

ORDINANCE 23-5841

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING
THE PLANNED DEVELOPMENT ZONE AGREEMENT ON
Lots 1, 2 and 3, Block 1 of MK Subdivision 2nd Filing, BE
AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.*

Section 2. DESCRIPTION. **Lots 1,2,and 3 of Block 1, MK Subdivision, 2nd Filing,** is presently zoned **Planned Development – Neighborhood Commercial (PD-NC)**, and is shown on the official zoning map within this zone. The Planned Development agreement for this property was filed with the Clerk and Recorder under document No. 3874369.

Section 3. ZONE DISTRICT AMENDMENT. The official original **Planned Development Agreement known as Hawk Creek Planned Development filed as document No. 3874369** is hereby **deleted in its entirety** and substituted with **a new and amended PD Agreement as shown in Exhibit A.** Such amended Planned Development will be executed and filed with the Clerk and Recorder and shall be subject to all the rules and regulations pertaining to Planned Development Agreements as set out in the Billings, Montana City Code.

Section 4. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 5. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 6. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 12th day of June, 2023.

PASSED, ADOPTED and APPROVED on second reading this 26th day of June, 2023.



CITY OF BILLINGS

BY: William A. Cole
William A. Cole, Mayor

Attest:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk

Zone Change 1028 – Hawk Creek Planned Development Agreement Amendment

EXHIBIT A

Return to:
City Clerk
City of Billings
PO Box 1178
Billings, MT 59101

PLANNED DEVELOPMENT AGREEMENT
LOTS 1-3, BLOCK 1, MK SUBDIVISION, SECOND FILING IN
THE CITY OF BILLINGS, MONTANA

THIS AGREEMENT is made and entered into this ____ day of _____, 2023, by and between **Arrowhead Investment Corporation**, whose address for the purpose of this agreement is 115 North Broadway, Suite 200, Billings, MT 59101, hereinafter referred to as "Owner," and **City of Billings**, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the Owner owns approximately 3.6 acres of real property in Billings, Montana specifically described as Lots 1-3, Block 1 of the MK Subdivision, Second Filing. The foregoing property shall be known as "Hawk Creek Planned Development," or a related name that may be assigned later.

WHEREAS, the Hawk Creek Planned Development will consist of a mixture of commercial, retail, professional, medical and related uses.

WHEREAS, the Owner desires to place certain building and use restrictions on the property, specify certain land uses, and create a pattern of development that promotes community service, economic activity, convenience, and amenity for the Hawk Creek Planned Development and surrounding neighborhoods.

WHEREAS, the aforesaid Owner and the City desire to ensure the Hawk Creek Planned Development will be developed and maintained consistent with the standards described in this agreement.

THEREFORE, the undersigned hereby establish and declare the following plan for the Hawk Creek Planned Development as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

AGREEMENT

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporations, or other entities, who shall hereafter acquire any interest in and to the above described property, in whole, or in part, shall be taken and held to agree, to conform to, and observe the following land uses, restrictions, and other stipulations as to the use thereof, and as the construction of improvements thereon.

II. LAND USES AND BUILDING RESTRICTIONS

Unless expressly designated below, all other standards or requirements of the Zoning Regulations for the City of Billings shall be followed for the type of use within each of the areas described herein.

A. Restricted Uses for Underlying City Zone: Neighborhood Commercial – NC

No land may be used for purposes that include gaming (casinos) or adult entertainment or sexually oriented businesses. No variances or special review approvals may be requested or granted for those businesses.

All allowed land uses as outlined within the City of Billings Zoning regulations for the underlying zone shall be allowed within the Planned Development, with the following exceptions:

Exceptions (uses not allowed):

Division A: Agriculture, Forestry, and Fishing

Group 07 – Agricultural Services

- Veterinary services for Animal specialties – Outpatient Only

Division B: Mining

- Construction sand and gravel mining (1442)

Division D: Manufacturing

Group 20 – Food and Kindred Products

- All sub-groups except offices

Division E: Transportation, Communications, Electric, Gas and Sanitary Sewer

Group 46 – Pipelines, except natural gas

Group 48 – Communications

- All uses except offices

Group 48 – Commercial Antenna Support Structures

Group 49 – Electric, Gas, and Sanitary Services

- Transmission and distribution, electric and gas

Division G: Retail Trade

Group 54 – Food Stores

- Convenience Store with Gas Pump Islands

Group 55 – Automotive Dealers and Gasoline Service Stations

- All uses

Division I: Services

Group 70 – Hotels, Rooming Houses, Camps, and Other Lodging Places

- Rooming, boarding houses; organization hotels and lodging houses, on a membership basis (702, 704)

Group 72 – Personal Services

- Coin-operated laundries and dry cleaning (7215)
- Funeral service and crematories (726)

Group 75 – Automotive Repair, Services, & Parking

- Automobile parking (752)

Division K: Non-Classifiable Establishments

Dwellings – Modular Homes

Allowances:

The subject property shall be allowed use of one (1) full beverage liquor license and one (1) brewing/taproom license. Subsequent subdivision of the subject parcel shall not increase the number of licenses allow for use within the Planned Development.

III. OPERATIONAL RESTRICTIONS – Alcoholic Beverage Manufacturing and Full Beverage Liquor License

The Developer and City recognize the sensitive location of the Hawk Creek Planned Development and the need to include specific operational restrictions and site requirements not normally required for the uses listed above.

A. Developer Agrees to the Following:

- a. Any outdoor seating areas associated with the brewing/taproom or full beverage liquor license operations shall be located on either the east, west or south elevations of the structures. Under no circumstances shall seating areas with either taproom or full beverage liquor license operation be located off the north elevation of the structure(s).

- b. Any seating area outside of any enclosed building for use by the patrons of the alcoholic beverage manufacturer or full beverage liquor license operation shall have a fence installed at least 42-inches in height enclosing the outdoor area. There shall be no entry to the outdoor seating area for patrons except through the operating building.
- c. Any music or entertainment, including any permanent or temporary speakers, outside of an enclosed building shall only be installed/located along the western or southern elevations of the structure.
- d. ~~Operating hours for the taproom and full beverage liquor license shall be dictated by Montana State Law outlined in the MCA 16.3.2 and MCA 16.4.1, respectively.~~ Operating hours for the brewing/taproom and full beverage liquor license operations shall be subject to Montana Code Annotated, Title 16, except that the operations shall be open **no later** than 11:00 p.m.

IV. SIGNAGE AND LIGHTING

The intent of signage and lighting design regulation is to encourage the use of signage and lighting as a design component to enhance buildings, landscaping, or other site features while not detracting from the aesthetics of adjacent neighborhoods. Developers should encourage night sky's visibility to reduce the general illumination of the sky in the surrounding area. Design elements should reduce horizontal light glare and vertical light trespass from a development site onto adjacent parcels. Developers should encourage the judicious use of lighting in conjunction with other security methods to increase site safety.

A. Signage

- a. Signage should be provided in accordance with the PDA, with the intent to compliment the pedestrian-oriented environment. The signage requirements included in Article 27-700 of the 2021 Archived Zoning Regulations and any subsequent amendments thereto shall govern the regulation of signage in Hawk Creek Planned Development so far as they are not inconsistent with the Planned Development Agreement and the below standards.
- b. All signs shall comply with the design guidelines below:
 - i. All signs, except for neighborhood identification signs, shall be placed flat against a building or designed as part of an architectural feature thereof.
 - ii. No electronic message displays or signs are allowed.
 - iii. No neon signs are allowed.
 - iv. No balloon signs as defined by the 2021 Archived Zoning Code are allowed.
 - v. No string of pennants, flags, or other similar types of non-informative non-holiday decorations are allowed.
 - vi. One (1) free-standing sign is allowed indicating the name and/or nature of the occupancy for each developed parcel/tenant. Signs may not exceed fifteen (15) feet in height and fifteen (15) feet in width.

vii. No rooftop signs are allowed.

B. Exterior Lighting

- a. Developers shall provide adequate lighting levels in all areas used by pedestrians or automobiles, including building entries, walkways, parking areas, and circulations areas.
- b. All exterior lighting must be installed or shielded to minimize light intrusion into residential units in adjacent neighborhoods.
 - i. All outdoor pole lighting shall be fully shielded and mounted at heights no greater than fifteen (15) feet above grade.
 - ii. All outdoor lighting, except street lighting, shall be aimed or shielded so as to minimize stray light trespassing across property boundaries.

V. LANDSCAPING REQUIREMENTS

All landscaping and performance standards as outlined within section 27-1101 of the 2021 Archived Zoning ordinance shall be followed as required within the underlying City zone. Additionally, all development must comply with the requirements outlined in this Section of the Planned Development.

