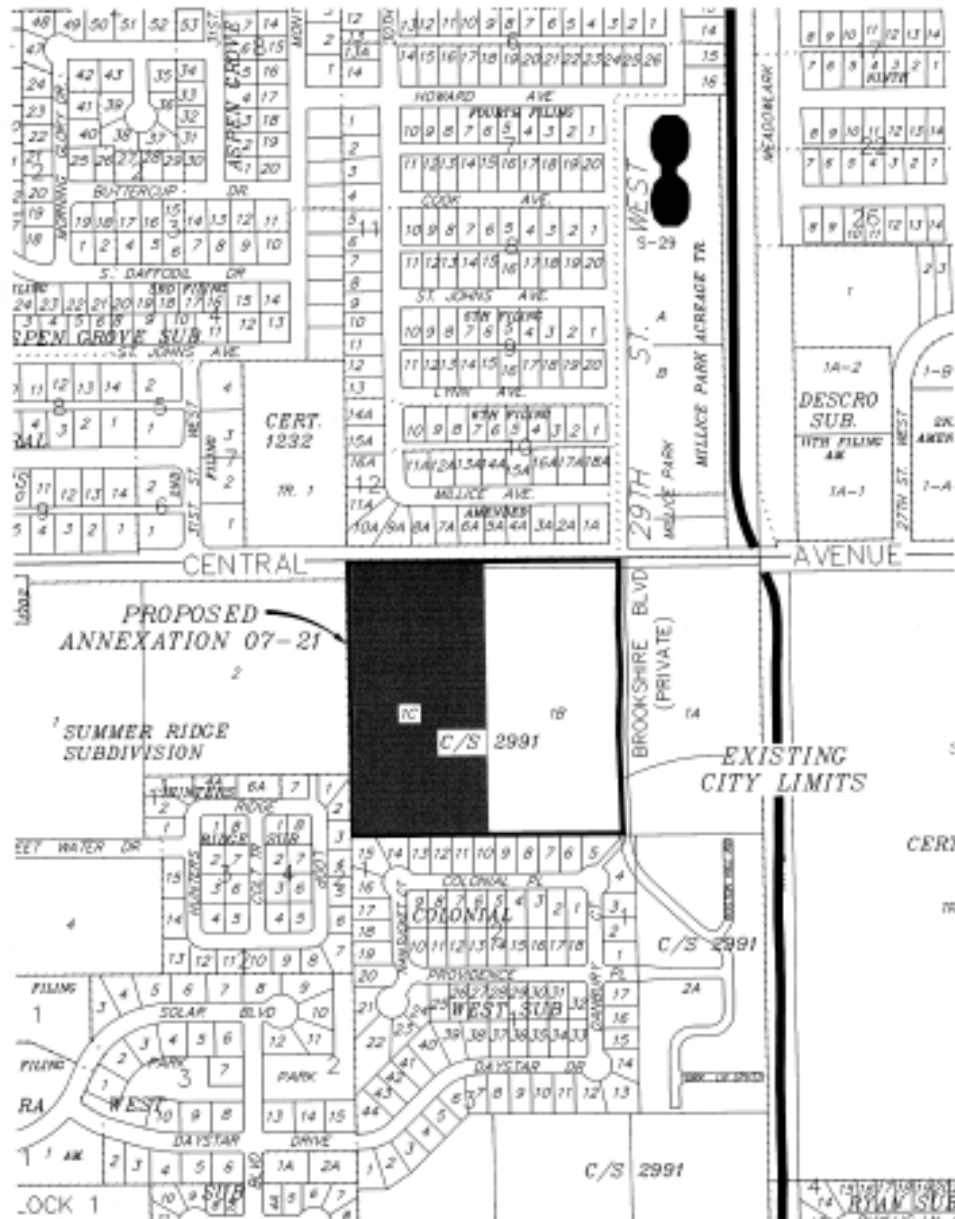
ATTEST:

BY: _____

CITY CLERK

(AN 07-21)

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Zone Change #824 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone Lot 1C, Certificate of Survey 2991 from Residential 9600 (R-96) to Neighborhood Commercial (NC), Residential Professional (RP), and Residential Multi-Family Restricted (RMF-R). The subject property is located west of the corner of the intersection of Central Avenue and Brookshire Boulevard. Lydia Kramer Real Estate Management Trust, Douglas and Raymond Kramer, Powers of Attorney are the owners and the representative is Engineering, Inc. The Zoning Commission conducted a public hearing on September 4, 2007, and forwarded a recommendation of approval on 5-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #824 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs (available for viewing in the City Clerk's Office)
- B: Surrounding Zoning
- C: Zoning Exhibit
- D: Letters of Opposition
- E: Ordinance

INTRODUCTION

The applicant is requesting to rezone Lot 1C, Certificate of Survey 2991 from Residential 9600 (R-96) to Neighborhood Commercial (NC), Residential Professional (RP), and Residential Multi-Family Restricted (RMF-R). The subject property is located west of the corner of the intersection of Central Avenue and Brookshire Boulevard.

PROCEDURAL HISTORY

- On August 6, 2007, the Annexation Petition and rezone application were submitted to the Planning Department.
- On September 4, 2007, the City Zoning Commission conducted a public hearing on a zone change from R-96 to NC, RP, and RMF-R on the subject property, in which they forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On September 10, 2007, the City Council acknowledged the annexation petition and set a public hearing date for September 24, 2007.
- On September 24, 2007, the City Council will conduct the public hearing for the annexation and the zone change.
- On October 9, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted; if approved on the first reading, the second reading of the zone change will be conducted.
- On October 22, 2007, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

The applicant is requesting to rezone an 8.87 acre parcel from R-96 to NC, RP, and RMF-R. The subject property is located on the southwest corner of the intersection of Central Avenue and Brookshire Boulevard. It is the property owner's intent to provide approximately 2.61 acres along Central Avenue for light commercial uses, 2.61 acres in the center of the property for offices, and 3.65 acres on the southern portion of the property for multi-family residential units.

The Zoning Commission is forwarding a recommendation of approval for this application and has based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

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

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

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

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

This property is in an area of West Billings that is experiencing rapid commercial and residential growth. The rezoning of this parcel will focus new growth in a developing and expanding population center.

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

The proposed zoning will be compatible with the multi-family residential uses located to the south and will provide a transitional zone between the commercial uses along Central Avenue and the proposed multi-family residences located on the southern portion of the site.

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

The proposed zoning will permit light commercial uses, offices, and multi-family residential uses, which will provide for more housing and business choices in this neighborhood.

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

The proposed zoning is expected to generate more traffic than the current vacant use. During the subdivision review or with a development agreement to be executed with the annexations, there may be improvements to the intersection of 32nd Street West and Central Avenue or a cash contribution for these improvements. As specified by the Engineering Division, there may also be a requirement for a reciprocal (shared) access for Tracts 1B and 1C, upon development.

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

Access will be from Central Avenue bordering the northern boundary of the property. Additional review of the site will be discussed with the annexations and site development of the property.

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

The proposed zoning will permit multi-family uses, commercial uses, and offices. The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements, as well as height restrictions for the proposed zoning districts.

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

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

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

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

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

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

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

Transportation: Any improvements identified by the City Engineering Department will be required with the subdivision approval.

Water and Sewer: Water and sewer lines are located within Central Avenue and will serve the subject property.

Schools and Parks: The proposed zoning could result in an overcrowding of West High School which is currently over capacity. The middle and elementary schools that serve this property have capacity for additional students. A park dedication will be required if the property is subdivided.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service will be further reviewed with site plan development.

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

The proposed zoning will be similar in character with the adjacent multi-family residential uses and duplexes to the south, as well as the office structure to the east.

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

The subject property is suitable for the requested zoning district.

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

The applicant has proposed the RMF-R south of the commercial properties fronting Central Avenue, which provides for a transition zone between the commercial uses and the single-family residential uses on the southern portion of the property.

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

The proposed zoning will permit commercial, offices, and multi-family residential uses, which are compatible with the surrounding commercial and residential uses.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on September 4, 2007, and forwarded a recommendation of approval to the City Council on a 5-0.

There were two adjacent property owners present at the public hearing who had concerns regarding the density of the subject property, overcrowding of schools, and potential traffic conflicts due to the proposed development. In response, the applicant's representative stated that 2/3 of the property would be utilized for commercial development, with residential multi-family only on the southern portion of the site to provide a buffer zone between the residential uses to the south. The applicant's representative further stated that the commercial portion of the site should limit impacts to schools. While the school district has stated that they are overcrowded, they will accommodate additional students. Staff did specify that based on the size of the proposed multi-family zoned portion of the property, approximately 10, 4-plexes could be constructed on the property. This rough estimate is based on the gross area of the property and does not take into account lot coverage or setbacks for the property. Accesses and traffic mitigation measures will be reviewed with the site plan development or subdivision of this property. The applicant's representative did state that there would be one shared access from Central Avenue with the adjacent property to the east and an additional Central Avenue access.

One letter of opposition has been received and is included in Attachment D of this report.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #824 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

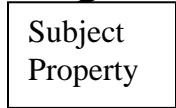
ATTACHMENTS:

- A: Site Photographs (available for viewing in the City Clerk's Office)
- B: Surrounding Zoning
- C: Zoning Exhibit

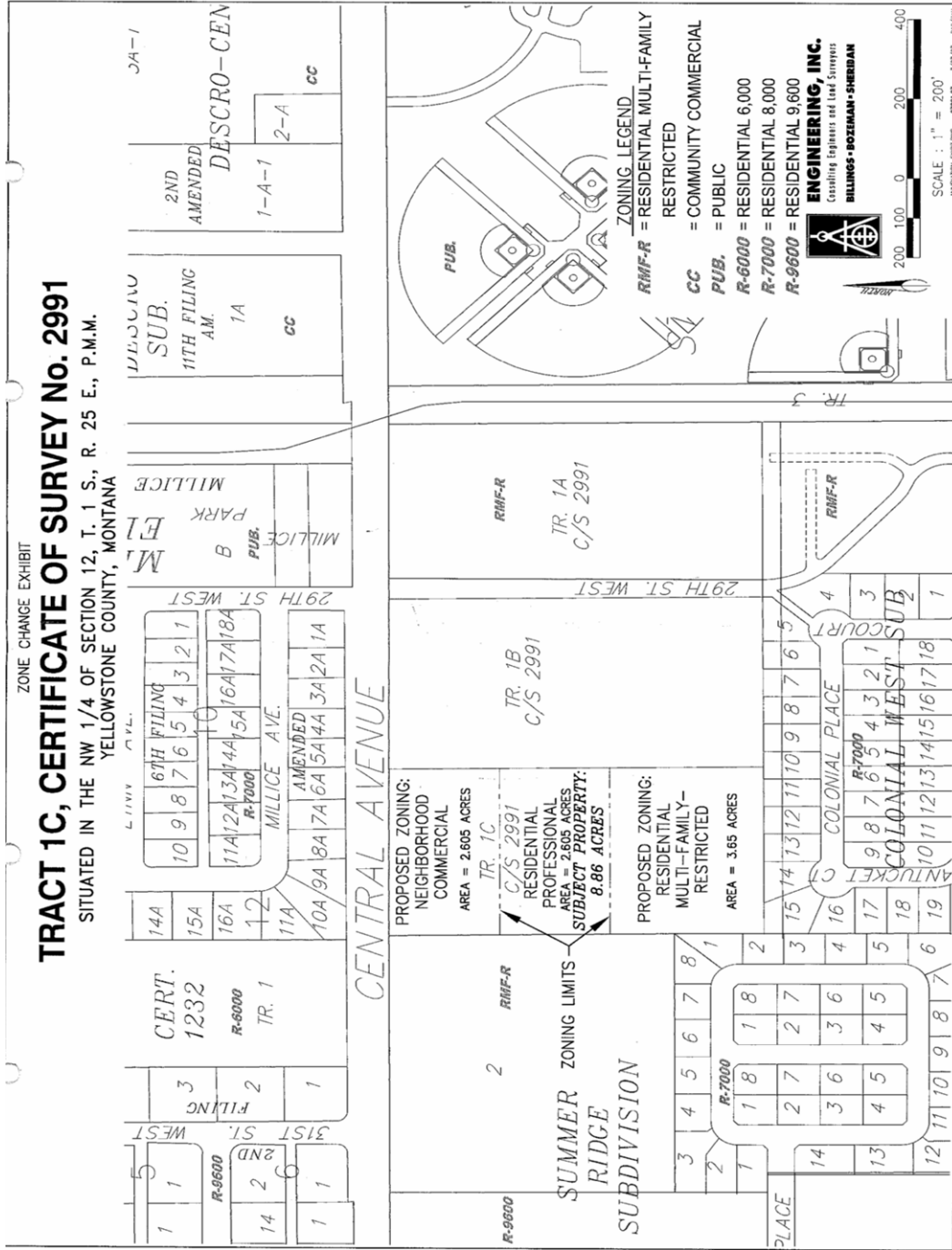
D: Letters of Opposition
E: Ordinance

Attachment B

Surrounding Zoning



Attachment C
Zoning Exhibit



Attachment D

Letter of Opposition

To:

Billings City Zoning Commission

From:

20 823
20 824

Michael R. Butz
349 Future Circle
Billings, Montana 59102

Re: 07-723

Dear Members of the Commission:

I am writing to advance my concern about Re-zoning this area. Already, within the square miles to the South of Central; and to the west of Stewart Park this area has two large apartment complexes, and two sets of duplex developments which is well in excess of other neighborhoods. This area needs to remain as Single Family Homes.

see back ↓

Also, streets are so narrow
via Drystar and other routes.
I have serious concerns about
traffic congestion and the possibility
of evacuating the area should
an emergency occur.

Please consider these factors,
as it will degrade the quality
of our subdivision and its safety.

Sincerely yours,

Michael R. Butz, Ph.D.

349 Future Circle

Billings, MT 59102

Attachment E
Zone Change #824

ORDINANCE NO. 07-
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Tract 1C, Certificate of Survey 2991, Containing
approximately 8.86 acres

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

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

2. **DESCRIPTION.** A tract of land known as Tract 1C, 2991, Containing approximately 8.86 acres and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

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

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

5. **EFFECTIVE DATE.** This ordinance shall be effective from and after final

passage and as provided by law.

PASSED by the City Council on first reading September 24, 2007.

PASSED, ADOPTED AND APPROVED on second reading October 9, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
City Clerk

ZC #824

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Public Hearing and Resolution for Annexation #07-22

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: Owners and petitioner, Todd Icopini, Legacy Homes, is requesting annexation of a property legally described as Tract 1B, Certificate of Survey 2991 located in the NW 1/4, Section 12, Township 1S, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the southwest corner of the intersection of Central Avenue and 29th Street West. The petitioner is requesting annexation in order to obtain city water and sewer services for commercial and residential development. The subject property is currently vacant land and is zoned Residential 9600 (R-96). A concurrent zone change has been submitted for the property from R-96 to Neighborhood Commercial (NC), Residential Professional (RP), and Residential Multi-Family Restricted (RMF-R).

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

FINANCIAL IMPACT: The City can provide municipal services to the subject property. The property can develop with single-family residences under the current zoning. If the proposed zone change is approved, the property could further develop as commercial and residential, thereby increasing the tax revenue for the city.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution Annexing Tract 1B, Certificate of Survey 2991, subject to the following conditions of approval:

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

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

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

ATTACHMENT

A. Resolution and Annexation Map

INTRODUCTION

Owners and petitioner, Todd Icopini, Legacy Homes, is requesting annexation of a property legally described as Tract 1B, Certificate of Survey 2991 located in the NW 1/4, Section 12, Township 1S, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the southwest corner of the intersection of Central Avenue and 29th Street West. The petitioners are requesting annexation in order to obtain city water and sewer services for commercial and residential development. The subject property is currently vacant land and is zoned Residential 9600 (R-96). A concurrent zone change has been submitted for the property from R-96 to Neighborhood Commercial (NC), Residential Professional (RP), and Residential Multi-Family Restricted (RMF-R).

PROCEDURAL HISTORY

- On August 6, 2007, the Annexation Petition and rezone application were submitted to the Planning Department.
- On September 4, 2007, the City Zoning Commission conducted a public hearing on a zone change from R-96 to NC, RP, and RMF-R on the subject property, in which they forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On September 10, 2007, the City Council acknowledged the annexation petition and set a public hearing date for September 24, 2007.
- On September 24, 2007, the City Council will conduct the public hearing for the annexation and the zone change.
- On October 9, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted; if approved on the first reading, the second reading of the zone change will be conducted.
- On October 22, 2007, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

The subject property is wholly surrounded by properties within the City limits and is depicted on the updated Annexation Map adopted by the City Council on February 26, 2007, in an area proposed to be annexed within the next six (6) years.

ALTERNATIVES ANALYSIS

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

1. The area is located within the Limits of Annexation and within an area identified to be included in the Urban Planning Area.
2. The City is able to provide adequate services.

3. The proposed improvements for the subdivision, including streets, satisfy City standards.

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

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

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

- **Water:** Water to the subject property will be extended from the main line within Central Avenue located along the northern boundary of the subject property.
- **Sewer:** Sanitary sewer will be extended from the main line within Central Avenue located along the northern boundary of the subject property.
- **Stormwater:** All stormwater improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- **Transportation:** Access to the property will be via a shared access between this Tract and Tract 1C to the west of the property. Additional accesses may be from Brookshire Boulevard, a private street bordering the property to the east. This and any other accesses, as well as street improvements will be reviewed during site development.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 604 S 24th Street West (Station #5).
- **Parks:** Millice Park is located directly across Central Avenue (north) of the subject property. Stewart Park is located approximately ¼ mile to the east of the subject property on the south side of Central Avenue.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. Sidewalks along Central Avenue will be required at the time of construction. Internal sidewalks will not be required unless a subdivision is proposed.

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

- **Transit:** The MET transit system had no objection with the annexation request.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The police department did state that continued annexations without an increase in assets will affect their ability to respond to calls in a timely manner.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Engineering Division (Street and Traffic):** The Street and Traffic Division did specify that they have concerns regarding the ability for service to these annexed areas after 2008, due to budget cuts.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively impacted.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on September 7, 2007, and published in the Billings Times on September 6, 2007. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

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

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)
- More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)

The proposed subdivision satisfies the following policies of the *West Billings Plan*:

- Development in the West End planning area shall provide for a variety of residential types and densities.
- Conditional approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution Annexing Tract 1B, Certificate of Survey 2991, subject to the following conditions of approval:

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

ATTACHMENT

A. Resolution and Annexation Map

RESOLUTION NO. 07-

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

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

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

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

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

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

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

Tract 1-B, Certificate of Survey No. 2991, Recorded December 29, 1998, Under Document No. 3033373, Records of Yellowstone County, Montana.

Including all adjacent right-of-way of Central Avenue.

