

CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

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

COUNCIL CHAMBERS

May 27, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Ronquillo
ROLL CALL
MINUTES – May 12, 2008
COURTESIES
PROCLAMATIONS
ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 12, 13, and 14 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) **City Parking Garage Painting** (opened 5/27/08). Recommend delay of award until June 9, 2008.
[\(Corresponding Staff Memo A1\)](#)
 - (2) **SID 1379 King Avenue West – Landscaping Design** (opened 5/27/08). Recommend delay of award until June 9, 2008.
[\(Corresponding Staff Memo A2\)](#)
 - (3) **W.O. 07-14, Moore Lane and Monad Road Water and Sewer Improvements** (opened 5/27/08). Recommend delay of award until June 9, 2008.
[\(Corresponding Staff Memo A3\)](#)
- B. **Approval of Contract** with Yellowstone County Animal Shelter, Inc. for City of Billings Animal Shelter Operations. Recommend delay of action until June 23, 2008.

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

C. Approval of License Agreement for Maintenance Access to Briarwood sanitary sewer main lines located in the Briarwood Country Club Golf Course with PM & M, LLC, Max E. Thornton, and Katherine K. Thornton Testamentary Trust, at no cost to the City.

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

D. Approval of Right-of-Way Agreement and Two Bargain and Sale Deeds with Montana Department of Transportation for Airport Road Project MT 009, \$184,400 revenue, less \$24,692 returned to the FAA, for net revenue of \$159,708.

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

E. Approval of Seven Temporary Construction Easements for W.O. 07-22, King Avenue East Widening, between Orchard Lane and South Billings Boulevard, \$1,650 total cost to the City.

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

F. W.O. 07-22 King Avenue East Right-of-Way Agreements and Warranty Deeds

(1) Tract of land situated in Lot 1, Block 5, Pinnick Subdivision, 3rd Filing, Christ the King Lutheran Church, \$65,100.

[\(Corresponding Staff Memo F1\)](#)

(2) Tract of land situated in Lots 1 and 2, Block 9, Orchard Lane Subdivision, 3rd Filing, Kurt. E. and Delores A. Cummins, \$1,603.86.

[\(Corresponding Staff Memo F2\)](#)

(3) Tract of land situated in Tract 1, C/S 2350, Robert Medvec, \$38,220.

[\(Corresponding Staff Memo F3\)](#)

(4) Tract of land situated in Lot 24, Sugar Subdivision, Emil and Gladys Rennich, \$40,372.50.

[\(Corresponding Staff Memo F4\)](#)

G. Approval of Application for Substitution of a Certificate of Deposit in lieu of cash retainage as security for performance for Aronson Avenue Extension Project, COP Construction, with expiration of CD at completion of project.

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

H. Approval of Quarterly Report for Pledged Collateral on Wells Fargo, First Interstate Bank, and US Bank Certificates of Deposit; US Bank Municipal Investor Accounts, and US Bank Repurchase Account.

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

I. Acknowledge Receipt of Petition to Vacate portions of Lake Hills Subdivision, 25th Filing, right-of-way, and set a public hearing date for June 23, 2008.

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

J. Street Closures:

(1) Perfect Pitch, Inc. - Montana Avenue Live, Fridays, 1:30 p.m. – 12 midnight, 6/13/08 through 8/22/08, N. 25th from Montana Avenue to 1st Avenue North.
[\(Corresponding Staff Memo J1\)](#)

(2) St. Vincent's Health Care Heart and Sole Race, 6:00 a.m. – 1:00 p.m., 6/14/08; commencing on N. 30th Street across from St. Vincent Healthcare, south to 7th Ave. N., west on Avenue B, through Pioneer Park, north on Virginia Lane, west on Parkhill Drive, north on 17th Street West, west on Colton Boulevard, north to Poly Drive, east on Poly Drive, ending on Poly Drive north of Grandview Park.
[\(Corresponding Staff Memo J2\)](#)

(3) Alberta Bair Theater Annual Fundraiser, 6:00 a.m. on 6/28/08 through noon on 6/29/08, N. Broadway between 3rd and 4th Avenues N. and the alley behind the theater between the Miller Building and the theater.
[\(Corresponding Staff Memo J3\)](#)

K. Acceptance of Donation from Parmly Billings Library Foundation for Library multimedia equipment, \$11,710.
[\(Corresponding Staff Memo K\)](#)

L. Resolution authorizing issuance and sale of a general obligation note with US Bank to finance the entire Dehler Park scoreboard upgrades prior to the 2008 baseball season with annual debt service payments made by previously-approved Pepsi Cola donations over a 10-year period.
[\(Corresponding Staff Memo L\)](#)

M. Second/Final Reading Ordinance expanding the boundaries of Ward II to include recently annexed property in Annex #08-06: a 20.6-acre parcel legally described as Tracts 1A, 1B, and 1C, Amended Tract 1, C/S 2055, and located north of Alkali Creek Road. Jim Pickens, Best Development Corporation, owner and petitioner.
[\(Corresponding Staff Memo M\)](#)

N. Preliminary Plat of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision, conditional approval of the plat and adoption of the Findings of Fact.
[\(Corresponding Staff Memo N\)](#)

O. Preliminary Subsequent Minor Plat of Amended Lot 2, Block 1, Shiloh Crossing Subdivision, conditional approval of the plat and adoption of the Findings of Fact.
[\(Corresponding Staff Memo O\)](#)

P. Preliminary Subsequent Minor Plat of Amended Lot 6B, Flanagan Subdivision, conditional approval of the plat and adoption of the Findings of Fact.
[\(Corresponding Staff Memo P\)](#)

Q. Final Plat of Riverfront Business Park Subdivision.
[\(Corresponding Staff Memo Q\)](#)

R. Bills and Payroll
(1) April 25, 2008

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

(2) May 2, 2008

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

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION** to sell an approximate 10,000 square foot parcel of vacant land north of Leavens Reservoir, generally located at Rimrock Road and Normal Avenue, north of the MSU-B campus. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).

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

3. **PUBLIC HEARING AND RESOLUTION** ordering construction of improvements for W.O. 02-08, Milton Lane School Route, \$480,500 total project cost. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

4. (a) **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #08-07:** A 4.765-acre parcel described as Tract 1, C/S 2350, generally located on the northeast corner of King Avenue East and Calhoun Lane, Robert Medvec, owner and petitioner. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation).

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

(b) **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #842:** A zone change from Residential 9600 (R-96) to Entryway General Commercial (EGC) on Tract 1 of C/S 2350; a 4.34-acre parcel generally located on the northeast corner of King Avenue East and Calhoun Lane; Robert Medvec, owner; Kristin Omvig and Jared LeFevre of Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents. Zoning Commission recommends approval and adoption of the 12 Zoning Commission determinations. (**Action:** approval or disapproval of Zoning Commission recommendation).

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

5. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #838:** A zone change for property in a Planned Development (PD) with underlying zoning of Public (P) to an underlying zoning district of Highway Commercial (HC) on a .75-acre parcel of land legally described as a portion of Lots 1-4 & 15 of Amended Lot 15A, Block 2, Southgate Subdivision, 1st Filing, located directly east of 5379 Southgate Drive. City of Billings, owner; Bruce McCandless, Assistant City Administrator, agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission determinations. (**Action:** approval or disapproval of Zoning Commission recommendation).

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

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #839: A zone change from Residential 9600 (R-96) to Neighborhood Commercial (NC) on Lots 3 through 7, Block 9, Central Acres Subdivision, 5th Filing, located at 3133 Central Avenue. Charles Haynes, Ira & Ruth Park, and Alan Oster, owners; Gerald Neumann, agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission determinations. (**Action:** approval or disapproval of Zoning Commission recommendation).

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

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #840: A zone change from Residential Multi-Family-Restricted (RMF-R) to Residential Professional (RP) on Lot 4A, Block 2, Goodman Subdivision, 4th Filing, described as a 67,110 square foot parcel of land on the southeast corner of the intersection of 41st Street West and Avenue C. Randall Swenson, Steve Repac and Jeff Muri, owners; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission determinations. (**Action:** approval or disapproval of Zoning Commission recommendation).

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

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #841: A zone change from Residential 7000 (R-70) to Entryway General Commercial (EGC) on Lot 1, Block 5, Pinnick Subdivision, 3rd Filing, less the north 110 feet; described as a 3.043-acre parcel generally located on the northeast corner of the intersection of Newman Lane and King Avenue East; Christ the King Lutheran Church, owner; Kristin Omgvig and Jared LeFevre of Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (**Action:** approval or disapproval of Zoning Commission recommendation).

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

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #843: A text amendment to Section 27-1502(b) of the Unified Zoning Regulations requiring that a pre-application neighborhood meeting be held within a 2-mile radius of the subject property of a proposed zone change. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation).

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

10. PUBLIC HEARING AND SPECIAL REVIEW #857: A special review to allow a drive-through window for a proposed CVS Drug Store in a Community Commercial (CC) zone adjacent to Residential Multi-Family (RMF) and Residential 6000 (R-60) zoning districts on Lots 5-10, Block 4, Central Avenue Addition, generally located at 615 and 617 Central Avenue; Greg and Becky Pekovich, owners; Velmeir Companies and Kevin Heaney of Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation).

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

11. **a) CONTINUANCE OF PUBLIC HEARING AND FIRST READING ORDINANCE – MODEL CABLE TV ORDINANCE.** (Continued from 4/28/08) Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
[\(Corresponding Staff Memo 11a\)](#)
- (b) CONTINUANCE OF PUBLIC HEARING AND FIRST READING ORDINANCE** repealing existing Cable TV Franchise Ordinance and enacting new Franchise Ordinance with Bresnan Communications. (Continued from 4/28/08) Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
[\(Corresponding Staff Memo 11b\)](#)
12. **CONSIDERATION AND APPROVAL** of the Cottonwood Park School Site Purchase and Sale Agreement. (Action delayed from 5/12/08.) Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
[\(Corresponding Staff Memo 12\)](#)
13. **APPROVAL OF RIMROCK FOUNDATION SETTLEMENT.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
[\(Corresponding Staff Memo 13\)](#)
14. **APPROVAL OF SETTLEMENT WITH GUNLACH.**
[\(Corresponding Staff Memo 14\)](#)
15. **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

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

A1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Delay Contract Award for Painting City Parking Garages
DEPARTMENT: Administrative Services – Parking Division
PRESENTED BY: Chris Mallow, Parking Supervisor

PROBLEM/ISSUE STATEMENT: Bids were received on May 27, 2008, for painting the City owned parking garages. Staff will review bids for accuracy and compliance but cannot complete the review in time to make a recommendation at this Council meeting. Staff will present the recommendation at the June 9th, 2008, City Council meeting.

FINANCIAL IMPACT: Funding for the project will come from the Parking Fund and is budgeted in the FY08 budget.

RECOMMENDATION

Staff recommends that Council delay awarding a contract for painting the City parking garages until the June 9, 2008, City Council Meeting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: SID 1379 King Avenue West – Landscaping Design
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for the landscaping contract for SID 1379 King Avenue West on May 27, 2008. This project will provide for landscaping features for the boulevard and other areas relating to the King Avenue West expansion project from S. 31st Street West to Shiloh Road.

ALTERNATIVES ANALYZED:

1. Delay awarding SID 1379 King Avenue West – Landscaping design until the June 9, 2008, City Council Meeting.

FINANCIAL IMPACT: Funding for this project will be provided entirely from Arterial Funds.

RECOMMENDATION

Staff recommends that Council delay awarding SID 1379 King Avenue West – Landscaping Design until the June 9, 2008, City Council Meeting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Work Order 07-14, Moore Lane and Monad Road Water and Sewer Improvements

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 07-14 Moore Lane and Monad Road Water and Sewer Improvements on May 27, 2008. This project will replace the existing water line and install a new sewer line in Moore Lane. MDT is planning on reconstructing the intersection of Moore Lane and Monad Road with a concrete intersection. As such, these utilities need to be installed before the intersection construction starts.

ALTERNATIVES ANALYZED:

1. Delay awarding Work Order 07-14 Moore Lane and Monad Road Water and Sewer Improvements until the June 9, 2008, City Council Meeting.

FINANCIAL IMPACT: Funding for this project will be out of the 2008 water and sewer rehabilitation funds.

RECOMMENDATION

Staff recommends that Council delay awarding Work Order 07-14 Moore Lane and Monad Road Water and Sewer Improvements until the June 9, 2008, City Council Meeting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Animal Shelter Privatization Contract
DEPARTMENT: City Council/City Administrator's Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings issued a request for proposals for privatization of the Animal Shelter on February 22, 2008. The City received only one response, from Yellowstone County Animal Shelter, Inc. (YCAS), but it is more than 150 pages long. The contract is being reviewed by a committee consisting of City Councilmember Vince Ruegamer, Animal Control Board Chair Kevin Walsh, City Administrator Tina Volek, Purchasing Agent Liz Kampa-Weatherwax and Police Department Marketing/Minor Alcohol Prevention Coordinator Lisa Posada-Griffin. The committee is thoroughly reviewing the proposal, and needs additional time to complete the review and negotiate a contract with YCAS.

ALTERNATIVES ANALYZED: The City Council may:

- Continue the item to June 23, 2008;
- Award the contract to YCAS;
- Reject all bids.

FINANCIAL IMPACT: The financial impact would depend on the negotiated contract.

RECOMMENDATION

Continue the contract to the June 23, 2008, City Council meeting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Approval of Access License Agreement for Tract 12A of Amended Tracts 2, 3, 4, 5, 6A-1, 7A, 12 & 13A of C/S 2544 4th and 5th Amended

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Sanitary sewer main associated with the above-named project extends through portions of the Briarwood Country Club golf course, and this main must be accessed by heavy equipment for regular cleaning and maintenance. In order that impacts to the golf course surface and daily operations are minimized during maintenance activity, it has been determined that an agreement be reached with the above-referenced land owner allowing access across this currently undeveloped property to the golf course for maintenance purposes.

FINANCIAL IMPACT: Approval of this Agreement does not impact the current project budget. As part of the project design, the City has incorporated a 320-foot extension of 8-inch sewer main to the east property line of Tract 12A to make service available to it as well as other developable property in the future.

RECOMMENDATION

Staff recommends that Council approve the Access License Agreement for Tract 12A of Amended Tracts 2, 3, 4, 5, 6A-1, 7A, 12 & 13A of C/S 2544 4th and 5th Amended.

Approved By: City Administrator ____ City Attorney ____

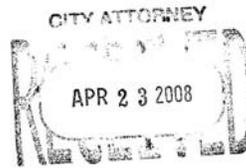
ATTACHMENT

- A. License Agreement

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



401 North 31st Street
P.O. Box 30918
Billings, MT 59116-0918
406-255-5205
800-342-9599 toll free
Fax: 406-255-5261
www.firstinterstate.com



April 21, 2008

City of Billings
Attn: Mr. Kelly Addy, Deputy City Attorney
PO Box 1178
Billings, MT 59103

RE: Katherine Thornton Trust #321603
Duplicate Originals of Access License Agreement

SENT CERTIFIED MAIL

Dear Kelly:

Enclosed please find duplicate originals of the Access License Agreement executed by Max Thornton, Dick Paasch as manager and First Interstate Bank as Co-Trustee. Once the matter has been signed and processed by the City, please return an original to us for safekeeping.

As always, it is a pleasure working with you! If you have any questions, please do not hesitate to contact our office at 406-255-5257.

Sincerely,

Carina R. Lange, CTFA
Wealth Advisor
Wealth Management

/crl

cc: Dick Paasch, Managing Partner of PM&M, LLC
Max Thornton, Co-Trustee and Individually

**LICENSE AGREEMENT FOR
MAINTENANCE ACCESS FOR SANITARY SEWER MAIN LINES**

This License Agreement for Maintenance Access for Sanitary Sewer Main Lines (the "Agreement") made and entered into this ____ day of _____, 2008, by and between the **P M & M, LLC**, of 2060 Rimrock Road, Billings, Montana, **MAX E. THORNTON**, individually, of 11842 Pryor Road, Billings, MT, and the **KATHERINE K. THORNTON TESTAMENTARY TRUST**, with mailing address of P.O. Box 30918, Billings, MT 59116-0918, (collectively, the "Licensor"), and the **CITY OF BILLINGS**, a Montana Municipal Corporation, of P.O. Box 1178, Billings, Montana 59103 (the "Licensee").

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

**SECTION ONE
GRANT OF LICENSE AND DESCRIPTION OF PREMISES**

Licensor grants to Licensee a license, subject to all of the terms and conditions of this Agreement, for reasonable vehicular access for the purpose of periodic maintenance and upkeep of sanitary sewers, and for incidental purposes related to such purpose, across, over and through certain real property located in Section 28, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana, more particularly described as follows:

Tract 12A of Amended Tracts 2, 3, 4, 5, 6A-1, 7A, 12 & 13A of Certificate of Survey No. 2544 4th and 5th Amended, Recorded December 17, 2004 under Document No. 3315777, Records of Yellowstone County, Montana,

It is understood that the Licensor shall provide reasonable access for Licensee's maintenance vehicles across and through the aforementioned Tract 12A in order to utilize the bridge across Blue Creek located north of the fairway of hole #5 on The Briarwood Country Club, but the specific location of the access route may be changed from time to time at the discretion of the Licensor, in which event Licensor shall provide reasonable notice of any such change to Licensee.

**SECTION TWO
LIMITATION TO DESCRIBED PURPOSE**

The above-described property may be accessed by Licensee solely for the purpose of providing Licensee ingress and egress to the aforementioned Tract 12A in order for Licensee to operate and maintain municipal sanitary sewers, and for incidental purposes related to such purpose. Licensee, at Licensee's expense, shall be responsible for any surface restoration due to any maintenance, repair or service work performed hereunder.

No major construction or repair shall be accomplished on the said Tract 12A by the Licensee during the term of this Agreement. At Licensee's sole cost and expense, Licensee shall perform minor road repairs such as graveling or grading, or repairs that are necessary to maintain Licensee's access to the sanitary sewer. Licensor may lock any gate or gates upon the premises, provided that Licensor provides Licensee with duplicate keys for any such locks. Licensee shall close and re-lock all gates immediately upon passing through them. No gates shall be left standing open, and no locked gates shall be left unlocked. It is further understood and agreed that this access license is not a license for general public travel.

SECTION THREE DURATION

This license shall commence on the date of this Agreement and shall continue until both parties agree in writing to terminate it.

SECTION FOUR CONSIDERATION

The parties agree that the consideration given by Licensee to Licensor shall be the construction, operation and maintenance of a sanitary sewer trunk main and a sanitary sewer lateral main with which the Licensee may provide sanitary sewer services to privately-owned parcels of property in the Briarwood area. Licensor shall control the location of the municipal sanitary sewer to be constructed on the subject property. The Licensee, at its sole cost and expense, shall obtain right-of-way and extend a lateral sanitary sewer main from the adjoining Briarwood Country Club property to a point in and on the said Tract 12A for the use and enjoyment of the public. It is understood that the connection fees Licensor would incur to connect to the lateral sewer main will not be waived, in whole or in part, as any part of the consideration for Licensor's consent to this Agreement. Further extension of the lateral main for Licensor's use or for another party's use shall be at their sole cost and expense. It is understood that Licensor shall allow extension of this lateral sanitary sewer main to serve other properties west and southwest of the said Tract 12A with mutual consent of the parties involved. The parties further agree that Licensor will receive a benefit from this activity by Licensee because municipal sanitary sewer mains are available for connection from privately-owned parcels of property in the Briarwood area.

SECTION FIVE TERMINATION

If Licensee fails to comply with any condition of this Agreement at the time or in the manner provided for, the Licensor may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within sixty (60) calendar days after the date Licensor provides written notice to the Licensee. Said notice shall set forth the items to be cured. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**SECTION SIX
LICENSOR AS AN ADDITIONAL INSURED**

Licensee shall name Licensor as a "non-municipal" additional covered party under its Memorandum of Coverage with the Montana Municipal Insurance Authority so that Licensor is an additional covered party for any injuries or damages caused by Licensee's actions, activities, or infrastructure pursuant to this Agreement.

**SECTION SEVEN
COSTS AND EXPENSES; INDEMNITY**

Except as otherwise provided herein, all costs and expenses relating to the access granted to Licensee hereunder and the maintenance and upkeep related thereto shall be the responsibility of the Licensee. The Licensee shall indemnify, defend and hold the Licensor harmless from and against any and all claims, demands, actions, liabilities, obligations, judgments, awards, fines, penalties, damages, costs or expenses, including reasonable attorneys' fees, including injury to or death of persons or damage to property, directly or indirectly arising out of Licensee's use of the license granted hereunder, including but not limited to the use of Licensee's vehicles and maintenance and upkeep of sanitary sewers on the subject property; provided, however, the Licensee shall not indemnify nor save harmless Licensor from any action, claim or demand arising out of the negligent or willful acts of the Licensor, or its officers, directors, employees or agents.

**SECTION EIGHT
LICENSE RUNS WITH THE LAND**

This license shall run with the land and shall be binding on and shall inure to the benefit of the parties to this Agreement, their respective heirs, successors, or assigns.

**SECTION NINE
GOVERNING LAW AND INTERPRETATION**

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County. If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall nonetheless be effective. The headings used herein are for convenience only, and shall not be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

**SECTION TEN
NOTICES**

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by United States Mail, First Class postage

prepaid, if sent to the respective address of each party as set forth at the beginning of this Agreement.

**SECTION ELEVEN
ASSIGNMENTS**

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior written consent of the other party, which consent shall not be unreasonably denied; provided, however, in the event of Licensor's sale of any or all of the subject property, Licensor may assign this Agreement to the purchaser or the subject property without the written consent of Licensee.

**SECTION TWELVE
ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the parties relating to the subject matter contained herein. No agent or representative of either party has authority to make any representations, statements, warranties or agreements not herein expressed and all modifications or amendments of this Agreement, including the appendices, must be in writing and signed by an authorized representative of each of the parties hereto.

**SECTION THIRTEEN
ATTORNEY FEES**

If either party defaults in its performance hereunder and the other party employs an attorney because of such default, the defaulting party agrees to pay, on demand, all costs, charges and expenses, including reasonable attorney, expert and paralegal fees, incurred at any time by the other party because of the default.

**SECTION FOURTEEN
WAIVER**

Waiver by any party hereto of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of the same, or of any other term, covenant or condition contained in this Agreement. The consent to, or approval of, any act of any the parties hereto by any other party shall not be deemed to render unnecessary the obtaining of the consent to, or approval of, any subsequent act by any party hereto, as the case may be, by the other party.

**SECTION FIFTEEN
THIRD PARTY RIGHTS**

Nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between the parties. Except as expressly provided herein, no term or

P M & M, LLC

Richard W. Paasch, mgr

By: Richard W. Paasch, _____

STATE OF MONTANA)

:SS

County of Yellowstone)

On this 21st day of April, 2008, before me, personally appeared **RICHARD W PAASCH**, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same as the Manager of the **P M & M, LLC**.

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



Erin Pinney
Notary Public for the State of Montana
Printed Name: Erin Pinney
Residing at Billings, Montana
My Commission Expires: October 31, 2011

Max E. Thornton
MAX THORNTON, In his individual capacity

STATE OF MONTANA)

:SS

County of Yellowstone)

On this 17th day of April, 2008, before me, personally appeared **MAX E. THORNTON**, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the.

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



Erin Pinney
Notary Public for the State of Montana
Printed Name: Erin Pinney
Residing at Billings, Montana
My Commission Expires: October 31, 2011

KATHERINE K. THORNTON TESTAMENTARY TRUST

Max E. Thornton
MAX E. THORNTON, Co-Trustee

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this 17th day of April, 2008, before me, personally appeared
MAX E. THORNTON, known to me to be the person who signed the foregoing
instrument and who acknowledged to me that he executed the same as the Co-Trustee of
the KATHERINE K. THORNTON TESTAMENTARY TRUST.

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



Erin Pinney
Notary Public for the State of Montana
Printed Name: Erin Pinney
Residing at Billings, Montana
My Commission Expires: October 31, 2011

By: Carina R. Lange VP&TO
FIRST INTERSTATE BANK
F/K/A FIRST INTERSTATE BANK OF COMMERCE, Co-Trustee
By: Carina R. Lange Carina R. Lange (Printed Name)
Its: vice President & Trust Officer

By: Cynthia A. Reiersen
FIRST INTERSTATE BANK
F/K/A FIRST INTERSTATE BANK OF COMMERCE, Co-Trustee
By: Cynthia A. Reiersen (Printed Name)
Its: Case VP & Trust Officer

STATE OF MONTANA)

:ss

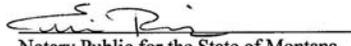
County of Yellowstone)

On this 21st day of April, 2008, before me, personally appeared Carina Lange, and Cynthia Reiverson, known to me to be the Vice President & Trust Officer and Asst Vice President & Trust Officer of **FIRST INTERSTATE BANK F/K/A FIRST INTERSTATE BANK OF COMMERCE** who signed the foregoing instrument as its authorized representative and on its behalf as the Co-Trustee of the **KATHERINE K. THORNTON TESTAMENTARY TRUST**.

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

Notarial Seal




Notary Public for the State of Montana
Printed Name: Erin Pinney
Residing at Billings, Montana
My Commission Expires: October 31, 2011

ACKNOWLEDGMENT AND ACCEPTANCE
OF INTEREST IN PROPERTY

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

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

By: _____
RON TUSSING, Mayor

ATTEST:

By: _____
CARI MARTIN, City Clerk

STATE OF MONTANA)
: ss.
County of Yellowstone)

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

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

(NOTARIAL SEAL)

(Signature)

(Printed Name)
Notary Public for the State of Montana
Residing in _____
My Commission Expires: _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Montana Department of Transportation (MDT) Right-of-Way Agreements with the City of Billings Aviation and Transit Department for the Airport Road Project MT 009

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Montana Department of Transportation (MDT) has requested to purchase portions of City owned property managed by the Airport for the right-of-way and construction of the widened Airport road from Main Street to the Airport entrance at North 27th Street, and has agreed to compensate the Aviation and Transit Department for the Airport property that will be disturbed and displaced during the construction process.

MDT has supplied the City with a Right-of-Way Agreement and two (2) Bargain and Sale Deed documents, one deed for the land purchased with Federal Grant Funding and one deed for the City owned land. The Airport is seeking official approval from the Federal Aviation Administration (FAA) to release the portion of land purchased with Federal funds. The FAA Area District Office in Helena has determined that this sale is reasonable and benefits the Airport because of the new road and Airport access; however, before final approval can be given, a 30-day notice must be placed in the Federal Register, which is awaiting FAA posting. MDT had initial concerns that the July bid date for the total project would be missed due to the delay by the FAA. After discussing the situation with the MDT, staff there is willing to accept Council approval with the Mayor's execution of the Right-of-Way Agreement, and approval of the Deed documents with contingent execution of the Deeds when the FAA has finally cleared the sale of the property purchased with Federal funds. The MDT would then continue with the July bid for construction. If the Agreement is not approved and signed, the project will be delayed until an acceptable agreement is reached.

FINANCIAL IMPACT: The Right-of-Way Agreement with the MDT will provide the City's Aviation and Transit Department with \$184,400 in compensation; however, \$24,692 must be returned to the FAA as reimbursement for the portions of land purchased with Federal funds.

RECOMMENDATION

Staff recommends that City Council approve the acceptance of the MDT's Right-of-Way Agreement and the two (2) Bargain and Sale Deeds and authorize the Mayor to immediately execute the Right-of-Way Agreement with contingent authorization to execute the two (2)

Bargain and Sale Deeds when the FAA has finalized approval of the transfer of the land purchased with Federal funds.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: W.O. 07-22, King Avenue East Widening Construction Easements
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Work Order 07-22 will construct King Avenue East to a five-lane section from Orchard Lane to South Billings Boulevard. Included in the construction will be installation of a traffic signal at the intersection of Calhoun Lane and King Avenue East. The City Engineer's Office has started negotiations with property owners for the necessary right of way and temporary construction easements. There are a total of 12 properties in which right of way or temporary construction easements are needed from. Of the 12 properties, 7 of the properties require only temporary construction easements. These temporary easements extend into the properties 10 feet and are only good through construction and the one-year warranty. The Appraisal Group has set a value of each of these easements at \$200 or \$250, depending on the size of the easements needed. Offers have been made to all of the property owners. All of the offers are in accordance of the City of Billings Purchasing Manual.

FINANCIAL IMPACT: The total value of the temporary easements for the 7 properties is \$1,650.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the Temporary Easement Agreements on King Avenue East.

ATTACHMENT

A. Example of Temporary Easement Agreement

4. **THE GRANTOR**, hereby grants the City of Billings a Temporary Construction Permit, 10 feet wide, as shown on Exhibit A, attached hereto and made a part hereof, for the period of one year or the duration of the construction project.
5. **IT IS UNDERSTOOD AND AGREED** the Temporary Permit Area will be cleared of any debris after construction and left in a good, workmanlike condition that is satisfactory to the property owner.
6. **IT IS UNDERSTOOD AND AGREED** the City will construct curb, gutter, sidewalk and street improvements to widen King Avenue East and Orchard Lane on and along the acquired property at no cost to the Grantor. These improvements shall be maintained according to the City policy in effect at such time maintenance is necessary. The City further agrees to relocate or remove obstructions such as; planters, lights, signs, landscaping, etc., as required to accommodate the street widening at no cost to the Grantor. The City also further agrees to modify the existing property, as necessary, to reasonably match the new improvements at no cost to the Grantor. Any additional work requested by the Grantor, but not necessary to construct the King Avenue East and Orchard Lane widening, shall be the Grantor's sole responsibility.
7. **IT MAY BE NECESSARY** for the City of Billings, in some instances, to acquire some properties by its Right of Eminent Domain. I/We understand this and hereby acknowledge the necessity of the project and our agreement thereof. I/We further agree that the property given to the City of Billings by me/us has been sold for an agreed upon price and that sale shall not be affected by the City of Billings exercise of Eminent Domain of other properties in order to successfully complete the project.

WITNESS WHEREOF, the parties hereto have executed this agreement the day and year as written below.

RECOMMENDED FOR APPROVAL

For Engineering Division (Date)

Owner (Date)

Owner (Date)

**APPROVED FOR AND ON BEHALF OF
THE CITY OF BILLINGS**

ATTEST

BY: _____
MAYOR (Date)

BY: _____
Cari Martin (Date)
CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: WO 07-22 King Avenue East Right-of-Way Agreement and Warranty Deed with Christ the King Lutheran Church

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 07-22 King Avenue East will widen King Avenue East from South Billings Boulevard and Orchard Lane. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners. There are five property owners on the north side of King Avenue East in which right of way is required to be purchased. The Appraisal Group, Ltd. has completed appraisals of the five properties and offers have been made based on those appraisals. Christ the King Lutheran Church, owner of the property located on the northeast corner of Newman Lane and King Avenue East, has agreed to sell the right of way parcel from its property. This includes a temporary construction easement. The City Engineer's Office offered Christ the King Lutheran Church the appraised value plus 5% (\$65,100) and the cost of two water services that were installed with WO 08-05.

ALTERNATIVES ANALYZED:

1. Approve Right-of-Way Agreement and Warranty Deed with Christ the King Lutheran Church.
2. Do not approve the Right-of-Way Agreement and Warranty Deed with Christ the King Lutheran Church.

FINANCIAL IMPACT: The cost of the right-of-way and construction easement from Christ the King Lutheran Church is \$65,100.00, which will be paid out of the Tax Increment Finance District.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement and Warranty Deed with Christ the King Lutheran Church.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right-of-Way Agreement with Christ the King Lutheran Church
- B. Warranty Deed

**CITY OF BILLINGS
PUBLIC WORKS DEPARTMENT**

Project No. W.O. 07-22 County of Yellowstone
Designation King Avenue East

RIGHT OF WAY AGREEMENT

Parcel from Station-To-Station Subdivision Section Township Range

A Tract of land situated in Lot 1, Block 5, Pinnick Subdivision 3rd Filing as recorded in Document No. 779769, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana.

List Names & Addresses of the Grantor, Con. Purchaser & Lessee

Christ the King Lutheran Church
409 Newman Lane
Billings, MT 59101

1. IN CONSIDERATION OF THE PAYMENTS HEREIN SET FORTH AND THE SPECIFIC AGREEMENTS TO BE PERFORMED BY BOTH PARTIES HERETO AND WRITTEN IN THIS AGREEMENT, THE PARTIES HERETO BIND THEMSELVES TO THE TERMS AND CONDITIONS SET FORTH HEREIN. NO VERBAL AGREEMENTS SHALL BE BINDING UPON EITHER PARTY AND THIS AGREEMENT SHALL BECOME EFFECTIVE UPON EXECUTION BY A DESIGNATED REPRESENTATIVE OF THE CITY OF BILLINGS.

2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acres and/or sq. ft. and improvements in the taking.)

| | | |
|--|-----------|--------------------|
| 7,847.3 SF @ \$6.31/SF | Subtotal: | \$49,516.46 |
| Compensation for existing site improvements | Subtotal: | <u>\$ 9,937.00</u> |
| Total compensation for land and improvements | Total | \$59,453.46 |

3. COMPENSATION FOR TEMPORARY EASEMENT

| | | |
|------------------------------|-----------|-------------|
| One time payment of | | |
| 3,886.8 SF @ \$6.31/SF X 10% | Subtotal: | \$ 2,452.57 |
| Add 5% per agreement | Subtotal: | \$ 3,100.00 |

WITNESS WHEREOF, the parties hereto have executed this agreement the day and year as written below.

RECOMMENDED FOR APPROVAL

For Engineering Division (Date)

Owner (Date)

Owner (Date)

**APPROVED FOR AND ON BEHALF OF
THE CITY OF BILLINGS**

ATTEST

BY: _____
MAYOR (Date)

BY: _____
Cari Martin (Date)
CITY CLERK

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

Project No. W.O. 07-22 County of Yellowstone

Designation King Avenue East – South Billings Boulevard to Orchard Lane

WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 200__.

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:**

Christ the King Lutheran Church
409 Newman Lane
Billings, MT 59101

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

A Tract of land situated in Lot 1, Block 5, Pinnick Subdivision 3rd Filing as recorded in Document No. 779769, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of said Lot 1, thence S90°00'00"W, a distance of 389.40 feet to the Easterly Right-of-Way of Newman Lane; thence N00°03'00"W along said Easterly Right-of-Way of Newman Lane, a distance of 25.62 feet; thence S87°12'20"E, a distance of 135.68 feet; thence N90°00'00"E, a distance of 253.90 feet to the Easterly line of said Lot 1; thence S00°00'00"E along the Easterly line of said Lot 1, a distance of 19.00 feet to the Point of Beginning, containing 7847.3 Sq.Ft., more or less.

AS SHOWN by Exhibit "A", consisting of one sheet attached hereto and made a part hereof.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: WO 07-22 King Avenue East Right-of-Way Agreement and Warranty Deed with Kurt and Delores Cummins

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 07-22 King Avenue East will widen King Avenue East from South Billings Boulevard and Orchard Lane. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners. There are five property owners on the north side of King Avenue East in which right of way is required to be purchased. The Appraisal Group, Ltd. has completed appraisals of the five properties and offers have been made based on those appraisals. Kurt and Delores Cummins, owners of the property located on the northwest corner of Orchard Lane and King Avenue East, have agreed to sell the right of way parcel from their property. This includes a temporary construction easement. The City Engineer's Office offered Christ the Kurt and Delores Cummins the appraised value(\$1,603.86) and the replacement of a tree.

ALTERNATIVES ANALYZED:

1. Approve Right-of-Way Agreement and Warranty Deed with Kurt and Delores Cummins.
2. Do not approve the Right-of-Way Agreement and Warranty Deed with Kurt and Delores Cummins.

FINANCIAL IMPACT: The cost of the right-of-way and construction easement from Kurt and Delores Cummins is \$1,603.86, which will be paid out of the Tax Increment Finance District.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement and Warranty Deed with Kurt and Delores Cummins.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right-of-Way Agreement with Kurt and Delores Cummins
- B. Warranty Deed

**CITY OF BILLINGS
PUBLIC WORKS DEPARTMENT**

Project No. W.O. 07-22 County of Yellowstone
Designation King Avenue East

RIGHT OF WAY AGREEMENT

Parcel from Station-To-Station Subdivision Section Township Range

A Tract of land situated in Lots 1 and 2, Block 9, Orchard Lane Subdivision 3rd Filing as recorded in Document No. 537746, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana.

List Names & Addresses of the Grantor, Con. Purchaser & Lessee

Kurt E. and Delores A. Cummins
748 Orchard Lane
Billings, MT 59101

1. IN CONSIDERATION OF THE PAYMENTS HEREIN SET FORTH AND THE SPECIFIC AGREEMENTS TO BE PERFORMED BY BOTH PARTIES HERETO AND WRITTEN IN THIS AGREEMENT, THE PARTIES HERETO BIND THEMSELVES TO THE TERMS AND CONDITIONS SET FORTH HEREIN. NO VERBAL AGREEMENTS SHALL BE BINDING UPON EITHER PARTY AND THIS AGREEMENT SHALL BECOME EFFECTIVE UPON EXECUTION BY A DESIGNATED REPRESENTATIVE OF THE CITY OF BILLINGS.

2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acres and/or sq. ft. and improvements in the taking.)

| | | |
|--|-----------|-------------------|
| 22.7 SF @ \$3.00/SF | Subtotal: | \$ 68.10 |
| Compensation for existing conifer tree | Subtotal: | <u>\$1,155.00</u> |
| Total compensation for land and improvements | Total | \$1,223.10 |

3. COMPENSATION FOR TEMPORARY EASEMENT

| | | |
|---|-----------|----------|
| One time payment of 1,269.2 SF @ \$3.00/SF X 10% | Subtotal: | \$380.76 |
|---|-----------|----------|

WITNESS WHEREOF, the parties hereto have executed this agreement the day and year as written below.

RECOMMENDED FOR APPROVAL

For Engineering Division (Date)

Owner (Date)

Owner (Date)

**APPROVED FOR AND ON BEHALF OF
THE CITY OF BILLINGS**

ATTEST

BY: _____
MAYOR (Date)

BY: _____
Cari Martin (Date)
CITY CLERK

Project No. W.O. 07-22 County of Yellowstone

Designation King Avenue East – South Billings Boulevard to Orchard Lane

WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 200__.

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:**

Kurt E. and Delores A. Cummins
748 Orchard Lane
Billings, MT 59102

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:

A Tract of land situated in Lot 1, Block 9, Orchard Lane Subdivision 3rd Filing as recorded in Document No. 537746, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Orchard Lane Subdivision 3rd Filing, thence S89°55'30"W along the Northerly Right-of-Way of King Avenue East, a distance of 11.47 feet; thence N70°54'10"E, a distance of 12.13 feet to the Westerly Right-of-Way of Orchard Lane; thence S00°11'30"E along said Westerly Right-of-way of Orchard Lane, a distance of 3.95 feet to the Point of Beginning containing 22.7 Sq.Ft., more or less.

AS SHOWN by Exhibit "A", consisting of one sheet attached hereto and made a part hereof.

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 al other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

: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
Tuesday, May 27, 2008

TITLE: WO 07-22 King Avenue East Right-of-Way Agreement and Warranty Deed with Robert Medvec

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 07-22 King Avenue East will widen King Avenue East from South Billings Boulevard and Orchard Lane. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners. There are five property owners on the north side of King Avenue East in which right of way is required to be purchased. The Appraisal Group, Ltd. has completed appraisals of the five properties and offers have been made based on those appraisals. Robert Medvec, owner of COS 2350 Tract 1 located on the northeast corner of Calhoun Lane and King Avenue East, has agreed to sell the right of way parcel from his property. This includes a temporary construction easement. The City Engineer's Office offered Mr. Medvec the appraised value plus 5% (\$38,220.00) and the cost of three water services that were installed with WO 08-05.

ALTERNATIVES ANALYZED:

- Approve the Right-of-Way Agreement and Warranty Deed with Robert Medvec.
- Do not approve the Right-of-Way Agreement and Warranty Deed with Robert Medvec.

FINANCIAL IMPACT: The cost of the right-of-way and construction easement from Robert Medvec is \$38,220.00. This will be paid out of Tax Increment Finance District.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement and Warranty Deed with Robert Medvec.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right-of-Way Agreement with Robert Medvec
- B. Warranty Deed

**CITY OF BILLINGS
PUBLIC WORKS DEPARTMENT**

Project No. W.O. 07-22 County of Yellowstone
Designation King Avenue East

RIGHT OF WAY AGREEMENT

Parcel from Station-To-Station Subdivision Section Township Range

A Tract of land situated in Tract 1, Certificate of Survey No. 2350 as recorded in Document No. 1372518, in the S1/2 SW1/4 SE1/4 SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana.

List Names & Addresses of the Grantor, Con. Purchaser & Lessee

Robert Medvec
4513 King Avenue East
Billings, MT 59101

1. IN CONSIDERATION OF THE PAYMENTS HEREIN SET FORTH AND THE SPECIFIC AGREEMENTS TO BE PERFORMED BY BOTH PARTIES HERETO AND WRITTEN IN THIS AGREEMENT, THE PARTIES HERETO BIND THEMSELVES TO THE TERMS AND CONDITIONS SET FORTH HEREIN. NO VERBAL AGREEMENTS SHALL BE BINDING UPON EITHER PARTY AND THIS AGREEMENT SHALL BECOME EFFECTIVE UPON EXECUTION BY A DESIGNATED REPRESENTATIVE OF THE CITY OF BILLINGS.

2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acres and/or sq. ft. and improvements in the taking.)

| | | |
|--|-----------|-------------|
| 4,232.5 SF @ \$6.66/SF | Subtotal: | \$28,188.45 |
| Compensation for existing site improvements | Subtotal: | \$ 3,911.00 |
| Total compensation for land and improvements | Total | \$32,099.45 |

3. COMPENSATION FOR TEMPORARY EASEMENT

| | | |
|---|-----------|-------------|
| One time payment of 6,408.8 SF @ \$6.66/SF X 10% | Subtotal: | \$ 4,268.26 |
|---|-----------|-------------|

Add 5% per agreement

Subtotal: \$ 1,820.00

4. **TOTAL COMPENSATION FOR PARCEL** \$38,220.00
Rounded Subtotal \$36,400.00 plus 5% (\$1,820.00) for a total \$38,220.00.

5. **THE GRANTOR**, hereby grants the City of Billings a Temporary Construction Permit, 10 feet wide, as shown on Exhibits A, attached hereto and made a part hereof, for the period of one year or the duration of the construction project.
6. **IT IS UNDERSTOOD AND AGREED** the Temporary Permit Area will be cleared of any debris after construction and left in a good, workmanlike condition that is satisfactory to the property owner.
7. **IT IS UNDERSTOOD AND AGREED** the City will construct curb, gutter, sidewalk and street improvements to widen King Avenue East and Orchard Lane on and along the acquired property at no cost to the Grantor. These improvements shall be maintained according to the City policy in effect at such time maintenance is necessary. The City further agrees to relocate or remove obstructions such as; planters, lights, signs, landscaping, etc., as required to accommodate the street widening at no cost to the Grantor. The City also further agrees to modify the existing property, as necessary, to reasonably match the new improvements and install three 6" water services to property line at no cost to the Grantor. Any additional work requested by the Grantor, but not necessary to construct the King Avenue East and Orchard Lane widening, shall be the Grantor's sole responsibility.
8. **IT MAY BE NECESSARY** for the City of Billings, in some instances, to acquire some properties by its Right of Eminent Domain. I/We understand this and hereby acknowledge the necessity of the project and our agreement thereof. I/We further agree that the property given to the City of Billings by me/us has been sold for an agreed upon price and that sale shall not be affected by the City of Billings exercise of Eminent Domain of other properties in order to successfully complete the project.
9. **IT IS UNDERSTOOD AND AGREED** the Grantor will execute the Right-of-Way Agreement and Warranty Deed and other documents as necessary to accommodate the conveyance of Right of Way located beginning at the Southwest corner of said Tract 1, thence N00°09'49"W along the Easterly Right-of-Way of Calhoun Lane, a distance of 35.84 feet; thence S54°36'53"E, a distance of 32.49 feet; thence N89°51'37"E, a distance of 85.44 feet; thence S83°00'53"E, a distance of 88.69 feet; thence N89°51'37"E, a distance of 66.88 feet; thence S88°59'59"E, a distance of 80.74 feet; thence S87°51'35"E, a distance of 109.57 feet to the existing Northerly Right-of-Way of King Avenue East; thence S89°51'37"W along said Northerly Right-of-Way of King Avenue East, a distance of 456.96 feet to the Point of Beginning, containing 4232.5 Sq.Ft., more or less.

WITNESS WHEREOF, the parties hereto have executed this agreement the day and year as written below.

RECOMMENDED FOR APPROVAL

For Engineering Division (Date)

Owner (Date)

Owner (Date)

**APPROVED FOR AND ON BEHALF OF
THE CITY OF BILLINGS**

ATTEST

BY: _____
MAYOR (Date)

BY: _____
Cari Martin (Date)
CITY CLERK

EXHIBIT 'A'

RIGHT-OF-WAY ACQUISITION

Tr. A-1
RIGHT-OF-WAY ACQUISITION DESCRIPTION

Tr. A-2

A Tract of land situated in Tract 1, Certificate of Survey No. 2350 as recorded in Document No. 1372518, in the S½SW¼SE¼SW¼ Section 9, T.15N., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

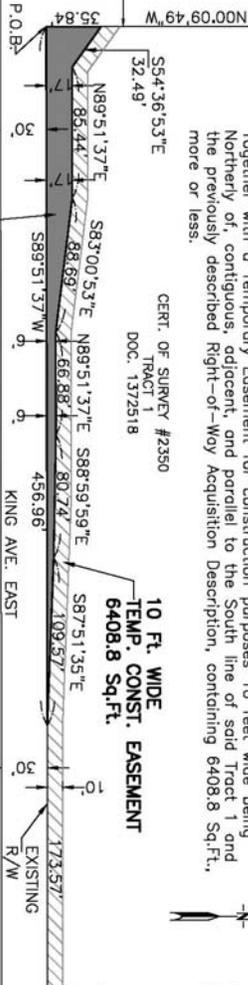
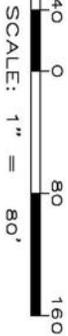
Beginning at the Southwest corner of said Tract 1, thence N00°09'49"W along the Easterly Right-of-Way of Calhoun Lane, a distance of 35.84 feet; thence S54°36'53"E, a distance of 32.49 feet; thence N89°51'37"E, a distance of 85.44 feet; thence S83°00'53"E, a distance of 88.69 feet; thence N89°51'37"E, a distance of 66.88 feet; thence S88°59'59"E, a distance of 80.74 feet; thence S87°51'35"E, a distance of 109.57 feet to the existing Northerly Right-of-Way of King Avenue East; thence S89°51'37"W along said Northerly Right-of-Way of King Avenue East, a distance of 456.96 feet to the Point of Beginning, containing 4232.5 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes, 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the South line of said Tract 1 and the previously described Right-of-Way Acquisition Description, containing 6408.8 Sq.Ft., more or less.