A. General Landscape Area Requirements

- a. A palette of regionally appropriate drought and climate tolerant plant materials is required to be used.
- b. The use of drip irrigation and/or other irrigation systems is required.
- c. All development should create a pedestrian-friendly environment on the street and connect to adjacent developments as identified in the conceptual master plan.
- d. A variation of elements should be provided along public frontage; no less than two (2) types of trees may be used in a single development lot.
- e. One (1) 2-inch tree is required per 2,000 sf of total landscape area per development lot or parcel.
- f. One (1) large shrub (mature height over three feet) is required for every 500 sf of total landscape area per development lot or parcel.
- g. Trees and shrubs should be grouped for aesthetic and irrigation purposes.
- h. Lawn must have a minimum width of six (6) feet.
- i. Plant materials must be maintained and dead plants must be replaced in a timely manner.

B. Landscaped Green Belt Improvements

- a. A minimum 25-foot landscaped green belt, which may be incorporated into any required building setbacks, shall be landscaped and maintained along the northern property boundary.
- b. Developers shall be responsible for installation and maintenance of the landscaped green belts in accordance with Section V.A of this document.

- c. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt or the setback.
- d. All improvements shall comply with The City of Billings and Yellowstone County's clear vision standards.

C. Parking Lot Landscaping

- a. All parking lot landscaping may be included as part of the landscaped area as calculated in Section V.A of this document.
- b. Trees shall be planted and incorporated into parking lot layouts at a density of one (1) 2-inch tree for every sixteen (16) parking spots.

VI. SITE LAYOUT AND ORIENTATION

All development must comply with the site layout and orientation requirements outlined in this Section of the Planned Development.

A. Building Requirements

- a. Buildings shall be located in the south two-thirds of the lot allowing for parking or green space on the north third of the lot.
- b. Buildings can be located directly against sidewalk with no front lot setback requirements.
- c. Sidewalks shall be a minimum of 5-feet wide and a minimum of 7-feet wide when directly adjacent to parking areas.
- d. Building height shall be no greater than 34-feet from grade.
- e. No more than fifty (50) percent lot coverage is allowed by the building.
- f. Buildings containing the use of either a brewery/taproom or full-beverage license shall be designed with a likeness to traditional agricultural structures in both elevation and profile views.
- g. All dumpsters shall be contained within a privacy fence that aligns the architecture features of the building.
- h. All development shall provide for bike parking and non-motorized accessibility.

B. Parking Requirements

- a. Parking shall be provided at a one (1) parking spot for every 200-square-feet of building.
- b. Reciprocal parking access shall be provided for all businesses within the development.
- c. Parking lots must be a minimum of 30-feet from the northern boundary with the landscaped green belt counting towards the setback requirement.
- d. Bike parking shall be provided at a one (1) parking spot for every 2,000-square-feet of building with a minimum of two (2) spaces for each building.

VII. MODIFICATION OF THE APPROVED PLANNED DEVELOPMENT

Any modification of the approved development plan shall be processed using the same procedures for a new application, as set forth in the City of Billings Zoning regulations (2021 et seq). However, minor modifications may be approved by the zoning coordinator if he/she makes the following findings through administrative relief:

- No change in the overall character of the development;
- No increase in the number of residential units greater than two (2) percent;
- No additional allowed uses;
- No reduction in open space greater than two (2) percent; and
- No change in the approved minimum setbacks, maximum lot coverage or maximum allowed height.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“OWNER”

Ty Schmechel

By: _____

**Arrowhead Investments Corporation
Managing Member**

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be _____ **Ty Schmechel, Managing Member of Arrowhead Investments Corporation** who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

This agreement is hereby approved and accepted by the City of Billings, this _____ day of _____, 20____.

“CITY”

CITY OF BILLINGS, MONTANA

William A. Cole, Mayor

BY: _____

Attest:

BY: _____

Denise R. Bohlman, City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 20____, before me, a Notary Public
in
and for the State of Montana, personally appeared

known to me to be the Mayor of the City of Billings, Montana, whose name are subscribed to
the foregoing instrument in such capacity and acknowledged to me that they executed the same
on behalf of the City of Billings, Montana.

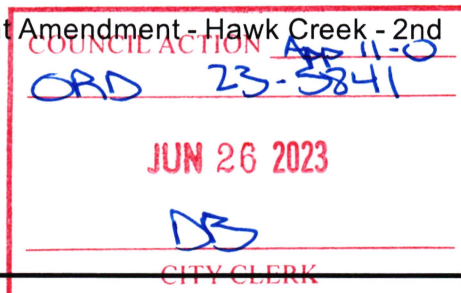
Notary Public in and for the State of Montana
Printed Name:

Residing at:

My commission expires:

City Council Regular

Date: 06/26/2023
Title: Zone Change 1028 - Planned Development
Presented by: Nicole Cromwell
Department: Planning & Community Services
Presentation: No
Legal Review: Not Applicable
Project Number: PZX-23-00068

**RECOMMENDATION**

The Zoning Commission recommended approval of the zone change and adoption of the findings of the 10 review criteria, and further recommends the City Council include an amendment to the Planned Development which would prohibit the business from operating beyond existing hours of operation (11 pm). The PD draft ordinance was amended by Council on first reading to include a limitation on the hours of operation in Section III.A.d. The amended ordinance is attached. A second reading is required to approve the zone change. Staff recommends the City Council approve this item on second reading to be consistent with its first reading action.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

This is a zone change request to amend an existing Planned Development (PD) zoning agreement for Lots 1-3, Block 1 of MK Subdivision, 2nd Filling. Lot 3 at 5417 Hawk Creek Avenue is the location of the Diamond X Beer Company. This location has a domestic brewery license with a taproom and a cabaret license for service of beer and wine in the food service area. The original PD agreement allowed one (1) cabaret license on the property without gaming or gambling. The proposed amendment would eliminate the cabaret beer & wine license and substitute a full-beverage liquor license and keep the prohibition on gaming or gambling in place. The other proposed changes to the PD agreement are to name the current property owners, and conform the agreement to the current and archived city zoning regulations. The owners would like to provide a wider range of before and after dinner beverages for their adult customers.

The amendment to the PD adds a use, making it necessary for the amendment to go through the zone change process. The other modifications in the agreement are minor. The previous zoning for the property - Neighborhood Commercial - did not allow any on-premise alcohol service for a restaurant and did not allow a brewery. The current corollary zone district of Neighborhood Mixed Use (NMU), allows a full-beverage license with nine or fewer gaming machines for a restaurant, but still prohibits a brewery or craft alcohol maker. The PD agreement is still necessary to provide certainty for the adjoining neighborhood to the north and to ensure the location is developed in a compatible way.

Planning staff recommended approval and adoption of the findings for the 10 review criteria to amend this PD agreement. The Zoning Commission concurred with this recommendation and findings of the 10 review criteria. The essential activity on the property will not change with the change in the type of liquor license on the property. Full beverage licensees are not required to stay open later than the current closing time for Diamond X Beer Company (11 pm) or to sell package liquor to patrons. These are choices made by a license holder but do come with the full beverage license. The brewery/taproom license will remain as a separate license and allows the brewing of beer, daily sales of beer for on-premise consumption and sales of beer to patrons for off-site consumption. A review of public safety calls for service in the last 6 months shows no calls to this location but 4 calls in the surrounding area, within 500 feet of 5417 Hawk Creek Avenue. These calls related to disturbing the peace, drugs, theft, or DUI. The DUI was reported in February of this year, and the other three calls happened in 2022. The applicant conducted a pre-application meeting on March 22, 2023, and two of the 74 surrounding owners attended the meeting. There were no concerns and the Planning Division received no letters, emails or phone calls regarding the proposed change to the Planned Development agreement.

STAKEHOLDERS

The applicant conducted a pre-application meeting on March 22, 2023, and two of the 74 notified surrounding owners came to the meeting held at the Grace Montessori School (4819 Grand Avenue). There were no concerns with the proposed change to the PD agreement. Planning staff notified the same surrounding owners on April 14, 2023, posted the property and published a legal ad. Planning staff had not received any communications regarding the application from the public or from other city departments prior to the Zoning Commission hearing.

Zoning Commission Hearing May 2, 2023

The Zoning Commission conducted a public hearing on May 2, 2023, and received the staff recommendation and testimony from the applicant's agent, Performance Engineering, and from the owner Ty Schmechel of Diamond X Beer Company. In addition, testimony from surrounding owners in the Cottonwood Grove Subdivision to north was received including from Kaitlin Taylor of 5408 Round Stone Avenue, Jill Saitta of 5422 Round Stone Avenue, Molly Dutson of 5418 Round Stone Avenue, and Travis Brewington of 5426 Round Stone Avenue.