Said Tract containing 8.869 acres.

(# 07-22) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following conditions:
 - a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 24th day of September, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

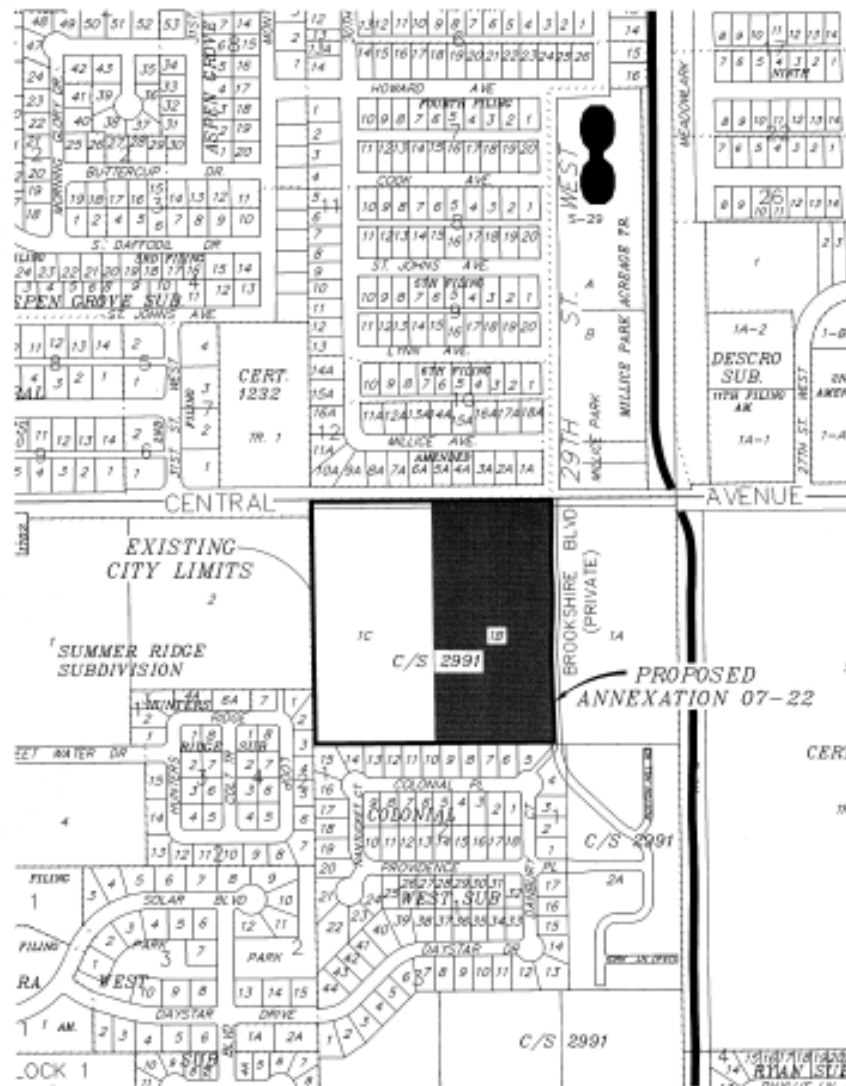
ATTEST:

BY: _____

CITY CLERK

(AN 07-22)

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, September 24, 2007**

TITLE: Zone Change #823 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone Tract 1B, Certificate of Survey 2991 from Residential 9600 (R-96) to Neighborhood Commercial (NC), Residential Professional (RP), and Residential Multi-Family Restricted (RMF-R). The subject property is located on the southwest corner of the intersection of Central Avenue and Brookshire Boulevard. The owner is Legacy Homes, Inc. and the representative is Engineering, Inc. The Zoning Commission conducted a public hearing on September 4, 2007, and forwarded a recommendation of approval on 5-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #823 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

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

ATTACHMENTS:

- A: Site Photographs (available for viewing in the City Clerk's Office)
- B: Surrounding Zoning
- C: Zoning Exhibit
- D: Letters of Opposition
- E: Ordinance

INTRODUCTION

The applicant is requesting to rezone Tract 1B, Certificate of Survey 2991 from Residential 9600 (R-96) to Neighborhood Commercial (NC), Residential Professional (RP), and Residential Multi-Family Restricted (RMF-R). The subject property is located on the southwest corner of the intersection of Central Avenue and Brookshire Boulevard.

PROCEDURAL HISTORY

- On August 6, 2007, the Annexation Petition and rezone application were submitted to the Planning Department.
- On September 4, 2007, the City Zoning Commission conducted a public hearing on a zone change from R-96 to NC, RP, and RMF-R on the subject property, in which they forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On September 10, 2007, the City Council acknowledged the annexation petition and set a public hearing date for September 24, 2007.
- On September 24, 2007, the City Council will conduct the public hearing for the annexation and the zone change.
- On October 9, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted; if approved on the first reading, the second reading of the zone change will be conducted.
- On October 22, 2007, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

The applicant is requesting to rezone an 8.87 acre parcel from R-96 to NC, RP, and RMF-R. The subject property is located on the southwest corner of the intersection of Central Avenue and Brookshire Boulevard. It is the property owner's intent to provide approximately 2.61 acres along Central Avenue for light commercial uses, 2.61 acres in the center of the property for offices, and 3.65 acres on the southern portion of the property for multi-family residential units.

The Zoning Commission is forwarding a recommendation of approval for this application and has based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

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

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

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

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

This property is in an area of West Billings that is experiencing rapid commercial and residential growth. The rezoning of this parcel will focus new growth in a developing and expanding population center.

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

The proposed zoning will be compatible with the multi-family residential uses located to the south and will provide a transitional zone between the commercial uses along Central Avenue and the proposed multi-family residences located on the southern portion of the site.

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

The proposed zoning will permit light commercial uses, offices, and multi-family residential uses, which will provide for more housing and business choices in this neighborhood.

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

The proposed zoning is expected to generate more traffic than the current vacant use. During the subdivision review or with a development agreement to be executed with the annexations, there may be improvements to the intersection of 32nd Street West and Central Avenue or a cash contribution for these improvements. As specified by the Engineering Division, there may also be a requirement for a reciprocal (shared) access for Tracts 1B and 1C, upon development.

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

Access will be from Central Avenue, as Brookshire Boulevard bordering the property on the east is a private road. Additional review of the site will be discussed with the annexations and site development of the property.

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

The proposed zoning will permit multi-family uses, commercial uses, and offices. The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements, as well as height restrictions for the proposed zoning districts.

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

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

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

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

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

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

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

Transportation: Any improvements identified by the City Engineering Department will be required with the subdivision approval.

Water and Sewer: Water and sewer lines are located within Central Avenue and will serve the subject property.

Schools and Parks: The proposed zoning could result in an overcrowding of West High School which is currently over capacity. The middle and elementary schools that serve this property have capacity for additional students. A park dedication will be required if the property is subdivided.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service will be further reviewed with site plan development.

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

The proposed zoning will be similar in character with the adjacent multi-family residential uses and duplexes to the south, as well as the office structure to the east.

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

The subject property is suitable for the requested zoning district.

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

The applicant has proposed the RMF-R south of the commercial properties fronting Central Avenue, which provides for a transition zone between the commercial uses and the single-family residential uses proposed for the southern portion of the property.

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

The proposed zoning will permit commercial, offices, and multi-family residential uses, which are compatible with the surrounding commercial and residential uses.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on September 4, 2007, and forwarded a recommendation of approval to the City Council on a 5-0.

There were two adjacent property owners present at the public hearing who had concerns regarding the density of the subject property, overcrowding of schools, and potential traffic conflicts due to the proposed development. In response, the applicant's representative stated that 2/3 of the property would be utilized for commercial development, with residential multi-family only on the southern portion of the site to provide a buffer zone between the residential uses to the south. The applicant's representative further stated that the commercial portion of the site should limit impacts to schools. While the school district has stated that they are overcrowded, they will accommodate additional students. Staff did specify that based on the size of the proposed multi-family zoned portion of the property, approximately 10, 4-plexes could be constructed on the property. This rough estimate is based on the gross area of the property and does not take into account lot coverage or setbacks for the property. Accesses and traffic mitigation measures will be reviewed with the site plan development or subdivision of this property. The applicant's representative did state that there would be one shared access from

Central Avenue with the adjacent property to the west and an additional Central Avenue access. There may be additional accesses off of Brookshire Boulevard, a private street to the east.

Three letters of opposition have been received and are included in Attachment D of this report.

RECOMMENDATION

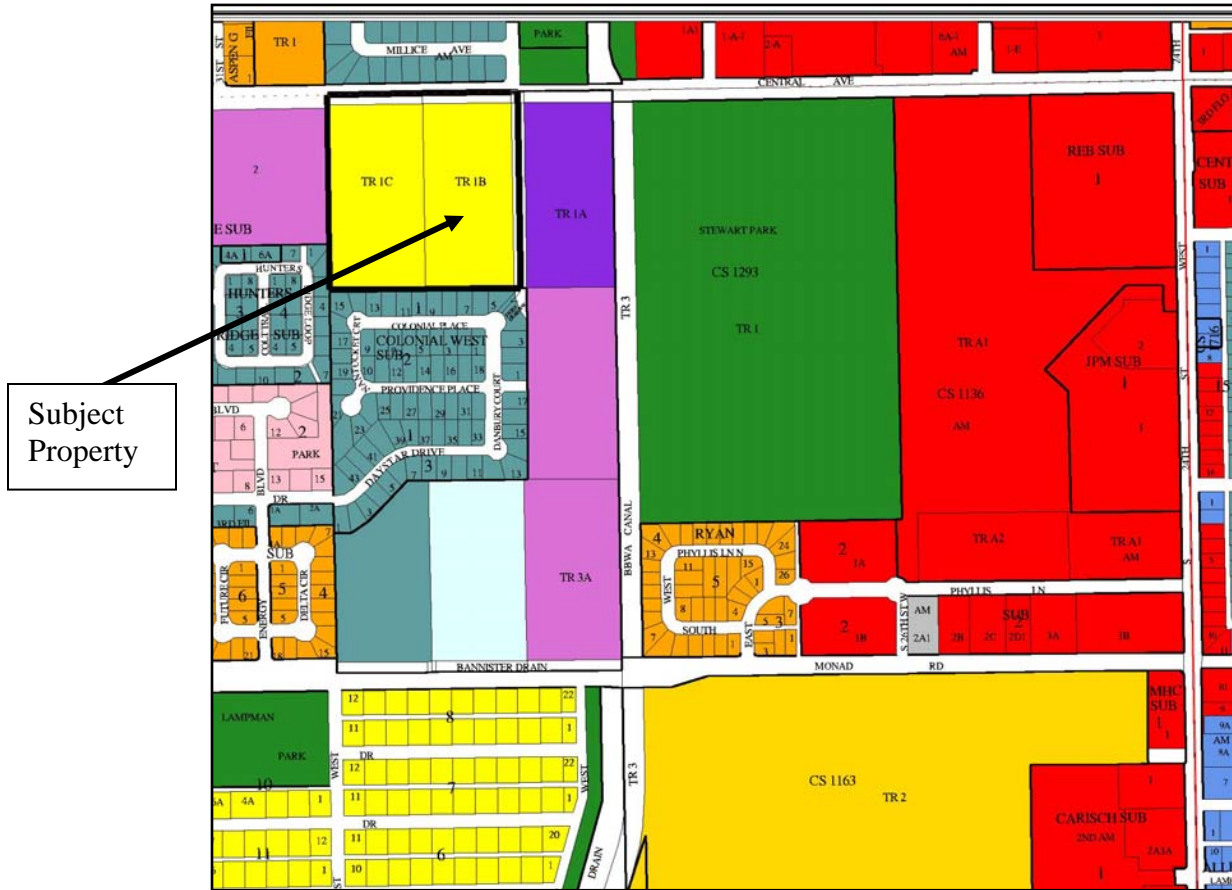
The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #823 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS:

- A: Site Photographs (available for viewing in the City Clerk's Office)
- B: Surrounding Zoning
- C: Zoning Exhibit
- D: Letters of Opposition
- E: Ordinance

Attachment B

Surrounding Zoning



Attachment C
Zoning Exhibit

YELLOWSTONE COUNTY, MONTANA



Attachment D
Letters of Opposition

To:

Billings City Zoning Commission

From:

ZC 823

ZC 824

Michael R. Butz

349 Future Circle

Billings, Montana 59102

Re: 07-723

Dear Members of the Commission:

I am writing to advance my concern about Re-zoning this area.

Already, within the square miles to the South of Central; and to the west

of Stewart Park this area has two large apartment complexes, and two sets of duplex developments which is well in excess of other neighborhoods. This area needs to remain as Single Family Homes.

see back ↓

Also, streets are so narrow pg 2
via ~~Dry~~star and other routes.
I have serious concerns about
traffic congestion and the possibility
of evacuating the area should
an emergency occur.

Please consider these factors,
as it will degrade the quality
of our subdivision and its safety.

Sincerely yours,

Michael R. Butz, M.D.

349 Future Circle

Billings, MT 59102

Fred and Joan Nelson
3072 Hunter's Ridge Loop
Billings, Montana, 59102
1-406-656-9759



8/27/07

To: The Chairman of the Planning & Community Services Department
510 North Broadway, 4th Floor
Billings, Montana, 59101

Dear Chairman of the Planning Department,

Thank you for your correspondence of August 17th, 2007 regarding City Zone change request #823. We are grateful for the notification as we are very much opposed to this request.

As you are aware, the property at 3000 Block of Central Avenue is currently zoned Residential 9,600. Like most of our neighbors, we purchased our home in July of 2006 having confirmed that the vacant property near and around us would not become commercial or residential multi-family.

Because of the limited egress from each of the loops in our area and the incredibly high volume of traffic that currently travels on 32nd, Central, and Monad, we are very concerned about this zone request causing further congestion and safety hazards in our neighborhood. Vehicle noise, engine exhaust, and traffic hazards will be significantly increased if a builder is allowed to use the current single family lots for the construction of businesses and apartment buildings.

We are asking that you honor the original plan approved by the city for our subdivision and deny the zone change being requested by Legacy Homes. Our safety, our quality of life, and our property values are at stake. If you have any questions, please contact us at your convenience. Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink that appears to read "Fred M. Nelson".

Fred M. Nelson

August 28, 2007

Zoning Committee Chairperson
City Zoning Commission
510 North Broadway, 4th Floor
Billings, MT 59101

Reference: City Zone Change #823

Dear Chairperson:

I am writing this letter in response to a letter that I received in the mail concerning **City Zone Change #823**. I will unfortunately be out of town when the Public Hearing is scheduled on both of the days and wanted to state my feelings on the matter. Currently we are zoned in the neighborhood to have something like 80 multifamily complexes built already. Many of these have gone up on Brookshire/29th already and many are almost completed. Already the traffic clog on the street is horrendous. There is one entrance to the subdivision from the North side and frankly I already fear for the safety of the children in the neighborhood when people park cars on the street and then add to these two lanes of traffic and you take your life into your own hands. My wife and I are expecting our first child and we purchased this property with the understanding that single and multi-family homes would be all that would go up in our neighborhood. To me that is rather misleading. I understand that progress must be made; but should we make that progress at the expense of our kids. The following is a listing of the questions that are supposed to be asked when a Criterion for Zone Change is put in. I do not think that Engineering, Inc. addressed all of these questions to the best of their ability or took into account the thoughts of people that actually live in the neighborhood.

1. Is the new zoning designed in accordance with the Growth Policy? I am not familiar enough with the Growth Policy to address it intellectually; but I can address what Eng, Inc. had to say. Plain and simple this will NOT raise the quality of life for the residents. This will create congestion and havoc on our many bikers, walkers, and runners. As I stated before we have one entrance into the subdivision and to change it to a commercial zone would only make it harder for everyone living in the subdivision.
2. Is the new zoning designed to lessen congestion in the streets? This will not happen at all. Congestion and accidents will worsen until somebody is hurt severely or killed. I can't believe Eng, Inc didn't take this into account at all.
3. Will the new zoning secure safety from fire, panic and other dangers? I honestly don't know how a fire truck would get into the neighborhood if something dreadful should happen. They would have to go through the Terra West Subdivision losing valuable time in saving someone's home.
4. Will the new zoning promote health and general welfare? Once again the answer is a resounding NO. Somebody will be hurt or killed on the street if this goes through. Congestion is already high with people driving through to skirt 32nd to get to Monad. Somebody will get hurt

J.J. & Alicia Hutzenbiler
2979 Providence Place
Billings, MT 59102



6. Will the new zoning prevent overcrowding of land? I am already a bit concerned with all of the multifamily stuff going up; but I don't have much say in that. The new zoning will only increase the multifamily housing problem and thusly increase the overcrowding of land.
7. Will the new zoning avoid undue concentration of population? The new zoning would accomplish this; but so would the old zoning.
8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements? Yes; but again so would the old zoning.
9. Does the new zoning give reasonable consideration to the character of the district? I don't feel as if Eng, Inc took this into consideration at all. The character of the district will change with the addition of any more commercial buildings. It would be like living in the middle of a shopping mall.
10. Does the new zoning give consideration to peculiar suitability of the property for particular uses? I don't know exactly what this question drives at; but Eng Inc. didn't answer and neither can I.
11. Was the new zoning adopted with a view to conserving the value of buildings? The property value of homes in the neighborhood will drop if this zone change happens. Who wants to live in a shopping mall? Who wants to raise their children in an environment in which they can be hurt or killed? You don't and neither do I.
12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area? I think that either would use the land appropriately by the definition implied in the question. I just don't think that the zone change would benefit the community as a whole as Eng, Inc made it sound. It wouldn't be all roses and candy like they made it seem. It would be congested and dangerous.

I have personally seen four wrecks at the intersection of Brookshire/29th and Central in the past year and a half that my wife and I have owned our property. There should be a light here in nothing else.

In closing, I hope that you take our considerations to heart. These are the views of myself and many of the people in our neighborhood. The road is already overly congested and would become dangerously so if the zoning change would take affect. Please take a drive down Brookshire/29th Street, down Providence, and through Daystar to see the congestion yourself. Finally, the commercial complex across the street from the proposed zoning change still has vacancies from when it opened. How would somebody fill a brand new building? They wouldn't. Thank you for your time and consideration.

Sincerely,


J.J. & Alicia Hutzenbiler

Attachment E
Zone Change #823

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tract 1B, Certificate of Survey 2991, Containing approximately 8.86 acres

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

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

2. DESCRIPTION. A tract of land known as Tract 1B, 2991, Containing approximately 8.86 acres and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading September 24, 2007.