CERT. OF SURVEY #2350
TRACT 1
DOC. 1372518

10 Ft. WIDE
TEMP. CONST. EASEMENT
6408.8 Sq.Ft.

NEW R/W
4232.5 Sq.Ft.



ORCHARD LANE
SUBDIVISION
3rd FILING



Engineers
Surveyors
Planners
316 N. 29th Street
Billings, MT 59101
Phone: (406) 666-0000
Fax: (406) 257-1221
www.mmaerle.com
DATE: 09/08

DO/MAH/WR/DJB
Checked by: SJP
Approved by: SJP
DATE: 09/08

CITY OF BILLINGS
RIGHT-OF-WAY EXHIBIT
KING AVENUE EAST
TRACT 1, CERTIFICATE OF SURVEY No. 2350

PROJECT NO.
2106/002
MT
FIG. 5

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

Project No. W.O. 07-22 County of Yellowstone

Designation King Avenue East – South Billings Boulevard to Orchard Lane

WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 200__.

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:**

Robert Medvec
4513 King Avenue East
Billings, MT 59101

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

A Tract of land situated in Tract 1, Certificate of Survey No. 2350 as recorded in Document No. 1372518, in the S1/2 SW1/4 SE1/4 SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southwest corner of said Tract 1, thence N00°09'49"W along the Easterly Right-of-Way of Calhoun Lane, a distance of 35.84 feet; thence S54°36'53"E, a distance of 32.49 feet; thence N89°51'37"E, a distance of 85.44 feet; thence S83°00'53"E, a distance of 88.69 feet; thence N89°51'37"E, a distance of 66.88 feet; thence S88°59'59"E, a distance of 80.74 feet; thence S87°51'35"E, a distance of 109.57 feet to the existing Northerly Right-of-Way of King Avenue East; thence S89°51'37"W along said Northerly Right-of-Way of King Avenue East, a distance of 456.96 feet to the Point of Beginning, containing 4232.5 Sq.Ft., more or less.

AS SHOWN by Exhibit "A", consisting of one sheet attached hereto and made a part hereof.

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
Tuesday, May 27, 2008

TITLE: WO 07-22 King Avenue East Right-of-Way Agreement and Warranty Deed with Emil and Gladys Rennich

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 07-22 King Avenue East will widen King Avenue East from South Billings Boulevard and Orchard Lane. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners. There are five property owners on the north side of King Avenue East in which right of way is required to be purchased. The Appraisal Group, Ltd. has completed appraisals of the five properties and offers have been made based on those appraisals. Mr. and Mrs. Rennich, owner of the property located on the northwest corner of Calhoun Lane and King Avenue East, has agreed to sell the right of way parcel from their property. This includes a temporary construction easement. The City Engineer's Office offered Mr. and Mrs. Rennich the appraised value plus 5% (\$40,372.50), the construction of a fence along King Avenue East, and the installation of six trees.

ALTERNATIVES ANALYZED:

3. Approve the Right-of-Way Agreement and Warranty Deed with Mr. and Mrs. Rennich.
4. Do not approve the Right-of-Way Agreement and Warranty Deed with Mr. and Mrs. Rennich.

FINANCIAL IMPACT: The cost of the right-of-way and construction easement from Mr. and Mrs. Rennich is \$40,372.50 plus the installation of a fence and six trees. This will be paid out of Tax Increment Finance District.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement and Warranty Deed with Emil and Gladys Rennich.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right-of-Way Agreement with Emil and Gladys Rennich
- B. Warranty Deed

**CITY OF BILLINGS
PUBLIC WORKS DEPARTMENT**

Project No. W.O. 07-22 County of Yellowstone
Designation King Avenue East

RIGHT OF WAY AGREEMENT

Parcel from Station-To-Station Subdivision Section Township Range

A Tract of land situated in Lot 24, Sugar Subdivision as recorded in Document No. 15136, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana.

List Names & Addresses of the Grantor, Con. Purchaser & Lessee

Emil and Gladys Rennich
766 Calhoun Lane
Billings, MT 59101

1. IN CONSIDERATION OF THE PAYMENTS HEREIN SET FORTH AND THE SPECIFIC AGREEMENTS TO BE PERFORMED BY BOTH PARTIES HERETO AND WRITTEN IN THIS AGREEMENT, THE PARTIES HERETO BIND THEMSELVES TO THE TERMS AND CONDITIONS SET FORTH HEREIN. NO VERBAL AGREEMENTS SHALL BE BINDING UPON EITHER PARTY AND THIS AGREEMENT SHALL BECOME EFFECTIVE UPON EXECUTION BY A DESIGNATED REPRESENTATIVE OF THE CITY OF BILLINGS.

2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acres and/or sq. ft. and improvements in the taking.)

| | | |
|---|-----------|-------------|
| 4,194.3 SF @ \$6.67/SF | Subtotal: | \$27,975.98 |
| Compensation for existing site improvements And Depreciation in Market Value | Subtotal: | \$ 9,019.00 |
| Total compensation for land and improvements | Total | \$36,994.98 |

3. COMPENSATION FOR TEMPORARY EASEMENT

| | | |
|---|-----------|-------------|
| One time payment of 2,135.9 SF @ \$6.67/SF X 10% | Subtotal: | \$ 1,424.65 |
| Add 5% per agreement | Subtotal: | \$ 1,922.50 |

4. **TOTAL COMPENSATION FOR PARCEL** \$40,372.50
Rounded Subtotal \$38,450 plus 5%(\$1,922.50) for a total \$40,372.50.
5. **THE GRANTOR**, hereby grants the City of Billings a Temporary Construction Permit, 10 feet wide, as shown on Exhibits A, attached hereto and made a part hereof, for the period of one year or the duration of the construction project.
6. **IT IS UNDERSTOOD AND AGREED** the Temporary Permit Area will be cleared of any debris after construction and left in a good, workmanlike condition that is satisfactory to the property owner.
7. **IT IS UNDERSTOOD AND AGREED** the City will construct curb, gutter, sidewalk and street improvements to widen King Avenue East and Orchard Lane on and along the acquired property at no cost to the Grantor. These improvements shall be maintained according to the City policy in effect at such time maintenance is necessary. The City further agrees to relocate or remove obstructions such as; planters, lights, signs, landscaping, etc., as required to accommodate the street widening at no cost to the Grantor. The City also further agrees to modify the existing property, as necessary, to reasonably match the new improvements, install a combination fence and retaining wall as shown on the attached exhibit, and install six trees in locations agreeable to the Grantor at no cost to the Grantor. Any additional work requested by the Grantor, but not necessary to construct the King Avenue East and Orchard Lane widening, shall be the Grantor's sole responsibility.
8. **IT MAY BE NECESSARY** for the City of Billings, in some instances, to acquire some properties by its Right of Eminent Domain. I/We understand this and hereby acknowledge the necessity of the project and our agreement thereof. I/We further agree that the property given to the City of Billings by me/us has been sold for an agreed upon price and that sale shall not be affected by the City of Billings exercise of Eminent Domain of other properties in order to successfully complete the project.
9. **IT IS UNDERSTOOD AND AGREED** the Grantor will execute the Right-of-Way Agreement and Warranty Deed and other documents as necessary to accommodate the conveyance of Right of Way located beginning at the Southeast corner of Lot 1, Pinnick Subdivision 3rd Filing, thence N00°00'00"W, a distance of 19.00 feet; thence N90°00'00"E, a distance of 187.61 feet; thence N54°26'59"E, a distance of 28.39 feet to the Westerly Right-of-Way of Calhoun Lane; thence S00°00'00"E along said Westerly line of Calhoun Lane, a distance of 35.51 feet; thence S90°00'00"W, a distance of 210.71 feet to the Point of Beginning, containing 4194.3 Sq.Ft., more or less.

WITNESS WHEREOF, the parties hereto have executed this agreement the day and year as written below.

RECOMMENDED FOR APPROVAL

For Engineering Division (Date)

Owner (Date)

Owner (Date)

**APPROVED FOR AND ON BEHALF OF
THE CITY OF BILLINGS**

BY: _____
MAYOR (Date)

ATTEST

BY: _____
Cari Martin (Date)
CITY CLERK

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

Project No. W.O. 07-22 County of Yellowstone
Designation King Avenue East – South Billings Boulevard to Orchard Lane

WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 200__.

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:

Emil and Gladys Rennich
766 Calhoun Lane
Billings, MT 59101

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

A Tract of land situated in Lot 24, Sugar Subdivision as recorded in Document No. 15136, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Pinnick Subdivision 3rd Filing, thence N00°00'00"W, a distance of 19.00 feet; thence N90°00'00"E, a distance of 187.61 feet; thence N54°26'59"E, a distance of 28.39 feet to the Westerly Right-of-Way of Calhoun Lane; thence S00°00'00"E along said Westerly line of Calhoun Lane, a distance of 35.51 feet; thence S90°00'00"W, a distance of 210.71 feet to the Point of Beginning, containing 4194.3 Sq.Ft., more or less.

AS SHOWN by Exhibit "A", consisting of one sheet attached hereto and made a part hereof.

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

EXHIBIT 'A'

RIGHT-OF-WAY ACQUISITION

RIGHT-OF-WAY ACQUISITION DESCRIPTION

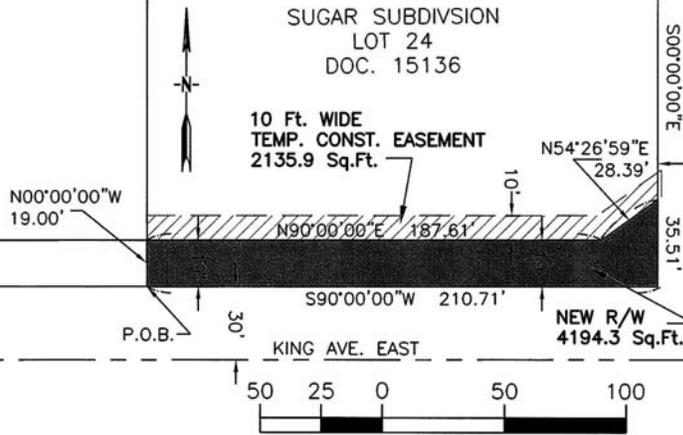
A Tract of land situated in Lot 24, Sugar Subdivision as recorded in Document No. 15136, in the SW $\frac{1}{4}$ Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Pinnick Subdivision 3rd Filing, thence N00°00'00"W, a distance of 19.00 feet; thence N90°00'00"E, a distance of 187.61 feet; thence N54°26'59"E, a distance of 28.39 feet to the Westerly Right-of-Way of Calhoun Lane; thence S00°00'00"E along said Westerly line of Calhoun Lane, a distance of 35.51 feet; thence S90°00'00"W, a distance of 210.71 feet to the Point of Beginning, containing 4194.3 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-Way Acquisition Description, containing 2135.9 Sq.Ft., more or less.

PINNICK
SUBDIVISION
3rd FILING
LOT 1

CALHOUN LANE



| | | | | |
|--|---|----------------|--|-------------------------|
| <p>MORRISON MAIERLE, INC. <i>An Employee-Owned Company</i></p> | <p>315 N. 25th Street Suite 102 Billings MT 59101 Phone: (406) 654-6000 Fax: (406) 231-1201</p> | DRAWN BY: DGS | CITY OF BILLINGS RIGHT-OF-WAY EXHIBIT | PROJECT NO. 2105.052 |
| | | CHKD. BY: | BILLINGS | MT |
| <p>KING AVENUE EAST LOT 24, SUGAR SUBDIVISION</p> | | APPR. BY: GAP | FIGURE NUMBER FIG. 4 | |
| <p>V:\2105052\King Ave EVACAD\Survey\2105052 RW_EXHIBIT-LT24 RMNR SUGAR.dwg Plotted by duane schmitz on Mar11/2008</p> | | DATE: 03/20/08 | | |

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE Application for Substitution of a Certificate of Deposit in Lieu of Cash Retainage as Security for the Performance of a Public Works Contract

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: COP Construction has requested to substitute a Certificate of Deposit in lieu of a cash retainage as security for the performance of the Aronson Avenue extension project. The Certificate of Deposit shall be issued to the City of Billings, in care of COP Construction. The Certificate of Deposit shall be terminated and returned to COP Construction only upon satisfactory completion of the project contract.

RECOMMENDATION

Staff recommends that Council approve the application for substitution of a Certificate of Deposit in lieu of cash retainage.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A – Application

**APPLICATION FOR SUBSTITUTION OF
A CERTIFICATE OF DEPOSIT IN LIEU OF CASH RETAINAGE
AS SECURITY FOR THE PERFORMANCE OF
A PUBLIC WORKS CONTRACT FOR
THE CITY OF BILLINGS**

The CONTRACTOR seeks to withdraw Retainage held by the City in respect to the Project Contract and to substitute a Certificate of Deposit in lieu thereof as provided in §18-1-301, et seq., MCA. The City seeks adequate protection to assure timely and satisfactory performance of the Project Contract and to assure the City has exclusive and convenient recourse to all Certificates of Deposit so substituted. In consideration of an expedited release of retainage, the CONTRACTOR agrees and consents to the following procedures to implement §18-1-301, et seq., MCA for purposes of administration of the Project Contract.

THEREFORE, the CONTRACTOR agrees as follows:

1. Definitions – (See attached Schedule A)
2. The CONTRACTOR providing a Certificate of Deposit in lieu of cash retainage shall obtain a Certificate of Deposit and deposit such Certificate of Deposit with the City Finance Office under the following conditions:
 - a. The CONTRACTOR executing this application recognizes that, while it has the right to withdraw sums otherwise due to it from the City of Billings and which are retained by the City pursuant to the terms of that certain Construction Contract between CONTRACTOR and the City of Billings, dated the 14th day of January, 2008, CONTRACTOR must deposit specified obligations under §18-1-301, et seq., MCA, in a value at least equal to the amount so withdrawn. The CONTRACTOR further understands that §18-1-304, MCA provides for reduction of amounts pursuant to the construction contract first from retained payments held by the City of Billings for which no obligation has been substituted pursuant to §18-1-301, et seq., MCA. The CONTRACTOR further understands that the Construction Contract is the underlying document, which controls the deductions from the retained payments and substituted obligations and governs the ultimate release of the substituted obligations.
 - b. The Certificate of Deposit in lieu of cash retainage shall be terminated and all Certificates of Deposit shall be returned to the CONTRACTOR only upon satisfactory completion of the Project Contract.
3. Upon deposit, the CONTRACTOR shall submit to the City a request for release of cash retainage equal to the Certificate of Deposit deposited. Such request shall

include a Schedule of Certificates of Deposit identifying the Certificates of Deposit deposited, which list shall be verified by the notarized signature of an authorized officer of the Bank which has issued any such Certificate or Certificates of Deposit.

4. The CONTRACTOR shall indemnify and hold the City harmless against all expenses, specifically including but not limited to legal or administration expenses, that the City or the CONTRACTOR may incur in the event the City is required to take legal action to obtain funds from any deposited Certificates of Deposit pursuant to §18-1-304, MCA.
5. Nothing in this Application shall be construed to in any way alter or amend CONTRACTOR's obligations under the Project Contract and if the CONTRACTOR is or later becomes in default under the Project Contract and if the CONTRACTOR is or later becomes in default or in breach of the Project Contract, the City reserves the right to refuse to accept Certificate of Deposits in lieu of cash retainage, notwithstanding the provisions of this Application.

CONTRACTOR:

Printed Name of Contractor

By _____
Its: _____

CONSENT BY THE CITY OF BILLINGS

Passed by the City Council at its regular meeting on _____, 20____, the City of Billings hereby consents to the terms and conditions proposed by the CONTRACTOR in this Application.

CITY OF BILLINGS, a Montana
Municipal Corporation

By: _____
RON TUSSING, Mayor

ATTEST:

By: _____
CARI MARTIN, City Clerk

SCHEDULE A

1. Definitions

- a. City – The City of Billings, Montana, a Montana Municipal Corporation.
- b. CONTRACTOR – COP Construction.

Address: 242 South 64th Street West, Billings, Montana 59106.

Project Contract – Aronson Avenue Extension.

- c. Certificates of Deposit – Certificates of Deposit as defined in §18-1-301(d), MCA on which the City of Billings' City Administrator or his or her designee will be the only signature authorized to release the Certificate of Deposit and no signature or other evidence of consent to the release of the funds shall be required from the CONTRACTOR. Specimen signatures for this contract are as follows:

CHRISTINA M. VOLEK
City Administrator

PATRICK M. WEBER
Financial Services Manager

Bank – a national banking association located in the State of Montana or a banking corporation incorporated under the laws of the State of Montana, in this case First Interstate Bank, whose address is 401 North 31st Street, Billings, Montana 59101.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE Quarterly Report for Pledged Collateral for Wells Fargo Certificate of Deposit, First Interstate Bank Certificate of Deposit, US Bank Municipal Investor Accounts, US Bank Repurchase Account, and US Bank Certificates of Deposit

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Deposit type securities (i.e., certificates of deposit) shall be collateralized according to Montana Code Annotated Section 7-6-207.

On March 31, 2008, the City had a certificate of deposit at Wells Fargo Bank, Billings and First Interstate Bank each for \$1,500,000; \$31,432,225.88 invested in the U.S. Bank Municipal Investor Accounts; and \$2,378,341.64 in the US Bank Repurchase Account. The City has \$3,500,000 in two certificates of deposit at US Bank, Billings.

Because Well Fargo Bank, First Interstate Bank and US Bank's net worth ratio to total assets ratio is over 6%, the City is required to have a minimum of 50% of the deposits covered by pledged securities. Well Fargo Bank has collateralized the City's deposits with 102% in pledged securities. First Interstate Bank has collateralized the City's deposits with 100% in pledged securities. US Bank has collateralized the City's Municipal Investor Account and two certificates of deposit with 119% in pledged securities. The Repurchase Account is collateralized with 102 % in pledged securities.

RECOMMENDATION

Staff recommends that Council approve securities pledged by Wells Fargo Bank, First Interstate Bank and US Bank as collateral for their respective certificates of deposit , MIA, and repurchase account.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Acknowledge Receipt of Petition to Vacate Portions of Lake Hills Subdivision 25th Filing, Right-of-Way and Set a Public Hearing Date

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: The plat of Lake Hills Subdivision 25th Filing Amended is reconfiguring lots within the existing Lake Hills Subdivision 25th Filing. The preliminary plat of the reconfigured subdivision will be on the June 23, 2008, City Council agenda. This subdivision will require right-of-way to be vacated for portions of the existing Lake Hills Subdivision 25th Filing. The attached Exhibit A shows the right-of-way to be dedicated and vacated.

ALTERNATIVES ANALYZED:

- Acknowledge receipt of petition to vacate portions of Lake Hills Subdivision 25th Filing, right-of-way and set a public hearing date of June 23, 2008.
- Do not acknowledge receipt of petition to vacate portions of Lake Hills Subdivision 25th Filing, right-of-way.

FINANCIAL IMPACT: Right-of-way will be dedicated with Lake Hills Subdivision 25th Filing Amended. There will be no financial impact to the City. The City Engineer's Office recommends the right-of-way be vacated at no cost due to the fact that the right of way to be dedicated is larger than the right of way proposed to be vacated.

RECOMMENDATION

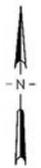
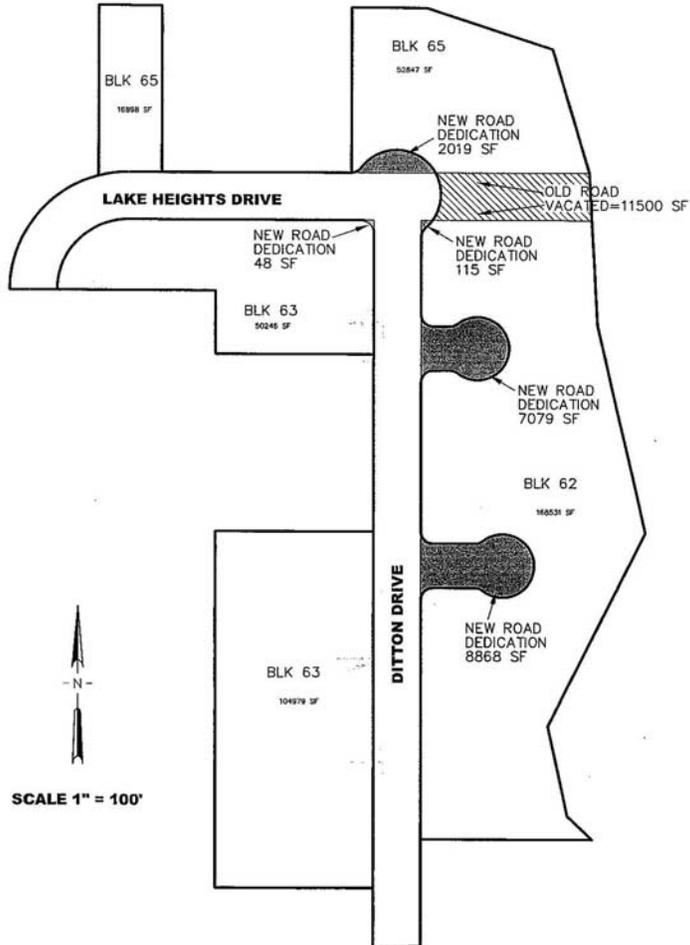
Staff recommends that Council acknowledge receipt of the petition to vacate portions of Lake Hills Subdivision 25th Filing, and set a public hearing date for June 23, 2008.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Exhibit A

LAKE HILLS SUBDIVISION - TWENTY-FIFTH FILING AMENDED
EXHIBIT SHOWING AREAS OF VACATED ROAD RIGHT-OF-WAY
AND NEW DEDICATED RIGHT-OF-WAY



SCALE 1" = 100'

-  TOTAL AREA OF NEW DEDICATED ROAD = 18129 SF
-  TOTAL AREA OF VACATED ROAD = 11500 SF

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Perfect Pitch, Inc Montana Avenue Live
DEPARTMENT: Public Works - Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Perfect Pitch, Inc. requests the closure of N. 25th from Montana Avenue to 1st Ave North for the Montana Avenue Live event every Friday night starting June 13th and continuing until August 22nd, from 1:30 p.m. – 12:00 am.

Recommended conditions of approval include; Perfect Pitch, Inc:

1. Contacting all businesses and making them aware of the event
2. Cleaning the area to be used following the event and providing and emptying waste cans
3. Notifying all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Providing certificate of insurance naming City of Billings as additional insured
5. Obtaining the proper permit if alcohol will be consumed in the public right of way
6. Providing a 20' access lane for emergency vehicles

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closures named above for the Montana Avenue Live events.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Letter from Tim Goodridge, Perfect Pitch, Inc. outlining the event
- B. Right of Way Special Activity Permit
- C. Course Map
- D. Certificate of Insurance
- E. BID Event Kit Page

Montana Avenue Live 2008

Montana Avenue Live is a summer concert series consisting of 9 concerts held in the parking lot of the McCormick Café at 2419 Montana. These concerts are presented by Perfect Pitch, a 501(c)3 non-profit whose mission is to develop the live music culture in Billings and fund music education.

In 2007, from the proceeds of 10 Montana Avenue Live concerts, Perfect Pitch donated \$4,000 to Billings Public School music programs and \$1,000 to the Shepherd High School Band. It is our goal in 2008 to surpass these marks.

Perfect Pitch, Inc. requests the closure of N. 25th from Montana Avenue to 1st Ave. North for the Montana Avenue Live concerts every Friday night starting June 13 and continuing until August 22nd, from 1:30pm – 12am under the following conditions:

1. N. 25th cannot be closed prior to 1:30pm each Friday.
2. N. 25th shall be re-opened to traffic no later than midnight each Friday.
3. N. 25th will not be closed on Friday, August 8 due to Montana Ave. closure for Blues Festival.
4. Barricades will prevent access from the alley to N. 25th from both the east & west sides of the street.
5. Parking will be prohibited along the east side of N. 25th between the alley and 1st Ave. North when street is closed to allow buses easy access to the depot. Event security personnel will be responsible for insuring that vehicles of any kind do not park in this area.
6. Place barricades across N. 25th along the south side of 1st Ave. North. Bus depot will move barricades as necessary to allow bus access to the depot and then put them back in position after buses enter.
7. The event sponsor shall be responsible for providing security personnel (Starplex Crowd Management will be used) for crowd control and ensuring open containers remain inside fenced perimeter.
8. Not all concerts in the series will require the closure of N. 25th. Event sponsor will alert Public Works one week prior to concerts requiring closure to ensure all necessary city departments are aware of closure.
9. Event sponsor will notify all property and business owners adjacent to N. 25th between Montana Ave. & 1st Avenue North of the dates, times and durations of the street closures no later than one week prior to the closure.

Tim Goodridge
2990 Lohof Dr.
Billings, MT 59102
670-2329



City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party

Submit this application with attachments to either the: Public Works office, 510 N. Broadway, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Tim Goodridge

ORGANIZATION MAKING APPLICATION Perfect Pitch

PHONE 670-2329

ADDRESS 2990 Lohof Dr. Billings MT 59102.

EMAIL ADDRESS tgoodridge3@brcsna.net

APPROXIMATE TIME EVENT WILL:

Assemble 7:00 pm Start 7 pm Disband 12 midnight

DATE OF EVENT _____

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

Summer concert series

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

N. 25th St

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

we clean.

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ \$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance *is not required* for Block Parties)

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

FOR DOWNTOWN EVENTS: YOU OR THE ORGANIZATION YOU REPRESENT MUST "ASSIGN" THE FIRST TWO BLOCKS OF THE DOWNTOWN EVENT ROUTE FOR NO PARKING TWO HOURS PRIOR TO YOUR EVENT USING THE ROUTE SIGNS PROVIDED BY THE CITY. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE.

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

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

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

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

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

APPLICANT SIGNATURE *[Signature]* DATE 4/17/08
APPLICATION APPROVED _____ DATE _____
APPLICATION DENIED _____ DATE _____

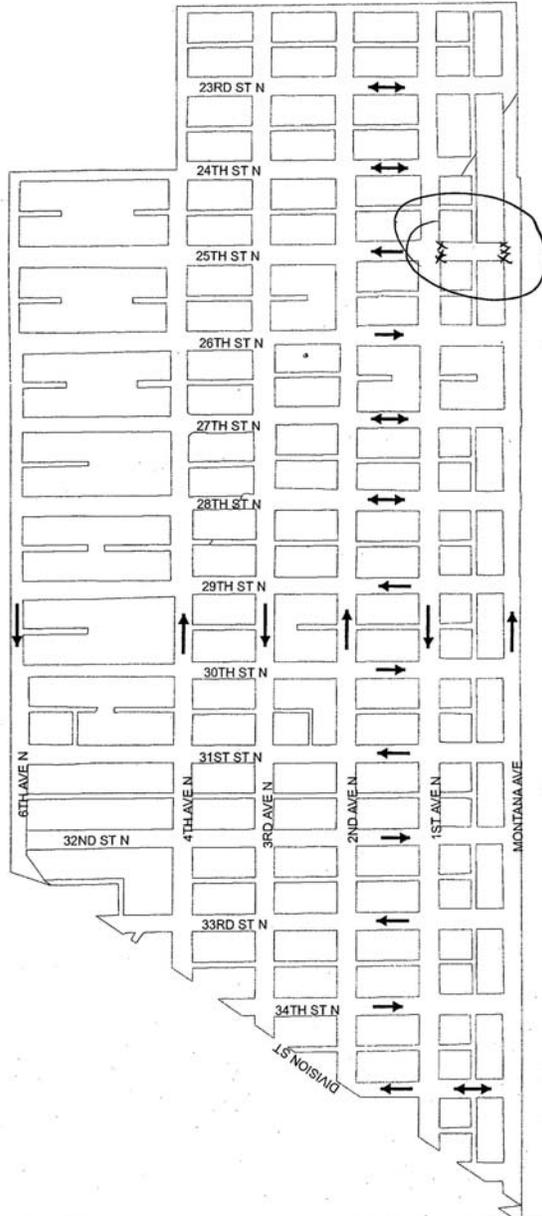
ADDITIONAL RESTRICTIONS OR SPECIAL CONDITIONS: YES [] NO []
(IF YES, ATTACH COPY)

FOR CITY USE ONLY

FEE: _____
APPLICANT NOTIFIED BY: _____
DATE: _____

- COPIES TO:**
CITY ADMINISTRATOR
DEPUTY CITY ADMINISTRATOR
POLICE CHIEF
FIRE CHIEF
FIRE MARSHALL
MET TRANSIT MANAGER
STREET/TRAFFIC SUPERINTENDANT
TRAFFIC ENGINEER
PRPL DIRECTOR
PARKING SUPERVISOR
CITY ATTORNEY

Downtown Billings Street Direction Map



(E)

1st Ave N.

MONTANA AVE



ALLEY

N 25TH



(S)

(N)



(N)

Montana Avenue Live
~~2008 Traffic Control~~

| | | |
|--|--|---|
| ACORD CERTIFICATE OF LIABILITY INSURANCE | | DATE (MM/DD/YYYY) 02/25/2008 |
| PRODUCER CONCORDE GENERAL AGENCY INC 720 28TH ST SW FARGO, ND 58103 | | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |
| INSURED HOTEL CARLIN INC 2407 MONTANA AVE BILLINGS MT 59101 | | INSURERS AFFORDING COVERAGE INSURER A: Penn America (commercial) INSURER B: INSURER C: INSURER D: INSURER E: |
| | | NAIC # |

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR ADD'L | LTG INSD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS |
|------------|----------|--|---------------|------------------------------------|-------------------------------------|--|
| A | X | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO- <input type="checkbox"/> POLICY <input type="checkbox"/> PRO- <input type="checkbox"/> LOC | PAC6711783 | 02/26/08 | 02/26/09 | EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG \$ 2,000,000 |
| | | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| | | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY- EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$ |
| | | EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$ | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ |
| | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY FRODOPTOR PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER | | | | W/C STATU- OTH TION/LIMITS OR EL- EACH ACCIDENT \$ EL- DISEASE- EA EMPLOYEE \$ EL- DISEASE- POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 CERTIFICATE HOLDER IS AN ADDITIONAL INSURED UNDER THIS POLICY.

| | |
|---|---|
| CERTIFICATE HOLDER CITY OF BILLINGS ATTN: BRENT BROOKS PO BOX 1178 BILLINGS MT 59103 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING RISERER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Scott M Anderson <i>Scott M Anderson</i> |
|---|---|

BID Event Kit of Parts Usage Packet

Below you will see a step by step process that must be implemented in order to close streets and hold an event. You may stage and implement your own event downtown and make use of the BID's "Kit of Parts." You must obtain your own street closure permission and provide your own liability insurance.

STEP 1: Make sure you have a PLAN AND that your block neighbors are "on board" with the idea...or, at least, do no object to your plan.

-Date(s) of Events June 13, 20, 27 July 11, 18, 25 August 1, 15, 22

-Does this event require any Street Closure? Yes No
 -Do you have Liability Insurance that will cover this event? Yes No

(You will be required to provide a "Binder" to the City of Billings showing coverage)

-Will you be serving alcoholic beverages? Yes No

(A permit may be required from the Billings Police Department)

What Blocks will be closed: (Example: The 200 Block of N. Broadway)

List all: Nth 25th between Montanave Ave and 1st Ave North.

Briefly Describe Your Event Activity/Participants: Montanave Avenue Live

-Specify the exact date and TIME the blocks noted above will be CLOSED: 3 pm - midnight

-Specify the exact date and TIME the blocks noted above will be REOPENED: midnight

-Indicate your traffic re-route plan: **BE SEPCIFIC...SEE EXAMPLE**

(Example if closing the 200 Block of N. Broadway...Northbound traffic on N. 28th would be diverted west at 1st Ave. North then resume northbound at N. 29th & southbound traffic on N. 28th would be diverted east at 2nd Ave. North then resume southbound at N. 27th)

Traffic will continue easton Montana Avenue to a N. 23rd.

List All of the Businesses impacted by the closure and have them "sign off" on the event:

| BUSINESS NAME: | ADDRESS: | SIGNATURE: |
|----------------------------|---|-----------------------|
| 1. <u>McCormick's Cafe</u> | <u>2419 Montana Ave</u> | <u>Michael Zehner</u> |
| 2. <u>Carlton Hotel</u> | <u>2501 Montana Ave</u> | <u>Michael Zehner</u> |
| 3. <u>Bus Depot</u> | <u>1st & 25th</u> | |
| 4. _____ | <u>Bus Depot will be alerted 1 week from event</u> | |
| 5. _____ | <u>to let them know buses will need to enter</u> | |
| 6. _____ | <u>from 1st Ave N. and 25th.</u> | |
| 7. _____ | | |
| 8. _____ | <u>This is what we have done in the past for</u> | |
| 9. _____ | <u>Alive after 5 and Montana Avenue Live closures</u> | |
| 10. _____ | | |
| 11. _____ | | |

Use an additional sheet if needed

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, May 27, 2008

TITLE: St. Vincent's Health Care Heart and Sole Race Street Closures
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: St. Vincent's Health Care requests temporary street closures as outlined in the attached event route maps on Saturday, June 14, 2008, from 6:00 am to 1:00 pm for the annual Heart and Sole Race.

Recommended conditions of approval include St. Vincent's Health Care:

1. Have no alcohol consumption in the right of way
2. Clean the area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide a certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

1. Approve request to close streets for the event (recommended)
2. Do not approve the street closures

FINANCIAL IMPACT: There are no costs to the City of Billings for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for by St. Vincent's Health Care.

RECOMMENDATION

Staff recommends that Council approve the temporary closure of the streets as outlined.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Letter from St. Vincent Health Care outlining event

- B. Right of Way Special Activity Permit
- C. Course map and supporting document
- D. Certificate of Insurance



St. Vincent Healthcare Foundation

Benefiting the Healing Ministry of St. Vincent Healthcare

March 28, 2008

St. Vincent Healthcare Foundation
1106 N. 30th St.
Billings, MT 59101

To City of Billings To Whom It May Concern:

June 14th, 2008, St. Vincent Healthcare will be holding the 29th Annual Heart & Sole Run. This event includes the Montana 5K State Championship. All events start at 8:30 and include a 5K, 10K, 2Mile Walk and short ½ mile stroll. The race begins on N. 30th St. across from St. Vincent Healthcare and ends on Poly Dr., north of Grandview Park. All activities following the event take place in Grandview Park between 6am and 1pm.

The proceeds from this race will benefit people who need supervised exercise programs and also youth in the YMCA Youth Programs.

Respectfully yours,

Linda Baugh
Special Events Coordinator
St. Vincent Healthcare Foundation
Heart & Sole Race Co-Director

Please consider including St. Vincent Healthcare in your Will or Estate Planning...

your legacy will live on in the lives of grateful patients for years to come.

1106 North 30th Street, Billings, Montana 59101

406-237-3600 Fax 406-237-3619 www.svfoundation.org



City of Billings
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party

Submit this application with attachments to either the: Parks, Recreation and Public Lands office, 390 North 23rd Street, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Linda Baugh

ORGANIZATION MAKING APPLICATION St. Vincent Healthcare

PHONE 406-237-3603

ADDRESS 1106 N. 30th St. Billings MT 59101

EMAIL ADDRESS Linda J. Baugh ^{CITY}@svh-^{STATE}mt.^{ZIP}org

APPROXIMATE TIME EVENT WILL:

Assemble 6am Start 8am Disband 1pm

DATE OF EVENT June 14, 2008

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

Montana SK State Championships, 5K, 10K, 2 mi stroll, 2 mi. Walk. Proceeds benefit people who need supervised exercise programs and youth in the YMCA youth program

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

Map attached

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

Volunteers will do cleanup

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ \$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance *is not required* for Block Parties)

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

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

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

APPLICANT SIGNATURE Linda R. Baugh DATE 3/28/08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

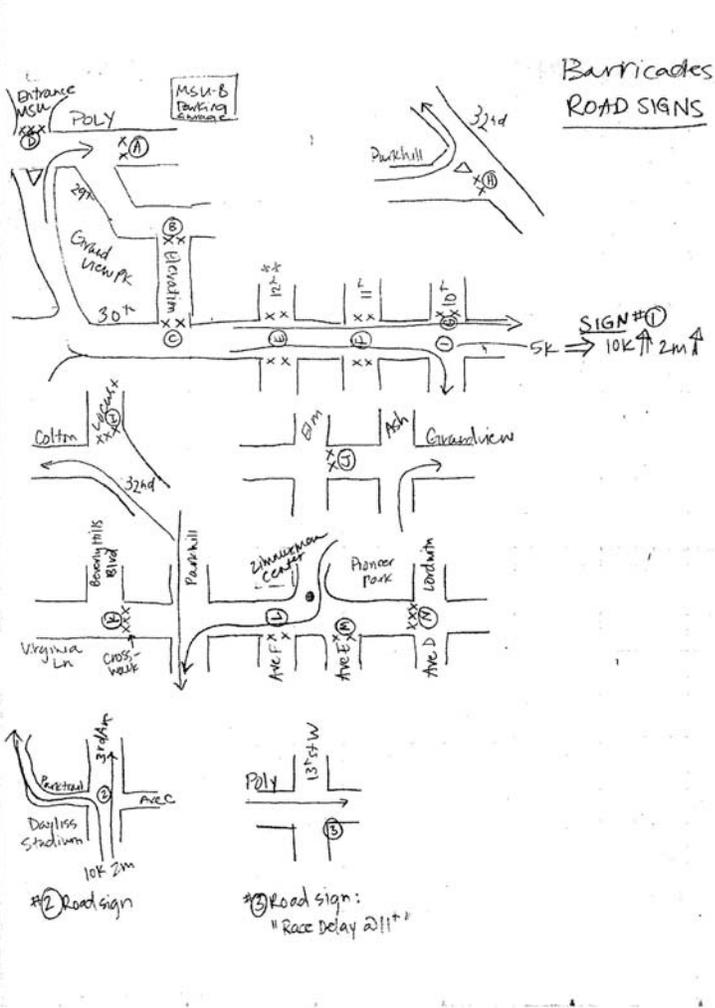
FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

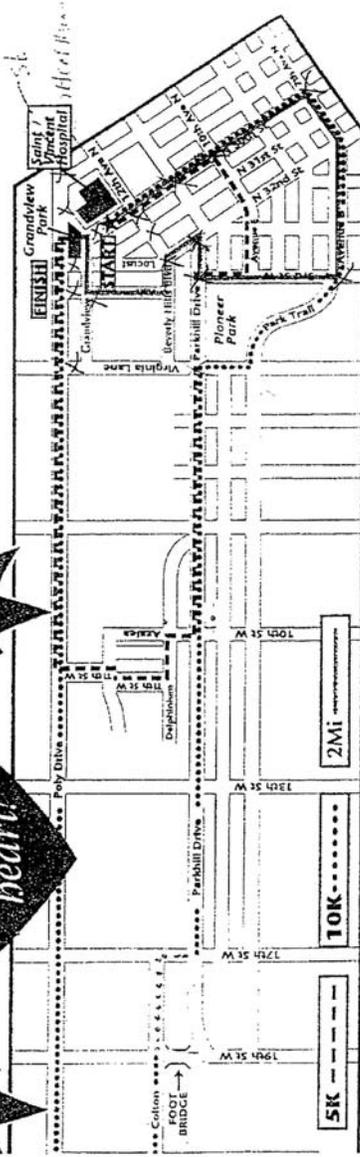
- | |
|-------------------------------|
| COPIES TO: |
| CITY ADMINISTRATOR |
| DEPUTY CITY ADMINISTRATOR |
| POLICE CHIEF |
| FIRE CHIEF |
| FIRE MARSHALL |
| MET TRANSIT MANAGER |
| STREET/TRAFFIC SUPERINTENDANT |
| TRAFFIC ENGINEER |
| PRPL DIRECTOR |
| PARKING SUPERVISOR |
| CITY ATTORNEY |



Saturday, June 14, 2008



St. Vincent
Healthcare



X- provided
Road closure

**Road Closures for Heart & Sole Race
June 14, 2008**

| | |
|---|---------------------------|
| Poly from North 29 th St to Virginia | From 6:30am to 12:00 noon |
| Elevation Ave from North 30 th St to North 29 th St | From 6:30am to 12:00 noon |
| North 30 th St to Poly | From 6:30am to 12:00 noon |
| North 30 th St south to Poly Dr. (MSU-B area) | From 6:30am to 12:00 noon |
| <i>(Festival in Grandview Park – Races finish at Poly Dr and North 30th)</i> | |
| North 30 th St. north of 12 th Ave closed to north traveling traffic only From 6:30am to 12:00 noon | |
| <i>(Releases Grandview traffic down North 30th but avoids north bound traffic from accessing Poly Dr. which is closed)</i> | |
| Grandview Blvd from Elm St to Elevation St | From 6:30am to 9:45am |
| Grandview Blvd at Locus St | From 6:30am to 9:45am |
| On North 30 th at 12 th , 11 th and 10 th Avenues will be closed from 7:45am to 9:00am | |
| North 32 nd St at 11 th Ave | From 7:45am to 9:30am |
| <i>(Regulating traffic traveling north to avoid race participants)</i> | |
| McDonnell Blvd at Locus St | From 7:45am to 12:00 noon |
| <i>(Limit traffic near the finish line on Poly Dr)</i> | |
| Grandview Blvd at Elm St | From 7:45am to 9:45am |
| Virginia Lane at Ave E & F and Lordwith Dr | From 7:45am to 9:45am |
| <i>(Regulating traffic traveling north to avoid race participants)</i> | |
| Virginia Lane at Beverly Hill Blvd | From 7:45am to 10:15am |
| <i>(Regulating traffic traveling north to avoid race participants at Virginia Lane and Poly)</i> | |

Barricade removal times other than the 12:00 noon times are based on previous years' slowest participants'. We respectively request 15 minute latitude for barricade removal based on actual race participants. It is our goal to reopen all roads as quickly as possible and ensure the safety of our participants.

Put (2-3) barricades to mostly block the following streets (unless otherwise denoted)

- A. Block Poly at N. 29th allowing cars to turn around at 29th and allows access to MSU-Billings parking garage. This prevents cars from proceeding west on Poly as races head east on Poly to complete the race at Grandview Park. (3) "Road Closed" sign.
- B. Elevation and N. 29th (Block off Elevation from incoming traffic) (2)
- C. Elevation and N. 30th (Block off Elevation from incoming traffic) (2)
- D. Poly and University (Block off the MSU-Billings entrance so cars cannot get onto Poly) (2)
- E. 12th Ave and N. 30th St (Block both sides of the roads to keep traffic from going down N. 30th) (2)
- F. 11th Ave and N. 30th St (Block both sides of the roads to keep traffic from going down N. 30th) (2)
- G. 10th Ave and N. 30th St (Block both sides of the roads to keep traffic from going down N. 30th) (3)
 - 1. Road sign reading "5K ONLY TURN RIGHT, 2Mile/10K STRAIGHT" placed on manhole cover in the middle of 10th and 30th intersection
- H. 32nd and Parkhill (Block Parkhill at 32nd so that traffic cannot turn up Parkhill) (3)
- I. N. 32nd and Locust/Colton (Block off North side of road). (3)
- J. Grandview and Elm (Complete length of Grandview, so cars can turn right on Elm and avoid the race participants) (3-4)
- K. Across Virginia Lane at crosswalk on Beverly Hills Blvd (Place barricades on crosswalk to block Virginia Lane so traffic can avoid race participants at Parkhill and Virginia Lane by turning at Beverly Hills Blvd). (3)
- L. Ave F at Virginia Lane (Block off Ave F so traffic cannot turn onto Virginia Lane) (2)
- M. Ave E at Virginia Lane (Block of Ave E so traffic cannot turn onto Virginia Lane) (2)

N. Across Virginia Lane at Lordwith/Ave D (Block so that cars can turn onto Lordwith or Ave D and avoid the race participants) (3-4)"Road Closed" sign

- 2. Road sign reading "10K ONLY TURN LEFT UP TRAIL, 2Mile STRAIGHT" placed in the middle of 3rd Ave between park trail and Ave C
- 3. Road sign that says "RACE DELAY AT 11th PLEASE TURN" placed on southeast corner of sidewalk at 13th Street West and Poly. (Facing West on Poly"

ACORD™ CERTIFICATE OF LIABILITY INSURANCE 3/1/2009 DATE (MM/DD/YYYY) 3/10/2008

| | |
|---|--|
| PRODUCER Marsh Management Services Cayman, Ltd. Governors Square, Building 4, 2nd Floor 23 Lime Tree Bay Avenue P.O. Box 1051 Grand Cayman KY1-1102 CAYMAN ISLANDS | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |
| INSURED 1303116 ST. VINCENT HEALTHCARE 1233 N. 30TH ST. BILLINGS MT 59107-5200 | INSURERS AFFORDING COVERAGE INSURER A: SELF - INSURED TRUST RE-INSURED* INSURER B: *BY LEAVEN INSURER C: INSURER D: INSURER E: |
| | NAIC # |

COVERAGES SISOP01-M O2
 THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | ADDT INBRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|----------|------------|--|----------------|----------------------------------|-----------------------------------|--|
| | | GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | NOT APPLICABLE | | | EACH OCCURRENCE \$ XXXXXXXX DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMP/OP AGG \$ XXXXXXXX |
| | | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HURED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | NOT APPLICABLE | | | COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX |
| | | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | NOT APPLICABLE | | | AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN EA ACC \$ XXXXXXXX AUTO ONLY: AGG \$ XXXXXXXX |
| A | | EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> UMBRELLA FORM RETENTION \$ | LIC310809 | 3/1/2008 | 3/1/2009 | EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX \$ XXXXXXXX |
| | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER | NOT APPLICABLE | | | WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 PRIMARY GENERAL LIABILITY COVERAGE IS SELF-INSURED FOR THE FIRST \$1,000,000 / \$3,000,000 ON A CLAIMS MADE BASIS. THE CITY OF BILLINGS, MT IS NAMED AS ADDITIONAL INSURED FOR THE GENERAL LIABILITY AS RESPECTS THIS EVENT ON JUNE 14, 2008. RE: \$750,000/\$1.5M COVERAGE FOR THE RIGHT-OF-WAY SPECIAL ACTIVITY PERMIT FOR THE HEART AND SOLE RUN EVENT FOR ST. VINCENT HEALTHCARE.

| | |
|--|--|
| CERTIFICATE HOLDER 3553935 CITY OF BILLINGS DEPT. OF PARKS, RECREATION & PUBLIC LANDS ATTN: JOE SEDIN 1233 N. 30TH ST. PO BOX 1178 BILLINGS MT 59103-1178 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>M. Hoffman</i> |
|--|--|

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 27, 2008

TITLE: Alberta Bair Theater Annual Fundraiser Event
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Alberta Bair Theater requests the temporary closure North Broadway between 3rd & 4th Ave and the alley behind ABT (between The Miller Building and ABT) on Saturday June 28th from 6:00 a.m. until Sunday June 29th at noon. This year's event will feature Lily Tomlin.

