



## CITY ZONING COMMISSION

AGENDA-Tuesday, January 7, 2020, 4:30 p.m.  
Miller Building, 1st Floor Conference Room  
2825 3rd 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:**

The minutes of the Board meeting of November 5, 2019.

**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 Exparte 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. **City Zone Change 975 – SW corner of S 46<sup>th</sup> St. W & King Ave W - Modification to the Western Sky Planned Development** - A zone change request to amend the Planned Development Agreement (PDA) for Western Sky Subdivision, more specifically the underlying Neighborhood Commercial (NC) allowed uses to include certain light manufacturing, ancillary warehousing and preparation facilities. The amendment also clarifies offices and manufacturing facilities shall conform to the setbacks in the Billings zoning code for all NC zone districts, however, any ancillary warehouse facilities shall be set back a minimum of 40 feet from the front property line along King Avenue West. Mini storage facilities will continue to be set back a minimum of 150 feet from the King Avenue West property line. The amendment includes an allowance for a 45-foot building height limit in the NC zone district. The amendment applies to Lots 2 & 3, Block 1, Western Sky Subdivision Amended, a 9.128 acre parcel of land. A pre-application neighborhood meeting was held on November 25, 2019, at the offices of Sanderson Stewart, 1300 N. Transtech Way. Presented by Nicole Cromwell, Zoning Coordinator

- b. City Zone Change 976 – 727 Lincoln Lane - from R-70 to HC- A zone change request from Residential-7000 (R-70) to Highway Commercial (HC), on Lots 1 & 2, Block 2 Bede Subdivision, a 25,200 square foot parcel of land. A pre-application neighborhood meeting was held on November 21, 2019, at 231 Main Street. Tax ID: A29430. Presented by; Karen Husman, Planner I

## **Other Business/Announcements**

## **Adjournment**

**The City Council has designated Monday, January 27,2020, at 5:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the special review and zone change.**

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 the first reading of the amendment by the City Council.

Testimony regarding the above mentioned item 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 Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartlevr@ci.billings.mt.us](mailto:bartlevr@ci.billings.mt.us)

**City Zoning Commission**

**Meeting Date:** 01/07/2020

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**Information**

**Subject**

The minutes of the Board meeting of November 5, 2019.

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**Attachments**

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## City of Billings Zoning Commission Meeting Minutes November 5, 2019

**The City of Billings Zoning Commission met on Tuesday, November 5, 2019 in the Miller Building 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana.**

Chairman Wagner called the meeting to order at 4:30 p.m.

<b>Commission and Staff</b>		<b>01/03/2019</b>	<b>02/05/2019</b>	<b>03/05/2019</b>	<b>04/02/2019</b>	<b>05/07/2019</b>	<b>06/04/2019</b>	<b>07/02/2019</b>	<b>08/06/2019</b>	<b>09/03/2019</b>	<b>10/01/2019</b>	<b>11/05/2019</b>	<b>12/03/2019</b>
Dan Wagner	Chairman	-	E	1	-	1	-	-	-	1	1	1	-
Dennis Ulvestad	Commissioner	-	1	1	-	1	-	-	-	1	1	1	-
Mike Boyett	Vice Chairman	-	E	1	-	1	-	-	-	E	1	E	-
Michael Larson	Commissioner	-	1	1	-	1	-	-	-	1	1	1	-
James Mariska	Commissioner	-	1	1	-	E	-	-	-	1	A	1	-
Wyeth Friday	Director, Planning & Community Services	-	-	-	-	-	-	-	-	-	-	-	-
Monica Plecker	Division Planning Manager	-	-	-	-	-	-	-	-	-	-	-	-
Nicole Cromwell	Planner Zoning Coordinator	-	1	1	-	1	-	-	-	1	1	1	-
Tammy Deines	Planning Clerk	-	1	-	-	-	-	-	-	1	1	1	-
Dave Green	Planner II	-	-	-	-	-	-	-	-	-	-	-	-
Karen Husman	Planner I	-	1	1	-	1	-	-	-	-	-	1	-
Robbin Bartley	Administrative Support	-	-	1	-	1	-	-	-	-	-	-	-

Total Number of 2019 Applications	01/03/2019	02/05/2019	03/05/2019	04/02/2019	05/07/2019	06/04/2019	07/02/2019	08/06/2019	09/03/2019	10/01/2019	11/05/2019	12/03/2019	TOTAL
Zone Change	0	-	-	-	-	0	0	0	0	1	1	-	2
Special Review	0	1	1	-	2	0	0	0	2	1	1	-	8

Chairman Wagner introduced the Planning Division Staff and Commission. Attending Staff were Nicole Cromwell, Zoning Coordinator, Karen Husman, Planner I, and Tamara Deines, Planning Clerk.