The applicant and agent stated the change to the PD is to swap out a beer & wine license for an all beverage license but keep the other restrictions in the PD agreement in place including the prohibition on gaming or gambling. Mr. Aspenlieder stated the business does not participate in the annual outdoor concert held by the Den, but at the pre-application meeting the two attendees were most concerned with this activity. Mr. Aspenlieder stated the business is a good neighbor and has address any and all concerns brought forward by the neighbors. Mr. Schmechel stated they do not intend to change any of the format of the business or add on to the existing building. He stated the business has been very successful at this location and intends to keep the family-friendly atmosphere going even with the change in the alcohol license. He stated when the building was constructed they adhered to the stipulations of the PD agreement and will continue to do so.

The surrounding property owner testimony was largely opposed to the zoning request. The individuals listed above who testified expressed concern regarding the noise, suspicious activity, damage to the fencing from erratic driving in the overflow parking lot, people tossing trash over the fence into backyards, over-served patrons causing issues after closing times, staff making noise in the parking lot after hours, public urination and issues generally associated with a business that serves alcohol. The neighbors' concerns also focused on a potential change in the business model from a limited alcohol service and restaurant to more of a bar atmosphere that closes at 2 am. The four property owners all own lots that are directly adjacent to the north property line of Diamond X Beer Company.

Mr. Aspenlieder provided response to the testimony from the surrounding owners. He stated the company takes these concerns seriously and the owner will have discussion about these issues with the neighbors. He stated Mr. Schmechel and his employees are always open to discussing issues or concerns with the neighbors. He stated the issues voiced by the neighbors are valid and stated the owner has no intention of changing the business model or staying open later.

Zoning Commission member David Goss made a motion to recommend approval of the zone change and adoption of the findings of the 10 review criteria, and further recommending the City Council include an amendment which prohibits the business from operating beyond existing hours of operation. Mr. Goss also made a recommendation to the applicant to explore with the neighbors a better buffer yard along the north property line. The motion was seconded by Zoning Commission member Trina White and was approved on a unanimous vote.

City Council Hearing June 12, 2023

The City Council received the Zoning Commission report as presented by Planning staff at the first reading hearing on June 12, 2023. Council members asked questions to clarify the Zoning Commission recommendation. The owner and agent also presented testimony to the City Council on the requested change to the Planned Development document to allow a full-beverage license. The applicant had no objection to including the limitation of operational hours. Questions from the Council included information about future use of the property for a casino or other less compatible uses. The Council and Mayor debated the issue of additional landscaping or screening for the north property line. The planted buffer yard between the building and the neighborhood properties does have young trees including evergreen trees. The gravel parking to the west of the building does not have similar plantings. This area has deciduous trees spaced about 50 feet apart.

The owner, Ty Schmechel, and agent, Scott Aspenlieder, provided testimony about the current business and the request to swap a beer and wine license for a full beverage license. Mr. Aspenlieder stated they removed the former subsection III.A.d that stated all outdoor activity ceases at 9 pm since the issue of people sitting out on the patio while it is still nice outside in the summer. He stated they are willing to accept the limitation on hours of all operations closing at 11 pm, but would like to use the full facility during the summer months including the outdoor patio. Mr. Aspenlieder stated there is a well planted buffer yard to the north of building, however but the trees are young and not yet to a mature height. When the landscape matures the buffering and screening will improve.

Ty Schmechel, co-owner of the Diamond X Beer Company, stated the change is a simple change and will not fundamentally change the business model they have adopted. This is a family-friendly restaurant and destination. The building and development plan was deliberate, fits with the agrarian heritage of the West End, with full consideration for the closest neighbors. We have an open-door policy with our neighbors. The business is a giving organization that has given more than \$10,000 to local non-profits including organizations that support kids. We have taken action based on the neighbor concerns expressed at the Zoning Commission hearing. They intend to buy a full beverage license without any gaming. We have reached out to our vendors and the City Solid Waste about the noise early or

late during the day for activity north of the building. He stated they are taking management staff to deal with these issues. Mr. Schmechel also said the business would be fine with adding some more trees to the area north of the gravel parking lot similar to what they already planted north of the building.

Sean Graves, co-owner of Diamond X Beer Company, stated the goal of the business is to provide a family friendly space, where people can come and create memories and give back to the community. The only change is to the type of adult beverages we can serve. This license would also allow us to serve earlier for brunch on the weekends. Our business has been operating since 1994 downtown and here in the West End since 2020.

Tyler Patenaude of 3121 Forbes Blvd, Simon Harris of 2311 Kings Drive, Wesley Dunn of 832 Dorothy Lane, Bryce Pedersen of 539 Wyoming, Jessie Gleason of 1042 Nutter Blvd, Jordan Roberts of 3939 Palisades Park Dr, Jeff McClain of 601 Pryor Creek Road, Dustin Brown of 3304 Tahoe, Tyson Adams, of 4513 San Fernando Drive and Kevin Barth 501 S 44th St W, all testified in favor of the zone change and in support of the Diamond X Beer Company.

Council member Purinton made a motion to approve the request on first reading. The motion was seconded by Council member Tidswell. An amendment to the motion was made to include limiting the hours of operation to 11 pm by Council member Boyett. The amendment was seconded by Council member Rupsis and was approved on an 11 to 0 vote. A second amendment to the motion was made by Council member Neese to include a limitation on outdoor activity (the patio) to 10 pm. The motion was seconded by Council member Boyett. This motion failed on a 4 in favor and 7 opposed vote. A third amendment to the motion was offered by Mayor Cole to include language that the buffer yard north of the gravel parking lot be improved with more trees. The motion was seconded by Council member Boyett. This third amendment failed on a 3 in favor and 8 opposed vote. A final vote on the amended main motion passed on a 10 in favor and 1 opposed vote. Council member Neese voted no.

ALTERNATIVES

The City Council may:

- Approve and adopt the findings of the ten review criteria for Zone Change 1028 as recommended by the Zoning Commission; or,
- Deny and adopt different findings of the ten review criteria for Zone Change 1028; or,
- Delay action on the zone change request for up to 30 days; or,
- Allow the applicant to withdraw the zone change request.

Staff recommends the City Council approve the zone change on second reading. Any other action would be inconsistent with first reading action.

FISCAL EFFECTS

Approval or denial of the proposed zone change will not have an effect on the Planning Division budget.

SUMMARY

Before making a decision on the requested zone change, the City Council shall consider the following recommended findings of the 10 review criteria.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following guidelines of the 2016 Growth Policy and the West Billings Neighborhood Plan (2001):

The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer neighborhood services in proximity to developed neighborhoods. The West Billings Plan adopted a number of Goals, Policies, and Implementation Strategies. The proposed amendments to the Planned Development agreement are consistent with the following adopted Policies of Planned Growth Goal 1: Establish Development Patterns that Use Land More Efficiently

Policy A - "Shorten automobile trips by locating non-industrial commercial development in proximity to residential areas."

Policy B - "Limit neighborhood commercial centers to compact "commercial villages" of approximately 15 to 20 acres in size."

Policy N - "Subdivision review should encourage mixed-use development and PUD concepts and shall consider the proximity of housing to commercial, medical, and recreational facilities."

The proposed adjustments to the PD agreement are compatible with goals of the West Billings Neighborhood Plan. The proposed amendment will accommodate uses that are compatible in a mixed-use environment. The proposed development will also have good access to outdoor activities and is close to developed and developing residential neighborhoods and pedestrian facilities. There have been no reported compatibility issues with the existing

brewery/restaurant and the adjacent neighborhood.

The proposed amendment is also in line with the adopted 2016 Growth Policy goals for:

Community Fabric:

- Developed landscape areas in commercial areas encourage more pedestrian activity and vibrant commercial activity
- Attractive street-scapes provide a pleasant and calming travel experience in urban and suburban neighborhoods
- Outdoor public spaces provide casual and relaxing gathering areas for people
- Developed landscape areas in commercial areas encourage more pedestrian activity and vibrant commercial activity
- Attractive street-scapes provide a pleasant and calming travel experience in urban and suburban neighborhoods

Strong Neighborhoods:

- Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, good will and social interaction

Mobility and Access:

- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings

Prosperity:

- A diversity of available jobs can ensure a strong Billings' economy
- Successful businesses that provide local jobs benefit the community
- Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses
- Retaining and supporting existing businesses helps sustain a healthy economy

The proposed change to the PD agreement will allow this successful business to expand its adult beverage choices and help grow the business in its current location. The business does generate vehicle traffic but the streets within this commercial node at 54th St W and Grand Avenue are private streets. There are two accesses - one from Grand Avenue (Chy Way) and one from 54th St West (Hawk Creek Avenue). A third access will be developed when the lot at the corner of Grand and 54th St W is developed. There is a 25 ft wide landscape buffer along the north property line for these lots and the lot to the east created with the MK subdivision. The PD does not specify a walking path or trail through this area however one has been provided to the north of Diamond X Beer Company (Lot 3). This path will continue to the west across Lots 1 and 2. The lot to the east, Lot 5 in MK Sub 1st Filing, is currently vacant and may or may not complete this paved walkway to the join with the multi-use path that exists on the west side of 54th St W.

