

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

December 10, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Boyer
ROLL CALL
MINUTES – November 26, 2007
COURTESIES – VISTA Placement
PROCLAMATIONS
ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: and 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) **100-Ton Static Pipe Bursting System.** (Opened 11/20/07). Recommend Vermeer Rocky Mountain, Inc., \$186,000.00.
[\(Corresponding Staff Memo A1\)](#)
 - (2) **LED Traffic Signal Components.** (Opened 11/20/07). Recommend Trastar, Inc., \$72,664.50.
[\(Corresponding Staff Memo A2\)](#)

- B. **Change Order No. 2, New Baseball and Multi-Use Stadium at Athletic Park, \$87,114.00.**
[\(Corresponding Staff Memo B\)](#)

C. Amendment #1, Restriping Airfield Markings Service Agreement, changing contractor's name from United Rentals to Streamline Marking, Inc.

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

D. Approval and acceptance of the 2009 Billings Adult Misdemeanor Drug Court Award from the Supreme Court of Montana, \$180,384.00.

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

E. Approval of Assignment of Drew C. and/or Jennifer R. White West End Hangar Ground Lease to Western Security Bank for financing purposes with no financial impact to the City.

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

F. Approval of 20-year lease with Corporate Jet LLC, for Fuel Farm Site on Lot 1 in the East End Fuel Farm (12/1/07-11/30/27), \$1,269.96 first year revenue.

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

G. Approval of 5-year lease renewal for building and ground space with the Bureau of Land Management (9/5/07-9/4/12), \$54,967.37 first year revenue.

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

H. Approval of amendment extending franchise agreement with Bresnan Communications.

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

I. Declaring surplus property and authorizing the Aviation and Transit Department to donate airfield lighting equipment to the Montana Aeronautics Division.

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

J. W.O. 04-33, Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition: Parcel 2: Portion of Tract 3, Certificate of Survey 205, Benjamin J. Huber, \$7,700.00.

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

K. Right-of-Way Easement with Department of Natural Resources and Conservation (DNRC) for Zone 4 Reservoir, \$26,894.00.

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

L. Street Closure: Martin Luther King Observance March on Monday, January 21, 2008, from 6:00 p.m. to 6:50 p.m. originating on the courthouse lawn, walking on the sidewalk to the corner of N. 27th and 3rd Avenue N, crossing N. 27th, marching in the street to N. 29th, north on N. 29th, and disbanding at the Lincoln Center.

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

M. Resolution setting zoning compliance review fees at \$41.00 for residential permit applications and \$16.00 for commercial permit applications.
[\(Corresponding Staff Memo M\)](#)

N. Resolution of Intent to sell Lot 27A, Block 6, Rehberg Ranch Estates Subdivision, 1st Filing, and setting a public hearing date for January 14, 2008.
[\(Corresponding Staff Memo N\)](#)

O. Second/final reading ordinance creating the South Billings Boulevard Urban Renewal District.
[\(Corresponding Staff Memo O\)](#)

P. Bills and Payroll

(1) November 9, 2007

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

(2) November 16, 2007

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

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **COMPENSATION** increase for City Administrator. Staff recommends approval.
(Action: approval or disapproval of staff recommendation.)

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

3. **PUBLIC HEARING AND RESOLUTION** vacating a portion of Henry Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

4. **PUBLIC HEARING AND RESOLUTION** creating Park Maintenance District No. 4035, Bitterroot Heights Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

5. (a) **PUBLIC HEARING AND RESOLUTION** creating Special Improvement District No. 1380, Terra West Subdivision, 3rd and 4th Filings, for Monad Road Street Frontage Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

(b) **PUBLIC HEARING AND RESOLUTION** creating Special Improvement Maintenance District No. 4038, Terra West Subdivision, 3rd and 4th Filings,

Monad Road Street Frontage Improvements. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

6. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-05:** Property described as 13.4 acres of a portion of park land along Zimmerman Trail right-of-way and a portion of Zimmerman Trail right-of-way between Highway 3 and Rimrock Road; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

7. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-18:** Property described as a portion of 56th Street West and Broadwater Avenue rights-of-way; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

8. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-19:** Property described as a 6.832-acre portion of Rimrock Road right-of-way from 62nd Street West to the city limits; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

9. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-25:** Property described as a 2.457-acre portion of 44th Street West right-of-way south of King Avenue West; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

10. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-11:** Property described as a 3.74-acre portion of Broadwater Avenue right-of-way west of 30th Street West; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

11. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-12:** Property described as a 1.69-acre portion of Bell Avenue right-of-way west of Shiloh Road; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

12. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-13:** Property described as a 0.92-acre portion of Zimmerman Trail right-of-way; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

- 13. PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-14:** Property described as a 4.86-acre portion of Cove Avenue right-of-way between 46th and 50th Streets West; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

- 14. PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-16:** Property described as a 0.359-acre portion of Grand Avenue right-of-way east of 56th Street West; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

- 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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, December 10, 2007

TITLE: 100-Ton Static Pipe Bursting System
DEPARTMENT: Public Works Department
PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Public Works Department received bids for a 100-Ton Static Pipe Bursting System in accordance with the approved equipment replacement plan and is recommending award.

FINANCIAL IMPACT: The bid was advertised on November 8 and 15, 2007. There is sufficient money in the FY 08 budget for the Construction and Equipment Fund to cover the award. One bid was received on November 20, 2007, as follows:

Vermeer Rocky Mountain Inc.\$186,000.00

RECOMMENDATION

Staff recommends that Council award the bid for the 100-Ton Static Pipe Bursting System to Vermeer Rocky Mountain Inc. in the amount of \$186,000.00.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

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

PROBLEM/ISSUE STATEMENT: The Public Works Department has received 5 bids for LED Traffic Signal Components. These components will upgrade the traffic signal incandescent lamps to light emitting diodes (LED). This upgrade will provide increased efficiency and energy savings for the city.

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

The bid was advertised on November 8 and 15, 2007. Bids were opened on November 20, 2007. Five bids were received as follows:

<u>Bidder</u>	<u>Bid Price</u>
Trastar Inc.	\$72,664.50
McCain Traffic	\$76,143.00
Coral Sales	\$88,248.33
Intermountain Traffic	\$89,759.46
Advanced Traffic	\$90,629.88

RECOMMENDATION

Staff recommends that the council award the bid to Trastar for low bid for the LED Traffic Signal Components in the amount of \$72,664.50.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 10, 2007

TITLE: Award of Change Order #2 to Contract for the New Baseball and Multi-Use Stadium at Athletic Park

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: The Stadium Fundraising Committee has been very active in securing funds to meet the project short fall. Additional money is available to fund project alternates at the new Billings Baseball and Multi-Use Stadium at Athletic Park. The Steering Committee met on Tuesday December 4, 2007 to evaluate the project alternates and additional work with their associated cost and deadline for decision provided by Langlas and Associates. (see Attachment A). Their Recommendation is to accept all the project alternates indicated in bold face type.

FINANCIAL IMPACT: The financial impact will be a net *increase* to the project of \$87,114.00. (Attachment B).

Location of Work: At Athletic Park comprising the entire block bounded by North 27th Street, North 25th Street, 9th Avenue North and 10th Avenue North.

Funding Sources: Increases will come from donations.

ALTERNATIVES ANALYZED:

- Accept the Steering Committee's recommendation of project alternates and additional work, or
- Reject all recommendations, or
- Modify the Steering Committee's recommendation by adding and or deleting project alternates and additional work.

RECOMMENDATION:

Staff recommends accepting the Steering Committee's recommendation of project alternates and additional work.

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

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C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Amendment One to Service Agreement for Restriping Airfield Markings
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: On June 12, 2006, the City entered into a three (3) year Service Agreement with United Rentals for restriping airfield markings for Billings Logan International Airport. Management of the local branch of United Rentals notified the Airport that on August 1, 2007, it assumed the ownership of the local branch and subsequently changed the name of the business to Streamline Marking, Inc. Additionally, as part of the ownership transfer, a number of existing contracts were transferred as well, including the Airport's restriping contract. The City's existing contract requires that any amendments thereto must be in writing and executed by both parties.

FINANCIAL COMMENT: There is no financial impact from the proposed Amendment. The Amendment changes only the contractor's name; all other terms and conditions remain unchanged and in full force and effect.

RECOMMENDATION

Staff recommends that Council approve Amendment One to the Service Agreement for Restriping Airfield Markings. This Amendment changes the contractor's name from United Rentals to Streamline Markings, Inc.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Amendment One – 2 Pages

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AMENDMENT ONE

SERVICE AGREEMENT

FOR

RESTRIPING AIRFIELD MARKINGS FOR THREE (3) YEARS

FOR

BILLINGS LOGAN INTERNATIONAL AIRPORT

W I T N E S S E T H

WHEREAS, the City of Billings, Montana (OWNER) and United Rentals Highway Technologies, Inc. (CONTRACTOR) entered into a Service Agreement for Restriping Airfield Markings for Three (3) Years for Billings Logan International Airport (the AGREEMENT) for term commencing July 1, 2006 and ending at midnight on June 30, 2009, and

WHEREAS, the management of the Billings Office of United Rentals assumed ownership of the Billings branch of United Rentals and subsequently changed the name of the business to Streamline Markings, Inc., effective August 1, 2007, and

WHEREAS, the change of ownership also included the transfer of a number of existing contracts, including the AGREEMENT, and

WHEREAS, both parties desire to amend the AGREEMENT to change the name of the CONTRACTOR to Streamline Markings, Inc. for the remainder of the term, and

NOW THEREFORE, in consideration for the continued payment of charges for services, as specified in the AGREEMENT, the parties hereto covenant and agree to amend said AGREEMENT, effective August 1, 2007 as follows:

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"This AGREEMENT, made June 12, 2006 between the City of Billings, hereinafter designated OWNER, and UNITED RENTALS, known as CONTRACTOR."

Is hereby amended as follows:

"This AGREEMENT, made June 12, 2006 between the City of Billings, hereinafter designated OWNER, and STREAMLINE MARKINGS, INC., known as CONTRACTOR."

and shall be for the period commencing on August 1, 2007, the effective date of the transfer, and ending at midnight on June 30, 2009.

FURTHER, all other terms and conditions of the AGREEMENT by and between the City of Billings and United Rentals, made on June 12, 2006, remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hand this ____ day of _____ 2007.

ATTEST:

BY _____
CITY CLERK

CITY OF BILLINGS

BY _____
MAYOR

APPROVED AS TO FORM

BY _____
CITY ATTORNEY

BY _____
STREAMLINE MARKINGS, INC.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Acceptance and Approval of the 2009 Billings Adult Misdemeanor Drug Court Award in the amount of \$180,384
DEPARTMENT: Municipal Court
PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Billings Adult Misdemeanor Drug Court (BAMDC), Montana’s first limited jurisdiction drug court has served its participants for nearly three years. Nearly 30,000 cases are filed with the Billings Municipal Court each year, many of those offenses being drug or alcohol related. Prior to implementation of the BAMDC, offenders were seen on multiple charges escalating in severity to support their addictions. The goals of this court are to increase public safety, reduce the number of drug and alcohol cases entering the felony system, make treatment resources readily available and thereby reduce recidivism, hold participants accountable and assist them in becoming productive and contributing members of the community. This award, funded through the Supreme Court of Montana, will be used to continue this program. Staff is asking City Council to accept and approve the 2009 BAMDC award in the amount of \$180,384 and ask the Mayor to be authorized to approve the award documents when received.

FINANCIAL IMPACT: The \$180,384 will require no city match. The award has been budgeted in Fund 246 for the balance of FY 08/09.

RECOMMENDATION

Staff recommends that Council approve and accept the 2009 Billings Adult Misdemeanor Drug Court Award from the Supreme Court of Montana in the amount of \$180,384, and authorize the Mayor to sign the necessary documents, when they are received.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Assignment of Drew C. and/or Jennifer R. White West End Hangar
 Ground Lease to Western Security Bank for Financing Purposes

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: John M. and Marcia A. Nash leased four (4) separate Airport properties from the City of Billings, on which they have constructed two (2) one hundred and twenty-foot (120') by sixty-foot (60') duplex style aircraft hangars on the properties, described as Lots 8-11. Mr. and Mrs. Nash have subsequently assigned their Leases on Lots 9-11, retaining only the Lot 8 Lease. The latest assignment to Drew C. and/or Jennifer R. White was approved by the City Council on November 13. Mr. and Mrs. White are working with Western Security Bank for financing the purchase of one-half of the duplex style hangar that has been built, known as Lot 11.

The Assignment language has been reviewed by staff and the City Attorney, and is similar to language used in the past. The City has approved a number of these financing assignments over the years as a means for the banks to secure the loans they provide to the Airport tenants for their hangar facilities. This is the case with the Drew C. and/or Jennifer R. White hangar, as Western Security Bank seeks to secure its loan for the costs of the hangar purchase.

FINANCIAL IMPACT: There would be no financial impact to the City, as Drew C. and/or Jennifer R. White will still be required to pay the annual ground lease rental as established in the existing Lease that was approved by the City Council on May 29, 2007.

RECOMMENDATION

Staff recommends that Council approve the Assignment of the Drew C. and/or Jennifer R. White West End Hangar Ground Lease to Western Security Bank, for the purpose of securing the loan for the costs of the hangar purchase.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Commercial Aviation Ground Lease with Corporate Jet, LLC for Fuel Farm Site
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Corporate Jet, LLC, intends to operate a fixed base operator (FBO) business at Billings Logan International Airport. This would be a second operation of that type; Edwards Jet Center is currently the sole FBO at the Airport. One of Corporate Jet's first steps in setting up its new FBO business is to establish a fuel farm for its use. The Airport has a designated Fuel Farm area on the east end of the Airport that will accommodate Corporate Jet's request to install three (3) underground fuel tanks and the necessary pump and monitoring equipment. The proposed Lease includes 3,483 square feet of ground space in the Fuel Farm. The Lease would be for twenty (20) years, beginning December 1, 2007, and ending on November 30, 2027.

FINANCIAL IMPACT: The Lease will generate \$1,269.96 in the first year of its term. Subsequent years will be adjusted by the Consumer Price Index for all Urban Consumers. In addition to the annual land rentals, the City will collect fuel flowage fees, based on the volume of fuel purchased by Corporate Jet.

RECOMMENDATION

Staff recommends that Council approve this twenty-year Lease with Corporate Jet, LLC for a Fuel Farm Site on Lot 1 in the East End Fuel Farm, for a period beginning December 1, 2007, and ending November 30, 2027.

Approved By: City Administrator _____ City Attorney _____

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

G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Renewal of Lease for Building and Ground Space at Billings Logan International Airport to the Bureau of Land Management

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Bureau of Land Management (BLM) Fire Cache operation has requested to renew a Lease for office, storage, and wareyard space at the Airport Business Park. The office and storage space is contained within Airport Buildings IP-6 and IP-7. The wareyard space consists of two (2) areas, one for vehicle storage and the other for supply storage. The current Lease expired on September 4, 2007. The Lease includes 1,859 square feet of storage in IP-6, 3,080 square feet of office space in IP-7, 1,862 square feet of storage in IP-7, 20,155 square feet for the vehicle wareyard, and 17,000 square feet for the supply wareyard. The BLM will utilize this space for office space for some of its staff and to store wild land fire fighting equipment and supplies over the next five (5) years.

FINANCIAL IMPACT: The City will generate \$54,967.37 in the first year of the Lease. Subsequent years will be adjusted by the Consumer Price Index.

RECOMMENDATION

Staff recommends that Council approve this five-year Lease with the Bureau of Land Management for office, storage, and wareyard space in IP-6, IP-7, and the wareyards located in the Airport Business Park for the period beginning September 5, 2007, and ending September 4, 2012.

Approved By: City Administrator ____ City Attorney ____

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H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Amendment Extending Cable Television Franchise Agreement
DEPARTMENT: City Administrator's Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings and Bresnan Communications, LLC, currently are negotiating an extension of a non-exclusive television franchise agreement, which is set to expire on Dec. 17, 2007. New Federal Communications Commission rules on franchises required input from a consulting legal firm in Washington, D.C., which delayed the onset of negotiations. A 60-day extension will allow the City and Bresnan to complete the negotiations, maintaining customer service and City revenue.

ALTERNATIVES ANALYZED:

- Approve the amendment;
- Make changes to the amendment;
- Do not approve the amendment, which could affect negotiations, service and revenue.

FINANCIAL IMPACT: The franchise agreement results in budgeted revenues to the City of about \$800,000 a year. The funds support the Channel 7 public television service and the General Fund.

RECOMMENDATION

Approve the Amendment.

Approved By: City Administrator ____ City Attorney ____

Attachment:

A: Amendment

**AMENDMENT TO AND EXTENSION OF CABLE TELEVISION
FRANCHISE TRANSFER AGREEMENT**

This Agreement to Amend and Extend the terms of the current Cable Television Franchise is made this _____ day of December, 2007, by and between the City of Billings, Montana, a municipal corporation ("City") and Bresnan Communications, LLC, a Delaware Limited Liability Company ("Bresnan").

RECITALS

WHEREAS the City Council of the City of Billings previously approved a Transfer Agreement issuing a non-exclusive Cable Television Franchise to Bresnan Communications, LLC through Resolution No. 03-17956; and

WHEREAS the City of Billings and Bresnan Communications, Inc. are currently negotiating a renewal of the existing Cable Television Franchise; and

WHEREAS the parties desire to continue the existing Cable Television Franchise which expires on December 17, 2007; and

WHEREAS a Sixty (60) day extension of the current Franchise Agreement is in the best interests of the City, the public and Bresnan to allow modifications of the current Franchise Agreement to be completed.

**NOW, THEREFORE, THE PARTIES DO HEREBY AGREE AS
FOLLOWS:**

1. That the current Transfer Agreement dated February 24, 2003, attached hereto as Exhibit "A" between the City and Bresnan, is hereby extended for a Sixty (60) day period of time up to and including February 10, 2007.
2. All other terms, conditions and obligations of such Transfer Agreement and the current Cable Television Franchise dated October 17, 1988, granted to and transferred to several predecessors of Bresnan shall remain in full force and effect during this extension of time.

Agreed to this _____ day of December, 2007.

CITY OF BILLINGS

By: _____
Mayor Ron Tussing

ATTEST:

Billings City Clerk

Bresnan Communications, LLC
By: Bresnan Communications, Inc., its Manager

By: _____
Title: _____

APPROVED AS TO FORM:

Billings City Attorney

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Disposal of Surplus Airfield Lighting Equipment
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The Aviation and Transit Department has replaced a significant amount of airfield lighting equipment during the past few years. Since most of this equipment was purchased with 90% Federal fund participation, the Department is seeking Council approval to declare this old lighting equipment as surplus, and to donate it to the Montana Aeronautics Division to be distributed as needed to Montana's smaller airports. This means of disposal is preferred by the Federal Aviation Administration (FAA).

ALTERNATIVES ANALYZED: The City Council has two options to consider:

- Declare this old airfield lighting equipment as surplus and provide approval to donate it to the Montana Aeronautics Division so that it can be utilized by other airports.
- Declare this equipment as surplus and attempt to sell it at the 2008 City auction; however, there is not a secondary market for this type and vintage of airfield lighting equipment.

FINANCIAL IMPACT: The estimated value of this equipment is very difficult to calculate, as it is unique and specifically designed for airport operations. The equipment ranges in age from 10-30 years old and some of the replacement parts are becoming difficult to obtain. Manufacturers are also unwilling to place a value on the equipment based on its age and condition. The financial impact is expected to be minimal, if any at all.

RECOMMENDATION

Staff recommends that Council declare the attached list of airport airfield lighting equipment as surplus, and permit the donation of this equipment to the Montana Aeronautics Division so that Montana's smaller airports might benefit from this equipment.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #2, a Portion of Tract 3 of Certificate of Survey No. 205 With Benjamin J. Huber

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #2 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$7,700.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$7,700.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #2, a Portion of Tract 3 of Certificate of Survey No. 205 With Benjamin J. Huber in the amount of \$7,700.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

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

BACKGROUND

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

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

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #2, a Portion of Tract 3 of Certificate of Survey No. 205 With Benjamin J. Huber in the amount of \$7,700.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Lake Elmo Road Hilltop Road to Wicks Lane Work Order: 04-33 Yellowstone
 DESIGNATION Project No. 05153 COUNTY

Parcel No.	Parcel Description	Section	Township	Range
2	TRACT 3, COS 205	22	1N	26E

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

BENJAMIN J. HUBER
 822 LAKE ELMO ROAD
 BILLINGS, MT 59105
 259-1955

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

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

3,873 square feet by deed	
(2,213 square feet existing easement)	\$ 371.00
(1,660 square feet new acquisition)	\$5,561.00
Improvements (Fence, Asphalt, Sod)	\$1,583.00

3. OTHER COMPENSATION:

553 square feet Temporary Construction Permit	\$ 185.00
---	-----------

4. TOTAL COMPENSATION (includes all damages to the remainder): \$7,700.00.

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

A warrant in the amount of \$7,700.00, to be made payable to BENJAMIN J. HUBER and mailed to 822 LAKE ELMO DRIVE, BILLINGS, MT 59105

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

7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.

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

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

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

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

(Continued from Previous Page)

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

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

Billings
our

Benjamin J. Huber 10-31-07
Signature: BENJAMIN J. HUBER (Date)

Signature: _____ (Date) Tax ID No. _____

Signature: _____ (Date) Tax ID No. _____

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 11-5-07
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

City of Billings, Public Works Department (Date) City Clerk (Date)

LER-002.200 Huber

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

Project No. W.O. 04-33 Parcel No. 2 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 31st day of October, 2007.

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

BENJAMIN J. HUBER
822 LAKE ELMO ROAD
BILLINGS, MT 59105

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

Parcel No. 2 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 3 of Certificate of Survey No. 205, on file under Document No. 449659, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 3,873 sq. ft., including 2,213 sq. ft., which constitutes a part of an existing road easement.

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 553 sq. ft.