**Attending:** Linda Walters, Ed Sermon, Mike Irwin, Ed Melcher, Greg Price, James & Georgia Spomer, Ronda Carlson, Tony Neumann, Patti Stanfill, Jerome Rangitsch

Public Comment

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

**Approval of Minutes:**

Chairman Wagner called for approval of the October 1, 2019 meeting minutes.

**Motion**

**Commissioner Larson made a motion and Commissioner Boyett seconded the motion to approve the October 1, 2019 meeting minutes.**

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Dan Wagner	X			
Mike Boyett	X			
Dennis Ulvestad	X			
Mike Larson	X			
James Mariska	X			

**The motion for approval then carried with a unanimous voice vote 4-0.**

**Disclosure of Conflict of Interest**

<b>COMMISSIONER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Dan Wagner		X		
Mike Boyett		X		
Dennis Ulvestad		X		
Mike Larson		X		
James Mariska		X		

**Disclosure of Outside Communication**

Nicole Cromwell stated staff received an email from one of the surrounding property owners, Jason Hanson, dated November 5, 2019. It is available in the City Zoning Commission notebook and has been distributed to the Zoning Commission members.

<b>COMMISSIONER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Dan Wagner		X		
Mike Boyett		X		
Dennis Ulvestad		X		
Mike Larson		X		
James Mariska		X		

**Public Hearings:**

Chairman Wagner reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and advised the audience that this would be heard by the City Council on November 25, 2019.

**Item #1**

Zoning Coordinator Nicole Cromwell read aloud the legal notice for this application:

**City Special Review 980 – – 2335 Lewis Ave – To allow a car wash – A special review request to allow a car wash in a Neighborhood Commercial (NC) Zone, on Lot 7A Amended Lots 6 & 7, Arnold Sub., a 30,660 square foot parcel of land. Tax ID: A02435**

Planner Husman opened with presentation of the staff report. She stated a zone change was approved by City Council for this parcel. She added that the applicant is agreeable to the addition of a boulevard sidewalk along Lewis Avenue as an addition to Condition of Approval #6.

**RECOMMENDATION**

The Planning Division recommends conditional approval and adoption of the findings of the three criteria for Special Review 980. This application is pending approval of Zone Change 973 to change the zoning from RP to NC. The City Council approved the zone change on first reading on Monday October 28. The second reading is scheduled for November 12.

The Planning Division recommends conditional approval and adoption of the findings of the criteria for Special Review #980.

**Amended** Recommended conditions:

1. The special review approval is limited to Lot 7A Amended Lots 6 & 7, Arnold Sub., a 30,660 square foot parcel of land generally located at 2335 Lewis Avenue.
2. The special review is for the construction and operation of a car wash. No other use is intended or implied.
3. The developed property will adhere to the noise ordinance in place at all times.
4. A sight-obscuring fence and landscape buffer shall be placed on the east property line to buffer the adjacent residential use.
5. There will be a minimum setback of ten (10) feet from the side (north) and rear (east) property lines.
6. In addition to the required landscaping per Section 27-1103, there will be landscaping on the corner of Lewis and 24th Street West with a sufficient "safe" area for gathering of pedestrians waiting to cross the intersection safely.
7. All outdoor lighting shall have full cutoff shields so no part of the fixture or lens projects to the neighboring property to the east.
8. With the exception of the above conditions, the site shall be developed in substantial conformance with the site plan submitted.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.
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, leaseholders, heirs and assigns.

**Discussion**

Chairman Wagner called for questions and discussion from the Board. There was none.

**Public Hearing**

Chairman Wagner opened the public hearing and called for presentation by the applicant.

**Scott Aspenlieder, Performance Engineering, 608 N 29<sup>th</sup> Street, Billings, Montana**

Mr. Aspenlieder is the applicant's agent for the owner and developer, Rocky Mountain Car Wash. He said he wished to address some of the concerns and highlight the proposed mitigations.