2. Is the new zoning designed to secure from fire and other dangers?

The zoning requires minimum setbacks, open and landscaped areas and building separations. The zoning change to allow one full-beverage license will not affect security from fire or other dangers. Any building where alcohol is served is required to be fully sprinkled and there is good access to the property from streets. Fire Station 7 is less than 1,000 feet away on the east side of 54th St W.

3. Whether the new zoning will promote public health, public safety and general welfare?

Public health and public safety will not be affected by the proposed change. The business is fully developed and has a track record of responsible service to their customers and to compatibility with the adjacent neighborhood. The addition of a full-beverage license will not affect the public health, safety or general welfare.

4. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?

Transportation: The city has reviewed a traffic study for the entire subdivision and proposed uses. The developer has already contributed the required amount for traffic management in the area.

Water and Sewer: The City provides water and sewer to the property. There will be no additional impacts to the system from the proposed change.

Schools and Parks: Schools and parks will not be effected by the proposed amendment. The business is a "family friendly" business and is more than 1/4-mile from Ben Steele Middle School

Fire and Police: The subject property is served by city public safety services. The Police and Fire Departments had no concerns with the zone change.

5. Will the new zoning provide adequate light and air?

The existing PD zoning provides for sufficient setbacks to allow for adequate separation between structures and

adequate light and air.

6. Will the new zoning effect motorized and non-motorized transportation?

Non-motorized travel -- walking and biking -- is an essential part of the circulation plan for this area of West Billings. The existing development plans to provide a continuous walkway in the 25-foot landscape buffer to the north. It is expected any development on Lot 5 to the east will follow suit and connect to the existing multi-use trail on 54th St West. There is a traffic signal at 54th St W and Grand Avenue where people on foot or on non-motorized bikes and scooters can safely cross Grand Avenue and 54th St W. The city, county and state will be working on a set of corridor improvement projects for Grand Avenue from just west of Shiloh Road to the intersection with 62nd St West. Traffic counts in the area on Grand Avenue are about 9,000 vehicle trips per day (3-year average) and about 3,900 vehicle trips per day on 54th St W. The new Albertson's store opening just to the east, as well as new residential development in the area will add to traffic volume and the need for safe pedestrian facilities.

7. Will the new zoning promote compatible urban growth?

The proposed addition of a full-beverage license to this development is compatible with urban growth and the provision of city level services to the new residents. The PD prohibits gaming or gambling on the property so the typical concern with a full-beverage license of a casino is not possible on this property.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?

The proposed PD amendment does consider the character of the district and the suitability of the property for the proposed use. This area between Grand Avenue and Rimrock Road is undergoing rapid development compared to other areas of West Billings. The demand for local services such as groceries, pharmacy, personal services and places to relax and dine out is increasing. Providing the whole complement of these services close to where people live in West Billings will help reduce longer vehicle trips to obtain these services. Most West Billings residents do not have convenient access to these services within 2 or 3 miles of where they live. Consequently, traffic volumes on local streets and arterials is higher in this area compared to similar areas of more compact development.

9. Will the new zoning conserve the value of buildings?

The property is a combination of developed and undeveloped parcels. Approval of the zone change to amend the PD agreement will continue to provide certainty to surrounding landowners and may help to maintain property values of adjacent buildings.

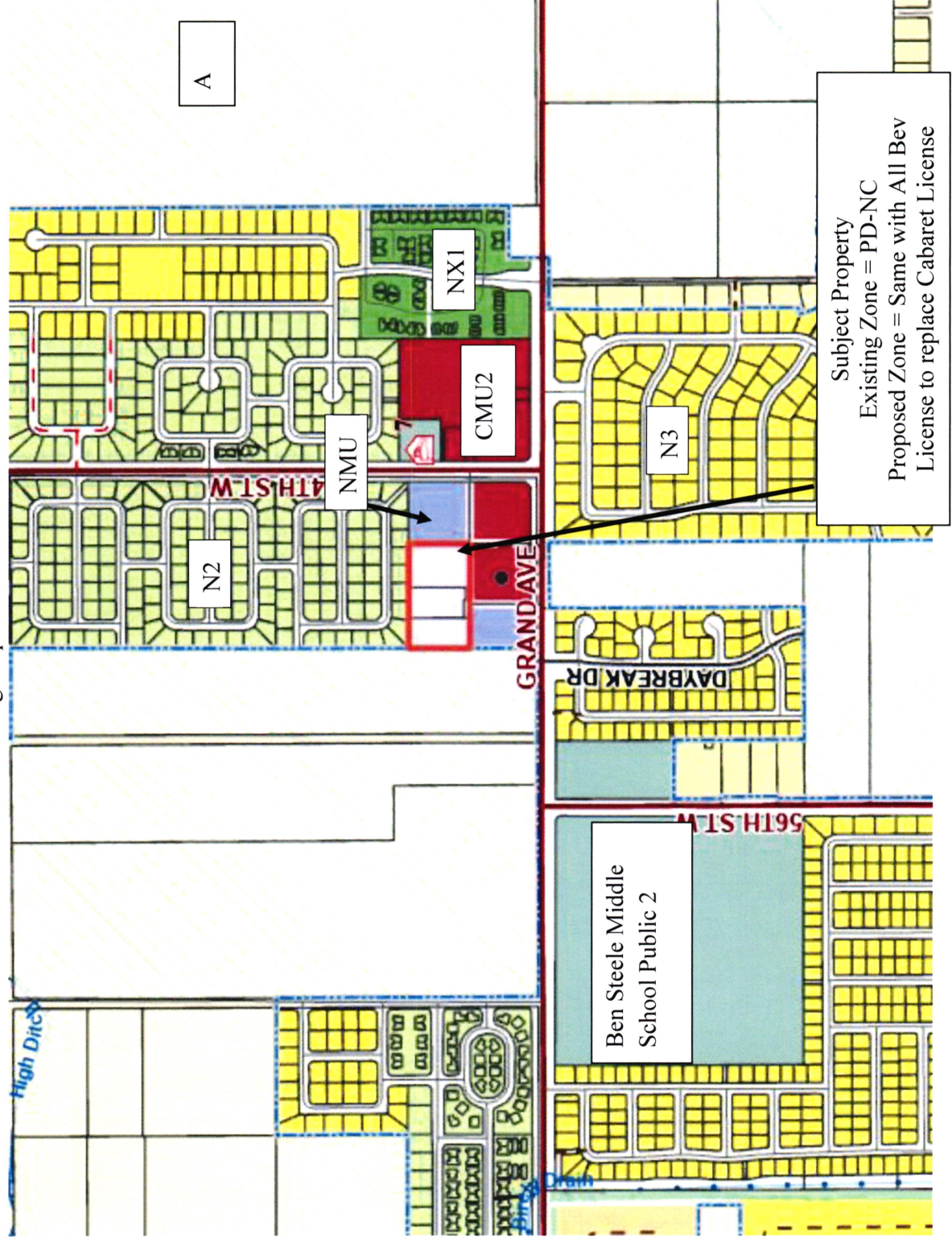
10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?

The proposed amendment to the PD may encourage the most appropriate use of this land in Billings.

Attachments

Zoning Map and Site Photos
Chart of Zoning History
Application and Letter
Preapplication meeting materials
Amended PD agreement
Original PD Agreement
Ordinance 1028 updated for 2nd reading

City Zone Change 1028 – Hawk Creek PD Amendment
Zoning Map and Site Photos





Subject Property



Subject Property north west of intersection of Hawk Creek Lane and Chy Way



View of west side of Diamond X Brewery and Restaurant (Lot 3)



View north east at Diamond X Brewery



View south east to The Den



View south and west towards Grand Avenue



5417 Hawk Creek Lane – Diamond X

City Zone Change 1028 – Hawk Creek Planned Development
Chart of Zoning History

SUBJECT PROPERTY	Application	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
MK Sub, Block 1, Lts 1-3	971	1/14/2019	NC to PD-NC	Yes	Original PD
SURROUNDING PROPERTY	Application	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
MK Sub	City ZC 798	2/26/2007	A to NC & CC	Y	CMU2 & NMU
1411 Chy Way	City ZC 925	10/14/2014	NC to CC	Y	CMU2- The Den
1411 Chy Way	City SR 958	11/27/2017	Allow All Bev & Casino	Y	CMU2 -The Den
Cottonwood Grove	City ZC 734	2/28/2005	A to R-70 (now N2)	Y	Now N2
Daybreak Sub	City ZC 920	6/9/2014	A to R-60 (now N3)	Y	Now N3
Coal Creek Sub	City ZC 961	1/22/2018	RP to CC (expansion)	Y	CMU2, NO & N2
Coal Creek Sub	City ZC 767	11/17/2005	R-96 to RMF, RP and CC	Y	CMU2, NO & N2
Bishop Fox	City ZC 756	5/9/2005	A to CC, P, R-70 and R-96	Yes	Now CMU2, P2 & N2
Buffalo Crossing	City ZC 1011	4/11/2022	RR3 to N3, N2 NX2 and P1	Y	C/S 2735 Tract 4A
Mont Vista	City ZC 851	7/13/2009	R-96 to PD multiple zones	Y	
Grand Peaks Sub	City ZC 938	8/24/2015	R-96 to R-70	Y	Now N3 & N2
Sweetgrass Creek	City ZC 998	10/11/2021	A to to N1, N2, N3, NX1 and P1	Y	Sweetgrass Creek Subdivision
Foxtail Village	City ZC 729	5/10/2004	A to R-96 & R-70	Y	Now N3 & N2
Trails West	City ZC 847	10/14/2008	R-96 to R-60-R	Y	Now N3
Tule Ridge	County ZC 667	12/29/2015	R-96 to CC	Y	Now CMU1
Vintage Estates	None	1/10/2005	A to R-96 default	Y	Now N3