Recommended conditions of approval include; Alberta Bair Theater:

1. Contacting all businesses and making them aware of the event 30 days in advance
2. Notifying all emergency facilities, bus lines and media at least two weeks in advance
3. Providing certificate of insurance naming City of Billings as additional insured
4. Provide and install adequate traffic barricades and signs directing motorists around closure

ALTERNATIVES ANALYZED:

1. Approve request to close street & alley for the event (recommended)
2. Deny the street closure

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process permit. Police and traffic control are to be paid for by the event sponsors.

RECOMMENDATION

Staff recommends that Council approve the closures named above for the Alberta Bair Fundraiser.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right of Way Special Activity Permit Application

- B. Street Closure Map
- C. BID Event Kit
- D. Certificate of Insurance



City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party

Submit this application with attachments to either the: Public Works office, 510 N. Broadway, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION William Wood, Executive Director

ORGANIZATION MAKING APPLICATION Alberta Bain Theater (ABT)

PHONE 256.8915 x203

ADDRESS North Broadway + 3rd Avenue 59101

EMAIL ADDRESS Woody@albertatheater.org

APPROXIMATE TIME EVENT WILL:

Assemble Saturday 6:28^{am} Start Sat: 6am Disband Sunday 6/29 noon

DATE OF EVENT Saturday, June 28th 2008 (7pm)

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

Alberta Bain Event: Annual fundraiser
featuring "Lily Tomlin". This year's event
comprises a pre-show and post-show utilizing
the ABT as well as footprint on N. Broadway
and alley.

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

- 1. North Broadway between 3rd + 4th Aves.
- 2. Alley behind ABT (between Miller Bldg + ABT)

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

Volunteer committee and Business Improvement
District.

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ \$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance is not required for Block Parties)

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

FOR DOWNTOWN EVENTS: YOU OR THE ORGANIZATION YOU REPRESENT MUST "ASSIGN" THE FIRST TWO BLOCKS OF THE DOWNTOWN EVENT ROUTE FOR NO PARKING TWO HOURS PRIOR TO YOUR EVENT USING THE ROUTE SIGNS PROVIDED BY THE CITY. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE.

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

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

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

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

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

APPLICANT SIGNATURE Will Fuld DATE 4/22/08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

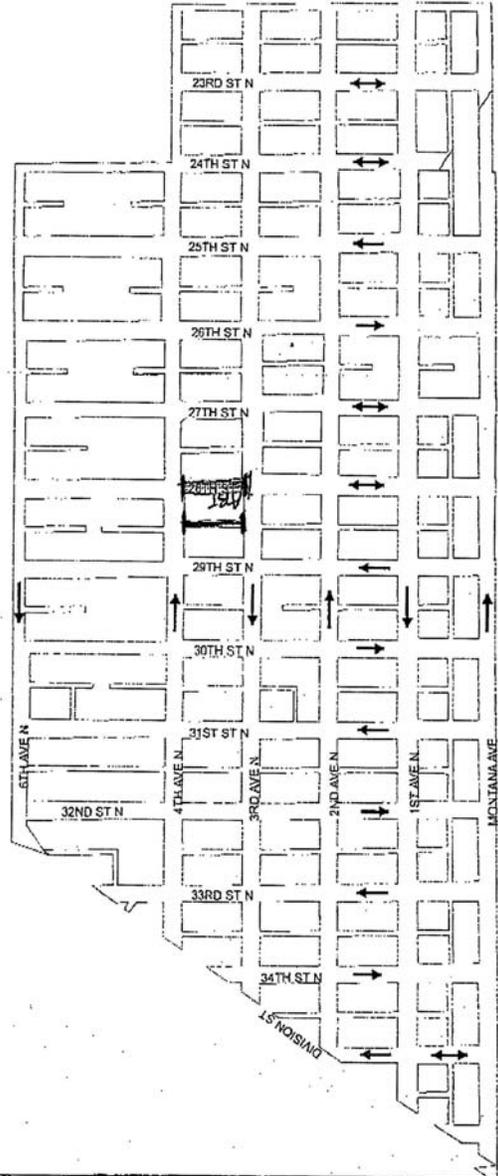
FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

- COPIES TO:**
 CITY ADMINISTRATOR
 DEPUTY CITY ADMINISTRATOR
 POLICE CHIEF
 FIRE CHIEF
 FIRE MARSHALL
 MET TRANSIT MANAGER
 STREET/TRAFFIC SUPERINTENDANT
 TRAFFIC ENGINEER
 PRPL DIRECTOR
 PARKING SUPERVISOR
 CITY ATTORNEY

Downtown Billings Street Direction Map





BID Event Kit of Parts Usage Packet

Below you will see a step by step process that must be implemented in order to close streets and hold an event. You may stage and implement your own event downtown and make use of the BID's "Kit of Parts." You must obtain your own street closure permission and provide your own liability insurance.

STEP 1: Make sure you have a PLAN AND that your block neighbors are "on board" with the idea... or, at least, do not object to your plan.

-Date(s) of Event: June 28, 2008

-Does this event require any Street Closure? Yes No
-Do you have Liability Insurance that will cover this event? Yes No

(You will be required to provide a "Binder" to the City of Billings showing coverage)
-Will you be serving alcoholic beverages? Yes No
(A permit may be required from the Billings Police Department)

What Blocks will be closed: (Example: The 200 Block of N. Broadway)

List all: North Broadway between 3rd + 4th Avenues.

Briefly Describe Your Event Activity/Participants:

Gala Event (fundraiser) w/ pre + post show events @ ART and corridor between US Bank + ART.

Specify the exact date and TIME the blocks noted above will be CLOSED: 6-28, 6am
-Specify the exact date and TIME the blocks noted above will be REOPENED: 6:30, noon?

-Indicate your traffic re-route plan: **BE SEPCIFIC...SEE EXAMPLE**

(Example if closing the 200 Block of N. Broadway... Northbound traffic on N. 28th would be diverted west at 1st Ave. North then resume northbound at N. 29th & southbound traffic on N. 28th would be diverted east at 2nd Ave. North then resume southbound at N. 27th)

Northbound traffic on N. 28th (Broadway) would be diverted to 3rd Avenue North. Traffic on 4th Ave N. would be diverted to 27th.

-List All of the Businesses impacted by the closure and have them "sign off" on the event:
BUSINESS NAME: ADDRESS: SIGNATURE:

1. _____
2. Travelodge _____
3. US Bank _____
4. Miller Bldg _____
5. United Methodist _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____

Client#: 2149

ALBERTA

ACORD CERTIFICATE OF LIABILITY INSURANCE

RECEIVED 11/5/2008
DATE (MM/DD/YY)
04/09/08

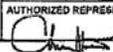
| | | | |
|--|--|---|--------|
| PRODUCER Holness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638 | | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. | |
| INSURED Alberta Bair Theater Corporation DBA P.O. Box 1556 Billings, MT 59103 | | INSURERS AFFORDING COVERAGE INSURER A: Cincinnati Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: | NAIC # |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR NO./ LTR | INSR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|---------------|------|--|---------------|----------------------------------|-----------------------------------|---|
| | | GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Per occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPIOR AGG \$ |
| | | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| | | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$ |
| A | | EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$ | CPP0882643 | 07/01/07 | 07/01/08 | EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$ \$ |
| | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below | | | | <input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER CL. EACH ACCIDENT \$ FL. DISEASE - EA EMPLOYEE \$ FL. DISEASE - POLICY LIMIT \$ |
| A | | OTHER Liquor Liab | CPP0882643 | 07/01/07 | 07/01/08 | \$1,000,000 limit |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
**** Supplemental Name ****
 Alberta Bair Theater Corporation DBA Alberta Bair Theater
 Alberta Bair Endowment Foundation
 (See Attached Descriptions)

| | |
|--|--|
| CERTIFICATE HOLDER The City of Billings PO Box 1178 Billings, MT 59103 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE  |
|--|--|

Client#: 2149

ALBERTA

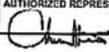
| | | |
|--|--|---|
| ACORD - CERTIFICATE OF LIABILITY INSURANCE | | DATE (MM/DD/YYYY) 04/09/08 |
| PRODUCER Hoiness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638 | | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |
| INSURERS AFFORDING COVERAGE | | |
| INSURED Alberta Bair Theater Corporation DBA P.O. Box 1556 Billings, MT 59103 | | INSURER A: Cincinnati Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: |

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| INSR ADD'L LTR INSRG | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS |
|----------------------|---|---------------|------------------------------------|-------------------------------------|---|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENRAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PER-ACC <input type="checkbox"/> LOC | CPP0882643 | 07/01/07 | 07/01/08 | EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | CPP0882643 | 07/01/07 | 07/01/08 | COMBINED SINGLE LIMIT (EA ACCIDENT) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$ |
| A | EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$ | CPP0882643 | 07/01/07 | 07/01/08 | EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$ \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER | | | | WC STATUTORY LIMIT \$ OTHER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
**** Supplemental Name ****
 Alberta Bair Theater Corporation DBA Alberta Bair Theater
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|--|--|

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Donation from Parmly Billings Library Foundation
DEPARTMENT: Library
PRESENTED BY: Bill Cochran, Library Director

PROBLEM/ISSUE STATEMENT: The Parmly Billings Library Foundation secured grants from 1st Interstate Bank and MDU totaling \$11,700 for the purchase of multimedia equipment for the Library’s 3rd floor. The equipment will be used for public programs for all ages and for programs sponsored by the Foundation. Included in the purchase is a plasma television with accessories, lectern with a sound system and a theater system projector with locking cabinet for storage.

FINANCIAL IMPACT: This donation will enhance the Library’s ability to present a variety of programs for the public.

RECOMMENDATION

Staff recommends that Council approve the donation of \$11,710 worth of multimedia equipment from the Parmly Billings Library Foundation.

Approved By: City Administrator ____ City Attorney ____

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Resolution Relating to Financing for Scoreboard Improvements
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Pepsi Cola Bottling Company has agreed to donate \$200,000 over a ten year period for upgrades for the scoreboard at the new baseball stadium. In order to complete the upgrades for the upcoming baseball season, US Bank will provide the financing for the project now and the yearly contribution from Pepsi Cola will make the debt service payment. The interest rate will be 6.72% for nine years.

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO \$130,500 TAXABLE GENERAL FUND OBLIGATION NOTE, SERIES 2008; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF; DETERMINING THE FORM AND DETAILS AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF AND MAKING CERTAIN COVENANTS RELATED TO THE PAYMENT THEREOF AND SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on May 27, 2008, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____
_____ ; voted against the same: _____
_____ ; abstained from voting thereon: _____ ; or were absent: _____
_____.

WITNESS my hand and seal officially this ____ day of May, 2008.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO \$130,500 TAXABLE GENERAL FUND OBLIGATION NOTE, SERIES 2008; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF; DETERMINING THE FORM AND DETAILS AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF AND MAKING CERTAIN COVENANTS RELATED TO THE PAYMENT THEREOF AND SECURITY THEREFOR

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

Section 1. Authorization; Sale; Recitals.

1.01. Authorization. Pursuant to Montana Code Annotated, Section 7-7-4104 (the "Act"), a municipality is authorized to issue a general obligation of the municipality not secured by its taxing power without submitting the question of incurring the indebtedness to the electors, upon the satisfaction of certain conditions: (1) the principal amount of the obligation may not exceed 10% of the general fund budget of the municipality in each of the two preceding fiscal years; (2) at the time the obligation is incurred, the debt service in the current or any future fiscal year on the obligation and any other outstanding obligation issued pursuant to such section do not exceed 2% of the revenues deposited in the general fund of the municipality in each of the two immediately preceding fiscal years; and (3) the term of the obligation does not exceed 20 years.

1.02. Compliance with Conditions. The City proposes to issue its Taxable General Fund Obligation Note, Series 2008, in the principal amount of \$130,500 (the "Note") for the purpose of paying a portion of the costs of the new scoreboard to be installed at the City's new baseball stadium (the "Project"), payable over a term of nine years. The City represents that it meets the conditions of Section 7-7-4104 as follows:

A. The principal amount of \$130,500 does not exceed 10% of the general fund budget of the City for the immediately two preceding fiscal years, i.e., \$37,192,527 for fiscal year ending 2006 and \$42,808,926 for fiscal year ending 2007.

B. Assuming an interest rate of 6.72% and assuming substantially equal amount debt service payments over nine years, the maximum amount of debt service on the Note and the other outstanding obligations issued pursuant to such Act does not exceed 2% of the revenue deposited in the general fund of the City in each of the two immediately preceding fiscal years, i.e., \$750,595 and \$839,259, respectively.

1.03. Sale of Note; Note Purchase Agreement. Pursuant to such authority, this Council authorizes the issuance and sale of \$130,500 principal amount of general fund obligation note of the City for the purpose of paying a portion of the costs of the Project. Pursuant to the

Act, this Council hereby determines that it would be in the best interests of the City to sell the Note at a private negotiated sale to U.S. Bank National Association, Seattle, Washington (the "Purchaser"), in the aggregate principal amount of \$130,500. The Note shall be dated as of the date of original issue, shall be issued as a single amortizing note designated the "Series 2008 Note," payable annually over a term not to exceed nine years and two months. This Resolution will supersede any previous agreement between the City and the Purchaser. The Financial Services Manager is authorized to execute and deliver on behalf of the City a Note Purchase Agreement.

1.04. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including the Act, in order to make the Note valid and binding general obligations in accordance with its terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. Note Terms, Execution and Delivery.

2.01. Term of Note. The Note shall be designated "Taxable General Fund Obligation Note, Series 2008." The Note shall bear interest at the rate of 6.72% per annum from the date of delivery until paid. Equal installments of principal and interest on the Note shall be payable on each August 1, commencing August 1, 2009 and continuing through August 1, 2017. The Note shall be prepayable in whole or in part on any Business Day only in accordance with the Prepayment Terms set forth in Exhibit C, attached hereto. Interest on the Note shall be calculated on the basis of a year of 360 days composed of twelve 30-day months.

2.02. Registered Form; Payment. The Note shall be issuable only in fully registered form, and the ownership of the Note shall be transferred only upon the Note Register of the City hereinafter described. Principal of and premium, if any, and interest on the Note are payable in lawful money of the United States of America. Principal and premium, if any, shall be payable by wire transfer in immediately available funds to such account as the Holder of the Note shall direct the Registrar, or otherwise by check or draft drawn on the Registrar hereinafter described, upon presentation and surrender of the Note at maturity or upon redemption at the principal office of the Registrar; provided, however, the Holder shall not be required to surrender the Note upon partial payment or partial redemption of the Note, but only upon final maturity. Principal and interest on the Note shall be payable on August 1 in each year, commencing August 1, 2009, by wire transfer in immediately available funds to such account as the Holder of the Note shall direct the Registrar or otherwise by check or draft of the Registrar mailed to the owners of record thereof as such appear in the Note Register as of the close of business on the first day of month in which the payment date occurs, whether or not such day is a business day.

2.03. Dating of Note. Each Note shall be dated, as originally issued, as of the date of its delivery, and upon authentication of any Note the Registrar (as hereinafter defined) shall indicate thereon the date of such authentication.

2.04. Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent (the “Registrar”). The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep at its operations center a bond register in which the Registrar shall provide for the registration of ownership of Note and the registration of transfers and exchanges of Note entitled to be registered, transferred or exchanged.

(b) Transfer of Note. Upon surrender to the Registrar for transfer of any Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of a like aggregate principal amount and maturity, as the case may be, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer of any Note within the 15 days that Note is being selected for redemption or of any Note or portion thereof selected for redemption.

(c) Exchange of Note. Whenever any Note is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver a new Note of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner’s attorney in writing.

(d) Cancellation. Any Note surrendered upon any transfer or exchange shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Note or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Note is at any time registered in the bond register as the absolute owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and prepayment price of and interest on such Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner’s order shall be valid and effectual to satisfy and discharge the liability of the City upon such Note to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of a Note (except an exchange upon a partial redemption), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Note. In case any Note shall become mutilated or be lost, stolen or destroyed, the Registrar shall deliver a new Note of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Note or in lieu of and in substitution for any such Note lost, stolen or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Note lost, stolen or destroyed, upon filing with the Registrar of evidence satisfactory to it that such Note was lost, stolen or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. Any Note so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen or destroyed Note has already matured or such Note has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Note prior to payment.

2.05. Appointment of Initial Registrar. The City's Financial Services Manager shall serve as registrar, transfer agent and paying agent (the "Registrar"). The City reserves the right to appoint a successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana, Montana Code Annotated, Title 17, Chapter 5, Part 11, as amended (the "Registration Act"), but the City agrees to pay the reasonable and customary charges of the Registrar for the services performed.

2.06. Prepayment. The principal of the Note is subject to prepayment in whole or in part on any Business Day only on the terms set forth in Exhibit C. Notice of prepayment will be mailed, at least ten days before said redemption date, to the registered owner thereof, by U.S. mail overnight delivery, postage prepaid. Upon partial prepayment of the Note, the outstanding principal amount thereof will be reamortized by the Purchaser at the then-existing interest rate who shall forward to the City Financial Services Manager a copy of the new amortization schedule. The Financial Services Manager, at least ten days prior to the designated redemption date, shall give the Purchaser notice of the date and amount of any prepayment portions thereof shall cease to bear interest.

2.07. Form. The Note shall be prepared in substantially the form set forth in Exhibit A hereto, which is hereby incorporated by reference and made a part hereof.

2.08. Execution and Delivery. The Note shall be forthwith prepared for execution under the direction of the Financial Services Manager, and shall be executed on behalf of the City by the signatures of the Mayor, Financial Services Manager, and City Clerk, and shall be sealed with the official seal of the City; provided that said signatures and the seal may be printed, engraved or lithographed facsimiles thereof. In case any officer whose signature or a facsimile of whose signature shall appear on the Note shall cease to be such officer before the delivery thereof, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the Note shall have been so executed by said City officers, the Note shall be registered by the Financial Services Manager in accordance with Montana Code Annotated, Section 7-7-4257. Notwithstanding such execution, no Note shall be valid or obligatory for any purpose or be

entitled to any security or benefit under this resolution unless and until a certificate of authentication on such Note has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication on different Notes need not be signed by the same representative. The executed certificate of authentication on each Note shall be conclusive evidence that it has been authenticated and delivered under this resolution. When the Note shall have been fully executed and authenticated, the Note shall be delivered by the Financial Services Manager to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed, and the Purchaser shall not be obligated to see to the application of the purchase price.

Section 3. Security Provisions.

3.01. Project Account; Use of Proceeds. There is hereby created a special account to be designated as the "Project Account" (the "Project Account"), to be held and administered by the Financial Services Manager of the City separate and apart from all other funds of the City. The City appropriates to the Project Account: (a) the proceeds of the sale of the Note in the amount of \$130,500.00, and (b) all income derived from the investment of amounts on hand in the Project Account. The Project Account shall be used solely to defray expenses of the Project and costs of issuance of the Note. Upon completion and payment of all costs of the Project, any remaining proceeds of Note in the Project Account shall be credited and paid to the Debt Service Account.

3.02. 2008 Note Debt Service Account. So long as the Note is outstanding and any principal thereof or interest thereon unpaid, the Financial Services Manager shall maintain a separate and special 2008 Note Debt Service Account (the "Debt Service Account") to be used for no purpose other than the payment of the principal and prepayment price of and interest on the Note. The City irrevocably appropriates to the Debt Service Account: (a) any proceeds of the Note in excess of \$130,500.00, (b) all payments received from Pepsi Cola Bottling Company pursuant to the Pepsi Cola Bottling Company Agreement, (c) all funds to be credited and paid thereto in accordance with the provisions of Section 3.01, (d) all amounts appropriated or transferred in accordance with Section 3.03 of this resolution, (e) all income derived from the investment of amounts on hand in the Debt Service Account, and (f) such other money as shall be received and appropriated to the Debt Service Account from time to time.

3.03. General Obligations; Pledge of General Credit; Covenant To Make Appropriations. (a) The Note is a general obligation of the City, but is not secured by a pledge of the taxing power of the City. The general credit (but not the taxing power) of the City shall be and is hereby irrevocably pledged to the prompt and full payment of the principal of and interest on the Note when due. The principal of and interest on the Note are payable from any funds of the City legally available for the payment thereof, including funds on hand in the General Fund of the City, including payments to be made to the City by Pepsi Cola Bottling Company, 344 Howard Ave, Billings, Montana, 59101, in nine annual payments of \$20,000 payable on July 1, commencing on July 1, 2009. If on any date that the payment of principal of or interest on the Note is due and the amount on hand in the Debt Service Account is insufficient for the payment thereof, this Council shall forthwith appropriate to the Debt Service Account sufficient legally available money of the City to make good the deficiency.

(b) As security for the Note, the City hereby grants a first lien on the Pepsi Cola Bottling Company payments collected each year and agrees to deposit such payments in the Debt Service Account of the City and covenants and agrees to appropriate each fiscal year during the term of the Note from its General Fund an amount sufficient for the payment of the principal of and interest on the Note to the extent the moneys on hand in the Debt Service Account are insufficient therefor, subject to the first lien pledge of the General Fund revenues to the payment of the City's outstanding \$3,719,000 General Fund Obligation Note, Series 2007 and any other parity obligations incurred under the Act due in such fiscal year. Such appropriated funds shall be credited to the Debt Service Account. Any ad valorem taxes the City may in its discretion levy to pay principal of and interest on the Note are subject to applicable limits now or hereafter imposed by law on the amount of taxes that may be levied by the City.

Section 4. Defeasance.

4.01. General. When the liability of the City on the Note issued under and secured by this Resolution and all interest thereon has been discharged as provided in this section, all pledges, covenants and other rights granted by this Resolution to the holders of such Note shall cease.

4.02. Maturity. The City may discharge its liability with reference to the Note and interest thereon which are due on any date by depositing with the Registrar for such Note on or before the date a sum sufficient for the payment thereof in full; or if any Note or interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

4.03. Redemption. The City may also discharge its liability with reference to any prepayable Note which is called for redemption on any date in accordance with its terms, by depositing with the Registrar on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due thereon, provided that notice of such redemption has been duly given as provided in this Resolution.

4.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to any Note subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose (including, if so qualified, the Registrar), cash or securities which are general obligations of the United States or securities of United States agencies which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal, interest and redemption premiums, if any, to become due on such Note at their stated maturities or, if such Note are prepayable and notice of redemption thereof has been given or irrevocably provided for, to such earlier redemption date.

Passed and adopted by the City Council of the City of Billings, Montana, this ___th day of _____, 2008.

Mayor

Attest:

City Clerk

(SEAL)

EXHIBIT A

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF YELLOWSTONE

CITY OF BILLINGS

TAXABLE GENERAL FUND OBLIGATION NOTE, SERIES 2008

No. 1

\$130,500.00

REGISTERED OWNER: U.S. BANK NATIONAL ASSOCIATION

FOR VALUE RECEIVED, THE CITY OF BILLINGS, YELLOWSTONE COUNTY, STATE OF MONTANA (the "City"), acknowledges itself to be indebted and hereby promises to pay to the registered owner named above, or registered assigns, the principal amount specified above or, if this Note is prepayable as stated herein, on any date prior thereto on which this Note shall have been duly called for redemption, and to pay interest on said principal amount to the registered owner hereof from its date of delivery or from such later date to which interest has been paid or duly provided for until this Note is paid. The City's Financial Services Manager shall serve as Registrar and Paying Agent on the Note. Principal and interest on this Note is payable annually on each August 1, commencing on August 1, 2009, by wire transfer in immediately available funds to such account as the Holder of the Note shall direct the Registrar or otherwise by check or draft mailed by the Registrar to the person in whose name this Note is registered as of the close of business on the first day (whether or not a Business Day) of the month in which the payment date occurs, at his address as it appears on the bond register maintained by the Registrar. The principal of and interest on this Note are payable in lawful money of the United States of America.

THE PRINCIPAL AND INTEREST ON THE NOTE ARE PAYABLE FROM ANY FUNDS OF THE CITY LEGALLY AVAILABLE FOR THE PAYMENT THEREOF, INCLUDING FUNDS IN ITS GENERAL FUND DEPOSITED IN THE 2008 NOTE DEBT SERVICE ACCOUNT. THE NOTE IS NOT SECURED BY A PLEDGE OF THE CITY'S TAXING POWER.

This Note comprises this issue of the Taxable General Fund Obligation Note, Series 2008 of the City and is issued in the total principal amount of \$130,500 (the "Note"), authorized by the City in accordance with Montana Code Annotated, Section 7-7-4104, as amended, for the purpose of paying a portion of the costs of the new scoreboard to be installed at the City's new baseball stadium, and paying costs associated with the sale and issuance of the Note, all pursuant to a resolution duly adopted by the City Council of the City, including a resolution adopted on May 27, 2008 (the "Resolution"), and in full conformity with the Constitution and laws of the State of Montana thereunto enabling. The Note is issuable only as a fully registered note.

Outstanding principal of this Note shall bear interest from its date of delivery until paid at the rate of 6.72% per annum. As used herein, "Business Day" means any day other than (i) a Saturday or Sunday, or (ii) a legal holiday in the State of Montana. Interest on the Note shall be calculated on the basis of a year of 360 days composed of twelve 30-day months. Closing shall mean the day of execution and delivery of the Note and receipt of the purchase price thereof.

The Note shall be prepayable in whole or in part on any Business Day only on the terms set forth in Exhibit C to the Resolution. Notice of prepayment will be mailed, at least ten days before said redemption date, to the registered owner thereof, by first-class mail postage prepaid. Upon partial prepayment of the Note, the outstanding principal amount thereof will be reamortized at the then-existing interest rate.

As provided in the Resolution and subject to certain limitations set forth therein, this Note is transferable upon the books of the City at the operations center of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney, and may also be surrendered in exchange for Note of other authorized denominations. Upon any such transfer or exchange, the City will cause a new Bond or Note to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Note is registered as the absolute owner hereof, whether this Note is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Montana to be done, to exist, to happen and to be performed precedent to and in the issuance of this Note, in order to make it a valid and binding general obligation of the City according to its terms, have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the general credit (but not the taxing power) of the City has been irrevocably pledged to the prompt and full payment of the principal and prepayment price of and interest on the Note when due; that the City has granted a first lien on annual payments to be received from Pepsi Cola Bottling Company pursuant to the Pepsi Cola Bottling Company Agreement and has agreed in the Bond Resolution to deposit such payments in the debt service account created for the Note and to the extent necessary, appropriate each fiscal year during the term of the Note from its General Fund an amount sufficient for the payment of the principal and prepayment price of and interest on the Note, subject to the first lien pledge of the General Fund revenues to the payment of the City's outstanding \$3,719,000 General Fund Obligation Note, Series 2007 and any other parity obligations incurred under the Act due in such fiscal year; that the principal and prepayment price of and interest on the Note are payable from any funds of the City legally available for the payment thereof, including funds in its General Fund, and that if on

any date that the payment of principal and prepayment price of or interest on the Note is due and the amount on hand in the 2008 Note Debt Service Account is insufficient for the payment thereof, the City Council of the City has agreed in the Resolution forthwith to appropriate to the 2008 Note Debt Service Account sufficient legally available money of the City to make good the deficiency; that the issuance of the Note does not cause the indebtedness of the City to exceed any constitutional or statutory limitation; and that the opinion attached hereto is a true copy of the legal opinion given by Bond Counsel with reference to the Note, dated the date of original issuance and delivery of the Note.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Yellowstone County, State of Montana, by its City Council, has caused this Note to be executed by the facsimile signatures of the Mayor, the City Clerk and the Financial Services Manager.

(Facsimile Signature)
Mayor

(Facsimile Signature)
Financial Services Manager

(Facsimile Signature)
City Clerk

(Facsimile Seal)

Date of Authentication:

CERTIFICATE OF AUTHENTICATION

This is one of the Note delivered pursuant to the Resolution mentioned within.

CITY OF BILLINGS FINANCIAL
SERVICES MANAGER,
as Note Registrar, Transfer Agent,
and Paying Agent

By _____

The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

| | | |
|---------------------------|---|---|
| TEN COM -- | as tenants in common | UTMA.....Custodian..... (Cust) (Minor) |
| TEN ENT -- | as tenants by the entireties | under Uniform |
| Transfers to JT TEN -- | as joint tenants with right survivorship and not as tenants in | Minors Act..... (State) common |

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____
**PLEASE INSERT SOCIAL SECURITY
OR OTHER IDENTIFYING NUMBER
OF ASSIGNEE**

**NOTICE: The signature to this assignment
must correspond with the name as it appears
upon the face of the within Note in every
particular, without alteration or enlargement
or any change whatsoever.**

Signature Guarantee:

Signature(s) must be guaranteed by an
"eligible guarantor institution" meeting
the requirements of the Registrar, which
requirements include membership or
participation in STAMP or such other
"signature guaranty program" as may
be determined by the Registrar in addition
to or in substitution for STAMP, all in
accordance with the Securities Exchange
Act of 1934, as amended.

EXHIBIT C
PREPAYMENT TERMS

Prepayment: There shall be no prepayments of this Note, provided that the Bank may consider requests for its consent with respect to prepayment of this Note, without incurring an obligation to do so, and the City acknowledges that in the event that such consent is granted, the City shall be required to pay the Bank, upon prepayment of all or part of the principal amount before final maturity, a Prepayment Fee equal to the maximum of: (a) zero, or (b) that amount, calculated on any prepayment date, which is derived by subtracting: (a) the principal amount of the Note or portion of the Note to be prepaid from (b) the Net Present Value of the Note or portion of the Note to be prepaid on such date of prepayment.

"Net Present Value" shall mean the amount which is derived by summing the present values of each prospective payment of principal and interest which, without such full or partial prepayment, could otherwise have been received by the Bank over the shorter of the remaining contractual life of the Note or next repricing date if the Bank had instead initially invested the Note proceeds at the Initial Money Market Rate. The individual discount rate used to present value each prospective payment of interest and/or principal shall be the Money Market Rate at Prepayment for the maturity matching that of each specific payment of principal and/or interest.

"Initial Money Market Rate" shall mean the rate per annum, determined solely by the Bank, on the first day of the term of this Note or as mutually agreed upon by the City and the Bank, as the rate at which the Bank would be able to borrow funds in Money Markets for the amount of this Note and with an interest payment frequency and principal repayment schedule equal to this Note and for a term as may be arranged and agreed upon by the City and the Bank. Such a rate shall include FDIC insurance, reserve requirements and other explicit or implicit costs levied by any regulatory agency. The City acknowledges that the Bank is under no obligation to actually purchase and/or match funds for the Initial Money Market Rate of this Note.

"Money Market Rate At Prepayment" shall mean that zero-coupon rate, calculated on the date of prepayment, and determined solely by the Bank, as the rate in which the Bank would be able to borrow funds in Money Markets for the prepayment amount matching the maturity of a specific prospective Note payment or repricing date. Such a rate shall include FDIC insurance, reserve requirements and other explicit or implicit costs levied by any regulatory agency. A separate Money Market Rate at Prepayment will be calculated for each prospective interest and/or principal payment date.

"Money Markets" shall mean one or more wholesale funding mechanisms available to the Bank, including negotiable certificates of deposit, Eurodollar deposits, bank notes, fed funds, interest rate swaps, or others.

In calculating the amount of such a prepayment fee, the Bank is hereby authorized by the City to make such assumptions regarding the source of funding, redeployment of funds and other related matters, as the Bank may deem appropriate. If the City fails to pay any Prepayment Fee when due, the amount of such Prepayment Fee shall thereafter bear interest until paid at the default rate specified in this Note (computed on the basis of a 360-day year, actual days elapsed).

Any prepayment of principal shall be accompanied by a payment of interest accrued to date thereon; and said prepayment shall be applied to the principal installments in the inverse order of their maturities. All prepayments shall be in an amount of at least \$100,000 or if less, the remaining entire principal balance of the loan.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Second Reading of an Ordinance Expanding Ward II: Annexation #08-06
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On April 28, 2008, the City Council approved the annexation of a 20.6-acre property located north of Alkali Creek Road. The request for annexation was submitted by Jim Pickens of Best Development Corp., the owner of the property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward II was conducted at the May 12, 2008 Council meeting.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

- A. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 08-_____

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

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

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

A tract of land situated in the E1/2 of Section 28, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:
Tracts 1A, 1B, and 1C, Amended Tract 1, Certificate of Survey No 2055, Recorded March 13, 2008, under Document No. 3457577, Records of Yellowstone County.
Including all adjacent right-of-way of Aronson Avenue.
Containing 20.632 gross and net acres.
(# 08-06) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 12th day of May, 2008.

PASSED by the City Council on the second reading this 27th day of May, 2008.

THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

(AN 08-06)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Preliminary Plat of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On April 14, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision, which contains one lot on approximately 1.91 acres. The purpose of this minor plat is to remove a 30-foot wide section of a 1-foot no access strip on 32nd Street West for access to proposed Lot 1A. The subject property is located on the southeast corner of 32nd Street West and Gabel Road and is zoned Controlled Industrial (CI). The owner is Copper King Resources, Inc, and Engineering, Inc. is the agent.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on June 3, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner’s ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

Staff recommends that the City Council conditionally approve the preliminary plat of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision, and adopt the Findings of Fact as presented in the staff report.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

A: Plat

B: Mayor's Approval Letter

C: Findings of Fact

INTRODUCTION

On April 14, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision, which contains one lot on approximately 1.91 acres. The purpose of this minor plat is to remove a 30-foot wide section of a 1-foot no access strip on 32nd Street West for access to proposed Lot 1A. The subject property is located on the southeast corner of 32nd Street West and Gabel Road and is zoned CI.

PROCEDURAL HISTORY

- On June 9, 1981, the original plat (including the subject property) for Tierra Yellowstone Industrial Park Subdivision was recorded.
- On April 23, 1986, Amended Lots 1-4, Tierra Yellowstone Industrial Park Subdivision (including minor amendments to the subject property) was recorded.
- On April 14, 2008, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On May 27, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed subsequent minor subdivision.

BACKGROUND

| | |
|------------------------|---|
| General location: | Intersection of 32 nd Street West and Gabel Road |
| Legal Description: | Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision |
| Subdivider/Owner: | Copper King Resources, Inc. |
| Engineer and Surveyor: | Engineering, Inc. |
| Existing Zoning: | CI |
| Existing land use: | Vacant |
| Proposed land use: | Industrial Uses |
| Gross area: | 1.92 acres |
| Parkland requirements: | A parkland dedication is not required, as this is a commercial minor subdivision. |

ALTERNATIVES ANALYSIS

One of the purposes of the City’s subdivision review process is to identify potential negative effects of the subdivision. When negative effects are identified it is the subdivider’s responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. The Planning Division 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

1. Minor changes may be made to the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
2. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES

No variances requested.

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The subdivision is consistent with the 2003 Yellowstone County/City of Billings Growth Policy, the 2000 Transportation Plan and the Heritage Trail Plan. Specific conformance is discussed within the Findings of Fact.

RECOMMENDATION

Staff recommends that the City Council conditionally approve the preliminary plat of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

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

ATTACHMENT A

Preliminary Plat of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision

ATTACHMENT B
Findings of Fact

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

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

1. Effect on agriculture and agricultural water user facilities

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

2. Effect on local services

- a. **Utilities** – Water and sanitary sewer services are already located within 32nd Street West and Gabel Road.
- b. **Stormwater** – No additional storm drain improvements are required for this subdivision.
- 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** – Upon removal of the 1-foot no access strip, a 30-foot wide access from 32nd Street West and a private reciprocal access easement along the eastern border of the property will provide access to Lot 1A. Engineering is supportive of the removal of the 1-foot no access strip along 32nd Street West.
- 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).

3. Effect on the natural environment

Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

4. Effect on the public health and safety

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

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

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

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

1. Yellowstone County-City of Billings 2003 Growth Policy

The proposed subdivision was platted in 1981 and was annexed into the City shortly after the subdivision. The proposed subdivision will not create any new lots, as it is only removing a 30-foot wide portion of a 1-foot no access strip on 32nd Street West.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

A Heritage Trail Corridor is not identified for this subdivision.

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

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

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

The property will be served by public water and sewer services from Gabel Road and 32nd Street West.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the CI 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)

Utilities are already in place for this subdivision.

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

Access to the lot will be from a new access proposed on 32nd Street West and by a private reciprocal access located to the east of the subdivision.

CONCLUSIONS OF FINDING OF FACT

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

Approved by the Billings City Council, May 27, 2008

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

May 27, 2008

Copper King Resources, Inc.
Attn: Darrell Kreitzberg
71 25th Street West
Billings, MT 59102

Dear Mr. Kreitzberg:

On May 27, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision, subject to the following conditions of approval:

1. 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.
2. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

Ron Tussing, Mayor

pc: Will Ralph, PE, Engineering, Inc.

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Preliminary Subsequent Minor Plat of Amended Lot 2, Block 1, Shiloh Crossing Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On April 14, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 2, Block 1, Shiloh Crossing Subdivision, which contains five lots on approximately 20.59 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is currently under construction and was recently rezoned Controlled Industrial (CI).

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on June 3, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of Amended Lot 2, Block 1, Shiloh Crossing Subdivision and adopt the Findings of Fact as presented in the staff report.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

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

INTRODUCTION

On April 14, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 2, Block 1, Shiloh Crossing Subdivision, which contains five lots on approximately 20.59 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is currently under construction and was recently rezoned Controlled Industrial (CI).

PROCEDURAL HISTORY

- On April 14, 2008, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On May 27, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed subsequent minor subdivision.

BACKGROUND

| | |
|--------------------------|---|
| General location: | Southeast corner of the intersection of Shiloh Road and King Avenue West |
| Legal Description: | Lot 2, Block 1, Shiloh Crossing Subdivision |
| Subdivider/Owner: | Shiloh Crossing, LLC |
| Engineer and Surveyor: | Engineering, Inc. |
| Existing Zoning: | CI |
| Existing land use: | Vacant |
| Proposed land use: | Commercial Shopping Center |
| Gross area: | 20.59 acres |
| Net area: | 20.59 acres |
| Proposed number of lots: | 5 |
| Lot size: | Max: 5.06 acres Min.: 51,756 square feet |
| Parkland requirements: | A parkland dedication is not required, as this is a commercial minor subdivision. |

ALTERNATIVES ANALYSIS

One of the purposes of the City’s subdivision review process is to identify potential negative effects of the subdivision. When negative effects are identified it is the subdivider’s responsibility to mitigate those effects. Various City departments have reviewed this application

and provided input on effects and mitigation. The Planning Division develops and recommends conditions of approval that are based on departmental comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. 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.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

There are no variances requested, however, a variance to permit a multi-use trail in lieu of sidewalks, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets was approved by the Council with Shiloh Crossing Subdivision on September 10, 2007.

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

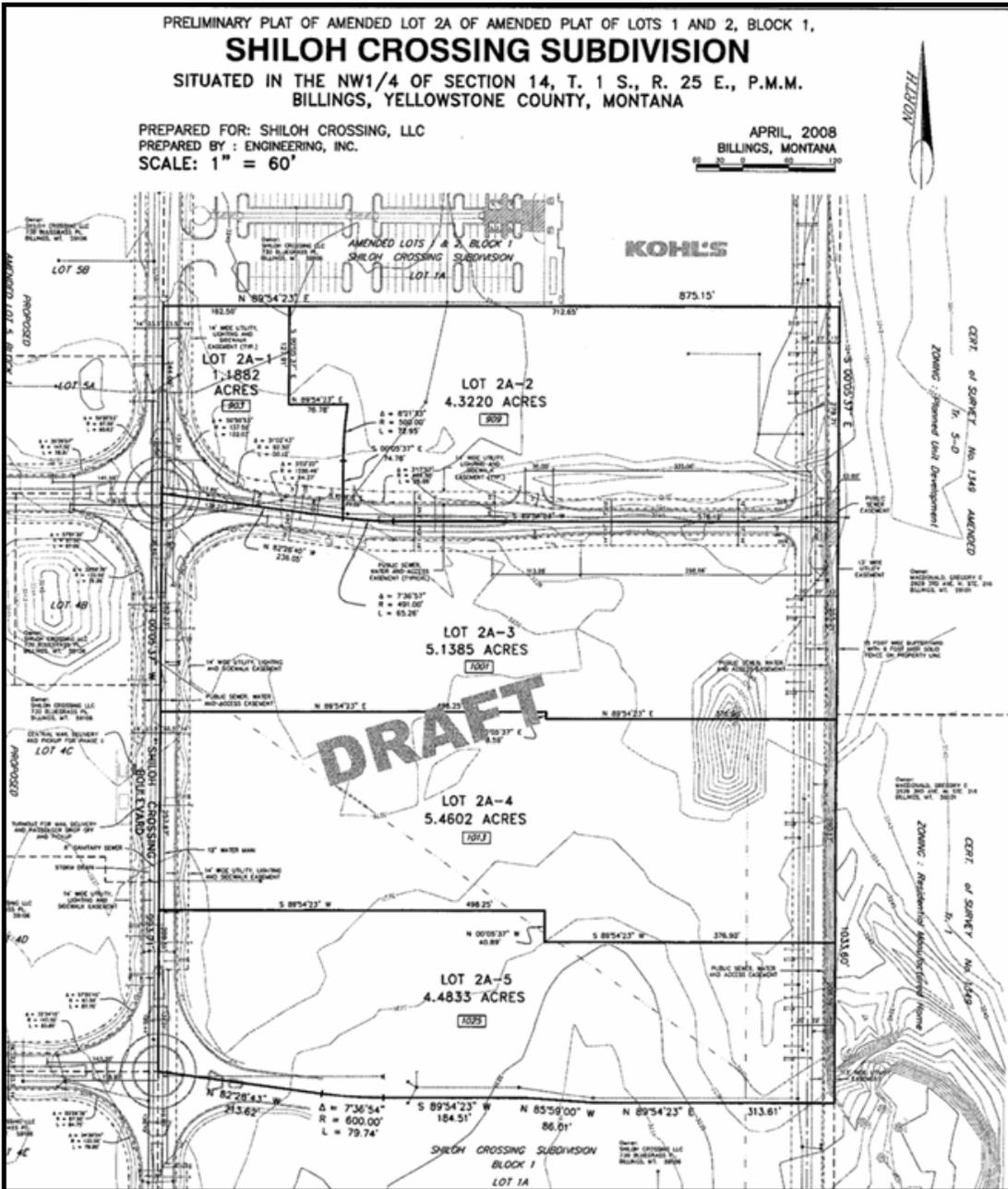
Staff recommends the City Council conditionally approve the preliminary minor plat of Amended Lot 2, Block 1, Shiloh Crossing Subdivision and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

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

ATTACHMENT A

Preliminary Plat of Amended Lot 2, Block 1, Shiloh Crossing Subdivision



ATTACHMENT B
Findings of Fact

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

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

1. Effect on agriculture and agricultural water user facilities

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

2. Effect on local services

- a. **Utilities** –Water to the subject property will be extended from the 12-inch main line in Shiloh Road and the 16-inch main line in King Avenue West. The SIA does specify that the 12-inch main will be extended along Shiloh Road to the south property line of Shiloh Crossing at the time of the Shiloh Road reconstruction. An internal water main will be installed during Phase I of construction through a private contract, as specified within the SIA.

A 27-inch sanitary sewer main exists in King Avenue at the northwest corner of the subdivision. The SIA specifies that the subdivision will be served by the 2008 extension of the 27-inch main east along King Avenue to a lift station located on Lot 5E. A concurrent variance application for Land Contrary to Zoning for the sewer pump station has been submitted and a public forum was held by the Board of Adjustment on May 7, 2008.

- b. **Stormwater** – There is no storm drain system available to this area at this time, therefore, stormwater will be handled through a combination of onsite surface flow on streets and parking lots with collection through a network of basins, inlets, and piping. Discharge of the stormwater will be in the existing gravel pit pond on the site. Storm drainage for King Avenue West adjacent to the proposed subdivision will be accomplished in the future once the drain is extended from 31st Street West as part of a 2008 reconstruction process. Storm drainage for Shiloh Road adjacent to the proposed subdivision is currently handled by borrow ditches to Hogan's Slough and the Shiloh Drain. An upgrade of this drainage system will occur in 2009, as part of a Montana Department of Transportation Shiloh Road reconstruction. As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the proposed lots will be via private internal subdivision streets from King Avenue West and Shiloh Road. As specified in the SIA, the subdivider is

proposing a 65-foot wide shared access on King Avenue West. There are two additional 40-foot wide right-in/right-out approaches along King Avenue West and two accesses from Shiloh Road. The Shiloh Road accesses have been included in the Shiloh Road reconstruction project. Shiloh Crossing Boulevard is the major internal street and will be constructed to city standards. A reciprocal access easement document was submitted for the shared driveways and parking lots for the commercial development.

A variance to permit a multi-use trail in lieu of sidewalks, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets was approved with the Shiloh Crossing Subdivision by the City Council on September 10, 2007. The subdivider is proposing to provide a multi-use trail within the subdivision instead of standard sidewalks. This will provide for easy access through the site, as it will be constructed to interconnect all commercial buildings and parking lots on the site

A Traffic Accessibility Study was submitted with Shiloh Crossing Subdivision and all necessary traffic control devices will be as outlined within the study and approved by the City of Billings during construction. All improvements have been specified within the SIA.