PASSED, ADOPTED AND APPROVED on second reading October 9, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
City Clerk

ZC #823

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Zone Change #815 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a zone change request from Residential 7,000 (R-70) to Residential 6,000 (R-60) on a 25,273 square foot parcel of land known as Lots 2 and 3, Carrie E. Smith Subdivision, 2nd Filing located at 1248 Clark Avenue. The property is owned by Jack L. Robinson and Estate of Genevieve E. Robinson and the agent for the property is Ackerly- Hurlburt Architects. The Zoning Commission conducted a public hearing on August 7, 2007, and on September 4, 2007, and voted 4-1 to recommend denial to the City Council.

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

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

FINANCIAL IMPACT: The proposed zone change should not have a significant effect on the City's tax base when the property is developed.

RECOMMENDATION

The Zoning Commission recommends by a 4-1 vote that the City Council deny Zone Change #815 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS:

- A: Letters from Surrounding Property Owners
- B: Site Photographs (available for viewing in the City Clerk's Office)
- C: Site Plan
- D: Surrounding Zoning and Proposed Zoning
- E: Ordinance

INTRODUCTION

This is a zone change request from R-70 to R-60 on Lots 2 and 3 of Carrie E. Smith Subdivision, 2nd Filing. The property is located at 1248 Clark Avenue. The property is currently zoned R-70 which allows single family homes of 7,000 square feet of lot area and two-family homes on 9,600 square feet of lot area. There is one existing single-family home on Lot 3. The property is located on a short unimproved cul-de-sac south of Lewis Avenue.

PROCEDURAL HISTORY

- A zone change request was received on July 2, 2007, for the subject property.
- The Zoning Commission conducted a public hearing on August 7, 2007, and the Zoning Commission granted the applicant's request for a 30-day delay.
- The Zoning Commission conducted a second public hearing on September 4, 2007, and the Zoning Commission voted 4-1 to recommend denial of the zone change.
- The City Council will conduct a public hearing and first reading on September 24, 2007, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on October 9, 2007.

BACKGROUND

The applicant is requesting a zone change as well as a special review request to re-develop the property for a 4-plex multifamily dwelling and a duplex dwelling unit. The applicant proposes to demolish the existing single family home. The property is located on a short unimproved cul-de-sac south of the intersection of Lewis Avenue and 13th Street West. The original subdivision contemplated the continuation of 13th Street West south of Lewis Avenue but the right of way was later vacated and there is no connection south of these lots to Yellowstone Avenue. Single structures with more than two units are not allowed under the current R-70 zoning for these parcels. Most of the surrounding property is zoned for single family or two family dwelling units. Property to the south along Yellowstone Avenue is zoned R-60 and two multi-family unit condominiums were developed in the 1980s on these lots. Applications to change the zoning from R-70 (formerly R-72) to R-60 on lots north and east of these condominiums have been denied. There is a clear demarcation and separation between the multi-family units to the south and the single-family and two-family units to the north. The subject property is north of the multi-family units. Similar and more recent requests to rezone property from R-70 to R-60 have also been denied.

The potential development density with an R-60 zoning is up to eleven (11) units if the applicant requested a special review for a single ten unit multi-family building. Without a special review approval in an R-60 zone, the property could support up to three two-family homes or six dwellings units total. The current R-70 zone would allow two two-family homes or four dwelling units maximum. The current R-70 zone is compatible with the surrounding zoning and density of this area. There are no other R-60 zones within one block of

Lewis Avenue within the immediate area. The closest R-60 zone on Lewis Avenue is on the north east corner of 17th Street West and Lewis Avenue. The R-60 zone adjacent to the south has frontage on Yellowstone Avenue and was the original zoning (1972) of the property.

The Planning Division reviewed the application and recommended denial based on the attached twelve (12) criteria for zone changes. The subject property is surrounded by R-70 zoning to the north, east and west and an R-60 zone is not compatible with the surrounding zoning or neighborhood character. The Zoning Commission conducted a public hearing on August 7, 2007, and on September 4, 2007, and recommended denial of the zone change on a 4-1 vote.

ALTERNATIVES ANALYSIS

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

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

The proposed zone change is inconsistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would permit, with special review approval, up to 11 dwelling units on the parcel, which is inconsistent with the surrounding single-family and two-family residential uses. The applicant's proposal to develop a total of six units is still an increase in potential density of 50% over existing zoning and the surrounding neighborhood.

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

The proposed zoning is inconsistent with the surrounding character of the neighborhood, which is made up of single-family and two-family residences.

The proposed zoning would allow higher density multi-family development within an established neighborhood. The property is accessed only by an unimproved cul-de-sac and is not developed at this time to handle the proposed increase in traffic.

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

The additional traffic that could be produced by the proposed increase in density is minor but may have a significant impact on the unimproved road that provides the only access to the subject property. In addition, the level of service at the current intersection of 13th Street West and Lewis Avenue may be impacted by this increased traffic.

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

The subject property is currently serviced by City Fire and Police. Staff is unable to determine the impacts of the proposed density on those services. Any development will require a minimum width for access roads and provision of water for fire protection.

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

The proposed zoning would permit a significant density increase from the current allowed maximum of four units on the subject property in the R-70 zoning district. This could cause traffic conflicts within the area. However, the Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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

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

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. However, the proposed densities are significant and could cause overcrowding in this area of the City.

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

The proposed zoning will allow multi-family residential uses in an area surrounded by single-family and two-family residences. This may create an undue concentration of population in this area.

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

Transportation:	The proposed zoning may impact the surrounding streets, as the only way in and out of the development is an unimproved cul-de-sac and the intersection of 13 th Street West and Lewis is heavily used.
Water and Sewer:	The City will provide water and sewer to the property through existing lines on Lewis Avenue and the existing cul-de-sac.
Schools and Parks:	Burlington Elementary, Lewis and Clark Middle School and Senior High School will provide education to students within the development.
Fire and Police:	The subject property is currently served by the City of Billings fire and police departments.

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

The proposed zoning will permit multi-family uses, which are not alike in character to the surrounding single-family and two-family residential uses.

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

The subject property is not suitable for the requested zoning district. The property is accessed by an unimproved cul-de-sac and is surrounded by single-family and two-family dwellings.

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

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. High density multi-family dwellings may negatively affect single-family market prices.

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

The proposed zoning will permit more dense development that is not alike in character to the surrounding single-family residential uses.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on August 7, 2007, and received testimony from several surrounding property owners. The applicant was unable to attend the August 7, 2007, and requested a 30-day delay in writing. Testimony at the August 7, 2007, was received from David Fulwiler of 1325 Yellowstone Avenue, Pat and Bill McAllister of 1234 Lewis and Dean Galles of 1323 Yellowstone Avenue. Mr. Fulwiler testified that he agreed with the staff recommendation for denial. He stated that this is not a good zoning in this area, the area is already too crowded and the area can not support more families. He agreed that the existing dead-end street could not support the increase of population. Pat and Bill McAllister stated their property abuts the applicant's property. Pat McAllister stated she believes that this property will not support this many additional families. Dean Galles testified that he would like to see this property cleaned up and developed. He would like to know how big of a 4-plex they are proposing. He stated the owner should have to provide adequate off-street parking. Mr. Galles testified there are already cars parked on Yellowstone and Lewis because the area is already so clogged. The only way this property could support this type of development is if 13th Street south of Lewis was improved with pavement.

The Zoning Commission conducted a second public hearing on September 4, 2007, and received testimony from the applicant, Mr. Jack L. Robinson, and one surrounding property owner, Mr. Jon Doak of 1223 Clark Avenue. Mr. Robinson stated that his family has owned these two lots for many years and the neighborhood has grown up around the property. He would like to re-develop the area and when he spoke with the adjacent property owners they were concerned about more rental duplexes in the area. Mr. Robinson stated that several rental duplex dwellings in the area generate many calls for city services such as police and fire. The area does not have a clear demarcation of zoning. The map shows a mosaic of zoning in the area and many properties have been granted similar zone changes prior to his application. Mr. Robinson believed the highest and best use of the property is for the proposed 4-plex and duplex dwelling unit. This density of six total units is about half of what might be allowed under the R-60 zoning. The concern of abutting property owners about the building height is unfounded because two-story homes for single family or two family dwellings could be built on the property under the current zoning. The proposed zone change does not change the allowed building height. Chairman Angela Cimmino asked Mr. Robinson about access to the property. Mr. Robinson responded the existing city-owned right of way would provide adequate access to his two lots. As the lots were developed, he would pay for the improvements on the street in front of his property but not for improvements to the entire street right-of-way to Lewis Avenue. Commissioner Workman asked Planning Staff whether the police or fire department expressed any concern about the existing gravel turn-around. Ms. Cromwell stated that police, fire and emergency responders have not expressed concern with the existing turn-around at the current level of development. Further evaluation of the cul-de-sac would be necessary at the time lots are developed. Mr. Robinson testified that many cars and vehicles now use the turn around because driver's mistake this portion of 13th Street West as a through street to Yellowstone Avenue.

Mr. Jon Doak of 1223 Clark Avenue testified against the proposed zone change. He stated that he agrees with the staff report and recommendation to deny the request. He stated his largest concern was the existing traffic congestion at the intersection of 13th Street West and Lewis Avenue. Lewis and Clark School is just west of the intersection and many children walk to school in the area. He also stated a concern with increase in dust if the applicant does not pave any of the existing right-of-way to his lots. Mr. Doak stated this area between Lewis and Yellowstone is a green belt area within the city and provides access to Spring Creek Park and wild life moves east and west through this area. The proposed site plan would take out older trees on the site and the minimum five foot setback for the 4-plex is crowding the adjacent properties.

The Planning Division received three letters objecting to the proposed zone change and the special review for the 4-plex multifamily dwelling. Those letters are included as Attachment A. The Zoning Commission considered the staff recommendation, the testimony at both public hearings, written testimony and the applicant's explanation of the proposed project. The Zoning Commission voted 4-1 to deny the zone change application with Commissioner Workman voting against the motion to deny.

RECOMMENDATION

The Zoning Commission recommends by a 4-1 vote that the City Council approve Zone Change #815 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Letters from Surrounding Property Owners
- B: Site Photographs (available for viewing in the City Clerk's Office)
- C: Site Plan
- D: Surrounding Zoning and Proposed Zoning
- E: Ordinance

ATTACHMENT A
Surrounding Property Owner Letters – Zone Change #815

8/02/07

Planning & Community Services Department
510 North Broadway, 4th Floor
Billings, Montana 59101



Dear Members of the Zoning Commission:

My husband and I are out of town but would like to express our thoughts on the requested zoning and special review request being made by Jack Robinson, the Robinson Estate and Agent Dave Hurlburt. We are asking you to closely examine this request and hope that it will be denied as the impact on this small dead-end cu-de-sac will be negative and create adverse effects for several reasons.

We own a home and a large duplex lot that border this cu-de-sac, so we can address the current traffic flow and parking issues that exist as our garages open directly onto this area. With this proposal, the traffic congestion will be at least double of what it is now, and it is currently pretty busy with a duplex to the east, 2 town houses to the south as well as our house and Robinsons. We have no problem with the current zoning that allows a duplex, but the proposed request of 6 units would add 6 families, most with two cars or possibly 3 if they have teenagers. This would mean that the current number of 11 vehicles that daily share this small cul-de-sac, would jump to about 23 or more. We would like to request that members of the zoning commission actually go out to the site and view this cul-de-sac as not everyone listed within the legal radius for input will be impacted as dramatically as those that live directly adjacent to it.

In Jack Robinson's letter that accompanied his application for rezoning of this property he writes "All of the area surrounding these two parcels are already zoned R6000, so to place a single family unit or one duplex on Lot #3, places a burden on the single family dweller being out of place with the surrounding neighborhood". This is incorrect and utter nonsense! This makes it sound like this property is surrounded on all sides by 4-plexes and two story condos. It is true that there are R6000 units to the south; however this is totally untrue on the Lewis Avenue side. If commission members were to view the properties for themselves on Lewis Avenue from 12th to 14th (including the cul-de-sac), I think you will agree that this is incorrect. Also, his statement indicating that this area had been used as a hiding place for undesirables and as an area to avoid police is slightly overplayed and borderline ridiculous. Anyone chased by police will run and when they hit a dead end cul-de-sac, it really wouldn't matter what area of town they were in.

We appreciate your consideration of this input and ask that this application be denied.

Sincerely,


Tom & Robin Grinsteiner

Owners of 1306 & 1308 Lewis Avenue 59102

Planning Department ~
Zoning Commission ~

Attention: L12

I am writing on Behalf of
myself Patricia K. Thompson and
my spouse Dr. Grant R. Thompson
concerning the Zoning Change
request on the property at 1248

Clark Avenue. This property
is directly behind our home at
1231 Clark Avenue. Our firm
objections to this change is that
the building of a 4 plex and a
Duplex. - The 4 plex being approx
5 feet off our property line.

These structures to house at least
6 families, are on a undeveloped
single lane gravel road, direct
to Lewis Ave which is already
an extremely busy road, especially

With the School in the direct vicinity on Lewis Ave.

We would loose most of our privacy, with the removal of trees + shrubs along the property line to accomodate the construction, a major increase in noise from 6 additional families with 6 to 12 cars (possibly 2 per family) using this extremely small area. We are extremely concerned about a huge decrease in property value, from this zone change + Building. We do NOT feel that this is any way consistent with our existing neighborhood.

The Planning division did a complete analysis + made recommendations to deny this zone change. We are in complete agreement with

This Analysis & Recommendation.

Zone Change # 815

now is: R70

wants change

To R60 NO

Special Review # 849

If you have any further questions,
Please feel free to contact
Frank or myself at anytime.

Sincerely -

Patricia K. Thompson
Dr. Frank R. Thompson
1231 Clark Ave
Blgo, Mt 59102

406-245-0558 or cell: 406-690-1931

09/04/2007 14:43 FAX

MOULTON LAW FIRM

001/003



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GERALD B. MURPHY
K. KENT KOOLIN
GREGORY C. MURPHY
W. A. FORSYTHE
DOUG JAMES
BRAD H. ANDERSON
THOMAS E. SMITH
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MATTHEW D. BRAUNMANN
KATHRYN J. BEUL

FREDRIC D. MOULTON
[1912-1989]

W. S. MATHER
[1922-1993]

WM. H. BELLINGHAM
[1920-2002]

FACSIMILE TRANSMITTAL

Fax No. (406) 248-7889



From: Nancy Bennett

To: Liz Allen, Planning Clerk

Fax No. 657-8327

To: _____

Fax No. _____

To: _____

Fax No. _____

Total Number of Pages (Including this Page): 3

(ORIGINAL WILL ☒ WILL NOT ☐ FOLLOW BY U.S. MAIL)

Subject: Zone Change #815 and Special Review # 849

Date: September 4, 2007

File No. 099099

Message: Dear Liz,

Please forward the attached letter to the zoning commission for their meeting today at 4:30 p.m. on City Zone Change #815 & City Special Review #849. Thank you.

Please contact (406) 248-7731 if transmission is incomplete or illegible.

IMPORTANT NOTICE -- CONFIDENTIAL COMMUNICATION

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE. THIS MESSAGE CONTAINS INFORMATION WHICH MAY BE PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER THE APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY PHONE AND RETURN THIS TO US BY U.S. MAIL.

Nancy Bennett
1225 Clark Avenue
Billings, MT 59102

September 4, 2007

Angela Cimmino, Chair
1745 Sylvan Lane
Billings, MT 59105

Edward Workman, Vice Chairperson
3247 Flora Avenue
Billings, MT 59102

Thomas Grimm
2024 Avenue C
Billings, MT 59102

Michael Larson
3095 Avenue E
Billings, MT 59102

Leonard Dailey Jr
1202 Yale Avenue
Billings, MT 59102

Re: City Zone Change #81'5 and City Special Review #849 for 1248 Clark Avenue
Billings, MT 59102

Dear Committee Members:

Due to a prior commitment today at 4:30 p.m., I cannot be present for the zoning commission's review of the above request to allow a four-plex and a duplex to be built at 1248 Clark Avenue. 1248 Clark Avenue is currently zoned R-70 and the request for a zone change does not meet the twelve criteria necessary for a zone change. I strongly oppose the request for a zone change to R-60 with the construction of a four-plex and duplex at 1248 Clark Avenue. My home is directly east of the property for which Mr. Robinson requests a zone change. The proposed duplex would be on the west side of his lot with the four-plex on the east side of his lot set back five feet from the property line. As a result, I would no longer be able to enjoy my back patio as the four-plex would be about fifteen feet from my back patio. This will clearly result in a decline in my property value as well as the other homes adjacent to the east property line.

All the homes east of 1248 Clark Avenue are zoned R-70 allowing single structures with two units. The proposed zone change is inconsistent with the neighborhood. Although

there are multi-family units located south of 1248 Clark Avenue, those units were developed prior to the requirement for special review for approval of multi-family dwellings. Further, the multi-family units are clearly separated from the currently existing homes on Clark Avenue leaving Clark Avenue composed of single structures with two units. Nor do the multi-family units have access to Lewis Avenue and, therefore, they do not effect the traffic flow on Lewis Avenue.

The lot at 1248 Clark Avenue is accessed by a single lane, gravel road ending in a cul-de-sac. The unimproved, single lane gravel road will not support the increased traffic from the proposed duplex and four-plex. The unimproved gravel road leads directly to Lewis Avenue and is directly across from 13th Street West. 13th Street West is already a very busy intersection and the intersection will be unable to handle the increased traffic from the proposed development of 1248 Clark Avenue.

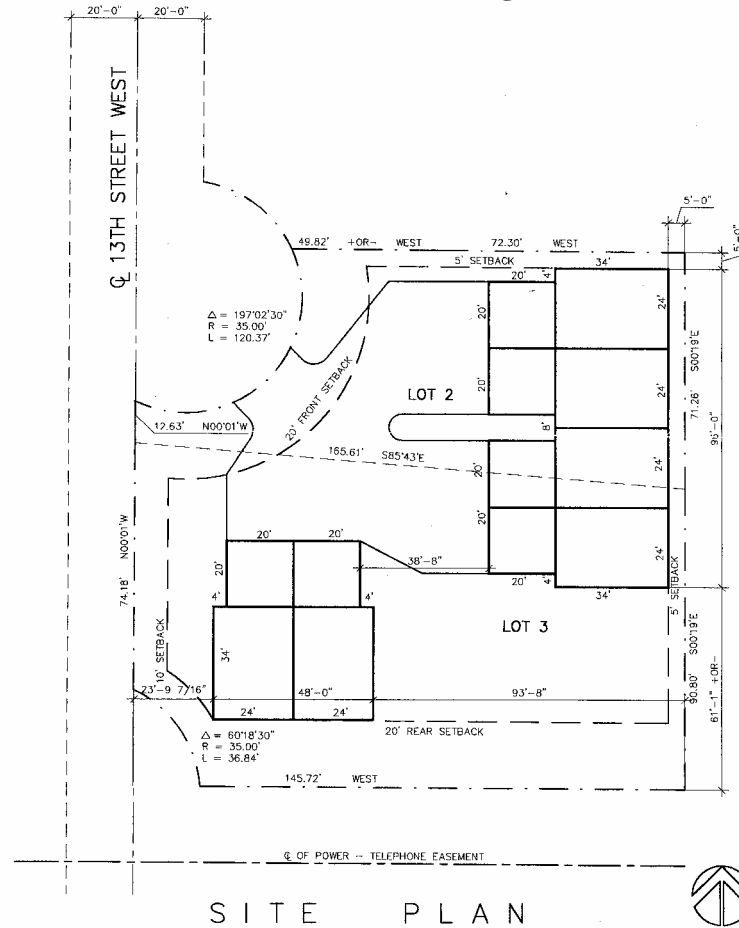
The Planning Division did a very thorough analysis of the requested zone change. I am in complete agreement with the Division's analysis and recommendation to deny the zone change. I

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Bennett", with a stylized flourish at the end.