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 2

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

X Benjamin J Huber
BENJAMIN J. HUBER

State of Montana)

County of Yellowstone)

This instrument was acknowledged before me on October 31, 2007
(date)

by BENJAMIN J. HUBER



Brian McCluskey
Notary Signature Line

Brian McCluskey
Notary Printed Name

Notary Public for State of Montana

Residing at: Billings

My Commission Expires: May 1, 2009

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings Date

ATTEST: _____
City Clerk

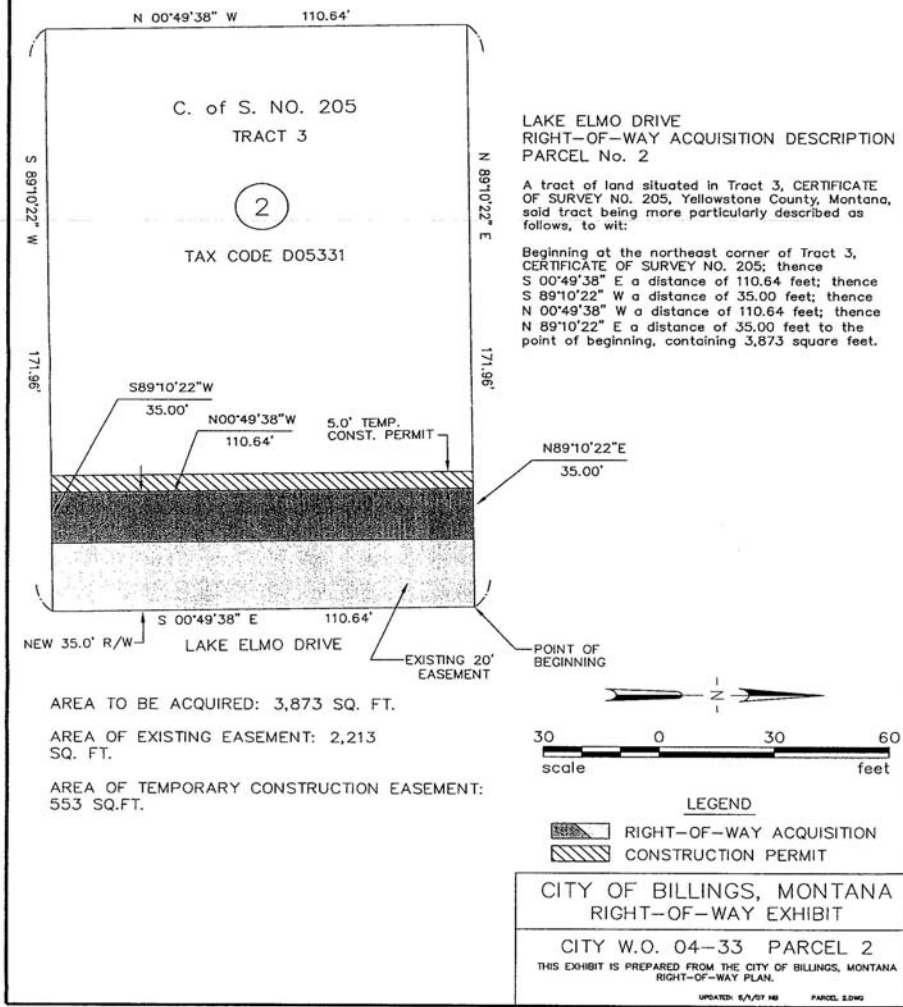
STATE OF MONTANA)
:ss
County of Yellowstone)

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

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

Print Name

EXHIBIT A
 RIGHT-OF-WAY ACQUISITION
 AND TEMPORARY CONSTRUCTION PERMIT
 SITUATED IN TRACT 3,
 CERTIFICATE OF SURVEY NO. 205,
 YELLOWSTONE COUNTY, MONTANA



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: W.O. 04-26—Zone 4 Reservoir, Acquisition of Right of Way from DNRC
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Public Works water utility has plans to construct a pumping facility and water storage tanks in Northwest Billings (near Ironwood Subdivision) to provide service to water distribution pressure Zones 4 and 5 West. The new pump station, associated site piping, and Zone 4 reservoirs are being designed to provide future service to Zones 6 and 7. These future zones are above the Rims and west of the Airport, including Indian Cliffs. To enable connections from the new pump station and reservoirs to the future zones, a right of way (ROW) easement will be needed to cross land owned by the Department of Natural Resources and Conservation (DNRC). The DNRC has had an independent appraisal performed on the land in question. Council is requested to establish the fair market value of the desired land based on this appraisal and purchase a right of way easement for the land accordingly.

ALTERNATIVES ANALYZED:

- Purchase ROW easement from DNRC based on 2007 appraisal. This will allow the City to have ROW in place and the ability to provide water distribution service in the future to areas determined to eventually be annexed and become part of the City limits.
- Do not purchase ROW easement from DNRC at this time. It is highly likely that the service areas in question will eventually be annexed and the City will have to provide water service to them. If the ROW is not purchased now, it will have to be bought later at potentially a much higher cost.

FINANCIAL IMPACT: The cost of the desired ROW easement containing approximately 7.91 acres, based on current appraisal, is \$26,894.00. Sufficient money has been budgeted in the FY 08 CIP and adequate funds are available to purchase the ROW easement.

RECOMMENDATION

Staff recommends that Council establish a fair market value of \$26,894.00 for a right of way easement to purchase from DNRC and authorize the Mayor to execute the respective Right of Way Deed.

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

INTRODUCTION

The Public Works water utility has plans to construct a pumping facility and water storage tanks in Northwest Billings (near Ironwood Subdivision) to provide service to water distribution pressure Zones 4 and 5 West. The new pump station, associated site piping, and Zone 4 reservoirs are being designed to provide future service to Zones 6 and 7. These future zones are above the Rims and west of the Airport, including Indian Cliffs. To enable connections from the new pump station and reservoirs to the future zones, a right of way (ROW) easement will be needed to cross land owned by the Department of Natural Resources and Conservation (DNRC). The DNRC has had an independent appraisal performed on the land in question. Council is requested to establish the fair market value of the desired land based on this appraisal and purchase a right of way easement for the land accordingly.

BACKGROUND

W.O. 04-26—Zone 4 Reservoir includes the acquisition of land, design, and construction of a new pump station and water storage tanks. The Zone 4 Reservoir, Zone 5 Reservoir and Pump Station project will immediately provide service to the City's water distribution pressure Zones 4 and 5 West. The Zone 4 pressure zone runs along and below the Rims from the central portion of Billings to the West End. The Zone 5 West pressure zone will be a new zone put on-line with the completion of the new pump station. Zone 5 is also in the northwest part of Billings at and below the Rims.

The new pump station, associated site piping, and reservoirs are being designed to provide future service to Zones 6 and 7. These zones are above the Rims and west of the Airport. Zone 7 will include Indian Cliffs and DNRC land. Ultimately, the new pump station will provide a connection between Zone 4 and the existing Zone 6 (which includes a small area immediately west of the Airport), resulting in desired redundancy. To make this future connection, a ROW easement is required to cross the DNRC land.

Correspondence began with DNRC in 2005 for acquisition of the ROW easement. The requested easement totaled about eight (8) acres, and the initial price quote from DNRC was over \$200,000! Feeling this was an excessively high price, City Staff pursued DNRC to obtain an independent appraisal while continuing to process the ROW application. The appraisal was completed early in 2007, and the result was a value of \$3,400 per acre—substantially less than originally quoted. The ROW application was approved by the State Board of Land Commissioners on September 17, 2007, allowing the sale of approximately 7.91 acres of ROW easement to the City of Billings for \$26,894.00.

ALTERNATIVES ANALYZED:

- Purchase ROW easement from DNRC based on 2007 appraisal. This will allow the City to have ROW in place and the ability to provide water distribution service in the future to areas determined to eventually be annexed and become part of the City limits.
- Do not purchase ROW easement from DNRC at this time. It is highly likely that the service areas in question will eventually be annexed and the City will have to provide water service

to them. If the ROW is not purchased now, it will have to be bought later at potentially a much higher cost.

RECOMMENDATION

Staff recommends that Council establish a fair market value of \$26,894.00 for a right of way easement to purchase from DNRC and authorize the Mayor to execute the respective Right of Way Deed.

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Martin Luther King Day Pedestrian March Street Closure Request
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: Paul Reeder of the Black Heritage Foundation requests temporary street closures along the following route for the annual pedestrian march in observance of the Martin Luther King Day on Monday January 21, 2008. Marchers assemble on the Court House lawn at 6:00 p.m., walk on the sidewalk to the corner of N.27th and 3rd Ave. N, cross N.27th, march in the street to N. 29th, then north on N. 29th, disbanding at the Lincoln Center at approximately 6:50 p.m.

Recommended conditions of approval include Black Heritage Foundation:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event
3. Coordinate with Police Department to ensure proper assistance is provided for traffic control
4. Clean the area to be used following the event and provide and empty waste cans
5. Notify all emergency facilities, bus lines and media as soon as possible
4. Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured

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 other than administrative time to process permit. Traffic control and litter removal are to be paid for by the Black Heritage Foundation.

RECOMMENDATION

Staff recommends that Council approve the closures named above for the annual Martin Luther King Day March.

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

ATTACHMENTS

- A. Letter from Black Heritage Foundation outlining the event (1 page)
- B. Right of Way Special Activity Permit Application (2 pages)
- C. Map outlining event (1 page)
- D. Certificate of insurance

BLACK HERITAGE FOUNDATION

P O Box 31001

Billings, MT 59701

November 9, 2007

To: City of Billings

This letter accompanies our application for a permit for the annual Martin Luther King Observance March, on Monday, January 21, 2008. This march originates at the Court House Lawn, then crosses 27th and will proceed down 3rd Avenue North to 29th, then north past 4th Avenue to the Lincoln Center. We anticipate this will begin about 6:30 p.m. and conclude by 6:50 p.m. This has become a tradition, now over 10 years, from the mid 1990's.

Bonnie Banks is the coordinator/ chair of the MLK observance again this year, and is working on the program and participants at the Lincoln Center observance, which begins at 7:00 p.m. Mike Yakowitz is the coordinator of the 6:00 gathering on the Court House lawn, which precedes the March, and blends into the March. If you have questions or desire more information, you may contact them – Bonnie at 245-8507, Mike at 254-2445, or myself at 252-7458.

Thank you for your consideration of this matter.

Sincerely,



Paul J. Reeder

Secretary, Black Heritage Foundation



City of Billings
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION

Attachment B

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 Paul J. Reeder

ORGANIZATION MAKING APPLICATION Black Heritage Foundation

PHONE 252-7458

ADDRESS P.O. Box 31001, Billings MT 59107

EMAIL ADDRESS _____

APPROXIMATE TIME EVENT WILL:

Assemble 6:00 p.m. ^{court House lawn} Start 6:30 p.m. Disband 6:50 p.m.

DATE OF EVENT Monday, Jan. 21, 2008

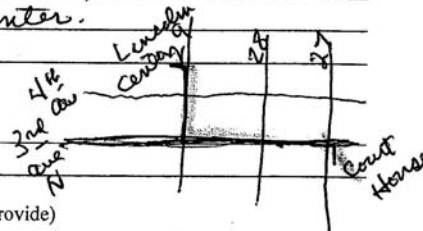
PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)

March from Courthouse lawn to Lincoln Center,
for Martin Luther King Day Observance.

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

on sidewalk by Courthouse; cross 2nd St. on 3rd Avenue;
then march west on 3rd in street to 2nd north, turn
north and cross 4th Avenue to Lincoln Center.

~~BLOCK PARTY~~ STREET LOCATION (IF APPLICABLE):



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

RECEIVED

NOV 09 2007

Per

[Signature]

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 Paul J. Reader DATE November 9, 2007
APPLICATION APPROVED _____ DATE _____
APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

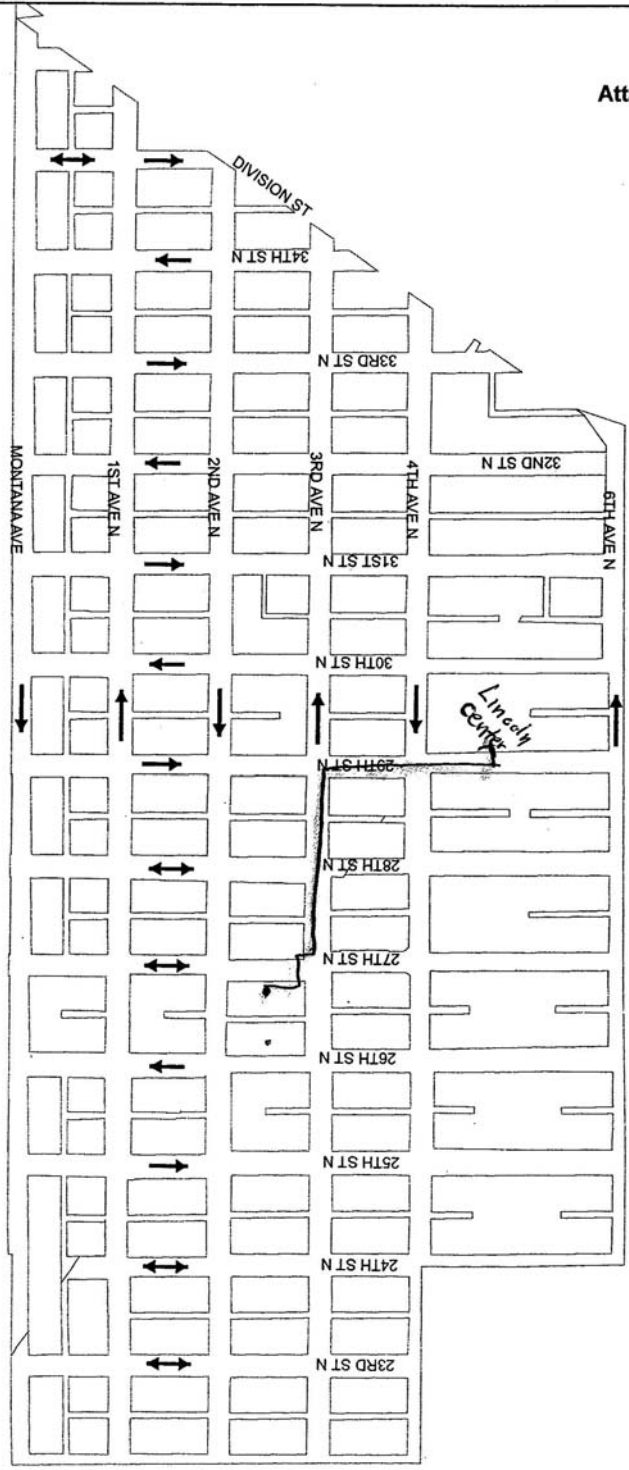
FEE: _____

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

Attachment C



Downtown Billings Street Direction Map

Black Heritage Foundation - North Fulton King Navale
January 21, 2008 6:30pm

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 11/9/2007
PRODUCER (406)252-0551 FAX: (406)252-4532 ISU Streeter Brothers Insurance 2823 6th Ave N P.O. Box 1416 Billings MT 59103		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 Black Heritage Foundation Of Billings & Yell PO Box 31001 Billings MT 59107		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: Zurich		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

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 LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	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-JECT <input type="checkbox"/> LOC	PPS02048777	11/22/2007	11/22/2008	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
		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 <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> 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
 The City of Billings is listed as an additional insured.

CERTIFICATE HOLDER 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 <u>10</u> 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>Richard L. Nall</i>
--	--

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Zoning Compliance Review Fee Resolution
DEPARTMENT: Planning and Community Development Services
PRESENTED BY: Candi Beaudry, AICP, Director

PROBLEM/ISSUE STATEMENT: The City Council held a public hearing and approved an ordinance authorizing zoning compliance review fees on August 27, 2007. The fee offsets the loss of revenue from the Building Division, and establishes a charge for services currently provided by the Planning Division. In 2006, the Finance Division determined that transfers from the Building Division to the Planning Division did not comply with state statute. State statutes require building permit fees to be used for the enforcement of building code only (50-60-106 (g) and (i), MCA). Because the transferred funds are used to provide zoning compliance review services, the transfer of funds violates state statutes. The Billings Homebuilders Association was made aware of these proposed changes at a joint meeting with City staff on November 13 and through a HBA Newsletter article published the first week of December, 2007. No comments have been received as of November 28.

The revenue generated by the zoning compliance fee is estimated at \$33,000 for fiscal year 2008. This amount was approved as a Supplemental Budget Request by the City Administrator and City Council approved it as part of the FY2008 budget.

ALTERNATIVES ANALYZED: A cost analysis performed by the Planning staff determined that the cost for zoning compliance review, based on the average review time, is \$41.00 for residential permit applications and \$16.00 for commercial permit applications.

FINANCIAL IMPACT: The proposed fees are \$41.00 for residential permits and \$16.00 for commercial permits. The new revenue source will not increase the Planning Division's overall revenue. The new fee will help offset the loss of revenue resulting from a reduction of Building Division transfers.

RECOMMENDATION

Staff recommends that Council adopt the resolution to set zoning compliance review fees at \$41.00 for residential permit applications and \$16.00 for commercial permit applications.

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

ATTACHMENT

A. Resolution Setting Zoning Compliance Review Fees

RESOLUTION NO. 07-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA ESTABLISHING ZONING COMPLIANCE REVIEW FEES PURSUANT TO ORDINANCE NO. 4314, AMENDED BY ORDINANCE NO. 4494 FOR FEES ASSOCIATED WITH VARIOUS APPLICATIONS AND SERVICES PROVIDED BY THE CITY/COUNTY PLANNING DEPARTMENT.

WHEREAS, Ordinance No. 5430 provides for fees associated with zoning compliance review of residential and commercial building permits, and;

WHEREAS, Ordinance No. 4314, amended by Ordinance No. 4494 provides that applications fees shall be established by Resolution;

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

1. FEES. The following fees are hereby established and are payable upon submittal of a residential or commercial building permit application:

Residential Zoning Compliance Review Fee	\$41.00
Commercial Zoning Compliance Review Fee	\$16.00
2. EFFECTIVE DATE. The fees established herein shall become effective upon passage of this resolution and remain in effect thereafter until changed by resolution.

PASSED AND ADOPTED this ____ day of _____, 2007

THE CITY OF BILLINGS

BY: _____
Ron Tussing, Mayor

ATTEST:

Cari Martin, CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Resolution of Intent to Sell Property, Rehberg Ranch Estates Subdivision, 2nd Filing, Park, Block 10, Fragment

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Mike Whitaker, PRPL Director

PROBLEM/ISSUE STATEMENT: The owners of Lot 27, Block 6, Rehberg Ranch Estates Subdivision 1st Filing, has offered to buy from the city a triangular fragment of city parkland that is 4,130 square feet in size and is located on the northeast side of Lot 27. The property owners of Lot 27, Tracy L. and Pamala Willett, have asked to be given the opportunity to purchase the parcel to add to their lot, Lot 27, to provide them with a suitable building site because of the rugged terrain in their lot. Mr. and Mrs. Willet have had the parcel surveyed and platted at their expense to be to allow it to be platted as a boundary change for Lot 27, if the sale is approved. The fragment has been appraised and it is estimated to range in value from \$0.05 per square foot to \$1.00 per square foot because it is a fragment that has little value separate from the larger park lot adjacent to it, or if added to Lot 27. The Willett's have received approval from both the Rehberg Ranch Estates Homeowners Association and the Rehberg Ranch Estates Company to proceed with the proposal to purchase this property from the City. This is the first step in the process to allow the sale of the property, to be identified as Block 6, Lot 27A. The Resolution of Intent to Sell provides for the advertisement of the proposed sale and for Public Notice of Intention to Sell the parcel to be mailed to all property owners within 300 feet of the parcel. The total acreage of park property in the Rehberg Ranch Subdivision 1st and 2nd Filings totals 49.36 acres, and there is a street side frontage of almost 300 feet on the cul-de-sac on which the property is located. If sold this fragment would decrease the total park acreage by less than a 10th of an acre. A Public Hearing and a Resolution to Proceed with the advertisement for sale of the parcel would take place at the January 14th, 2008, City Council meeting. If that is approved, the parcel will be advertised for sale and offers received at a public bid opening.

ALTERNATIVES ANALYZED:

- Proceed with the offer in accordance with BMC Article 22-900 and allow it to be purchased by the highest bidder. This is the staff recommendation.
- Do not proceed with the sale of the parcel at this time.

FINANCIAL IMPACT: The appraisal value of the subject property was given as a range from \$200.00 to \$1.00 per square foot, or \$4,130. While lots in Rehberg Subdivision sell for over \$4.00 per square foot, the subject property has real value only for the City as the owner and for the adjacent property owner, which reduces its value significantly. Mr. Willett has agreed to pay all the costs connected with resurveying and platting the parcel involved.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Sell Lot 27A, Block 6, Rehberg Ranch Subdivision, and to set the date for the Public Hearing and consideration of the Resolution to Proceed by the City Council for January 14, 2008.

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

ATTACHMENTS

- A. Resolution of Intent to Sell Lot 27A, Block 6
- B. Exhibit A: Amended Plat of Block 10, Park, Rehberg Ranch Estates, 2nd Filing, with Lot 27A, Block6.
- C. Exhibit B: Appraisal of proposed lot 27A, Block 6
- D. Exhibit C: List of Property Owners located within 300 feet of the proposed sale.

INTRODUCTION

The owner of Lot 27, Block 6, Rehberg Subdivision, 1st Filing, has requested the City to sell a parcel of 4,130 square feet abutting their lot in order to provide a more suitable building site. Approval of the Resolution of Intent to sell the subject property next to Lot 27, Block 6, in Rehberg Estates Subdivision, is the first step in offering the property for sale, according to the requirements of BMC Article 22-900. The Resolution of Intent notifies property owners within 300 feet and sets a date for Public Hearing and consideration of a Resolution to Proceed with the sale at the January 14, 2008, City Council Meeting.

PROCEDURAL HISTORY

- Mr. Willett contacted this office in late 2005 with a query about purchasing a parcel that would provide a more buildable lot and the process was explained. He agreed that he would pay the costs for resurveying and platting the properties involved if the sale is approved.
- The process to make the parcel available for sale is outlined in BMC Article 22-900.
- An appraisal of the parcel was conducted by Richard Bjelland, of Bjelland and Cruikshank Appraisers, SRA.
- The Rehberg Homeowners Association was contacted and they have approved proceeding with the sale.
- Rehberg Ranch Marketing, Inc. was contacted and have approved proceeding with the sale.
- The Resolution of Intent To Sell the subject parcel provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Proceed to Sell the fragment as platted at the January 15th, 2008, regular City Council meeting.

BACKGROUND

Lot 27, Block 6, sits on a cul-de-sac on the edge of a steep draw that makes the layout of a building on the site problematic. The additional area of 4,130 square feet as platted in Lot 27A is desirable in order to provide additional area of buildable lot. The purchase request was received and the location inspected and it was determined that the parcel involved in the request would not be large enough to constitute an essential property for the subdivision or public area access purposes. Less than a 10th of an acre out of the 49.36 acres of public property in the Rehberg Ranch Subdivision would be sold, if approved. Neither the Rehberg Ranch Homeowners Association or the Rehberg Ranch Marketing Company have any objection to sale of the parcel that is being proposed. Approval of the Resolution of Intent to Sell the parcel labeled as Lot 27A, Block 6 as shown in Exhibit "A", is the first step in the process. The Resolution of Intent to Sell provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and

consideration of the Resolution to Proceed with the sale will take place at the January 14th, 2008, City Council Meeting.

ALTERNATIVES ANALYSIS

- Proceed with the offer in accordance with BMC Article 22-900 and allow it to be purchase by the highest bidder. This is the staff recommendation.
- Do not proceed with the sale of the parcel at this time.

STAKEHOLDERS

- The developers have no objection to offering the parcel for sale.
- The Homeowners Association has no objection to offering the parcel up for sale.
- The City of Billings, as the owner, would receive the proceeds from the sale of the parcel, if approved. The property in question does not have any significant impact on the community park needs or the neighborhood park use or access and puts into private ownership and back onto the tax rolls some additional taxable property.
- The adjacent property owner has a compelling need to purchase additional area to expand his lot to provide a workable building site.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

Efforts to dispose of excess and unusable city properties have been encouraged by the City Council as a continuing need for reducing the maintenance burden of the city property on the Billings taxpayers. While sale of this parcel cannot be considered to have a significant impact, it is consistent with past actions similar to the approach being taken regarding other offers to purchase non-essential park property.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Sell Lot 27A, Block 6, Rehberg Ranch Subdivision, and to set the date for the Public Hearing and consideration of the Resolution to Proceed by the City Council for January 14, 2008.

ATTACHMENTS

- A. Resolution of Intent to Sell Lot 27A, Block 6
- B. Exhibit A: Amended Plat of Block 10, Park, Rehberg Ranch Estates, 2nd Filing, with Lot 27A, Block6.
- C. Exhibit B: Appraisal of proposed lot 27A, Block 6
- D. Exhibit C: List of Property Owners located within 300 feet of the proposed sale.

