



**CITY ZONING COMMISSION**  
**AGENDA-Tuesday, July 7, 2015, 4:30 p.m.**  
**Miller Building, 1<sup>st</sup> Floor Conference Room**  
**2825 3<sup>rd</sup> Avenue North, Billings, Montana**

NOTICE TO THE PUBLIC

Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

**Call the meeting to order.**

**Introduction of City Zoning Commission Members and Planning Department Staff.**

**Public Comment**

**Approval of Minutes: June 2, 2015**

**Disclosure of any Conflict of Interest-Members of the Commission and Staff**

**Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff**

**a.The Exparté Communication Binder is available at the Sign-In and Agenda Station.**

**Regular Business:**

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:

**Public Hearings:**

- a. **Item #1; Return Item - City Special Review #927 – 4020 Montana Sapphire Drive (aka 920 Shiloh Road)** – A special review request to locate an all beverage liquor license without gaming in a proposed new 4,125 square foot restaurant, The Divide Restaurant and Bar, an outdoor patio of 1,500 square feet, a parking lot with 56 spaces and landscaping in a Highway Commercial (HC) zone on Lot 7, Block 1 of Montana Sapphire Subdivision, a 1.69 acre parcel of land. The City Council allowed the applicant to withdraw on May 26, 2015, to re-design the site to meet minimum off-street parking requirements.
  
- b. **Item #2 - City Zone Change #935 – 741 S 24<sup>th</sup> St West** – A zone change request from Residential Professional (RP) to Neighborhood Commercial (NC) on Lot 9A, Block 2, Justiss Subdivision. A 13,706 square foot parcel of land. The applicant conducted a pre-application neighborhood meeting on May 21, 2015, at the Hilton Garden Inn at 939 S 25<sup>th</sup> St West. Property Tax ID: C01676.
  
- c. **Item #3 - City Zone Change #936 – 1545 Hawthorne Lane** – A zone change request from Residential 5,000 (R-50) to Residential Multi-Family-Restricted (RMF-R) on Lot 11, Block 1, of Caleb Park Subdivision, a 2.137 acre parcel of land. The applicant conducted a pre-application neighborhood meeting on April 7, 2015, at Lake Elmo State Park, 2300 Lake Elmo Road. Tax ID: D05362.
  
- d. **Item #4 - City Zone Change #937 – 100 Emerald Drive** – A City Council initiated zone change from Residential 9,600 (R-96) to Residential Professional (RP) on C/S 604 & Tract 2 of C/S 356 a 35,719 square foot parcel of land. The Council initiated the zone change on June 8, 2015 to correct a misclassification of the commercial property made at the time of annexation in June 1974. Tax ID: D05590.

### **Other Business/Announcements**

**1. The next City Zoning Commission meeting is scheduled for Tuesday, July 7, 2015.**

### **Adjournment**

**The City Council** has designated **Monday, July 27, 2015**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the special review uses.

Before taking any action on an application for a **zone change**, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a zone change other than the one advertised. The City Council shall take one of the following actions on the zone change requests: 1) approve the application; 2) deny the application; 3) allow withdrawal of the application; or 4) delay the application for a period not to exceed thirty (30) days.

As provided in Montana Code Annotated, Section 76-2-305(2), in the event of a protest petition against such **zone change** signed by the owners of twenty-five (25) percent or more of: (1) the area of the lots

included in any proposed change; or (2) those lots or units, as defined in MCA 70-23-102, **one hundred fifty (150) feet from a lot included in a proposed change**, such proposed amendment shall not become effective except by the favorable vote of two-thirds ( 2/3) of the present and voting members of the city council. For purposes of this protest provision interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located. The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change or by the presiding officer of the association of unit owners. The protest petition must be received in the Planning Division office by 5:00 p.m. on the Friday preceding (July 24, 2015) the first reading of the amendment by the City Council.

The Zoning Commission and City Council will hear all persons wishing to speak relative to the proposed special review and zone change. Testimony regarding the above mentioned items may also be submitted in writing to the Planning Division, 2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor, Miller Building, Billings, MT 59101 (247-8676) or to the Mayor and City Council, P.O. Box 1178, Billings, MT 59103.

The Zoning Commission and City Council will hear all persons wishing to speak relative to the proposed special review uses. Testimony regarding the above mentioned items may also be submitted in writing to the Planning Division, 2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor, Miller Building, Billings, MT 59101 (247-8676) or to the Mayor and City Council, P.O. Box 1178, Billings, MT 59103.

Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Tammy Deines, Planning Clerk, at 247-8610 or e-mail at [deinest@ci.billings.mt.us](mailto:deinest@ci.billings.mt.us)

**City Zoning Commission**

**Meeting Date:** 07/07/2015

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**Information**

**Subject**

**Approval of Minutes: June 2, 2015**

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**Attachments**

2015\_07\_07\_BZC\_Minutes

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**City of Billings Zoning Commission  
Meeting Minutes- June 2, 2015**

**The City of Billings Zoning Commission met on Tuesday, June 2, 2015 in the Miller Building 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana**

Chairman Leonard Daily called the meeting to order at 4:30 p.m. The City Council has designated **Monday, June 22, 2015**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

<b>Commission and Staff</b>		<b>01/06/2015</b>	<b>02/03/2015</b>	<b>03/03/2015</b>	<b>04/07/2015</b>	<b>05/05/2015</b>	<b>06/02/2015</b>	<b>07/07/2015</b>	<b>08/04/2015</b>	<b>09/08/2015</b>	<b>10/06/2015</b>	<b>11/10/2015</b>	<b>12/01/2015</b>
Leonard Dailey, Jr.	Chairman	1	1	1		1	1						
Barbara Hawkins	Commissioner	1	1	1		1	1						
Dan Wagner	Vice Chairman	1	1	1		E	1						
Dennis Ulvestad	Commissioner	1	E	1		1	1						
Mike Boyett	Commissioner	1	1	1		1	E						
Candi Millar	Director, Planning & Community Services	-	-	-		--	-	-	-	-	-	-	-
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1		1	1	1	1	1	1	-	-
Tammy Deines	Planning Clerk	1	1	1		-	1	1	-	1	1	-	-
Wyeth Friday	Planning Division Manager	-	-	-		-	-	-	-	-	-	-	-
Juliet Spalding	Planner II	-	-	-		-	-	-	-	-	-	-	-
Lora Mattox	Planner II	-	-	-		-	-	-	-	-	-	-	-
Karen Husman	Planning Assistant	-	-	-			-	-		-	-	-	-
Jeanette Vieg	Receptionist					1							

Total Number of 2015 Applications	01/06/2015	02/03/2015	03/03/2015	04/07/2015	05/05/2015	06/02/2015	07/07/2015	08/04/2015	09/08/2015	10/06/2015	11/10/2015	12/01/2015	TOTAL
Zone Change	2	2	2	0	0								6
Special Review	1	1	3	0	3								8

Chairman Dailey introduced the Planning Department Staff and Commission: Nicole Cromwell, Zoning Coordinator; and Tammy Deines, Planning Clerk

**Others in Attendance:** Carrie and Chuck Wissenbach; Tim Ballou; Nick Pancheau; Jonathan Boll; Ron Kesler; Alex Tommerup, AT Architecture; Jeff Kanning

**Public Comment**

Chairman Dailey called for public comments. There were no public comments. Chairman Dailey closed the public comment portion of the meeting.

**Approval of Minutes: March 3, 2015**

Chairman Dailey called for approval of the March 3, 2015 meeting minutes.

**Motion**

**Leonard Dailey made a motion and Dennis Ulvestad seconded the motion to approve the March 3, 2015 meeting minutes as submitted.**

**The motion carried with a unanimous voice vote.**

**Disclosure of Conflict of Interest**

Chairman Dailey called for disclosures of conflict of interest. There was none.

**Disclosure of Outside Communication**

Chairman Dailey called for disclosure of ex parte communication. There was none

**Public Hearings:**

Chairman Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and asked Ms. Cromwell to open the next agenda item

**Item #1: City Special Review #928 – 770 King Park Drive – Lucky Lil’s – Beer & Wine License with gaming** – A special review request to locate an all beverage liquor license with gaming (Lucky Lil’s) in a remodeled structure (formerly Del Taco), a 2,164 square foot building with a 403 square foot outdoor patio, and an existing 37-stall parking

lot with landscaping in an Controlled Industrial (CI) zone on the north half of Lot 4A, Block 1 King Park Subdivision a 79,524 square foot parcel of land. Tax ID: A24694.

**RECOMMENDATION:** The Planning Division has considered the request and is forwarding a recommendation of conditional based on findings of the 3 review criteria for Special Review #928.

### **Discussion**

Chairman Dailey called for questions and discussion. Leonard Dailey asked for clarification on the site plan and it was given by Nicole Cromwell.

**Public Hearing:** At 4:49 p.m. Chairman Dailey opened the public hearing and called for proponents or opponents of City Special Review #928.

### **Proponents**

#### **Alex Tommerup, 848 Main Street, Billings, Montana**

Mr. Tommerup is the agent for property owner, BK RE 5165, LLC. Per Commissioner Ulvestad's request, he explained the criterion for moving a beer and wine license. Per the Administrative Rules of Montana, a certain number of licenses are issued based on population and can be moved within the same jurisdiction. Commissioner Dailey referred to page 2 of the staff report which stated there will be no impact on circulation to and from the location. Nicole Cromwell said based on standard traffic generation tables, the traffic should be less than the former fast food operation. She explained the spacing requirement for the licenses and responded to Commissioner Wagner's question stating the fence is at 42 inches tall. In response to a request from the agent, the Zoning Commission considered modifying staff proposed condition #6 concerning the height of the existing patio enclosure. The agent stated the existing patio enclosure is 3.5 feet in height and this exceeds the minimum requirement for the state license. The proposed addition of 6 inches to the fence enclosure by the staff would not be an effective use of the existing patio design and development. The agent stated the existing patio enclosure was in good condition and retrofitting the fence to add 6 inches would be cost prohibitive for little benefit. In response to a request from the agent, the Zoning Commission agreed to eliminate staff proposed condition #9 concerning the solid waste enclosure. The existing development includes a sight obscuring dumpster enclosure so the condition is unnecessary.

### **Opponents**

There was none. Chairman Dailey closed the public hearing for City Special Review #928.

### **Motion**

**Commissioner Mike Boyett made a motion and Commissioner Ulvestad seconded the motion to forward a recommendation to City Council of approval of City Special Review #928 with the Findings of Fact presented by Staff, changes to Condition of Approval #6 and removal of Condition of Approval #9.**

**Discussion**

Chairman Dailey called for discussion on the motion

**The motion to approve City Special Review #928 carried with a unanimous voice vote, 4-0.**

**Item #2: City Special Review #929 – 2802 Belvedere – Church School Expansion – A special review request to expand an existing church school, Trinity Lutheran School, to add 7,975 square feet to an existing 26,399 square foot building, in a Residential 9,600 (R-96) zone on Lot 2A, Block 1 Oakland Subdivision 2<sup>nd</sup> Filing a 4.227 acre parcel of land.**

**RECOMMENDATION:** The Planning Division recommends approval based on the findings of the 3 criteria for Special Review #929 and subject to the following conditions:

1. The special review is limited to the expansion of an existing private church school and no other use is intended or implied.
2. The approval is limited to Lot 2A, Block 1, of Oakland Subdivision, 2<sup>nd</sup> Filing, generally located at 2802 Belvedere Drive.
3. Any addition to the building or the parking area greater than 10% of the total shown on the site plan shall require additional special review approval.
4. There shall be no demolition or construction activity before 7 am or after 8 pm.
5. Any new outdoor lighting - except security lighting on the building will have full cut-off shields so that no part of the lens or fixture projects below the shield. Any new outdoor pole light is limited to 15 feet in height above grade.
6. The solid waste collection enclosure shall be sight-obscuring, tall enough so no part of the collection box projects above the enclosure and have a sight-obscuring closing gate or gates.
7. The new landscaping shall be installed as shown on the submitted site plan.
8. The addition shall be in substantial conformance with the submitted site plan. Minor modification are allowed.
9. The applicant will install new bicycle racks as recommended by the Planning Division guidelines.
10. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

11. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

### **Discussion**

Chairman Dailey called for questions and discussion from the members of the Commission. Leonard Dailey asked about Condition of Approval #9. Nicole Cromwell explained that the 2011 Bikeway and Pedestrian Plan was adopted by the City and County to develop guidelines for new or remodeled facilities. She stressed these are only guidelines and it is up to the interpretation of the designer to decide the appropriate location on the site.

**Public Hearing:** At 5:17 p.m., Chairman Dailey opened the public hearing and called for proponents or opponents of City Special Review #929.

### **Proponents**

#### **Jeff Kanning, Collaborative Design Architects, 2280 Grant Road, Billings, Montana**

Mr. Canning is the agent for Trinity Evangelical Lutheran Church. Trinity Lutheran is in their sixth decade of teaching. Mr. Kanning said they are trying to keep up with growing enrollment; add a computer center, music room, and make changes in the parking lot to address traffic and safety in the physical drop off area. The new layout should get some of the traffic off the street. In addition the proposal is to improve approaches. They will install bike racks and are in agreement with the conditions of approval.