Nancy Bennett

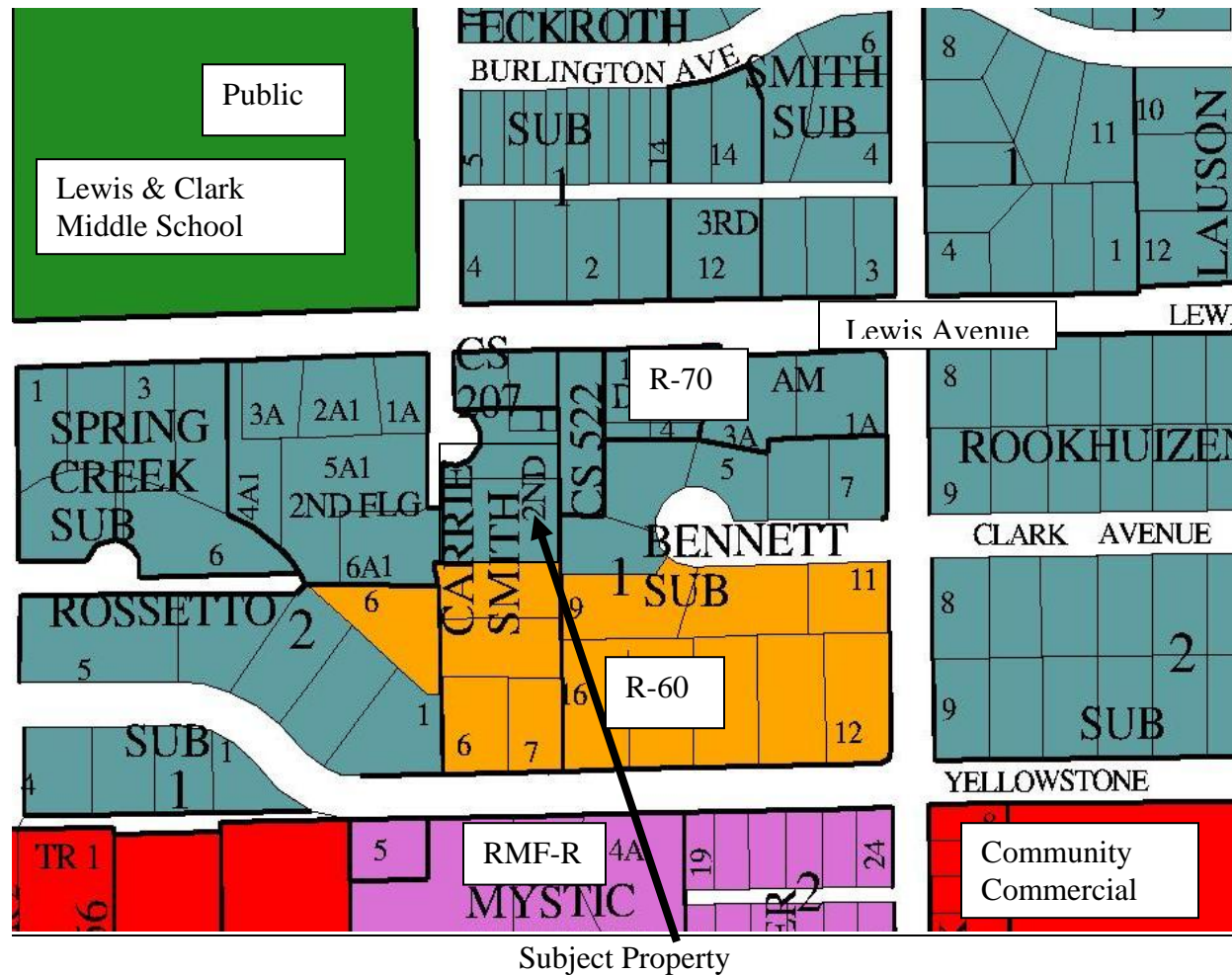
ATTACHMENT C **Site Plan – Zone Change #815**



S I T E P L A N

LEGAL DESCRIPTION: LOTS 2 & 3, BLOCK ?, CARRIE E. SMITH SUBDIVISION, 2ND FILING
 COMBINED LOT AREA(S): 24,197 SF
 LOT COVERAGE: 7,296 SF = 30.1%
 CURRENTLY ZONED R-7000

ATTACHMENT D
Surrounding Zoning – Zone Change #815
Zoning Map



ATTACHMENT E

Zone Change #815

ORDINANCE NO. 07-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR LOTS 2 AND 3, CARRIE E. SMITH SUBDIVISION, 2ND
FILING.

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

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

2. DESCRIPTION. A tract of land known as Lots 2 and 3, Carrie E. Smith Subdivision, 2nd Filing and is presently zoned Residential 7,000 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning on **Lots 2 and 3, Carrie E. Smith Subdivision, 2nd Filing** is hereby changed from **Residential 7,000** to **Residential 6,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6,000** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading September 24, 2007.

PASSED, ADOPTED AND APPROVED on second reading October 9, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

ZC#815 – 1248 Clark Avenue – Lots 2 and 3 Carrie E. Smith Subdivision, 2nd Filing

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Public Hearing for Special Review #849
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a special review request to allow a four-plex multifamily dwelling on a 25,273 square foot parcel in a proposed Residential 6,000 (R-60) zone, on Lots 2 and 3, Carrie E. Smith Subdivision, 2nd Filing. Jack L. Robinson and Genevieve E. Robinson are the owners and Dave Hurlburt of Ackerly-Hurlburt Architects is the agent. The property is addressed as 1248 Clark Avenue. The Zoning Commission held a public hearing on this request on August 7, 2007, and voted to allow a 30-day delay so the applicant could attend the hearing. A second public hearing was held on September 4, 2007, and the Zoning Commission is forwarding a recommendation of denial to the City Council on a 4-1 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, would not have a significant effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of denial of Special Review #849 on a 4-1 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs (available for viewing in the City Clerk's Office)
- C. Site Plan
- D. Letters from Surrounding Property Owners

INTRODUCTION

This is a request for a special review to allow the construction of a four-plex multifamily dwelling unit on Lots 2 and 3 of Carrie E. Smith Subdivision, 2nd Filing. The applicant has submitted a concurrent zone change request to change the underlying zoning from Residential 7,000 (R-70) to R-60 to allow for this special review request. The Zoning Commission has recommended denial of the zone change request based on the 12 review criteria for zone changes. If the City Council concurs with the zone change recommendation, this special review request cannot be considered and is moot. If the City Council does not concur with the recommendation to deny the zone change then it may also consider this special review request.

PROCEDURAL HISTORY

- A special review application to construct a 4-plex multi-family dwelling was received concurrently with the zone change application on July 2, 2007.
- The City Zoning Commission held a public hearing on August 7, 2007, and voted to allow a 30-day delay as requested by the applicant.
- The City Zoning Commission held a second public hearing on September 4, 2007, and is forwarding a recommendation of denial on a 4-1 vote.
- The City Council will conduct a public hearing and consider this application on September 24, 2007.

BACKGROUND

The applicant, Jack Robinson, is proposing to demolish the existing single family home and construct one duplex and one four-plex on the property. Single structures with more than two units are not allowed under the current R-70 zoning for these parcels. Most of the surrounding property is zoned for single family or two family dwelling units. Property to the south along Yellowstone Avenue is zoned R-60 and two multi-family unit condominiums were developed in the 1980s on these lots. The multifamily dwellings to the south in the R-60 zone were constructed prior to the requirement for special review approval for multifamily dwellings. There is a clear demarcation and separation between the multi-family units to the south and the single-family and two-family units to the north. The subject property is north of the multi-family units. Multifamily developments can be compatible in neighborhoods that have well developed access to collector or arterial streets or where there are existing multifamily dwellings. The multifamily dwellings to the south do not have access to Lewis Avenue and were developed as part of a multifamily neighborhood that fronts on Yellowstone Avenue. Although the proposed four-plex is compatible with these existing structures, they are part of a separate and distinct neighborhood group.

The Planning Division reviewed this application with other city departments and recommended denial to the Zoning Commission. Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the

application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it might be within one of the zoning districts (the proposed R-60 zone) where multifamily dwellings are allowed by special review approval. The form of the application is correct and the submitted site plan appears to be in conformance with site development and zoning regulations for multifamily dwellings.

The application does not conform to the second or third criteria. The zoning regulations adopted by the City Council have the purpose of promoting health, safety and general welfare. During the staff review of this project, the Engineering and Planning staff expressed concern with the existing access to the property. The unimproved cul-de-sac may not support the increased traffic from a multifamily dwelling. The right of way is gravel and provides minimal access at this time for a single family dwelling on the subject property and a duplex dwelling unit on the west side of the cul-de-sac. The proposed multifamily dwelling unit is not compatible with the majority of the surrounding property that is developed for single family and two family dwellings. No conditions of approval can be offered that can minimize the adverse impacts of this proposal. The Zoning Commission has recommended denial of the proposed zone change from R-70 to R-60 and is forwarding a recommendation of denial for the special review based on the three review criteria for special reviews.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is not consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is not appropriate in this particular district based on all the circumstances of the location. The access is an unimproved right-of-way and the application does not indicate the right of way will be improved except for the frontage adjacent to Lots 2 and 3. The application does not encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. Adjacent parcels are developed for single family and two family dwellings. A 4-plex multifamily dwelling will be out of character for this neighborhood. The application does not encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.
3. **Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.**
The proposed location of this multifamily dwelling is not appropriate at this location and no conditions of approval could minimize the adverse effects of the proposal.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

9. Street and road capacity;
10. Ingress and egress to adjoining streets;
11. Off-street parking;
12. Fencing, screening and landscaping;
13. Building bulk and location;
14. Usable open space;
15. Signs and lighting; and/or
16. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of denial of Special Review #849 on a 4-1 vote with Commissioner Workman voting against the motion to deny.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on August 7, 2007, and received testimony from several surrounding property owners. The applicant was unable to attend the August 7, 2007, and requested a 30-day delay in writing. Testimony at the August 7, 2007, was received from David Fulwiler of 1325 Yellowstone Avenue, Pat and Bill McAllister of 1234 Lewis and Dean Galles of 1323 Yellowstone Avenue. Mr. Fulwiler testified that he agreed with the staff recommendation for denial. He stated that this is not a compatible use in this area, the area is already too crowded and the area can not support more families. He agreed that the existing dead-end street could not support the increase of population. Pat and Bill McAllister stated their property abuts the applicant's property. Pat McAllister stated she believes that this property will not support this many additional families. Dean Galles testified that he would like to see this property cleaned up and developed. He would like to know how big of a 4-plex they are proposing. He stated the owner should have to provide adequate off-street parking. Mr. Galles testified there are already cars parked on Yellowstone and Lewis because the area is already so clogged. The only way this property could support this type of development is if 13th Street south of Lewis was improved with pavement.

The Zoning Commission conducted a second public hearing on September 4, 2007, and received testimony from the applicant, Mr. Jack L. Robinson, and one surrounding property owner, Mr. Jon Doak of 1223 Clark Avenue. Mr. Robinson stated that his family has owned these two lots for many years and the neighborhood has grown up around the property. He would like to re-develop the area and when he spoke with the adjacent property owners they were concerned about more rental duplexes in the area. Mr. Robinson stated that several rental duplex dwellings in the area generate many calls for city services such as police and fire. The area does not have a clear demarcation of zoning. The map shows a mosaic of zoning in the area and many properties have been granted similar zone changes and allowed to develop multifamily housing. Mr. Robinson believed the highest and best use of the property is for the proposed 4-plex and duplex dwelling unit. This density of six total units is about half of what might be allowed under the R-60 zoning. The concern of abutting property owners about the building height is unfounded because two-story homes for single family or two family dwellings could be built on the property under the current zoning. The proposed zone change and special review does not change the allowed building height. Chairman Angela Cimmino asked Mr. Robinson about access to the property. Mr. Robinson responded the existing city-owned right of way would provide adequate

access to his two lots. As the lots were developed, he would pay for the improvements on the street in front of his property but not for improvements to the entire street right-of-way to Lewis Avenue. Commissioner Workman asked Planning Staff whether the police or fire department expressed any concern about the existing gravel turn-around. Ms. Cromwell stated that police, fire and emergency responders have not expressed concern with the existing turn-around at the current level of development. Further evaluation of the cul-de-sac would be necessary at the time lots are developed. Mr. Robinson testified that many cars and vehicles now use the turn around because driver's mistake this portion of 13th Street West as a through street to Yellowstone Avenue.

Mr. Jon Doak of 1223 Clark Avenue testified against the proposed zone change. He stated that he agrees with the staff report and recommendation to deny the request. He stated his largest concern was the existing traffic congestion at the intersection of 13th Street West and Lewis Avenue. Lewis and Clark School is just west of the intersection and many children walk to school in the area. He also stated a concern with increase in dust if the applicant does not pave any of the existing right-of-way to his lots. Mr. Doak stated this area between Lewis and Yellowstone is a green belt area within the city and provides access to Spring Creek Park and wild life moves east and west through this area. The proposed site plan would take out older trees on the site and the minimum five foot setback for the 4-plex is crowding the adjacent properties.

The Planning Division received three letters objecting to the proposed zone change and the special review for the 4-plex multifamily dwelling. Those letters are included as Attachment A. The Zoning Commission considered the staff recommendation, the testimony at both public hearings, written testimony and the applicant's explanation of the proposed project. The Zoning Commission voted 4-1 to deny the zone change application with Commissioner Workman voting against the motion to deny.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does not conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does not encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

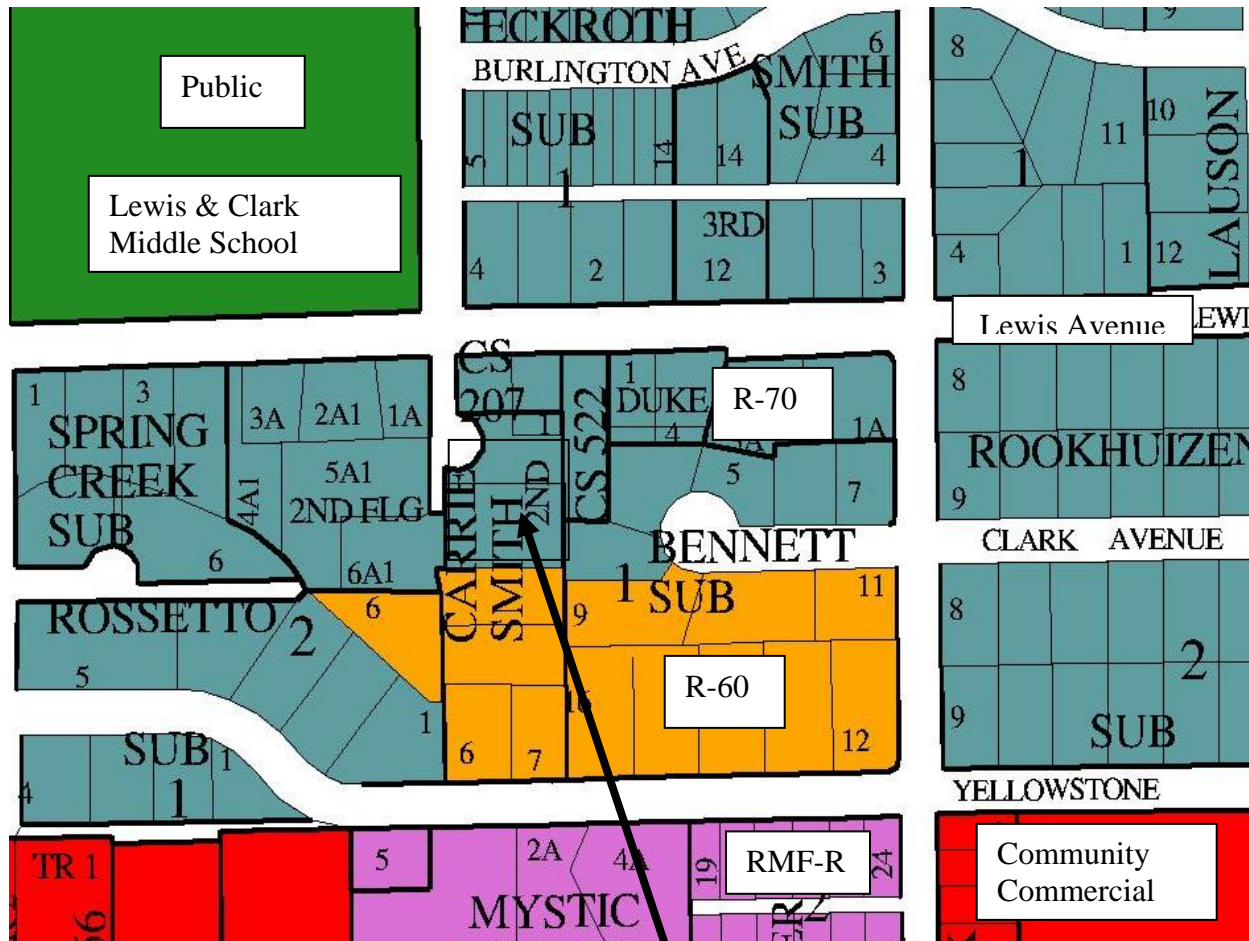
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of denial of Special Review #849 on a 4-1 vote.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs (available for viewing in the City Clerk's Office)
- C. Site Plan
- D. Letters from Surrounding Property Owners

ATTACHMENT A
Zoning Map – Special Review #849



Subject Property

Site Plan – Special Review #849



ATTACHMENT D
Letters from Surrounding Property Owners – Special Review #849

8/02/07

Planning & Community Services Department
510 North Broadway, 4th Floor
Billings, Montana 59101



Dear Members of the Zoning Commission:

My husband and I are out of town but would like to express our thoughts on the requested zoning and special review request being made by Jack Robinson, the Robinson Estate and Agent Dave Hurlburt. We are asking you to closely examine this request and hope that it will be denied as the impact on this small dead-end cu-de-sac will be negative and create adverse effects for several reasons.