APPLICATION FORM

CITY ZONE CHANGE

Billings Zone Change # _____ - Project #22-171

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning: PD- Neighborhood Commercial with the allowance of one cabaret license and one brewery/taproom license

Proposed Zoning: PD-Neighborhood Commercial with the allowance of one brewery/taproom license and one full liquor license

Tax ID # A31805F CITY ELECTION WARD # WARD IV

Legal Description of Property: MK Sub 2nd Filing, Section 31, Township 01N, Range 25E, Block 1, Lot 3

Address or General Location (If unknown, contact County Public Works): Grand Avenue & 54th Street West

Size of Parcel (Area & Dimensions): 1.5 ACRES (305 FT X 214 FT)

Present Land-Use: Commercial

Proposed Land-Use: Commercial

Covenants or Deed Restriction on Property: Yes X No _____

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application

Owner(s): Arrowhead Investments Corporation

(Recorded Owner)

115 N Broadway Suite 200, Billings, MT, 59101

(Address)

406-855-6884

(Phone Number)

tyschmechel@gmail.com

(Email)

Agent(s): Scott Aspenlieder

(Name)

608 N 29th Street, Billings, MT, 59101

(Address)

406-384-0080

(Phone Number)

scott@performance-ec.com

(Email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: [Signature] Date: 03/30/23

(Recorded Owner)

1. Explain how the proposal is consistent with the goals and policies of the adopted Growth Policy or West End Neighborhood Plan.

The tract of interest is currently zoned Planned-Development Neighborhood Commercial functionally operating at Diamond X Beer Company. There are several Growth Policy goals that are already being met by the current zoning to which the change proposed would only enhance for the surrounding residents.

Essential Investments – With the facility already constructed and operational, the proposed change to allow for full-beverage service does not change the site or building. The applicants have invested significantly in the neighborhood with a building and business that has added value to the surrounding areas while starting to provide necessary neighborhood dining and entertainment to the surrounding region. The site is accessible, friendly and safe for the area and provides a diversity in serve and choices from other businesses in the direct area. The facility will not change physically with the proposed zone change, only operations will change with the insertion of a full-beverage license to the building. The existing site is clean, well-lit, maintained and fits in the character of the neighboring development, not sticking out or detracting from the value of these properties.

Place Making – The existing facility is connected to a local multi-use trail system within the development which will continue to expand with neighboring developments. The business has sourced locally when possible and become a local west-end hang out for those that live in the west end of Billings. The proposed zone change will only enhance the ability of the business to a permanent staple for residents in the area to frequent, making it a permanent neighborhood hangout.

Community Fabric – The existing facility was built with the landscape and heritage of Billings in mind with a barn style look and unique landscaping to ensure the building fit the area and neighborhood. The facility offers indoor and outdoor dining and entertainment experiences during operational hours which align with the desires of local residents, particularly during the summer with an open patio and yard games. The business has catered to locals and neighboring residents to build a strong following as evidence by the waiting lines to get in on most evenings. The proposed zone change will not change or modify the building it would only allow the business to better meet the growing demands and requests of its customers and local residents.

Strong Neighborhoods – The existing facility and business provides for the foundation of a strong neighborhood with community services and a walkable place to dine and find entertainment. The surrounding neighborhoods have benefited from having dining and entertainment establishments within the area, reducing the need to travel into town for the same service. The facility is walkable for five neighboring residential developments, hitting a core tenant of strong neighborhoods. The proposed zone change will not change but only enhance the services and choices for the neighborhood.

Home Base – Although the existing business and facility does not provide housing options it does facilitate further development in the area by providing necessary neighborhood services and entertainment. The business serves as the local hangout and restaurant for many in the surrounding neighborhoods. The proposed zone change would allow for a full-beverage service to better meet the demands and accommodate the neighbors in the area.

Mobility and Access – The business and facility is connected to sidewalks and trails within its development and is fully bikeable and walkable for the neighboring developments. Bike racks are prominently placed in the facility to encourage different modes of transportation to visit the facility. All efforts have been made to encourage outdoors experience and different transportation to visit the facility. The proposed zone change does not change anything to impact, positive or negative, the access and encouragement of alternative transportation methods to the site. No changes to the site layout or building are requested or planned.

Prosperity – The facility and business have provided local jobs that vary from brewmaster and chef to server and facility maintenance which supports the City overall. Additionally, the investment has created a large taxable business on a previously undeveloped tract which helps support the City budget and revenue. The business currently creates a foundation for additional business attraction to the current development by bringing a large customer base to the area. The proposed zone change only further enhances the applicant's ability to serve the existing client base through the expansion of a full-beverage license.

2. Explain how the application meets the 10 statutory criteria for a zone change.

- 1 – The new zoning does not in fact change the existing base zoning of the area nor does it change the type of business or operation able to locate at the site. The PD change request specifically allows for use of a full-beverage license in the existing building. There can still be no gaming on the site and no additional changes are being requested.
- 2 – The new zoning does not in fact change the existing base zoning nor does it change the existing construction on the lot. The site has been built out to be secure from fire and other dangers and previously approved by the Billings Fire Department.
- 3 – The new zoning does not change the existing facility, layout or site as it is constructed. The proposed changes could allow for a change in hours of operation but no change will occur to the site or facilities. The business will continue to provide diversity in jobs, services, and entertainment which benefit the general welfare of the City.
- 4 – The new zoning does not in fact change the base zoning nor will the proposed change facilitate a physical change to the existing facility. With that all said, the existing site facilitates adequate provision for transportation, public utilities, parks and schools. No change will result from the proposed zone change.
- 5 – The new zoning does not in fact change the base zoning nor will the proposed change facilitate a physical change to the existing facility. The existing building and operations meets all current City of Billings zoning regulations and codes to facilitate proper light and air for the surrounding area.
- 6 – The new zoning does not in fact change the base zoning nor will the proposed change facilitate a physical change to the site or transportation networks of the area. The zone change will only allow for the business to better meet the needs and demands of the customer base and residents in the area.
- 7 – The new zoning does not in fact change the base zoning but only allows for full-beverage services under a liquor license. The existing facility has helped facilitate a growing area in our community by providing necessary food, beverage and entertainment services which were not available to the area before. These services are necessary in urban growth of our community

and the continued development of the Billings West End. The proposed change will allow the business to continue to meet the needs and requirements of the customer base while adding value to the neighborhood.

- 8 – The new zoning does not in fact change the base zoning which was already in place and deemed suitable for the particular uses in place and facility constructed. The proposed change will only allow for full-beverage service under a liquor license and will not allow for gaming on the site. There will be minimal to no net change realized by the surrounding properties.
- 9 – The new zoning does not in fact change the base zoning nor will it change the existing building on the lot. The proposed zoning will only allow for expanded full beverage service. The existing building was built with the character of the West End in mind with a nod to our agricultural heritage. The building is very aesthetically pleasing, maintained and landscaped to fit and add value to the surrounding area.
- 10 – The new zoning will certainly encourage the most appropriate use of land in Billings. The proposed change will not create a physical change to the existing site, only allowing for expansion of full beverage service, therefore preserving and enhancing an existing successful business.

3. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.

The proposed zoning currently allows the restaurant and taproom facility to sell beer and wine, along with their cabaret license that allows the sale of beer and wine. The proposed zone change would allow for full-beverage service within the existing facility, which it is incapable of doing with the current PD for the lot. Since the current facility is already operational and has been for over a year, the change in zoning will not negatively impact the surrounding area and will provide more opportunities for entertainment for the neighboring residents. No physical changes are being proposed for the site or the building currently housing Diamond X Beer Company. The proposed changes still does not allow for gaming to be located in the facility or on the lot.

Pre-Application Statement of Owner(s) or Agent(s)

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a completed zone change application packet, including any required fees, for a zone change to be processed by the Planning Division.

1. **Present Zoning:** Planned Development Neighborhood Commercial with one (1) brewery/taproom and one (1) cabaret license.