- 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).
- f. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The location of this mail box is proposed to be located on Lot 4C and 5B for the entire subdivision, as specified within the SIA.

3. Effect on the natural environment

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official. Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

4. Effect on wildlife and wildlife habitat

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property. However, a statement has been added to the SIA, that lot owners should be aware that interactions with wildlife could occur and that any damage to property is the lot owner's responsibility.

5. Effect on the public health, safety and welfare

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

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

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

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

1. Yellowstone County-City of Billings 2003 Growth Policy

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

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

The proposed subdivision is consistent with the surrounding commercial and multi-family uses.

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

The subject property is compatible with the commercial development within Montana Sapphire Subdivision to the west and the proposed commercial development to the northwest.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

A Heritage Trail corridor is identified on the west side of Shiloh Road, Hogan's Slough, and along the BBWA canal. An easement for a segment of trail has been depicted on the north side of the BBWA canal. No improvements are proposed at this time. The subdivider is proposing an internal multi-purpose trail within the entire Shiloh Crossing Subdivision for connectivity to the proposed parking lots and commercial buildings.

4. West Billings Plan

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

- 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.
- The West Billings Plan identifies the intersection of King Avenue West and Shiloh Road as a community commercial center.

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

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks. This subdivision will be close to these amenities once Shiloh further develops.

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.

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

The property will be served by public water and sewer services from King Avenue West and Shiloh Road.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the CI zoning district. The subject property will also be required to comply with the South Shiloh Road Overlay 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)

Access to the lots will be via private internal streets from King Avenue West and Shiloh Road.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lot 2, Block 1, Shiloh Crossing Subdivision does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, May 27, 2008

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

May 27, 2008

Shiloh Crossing, LLC
Attn: Steve Corning, Managing Member
Corning Companies
2280 Grant Road
Billings, MT 59102

Dear Mr. Corning:

On May 27, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 2, Block 1, Shiloh Crossing Subdivision, subject to the following conditions of approval:

3. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

Ron Tussing, Mayor

pc: Robert Sanderson, Engineering, Inc.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Preliminary Subsequent Minor Plat of Amended Lot 6B, Flanagan Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On April 14, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 6B, Flanagan Subdivision, which contains two lots on approximately 2.52 acres for commercial development. The subject property is located south of the intersection of Central Avenue and Moore Lane on the west side of Moore Lane. The owner is Moore Lane Veterinary Hospital BlueLine Engineering is the agent. Proposed Lot 6B-2 is currently under construction with a veterinary clinic and proposed Lot 6B-1 is vacant. The subject property is zoned Controlled Industrial (CI).

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on June 3, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner’s ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of Amended Lot 6B, Flanagan Subdivision and adopt the Findings of Fact as presented in the staff report.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- D. Preliminary Plat
- E. Findings of Fact
- F. Mayor's Approval Letter

INTRODUCTION

On April 14, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 6B, Flanagan Subdivision, which contains two lots on approximately 2.52 acres for commercial development. The subject property is located south of the intersection of Central Avenue and Moore Lane on the west side of Moore Lane. Proposed Lot 6B-2 is currently under construction with a veterinary clinic and proposed Lot 6B-1 is vacant. The subject property is zoned CI.

PROCEDURAL HISTORY

- On January 10, 2008, a pre-application was conducted for the proposed subdivision.
- On April 14, 2008, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On May 27, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed subsequent minor subdivision.

BACKGROUND

| | |
|--------------------------|---|
| General location: | South of the intersection of Moore Lane and Central Avenue |
| Legal Description: | Lot 6B, Flanagan Subdivision |
| Subdivider/Owner: | Moore Lane Veterinary Hospital |
| Engineer and Surveyor: | Blueline Engineering |
| Existing Zoning: | CI |
| Existing land use: | Proposed Lot 6B-2 is under construction and proposed Lot 6B-1 is vacant |
| Proposed land use: | Commercial Business and Expansion of Existing Veterinary Hospital |
| Gross area: | 2.52 acres |
| Net area: | 2.52 acres |
| Proposed number of lots: | 2 |
| Lot size: | Max: 1.27 acres Min.: 1.25 acres |
| Parkland requirements: | A parkland dedication is not required, as this is a commercial minor subdivision. |

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potential negative effects of the subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. The Planning Division 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:

4. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
5. To minimize effects on local services, all required improvements (i.e. curb and gutter, sidewalk, and necessary street widening) shall be identified in the Subdivision Improvements Agreement (SIA) and included in the Waiver of Right to Protest. *(Recommended by the Engineering Division)*
6. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

There are no variances requested.

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

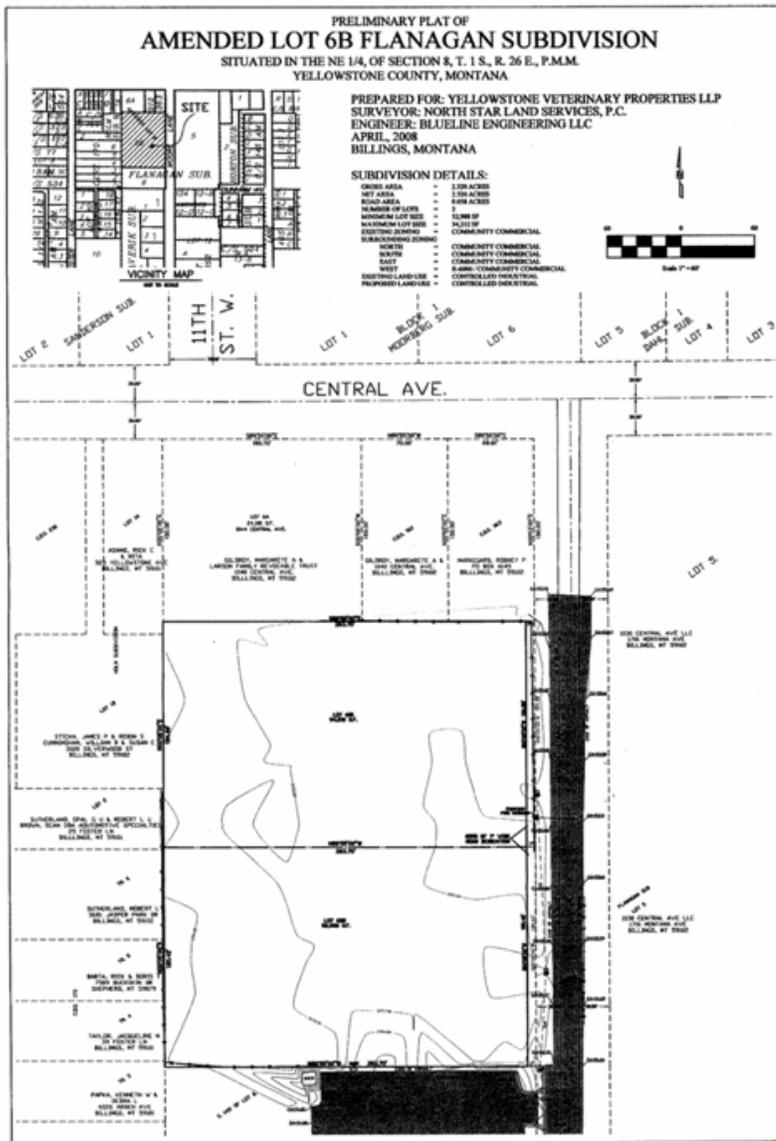
Staff recommends the City Council conditionally approve the preliminary minor plat of Amended Lot 6B, Flanagan Subdivision and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

- D. Preliminary Plat
- E. Findings of Fact
- F. Mayor's Approval Letter

ATTACHMENT A

Preliminary Plat of Amended Lot 6B, Flanagan Subdivision



ATTACHMENT B
Findings of Fact

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 6B, Flanagan Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

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

2. Effect on local services

- e. **Utilities** –Water to the subject property will be extended from the 10-inch main line within Moore Lane at the time of lot development. Sanitary sewer will be extended from the 8-inch main line within Moore Lane, with 6-inch lines serving the two lots internally. These will be installed at the time of development of Lot 6B-2.
- f. **Stormwater** –As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- g. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- h. **Streets** – Access to the proposed lots will be individual drives from Moore Lane bordering the property to the east. The current right-of-way width of Moore Lane adjacent to the subdivision is 30-feet. Since Moore Lane is classified as a collector street, a 37-foot wide half width of right-of-way is required for each side of the street for a total of 74-feet in width per Table 23-406.B.1, BMCC. Therefore, the subdivider is dedicating an additional 7-feet along Moore Lane with the plat.

There are no required street improvements at this time. However, the Engineering Division did review the plat and is requesting that additional information be added to the SIA regarding future street improvements including widening, sidewalks, curb and gutter, etc. This information shall also be included in the Waiver of Right to Protest submitted with the subdivision, as required by Condition #2.

- f. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 476 6th Street West (Station #4).

3. Effect on the natural environment

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official. Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

4. Effect on wildlife and wildlife habitat

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property. However, a statement has been added to the SIA, that lot owners should be aware that interactions with wildlife could occur and that any damage to property is the lot owner's responsibility.

5. Effect on the public health, safety and welfare

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

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

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

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

1. Yellowstone County-City of Billings 2003 Growth Policy

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

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

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

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

The subject property is compatible with the commercial and industrial development within the immediate vicinity.

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

The subject property is located in an urbanized portion of the city and is considered infill.

2. Urban Area 2005 Transportation Plan Update

Moore Lane is classified as a collector street, which requires a 37-foot wide half width of right-of-way for each side of the street for a total of 74-feet in width per Table 23-406.B.1, BMCC. Therefore, the subdivider is dedicating an additional 7-feet along Moore Lane with the plat.

3. Heritage Trail Plan

A Heritage Trail corridor is not identified in this area.

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.

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

The property will be served by public water and sewer services from Moore Lane.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the CI zoning district. All setbacks and lot coverages have been satisfied with the lot currently under construction.

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

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

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

Access to the lots will be via private drives from Moore Lane.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended 6B, Flanagan Subdivision does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, May 27, 2008

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

May 27, 2008

Moore Lane Veterinary Hospital
50 Moore Lane
Billings, MT 59101

Dear Property Owner:

On May 27, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 6B, Flanagan Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, all required improvements (i.e. curb and gutter, sidewalk, and necessary street widening) shall be identified in the Subdivision Improvements Agreement (SIA) and included in the Waiver of Right to Protest. *(Recommended by the Engineering Division)*
3. 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.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

Ron Tussing, Mayor

pc: Marshall Phil, Blueline Engineering

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Final Plat of Riverfront Business Park Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Riverfront Business Park Subdivision is being presented to Council for approval. On February 11, 2008, the City Council conditionally approved five lots on approximately 54 acres for commercial and industrial development. The subject property is located west of Washington Street, south of Interstate 90 and north of the Yellowstone River. The owners are King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson and the representing agent is Blueline Engineering. The subject property was recently rezoned from Agricultural Open Space (AO) to Controlled Industrial (CI) in the county and was annexed into the city on January 28, 2008. 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

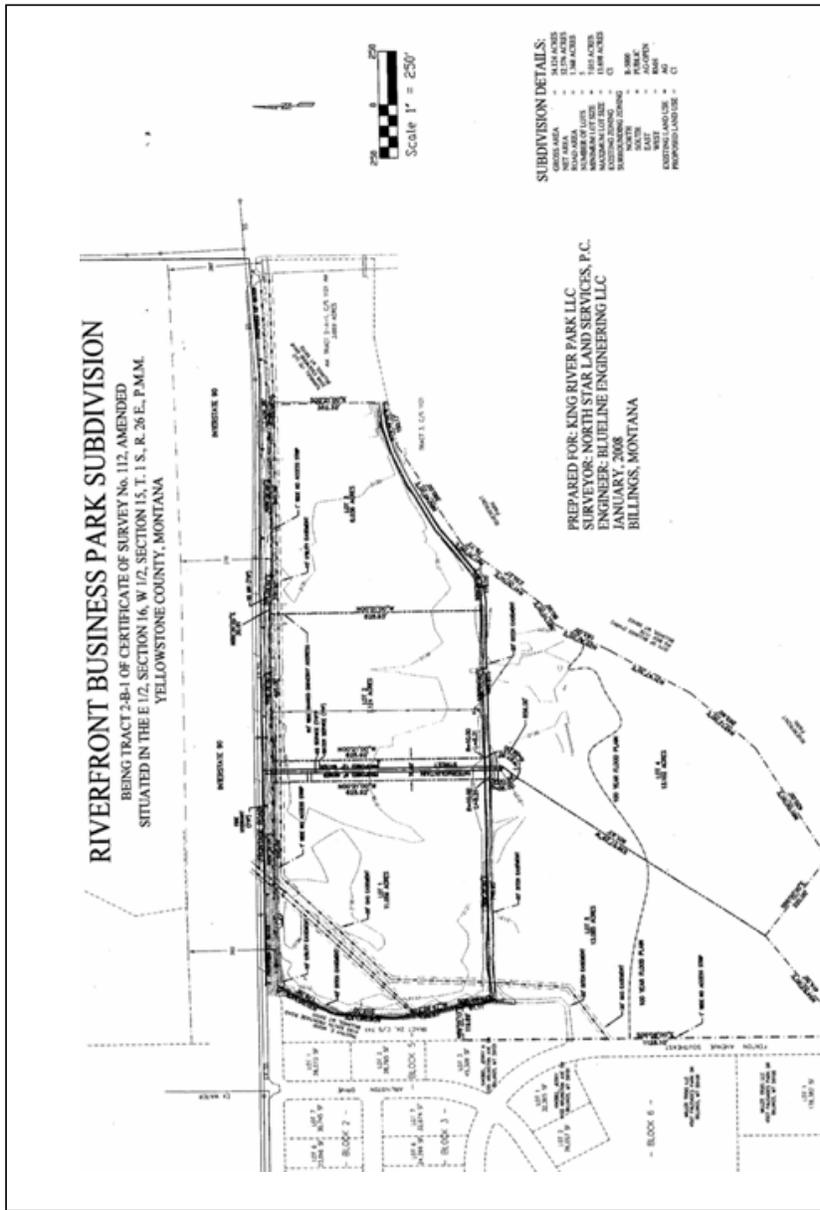
Staff recommends that the City Council approve the final plat of Riverfront Business Park Subdivision.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Plat

ATTACHMENT A



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

R1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 27, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,246,173.54 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 25, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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

R2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 27, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,341,932.38 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 2, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Leavens Reservoir Property Disposal – Public Hearing and Resolution
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The property owner at 3011 Lyons Lane, adjacent to the City’s Leavens reservoir site, wishes to purchase approximately 10,000 square feet of city property for expansion of her yard. Leavens reservoir is located at Rimrock Road and Normal Avenue north of the MSU-B campus. The land to be purchased lies north of the reservoir and is currently vacant. In accordance with city code, the public must be notified, the Council must conduct a public hearing, and six of the council members present must approve a resolution authorizing the disposal of city-owned property.

ALTERNATIVES ANALYZED: Staff has identified the following alternatives:
1. Approve Resolution
2. Disapprove Resolution

FINANCIAL IMPACT: There are no budget items related to this issue. Sale of the property will generate an estimated \$20,000 while the non-sale will have no financial impact on the City.

RECOMMENDATION

Staff recommends that Council approve Resolution 08 - _____.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Resolution
- B. Photos

INTRODUCTION

The property owner at 3011 Lyons Lane, adjacent to the City's Leavens reservoir site, wishes to purchase approximately 10,000 square feet of city property for expansion of her yard. Leavens reservoir is located at Rimrock Road and Normal Avenue north of the MSU-B campus. The land to be purchased lies north of the reservoir and is currently vacant. In accordance with city code, the public must be notified, the Council must conduct a public hearing, and six of the council members present must approve a resolution authorizing the disposal of city-owned property. Staff recommends that the Council approve the subject resolution.

BACKGROUND

This matter began when Karen Cabell, the property owner at 3011 Lyons Lane, asked if the City would consider selling her some property so she could expand her yard. Upon further investigation, staff established that the existing yard was encroaching on city property. The photos, designated as Attachments B and C, show the relative location of the existing property line (blue) and fence and yard (orange). Ms. Cabell wishes to purchase the additional property to "reclaim" her existing yard plus some additional area.

In accordance with city code, staff has advertised the notice of public hearing and mailed notices to those properties within the prescribed distance of the proposed property sale.

At staff request, Ms. Cabell supplied staff with a Comparative Market Analysis that established the value of the property to be purchased at \$2.08 per square foot. Upon Council's approval of the property sale, staff will initiate a property survey for replatting purposes, the cost of which will be paid by the purchaser. This survey will be used to accurately determine the area of the purchase and subsequently the total purchase price.

ALTERNATIVES ANALYSIS

Staff offers the following discussion of the identified alternatives:

- **Approve Resolution** – approval of the sale would allow Ms. Cabell to meet her goal of not only reclaiming her existing yard and landscaping but also allow expansion. As can be seen in the photos, the area to be purchased is quite rough and uneven and strewn with large boulders. There are no existing water facilities in the immediate area and staff believes it very unlikely that any would be given the terrain and proximity to the fill slope of Airport Road. Therefore, staff believes the proposed sale will not be detrimental to continued use of the remaining property for operation of the water facilities.
- **Disapprove Resolution** – disapproving the resolution will mean that Ms. Cabell will need to remove all existing encroachments from within city property absent any other arrangements being agreed to by the City.

RECOMMENDATION

Staff recommends that Council approve Resolution 08 - _____.

ATTACHMENTS

- A. Resolution
- B. Photos

RESOLUTION 08-_____

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it desirable to dispose of property it currently owns, said property being a portion of an unplatted parcel located at 401 Rimrock Road in the City of Billings, Yellowstone County, Montana as generally depicted on the attached Exhibit No. 1; and

WHEREAS, the concise legal description, property area and total purchase price will subsequently be determined by legal boundary survey following approval of this Resolution; and

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 27th day of May, 2008;

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

That the City staff is authorized to proceed with the disposal of that portion of the unplatted parcel located at 401 Rimrock Road as generally depicted on attached Exhibit No. 1 in accordance with the requirements of Section 22-902 of the Billings, Montana City Code.

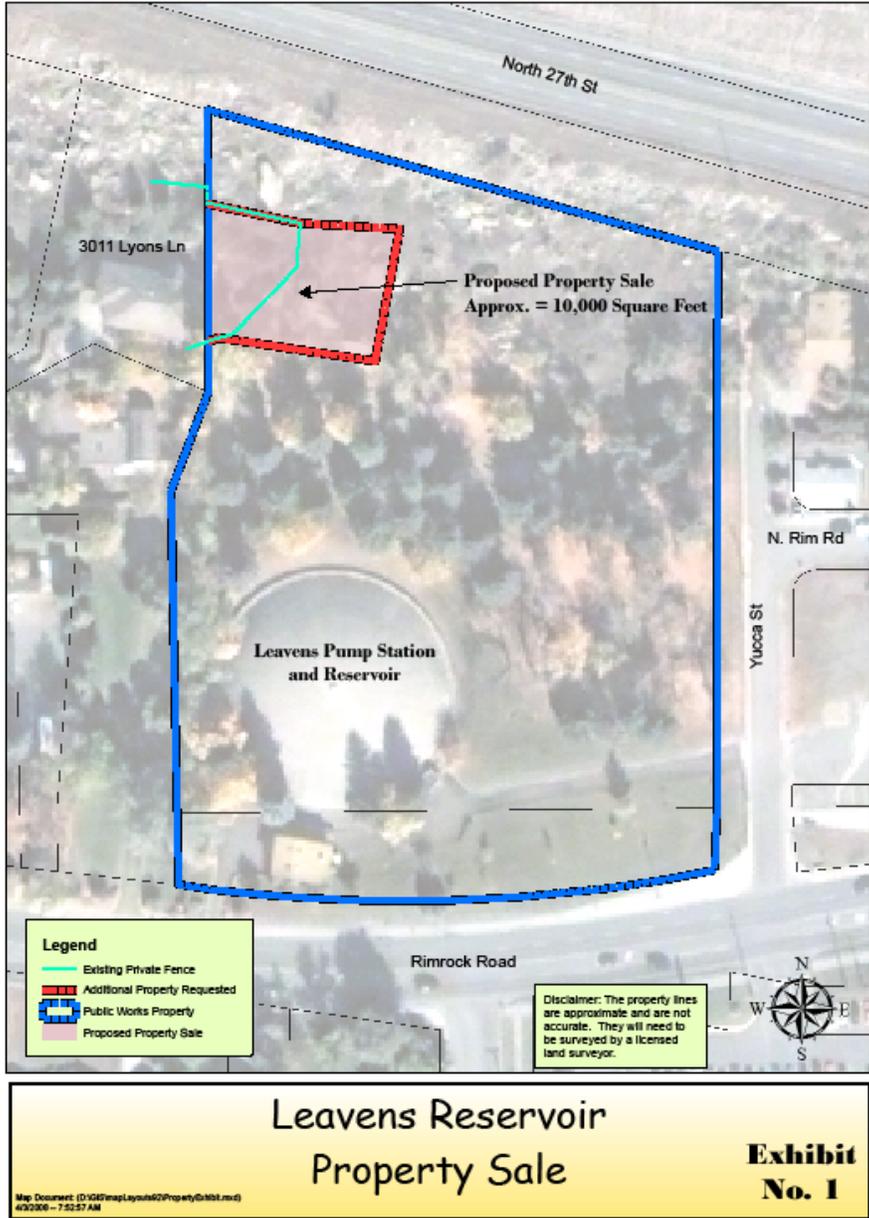
APPROVED AND PASSED by the City Council of the City of Billings this 27th day of May, 2008.

THE CITY OF BILLINGS:

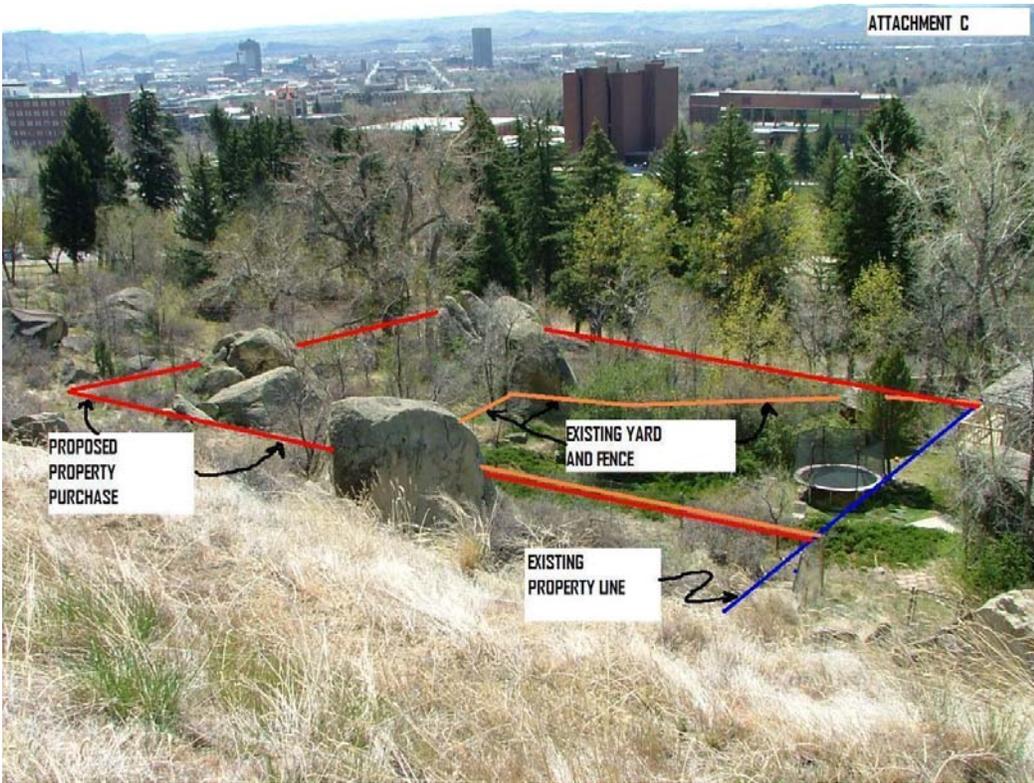
BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK







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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
 Tuesday, May 27, 2008

TITLE: Public Hearing and Resolution – W.O. 02-08, Milton Lane School Route
 DEPARTMENT: Public Works - Engineering
 PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: On April 28th, 2008, Council passed a Resolution of Intent for this project and established a Public Hearing date of May 27, 2008. In order to proceed with construction of the project Council must pass a resolution ordering construction of the improvements after conducting the public hearing.

FINANCIAL IMPACT: The proposed project is funded through multiple sources, including direct property assessments for a total project cost of \$480,500, as follows:

| | |
|--------------------------|-----------|
| Estimated Assessed Costs | \$ 67,000 |
| CTEP | \$125,000 |
| Storm Drain | \$ 50,000 |
| CDBG (for Storm Drains) | \$ 52,500 |
| Gas Tax Funds | \$186,000 |

Funding for the proposed project has already been authorized in the Capital Improvement Plan and is identified in the Fiscal Year 2008 budget.

RECOMMENDATION

Staff recommends that Council pass a resolution ordering construction of the improvements identified in Work Order 02-08, Milton Lane School Route.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Resolution Ordering Improvements

INTRODUCTION

The purpose of this project is to provide school route sidewalks along Milton Lane from the east side of Bench Elementary School to Lake Elmo Drive. The project will entail completion of the street section, curb & gutter, sidewalks, installation of storm drain improvements, enhanced crosswalks, and school frontage improvements.

PROCEDURAL HISTORY

Completed Items

- November 14, 2005 – Council approved using CDBG funds for storm drain for Milton Lane
- June 6, 2006 – CTEP Project Specific Agreement approved by Council
- September 20, September 27, and October 4, 2007 – RFP advertisement dates
- October 19, 2007 – Proposals received by Engineering Division
- November 14, 2007 – Selection committee meeting
- February 11, 2008 – Award of Contract for Professional Services
- April 28, 2008 – Creation of sidewalks assessment project by Council

Future Items

- May 27, 2008 – Public Hearing and Resolution of Ordering Improvements (**this memo**)
- June 2008 – Design completed, advertising for construction contract and contract award
- July 2008 – Construction begins
- September 2008 – Construction complete

BACKGROUND

The properties on the north side of Milton Lane have sidewalk, curb & gutter existing. The improvements to these properties will be based on the condition of the facilities. Bench Elementary School is located on the north side of Milton Lane, but it will receive further upgrades to its sidewalk to enhance the school crossings. The properties on the south side of Milton Lane have no sidewalk, curb & gutter. The pavement will be widened to the new improvements.

The proposed project uses funding allocations from various sources. The properties will be assessed for the extra pavement width, sidewalk, and curb & gutter. Of this assessment, CTEP funds will pay for 50% of the sidewalk and the curb & gutter. CDBG and Storm Drain funds will be used to pay for the storm drain improvements with this project. The Gas Tax funds will be used for the remainder of the construction and engineering costs.

RECOMMENDATION

Staff recommends that Council pass a resolution ordering construction of the improvements identified in Work Order 02-08, Milton Lane School Route.

ATTACHMENT

A. Resolution Ordering Improvements

RESOLUTION NO. 08 - _____

A RESOLUTION RELATING TO W.O. 02-08, MILTON LANE SCHOOL ROUTE; ORDERING THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

Section 1. Passage of Resolution of Intention. This Council, on April 28, 2008, adopted Resolution No. 08-18704 (the "Resolution of Intention"), pursuant to which this Council declared its intention to order in certain sidewalks, curb, gutter and street improvements, designated as W.O. 02-08 (the "Project") of the City, under Montana Code Annotated, Title 7, Chapter 14, Part 41, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of sidewalk, curb and sidewalk, curb and gutter improvement bonds drawn on the Project (the "Bonds"), the creation and administration of the Project, and the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

Section 2. Notice and Public Hearing. Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with law, and on May 27, 2008, this Council conducted a public hearing on the ordering in of the Project and the making of the Improvements.

Section 3. Order. It is hereby ordered that the following improvements shall be constructed, reconstructed, repaired, or replaced:

See Exhibit "A" attached hereto.

Section 4. Affected Properties. All properties which will be required to pay any portion of the costs of the improvements identified herein are identified in Exhibit "B" attached hereto.

Section 5. Reimbursement Expenditures.

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

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

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated aggregate principal amount of \$67,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

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

5.05. Reimbursement Allocations. The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Public Hearing and Resolution for Annexation #08-07
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, Robert Medvec, is requesting annexation of a property legally described as Tract 1 of Certificate of Survey 2350, located in Section 9, Township 1S, Range 26E into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The 4.76-acre subject property is located on the northeast corner of King Avenue East and Calhoun Lane. The petitioner is requesting annexation in order to obtain city water and sewer services for redevelopment of the property. The subject property has two residences on it with Residential-9600 (R-96) zoning. A concurrent zone change application from R-96 to Entryway General Commercial (EGC) is being considered for the property. At its May 12, 2008 meeting, the Council acknowledged receipt of the petition and set a public hearing date for this meeting.

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

FINANCIAL IMPACT: The City can provide municipal services to the subject property. If the proposed annexation is approved, the property could further develop with residential or commercial uses, thereby increasing the tax revenue for the City.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Tract 1 of Certificate of Survey 2350, subject to the following conditions of approval:

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

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

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

ATTACHMENT

A. Resolution

INTRODUCTION

Owner, Robert Medvec, is requesting annexation of his 4.76-acre property at 4513 King Avenue East. The subject property is located on the northeast corner of King Avenue East and Calhoun Lane. The petitioner is requesting annexation in order to obtain city water and sewer services for redevelopment of the property. The subject property has two residences on it with R-96 zoning. A concurrent zone change application from R-96 to EGC is being considered for the property.

PROCEDURAL HISTORY

- On April 17, 2008, the annexation petition was submitted to the Planning & Community Services Department.
- On May 12, 2008, the City Council acknowledged receipt of the annexation petition and set a public hearing date for May 27, 2008.
- On May 27, 2008, the City Council will conduct the public hearing for the annexation and may take action on the request.
- On June 9, 2008, if the resolution to annex is approved by the City Council, a public hearing and first reading of an ordinance to expand the Ward I City Council boundary will be conducted.
- On June 23, 2008, the City Council will conduct the second and final reading for the ordinance expanding the ward boundary.

BACKGROUND

The 4.76-acre subject property is located at the northeast corner of King Avenue East and Calhoun Lane, just east of the 1-90/South Billings Boulevard interchange and across the street from the newly developing Foursquare (Cabela's) complex. It is surrounded by properties within the City limits to the east and the south, and is within the red boundary of the limits of annexation as specified by the Annexation Map adopted by the City Council on March 10, 2008. Annexing the property would allow it to be redeveloped most efficiently for a variety of uses and therefore increase the taxable value of the property. There is a concurrent zone change application in process at this time from R-96 to EGC.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns regarding how annexing additional properties may affect the City's ability to provide services to new developments 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 the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements will be required to meet City standards.
4. As part of the Development Agreement or SIA, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.

5. The proposed land use may conform to the goals of the City of Billings and Yellowstone County Growth Policy. This criterion will be further analyzed with the zoning request.

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 and County Departments, and the Southwest Corridor Task Force were given the opportunity to comment on this annexation. All City departments responded favorably. Of the County Departments that were informed, only the County Emergency and General Services Director, Jim Kraft, responded, indicating that the property is not located within an established floodplain.

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

- **Water:** The City can provide needed water services to the subject property. The Public Works Department is currently constructing a new 12-inch water main on King Avenue East just south of this property and water stubs are being provided to this property. The developer will be responsible for construction of the interior mains within the property at the time of redevelopment.
- **Sewer:** The City can provide sewer service to the property using the 8-inch sanitary sewer main located in the alley between Jansma Avenue and King Avenue East on the east side of this property. The developer will be responsible for construction of the interior mains within the property at the time of redevelopment.
- **Stormwater:** All storm water 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 Public Works Department. There is currently a 36-inch diameter storm drain in Calhoun Lane and the City-County drain is located on the south side of King Avenue East.
- **Transportation:** The subject property has 630 feet of King Avenue East street frontage on its south side which is a minor arterial street. The section that fronts the subject property will be reconstructed in the near future to accommodate the commercial development on-going to the south. The property also has 300 feet of Calhoun Lane street frontage, which is a collector street. All proposed accesses and required improvements will be discussed at the time of redevelopment of the property. All new street improvements will be completed in accordance with City standards. Furthermore,

driveway locations and additional traffic impacts for the property will be reviewed during the subdivision or site development review process.

The Street and Traffic Division expressed concerns over the ability to adequately service any additional areas due to budget cuts within the division for fiscal year 2008 and beyond.

- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. Fire Station #4 at 476 6th St. West is the closest station to the subject property. It is approximately 1.5 miles from the subject property.
- **Parks:** Parkland dedication requirements will be reviewed for the property at the time of development. Amend Park and Riverfront Park are regional parks within one mile of the subject property.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. A multi-use trail is planned along the south side of King Avenue East in conjunction with the street widening improvements being planned from South Billings Boulevard to the east. Furthermore, sidewalks will be required on both sides of the internal local streets when the subject property is further developed.

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 system operators have no objections with the annexation request. There is a bus route providing service to the subject property along King Avenue East.
- **Fire:** The Fire Department currently provides fire protection to the County parcel as it is within the BUFSA. Upon annexation and redevelopment, the required services may be increased. The Department indicates that staffing is an issue, and any increase in response area or population will be difficult to serve.
- **Police:** The Police Department states that the subject property is located in a well established patrol area, however, continued annexation and development will adversely affect the department's ability to provide service without additional resources.
- **Public Utilities:** The Public Works-- Distribution and Collection Division had no objection with the annexation request.
- **Public Works -Street and Traffic Division:** The Street and Traffic Division expressed concerns over the ability to adequately service this property due to budget reductions.

- **Public Works-Solid Waste:** There currently is a private trash collection service to the residential property; therefore, in accordance with State Statute, City Public Works--Solid Waste Division can not serve the property for five years.
- **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 the Legal and Finance Departments have indicated that they will not be negatively impacted. However, the Assistant City Administrator indicates that the City should consider initiating annexation of the two remaining County parcels immediately north and west of the subject property.
- **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 May 9, 2008, and published in the Billings Times on May 8, 2008. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood (Land Use Element Goal, page 6).
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, page 10).
- An inviting and attractive urban interstate corridor through the City and County (Aesthetics Goal, page 7).
- Coordinated economic development efforts that target business recruitment, retention, and expansion (Economic Development Goal, page 6).

The *South Billings Boulevard Interchange Master Plan*, adopted in 2002, also established planning goals and objectives for this general area. According to the plan, there are four objectives outlined for the area off of the I-90 interchange. Annexation of the property can

facilitate proper planning and redevelopment of this highly visible subject property. The objectives are as follows:

- To encourage the development of large, well-planned projects designed to serve the area over a long period of time, as opposed to small, hastily conceived projects that do little to add to the overall appearance or economic vitality of the area.
- To discourage the conversion of existing houses into small piecemeal commercial establishments.
- To limit the number of drive approaches along major arterial streets in order to preserve the functional integrity that such arterial systems are intended to provide.
- To present a favorable and attractive image of Billings from Interstate 90, King Avenue and South Billings Boulevard.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Tract 1 of Certificate of Survey 2350, subject to the following conditions of approval:

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

ATTACHMENT

- A. Resolution

RESOLUTION NO. 08-

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

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

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

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

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

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

A tract of land situated in the SW1/4 of Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:
Tract 1, Certificate of Survey No 2350, Recorded November 18, 1985, under Document No. 1372518, Records of Yellowstone County.
Including all adjacent right-of-way of Calhoun Lane.
Containing 4.765 gross acres and 4.345 net acres.
(# 08-07) 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.

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 27th day of May, 2008.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

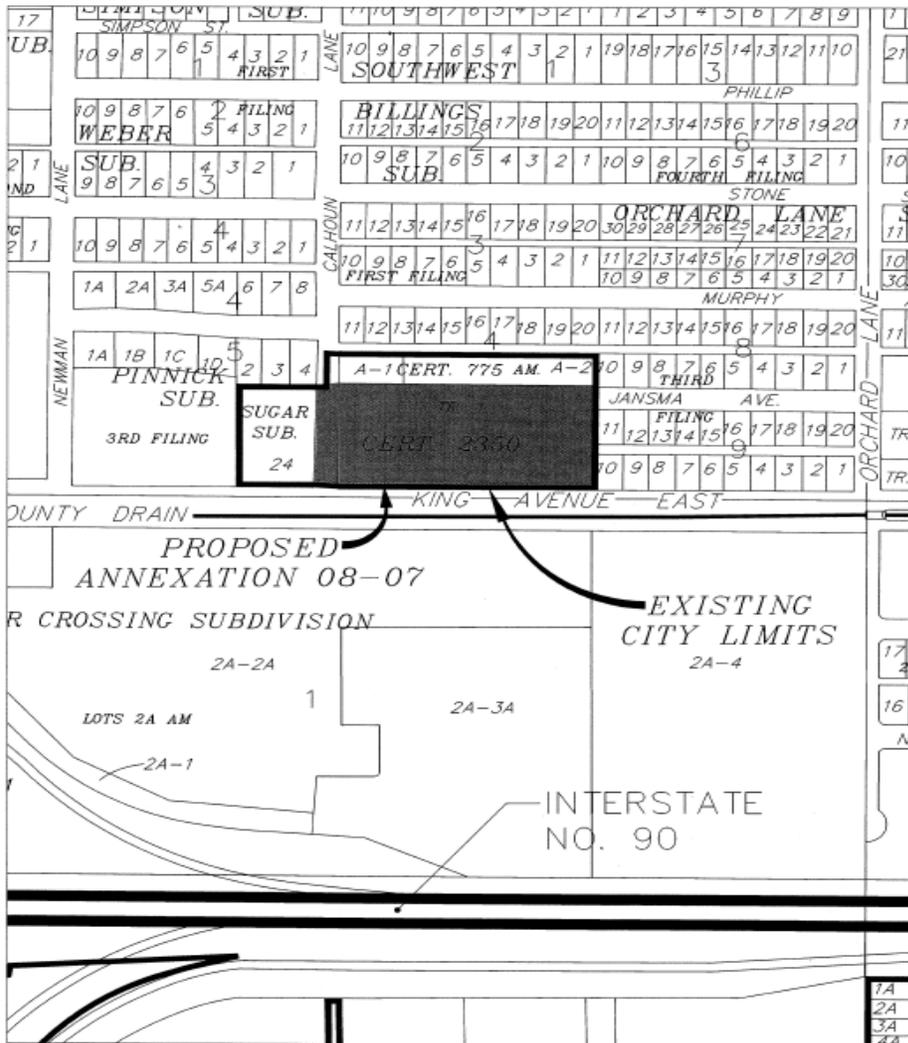
ATTEST:

BY: _____

CITY CLERK

(AN 08-07)

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Zone Change #842 and 1st Reading of Ordinance, 4517 King Avenue East
DEPARTMENT: Planning and Community Services
PRESENTED BY: Lora Mattox, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone Tract 1 of Certificate of Survey 2350 from Residential 9600 (R-96) to Entryway General Commercial (EGC). The subject property is generally located on the northeast corner of King Avenue East and Calhoun Lane and has 2 single-family residential dwellings. This site is a 4.34 acre parcel of land. Robert M. Medvec is the owner, with Kristin Omvig and Jared Le Fevre from Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents. A pre-application neighborhood meeting was held at Christ the King Lutheran Church on February 25, 2008. The Planning Division forwarded a recommendation of denial to the Zoning Commission. The Zoning Commission conducted a public hearing on May 6, 2008, and is forwarding a recommendation of approval on a 4-0 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 of the property, 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 #842 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

A: Surrounding Zoning

B: Ordinance

INTRODUCTION

The applicant is requesting to rezone Tract 1 of Certificate of Survey 2350 from Residential 9600 (R-96) to Entryway General Commercial (EGC). The subject property is generally located on the northeast corner of King Avenue East and Calhoun Lane and has 2 single-family residential dwellings. The applicant, Robert M. Medvec, is proposing the zone change with the anticipation that the land will be more desirable as commercially zoned property than as residentially zoned property for possible future sale. The surrounding property to the north, east and west is zoned for single family or multi-family; land to the south across King Avenue East is zoned EGC. The property is on a minor arterial street, King Avenue East, and just east of the South Billings Boulevard and the Interstate 90 (I-90) exit.

PROCEDURAL HISTORY

- On February 25, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at the Christ the King Lutheran Church.
- On April 7, 2008, a zone change application was submitted to the Planning Division.
- On May 6, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 4-0 vote.
- On May 27, 2008, the City Council will conduct the public hearing and first reading of the zone change.
- On June 9, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The subject property is on the north side of King Avenue East across from the location of the proposed Cabela's store and the proposed new commercial development by Foursquare Properties. The Foursquare development has prompted the widening of King Avenue East. This will impact the surrounding neighborhood with the most noticeable impact on the property north of King Avenue East. The subject property is expected to sell land for roadway widening.

This neighborhood will be experiencing changes that will impact it with increased traffic being the most predictable change. Other businesses will likely want to move in to the area to be a part of the increase in people coming to the new development being constructed by Foursquare Properties. The proposed development will create more traffic on King Avenue East and will likely make the property north of the commercial development less appealing for only residential development. With these changes in mind, the property owner Robert M. Medvec has applied for a zone change to rezone his property from R-96 to EGC zoning. The purpose of the EGC Zone as defined in the Zoning Code is to provide a specialized classification for hotels, restaurants and other tourist-related facilities near major highway interchanges. This zoning is the same zoning as the Foursquare Property to the south of King Avenue East.

Entryway zoning requires a greater amount of site improvements and building aesthetics than other commercial zoning such as Community Commercial (CC) or Highway Commercial (HC). Entryway zoning requires larger landscaped bufferyards with a minimum number of trees per

lineal foot of bufferyard. Entryway zoning also requires a minimum 10-foot wide bufferyard and a 6 foot tall solid fence along the property line that is adjacent to residential property.

EGC zoning also allows more intense uses than other entryway zoning such as Entryway Light Commercial (ELC). EGC zoning would allow automobile sales, rental, and service stations, broadcasting studios (radio and television), car washes, commercial recreation uses, hotels/motels, laundry and dry cleaning, recreational vehicle sales and service, retail nurseries, signs, indoor theaters, tire sales, and wholesale uses not to exceed 3,000 square feet gross floor area. With a special review, there are additional uses that could be allowed with EGC zoning that include campgrounds, commercial recreation uses such as go-carts, rodeo, roping arenas, gravel and/or sand extraction, mixed use development with residential units, restaurants with alcohol sales, truck stops, veterinary clinics and wholesale uses not to exceed 10,000 square feet. ELC does not allow the above mentioned uses with the exception of the following uses with special review approval; car washes, commercial recreation uses, gravel and/or sand extraction, mixed use development with residential uses, and restaurants with alcohol sales for on-premise consumption only. ELC zoning is intended for less intense neighborhood uses with potentially lower impacts than EGC zoning.

In the South Billings Boulevard Interchange Master Plan adopted in 2002, the purpose of the plan is to provide interstate related goods and services to the traveler and to provide goods and services on a regional and community level. It is also the intent of this district to preserve and maintain the aesthetic qualities of the Yellowstone River, Riverfront Park and the surrounding area by creating land development practices to compliment the region. According to the plan, there are four objectives outlined for the area off of the I-90 interchange. The first is to encourage the development of large, well-planned projects designed to serve the area over a long period of time, as opposed to small, hastily conceived projects that do little to add to the overall appearance or economic vitality of the area. The second is to discourage the conversion of existing houses into small piecemeal commercial establishments. The third is to limit the number of drive approaches along major arterial streets in order to preserve the functional integrity that such arterial systems are intended to provide. The fourth is to present a favorable and attractive image of Billings from Interstate 90, King Avenue and South Billings Boulevard.

The applicant held the pre-application meeting with the surrounding neighbors on February 25, 2008, at the Christ the King Lutheran Church at 759 Newman Lane, and approximately 52 residents signed the sign-in sheet. According to the materials and minutes submitted from that meeting the neighbors had several concerns with the proposed zone change. Some of the concerns from the surrounding neighbors were the preservation of their property values, the increase in traffic in the area, noise, height of buildings and having the back wall of a building to look at across the alley.

Planning staff forwarded a recommendation of denial to the Zoning Commission for this application. The Zoning Commission conducted a public hearing on May 6, 2008 and is forwarding a recommendation of approval to the City Council. The Zoning Commission's recommendations are made and discussed in the 12 criteria for zone changes 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 zone change is generally consistent with the following goals of the Growth Policy:

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

The proposed zoning will permit commercial development along the north side of King Avenue East across the street from commercial development, which will provide more business choices within the surrounding neighborhood. Mixed use development with residential uses is also allowed in the EGC zone with special review approval.

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

The proposed zoning will encourage new businesses along the north side of King Avenue East across the street from another commercial development, which will expand the commercial development along King Avenue East.

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

The proposed zone change will allow more businesses along King Avenue East that may increase traffic in this area of Billings. However, this area will be experiencing a substantial increase in traffic from the commercial development that is already proposed for the area, the Foursquare Properties development on the south side of King Avenue East. It is likely any new businesses would take advantage of the increased traffic from the Foursquare Property development but not create new vehicle trips.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. All buildings built within the city of Billings must be approved by the Billings Building Division to make certain that they meet current fire code requirements. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to ensure that it is designed to meet these safety requirements.

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

The proposed zoning will permit commercial uses. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions within the proposed EGC zone. In addition, the EGC zone has landscape requirements and minimum setbacks to enhance the look of the site and make it a positive addition. The development of the property will likely bring some neighborhood type services to the area including restaurants, medical services and banking services.

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

The proposed zoning requires very specific setbacks from street frontage and setbacks and separation from residential properties. These setbacks are designed to allow for adequate separation between structures and adequate light and air.

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

The proposed zoning to EGC will allow building heights of 40 feet and lot coverage of 50%. Standard residential zoning building heights are 34 feet maximum with 30% lot coverage maximum. These requirements are designed to prevent overcrowding of the land.