We own a home and a large duplex lot that border this cu-de-sac, so we can address the current traffic flow and parking issues that exist as our garages open directly onto this area. With this proposal, the traffic congestion will be at least double of what it is now, and it is currently pretty busy with a duplex to the east, 2 town houses to the south as well as our house and Robinsons. We have no problem with the current zoning that allows a duplex, but the proposed request of 6 units would add 6 families, most with two cars or possibly 3 if they have teenagers. This would mean that the current number of 11 vehicles that daily share this small cul-de-sac, would jump to about 23 or more. We would like to request that members of the zoning commission actually go out to the site and view this cul-de-sac as not everyone listed within the legal radius for input will be impacted as dramatically as those that live directly adjacent to it.

In Jack Robinson's letter that accompanied his application for rezoning of this property he writes "All of the area surrounding these two parcels are already zoned R6000, so to place a single family unit or one duplex on Lot #3, places a burden on the single family dweller being out of place with the surrounding neighborhood". This is incorrect and utter nonsense! This makes it sound like this property is surrounded on all sides by 4-plexes and two story condos. It is true that there are R6000 units to the south; however this is totally untrue on the Lewis Avenue side. If commission members were to view the properties for themselves on Lewis Avenue from 12th to 14th (including the cul-de-sac), I think you will agree that this is incorrect. Also, his statement indicating that this area had been used as a hiding place for undesirables and as an area to avoid police is slightly overplayed and borderline ridiculous. Anyone chased by police will run and when they hit a dead end cul-de-sac, it really wouldn't matter what area of town they were in.

We appreciate your consideration of this input and ask that this application be denied.

Sincerely,

 
Tom & Robin Grinsteiner

Owners of 1306 & 1308 Lewis Avenue 59102

Planning Department ~
Zoning Commission ~

Attention: L12

I am writing on behalf of
myself Patricia K. Thompson and
my spouse Dr. Frank R. Thompson
concerning the zoning change
request on the property at 1248

Clark Avenue. This property
is directly behind our home at
1231 Clark Avenue. Our firm
objections to this change is that
the building of a 4 plex and a
Duplex. - The 4 plex being approx
5 feet off our property line.

These structures to house at least
6 families, are on a undeveloped
single lane gravel road, direct
to Lewis Ave which is already
an extremely busy road, especially

With the School in the direct vicinity on Lewis Ave.

We would loose most of our privacy with the removal of trees + shrubs along the property line to accomodate the construction, a major increase in noise from 6 additional families with 6 to 12 cars (possibly ² per family using this extremely small area. We are extremely concerned about a huge decrease in property value, from this zone change + Building. We do not feel that this is any way consistent with our existing neighborhood.

The Planning division did a complete analysis + made recommendations to deny this zone change

We are in complete agreement with

This Analysis & Recommendation.

Zone Change # 815

now is: R 70

wants change

To R 60 NO

Special Review # 849

If you have any further questions,
please feel free to contact
Frank or myself at anytime.

Sincerely -

Patricia K. Thompson
Dr. Frank R. Thompson
1231 Clark Ave
Blgo, Mt 59102

406-245-0558 or cell: 406-690-1931

09/04/2007 14:43 FAX

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001/003



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FACSIMILE TRANSMITTAL
Fax No. (406) 248-7889



From: Nancy Bennett

To: Liz Allen, Planning Clerk

Fax No. 657-8327

To: _____

Fax No. _____

To: _____

Fax No. _____

Total Number of Pages (Including this Page): 3

(ORIGINAL WILL ☒ WILL NOT ☐ FOLLOW BY U.S. MAIL)

Subject: Zone Change #815 and Special Review # 849

Date: September 4, 2007

File No. 099099

Message: Dear Liz,

Please forward the attached letter to the zoning commission for their meeting today at 4:30 p.m. on City Zone Change #815 & City Special Review #849. Thank you.

Please contact (406) 248-7731 if transmission is incomplete or illegible.

IMPORTANT NOTICE -- CONFIDENTIAL COMMUNICATION

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE. THIS MESSAGE CONTAINS INFORMATION WHICH MAY BE PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER THE APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY PHONE AND RETURN THIS TO US BY U.S. MAIL.

Nancy Bennett
1225 Clark Avenue
Billings, MT 59102

September 4, 2007

Angela Cimmino, Chair
1745 Sylvan Lane
Billings, MT 59106

Edward Workman, Vice Chairperson
3247 Flora Avenue
Billings, MT 59102

Thomas Grimm
2024 Avenue C
Billings, MT 59102

Michael Larson
3095 Avenue E
Billings, MT 59102

Leonard Dailey Jr
1202 Yale Avenue
Billings, MT 59102

Re: City Zone Change #81'5 and City Special Review #849 for 1248 Clark Avenue
Billings, MT 59102

Dear Committee Members:

Due to a prior commitment today at 4:30 p.m., I cannot be present for the zoning commission's review of the above request to allow a four-plex and a duplex to be built at 1248 Clark Avenue. 1248 Clark Avenue is currently zoned R-70 and the request for a zone change does not meet the twelve criteria necessary for a zone change. I strongly oppose the request for a zone change to R-60 with the construction of a four-plex and duplex at 1248 Clark Avenue. My home is directly east of the property for which Mr. Robinson requests a zone change. The proposed duplex would be on the west side of his lot with the four-plex on the east side of his lot set back five feet from the property line. As a result, I would no longer be able to enjoy my back patio as the four-plex would be about fifteen feet from my back patio. This will clearly result in a decline in my property value as well as the other homes adjacent to the east property line.

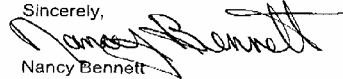
All the homes east of 1248 Clark Avenue are zoned R-70 allowing single structures with two units. The proposed zone change is inconsistent with the neighborhood. Although

there are multi-family units located south of 1248 Clark Avenue, those units were developed prior to the requirement for special review for approval of multi-family dwellings. Further, the multi-family units are clearly separated from the currently existing homes on Clark Avenue leaving Clark Avenue composed of single structures with two units. Nor do the multi-family units have access to Lewis Avenue and, therefore, they do not effect the traffic flow on Lewis Avenue.

The lot at 1248 Clark Avenue is accessed by a single lane, gravel road ending in a cul-de-sac. The unimproved, single lane gravel road will not support the increased traffic from the proposed duplex and four-plex. The unimproved gravel road leads directly to Lewis Avenue and is directly across from 13th Street West. 13th Street West is already a very busy intersection and the intersection will be unable to handle the increased traffic from the proposed development of 1248 Clark Avenue.

The Planning Division did a very thorough analysis of the requested zone change. I am in complete agreement with the Division's analysis and recommendation to deny the zone change. I

Sincerely,



Nancy Bennett

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Zone Change #821 Public Hearing and 1st Reading of Ordinance – Electronic Signs – City Sign Code Amending Sections 27-703, 27-705(c), 27-706(b) and 27-708

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: Section 27-701 of the Unified Zoning Regulations (City Sign Code) defines and regulates many types of commercial signs. The current code inadequately regulates signs that use newer technology. In January 2006, at a City Council Work Session, the City Sign Code was reviewed due to concerns about the regulation of electronic message displays. As a result, the City Council created the Electronic Sign Ad Hoc Committee in June, 2006. The committee was charged with specifically reviewing Section 27-708 (Prohibited Signs) to create sufficient criteria to regulate e-signs and to make a recommendation to the City Council on or before June 26, 2007. On July 30, 2007, the City Council accepted the recommendation of the Electronic Sign Ad Hoc Committee and initiated this amendment to the City Sign Code. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on September 4, 2007, and voted 5-0 to recommend approval to the City Council of the amendment and that the City Council further consider amending the ordinance to include a minimum separation of e-signs from residential uses, minimum landscaping requirements for new e-signs and whether operational standards should be applied to existing e-signs.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on September 24, 2007. Five persons testified in favor and eight testified in opposition to the proposed zone change. The City Zoning Commission is forwarding a recommendation of approval and that the City Council consider three amendments to the ordinance: 1) provide a minimum separation of any new e-signs from residential uses; 2) consider a minimum landscaping requirement for new e-signs; and 3) consider whether operational standards should apply to existing e-signs. The City Council may choose to approve,

deny or delay action for thirty (30) days on the proposed text amendments. The City Council may also indefinitely postpone action on the text amendment and direct the Planning Division or the City Attorney to make specific changes to the ordinance.

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 5-0 vote recommends that the City Council approve Zone Change #821 and that the City Council further consider amending the ordinance to include a minimum separation of e-signs from residential uses, minimum landscaping requirements for new e-signs and whether operational standards should be applied to existing e-signs.

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

ATTACHMENTS (available in City Clerk's Office):

Attachment A:	Draft of Text Amendment – E-sign regulations
Attachment B:	Memo from Assistant City Attorney Bonnie Sutherland
Attachment C:	Code comparison chart of existing City & County Sign Codes
Attachment D:	E-sign Inventory
Attachment E:	E-sign Regulations from Missoula, Kalispell, Bozeman, Great Falls, MT & Boise, ID
Attachment F:	Petitions and letters from concerned citizens received on or before the City Council Work Session July 30, 2007
Attachment G:	Written Testimony received by the Zoning Commission on September 4, 2007

INTRODUCTION

On June 26, 2006, the City Council created the E-Sign Ad Hoc Committee to review sections of the City Sign Code that pertain to or regulate full color electronic message display signs. The committee was charged with specifically reviewing Section 27-708 (Prohibited Signs) to create sufficient criteria to regulate e-signs and to make a recommendation to the City Council on or before June 26, 2007. The committee consisted of 12 members and members were appointed to represent certain interested parties including the community, sign owners as well as sign designers and manufacturers. In addition, the City Council appointed two city staff members and two City Council members as voting members of the committee. The E-sign Ad Hoc Committee met 15 times in public session and came to a consensus on a recommendation on May 31, 2007. The draft ordinance was compiled with the assistance of several committee members and review was provided by Bonnie Sutherland, Assistant City Attorney.

PROCEDURAL HISTORY

- On June 26, 2006, the City Council created the Electronic Signs Ad Hoc Committee to review parts of the Billings City Sign Code and make recommendations to the City Council in regard to City Code regulations for full-color display electronic message centers.
- The E-Sign Ad Hoc Committee held its first meeting on August 31, 2006, and its last meeting on May 31, 2007.
- On July 30, 2007, the City Council reviewed and accepted the recommendation from the E-Sign Ad Hoc Committee and forwarded the zone change to the Zoning Commission for public hearing and recommendation.
- On September 4, 2007, City Zoning Commission conducted the public hearing for the change to the City Sign Code regulations.
- The City Council will hold a public hearing and 1st reading of the ordinance on September 24, 2007, and make a decision on the City Sign Code amendments.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on October 9, 2007.

BACKGROUND

The E-Sign Ad Hoc committee reviewed sign ordinances from Missoula, MT; Kalispell, MT; Bozeman, MT; Great Falls, MT; San Diego, CA; Kent, WA; Douglas County, CO; Kent, OH; Maple Valley, WA; Boise, ID; Champaign, IL; Urbana, IL; Cookeville, TN; Murray, KY; Burbank, CA; Oakridge, TN; Tukwila, WA; San Luis Obispo, CA; Mesa, AZ; West Hollywood, CA; SeaTac, WA; Tavares, FL and Seattle, WA. Selected sections of electronic message display sign codes from Missoula, Kalispell, Bozeman and Great Falls, MT as well as Boise, ID are included as **Attachment E**. These five codes regulate e-signs in several areas but all allow e-signs in some zoning districts. In Missoula, “changeable copy” signs may be electronic signs but may not change the message on the sign more than once per hour. “Changing signs” may also be electronic and may change more than once per hour. Both types of signs may be up to 32 square feet or 50% of the allowable sign area whichever is greater. Missoula sign regulations in general have lower maximum sizes for all signs than the Billings code currently allows. Kalispell allows

electronic signs as long as time and temperature are displayed every 30 seconds, is incorporated with a primary sign, is no greater than 25% of the sign area, the message does not change in increments of less than 5 seconds and does not flash or blink. Kalispell prohibits the use of red or green in an e-sign.

The committee also reviewed articles from the American Planning Association, the sign industry, the Federal Highway Administration, articles on legal issues with sign regulation and technical articles on measuring brightness. Dennis Harriman of the committee created a photographic inventory of the electronic message signs within the city limits. The Planning staff augmented this inventory with permit data to create a base of sign information. The inventory including the number of signs that may become nonconforming if the proposed text amendment passes is included as **Attachment D**.

The committee invited a representative of Daktronics, a leading manufacturer of electronic message signs, to discuss the technical aspects of measuring sign brightness and to demonstrate for the committee the capabilities of an electronic message sign. The committee also reviewed the seven separate sign codes that apply in various districts within the city and in Yellowstone County. A chart comparing these seven sign codes is included as **Attachment C**.

The Planning Division reviewed the proposed amendment as well as serving on the E-sign Ad Hoc Committee. The Planning Division recommended approval of the proposed text amendment with the addition of language concerning a compliance time period for the proposed operational standards that includes brightness, flashing or other sign animations proposed to be prohibited under the new language. Assistant City Attorney Bonnie Sutherland advised the committee and the Planning Division that operational standards can be applied to existing electronic signs provided the code allows a set period of time to bring those signs in to compliance with the new standards of operation. Bonnie Sutherland's memo is included as **Attachment B**.

The Zoning Commission conducted a public hearing on September 4, 2007, and heard testimony on the proposed changes. Written testimony was also received and reviewed by the Zoning Commission. Written testimony received at the September 4, 2007, is included as **Attachment G**. Written testimony received prior to the Zoning Commission hearing is included as **Attachment F**. The Zoning Commission voted 5-0 to recommend approval to the City Council of the amendment and that the City Council further consider amending the ordinance to include a minimum separation of e-signs from residential uses, minimum landscaping requirements for new e-signs and whether operational standards should be applied to existing e-signs.

ALTERNATIVES ANALYSIS

The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments. The City Council may also indefinitely postpone action on the text amendment and direct the Planning Division or the City Attorney to make specific changes to the ordinance.

STAKEHOLDERS

The Zoning Commission held a public hearing on September 4, 2007, on the proposed changes to the City Sign Code. Thirteen persons testified on the proposed amendments. Five testified in favor of the amendments: Gordon Tryan, Brown's Automotive and Chairman of the E-Sign Ad Hoc Committee, Kelly Strobel, Lamar Inc., Lisa Gilbertson of Western Security Bank and E-Sign Ad Hoc Committee member, Ron Bachman, Permaletter Sign Company and E-Sign Ad Hoc Committee member, and Paul Cox, Sign Products, Inc. Eight persons testified in opposition to the proposed amendments: Josi Wilgus, Vice-Chairman of the E-Sign Ad Hoc Committee, Paul Whiting of Flat Iron Gallery and photographer, Theresa Keaveny of Montana Conservation Voters, Bruce MacIntyre, Director of Government Affairs for the Billings Chamber of Commerce, Michelle Cormier of Player's Paradise Casino, Angie Cormier of Cormier, Inc., Souther of the Billings Architectural Association and Rich Hageman of Dairy Queen.

Gordon Tryan testified the committee attempted to first deal with the complaints the city was receiving about e-signs including the brightness of signs, flashing and blinking. The committee focused on creating sufficient definitions and good operational standards for the sign code. Mr. Tryan emphasized that the section of e-sign billboards was to apply regulations where none currently exist although the current code would allow e-signs on billboards. There is one current off-premise billboard e-sign at King Avenue West and 24th Street West – the Big Bear Sports sign. Mr. Tryan testified the committee agrees that all existing e-signs should have to conform to the proposed operational standards and prohibitions. The committee attempted to draft the code so it would keep pace with any technology that might come along in the future. In addition, the committee carefully considered whether the standards and regulations were enforceable with current staff resources.

Kelly Strobel testified that his interest was the regulation of e-signs on off-premise billboard signs. He attended most of the E-Sign Ad Hoc Committee meetings and requested the committee allow a change in advertising message displays every six seconds for billboard signs. Some cities allow six seconds and some allow changes every 10 seconds. The committee agreed to recommend the six second standard.

Lisa Gilbertson testified that she currently operates eight e-signs in Billings for Western Security Bank. Ms. Gilbertson testified there is a steep learning curve for new sign owners and operators. What the operator sees on the computer screen in the office is not how it appears on the sign on the street. Ms. Gilbertson believes many of the original complaints to the city about flashing and bright e-signs were about the signs she was learning to operate. Ms. Gilbertson testified that she has applied the proposed code to all the signs she operates and the signs are very effective even with the limitations on flashing, brightness and video. Ms. Gilbertson stated that any sign owner can comply with the new code and still communicate effectively with the public.

Ron Bachman testified that e-signs are critical to Billings' small businesses. Consumers respond to visual images, not words and e-signs are very effective. The proposed code is understandable and was a negotiated result of nine months of meetings. Small businesses need this competitive edge in Billings to succeed. Mr. Bachman testified that the proposed 40% maximum for e-signs was a compromise and will prevent big "black box" signs from proliferating. E-signs are now

being used by businesses to replace other clutter-producing signs such as portable reader boards and banners. E-signs should result in less visual clutter not more.

Paul Cox testified that he has been in the sign business for more than 32 years and he believes the proposed amendment is a fair and equitable regulation.

Josi Wilgus testified that the committee never decided whether the existing code allowed e-signs or not. The committee should have discussed this issue prior to writing any new regulations. Ms. Wilgus testified the committee was one-sided in favor of sign companies and sign owners. The committee received copies of other city sign codes, but the merits of these codes were never discussed by the committee. Ms. Wilgus testified that appointing city staff members as voting members hampered their ability to present an unbiased professional opinion to the committee. Safety studies concerning the effect of e-signs on driver attention were dismissed as inconclusive by the committee. The committee ignored the goals and policies of the 2003 Growth Policy that has a goal of creating a visually appealing community, and reducing visual clutter. Ms. Wilgus stated there is no empirical evidence that e-signs improve businesses or attract more customers. Ms. Wilgus testified that the proposed amendments allow e-signs that are too large – up to 100 square feet in certain areas. Ms. Wilgus urged the Zoning Commission to reduce the maximum size of e-signs to 24 square feet for all areas, to include a minimum separation of 300 feet from a residential area and that new e-signs should have landscaping installed.

Paul Whiting testified that the ad hoc committee used a flawed process to propose the code amendments. The committee should have answered the question of whether e-signs are allowed under the current code. The committee did not answer this question and proceed to develop definitions and regulations. This action added legitimacy to the existing e-signs without deciding the legality of such signs. Mr. Whiting testified that one member of the ad hoc committee never attended a single meeting and the meetings were not well advertised to the general public. Mr. Whiting testified the Zoning Commission should recommend an entire new committee be appointed and that committee should be charged first with deciding the ambiguity of the existing code. Commissioner Ed Workman asked Mr. Whiting if he would prefer regulation of e-signs or to prohibit them. Mr. Whiting stated he would prefer a prohibition on e-signs. Mr. Whiting testified that he believes the existing code does prohibit e-signs from using any moving graphics at all.