2. **Written description of the Zone Change Plan** including a square footage or acres of proposed new zoning: The zoning proposal will change 1.5 acres of developed land, with a restaurant located on the lot with one(1) brewery/taproom and one (1) cabaret license to also include one (1) full liquor license.

3. **Subject Property Map:** See Attachments

4. **Legal Description of Property:** MK Sub, Second Filing, S31, T01 N, R25 E, Block 1, Lot 3

5. **Neighborhood Task Force:** West End Task Force comments not received as of submittal

6. **Roster of persons who attended the pre-application neighborhood meeting:** See Attachments

7. **A copy of the meeting notice:** See Attachments

8. **A brief synopsis of the meeting results:** See Attachments

9. **The undersigned affirm the following:**

- 1) The pre-application neighborhood meeting was held on the 22nd, day of March, 2023.
- 2) The zone change application is based on materials presented at the meeting.

Owner (s): Arrowhead Investment Corporation Telephone: 406-855-6884

Address: 115 N Broadway, Suite 200 Email: tyschmechel@gmail.com

Billings, MT 59101

Agent (s): Scott Aspenlieder Telephone: 406-384-0080

Address: 608 N 29th Street Email: scott@performance-ec.com

Billings, MT 59101



608 North 29th Street, • Billings, MT 59101 • (406) 384-0080

March 13, 2022

Dear Interested West-End Neighbor:

On behalf of Arrowhead Investment Corporation, Performance Engineering, LLC, is writing to inform you of a zoning pre-application neighborhood meeting being held on **Wednesday, March 22nd**, at **6:00 p.m.** at **Grace Montessori Academy** located at **4809 Grand Avenue in Billings**. The meeting is being held to discuss a modification to the zoning criteria of a neighboring property. You are receiving this notification as your property is located within 600-ft of the proposed zoning modification as required by the County Zoning Code. The owner is requesting that the property shown on the attached exhibit and described below be re-zoned to accommodate future development:

Block 1 of Lot 3 of the MK Subdivision 2nd Filing in Section 31, Township 1 North, Range 25 East in Yellowstone County totaling 1.5 acres.

The intent of the meeting is to make neighboring property owners aware of the proposed zoning change for the subject property and to answer questions about the project. The property is currently zoned as **Planned Development Neighborhood Commercial (PD-NC)** with the exception of the allowance of one (1) microbrewery/taproom and one (1) cabaret license. The zoning proposal to be presented to Yellowstone County will be to maintain the zoning of the land described above as **Planned Development Neighborhood Commercial (PD-NC)** with the exception of the allowance of one (1) microbrewery/taproom, one (1) cabaret license and one (1) full liquor license. A total of 1.5 acres is included in the proposed zoning criteria modification. Below is the definition for **Neighborhood Commercial (NC)** zoning as stated in the *Unified Zoning Regulations* for Yellowstone County.

"Neighborhood Commercial (NC): A zone for commercial centers and limited retail activities conducted in a unified development designed to serve the surrounding neighborhood with shopping facilities consisting of convenience retail and personal service establishments which secure their principal trade by supplying the daily needs of the neighboring population. Only uses serving the above purpose without undue detriment to surrounding residences should be permitted."

By way of a Planned Development, the existing **Planned Development Neighborhood Commercial (PD-NC)** zoning will be modified to allow one (1) microbrewery/taproom, one (1) cabaret license and one (1) full liquor license.

Performance Engineering, LLC acting as representatives for the owners will be present at the meeting to answer questions from those who attend. For those unable to attend the meeting, written letters can be directed to Performance Engineering at 608 N 29th Street, Billings, MT 59101, attention Scott Aspenlieder, or emails may be sent to scott@performance-ec.com. We look forward to discussing the proposed zoning modification with you and hope to see you on March 22nd.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Aspenlieder'.

Scott Aspenlieder, P.E.
Principal



PERFORMANCE ENGINEERING

Diamond X PUD Zone Change Neighborhood Meeting

Wednesday, March 22, 2023

[illegible]

Return to:
City Clerk
City of Billings
PO Box 1178
Billings, MT 59101

PLANNED DEVELOPMENT AGREEMENT
LOTS 1-3, BLOCK 1, MK SUBDIVISION, SECOND FILING IN
THE CITY OF BILLINGS, MONTANA

THIS AGREEMENT is made and entered into this ____ day of _____, 2023, by and between **Arrowhead Investment Corporation**, whose address for the purpose of this agreement is 115 North Broadway, Suite 200, Billings, MT 59101, hereinafter referred to as "Owner," and **City of Billings**, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the Owner owns approximately 3.6 acres of real property in Billings, Montana specifically described as Lots 1-3, Block 1 of the MK Subdivision, Second Filing. The foregoing property shall be known as "Hawk Creek Planned Development," or a related name that may be assigned later.

WHEREAS, the Hawk Creek Planned Development will consist of a mixture of commercial, retail, professional, medical and related uses.

WHEREAS, the Owner desires to place certain building and use restrictions on the property, specify certain land uses, and create a pattern of development that promotes community service, economic activity, convenience, and amenity for the Hawk Creek Planned Development and surrounding neighborhoods.

WHEREAS, the aforesaid Owner and the City desire to ensure the Hawk Creek Planned Development will be developed and maintained consistent with the standards described in this agreement.

THEREFORE, the undersigned hereby establish and declare the following plan for the Hawk Creek Planned Development as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

AGREEMENT

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporations, or other entities, who shall hereafter acquire any interest in and to the above described property, in whole, or in part, shall be taken and held to agree, to conform to, and observe the following land uses, restrictions, and other stipulations as to the use thereof, and as the construction of improvements thereon.

II. LAND USES AND BUILDING RESTRICTIONS

Unless expressly designated below, all other standards or requirements of the Zoning Regulations for the City of Billings shall be followed for the type of use within each of the areas described herein.

A. Restricted Uses for Underlying City Zone: Neighborhood Commercial – NC

No land may be used for purposes that include gaming (casinos) or adult entertainment or sexually oriented businesses. No variances or special review approvals may be requested or granted for those businesses.

All allowed land uses as outlined within the City of Billings Zoning regulations for the underlying zone shall be allowed within the Planned Development, with the following exceptions:

Exceptions (uses not allowed):

Division A: Agriculture, Forestry, and Fishing

Group 07 – Agricultural Services

- Veterinary services for Animal specialties – Outpatient Only

Division B: Mining

- Construction sand and gravel mining (1442)

Division D: Manufacturing

Group 20 – Food and Kindred Products

- All sub-groups except offices

Division E: Transportation, Communications, Electric, Gas and Sanitary Sewer

Group 46 – Pipelines, except natural gas

Group 48 – Communications

- All uses except offices

Group 48 – Commercial Antenna Support Structures

Group 49 – Electric, Gas, and Sanitary Services

- Transmission and distribution, electric and gas

Division G: Retail Trade

Group 54 – Food Stores

- Convenience Store with Gas Pump Islands

Group 55 – Automotive Dealers and Gasoline Service Stations

- All uses

Division I: Services

Group 70 – Hotels, Rooming Houses, Camps, and Other Lodging Places

- Rooming, boarding houses; organization hotels and lodging houses, on a membership basis (702, 704)

Group 72 – Personal Services

- Coin-operated laundries and dry cleaning (7215)
- Funeral service and crematories (726)

Group 75 – Automotive Repair, Services, & Parking

- Automobile parking (752)

Division K: Non-Classifiable Establishments

Dwellings – Modular Homes

Allowances:

The subject property shall be allowed use of one (1) full beverage liquor license and one (1) brewing/taproom license. Subsequent subdivision of the subject parcel shall not increase the number of licenses allow for use within the Planned Development.

III. OPERATIONAL RESTRICTIONS – Alcoholic Beverage Manufacturing and Full Beverage Liquor License

The Developer and City recognize the sensitive location of the Hawk Creek Planned Development and the need to include specific operational restrictions and site requirements not normally required for the uses listed above.

A. Developer Agrees to the Following:

- a. Any outdoor seating areas associated with the brewing/taproom or full beverage liquor license operations shall be located on either the east, west or south elevations of the structures. Under no circumstances shall seating areas with either taproom or full beverage liquor license operation be located off the north elevation of the structure(s).

- b. Any seating area outside of any enclosed building for use by the patrons of the alcoholic beverage manufacturer or full beverage liquor license operation shall have a fence installed at least 42-inches in height enclosing the outdoor area. There shall be no entry to the outdoor seating area for patrons except through the operating building.
- c. Any music or entertainment, including any permanent or temporary speakers, outside of an enclosed building shall only be installed/located along the western or southern elevations of the structure.
- d. Operating hours for the taproom and full beverage liquor license shall be dictated by Montana State Law outlined in the MCA 16.3.2 and MCA 16.4.1, respectively.