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

The proposed zoning of EGC is a commercial zoning and therefore, does not increase the population in this area. Residential uses could be included with special review approval within the commercial development as a mixed use. However, the requirements for setbacks and lot coverage should alleviate crowding.

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

Transportation: This area of Billings will experience high volumes of traffic on the streets. King Avenue East is being widened to accommodate high volumes of traffic for the Foursquare Property development south of King Avenue East. The access driveways to the property will need to be approved by the City Traffic Engineering prior to construction. Traffic impacts will have to be assessed at the time of a proposed development. King Avenue East should accommodate any new traffic from the site.

Water and Sewer: The property has submitted a concurrent annexation request and city services will be available to this site.

Schools and Parks: The proposed zoning is intended for mainly commercial use; however, residential development could occur in a mixed use development. There could be some impact on the school system or parks.

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

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

King Avenue East from South Billings Boulevard to Orchard Lane will be experiencing change from residential and agricultural uses to commercial uses. The EGC zoning requested will mirror the Foursquare property. The adjacent residential neighborhood to the north and east should be protected by the required screening and buffering regulations in the EGC zoning district, or if a mixed use development with residential uses is constructed on the site.

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. The proposed commercial development will provide the surrounding citizens with a shopping area within their neighborhood. The property has street frontage on an arterial street to accommodate commercial traffic.

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

The increased commercial development along the south side of King Avenue East will affect the character of the residential uses to the north. The new zoning may provide a buffer from King Avenue East and the intense commercial traffic to the south.

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

The proposed zoning will encourage commercial development on a busy street where single family residences may not be appropriate or desirable. A mixed use development with some residential uses allowed in EGC zoning by special review also could provide a good transition from King Avenue East.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the alternative analysis.

STAKEHOLDERS

A neighborhood meeting was conducted on February 25, 2008, at the Christ the King Lutheran Church by the applicant and agent. Approximately 52 residents attended the meeting in addition to the applicant and agent.

The Zoning Commission conducted a public hearing on May 6, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. The applicant and agent were present at the Zoning Commission meeting and explained the application. Five persons spoke in favor of the application in addition to the applicant and agent. No one spoke in opposition to the zone change request.

Agent Jared LeFevre testified that he respectfully disagreed with the Planning Staff recommendation of denial. He asked the Zoning Commission to support the zone change request and to incorporate his comments from Zone Change #841 into the record for this zone change. Mr. LeFevre stated the size and depth of the lot does not make the property a good candidate for intense commercial uses such as hotels and car sales lots. The development of the lot for commercial uses suited to this lot size such as banks, offices and restaurants may in fact buffer the adjacent residential uses from the Cabela's development to the south of King Ave East. The proposed zoning encourages in-fill and saves city resources. Planning Staff stated a concern over piece meal development however any development on the subject property would be likely done as a whole project and not small sections at a time.

Ryan Wendt, pastor of Christ the King Lutheran Church, testified in favor of the zone change. He stated his family lives at 36 Nimitz and would enjoy having a commercial area in the neighborhood rather than traveling to West Billings to shop and downtown for doctor's visits. He stated the zone change would add good neighborhood value to the area.

Mike Walker, NAI Business Properties, and agent for the applicant testified in favor of the zone change. He stated the 4.3 acre parcel is not suitable for intense commercial uses given the high dollar per square foot value of the land and the size of the parcel.

JW Westman a member of Christ the King Lutheran Church testified in favor of the zone change. He stated this parcel of land received the same deal as the church property. This zone change is a result of the development and zone change south of King Avenue East. Cabela's will change the whole area and the zoning will give both owners the opportunity to sell and move.

Eric Gabriel a member of Christ the King Lutheran Church testified in favor of the zone change. He stated this zone change is identical to the church zone change request and the Zoning Commission should support the request.

Robert Medvec, owner, testified in favor of the application. He stated he has owned the property for over 30 years and raised his son there as a single parent. The new street will take down the 12 cottonwood trees that provide shade for his house and decrease the quality of life for residential uses. He stated the development of his property will not generate additional traffic but will take advantage of the traffic Cabela's will generate.

Al Koelzer, NAI Business Properties and agent for applicant testified in favor of the zone change. He stated that 177 members of the church and Mr. Medvec are community members and want to do what is beneficial for the neighborhood. The City gave this zoning district for Cabela's and these owners are asking for the same treatment.

Commissioner Hawkins stated she was not in agreement with the Planning Staff recommendation of denial. The city has approved the Cabela's zone change and development plan and should not deny a similar zone to adjacent property owners on the north side of King Ave East. Commissioner Hawkins also stated that the zoning district regulations will preserve the quality of life and property values of the adjacent residential dwellings. Commissioner Hawkins stated the entire character of this area will change over time after the development of the Foursquare property and this is an appropriate zoning request.

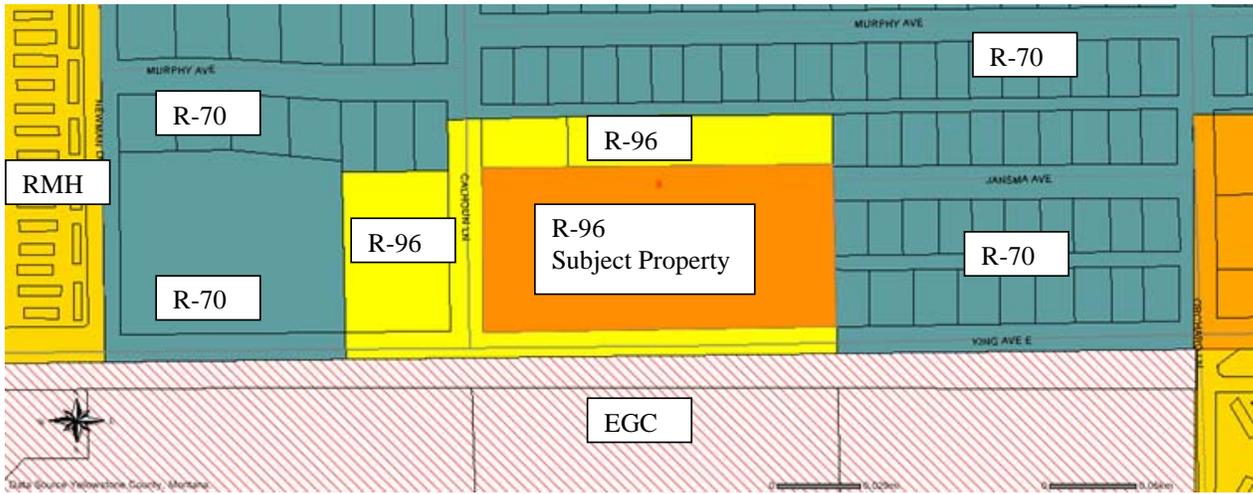
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #842 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

ATTACHMENTS:

- A: Surrounding Zoning
- B: Ordinance

Attachment A
Zone Change #842 – 4517 King Avenue East



Attachment B
Zone Change #842

ORDINANCE NO. 08-_____
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
Tract 1, Certificate of Survey 2350, containing approximately 4.34 acres

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

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

2. **DESCRIPTION.** A tract of land known as Tract 1, Certificate of Survey 2350, containing approximately 4.34 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 **Entryway General Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Entryway General Commercial** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

City Clerk

ZC #842- 4517 King Avenue East

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Zone Change #838 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone a portion of a property in a Planned Development (PD) with underlying zoning of Public (P) to an underlying zoning district of Highway Commercial (HC) on a .75 acre parcel of land directly east of 5379 Southgate Drive. The property is legally described as a portion of Lots 1-4 & 15, of amended Lot 15A, Block 2, Southgate Subdivision 1st Filing. The subject property is currently undeveloped parkland. The City of Billings is the owner and Bruce McCandless, Assistant City Administrator, is the agent. The Zoning Commission conducted a public hearing on May 6, 2008, and forwarded a recommendation of approval on 4-0 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 of the property, 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 #838 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

A: Site Photographs

B: Surrounding Zoning
C: Ordinance

INTRODUCTION

The applicant is requesting to rezone a portion of a property in a Planned Development (PD) with underlying zoning of Public (P) to an underlying zoning district of Highway Commercial (HC) on a .75 acre parcel of land directly east of 5379 Southgate Drive. The property is legally described as a portion of Lots 1-4 & 15, of amended Lot 15A, Block 2, Southgate Subdivision 1st Filing. The subject property is currently undeveloped parkland. Property to the east and west of this parcel has an underlying zoning of HC within the PD. A pre-application neighborhood meeting was held at Parmly Billings Library 4th Floor conference room on May 1, 2008.

PROCEDURAL HISTORY

- On April 7, 2008, a zone change application was submitted to the Planning Division.
- On May 1, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at Parmly Billings Library 4th Floor conference room.
- On May 6, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 4-0 vote.
- On May 27, 2008, the City Council will conduct the public hearing for the zone change.
- On June 9, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The applicant, the City of Billings, is requesting to rezone a portion of Lots 1-4 & 15, of amended Lot 15A, Block 2, Southgate Subdivision, 1st Filing. This parcel of land was originally set-aside as parkland to buffer the residential property north of King Avenue East and provide a park walking area between lots. The property that runs along King Avenue East has been landscaped and is owned and maintained by the city through a Parks Maintenance District. The piece of parkland that is the subject of this zone change runs north and south between two commercial properties and has never been developed as a park. MRL Equipment Company owns the property that is located immediately west of this city owned parcel. MRL Equipment Company is a pavement striping machine assembly company and it would like to purchase this parcel of land for future expansion of its parking lot or building.

At the January 14, 2008, City Council meeting, a public hearing was conducted to determine if there were objections to the sale of the land to MRL Equipment Company. The Parks Department does not object to the sale of the property and will put the money from the sale into the Park Acquisition and Development Fund. There were no objections voiced from the public at this City Council meeting.

A surrounding property owner meeting was held on May 1st for this proposed zone change. No one from the neighborhood attended the meeting.

Planning staff forwarded a recommendation of approval to the Zoning Commission for this application. The Zoning Commission concurred with this recommendation. Staff 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 zone change is generally consistent with the following goals of the Growth Policy:

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

This property is in an area of Billings that is industrial in nature. The HC zoning will allow an existing use to expand and provide more jobs and a larger tax base for the city.

- *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 HC zoning will be consistent with the zoning in the neighborhood and any proposed project will need to meet the required setbacks and provide site improvements associated with the zoning.

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

This property is vacant land between existing businesses. Expansion of the existing business onto this parcel will focus development in an existing business population area. The development requirements will ensure separation of uses and open space between buildings.

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

The proposed land use will provide an existing business the opportunity to expand and possibly provide additional services and job opportunities to the residents of Billings.

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

The new zoning will not decrease the congestion on the streets of this neighborhood. This part of Billings is a mixed use neighborhood with industrial and commercial uses. Changes to the site with this additional parcel will most likely have minimal effect on the traffic.

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

With the proposed zoning, there are requirements that help to ensure safety from fire, panic and other dangers. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to ensure that it is designed to meet safety requirements.

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

The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. The surrounding businesses are in HC zoning within the PD. This zone change will continue the HC restrictions to ensure consistent requirements to promote health and general welfare of the neighborhood.

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, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land through these regulations.

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

The proposed zoning is for HC uses, which will not cause a concentration of population. HC zoning is not intended for residential uses and will not concentrate population in this area. The proposed use is for expansion of an existing business that produces roadway striping machinery.

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

Transportation: Any new development on this property may increase traffic in the area but it would most likely be minimal. The roads in the area are expected to be able to handle additional traffic.

Water and Sewer: The City will provide water and sewer to the entire property through existing lines.

Schools and Parks: The proposed zoning will have no impact on the school system or overall parks system. This parcel is parkland that has not been

developed and which the Parks Department would like to sell to the property owners to the west.

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 allow an expansion of an existing business and will fit into the commercial and industrial character of the district.

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

The subject property is suitable for the requested zoning. The existing neighborhood is a mix of industrial and commercial uses. The business to the west is interested in the parcel to allow it to do business expansion. The property is suitable for expansion of an existing business.

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

The new zoning is expected to conserve the value of the surrounding buildings because the proposed use is an existing use in the area.

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

The proposed zoning will encourage expansion of an existing use in the neighborhood that will possibly provide more jobs and a larger tax base for the city.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

A neighborhood meeting was conducted on May 1, 2008, at the Parmly Billings Library fourth floor conference room by the city and it's agent. None of the surrounding property owners attended the meeting. Only planning staff and the agent were present. Staff has not received any phone calls or letters regarding concerns over this proposed zone change application.

The Zoning Commission conducted a public hearing on May 6, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. The applicant and agent were present at the Zoning Commission meeting and explained the application and proposed development. Commissioner Ed Workman asked how much the city would be receiving for the

property. Mr. McCandless answered that the city would be receiving \$3.00 per square foot for the land, which he stated is a fair market value for the land. There was no other public comment at the meeting and no discussion by the Zoning Commission.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #838 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

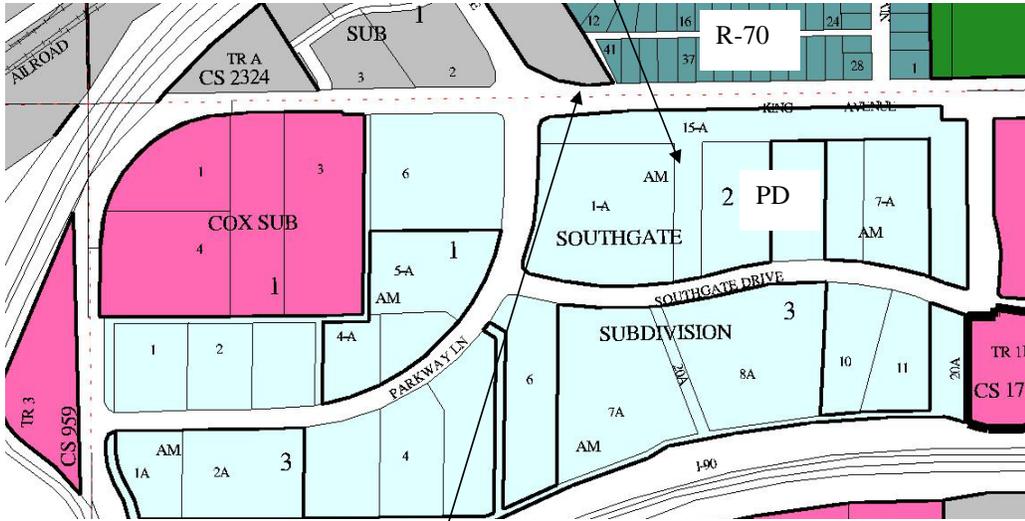
ATTACHMENTS:

- A: Surrounding Zoning
- B: Ordinance

Attachment A

Zone Change #838 – Parcel east of 5379 Southgate Drive

Subject Property



King Avenue East

Attachment B
Zone Change #838

ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
Lots 1-4 & 15, of Amended Lot 15A, Block 2, Southgate Subdivision 1st Filing, containing
approximately .75 acres

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

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

2. **DESCRIPTION.** A tract of land known as Lots 1-4 & 15, of Amended Lot 15A, Block 2, Southgate Subdivision 1st Filing, containing approximately .75 acres and is presently zoned Public within a Planned Development 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 **Planned Development with underlying zoning of Public** to **Planned Development with underlying zoning of Highway Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Highway Commercial** as set out in the Southgate Amended Planned Development Agreement.

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 May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

BY: _____

Ron Tussing, Mayor

ATTEST:

BY:

City Clerk

ZC #838- Parcel directly east of 5379 Southgate Drive

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Zone Change #839 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change request from Residential 9,600 (R-96) to Neighborhood Commercial (NC) on Lots 3 through 7 of Block 9, Central Acres Subdivision, 5th Filing located at 3133 Central Avenue. The applicant is proposing to construct a small retail center on the northeast corner of the intersection of 32nd Street West and Central Avenue. The applicants are Charles Haynes, Ira & Ruth Park and Alan Oster and the agent is Gerald Neumann. A pre-application neighborhood meeting was held at Shiloh Veterinary Clinic on March 29, 2008. The Zoning Commission conducted a public hearing on May 6, 2008, and is forwarding a recommendation of approval on a 4-0 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 of the property, 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 #839 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

INTRODUCTION

The applicant is requesting to rezone five adjacent lots on the northeast corner of the Central Avenue and 32nd Street West intersection to NC zoning. This is the intersection of two principal arterial streets and the lots are currently zoned R-96, a single family zoning district. Three of the four corners of this intersection have been zoned or developed for commercial or institutional uses. The 2003 Growth Policy encourages the location of new commercial development where it will compliment existing zoning and where arterial streets intersect. The owners of the property have entered an agreement to sell the property to the agent if the zone change is successful. The agent, Gerald Neumann, is proposing to develop a multi-tenant retail center.

PROCEDURAL HISTORY

- On March 29, the pre-application neighborhood meeting for the proposed zoning application was conducted at the Shiloh Veterinary Clinic.
- On April 7, 2008, a zone change application was submitted to the Planning Division.
- On May 6, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 4-0 vote.
- On May 27, 2008, the City Council will conduct the public hearing for the the zone change.
- On June 9, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The proposed NC zoning district does not allow any restaurant that serves alcohol, most retail uses are restricted to no more than 10,000 square feet of building space, and vehicle related uses are restricted in some cases. Car washes would only be allowed by special review approval but gasoline stations with convenience stores would be allowed by right. Property to the north and east is zoned R-96 and has been developed.

The lots to the west and southwest are zoned CC and have been fully developed for commercial uses. The property directly south of the subject property is zoned R-96 and Public and has been approved for the development of Faith Evangelical Church and the Qwest telephone facility. South of Central Avenue and east of the subject property the Hunter's Pointe Apartments were recently completed. The City Council recently approved zone changes from R-96 to NC, RP and RMF-R on 16 acres in the 3000 block of Central Avenue just east of the Hunter's Point Apartments. The subject property is at the intersection of 32nd Street West and Central Avenue, a traffic light controlled intersection. Traffic counts at this intersection for 2008 show approximately 9,000 vehicle trips per day east and west on Central as well as north and south on 32nd Street West. Traffic counts have increased significantly since the completion of 32nd Street West from Broadwater Avenue to Rimrock Road. In 2005, there were 5,000 vehicle trips per day on 32nd Street West north of Central Avenue and the 2008 traffic counts are 80% higher for this section of 32nd Street West.

All of the lots have street frontage on Central Avenue decreasing the marketability and value of single family dwellings at this intersection. One previous zone change request in 1987 was denied because it included only the single lot at the intersection (Lot 7) and would have had little development potential. In addition, access on this single lot would have been difficult to accommodate and such a small area could have been considered spot zoning. City staff at the time recommended the owner pursue a collaborative effort with adjoining property owners to the east.

The 2003 Growth Policy supports predictable land uses in existing neighborhoods and encourages compact commercial development where arterial streets exist to handle increased traffic. The proposed NC zoning district for these five lots at the intersection of two principal arterial streets meets these policy goals. The applicant conducted a pre-application neighborhood meeting to discuss the zone change. The neighborhood expressed concern with how traffic would circulate through the property and how the alley might be used by these new businesses. The site would need to meet all of the development regulations in the city code. Those requirements include adequate off-street parking, landscaping, and screening and buffering of the residential property to the north and east. Customer access to the alley may only be allowed by City Council approval of a variance from the City's Site Development Code. Specifics related to development of the site will be discussed and reviewed by relevant city staff when a site plan is submitted. City staff had an informal review of a proposed site plan on May 1, 2008. Changes and refinements of the site plan will occur if the zone change request is approved by the City Council.

Planning staff forwarded a recommendation of approval to the Zoning Commission for this application. The subject property is adjacent to two arterial streets and land on the surrounding points of the intersection has been developed for either commercial or institutional uses. The proposed NC zoning does not allow intense commercial uses such as alcohol sales for on premise consumption, automotive uses, hotels, general repair shops or similar uses that are likely to be directly incompatible with residential uses. The zoning district has identical building height limitations as the adjacent residential zoning and similar building setbacks. The proposed zoning is compatible with the surrounding zoning and neighborhood character. The Zoning Commission concurred with this recommendation. Staff 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 zone change is 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 6)*

The proposed zoning would allow commercial development at the intersection of two principal arterial streets. Two existing single family homes on the lot would be removed to develop the five lots for commercial uses. This use is consistent with the zoning and uses on property directly abutting the intersections. The land use pattern in West Billings is to concentrate commercial uses at principal arterial intersections.

- *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 consistent with the surrounding character of the intersection. City development codes will require screening and buffering of single family uses to the north and east.

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

Each of the existing five lots could be developed for single family uses each with a drive approach on to Central Avenue. This pattern of development would decrease traffic safety on Central Avenue near this intersection. It would add to congestion on Central Avenue by creating traffic conflicts with these new drive approaches for residences. Five residences would generate between 50 and 75 new vehicle trips per day on Central Avenue. A commercial development would limit the number of new drive approaches to one or possibly two based on the City Traffic Engineer's approval. This would reduce traffic congestion and conflicts. The new zoning would increase the potential number of vehicle trips per day from residential uses. Those additional vehicle trips could be substantially more than residential uses depending on the specific uses proposed for the property.

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

The subject property is currently serviced by City Fire and Police. Any development will require a minimum width for access driveways, turn around areas, and provision of water for fire protection.

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

The current and proposed zoning have identical building height limits (34 feet) and identical building setback requirements. The city development code requires landscaping and buffering of adjacent residential uses. The existing zoning has not resulted in development of these vacant parcels. Dwellings on Lynn Avenue are not buffered from the traffic impacts on Central Avenue and 32nd Street West. Development of the lots will buffer the homes on Lynn Avenue from this traffic.

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. The current R-96 zone allows

30% lot coverage and the proposed NC zone allows 50% lot coverage. The proposed increase in lot coverage should not overcrowd the property.

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

The proposed zoning would allow multi-family residences at the same density as RMF-R. The maximum density on this parcel would be 32 dwelling units or 26 dwelling units per acre. It is not likely this density could be achieved based on the maximum building height of 34 feet, requirements for off-street parking, drive aisles and landscaping. The Hunter's Pointe Apartments developed at a density of 108 dwelling units on 9.3 acres of land or about 11 units an acre.

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 have an impact on the arterial streets. Access and trips will be analyzed by the City Traffic Engineer and mitigation if necessary provided by the lot owner. |
| Water and Sewer: | The City will provide water and sewer to the property through existing lines on Central Avenue or north of the site through the alley. |
| Schools and Parks: | There should be no impact on schools or parks from this commercial 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 commercial uses where currently only single family uses are allowed. The single family zoning dates from the original zoning of the property in Yellowstone County as R-96. The zoning remained the same when it was annexed in August of 1981. Development of the 5 lots has to date has included only two single family homes – one constructed in 1940 and the other in 1957. The character of the district has changed significantly since the subdivision was filed in 1956. Many of the homes to the north were built in the mid-1970s and into the early 1980s. The development of southwest corner of the intersection of Central Avenue and 32nd Street West started in 2003 and 2004. The Summer Ridge Subdivision south of the property includes the Hunter's Pointe Apartments and the Faith Evangelical Church. The small commercial center on the northwest corner was constructed in 1965 and remodeled in 2001. The new zoning gives reasonable consideration to the existing character of the district.

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

The subject property is suitable for the requested zoning district. Many properties that are within a short distance of principal arterial intersections have been zone for neighborhood commercial uses. The adjacent arterial streets are intended to provide access for commercial uses or higher density residential uses.

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. Higher density multifamily dwellings may negatively affect single-family market prices. Commercial development may or may not negatively affect the single family market prices. The value of the existing single family homes is not affected by this zone change. Both zoning districts allow single family dwellings.

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

The proposed zoning will encourage the most appropriate use of this land at the intersection of two arterial streets and throughout the district.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan and discussed within the Alternatives Analysis section of this report.

STAKEHOLDERS

A neighborhood meeting was conducted on March 29, 2008, at the Shiloh Veterinary Clinic by the applicant and agent. Seven surrounding property owners and the Chairman of the West Billings Task Force attended the meeting in addition to the applicant and agent. Staff received a phone call from Mr. Jerry Voto of 3128 Lynn Avenue requesting information on what is allowed or not allowed in the NC zoning district.

The Zoning Commission conducted a public hearing on May 6, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. The agent was present at the Zoning Commission meeting and explained the application and proposed development. Mr. Jerry Voto testified he was in favor of the proposed zone change. He asked whether the City improvements to Central Avenue at this intersection would be done at the same time as the proposed development. Staff indicated the improvement could be done at nearly the same time but may occur after the proposed development. Mr. Voto commented that traffic has tripled in volume since the completion of 32nd Street West north of Broadwater (now called Zimmerman Trail). Many residents in the area cannot head south or east out of the area and can only make right turns where residential streets intersection with these two arterials. There was no further public comment at the meeting and no discussion by the Zoning Commission.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #839 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning

C: Ordinance

Attachment A

Site Photographs, Zone Change #839 – 3133 Central Avenue

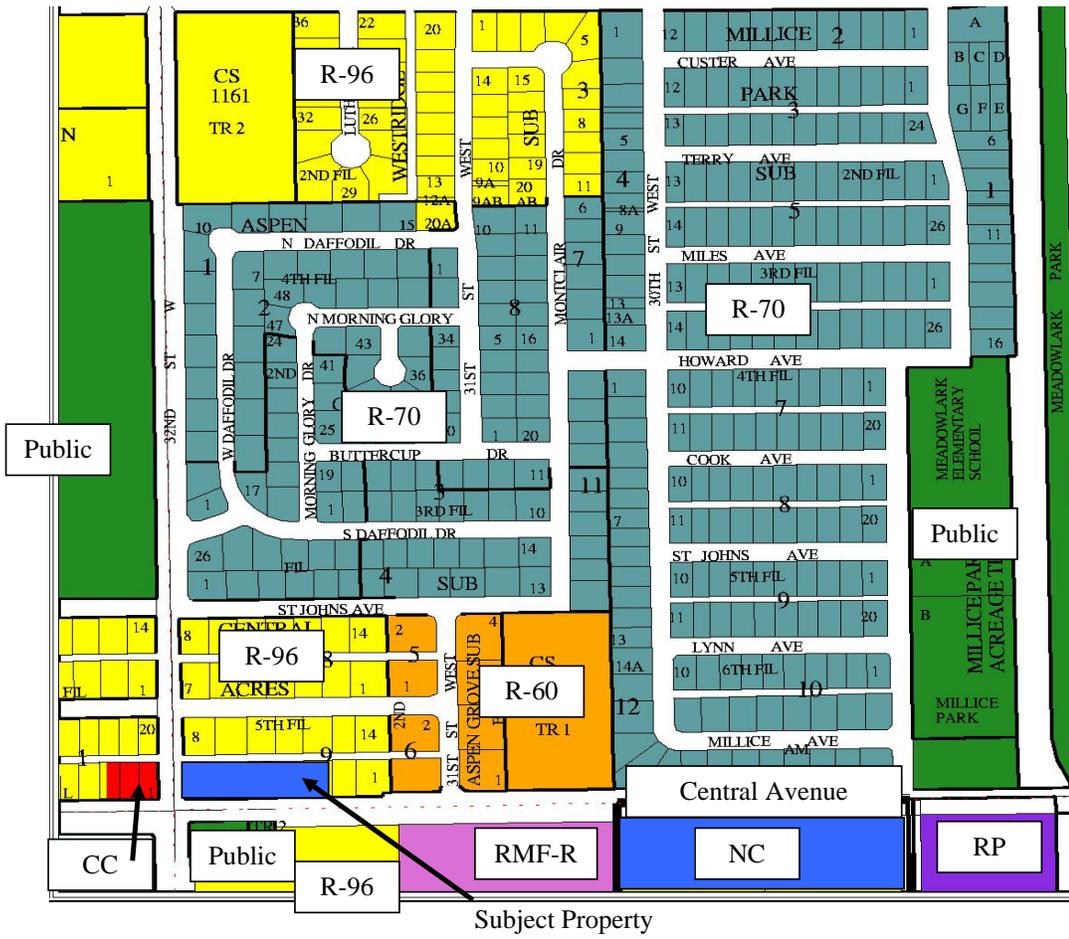


Subject Property from Central Avenue



Subject Property

Attachment B
 Zone Change #839 – 3133 Central Avenue



ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
Lots 3-7, Block 9 Central Acres, 5th Filing, containing approximately
53,172 square feet

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

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

2. DESCRIPTION. A tract of land known as Lots 3-7, Block 9 Central Acres, 5th Filing, containing approximately 53,172 square feet and is presently zoned Residential 9,600 and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor ATTEST:

BY: Cari Martin, City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Zone Change #840 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential Multi-Family-Restricted (RMF-R) to Residential Professional (RP) on Lot 4A, Block 2, Goodman Subdivision, 4th Filing. It is a 67,110 square foot parcel of land on the southeast corner of the intersection of 41st Street West and Avenue C. Randall Swenson, Steve Repac and Jeff Muri, are the owners with Engineering, Inc, as agent. A pre-application neighborhood meeting was held at Shiloh United Methodist Church on March 27, 2008. The Zoning Commission conducted a public hearing on May 6, 2008, and is forwarding a recommendation of approval on 4-0 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 #840 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

A: Surrounding Zoning
B: Ordinance

INTRODUCTION

The applicant is requesting a zone change from Residential Multi-Family-Restricted (RMF-R) to Residential Professional (RP) on Lot 4A, Block 2, Goodman Subdivision, 4th Filing. It is a 67,110 square foot parcel of land on the southeast corner of the intersection of 41st Street West and Avenue C. The surrounding property is zoned RMF-R, RP, Residential 7000 (R-70) and Community Commercial (CC). The property is north of Grand Avenue and west of Shiloh Road.

PROCEDURAL HISTORY

- On March 27, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at Shiloh United Methodist Church.
- On April 4, 2008, a zone change application was submitted to the Planning Division.
- On May 6, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 4-0 vote.
- On May 27, 2008, the City Council will conduct the public hearing for the zone change.
- On June 9, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The applicants are requesting to rezone Lot 4A, Block 2, Goodman Subdivision, 4th Filing. In a letter submitted by the applicants, they state that the land is of more interest to potential developers and buyers as land zoned RP than the current RMF-R zoning. In the letter they also state that this will provide a buffer between the commercial development to the east and the residential development to the west. Off the northwest corner of the subject property, across Avenue C, are duplex homes. Off the northeast corner of the subject property, across Avenue C, is CC zoned vacant land. To the east is Sylvan Nursery, a commercial green house and garden center. To the south is vacant RP zoned land and to the west is vacant RMF-R zoned land.

The applicant held the pre-application meeting with the surrounding neighbors on March 27, 2008, at the Shiloh United Methodist Church. According to the minutes submitted from that meeting, the neighbors in attendance were very positive with no one voicing opposition to the proposed zone change.

Planning staff forwarded a recommendation of approval to the Zoning Commission for this application. The Zoning Commission concurred with this recommendation. The Zoning Commission 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 zone change is generally consistent with the following goals of the Growth Policy:

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

This property is in an area that is developing. The RP zoning will provide a separation between the more intense uses to the east off of Shiloh Road and the to the south from Grand Avenue between existing commercial uses, proposed commercial uses and the proposed residential uses to the west.

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

RP zoning will provide a less intense use of the land that is set between RMF-R zoning to the west and the commercial greenhouse, zoned CC to the east. This will also provide a separation of more intense land uses that are possible on the land farther south across Avenue B that is also zoned CC. The RP zoning, which allows predominantly office use, will provide a positive separation of uses between the existing commercial uses to the east and the proposed multi-family residential uses to the north and west of this property. This area of Billings is currently developing with a mix of uses and creating a commercial node at a major intersection. This zoning will provide a separation from those more intense commercial uses the future residential uses.

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

This property is vacant land with commercial uses to the east and proposed multi-family residential to the west and existing twin homes to the northwest. Zoning requires specific building setbacks and landscaping to provide separation of buildings and uses and open space.

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

The proposed zoning will permit the development of professional offices or single family housing which will provide more choices within the surrounding neighborhood for a more mixed-use neighborhood.

The proposed zone change is generally inconsistent with the following goals of the Growth Policy:

- *Reduced traffic congestion in Billings. (Transportation Goal, page 10)*

The proposed zone change will likely increase traffic in this area of Billings once the site is developed. Any development in this part of Billings will increase traffic because it is vacant land. Grand Avenue and Shiloh Road are Principal Arterial Streets and are expected to handle higher traffic volumes.

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

The new zoning will not decrease the congestion on the streets of this neighborhood. This area of Billings is still developing and the traffic patterns are not yet established. This lot is not on an arterial street and would most likely be in an area that will have lower traffic around it. With what is allowed in RP zoning, traffic will most likely be highest during normal business hours. Traffic is also expected to utilize the surrounding streets to access to Grand Avenue and Shiloh Road to and from this business, which should direct most of the traffic away from the residential neighborhood to the north.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to insure that it is designed to meet safety requirements.

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

The proposed zoning will permit professional office or single family residential uses only. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. RP zoning is restricted to requirements very similar to the requirements of the existing RMF-R zoning and is expected to fit into this mixed use neighborhood. RP zoning requires a front setback of 20 feet, a side setback of 10 feet and allows a zero setback adjacent to other commercial uses or a 15 foot setback when adjacent to residential uses. The maximum height allowed is 34 feet and the lot coverage maximum in RP zoning is 50%. RMF-R zoning requires a front setback of 15 feet, a side setback of 5 feet, and a rear setback of 15 feet. Maximum height allowed is 40 feet and maximum lot coverage is 55%. Given these setback, lot coverage and height differences, RP zoning may provide a good transition in land uses between the commercial uses to the south and east and the multi-family and single-family uses to the north and west in this area of Billings.

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, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land. The maximum height allowed in RP zoning is 34 feet and the lot coverage maximum is 50%. Maximum height allowed in RMF-R zoning is 40 feet and maximum lot coverage is 55%. Either of these zoning districts should prevent overcrowding of land.

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

The proposed zoning is for RP uses, which only allows single family residential development or professional office uses and will not cause an undue concentration of population. If the property develops as an office complex there will not be any increase in population as a result of this zone change. RP zoning only allows single-family residential development with a minimum lot size of 6,000 square feet, a front setback of 15 feet, a side setback of 5 feet, and a rear setback of 15 feet. Maximum height allowed is 40 feet and maximum lot coverage is 55%. The subject property is 67,000 square feet and could accommodate up to 11 single-family lots at 6,000 square feet each if all other regulations were met.

RMF-R zoning allows multi-family development based on the lot size. RMF-R zoning requires a front setback of 15 feet, a side setback of 5 feet, and a rear setback of 15 feet. Maximum height allowed is 40 feet and maximum lot coverage is 55%. The subject property is 67,000 square feet and could accommodate up to 42 units if all other regulations could be met. While either RP or RMF-R zoning could be developed without undue concentration of population, RP zoning does limit the residential densities significantly.

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

- Transportation:* Traffic in this part of Billings is predominantly residential traffic. With a great deal of the surrounding area not developed, traffic patterns have not been well established. Any development on this property, professional or residential, will increase traffic. Traffic is expected to travel north and south from Shiloh Road and Grand Avenue to access this property and not travel north into the residential neighborhood.
- Water and Sewer:* The City will provide water and sewer to the entire property through existing lines.
- Schools and Parks:* The proposed zoning will have no effect on the school system or parks unless it is developed as single family residential.
- 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 allow smaller office buildings to be built on the lots with required setbacks, separations and heights. These restrictions will help ensure that the buildings blend in with future multi-family residential structures to the west, the existing twin homes to the northwest, and the commercial development 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. It is not on a principle arterial street but is tucked into an area that transitions from commercial to residential. The RP zoning can provide office space for professional offices that may be providing services to the residential neighborhood to the north and the future multi-family to the west.

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

The new zoning is expected to conserve the value of the surrounding buildings because the use restrictions do not allow intense commercial uses on the site. It is not known if there RP zoning conserves values more or less than RMF-R zoning. The RP zoning will allow development that will provide a separation between commercial uses to the east off of Shiloh Road and the residential development to the west and north.

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

The proposed zoning will encourage office space in a neighborhood setting that is zoned for multi-family dwellings to the west and the commercial zoning to the north and the east. This zone change to RP will encourage a less intense use next to multi-family and twin homes and provide a separation between the residential and the commercial uses.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

A neighborhood meeting was conducted on March 27, 2008, at the Shiloh United Methodist Church by the applicant and agent. According to the applicants meeting minutes, those that were present were positive about the zone change. Staff has not received any phone calls or letters regarding concerns over the proposed zone change.

The Zoning Commission conducted a public hearing on May 6, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. There were no comments from the public about this application and no discussion by the Zoning Commission.

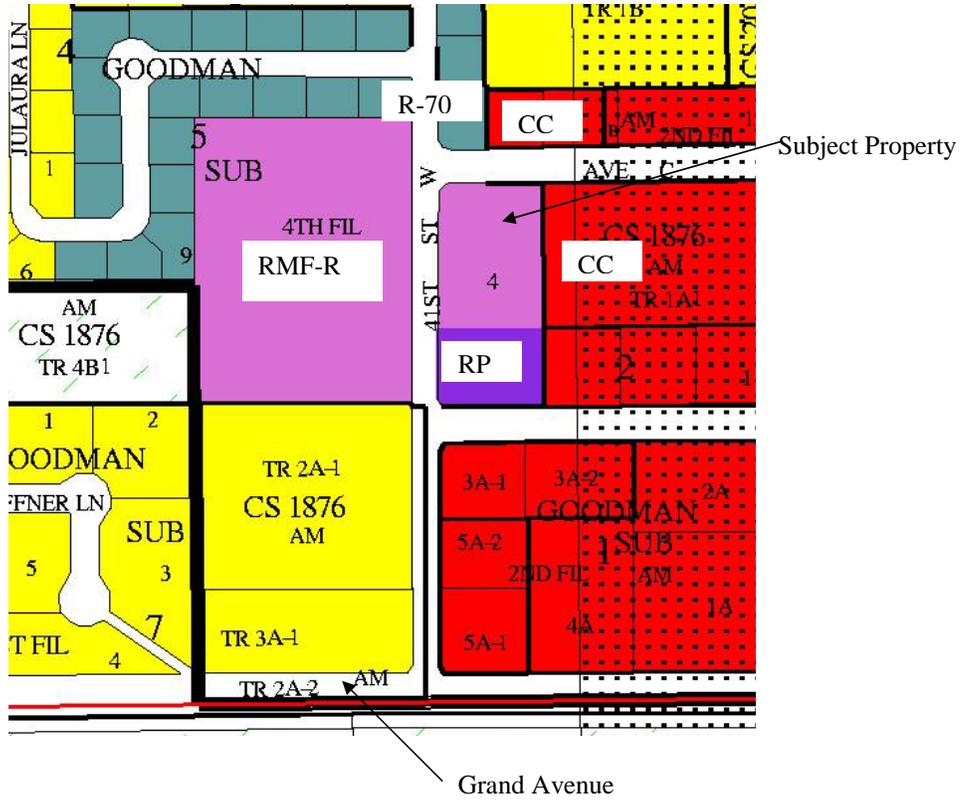
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #840 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

ATTACHMENTS:

- A: Surrounding Zoning
- B: Ordinance

Attachment A
Zone Change #840 – 41st and Avenue C



Attachment B
Zone Change #840

ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
Lot 4A, Block 2, Goodman Subdivision, 4th Filing, containing approximately 1.54 acres

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

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

2. **DESCRIPTION.** A tract of land known as Lot 4A, Block 2, Goodman Subdivision, 4th Filing, containing approximately 1.54 acres and is presently zoned Residential Multi-Family-Restricted and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

City Clerk

ZC #840- 41st Street West and Avenue C

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Zone Change #841 and 1st Reading of Ordinance, 759 Newman Lane
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential 7,000 (R-70) to Entryway General Commercial (EGC) on Lot 1, Block 5, of Pinnick Subdivision, 3rd Filing, less the north 110 feet. The parcel is located on the north east corner of the intersection of Newman Lane and King Avenue East. This site is a 3.043 acre parcel of land. Christ the King Lutheran Church is the owner, and Kristin Omvig and Jared LeFevre from Crowley, Haughey, Hanson, Toole & Dietrich Law Firm are the agents. A pre-application neighborhood meeting was held at Christ the King Lutheran Church on February 25, 2008. The Zoning Commission conducted a public hearing on May 6, 2008, and is forwarding a recommendation of approval on a 4-0 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: The proposed zone change, if approved, could increase the City's tax base when the property is sold and re-developed. Denial of the proposed zone change should have no effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #841 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Surrounding Zoning
- B: Ordinance

INTRODUCTION

The applicant is requesting a zone change from R-70 to EGC on Lot 1, Block 5, of Pinnick Subdivision, 3rd Filing, less the north 110 feet. The parcel is located on the northeast corner of the intersection of Newman Lane and King Avenue East. The applicant, Christ the King Lutheran Church, is proposing the zone change with the anticipation that the land will be more desirable as commercially zoned property than as residentially zoned property for possible future sale. The surrounding property to the north, east and west is zoned for single family or multi-family, and land to the south is zoned EGC and is the site of the proposed Cabela's store. The property is located on a minor arterial street, King Avenue East, and just east of the South Billings Boulevard and the Interstate 90 (I-90) exit.

PROCEDURAL HISTORY

- On February 25, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at the Christ the King Lutheran Church.
- On April 7, 2008, a zone change application was submitted to the Planning Division.
- On May 6, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 4-0 vote.
- On May 27, 2008, the City Council will conduct the public hearing and first reading of the zone change.
- On June 9, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The Foursquare Properties development that includes the site for a new Cabela's store will require road widening and upgrades to existing utilities. This work is underway and will affect the character of the property to the north and east. The most noticeable impact will be the increase in traffic exiting I-90 and traveling east and west on King Avenue East. The subject property is expected to sell land for roadway widening.

The increase in average daily traffic on King Avenue East will decrease the desirability of the subject property for use as a church and for strictly residential development. The frontage on King Avenue East could allow development of commercial uses. Any proposed commercial development of the subject property could create additional traffic on King Avenue East but is more likely to take advantage of the increased traffic created by the 42-acre Foursquare development to the south. The proposed zoning, EGC, is identical to the zoning approved for the Cabela's site to the south.

Entryway zoning requires a greater amount of site improvements and building aesthetics than other commercial zoning such as Community Commercial (CC) or Highway Commercial (HC). Entryway zoning requires larger landscaped bufferyards with a minimum number of trees per 100 lineal foot of bufferyard. Entryway zoning also requires a minimum 10-foot wide bufferyard and a 6-foot tall solid fence along any property line adjacent to residential property.

EGC zoning also allows more intense uses than other entryway zoning such as Entryway Light Commercial (ELC). The purpose of the EGC zone is to provide a specialized classification for hotels, restaurants and other tourist-related facilities near major highway interchanges. EGC zoning would allow automobile sales, rental, and service stations, broadcasting studios (radio and television), car washes, commercial recreation uses, hotels/motels, laundry and dry cleaning, recreational vehicle sales and service, retail nurseries, signs, indoor theaters, tire sales, and wholesale uses not to exceed 3,000 square feet gross floor area. With a special review, there are additional uses that could be allowed with EGC zoning that include campgrounds, commercial recreation uses such as go-carts, rodeo, roping arenas, gravel and/or sand extraction, mixed use development which include residential uses, restaurants with alcohol sales, truck stops, veterinary clinics and wholesale uses not to exceed 10,000 square feet.

ELC does not allow the above-mentioned uses with the exception of the following with special review approval: car washes, commercial recreation uses, gravel and/or sand extraction, mixed-use development, and restaurants with alcohol sales. ELC zoning is intended for less intense neighborhood uses with potentially lower impacts than EGC zoning.

In the South Billings Boulevard Interchange Master Plan adopted in 2002, there are four objectives outlined for the area off of the I-90 interchange. The purpose of the South Billings Boulevard Interchange Master Plan is to provide interstate related goods and services to the traveler and to provide goods and services on a regional and community level. It is also the intent of this district to preserve and maintain the aesthetic qualities of the Yellowstone River, Riverfront Park and the surrounding area by creating land development practices to compliment the region. The first of the four objectives is to encourage the development of large, well-planned projects designed to serve the area over a long period of time, as opposed to small, hastily conceived projects that do little to add to the overall appearance or economic vitality of the area. The second is to discourage the conversion of existing houses into small piecemeal commercial establishments. The third is to limit the number of drive approaches along major arterial streets in order to preserve the functional integrity that such arterial systems are intended to provide. The fourth is to present a favorable and attractive image of Billings from I-90, King Avenue and South Billings Boulevard.

The applicant held the pre-application meeting with the surrounding neighbors on February 25, 2008, at the Christ the King Lutheran Church at 759 Newman Lane. Approximately 52 people signed in at the meeting. According to the minutes submitted from that meeting, the neighbors had several concerns with the proposed zone change. Some of the concerns from the surrounding neighbors were the preservation of their property values, the increase in traffic in the area, noise, height of buildings and having the back wall of a building to look at across the alley.

Planning staff forwarded a recommendation of denial to the Zoning Commission for this application. The Zoning Commission conducted a public hearing on May 6, 2008 and is forwarding a recommendation of approval to the City Council. The Zoning Commission's recommendations are made and discussed in the 12 criteria for zone changes 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 zone change is generally consistent with the following goals of the Growth Policy:

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

The proposed zoning will permit commercial development along the north side of King Avenue East across the street from commercial development, which will provide more business choices within the surrounding neighborhood. Mixed use development with residential is also allowed in EGC zoning by special review approval.

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

The proposed zoning will encourage new businesses along the north side of King Avenue East across the street from another commercial development, which will expand the commercial development along King Avenue East.

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

The proposed zone change will allow more businesses along King Avenue East that may increase traffic in this area of Billings. However, this area will be experiencing a substantial increase in traffic from the commercial development that is already proposed for the area, the Foursquare Properties development on the south side of King Avenue East. It is likely any new businesses would take advantage of the increased traffic from the Foursquare Property development but not create new vehicle trips.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. All buildings built within the city of Billings must be approved by the Billings Building Division to make certain that they meet current fire code requirements. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to ensure that it is designed to meet all site development requirements.

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

The proposed zoning will permit commercial uses. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions within the proposed EGC zone. In addition, the EGC zone has landscape requirements and minimum setbacks to enhance the look of the site and make it a positive addition. The development of the property may bring some neighborhood type services to the area including restaurants, medical services and banking services.