### **Discussion**

Commissioner Wagner commented the streets in this area are horrific and asked who is responsible for upgrades. Mr. Kanning stated the north and south approaches will be brought into compliance. Commissioner Wagner asked who will fix the compressions into the street, and Mr. Kanning said they will comply with current engineering regulations. Nicole Cromwell said she will forward this question to City Public Works to inquire when an overlay on Belvedere is planned. Commissioner Ulvestad asked if they have considered the student enrollment rate. Commissioner Dailey asked regarding the time frame to start construction. Jeff Kanning said they will start the project June 24, 2015 and hope to complete the project by the end of the year with a 5-6 month construction period. Mr. Kanning said the applicant is ok with Condition of Approval # 9, ok with the bicycle racks. It was noted the 1 for 5 parking space criterion may be excessive for this facility. Commissioner Dailey asked how long the preschool has been in existence. Mr. Kanning said it has been operation for-seven years serving children 3 years to six years of age. He said the preschool children cross the street to access the primary building. The plan is to return the house to a residential use. Commissioner Wagner asked about Staff parking. There will be additional parking on the north side of the gym, and the reworking the parking will be for two effective drop areas. There is not a lot of need for bike racks as the parents primarily drop off students. Commissioner Ulvestad asked about public notification and Mr. Kanning said the neighbors were contacted by mail. He received a phone call from Mrs. Kennedy. She is not opposed to this request in terms of the construction.

**Jonathan Boll, 401 Lavender Street, Billings, Montana**

Mr. Boll said the do not plan to expand the capacity of the school with the exception of the preschool and daycare. They plan to limit classroom sizes to 26 students. The proposal is to add other multi-use spaces; and the upgrades may attract new students. Mr. Boll said 16 spaces for bicycle racks would be adequate as he has not seen more than five or six bicycles at one time.

**Opponents**

**Charles Wissenbach, 2609 Belvedere, Billings, Montana**

Mr. Wissenbach stated they are unable to access their driveway between 8:00-8:30 a.m., and the school staff fills up all of the parking spaces. During events at the school, the cars stack the length of 28<sup>th</sup> Street West and Belvedere is full of cars. Mr. Wissenbach said he has had to request a car be moved away from his driveway. He suggested consideration of a designated drop off and pick up area in order to avoid injury to students that may be walking between cars. He said approximately four nights a week there is no parking and not enough room for multiple cars.

**Carrie Wissenbach, 2609 Belvedere, Billings, Montana**

Ms. Wissenbach concurred with Charles Wissenbach and stated the traffic clogs the entire street and there is no parking available during events.

Chairman Dailey called for rebuttal.

**Rebuttal**

**Jeff Kanning, Collaborative Design Architects, 2280 Grant Road, Billings, Montana**

Mr. Kanning stated they modified the parking lot to create two separate zones to alleviate students walking between cars. The proposed plans meet the requirements and are compliance with current engineering standards. They are in excess of the required number of parking spaces.

**Jonathan Boll, 401 Lavender Street, Billings, Montana**

Mr. Bolls said he can can sympathize with the Wissenbach's concerns. He said he is hoping the internal drop offs will limits the curbside parking. Commissioner Ulvestad asked if a "No parking" sign might be installed or if the curbs could be painted at the driveway. He encouraged the applicant to look into these options. Mr. Kanning agreed to add the curbside painting to maintain a good neighbor policy. Nicole Cromwell suggested putting reflective markers to indicate the driveway. Mr. Kanning said the striping would be a practical solution. Commissioner Daily commented some the issues might be solved by some of the things discussed today.

Chairman Dailey asked if there was anyone else wishing to speak in favor or against Special Review #929. There was none. Chairman Dailey closed the public hearing for City Special Review #929.

**Motion**

**Commissioner Wagner made a motion and Commissioner Ulvestad seconded the motion to forward a recommendation to City Council of conditional approval of City Special Review #929 with the and Findings of Fact presented by Staff.**

**Discussion**

Chairman Dailey called for discussion on the motion. Commissioner Wagner commended the applicant for their desire to be a good neighbor and said communication will close the gap on some of the issues. Commissioner Ulvestad concurred with Commissioner Wagner and said he is in favor of the Special Review. Commissioner Dailey said with the understanding that Trinity Lutheran has been there since the 1950's and with the planning of the licensed architect, this will be beneficial to the community.

**The motion to approve City Special Review #929 carried with a unanimous voice vote, 4-0.**

**Other Business:**

--Nicole Cromwell announced the next meeting is scheduled for July 7, 2015 with two zone changes pending for this meeting.

**Adjournment: The meeting adjourned at 7:35 p.m.**

**ATTEST: DRAFT TO APPROVED BY A MOTION ON JULY 7, 2015**

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Leonard Dailey, Chairman

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Tamara L. Deines, Planning Clerk



## City Zoning Commission

**Meeting Date:** 07/07/2015

**SUBJECT:** Special Review 927 - 4020 Montana Sapphire Drive - All Beverage without gaming

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**Item #1; Return Item - City Special Review #927 – 4020 Montana Sapphire Drive (aka 920 Shiloh Road)** – A special review request to locate an all beverage liquor license without gaming in a proposed new 4,125 square foot restaurant, The Divide Restaurant and Bar, an outdoor patio of 1,500 square feet, a parking lot with 56 spaces and landscaping in a Highway Commercial (HC) zone on Lot 7, Block 1 of Montana Sapphire Subdivision, a 1.69 acre parcel of land. The City Council allowed the applicant to withdraw on May 26, 2015, to re-design the site to meet minimum off-street parking requirements.

#### RECOMMENDATION

The Planning Division is recommending conditional approval based on the findings of the 3 review criteria for Special Review 927.

#### APPLICATION DATA

OWNER: David Williams

AGENT: Atwood Architecture, Scott Atwood

LEGAL DESCRIPTION: Lot 7, Block 1, Montana Sapphire Subdivision

ADDRESS: 4020 Montana Sapphire Drive (aka 920 Shiloh Road)

CURRENT ZONING: ELI

EXISTING LAND USE: Vacant

PROPOSED USE: Proposed new restaurant and bar - The Divide

SIZE OF PARCEL: 1.69 acres

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#### CONCURRENT APPLICATIONS

MT Dept. of Revenue - License for All Beverage Service without gaming

#### APPLICABLE ZONING HISTORY

The City Council has conditionally approved 22 locations for on-premise service of alcohol in this area of West Billings since 1985. Most of these locations were for restaurants with just a few for bars with casinos, such as Montana Lil's at 2850 King Ave West approved in 2008. There are two bars and casinos in Montana Sapphire at this time - Manny's (2008) and Tinseltown Casino (2007). An All Beverage License without gaming is an unusual license in Montana. Most All Beverage Licenses have gaming attached. This license is for a restaurant with a full service bar.

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: ELI Land Use: Vacant
SOUTH:	Zoning: Public Land Use: Shiloh Conservation Area
EAST:	Zoning: ELI Land Use: Vacant
WEST:	Zoning: HC Land Use: Vacant

## **BACKGROUND**

This is a special review to locate an All Beverage License without gaming for a new proposed restaurant, the Divide, in the Montana Sapphire Subdivision at 4020 Montana Sapphire Drive. The property is easily accessible from Shiloh Road and is situated just north of the new Shiloh Conservation Area. The city has approved 22 locations in the area for alcoholic beverage service but the two existing locations in Montana Sapphire are more geared for bars and casino gaming and not restaurant service. There are no churches, parks with playing fields or playgrounds, or schools within 600 feet of this proposed location.

The proposed restaurant will be a maximum of 4,125 square feet with an outdoor patio of 1,500 square feet. These proposed use areas have been updated since the May 5, 2015, Zoning Commission hearing to accommodate the required minimum off-street parking requirements. The property will have to comply with the South Shiloh Overlay District requirements due to the portion of this lot that runs east to Shiloh Road. The revised site plan shows 56 parking spaces - this is a ratio of 1 space for each 100 square feet of gross building area and includes the outdoor patio. The site plan appears to meet all the requirements for the zoning and site development.

The Planning Division has reviewed the application and the 3 criteria for special review and is recommending conditional approval. Before a recommendation of approval or conditional approval may be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria, and appears to conform to all parts of the Unified Zoning Regulations. Complete compliance with the South Shiloh Overlay District for details on landscaping, screening, building design and signage will be evaluated at the time of building and sign permit submittal. The location is in one of the zoning districts that allows an all beverage license without gaming by special review approval. The application is conforming to the purposes of the regulations and the 2008 Growth Policy. The location of an additional license in this area should have no impact on the surrounding uses or neighbors.

The application also conforms to the second and third criteria. The Montana Sapphire Subdivision is not yet fully developed so additional businesses and residents will help to improve the area. The new Shiloh Conservation Area is an amenity for this subdivision and the addition of a full service restaurant with an outdoor patio overlooking the conservation improvements will be beneficial. Planning staff is recommending conditions for this special review based on the approval criteria for special review uses.

The Planning Division is recommending the following conditions:

1. The special review approval shall be limited to Lot 7, Block 1, Montana Sapphire Subdivision.
2. The special review approval is for the location of an all beverage license without gaming and no other use is intended or implied.
3. Any expansion of the restaurant and patio area greater than 562 square feet will require an

additional special review approval.

4. Any increase in the number of parking spaces over 10% of what is shown (56 spaces) will require an additional special review approval.
5. There shall be no outdoor public address system, outside announcement system, whether permanent or temporary, of any kind. There shall be no outdoor event on the patio or grounds that includes amplified music or an amplified sound system of any kind.
6. The outdoor patio shall have a continuous 3-foot fence around the perimeter with "exit only" gates as required for public safety. There will be no direct entrance from the parking area or landscaped area to the fenced patio area except through the restaurant.
7. The patio is allowed to have background music or un-amplified live music. Background music is defined as amplified music that is not audible beyond the patio perimeter.
8. The solid waste storage area shall have a sight-obscuring enclosure constructed in similar materials and colors of the building. The enclosure will include a sight-obscuring gate.
9. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Division points out that the use and development of the property must be in accordance with the submitted site plan.

## **RECOMMENDATION**

The Planning Division recommends conditional approval and adoption of the findings of the 3 criteria for Special Review 927.

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### **Attachments**

Zoning Commission determinations  
Zoning Map  
Site Photos  
Revised Site Plan

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**Attachment A**  
Zoning Commission Action

The City Zoning Commission shall make a recommendation to the City Council to:

1. Deny the application for a special review use.
2. Grant the application for a special review use.
3. Conditionally grant the application for a special review use.
4. Delay action on the application for a period not to exceed thirty (30) days.
5. Give reasons for the recommendation.

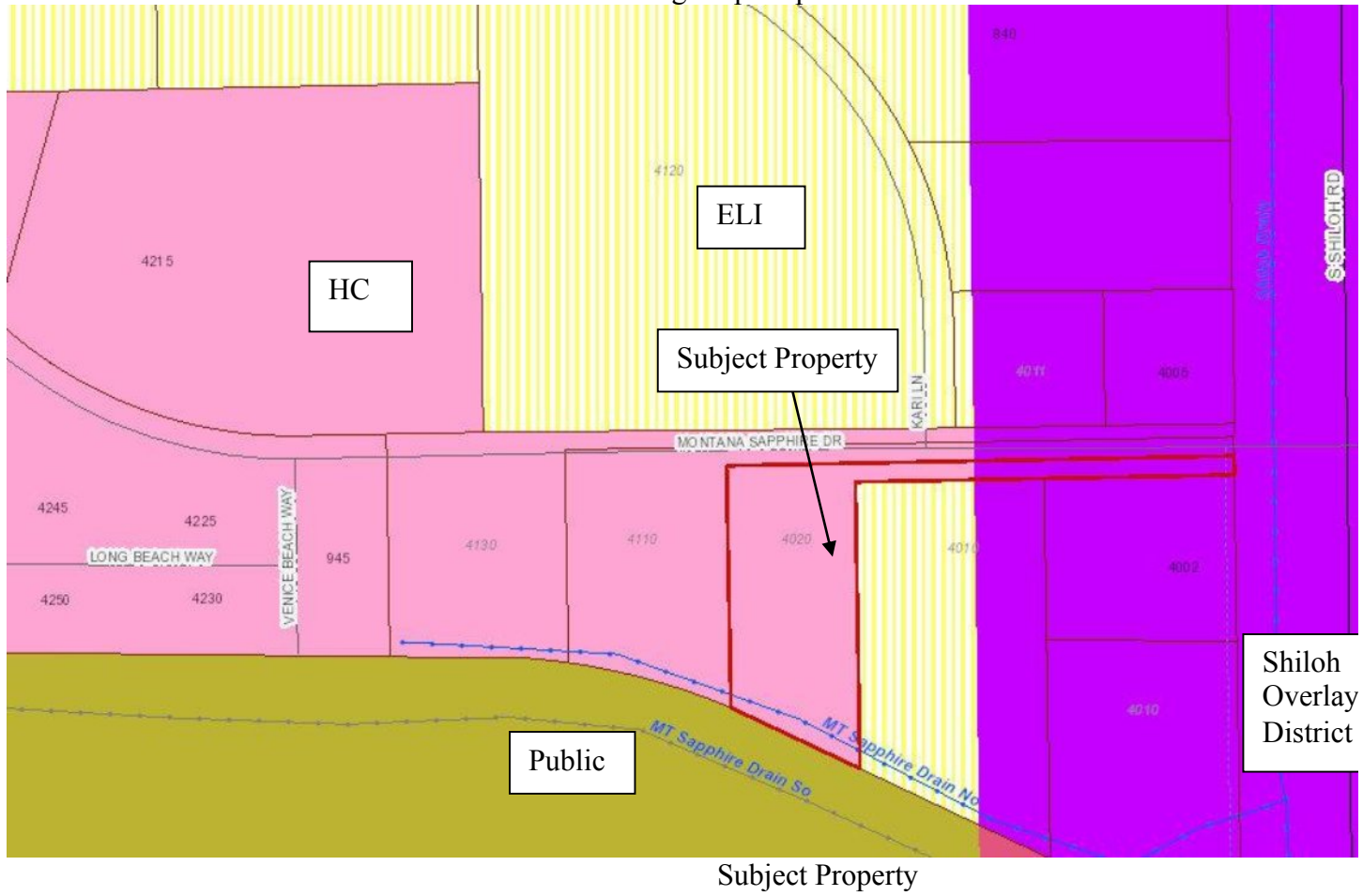
Before approving a special review use, the Zoning Commission shall find that the contemplated use:

1. Complies with all requirements of this Article (27-1500);
2. Is consistent with the objectives and purposes of Chapter 27 and the Comprehensive Plan;
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

Further the Zoning Commission shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

**Attachment B**  
Zoning Map – Special Review #927



**Attachment C**  
Site Photos – Special Review #927



Subject Property from Montana Sapphire Drive



View west along Montana Sapphire Drive

**Attachment C, continued**  
Site Photos – Special Review #927

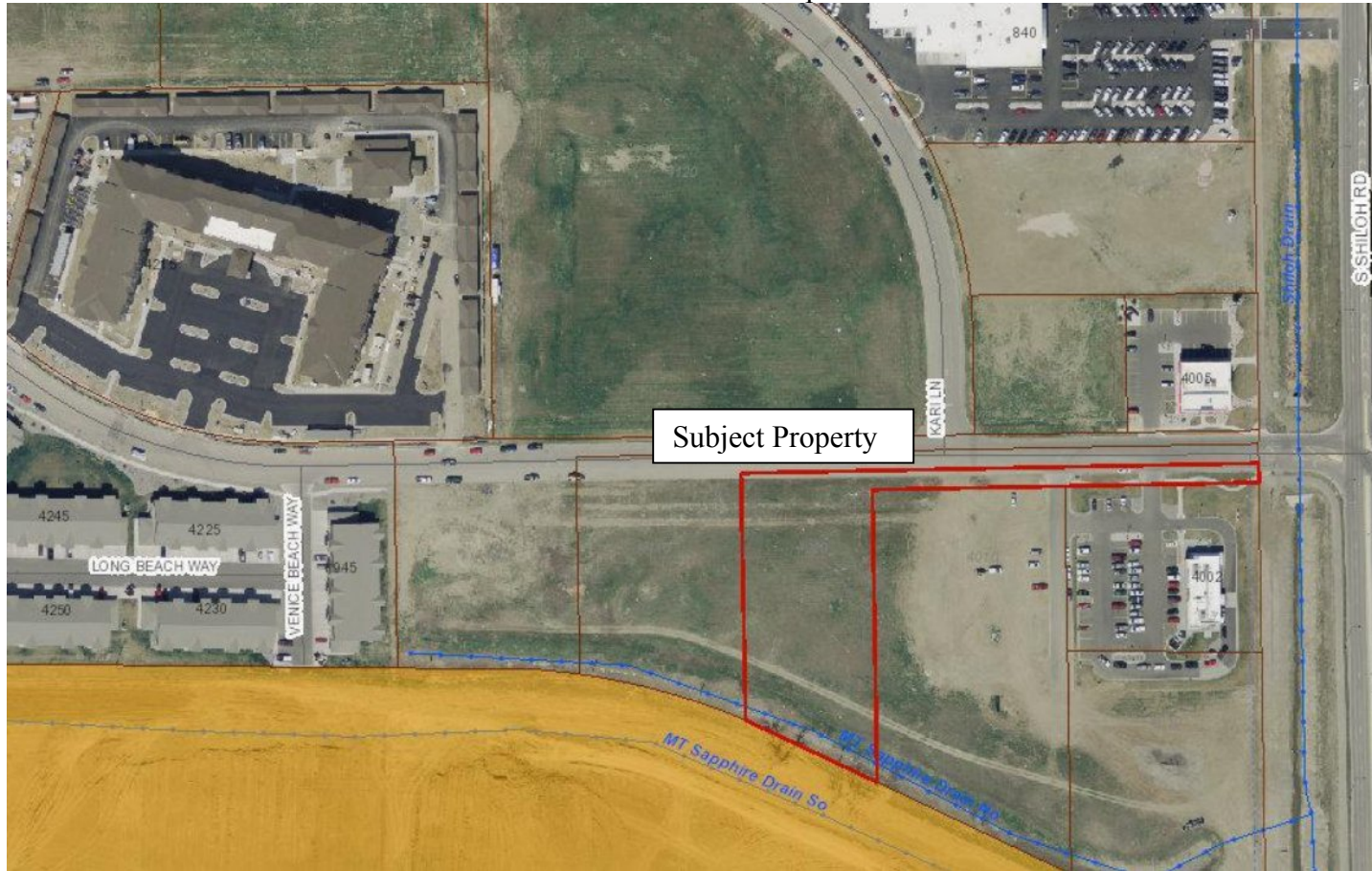


View north across Montana Sapphire Drive

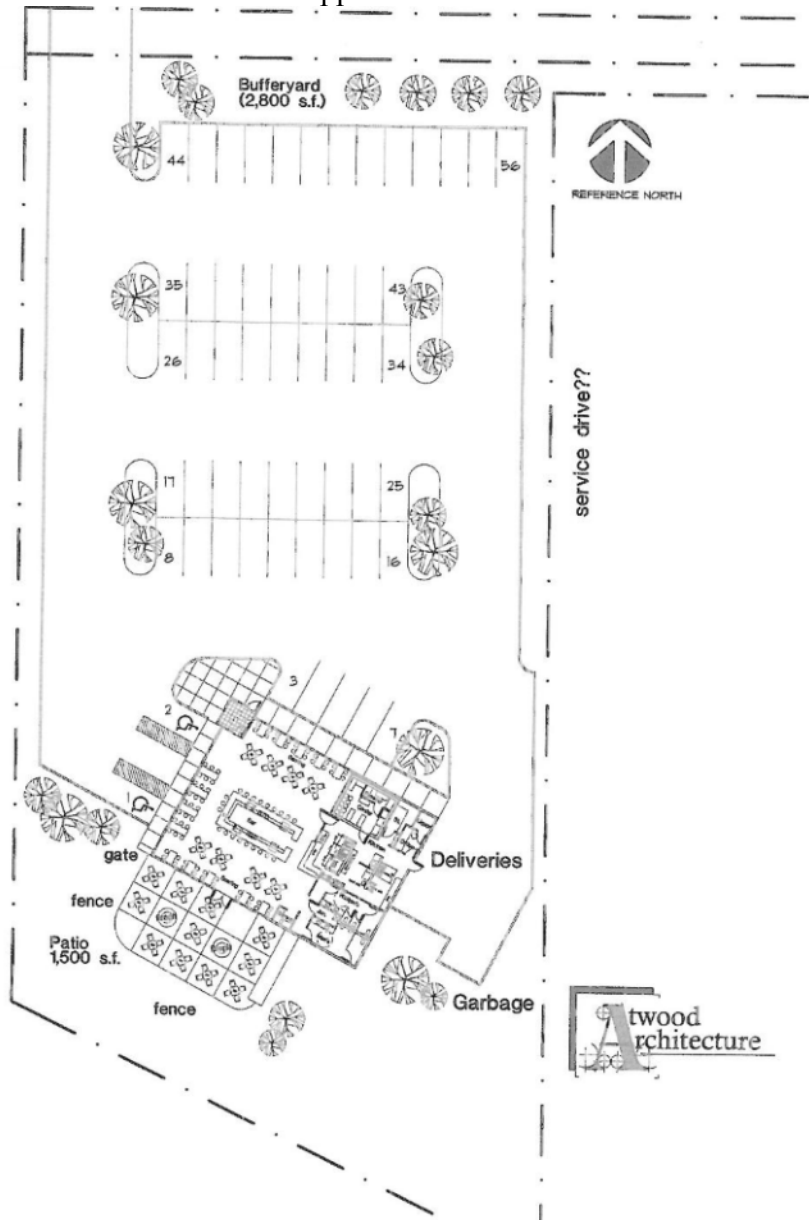


View east along Montana Sapphire Drive

**Attachment C, continued**  
Site Photos – Special Review #927



Special Review 927  
Site Plan and Applicant Letter



CONCEPT STUDY SITE LAYOUT FOR:  
**THE DIVIDE**

1"=30'

BILLINGS, MONTANA

6-4-2015 *revised*  
4,125 s.f of building plus 1,500 s.f of patio  
5,625 s.f. - 56 stalls required  
56 stalls provided



June 4, 2015

Nicole Cromwell, AICP  
Planning & Community Services Department  
2825 3<sup>rd</sup> Avenue North  
Billings, MT 59101

Re: City Special Review #927  
4020 Montana Sapphire Drive (aka 920 Shiloh Road)  
Resubmittal of Revised Site Layout

Dear Nicole,

Attached please find copies (at 1"=20' and 1"=30' scales) of the updated/revised site layout for The Divide project.

Our office has spoken with Wayne Ware over the phone and are confident the layout meets the intention of the "gross square footage" criteria with the updated calculations.

If you have any questions about this request please feel free to call me at the number listed below.

Sincerely,  
Atwood Architecture

A handwritten signature in blue ink that reads 'Scott Atwood'.

Scott Atwood, Registered Architect  
copy: Dave Williams, Darrin Williams

# Special Review Narrative The Divide Restaurant and Bar

April 6, 2015

## Project Description:

An approximate 3,750 s.f. Restaurant and Bar

While not completely designed at this time, the project is seen as “non-high tech” with a western feel, using woods and stone in a warm, comfortable atmosphere. Locating the restaurant/bar adjacent to the Shiloh Conservation Area is seen as part of the atmosphere of the facility. We’ve used the term....”American Pub & Casual Dining Establishment” to describe our goals to others. We would like to note that the facility is not intended to house gaming or casino functions.

## Project Address:

920 Shiloh Road (we have reason to believe this will change to an address on Montana Sapphire Drive but have not gone through that process just yet.)

Lot 7 of the Montana Sapphire Subdivision (off of Shiloh and King Avenue) - see attached

## Question 1A:

We have investigated the proposed area, learned about the surrounding commercial and residential development as well as future growth expectations and determined that the area is the most suitable location to meet the goals for our proposed facility. The west end business and residential growth continues and it is expected that our facility will serve this area as well as draw from other areas of the City using the Shiloh Road transportation linkage.

## Question 1B:

West end growth continues with the infilling of the Montana Sapphire Development (originally envisioned in 2002) with a variety of businesses and services. It is estimated that 70% of that development is either built out or under contract in some fashion with both residential and business development.

## Question 1C:

Approval of the Special Request will allow us to build a new, attractive facility to serve the area and to employ more Billings citizens.

## Question 1D:

The Special Review is an “automatic” requirement prior to the granting of an All Beverage license. We would like to note that the Special Review is NOT part of a desire for gaming or casino activity.

## Questions 2 A and B

See attached exhibits showing a proposed floorplan and site layout. Because the drawings

have only been developed to a “conceptual” stage and further refinement is needed by a Kitchen Designer, it is anticipated that the facility could conceivably grow by another 250 - 500 square feet. However, we are comfortable stating that the facility will not exceed 4,500 square feet. Please note that again, due to the conceptual nature of the drawings at this time, full landscape design has not occurred just yet. We have been advised of both the City requirements and the Montana Sapphire Development requirements for bufferyards and landscaping requirements and agree to comply with them as part of the final permit submittal process.



## City Zoning Commission

**Meeting Date:** 07/07/2015

**SUBJECT:** Zone Change 935 - 741 S 24th St West

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**Item #2 - City Zone Change #935 – 741 S 24<sup>th</sup> St West** – A zone change request from Residential Professional (RP) to Neighborhood Commercial (NC) on Lot 9A, Block 2, Justiss Subdivision. A 13,706 square foot parcel of land. The applicant conducted a pre-application neighborhood meeting on May 21, 2015, at the Hilton Garden Inn at 939 S 25<sup>th</sup> St West. Property Tax ID: C01676.

#### RECOMMENDATION

The Planning Division recommends approval and adoption of the findings of the 10 criteria for Zone Change 935.

#### APPLICATION DATA

OWNER: 741 S 24th St West, Inc. Jeff Essmann  
AGENT: Mike Walker, NAI Business Properties  
LEGAL DESCRIPTION: Lot 9A, Block 2, Justiss Subdivision  
ADDRESS: 741 S 24th St West  
CURRENT ZONING: Residential Professional (RP)  
EXISTING LAND USE: Vacant Dry Cleaner  
PROPOSED USE: Possible retail  
SIZE OF PARCEL: 13,706 square feet

#### CONCURRENT APPLICATIONS

None.

#### APPLICABLE ZONING HISTORY

The subject property received a zone change from R-70 to RP and a special review approval for the drive through service in 1996. The applicant also requested a setback variance in 1996 but this was denied. The Valet Dry Cleaning service has operated from this location since the zoning and special review was approved in 1996. The dry cleaner has since re-designed its business model and no longer needs as many locations for drop off service.

The Justiss Subdivision was originally subdivided and zoned for residential uses. Zone change applications in the subdivision have had mixed success starting in 1975 when the first proposed commercial zone change was denied. Subsequently, 13 additional zone changes were submitted and 4 have been approved, 3 were withdrawn and 6 were denied. The most recent zone change was submitted

for 745 Henesta Place directly east of the subject property. The proposed zoning of RP was approved and the property has been re-developed for commercial office space. Surrounding subdivisions are primarily commercial zoning except for lots north and east where a large residential neighborhood has developed.