RESOLUTION 07 - _____

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED OF, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY, AND SETTING A TIME AND DATE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City of Billings owns a parcel described as Block 10, PARK, consisting of 17.16 acres of natural park open space, in Rehberg Ranch Estates, 2nd Filing, and the owner of Lot 27, Block 6, Rehberg Ranch Estates, 2nd Filing, has proposed to purchase a portion thereof consisting of 4,130 square feet, 0.0948 acres, of said open space adjacent to Lot 27, Block 6; and

WHEREAS, the parcel proposed to be purchased is further described as surveyed and platted in the attached exhibits titled Amended Plat of Block 10, Rehberg Ranch Estates, 2nd Filing, to be Lot 27a, Block 6, of Rehberg Ranch Estates, 2nd Filing; and

WHEREAS, the location of the portion of Block 10, PARK, in Rehberg Ranch Estates Subdivision, 2nd Filing, that is proposed to be sold as Lot 27a, Block 6, is more particularly described as follows:

A triangular piece of land consisting of 4,130 square feet in Rehberg Ranch Estates Subdivision, 2nd Filing, adjacent to the northeast side of lot 27, Block 6, situated in the NE1/4, and the SE1/4 Section 22, Township 1N, Range 25 E, P. M. M., Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana; and

WHEREAS, The Rehberg Ranch Estates Homeowners Association has reviewed and approved the proposed sale, and the development company, Rehberg Ranch Estates Marketing, Inc. has reviewed and approved the proposed sale; and

WHEREAS, The owners of Lot 27, Block 6, have offered to purchase said parcel, called Lot 27A, Block 6, adjacent to Lot 27, Block 6, in Rehberg Ranch Estates, 2nd Filing, consisting of 0.0948 acres, to allow a suitable homesite; and

WHEREAS, Article 22-900 BMC requires the city to declare its intention to sell or trade city property, giving the public the opportunity to be heard regarding such action, and setting a public hearing date; and,

WHEREAS, Article 22-900 BMCC also requires that all property owners within three hundred (300) feet of the exterior boundaries of said property be notified by mail, fifteen (15) days in advance of the time, date, and place of public hearing and the existing and the proposed use.

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

PUBLIC HEARING: The public hearing date has been set for ***Monday, January 14, 2008, at 6:30 o'clock p. m.*** in the Council Chambers located on the second floor of City Hall, 220 North 27th Street, Billings, Montana. The City Clerk is hereby directed to publish notice of the public hearing in the Billings Times in its regular issue on ***December 13, and December 20, , 2007*** and to mail a copy of such notice to all property owners within a three hundred (300) foot radius of said property to be traded.

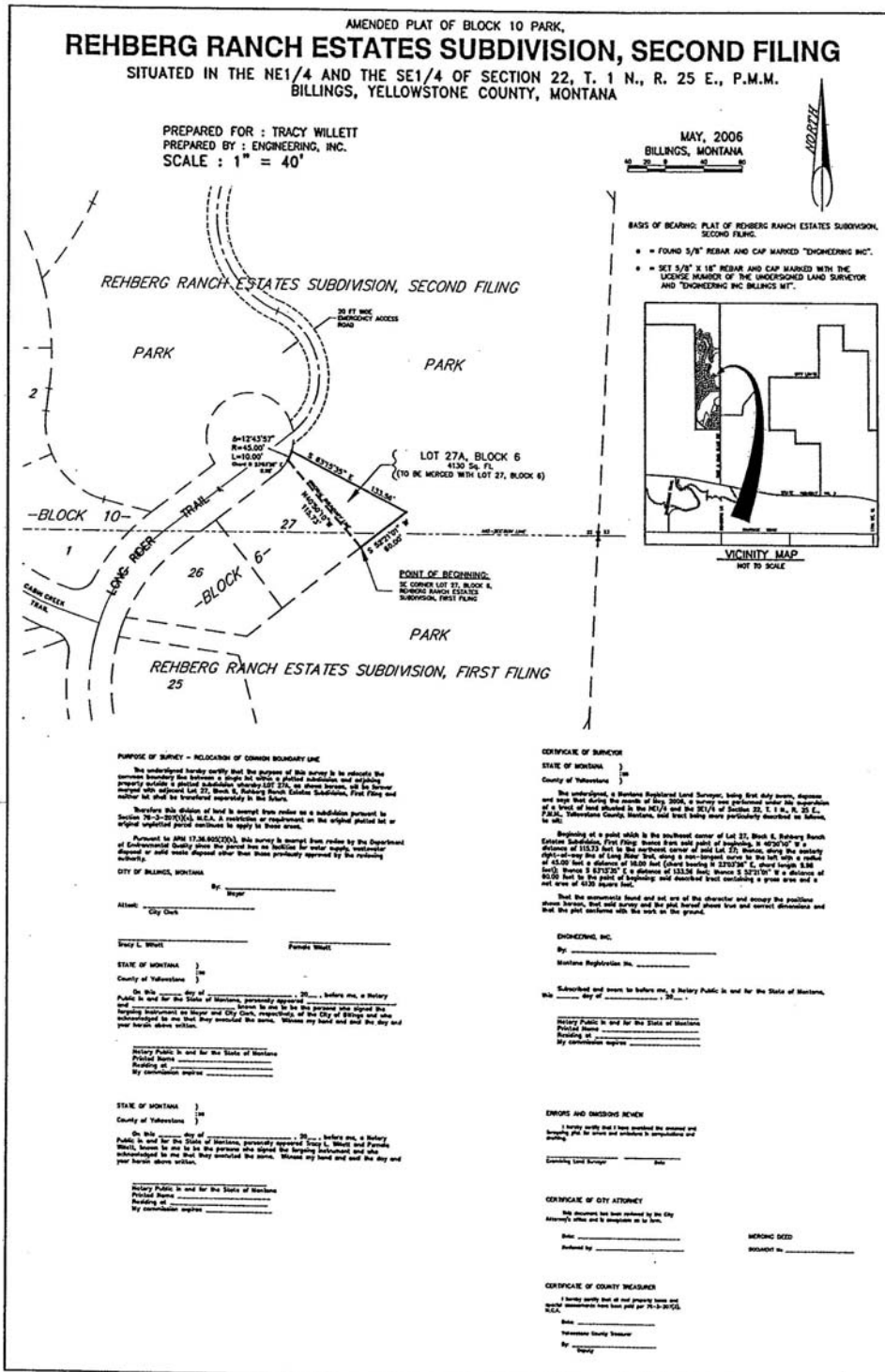
APPROVED AND PASSED by the City Council of the City of Billings, Montana this _____ day of _____, 2007.

THE CITY OF BILLINGS:

BY: _____
RON TUSSING, MAYOR

ATTEST:

CARI MARTIN, CITY CLERK



LAND APPRAISAL REPORT

Exhibit B

Summary Appraisal Report File No. Willett

Property Address: Adjoins East of 4297 Long Rider Trail Census Tract 0880 0013 Map Reference N/A

City: Billings County: Yellowstone State: MT Zip Code: 59106

Legal Description: A portion of Lot 4 as on Plat Attached & Attached Legal: Beginning at NE Corner of L 27, Block 6, Rehberg Ranch

Sale Price \$ N/A Date of Sale Current Loan Term N/A yrs. Property Rights Appraised Fee Leasehold De Minimis PUD

Actual Real Estate Taxes \$ 703.42 (yr) Loan charges to be paid by seller \$ N/A Other sales concessions N/A

Lender/Client /Client Tracy & Pam Willett Address 1615 Alderson Avenue Billings, MT 59104

Occupant Vacant Appraiser Richard W. Bjelland Instructions to Appraiser Appraiser to Estimate the Market Value for a potential purchase by the adjoining owner.

NEIGHBORHOOD

Location Urban Suburban Rural

Built Up Over 75% 25% to 75% Under 25%

Growth Rate Fully Dev. Rapid Steady Slow

Property Values Increasing Stable Declining

Demand/Supply Shortage In Balance Oversupply

Marketing Time Under 3 Mos. 4-6 Mos. Over 6 Mos.

Present Land Use 50% 1 Family 4% 2-4 Family 2% Apts. % Condo 0% Commercial

Change in Present Land Use Not Likely Likely (*) Taking Place (*)

(*) From Agricultural To Residential

Predominant Occupancy Owner Tenant % Vacant

Single Family Price Range \$ 175 to \$ 600,000 Predominant Value \$ 275,000

Single Family Age UC yrs. to 3 yrs. Predominant Age 2 yrs.

Employment Stability Good Avg. Fair Poor

Convenience to Employment

Convenience to Shopping

Convenience to Schools

Adequacy of Public Transportation

Recreational Facilities

Adequacy of Utilities

Property Compatibility

Protection from Detrimental Conditions

Police and Fire Protection

General Appearance of Properties

Appeal to Market

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): The immediate area is a relatively new subdivision and includes mostly "upper end" housing. The area is below the main runway flight path of Logan International Airport, but this does not adversely affect value. Proximity to Downtown, westend shopping, and amenities is average.

SITE

Dimensions Irregular (See Attached Legal) = 4,050 Sq. Ft. or Acres Corner Lot

Zoning classification PUD Present Improvements go do not conform to zoning regulations

Highest and best use Present use Other (specify) _____

Public Other (Describe) _____

Off Site Improvements: Public Private

Street Access Public Private

Surface Asphalt Topo Moderate & steeply sloping

Maintenance Public Private

Storm Sewer Curb/Gutter

Sidewalk Street Lights

Drainage Good

Is the property located in a HUD identified Special Flood Hazard Area? No Yes

Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions): The subject is not a building site and cannot be built on as per City of Billings Park Department official. It can only be used in connection with the adjoining property ownership. Only 10' of subject is along the Long Rider Trail Cul de Sac along the northerly side and then projects down the hill about 140.5' along Lot 27 Block 6, and then 60' easterly and then return northerly to Long Rider Trail.

MARKET DATA ANALYSIS

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	Adjoins E. 4297 Long Rider Trail Billings, MT	4152 Iron Horse Trail Billings, MT	4271 Long Rider Trail Billings, MT	4293 Smohawk Trail Billings, MT
Proximity to Subject		L 4A, B 9, Rehberg Ran. Est 1st	L 25, B 6, Rehberg Ran. Est. 1st	L 10A, B 7, Rehberg Ran. Est 1st
Sales Price	\$ N/A	\$	\$	\$
Price	\$	\$ 37,500	\$ 39,500	\$ 49,000
Data Source	Inspection/Courthouse	MLS	MLS	MLS
Date of Sale and Time Adjustment	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Current	5/12/05	3/12/05	5/10/05	
Location	Good	Good	Good	
Site/View	4050 SF/Average	9717 SF/Busy Street	15866 SF/Good	14804 SF/Good
Street Frontage	10'	99', Good	146', Good	35', Good
Topography	Rolling	Rolling	Rolling	Rolling
Financing	Cash	Cash Sale	Cash Sale	Cash Sale
Utility	Poor	Good	Good	Good
Sales or Financing Concessions	N/A	None	None	None
Net Adj. (Total)		\$	\$	\$
Indicated Value of Subject		\$	\$	\$

Comments on Market Data: Sale No. 1 \$3.85 SF, Sale No. 2 \$2.48 SF, Sale No. 3 \$3.30 SF without adjustments. Because subject is not a buildable site and will be used as an emergency road out of the subdivision, it is estimated that subject's monetary value is only as it contributes to the adjoining owner's utility. After the needs of a building site are met, the extra land serves only to enhance a view and the SF value is less than the site value.

Comments and Conditions of Appraisal: The legal description and square footage furnished are assumed to be correct. Comparables similar to subject site are not available. The above comparables represent values for full buildable home sites, while subject is only a non buildable site. The addition of subject parcel to the adjoining ownership would tend to possibly increase the assessed value. The value of subject is only nominal as it has value only to the adjoining owner.

Final Reconciliation: *It is estimated that the subject market value is nominal & with a range between \$200, for a nominal total site value to a maximum value of \$1.00 per SF, or a total site value of \$4050.

RECONCILIATION

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF November 14, 2005 to be \$ 200.

Richard W. Bjelland Did Did Not Physically Inspect Property

Appraiser(s) Review Appraiser (if applicable)

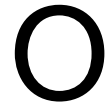
[12K]

rehbergranch NOTICE LIST

7/10/2007

GEOCODE	TAX_ID	ADDR
03103223201010000	D04559	02931 ROD & GUN CLUB RD
03103222101730000	A33399	04357 PARK
03103222101070000	A30228	03117 STOUT CREEK TRL
03103222101050000	A30227	03109 CABIN CREEK TRL
03103222101030000	A30226	04297 CABIN CREEK TRL
03103222402530000	A30187	03073 LONG RIDER TRL
03103222101010000	A30225	04281 CABIN CREEK TRL
03103222403110000	A30193	04283 SMOHAWK TRL
03103222402510000	A30186	04269 LONG RIDER TRL
03103222401010000	A30239	04271 SMOHAWK TRL
03103222403090000	A30192	04271 LONG RIDER TRL
03103222403350000	A30202A	LONG RIDER TRL
03103222402490000	A30185	LONG RIDER TRL
03103222403070000	A30191	LONG RIDER TRL
03103222402470000	A30184	LONG RIDER TRL
03103222403050000	A30190	LONG RIDER TRL
03103222402450000	A30183	LONG RIDER TRL

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Second Reading of Ordinance for the South Billings Boulevard Urban
Renewal District

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: On November 26, 2007, City Council on first reading approved an ordinance creating a South Billings Boulevard Urban Renewal District and establishing the boundary for the new district. The final step is for Council to adopt the ordinance on second reading.

At the November 26, 2007, City Council meeting, a public hearing was held to receive comments from the public in regards to the creation of the district. During this meeting, staff recommended several language changes to the Urban Renewal Plan. Changes include:

- Section 13 – Change “goals” to “projects”.
- Section 13 – Add statement that it is the intent of the City of Billings to use TIF to finance public improvement projects.
- Add section on “sound and adequate financial program”. An estimate on amount of increment potential.
- Ordinance – Remove paragraph #3, Conditional Commitment.
- Add additional language to the eminent domain statement that states, “In no case shall eminent domain be used as a tool in the redevelopment of the South Billings Boulevard Urban Renewal District except as a last resort in the case of needed public infrastructure improvements and/or rights-of way.”

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

- reject the ordinance
- modify the proposed boundary

- adopt the ordinance with the proposed boundary

FINANCIAL IMPACT: The financial impact is unknown. However, the current taxable value in the proposed TIFD is approximately \$6,444,737 and is stagnant. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus there is no “loss” of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

RECOMMENDATION

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

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

ATTACHMENTS

- A. Ordinance and Exhibits

ORDINANCE NO. 07 _____

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

Recitals:

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

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

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

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

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

Ordinance:

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

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

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

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

b. No housing element or structure is disturbed by this District making no relocation necessary;

c. The Plan conforms to the Growth Policy or parts thereof of the City for the municipality as a whole;

d. The Plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise;

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

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

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

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

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

EXHIBIT A MAP OF URBAN RENEWAL AREA

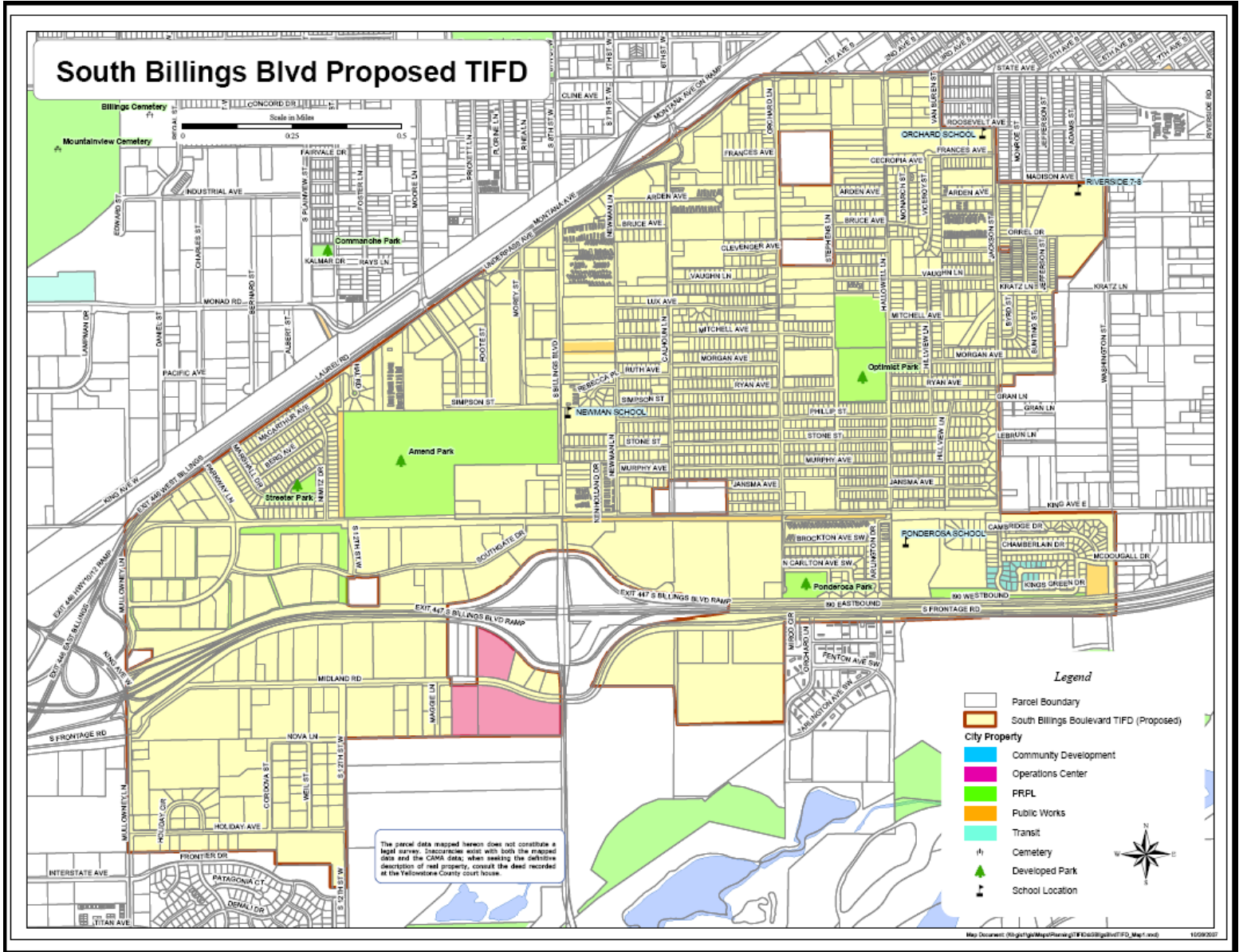


EXHIBIT B
LEGAL DESCRIPTION OF URBAN RENEWAL AREA

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

**EXHIBIT C
EAST BILLINGS URBAN RENEWAL PLAN**

(separate attachment available for viewing in the City Clerk's Office)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,667,649.62 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 9, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,444,736.68 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 16, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: City Administrator Compensation
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Council recently completed the City Administrator’s performance evaluation and according to the written employment agreement, the Council shall set the City’s Administrator’s compensation for the year. Section 3. B. of the agreement states:

This agreement shall be amended each subsequent October 1 to reflect a cost-of-living adjustment (COLA) and an increase in compensation as agreed by the Employer and Employee, dependent upon successful completion of the performance evaluation conducted under the provisions of Section 12 of this Agreement.

The City Council will consider the City Administrator’s compensation for the period October 1, 2007 – September 30, 2008.

FINANCIAL IMPACT: The COLA increase of 3% equals \$3,175 on the base salary of \$105,833. That amount is included in the FY 2008 budget. The City Administrator’s budget has enough flexibility to permit a reasonable amount of additional pay without exceeding the total budget authority.

RECOMMENDATION

Staff recommends that Council approve an increase in compensation for the City Administrator.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Employment agreement

Employment Agreement

Introduction

This Agreement, made and entered into September 8, 2006, by and between the **City of Billings**, Montana, a municipal corporation, (hereinafter called "Employer") and **Christina F. Volek** (hereinafter called "Employee"), an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1: Term

The term of this agreement shall be for an initial period of two years, from September 8, 2006, to October 1, 2008. This Agreement shall be reviewed annually on its anniversary date, and shall be renewed for an additional 2-year year term unless notice is given by the Employer at least 12 months before the expiration date that the Agreement shall be terminated. If the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. If the Employee is terminated, as defined in Section 9 of this agreement, the Employee shall be entitled to all compensation including salary, accrued vacation, $\frac{1}{4}$ of accrued sick leave, car allowance paid in lump sum, plus continuation of all benefits for the remainder of the term of this agreement.

Section 2: Duties and Authority

Employer agrees to employ Christina F. Volek as City Administrator to perform the functions and duties specified in Section 4.03 of the City Charter of the City of Billings, Montana.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee in the first year of this Agreement an annual base salary of \$105,833 payable in biweekly installments at the same time that the other management employees of the Employer are paid.

B. This agreement shall be amended each subsequent October 1 to reflect a cost-of-living adjustment (COLA) and an increase in compensation as agreed by the Employer and Employee, dependent upon successful completion of the performance evaluation conducted under the provisions of Section 12 of this Agreement.

Section 4: Health, Disability and Life Insurance Benefits

- A. Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and her dependents equal to that which is provided to other employees of the City of Billings, Montana
- B. Employer shall pay the amount of premium due for term life insurance in the amount of the Employee's two-year annual base salary. The Employee shall name the beneficiary of the life insurance policy.
- C. Should Employee die while on travel for the Employer, the Employer shall cover the full cost of retrieving and transporting the Employee's remains back to the custody of the Employee's family.

Section 5: Vacation and Sick Leave

- A. On the effective date of this agreement, Employee shall be credited with her existing sick and vacation leave earned to date. The Employee shall then accrue sick and vacation leave on an annual basis at the highest rate provided to any other employees.
- B. Employee is entitled to accrue all unused leave, up to 500 hours, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, and other benefits to date.

Section 6: Automobile

Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$4,800 per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The amount of the vehicle allowance may be increased in the future by mutual consent of the parties. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee on the basis of gasoline receipts for any business use of the vehicle beyond the greater Billings area. For purposes of this Section, use of the car within the greater Billings area is defined as travel to locations within a 50-mile radius of Billings.

Section 7: Retirement

- A. Employer agrees to contribute 6.8% of the Employee's annual salary into the Montana Public Employees' Retirement System (MPERS) or its successor. Employee will contribute 6.9% of her annual salary to MPERS.

B. In addition to Employer's payment to MPERS as referenced above, Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation [ICMA-RC] or other Section 457 deferred compensation plan for Employee's continued participation in said supplementary retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer agrees to pay ICMA-RC an amount equal to 6.8% of Employee's base salary, in equal proportionate amount each pay period. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

Section 8: General Business Expenses

A. Employer agrees to budget for and to pay for:

1. Professional dues and subscriptions of the Employee for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
2. Reasonable travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
3. Reasonable travel and subsistence expenses of Employee for short courses, institutes, and seminars for the Employee's professional development and for the good of the Employer.

B. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations reasonably related to Employee's duties. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.

B. If the Employer, citizens or legislature acts to amend any provisions of the City Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

C. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the majority of the governing body, then the Employee may declare a termination as of the date of the suggestion.