5. *Will the new zoning provide adequate light and air?*
The proposed zoning requires very specific setbacks from street frontage and setbacks and separation from residential properties. These setbacks are designed to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*
The proposed zoning to EGC will allow building heights of 40 feet and lot coverage of 50%. Standard residential zoning building heights are 34 feet maximum with 30% lot coverage maximum. These requirements are designed to prevent overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*
The proposed zoning of EGC is a commercial zoning and therefore, does not increase the population in this area. Mixed use development with residential uses is allowed in AGC by special review. Mixed uses with residential dwelling must meet either the R-96 or RMF-R zoning requirements.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
 - Transportation:* This area of Billings will experience high volumes of traffic on the streets. King Avenue East is being widened to accommodate high volumes of traffic for the Foursquare Property development south of King Avenue East. The access driveways to the property will need to be approved by the City Traffic Engineering prior to construction. Traffic will have to be assessed at the time of a proposed development. King Avenue East should accommodate any new traffic from the site.
 - Water and Sewer:* The City will provide water and sewer to the property through existing lines.
 - Schools and Parks:* The proposed zoning is not expected to be for residential development therefore, there is no anticipated effect on the school system or parks.
 - Fire and Police:* The subject property is currently served by the City of Billings fire and police departments.

9. *Does the new zoning give reasonable consideration to the character of the district?*
King Avenue East from South Billings Boulevard to Orchard Lane will be experiencing change from residential and agricultural uses to commercial uses. The EGC zoning requested will mirror the Foursquare property. The adjacent residential neighborhood to the north and east should be protected by the required screening and buffering regulations in the EGC zoning district. EGC zoning does allow mixed use developments with residential uses by special review. A mixed use development also could make the development fit with the surrounding districts.

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. The proposed commercial development will provide the surrounding citizens with a shopping area within their neighborhood. The property has street frontage on an arterial street to accommodate commercial traffic.

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

The increased commercial development along the south side of King Avenue East will affect the character of the residential uses to the north. The new zoning may provide a buffer from King Avenue East and the intense commercial traffic to the south.

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

The proposed zoning will encourage commercial development on a busy street where single family residences may not be appropriate or desirable.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

A neighborhood meeting was conducted on February 25, 2008, at the Christ the King Lutheran Church at 759 Newman Lane. Approximately 52 people signed the sign in sheet. There was a great deal of concern for what effect there would be property values, traffic on the lot right next to residential, lights, and what type of uses there would be. Staff has not received any phone calls or letters regarding the proposed zone change application.

The Zoning Commission conducted a public hearing on May 6, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. The Zoning Commission believes the proposed zone change was the best and highest use of the property and that change in the character of this portion of King Avenue East has been approved by the City Council through the zone change for the Foursquare property.

Jared LeFevre, agent for Christ the King Lutheran Church, testified that he respectfully disagreed with the Planning Staff recommendation of denial. He stated that this site is no longer logical for its current use considering the proposed use across the street. Mr. LeFevre stated that any traffic generated by this development will be negligible in comparison to the traffic generated by Cabela's. He stated the more intense uses that are possible on EGC zoned lots would not occur on the church's property due to its small size and access limitations. He testified that the more likely use would be a bank, bakery, a restaurant, a dentist or doctor. He also stated this zone change was consistent with the zoning on the Cabela's lot. Mr. LeFevre testified the zone change is in harmony with the future land uses in the area. The widening of King Avenue East to 5-lanes

already anticipates the increase in traffic. He testified that compared to the 40-acre commercial development, this 3-acre proposed zone change is minimal. The re-development of the church's property could bring neighborhood services to the area. The staff report noted there was no development plan for the property. Mr. LeFevre stated a development plan is not essential to the discussion of this zone change request and the church does not intend to move from the property in the near future. The church would like to remain on the site for as long as possible. The zone change will allow the church to exercise the option to sell at some future date for a use compatible with the future development south of King Avenue East.

Mike Walker, NAI Business Properties and agent for the applicant, testified in favor of the zone change stating that some of the more intense uses allowed in EGC zoning would not fit on this site. This land will be premium property and will not be something just anyone can afford. New or used cars, theaters and auto repair would not fit on this 3 acre parcel. He testified it is more likely the site could develop as three separate buildings with multiple tenants in each building. The tenants he believes are most likely for this site would be restaurants, banking, or medical and dental offices. He testified the traffic impact would be small because this is a neighborhood use. The buildings that go here will be for neighborhood services.

Eric Gabriel, a member of Christ the King Lutheran Church, testified in favor of the zone change. He is a member of Christ the King Lutheran Church's zoning committee. When they first learned that King Avenue East was going to be widened they sought legal council for what options are available to them. The legal council told them to do a zone change. This area is going to become commercial anyway and this is the best option to them. He testified this is the most appropriate zone given the development of Cabela's across the street.

J.W. Westman, president of the Church council and member of Christ the King Lutheran Church, testified in favor of the zone change. The Foursquare Development spurred the church to consider its zoning options and alternative for future church expansion to another location. The widening of the road has taken land from the church's property and the new zoning would provide flexibility to sell the land if necessary. Commissioner Thomas Grimm asked Mr. Westman if he was aware that this zone change would make the church building a non-conforming use. Mr. Westman answered this zone change will give them more options if they have to sell property. He said the church building is not amenable to expansion at this location due to building code issues.

Randy Klitemier, member of Christ the King Lutheran Church, spoke in favor of the zone change stating that the change in the neighborhood is happening to us. He testified the church has no choice but to re-zone the property. He stated it is unrealistic for the church to stay at this location.

Ryan Wendt, the pastor for the Christ the King Lutheran Church, testified in favor of the zone change. He thanked the staff for the work that was done on the zone change application but felt the recommendation for denial was wrong. He stated the zone change will change the church to a nonconforming use and they will not be able to add on to the church under the new regulations.

The church could re-build on the property if the structure was damaged by less than 50%. The property will become available for construction of neighborhood services that do not exist in this part of Billings. Pastor Wendt stated that everyone now must travel to the west end for services and many people would like to stay in the area. The City has already installed two 6-inch water mains to the edge of their property. These are not residential sized water lines. Traffic will not be an issue with this zone change since the City is already widening King Avenue East to handle the traffic. When the church sought legal council the lawyers told the church that EGC zoning would be the best zoning for this site.

Dan Curran, general manager of MRL Equipment at 5379 Southgate Drive, testified in favor of the zone change. He would like to see more neighborhood services in the area. His staff at MRL would appreciate services close by such as banks and restaurants other than fast food.

Lyle Hedeem, a member of Christ the King Lutheran Church, stated he was in favor of this zone change. He testified that most of the north south streets such as Calhoun, Jackson, Orchard, and Newman, will not be experiencing any increase in traffic because everyone from Billings will use South Billings Boulevard to get to Cabela's and the tourists coming to Cabela's will all be coming off the interstate. Those streets have all been widened and have traffic controls. Traffic coming to Cabela's will get off the interstate and then straight back on the interstate.

Al Koelzer, NAI Business Properties, testified in favor of the zone change. Mr. Koelzer stated this is the right thing to do for these property owners north of Cabela's. He stated the Planning Staff conclusions are not supported by facts. He urged the Zoning Commission to consider all the facts and come to its own conclusion on the zone change request. He stated the Planning Staff's conclusion that this would be piece meal development. He stated there will not be any intense uses but uses such as banks, beauty salons, and maybe dental offices are expected. He testified the property value would be too high to support intense commercial uses such as car lots and theaters. He stated that when the city rezoned the south side of King Avenue East it cast the die for the surrounding neighborhood.

Kayla Prenzler, a surrounding property owner, testified in favor of the zone change. She stated the zone change will bring good things to the neighborhood.

Mary Chambers of 4610 Murphy Avenue testified against the zone change. She stated that she is a single woman on a fixed income and this zone change will hurt the neighborhood and her property value. She stated the people along Murphy were not happy and all opposed to the zone change. She would like to see residential stay in the area or the land used for a park space. She testified the current closure of King Avenue East has re-routed all the traffic through the neighborhood. This could continue if the church property were developed for commercial uses. She asked the Zoning Commission to deny the zone change. She testified she has lived at her current address for 32 years and doesn't want the change. She testified that the church pastor told the people at the neighborhood meeting the reason for the zone change was to get more money out of the city for the land.

Trent Godfrey of 737 South billings Boulevard testified against the zone change. He stated that if this zone change is approved it is just a matter of time before all the people in the trailer park, a total of 51 residences, will be told to move. He stated there is all residential around this parcel except for the Cabela's site across King Avenue East. He testified the EGC would not be a good fit for this site. The existing entryway zoning on the corner of Southgate Village has not generated any development and zoning would not generate any new development either. He testified that Mr. Rennich, the owner between the church property and Mr. Medvec's property to the east, is not going anywhere and his property is still zoned residential. He stated the proposed zone change does not support the health, safety or welfare of the area.

Jared LeFevre, agent for Christ the King Lutheran Church, provided rebuttal testimony. He stated it is not realistic nor the responsibility of the church to provide park land as requested. Current traffic through the neighborhood is not a valid concern. This situation is only temporary while the street is under construction. The price paid by the City for the right-of-land is current fair market price and is not based on the current zoning or use. The requirements for landscape and fences will buffer the residential uses to the north and east. He also stated this is a natural expansion of the development across King Avenue East.

Chairman Leonard Dailey Jr., asked whether this zone change would provide a safe and healthy environment. Mr. LeFevre stated they would have to meet all code for this zoning, which will provide a safe and healthy environment. Mr. LeFevre stated the additional tax revenue from a commercial development would directly benefit the neighborhood through projects developed by the tax increment finance district.

The public hearing was closed and a motion made by Commissioner Workman and seconded by Commission Grimm to approve the zone change. Commissioner Workman stated this zone change would be the highest and best use of the land and development was going to happen anyway. He stated the character of the area is changing and the adjacent zoning and uses would not be appropriate in the area any longer. The neighborhood will be affected by the Cabela's development regardless of the zoning of the property. The commission voted 4-0 to recommend approval of the zone change.

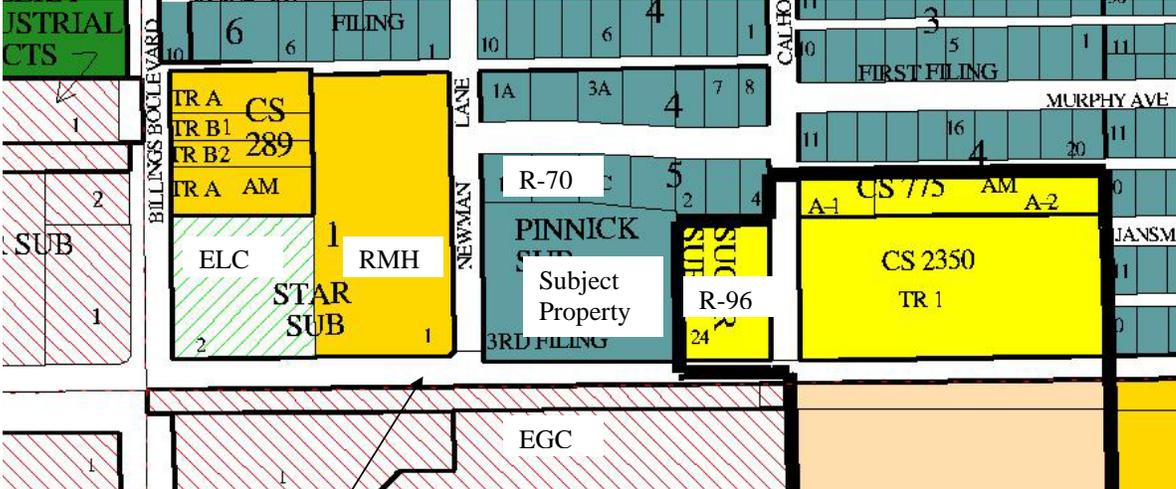
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #841 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

ATTACHMENTS:

- A: Surrounding Zoning
- B: Ordinance

Attachment A
Zone Change #841 – 759 Newman Lane



King Avenue East

Attachment B
Zone Change #841

ORDINANCE NO. 08-_____
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
Lot 1, Block 5, of Pinnick Subdivision, 3rd Filing, less the north
110 feet, containing approximately 3.043 acres

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

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

2. **DESCRIPTION.** A tract of land known as Lot 1, Block 5, of Pinnick Subdivision, 3rd Filing, less the north 110 feet, containing approximately 3.043 acres and is presently zoned Residential 7000 and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

City Clerk

ZC #841- 759 Newman Lane

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Zone Change #843, Public Hearing and 1st Reading of Ordinance – Pre-application Neighborhood Meeting Location Amending Section 27-1502(b)

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: Section 27-1502 of the Unified Zoning Regulations regulates how amendments to the official zoning map are processed and how surrounding property owners may be notified. On July 9, 2007, the City Council adopted an amendment to this section to require pre-application neighborhood meetings. The amendment did not specify a maximum distance from a proposed zone change where the meeting should occur. Several applicants in the past have conducted pre-application meetings miles away from the subject property. On December 12, 2007, the City Council initiated an amendment to require a pre-application neighborhood meeting be held within a set distance from a proposed zone change. The amendment will require this pre-application meeting within 2-radius miles of the subject property. Most property within the city limits has at least one location within a 2-mile radius that is suitable for a pre-application meeting. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on May 6, 2008, and voted 4-0 to recommend approval to the City Council.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on May 6, 2008. 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 amendment.

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

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #843.

Approved by: _____ **City Administrator** _____ **City Attorney**

ATTACHMENTS:

A: Ordinance

B: Example of 2-mile radius meeting area for 205 Broadwater Avenue

INTRODUCTION

On December 12, 2007, the City Council initiated this amendment to the pre-application meeting requirements. Several applicants held pre-application meetings in West Billings for proposed zone changes in Billings Heights. The intent of the regulation approved in 2007 was to provide local residents within 300 feet of a proposed zone change the opportunity to discuss issues outside of a formal public hearing process. The Planning Division developed the amendment based on the goals and policies outlined in the 2003 Growth Policy. One of the goals of the policy is to make land use decisions that are predictable and consistent with neighborhood character and land use patterns. These goals also list objectives that include reducing conflicts between neighbors, maintaining a high quality of life, preserving neighborhood integrity and empowering neighborhood groups. This amendment will further clarify the intent of the pre-application neighborhood meeting.

PROCEDURAL HISTORY

- On July 9, 2007, the City Council approved the zone change amendment to require a pre-application neighborhood meeting for all proposed zone changes.
- On December 12, 2007, the City Council initiated this amendment to add a maximum distance from a subject property.
- On May 6, 2008, the City Zoning Commission conducted the public hearing.
- The City Council will hold a public hearing and 1st reading of the ordinance on May 27, 2008, and make a decision on the change to impose a maximum 2-mile radius from the subject property.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on June 9, 2008.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the changes to require pre-application meetings be conducted within a 2-mile radius of the subject property.

STAKEHOLDERS

The Zoning Commission held a public hearing on May 6, 2008, on the proposed changes. Planning Staff explained the proposed changes to the Zoning Commission. Trent Godfrey of 737 South Billings Boulevard testified in favor of the amendment. No one testified in opposition to the amendment.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #843.

ATTACHMENTS:

- A: Ordinance
- B: Example of 2-mile radius meeting area for 205 Broadwater Avenue

ATTACHMENT A
ORDINANCE NO. 08-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-1502(b); AMENDMENTS TO CHAPTER, APPLICATIONS FOR MAP AMENDMENTS, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

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

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

Section 3. That the Billings, Montana City Code be amended by revising Section 27-1502(b) to add new language to read as follows:

SEC. 27-1502. AMENDMENTS TO CHAPTER.

(b) *Applications for map amendments.* Unless initiated by the city council or board of planning, all applications for official map amendments must be submitted by the owner of such property, the contract purchaser, or the authorized agent of the owner. An application for an amendment affecting the same property shall not be submitted more often than once every twelve (12) months. Each application to amend the official map shall be filed with the zoning coordinator, and each application shall be submitted under the following conditions:

- (1) The applicant or his/her authorized agent shall submit the following pre-application information to the planning department to begin the zone change process:
 - a. Legal description of the subject parcel(s), along with a map showing the dimensions, acreage and location of the parcel(s);

- b. The names and addresses of the owner(s) and contract purchasers, if any, of the subject property and their agent(s), if any, along with the recorded property owner's signature;
- c. A zone change plan which shall consist of the following:
 - i. A written description of the proposed zone change including the area in square footage or acres to be included in the zone change.
 - ii. If there are multiple zone changes proposed, the location and area of each specific new zoning district.

(2) The planning department shall provide a list of surrounding property owners within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s) to the applicant or his/her agent based on the submitted information.

(3) The applicant or his/her agent shall conduct a pre-application neighborhood meeting to explain the proposed new zoning and receive comment from the surrounding property owners. The applicant or his/her agent shall notify in writing the persons on the surrounding property owner list as provided in subsection (2) and the planning department of the date, time and location of the pre-application neighborhood meeting. **The pre-application neighborhood meeting shall be conducted within 2 radius miles of the subject parcel.** The written notification shall be mailed at least seven (7) calendar days prior to the scheduled meeting. The written notification shall include all the materials noted in subsection 27-1502 (b) 1. The pre-application neighborhood meeting shall be conducted at least seven (7) calendar days prior to the submittal of the proposed zone change to the planning department. The applicant shall obtain a roster of the names of the persons that attend the pre-application neighborhood meeting and make a record of the minutes of the meeting.

- (4) Once the pre-application neighborhood meeting has been conducted the applicant or his/her agent may submit a zone change application and it shall include but not be limited to the following information:
- a. A legal description of the tract(s) proposed to be rezoned;
 - b. A map showing the dimensions, acreage and location of the tract(s) being changed;
 - c. The names and addresses of the owner(s) of the land and their agents, if any, along with the recorded property owner's signature;
 - d. A certified list of the names, addresses and legal descriptions of the owners of property within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s);

- e. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list; and
 - f. Payment of all applicable fees.
 - g. A signed statement affirming the pre-application neighborhood meeting was conducted in conformance with the requirements of Section 27-1502(b) 3, and the zone change application is based on material presented at the meeting. The signed statement shall include a copy of the meeting notice, any written materials provided to the surrounding property owners, a brief synopsis of the meeting results, a roster of the persons attending the meeting and audio or written minutes of the meeting.
- (5) An application for amendment to the official map shall be submitted at least twenty (20) days prior to the date of the public hearing before the city zoning commission.
- (6) An application for a zone change may be withdrawn or amended as follows:

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

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

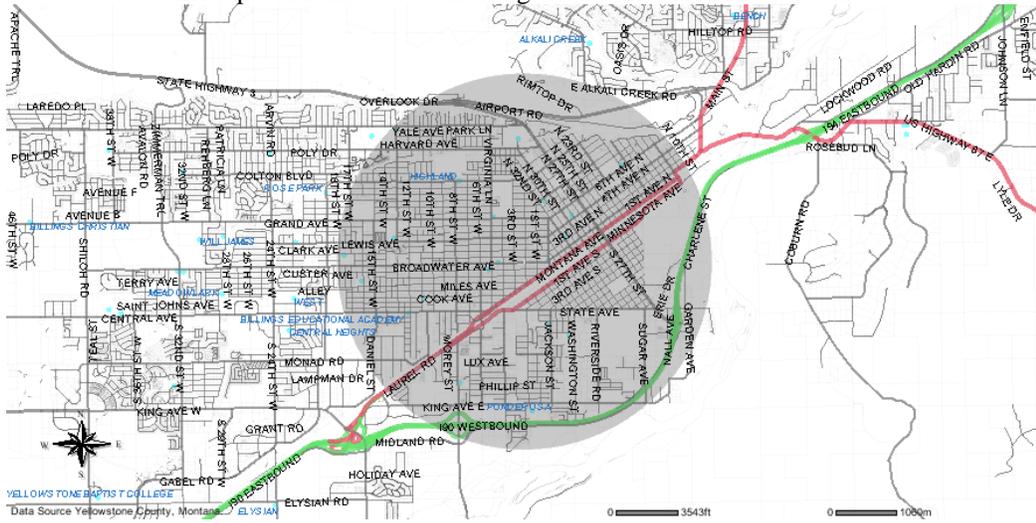
BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Cari Martin, City Clerk

ATTACHMENT B

Example of 2-mile radius meeting area for 205 Broadwater Avenue



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Public Hearing for Special Review #857
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 drive-through window for a proposed new CVS Drug Store in a Community Commercial (CC) zone adjacent to Residential Multi-Family (RMF) and Residential 6,000 (R-60) zoning districts, on Lots 5 – 10, Block 4 of Central Avenue Addition. The property is addressed as 615 and 617 Central Avenue and is the site of the Overpass Motel. Greg and Becky Pekovich are the owners and Velmeir Companies and Kevin Heaney of the Crowley Law Firm are the agents. The Zoning Commission held a public hearing on this request on May 6, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #857 on a 4-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

This is a request for a special review to allow a drive-through window for a new CVS Drug Store in a CC zone adjacent to single family and multi-family dwellings along 6th Street West and St John's Avenue to the north. The property is located at the northwest corner of the intersection of 6th Street West and Central Avenue and is currently developed as the Overpass Motel. Greg and Becky Pekovich are the current owners and CVS Caremark is the prospective owner. The Overpass Motel contains approximately 25 units built between 1948 and 1957. The property is addressed as 615 & 617 Central Avenue at the intersection of Central Avenue, a principal arterial and 6th Street West, a minor arterial street.

PROCEDURAL HISTORY

- A special review application to allow a drive-through service was received on March 3, 2008.
- The City Zoning Commission held a public hearing on May 6, 2008, and is forwarding a recommendation of conditional approval on a 4-0 vote.
- The City Council will conduct a public hearing and consider this application on May 27, 2008.

BACKGROUND

The applicant proposes to demolish all of the existing buildings and construct a new building for a CVS Drug Store with a drive through service window on the northwest corner of the new building (See Attachment C). A Special Review must be approved to have the drive-through use on the commercially zoned property adjacent to the residential property to the north. The applicant intends to fully re-develop the east portion of the property including new screening, parking lot pavement and landscaping. The drive through service window will be located on the northwest corner of the new building so they are not directly adjacent to the residences to the north.

This property is surrounded by high-density retail, commercial and light industrial development. In addition, to the north are several apartment buildings as well as single family homes. Central Avenue and 6th Street West are classified as arterial streets and are designed to carry high volumes of traffic through this area of the City. The 2008 traffic count for Central Avenue at this location is approximately 17,000 vehicle trips per day and the count on 6th Street West is approximately 7,000 vehicle trips per day.

The applicant plans to completely re-develop the site. The Engineering Division staff and Planning Division staff have worked extensively with the applicant's agents to prepare a workable site plan that meets the city's regulations and the CVS development plan. The site will have one drive approach on Central Avenue about 350 feet west of the intersection. A second drive approach is proposed for 6th Street West, opposite the Albertson's drive approach and 150 feet north of the intersection. Both will be full access drive approaches. The north property line will have a 6 foot sight obscuring fence along the alley except where an access is proposed for delivery trucks and employee parking. The site will contain the required landscaping and the required number of parking spaces for the proposed 13,225 square foot building.

The Planning Division reviewed this application with other city departments and recommended conditional approval. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within a zoning districts that allows pharmacies and general merchandise retail stores and where drive through services adjacent to residential uses might be allowed. The form of the application is correct and the submitted site plan appears to be in conformance with site development and zoning regulations for commercial uses.

The application also conforms to the second and third criteria. The zoning regulations adopted by the City Council have the purpose of promoting health, safety and general welfare. The proposed site plan will meet these objectives. In addition, the Zoning Commission is recommending conditions of approval to minimize and otherwise mitigate any adverse impact the development may pose to the surrounding property.

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 BMCC and the Growth Policy.
This application is consistent with the purposes of Chapter 27- Unified Zoning Regulations and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood. The proposed development has arterial street frontage and is an appropriate redevelopment of this property.
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 the drive through service is appropriate and conditions of approval are recommended.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

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.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #857 on a 4-0 vote.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lots 5 through 10 of Block 4, Central Avenue Addition as shown on the site plans submitted with this application.
2. Any expansion of the proposed new CVS building greater than 10 percent will require an additional special review approval as per Unified Zoning Regulation Section 27-613(c).
3. Any new lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. The building location, landscaped areas, drive approaches, parking lot layout, drive through location and site circulation shall be installed as shown on the site plans faxed to the Planning Division on April 4, 2008, including the dumpster enclosure and the 6-foot sight-obscuring fence along the north property boundary.
5. There shall be no outdoor public address system or outside announcement system of any kind. The drive through may have an outdoor private address system as standard for all drive through services.
6. Demolition of the existing structures on the property will provide for site security, debris and trash containment, dust control during and after structure demolition, and no demolition work shall occur prior to 8 am or after 8 pm daily. A demolition permit from the Building Division is required.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations 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 level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Division points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

A public hearing before the City Zoning Commission was held on May 6, 2008. Staff forwarded a recommendation of conditional approval. Kevin Heaney of the Crowley Law Firm appeared

before the Zoning Commission and explained the proposed development. No other persons testified in favor or in opposition to the application.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission moved to recommend conditional approval of the special review request and voted 4-0 to forward this recommendation to the City Council.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

Consistency with plans and policies is discussed in the Alternatives Analysis section above.

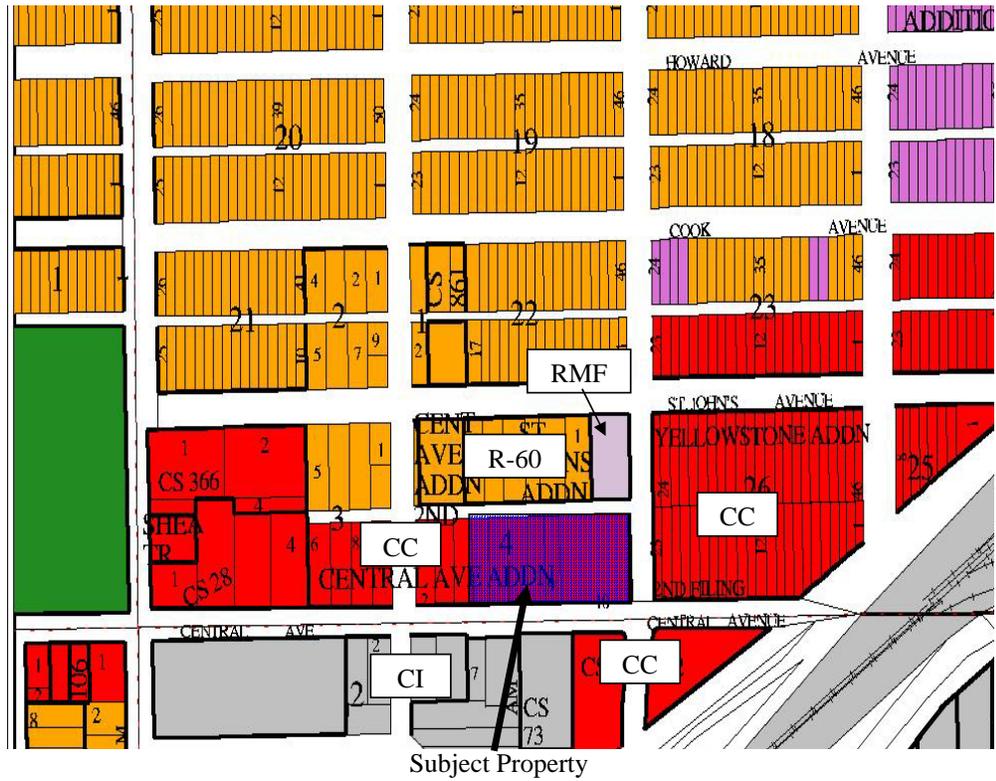
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #857 on a 4-0 vote.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

ATTACHMENT A
Zoning Map – Special Review #857



ATTACHMENT B
Site photos –Special Review #857

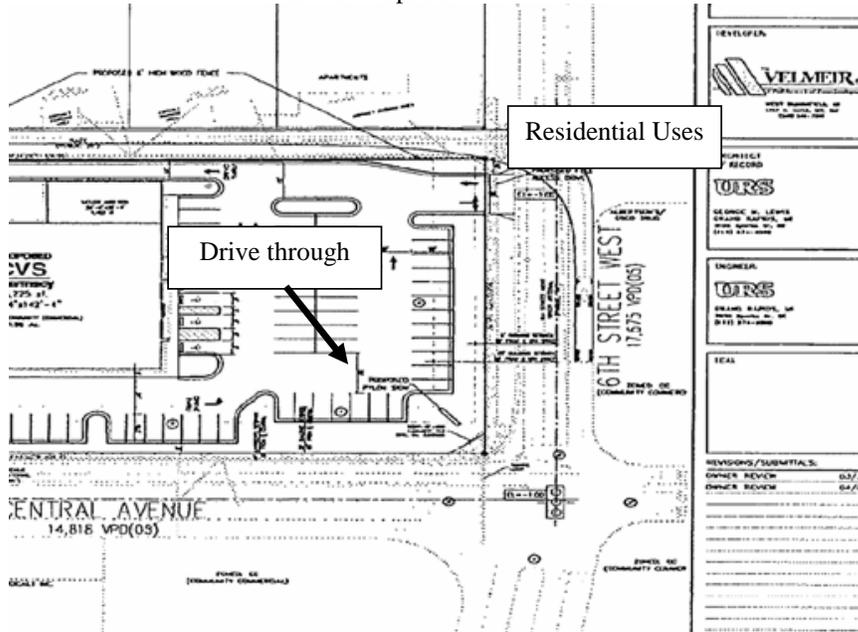


Subject Property 615/617 Central Avenue – The Overpass Motel



ATTACHMENT C

Site Plan – Special Review #857



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday May 27, 2008

TITLE: New Model Cable TV Franchise Ordinance-Continuation of First Reading and Public Hearing from the April 28, 2008, Council Meeting.

DEPARTMENT: City Attorney/City Administrator

PRESENTED BY: Brent Brooks, City Attorney and Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: With substantial advances in telecommunications law and technology, City staff is proposing that a new, model cable system franchise ordinance be enacted in addition to specific individual cable TV franchise agreements with cable TV providers. This new, general ordinance would establish policies of the Mayor and City Council for granting specific cable TV franchises together with procedures, terms and conditions for granting, modifying, renewing, transferring and regulating where law authorizes such, cable TV franchises. This is a new ordinance and does not repeal an existing ordinance. The first Reading and Public hearing on this ordinance was presented to the Council during the April 28, 2008, Council meeting and was continued until May 27, 2008, meeting at the request of staff to allow final changes to it that were related to the companion franchise ordinance with Bresnan Communications, item 11(b) on the May 27, 2008 Agenda. Minor changes have been made to the attached ordinance since the Council's April 28, 2008, meeting as noted by underlines and strikethroughs.

ALTERNATIVES ANALYZED: Staff has analyzed alternatives available to the Mayor and City Council concerning this proposed general cable TV franchise ordinance applicable to current and future cable system providers wishing to enter the City of Billings cable TV market. Those alternatives are as follows:

1. Consider and approve on first and second reading the attached, proposed model Cable System Franchise.
2. Disapprove the model Cable System Franchise and rely upon case by case, specific negotiation with cable system TV providers wishing to enter the Billings market.

FINANCIAL IMPACT: There is no direct financial impact to the City by approving or disapproving this Cable System Franchise Ordinance. However, enacting the standards, policies

and procedures contained within the proposed attached ordinance would facilitate a more orderly and consistent negotiation, renegotiation or transfer of cable system franchises to existing or new competitors entering such a market.

RECOMMENDATION

Staff recommends that Council consider and adopt the attached Cable System Franchise Ordinance as modified since the April 28, 2008, Council meeting, establishing general policies and procedures applicable to all Cable TV System operators providing Cable TV service to City of Billings.

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

ATTACHMENT

A. Cable System Franchise Model Ordinance as modified since April 28, 2008.

INTRODUCTION Numerous advances in the telecommunications law and technology have caused City staff to more closely analyze the need for a general ordinance concerning cable TV system operation standards. With the assistance of the Miller & Van Eaton Law Firm in Washington, D.C., staff has identified several areas as noted in the attached proposed ordinance which would more specifically identify, define and quantify cable TV system operational standards for all providers entering the City of Billings market.

PROCEDURAL HISTORY In the past, the Mayor and City Council have individually negotiated and contracted with cable TV system providers in order to bring cable TV service to the City of Billings. Currently one company, Bresnan Communications, provides cable TV service to the City. The franchise under which Bresnan Communications has been operating is now expiring and an individual franchise agreement by way of an ordinance has been submitted to the Mayor and Council for approval, separate from this ordinance.

During the negotiation process with Bresnan Communications to renew its franchise agreement ordinance with the City, it also became apparent that certain general standards for operating any cable TV system within the City of Billings were appropriate and needed. Until now, no such general cable system regulations on the local level have been considered or adopted by the City Council.

ALTERNATIVES ANALYSIS

Advantages of New Ordinance The proposed ordinance more specifically defines the terms and policies upon which the Mayor and City Council may grant an individual franchise to one or more competing cable TV system operators. This serves as a general blueprint for individual cable system TV operators to negotiate with the City and enter the Billings city market and provides useful information to potential cable TV system operators as to the important issues for the Mayor and City Council when considering any cable TV system franchise.

The proposed ordinance is much more specific and comprehensive as to standards for new, renewed or transferred cable TV system franchises, makes updated references to federal telecommunications laws, provides certain minimum standards for cable TV system construction, location of cable TV system equipment, repairs of such and coordination of construction with the City.

The proposed ordinance also concerns providing service to City building in the franchise area as well as establishing minimum customer service standards, technical standards and general oversight as to the City's right to inspect books and records of any cable TV system operator and the authority to require cable TV system operators to repair reports as the City reasonably deems necessary to monitor or enforce compliance with the terms of the proposed ordinance.

The proposed ordinance also contains updated and revised provisions concerning insurance and indemnification from the cable TV system franchise operator, performance bonds and revocation of the franchise under certain conditions.

Disadvantage to Enacting Ordinance There is no disadvantage to enacting the proposed general ordinance applicable to all cable TV system operators providing service within the City of Billings. There would be some additional work created on the part of City staff to ensure the standards and policies of the new ordinance were met by all cable TV system operators, however, most of these standards are able to be monitored without significant additional effort.

STAKEHOLDERS The citizens of the City are stakeholders in that providing this new model ordinance would ultimately give the City authority to provide the highest level of customer service to all subscribers. An additional stakeholder would be any cable TV system operator currently or in the future contemplating operations within the City. This proposed ordinance would more clearly identify the expectations and uniform standards applicable to all competing system operators.

RECOMMENDATION

Staff recommends that Council adopt the attached model Cable System Franchise Ordinance as modified since the April 28, 2008, Council meeting upon first and second readings.

ATTACHMENT

- A. Cable System Franchise Model Ordinance as modified since April 28, 2008.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY ADDING A NEW ARTICLE 7-900-1; PROVIDING PROCEDURES, POLICIES, TERMS, AND CONDITIONS FOR GRANTING, MODIFYING, RENEWING, TRANSFERRING, AND REGULATING CABLE FRANCHISES; AND, PROVIDING FOR FEES AND ENFORCEMENT.

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

Section 1. That the Billings, Montana, City Code be amended by adding a new Article 7-900-1, to read as follows:

**“ARTICLE 7-900-1
CABLE SYSTEM FRANCHISE**

SECTION 7-901.1 PURPOSE

This Article is adopted for the purpose of establishing the procedures, policies, terms, and conditions for granting, modifying, renewing, transferring, and regulating Cable Franchises.

SECTION 7-901.2 DEFINITIONS

For the purpose of this Article, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Any word or phrase not defined in this Section shall have the same meaning as in 47 U.S.C. § 521 et seq. (“Cable Act”) and associated Federal Communications Commission (“FCC”) rules and regulations. Otherwise, words shall have their ordinary and common meaning.

Applicant” shall mean any Person submitting an application within the meaning of this Article; in the case of a Transfer, the Applicant is the transferee. Formatted: Bullets and Numbering

“Cable System” shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming, or Video Programming Service, regardless of the transmission technology used and which is provided to multiple Subscribers within the Service Area. Such term specifically includes an open video Formatted: Bullets and Numbering

system, as that term is used in the Cable Act, and a system that delivers video using Internet Protocols (“IP Video”), but such term does not include:

(a) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) a facility that serves subscribers without using any public way;

(c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541 (c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

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~~(d) any facilities of any electric utility used solely for operating its electric utility systems.~~

Deleted: (d) an open video system that complies with 47 U.S.C. § 653.

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(e) a facility that delivers Video Programming solely via the public Internet.

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The term includes wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary to the operation of the Cable System to provide cable services or video programming services.

“Franchise” means the authorization Franchised by the City to a Cable System operator giving the operator the non-exclusive right to occupy, place or use facilities upon, across, beneath or over any public Right-of-Way in the City to provide cable service or video programming service within a Franchise Area. The term Cable Franchise does not include:

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(a). Any other permit or authorization required by applicable law for transacting and maintaining a business within the City;

(b). Any other permit, agreement, or authorization required for using public way or other public property including, by way of example and not limitation, street cut permits, or conduit or pole leases.

“Construction,” “operation,” “repair,” and similar formulations of those terms, means any actions associated with servicing the Cable System such as installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation, tree trimming, and management of the same. Reference to these terms should be construed as broadly as permitted under

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applicable law.

“Franchise Area” means the area of the City that a Grantee is authorized to serve by its Cable Franchise. ← --- Formatted: Bullets and Numbering

“Grantee” means any Person holding a Cable Franchise. ← --- Formatted: Bullets and Numbering

“Gross Revenue” means revenue derived by Grantee, or any affiliate of Grantee from the operation of the Cable System, provided, however, that such phrase shall not include: unrecovered bad debt, to the extent reported as revenue on Grantee’s books. ← --- Formatted: Bullets and Numbering

“Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity. ← --- Formatted: Bullets and Numbering

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses held by the City in the Service Area and which by their nature entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining a Cable System. ← --- Formatted: Bullets and Numbering

Service Area” means the area a Franchise authorizes a Grantee to serve within the City. ← --- Formatted: Bullets and Numbering

"Subscriber" means any Person who lawfully receives cable service. ← --- Formatted: Bullets and Numbering

L. “Transfer” means any transaction in which:

- (a). The Cable System is sold or assigned;
- (b). There is any change, acquisition, or transfer of control of the Grantee or its direct or indirect parents, whether by merger, consolidation, sale of assets or ownership interests, or by any other means. A Transfer shall be deemed to have occurred whenever there is a change, acquisition or conveyance of control of a general partner, or of more than a twenty percent (20%) ownership in a Grantee or its direct or indirect parents by any entity, or a group of entities acting in concert. However, a Transfer also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of a Grantee or its direct or indirect parents; or
- (c). The rights and/or obligations held by a Grantee under a Cable Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party.

SECTION 7-901.3 CABLE FRANCHISE REQUIRED

Except as provided by applicable law, it is unlawful for a Person, other than City, to construct or operate a Cable System without a valid Cable Franchise.

SECTION 7-901.4 GRANT OF CABLE FRANCHISE

The City may grant one or more Cable Franchises in accordance with and subject to the provisions of the City Charter and this Code. Nothing contained in this Code is, nor should it be construed to be, a contract between the City and a Grantee. Nothing contained in this Code, or in a Franchise issued pursuant to this Code, prohibits, or should be construed to prohibit the City from amending and applying this Code to a Grantee. Terms of a Franchise shall be read consistent with the Code, and shall not be deemed to supersede or waive any provisions of the Code except as specifically stated therein. Any action on a franchise application, whether for a initial franchise, renewal franchise, or transfer shall be taken in accordance with time limits established by federal or state law. The City is not required to follow any procedure that would result in the City failing to meet any such time limits.

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SECTION 7-901.5 TRANSFERS OF CABLE FRANCHISES

- A. Transfers shall not occur without the City’s prior written approval, except where a request for approval or sale is subject to a deadline for action under 47 U.S.C. § 537, and the City fails to act by the time required under 47 U.S.C. § 537. The City, among other remedies, may terminate the Franchise if it is transferred without the City’s approval. The granting of approval for a Transfer in one instance shall not render unnecessary the City’s approval of any subsequent Transfer.
- B. Notwithstanding the foregoing, the City’s prior approval is not required for the following:
 - 1. Pledges in trust or mortgages of the assets of, or a grant of a similar security interest in, a Cable System or Cable Franchise to secure the construction, operation or repair of the Cable System; provided that:
 - a. Arrangements are not made that would prevent a Grantee or any successor from complying with the Cable Franchise and applicable law;
 - b. Arrangements do not permit a third party to succeed to the interest of a Grantee, or to own or control the Cable System, without the City’s prior consent;
 - c. Any such mortgage, pledge, or security interest will be subject and subordinate to the rights of the City under the Cable Franchise and/or applicable law.

SECTION 7-901.6 CABLE FRANCHISE CHARACTERISTICS

- A. A Cable Franchise is non-exclusive and does not explicitly or implicitly preclude the City from granting other Cable Franchises or affect the City's right to construct, operate, or maintain its own Cable System. The City may refuse to issue a Cable Franchise to a Grantee that will result in any person obtaining an exclusive right to serve any portion of the City.
- B. All privileges prescribed by a Cable Franchise are subordinate to any prior lawful occupancy of Public Way. The City has the right to designate where a Grantee's facilities may be placed within Public Way.
- C. A Cable Franchise is a privilege held in public trust by the Grantee.
- D. A Grantee shall not require a Subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing cable service. However, nothing prevents a Grantee from entering into an otherwise lawful exclusive consensual arrangement with a building owner or manager of a multiple dwelling unit or commercial Subscriber.
- F. Nothing in any Cable Franchise shall be read to waive any of the City's governmental rights or police powers.

SECTION 7-901.7 RATE REGULATION

The City may regulate rates and charges of each Grantee, and order refunds of unreasonable rates charged, except to the extent that it is preempted from doing so by applicable law. The City shall follow any applicable state or federal procedures for reviewing rates.

SECTION 7-901.8 NO RECOURSE AGAINST CITY

Every Cable Franchise Franchised pursuant to the provisions of this Code shall provide that, to the fullest extent permitted by Montana law, without limiting such immunities as the City or other Persons may have under applicable law, a Grantee shall not have any monetary recourse against the City or its officials, boards, commissions, public agencies when acting on the City's behalf, or employees for any loss, costs, expense, or damage arising out of the construction, operation or repair of its Cable System, or the activities of the City or any entity authorized by the City to use Public Way or other public property unless the same was caused by the City's criminal acts or gross negligence. Nothing in this section waives claims a Grantee might otherwise have against third parties.

SECTION 7-901.9 ACTS AT GRANTEE'S EXPENSE

Any act that a Cable Franchise or this Ordinance requires or allows a Grantee to perform, shall be

performed at the Grantee's expense, unless expressly provided for otherwise in the Cable Franchise, this Ordinance, or state law.

SECTION 7-902.1 APPLICATIONS FOR CABLE FRANCHISE GRANTS, RENEWALS OR TRANSFERS

An application shall be filed with the City for:

- A. Grant of an initial Cable Franchise;
- B. Renewal of a Cable Franchise, except that an application is not required for a proposal for renewal submitted pursuant to 47 U.S.C. § 546(h);
- C. Transfer.

All applications shall be available for public inspection unless otherwise provided by applicable law.

SECTION 7-902.2 APPLICATIONS - FEES

From and after October 1, 2006, each Applicant for the grant, renewal or Transfer of a Cable Franchise shall reimburse the City for all expenses incurred by it in reviewing the application. Each application shall be accompanied by a check for \$5,000 which shall be credited against amounts owed. The City may submit invoices to an Applicant from time to time to recover its expenses, which invoices shall be paid within thirty (30) days of rendering. Any amounts paid by an Applicant, but not actually expended by the City, shall be returned to the Applicant. Nothing herein prevents an Applicant from claiming that a particular application fee, as applied, violates 47 U.S.C. § 542.

SECTION 7-902.3 APPLICATIONS FOR INITIAL OR RENEWAL FRANCHISE

An application for an initial or renewal Cable Franchise shall be in a form prescribed by the City Manager, or if there is no form, shall provide the following information and additional information, if any, required by federal or state law.

- A. The names and addresses of Persons authorized to act on behalf of the Applicant with respect to the application;
- B. The name and address of the Applicant and identification of Applicant's ownership and control, including the names and addresses of the ten (10) largest holders of an ownership interest in the Applicant and all Persons in the Applicant's direct ownership chain;
- C. A demonstration of the Applicant's technical ability to construct and/or operate the proposed

Cable System, including identification of key personnel;

- D. A demonstration of the Applicant's legal qualifications to construct and/or operate the proposed Cable System;
- E. A statement prepared by an independent certified public accountant or independent financial institution regarding the Applicant's financial ability to complete the construction and operation of its proposed Cable System;
- F. A description of the Applicant's prior experience in Cable System ownership, construction, and operation;
- G. Identification of Montana cities and counties where the Applicant or its principals have an interest in a Cable Franchise. If there is no Montana city or county, the information shall be provided for systems in other states.
- H. Identification of the proposed Service Area's boundaries;
- I. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities;
- J. Where applicable, a proposed construction schedule;

- K. A demonstration of how the Applicant will reasonably meet the community's future cable-related needs and interests, including descriptions of the capacity, facilities, and support for public, educational, and governmental use of the Cable System (including institutional networks);
- L. An affidavit or declaration of the Applicant or its authorized officer certifying the truth and accuracy of the information in the Application.