**Buffering:** The proposed layout has been revised with the car wash located away from the property owners and there is significant landscaping for noise buffering. This layout will provide more buffering for the neighbors and should be workable for the neighborhood and the community. They will install boulevard sidewalk along Lewis Avenue and expand the landing area at the crosswalk located at Lewis Avenue and 24th Street West. He presented the proposed facility rendering and pointed out the tallest part of the building will provide a sound barrier from the facility back towards the east. He provided clarification on the location of the building and stated the proposed vegetation will be trees planted on the eastern boundary along with fencing.

**Noise Concerns:** Mr. Aspenlieder presented slides of existing facilities located in residential areas. He stated the owner has good relationships with the neighborhoods and has had no complaints. Mr. Aspenlieder continued and provided statistics for the decibel readings and levels of the existing ambient noise at this property. He noted the distances to the closest residents from the proposed facility. A site noise map from a similar facility in Riverton, Wyoming with two dyers running at the same time was presented. He explained that the difference in measurement is that the second dyer added between one and two decibels. He said there would be a significant reduction by flipping the building around in the layout and making mitaigational adjustments with a center building, vegetation, and buffering. Chairman Wagner commented a masonry fence should be used to fully buffer the sound. Nicole Cromwell said the Commission could amend the conditions of approval if so desired. Mr. Aspenlieder stated they are confident they will meet the noise ordinances current and future.

**Traffic/Safety:** A preliminary traffic study has been conducted and provided to the City Traffic Engineer. Based on the findings of the traffic study, the City has agreed to the proposed site layout. He stressed that this is a captive business and not a trip generating business in that the facility may augment traffic flows but it does not increase traffic. The boulevard walk along the frontage of the lot is included to keep pedestrians back from the roadway.

The applicant is agreeable to the amended staff recommendations including the noise compliance and construction of an active buffer and eastern fence, and boulevard sidewalk with an enlarged crossing area. Mr. Aspenlieder stated the applicant has received preliminary approval by the City Traffic Engineer, and they intend to do what they can to make this project a success.

Chairman Wagner called for those wishing to speak in favor of City Special Review #980.

**Favor:**

**Pat Robertson, NAI Business Properties, (no address given)**

Mr. Robertson stated he is in favor of this special review.

**Pastor Ed Sermon, 1625 Riverstone, Billings, Montana**

Pastor Sermon is the pastor of the church that owns this parcel. He said the church has to move and they have purchased a facility. In regards to children's safety, he said the church allows other folks to go through the parking lot as a "cut-through" from 24<sup>th</sup> Street West to ALTANA bank and to

Lewis Avenue. ALTANA confirmed that approximately 45 customers enter from the church parking lot a day to access the ATM. He said he feels the car wash will increase safety, as it will reduce the “cut-through traffic”. Pastor Sermon said the schools would address issues with the City regarding the traffic light. The crossing guard suggested they should be walking the students past the entrance to the proposed car wash.

Chairman Wagner asked if there is anyone wishing to speak in opposition of Special Review #980.

### **Opposition**

**Jason Hanson, 2320 Lewis, Billings, Montana**

**Ronda Carlson, 2320 Hanson, Billings, Montana. On behalf of Jason Hanson.**

Ms. Carlson read aloud Mr. Hanson’s statement. Mr. Hanson’s concerns:

Noise and migration of noise. Can the City water system handle the car wash and will the applicant be held responsible for any damage to the water or sewer? Who will enforce violations and what will the consequences be? Based on the noise ordinance requirements, there is no distinction between the Residential Professional and residential properties.

Mr. Hanson feels this facility needs to be held accountable so they will not violate the ordinance now and in the future, and the applicant’s rush to push this project is a direct response to the upcoming noise ordinance. Ms. Carlson pointed out the letter provided by Jason P. Hanson, 2320 Lewis Avenue. Ms. Carlson protested the 3-minute period for presentation as she feels the applicant got more time to present the application.

**M. Ed Melcher, 2331 Lewis Avenue, Edm@Fismt.com, Billings, Montana**

Mr. Melcher thanked Mr. Ivan for changing the site plan layout. He said he likes the idea of a decorative concrete wall along the adjoining property line as it will block some of the exhaust. He asked if he will lose the parking space for his business on Lewis Avenue, and if there will be monitoring services for security as this would be a 24/7 business. He said this would become a destination point if a monthly pass were offered.

### **Rebuttal**

Chairman Wagner called for rebuttal from the applicant.