Theresa Keaveny stated that Section 27-708 of the City Sign Code is contradictory and the ad hoc committee did not address this ambiguity at all. Ms. Keaveny urged the Zoning Commission to amend the ordinance to reduce the maximum size of e-signs to 24 square feet or 40% of the sign area whichever is less, impose a minimum separation from residential areas of 150 feet similar to off-premise billboard signs and require landscaping when new e-signs are installed. Ms. Keaveny testified that the make up of the committee was unusual in that two City Council members and two city staff were voting members. Only two of the twelve members truly represented community concerns. Ms. Keaveny testified the process did not pass the “smell test” and was biased towards signs companies and sign owners. The result is an amendment that does not represent the community interests.

Bruce MacIntyre testified that as a representative of the Billings Chamber of Commerce he should have been involved sooner in the process. He apologized to the Zoning Commission for not being involved while the ad hoc committee was discussing the proposal. He applauded the ad hoc committee for their efforts. Mr. MacIntyre testified that existing e-sign owners should be able to enjoy all of the capabilities of the signs including motion borders. Mr. MacIntyre questioned whether these types of advertising are a distraction or not for drivers. Signs are a large part of any business' annual advertising budget especially small businesses. Small business makes up 80% of all businesses in Montana and most employ 20 or fewer staff. Sign advertising helps small businesses succeed.

Michelle Cormier testified that before her new e-sign went up, her business was averaging 3 to 5 new customers a week. Since the sign went up, her business has attracted 125 new customers in less than 3 weeks. Ms. Cormier stated that 80% of the cost of her e-sign was to upgrade it for video. The proposed regulation will nullify that investment. Ms. Cormier stated her sign has an automatic dimmer installed. Ms. Cormier stated she has tried all types of advertising including radio, television and flyers. These advertising efforts are not effective for her business. The new e-sign really works to bring in new customers. She urged the Zoning Commission to not recommend enforcing the operational standards on existing e-signs.

Angie Cormier testified that persons opposed to this new technology should consider that Billings is a large city and should look and act like a big city. Businesses use new technology such as e-signs to increase their businesses. Ms. Cormier testified that just like "community representatives" only two of twelve ad hoc committee members were businesses that owned e-signs. The proposed ordinance most affects business owners and they should have a prominent seat on these committees. Businesses need good advertising to expand and benefit the community.

Souther testified that the Billings Architectural Association is concerned the proposed ordinance would continue to encourage sign blight. Souther read the statement sent to the ad hoc committee in October of 2006. The association urges the Zoning Commission to consider stricter regulations for e-signs. Sign blight has overcome some areas of Billings and signs dominate the streetscape. Signs should be sensitive to the area and should be reduced in height, bulk, scale and landscaping should be added. The Billings Architectural Association urges the Zoning Commission to acknowledge that the ad hoc committee did not adequately represent the community and send it back to the Planning Division for a revision and with a broader review of the City Sign Code.

Rich Hageman testified that the person most affected by this regulation will be the consumer. Mr. Hageman stated that a 24 square foot sign is too small to be effective. Mr. Hageman agreed that what Dennis Harriman stated at the July 30, 2007, City Council Work Session was true – "If the Council limits the maximum size to 24 square feet, you might as well prohibit e-signs altogether." Mr. Hageman testified that he believes it is a small minority of people who are trying to impose their sensibilities on the majority of the community. Mr. Hageman stated he

believes the ad hoc committee did a good job for the most part. He disagrees with imposing operational standards on existing e-signs. He stated that motion borders don't bother him and probably don't affect the majority of other drivers.

RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council approve Zone Change #821 and that the City Council further consider amending the ordinance to include a minimum separation of e-signs from residential uses, minimum landscaping requirements for new e-signs and whether operational standards should be applied to existing e-signs.

ATTACHMENTS (available in City Clerk's Office):

- Attachment A: Draft of Text Amendment – E-sign regulations
- Attachment B: Memo from Assistant City Attorney Bonnie Sutherland
- Attachment C: Code comparison chart of existing City & County Sign Codes
- Attachment D: E-sign Inventory
- Attachment E: E-sign Regulations from Missoula, Kalispell, Bozeman, Great Falls, MT & Boise, ID
- Attachment F: Petitions and letters from concerned citizens received on or before the City Council Work Session July 30, 2007
- Attachment G: Written Testimony received by the Zoning Commission on September 4, 2007

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

TITLE: Zone Change #820 Public Hearing and 1st Reading of Ordinance –Text Amendment to Section 27-705(C), BMCC, Commercial Sign Regulations

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On July 16, 2007, the City Council approved an initiative directing staff to revise Section 27-705(C), BMCC, Commercial Sign Regulations. Since the commercial zoning districts are all contained within the same section of the regulations, the entire commercial sign portion of the code has been revised to reflect a more simplified version including specific regulations that apply only to the Central Business District (CBD). The City Zoning Commission conducted a public hearing on the amendment to the zoning regulations on September 4, 2007, and voted 5-0 to recommend approval to the City Council of the amendment.

ALTERNATIVES ANALYZED: The City Zoning Commission conducted a public hearing on the proposed text amendment on September 4, 2007. No one testified in favor or in opposition to the proposed zone change. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

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

RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council approve Zone Change #820, amending Section 27-705(C) of Billings, Montana City Code.

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

ATTACHMENTS:

A: Ordinance

INTRODUCTION

On July 16, 2007, the City Council approved an initiative directing staff to revise Section 27-705(C), BMCC. Since the commercial zoning districts are all contained within the same section of the regulations, the entire commercial sign portion of the code has been revised to reflect a more simplified version including specific regulations that apply only to the Central Business District (CBD).

PROCEDURAL HISTORY

- On November 20, 2006, proposed revisions to the commercial portion of the sign regulations were presented at a Council Work Session. The Council had concerns regarding portions of the proposed amendment and requested staff to revise the sign regulations.
- On July 16, 2007, the proposed revisions to the commercial portion of the sign regulations were presented to the City Council and the Council initiated staff to move forward with the text amendment.
- On September 4, 2007, the City Zoning Commission conducted the public hearing for the text amendment.
- On September 24, 2007, the City Council will conduct a public hearing and 1st reading of the ordinance.
- On October 9, 2007, if the text amendment is approved on first reading, the City Council will consider it for second reading.

BACKGROUND

Planning staff has been working with the Downtown Business Owners Association to revise signage regulations for the Central Business District (CBD). A group of citizens interested in revising signage for downtown businesses began changes to the sign code in October 2000. In the Fall of 2005, the regulations that were proposed in 2000, were again proposed, and the Urban Design Committee (UDC) started meeting with staff about completing a text amendment. Planning staff drafted a revised version of the commercial sign regulations for the Downtown Business Owners Association in the summer of 2006. At that time, the business owners decided to form another committee composed of those who had a property interest in the downtown area, as well as a member of the sign community, an architect, and a member of Planning staff. This group has created sign regulations that they feel adequately address the needs within the CBD, including a greater allowance for projecting signs into the right-of-way, less restrictions on the number of signs, and an additional allowance for “building identifier” signs (i.e. Wells Fargo, Crowne Plaza, First Interstate) for buildings greater than two stories. These specific regulations will only apply to the CBD. However, since the commercial zoning districts are all contained within the same section of the sign regulations, the entire commercial sign portion (Section 27-705(C)) of the code has been revised to reflect a more simplified version.

At the November 20, 2006, Council Work Session, revisions to signs within the CBD was initiated by the City Council. On March 5, 2007, staff attended a City Council Work Session and presented the revisions to the regulations. The Council expressed concerns regarding the

increased size of signs for building identifier signs and requested that staff provide visual images of signs as they exist and how they could be increased under the proposed regulations.

At the July 16, 2007, City Council Work Session, the Council initiated staff to revise Section 27-705(C), BMCC, to create a simplified version of the commercial portion of the sign code with no substantive changes. These regulations will only apply within the city limits. The following are clarifications and revisions added to the code:

- Section 27-705(C)(1)(c) - For any off-premises signs located within 660 feet of an interstate or state controlled highway, street, or road right-of-way, a copy of the Montana Department of Transportation (MDT) permit shall be required and submitted with the City of Billings permit application in accordance with Section 18.6.211, Administrative Rules of Montana (ARM).
- Section 27-705(C)(2) - A greater allowance for projecting signs into the right-of-way. The existing regulations permit signs to project 18-inches into the public right-of-way. The proposed regulations would allow for signs to project over 2/3 of the sidewalk, provided that an encroachment agreement is first obtained from the Engineering Division.
- Section 27-705 (C)(2) - There are an unlimited number of signs permitted for all commercial districts for each structure, provided that they do not exceed their allotted square footage for sign area.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the revisions to Section 27-705(C), BMCC.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on September 4, 2007, on the proposed changes to the zone change application regulations. No one spoke in favor or in opposition to the proposed ordinance. Planning staff explained the proposed changes to the Zoning Commission and encouraged discussion regarding the proposed revision to allow an unlimited number of wall signs, provided that businesses do not exceed the allotted square footage permitted based on the linear feet of building frontage. This would eliminate the confusion of primary entrance signs versus wall signs, as well as the transferring of square footage from one wall to another. The permitted square footage would regulate the signs. The Zoning Commission did have concerns regarding whether some buildings might visually clutter the wall faces of buildings with small signs. However, they did state that they felt that common sense would prevail, as businesses would not want to litter their buildings with numerous sign. Staff did specify that other communities similar in size to Billings have updated their signs codes to allow only a percentage of walls to be covered by signs or an unlimited number of signs. The Zoning Commission did note that they would like to possibly review this section of the regulations in the future if it is determined that the intent of the regulations is not being followed.

RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council approve Zone Change #820, amending Section 27-705(C) of Billings, Montana City Code.

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

ORDINANCE NO. 07-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 27-705(C); CLARIFYING THE EXISTING COMMERCIAL SIGN REGULATIONS WITH REVISIONS TO THE CENTRAL BUSINESS DISTRICT SIGN REGULATIONS

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

Section 1. That Section 27-705(c) of the Billings, Montana City Code be amended so that such section shall read as follows:

~~(c) Community commercial, neighborhood commercial, neighborhood commercial limited, controlled industrial, heavy industrial, highway commercial, and Central Business District. Within these zones, signs are permitted as follows:~~

~~(1) One (1) free-standing sign indicating only the name and nature of the occupancy for each developed parcel not to exceed three (3) square feet of sign area for each lineal foot of street frontage abutting the developed portion of the parcel, provided that:~~

~~a. Where a developed parcel has in excess of three hundred (300) feet of street frontage, one (1) additional free-standing sign may be erected for each additional three hundred (300) feet of street frontage in excess of the first three hundred (300) feet of street frontage abutting the developed portion of the parcel; Signs will be permitted as follows:~~

TABLE INSET:

<i>Frontage Feet-</i>	<i>Signs</i>
0-600-	1 free-standing sign-
601-900-	2 free-standing signs-
901-1200-	3 free-standing signs-
Over 1200-	3 free-standing signs plus, 1 additional sign for each 300 lineal street frontage feet over 1200 frontage feet-

~~b. Where a developed parcel is permitted to have more than one (1) free-standing sign under this article, the distance between the free-~~

~~standing signs on each parcel shall be not less than one hundred fifty (150) frontage feet;~~

~~c. The sign must be located five (5) feet behind all property lines except:~~

~~(i) If the bottom of the structure is twelve (12) feet or higher above the establish grade, then the sign structure may be located up to one (1) foot behind the property line; or~~

~~(ii) If the sign is in the Central Business District, then the sign structure can be located up to the property line.~~

~~d. No free-standing sign shall exceed the height of thirty (30) feet except free-standing signs in the highway commercial zone and within the interstate corridor which shall not exceed the height of fifty (50) feet. No sign shall exceed one hundred seventy-five (175) square feet in sign area except for a parcel's first free-standing sign located within the interstate corridor which shall not exceed four hundred forty (440) square feet in sign area. Any additional free-standing sign authorized on a parcel shall not exceed one hundred seventy-five (175) square feet in sign area. One (1) measured side of the display shall compose the square footage;~~

~~e. If a free-standing sign projects over a private vehicular driveway or parking lot aisle, the minimum clearance between the bottom of the sign and the ground shall be seventeen (17) feet;~~

~~f. No rotating free-standing sign shall rotate at a rate faster than six (6) revolutions per minute or have a minimum clearance lower than nine (9) feet between the bottom of the sign and the ground;~~

~~g. When a developed parcel fronts on more than one (1) public right-of-way or street, excluding alleys and serviceways, the above provisions of subsection (c) shall apply to each frontage.~~

~~(2) One (1) wall or one (1) canopy sign and four (4) architectural blade signs indicating only the name and nature of the occupancy for each occupancy within the developed parcel as follows:~~

~~a. No sign shall exceed a total area of three (3) square feet of copy sign area for each lineal foot of building frontage of each occupancy except buildings over two (2) stories shall be allowed an additional one (1) square foot of copy for each lineal foot of building frontage of each occupancy. The allowable sign area shall be reduced by the~~

~~sign area for each wall sign installed over any primary public entrances pursuant to subsection (3) below;~~

- ~~b. If such occupancy is on a corner, one (1) wall sign or one (1) canopy sign will be permitted for each frontage face;~~
 - ~~c. A permitted wall sign(s) can be transferred from one wall to another wall provided the number of signs remain within the permitted number of signs and within allowable sign area;~~
 - ~~d. No wall or canopy signs shall project into the public right-of-way, except
 - ~~(i) In the Central Business District, wall signs may project eighteen (18) inches over the right-of-way, subject to a minimum height limit of nine (9) feet from the sidewalk; and~~
 - ~~(ii) In the Central Business District, canopy signs may project up to two (2) feet to a vertical line from the curb face over the right-of-way.~~~~
 - ~~e. If the building includes a canopy, each tenant will be permitted one (1) under canopy sign per public entrance in lieu of the wall or canopy sign. Any signs attached to the underside of a canopy shall be perpendicular to the wall face of the building and shall not have a copy area greater than four (4) square feet or have a clearance lower than of eight (8) feet from the sidewalk.~~
- ~~(3) One (1) roof sign, in lieu of the wall or canopy sign authorized in section 27-705(c)(2) above, indicating only the name and nature of the occupancy for each developed parcel as follows:~~
- ~~a. The sign shall not extend above the highest plane of the roof;~~
 - ~~b. The supports, anchors, or braces for the roof sign shall be enclosed so that they are not visible from the street or other public or private property; and~~
 - ~~c. The sign is designed similar to a wall sign or projecting sign, and designed to look like part of the building or roof structure, rather than something suspended from or standing on the building.~~
- ~~(4) One (1) wall sign for each "primary public entrance" of the business indicating only name of the occupancy within the developed parcel provided:~~

- ~~a. The combined sign area of all signs over all primary public entrances does not exceed the sign area of one allowable wall sign; and~~
- ~~b. No wall or canopy signs shall project into the public right-of-way, except in the Central Business District wall signs may project eighteen (18) inches over the right-of-way, subject to a minimum height limit of nine (9) feet from the sidewalk.~~

C. Permitted Signs: Community Commercial, Neighborhood Commercial, Highway Commercial, Controlled Industrial, Heavy Industrial, Central Business District

1. Freestanding Signs:

	<u>Number of Signs Permitted</u>	<u>Sign Area Permitted</u>	<u>Maximum Square Footage Per Sign</u>	<u>Maximum Height</u>	<u>Minimum Setbacks from all Property Lines</u>
<u>Freestanding Signs</u>	<u>One (1) per street frontage</u> <u>**</u>	<u>3 square feet per lineal foot of street frontage</u>	<u>175 square feet per side</u>	<u>30 feet</u>	<u>5 feet*</u>
<u>Freestanding Signs</u> <u>Central Business District Only</u>	<u>One (1) per street frontage</u> <u>**</u>	<u>3 square feet per lineal foot of street frontage</u>	<u>175 square feet per side</u>	<u>30 feet</u>	<u>0 feet for sign face</u>

* If the bottom of the sign face is twelve (12) feet or higher above the established grade, then the sign support structure may be located up to one (1) foot behind the property line.

** Where a developed property abuts more than 300 lineal feet of street frontage, one (1) additional free-standing may be erected for each additional 300 feet of street frontage. Where a developed parcel has frontage on more than one (1) public right-of-way or street, excluding alleys, driveways, and service ways the provisions of this subsection shall apply to each street frontage, as follows:

<u>Street Frontage</u>	<u>Number of Signs Permitted</u>
<u>0—599 feet</u>	<u>1 free-standing sign</u>
<u>600—900 feet</u>	<u>2 free-standing signs</u>
<u>901—1200 feet</u>	<u>3 free-standing signs</u>

<u>Over 1200 feet</u>	<u>3 free-standing signs, plus 1 additional sign for each 300 lineal street frontage feet over 1200 frontage feet</u>
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- (a) Distance between signs. For properties where more than one (1) freestanding sign is permitted, the distance between freestanding signs shall be a minimum of 150 feet;
- (b) Sign height. No free-standing sign shall exceed the height of thirty (30) feet except free-standing signs in the highway commercial zone and within the interstate right-of-way which shall not exceed the height of fifty (50) feet.
- (i) If a free-standing sign projects over a private vehicular driveway or parking lot aisle, the minimum clearance of 17 feet shall be maintained between the bottom of the sign edge and the established grade of the site;
- (ii) Rotating freestanding signs shall have a minimum clearance of nine (9) feet between the bottom of the sign edge and established grade of the site. Rotating, free-standing signs shall maintain no more than six (6) revolutions per minute.
- (c) Sign location For any off-premises signs located within 660 feet of an interstate or state controlled highway, street, or road right-of-way, a copy of the Montana Department of Transportation (MDT) permit shall be required and submitted with the City of Billings permit application in accordance with Section 18.6.211, Administrative Rules of Montana (ARM).

2. Wall, Canopy, or Projecting Signs:

Wall, canopy, projecting signs, roof signs or any combination thereof, indicating the name and nature of the occupancy for each occupancy located on a property is permitted, provided that they do not exceed the maximum square footage permitted.