Section 10: Severance Compensation

A. Severance compensation shall be paid to the Employee if employment is terminated as defined in Section 9.

B. If the Employee is terminated, the Employer shall provide a minimum severance compensation payment equal to one year salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

C. The Employee shall also be compensated for all accrued vacation leave and ¼ of accrued sick leave. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

D. For a minimum period of one year following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the employee and all dependents as provided in Section 4A;
2. Life insurance as provided in Section 4B;
3. Out-placement services should the employee desire them in an amount to be negotiated at time of separation.
4. Any other benefits as negotiated at the time of separation.

E. If the Employee is terminated for cause, the Employer is not obligated to pay severance under this section.

Section 11: Resignation

If the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

Section 12: Performance Evaluation

Employer shall annually review the performance of the Employee in September, subject to a review form shown as Attachment A or to another process for the evaluation which shall be

mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to:

1. Prepare a written evaluation;
2. Meet and discuss the evaluation; and
3. Present a written summary of the evaluation results, along with specific suggestions for improvement. The final written evaluation shall be completed and delivered to the Employee within 30 days of the evaluation meeting.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 14: Residency

Employee agrees to maintain residence within the corporate boundaries of the City of Billings.

Section 15: Indemnification

Employer shall defend, save harmless and indemnify Employee as provided in the current version of Montana Code Annotated Section 2-9-305(2005) which is set forth in its entirety below. This obligation shall survive and extend beyond the Employee's separation from Employer and Employee shall be indemnified and held harmless for any post-separation costs or expenses incurred in connection with the investigation or defense of any claim related to her employment.

1. It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.
2. In any non-criminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to *42 U.S.C. 1983*, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.
3. Upon receiving service of a summons and complaint in a non-criminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity employer. If

the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

4. In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection 6.
5. Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).
6. In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:
 - (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;
 - (b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;
 - (c) the employee compromised or settled the claim without the consent of the government entity employer; or
 - (d) the employee failed or refused to cooperate reasonably in the defense of the case.
7. If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those

exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

Section 16: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 17: Other Terms and Conditions of Employment

A. Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other exempt employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 18: Notices

Notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 19: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on September 8, 2006.

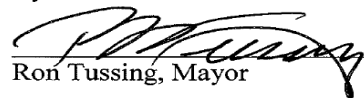
D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Approved this 10th day of October, 2006,



The City of Billings:

By:


Ron Tussing, Mayor

Attest:


Marita Herold, CMC/AAE, City Clerk

Employee:


Christina F. Volek, Employee

Approved as to Form:


Brent Brooks, City Attorney

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing to Vacate a portion of Henry Road
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: John Glenn, property owner at 1125 Henry Road, has petitioned to vacate a portion of Henry Road fronting his property. Henry Road currently has 60 feet of right of way fronting this property, but only the southern 30 feet of the road is constructed. The northern 30 feet of right of way has steep terrain and sandrock. The past property owner of 1125 Henry Road applied for and was approved to have the required building front setback of 20 feet reduced to 1 foot due to the steep terrain of his parcel. Mr. Glenn is petitioning to vacate the northern 30 feet of right of way which will be utilized for his driveway. The southern 30 feet of right of way will continue to benefit the one property owner to the east of this property.

ALTERNATIVES ANALYZED:

1. After holding a public hearing approve the vacation of the above-mentioned right-of-way.
2. After holding a public hearing do not approve the vacation of the above-mentioned right-of-way.

FINANCIAL IMPACT: Mr. Glenn purchased his lot in 2004 for \$3.13 per square foot and is willing to pay the same price for the Henry Road right of way. The total value of the proposed vacated property (4,122.90 square feet) to be paid to the city from Mr. Glenn is \$12,904.68 at the \$3.13 per square foot price.

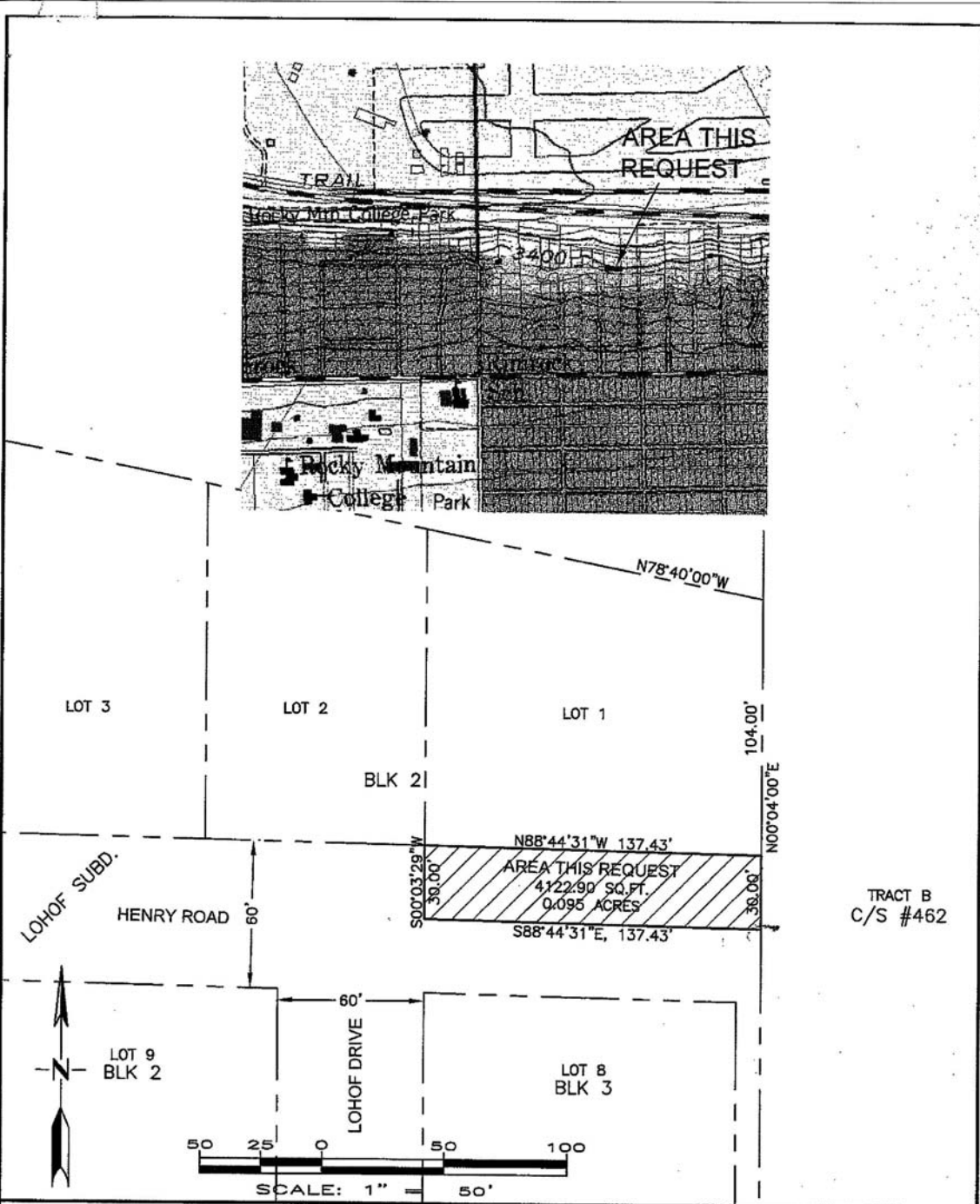
RECOMMENDATION

Staff recommends that Council approve to vacate a portion of Henry Road.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Map Depicting Area to be Vacated
- B. Letter from Property Owner
- C. Approval Letter for Setback Variance
- D. Resolution to Vacate



TRACT B
C/S #462

MORRISON MAIERLE, INC.
An Employee-Owned Company

Engineers 315 N. 25th Street
Surveyors Suite 102
Schedlers Billings MT 59101
Planners Phone: (406) 656-6000
Fax: (406) 237-1201

DRAWN BY: DGS
CHKD. BY: GAP
APPR. BY: GAP
DATE: 04/2007

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V:\4372001\ACAD\Survey\4372001_EXHBIT.dwg Plotted by dschultz on Apr/18/2007

EXHIBIT A
STREET VACATION REQUEST

Billings MT

1125 HENRY DRIVE
S. 30, T. 1N., R. 26E., P.M.M., CITY OF BILLINGS,
YELLOWSTONE COUNTY, MONTANA

PROJECT NO. 4372.001
FIGURE NUMBER

FIG.

May 27, 2007

Honorable City Council
City of Billings

REQUEST TO VACATE
PUBLIC R-O-W

Dear Council Members:

Our application plus \$200 fee to acquire public right-of-way from the City in order for us to have access to the residence we are building for our permanent home at 1125 Henry Road is enclosed for your consideration.

Also enclosed is a copy of a letter dated May 29, 1985 to the former owner of the property granting a one-foot setback for construction on the lot. We are building in accord with that setback.

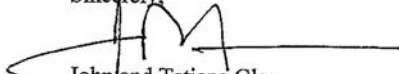
We paid \$50,000 for the lot in 2004 making a square footage value of \$3.13. The area we are requesting to purchase, as depicted on a sketch in the application, constitutes 4122.9 square feet giving thus an extended value at \$3.13/SF of \$12,904.68.

Photographs are also enclosed to show the physical conditions necessitating our request.

Please allow us to purchase the property as requested for the amount of \$12,904.68 to be paid forthwith upon notice of your approval.

Thank you for your kind consideration.

Sincerely,



John and Tatiana Glenn
7717 Blue Creek Road
Billings, MT 59101

May 29, 1925

#454 Variance

J. P. Evans
3115 Lohof Drive
Billings, Montana 59102

Dear Mr. Evans:

This is to inform you of the action taken by the City Board of Adjustment on your request for a variance from the front yard setback of 20' to 1' in a Residential 9600 (R-96) zone to allow construction of a residence on Lot 1, Block 2, Lohof Subdivision. The Board of Adjustment granted the variance.

Sincerely,

Lee Tuott
Zoning Coordinator

xc: R. H. and Marcia Spalding
Steve Baker, Building Official

RESOLUTION NO. 07-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, DISCONTINUING AND VACATING **a portion of Henry Road.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of **a portion of Henry Road** as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by MCA section 7-14-4114(3);

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

1. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., **a portion of Henry Road** more particularly described as follows:

A portion of Henry Road
A tract of land situated in the SW ¼ of Section 30, T. 1 N., R. 26 E., P.M.M., City of Billings, Yellowstone County, Montana, being a portion of Lohof Subdivision, recorded as document #567242 in the office of the Yellowstone County Clerk and Recorder, being more particularly described as follows:
The Northerly 30 feet of Henry Road coincident with the South line of

Lot 1, Block 2 of said Lohof Subdivision, containing 4122.90 Square Feet or 0.095 acres more or less, and subject to easements either of record or apparent on the ground.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described **a portion of Henry Road** is in the best interest of the public and can be done without any public detriment. Pursuant to MCA 76-3-305, a portion of Henry Road right of way will revert to Lot 1, Block 2, Lohof Subdivision.

PASSED by the City Council and APPROVED this 10th day of December 2007.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing
MAYOR

ATTEST:

BY: _____
Cari Martin CITY CLERK

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution to Create - Park Maint. District No. 4035, Bitterroot Heights Subdivision

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: Bitterroot Heights Subdivision, 1st Filing, contains approximately 11.6 acres of dedicated park and public open space in 5 lots. Park lands include a 10.4 acre park tract for both natural and developed park area, and a 1.1 acre 50-foot wide public drainage way strip with soft-surface trail, that connects to the large public park area. Also included are a landscaped median and entry tracts at the subdivision's entrance from Bitterroot Drive totaling 9,151 square feet (0.2 acres). The development and improvement of the park will be by the developer through private contract. As a condition of the Bitterroot Heights Subdivision, 1st Filing, final plat approval, a park maintenance district must be established by the subdivision. The Resolution of Intent to Create the District was approved at the November 13, 2007, City Council meeting as the first step in the process to include all lots of Bitterroot Heights Subdivision in Park Maintenance District No. 4035. The proposed PMD includes parks, entrance landscaping and street lighting. Current public area improvements include entrance landscaping and lighting, requiring an electric meter and water service. The developers, BRV Development, are requesting that the Council delay creation pending a revision of the subdivision concept plan. They will make their request at the public hearing.

ALTERNATIVES ANALYZED:

- Create the Park Maintenance District now to assure assessments can be collected to pay costs of maintenance as the park is developed. This is the requirement approved in the Subdivision Improvement Agreement and the staff recommendation.
- Do not create the Park Maintenance District at this time. BRV Development is requesting a delay of from 2 to 6 months, and have said that they will assume liability for any costs for the parks until then.

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$12,035.00 for the first year. The water and electric utility accounts are in the contractors

name, however, there are outstanding special assessment charges to the 5 park and public parcels for 2007 for a total of \$1,447.52 that are due before the end of May, 2008. Creation of PMD 4035 assures that these are paid by the district. The assessment rate for this amount is \$0.02812 per square foot of property in District 4035. The assessment for the lots is shown in “Exhibit D” of the attached PMD documents for the coming year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Park Maintenance District No. 4035 for the Bitterroot Heights Subdivision.

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

ATTACHMENT:

- A. Resolution of Intent to Create Park Maintenance District No. 4035

INTRODUCTION

The Public Hearing and consideration of approval of the Resolution to Create Park Maintenance District No. 4035 for the maintenance of Bitterroot Heights Subdivision public areas is the final step in the process for creating the Park Maintenance District.

PROCEDURAL HISTORY

- The Bitterroot Heights Subdivision, 1st Filing final plat has been approved and filed.
- The Master Plan for the construction of the public area improvements was developed with the PRPL Department and adopted by the City Council as Resolution #05-18254 on April 11th, 2005.
- The Resolution of Intent To Create the Park Maintenance District was approved by the City Council at the November 13th, 2007, City Council meeting.
- The Public Notice of Intention to Create PMD 4035 was advertised on November 15th and November 22nd, and was mailed to affected property owners within the proposed PMD explaining the protest and comment procedures and providing for a protest period from November 15th through November 30th, 2007.
- The Billings City Council will hold a Public Hearing and consider the Resolution to Create the district at the December 10th, 2007, regular City Council meeting.

BACKGROUND

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Bitterroot Heights Subdivision Improvement Agreements call for the park improvements to be made and the Park Maintenance District to be created. The proposed maintenance district includes all lots included in Bitterroot Heights Subdivision, 1st Filing. Said lots shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted. All filings have or will have on file Waivers of Protest for the formation of the park maintenance district for all lots within Bitterroot Heights Subdivision.

Approval of the Resolution to Create Park Maintenance District No. 4035 for Bitterroot Heights Subdivision completes the process to create the maintenance district as required.

ALTERNATIVES ANALYSIS

- Create the Park Maintenance District now to assure assessments can be collected in to pay costs of maintenance as the park development commences. The approved Subdivision

Improvements Agreements call for development at this time and requires a Park Maintenance District to be created for maintaining it. This is the staff recommendation.

- Do not create the Park Maintenance District at this time.

STAKEHOLDERS

- The developers have agreed to the development and maintenance of the public areas in Bitterroot Heights Subdivision.
- The 49 lots initially included in the PMD in Bitterroot Heights Subdivision consist of single-family residential lots. The developers currently own all platted lots and have agreed to the development.
- Billings' residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks for their residents to mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The extension of quality landscape maintenance services to new subdivision parks through the use of Special Improvement Districts and maintaining them through Park Maintenance Districts continues the Parks 20/20 plan recommendations, and conforms to city policy adopted in 1982 regarding new subdivision parks. The use of Park Maintenance Districts has allowed the use of the PRPL Parks grounds keeping staff to provide professional level maintenance to areas of public grounds and landscaping in new subdivisions as they develop and are brought into the city. This has improved the environment, increased the quality of life for Billings' residents, and increased the value of surrounding private property. The revenue provided helps support the overall park operations in all of the general fund supported parks by allowing better trained, more competent staffing and providing added support for state of the art operations and equipment that would be otherwise be limited by General Fund revenue constraints.

Maintaining this park with a maintenance district continues the process of extending maintenance services to the developing areas of Billings even though the revenue growth of the city general fund has not been adequate to provide for the maintenance of these new parks. Park Maintenance District revenue is estimated to be \$486,683 to offset maintenance expenses in the upcoming 2008 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division Operations & Maintenance budget this year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Park Maintenance District No. 4035 for the Bitterroot Heights Subdivision.

ATTACHMENT:

- A. Resolution of Intent to Create Park Maintenance District No. 4035

RESOLUTION NO. 07-_____

A RESOLUTION CREATING PARK MAINTENANCE DISTRICT NO. 4035 FOR THE PURPOSE OF MAINTAINING EXISTING AND FUTURE PUBLIC AREA IMPROVEMENTS IN BITTERROOT HEIGHTS SUBDIVISION, CITY OF BILLINGS, MONTANA.

WHEREAS, the City Council of Billings, Montana, hereby finds, determines and declares that:

1. The public interest and convenience require the creation of the above named district.
2. That said district is of more than local or ordinary public benefit.
3. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the costs and expenses of the district.

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

1. *Jurisdiction and Creation.* Special Improvement Maintenance District Number 4035 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the proposed improvement, and it does hereby create Special Improvement Maintenance District Number 4035. All lands included within Special Improvement Maintenance District No. 4035 are benefited and no lands that are not benefited have been included in said district.
2. *General Character of Improvement and Maintenance.* The general character of the improvements to be maintained is as follows: landscaping, trails, trees, lighting, irrigation systems, irrigation system water services, storm water detention facilities, and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District. The purpose of said district is to provide perpetual maintenance of the above-mentioned items.
3. *Boundaries.* The Boundaries of the district are described and designated on Exhibit "B" attached hereto.

4. *Ownership.* The ownership records of all properties within the said district are described and designated in Exhibit “C” attached hereto.
5. *Maintenance Estimate.* The estimated cost of the proposed maintenance for the first year will be \$0.02812/square foot of lot area for 49 lots as described in the Maintenance Estimate attached hereto in Exhibit “D”.
6. *Assessment Method.* All eligible properties within the District are to be assessed for a portion of the costs of maintaining the existing and future Bitterroot Heights Subdivision public area improvements, as specified herein. Said properties shall not be eligible for assessment until such time as the final plat of the property is filed. The costs of maintaining the Improvements shall be assed against the property in the District benefiting from the Bitterroot Heights Subdivision, Public Area Improvements, based on the assessable area method of assessment described in Section 7-12-4162 through 7-12-4165, M.C.A., as particularly applied and set forth herein.
7. *Payment of Assessment.* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that payment of one-half of said annual assessment may be deferred to May 31 of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute a fund to be known as Fund of Special Improvement Maintenance District Number 4035.
8. *Bonds for Improvement.* There will be no bonds sold for this district as it is for maintenance only.
9. *Engineering.* No engineering will be required.
10. *District Accounts.* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this _____ day of _____, _____.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution to Create Special Improvement District 1380, Terra West Subdivision 3rd & 4th Filings, for Monad Road Street Frontage Improvements

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: The residents of the 3rd and 4th Filings of Terra West Subdivision, containing 76 lots, have requested that immediate steps be taken to develop the unimproved boulevard strip on Monad Road that borders Terra West Subdivision. The Subdivision Improvements Agreement for Terra West 3rd Filing, and Terra West 4th Filing, provides for an extended Special Improvement District to be formed to fund the improvements of public areas for the subdivision. The proposed Special Improvement District No.1380 is for \$82,000 to finance the engineering and design service and to provide the improvements including grading and leveling the street frontage, installing a water service and irrigation system, and plant grass and trees along the 657 foot long strip (0.74 acres). The Public Hearing and consideration of the Resolution to Create Special Improvement District 1380, if approved, completes the process to include all lots of Terra West Subdivision 3rd and 4th Filings in S. I. D. 1380 to fund the construction of the Monad Road street frontage improvements. A Notice of Intent to form Special Improvement District 1380 was mailed to each property owner in the proposed district providing for comments and protests to be filed with the City Clerk by November 30th, 2007. By close of business on November 30, 2007, there were no comments or protests filed by property owners within the proposed Special Improvement District. Waivers of Protest to the creation of improvement or maintenance districts for public areas are on file for the properties included in the proposed district.

ALTERNATIVES ANALYZED:

- Create the S. I. District now to enable development of the street frontage in the spring of 2008. This is a requirement approved in the Subdivision Improvement Agreements for the Terra West 3rd Filing and 4th Filing, and Waivers of Protest for the formation of the S. I. D.

and a S. I. Maintenance District were filed with the Subdivision Improvements Agreement. This is the staff recommendation and the request of the Terra West Property owners.

- Do not create the Special Improvement District at this time.

FINANCIAL IMPACT: The development costs of the Monad Road improvements is estimated to be \$82,000 spread on the 76 lots in Terra West 3rd and 4th Filings, or \$1,078.95 per lot, payable with interest over an assessment period of 15 years. The assessment for the lots is shown in “Exhibit D” of the attached SID documents.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Special Improvement District 1380 to fund the improvements to the Monad Road street frontage of Terra West Subdivision.

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

ATTACHMENT:

- A. Resolution of Intent to Create Special Improvement District No. 1380

INTRODUCTION

The Resolution to Create Special Improvement District No. 1380 for the construction of street frontage improvements on the north side of Monad Road adjacent to Terra West Subdivision, if approved, completes the process to create the district.

PROCEDURAL HISTORY

- July, 1993, Terra West Subdivision, 3rd Filing final plat approved and filed, including Waivers of Protest for park and public area improvements and maintenance. The Master Plan for the construction of the park area improvements was developed with the PRPL Department and adopted by the City Council as part of the Terra West 3rd Filing plat and approved at the same time
- August, 2001, Terra West, 4th Filing final plat was approved and filed, including Waivers of Protest for the construction and maintenance of improvements to public areas of the subdivision. Provision for the construction of street frontage improvements was not made in the 4th Filing plat approval other than as provided for in the Waivers of Protest that were filed.
- February 14, 2006, Petition to Amend Covenants filed by property owners within the Terra West 4th Filing to have the Monad Road street frontage improvements installed.
- May 1, 2006, meeting of the Terra West Subdivision residents at West End Baptist Church to discuss the improvement of the Monad Road Street frontage, estimated costs and funding alternatives.
- Determination that the Terra West Subdivision Park Maintenance District could not be used to fund the street frontage improvements. The only other alternative available is to form a Special Improvement District for this purpose.
- The Resolution of Intent To Create Special Improvement District No. 1380 was approved by the City Council at the November 13th, 2007, meeting. It provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period.
- A report of comments received will be provided at the December 10th, 2007, regular City Council meeting, when the Public Hearing and consideration of the Resolution to Create Special Improvement District No. 1380 will take place.

BACKGROUND

The development of the streetfront on Monad Road adjacent to Terra West Subdivision is a requirement of the subdivision and is provided for with the Waivers of Protest that were filed when the Terra West 3rd and 4th Filing plats were approved. The Waivers of Protest to the creation of improvement and maintenance districts for public areas within the subdivision are the mechanism that was put in place to enable these improvements to be completed.

- When the Terra West 1st and 2nd Filings were approved, the street front improvements along 32nd Street West were required to be completed as the Filings were built out. The 32nd Street West streetfront adjacent to Terra West 1st and 2nd Filings are maintained by the residents in that portion of Terra West Subdivision.
- The park in the center of Terra West Subdivision was completed by the developed as required in the Subdivision Improvements Agreement as part of the development of Terra West 3rd Filing. It is maintained by a subdivision-wide maintenance district, PMD 4008, created for that purpose, assessed to all properties within the entire Terra West Subdivision. The existing maintenance district is only for the purpose of maintaining that internal park area.
- The Monad Road streetfront improvement and maintenance districts will include the Terra West 3rd and 4th Filing properties. The Terra West 1st and 2nd Filings are excluded because those properties improved and are maintaining the 32nd Street West streetfront landscape.