IV. SIGNAGE AND LIGHTING

The intent of signage and lighting design regulation is to encourage the use of signage and lighting as a design component to enhance buildings, landscaping, or other site features while not detracting from the aesthetics of adjacent neighborhoods. Developers should encourage night sky's visibility to reduce the general illumination of the sky in the surrounding area. Design elements should reduce horizontal light glare and vertical light trespass from a development site onto adjacent parcels. Developers should encourage the judicious use of lighting in conjunction with other security methods to increase site safety.

A. Signage

- a. Signage should be provided in accordance with the PDA, with the intent to compliment the pedestrian-oriented environment. The signage requirements included in Article 27-700 of the 2021 Archived Zoning Regulations and any subsequent amendments thereto shall govern the regulation of signage in Hawk Creek Planned Development so far as they are not inconsistent with the Planned Development Agreement and the below standards.
- b. All signs shall comply with the design guidelines below:
 - i. All signs, except for neighborhood identification signs, shall be placed flat against a building or designed as part of an architectural feature thereof.
 - ii. No electronic message displays or signs are allowed.
 - iii. No neon signs are allowed.
 - iv. No balloon signs as defined by the 2021 Archived Zoning Code are allowed.
 - v. No string of pennants, flags, or other similar types of non-informative non-holiday decorations are allowed.
 - vi. One (1) free-standing sign is allowed indicating the name and/or nature of the occupancy for each developed parcel/tenant. Signs may not exceed fifteen (15) feet in height and fifteen (15) feet in width.

- vii. No rooftop signs are allowed.

B. Exterior Lighting

- a. Developers shall provide adequate lighting levels in all areas used by pedestrians or automobiles, including building entries, walkways, parking areas, and circulations areas.
- b. All exterior lighting must be installed or shielded to minimize light intrusion into residential units in adjacent neighborhoods.
 - i. All outdoor pole lighting shall be fully shielded and mounted at heights no greater than fifteen (15) feet above grade.
 - ii. All outdoor lighting, except street lighting, shall be aimed or shielded so as to minimize stray light trespassing across property boundaries.

V. LANDSCAPING REQUIREMENTS

All landscaping and performance standards as outlined within section 27-1101 of the 2021 Archived Zoning ordinance shall be followed as required within the underlying City zone. Additionally, all development must comply with the requirements outlined in this Section of the Planned Development.

A. General Landscape Area Requirements

- a. A palette of regionally appropriate drought and climate tolerant plant materials is required to be used.
- b. The use of drip irrigation and/or other irrigation systems is required.
- c. All development should create a pedestrian-friendly environment on the street and connect to adjacent developments as identified in the conceptual master plan.
- d. A variation of elements should be provided along public frontage; no less than two (2) types of trees may be used in a single development lot.
- e. One (1) 2-inch tree is required per 2,000 sf of total landscape area per development lot or parcel.
- f. One (1) large shrub (mature height over three feet) is required for every 500 sf of total landscape area per development lot or parcel.
- g. Trees and shrubs should be grouped for aesthetic and irrigation purposes.
- h. Lawn must have a minimum width of six (6) feet.
- i. Plant materials must be maintained and dead plants must be replaced in a timely manner.

B. Landscaped Green Belt Improvements

- a. A minimum 25-foot landscaped green belt, which may be incorporated into any required building setbacks, shall be landscaped and maintained along the northern property boundary.
- b. Developers shall be responsible for installation and maintenance of the landscaped green belts in accordance with Section V.A of this document.

- c. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt or the setback.
- d. All improvements shall comply with The City of Billings and Yellowstone County's clear vision standards.

C. Parking Lot Landscaping

- a. All parking lot landscaping may be included as part of the landscaped area as calculated in Section V.A of this document.
- b. Trees shall be planted and incorporated into parking lot layouts at a density of one (1) 2-inch tree for every sixteen (16) parking spots.

VI. SITE LAYOUT AND ORIENTATION

All development must comply with the site layout and orientation requirements outlined in this Section of the Planned Development.

A. Building Requirements

- a. Buildings shall be located in the south two-thirds of the lot allowing for parking or green space on the north third of the lot.
- b. Buildings can be located directly against sidewalk with no front lot setback requirements.
- c. Sidewalks shall be a minimum of 5-feet wide and a minimum of 7-feet wide when directly adjacent to parking areas.
- d. Building height shall be no greater than 34-feet from grade.
- e. No more than fifty (50) percent lot coverage is allowed by the building.
- f. Buildings containing the use of either a brewery/taproom or full-beverage license shall be designed with a likeness to traditional agricultural structures in both elevation and profile views.
- g. All dumpsters shall be contained within a privacy fence that aligns the architecture features of the building.
- h. All development shall provide for bike parking and non-motorized accessibility.

B. Parking Requirements

- a. Parking shall be provided at a one (1) parking spot for every 200-square-feet of building.
- b. Reciprocal parking access shall be provided for all businesses within the development.
- c. Parking lots must be a minimum of 30-feet from the northern boundary with the landscaped green belt counting towards the setback requirement.
- d. Bike parking shall be provided at a one (1) parking spot for every 2,000-square-feet of building with a minimum of two (2) spaces for each building.

VII. MODIFICATION OF THE APPROVED PLANNED DEVELOPMENT

Any modification of the approved development plan shall be processed using the same procedures for a new application, as set forth in the City of Billings Zoning regulations (2021 et seq). However, minor modifications may be approved by the zoning coordinator if he/she makes the following findings through administrative relief:

No change in the overall character of the development;

No increase in the number of residential units greater than two (2) percent;

No additional allowed uses;

No reduction in open space greater than two (2) percent; and

No change in the approved minimum setbacks, maximum lot coverage or maximum allowed height.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“OWNER”

Ty Schmechel

By: _____

**Arrowhead Investments Corporation
Managing Member**

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of **Ty Schmechel, Managing Member of Arrowhead Investments Corporation** who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 20__.

“CITY”

CITY OF BILLINGS, MONTANA

Mayor

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the Mayor of the City of Billings, Montana, whose name are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

EXHIBIT A

Return to:
City Clerk
City of Billings
PO Box 1178
Billings, MT 59101

**PLANNED DEVELOPMENT AGREEMENT
LOT 4, BLOCK 1, MK SUBDIVISION IN THE CITY OF
BILLINGS, MONTANA**

THIS AGREEMENT is made and entered into this 14th day of January, 2018, by and between MYK Enterprises, LLC, whose address for the purpose of this agreement is 218 Brookshire Blvd Unit 2, Billings, MT 59102, hereinafter referred to as "Owner," and City of Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the Owner owns approximately 3.6 acres of real property in Billings, Montana specifically described as Lot 4, Block 1 of the MK Subdivision. The foregoing property shall be known as "Hawk Creek Planned Development," or a related name that may be assigned later.

WHEREAS, the Hawk Creek Planned Development will consist of a mixture of commercial, retail, professional, medical and related uses.

WHEREAS, the Owner desires to place certain building and use restrictions on the property, specify certain land uses, and create a pattern of development that promotes community service, economic activity, convenience, and amenity for the Hawk Creek Planned Development and surrounding neighborhoods.

WHEREAS, the aforesaid Owner and the County desire to ensure the Hawk Creek Planned Development will be developed and maintained consistent with the standards described in this agreement.

THEREFORE, the undersigned hereby establish and declare the following plan for the Hawk Creek Planned Development as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

AGREEMENT

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporations, or other entities, who shall hereafter acquire any interest in and to the above described property, in whole, or in part, shall be taken and held to agree, to conform to, and observe the following land uses, restrictions, and other stipulations as to the use thereof, and as the construction of improvements thereon.

II. LAND USES AND BUILDING RESTRICTIONS

Unless expressly designated below, all other standards or requirements of the Zoning Regulations for the City of Billings shall be followed for the type of use within each of the areas described herein.

A. Restricted Uses for Underlying City Zone: Neighborhood Commercial – NC

No land may be used for purposes that include gaming (casinos) or adult entertainment or sexually oriented businesses. No variances or special review approvals may be requested or granted for those businesses.

All allowed land uses as outlined within the City of Billings Zoning regulations for the underlying zone shall be allowed within the Planned Development, with the following exceptions:

Exceptions (uses not allowed):

Division A: Agriculture, Forestry, and Fishing

Group 07 – Agricultural Services

- Veterinary services for Animal specialties – Outpatient Only

Division B: Mining

- Construction sand and gravel mining (1442)

Division D: Manufacturing

Group 20 – Food and Kindred Products

- All sub-groups except offices

Division E: Transportation, Communications, Electric, Gas and Sanitary Sewer

Group 46 – Pipelines, except natural gas

Group 48 – Communications

- All uses except offices

Group 48 – Commercial Antenna Support Structures

Group 49 – Electric, Gas, and Sanitary Services

- Transmission and distribution, electric and gas

Division G: Retail Trade

Group 54 – Food Stores

- Convenience Store with Gas Pump Islands

Group 55 – Automotive Dealers and Gasoline Service Stations

- All uses

Division I: Services

Group 70 – Hotels, Rooming Houses, Camps, and Other Lodging Places

- Rooming, boarding houses; organization hotels and lodging houses, on a membership basis (702, 704)

Group 72 – Personal Services

- Coin-operated laundries and dry cleaning (7215)
- Funeral service and crematories (726)

Group 75 – Automotive Repair, Services, & Parking

- Automobile parking (752)

Division K: Non-Classifiable Establishments

Dwellings – Modular Homes

Allowances:

The subject property shall be allowed use of one (1) cabaret license and one (1) brewing/taproom license. Subsequent subdivision of the subject parcel shall not increase the number of licenses allow for use within the Planned Development.