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: PD-NC Land Use: Pier One Imports
SOUTH:	Zoning: RP Land Use: Office Space
EAST:	Zoning: RP Land Use: Office Space
WEST:	Zoning: CI Land Use: Applebee's, Toys R Us, Walmart

## **BACKGROUND**

The applicant is requesting a zone change from RP to NC to facilitate the marketing of the existing building for re-use as either a new office space or for retail uses as allowed in the zone. This would not include any restaurant that provides on-premise alcohol service or any bar or casino. Grocery stores, convenience stores or drug stores could sell beer or wine for off-premise purposes. Other retail service businesses may also be allowed in the proposed zoning. The existing zoning, RP, does not allow any retail services, and is the most restrictive commercial zone for allowed uses. The property is located at the southeast corner of the intersection of Rosebud Drive and S 24th St West. South 24th St West is a principal arterial and carries close to 25,000 vehicles each day. King Avenue West, just south of the subject property, carries almost 27,000 vehicle each day. The site is about 1/4-acre in area so potential re-use of the property will be limited to smaller retail uses and office space. Pier One Imports is directly north across Rosebud Drive and Applebee's, Toys R Us, and Walmart are directly west across S 24th St West. The property also has a 3rd street frontage on Henesta Drive. The approval for the drive through service in 1996 restricted access to S 24th St West and Rosebud Drive. The access to the property will not change so any new use on the property will use the access off Henesta Drive.

The applicant conducted a pre-application neighborhood meeting on May 21, 2015, at the Hilton Garden Inn and 1 surrounding property owner attended the meeting. The surrounding owner, Mr. Vandiviere of Huntley, discussed the allowed uses in NC zones and the possibility of restaurant use or similar. The owner stated the parking requirements for food service, 1 space for each 100 square feet of building area, may be too great for this small site. Mr. Vandiviere expressed no objection to the zone change.

The Planning Division has reviewed the application and is forwarding a recommendation of approval based on the proposed findings of the 10 criteria for this zone change. The proposed zoning will allow similar uses in an area surrounded by NC, CI or RP zoning. There are no directly adjacent residential uses so buffering and screening is not required. The property is located at a signalized intersection on S 24th St West with about 25,000 vehicles passing by this property everyday. The existing access from Henesta Drive will continue to serve the property. There should be no impact to surrounding traffic or properties from the proposed zoning. Most zoning in the area is a mixture of commercial and industrial with large and small retail and office uses throughout. There should be no impact to public safety services or other city services from the proposed zoning or re-use of the property.

## **RECOMMENDATION**

The Planning Division recommends approval and adoption of the findings of the 10 criteria for Zone Change 935.

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## **Attachments**

Zoning Map

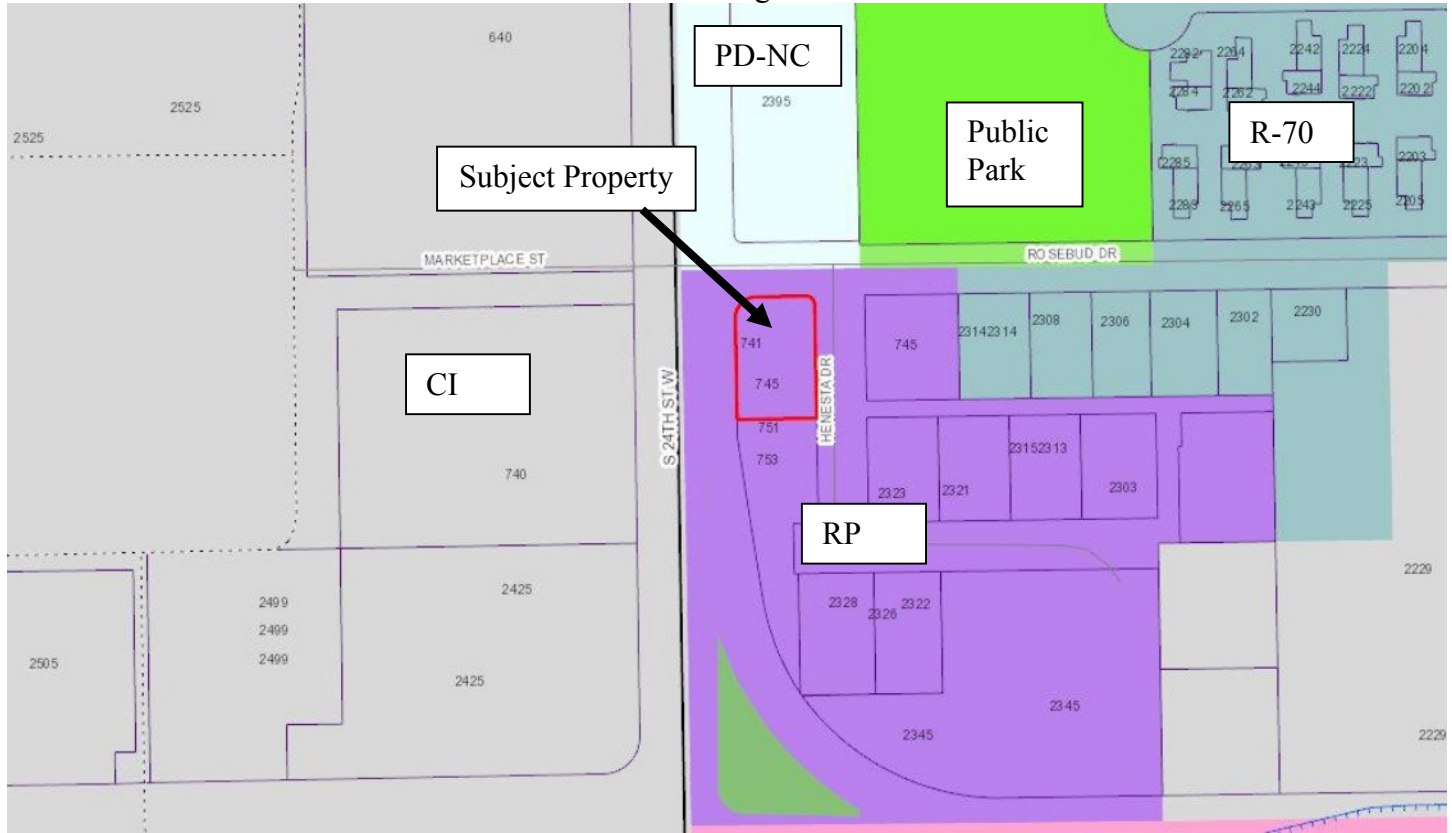
Review Criteria Findings

Site Photos

Applicant Letter and pre-app meeting

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**Attachment A: Surrounding Zoning**  
Zone Change #935 – 741 S 24<sup>th</sup> St West



## Attachment B

### Zoning Commission Determinations Zone Change #935 – 741 S 24<sup>th</sup> St West

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

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

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

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit the existing vacant dry cleaner service building to be used for retail, service business or office space. The current zoning does not allow any retail use of the building. The property is located adjacent to a high traffic corridor and can accommodate additional uses without disrupting the neighborhood.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The existing zoning is restricted to “9 to 5” businesses without retail sales. These use restrictions may be appropriate for some locations where residential uses are directly adjacent. A small retail or service business with retail sales will provide more business choices in the area.

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

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

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

Public health, safety and general welfare will be promoted by the proposed zoning. The overly restrictive zoning discourages re-use of the property.

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

Transportation: The proposed zoning should have no impact on transportation.

Water and Sewer: The City provides water and sewer services to the property.

Schools and Parks: There should not be any impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the city Public Safety Services.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

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

Traffic generation from the property will be based on the actual re-use of the property. The dry cleaning drop-off service generated approximately 200 vehicle trips per day. Proposed

uses will need to use the existing driveway off Henesta Drive. Potential traffic impacts will be evaluated at the time a change of use permit is submitted to the Building Division.

7. *Will the new zoning will promote compatible urban growth?*

The new zoning does promote compatibility with urban growth. The new zoning will allow re-investment in the property increasing property value over time.

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

The proposed zoning does consider the character of district and the suitability of the property for retail sales, service businesses and office space. The location of the property on a principal arterial and a signalized intersection makes it suitable for these uses.

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

The existing dry cleaner building will be conserved by the new zoning.

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

The proposed zoning will permit an existing building to be marketed for a wide variety of uses more suitable for its location on a principal arterial street.

**Attachment C**  
Site Photographs, Zone Change #935 – 741 S 24<sup>th</sup> St West



Subject Property – view east from S 24<sup>th</sup> St West



View north from intersection of Rosebud and S 24<sup>th</sup> St West

**Attachment C, continued**  
Site Photographs, Zone Change #935 – 741 S 24<sup>th</sup> St West



View south along S 24<sup>th</sup> St West



View west across S 24<sup>th</sup> St West

**Attachment C, continued**  
Site Photographs, Zone Change #935 – 741 S 24<sup>th</sup> St West



View north and west across S 24<sup>th</sup> St West



Aerial View

**Attachment D**  
Applicant letter and documentation

Zone Change Request 741 South 24<sup>th</sup> Street West

Zone Change Plan: The request is to change the zoning of a small parcel containing 13,706 Square Feet located at the Southeast corner of the intersection of South 24<sup>th</sup> Street West and Rosebud Drive from the current zoning of Residential Professional with a Special Review permitting a dry cleaning business to a proposed zone of Neighborhood Commercial so that the parcel may be converted to a light retail use, such as the sale of home furnishings. The dimensions of the parcel are approximately 95 feet by 146 feet. More intense uses like bars or casinos are not permitted in a Neighborhood Commercial Zone.

- A. In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?

The requested zone change is from Residential-Professional to Neighborhood Commercial. The former zone classification is meant to establish a light use buffer between more intensive commercial uses permitted in Highway Commercial and Community Commercial and residential uses. The Neighborhood Commercial zone is intended to permit smaller (under 10,000 SF) retail uses that will serve the surrounding neighborhood with shopping facilities providing convenient retail services to supply the needs of the neighboring population.

The parcel sought to be rezoned is buffered from residential uses by the adjacent Residential Professional zoning and uses and is compatible in nature with the commercial uses to the north and west. This rezoning is compatible with the Land use goal of the growth policy that wishes to have land use patterns consistent with the current neighborhood character. It is also consistent with the goal of having entryways that are attractive and encourage economic development.

- B. Explain your need for the intended zone change and why the property cannot be used under the existing zoning. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.

For most of the past two decades the subject parcel has been used as a neighborhood drycleaning shop with a drive through window as permitted under Residential Professional zoning with a special review. The intended use is for a small retail operation, for example, selling home furnishings which are not allowed in an RP zone. The building will receive construction updates consistent with its new light commercial use. The new use is consistent with commercial uses to the north and west. The new retail use should generate approximately the same traffic impacts as the previous drycleaning business. Residential professional uses to the east and south will act as buffers to the residential uses in the area.



**Synopsis of Neighborhood Meeting  
May 21, 2015**

Notice of a neighborhood pre-application meeting for a proposed zone change at 741 South 24<sup>th</sup> Street West, Billings, MT 59102 was mailed to 16 owners of property within the 300 foot radius area. The meeting was set for 6:00 o'clock p.m. on Thursday, May 21, 2015 at the Hilton Garden Inn, 939 South 25<sup>th</sup> Street West.

At 6:12 p.m., Mr. Gordon Vandiviere arrived and was the sole neighboring owner to attend so the meeting commenced. Mr. Jeff Essmann, the owner of the corporation which owns the parcel subject to the zone change proposal, gave a brief history of his acquisition of the parcel, the original improvement of the parcel in 1997, and the subsequent use of the parcel as a neighborhood dry cleaning shop under the current zoning of Residential Professional with a Special Review.

Jeff related that his current tenants had built their own new building on Enterprise Avenue and had vacated the property at 24<sup>th</sup> Street West and Rosebud. He outlined that the zoning change being requested was for Neighborhood Commercial in order to repurpose the building for a small commercial retail or service business.

Mr. Vandiviere asked for clarification of the uses allowed in the Residential Professional zone versus Neighborhood Commercial. Jeff responded that Residential Professional permitted banks, day care facilities, medical uses, offices, and dry cleaners with a special review. Neighborhood Commercial permitted retail and service businesses under 10,000 square feet, but no industrial or manufacturing uses and no bars or casinos. Food or beverage uses with sit down seating would not work at the site, although allowed under the zoning, due to a lack of sufficient parking to meet building code requirements.

Mr. Vandiviere asked about potential traffic impacts. Mr. Essmann replied that the current use generated about 100 customers a day or 200 vehicle trips and that he thought most small retailers or service shops would have a similar traffic count. Mr. Vandiviere asked about potential use for a coffee shop. Mr. Essmann was doubtful that that use would be permitted due to lack of parking to meet the building code, but that sufficient parking was present to meet codes for a retail or service business.

Mr. Vandiviere stated that based on that information, he would have no problem with the proposed zone change.

Jeff thanked Mr. Vandiviere for attending. The meeting was adjourned at 6:35 p.m.

*Meeting synopsis prepared by Sherry Essmann.*



## City Zoning Commission

**Meeting Date:** 07/07/2015

**SUBJECT:** Zone Change 936 - 1545 Hawthorne Lane

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**Item #3 - City Zone Change #936 – 1545 Hawthorne Lane** – A zone change request from Residential 5,000 (R-50) to Residential Multi-Family-Restricted (RMF-R) on Lot 11, Block 1, of Caleb Park Subdivision, a 2.137 acre parcel of land. The applicant conducted a pre-application neighborhood meeting on April 7, 2015, at Lake Elmo State Park, 2300 Lake Elmo Road. Tax ID: D05362.

#### RECOMMENDATION

The Planning Division is recommending denial based on the findings of 10 criteria for zone changes.