Approval of the Resolution of Intent to Create Special Improvement District No. 1380 provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create Special Improvement District No. 1389 will take place at the December City Council Meeting.

ALTERNATIVES ANALYSIS

- Create the Special Improvement District now to enable the construction of the improvements to the Terra West Subdivision Monad Road improvements in the Spring of 2008. The approved Subdivision Improvements Agreements call for development of public areas in the subdivision through Special Improvement District and also provides that a Special Improvement Maintenance District be created for maintaining it. This is the staff recommendation.
- Do not create Special Improvement District No. 1380 and the S.I. Maintenance District to improve and maintain the Terra West Monad Road street frontage at this.

STAKEHOLDERS

- The developers of Terra West Subdivision have agreed to the development and maintenance of the public areas in the Subdivision.
- All properties in Terra West Subdivision have Waivers of Protest on file for the improvement and maintenance of public areas. However, Terra West 1st and 2nd Filings are being excluded from SID1380 and SIMD 4038 because they were required to install landscape

improvements on the 32nd Street West street frontage and have been required to maintain it since the 1st and 2nd Filings were developed. They will continue to maintain the 32nd Street W. landscaping separate from the 3rd and 4th Filings.

- All properties in Terra West Subdivision are included in PMD 4008 that was created specifically for the maintenance of the 2 park areas in the northeast part of the subdivision.
- The 76 lots included in the S. I. D. and S. I.M. D. in Terra West Subdivision, 3rd and 4th Filings, consist of single-family residential lots and Waivers of Protest for the creation of the SID and the SIMD are on file. The landscaping along Monad Road will provide an attractive street frontage for the subdivision, similar to the 32nd Street West frontage, and increase property values for the homes and lots within it, especially for the 3rd and 4th Filing properties.
- The adjacent subdivisions on the north side of Monad Road are landscaping their street frontage from the Billings Bench Water Association canal west to 32nd Street West and failure to develop the Terra West Monad Road frontage will make it the only section that will be unimproved. The neighborhood and the City of Billings residents would continue to have new subdivisions with arterial street frontage unimproved to become an eyesore if not for the requirement that new subdivisions provide for the development and maintenance of street frontage that is part of the subdivision as part of the Subdivision Improvement Agreements.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The use of Special Improvement and Maintenance Districts for street frontage and public areas in subdivisions is consistent with long-term development practices in place throughout the City of Billings.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Special Improvement District 1380 to fund the improvements to the Monad Road street frontage of Terra West Subdivision.

ATTACHMENT:

- A. Resolution of Intent to Create

Resolution No. 07-_____

A RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1380; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

Section 1. Passage of Resolution of Intent. This Council, on November 13, 2007, adopted Resolution No. 07-18629 (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No 1380 of the City, under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and security of special improvement district bonds drawn on the District (the "Bonds"), the creating and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

Section 2. Notice and Public Hearing. Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with the law, and on December 10, 2007, this Council conducted a public hearing on the creation or extension of the District and the making of the Improvements. The meeting of this Council at which this resolution was adopted is the first regular meeting of the Council following the expiration of the period ended 15 days after the first date of publication of the notice of passage of the Resolution of Intention (the "Protest Period").

Section 3. Protest. Within the Protest Period, **no protests** were filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for 100 percent of the total costs of the Improvements or representing 100 percent of the area of the District to be assessed for the cost of the Improvements. **The protest represents zero percent of the assessed costs.**

Section 4. Creation of the District; Insufficiency of Protests. The District is hereby created on the terms and conditions set forth herein, and otherwise in accordance with the Resolution of Intention. The protests against the creation or extension of the District or the making of the Improvements filed during the Protest Period, if any, are hereby found to be insufficient. The findings and determinations made in the Resolution of Intention are hereby ratified and confirmed.

Section 5. Reimbursement Expenditures.

5.01 Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City of 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 issued 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 transitional provision contained in Section 1.150-2 (j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2 (f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2 (f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs for the Improvement out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$82,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2 (d)(3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are not City funds reserved, allocated on a long-term basis, or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

5.05. Reimbursement Allocations. The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the

transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvement and shall specifically identify the actual original expenditure being reimbursed.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this _____ day of _____, 2007.

THE CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution to Create Spec. Imp. Maintenance District No. 4038, Terra West Sub. 3rd & 4th Filings, Monad Road Street Frontage Improvements

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: The residents of the 3rd and 4th Filings of Terra West Subdivision, containing 76 lots, have requested that immediate steps be taken to develop the unimproved boulevard strip on Monad Road that borders Terra West Subdivision. The Subdivision Improvements Agreement provides for extended Special Improvement District No. 1380 to be formed to fund the improvements of public areas for the subdivision. The Subdivision Improvements Agreements for Terra West 3rd and 4th Filings further provides that Special Improvement Maintenance District 4038 can be created to maintain the Monad Road public area improvements installed by SID 1380. The Monad Road Street frontage is a 55 foot by 657 foot long strip (0.74 acres) that will include automatic irrigation, turf grass and 16 trees. As a condition of the Terra West Subdivision 3rd and 4th Filings final plat approval, Waivers of Protest for the creation of development or maintenance districts are on file to provide maintenance for of all public areas within the subdivision. A Notice of Intent to form Special Improvement Maintenance District 4038 was mailed to each property owner in the proposed district providing for comments and protests to be filed with the City Clerk by November 30th, 2007. By close of business on November 30, 2007, there were no comments or protests filed by property owners within proposed Special Improvement Maintenance District 4038. The Resolution to Create Special Improvement Maintenance District 4038 completes the process to create the maintenance district for the Monad Road street frontage improvements.

ALTERNATIVES ANALYZED:

- Create S. I. Maintenance District No. 4038 with Special Improvement District No. 1380 to enable maintenance of the street frontage once the improvements are completed. This is the staff recommendation and the request of the Terra West Property owners.
- Do not create Special Improvement Maintenance District No. 4038 at this time.

FINANCIAL IMPACT: The maintenance costs for the Landscaping improvements are estimated to be \$5,710.00 for the first year. The assessment rate for this amount is \$75.10 per lot in S.I.M.District 4038. The assessment for the lots is shown in “Exhibit D” of the attached SIMD documents for the coming year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Special Improvement Maintenance District No. 4038, contingent on the approval of the Resolution of Intent to Create Special Improvement District No. 1380 for the construction of improvements to the Terra West Monad Road street frontage. .

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

ATTACHMENT:

- A. Resolution of Intent to Create Special Improvement Maintenance District No. 4038

INTRODUCTION

The Resolution to Create S. I. Park Maintenance District No. 4038 for the maintenance of the Terra West Subdivision Monad Road street frontage that is proposed for development in SID 1380, if approved, completes the process to create the S.I. Maintenance District.

PROCEDURAL HISTORY

- July, 1993, Terra West Subdivision, 3rd Filing final plat approved and filed, including Waivers of Protest for park and public area improvements and maintenance. The Master Plan for the construction of the park area improvements was developed with the PRPL Department and adopted by the City Council as part of the Terra West 3rd Filing plat and approved at the same time
- August, 2001, Terra West, 4th Filing final plat was approved and filed, including Waivers of Protest for the construction and maintenance of improvements to public areas of the subdivision. Provision for the construction of street frontage improvements was not made in the 4th Filing plat approval other than as provided for in the Waivers of Protest that were filed.
- February 14, 2006, Petition to Amend Covenants filed by property owners within the Terra West 4th Filing to have the Monad Road street frontage improvements installed and maintained as provided for in the Subdivision Improvements Agreements.
- May 1, 2006, meeting of the Terra West Subdivision residents at West End Baptist Church to discuss the improvement of the Monad Road Street frontage, estimated costs and funding alternatives.
- Determination that Terra West Subdivision Park Maintenance District No. 4008 could not be used to fund street frontage improvements or to provide the maintenance for the improvements after they are installed. The alternative available is to form a Special Improvement District and a S. I. Maintenance. District for this purpose.
- The Resolution of Intention To Create Special Improvement Maintenance District No. 4038 was approved at the November 13th, 2007, City Council meeting.
- The Public Notice of Intention was advertised on November 15th and November 22nd and a copy of the public notice was mailed to all property owners within the proposed district providing a protest and comment period ending November 30th, 2007 and explaining the protest and comment procedures.

BACKGROUND

The development of the street frontage on Monad Road adjacent to Terra West Subdivision is a requirement of the subdivision and is provided for with the Waivers of Protest that were filed when the Terra West 3rd and 4th Filing plats were approved. The Waivers of Protest to the creation of improvement and maintenance districts for public areas within the subdivision are the mechanism that was put in place to enable these improvements to be completed and then maintained.

- When the Terra West 1st and 2nd Filings were approved, the street front improvements along 32nd Street West were required to be completed as the Filings were built out. The 32nd Street West street frontage adjacent to Terra West 1st and 2nd Filings are maintained by the residents in that portion of Terra West Subdivision.
- The park in the center of Terra West Subdivision was completed by the developed as required in the Subdivision Improvements Agreement as part of the development of Terra West 3rd Filing. It is maintained by a subdivision-wide maintenance district, PMD 4008, created for that purpose, assessed to all properties within the entire Terra West Subdivision. The existing maintenance district is only for the purpose of maintaining that internal park area.
- The Monad Road street frontage improvement and maintenance districts will include only the Terra West 3rd and 4th Filing properties. The Terra West 1st and 2nd Filings are excluded because those properties improved and are maintaining the 32nd Street West street frontage landscape.

The Public Hearing and consideration of the Resolution to Create Special Improvement Maintenance District No. 4038 will take place at the December 10th, 2007, City Council Meeting, along with consideration of the Resolution to Create the Special Improvement District, No. 1380, to fund the improvements.

ALTERNATIVES ANALYSIS

- Create Special Improvement Maintenance District No. 4038 now to enable the maintenance of the improvements to the Terra West Subdivision Monad Road frontage, if the SID No.1380 is approved. The approved Subdivision Improvements Agreements call for development of public areas in the subdivision through Special Improvement District and also provides that a Special Improvement Maintenance District be created for maintaining it. This is the staff recommendation.
- Do not create Special Improvement Maintenance District No. 4038 to maintain the Terra West Monad Road street frontage at this time.

STAKEHOLDERS

- The developers of Terra West Subdivision have agreed to the development and maintenance of the public areas in the Subdivision.

- All properties in Terra West Subdivision have Waivers of Protest on file for the improvement and maintenance of public areas. However, Terra West 1st and 2nd Filings are being excluded from SID1380 and SIMD 4038 because they were required to install landscape improvements on the 32nd Street West street frontage and have been required to maintain it since the 1st and 2nd Filings were developed. They will continue to maintain the 32nd Street W. landscaping separate from the 3rd and 4th Filings.
- All properties in Terra West Subdivision are included in PMD 4008 that was created specifically for the maintenance of the 2 park areas in the northeast part of the subdivision.
- The 76 lots included in the S. I. D. and S. I.M. D. in Terra West Subdivision, 3rd and 4th Filings, consist of single-family residential lots and Waivers of Protest for the creation of the SID and the SIMD are on file. The landscaping along Monad Road will provide an attractive street frontage for the subdivision, similar to the 32nd Street West frontage, and increase property values for the homes and lots within it, especially for the 3rd and 4th Filing properties.
- The adjacent subdivisions are improving the Monad Road street frontage on the north side from the Billing Bench Water Association canal west to 32nd Street West and failure to develop the Terra West Monad Road frontage will make it the only portion that will be unimproved along that section of Monad Road. The neighborhood and the City of Billings residents would continue to have new subdivisions with arterial street frontage unimproved to become an eyesore if not for the requirement that new subdivisions provide for the development and maintenance of street frontage that is part of the subdivision as part of the Subdivision Improvement Agreements.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The use of Special Improvement and Maintenance Districts for street frontage and public areas in subdivisions is consistent with long-term development practices in place throughout the City of Billings.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Special Improvement Maintenance District No. 4038, contingent on the approval of the Resolution of Intent to Create Special Improvement District No. 1380 for the construction of improvements to the Terra West Monad Road street frontage. .

ATTACHMENT:

- A. Resolution of Intent to Create Special Improvement Maintenance District No. 4038

RESOLUTION NO. 07-

A RESOLUTION CREATING SPECIAL IMPROVEMENT MAINTENANCE DISTRICT NO. 4038 FOR THE PURPOSE OF MAINTAINING EXISTING AND FUTURE PUBLIC AREA IMPROVEMENTS IN TERRA WEST SUBDIVISION, THIRD AND FOURTH FILINGS, CITY OF BILLINGS, MONTANA

WHEREAS, the City Council of Billings, Montana, hereby finds, determines and declares that:

1. The public interest and convenience require the creation of the above named district.
2. That said district is of more than local or ordinary public benefit.
3. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the costs and expenses of the district.

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

1. *Jurisdiction and Creation.* Special Improvement Maintenance District No. 4038 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the proposed improvement, and it does hereby create Special Improvement Maintenance District Number 4038. All lands included within Special Improvement Maintenance District Number 4038 are benefited and no lands that are not benefited have been included in said district.
2. *General Character of Improvement and Maintenance.* The general character of the improvements to be maintained is as follows: landscaping, irrigated turf grass, trees, irrigation systems, irrigation system water services, sidewalk, and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District. The purpose of said district is to provide perpetual maintenance of the above-mentioned items.
3. *Boundaries.* The Boundaries of the district are described and designated on Exhibit "B" attached hereto.

4. *Ownership.* The ownership records of all properties within the said district are described and designated in Exhibit “C” attached hereto.
5. *Maintenance Estimate.* The estimated cost of the proposed maintenance for the first year will be \$5,710.00 as described in the Maintenance Estimate attached hereto in Exhibit “D”.
6. *Assessment Method.* All properties within the District are to be assessed for a portion of the costs of maintaining SID 1380 public area improvements as specified herein. The costs of maintaining the improvements shall be assessed against the property in the District benefiting from the Public Area Improvements, based on the assessable area method of assessment described in Section 7-12-4162 through 7-12-4165, M.C.A., as particularly applied and set forth herein.
7. *Payment of Assessment.* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that payment of one-half of said annual assessment may be deferred to May 31 of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute a fund to be known as Fund of Special Improvement Maintenance District Number 4038.
8. *Bonds for Improvement.* There will be no bonds sold for this district as it is for maintenance only.
9. *Engineering.* All engineering will be as part of SID 1380.
10. *District Accounts.* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this _____ day of _____, 2007.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:
BY: _____
Cari Martin, CITY CLERK

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-05
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex a portion of park land along the Zimmerman Trail road right-of-way and a portion of the Zimmerman Trail road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The total property is 13.4 acres in size. Yellowstone County recently quit claimed the 4.2 acre parcel of park land to the City and in 2005 quit claimed the road right-of-way. The property borders and includes the Zimmerman Trail road right-of-way as it climbs the rim rocks to Highway 3 (See Attachment B).

The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City from the County in areas where annexations are occurring. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. Since the County has quit claimed the road right-of-way and the adjacent park land to the City, and the City limits border these properties to the east, the City now is ready to annex the properties as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request, approved a resolution of intent (Resolution No. 07-18637) to annex the property, and set a public hearing date for December 10, 2007. The Council will conduct a public hearing at this meeting and consider the question of annexation.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is

consistent with City Council policy and State Law is to conduct a public hearing and review the annexation request before taking action.

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis has not been completed for this annexation request.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

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

ATTACHMENTS

- A. Resolution to Annex
- B. Map

INTRODUCTION

The City of Billings on August 16, 2007, submitted a request for annexation of property totaling 13.4 acres of park land and road right-of-way adjacent and including portions of Zimmerman Trail between Rimrock Road and Highway 3. The property is bordered by the City Limits on the east side along Zimmerman Trail and is eligible for annexation since it requires no service provisions and is parkland and road right of way. The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request, approved a resolution of intent (Resolution No. 07-18637) to annex the property, and set a public hearing date for December 10, 2007.

PROCEDURAL HISTORY

- August 16, 2007 – The Planning and Community Services Department received a signed letter of request to annex the subject property into the City of Billings.
- November 13, 2007 – The City Council acknowledged the request to annex, approved a resolution of intent to annex the property, and set a public hearing date for the City Council meeting on December 10, 2007.
- December 10, 2007 – City Council holds public hearing and acts on the request to annex the subject property.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. This proposed annexation is for road right-of-way and does not require services for existing or future development. It *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. Any proposed road improvements would meet City standards.
3. It is the City's intention to continue to use the property for its present use as park land and road right-of-way.
4. The proposed annexation meets at least one goal of the City-County Growth Policy.

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

City Facilities: The property will not be served by water, sewer, stormwater or other improvements and facilities. The City has an agreement with the Montana Department of Transportation for the maintenance of this portion of Zimmerman Trail.

Parks, Recreation and Public Lands: The park land being annexed is undeveloped open space in very rugged terrain and is not expected to be developed in the future. The Parks Department would have jurisdiction over the park land that is annexed if improvements or maintenance were required in the future.

STAKEHOLDERS

This annexation request process by a municipality does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was published in the Billings Times to provide the legally required 20-day comment period on this annexation request. The Planning Division has not received any comments regarding this proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City property and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10). *The City maintains its roads to a level of service that provides for safe and efficient traffic flow throughout the City.*

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

ATTACHMENTS

- A. Resolution to Annex
- B. Map

ATTACHMENT A

RESOLUTION NO. 07-

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

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

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

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

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

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

A tract of land situated in Section 27, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Zimmerman Trail between Rimrock Road and State Highway No. 3, as recorded in Book 342, Page 349, Recorded May 11, 1949, Under Document No. 450203, Records of Yellowstone County, also described under Quitclaim Deed, Yellowstone County to the City of Billings, Recorded December 5, 2005, Under Document No. 3359157, Records of Yellowstone County, being a strip of land 100.0 feet in width to the following described centerline:

Beginning at a point on the south line of Section 27, Township 1 North, Range 25 East M.P.M. which point is 2904.9 feet west of the southeast corner of said section; thence due North, 1105 feet; thence Northeast 382.6 feet on a 17°28' curve right ($\Delta=67^{\circ}28'$); thence Easterly 165.9 feet on a 25°43' curve right ($\Delta=42^{\circ}40'$); thence South 69°52' East, 96.5 feet; thence South 69°0' East, 202.4 feet; thence Easterly 351.2 feet on an 8°18' curve left ($\Delta=29^{\circ}09'$); thence North 81°51' East, 66.0 feet; thence North 85°18' East, 110.3 feet; thence Northeasterly 376.1 feet on a 6°0' curve left, ($\Delta=22^{\circ}34'$); thence North 62°44' East, 90.3 feet; thence Northeasterly, 183.9 feet on a 41°0' curve left ($\Delta=75^{\circ}25'$); thence North 12°41' West, 219.8 feet; thence N. 19°01' West, 388.0 feet; thence Northwesterly 392 feet on a 24°0' curve left ($\Delta=92^{\circ}21'$); thence S. 68°38' West, 232 feet; thence Northwesterly

450 feet on a 19°0' curve right ($\Delta=85^\circ30'$); thence Northeasterly 371.7 feet on a 15°0' curve right ($\Delta=55^\circ45'$); thence North 29°53' East, 93.3 feet, more or less to the intersection with the center line of the new Billings-Broadview road (now known as State Highway No. 3), including all adjacent right-of-way of State Highway No. 3;

Also that portion of Yellowstone County Park land wholly surrounded by the previously described portion of Zimmerman Trail to the west; Durland Heights Subdivision, Recorded September 22, 1951, Under Document No. 482159, Records of Yellowstone County to the south; Wilshire Heights Subdivision 5th Filing, Recorded October 10, 1972, Under Document No. 918177, Records of Yellowstone County, and Wilshire Heights Subdivision 6th Filing, Recorded February 9, 1973, Under Document No. 926987, Records of Yellowstone County to the east; and Wilshire Park of Certificate of Survey No. 972, Recorded September 29, 1964, Under Document No. 739703, Records of Yellowstone County to the north.

Containing 13.401 gross acres and 4.205 net acres, more or less.
(# 07-05) See Exhibit "J" Attached

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

BY: _____

CITY CLERK

(AN #07-05)

ATTACHMENT B
Annexation Map – Annexation #07-05

EXHIBIT J



1.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-18
DEPARTMENT: Planning and Community Services Division
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a letter of request to annex road right-of-way land into the City of Billings under 7-2-4401, et. seq. Montana Code Annotated (MCA). The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits based on requirements of the State of Montana Code. Montana Code Annotated 7-2-4211 enacted by the 2003 session of the Montana Legislature states; “In all instances of annexation the municipality shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed”. This law requires the City to annex the entire right-of-way for Broadwater Avenue and 56th Street West since it is adjacent to properties annexed after 2003 on the north side of Broadwater Avenue and the west side of 56th Street West. These rights-of-way should have been annexed at the time properties adjacent to the roads were annexed into the City.

City staff contacted the property owners by letter and informed them of the proposed annexation of the road rights-of-way. The property owners are Mr. William C. Lackman, 637 56th Street West, Billings, MT 59106, Mr. Bret T. Murray, 1011 56th Street West, Billings, MT 59106, Mr. Robert A. Olsen, 715 56th Street West, Billings, MT 59106, and Mr. Gregory J. Smith, 909 56th Street West, Billings, MT 59106. Staff has spoken with Mr. Murray and Mr. Olsen. Their questions were clarifications of what is happening and how it will affect them. The other two property owners have not responded to the letters that were sent to them, (See Attachment C).

ALTERNATIVES ANALYZED: Montana Code Annotated 7-2-4401, et. seq. allows government officials to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City would own the subject property or have an interest in the property, and the City does not tax itself, there is not expected to be a financial impact.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the Resolution of Annexation.

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

ATTACHMENTS

- A. Resolution
- B. Exhibit Map
- C. Letters to Property Owners

INTRODUCTION

The City of Billings submitted a letter of request to annex road right-of-way land into the City of Billings under 7-2-4401, et. seq. Montana Code Annotated (MCA). The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits based on requirements of the State of Montana Code. Montana Code Annotated 7-2-4211 enacted by the 2003 session of the Montana Legislature states; “In all instances of annexation the municipality shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed”. This law requires the City to annex the entire right-of-way for Broadwater Avenue and 56th Street West since it is adjacent to properties annexed after 2003 on the north side of Broadwater Avenue and the west side of 56th Street West. These rights-of-way should have been annexed at the time properties adjacent to the roads were annexed into the City.

The City Council’s policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledges the annexation request, approves a resolution of intent (Resolution No. 07-18643) to annex the property, and sets a public hearing for December 10, 2007.

PROCEDURAL HISTORY

- On August 16, 2007, a request for Annexation from a city official was submitted to the Planning Division.
- On August 20, 2007, a letter was sent to property owners of the proposed annexations.
- On August 23, 2007, a memo was sent to the Yellowstone County Board of Commissioners addressing the proposed rights-of-way annexations and Quit Claim Deeds for the county to sign.
- On October 2, 2007, the county signed the quit claim deeds transferring their interest in the road rights-of-way to the City of Billings.
- On October 24, 2007, a second letter was sent to property owners of the proposed annexations.
- On November 13, 2007, the City Council acknowledged the annexation request, accepted the county quit claims and set a public hearing date.
- On December 10, 2007, the City Council will conduct the public hearing and may adopt a resolution annexing the subject property.
- On December 17, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary V will be conducted.
- On January 15, 2008, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City’s ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. This proposed annexation is for road right-of-way and does not require

services for existing or future development. It *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. Any additional road improvements on Broadwater Avenue and 56th Street West would meet City standards.
3. It is the City's intention to continue to use the property for its present use as road right-of-way.
4. The proposed annexation meets at least one goal of the City-County Growth Policy.