**Scott Aspenlieder, Performance Engineering, 608 N 29<sup>th</sup> Street, Billings, Montana**

**Mike Irwing, Rocky Mountain Car Wash, 26 Hay Meadow Drive, Pinedale, Wyoming, 82941**

He stated the significant changes to the project and the data provided show that they have the means to be successful. Zoning Coordinator Nicole Cromwell clarified the minimum edge of a curb for a no parking zone is 3-feet and said there should be no limitation of parking spaces on Lewis Avenue. The curbed approach is 15-feet from the property line. Mr. Aspenlieder said the applicant is agreeable to construction of a block wall on the east end.

Chairman Wagner closed the public hearing and called for a motion.

**Motion**

**Commissioner Larson made a motion and Commissioner Boyett seconded the motion to forward a recommendation of conditional approval and adoption of the findings of the three criteria for Special Review #980; with the condition that a site-obscuring fence has to be of stone or masonry material. Sidewalks shall be constructed as boulevard sidewalks.**

**Discussion**

Chairman Wagner called for discussion on the motion. Commissioner Ulvestad stated he is impressed with the applicant’s agent and the amendments to the project to address concerns. He will vote in favor of the request.

COMMISSIONER	YES	NO	ABSTAINED	ABSENT
Dan Wagner	x			
Mike Boyett	x			
Dennis Ulvestad	x			
Mike Larson	x			
James Mariska		X		

**The Motion carried with a unanimous 4 - 1 vote with Commissioner Mariska voting against. A recommendation of conditional approval of Special Review #980 will be forwarded to City Council on Monday, November 25, 2019 at 5:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.**

**Item #2**

Nicole Cromwell stated a neighborhood pre-application meeting was held regarding Zone Change #974 on November 25, 2019. She read aloud the legal notice for this application:

**City Zone Change 974** – 1004 Lewis Ave- from R-70 to RP - A zone change request from Residential-7000 (R-70) to Residential Professional (RP), on Lot 2B – 3B Amended Lot1, VFW Subdivision, a 17,899 square foot parcel of land. A pre-application neighborhood meeting was held on September 14, 2019, at 1004 Lewis Avenue. Tax ID: A21244A.

Planner Karen Husman opened with presentation of the staff report.

**RECOMMENDATION**

Planning staff recommends approval and adoption of the findings of the ten criteria for Zone Change #974.

This is an application to change from Residential 7000 (R-70) to Residential Professional (RP) to build a new office building. A pre-application neighborhood meeting was held September 14, 2019

at 2:00 p.m. on the property to discuss the proposed zone change. The submitted meeting notes indicated the surrounding owners were supportive of the zone change to allow a new office space on the property.

#### **RECOMMENDATION**

The Planning staff has reviewed the application and is recommending approval based on the findings of the 10 review criteria. The proposed zoning and use of the property is compatible with the adjacent and surrounding land uses. The 2016 Growth Policy supports the proposed zoning and use in this area of mixed uses and zoning. This is an example of a good re-development project for this area.

#### **Discussion**

Chairman Wagner called for questions and discussion from the Board. There was none.

#### **Public Hearing**

Chairman Wagner opened the public hearing and called for presentation by the applicant.

#### **Patti Stanfill, Owner, KPCS, LLC, 1437 Wyoming Avenue, Billings, Montana**

Ms. Stanfill stated this is an accounting business currently located 1437 Wyoming in the same building as the former Ort & Company. She said she wants to build a professional office with a “homey-residential” feel. The exterior of the proposed building will have brown tones with rockwork and landscaping. A neighborhood meeting was held and the neighbors are excited with this proposal. KPCS LLC employees are from Montana and many live in this neighborhood. Ms. Stanfill said this location would work with their clients. The asbestos has been removed from the existing building and they plan to tear it down. They are in agreement with sharing the parking with the adjacent neighbors when the business is closed. If approved, this use will fit with the new zoning that will be coming in January. Customers will be taken by appointment only. Ms. Stanfill said currently KPCS is located five blocks away from this location and are good neighbors. Fifteen people attended the neighborhood meeting. Eleven positive comments were received along with four who are not in favor of any type of change at all. In response to question by Commissioner Ulvestad, Ms. Stanfill stated they are open all year long and offer services for payroll, consumers, and financial statements. Commissioner Mariska commented on the property to the east and possibility for major changes with the Elks Club. Ms. Stanfill responded that the proposed building would be a good buffer to the neighborhood. She said she has not talked with the Elks Club.