#### APPLICATION DATA

OWNER: First Free Will Baptist Church - Wesley Prouse

AGENT: Jens Selvig, Construction by Design

LEGAL DESCRIPTION: Lot 11, Block 1, of Caleb Park Subdivision

ADDRESS: 1545 Hawthorne Lane

CURRENT ZONING: R-50

EXISTING LAND USE: Church and accessory buildings

PROPOSED USE: Four 12-plex apartments (48 dwelling units)

SIZE OF PARCEL: 2.137 acres

#### CONCURRENT APPLICATIONS

None.

#### APPLICABLE ZONING HISTORY

The property was annexed to the city in 1984 and zoned R-70. The property received a zone change in 2005 from R-70 to R-50 prior to the subdivision of the property. The R-50 zoning allows single or two-family dwellings on lots of either 5,000 square feet or 8,000 square feet respectively. The R-50 zone also allows up to 40% lot coverage when most residential zones only allow 30% lot coverage. Most of the surrounding neighborhood is R-70 and has remained R-70 since zoning was adopted by the County in 1973. The property directly north, the 3Gs Convenience Store as well as the retirement home, received a zone change from R-70 to Neighborhood Commercial (NC) in 1978 and 1979. Further west at the intersection of Bench Boulevard and Wicks Lane, King Place Subdivision received a zone change from R-70 to NC and RMF-R in 2005.

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: NC Land Use: 3G's Convenience and a retirement home
SOUTH:	Zoning: R-70 Land Use: Undeveloped land
EAST:	Zoning: R-50 Land Use: Caleb Court Neighborhood - single family homes
WEST:	Zoning: R-70 Land Use: Single family homes

## **BACKGROUND**

In 2006, the City adopted the Billings Heights Neighborhood Plan and this area was designated for "medium to low" density housing development. The plan states that "arterial corridors" may have opportunities for the development of higher density or multi-family housing that is compatible with the surrounding neighborhoods and zoning. The property is located on the southeast corner of the intersection of Wicks Lane and Hawthorne Lane. Wicks Lane is an arterial street and Hawthorne Lane is a collector street. Property to the north is zoned NC and was developed in the late 1970s for a convenience store and gas station. To the east of the convenience store, the zoning is also NC and has been developed as a retirement home. All the other surrounding development is zoned R-70, a zoning designation for medium density residential uses including single family and 2-family dwellings.

Wicks Lane carries about 5,530 vehicles per day at this location and Hawthorne Lane about 2,630 vehicles per day. A 2 or 3 lane arterial street can carry up to 25,000 vehicles per day depending on the surrounding development. This segment of Wicks Lane serves as an arterial street primarily for the residential neighborhood east of Bench Boulevard. A 48-unit multi-family development could add up to 384 additional vehicle trips per day to Wicks Lane or Hawthorne Lane depending on how the property is developed. The existing church has a drive approach on to Wicks Lane but not on Hawthorne Lane. Development of the property would likely trigger additional street and public improvements on Hawthorne Lane and Wicks Lane. The Subdivision Improvement Agreement (SIA) for Caleb Park Subdivision may require a Special Improvement District to be formed to install any necessary improvements on Hawthorne Lane. The subject property is allowed 2 driveways from Hawthorne Lane into the property and 1 driveway from Wicks Lane. The driveways from Hawthorne Lane would need approval from the City Engineering Division prior to construction.

The owner and agent conducted three pre-application meetings. The first two meetings were not conducted according to the requirements of the city zoning requirements. The third meeting on April 7, 2015, met the requirements for a pre-application meeting. The attendance list and meeting notes are attached. The Planning Division has been contacted by several surrounding property owners and has received a protest petition against the zone change and a letter in opposition to the zone change. Planning staff has determined a valid protest has been filed. A valid protest of a zone change triggers a 2/3 majority vote of the City Council to approve the zone change. The protest letter and petition are also included as an attachment.

The Planning Division has reviewed the request and is recommending denial of the zone change based on the proposed findings of the 10 criteria for zone changes. The application is not supported by the adopted goals of the 2008 Growth Policy and the Billings Heights Neighborhood Plan. The applicant intends to develop 48 dwelling units (four, 12-plex apartment buildings) on a 2-acre property. The proposed density is not compatible with the surrounding zoning of R-70 and the existing development on Caleb Court to the east, Denway Place, and Victory Avenue to the west. The existing R-50 could allow 10-11 duplex dwellings (20-22 dwelling units) on this 2-acre site. This is compatible with the existing development in the area. Wicks Lane is an arterial street and could accommodate additional traffic or higher density housing if it was compatible with the adjacent development.

## **RECOMMENDATION**

The Planning Division recommends denial based on the findings of the 10 criteria for Zone Change 936.

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### **Attachments**

Zoning Map

Review Criteria Findings

Site photos

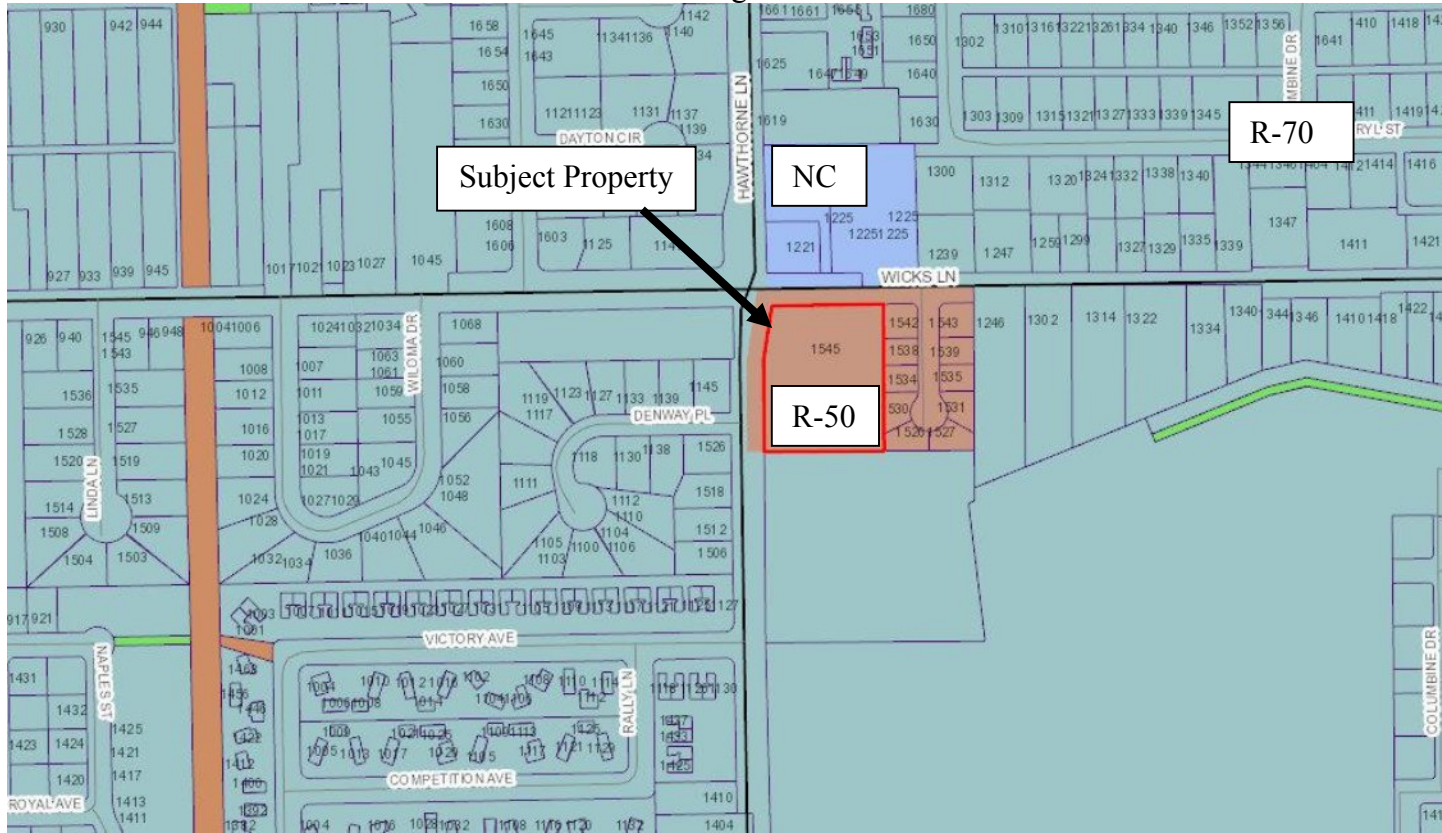
Applicant Letter, Pre-app meeting notes & Letter of Support

Letters of Opposition

Valid Protest

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**Attachment A: Surrounding Zoning**  
**Zone Change #936 – 1545 Hawthorne Lane**



## Attachment B

### Zoning Commission Determinations Zone Change #936 – 1545 Hawthorne Lane

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

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

The proposed zone change is not consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit the existing 2+ acre site to develop at densities that are not consistent with the surrounding character and land use patterns. Most property has developed at densities of 6 to 10 units per acre in the neighborhood. The proposed development of 24 dwelling units per acre is out of character for the area.

- *Heights Neighborhood Plan indicates this area for medium density housing with opportunity for higher density along arterial streets where compatible with existing development. (Future Housing Goal, page 23)*

The existing zoning is for single family and two-family homes on lots of varying sizes. The current zoning would allow 2 dwelling units on a lot area of 8,000 square feet for a maximum density of 10 dwelling units per acre. This is a medium density and compatible with the existing neighborhood. The proposed zoning could allow up to 28 dwelling units per acre. The parcel does have arterial street frontage on Wicks Lane, but the zoning is not compatible with the existing development in the area.

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

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

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

Public health, safety and general welfare may be compromised by the new zoning. The proposed zoning could generate additional traffic on Wicks Lane and Hawthorne Lane that do not have complete facilities for pedestrians and vehicles. Existing deficiencies of these facilities will be exacerbated by a dense residential development.

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

Transportation: The proposed zoning will have a negative impact on adjacent streets and traffic. Wicks Lane and Hawthorne Lane are deficient for use by all users and in particular pedestrians and non-motorized traffic.

Water and Sewer: The City can provide water and sewer services to the property.

Schools and Parks: There school district may have an increase in enrollment depending on the proposed apartment density and type. Caleb Park Subdivision contributed a cash-in-lieu of park land dedication at the time of the subdivision. The closest neighborhood park to this location is Hawthorne Park.

Fire and Police: The subject property is currently served by the city Public Safety Services. Additional service calls will be likely for an apartment complex.

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

The proposed zoning may not provide for sufficient setbacks to the east property line if the maximum building height of 40 feet is developed at the minimum side setback of 9 feet from the east property line. The adjacent homes on Caleb Court are single story and split-level homes and are not close to the maximum height in the R-50 zone of 34 feet. Most average 20 to 25 feet in height.

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

Traffic generation from the property will be based on the actual development of the property. The existing church generates sporadic traffic depending on days of services and activities. The proposed 48-unit multi-family development will likely generate close to 400 vehicle trips per day. There are no sidewalks on Hawthorne Lane and incomplete sections of sidewalks on Wicks Lane. If the development generates less than 500 vehicle trips per day, a traffic study is not required by the city. The city may require the creation of a special improvement district (SID) to pay for and guarantee necessary improvements to the streets directly adjacent to the development. The intersection of the street is currently controlled by a 4-way stop.

7. *Will the new zoning will promote compatible urban growth?*

The new zoning does not promote compatibility with urban growth. The proposed zoning is out of character with the neighborhood.

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

The proposed zoning does not consider the character of district and the suitability of the property for multi-family uses. The location of the property at the intersection of a principal arterial may have some suitability for additional density but not at the proposed zoning and density.

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

The existing church building will not be affected by the proposed zoning. Development of a multi-family complex may have some effect on the marketability of the adjacent single family and two-family dwellings.

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

The proposed zoning would not encourage the most appropriate use of the land in this area of Billings. Adjacent zoning and development indicates this area may allow some additional residential density but not at the proposed density.

**Attachment C**  
Site Photographs, Zone Change #936 – 1545 Hawthorne Lane



Subject Property – view south from Wicks Lane



View south east – existing church and homes on Caleb Court

**Attachment C, continued**  
Site Photographs, Zone Change #936 – 1545 Hawthorne Lane



View south and west from Wicks to Hawthorne Lane



View north across Wicks Lane

**Attachment C, continued**  
Site Photographs, Zone Change #936 – 1545 Hawthorne Lane



View north and east across Wicks Lane



View west at intersection of Wicks Lane and Hawthorne Lane

Aerial View



**Attachment D**  
Applicant letter and documentation

5/29/15

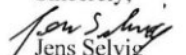
To Whom It May Concern:

The development of 1545 Hawthorne property will help the city of Billings meet the objectives listed in the growth policy which was adopted in 2008.

- 1) Land use element
  - (1.) The use after construction will be consistent with the neighborhood character in style and color choice.
  - (2.) The development of the property will meet the curb appeal as that of the surrounding community.
  - (4.) The multiplex construction will curb urban sprawl by having a higher density population in a smaller area.
  - (5.) This project will help to meet the demand for low to moderate income housing.
- 2) Providing Economic development
  - (9.) When the property transfers owners, the church will be getting the opportunity to expand the base from which its financially draws from for its outreaches.
- 3) Aesthetics Element.
  - (1.)The structures will appear similar to the homes in the Caleb Court, Denway Place or Victory Ave.
- 4) Natural Resources Element
  - (4.) By infilling the property with structures, there will be a reduction for weed count and other undesirable vegetation to have a place to grow. The property grounds are going to be maintained by crew that will monitor the condition of the green areas.
- 5) Open Space and Recreation Element
  - (2.) Improving the lifestyle of the tenants by having a playground in the middle of the property and several gazebos for family gatherings.
- 6) Transportation element
  - (8, 11.) An existing bus stop will be changed to a pullout for the MET transportation group, currently it is located on Hawthorn Ln with benches.
  - (9.) The sidewalk is non-existent on the property and will be placed so it facilitates the exercising individuals.
  - (10.) Bicycling hut for the enthusiast is planned on the south end of the green part of the property.
- 7) Public Facilities and Services Element
  - (5.) Each unit will have the utility hook up for individualized billing. In this construction, the improvements are shared over a larger number of tenants, seeing this is a corner lot, there is almost double the potential of street industrial development taxes that will occur.
- 8) Community Health Element
  - (7.) Poor housing availability along with a lack of living wage jobs for the heights community tends to place their health at risk. By making the units available at lower amounts than the west end will allow the residents to apply the savings to other needs.