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

City Facilities: The property will not be served by water, sewer, stormwater or other improvements and facilities. Broadwater Avenue and 56th Street West will continue to be maintained at its current City road standard.

STAKEHOLDERS

City staff contacted the property owners by letter and informed them of the proposed annexation of the road rights-of-way, (See Attachment C). In the letter, staff provided property owners with the option of either deeding the property to the City and having it removed from their property taxes, or taking no action and having the 30-foot-wide road easement annexed by the City and paying City taxes on the annexed portion of the right of way. The property owners are the legal owners of these road easement rights-of-way, but the ownership interest is subject to the public's right to use it as a roadway. The portion of Broadwater Avenue that is proposed to be annexed is a dedicated Yellowstone County road tract and so is the portion on the west edge of Certificate of Survey 2178. Yellowstone County has Quit Claimed those two road tracts to the City of Billings. Two of the four property owners have contacted the Planning Division office with questions about the annexation. The questions were clarifications of what is happening and how it will affect them. There were no objections raised about the proposed annexations. The remaining property owners have not responded to the information staff has provided and so annexation of the easements by the City is the expected outcome.

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 sent to the property owners by letter and it has been published in a legal ad. The Planning Division has received comments from two of the four property owners on this proposed annexation but no objections were made.

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*:

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

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the Resolution of Annexation.

ATTACHMENTS

- A. Resolution
- B. Exhibit Map
- C. Letters to Property Owners

RESOLUTION NO. 07-

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

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

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;” and

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

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

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

Broadwater Avenue Tract:

Basis of bearings Certificate of Survey No. 1322, Recorded June 27, 1973, Under Document No. 937794, Records of Yellowstone County, Montana,

A portion of Tract 7, AKA Broadwater Avenue, of said Certificate of Survey No. 1322 Beginning at the east $\frac{1}{4}$ corner of Section 5, T.1S., R.25E., P.M.M.; thence $89^{\circ}48'30''$ W along the E-W mid section line of said Section 5 for a distance of 1304.6 feet; thence $S 00^{\circ}05'30''$ for a distance of 30.00 feet; thence $89^{\circ}48'30''$ E for a distance of 1304.6 feet to a point on the east section line of said Section 5; thence $00^{\circ}04'$ E for a distance of 30.00 feet to the Point of Beginning. Said Tract containing 0.898 acres.

56th Street West Tract:

A portion of Yellowstone County road easement for 56th Street West also described as a portion of County Road Petition Number 19, Filed January 2, 1886, Road Established June 9, 1886, more particularly described as:

Beginning at the west ¼ corner of Section 4, T.1S., R.25E., P.M.M.; thence southerly along the west section line of said Section 4 for a distance of 30.00 feet; thence easterly for a distance of 30.00 feet on a line that is perpendicular to the west section line of said Section 4 to a point; thence northerly and 30.00 feet parallel to the west section line of said Section 4 for an approximate distance of 1347.3 feet to a point, said point being on a line that is perpendicular to the N1/16 corner of said Section 4; thence westerly for a distance of 30.00 feet to the N1/16 corner of said Section 4; thence southerly along the west section line of said Section 4 for an approximate distance of 1317.3 feet to the Point of Beginning. Said Tract containing 0.927 acres more or less.

(# 07-18) See Exhibit "A" Attached

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

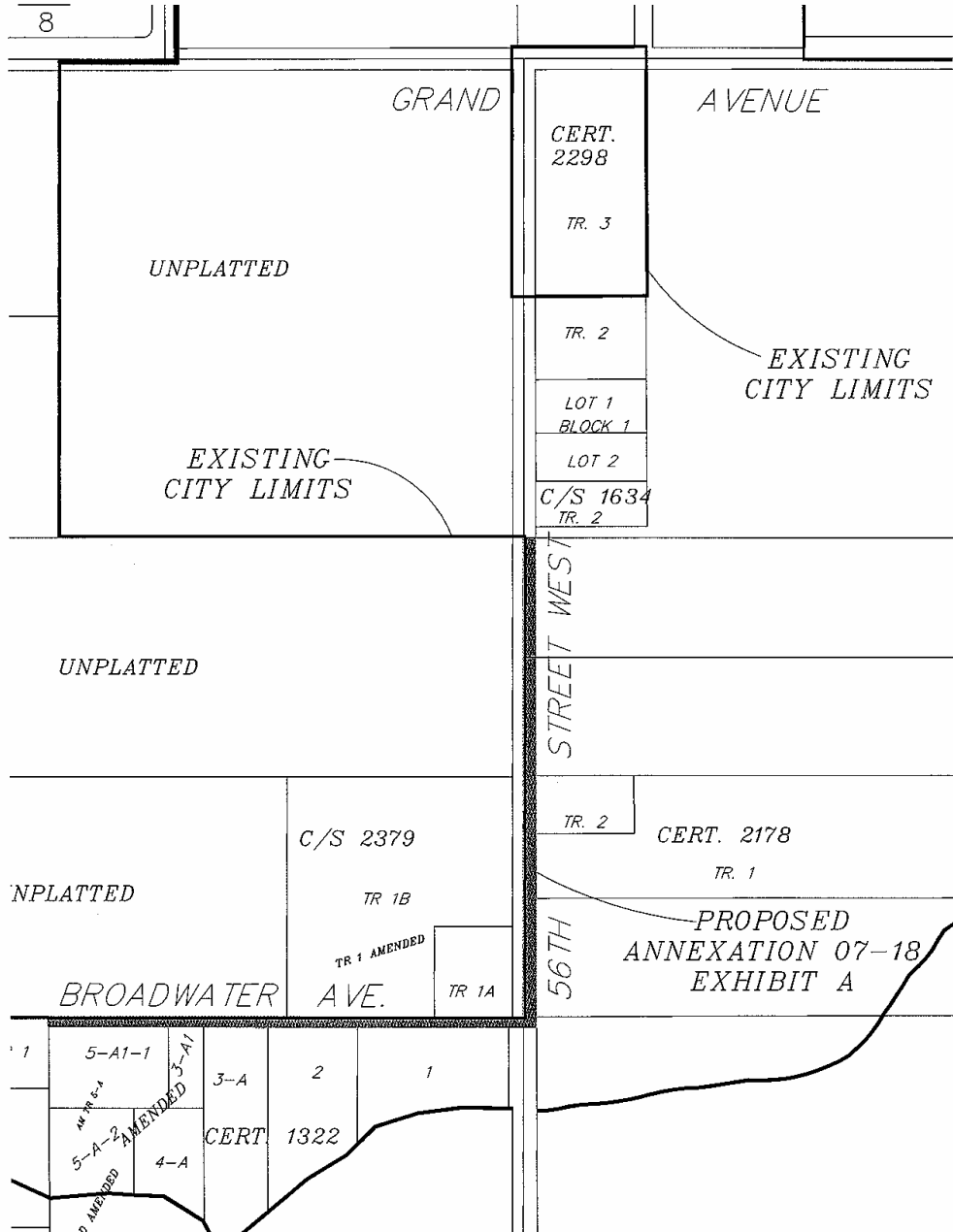
THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK
(AN #07-18)

ATTACHMENT B
Exhibit Map



www.muni.com

ATTACHMENT C
Letters to Property Owners



Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 24, 2007

Mr. William C. Lackman
637 56th Street West
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Lackman,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 900 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56th Street West and Broadwater Avenue, including the 30-foot wide road easement that is in the northwest corner of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,
Planner I
(406) 247-8654



Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 24, 2007

Mr. Bret T. Murray
1011 56th Street West
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Murray,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56th Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,
Planner I
(406) 247-8654



Planning & Community Services Department

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Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 24, 2007

Mr. Robert A. Olsen
715 56th Street West
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Olsen,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56th Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,
Planner I
(406) 247-8654



Planning & Community Services Department

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510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 24, 2007

Mr. Gregory J. Smith
909 56th Street West
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Smith,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56th Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,
Planner I
(406) 247-8654

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-19
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a letter of request to annex a 6.832 acre portion of Rimrock Road right-of-way under 7-2-4401, et seq. MCA. The City is in the process of annexing portions of road rights-of-way into the City limits where they are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services.

In this particular case, the proposed annexation is a 60-foot wide Petitioned County Road that covers the entire Rimrock Road right-of-way from 62nd Street West, west to the existing city limits (see Attachment A). Yellowstone County previously owned approximately 6.2 acres of the subject property, and quit claimed its interest to the City of Billings on October 2, 2007. Hageman Farms, Rodger Hageman, is the legal owner of the remaining portion of the road right-of-way property (.633-acres), but the ownership interest is subject to the public's right to use it as a roadway. City staff contacted the property owner, provided him with the option of either deeding the property to the City and having it removed from the property's taxes, or taking no action and having the 30-foot-wide road easement annexed by the City and paying City taxes on the annexed portion of the right of way (see Attachment B). Mr. Hageman has contacted staff a number of times for additional information on the annexation. He has also hired an attorney to review the situation. His attorney, Michael Dockery, has submitted a letter objecting to the proposed annexation method (see Attachment C), and City legal staff has responded to these objections and offered to meet with Mr. Dockery. Mr. Hageman has not offered to quit claim his interests for this portion of his property to the City as of this time, so annexation of the easement by the City is the expected outcome.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the November 13, 2007 meeting, the Council accepted the quit claim deed from the County, approved a resolution of intent to

annex the property, and set a public hearing date. The Council should conduct the hearing and decide if it will annex the property at this meeting.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property or property in which the City has a beneficial interest on behalf of the City. The only alternative that is consistent with City Council policy and state law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and hold a public hearing date to review the request.

FINANCIAL IMPACT: Since the City owns the majority of the subject property, and the City does not tax itself, a financial impact analysis will not be completed for the proposal.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

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

ATTACHMENTS

- A. Resolution to Annex
- B. Letter to property owner
- C. Letter from property owner's attorney

INTRODUCTION

The City of Billings on August 16, 2007, submitted a request for annexation of property totaling 6.832 acres of road right-of-way adjacent for Rimrock Road from 62nd Street West to just east of 70th Street West. The property is bordered by the City Limits on the north side along Rimrock Road and is eligible for annexation since it is in the City's beneficial interest to maintain this road right-of-way.

PROCEDURAL HISTORY

- August 16, 2007 – The Planning and Community Services Department received a signed letter of request to annex the subject property into the City of Billings.
- August 20, 2007 – Letter to affected property owners sent informing them of City's intent to annex right-of-way.
- October 22, 2007 – Letter to Hageman Farms sent reestablishing review schedule.
- November 13, 2007 – Letter from Hageman Farms attorney, Mike Dockery received.
- November 13, 2007 – The City Council acknowledged the request to annex, approved a resolution of intent to annex the property, and set a public hearing date for the City Council meeting on December 10, 2007.
- December 10, 2007 – City Council to hold the public hearing and act on the request to annex the subject property.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. This proposed annexation is for road right-of-way and does not require services for existing or future development. It *complies* with the recently adopted Annexation Policy criteria as follows:

5. The area is located within the Limits of Annexation and within the Urban Planning Area.
6. Any proposed road improvements would meet City standards.
7. It is the City's intention to continue to use the property for its present use as road right-of-way.
8. The proposed annexation meets at least two goals of the City-County Growth Policy.

Although MCA 7-2-4400 through 7-2-4407 does not specify the need to prepare a public services plan, it is the Council's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. Since this property is road right-of-way that was created in 1908, staff has abbreviated this report to reflect the City's beneficial interest and proposed use of the property.

City Facilities: The property is used for Rimrock Road, and its adjacent right-of-way. Within this right-of-way exists the City's sewer and water lines. No change of use is proposed at this

time. However, the City would like to control maintenance and any future improvements within the right-of-way.

STAKEHOLDERS

Prior to the Council's acknowledgment of the proposed annexation, staff notified the two affected property owners, Yellowstone County and Rodger Hageman, of the City's intent. The County officials were pleased to quit claim their interest in the right-of-way and allow it to be added to the City's jurisdiction. The quit claim deed was signed at the October 2, 2007, County Board meeting, and accepted by the City at the November 13, 2007 Council meeting.

Rodger Hageman owns an unplatted 40-acre parcel south of Rimrock Road on the western extent of the proposed annexation area. The north 30-feet of this property has a Petitioned County Road (No. 167) running across it, which subjects this 30 feet to a public road easement. The easement has been in place since 1908 and encompasses .633 acres of the Hageman property. Mr. Hageman has requested further information from staff on several occasions, regarding the City's legal right to annex the property, the tax burden he may face if the affected area is annexed, and other general information. Mr. Hageman's attorney has also provided a letter of concern to staff. Legal staff has provided a response indicating that the City has followed proper procedure and has a beneficial interest and a legal right to annex the right-of-way. They have also offered to meet with Mr. Hageman's attorney to discuss the matter further. This meeting has not yet occurred at the time this memo was written.

A public hearing will be held at this meeting for any additional public comment. Notice of the public hearing was published in the Billings Times to provide the legally required 20-day comment period on this annexation request.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147)
 - Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

ATTACHMENTS

- A. Resolution to Annex
- B. Letter to property owner
- C. Letter from property owner's attorney

ATTACHMENT A

RESOLUTION NO. 07-

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

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

WHEREAS, the City of Billings is the owner of the territory or has a beneficial interest in the territory; and

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

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

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

A tract of land situated in the S1/2 of Section 25, T.1N., R.24E., the N1/2 of Section 36, T.1N., R.24E., the SW1/4 of Section 30 T.1N., R.25E., and the NW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Yellowstone County road easement for Rimrock Road also described as a portion of County Road Petition Number 167, filed November 10, 1908, Declared a County Road December 29, 1908, more particularly described as:

Basis of bearings: Certificate of Survey No. 2465, Recorded October 1, 1987, Under Document No. 1458714, Records of Yellowstone County, Montana,

Commencing at the southeast corner of said Section 25; thence N 00°00'04" W a distance of 30.00 feet to the True Point of Beginning; thence S 89°29'28" W being 30.0 feet parallel to the south section line of said Section 25 for a distance of 2673.17 feet; thence S 89°44'27" W and continuing parallel to the south section line of said Section 25 for a distance of 2256.22 feet to the southeast corner of Tract 2A, Amended Tracts 2 and 3, Certificate of Survey No. 2465, Recorded September 16, 1996, Under Document No. 1845641, Records of Yellowstone County

Montana; thence south for a distance of 60.00 feet to a point on a line perpendicular to the south section line of said Section 25, said south section line being also the north section line of said Section 36; thence easterly and 30.0 feet parallel to the north section line of said Section 36 for an approximate distance of 944.7 feet to the northwest corner of Lot 14, Sunny Cove Fruit Farms, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County, Montana; thence easterly and continuing parallel to the north section line of said Section 36 for an approximate distance of 3985.4 feet to a point on the west section line of said Section 31; thence easterly and 30.0 feet parallel to the north section line of said Section 31 for a distance of 30.0 feet to the northwest corner of Lot 8 of said Sunny Cove Fruit Farms; thence north for a distance of 60.00 feet to a point on a line perpendicular to the north section line of said Section 31, said north section line being also the south section line of said Section 30; thence westerly and parallel to the south section line of said Section 30 for a distance of 30.0 feet to the Point of Beginning.

Containing 6.832 gross acres, more or less.
(# 07-19) See Exhibit "A" Attached

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

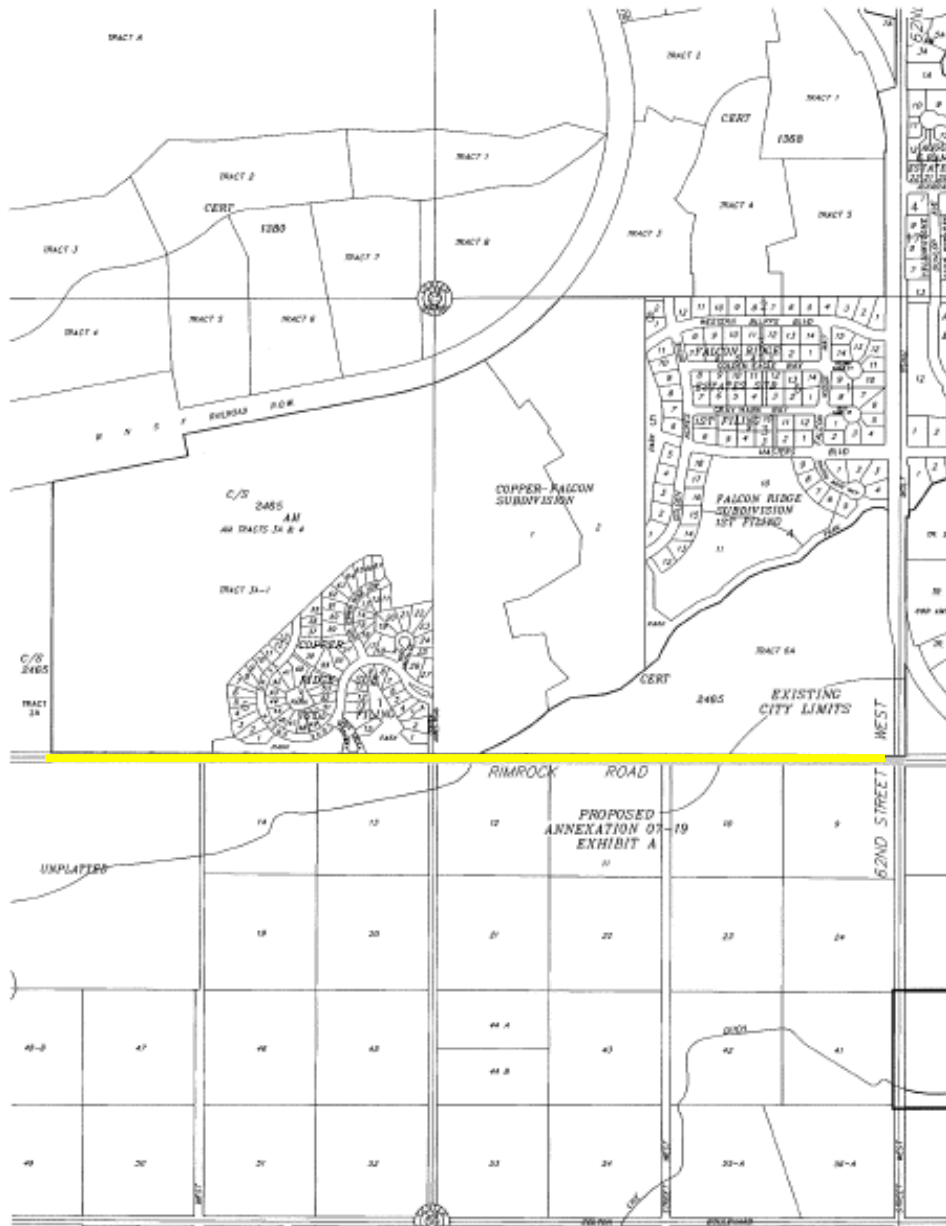
ATTEST:

BY: _____

CITY CLERK

(AN #07-19)

EXHIBIT A



ATTACHMENT B
Letter to Affected Property Owner

Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246

October 22, 2007

Rodger E. Hageman
PO Box 2251
Newport Beach, CA 92659

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Hageman,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, a portion of the right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately .633 acres of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

After receipt of your letter dated September 13, 2007, and further consideration by City legal staff, we have been directed to proceed with the annexation of Rimrock Road, including the 30-foot wide road easement that crosses the northern portion of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

Juliet Spalding, AICP
Planner II
(406) 247-8684

ATTACHMENT C

Letter from Hageman Farms' Attorney

CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH P.L.L.P.
ATTORNEYS AT LAW
 500 TRANSWESTERN PLAZA II • 490 NORTH 31ST STREET • BILLINGS, MONTANA 59101
 P.O. Box 2529 • BILLINGS, MONTANA 59103-2529
 Tel. (406) 252-3441 • FAX (406) 259-4159
 www.crowleylaw.com

CAROLINE A. ADAMS STEPHEN M. BARRETT MATTHEW S. BRAHANA CELESTE E. BRANCH ** GARY G. BRONDER DANIEL A. BRONDER BRADFORD J. BROWN ALAN C. BRYAN ** KRISTY L. BUCKLEY ASHLEY H. BURGESS DAVID L. CHARLES DANIELLE A. COFFMAN PAUL C. COLLINS GARY M. CORNELL RENEE L. COPPOCK AUREA F. DAVIDSON MICHAEL S. DICKERY JOHN B. DUDK. III JOSH T. DYRE ** MARY STEPH DYRE	SCOTT A. FISK HEIDI R. GOETTTEL MICHAEL W. GREEN ROBERT C. GRIFFIN PETER F. HADEN SCOTT D. HAZEL NATHAN S. HANBY KEVIN R. HENRY KENNETH G. JEDDO ** JAMES R. HENTZ BRIAN HOLLAND LARRY A. HOLLIE STEVEN W. JENNINGS DANIEL D. JONES JOEL L. KALEVA ALLAN L. KARELL KELLY S. KEANE PETER M. KIRKPATRICK WILLIAM D. LAMOND III ILL. O. LARSON	KENNETH K. LAY JOHN R. LEE ** JARED M. LEFEBVRE STEVEN J. LEBMAN JULIE A. LICHT DENISE D. LINFORD * MOELY A. LITSON ** JASBIR J. LUKS SARAH A. LUKS CHRIS MARGULIS WILLIAM J. MATLIK ERIC C. MAYNARD, JR. JOHN R. MAYNARD JOSEPH P. MAZUREK HEATHER A. MADONKELL ** DAN MONTGOMERY DANIEL M. MULLAN MATTHEW P. MULLAN ** ROBERT G. MICHELOTTI, JR. STEVEN R. MICH	TANSI A. MILLER KIMBERLY S. MOORE DONALD R. MURRAY, JR. JENNIFER M. NAEDEL ** ADAM M. OLSCHLAGER KRISTIN L. OBYG JEFFERY J. OYER * HERBERT J. PIERCE III FRID C. RATHER * KENT A. REEDSON ** STEVEN P. RUFFALTO ROBERT J. SANFORD GINA S. SHERMAN JAMES P. SITES GARITH SIEZ * LEONARDO H. SMITH MONIQUE P. STAFFORD CHRIS C. STONEBACK CHRISTOPHER C. VOGEL * DAVID M. WAGNER	NEIL G. WESTER DINA A. WILLIAMS BRYAN P. WILSON	111 EAST BROADWAY P.O. BOX 124 WILLETTON, MD 20690-0124 PHONE (703) 872-2244	431 FIRST AVENUE WEST P.O. BOX 770 KALISPELL, MT 59903-0770 PHONE (406) 752-4444	45 DISCOVERY DRIVE P.O. BOX 11494 DOZZERAN, MT 59715-0494 PHONE (406) 594-1274	345 SOUTH 4 TH ST. EAST SUITE 104 P.O. BOX 7071 MESA, MT 59607-7071 PHONE (406) 323-8334
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Attorneys are licensed in Montana unless otherwise noted. * also licensed in North Dakota. ** also licensed in Wyoming. + not licensed in Montana.