SECTION 7-902.4 CABLE FRANCHISE TRANSFER APPLICATIONS

A Cable Franchise Transfer application shall be submitted by the proposed transferee and contain the following:

- A. All information and forms required under applicable law;
- B. All information required by Section 7-902.3 (A)-(G), (L);
- C. Any contracts or other documents that relate to the proposed Transfer, including all documents, schedules, exhibits, or the like referred to therein and all material facts concerning the effect of the Transfer on the financial position of the Cable System and the Grantee;
- D. Any shareholder reports or filings with the Securities and Exchange Commission ("SEC") that discuss the proposed Transfer;
- E. Complete information regarding anticipated impact of the Transfer on Subscriber rates and service;

SECTION 7-902.5 APPLICATIONS - LEGAL QUALIFICATIONS

- A. For purposes of this Section, the term “Applicant” refers to the Applicant and any of its affiliates.
- B. In order to be legally qualified to obtain an initial or renewal Cable Franchise or a Transfer of a Cable Franchise:
 - 1. The Applicant shall be willing and able to comply with the provisions of applicable law and to comply with requirements of the Cable Franchise. The Applicant’s prior compliance with the requirements of this Ordinance may be considered in determining whether the Applicant is willing and able to comply.
 - 2. The Applicant shall not have had any Cable Franchise revoked by the City within three (3) years preceding the submission of the application. If Grantee challenges a revocation, it may not apply while the appeal is pending, or for three (3) years after the final resolution of the appeal if the revocation is valid.
 - 3. The Applicant shall not have had an application to the City for an initial or renewal Cable Franchise denied on the ground that the Applicant failed to propose a Cable System meeting the cable-related needs and interests of the community. If Grantee challenges a denial, it may not apply while the appeal is pending, or for three (3) years after the final resolution of the appeal if the denial is valid.
 - 4. The Applicant shall not be issued a Cable Franchise if, at any time during the ten (10) years preceding the submission of the application, the Applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the Applicant cannot be relied upon to deal truthfully with the City and the Subscribers, or to substantially comply with its obligations.
 - 5. The Applicant shall have the necessary authority under Montana and federal law to operate a Cable System, or show that it is in a position to obtain such authority.
 - 6. The Applicant shall not be issued a Cable Franchise if it files materially misleading information in its application or intentionally withholds information that the Applicant is required to provide by applicable law.
- C. An Applicant shall be provided a reasonable opportunity to show that a Cable Franchise should be issued even if the requirements of Section 7-902.5(B)(1)-(4) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the Applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the Applicant's principals, or the remoteness of the matter from the construction, operation or maintenance of a Cable System.

SECTION 7-902.6 TIMING AND REVIEW OF APPLICATIONS

- A. An application may be submitted at any time, except that an application for renewal pursuant to 47 U.S.C. § 546(a)-(g) may only be submitted after the City completes the proceedings required by 47 U.S.C. § 546(a). An application for Transfer shall be submitted at least one hundred twenty (120) days prior to the proposed date of the Transfer.
- B. The City shall deny an application if the Applicant or Grantee fails to provide information required by this Ordinance, and may deny an application if Applicant or Grantee fails to respond to requests for additional information to permit review of its Application in accordance with this Ordinance.
- C. The City shall promptly consider any complete application in accordance with deadlines established by federal or state law.

SECTION 7-902.7 REVIEW OF TIMELY CABLE ACT RENEWAL APPLICATIONS

Timely requests for renewal under 47 U.S.C. § 546(a) shall be received, reviewed and acted upon in a manner consistent with 47 U.S.C. § 546. The provisions of Sections 7-902.8 and 9 shall not apply to such renewal requests. Subject to the City Council's review, the City Manager may issue rules for conduct of any such renewal proceedings, and conduct studies and take such other actions necessary to comply with applicable law. An Applicant or Grantee may request the City Council to review any action taken by the City Manager under this section.

SECTION 7-902.8 REVIEW OF OTHER INITIAL AND RENEWAL FRANCHISES

- A. When evaluating other initial and renewal Cable Franchise applications, the City shall consider the following and such matters as it is required or entitled to consider under applicable law:
 - 1. Whether the Applicant substantially complied with applicable law and the material terms of any existing City Cable Franchise grant;
 - 2. The completeness of the application and Applicant's responses to questions regarding the application;
 - 3. Whether the quality of the Applicant's service under any existing City Cable Franchise, including, without limitation, signal quality, response to customer complaints, and billing practices, is reasonable in light of community needs and interests;
 - 4. Whether the Applicant has the financial, technical, and legal qualifications to hold a Cable Franchise;

5. Whether the application satisfies minimum requirements established by the City to meet the community's future cable-related needs and interests, taking into account the cost of meeting such needs and interests;
6. Whether the Applicant is able and willing to provide adequate public, educational, and governmental use capacity, facilities, or financial support;
7. Whether granting the application will result in redlining, discrimination in the provision of services, or grant the Applicant an unfair competitive advantage;
8. Whether the schedule for building out the system is reasonable; and
9. Whether approving the application would eliminate or reduce competition in **the** delivery of cable service.

SECTION 7-902.9 STANDARDS FOR REVIEW OF TRANSFER APPLICATIONS

- A. In determining whether to grant, deny, or grant subject to conditions an application for a Transfer of a Cable Franchise, the City may consider:
 1. The legal, financial, and technical qualifications of the Applicant to operate the Cable System, or in the case of a change in control where the Grantee will not change, whether the change in control may adversely affect the legal, financial, and technical qualifications of the Grantee;
 2. The impact of the Transfer on Subscriber rates or services;
 3. Whether the incumbent Grantee is in compliance with its Cable Franchise and applicable law and, if not, the Applicant's commitment to cure such noncompliance;
 4. Whether the Applicant owns or controls any other Cable System in the City, and whether operation by the Applicant may eliminate or reduce competition in the delivery of cable service in the City;
 5. Whether the City and Subscribers are protected against losses and costs associated with acts and omissions, or obtaining correction of acts and omissions, of the previous Grantee under the Cable Franchise and applicable law; and
 6. Whether operation by the Applicant or approval of the Transfer would adversely affect Subscribers, the public, or the City's interest under the Cable Franchise, or applicable law.
- B. In reviewing a change of control where the named Grantee does not change, the Applicant is

the company succeeding to the control of the Grantee.

- C. Requests for approval of a Transfer shall not be unreasonably denied, or conditioned.

SECTION 7-902.10 APPROVAL OR DENIAL OF CABLE FRANCHISES

- A. Before deciding whether to grant a Cable Franchise, the City ~~shall~~ hold one or more public hearings or implement other procedures for obtaining public input.
- B. If the City finds that it is in the public interest to issue a Cable Franchise, considering the factors described above, the City shall tender Applicant a Cable Franchise, and the Applicant shall be entitled to exercise all of the Franchise rights provided for therein upon its acceptance of the terms and conditions of such Franchise, in a form prescribed by the City.
- C. If the City finds that it is in the public interest to approve a Transfer, considering the factors described above, the City shall approve the same, subject to appropriate conditions.
- D. It is the policy of the City to promote competition in the provision of cable services, but there is a presumption that a Cable Franchise, or Franchise or franchise to use the public Rights-of-Way to deliver multichannel video programming services, that would result in redlining on economic or racial grounds, or otherwise give the Applicant an unfair competitive advantage shall not be Franchised.
- F. It is the policy of the City that each Franchise Agreement shall require a Grantee to extend service upon request to any entity requesting service within its Service Area, in accordance with the provisions of this Ordinance or service extension policies set forth in the Cable Franchise.
- G. If the City denies a Cable Franchise, it shall issue a written decision explaining its denial.

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SECTION 7-902.11 NO EFFECT ON 47 U.S.C. § 546(h); CONSISTENCY WITH OTHER LAWS

Nothing in this Ordinance prohibits a Grantee from submitting a renewal proposal pursuant to 47 U.S.C. § 546(h), which proposal may be Franchised or denied in accordance with the provisions of 47 U.S.C. § 546(h). Nothing in this Ordinance shall be read to require or permit the City to consider any factors that it is prohibited from considering in granting or transferring a franchise under applicable state or federal statutes or regulations.

SECTION 7-903.1 FACILITIES CONSTRUCTION STANDARDS; APPLICATION

As used in Section 7-003, the term “Facilities” refers to a Cable System, and to the extent located in the Public Way, other systems and all devices, facilities or structures appurtenant thereto used or designed to be used by any entity that owns or controls the system, or by an affiliate, to provide cable services. Nothing in this Section authorizes construction, operation or repair of a Cable System as defined under Section 7-1-002, or any other system without a Franchise from the City.

SECTION 7-903.2 FACILITIES SYSTEM CONSTRUCTION

- A. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable federal, state, and local regulations and the National Electric Safety Code and the National Electrical Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.
- B. Facilities construction, operation and repair shall be performed so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

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SECTION 7-903.3 LOCATION OF EQUIPMENT

- A. Except in underground utility districts or as otherwise provided in a Cable Franchise or applicable law, a Grantee may install Facilities overhead where transmission or distribution facilities of the incumbent local exchange carrier or distribution facilities of public utilities providing electric services are overhead. Wherever the owner of the poles on which the Facilities are located moves its plant from overhead to underground placement in an area, all Facilities in that area must be promptly moved underground.
- B. Where Facilities are not entitled to be placed aboveground under Section 7-903.3(A), or where they must otherwise be moved underground, all Facilities shall be undergrounded in accordance with then-existing City ordinances and requirements of the City Engineer.
- C. On application, the City may waive any requirement in this Section for good cause shown where it is demonstrated that (a) it is technically infeasible to place Facilities underground; (b) reasonable steps have been taken to minimize the impact of the aboveground Facilities; (c) the Facilities are otherwise being constructed in compliance with the Billings City Code.

SECTION 7-903.4 REPAIRS

- A. If during the course of the Grantee’s construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition better than, or equal to the condition of the Public Way existing immediately prior to such disturbance.
- B. Any other disturbance or damage to public property or private property caused by Facilities

construction, operation or repair shall be promptly repaired at no cost to the entity whose property was damaged. Property shall be restored to its prior condition, except where applicable law imposes a stricter standard for repair.

SECTION 7-903.5 RELOCATION – PUBLIC PROJECTS

Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee at its expense shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when required by the City or any government entity by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements. The Grantee shall in all cases have the right of abandonment of its property, provided that, if property is abandoned, Grantee upon request must provide City title to the property, free and clear of encumbrances.

SECTION 7-903.6 UTILITY RELOCATIONS

Grantee shall promptly protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee as required to enable another person authorized to place facilities in the rights of way (other than a person described in Section 7-903.5 to construct, modify, repair or maintain such facilities, with the cost therefore to be borne in accordance with applicable law.

SECTION 7-903.7 TEMPORARY RELOCATION UPON REQUEST

The Grantee shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, “reasonable advance written notice” shall be no less than ten (10) business days.

SECTION 7-903.8 TREE TRIMMING

The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System, subject to the supervision of the City. Nothing in this section relieves Grantee of any liability it may have to persons for damage caused to public or private property.

SECTION 7-903.9 CONTRACTORS AND SUBCONTRACTORS

Any contractor or subcontractor used by a Facilities owner or Grantee shall be properly licensed under applicable law. Each contractor or subcontractor has the same obligations with respect to its work as the owner or Grantee would have under this Code and applicable law if the work were performed by owner or Grantee. A Facilities owner or Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its Franchise and applicable law; and shall be responsible for all acts or omissions of contractors or subcontractors inconsistent with its Franchise or applicable law governing the construction, operation or maintenance of the Cable System.

SECTION 7-903.0010 CONSTRUCTION COORDINATION

- A. A Facilities owner or Grantee shall cooperate in planning, locating, and constructing its Facilities in utility joint trenches or common duct banks with other utilities, including cable and telecommunications providers, and shall comply with any requirements that the City lawfully may adopt regarding the same.

- B. A Facilities owner or Grantee shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole cost and expense, the locations of its underground Facilities upon notification in accordance with applicable law.
- C. Where it appears that a Facilities owner or Grantee is engaging in practices that endanger the public or other facilities in the public Rights-of-Way, the City may order that work to stop until the practices are corrected. Where a Facilities owner or Grantee engages repeatedly in such practices after receiving notice and having had an opportunity to cure, the City may revoke any Franchises or permits issued to the Facilities owner or Grantee.

SECTION 7-903.0011 INTERCONNECTION

Upon the City's request, Grantees or Facilities operators required to provide capacity for public, educational or governmental use (including institutional network capacity) within the City shall negotiate in good faith the terms and conditions of interconnection so that public, educational and governmental signals may be seamlessly exchanged to or from systems. Except to the extent the terms and conditions are subject to regulation by the state or federal governments, or regulation is prohibited by law, the City may establish terms and conditions for interconnection and establish deadlines for completion of the interconnection if the interconnecting parties are unable to agree to terms, but conditions for interconnection established by the City shall not place an undue burden or grant an undue benefit to one operator compared to another.

SECTION 7-903.0012 ABANDONMENT

A Facilities owner or Grantee may abandon any property in public Rights-of-Way that is in place upon written notice to the City and separate notice to the City Public Works Director, unless the City determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the required written notices are received, that the safety, appearance, functioning or use of public Rights-of-Way and Facilities in public Rights-of-Way will be adversely affected. Abandonment shall be effected in a manner acceptable to the City Engineer.

SECTION 7-904.1 SERVICE - TIME FOR EXTENSION

- A. A Grantee shall extend service to any Person or to any City building in the Franchise Area upon request, weather permitting:
1. Within seven (7) business days of the request, where service can be provided by activating or installing a standard drop;
 2. Within ten (10) business days if the Person cannot be served through installation of a standard drop, but can be served by activating or installing a drop;
 3. Within ninety (90) days of the request where an extension of one-half mile or less is required; or
 4. Within six (6) months where an extension of more than one-half mile is required.
 5. Requests for additional outlets, service upgrades or other connections separate from the initial installation shall be performed within seven (7) business days after an order has been placed.
- B. A Cable Franchise specifying a time for completion of initial construction or rebuild of a Cable System may suspend or modify the requirements of this Section for the period of the construction or rebuild. A Cable Franchise may specify minimum density requirements for Cable System extensions.
- C. A “standard drop” is an aerial drop not exceeding 150 feet. The City Manager may grant an extension of the time limits set forth in this Section where a Grantee shows that, because of exceptional circumstances, the standards could not be satisfied even with due diligence.

SECTION 7-904.2 SERVICE - MINIMUM CUSTOMER SERVICE STANDARDS

Each Grantee shall satisfy the customer service standards established by the FCC, and such additional or stricter customer service or consumer protection requirements as the City may adopt from time to time by resolution, or as may apply under applicable law. Provided that, the City will provide each Grantee an opportunity to comment on any proposed additional cable-specific customer service standards before they are adopted. Each Grantee shall maintain accurate records of its performance under the FCC standards and under other customer service and consumer protection standards established or enforced by the City.

SECTION 7-904.3 SERVICE - NO DISCRIMINATION

A Grantee shall not deny service, levy different rates, or otherwise discriminate against any Person or group on the basis of race, color, creed, national origin, sex, age, conditions of physical handicap, religion, ethnic background, or marital status or on the basis of the income of the residents of the

local area in which such Person or group resides.

SECTION 7-904.4 SERVICE - PRIVACY

A Grantee shall at all times protect the privacy of all Subscribers pursuant to the provisions of 47 U.S.C. § 551. A Grantee shall not condition Subscriber service on the Subscriber's grant of permission to disclose information which, pursuant to applicable law, cannot be disclosed without the Subscriber's explicit consent.

SECTION 7-904.5 SERVICE - TECHNICAL STANDARDS

Any Cable System within the City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76 Subpart K and any other applicable technical standards lawfully adopted by the City.

SECTION 7-905.1 OVERSIGHT - BOOKS AND RECORDS

- A. The City may inspect and copy at any time during normal business hours such books and records as the City reasonably deems necessary to enforce or monitor compliance with the terms of this Ordinance, or a Cable Franchise or state or federal law governing cable systems. The City may establish reasonable deadlines for the production of the books and records. Books and records requested pursuant to this Section shall be timely produced to the City unless the Grantee obtains a court order that the books and records need not be produced.
- B. Each Grantee shall be responsible for promptly collecting and producing requested books and records to the City at the City Hall. However, if books and records requested pursuant to this Ordinance or a Cable Franchise are too voluminous, or cannot be copied and moved for security reasons or because the requested records contain trade secrets, then a Grantee may produce the records at some other location, provided that: the Grantee shall make necessary arrangements for copying documents selected by the City after its review; and the Grantee shall pay all reasonable travel and additional expenses in connection with such inspection.
- C. The term "books and records" shall include information in whatever format stored, including, without limitation, information stored in electronic form. The term "books and records" includes books and records held by an Affiliate or any person holding any form of management contract for the Cable System.
- D. All proprietary information received by the City from a Grantee and clearly marked as such shall not be publicly disclosed to the extent allowed by the Montana Public Records Law, and other applicable law. The City shall notify a Grantee if any third party seeks access to any document that is marked confidential, and shall withhold disclosure of the document for the maximum period permitted by law to permit the Grantee to seek court protection against

the release of the requested documents.

SECTION 7-905.2 OVERSIGHT - REPORTS

- A. The City may require a Grantee to prepare such reports and maintain such records as the City reasonably deems necessary to enforce or monitor compliance with the terms of this Ordinance, or a Cable Franchise or state or federal law governing cable systems. The City may establish reasonable deadlines for the preparation of the reports. Reports requested pursuant to this Section shall be timely produced to the City unless the Grantee obtains a court order that the reports need not be produced.
- B. In addition to any other reports it is required to produce, each Grantee shall file a financial statement certified as true by the chief financial or operating officer of the Grantee, showing in detail the Gross Revenues of the Grantee by revenue category for the year.
- C. In addition to other reports and books and records it may be required to produce, upon request, the Grantee shall provide accurate maps for its Cable System identifying the location of system components in the Rights-of-Way.
- D. Nothing in this Ordinance shall be read to require a Grantee to violate state or federal law governing Subscriber privacy. However with respect to Subscriber privacy, each Grantee shall be responsible for redacting any information that applicable law prevents it from providing to the City.
- E. Any material misrepresentation made by the Grantee in any report, or in books and records provided to the City shall be treated as a violation of the Grantee's obligations under this Ordinance.

SECTION 7-905.4 OVERSIGHT - TESTING

Upon request of the City, for good cause as reasonably determined by the City, a Grantee shall perform tests necessary to demonstrate compliance with the requirements of the Cable Franchise and this Ordinance. The request shall also state with reasonable specificity the cause for the requested testing. Tests shall be conducted in accordance with the sound engineering practices, and the results promptly shared with the City. For good cause as reasonably determined by the City, the City may independently test the Cable System. Grantee shall cooperate with such independent tests. Tests shall be conducted in accordance with sound engineering practices, and shall be scheduled to minimize **service or operational disruptions. Grantee may observe any tests conducted by the City.**

SECTION 7-906.1 FRANCHISE FEE

- A. A Grantee shall pay the City a Franchise fee as specified in the Franchise agreement, or a fee in lieu of a Franchise fee, in the case of an open video system (collectively referred to in this ordinance as "Franchise fees." Should any person provide cable service without a

Franchise issued by the City, it must pay the highest Franchise fee permitted by law.

- B. Should the City not receive a Franchise fee payment on or before the due date or should the Grantee fail to make full payment of the Franchise fee due and owing to the City, the Grantee shall be charged interest from the due date at an interest rate equal to one percent (1%) per month on the unpaid balance.
- C. The City's acceptance of any Franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of such Franchise fee payment be construed as a release of any claim the City may have for additional sums payable.
- D. The Franchise fee is not a payment in lieu of any tax, fee, or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services), consistent with 47 U.S.C. § 542(g)(2).
- E. In the event of a Transfer, or where a Grantee stops providing Cable Service within the City, the Grantee shall file a final statement of Gross Revenues within thirty (30) days of the Transfer or stoppage. The statement shall be certified as accurate by an authorized representative on behalf of the Grantee, cover the period from the beginning of the calendar year in which the Transfer or stoppage occurred, identify Gross Revenues by category, Franchise fees paid on Gross Revenues, and Franchise fees owed on Gross Revenues up through the date of Transfer or stoppage. The statement shall be accompanied by a check for the Franchise fee owed through the date of Transfer or stoppage.

SECTION 7-907.1 ENFORCEMENT/SECURITIES - INSURANCE AND INDEMNIFICATION

- A. Each Grantee shall maintain adequate insurance against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the holding of the Cable Franchise, or the construction, operation or repair of the Cable System by the Grantee, its agents, representatives, contractors, subcontractors and employees.
- B. Each Cable Franchise shall contain an indemnification provision that provides, to the extent permitted by applicable law that:
 - 1. The Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liabilities, judgments, fines, penalties, litigation or administrative hearing costs including reasonable attorneys fees incurred by City arising from claims for property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System. Notwithstanding the foregoing, the Grantee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence solely attributable to the City.

2. A Cable Franchise may be revoked by the City for failure to maintain the insurance required, or for failure to indemnify the City.

SECTION 7-907.2 ENFORCEMENT/SECURITIES - LETTER OF CREDIT AND BONDS

In addition to any securities required by a Franchise, before any Cable System construction, upgrade, or other work in public Rights-of-Way, a Grantee shall obtain any required bonds in amounts and subject to such terms established by the City consistent with its normal practices.

SECTION 7-907.3 ENFORCEMENT/SECURITIES - REVOCATION AND TERMINATION

- A. A Cable Franchise issued pursuant to this Ordinance may be revoked or shortened for any material violation of this Ordinance or a Cable Franchise; or for defrauding, or attempting to defraud, the City or Subscribers; or for submission of false or misleading information; or if the Grantee abandons its Cable System without the City's approval; or willfully refuses to provide services to the City or any part of the City. The following procedures shall apply:
 1. Before revoking or shortening the Cable Franchise, the City shall give the Grantee written notice, which notice shall describe the nature of the alleged violation or breach and, except as provided herein, shall provide the Grantee with a reasonable opportunity to cure.
 2. If within thirty (30) calendar days following receipt of written notice from the City to the Grantee the Grantee has not corrected the default, or shown to the City's satisfaction that there was no violation or breach, the City may give written notice to the Grantee of its intent to consider revocation or shortening of the Cable Franchise.
 3. Not sooner than thirty (30) calendar days after notifying the Grantee of its intent to consider revoking the Cable Franchise, the City Council shall hold a public hearing at which the Grantee and the public shall be given an opportunity to be heard.
 4. Following the public hearing the City Council shall determine whether a violation or breach occurred, and whether to revoke or shorten the Cable Franchise based on the evidence presented at the hearing, and any other evidence of record.
 5. If the City Council determines to revoke or shorten a Cable Franchise, it shall issue a written decision setting forth the reasons for its decision.
 6. A copy of such decision shall be transmitted to the Grantee. Grantee may appeal such decision to a court of competent jurisdiction.
- B. Notwithstanding the foregoing, an opportunity to cure shall not be required where the City

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finds that the defect in performance is due to willful misconduct; or is an adjudicated violation of criminal law; or is part of a pattern of violations where the Grantee has already had notice and reasonable opportunity to cure. With respect to such violations, the City, in lieu of the opportunity to cure requirement of this Section, may provide a written notice of the breach and of its intent to revoke, and, not sooner than thirty (30) days thereafter, conduct the public hearing proceeding required by this Section.

SECTION 7-907.4 ENFORCEMENT/SECURITIES - BANKRUPTCY

A. Notwithstanding any other provision of this Ordinance:

- 1. A Cable Franchise shall automatically terminate by force of law one-hundred-twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding.**
- 2. However, the Cable Franchise may be reinstated if, within the one-hundred-twenty (120) day period:**
 - a. The assignment, receivership or trusteeship is vacated; or**
 - b. The assignee, receiver, or trustee has fully complied with the terms and conditions of this Ordinance and the Cable Franchise and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the Cable Franchise and this Ordinance.**

B. Notwithstanding any other provision of this Ordinance:

- 1. In the event of foreclosure or other judicial sale of any of the Grantee's Cable System facilities, equipment, or property, the City may revoke the Cable Franchise after a public hearing before the City Council, by serving notice upon the Grantee and the successful bidder at the sale.**
- 2. The Cable Franchise shall terminate thirty (30) calendar days after serving such notice, unless:**
 - a. The City approves the Transfer of the Cable Franchise to the successful bidder; and**
 - b. The successful bidder agrees with the City to assume and be bound by the terms and conditions of the Cable Franchise and applicable law.**

SECTION 7-907.5 ENFORCEMENT/SECURITIES - EFFECT OF REVOCATION OR ABANDONMENT

- A. In the event that the City revokes a Cable Franchise Franchised pursuant to the provisions of this Ordinance; or upon expiration of the Cable Franchise; or if the Cable System is abandoned:
1. The City may require the former Grantee to remove the Cable System (or any portion thereof) from the public Rights-of-Way at the former Grantee's sole expense. If the former Grantee fails to do so within a reasonable period of time, the City may have the removal done at the former Grantee's and/or surety's sole expense, except the Grantee may abandon any portion of its Cable System in place with the City's approval pursuant to Section 7-903.0012; and
 2. The City, by City Council resolution, may acquire ownership or effect a Transfer of the Cable System (or any portion thereof):
 - a. At fair market value, where the Cable Franchise expires;
 - b. At an equitable price where the Cable Franchise terminates or is revoked for cause;
 - c. The term "equitable price" shall be interpreted consistent with 47 U.S.C. § 547. Fair market value shall be determined in accordance with 47 U.S.C. § 547(a)(1).
- B. Notwithstanding Section 7-907.6(A)(2), if a Cable System or any part thereof is abandoned by a Grantee, the City may require the Grantee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same shall become the City's property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit.

SECTION 7-907.6 ENFORCEMENT/SECURITIES - REMEDIES CUMULATIVE

All remedies in this Ordinance and the Cable Franchise shall be cumulative unless expressly stated otherwise."

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 _____ day of _____, 2008.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2008.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday May 27, 2008

TITLE: Public Hearing and First Reading Ordinance Repealing Existing Cable TV Franchise Ordinance and Enactment of New Franchise Ordinance with Bresnan Communications, Continued from April 28, 2008.

DEPARTMENT: City Attorney/City Administrator

PRESENTED BY: Brent Brooks, City Attorney

PROBLEM/ISSUE STATEMENT: The existing 1988 cable TV franchise agreement and ordinance at BMCC Sections 7-901 through 909 has expired and is also based upon outdated federal communications law. The City and Bresnan Communications have negotiated a new, non-exclusive franchise agreement that was scheduled for first reading on April 28, 2008, and second reading on May 12, 2008. New federal communications law and regulations are incorporated as applicable in the new proposed franchise ordinance. Currently Bresnan Communications operates a cable TV franchise in Billings which it assumed from a previous cable tv franchise operator. Because this new ordinance extensively modifies the existing ordinance version, staff recommends that the existing ordinance be repealed in its entirety and the attached draft be considered and approved as a replacement.

Bresnan Communication and the City have been operating on an extension agreement since December, 2007 when the current franchise agreement/ordinance expired and the extension previously approved by the City Council is now expiring. This item was continued from the April 28, 2008, regular City council meeting upon request by staff in order to finalize the franchise document in negotiation with Bresnan Communications. Those negotiations concluded late Friday May 23, 2008. The attached franchise ordinance contains the changes noted by colored font and underlines/strikethroughs. These changes have been inserted since the April 28, 2008, Council meeting.

ALTERNATIVES ANALYZED:

- The Council may approve the proposed new cable TV franchise ordinance with the noted changes and repeal the existing outdated ordinance.
- The Council may disapprove the proposed draft franchise ordinance and retain the existing franchise ordinance.

FINANCIAL IMPACT: Currently the City charges an annual franchise fee of 5% of the annual gross revenues of the local cable TV operator, the maximum allowed by federal law. This is a planned revenue maintained in the City's General Fund. For FY 2007 the City received approximately \$890,569 in franchise revenue from Bresnan Communications as a result of the cable TV franchise fee assessed through the franchise ordinance. Whether or not the existing franchise ordinance is repealed and replaced with the proposed new, updated franchise ordinance, these fees will continue to be assessed and collected by the City.

RECOMMENDATION

Staff recommends that Council approve the proposed new franchise ordinance with changes inserted since the April 28, 2008, Council meeting and repeal the existing franchise ordinance.

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

ATTACHMENT:

A: Cable TV Franchise Ordinance

INTRODUCTION

The City and Bresnan Communications have negotiated a new, five (5) year, non-exclusive cable TV franchise agreement that is required to be approved and memorialized by enacting an ordinance. Bresnan currently operates a cable TV system under the existing but now expired and outdated franchise ordinance. Bresnan was previously approved as the successor to AT&T by the City Council. The current franchise expired in December, 2007, and was extended twice by agreement of the City Council and Bresnan to allow the existing franchise ordinance to be updated and renegotiated to reflect changes in technology and federal communications law and regulations.

PROCEDURAL HISTORY AND BACKGROUND

Bresnan is the successor to AT&T and purchased the cable TV system assets from AT&T in 2003. The City Council approved a Transfer Agreement in 2004 allowing Bresnan to assume AT&T's franchise agreement obligations until the franchise expired in December, 2007. Since December, 2007, the City Council and Bresnan have twice agreed to temporarily extend the franchise agreement expiration to allow a negotiation and revision of the current franchise to reflect current technology and federal communications law and regulations. The latest extension is expiring and the new proposed ordinance is ready for Council consideration and approval or disapproval.

The proposed new franchise ordinance grants a non-exclusive cable TV franchise to Bresnan and is a binding, contractual agreement between Bresnan and the City. Because the new ordinance extensively modifies and revises the existing ordinance, staff recommends that the existing ordinance be repealed in its entirety and replaced by the attached draft franchise ordinance. The new franchise includes the current best practices from across the country and more clearly defines and describes the obligations of both Bresnan and the City.

ALTERNATIVES ANALYSIS

If the Council approves the proposed new franchise ordinance with Bresnan it will update the existing and expiring agreement to reflect current federal telecommunications laws and regulations and will more clearly describe the obligations of Bresnan and the City.

If the Council rejects the proposed new franchise ordinance, continued negotiations with Bresnan will be required and an additional extension of the current franchise ordinance will be necessary while further negotiations are conducted between Bresnan and City staff. The current assessment and collection of five (5) % gross revenues will continue.

STAKEHOLDERS

All City residents who presently subscribe or may subscribe in the future to Bresnan cable TV are interested stakeholders in and beneficiaries of the revised franchise ordinance.

Also, educational and institutional entities such as School District # 2, Community Channel 7 and similar organizations also benefit from the programming required to be carried by Bresnan in the new franchise ordinance.

The City itself will realize continued revenue and greater input into the cable TV programming if the new franchise ordinance is approved.

RECOMMENDATION

Staff recommends that the Council approve the new draft franchise ordinance with changes inserted since the April 28,2008, Council meeting and repeal the current franchise ordinance in BMCC sections 7-901 through 909.

ATTACHMENT:

A: Cable TV Franchise Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING FOR THE REPEAL OF ARTICLE 7-900, SECTIONS 7-901 THROUGH 7-909 OF THE BILLINGS, MONTANA, CITY CODE, AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT; FURTHER PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY ADDING A NEW ARTICLE 7-900, SECTIONS 7-901 THROUGH 7-909, ESTABLISHING A NONEXCLUSIVE CABLE SYSTEM FRANCHISE AGREEMENT INCLUDING ALL TERMS AND CONDITIONS WITH BRESNAN COMMUNICATIONS, LLC

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

Section 1. That Article 7-900, Sections 7-901 through 7-909 inclusive, is hereby repealed and declared null and void and of no effect.

Section 2. That the Billings, Montana, City Code be amended by adding a new Article 7-900, to read as follows:

“ARTICLE 7-900. CABLE SYSTEM FRANCHISE

Sec. 7-901. Definition of terms.

For the purpose of this Article, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

“Basic Cable Service” means any service tier which includes the retransmission of local television broadcast signals and any public, educational, and governmental access programming. “Cable Act” means Title VI of the Communications Act of 1934, as amended.

“Cable Programming Service” means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

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- (a) Video programming carried on the Basic Service Tier;
- (b) Video programming offered on a pay-per-channel or pay-per-program basis; or
- (c) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
 - (1) consists of commonly-identified video programming; and
 - (2) is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(l)(2) (1993) and 47 C.F.R. 76.901(b) (1993). "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Cable System" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Service Area, but such term does not include:

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- (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (b) a facility that serves subscribers without using any public right-of-way;
- (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541 (c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with 47 U.S.C. § 653.
- (e) any facilities of any electric utility used solely for operating its electric utility systems.

The term includes wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be

ordinarily necessary to the operation of the Cable System.

“Converter” means an electronic device which converts signals to a frequency viewable on a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all signals included in the service.

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“Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.

“FCC” means the Federal Communications Commission, or successor governmental entity thereto.

“Franchise” means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546) issued by a Grantor, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

“Grantor” means the City of Billings, Montana or any lawful successor or assign.

“Grantee” means Bresnan Communications, LLC, or the lawful successor, transferee, or assignee thereof.

“Gross Revenue” means revenue derived by Grantee, or any affiliate of Grantee from the operation of the Cable System to provide Cable Services, provided, however, that such phrase shall not include: unrecovered bad debt, to the extent reported as revenue on Grantee’s books.

“Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses held by the Grantor in the Service Area and which by their nature entitle the Grantor and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining a Cable System.

“Service Area” means the present boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

“Standard Installation” is defined as any service installation that can be completed using a Drop of one hundred twenty five (125) feet or less.

“Subscriber” means any Person who lawfully receives Cable Service of the Cable System.

“Video Programming” means any programming provided by, or generally considered comparable to programming provided by a television broadcast station.

(c) *Restoration of public ways.* If during the course of the Grantee’s construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition better than, or equal to, the condition of the Public Way existing immediately prior to such disturbance.

(d) *Relocation for the Grantor.* Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee at its expense shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when required by the Grantor or any government entity by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements. The Grantee shall in all cases have the right of abandonment of its property, , provided that, if property is abandoned, Grantee upon request must provide Grantor title to the property, free and clear of encumbrances.

(e) *Relocation for a third party.* The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, “reasonable advance written notice” shall be no less than ten (10) business days in the event of a temporary relocation, and as promptly as possible for a permanent relocation, considering the work to be performed in connection with that relocation.

(f) *Relocation for a Person Authorized to Place Facilities in Rights of Way.* Grantee shall promptly protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee as required to enable another person authorized to place facilities in the rights of way (other than a person described in Sections ~~7-903(d)-(e)~~ to construct, modify, repair or maintain such facilities, with the cost therefore to be borne in accordance with applicable law.

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(g) *Trimming of Trees and Shrubbery.* The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System, subject to the supervision of the City. Nothing in this section relieves Grantee of any liability it may have to persons for damage caused to public or private property.

(h) *Safety Requirements.* Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable federal, state, and local regulations and the National Electric Safety Code and the National Electrical Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

(i) *Underground Construction.* In those areas of the Service Area where all of the distribution facilities of the incumbent local exchange carrier or distribution lines of public utilities

providing electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground.

(j) *Required Extensions of the Cable System.* Whenever the Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least ~~ten~~ (10) residential units that would be passed by an extension of 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees for drops charged to all Subscribers.

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(k) *Subscriber Charges for Extensions of the Cable System.* No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection ~~7-903(j)~~ above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals ~~ten~~ (10). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard and non-Standard Installation fees for drops.

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(l) *Cable Service to Public Buildings.* The Grantee, shall maintain and continue to provide free services to all public buildings to which it was providing free service as of January 1, 2008, and upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Grantor, fire station(s), police station(s), and K-12 public school(s) existing as of January 1, 2008. For such additional buildings as may be added after January 1, 2008, Grantee shall provide a free outlet of Basic Service upon request, provided that, if the person requesting service is more than 350 feet from the Cable System, the company shall provide free service and an extension upon request, if the person requesting service agrees to pay the additional incremental cost of drop installation beyond the cost for the first three hundred and fifty (350) feet. The Cable Service provided shall

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not be used for commercial purposes, and such outlets shall not be located in areas open to, and used continuously by the general public (students are not treated as part of the general public for purposes of this paragraph).. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in buildings owned or controlled by Grantor in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. Each building may extend the service from the free outlet to other locations, and Grantee shall provide power levels to the building to permit service to be so extended. If additional amplifiers are required in the building, the Grantee may charge its actual cost of the amplifier.

(m) *Emergency Use.* If the Grantee provides an Emergency Alert System ("EAS"), then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System.

Sec. 7-904. Regulation by the Grantor

(a) *Franchise Fee.*

- A. The Grantee shall pay to the Grantor an annual franchise fee of five percent (5%) of annual Gross Revenue (as defined in subsection ~~7-901(J)~~ of this Franchise). Each payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation, containing such information as the City may require to determine whether fees are being paid as required, and attested to as accurate by an officer of the grantee.
- B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.
- C. Grantor shall have the right to review and copy the books and records of the Grantee, and any person receiving revenues subject to the franchise fee hereunder, and Grantee shall be responsible for obtaining and providing such books and records to the City for its review at City Hall in the City of Billings, or such other location as the parties may agree.
- D. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise fee or for the performance of any other obligation of Franchisee.

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(b) *Rates and Charges.* The Grantor may regulate rates and charges except to the extent preempted from doing so by federal or state law.

(c) *Transfer of Franchise.* The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee as of the Effective Date, without the prior consent of the Grantor, such consent not to be unreasonably withheld. A change of control of Grantee or entities controlling Grantee shall be treated as a transfer. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness, provided that no such instrument permits any person to succeed to the ownership or control of the system without the approval of the City. Without limiting the other provisions of this Franchise, Grantor and Grantee shall comply with any federal regulations governing transfer of cable systems. In deciding whether to grant or deny a request for transfer, the City may consider any factors it may consider under applicable law, including without limitation the financial, technical and legal qualifications of the transferee, whether the Grantee is in compliance with its obligations, and the effect of the transfer on the City or subscribers. City may deny a transfer application for failure of Grantee or Transferee to respond to reasonable requests for information regarding the transfer. A request for approval of a transfer will not be unreasonably withheld.

Sec. 7-905. Books and Records

(a) The Grantee agrees that the Grantor, upon thirty (30) days written notice to the Grantee, may review and copy such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise, or applicable law, or to carry out any of the City's obligations under the same. Such notice shall reference the Section of the Franchise or applicable law giving rise to the request, so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, , other than revenue information, which must be maintained for at least five (5) years. Grantor agrees that it will not disclose information provided to it which is marked as confidential or proprietary, except as required to do so by Montana public records statutes or by court order. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, and shall redact any such information.

(b) Upon request, Grantee shall provide the City with maps of its system as built, in hard copy or, if the City requests it, in an electronic format compatible with the City's mapping systems.

(c) Grantor may require Grantee to produce reports reasonably necessary to ensure compliance with the terms of this Franchise, or applicable law, or to carry out any of the City's obligations under the same.

Sec. 7-906. Insurance and Indemnification

(a) *Insurance Requirements.* The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in

the amount of \$1,500,000 combined single limit for bodily injury and property damage. The Grantor shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Grantor. The Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

(b) *Indemnification.* Grantee shall indemnify, save harmless and defend the City, its mayor and council, appointed boards and commissions, officers and employees, (collectively “City and its agents”) individually and collectively from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgments or liability of any kind (“Losses”) (including but not limited to libel, slander, invasion of privacy, unauthorized use of any trademark, trade name or service mark, copyright infringement, injury, death or damage to person or property) arising out of or in any way connected with the installation, construction, operation, maintenance or condition of the Cable System. The City shall give Grantee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this section, where Grantee is not a party thereto.

Sec. 7-907. Enforcement and Termination of Franchise

(a) *Violation.* In the event that the Grantor believes that the Grantee has not complied with the terms of the Franchise, or applicable law, the City may commence a proceeding in any court or agency of competent jurisdiction, and take such other actions as are permitted under this section, or other applicable law.

(b) *Liquidated Damages.* Franchisee and City agree to the following liquidated damages for the following violations. The parties agree that the liquidated damage amounts are in 2008 dollars and, upon notice from City, may be increased once every three (3) years by the increase in the U.S. City Average of the Consumer Price Index. Damages accrue from the date of the violation; provided that, nothing herein prevents Franchisee from raising a defense to the imposition of liquidated damages from the date of violation based upon laches, waiver, statute of limitations, or any other similar defense.

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- A. For transferring this Franchise without required approval: One Thousand Dollars (\$1,000.00)/day for each violation for each day the violation continues.
- B. For failure to comply with requirements for PEG use of the System for which damages to the City are not readily ascertainable: Two Hundred Fifty Dollars (\$250.00)/day for each violation for each day the violation continues.
- C. For violation of customer service standards: One Hundred Dollars (\$100.00)per violation, except that for violations of customer service standards, such as telephone answering standards, where the operator’s compliance is not measured in terms of its response to individual customers, One Thousand Five Hundred Dollars (\$1,500.00) a month for any period during which Franchisee fails to meet applicable performance standards; and
- D. For all other material violations of this Franchise for which actual damages may not be ascertainable: Two Hundred Fifty Dollars (\$250.00)/day for each violation for each day the violation continues.

(c) *Imposition of Liquidated Damages.* The City may impose liquidated damages in accordance with the procedures in this Section. The City shall provide Franchisee written notice describing with reasonable specificity the alleged noncompliance, and provide Franchisee with an opportunity to be heard at a public meeting, to show either that a violation has not occurred or that damages should not be imposed. The written notice shall be provided at least sixty (60) days prior to any hearing on the alleged noncompliance.

(d) *Nature of Liquidated Damages.* These sums are agreed upon as reasonable liquidated damages, developed in accordance with Montana law, and are not penalties.

(e) *Revocation of Franchise.* The City shall have the right to terminate, revoke or shorten the term of this Franchise for the reasons specified in the Cable Ordinance as of the effective date of this Franchise, pursuant to the procedures specified in the Cable Ordinance. Provided that, any amendments to the Cable Ordinance shall provide the same level of due process as is provided under the procedures provided for under the Cable Ordinance as the same existed on the effective date of this Franchise.

(f) *Force Majeure.* Franchisee shall not be deemed in default with provisions of this Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, natural catastrophes, or other events beyond Franchisee’s control, provided that Franchisee takes immediate and diligent steps to comply as soon as possible under the circumstances with this Franchise without unduly endangering the health, safety and integrity of Franchisee’s employees or property, or the health, safety and integrity of the public, public rights-of-way, public property, or private property.

Sec. 7-908. Public, Educational and Governmental Use

(a) *Definitions:* “Access, Public, Educational or Government, or PEG” refers to the availability of the System for Public, Education or Government (“PEG”) use by various agencies, institutions, organizations, groups, and individuals, including the City and its Designated Access Providers, to acquire, create, and distribute video and non-video communications not under Grantee’s editorial control.

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(b) *Preservation of Existing Benefits.* Grantee shall continue to provide and maintain pathways and equipment associated with carrying the PEG channels that it was providing prior to and upon the effective date of this Franchise until and unless the City notifies Grantee that such support is no longer necessary.

(c) *Provision of Channel Capacity for PEG Use.* In the event that the Grantee Cable system would transition to an “All Digital” cable network, upon request Grantee shall provide up to one (1) additional digital channel for public, educational or government use on the basic service tier, when the usage triggers described in 7-908(n) are satisfied.

Deleted: In addition to the capacity provided under Section 8.11 (video on demand), upon request Grantee shall provide up to two (2) additional channels for public, educational or government use, when the usage triggers described in Exh. B are satisfied.

(d) *Management of Channels.* The City shall designate who is responsible for managing the PEG channels provided under this Franchise.

(e)

A. PEG channels, other than on demand channels provided under Section 7-908(k) shall be viewable by any Subscriber without the need for obtaining any equipment other than the equipment required to receive broadcast

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channels; and shall be provided as part of basic service tier, or if there is no basic service tier, as part of the service provided to any Subscriber.

- B. Other PEG channel capacity shall be useable by any Subscriber who is able to use any comparable commercial service, without any additional charges (for example, a Subscriber who is able to order commercial programming on demand shall also be able to obtain the PEG programming on demand).

(f) *Menus.* To the extent technically feasible, PEG programming choices shall be displayed on menus in a manner equivalent to the manner commercial programming choices are displayed. It is the responsibility of the entity that is responsible for managing a PEG channel to timely provide information that it wishes to have displayed on the menu.

(g) *Format.* PEG channel capacity (other than on-demand capacity) shall be provided in analog format until such time as Grantee digitizes all other channels on the basic service tier. PEG links and channels must be designed so that there is no noticeable deterioration in signal quality or programming as received from the PEG programmer. Once Grantee digitizes all other signals on the basic service tier, it shall provide all PEG channels in a digital format, including cablecasting in high definition format any PEG programming provided in high definition format. Channels used should be of a quality equivalent to other channels that were carried on the basic service tier.

(h)

A. In addition to providing and maintaining the links that were in place as of the Effective Date of this Franchise, Grantee shall provide and maintain links to any location listed in its prior Franchise. The Grantee shall also provide and maintain links to the new program origination locations in accordance with the following. The links shall be designed to serve as a program origination point, and as a playback center for programming on any PEG channel.

1. to one additional location at its cost, so long as the location is within 2640 cable bearing strand feet of the then-existing cable distribution network and any required land-owner permission is obtained.

2. to additional locations where the Grantee's then-existing cable distribution network is already in place (Dehler Field being such a location).

3. at the incremental cost of extending the nearest available fiber to the location where (1) and (2) do not apply.

B. The obligations under this Section include the responsibility to provide equipment necessary to place the signal on the system, and to route signals to the appropriate PEG channel, all without any noticeable PEG signal deterioration. Grantee is not responsible for any production equipment.

C. If Grantee makes changes to its System that necessitate modifications to PEG facilities and equipment, including but not limited to the links, Grantee shall provide any

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additional facilities or equipment necessary to implement such modifications within thirty (30) days of the date that the System changes are made, so that PEG facilities and equipment may be used and operated as intended.

(i)

A. Grantee may be required to pay up to \$0.85 per subscriber per month for such support, beginning sixty (60) days after adoption of a resolution adopted by the City after at a public meeting. A separate resolution from this ordinance must be adopted to invoke this fee. This charge would be passed through to subscribers as a PEG fee, at Grantee's option.

B. Grantee shall provide a lump sum amount of \$50,000, with one-half due within thirty (30) days of the effective date of this Agreement, and one-half due on the anniversary of the effective date.

(j) *Channel Location.* Grantee agrees to use reasonable efforts to locate PEG channels so that they are grouped with the majority of channels a Subscriber receives as part of the lowest level of service offered on the System. Grantee shall pay reasonable expenses associated with a change in the PEG channel positions, up to Three Thousand Dollars (\$3000.00) per change.

Grantee shall also provide up to two (2) 15-second slots per day, on the channel previously occupied by a PEG channel, mixed over morning, afternoon, evening and late night time slots, for thirty (30) days after a change in channel positions, subject to restrictions on ad inserts in

Grantee's contract with the applicable programmer. Grantee shall not change the channel position for the government channel designated by the City, without the City's consent unless the change is required by federal law. City consent will not be unreasonably withheld or delayed.