A major reason I am seeking to change the zoning for the Wicks and Hawthorne property is to improve the lifestyle of not only myself, but multiple families in the heights. This will also bring much needed improvement to the property.

Sincerely,

  
Jens Selvig  
(406) 861-2572

  
Wes Prouse  
(406) 598-5155





5/8/15

To Whom It May Concern:

A meeting was held on **Tuesday April 7<sup>th</sup>, 2015** between **6:30 PM and 7:00 PM**. The location was at **2300 Lake Elmo Dr. State Park covered picnic tables**.

MEETING NOTES:

Apologized for the confusion of the 2<sup>nd</sup> meeting.

Opened meeting for zoning change plans

Explained the differences of current zoning to the proposed zone.

*Neighbors voiced concerns that this would be the only project of this type in this community.*

*Concerns were expressed this would bring the wrong genre of people to the community.*

*One point was made that when the zoning change is done, it doesn't matter what the current plans are, anything can happen.*

*Others expressed in various ways that any attempt build any unit that is not a single family dwelling is unacceptable, they would go along with a duplex and this was not desirable.*

An explanation was given as to why the number of units is desired, initial investment cost vs the return on investment.

*One individual spoke about upgrades to Mary street and Wicks from the higher density of inhabitants.*

A question was posed, what is the difference between a town house and an apartment. Definition of a town home/ town house is one of a row of houses joined by common sidewalls. Someone pointed out it was a rhetorical question.

*Lastly, there was a comment about the meeting place being at a different location, such as Cherry Creek, Fudruckers or Western Security bank.*

This is a description of the discussion items at the 3<sup>rd</sup> meeting.

Sincerely,

Jens Selvig  
(406) 861-1305

Name	Phone	Address
Stacey Miller	670-9266	1534 Caleb Ct
Allyson Trotter	406-692-9269	" "
* Kellee Pierce	406-252-4802	1512 Hawthorne Ln
Pat Putrundo	406-538-1858	1125 Victory Ave
Wendy Offutt/Irvine	1543 Caleb Ct	
Connie Hayes	406-672-1779	1521 Caleb Ct.
Tom Zurbuchen	252 322	1747 Wicks Ln
* Brad Bouchard & Family	(406) 690-4893	1535 Caleb Court
Kaysi S Dale	406-208-4006	1247 Wicks Ln.
* Dawn Kite	406-876-2421	1247 Wicks Ln
Barb Garretson	406 670 4885	1246 Wicks Ln
* Bob Garretson	" 839 4405	PO Box 50667
* William Lile	406 698 7137	1217 Wells Lane
Pat Ellis	252 6399	2008 Outback Drive
	259 0170	2323 Campbelltown Tr
↑ Ron Neese		

Heights task force

4th task force Tuesday

Re-zone

options

= No

- Mary street

meeting location

Cherry creek

Fudructors

Western security Bank

Sunday April 30<sup>th</sup>

To whom it may concern, I have spoke to Mrs Prowse about there ideas on the property near licks & Hawthorne. They have told me they want to build duplexes there. The duplexes builded are nice and have young familys living in them. It has been very quite and peaceful since they started. I feel that his ideas are worth more. I support there ideas. It would be a nice addition to this naborhood.

Ja Bedda

owner of property  
at 11411 Wicks Ln

**Attachment E – Letters of Opposition**  
 Zone Change 936- 1545 Hawthorne Lane

COPY

We the residents, of and around Hawthorne Ln  
 in Billings, MT, strongly oppose the plan for  
 a zone change of the property at:  
 1545 Hawthorne Ln  
 Billings, MT 59105

Name	Address	Phone #
Jawn + Bill Kite	1247 Wicks Ln	876-2421
James Levine/Wendy <sup>DK</sup>	1543 Caleb Ct	698-7137
ERNIE SZILVAT	961 GOLD DUST CIRCLE	245-4746
Jeff + Corinne Pithon	1125 Victory Avenue	860-5200
Kelle <del>Rice</del>	1512 Hawthorne Ln	534-1859
Karen Tart	1526 Hawthorne Ln.	252-4802
Bob + Barb <del>Sherrison</del>	1246 Wicks Ln	671-7348
Kaysi Dahl <sup>DK verbal</sup>	1247 Wicks Ln	<del>697-7101</del>
Kory Rice <sup>DK verbal</sup>	1145 Denway Place	670-4885
Kyle Broadbent <sup>DK verbal</sup>	1247 Wicks Ln	208-4006
Brad + Crystal <sup>DK verbal</sup>		697-1001
Brenda <sup>DK verbal</sup>	1535 Caleb Court	850-8895
		600-4593
		690-1882

June 16, 2015

To the Billings Zoning Commission;

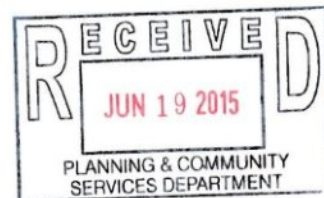
Because of a family situation we have requested that this letter be presented in our absence. We want it to be known that we (Robert and Barbara Garritson of 1246 Wicks Lane) absolutely oppose the degradation of our neighborhood by the rezoning of the property at Lot 11, Block 1 of Caleb Park Subdivision from Residential 5,000 (R-50) to Residential Multi-family-restricted. The building of 48 rental units (12 4-plexes) in a lot that is slightly over 2 acres will place an overwhelming strain on the infrastructure of the surrounding area, not to mention the aesthetics of having huge buildings in an area of single family housing. The burden of dealing with this overload will fall upon the property owners of the surrounding area. At each of the so called pre application meetings everyone who attended was unanimously opposed to this zone change. We respectfully request that the zoning commission honor the wishes of the property owners in the surrounding area and not agree to this zone change.

Yours

Robert Garritson



Barbara Garritson





TAX_ID	Owner Name	Property Owned
D05173A	G & L PROPERTIES LLC	1221 WICKS LN
D05173B	G & L PROPERTIES LLC	HAWTHORNE LN
D05173	EVI BILLINGS LLC	1225 WICKS LN
C05579	FROST, GAVIN M & RITA R	1239 WICKS LN
D05363	CARLSON, RONALD E & ALVIN B	
A33961	IRVINE, JAMES A	1543 CALEB CT
A33962	BASS, TIMOTHY J	1539 CALEB CT
A33963	BOUCHARD, BRAD & CRYSTAL	1535 CALEB CT
A33964	WILSON, BOBISUE	1531 CALEB CT
A33965	HAYES, CONSTANCE J	1527 CALEB CT
A33966	NAPOLI, RALPH	1526 CALEB CT
A33967	GARTON, JENNIFER	1530 CALEB CT
A33968	TROTTER, STACEY	1534 CALEB CT
A33969	BORTON, MARCUS R & REBEKAH K	1538 CALEB CT
A33970	FRIEDE, JAMES & SHAWNA	1542 CALEB CT
C07105	PIERCE, KELLE M	1512 HAWTHORNE LN
C07104	TURLEY, DAWN K ETAL	1518 HAWTHORNE LN
C07103	TAIT, CHAD M & KAREN A	1526 HAWTHORNE LN
C07087	RICE, KORY	1145 DENWAY PL
D05369	SZILLAT, ERNEST & JACQUELINE	1546 HAWTHORNE LN

**20 Properties with 150-foot valid protest area for Zone Change 936**

**5 or more properties in protest will create a valid protest of the zone**

**A 2/3 majority of the present and voting members of the City Council is required to approve a zone protest of record.**

**As of June 19, 2015, there are 6 properties in protest of Zone Change 936. This is a valid protest.**



## City Zoning Commission

**Meeting Date:** 07/07/2015

**SUBJECT:** Zone Change 937 - 100 Emerald Drive

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

Item #4 - **City Zone Change #937** – 100 Emerald Drive – A City Council initiated zone change from Residential 9,600 (R-96) to Residential Professional (RP) on C/S 604 & Tract 2 of C/S 356 a 35,719 square foot parcel of land. The Council initiated the zone change on June 8, 2015 to correct a misclassification of the commercial property made at the time of annexation in June 1974. Tax ID: D05590.

#### RECOMMENDATION

The Planning Division is recommending approval and adoption of the findings of the 10 criteria for Zone Change 937.

#### APPLICATION DATA

OWNER: Lois Schroeder

AGENT: Michael Schroeder and the City of Billings

LEGAL DESCRIPTION: C/S 604 and Tract 2 of C/S 356

ADDRESS: 100 Emerald Drive

CURRENT ZONING: R-96

EXISTING LAND USE: 3-unit commercial building

PROPOSED USE: same with accessory storage building

SIZE OF PARCEL: 35,719 square feet

#### CONCURRENT APPLICATIONS

None.

#### APPLICABLE ZONING HISTORY

The property was developed with a commercial building in 1968. The building has been used for commercial purposes since its construction. In 1974, the property was annexed to the city and zoned Residential 9,600 (R-96). The R-96 zone is the default zoning for property when annexed to the city unless the owner requests or the city determines a different zoning is appropriate. The city mistakenly zoned the property for single family residential in 1974. The City Council initiated the zone change on June 8, 2015 to correct this error. The most appropriate zoning is Residential Professional (RP).

The property owner also owns property to the east in the O'Leary Subdivision (204 Emerald Drive). This

property received a zone change in the County from R-96 to RP in 1976. In addition, lots further east on Emerald Drive were zoned Highway Commercial (HC). The property at 204 Emerald Drive was subsequently annexed in 1989.

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: R-96 & Public Land Use: BBWA Canal
SOUTH:	Zoning: R-96 & Public Land Use: Alkali Creek - Parkland
EAST:	Zoning: RP Land Use: Home and small business office
WEST:	Zoning: R-96 Land Use: Vacant land and Single family home

## **BACKGROUND**

Lois Schroeder and her son Michael Schroeder discovered the property located at 100 Emerald Drive did not have the appropriate zoning when Mr. Schroeder began planning for the construction of a personal storage garage at the business property. The current zoning, R-96, does not allow the construction of a personal garage unless a dwelling is constructed prior to, or at this same time, the garage is constructed. The Planning Division staff reviewed the zoning and annexation history of the property with the owners. The property owners discussed the issue with Council members from Ward I. The City Council initiated the zone change on June 8, 2015, at the request of the Schroeder family. There are 3 businesses currently located at the subject property: Wilson & Wilson Real Estate, EDM International, and Cline Production.

The Planning Division is recommending approval based on the proposed findings of the 10 criteria. The property has been in continuous use for small office space since 1968. The adjacent property is zoned RP and lots further east are zoned HC. The RP zoning is designed to be compatible with residential areas since it does not allow retail uses and most uses do not conducted business after normal business hours. The proposed zoning will ensure the property has the ability to maintain the structures and make improvements without additional financial risk.

## **RECOMMENDATION**

The Planning Division recommends approval and adoption of the findings of the 10 criteria for Zone Change 937.