November 13, 2007

Juliet Spalding, AICP
 Planner II
 Planning & Community Services Department
 510 North Broadway, 4th Floor
 Billings, Montana 59101

RE: Hageman Farms
 Annexation of Rimrock Road
 Our File No. 43-466-002



Dear Ms. Spalding:

This office represents Rod Hageman and Hageman Farms in connection with the attempt by the City of Billings to annex a thirty-foot strip of land in the NW¼ of Township 1 North, Range 25 East, in Yellowstone County, Montana (the "Hageman Property"). The property at issue is immediately south of Tract 3 A-1 of Certificate of Survey 2465 Amended and might loosely be called the south half of a portion of Rimrock Road. As your earlier correspondence indicates, Tract 3A-1 was annexed into the City in 2002, which included a strip of land comprising the north half of said Rimrock Road. However, the portion of Rimrock Road crossing the Hageman Property has not been dedicated to the public, nor has any written easement been given in favor of either Yellowstone County or the City of Billings. While the public has used the road for a number of years, that use has always been permissive. Even if that were not true, the use by the public would be limited to the scope and width established by such use, which is significantly less than thirty feet and has not included anything beyond vehicular traffic.

While we recognize that Mont. Code Ann. §7-2-4211 now requires annexation of the full width of public roads, that statute has nothing to do with the portion of Rimrock Road at issue

Juliet Spalding, AICP
November 13, 2007
Page 2

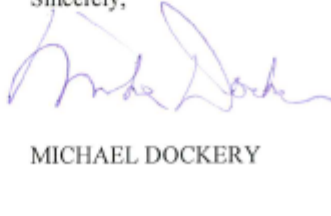
here. First, the statute did not become effective until October 1, 2003, and did not operate retroactively with respect to any prior annexations. Second, that statute is not a separate or independent method of annexing property into the boundaries of the City of Billings.

In your letter of October 22, 2007, you indicated that the City of Billings intends to proceed under Title 7, Chapter 2, Part 44, which governs annexation of contiguous government land. The property at issue here is owned by Hageman Farms, which is a private business entity. The right of the public to use a portion of that property for vehicular traffic can arise to no more than a public prescriptive easement, limited in scope and width. Neither Yellowstone County nor the City of Billings can step into the shoes of the public for purposes of asserting ownership and control over the property of Hageman Farms. Even if that were not true, the interest can never rise to more than a mere servitude, with the fee title remaining vested in Hageman Farms.

The property at issue here is clearly not government land, because it is not owned by the United States or by the State of Montana or by any agency, instrumentality, or political subdivision of either, as required under Mont. Code Ann. §7-2-4402. Further, a servitude or mere easement interest is not a beneficial interest in land rising to the equivalent of ownership contemplated in said §7-2-4402. The holder of a servitude or easement is not treated as the beneficial owner of real property under Montana law. Further, the City of Billings would not be proper governmental entity to assert the interest or consent to the annexation. In short, the provisions for annexation of contiguous government land have no application to the property owned by Hageman Farms and cannot legally support an annexation resolution. The attempt to annex the thirty-foot strip is tantamount to an exertion of ownership and control over my client's property by the City of Billings in violation of its federal and state constitutional rights.

The purpose of this correspondence is to respond to the statements in your letter of October 22, 2007. While Hageman Farms would be happy to discuss a mutually agreeable easement or conveyance of the property for Rimrock Road, it objects to the annexation process outlined in your letter.

Sincerely,



MICHAEL DOCKERY

MSD/js
cc: Rod Hageman
Brent Brooks, City Attorney (Hand Delivered)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-25
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a letter of request to annex a 2.457-acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq, Montana Code Annotated (MCA). The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits based on requirements of the State of Montana Code. These rights-of-way should have been annexed into the city when adjacent properties were annexed. In this case, property along 44th Street West to the west was previously annexed and the entire portion of 44th Street West right-of-way fronting the property was not included in that annexation. MCA, 7-2-4211 specifies that annexations of property into the city “shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed.” This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex the entire right-of-way for 44th Street West adjacent to annexed properties.

The portion of the right-of-way that will be annexed is a 40-foot wide county road tract legally described as Block 5, Lot 1, Long Subdivision and contains approximately 2.457 acres. Yellowstone County owns the 44th Street West road tract and is prepared to Quitclaim it to the City at the Board of County Commissioners meeting on November 27, 2007. The Quitclaim deed will be completed for the City Council to accept on December 10, 2007.

The City Council’s policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the November 13, 2007 meeting, the Council acknowledged the annexation request, approved a resolution of intent to annex the property and set a public hearing date. The Council will conduct the public hearing and decide if it will annex the property at this meeting.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA are permitted to request annexation of city-owned property or property in which the City has a beneficial interest

on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and hold a public hearing to review the request.

FINANCIAL IMPACT: Since the City would own the subject property or have an interest in the property, and the City does not tax itself, there is not expected to be a financial impact.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing, approve the Resolution of Annexation and accept the Quitclaim deed.

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

ATTACHMENT

A. Resolution and Exhibit B

INTRODUCTION

The portion of the right-of-way that will be annexed is a 40-foot wide county road tract legally described as Block 5, Lot 1, Long Subdivision and contains approximately 2.457 acres. The subject property is located at the intersection of 44th Street West and King Avenue.

PROCEDURAL HISTORY

- On October 29, 2007, a memo was sent to the Yellowstone County Board of Commissioners addressing the proposed rights-of-way annexations and Quit Claim Deed for the county to sign.
- On November 13, 2007, the City Council acknowledged the annexation request and set a public hearing date.
- On November 27, 2007, the Board of County Commissioners will decide whether to Quitclaim the property to the City.
- On December 10, 2007, the City Council will conduct the public hearing and may adopt a resolution annexing the subject property.
- On December 17, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary IV will be conducted.
- On January 15, 2008, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

The subject property is adjacent to rights-of-ways that have been annexed into the City Limits and is within the limits of annexation as specified by the Annexation Policy adopted by the City Council in 2004 and updated in 2007.

ALTERNATIVES ANALYSIS

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. Because this is the annexation of road rights-of-way this report will not address public services.

STAKEHOLDERS

The only stakeholder in this situation is Yellowstone County, as they are the owners of the right-of-way proposed for annexation. The Board of County Commissioners will act upon the Quitclaim deed to the City on November 27, 2007. The signed deed will be forwarded to City Council upon execution and ready for the City Council to accept on December 10, 2007.

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 has been published in a legal ad. The Planning Division has not received any comments.

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*:

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

RECOMMENDATION

Staff recommends that City Council conduct a public hearing, approve the Resolution of Annexation and accept the Quitclaim deed.

ATTACHMENT

- A. Resolution and Exhibit B

ATTACHMENT A

RESOLUTION NO. 07-

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

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

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;” and

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

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

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

A portion of Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994, Under Document No. 1755400, Records of Yellowstone County, Montana, more particularly described as:

The west 40.0 feet of said Lot 5, Block 1, Long Subdivision, adjacent to Western Sky Subdivision, Recorded April 19, 2006, Under Document No. 3374355, Records of Yellowstone County, Montana, including all adjacent right-of-way of King Avenue West.

Said Tract containing 2.457 gross and net acres.

(# 07-25) See Exhibit “B” Attached

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

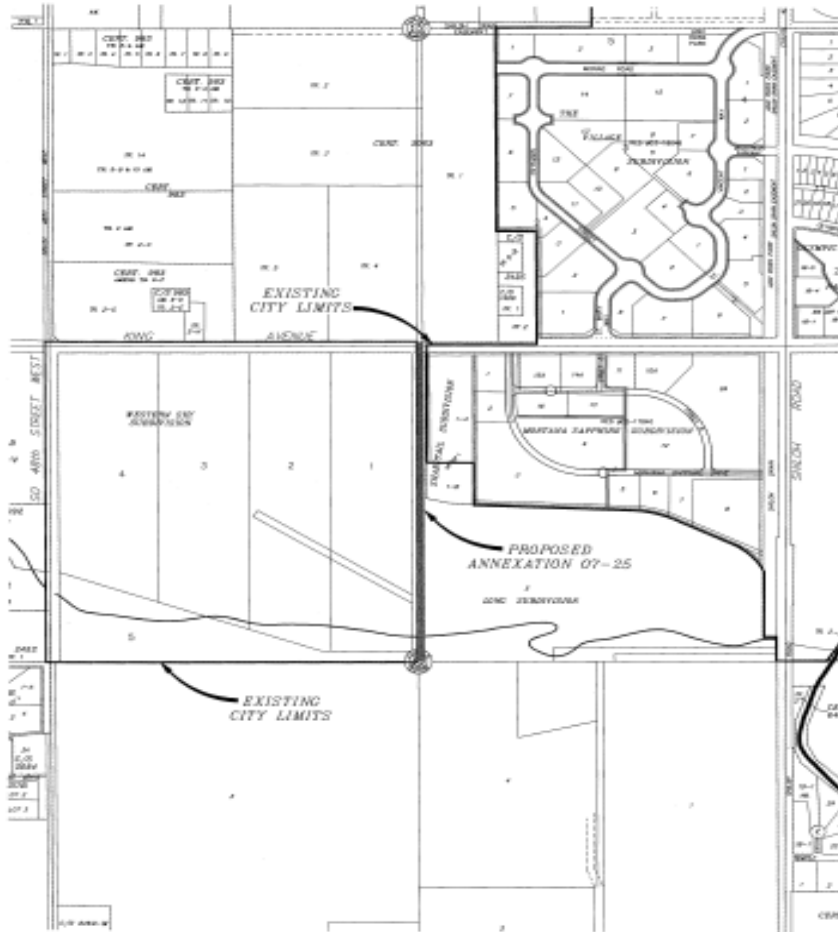
ATTEST:

BY: _____

CITY CLERK

(AN #07-25)

EXHIBIT B



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-11
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex this 3.74 acre portion of Broadwater Avenue road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City from the County in areas where annexations are occurring. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. Property to the south of this road right-of-way on Broadwater Avenue was annexed previously and all of the Broadwater Avenue right-of-way was not included in previous annexations. The City is now ready to annex this right-of-way property as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request, approved a resolution of intent (Resolution No. 07-18638) to annex the property, and set a public hearing date for December 10, 2007. The Council will conduct a public hearing at this meeting and consider the question of annexation.

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

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis has not been completed for this annexation request.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

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

ATTACHMENTS

- A. Resolution to Annex
- B. Map

INTRODUCTION

The City of Billings on August 16, 2007, submitted a request for annexation of property totaling 3.74 acres of road right-of-way adjacent the City limits along Broadwater Avenue. Property to the south of this right-of-way on Broadwater Avenue was annexed previously and all of the Broadwater Avenue right-of-way was not included in previous annexations. The City has a beneficial interest in this right-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request, approved a resolution of intent (Resolution No. 07-18638) to annex the property, and set a public hearing date for December 10, 2007.

PROCEDURAL HISTORY

- August 16, 2007 – The Planning and Community Services Department received a signed letter of request to annex the subject property into the City of Billings.
- November 13, 2007 – The City Council acknowledged the request to annex, approved a resolution of intent to annex the property, and set a public hearing date for the City Council meeting on December 10, 2007.
- December 10, 2007 – City Council holds public hearing and acts on the request to annex the subject property.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. This proposed annexation is for road right-of-way and does not require services for existing or future development. It *complies* with the recently adopted Annexation Policy criteria as follows:

9. The area is located within the Limits of Annexation and within the Urban Planning Area.
10. Any additional road improvements on Broadwater Avenue would meet City standards.
11. It is the City's intention to continue to use the property for its present use as road right-of-way.
12. The proposed annexation meets at least one goal of the City-County Growth Policy.

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

City Facilities: The property will not be served by water, sewer, stormwater or other improvements and facilities. The City will continue to maintain Broadwater Avenue to City standards.

STAKEHOLDERS

This annexation request process by a municipality does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was published in the Billings Times to provide the legally required 20-day comment period on this annexation request. The Planning Division has not received any comments regarding this proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City property and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10). *The City maintains its roads to a level of service that provides for safe and efficient traffic flow throughout the City.*

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

ATTACHMENTS

- A. Resolution to Annex
- B. Map

ATTACHMENT A

RESOLUTION NO. 07-

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

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

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

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

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

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

A tract of land situated in the N1/2 of Section 2, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 10-A-2, of Amended Tracts 8-A Through 13-A of Certificate of Survey No. 2314, Recorded January 7, 1992, Under Document No. 1619771, Records of Yellowstone County, Montana, less that portion previously annexed under City of Billings Ordinance No. 4421 Passed by the City Council and Approved by the Mayor February 1, 1982.

Containing 3.741 gross acres.
(# 07-11) See Exhibit "A" Attached

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

BY: _____

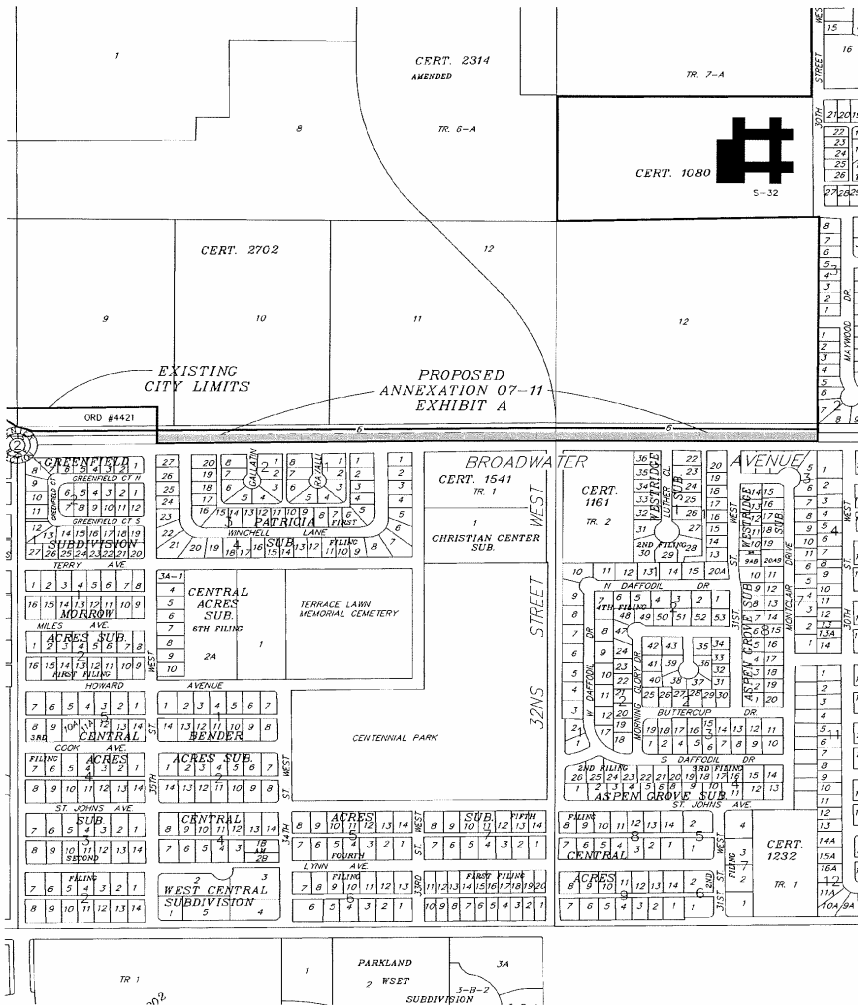
CITY CLERK

(AN #07-11)

ATTACHMENT B

Annexation Map – Annexation #07-11

EXHIBIT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-12

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex this 1.69 acre portion of Bell Avenue road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services.

This particular property was quit claimed by the County to the City on November 20, 2007, and the City Council is expected to accept this quit claim deed when it considers annexation of this property at this meeting (See Attachment C). Property to the north of this right-of-way property on Bell Avenue was annexed previously and all of the Bell Avenue right-of-way was not included in that annexation. The City is now ready to annex these rights-of-way as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request, approved a resolution of intent (Resolution No. 07-18639) to annex the property, and set a public hearing date for December 10, 2007. The Council will conduct a public hearing at this meeting and consider the question of annexation.

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

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis has not been completed for this annexation request.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing, accept the quit claim deed from the County to the City for the right-of-way, and approve the Resolution of Annexation.

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

ATTACHMENTS

- A. Resolution to Annex
- B. Map
- C. Quit Claim Deed from County to City

INTRODUCTION

The City of Billings on August 16, 2007, submitted a request for annexation of property totaling 1.69 acres of road right-of-way adjacent to the City limits along Bell Avenue. Property to the north of this property on Bell Avenue was annexed previously and all of the Bell Avenue right-of-way was not included in previous annexations. The City has a beneficial interest in this right-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. This particular property was quit claimed by the County to the City on November 20, 2007, and the City Council is expected to accept this quit claim deed when it considers annexation of this property at this meeting (See Attachment C).

PROCEDURAL HISTORY

- August 16, 2007 – The Planning and Community Services Department received a signed letter of request to annex the subject property into the City of Billings.
- November 13, 2007 – The City Council acknowledged the request to annex, approved a resolution of intent to annex the property, and set a public hearing date for the City Council meeting on December 10, 2007.
- November 20, 2007 – The Board of County Commissioners quit claimed the road right-of-way to the City of Billings.
- December 10, 2007 – City Council holds public hearing, accepts the quit claim deed from the County to the City, and acts on the request to annex the subject property.
- On December 17, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary V will be conducted.
- On January 15, 2008, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. This proposed annexation is for road right-of-way and does not require services for existing or future development. It *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. Any additional road improvements on Bell Avenue would meet City standards.
3. It is the City's intention to continue to use the property for its present use as road right-of-way.
4. The proposed annexation meets at least two goals of the City-County Growth Policy.

Although MCA 7-2-4400-4407 does not specify the need to prepare a public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and

facilities. Since this property is owned by the City and is road right-of-way, staff has abbreviated this report to reflect the City's ownership and proposed use of the property.

City Facilities: The property will not be served by water, sewer, stormwater or other improvements and facilities. Bell Avenue will continue to be maintained at its current standards. If improvements are contemplated for Bell Avenue, the improvements will be to City standards.

STAKEHOLDERS

This annexation request process by a municipality does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was published in the Billings Times to provide the legally required 20-day comment period on this annexation request. The Planning Division has not received any comments regarding this proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City property and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10). *The City maintains its roads to a level of service that provides for safe and efficient traffic flow throughout the City.*

RECOMMENDATION

Staff recommends that City Council conduct a public hearing, accept the quit claim deed from the County to the City, and approve the Resolution of Annexation.

ATTACHMENTS

- A. Resolution to Annex
- B. Map
- C. Quit Claim Deed from County to City

ATTACHMENT A

RESOLUTION NO. 07-

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

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

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

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

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

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

A tract of land situated in the NE1/4 of Section 10, T.1S., R.25E., P.M.M., Yellowstone County, Montana, being a portion of Tract 5 (a road Tract) adjacent to the south line of Tract 1 of Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648, Recorded July 20, 1994, Under Document No. 1749237, Records of Yellowstone County, Montana, also adjacent to the south line of Legends West Subdivision, Recorded February 7, 2003, Under Document No. 3214081, Records of Yellowstone County, Montana, and Bell Avenue as shown in Bell Estates Subdivision, Recorded March 27, 2000, Under Document No. 3085059, Records of Yellowstone County, Montana, more particularly described as:

Basis of bearings: Corrected Amendment of Tracts 1 and 3, and Remainder Tract 2 to be Amendment of Tracts 1, 2 And 3 Certificate of Survey No 1648,

Beginning at the northeast corner of Tract 5, of said Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648; thence N 89°52'00" W a distance of 1248.02 feet; thence S 00°08'00" W a distance of 30.00; thence S 89°52'00" E a distance of 32.67 feet; thence S 00°08'00" W a distance of 30.00 feet to the south Right-Of-Way line of Bell Avenue as shown in said Bell Estates Subdivision; thence

S 89°52'00" E a distance of 1215.78 feet to a point on the west line of the Shiloh Drain; thence N 00°16'30" W a distance of 60.00 feet to the Point of Beginning.

Containing 1.697 gross acres.
(# 07-12) See Exhibit "A" Attached

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

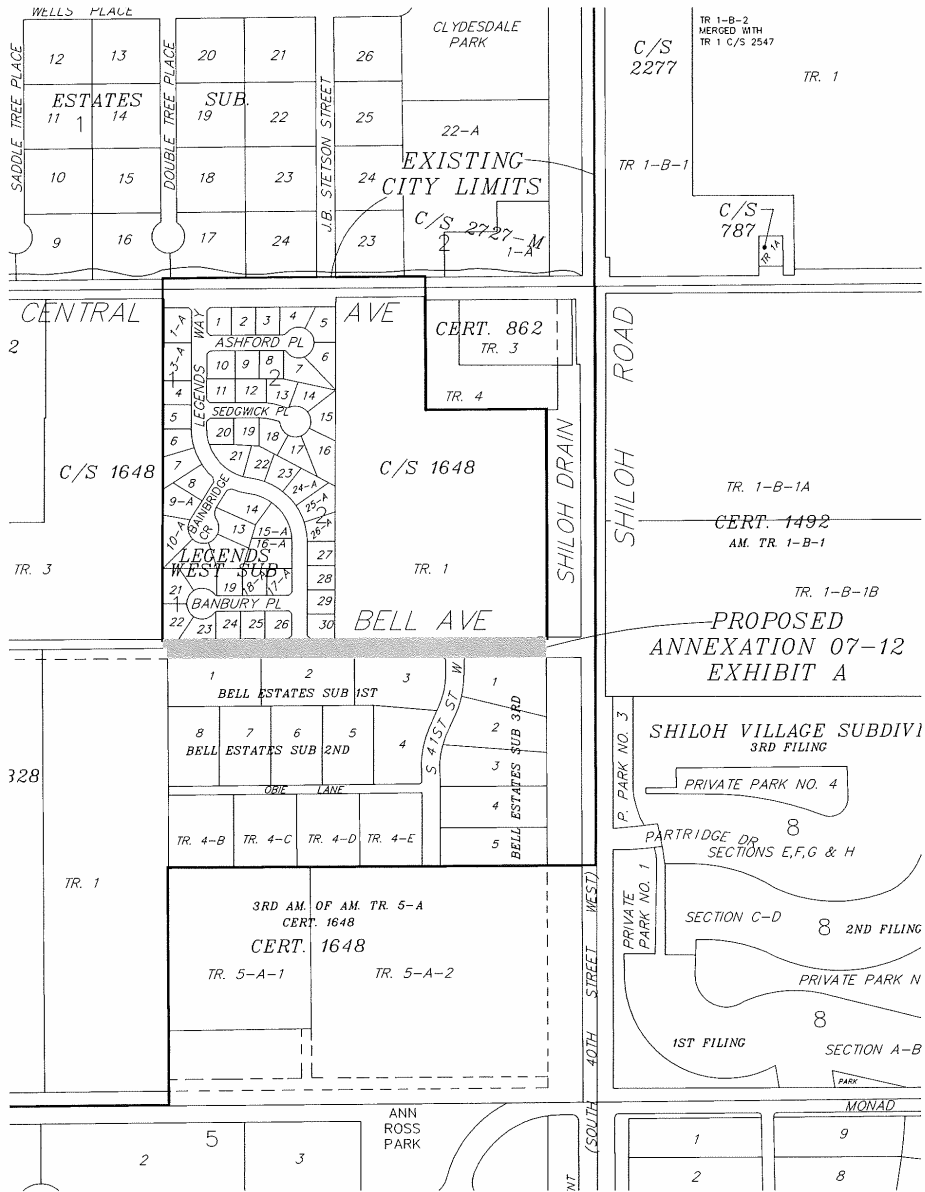
BY: _____

CITY CLERK

(AN #07-12)

ATTACHMENT B
Annexation Map – Annexation #07-12

EXHIBIT A



ATTACHMENT C

Return to:
City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

QUITCLAIM DEED

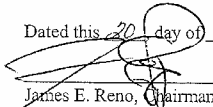
For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:


Tracts 4 & 5 (dedicated road tracts) of Amendment of Tracts 1 And 3 And Remainder Tract 2 of Certificate of Survey No. 1648, Recorded October 12, 1982, Under Document No. 1242733, Records of Yellowstone County, Montana,


Said Tracts containing 2.343 acres.