(k) Video on demand. As of the adoption of this resolution, Grantee has only recently begun to offer local video on demand content. Grantee is willing to make Billings a test bed for local video on demand programming, and Grantor agrees to use its best efforts to implement PEG video on demand in Billings. Grantor agrees to work cooperatively with Grantee in this effort and to explore and develop operational and technical procedures for submitting, storing, adding removing and tagging such programming, in a manner that is financially and technically feasible for both parties.

(l) *No Charge for Use.* The facilities, equipment and channel capacity provided for PEG Use shall be available at no charge from Grantee to users, to the City or to any entity responsible for managing a PEG channel. In the event separate resolution is enacted per Section 7-908(i)A above, the City recognizes that Grantee intends to pass those costs on to users, at its discretion.

(m) Support Not A Franchise Fee. The parties agree that any cost to the Company associated with providing any support for PEG use required under this Franchise shall not constitute a Franchise fee within the meaning of 47 U.S.C. § 542, and shall be deemed to fall within one or more of the exceptions listed in 47 U.S.C. § 542(g)(2).

(n) Satisfying any one of the following triggers shall entitle the City to the additional channel provided for in this section.

A. If all PEG channels are being programmed at least eighty (80) hours per week over a

Other C

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consecutive sixteen (16) week period.

B. If all channels designated for a particular use (e.g., educational use) are being programmed at least ~~eighty~~ (80) hours per week over a consecutive sixteen (16) week period, an additional channel shall be provided for that particular use upon request by the City.

C. If the City desires a governmental channel and there is no designated governmental channel, the City can show that there is a regular conflict over a consecutive sixteen (16) week period between programming it would carry and programming being carried on PEG channels.

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The term "repeat program" means the running time of any program to the extent that it is shown more than four (4) times during the test period. Repeat programs are counted only to a maximum of twenty-five percent (25%) of total hours for purposes of the tests in paragraphs 1 and 2 above.

Sec. 7-909. Miscellaneous Provisions

(a) *Actions of Parties.* In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

(b) *Entire Agreement.* This Franchise constitutes the entire agreement between the Grantee and the Grantor. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

(c) *Governing Law.* This Agreement shall be governed by the laws of the State of Montana unless expressly preempted by federal law. Venue for any litigation shall be in Yellowstone County, Montana.

(d) *Notice.* Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Grantor or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Grantor shall be addressed as follows:

City of Billings
City Administrator
P.O. Box 1178
Billings, MT 59103

The notices or responses to the Grantee shall be addressed as follows:

Sean O'Donnell
Regional Voce President and general manager, Montana Operations
Bresnan Communications
1860 Monad Road
Billings, Montana 59102
(4060 238-7710

Deleted: Robert V. Bresnan¶
Senior Vice President and General
Counsel¶
Bresnan Communications, LLC¶
One Manhattanville Road¶
Purchase, NY 10577

with a copy to: Robert Bresnan
Senior Vice President
Bresnan Communications, LLC
One Manhattanville Road
Purchase, NY 10577

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The Grantor and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

(e)*Descriptive Headings.* The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

(f)*Severability.* If any non-material Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.”

Section 3. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 4. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 5. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of

this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2008.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2008.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Consideration and approval or disapproval of Cottonwood Park School Site Purchase and Sale Agreement selling approximately 10 Acres in Cottonwood Park to School District # 2. Decision continued from the May 12, 2008, meeting until May 27, 2008.

DEPARTMENT: City Attorney/City County Planning/PRPL

PRESENTED BY: Brent Brooks, City Attorney

PROBLEM/ISSUE STATEMENT: In 2002, the City, School District #2, Westward Ho, Inc., and Yellowstone County, Montana, entered into a contract entitled “Charitable Gift and Cottonwood Park Development Agreement.” This Development Agreement was recorded with the Yellowstone County Clerk and Recorder and executed by the various governing bodies and private donor. As part of this Development Agreement, the City received approximately 38.16 acres of land commonly known as Cottonwood Park at no cost. This park is generally located north of Colton Boulevard and west of 54th Street West. Within the Development Agreement, the City granted to School District #2 the option to purchase up to 10 contiguous acres within the 38.16 acres of land within Cottonwood Park. All of the parties to the Development Agreement intended that the land that would be designated by School District #2 and thereafter purchased would be used for a public school. Although the desired location of such school property has not been formally surveyed, the City and School District #2 have tentatively identified the proposed location as generally described in the attached “Purchase and Sale Agreement.”

The original 2002 Development Agreement specified that, once School District #2 exercised its option to purchase up to 10 acres within Cottonwood Park, the School District and the City would initiate completion of the sale within 6 months of the School District obtaining all the necessary approvals which occurred in November, 2007. The City and the School District have tentatively agreed within the attached Purchase and Sale Agreement that a closing deadline of June 30, 2008, satisfies the original deadlines imposed by the 2002 Development Agreement allowing for the School District’s purchase of the 10 acres.

The School District #2 has proposed to purchase the 10 acres for a purchase price of Two Hundred Thousand Dollars (\$200,000).

The Mayor and City Council discussed this Agreement during its May 12, 2008, Regular Agenda, Item # 10(b). Councilmember Veis and others had questions about the 2002 Development Agreement, Section 13, page 4, which contained the following language:

“Should a portion of the property used as a public school revert to the City of Billings through the operation of this paragraph, said property and attached improvements shall revert “as is” and the School District shall not be liable for any costs, expenses or charges whatsoever for its discontinued use of the public school, nor shall it have any duty to remediate, demolish or otherwise participate in the preparation of the designated property for any change in use.”

This language created concern that should some unforeseen or unknown environmental condition occur during the District’s use of the land through any buildings it constructs, the city would be liable for any clean-up, remediation, etc because of this language which is also required in the warranty deed the City would convey to the District if/when this property is sold to the District.

Staff has met with the School District’s attorney and advised him of the issue. On Friday May 23, 2008, the District’s attorney advised that he had conferred with the original donors’ attorney that inserted this language. As a result, this language will be amended in both the original Development Agreement and in any warranty deed given to the District to reflect that the City will not be required to assume the property back if it has any environmental hazards.

A draft of this amended language is in progress and when received and reviewed by staff, will be brought to the Mayor and City Council within the next 2-3 weeks. The Mayor and Council’s approval of the attached Purchase and Sale Agreement with the District should be conditioned upon this amendment to the original 2002 Charitable Gift and Cottonwood Park Development Agreement.

ALTERNATIVES ANALYZED: Because School District #2 has exercised its option to purchase elementary school site property within Cottonwood Park in accordance with the 2002 Development Agreement, the only alternative for the Council to consider is the amount of the purchase price. That purchase price as proposed by School District #2 is \$200,000. Should the Council contest or dispute that amount, it could reject that purchase price proposed by School District #2, obtain a new formal fair market value appraisal for the property which may or may not confirm \$200,000 as a reasonable fair market value of the 10 acres. The most recent formal appraisal of the property was conducted on March 28, 2005, which yielded an appraised fair market value for the 10 acres of approximately \$200,000. A less formal estimated fair market value study analyzing comparable sales in the vicinity was conducted by Charlie Hamwey of Real Estate by Hamwey in September 2007. That study resulted in an estimate that the 10 acre parcel was worth approximately \$250,000. However, the Council has informally indicated earlier this year it would be receptive to accepting the less amount of \$200,000 as a reasonable sale price.

FINANCIAL IMPACT: The financial impact to the City would be receipt of the proposed purchase amount of \$200,000. This amount is required to be specifically expended for

improvements to Cottonwood Park as required by the Development Agreement of 2002. Therefore, the use of these funds has been specifically earmarked for park development and cannot be used for any other purpose.

RECOMMENDATION

Staff recommends that the Mayor and City Council conditionally approve the attached Cottonwood Park School Site Purchase and Sale Agreement and authorize Mayor to execute any necessary, related documents to complete the sale and transfer of ownership to School District #2 for the purchase price of \$200,000.

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

ATTACHMENT

- A. Proposed Purchase and Sale Agreement from School District #2 to City.

INTRODUCTION

In 2002, the City, Billings School District #2, Westward Ho, Inc., and Yellowstone County, Montana, entered into a contract entitled “Charitable Gift and Cottonwood Park Development Agreement.” That Development Agreement provided a gift of 38.16 acres of undeveloped land west of 54th St. West to the City. This Development Agreement also provided that School District #2 could purchase up to 10 acres within Cottonwood Park for use as an elementary school. Certain prerequisites were required of School District #2 in order to exercise that option and the District has now completed them by submitting the attached Purchase and Sale Agreement proposing that the City Council sell the designated 10 acres to School District #2 for the purchase price of \$200,000.

PROCEDURAL HISTORY /BACKGROUND

- 2002: City, School District #2, Westward Ho, Inc., and Yellowstone County, Montana executed a Development Agreement for Cottonwood Park whereby the City received 38.16 acres of park land west of 54th St. West and School District #2 retained an option to purchase up to 10 acres for an elementary school site.
- August 2007: School District #2 Board of Trustees initiated steps to exercise its option to purchase up to 10 acres of land within Cottonwood Park for purposes of an elementary school location.
- November 2007: As required by state statute, School District #2 voters were given the opportunity to approve the location of the elementary school within Cottonwood Park. That location was approved.
- May 2008: Approval of Cottonwood Park School Site Purchase and Sale Agreement by School District #2 Board of Trustees.
- May 12, 2008: Postponement of and continuation of approval/disapproval of the Purchase and Sale Agreement until May 27, 2008, pending staff communication with the District concerning amending Section 13, page 4, of the original 2002 Development Agreement upon request of Councilmember Veis and other Councilmembers. This change eliminates any City responsibility for environmental remediation should the property and any buildings ever revert back to the City.
- May 27, 2008: Conditional approval or disapproval of the Purchase and Sale Agreement

ALTERNATIVES ANALYSIS School District #2 has complied with the 2002 Cottonwood Park Development Agreement by exercising its option to purchase ten (10) acres from the City. The alternative available to the Mayor and City Council is to reject the proposed purchase and sale of those ten (10) acres for \$200,000 and submit a counter-proposal to School District #2

concerning the amount of the purchase in an amount it deemed appropriate and reasonable. The Council has previously, informally indicated to staff during a brief worksession discussion that it would be receptive to agreeing to the \$200,000 amount. It is within the discretion of the Mayor and City Council to accept the March 2005 appraisal as the fair market value of the 10 acres sought to be purchased by School District #2. It is also within the discretion of the Mayor and City Council to obtain an updated formal appraisal of the 10 acres and submit a counter proposal to School District #2. The voters in the fall of 2007 approved the location and purchase amount of \$200,000; therefore, the School District Board of Trustees may require additional voter approval should a different purchase amount be proposed by the Mayor and City Council.

STAKEHOLDERS Westward Ho, Inc., the original donors of the 38.16 acres to the City, is most interested in accomplishing the purchase of the ten (10) acres by School District #2 as expeditiously as possible. The proceeds from the sale received by the City would be applied exclusively to development of Cottonwood Park, although the proposed \$200,000 purchase price would not pay for all development of the Park.

School District #2 is also a stakeholder which intends to proceed with construction of an elementary school. The specific date of construction is currently under discussion by the School District Board of Trustees.

With the increasing development of various subdivisions immediately west of 54th St. West and the completion of Fire Station #7 on the east side of 54th St. West, there are numerous new developments that would logically utilize either or both the elementary school and the Park.

RECOMMENDATION

Staff recommends that the Mayor and City Council conditionally approve the Cottonwood Park School Site Purchase and Sale Agreement in the amount of \$200,000.

ATTACHMENT

- A. Cottonwood Park School Site Purchase and Sale Agreement.

**COTTONWOOD PARK SCHOOL SITE
PURCHASE AND SALE AGREEMENT**

This COTTONWOOD PARK SCHOOL SITE PURCHASE AND SALE AGREEMENT (the "Purchase Agreement") is made between THE CITY OF BILLINGS, MONTANA ("the City" or "Seller") and BILLINGS ELEMENTARY SCHOOL DISTRICT 2, YELLOWSTONE COUNTY (also known as Billings Public Schools or Billings School District No. 2 and hereinafter referred to as "the District" or "Buyer"). The effective date of this Purchase Agreement (the "Effective Date") shall be the later date of the dates this Purchase Agreement is executed by Seller and Buyer below.

RECITALS

A. In 2002, the City, the District, Westward Ho, Inc., and Yellowstone County entered into a contract entitled "Charitable Gift and Cottonwood Park Development Agreement" (the "Development Agreement"). The Development Agreement is recorded in the records of the Yellowstone County Clerk and Recorder under Document No. 3210655.

B. Through the Development Agreement, the City received at no cost approximately 38.16 acres of land commonly referred to Cottonwood Park, which is generally located north of Colton Boulevard and west of 54th Street West and is more particularly located in the SE ¼ of the NE ¼ of Section 31, Township 1 North, Range 25 East, PMM in Yellowstone County (the "Development Agreement Property").

C. In the Development Agreement, the City granted to the District the option to purchase up to ten contiguous acres of the Development Agreement Property. The real property subject to the District's option to purchase is referred to in the Development Agreement as the "Designated Property" and shall be referred to as the same herein. The parties to the Development Agreement intend that the Designated Property be used for a public school. Although the Designated Property has not been formally surveyed or subdivided from the Development Agreement Property, the parties to the Development Agreement identified the proposed location in the conceptual land use plan attached to the Development Agreement as Exhibit E.

D. The District's Board of Trustees exercised its option to purchase in 2007 (see the minutes of the Board's meetings on January 17, 2005, January 16, 2006, July 16, 2007, and August 20, 2007, all public records available through the District's website billingsschools.org/index.php or at the District's Clerk's office at 415 North 30th Street in Billings). As required by Montana law, the Board called for a school election seeking voter approval of the Designated Property as an elementary school site on November 6, 2007. The Designated Property was approved as a school site by the voters with 17,921 voting in favor of the site and 8,320 voting against. The Board may now enter into an agreement with the City for the purchase of

the Designated Property. Mont. Code Ann. § 20-6-603. The Board approved this Purchase Agreement at its regular meeting on April 21, 2008.

E. [This recital is reserved for description of City Council Action, as needed]

F. As provided for in Montana law, Seller desires to sell to Seller and Buyer desires to purchase from Seller the Designated Property, according to the provisions hereinafter set forth.

G. The transaction contemplated by this Purchase Agreement has been approved by both the Board of Trustees of Billings Elementary School District No. 2 and the Billings City Council.

AGREEMENT

For Valuable Consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. DESCRIPTION OF PROPERTY SOLD. Pursuant to the Development Agreement, which by reference is made a part hereof, Seller hereby agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, subject to the exceptions and reservations hereinafter described, the Designated Property. The parties agree that the Designated Property is generally described as:

Unplatted land being the NW ¼ SE ¼ NE ¼ of Section 31, Township 1 North, Range 25 East, P.M.M., in the City of Billings, Yellowstone County, Montana.

The parties agree the Designated Property shall be subdivided surveyed by the City and the City shall create a discrete tract of no more than ten (10) acres which can be conveyed to the District, as contemplated in the ~~from~~ the Development Agreement Property and this Purchase Agreement. The parties restate that the Designated Property shall not be materially relocated from the proposed site identified in Exhibit E of the Development Agreement, unless prior to the subdivision survey the City and the District determine that there is a mutually acceptable alternative school site. The precise location and size of the Designated Property shall be upon the mutual consent of the Seller and Buyer and shall be determined by the parties before the subdivision survey of the Designated Property. Upon the subdivision survey of the Designated Property, the Seller shall provide to Buyer a specific legal description, which legal description shall be attached hereto as Attachment A.

2. CLOSING. If this Purchase Agreement has not been previously terminated as permitted herein and if the conditions to close as set forth below have been met, closing

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 2 of 12

("Closing") of this sale shall occur on or before ~~May 6~~ June 30, 2008, at the office of American Title and Escrow in Billings, Montana ("Closing Agent"). Closing may take place at any other date, time or place with the consent of Seller and Buyer. The parties agree that the closing deadline of June 30, 2008, satisfies the closing requirement stated in Paragraph 16 of the Development Agreement. Except as otherwise provided for herein, the closing costs shall be shared equally by Seller and Buyer. The closing costs shall be limited to the Closing Agent's closing fee and deed recording fees. Closing costs shall not include costs associated with subdividing the subject property.

3. PURCHASE PRICE. Buyer agrees to pay or cause to be paid to the Seller the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) (the "Purchase Price") for the Designated Property, which shall be paid at Closing.

The Closing Agent shall not deliver the Purchase Price to Seller until the Warranty Deed (defined below) has been recorded, title has been updated and the Closing Agent is prepared to issue the title insurance policy required herein.

4. CONVEYANCE. At Closing, Seller will deliver to Buyer an executed warranty deed (the "Warranty Deed") conveying valid, marketable fee simple title to the Designated Property, to the Buyer, free and clear of all liens, encumbrances and title defects, except the following:

- a) Reservations and exceptions in patents from the United States or the State of Montana.
- b) Existing easements and rights-of-way.
- c) All building, use, zoning, sanitary and environmental restrictions.
- d) General and special taxes and assessments for 2008 and subsequent years.
- e) Mineral and royalty reservations or conveyances of record and any oil, gas and/or mineral leases of record.
- f) Those additional exceptions approved in writing by Buyer.
- g) The notice and restrictive covenant stated in Paragraph 13 of the Development Agreement, to wit:

"The property conveyed pursuant to this deed or instrument is subject to various covenants and restrictions described in a Charitable Gift and Park Development Agreement ('Agreement') by which Westward Ho, Inc., a Montana corporation, agreed to donate to the City of Billings approximately 38.16 acres of real estate to be developed and

maintained as a multifunctional community park, public school, and/or public library. A copy of the Agreement has been filed with the Yellowstone County Clerk and Recorder. It is expressly understood and agreed by and between the parties hereto that the property herein described is subject to the terms of the Agreement and shall be forever maintained as a public park, school, or library in accordance with the terms of the Agreement. In the event that any portion of the property is used as either a public school or a public library but such use is discontinued for a period of five (5) years, that portion of the property shall revert to the City of Billings for use as a public park and associated uses. Should a portion of the property used as a public school revert to the City of Billings through the operation of this paragraph, said property and attached improvements shall revert 'as is' and the School District shall not be liable for any costs, expenses or charges whatsoever for its discontinued use of the public school, nor shall it have any duty to remediate, demolish or otherwise participate in the preparation of the designated property for any change in use."

The parties affirm that Montana law governs the City's and District's ownership and use of the Designated Property, which may place different or additional restrictions on the Designated Property.

The Parties agree it is necessary for the City to subdivide survey the Designated Property from the Development Agreement Property. Any cost associated with subdividing surveying the Development Agreement Property shall be the City's responsibly.

5. TITLE MATTERS. Buyer shall not be obligated to purchase the Designated Property unless at, or prior to, Closing each of the following conditions has been met or Buyer has expressly waived said conditions in writing. Seller agrees to cooperate with Buyer and to execute any documents which may be necessary or convenient to the performance of these conditions.

- a) Within a reasonable time after the subdivision survey of the Designated Property from the Development Agreement Property and the creation of a discrete tract, Seller, at Seller's expense, shall obtain a title commitment for a standard Owner's Title Insurance Policy through American Title and Escrow in Billings for the Designated Property and in the amount of the Purchase Price, with legible copies of all documents referred to therein ("Title Commitment"). Within thirty (30) days after Buyer's receipt of the Title Commitment, Buyer shall raise any objections to title, which objections shall be made to Seller in writing ("Title Objections"). Seller shall have fifteen (15) days from receipt of Buyer's Title Objections to remove and/or cure same. If Seller, after expending diligent efforts, is unable to remove and/or cure such Title Objections, Buyer shall have the right to (i) cure the

Title Objections itself and close this transaction, (ii) close this transaction notwithstanding the Title Objections, or (iii) terminate this Agreement.

- b) Seller shall convey to Buyer good and marketable title to the Designated Property, which shall be free and clear of all liens, leasehold interests, tenancies, encumbrances, and other exceptions to title, except the liens of taxes and assessments not yet due and payable, easements and restrictions of public record, and those exceptions approved in writing by Buyer ("Permitted Exceptions").
- c) Within a reasonable time after the Closing, Seller shall cause, at Seller's expense, an owner's policy of title insurance to be issued to Buyer in accordance with the terms of this paragraph.

6. POSSESSION. Seller agrees to deliver possession of the Designated Property to the Buyer at Closing.

7. ATTORNEY FEES. If either party defaults in its performance and the other party employs an attorney, which may include in-house counsel employed by a party, because of such default, the defaulting party agrees to pay, on demand, all costs, charges and expenses, including reasonable attorney fees, reasonably incurred at any time by the other party or parties because of the default, together with interest thereon at the rate of ten percent (10%) per annum.

9. NOTICE. Any notice to be given hereunder shall be in writing and shall either be served upon a party personally, or served by registered or certified mail, return receipt requested, directed to the party to be served at the following addresses:

If to Seller, to:

City of Billings
P. O. Box 1178
Billings, MT 59103
Attn: City Administrator

If to Buyer, to:

Billings Elementary District 2
415 N. 30th Street
Billings, MT 59101
Attn: Superintendent

A party wishing to change its designated address shall do so by notice in writing to the other party. Notice served by mail shall be deemed complete when deposited in

the United States mail, postage prepaid and addressed to the party as above referenced, or at such other address as the parties may designate in accordance with this paragraph. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given shall be deemed to be a receipt of the notice.

10. BROKERAGE. Buyer and Seller represent and warrant that all negotiations relative to this Purchase Agreement have been carried on by them directly, without the intervention of any person, and no commissions relating to the purchase and sale hereof are due to any person.

11. ENVIRONMENTAL MATTERS AND ENVIRONMENTAL ASSESSMENT. Seller makes the following representations and warranties to the best of its knowledge: (a) no Hazardous Material exists at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property; (b) no Hazardous Material has been generated, discharged, released, deposited, stored, disposed of, placed, or otherwise located at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property, (c) no part of the Designated Property has been used as a landfill, dump, industrial waste disposal area, waste treatment facility, gasoline service station, or any other similar purpose or for any industrial purpose, (d) no above-ground storage tanks or underground storage tanks are or were located on the Designated Property, (e) no investigations, administrative proceedings, litigation, regulatory actions, or claims are pending, proposed, or threatened, or have ever been brought, with respect to the existence of any Hazardous Material at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property or to an alleged violation at, in, on, under, or about the Designated Property of any Environmental Law or regulation, (f) Seller has not violated any Environmental Law or regulation, at, in, on, under, or about the Designated Property, nor, to the best of Seller's knowledge, has any third party, and (g) neither all nor any part of the Designated Property is listed on the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or on any other list, schedule, log, inventory, or record of hazardous waste sites maintained by any federal, state, or local government agency. As used herein, the term "Hazardous Material" shall be defined as asbestos, urea-formaldehyde, petroleum hydrocarbons and other petroleum products (including gasoline, diesel fuel, fuel oil, crude oil and motor oil and constituents of those products), perchlorethylene, tetrachloroethylene, vinyl chloride, polychlorinated biphenyls ("PCB's"), nuclear fuel or materials, chemical, biological or medical wastes, radioactive materials, explosives, known or suspected carcinogens, petroleum products, and all dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by, any federal, state or local Environmental Law. The term "Environmental Law" shall mean and include any federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or

the environment, including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance.

Before the Closing, Buyer shall have reasonable access to the Designated Property, at its own risk and expense, to conduct or to have conducted for its benefit a Phase I Environmental Assessment, if it elects to do so. Buyer agrees to indemnify and hold harmless the Seller from all liabilities, obligations, claims and expenses (including reasonable attorneys fees) arising out of or related to the Buyer's, or those acting on the Buyer's behalf, conducting of a Phase I Environmental Assessment on the Designated Property. The obligation under the preceding sentence shall survive any termination of this Purchase Agreement. If Buyer is not satisfied with the Phase I Environmental Assessment, Buyer shall so notify the Seller. The Buyer and Seller shall then attempt to negotiate the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment. If, despite their good faith efforts to do so, the Buyer and the Seller are unable to satisfactorily negotiate the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment, then, upon notice to Seller (given not less than ten (10) days before the date of Closing), Buyer may terminate this Purchase Agreement. If Buyer so terminates this Purchase Agreement, the parties will have no further rights or obligations against the other under this Purchase Agreement, except for those obligations that are expressly stated to survive termination. If the Buyer either is satisfied with the Phase I Environmental Assessment or the matter that causes Buyer's dissatisfaction with the Phase I Environmental Assessment is successfully negotiated, the parties shall proceed to Closing on the same terms and conditions as set forth in this Purchase Agreement, subject to any modification to which the Buyer and Seller may have agreed in their negotiation of the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment.

12. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller warrants and represents to Buyer, which warranties and representations shall be true and correct as of the Closing Date, that:

- a) Seller has good and marketable fee simple title to the Designated Property, which will be free from liens and encumbrances at Closing;
- b) No suit, action, or legal, administrative, arbitration, or other proceeding or governmental investigation is pending or, to Seller's knowledge, is threatened against Seller which would affect the Designated Property. There is no outstanding judgment, decree, or order against Seller that affects the Designated Property;
- c) Neither the execution and delivery of this Purchase Agreement, nor Seller's consummation of any of the transactions contemplated hereby, will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree, or conflict with or result in the breach of any term, provision, covenant, or condition of any agreement or

other instrument to which Seller is a party or by which it may be bound, or which with the giving of notice or lapse of time or both would constitute an event of default thereunder; and

- d) Seller shall keep the Designated Property in the same condition from the date of this Purchase Agreement to the time Buyer takes possession.

These warranties and representations will survive the Closing. Seller will indemnify and hold Buyer harmless from any damage, loss, claims, or liability arising out of any falsity, omission, or misstatement of the matters set forth in this paragraph.

13. BUYER'S REPRESENTATIONS. Buyer warrants and represents to Seller, which warranties and representations shall be true and correct as of the Closing Date, that neither the execution and delivery of this Purchase Agreement, nor Buyer's consummation of any of the transactions contemplated hereby, will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree, nor conflict with or result in the breach of any term, provisions, covenant or condition of any agreement or other instrument to which Buyer is a party or by which it may be bound, or which with the giving of notice or lapse of time or both would constitute an event of default thereunder.

These warranties and representations will survive the Closing. Buyer will indemnify and hold Seller harmless from any damage, loss, claims, or liability arising out of any falsity, omission, or misstatement of the matters set forth in this paragraph.

14. BUYER'S INVESTIGATION AND DUE DILIGENCE. In addition to Buyer's right to conduct a Phase I Environmental Site Assessment under paragraph 11, Buyer shall have the right, at Buyer's expense to inspect and investigate the Designated Property pursuant to the terms and conditions of this paragraph. Before the Closing, Buyer and its employees, agents, designees, contractors and professionals, will have the right to conduct due diligence with respect to the Designated Property, the terms and conditions of this Purchase Agreement and the matters set forth below to its sole satisfaction for the purpose of evaluating this transaction for all matters and aspects, including but not limited to, all: tax matters; parking and traffic flow; security; safety; health; financing and expenses associated with and/or anticipated and/or expected from the Designated Property and any building or improvement to be located thereon; title matters; local, state and/or federal rules, regulations; hydraulics, including but not limited to water tables, piping, water delivery systems, cisterns, sewer, access and rights pertaining thereto; zoning, policies and legislation; liens, encumbrances and encroachments; soil suitability; state and federal financing; bonding and/or levy requirements; subsequent voter approvals; lease and lease back sufficiency and/or potential; suitability as a school site; management; structural, mechanical, electrical, HVAC, plumbing and aesthetic matters; legal compliance and suitability; regulatory, administrative and other legal matters; and/or any other matter deemed necessary in the District's sole judgment, all of which may be reviewed from a past, current or

anticipated basis. Disclosures made by Seller to Buyer prior to Closing will not limit Buyer's ability to investigate all matters pertaining to such disclosures. At all times prior to Closing, on an as necessary basis as deemed reasonably appropriate by Buyer, Seller will make the Designated Property available for inspection, and the Seller will make its agents and employees available to answer questions and to provide information, in order to assist in the timely completion of Buyer's inspection and due diligence. In the event that Buyer determines in its sole discretion that as a result of its inspection or due diligence the transaction contemplated herein is not acceptable to it, then the offer set forth in this Purchase Agreement may be terminated at Buyer's option without payment, penalty, cost or fee to Seller.

15. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS. The closing of this purchase and sale of the Designated Property is conditioned upon the occurrence of all of the following prior to Closing unless waived by the Buyer in writing:

- a) Seller complying with all of its obligations under this Purchase Agreement;
- b) All of Seller's representations and warranties set forth herein shall be true and correct;
- c) Buyer completing its inspection and due diligence review as set forth in this Agreement and approving the Designated Property in writing to Seller;
- d) There shall have been no material adverse change in the condition of the Designated Property from the date of this Purchase Agreement;
- e) Seller terminating any and all leases pertaining to the Designated Property, if any, to Buyer's sole satisfaction;
- f) Buyer and Seller agreeing on the final form of warranty deed;
- g) Seller obtaining at Seller's expense all necessary ~~permits and~~ approvals, including the ~~surveying, subdivision, proper zoning and replatting~~ of the Designated Property to accomplish the transaction contemplated herein;
- h) The approval of the transaction contemplated by this Purchase Agreement by Buyers' Board of Trustees; and
- i) The approval of the transaction contemplated by this Purchase Agreement by the Seller's City Council,

hereinafter referred to as "Conditions to Close."

If any of the Conditions to Close have not been satisfied by the Closing date or by such later date as may be hereafter mutually agreed upon in writing by the parties, this Purchase Agreement shall terminate upon written notice from Buyer to Seller.

16. REMEDIES ON DEFAULT.

a) If Seller fails to consummate this Purchase Agreement in accordance with its terms for any reason within the control of the Seller, Buyer shall have as Buyer's sole remedy the option of either of the following: (i) rescinding this Purchase Agreement by giving written notice to Seller; or (ii) enforcing specific performance by Seller of Seller's obligations hereunder.

b) If Buyer fails to consummate this Purchase Agreement in accordance with its terms for any reason with the control of Buyer, Seller shall have as Seller's sole remedy against Buyer the option of either of the following: (i) rescinding this Purchase Agreement by giving written notice to Buyer; or (ii) enforcing specific performance by Buyer of Buyer's obligations hereunder.

17. PARTIES' AGREEMENT. The parties make the Development Agreement a part of this Purchase Agreement. The Recitals above are part of this Purchase Agreement. Except as otherwise provided for herein, this Agreement, the Warranty Deed, and the Development Agreement contain the entire agreement and understanding of the parties, and supersede any and all prior negotiations and understandings. This Purchase Agreement shall not be modified, amended or changed in any respect except by written document signed by all parties hereto.

18. INTERPRETATION. If any portion of this Purchase Agreement shall be held to be void or unenforceable, the balance thereof shall nonetheless be effective. This Purchase Agreement has been made and entered into in the State of Montana and shall be governed by the laws of the State of Montana.

19. HEADINGS. The headings used in this Purchase Agreement are for convenience only, and shall not be construed as part of this Purchase Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

20. BINDING EFFECT. This Purchase Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors, successors in interest and assigns of the parties.

21. SURVIVAL OF AGREEMENT. This Purchase Agreement and all of the representations, warranties, covenants, promises, indemnities and agreements of the parties contained herein or in documents provided pursuant to this Purchase Agreement

shall survive the execution and delivery of this Purchase Agreement, the closing and the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement effective the day and year first above written.

BILLINGS ELEMENTARY SCHOOL DISTRICT 2

By: _____ Dated: _____
Malcolm Goodrich
Its Board of Trustees Chairperson

Attest:

Leo Hudetz, District Clerk

THE CITY OF BILLINGS

By: _____ Dated: _____
Its _____

Attest:

City Clerk

Attachment A
Legal Description of the Designated Property

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 12 of 12

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 26, 2007

TITLE: Rimrock Settlement Offer
DEPARTMENT: City Council/City Administrator’s Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The Rimrock Foundation filed suit against the City in U.S. District Court in November 2006, after the City Council denied Special Review #800 to allow the construction of a fourplex apartment building and operate a Community Residential Facility in a Residential 6000 zone on Tract A of Certificate of Survey 2237 at 1721 8th Avenue North.

The City and Rimrock Foundation have negotiated a settlement outlined in Attachment A that now is being brought to the City Council for approval.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the settlement;
- Deny the settlement, which will result in the Federal court case being continued; or
- Take no action at this time.

FINANCIAL IMPACT: The \$400,000 would come from the Property & Liability Fund, which currently has an unencumbered balance of about \$900,000. However, the fund will have to be repaid from an annual General Fund contribution over the next 3 years in order to have reserves for future settlements.

RECOMMENDATION

Staff recommends approval of the settlement as proposed.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

A: Settlement Memo from Harlan Krogh



Memo

To: Tina Volek
From: Harlan Krogh
Date: May 19, 2008
Subject: Rimrock Foundation

Per your request, I have described the essential terms of the proposed agreement with Rimrock Foundation:

1. The City of Billings agrees to pay Rimrock Foundation the sum of \$400,000.
2. The City will permit the construction of a Community Residential Facility, as defined in BMCC 27-201 with the following conditions:
 - a. The use shall be limited to Tract A of Certificate of Survey 2237.
 - b. The approval is for one two-story "t-shaped" building (as shown on the site plan submitted to the City of Billings pursuant to Rimrock Foundation's Building Permit Application Number 07-105) to be used as a Community Residential Facility for no more than two (2) persons per bedroom (hereinafter "the structure") and no other use or expansion of this use is approved or implied with this authorization. The structure may provide common facilities for the residents of the property. The structure's primary access will come from North 17th Avenue, as indicated on the building permit application (No. 07-105) site plan.
 - c. Prior to occupation of the structure, a 6-foot tall sight obscuring fence or wall shall be installed along the west property line beginning at a point not more than 56 feet north of the property corner at the intersection of the alley and 8th Avenue North and ending at the northwest property corner. A continuous evergreen hedge may be substituted for the required fence if the evergreen trees or shrubs are at least 4 feet in height when planted, reach a mature height of at least 8 feet, a mature width of at least 6 feet and are planted no greater than 7 feet on center. Any sight obscuring fence must be constructed of wood, stone, vinyl, brick or block or other conventional

fencing materials. No chain-link or wire fencing is allowed. This requirement shall not preclude Rimrock Foundation from installing an access or pass-through in the fence, wall, or shrub for the purpose of allowing the installation of a dumpster on Rimrock's property and providing the alley access to the dumpster for solid waste removal.

- d. Rimrock shall gravel the alleyway adjacent to Tract A of Certificate of Survey 2237. The City will open the alley right of way and ensure it is sufficiently free of encroachments so that Rimrock can gravel it. Rimrock is not responsible for removing encroachments from the alley right of way.
- e. Other than the "t-shaped" building, Rimrock has no intention of developing the other structures shown on the building permit application (No. 07-105) site plan. If, in the future, Rimrock does develop the property in accordance with the building permit application (No. 07-105) site plan, Rimrock understands it may be required by the City to pave the alley in order to provide primary access to the paved parking lot if such is required by the BMCC at the time of development.
- f. Rimrock Foundation shall maintain the existing healthy trees within the subject site, except where specific construction of the structure will be. Prior to the occupation of the structure, Rimrock Foundation must install at least four (4) canopy trees, of a 2-inch caliper and 8-foot tall minimum. These four (4) trees shall be evenly spaced within the front yard setback along the northern 200 feet of property frontage on North 17th Street. Except as otherwise provided herein, the remaining landscaping of the subject property shall comply with the landscaping standards in BMCC 27-1105; 27-1106; 27-1107; and 27-1110.
- g. Rimrock Foundation shall not use any brick or red siding materials on the structure.
- h. The footprint of the structure may not exceed 4,100 square feet. Projections of building features will not be calculated in the total footprint square footage if those projections do not exceed the parameters established in BMCC Section 27-310(g) Permitted Projections. The total square footage of the structure may exceed 4,100 square feet, provided that the footprint, minus the permitted projections, does not exceed 4,100 square feet.

Memo to Tina Volek
May 19, 2008
Page 3

- i. Any lighting within the parking lot shall have full cut-off shields so that light is directed to the ground and not onto adjacent property.
 - j. Construction of the structure must commence and be completed within five (5) years from the date of settlement.
 - k. The approval will not constitute approval of any building permit or any requirements set forth by the Building and Engineering Department in order to obtain a building permit.
3. Rimrock Foundation will dismiss all of its claims in all venues, courts, and administrative proceedings against the City of Billings with prejudice and sign a complete release of all claims in exchange for these covenants.
4. The foregoing agreement is subject to official City Council approval.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 27, 2008

TITLE: Gundlach Lawsuit Settlement
DEPARTMENT: City Council/City Administrator's Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: City Council is being asked to consider approving an attached compromise and settlement agreement in a dispute involving the Ironwood and Tuscany Subdivisions that includes a lawsuit against the City by GSK Partners, LLP, a company owned by Shane and Stephanie Gundlach. In their suit against the City, the Gundlachs were seeking to remove two conditions from a preliminary plat for Tuscany Subdivision that was approved by the Council in September 2007. One condition was that a secondary access be provided to the property via Ironwood Drive in the Ironwood Subdivision, and the other was that a traffic accessibility study be completed by the time the final plat is filed.

As part of the proposed settlement, GSK Partners would be able to resubmit the preliminary plat with a request for two variances. One would release Tuscany Subdivision from an obligation to build a second full access, and the other would release Tuscany from a required secondary fire emergency access that goes directly to Tuscany. Instead, the Public Works Department would build an emergency access on 62nd Street, which it had planned to do through an agreement with Ironwood Subdivision. According to the terms of the settlement, the City Council is not obligated to approve the variances when they are presented.

GSK Partners has agreed to extend a roadway spur called Pomino Way to the southern property line for future expansion toward the Yellowstone Country Club. It also has agreed to make all streets in the subdivision public, rather than private as originally planned. Finally, it gives the City a 56-acre park.

If the terms of agreement are not met within six months by all the parties, including the Gundlachs, a potential future owner of their property, the City and the Ironwood Non-Profit Owners Association, then the lawsuit may resume on matters that are incomplete.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the agreement;
- Decline to approve the agreement; or
- Take no action at this time.

FINANCIAL IMPACT: The City would be liable for the costs of the road and for developing and maintaining the park, if either or both were developed. There are no other settlement costs.

RECOMMENDATION

Staff recommends that the Council approve the compromise and settlement agreement.

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

Attachment:

A – Compromise and Settlement Agreement

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement (the "Agreement") is made and entered into on this ____ day of May, 2008, by and between Shane and Stephanie Gundlach (the "Gundlachs"), husband and wife, Gundridge, LLC, ("Gundridge"), a Montana Limited Liability Company owned by the Gundlachs, GSK Partners, LLP, ("GSK"), a Montana Limited Liability Partnership owned by the Gundlachs, and the City of Billings, a Montana municipality (the "City"). The Gundlachs, Gundridge and GSK will hereafter be referred to, collectively, as the "Plaintiffs." The Plaintiffs, along with the City are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Plaintiffs are owners of certain real estate in Billings, Montana known as the Tuscany Subdivision which lies directly to the east of the Ironwood Subdivision;

WHEREAS, a dispute has arisen between Plaintiffs and the Ironwood Non-Profit Owners Association (the "IOA") concerning access to the Tuscany Subdivision through Ironwood Subdivision which resulted in a lawsuit being filed in the Yellowstone County District Court as Case No. DV07-0797 (the "IOA Lawsuit");

WHEREAS, the Court in the IOA Lawsuit has recently issued an Order that does not permit Plaintiffs an easement across Lot 21 in the Ironwood Subdivision and voids any existing easement;

WHEREAS, a dispute has arisen between Plaintiffs and the City which resulted in a lawsuit being filed in the Yellowstone County District Court as Case No. DV07-1321 (the "City Lawsuit");

WHEREAS, the Parties wish to avoid the risk, uncertainty and cost of litigation and to buy peace, and desire to compromise and settle all claims which they have against each other or may have alleged against each other with regard to the City Lawsuit upon the terms and provisions set forth herein;

NOW, THEREFORE, in consideration of the above-stated premises, the promises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Property Transfer.** Upon fulfillment of the Contingencies set forth in paragraph 10, below, the Plaintiffs, or their successors in interest, will deed all properties east and south of the platted red subdivision line as shown on Exhibit "A", consisting of approximately 56 acres, to the City or one of its departments for a park (the "Park") by warranty deed free and clear of all liens, encumbrances, easements, taxes, and

assessments. In creating the Park, the City or its department will allow the Gundlachs to name the Park and there will be no motorized vehicles allowed in the Park except for City vehicles.

2. **Road Extension.** The roadway spur called Pomino Way that extends south in the Tuscany Subdivision, towards the Yellowstone Country Club, will be further extended to the southerly property line, rather than ending in a cul de sac as shown on Exhibit "A". This will require actual construction of a roadway to the south subdivision line by the Plaintiffs or their successors.

3. **Variances.** Plaintiffs may resubmit its preliminary plat requesting two variances for the Tuscany Subdivision. The first variance will release the Tuscany Subdivision from any obligation to build a second full access to the Tuscany Subdivision. The second variance will release the Tuscany Subdivision from the requirement of a secondary emergency (fire) access that goes directly to the Tuscany Subdivision; rather, an emergency access will be constructed by the City pursuant to Paragraph 4 herein. The City is not obligated hereunder to approve either variance.

4. **62nd Street Improvement.** If the plat is approved and the two variances are granted, the City will improve and construct 62nd Street to fire standards, to the point where it adjoins the southern edge of Ironwood Subdivision. This will include asphalt on the surface of 62nd Street; the entrance to Ironwood will continue to be gated.

5. **Public Access.** All residential streets depicted on the preliminary plat of Tuscany Subdivision will be dedicated public roads with no gates.

6. **Dismissal of Lawsuits.** Upon fulfillment of the terms of this agreement by the Parties, including the approval hereof by the Parties and J Back J, LLC, the granting of the two variances by the City, and the approval of the preliminary plat by the City, the City Lawsuit will be dismissed by the Parties no later than fifteen (15) days after the last of the preceding events to occur.

7. **Lot 21 Easement.** Lot 21 of the Ironwood Subdivision will remain residential, and the Plaintiffs will not seek a road easement access through this Lot. The parties acknowledge that the existing easement that the City obtained across Lot 21 has been nullified by the Court's decision in the IOA Lawsuit, is void, and of no effect. The City will file a document with the Yellowstone Clerk and Recorder terminating this easement.

8. **Contingencies.** This agreement is contingent upon: a) the approval of the prospective purchaser of the Tuscany Subdivision property (J Back J, LLC); b) approval by the City Council of this settlement agreement; and, c) approval by the City Council of the two variances and the preliminary plat. Execution of an acceptance to this agreement by Wayne Joyner on behalf of J Back J, LLC shall be conclusive evidence of his approval to be bound by the terms hereof. Even if the City approves this settlement agreement, there are no promises or representations made that either or both of the variances will be granted.

9. **Subdivision Size.** This agreement is premised upon Tuscany Subdivision being limited to a 49-single family residential subdivision, in substantial conformity with the current preliminary plat with conditions currently on file with the City.
10. **Compromise and Intention of Parties.** It is expressly understood and agreed that the terms hereby are contractual in nature and not merely recitals and that the agreements and releases contained herein are made and given in order to compromise and settle doubtful and disputed claims. The Parties further agree, as among them, that this is a compromise, resolution, and settlement of a dispute, primarily to avoid the uncertainty, time, trouble and expense of litigation, and that such compromise, resolution and settlement shall not be taken as an admission of liability but rather such liability has been expressly denied by the Parties. No promise or inducement has been offered except as set forth herein. This Agreement is executed without reliance upon any oral, written, express or implied representations, statements, promises, warranties or other inducement of any nature or sort made by any person or party hereto other than as is expressly set forth herein.
11. **Documents.** To the extent any documents are required to be executed by any of the parties to effectuate this Agreement, each party hereto agrees to execute and deliver such documents as may be required to carry out the terms of this Agreement.
12. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and there are no other written or oral agreements, understandings or arrangements between the parties regarding the subject matter hereof.
13. **Representation by Counsel.** The Parties acknowledge and represent that this agreement was reached as a result of mediation, and that they had a full opportunity to consider this Agreement and to confer with legal counsel, that they had a full opportunity to ask any questions that they may have concerning this Agreement or the settlement of claims, and that they have not relied upon any statements or representations made by the other party or their agents or attorneys, written or oral, other than the statements and representations that are explicitly set forth in this Agreement.
14. **Authority to Execute.** The Parties represent and warrant that they have the sole right and exclusive authority to execute this Agreement; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.
15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument; and the parties may execute copies sent by telefacsimile, and return signed copies by telefacsimile. Copies signed and returned by telefacsimile shall be deemed and considered executed counterparts, but a party executing a copy and transmitted same by telefacsimile shall promptly mail to the other parties copies bearing the transmitting party's original signatures.

16. **Release of All Claims.** Upon fulfillment of the terms of this agreement, the City and the Gundlachs fully and forever release and discharge each other, their heirs, personal representatives, predecessors, successors, assigns, agents, subsidiaries, affiliates, divisions, directors, shareholders, members, officers, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, whether sounding in tort, negligence, fraud, contract or otherwise, and especially those claims that are or could have been raised as part of the Lawsuits. It is expressly agreed, however, that neither Dan Wells, Regal Land, the IOA nor any of their related entities, subsidiaries, affiliates, divisions, directors, officers, or shareholders are released as part of this agreement.

DATED this _____ day of _____, 2008.

Shane Gundlach

Stephanie Gundlach

Gundridge, LLC

GSK Partners, LLP

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

City of Billings

By: _____
Name: _____
Its: _____

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

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Cobb Field being such a location)

at the incremental cost of extending the nearest available fiber to the location, where (1) and (2) do not apply.

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| The links shall be designed to serve as a program origination point, and as a playback center for programming on any PEG channel. | | |
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| Grantee shall provide capital funding for PEG channels and for facilities and equipment for the use of those channels in addition to satisfying its other obligations herein. | | |
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If Grantee provides video on demand to Subscribers in Billings, it shall: provide space on each of the servers or other devices (collectively, the devices) used to store or

forward video programming for up to twenty hours of programming selected by the City, using formats and technologies comparable to that used for commercial programming; provide a means for Subscribers to select the programming comparable to that used to select commercial programming; and provide a means for the City to load and remove programming from the devices via the connections to the headend, or some comparable means.