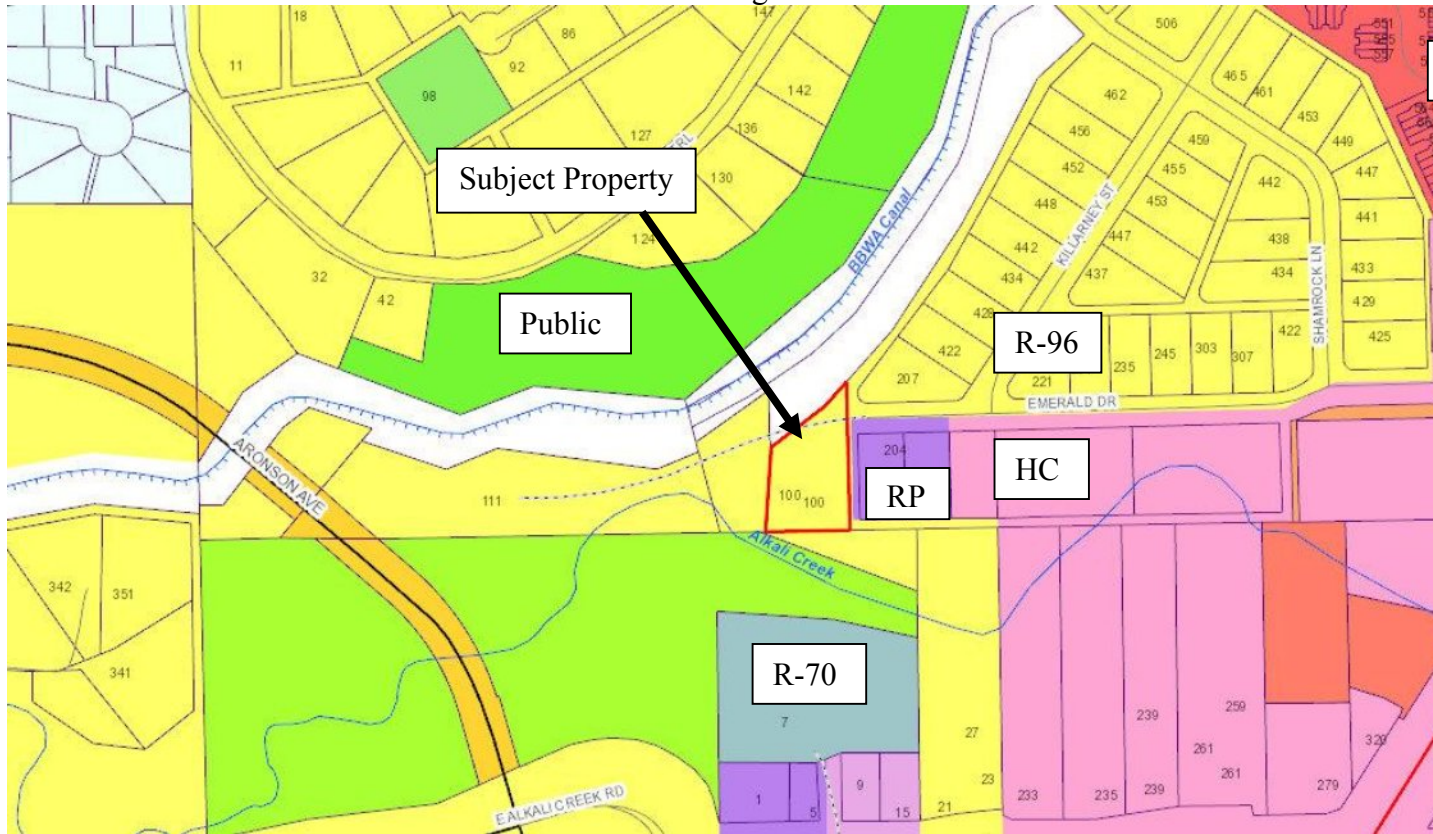
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### **Attachments**

Zoning Map  
Review Criteria Findings  
Site photos  
Application documentation  
Historical Annexation Documents

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**Attachment A: Surrounding Zoning**  
**Zone Change #937 – 100 Emerald Drive**



## Attachment B

### Zoning Commission Determinations Zone Change #937 – 100 Emerald Drive

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

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

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

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit the existing commercial building to continue in conformity with the zoning. The development has fit in well with the existing neighborhood for more than 40 years and continued investment in the property will preserve the neighborhood integrity. The proposed zoning, RP, is consistent with the neighborhood character and land use patterns on Emerald Drive.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The existing zoning is restricted to single-family only residential uses. The proposed zoning will allow the retention of the commercial building and necessary improvements to the property over time.

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

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

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

Public health, safety and general welfare will be promoted by the proposed zoning. The nonconforming zoning discourages investment in the property.

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

Transportation: The proposed zoning should have no impact on transportation.

Water and Sewer: The City provides water through the Billings Heights Water District and City sewer services to the property.

Schools and Parks: There should not be any impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the city Public Safety Services.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

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

Traffic generation from the apartments will not change since there is no expansion of the commercial building planned at this time.

7. *Will the new zoning will promote compatible urban growth?*  
The new zoning does promote compatibility with urban growth. The new zoning will allow investment in the property increasing property value over time.
8. *Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?*  
The proposed zoning does consider the character of district and the suitability of the property for professional office uses. The location of the property on the west end of Emerald Drive makes it suitable for this use.
9. *Will the new zoning conserve the value of buildings?*  
The existing multi-tenant commercial building value will be conserved by the new zoning.
10. *Will the new zoning encourage the most appropriate use of land throughout the City of Billings?*  
The proposed zoning will permit an existing commercial use to continue in the neighborhood and is the most appropriate use of the property.

**Attachment C**

Site Photographs, Zone Change #937 – 100 Emerald Drive



Subject Property – view west along Emerald Drive



View of existing sign on north side of Emerald Drive

**Attachment C, continued**  
Site Photographs, Zone Change #937 – 100 Emerald Drive



View south and east to 204 Emerald Drive



View east along Emerald Drive

**Attachment C, continued**  
Site Photographs, Zone Change #937 – 100 Emerald Drive



View north to residence at 207 Emerald Drive

Aerial View



## Attachment D

### Applicant letter and documentation

**From:** Cromwell, Nicole  
**Sent:** Wednesday, May 20, 2015 3:45 PM  
**To:** Volek, Christina  
**Cc:** Millar, Candi  
**Subject:** RE: Zone change request information

Hello Tina,

I have spoken with Mr. Schroeder who owns 100 Emerald Drive. His mother also owns adjacent property at 204 Emerald Drive that is zoned Residential Professional – but this is a home, not a business. His father – who has since passed away – used to run a small architecture office out of the home at 204 Emerald Drive. The County changed the zoning from R-96 to RP for 204 Emerald Drive in April 1976. (Lots 1 & 2 of Block 4 – O’Leary Subdivision). The other lots in Block 4 to the east of 204 Emerald Drive are all zoned Highway Commercial and are undeveloped. They were owned by Mr. Schroeder’s mother as well and they have grazed animals on this part of the property. Alkali Creek runs below these lots.

100 Emerald Drive has always been zoned R-96 even though the property was developed first as a gallery in 1968 (still in the County at the time) and is now used by 3 different businesses for office space. Mr. Schroeder wants to build a garage for additional storage space. The property was originally zoned R-96 and annexed into the city in 1974. The zoning of the parcel was not changed at the time of annexation. I have not requested the annexation records from the City Clerk. Normally, the city will evaluate the use of the property at the time of annexation to ensure a correct zoning is assigned when the property is annexed.

Since the office building is a prior legal non-conforming use, we cannot approve a building permit to expand the use (add garage space). Under the legal nonconforming provisions, Mr. Schroeder would have to first establish a residential use of the property and then build a residential garage for storage – or – build the house & garage at the same time. The only other alternative is to change the zoning to a zoning that would make his existing use of the property conforming (and thus eligible for expansion). Mr. Schroeder believes the city erred at the time of annexation in 1974 by not assigning a zoning appropriate to the existing use of the property. Since I do not have the records from 1974 when the property was annexed, I don’t know if the city knew of the existing use. The County zone change for his mother’s property at 204 Emerald Drive (April 1976) had sparse information.

The Council could initiate the zone change at the request of Mr. Schroeder. It would be helpful if Mr. Schroeder or the City Clerk could locate the annexation records for the property.

Here is the legal description for 100 Emerald Lane:

COS 604 AND TR 2 COS 356 AMEND & CORR  
Tax ID: D05590

Sincerely yours,  
Nicole Cromwell



RESOLUTION 11666

A RESOLUTION EXTENDING THE BOUNDARIES OF THE CITY OF BILLINGS, MONTANA TO INCLUDE CERTIFICATE OF SURVEY # 356; CERTIFICATE OF SURVEY # 604, LOT 1, BLOCK 3 AND LOTS 1-9, BLOCK 4, O'LEARY SUBDIVISION; CERTIFICATE OF SURVEY # 506, TRACT A; CERTIFICATES OF SURVEY # 331, CERTIFICATE OF SURVEY # 98, CERTIFICATE OF SURVEY # 698 AMENDED, AND HOLFELD SUBDIVISION, ALL SURROUNDED BY THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

WHEREAS, the following described property, to-wit:

Certificate of Survey # 356  
Certificate of Survey # 604  
Lot 1, Block 3 and Lots 1-9, Block 4, O'Leary Subdivision  
Certificate of Survey # 506, Tract A  
Certificate of Survey # 331  
Certificate of Survey # 98  
Certificate of Survey # 698 Amended  
Holfeld Subdivision

(including all amended Certificates of Survey & plats, and to the centerline of all adjoining streets and right of ways thereof) an island located in the S 1/2, NW 1/4 and the NE 1/2 SW 1/4 of Section 27, T1N, R26E, surrounded by the City of Billings, Yellowstone County, Montana

is land contiguous to the present boundaries of the city, and in the judgment of the City Council of the City of Billings, Montana, and the inhabitants thereof and of the inhabitants of the aforesaid area, that the corporate limits of the City of Billings, Montana be extended to include the above described property, and

WHEREAS, there was duly and regularly passed and adopted by the City Council and approved by the Mayor on the 21st day of January, 1974 a Resolution No. 11639, entitled "A Resolution Proposing to Extend the Boundaries of the City of Billings, Montana to include the above described property in the City of Billings, Yellowstone County, Montana

WHEREAS, objections were filed to the extending of the boundaries of the City of Billings, Montana,

NOW, THEREFORE, BE IT RESOLVED that the boundaries of the City of Billings, Montana be, and the same is hereby extended to include the above described area in the city of Billings, Yellowstone County, Montana, and the corporate limits of the City of Billings, Montana are hereby extended to include the said property effective upon the passage and approval of this Resolution.

Passed by the City Council and approved by the Mayor this 25th day of February, 1974.

ATTEST:

  
City Clerk

APPROVED:

  
Mayor

REGULAR MEETING OF THE CITY COUNCIL, MONDAY, FEBRUARY 25, 1974

The Council met in regular session in the Council Chambers of the City Hall, Monday, February 25, 1974, at 7:30 P.M. Mayor Leone presided. The invocation was given by Alderman Fox. Aldermen present on roll call, Kerr, Armstrong, Fox, Prchal, Fillner, Thompson, Riedl, Lesniak, Schoenthal, and Chapel. The minutes were approved as transmitted.

APPOINTMENT OF ANIMAL CONTROL OFFICER Appointment of Jimmie R. Nixon to fill the unexpired term of Charles Blome, Animal Control Officer, was submitted. Moved by alderman Fillner, seconded by alderman Fox that the appointment be confirmed. Upon roll call alderman Kerr, Armstrong, Fox, Prchal, Fillner, Thompson, Schoenthal and Chapel voted aye. Alderman Riedl, Lesniak voted no. Motion carried 8 to 2.

APPOINTMENT OF STREET SUPT. Appointment of Clarence Krum to fill the unexpired term of Derrald Ferrin as Street Superintendent, effective March 1, 1974, was submitted. Moved by alderman Fillner, seconded by alderman Fox that the appointment be confirmed. Passed on roll call.

BIDS for the construction and sale of bonds for S. I. D. 981, 988 and 989, the following bids were submitted.

	<u>Construction SID 981</u>	<u>Bonds 981</u>	<u>SID 988</u>	<u>Bonds 988</u>	<u>SID 989</u>	<u>Bonds 989</u>
Long Construction Co.,	99,215.95		211,688.00			
Studer Construction	96,949.40		179,893.40		( 130,007.95, Schedule I	( 119,578.25, Schedule II
Barry O'Leary, Inc.			205,099.00		122,613.00, Schedule II	
Empire Sand & Gravel			209,845.00		116,877.00, Schedule II	
Schultz & Meyer			238,390.00		145,043.50, Schedule II	
Able Construction Co.					100,900.50, Schedule I	
Bower Construction Co.					113,528.48, Schedule I	
Casper & Magera					106,613.00, Schedule I	
Holm-Sutherland					111,679.25, Schedule I	
D. A. Davidson, Inc.		6.70%, with \$9.00 premium		6.70%, with \$27.00 premium		6.70% with \$35.00 premium

The bids were referred to the Council of the Whole, City Engineer, Building Inspector, Sanitation Superintendent, and Utilities Director.

HEARING in vacating and discontinuing the alley at 11th Ave. South and adjacent to 11th Ave. South and 27th Street. There being no objections, it was moved by alderman Fillner, seconded by alderman Lesniak adoption of RESOLUTION 11658 vacating and discontinuing the alley. Passed on roll call unanimously.

This meeting having been designated as the time and place to hear reports from the Zoning Commission, the following recommendations were presented.

- (a) That the newly annexed area, Sand Cliff Subdivision, south of Highway # 3 on the rims, west of the airport, be zoned "R-96". Moved by alderman Schoenthal, seconded by alderman Lesniak that the recommendation be approved. Motion carried.
- (b) That the proposed amendments to the Comprehensive Zoning Ordinance be accepted. Moved by alderman Schoenthal, seconded by alderman Lesniak that this be referred to the Planning & Improvements Committee, and considered the first reading of the Ordinance. Motion carried.

COMMITTEE REPORTS Bids for Airport Fire Station. The Committee finds the bid of Palmer Steel in the amount of \$62,444.00 to be the lowest and best bid and recommend they be awarded the contract, subject to

the F. A. A. Grant Agreement, Plus Alt. # 2, and Alt. # 4.

	<u>Palmer Steel</u>	<u>Hardy Construction</u>
Base Bid	\$ 61,708.00	\$ 69,800.00
Alt. # 1	25.00	25.00
Alt. # 2	476.00	410.00
Alt. # 3	867.00	900.00
Alt. # 4	260.00	230.00
Alt. # 5	2,115.00	2,150.00

Moved by alderman Chapel, seconded by alderwoman Prchal approval of the Committee report. Motion carried.

Bids, Contract No. 5, Water Distribution System Improvements The Committee recommends that the bids be deferred one week to allow further study of said bids. Moved by alderman Fox, seconded by alderman Fillner approval of the Committee report. Motion carried.

Bids, Contract No. 9, Water Distribution System Improvements The Committee recommends that the bids be deferred one week to allow further study of said bids. Moved by alderman Fox, seconded by alderwoman Prchal approval of the Committee report. Motion carried.

Bids, Schedule I, Asphalt Paving Airport Improvements The Committee recommends that the bid of R. J. Studer & Sons for Schedule I is the lowest and best bid and that they be awarded the contract, subject to approval of the FAA. Bid in the total amount of \$119,019.25. Moved by alderman Fillner, seconded by alderwoman Prchal approval of the Committee report. Motion carried.