	<u>Sign Area Permitted</u>	<u>Minimum Height</u>	<u>Minimum Setbacks from all Property Lines</u>
<u>Wall Sign</u>	<u>3 square feet per lineal foot of building frontage</u>	<u>N/A</u>	<u>0 feet</u>
<u>Canopy or Projecting Signs</u>	<u>3 square feet per lineal foot of building frontage</u>	<u>9 feet from approved grade</u>	<u>0 feet</u>
<u>Canopy or Projecting Signs</u> <u>Central Business District Only</u>	<u>3 square feet per lineal foot of building frontage</u>	<u>9 feet from approved grade</u>	<u>Maximum projection of 2/3 of the sidewalk*</u>

<u>Under Awning or Canopy Signs for Buildings with Awnings or Canopies over the Right-of-Way Central Business District Only</u>	<u>3 square feet per lineal foot of building frontage</u>	<u>8 feet from approved grade</u>	<u>Maximum Projection of 2/3 of the sidewalk*</u>
<u>Roof Sign One permitted in lieu of a wall sign</u>	<u>3 square feet per lineal foot of building frontage*</u>	<u>N/A</u>	<u>N/A</u>

*An encroachment permit shall be obtained from the City Engineering Department for any projecting or canopy sign that encroaches into the public right-of-way

** Primary entrance signs shall indicate only the name of the occupancy. The allowable sign area shall be reduced for each wall sign installed over any primary public entrance.

(b) Roof signs shall not extend above the highest plane of the roof.

(i) The supports, anchors, or braces for the roof sign shall be enclosed so that they are not visible from the street or other public or private property.

(ii) Signs shall be similar to a wall sign or projecting sign, and designed to look like part of the building or roof structure, rather than something suspended from or standing on the building.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. 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.

PASSED by the City Council on first reading this 24th day of September, 2007.

PASSED, ADOPTED and APPROVED on second reading this 9th day of October, 2007.

CITY OF BILLINGS

By _____
Ron Tussing, Mayor

ATTEST:

By _____
Cari Martin, City Clerk

ZC#820 Amending Section 27-705(C)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 24, 2007

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

PROBLEM/ISSUE STATEMENT: On July 2, 2007, the developer, GSK Partners, LLC, applied for preliminary major plat approval for Tuscany Subdivision. This subdivision is proposed to be a private gated community and contains 49 lots on approximately 115 acres of land. The subject property is located east of Ironwood Estates and north of Yellowstone Country Club Estates. The Planning Board conducted a public hearing on the proposed subdivision on August 28, 2007, and is forwarding a recommendation of conditional approval on an 8-0 vote.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 60 working days to act upon this preliminary major plat. The 60-working day review period for this subdivision will end on September 25, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 day review period, the City Council is required to:

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

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

RECOMMENDATION

The Planning Board recommends, on an 8-0 vote, that the City Council grant conditional approval of the preliminary plat of Tuscany Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

- A. Preliminary Plat
- B. Site Photographs (available in City Clerk's Office)
- C. Variance Criteria
- D. Findings of Fact
- E. Mayor's Approval Letter

INTRODUCTION

On July 2, 2007, the developer, GSK Partners, LLC, applied for preliminary major plat approval for Tuscany Subdivision. This subdivision is proposed to be a private gated community and contains 49 lots on approximately 115 acres of land. The subject property is located east of Ironwood Estates and north of Yellowstone Country Club Estates. The subject property is bordered on the north by vacant land within the county; on the east by the future site of the city water reservoirs and vacant land; on the west by Ironwood Estates; and on the south by Yellowstone Country Club Estates.

PROCEDURAL HISTORY

- On October 4, 2006, the City Board of Adjustment conducted a public hearing to allow a land use contrary to zoning for the proposed water storage reservoir. The city water storage reservoir is to be located on the eastern portion of the subject property. There is currently an exempt plat in process for a minor boundary line adjustment to create two parcels out of the subject property. The eastern parcel will contain the water reservoir and the western parcel will contain the subdivision. Condition #4 requires that the boundary line adjustment to create the two parcels be completed prior to final plat approval.
- On January 17, 2007, a pre-application meeting was conducted regarding a proposed minor subdivision and condominium development on the subject property.
- On June 7, 2007, a pre-application meeting was conducted for a proposed major plat.
- On July 2, 2007, the preliminary major plat application was submitted to the Planning Division.
- On July 19, 2007, the departmental review meeting for the preliminary plat was conducted.
- On August 14, 2007, the Planning Board conducted a plat review for the proposed major subdivision.
- On August 28, 2007, the Planning Board conducted a public hearing on the proposed major subdivision and forwarded a recommendation of conditional approval to the City Council on an 8-0 vote.
- On September 24, 2007, the preliminary plat will be approved, conditionally approved, or denied by the City Council.

BACKGROUND

General location:	East of Ironwood Estates and north of Yellowstone Country Club Estates
Legal Description:	Tract B, Certificate of Survey 3030, Tract 1, 2 nd Amended
Subdivider/Owner:	GSK Partner, LLC
Engineer and Surveyor:	Morrison-Maierle, Inc.

Existing Zoning:	Residential 9600
Existing land use:	Vacant Land
Proposed land use:	Single-family residences within a private gated community.
Gross area:	115.75 acres
Net area:	55.88 acres
Proposed number of lots:	49
Lot size:	Max: 2.07 acres Min.: 0.64 acres
Parkland requirements:	3.23 acres of parkland required; 57 acres proposed as open space and private parkland

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potential negative effects of the subdivision on surrounding properties. 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 these 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:

12. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
13. 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)*
14. To allow for adequate emergency access to the site, as well as to comply with Section 23-406.A.5, BMCC which requires secondary access for major subdivisions, the

Ironwood Drive access to the subdivision shall be legally secured and documentation shall be provided with the final plat application. *(Required by the Engineering and Planning Divisions and the Fire Department)*

4. To comply with the definition of subdivision set forth by Article 23-200, BMCC, the exempt plat for the boundary line relocation of the water reservoir site and the remainder of the certificate of survey for the subject property shall be recorded prior to final plat. If the exempt plat is not recorded, the remainder of the property shall be depicted as a lot within the subdivision, which is a significant change to the subdivision and will require the proposal to repeat the major subdivision process as a new application. *(Required by Article 23-200, BMCC)*
5. To ensure public access within the private subdivision, easement documents specifying entities permitted to utilize the road and utility easements within the subdivision shall be provided prior to the final plat. Additionally, documentation for the blanket public trail easement for the trail located in Open Space #12 shall be provided with the final plat. *(Recommended by the Clerk and Recorder and the Planning Division)*
6. To clarify the trails and emergency services sections of the SIA, the following revisions shall be completed:
 - References to construction of the proposed public trail shall be removed from Section F and VII.C of the SIA.
 - A statement shall be added to Section F regarding the public access point for the proposed trail within Open Space #12.
 - The first sentence of Section IV.B.3 of the SIA shall be removed, as the Billings Fire Department is not requiring sprinklers within the residences in this subdivision.
 - A Condition that Runs with the Land shall be added to Section II of the SIA that there is a potential for rock slides within this area and lot owners should be aware that damage caused from slides will be the responsibility of the individual lot owner.
7. To minimize effects on local services, Section VI of the SIA shall be revised to include information regarding the public water and sewer mains within the private streets of Tuscany Subdivision. This language shall be reviewed and approved by the Public Utilities Department. *(Recommended by the Public Utilities Department)*
8. To mitigate traffic impacts to surrounding properties, as well as impacts to public health and safety, a Traffic Accessibility Study (TAS) shall be completed and reviewed and approved by the Engineering Division prior to final plat approval. Any requirements of the TAS, such as cash contributions and/or street improvements shall be specified within the SIA and scheduled through the Engineering Division for completion. *(Recommended by the Yellowstone County Planning Board)*

9. 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.
10. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

A variance to permit private internal subdivision streets, where Section 23-406.B.5, BMCC, requires all streets providing access to the subdivision to be dedicated to the public. The subdivider is proposing private internal subdivision streets with access from Canyonwoods Drive and Ironwood Drive to the west of the subdivision. The streets will be constructed to the city standard of 34-foot back to back of curb width with curb and gutter within 56-foot wide common access easements. Based on the proposed streets being constructed to city standards, as well as a blanket easement for city vehicles to access the water reservoir located to the east of the subject property, Engineering staff is supportive of the variance. In addition, the gated accesses will be equipped with a KNOX-BOX Rapid Entry System for easy emergency access for the Fire Department and other emergency vehicles. Information regarding entities permitted to enter the subdivision and emergency vehicle access has been included within Section III.E of the Subdivision Improvements Agreement (SIA).

A variance to permit sidewalks on one side of the internal subdivision streets, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets. The subdivider is requesting a hardship for the sidewalks based on the varied terrain of the subject property, as well as the fact that the subdivision will be a private gated community. Originally, the subdivider had proposed a series of internal soft trails to satisfy the need for sidewalks within the subdivision, however, these trails would have been required to be built to the Billings Trails and Bikeways Standard. After the departmental review meeting, the subdivider eliminated the soft internal trails and is now proposing 5-foot wide boulevard walks along one side of the internal subdivision streets, except in areas where there are no lots adjacent to the sidewalk. In these areas, the subdivider is proposing 5-foot wide curbwalks. Staff finds that this variance is acceptable, as there is varied terrain throughout the subdivision and there will be no connection of the sidewalk to the Ironwood Estates located to the west of the property. The sidewalks will be for the enjoyment and pedestrian safety of the private residents of the subdivision. The subdivider is proposing a public access easement along the southern portion of the property, which will provide a public access across the property to the adjacent parkland to the east and connecting to Ironwood Estates to the west. Further justification of these variances have been included as Attachment C of this report.

STAKEHOLDERS

On August 14, 2007, the Planning Board conducted a plat review for the proposed subdivision. Discussion at the Planning Board plat review focused on the proposed public trail located within Open Space #12 along the southern portion of the property, the provision of 62nd Street West as an emergency vehicle access, and the necessity of providing fire sprinklers within the residences in the subdivision.

On August 20, 2007, the Planning Director, Public Works Director, Fire Chief, and Parks & Recreation Department staff met with the subdivider to discuss the trail and access issues from the Planning Board meeting, as well as concerns of the subdivider. The trail within Open Space #12 was originally proposed as a private trail by the subdivider with the pre-application submittal. However, based upon the potential for a trail connection with the trail to the west in Ironwood, it was suggested by the city that either a linear park or trail easement be provided on the property. Section 23-406.1.a, BMCC, specifies that subdivision *may* provide a 20-foot wide multi-use trail easement across a property where the Heritage Trail Plan indicates that the proposed multi-use trail crosses the subdivision property. At the pre-application meeting, it was discussed that a public trail might be a possibility on Open Space #12. The June 29, 2007, application submittal for the major subdivision depicted a public access trail within a blanket easement on Open Space #12. There was no indication within the submitted Subdivision Improvements Agreement (SIA) regarding who would construct the trails or how they would be maintained. At the July 19, 2007, departmental review meeting, the Parks Department, the Alternative Modes Coordinator, and the Planning Division, requested information on the construction of any trails within the subdivision. At that time, it was stated that the subdivider would be constructing a soft surfaced trail. Based on this information, staff stated that if the trail is to be constructed by the developer and accessible to the public; then it would be required to meet the Billings Trails and Bikeways standards. The City was under the impression that the subdivider would be constructing the trail, which is the reason for the ADA requirements. While the city recommends a trail easement in this location, it is not required and the trail is not required to be constructed by the subdivider. Condition #6 requires that all language regarding the construction of the trail within the SIA be removed and that an entrance location for the trail be specified within the SIA.

In regard to the access to the parkland located to the east of the proposed subdivision, the city required this access during several pre-application meetings for this property. There is no public access to the parkland to the east at this time. One of the goals of the 2003 Growth Policy is to provide accessibility to public lands, which is why the connection was requested. It was during the departmental review meeting that there was further discussion of building some type of trail (even soft surfaced) to access the adjacent park. The Parks Department finds that the existing blanket easement is acceptable at this time.

After the plat review meeting, the subdivider did express concerns regarding the proposed public trail along the southern portion of the property and whether it should be within the subdivision. There were also concerns regarding the proposed parkland to the east of the subject property, which is to be given to the City with the exempt plat for the water reservoirs. The subdivider has requested that the site be utilized as a Public Utilities site only, with deed restrictions that only

residents within Tuscany Subdivision could utilize the public utilities site for recreational purposes.

Planning Board plat discussion also focused on the provision of 62nd Street West as an emergency access to the subdivision. With the original submittal, the Fire Department did express concerns regarding the lack of emergency access, as 62nd Street West was never constructed within the filings of Ironwood. In subsequent conversations with the Public Works Director, 62nd Street West is proposed to be constructed by the city to a 20-foot wide paved emergency access standard that can withstand a 10-year flood event as part of the water reservoir project. This construction is proposed for the spring of 2008, dependent upon the recording of the exempt plat for the property. Therefore, full secondary access both to the Ironwood area and directly to Tuscany Subdivision will be provided. It is not incumbent on this subdivider to provide the emergency vehicle access. Therefore, Condition #3 has been amended to exclude the requirement for 62nd Street West to be constructed prior to final plat approval. Legal access from Ironwood Drive is still required by Condition #3.

In response to the fire sprinklering requirements, staff has spoken with the Fire Department, and they have stated fire sprinklering will not be required. The requirement was originally specified within the Findings of Fact, as the SIA states, under Section IV.3, that "The City of Billings recommends that all structures should have internal sprinkler systems." The SIA does further state that, "if such systems are to be installed, plans shall be reviewed by the City of Billings Fire Marshall." Residential fire sprinklering is not required within the city. To eliminate any confusion, Condition #6 requires the first statement of this section be removed from the SIA.

On August 28, 2007, the Planning Board conducted a public hearing regarding this subdivision. The Planning Board discussion focused on the need to mitigate traffic impacts, as there is only one access in and out of Ironwood Estates for this subdivision, as well as all filings of Ironwood Estates to the west. The traffic discussion was a result of public comments from 11 surrounding property owners attending the public hearing. There were concerns regarding the capacity of Ironwood Drive and its ability to funnel traffic from the 400+ potential lots within the Ironwood Subdivisions, the Ironwood condominium projects and this proposed 49-lot development if there were an emergency evacuation of this area. It was questioned why a street is not proposed to the south of the subdivision through the Yellowstone Country Club Estates. The subdivider has provided an easement for a future street connection to the south, however, at this time the Yellowstone Country Club states that the additional access will not be granted. The Planning Board questioned why this subdivision was not subject to the requirements of a TAS, as it appears that the traffic could significantly impact the surrounding properties. The Planning Director clarified that a TAS is not required for subdivisions containing less than 50-lots. This 49-lot subdivision was not subject to the TAS requirements, however, if the Planning Board finds that a TAS is necessary to mitigate negative traffic impacts to surrounding properties, then a condition could be added to staff's recommendation for the City Council's consideration. The Planning Board determined that since the proposed subdivision is only 1-lot less than the requirement for a TAS and there appears to be a public health and safety issue with Ironwood Drive being the only street from Molt Road to the subdivision, a TAS is necessary for the proposal, as required by Condition #8. The TAS will determine any cash contributions necessary

for impacted intersections of the subdivisions, as well as additional street improvements that may be required as a result of the approximate 490 trips per day generated by the proposed subdivision.

There were additional concerns from the public regarding access to the rims to the east of the subject property, as this is a private development. The subdivider is proposing a public access easement located on the southern portion of the site within Open Space #12, which could potentially contain a trail and provide access to the property below the rimface to the east. The proposed Public Utility site was not reviewed as part of the subdivision and was therefore, not considered for public access.

A public hearing is not scheduled for the City Council meeting; however nearby property owners may attend the City Council meeting. With the exception of the Public Hearing comments discussed, the Planning Division has received no further 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

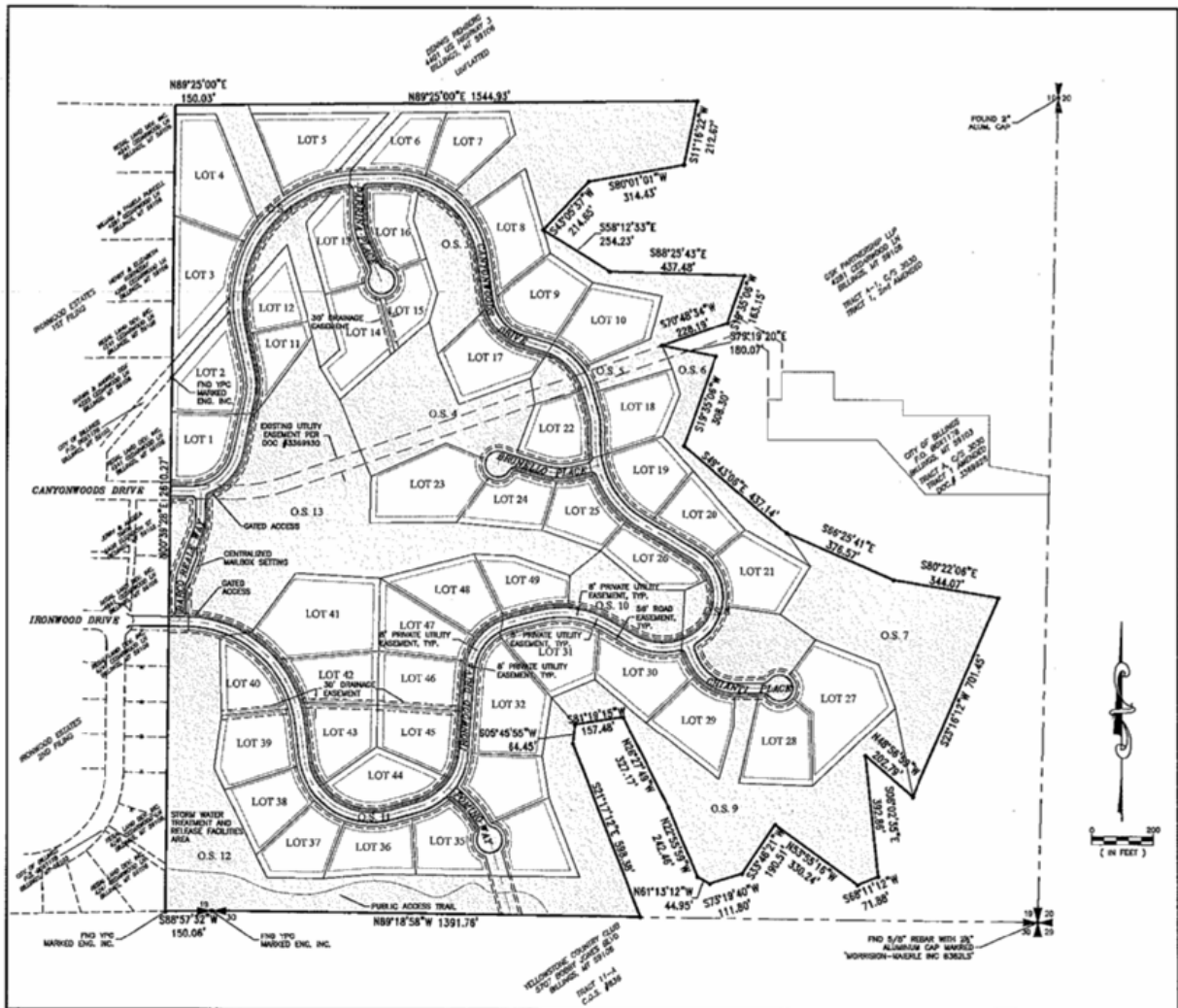
The Planning Board recommends, on an 8-0 vote, that the City Council grant conditional approval of the preliminary plat of Tuscany Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

- A. Preliminary Plat
- B. Site Photographs (available in City Clerk's Office)
- C. Variance Criteria
- D. Findings of Fact
- E. Mayor's Approval Letter

ATTACHMENT A
Preliminary Plat

PRELIMINARY PLAT OF
TUSCANY SUBDIVISION
TRACT B, C.O.S. #3030 TRACT 1, 2ND AMENDED,
LOCATED IN THE SE 1/4 AND SW 1/4 OF SECTION 19, T1N, R25E, P.M.M.,
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA



ATTACHMENT C

Variance Criteria

VARIANCE REQUESTS

The applicant is requesting two variances from Article 23-400 of the City of Billings Development Requirements. The variance requests are listed below:

1. Section 23-406. B. 5. Street and Road Dedication.

Findings associated with this variance request:

1. *The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.*

Variance Response: The proposed subdivision will be a private and gated community, which will result in less traffic safety concerns within the subdivision. Emergency services will have unimpeded access to the property. There will be no further subdivision to the property to the east of the project; therefore, there will be no need to extend a public right-of-way through this subdivision.