III. OPERATIONAL RESTRICTIONS – Alcoholic Beverage Manufacturing and Cabaret License

The Developer and City recognize the sensitive location of the Hawk Creek Planned Development and the need to include specific operational restrictions and site requirements not normally required for the uses listed above.

A. Developer Agrees to the Following:

- a. Any outdoor seating areas associated with the brewing/taproom or cabaret operations shall be located on either the east, west or south elevations of the structures. Under no circumstances shall seating areas with either taproom or cabaret operation be located off of the north elevation of the structure(s).
- b. Any seating area outside of any enclosed building for use by the patrons of the alcoholic beverage manufacturer or cabaret operation shall have a fence installed at least 42-inches in height enclosing the outdoor area. There shall be no entry to the outdoor seating area for patrons except through the operating building.

- c. Any music or entertainment, including any permanent or temporary speakers, outside of an enclosed building shall only be installed/located along the western or southern elevations of the structure.
- d. Any outdoor activities associated with operation of the facilities shall cease by 9 pm.
- e. Operating hours for the taproom and cabaret license shall be dictated by Montana State Law outlined in the MCA 16.3.2 and MCA 16.4.1, respectively.

IV. SIGNAGE AND LIGHTING

The intent of signage and lighting design regulation is to encourage the use of signage and lighting as a design component to enhance buildings, landscaping, or other site features while not detracting from the aesthetics of adjacent neighborhoods. Developers should encourage night sky's visibility to reduce the general illumination of the sky in the surrounding area. Design elements should reduce horizontal light glare and vertical light trespass from a development site onto adjacent parcels. Developers should encourage the judicious use of lighting in conjunction with other security methods to increase site safety.

A. Signage

- a. Signage should be provided in accordance with the PDA, with the intent to compliment the pedestrian-oriented environment. The signage requirements included in Article 27-700 of the United Zoning Regulations and any subsequent amendments thereto shall govern the regulation of signage in Hawk Creek Planned Development so far as they are not inconsistent with the Planned Development Agreement and the below standards.
- b. All signs shall comply with the design guidelines below:
 - i. All signs, except for neighborhood identification signs, shall be placed flat against a building or designed as part of an architectural feature thereof.
 - ii. No electronic message displays or signs are allowed.
 - iii. No neon signs are allowed.
 - iv. No balloon signs as defined by the City of Billings Code are allowed.
 - v. No string of pennants, flags, or other similar types of non-informative non-holiday decorations are allowed.
 - vi. One (1) free-standing sign is allowed indicating the name and/or nature of the occupancy for each developed parcel/tenant. Signs may not exceed fifteen (15) feet in height and fifteen (15) feet in width.
 - vii. No rooftop signs are allowed.

B. Exterior Lighting

- a. Developers shall provide adequate lighting levels in all areas used by pedestrians or automobiles, including building entries, walkways, parking areas, and circulations areas.
- b. All exterior lighting must be installed or shielded to minimize light intrusion into residential units in adjacent neighborhoods.
 - i. All outdoor pole lighting shall be fully shielded and mounted at heights no greater than fifteen (15) feet above grade.
 - ii. All outdoor lighting, except street lighting, shall be aimed or shielded so as to minimize stray light trespassing across property boundaries.

V. LANDSCAPING REQUIREMENTS

All landscaping and performance standards as outlined within section 27-1101 of the City of Billings Zoning ordinance shall be followed as required within the underlying City zone. Additionally, all development must comply with the requirements outlined in this Section of the Planned Development.

A. General Landscape Area Requirements

- a. A palette of regionally appropriate drought and climate tolerant plant materials is required to be used.
- b. The use of drip irrigation and/or other irrigation systems is required.
- c. All development should create a pedestrian-friendly environment on the street and connect to adjacent developments as identified in the conceptual master plan.
- d. A variation of elements should be provided along public frontage; no less than two (2) types of trees may be used in a single development lot.
- e. One (1) 2-inch tree is required per 2,000 sf of total landscape area per development lot or parcel.
- f. One (1) large shrub (mature height over three feet) is required for every 500 sf of total landscape area per development lot or parcel.
- g. Trees and shrubs should be grouped for aesthetic and irrigation purposes.
- h. Lawn must have a minimum width of six (6) feet.
- i. Plant materials must be maintained and dead plants must be replaced in a timely manner.

B. Landscaped Green Belt Improvements

- a. A minimum 25-foot landscaped green belt, which may be incorporated into any required building setbacks, shall be landscaped and maintained along the northern property boundary.
- b. Developers shall be responsible for installation and maintenance of the landscaped green belts in accordance with Section V.A of this document.

- c. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt or the setback.
- d. All improvements shall comply with The City of Billings and Yellowstone County's clear vision standards.

C. Parking Lot Landscaping

- a. All parking lot landscaping may be included as part of the landscaped area as calculated in Section V.A of this document.
- b. Trees shall be planted and incorporated into parking lot layouts at a density of one (1) 2-inch tree for every sixteen (16) parking spots.

VI. SITE LAYOUT AND ORIENTATION

All development must comply with the site layout and orientation requirements outlined in this Section of the Planned Development.

A. Building Requirements

- a. Buildings shall be located in the south two-thirds of the lot allowing for parking or green space on the north third of the lot.
- b. Buildings can be located directly against sidewalk with no front lot setback requirements.
- c. Sidewalks shall be a minimum of 5-feet wide and a minimum of 7-feet wide when directly adjacent to parking areas.
- d. Building height shall be no greater than 34-feet from grade.
- e. No more than fifty (50) percent lot coverage is allowed by the building.
- f. Buildings containing the use of either a brewery/taproom or cabaret license shall be designed with a likeness to traditional agricultural structures in both elevation and profile views.
- g. All dumpsters shall be contained within a privacy fence that aligns the architecture features of the building.
- h. All development shall provide for bike parking and non-motorized accessibility.

B. Parking Requirements

- a. Parking shall be provided at a one (1) parking spot for every 200-square-foot of building.
- b. Reciprocal parking access shall be provided for all businesses within the development.
- c. Parking lots must be a minimum of 30-feet from the northern boundary with the landscaped green belt counting towards the setback requirement.
- d. Bike parking shall be provided at a one (1) parking spot for every 2,000-square-foot of building with a minimum of two (2) spaces for each building.

VII. MODIFICATION OF THE APPROVED PLANNED DEVELOPMENT

Any modification of the approved development plan shall be processed using the same procedures for a new application, as set forth in the City of Billings Zoning regulations. However, minor modifications may be approved by the zoning coordinator if he/she makes the following findings:

No change in the overall character of the development;

No increase in the number of residential units greater than two (2) percent;

No additional allowed uses;

No reduction in open space greater than two (2) percent; and

No change in the approved minimum setbacks, maximum lot coverage or maximum allowed height.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"OWNER"

Patricia Kramer

By: Patricia Kramer

MYK Enterprises, LLC
Managing Member

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 21st day of December, 2019, before me, a Notary Public in and for the State of Montana, personally appeared Patricia Kramer known to me to be the Managing Member of Patricia Kramer, Managing Member of MYK Enterprises, LLC who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Vickie Tiry
Notary Public in and for the State of Montana
Printed Name: Vickie Tiry
Residing at: Laurel, Montana
My commission expires: 1/30/2020

This agreement is hereby approved and accepted by the City of Billings, this 14th day of January, 2019

"CITY"

CITY OF BILLINGS, MONTANA

Mayor

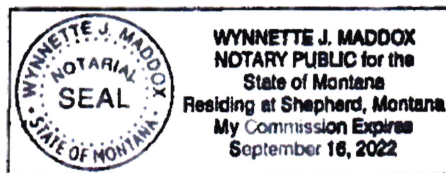
BY: William A. Cole
William A. Cole, Mayor

Attest:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 14th day of January, 2019, before me, a Notary Public in and for the State of Montana, personally appeared William A. Cole known to me to be the Mayor of the City of Billings, Montana, whose name are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.



Wynnette J. Maddox
Notary Public in and for the State of Montana
Printed Name: Wynnette J. Maddox
Residing at: Shepherd MT
My commission expires: 9.16.2022