Studer Construction Co.	119,019.25
Long Construction Co.	120,114.50
Empire Sand & Gravel	134,154.75

Bids, Schedule II, Security Fence, Airport Improvements The Committee finds the bid of Kober Construction Co. in the amount of \$105,930.50 is the lowest bid and recommend they be awarded the contract, and the Mayor and City Clerk authorized to sign the contracts when performance bond is posted, subject to approval of the F. A. A. Moved by alderman Chapel, seconded by alderman Lesniak approval of the Committee report. Motion carried.

Kober Construction Co.	105,930.50
------------------------	------------

Bids for Motor Coaches The Committee recommends that awarding of bid for Motor Coaches be deferred for one week. Moved by alderwoman Prchal, seconded by alderman Chapel approval of the Committee report. Motion carried.

White and Yellow Traffic Marking Paint The Committee finds the bid of Columbia Paint Company in the amount of \$16,759.00 for White and Yellow Traffic Paint is the lowest bid and recommend they be awarded the contract and the Mayor and City Clerk authorized to sign same, when performance bond is posted. Moved by alderman Armstrong, seconded by alderwoman Prchal approval of the Committee report. Motion carried.

Pittsburg Paint	16,800.00
Jourgensen Paint	17,855.00
Columbia Paint	16,759.00

Bids for Demolition of structures at 221 South 24th Street The Committee found the bid of Lloyd E. Schollaert in the amount of \$640.00 for demolition is the best bid and recommend they be awarded the contract. Moved by alderman Riedl, seconded by alderman Lesniak approval of the Committee report. Motion carried.

Lloyd E. Schollaert	\$ 640.00
Barry O'Leary, Inc.	1,450.00

#### REPORTS OF PLANNING & IMPROVEMENTS COMMITTEE

(a) The Committee recommends that the Council propose to extend the boundaries of the city to include Certificate of Survey # 1383, bounded on the north by Hilltop Road and on the east by Topaz Ave. RESOLUTION 11659.

Moved by alderman Riedl, seconded by alderman Lesniak adoption of the Resolution. Passed on roll call.

(b) That the resolution accepting the proposed urban planning area map as prepared by the City-County Planning staff be adopted, as amended. Moved by alderman Riedl, seconded by alderman Chapel approval of the Committee report. A substitute motion was made by alderman Schoenthal, seconded by alderman Fillner that this be referred back to the City-County Planning Board, then to the Planning & Improvements Committee. Substitute motion passed.

(c) The Resolution adopting the capital improvements program for the City of Billings be adopted as amended. Moved by alderman Riedl, seconded by alderman Fillner that this be referred to the next meeting of the Planning & Improvements Committee. Motion carried.

(d) That the Council adopt the proposed plat of Bannack Subdivision, and a Resolution adopted to this affect. Moved by alderman Riedl, seconded by alderwoman Thompson approval of the Committee report, and adoption of RESOLUTION 11660 accepting the Plat of Bannack Subdivision as an addition to the city. Passed on roll call subject to the approval of the City Attorney.

(e) That the Plat of Wilshire Heights Subdivision, 7th Filing, representing area north of Rimrock Road, east of Zimmerman Trail, be approved, as an addition to the city, and a Resolution accepting the plat be adopted. RESOLUTION 11661 accepting the plat of Wilshire Heights Subdivision, 7th Filing, as an addition to the city. Moved by alderman Riedl, seconded by alderman Kerr adoption of the Resolution. Passed on roll call unanimously.

RECONSIDERATION OF RESOLUTION for emergency budget for parking garage in the amount of \$27,000. Moved by alderman Armstrong, seconded by alderwoman Frchal that this item be reconsidered. Motion carried. Moved by alderman Armstrong, seconded by alderman Fox adoption of RESOLUTION 11662 setting forth the facts constituting an emergency in the All-Purpose General Fund of the city by necessity of providing funds for a parking garage. Passed on roll call unanimously.

COOPERATIVE AGREEMENT between City-County Planning Board and the City of Billings for funding 1974-75 fiscal year. This was referred to the Administration & Finance Committee.

REQUEST OF AIRPORT COMMISSION for an emergency budget for the purchase of two fire trucks for the airport in the amount of \$280,000, and estimated revenue from the F. A. A. in the amount of \$229,600.00. Moved by alderman Fillner, seconded by alderman Chapel that the request be granted. Motion carried. Moved by alderman Fillner, seconded by alderman Chapel adoption of RESOLUTION 11663, setting forth the facts constituting an emergency in the Airport Operating Fund of the city by reason of necessity to provide budget for the purchase of two fire trucks for the airport in the amount of \$280,000, and estimated revenue from the FAA in the amount of \$229,600. Passed on roll call unanimously.

LEASE TRANSFER of T Hangar from Walden Leitz to David Poore, approved by the Airport Commission. Moved by alderman Chapel, seconded by alderwoman Thompson that the transfer be approved. Motion carried.

BUSINESS LICENSES - New Applications and Transfers. This was referred to the License & Bond Committee.

REQUEST OF CITY TREASURER to release securities at Security Trust & Savings Bank totaling \$230,000. Moved by alderman Chapel, seconded by alderman Fox that the request be granted. Motion carried.

REQUEST OF FIRE CHIEF to install fire hydrants at the following locations: Rimrock Road & Silverwood Street; Silverwood street between Lots 15 & 16, Block 1, Silverwood Sub; Silverwood Street & Mulberry Drive. Morledge Street south line Lot 7, Block 3, Silverwood Sub., Morledge Street & Mulberry Drive and Morledge Street and Rimrock Road. Moved by alderman Fox, seconded by alderwoman Frchal that the request be granted. Motion carried.

REQUEST OF PUBLIC UTILITIES BOARD for a water extension for blocks 1 - 8, Golden View Subdivision. Moved by alderman Fox, seconded by alderwoman Frchal that the request be granted. Motion carried.

RESOLUTION 11664 providing for the acquisition and development of land for BOR project entitled Ponderosa Park was presented. Moved by alderman Lesniak, seconded by alderman Chapel adoption of the Resolution. Passed on roll call unanimously.

CLAIMS & ESTIMATES were presented for approval as follows:

Kober Construction Co., Sewer Dept,	\$ 5,879.71
Dept. of Revenue, Sewer Dept.,	59.39
Lockrem Construction, Water Dept.	862.79
Dept. of Revenue, Water Dept.	8.72
Brent Peterson, Utilities	155.26
Spildie Construction Co., Gen. Constn.	1,070.19
Dept. of Revenue, Gen. Constn.	10.81
City of Billings, Gen. Constn.	18,000.00
Brent D. Peterson, General	399.37
Brent D. Peterson, General	44.37
E. F. Link & Assoc., General Constn.	2,326.00
E. F. Link & Assoc., General Constn.	295.29
E. F. Link & Assoc., Gen. Constn.	626.25
Star Service, Inc., Gen. Constn.	10,660.49
Dept. of Revenue, Gen. Constn.	107.68
Kober Construction Co., Sewer	15,212.55
Dept. of Revenue, Sewer	153.66

Moved by alderman Riedl, seconded by alderman Lesniak that the claims be allowed and paid. Passed on roll call unanimously.

COUNCIL CONSIDERATION IN EXTENDING BOUNDARIES of the city to include Hilltop Subdivision, First, Second & Third Filings and amendments thereof (excluding Lots 8-14, Block 11; Lots 8-15, Block 12; Lots 1 & 2, Block 14 and Lots 1 & 5, Block 16 of Second Filing); Lots 22 and 23, Block 3, Heights View Subdivision, (including all amended certificates of survey and plats of the above described and to the centerline of all adjoining streets and right of ways thereof). The above described property is an island located in the NW 1/4 of Sec. 27 and the SW 1/4 of Sec. 22, T 1 N, R 26 E, surrounded by the city of Billings. Moved by alderman Riedl, seconded by alderman Chapel adoption of RESOLUTION 11665, extending the boundaries of the city to include this property. Upon roll call alderman Armstrong, Fox, Prchal, Fillner, Thompson, Riedl, Lesniak, Schoenthal and Chapel voted aye. Alderman Kerr voted no. Motion carried 9 to 1.

Extending the boundaries of the city to include Certificate of Survey # 356, Certificate of Survey # 604, Lot 1, Block 3, and Lots 1 - 9, Block 4, O'Leary Subdivision; Certificate of Survey # 506, Tract A, Certificate of Survey # 331, Certificate of Survey # 98, Certificate of Survey # 698 Amended, Holfeld Subdivision, (including all amended Certificates of Survey and plats, and to the centerline of all adjoining streets and right of ways thereof) an island located in the S 1/2, NW 1/4 and the N 1/2, SW 1/4 of Section 27, T 1 N, R 26 E, surrounded by the City of Billings. Moved by alderman Armstrong, seconded by alderman Kerr that the proposed annexation be deferred for one month. Upon roll call alderman Kerr, Armstrong, Fillner voted aye. Alderman Fox, Prchal, Thompson, Riedl, Lesniak, Schoenthal, Chapel voted no. Motion lost 7 to 3. A recess was called for a more detailed study of the proposed annexation. Upon convening it was moved by alderman Fillner, seconded by alderwoman Prchal adoption of RESOLUTION 11666 to include the above described property. Upon roll call alderman Kerr, Fox, Prchal, Fillner, Thompson, Riedl, Lesniak, Schoenthal, Chapel voted aye. Alderman Armstrong voted no. Motion carried 9 to 1.

RESOLUTION 11667 Excluding Certificate of Survey # 356; Lots 3-5, Block 1, Lots 4-7, Block 2, Lots 1-6, Block 3, Holfeld Subdivision; Lots 1-9, Block 4, O'Leary Subdivision, and Certificate of Survey 698 Amended. to make statutory exemption provisions. Passed on roll call unanimously.

RESOLUTION 11668 Extending the boundaries of the city of Billings to include Tract 1, Certificate of Survey # 848 (including all amended Certificates of Survey and plats and to the centerline of all adjoining streets and right of ways thereof) located in the SE 1/4 of Section 12, T 1 S, R 25 E, contiguous to Tract 2, Certificate of Survey # 1163 in the city of Billings. Moved by alderman Riedl, seconded by alderman Schoenthal adoption of

Resolution. Passed on roll call unanimously.

SURETY BONDS having been approved as to form by the City Attorney were presented as follows:

Hensley Plumbing & Heating, \$ 2,000, excavation bond, written by the Western Surety Co.

Tom D. Tennyson, Sewer Bond, \$ 3,000, written by the U.S. Fidelity & Guaranty Co.

Hoven Construction Co., Excavation Bond, written by the U. S. Fidelity & Guaranty Co.

Long Construction Co., Excavation Bond, \$ 2,000, written by the Safeco Insurance Co. of America

Moved by alderman Fillner, seconded by alderwoman Prchal that the bonds be accepted and placed on file. Motion carried.

The Clerk presented the report of the Traffic Commission recommending the Council set a policy concerning installation of sidewalks. This item not appearing on the agenda, it was moved by alderman Fillner, seconded by alderwoman Prchal that this item receive unanimous consent for consideration. Motion carried. This was referred to the Public Works Committee.

COMMITTEE REPORT, S. I. D. 981 CONSTRUCTION The Committee finds that all bids exceed the estimate of the Engineer, and cannot be awarded. Moved by alderwoman Prchal, seconded by alderman Armstrong approval of the Committee report. Motion carried.

COMMITTEE REPORT, SID 981 BONDS The Committee finds that the bid for construction of SID 981 exceeds the estimate of the Engineer, so no bid can be awarded. Moved by alderman Fox, seconded by alderwoman Prchal approval of the Committee report. Motion carried.

COMMITTEE REPORT, SID 988 CONSTRUCTION The Committee finds the bid of R. J. Studer & Sons in the amount of \$179,893.40 is the lowest bid and recommend they be awarded the contract, and the Mayor and City Clerk authorized to sign same, when performance bond is posted. Moved by alderman Armstrong, seconded by alderwoman Prchal approval of the Committee report. Motion carried.

COMMITTEE REPORT, SID 988 BONDS The Committee finds the bid of D. A. Davidson in the amount of 6.70% with \$27.00 premium is the lowest bid and recommend they be awarded the contract, and the Mayor and City Clerk authorized to sign same, when performance bond is posted. Moved by alderman Armstrong, seconded by alderwoman Prchal approval of the Committee report. Motion carried.

COMMITTEE REPORT, SID 989 CONSTRUCTION SCHEDULE I The Committee finds the bid of Able Construction in the amount of \$100,900.50 is the lowest bid and recommend they be awarded the contract and the Mayor and City Clerk authorized to sign the contracts when performance bond is posted. Moved by alderman Armstrong, seconded by alderman Fox approval of the Committee report. Motion carried.

COMMITTEE REPORT, SID 989 CONSTRUCTION, SCHEDULE II The Committee finds the bid of Empire Sand & Gravel for Schedule II is the lowest bid in the amount of \$116,877.00, and recommend they be awarded the contract and the Mayor and City Clerk authorized to sign the contracts when performance bond is posted. Moved by alderman Armstrong, seconded by alderman Schoenthal approval of the Committee report. Motion carried.

COMMITTEE REPORT, SID 989 BONDS The Committee find the bid of D. A. Davidson Co. in the amount of 6.70% with \$35.00 premium is the lowest bid and recommend they be awarded the contract, and the Mayor and City Clerk authorized to sign the contracts, when performance bond is posted. Moved by alderman Schoenthal, seconded by alderwoman Prchal approval of the Committee report. Motion carried.

There being no further business to come before the Council, the meeting adjourned.

ATTEST:

  
City Clerk

APPROVED:

  
Mayor