2. *Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.*

Variance Response: This subdivision is intended to be a private gated community, any public access, with the exception of emergency services, utility personnel, etc., would impact the objectives of a gated community. There will be no further subdivision to the property to the east of the project; therefore, there will be no need to extend a public right-of-way through this subdivision.

3. *The variance request will not result in an increase in taxpayer burden.*

Variance Response: This subdivision is proposed to be a private gated community with maintenance incurred by the Homeowner's Association.

4. *The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or growth policy.*

Variance Response: Zoning and Growth policy objectives are met regardless of street and road dedication.

5. *The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.*

Variance Response: There will be no further subdivision of the property to the east of this project; therefore, there will be no need to extend a public right-of-way through this subdivision. The proposed private roads will be built to appropriate City of Billings standards and will provide sufficient access for future residents and emergency responders.

2. Section 23-406. B. 13. Sidewalks.

Findings associated with this variance request:

1. *The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.*

Variance Response: The proposed subdivision will be private and gated which will result in reduced traffic concerns as well as reduced pedestrian movements. It is proposed to construct sidewalk on one side of the interior roadways within the subdivision. The proposed sidewalk would be five foot (5') wide boulevard-style except in areas where there are no adjacent lots. At these locations the sidewalk would be five foot (5') wide curb walk.

Because the subdivision is private and gated, the provision of sidewalk on one side of the subdivision roadways would not affect the adjoining properties. Therefore, it would not be detrimental to the health, safety, or general welfare of the public nor the adjoining properties.

2. *Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.*

Variance Response: The topography of the site consists of relatively gradual slopes with dramatic drainage gullies cutting through the property. These drainage gullies vary in depth from approximately ten to twenty feet and would present undue hardship to the owner and an unnecessary scarring of the landscape due to increased fill widths in order to create safe boulevard-style sidewalk crossings on both sides of the roadway in these areas. Providing sidewalk on one side of the interior roadways with curb walk at the gully crossings is an alternative for pedestrian movement that utilizes and compliments the site topography rather than working against it.

3. *The variance request will not result in an increase in taxpayer burden.*

Variance Response: This subdivision is proposed to be a private gated community with maintenance incurred by the Homeowners' Association.

4. *The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or growth policy.*

Variance Response: Zoning and Growth policy objectives are met regardless of sidewalk installation.

5. *The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.*

Variance Response: The construction of sidewalk on one side of the interior roadways provides equal opportunity for pedestrian movements within the subdivision. Accessibility ramps are proposed at all sidewalk/curb interfaces to provide adequate pedestrian movements across roadways. In addition the proposed subdivision will be private and gated which results in reduced traffic concerns as well as reduced pedestrian movements. There will be no further subdivision of the property to the east of this project and there are limited sidewalks in the Ironwood subdivision west of the project that provide continuity to the proposed subdivision.

ATTACHMENT D

Findings of Fact

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

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

1. Effect on agriculture and agricultural water user facilities

The land to be subdivided is vacant. No irrigation ditches, laterals, or irrigation easements exist on the site.

2. Effect on local services

g. **Utilities** – Water and sewer to the subject property will be through private main lines within the internal subdivision streets from the public lines within Ironwood Drive and Canyonwoods Drive. The location and sizing of these lines will be determined by the Public Utilities Department, as specified within the SIA.

h. **Stormwater** – Storm drainage for the proposed subdivision will be provided by a detention/retention facility in the southwest corner of the subdivision, which shall limit the peak discharge of stormwater from the subdivision to a level approved by the Engineering Division. Since a complete stormwater master plan for this area does not exist, the subdivision may be required to participate in the costs of a future area wide stormwater master plan, as specified within the SIA.

Concrete culverts will be installed where necessary under the internal subdivision streets to allow passage of stormwater runoff. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

i. **Solid waste** – A private hauler will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

j. **Streets** - Access to the proposed subdivision will be via internal streets from Ironwood Drive and Canyonwoods Drive located to the west of the subdivision. The internal subdivision streets will be constructed to 34-foot back to back pavement widths within 56-foot wide easements. These streets will be maintained by a private Homeowner's Association. Boulevard sidewalks will be installed on one side of the internal streets where streets front lots and curbswalks will be installed on one side of the street where there are no lots. The

subdivider is requesting a variance from Section 23-406.B.13, BMCC, which requires boulevard sidewalks on both sides of internal streets within a subdivision based on the terrain and the fact that this is a gated community. The subdivider has provided a looped road between Ironwood Drive and Canyonwoods Drive for emergency access, mail delivery, and visitors to the subdivision to turn around before reaching the gated portion of the subdivision. The gated portion of the subdivision will contain a KNOX BOX Rapid Entry System for emergency access and only authorized agents will be permitted to enter the gated accesses, as specified within the SIA. Condition #5 requires an easement document for the private internal streets and utility easement be provided prior to the final plat; this document shall specify authorized users. A variance to permit private internal streets instead of dedicated streets has been included with this application.

At this time, legal access from Ironwood Drive has not been obtained due to ongoing litigation between the Ironwood Homeowner's Association and the subdivider. Until this entrance is obtained, adequate emergency access cannot be provided. In subsequent conversations with the Public Works Director, 62nd Street West is proposed to be constructed by the city to a 20-foot wide paved emergency access standard that can withstand a 10-year flood event as part of the water reservoir project. This construction is proposed for the spring of 2008, dependent upon the recording of the exempt plat for the property. Condition #3 requires that the Ironwood Drive entrance to the subdivision shall be legally secured.

There were concerns at the public hearing regarding the capacity of Ironwood Drive and its ability to funnel traffic from the 400+ potential lots within the Ironwood Subdivisions, the Ironwood condominium projects and this proposed 49-lot development if there were an emergency evacuation of this area. It was questioned why a street is not proposed to the south of the subdivision through the Yellowstone Country Club Estates. The subdivider has provided an easement for a future street connection to the south, however, at this time the Yellowstone Country Club states that the additional access will not be granted. The Planning Board questioned why this subdivision was not subject to the requirements of a TAS, as it appears that the traffic could significantly impact the surrounding properties. The Planning Director clarified that a TAS is not required for subdivisions containing less than 50-lots. This 49-lot subdivision was not subject to the TAS requirements, however, if the Planning Board finds that a TAS is necessary to mitigate negative traffic impacts to surrounding properties, then a condition could be added to staff's recommendation for the City Council's consideration. The Planning Board determined that since the proposed subdivision is only 1-lot less than the requirement for a TAS and there appears to be a public health and safety issue with Ironwood Drive being the only street from Molt Road to the subdivision, a TAS is necessary for the proposal, as required by Condition #8. The TAS will determine any cash contributions necessary for impacted intersections of the subdivisions, as well as additional street improvements that may be required as a result of the approximate 490 trips per day generated by the proposed subdivision.

- k. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5). Once constructed, the fire station on 54th Street West will serve this

property. The subdivision is located within the ambulance service area of American Medical Response (AMR).

With the original submittal, the Fire Department did express concerns regarding the lack of emergency access, as 62nd Street West was never constructed within the filings of Ironwood. In subsequent conversations with the Public Works Director, 62nd Street West is proposed to be constructed by the city to a 20-foot wide paved emergency access standard that can withstand a 10-year flood event as part of the water reservoir project. This construction is proposed for the spring of 2008, dependent upon the recording of the exempt plat for the property. Therefore, full secondary access both to the Ironwood area and directly to Tuscany Subdivision will be provided. It is not incumbent on this subdivider to provide the emergency vehicle access. Therefore, Condition #3 has been amended to exclude the requirement for 62nd Street West to be constructed prior to final plat approval. Legal access from Ironwood Drive is still required by Condition #3.

As specified within the SIA, portions of this subdivision does fall within the Wildland Urban Interface code, which was adopted by the city and county in the fall of 2006. This requires defensible space around all lots specified within the SIA. In response to the fire sprinklering requirements specified within the SIA, staff has spoken with the Fire Department, and they have stated fire sprinklering will not be required. The requirement was originally specified within the Findings of Fact, as the SIA states, under Section IV.3, that "The City of Billings recommends that all structures should have internal sprinkler systems." The SIA does further state that, "if such systems are to be installed, plans shall be reviewed by the City of Billings Fire Marshall." Residential fire sprinklering is not required within the city. To eliminate any confusion, Condition #6 requires the first statement of this section be removed from the SIA.

The Police Department has expressed concerns regarding the lack of reception in this area and that they cannot always be reached for emergency calls. This has been a concern since the first filing of Ironwood was platted and remains a concern with further subdivision. The only remedy is to install another transmitter tower within this area. This is not a requirement of this subdivider, but may be required in the future. Construction may be through a Special Improvement District (SID) in which property owners in this area would contribute to the construction of the tower. A Waiver of Right to Protest has been included with this subdivision for future creation of SID's, if necessary.

- l. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review by the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend Boulder Elementary, Lewis and Clark Middle School, and Senior High School, as required by the school district as all other schools in this area have reached capacity.
- m. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 3.23 acres of dedicated parkland. The subdivider is proposing a land dedication of 59.87 acres in the form of private open space areas throughout the subdivision and a trail access easement located along the southern portion of the property. As specified within the SIA, the open

spaces will be maintained by a private Homeowner's Association. After the plat review meeting, the subdivider did express concerns regarding the proposed public trail along the southern portion of the property and whether it should be within the subdivision. There were also concerns regarding the proposed parkland to the east of the subject property, which is to be given to the City with the exempt plat for the water reservoirs. The subdivider has requested that the site be utilized as a Public Utilities site only, with deed restrictions that only residents within Tuscany Subdivision could utilize the public utilities site for recreational purposes.

- n. **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 #2. The proposed location of the mail boxes is on the loop road called Barco Reale Way located at the entrance of the subdivision. This location shall be reviewed and approved by the post office.

3. Effect on the natural environment

A geotechnical report was submitted with this application and indicates that there are variable soil conditions throughout the subdivision with a potential for hydro-collapsible soils. As specified by the Building Official's review of the submitted geotechnical report, a final design geotechnical investigation will be required when final building designs are available.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

5. Effect on the public health, safety and welfare

The following conditions exist on the subject property and may potentially create problems for future landowners. These issues have been addressed within the Conditions that Run with the Land portion of the SIA to warn future lot owners.

- The subdivision is being constructed on hydro-collapsible soils and additional geotechnical studies are required during the building permit process.
- There is a potential for interactions with wildlife.
- There is a petroleum pipeline within the subdivision and lot owners should be aware that it may be necessary for the pipeline company to inspect, test, and repair the pipeline.
- The water pressure within the subdivision may, at times, fall below acceptable minimum pressure. This may require the installation of booster pumping units within individual residences, which is the responsibility of the lot owner.
- Sanitary sewer service to individual residences may require the installation of grinder pump units, which is the responsibility of the lot owner.

- The streets within the subdivision are located within private access easements. Only residents of the subdivision and authorized users are permitted. This shall include the City of Billings, utility companies, emergency vehicles, and authorized agents.
- There is a public trail system encumbered by a public access easement located on the southern portion of the site within Open Space #12, as depicted on the plat. Additionally, as required by Condition #5, an easement document shall be provided for this trail easement.
- Based on Planning Board discussion regarding potential rock slides in this subdivision due to ravines on the property, a Condition that Runs with the Land shall be added to Section II of the SIA that there is a potential for rock slides within this area and lot owners should be aware that damage caused from slides will be the responsibility of the individual lot owner.

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

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

The proposed subdivision would provide for more housing choices within this portion of the City.

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

The subject property has been annexed and is adjacent to city subdivisions located to the south and west.

The subdivision is inconsistent with the following goal of the Growth Policy:

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

With the extension of the City limits and as surrounding properties develop with similar densities within this area; the proposed subdivision will be compatible with the character of the neighborhood. However, there is vacant land located to the north and east.

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 Plan identifies a trail corridor within this subdivision that will eventually connect to the Rimrocks to the northeast. The subdivider is proposing a public access easement within Open Space #12 located along the southern portion of the site that will provide an east-west link to the base of the Rimrocks to the Cove Creek drainage located south of Ironwood Subdivision. Condition #5 requires that an easement document be provided for the public easement within Open Space #12.

4. West Billings Plan

The proposed subdivision satisfies the following policy of the West Billings Plan:

- Development in the West End planning area shall provide for a variety of residential types and densities.

The proposed subdivision is in conflict with the following goals of the West Billings Plan:

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks.
- Conditional approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.

5. Northwest Shiloh Area Plan

The proposed subdivision complies with the following goals of the Northwest Shiloh Area Plan:

- Provide more housing and business choices within each neighborhood.
- Provide a multi-purpose trail network integrated into the community infrastructure that emphasizes safety, continuity, environmental preservation, resource conservation and cost effectiveness.

The proposed subdivision is in conflict with the following goals of the Northwest Shiloh Area Plan:

- Reduce commuting and the number and length of daily vehicle trips.
- Plan for the cost-efficient extension and delivery of public services.

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)

As submitted, the proposed subdivision does not satisfy the requirements of the Montana Subdivision and Platting Act or the review and approval procedures set forth in the local and state subdivision regulations.

There is an exempt plat in process for the subject property for a minor boundary line adjustment. This boundary line adjustment would expand existing Tract A of Certificate of Survey 3030, Tract 1, Amended (the city's water reservoir site) to include the entire eastern portion of the subject property. This would expand the city's water reservoir site to include the eastern portion for the reservoir site and future parkland. Until the exempt plat is recorded, the legal description on the submitted plat does not exist. In order to comply with the definition of subdivision set forth by Article 23-200, BMCC, this remainder portion of the property would be required to be depicted as a lot within the subdivision without the minor boundary line adjustment. Therefore, Condition #4, requires that the exempt plat either be recorded prior to the final plat or the subdivision shall include this remainder portion of the property as a lot. Including this portion as a lot is a substantial change and would require that the subdivision be resubmitted as a new major plat application.

Adequate emergency access has not been provided, as the Ironwood Drive access has not been secured from the Ironwood Homeowner's Association. Furthermore, the 62nd Street emergency access has not been constructed. Condition #3 requires that the Ironwood Drive entrance to the subdivision shall be legally secured and documentation shall be provided with the final plat application.

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

The subdivision will utilize city water, sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The subject property shall conform to the requirements set forth by Article 27-300 of the Unified Zoning Regulations for the R-96 zoning district.

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

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

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

Legal and physical access to the proposed subdivision will be via private internal subdivision streets from Ironwood Drive (once obtained) and Canyonwoods Drive.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Tuscany Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision, with the required conditions, 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, September 24, 2007.

Ron Tussing, Mayor

ATTACHMENT E
Mayor's Approval Letter

September 24, 2007

GSK Partners, LLC
Attn: Shane Gundlach
3940 Fairmeadow Drive
Billings, MT 59102

Dear Mr. Gundlach:

On September 24, 2007, the Billings City Council conditionally approved the preliminary plat of Tuscany Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, 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)*
3. To allow for adequate emergency access to the site, as well as to comply with Section 23-406.A.5, BMCC which requires secondary access for major subdivisions, the Ironwood Drive access to the subdivision shall be legally secured and documentation shall be provided with the final plat application. *(Required by the Engineering and Planning Divisions and the Fire Department)*
4. To comply with the definition of subdivision set forth by Article 23-200, BMCC, the exempt plat for the boundary line relocation of the water reservoir site and the remainder of the certificate of survey for the subject property shall be recorded prior to final plat. If the exempt plat is not recorded, the remainder of the property shall be depicted as a lot within the subdivision, which is a significant change to the subdivision and will require the proposal to repeat the major subdivision process as a new application. *(Required by Article 23-200, BMCC)*
5. To ensure public access within the private subdivision, easement documents specifying entities permitted to utilize the road and utility easements within the subdivision shall be provided prior to the final plat. Additionally, documentation for the blanket public trail easement for the trail located in Open Space #12 shall be provided with the final plat. *(Recommended by the Clerk and Recorder and the Planning Division)*

6. To clarify the trails and emergency services sections of the SIA, the following revisions shall be completed:
 - References to construction of the proposed public trail shall be removed from Section F and VII.C of the SIA.
 - A statement shall be added to Section F regarding the public access point for the proposed trail within Open Space #12.
 - The first sentence of Section IV.B.3 of the SIA shall be removed, as the Billings Fire Department is not requiring sprinklers within the residences in this subdivision.
 - A Condition that Runs with the Land shall be added to Section II of the SIA that there is a potential for rock slides within this area and lot owners should be aware that damage caused from slides will be the responsibility of the individual lot owner.
7. To minimize effects on local services, Section VI of the SIA shall be revised to include information regarding the public water and sewer mains within the private streets of Tuscany Subdivision. This language shall be reviewed and approved by the Public Utilities Department. *(Recommended by the Public Utilities Department)*
8. To mitigate traffic impacts to surrounding properties, as well as impacts to public health and safety, a Traffic Accessibility Study (TAS) shall be reviewed and approved by the Engineering Division prior to final plat approval. Any requirements of the TAS, such as cash contributions and/or street improvements shall be specified within the SIA and scheduled through the Engineering Division for completion. *(Recommended by the Yellowstone County Planning Board)*
9. 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.
10. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

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

- *A variance to permit private internal subdivision streets, where Section 23-406.B.5, BMCC, requires all streets providing access to the subdivision to be dedicated to the public.*
- *A variance to permit sidewalks on one side of the internal subdivision streets, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets.*

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

Sincerely,

Ron Tussing, Mayor

Pc: Kevin Jacobsen, P.E., Morrison Maierle, Inc.

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