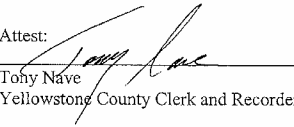
The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its November 22, 2007 meeting.

Dated this 20 day of November 2007.


James E. Reno, Chairman
Yellowstone County Commissioner


Bill Kennedy, Member
Yellowstone County Commissioner


Jonny Ostlund, Member
Yellowstone County Commissioner

Attest:

Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
 ss.
County of Yellowstone }

On November 20, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Reitz

Teri Reitz

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires 2-27-2010

ACKNOWLEDGEMENT 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.

Ron Tussing, Mayor, City of Billings

ATTEST:

By: _____
_____, 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 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.

(Notarial Seal)

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-13
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex this 0.92 acre portion of Zimmerman Trail road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. This property was quit claimed by the County to the City in 2005. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The property east of this right-of-way property on Zimmerman Trail was annexed previously, and all of the Zimmerman Trail right-of-way was not included in that annexation.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request, approved a resolution of intent (Resolution No. 07-18640) to annex the property, and set a public hearing date for December 10, 2007. The Council will conduct a public hearing at this meeting and consider the question of annexation.

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

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis has not been completed for this annexation request.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the Resolution of Annexation.

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

ATTACHMENTS

- A. Resolution to Annex
- B. Map

INTRODUCTION

The City of Billings on August 16, 2007, submitted a request for annexation of property totaling 0.92 acres of road right-of-way adjacent to the City limits along Zimmerman Trail between Poly Drive and Grand Avenue. This property was quit claimed by the County to the City in 2005. The City also has a beneficial interest in this right-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The property east of this right-of-way property on Zimmerman Trail was annexed previously, and all of the Zimmerman Trail right-of-way was not included in that annexation.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request and approved a resolution of intent (Resolution No. 07-18640) to annex the property, and set a public hearing date for December 10, 2007.

PROCEDURAL HISTORY

- August 16, 2007 – The Planning and Community Services Department received a signed letter of request to annex the subject property into the City of Billings.
- November 13, 2007 – The City Council acknowledged the request to annex, approved a resolution of intent to annex the property, and set a public hearing date for the City Council meeting on December 10, 2007.
- December 10, 2007 – City Council holds public hearing and acts on the request to annex the subject property.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. This proposed annexation is for road right-of-way and does not require services for existing or future development. It *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. Any additional road improvements on Zimmerman Trail would meet City standards.
3. It is the City's intention to continue to use the property for its present use as road right-of-way.
4. The proposed annexation meets at least one goal of the City-County Growth Policy.

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

City Facilities: The property will not be served by water, sewer, stormwater or other improvements and facilities. Zimmerman Trail will continue to be maintained at its current City road standard.

STAKEHOLDERS

This annexation request process by a municipality does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was published in the Billings Times to provide the legally required 20-day comment period on this annexation request. The Planning Division has not received any comments regarding this proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City property and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10). *The City maintains its roads to a level of service that provides for safe and efficient traffic flow throughout the City.*

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing, and approve the Resolution of Annexation.

ATTACHMENTS

- A. Resolution to Annex
- B. Map

ATTACHMENT A

Resolution No. 07-

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

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

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

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

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

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

Tracts of land situated in the SW1/4 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1B, Amended Tract 1 of Certificate of Survey No. 1990, Recorded October 26, 2005, Under Document No. 3354258, Records of Yellowstone County, Montana;

Tract 1-B, Amended Tract 1 of Certificate of Survey No. 2974, Recorded October 26, 2005, Under Document No. 3354257, Records of Yellowstone County, Montana. Less that portion of Tract 1-B of said Amended Tract 1 of Certificate of Survey No. 2974 designated for road for Grand Avenue; and less that portion of Tract 1-B previously annexed under City Resolution No. 06-18449, Recorded October 05, 2006, Under Document No. 3395866, Records of Yellowstone County, Montana.

Containing 0.912 gross acres.

(# 07-13) See Exhibit "A" Attached

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

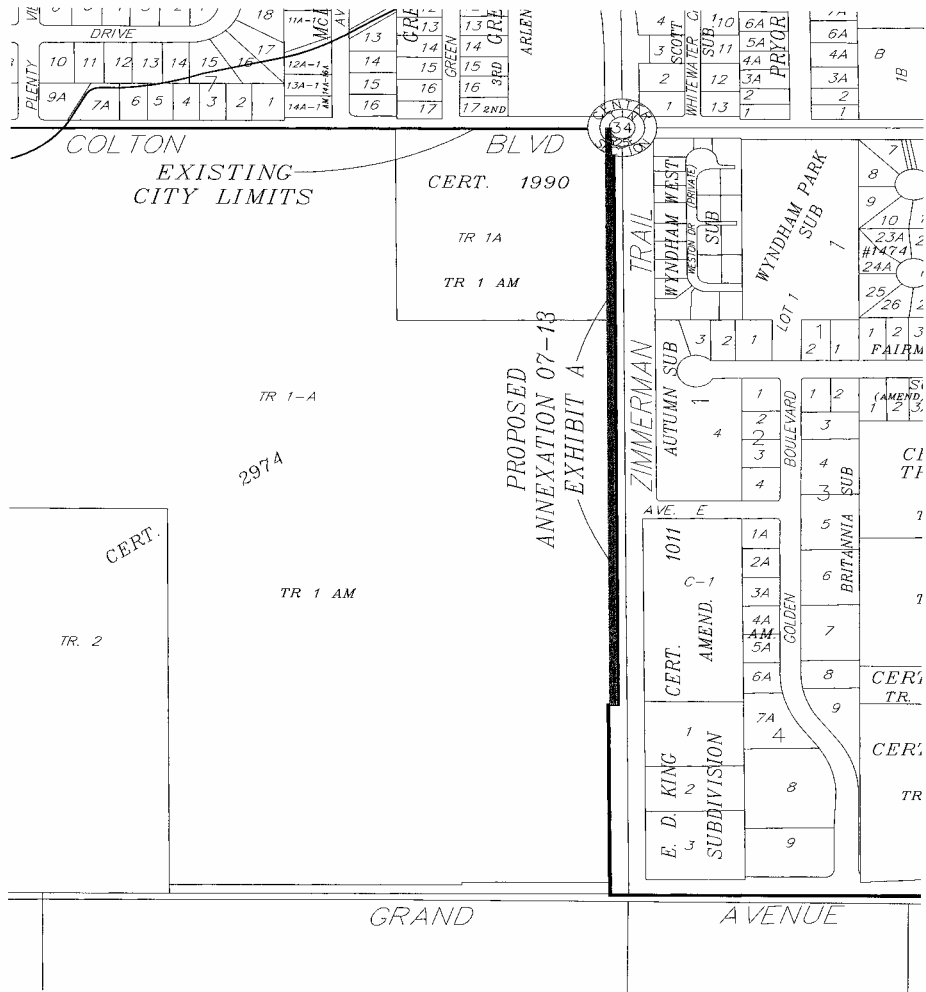
BY: _____

CITY CLERK

(AN #07-13)

ATTACHMENT B
Annexation Map – Annexation #07-13

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-14
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex this 4.86 acre portion of Cove Avenue road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The property south of this property on Cove Avenue was annexed in two separate annexations in 2002 and 2003. All of the Cove Avenue right-of-way was not included in those annexations.

Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.” This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex approximately the western two thirds of the right-of-way for Cove Avenue in this area since it is adjacent to property on the south that was annexed after 2003. The City also is ready to annex the eastern one third of the Cove Avenue right-of-way in this area as per 7-2-4401, et seq. MCA. The property to the south of this portion of the right-of-way was annexed in 2002.

The City Council’s policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request and approved a resolution of intent (Resolution No. 07-18641) to annex the property, and set a public hearing date for December 10, 2007. The Council will conduct a public hearing at this meeting and consider the question of annexation.

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

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis has not been completed for this annexation request.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

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

ATTACHMENTS

- A. Resolution to Annex
- B. Map

INTRODUCTION

The City of Billings on August 16, 2007, submitted a request for annexation of property totaling 4.86 acres of road right-of-way adjacent to the City limits along Cove Avenue between 46th Street West and 50th Street West. The City has a beneficial interest in this right-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The property south of this property on Cove Avenue was annexed in two separate annexations in 2002 and 2003. All of the Cove Avenue right-of-way was not included in those annexations.

Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.” This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex approximately the western two thirds of the right-of-way for Cove Avenue in this area since it is adjacent to property on the south that was annexed after 2003. The City also is ready to annex the eastern one third of the Cove Avenue right-of-way in this area as per 7-2-4401, et seq. MCA. The property to the south of this portion of the right-of-way was annexed in 2002.

The City Council’s policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At its meeting on November 13, the Council acknowledged the annexation request and approved a resolution of intent (Resolution No. 07-18641) to annex the property, and set a public hearing date for December 10, 2007. The Council will conduct a public hearing at this meeting and consider the question of annexation.

PROCEDURAL HISTORY

- August 16, 2007 – The Planning and Community Services Department received a signed letter of request to annex the subject property into the City of Billings.
- November 13, 2007 – The City Council acknowledged the request to annex, approved a resolution of intent to annex the property, and set a public hearing date for the City Council meeting on December 10, 2007.
- December 10, 2007 – City Council holds public hearing and acts on the request to annex the subject property.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City’s ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. This proposed annexation is for road right-of-way and does not require services for existing or future development. It *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. Any road improvements on Cove Avenue would meet City standards.

3. It is the City's intention to continue to use the property for its present use as road right-of-way.
4. The proposed annexation meets at least two goals of the City-County Growth Policy.

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

City Facilities: The property will not be served by water, sewer, stormwater or other improvements and facilities. Improvements to Cove Avenue will be to City road standard.

STAKEHOLDERS

This annexation request process by a municipality does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was published in the Billings Times to provide the legally required 20-day comment period on this annexation request. The Planning Division has not received any comments regarding this proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City property and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10). *The City maintains its roads to a level of service that provides for safe and efficient traffic flow throughout the City.*

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

ATTACHMENTS

- A. Resolution to Annex
- B. Map

ATTACHMENT A

RESOLUTION NO. 07-
A RESOLUTION OF THE CITY OF BILLINGS
APPROVING REQUESTS FOR ANNEXATION
AND ANNEXING TERRITORY TO THE CITY.

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

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

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

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

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

A tract of land situated in the NE1/4 of Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Street right-of-way of Cove Avenue, between east right-of-way line of 50th Street West running easterly to Leroy Lane as recorded with Zimmerman Subdivision 4th Filing, Recorded March 19, 1965, Under Document No. 751012, Records of Yellowstone County, Montana; also that portion of Leroy Lane right-of-way as dedicated with Zimmerman Acreage Tracts Subdivision 3rd Filing, Recorded May 1, 1963, Under Document No. 705939, Records of Yellowstone County, Montana beginning at the northeast corner of Lot 4, Block 3 of said Zimmerman Subdivision 4th Filing and extending easterly to the west right-of-way line of 46th Street West being on the existing City of Billings city limits.

Containing 4.864 gross acres.

(# 07-14) See Exhibit "A" Attached

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

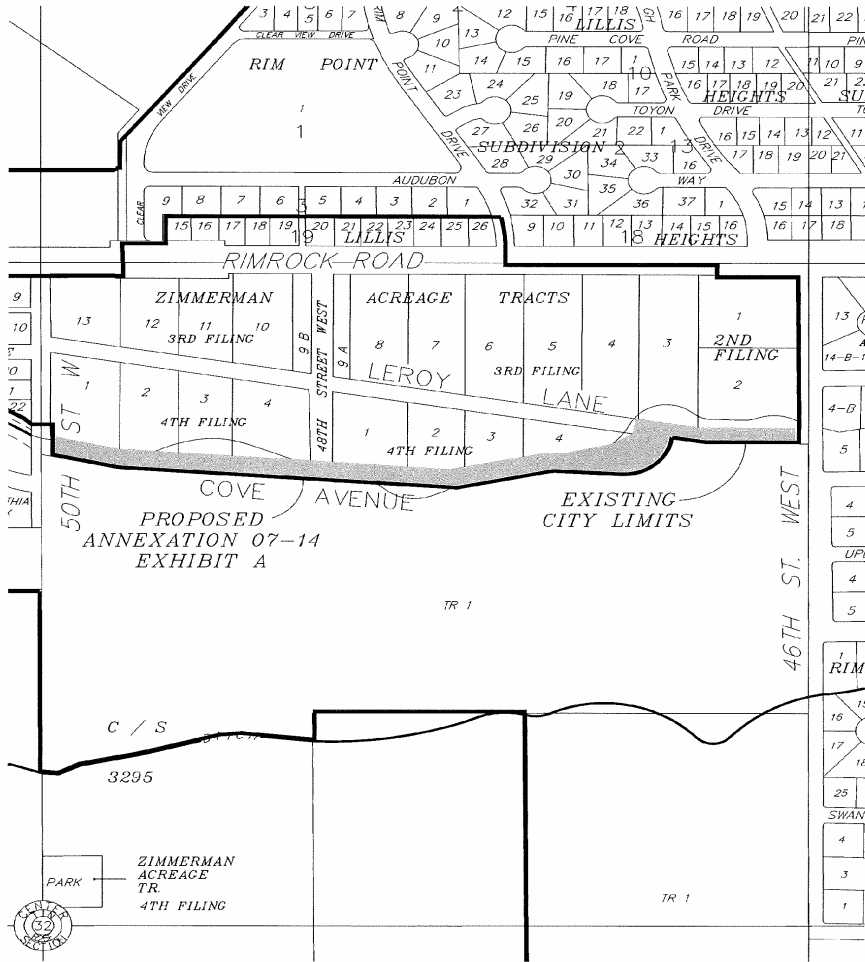
BY: _____

CITY CLERK

(AN #07-14)

ATTACHMENT B
Annexation Map – Annexation #07-14

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 10, 2007

TITLE: Public Hearing and Resolution for Annexation #07-16
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a letter of request to annex a 0.359-acre portion of Grand Avenue right-of-way to the City of Billings under 7-2-4401, et seq, Montana Code Annotated (MCA). The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits based on requirements of the State of Montana Code. These rights-of-way should have been annexed into the city when adjacent properties were annexed. In this case, property along Grand Avenue to the north was previously annexed and the entire portion of Grand Avenue right-of-way fronting the property was not included in that annexation. MCA, 7-2-4211 specifies that annexations of property into the city “shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed.” This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex the entire right-of-way for Grand Avenue adjacent to annexed properties.

The portion of the right-of-way that will be annexed is a 30-foot wide County Road Petition #5 that contains approximately 0.359 acres. The property requested to be annexed is the southern 30-feet of the Grand Avenue right-of-way extending from the northwest corner of Vintage Estates Subdivision west to the southwest corner of Lot 65A-4, Sunny Cove Fruit Farms. Bell Real Estate Holdings, LLC, is the legal owner of a 0.131-acre portion of the right of way property and Durand M. Ward, is the legal owner of a 0.228-acre portion of the right-of-way. However, the ownership interest is subject to the public’s right to use it as a roadway based on County Road Petition #5. Planning staff has contacted the property owners and provided them with the option of either deeding the property to the City and removing it from the property’s taxes, or taking no action and upon annexation of the 30-foot wide road easement, paying City taxes on the annexed portion of the right of way. In this case, one of the property owners (Bell Real Estate Holdings, LLC) has decided to quit claim this portion of the property to the City. The City will annex the easement for the remaining portion of Grand Avenue.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the November 13, 2007 meeting, the Council acknowledged the annexation request, approved a resolution of intent to annex the property, set a public hearing date and accept the Quitclaim deed from Bell Real Estate Holdings, LLC. The Council will conduct the public hearing and decide if it will annex the property at this meeting.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA are permitted to request annexation of city-owned property or property in which the City has a beneficial interest on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and hold a public hearing to review the request.

FINANCIAL IMPACT: Since the City would own the subject property or have an interest in the property, and the City does not tax itself, there is not expected to be a financial impact.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the Resolution of Annexation.

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

ATTACHMENTS

- A. Resolution and Exhibit A
- B. Property Owner Letter

INTRODUCTION

On August 16, 2007, The City of Billings submitted a request for annexation of property totaling 0.359 acres. The portion of the right-of-way that will be annexed is a 30-foot wide County Road Petition #5 that contains approximately 0.359 acres. The property requested to be annexed is the southern 30-feet of the Grand Avenue right-of-way extending from the northwest corner of Vintage Estates Subdivision west to the southwest corner of Lot 65A-4, Sunny Cove Fruit Farms.

PROCEDURAL HISTORY

- On August 16, 2007, an Annexation Petition from a city official was submitted to the Planning Division.
- On August 20, 2007, a letter was sent to property owners of the proposed annexations.
- On August 23, 2007, a memo was sent to the Yellowstone County Board of Commissioners addressing the proposed rights-of-way annexations and Quit Claim Deeds for the county to sign.
- On October 25, 2007, a second letter was sent to Durand Ward, one of the property owners of the proposed annexation. Bell Real Estate Holdings has already signed a Quitclaim deed.
- On November 13, 2007, the City Council acknowledged the annexation request and set a public hearing date.
- On December 10, 2007, the City Council will conduct the public hearing and may adopt a resolution annexing the subject property.
- On December 17, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary IV will be conducted.
- On January 15, 2008, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

The subject property is adjacent to rights-of-way that have been annexed into the City Limits and is within the limits of annexation as specified by the Annexation Policy adopted by the City Council in 2004 and updated in 2006.

ALTERNATIVES ANALYSIS

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. Because this is the annexation of road rights-of-way, this report will not address public services.

STAKEHOLDERS

City staff contacted the property owners by letter and informed them of the proposed annexation of the road rights-of-way (Attachment B). In the letter staff provided them with the option of either deeding the property to the City and having it removed from their property taxes, or taking

no action and having the 30-foot-wide road easement annexed by the City and paying City taxes on the annexed portion of the right of way. Bell Real Estate Holdings, LLC, is the legal owner of a 0.131-acre portion of the right of way property and Durand M. Ward, is the legal owner of a 0.228-acre portion of the right-of-way. However, the ownership interest is subject to the public's right to use it as a roadway based on County Road Petition #5. Planning staff has contacted the property owners and provided them with the option of either deeding the property to the City and removing it from the property's taxes, or taking no action and upon annexation of the 30-foot wide road easement, paying City taxes on the annexed portion of the right of way. In this case, one of the property owners (Bell Real Estate Holdings, LLC) has decided to quit claim this portion of the property to the City. The City will annex the easement for the remaining portion of Grand Avenue.

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 sent to the property owners by letter and it has been published in a legal ad. The Planning Division has not received any comments from the owners.

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*:

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

RECOMMENDATION

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

ATTACHMENTS

- A. Resolution and Exhibit A
- B. Property Owner Letter

ATTACHMENT A

RESOLUTION NO. 07-
A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION

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

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;” and

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

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

A tract of land situated in the NW1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana; Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 5, filed December 26, 1883, Declared a County Road March 6, 1884, being those portions of the E1/2E1/2NW1/4NW1/4 and the W1/2E1/2NW1/4NW1/4 of said Section 4 adjacent to Lot 65A-4 of Amended Plat Of Lot 65A Of The Plat Of Amended Lots 65-68, 93-100, And 125-128 Of Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County.

Said Tract containing 0.359 acres.
(# 07-16) See Exhibit “A”

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

PASSED by the City Council and APPROVED this 10th day of December, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

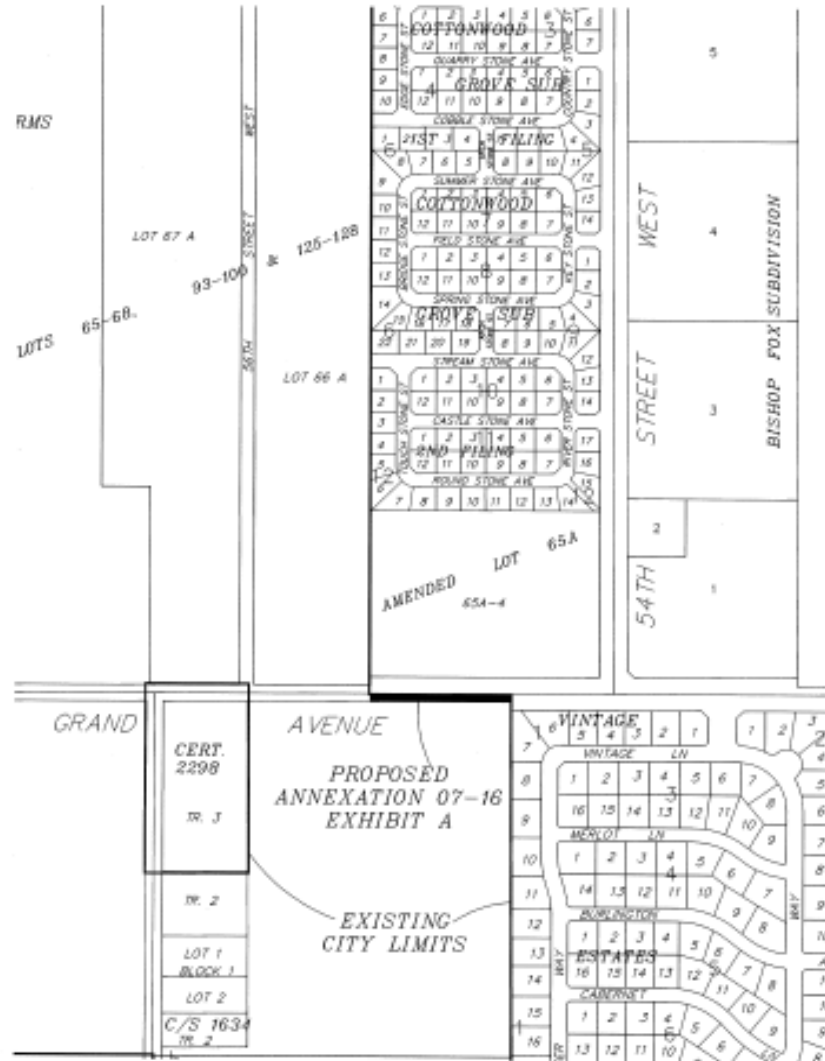
ATTEST:

BY: _____

CITY CLERK

(AN #07-16)

EXHIBIT A





Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 25, 2007

Mr. Durand M Ward
5416 Grand Avenue
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Ward:

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 22, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,931.68 square feet of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway

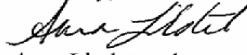
The original schedule was delayed due to some questions about the annexation process being proposed, however after further consideration by City legal staff, we have been directed to proceed with the annexation of 5416 Grand Avenue, including the 30-foot wide road easement on your property.

A new City Council review schedule is as follows:

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Sincerely,



Aura Lindstrand
Planner II

Enclosure

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