#### **Tony Newman, Newman Construction, 3410 Hollowtree Road South, Billings, Montana**

Mr. Newsman reiterated the need to make the building fit in the location by creating a building with a residential feel buffering to bridge the gap between the commercial location and the residential buildings. During the neighborhood meeting, they discussed moving the building to avoid lighting issues with the neighbors. Commissioner Ulvestad asked about lighting at night. Mr. Newman said there will be no spotlighting. Downward lighting will be installed for security reasons .

### **Opposition**

#### **Linda Walters, 1037 Lewis Avenue, Billings, Montana**

Ms. Walters presented a petition to the Zoning Commission with twenty-four signatures against this proposal. Ms. Walters stated she does not feel this business will benefit the welfare of the residential feel of the neighborhood. She suggested the applicant use a parcel adjacent to the Elks Club instead. Ms. Walters is concerned with potential for additional commercial development with the sale of the Elks' building. She said those neighbors in favor of their application are operating businesses out of their home, including one resident who has a towing business. Ms. Walters emphasized this is a residential neighborhood with children. Commissioner Mariska asked how many signatories reside on Lewis Avenue. Ms. Walters said about half with the remainder obtained from residents on Burlington, and Cottage Lane. She said she would rather see a residential building, condominium or duplex to blend in with the newer housing. She would like a community garden and keep the neighborhood residential.

### **Rebuttal**

Chairman Wagner called for rebuttal.

#### **Patti Stanfill, Owner, KPCS, LLC, 1437 Wyoming Avenue, Billings, Montana**

Ms. Stanfill spoke to address concerns. She reported this site would have parking located in the rear of the lot. The building will be west facing. The fourteen spaces are for employees that come in the morning and leave at night. There will be no generation of trips. She said they might have three clients in the office at any one time who come by appointment only to meet with two to three accountants. Operating hours are 8:00 a.m. - 5:00 pm. Monday-Friday. There are some evening appointments from 5:30 pm – 7:00 pm during the months of February through April for tax season. Employees work some Saturdays. Security lights will be installed to allow employees to go from the building to their vehicles safely. Ms. Stanfill commented this lot is two city lots and would have to be divided to build a reasonably priced home.

Chairman Wagner asked if there is anyone wishing to speak in favor of City Zone Change #974. There was none. Chairman Wagner asked if there is anyone wishing to speak in opposition of City Zone Change #974. There was none. Chairman Wagner closed the public hearing at 5:21 p.m. and called for a motion.

### **Motion**

**Commissioner Larson made a motion and it was seconded by Commissioner Ulvestad to forward a recommendation to City Council to approve the staff recommendation of approval and adoption of the findings of the ten criterion for Zone Change #974.**

### **Discussion**

Commissioner Larson stated he is sympathetic to the neighborhood objective to keep it residential and noted the options for a residential use or neighborhood garden are expensive. He stated this would be a good addition given the proposed business' low traffic volumes and hours of operation. Commissioner Larson will vote in favor of this zone change. Commissioner Mariska stated he sympathizes with Linda Walters but the problem is this may be the best option. He said he is not

happy with the City, as they have allowed commercial venues to come into residential neighborhoods. Even so, he feels this is a reasonable alternative. He pointed out there is no way to prevent future approved zone changes permitting further changes to the neighborhood.

COMMISSIONER	YES	NO	ABSTAINED	ABSENT
Dan Wagner	X			
Mike Boyett	X			
Dennis Ulvestad	X			
Mike Larson	X			
James Mariska	X			

**The motion carried 5-0. This request will be heard by City Council on Monday, November 25, 2019 at 5:30 p.m. in the City Council Chambers to hear testimony for or against the zoning applications.**

**Other Business**

- The Tuesday, December 3, 2019 meeting is canceled due to a lack of applications.

**Adjournment: The meeting adjourned at 5:42 p.m.**

**DRAFT: To be approved by a motion January 7, 2020**

***Tamara L. Deines, Planning Clerk***



**City Zoning Commission**

**Meeting Date:** 01/07/2020

**SUBJECT:** Zone Change 975 - Western Sky Planned Development Amendment

**THROUGH:** Nicole Cromwell

**PRESENTED BY:** Nicole Cromwell

**Information**

**REQUEST**

**City Zone Change 975 – SW corner of S 46<sup>th</sup> St. W & King Ave W - Modification to the Western Sky Planned Development - A** zone change request to amend the Planned Development Agreement (PDA) for Western Sky Subdivision, more specifically the underlying Neighborhood Commercial (NC) allowed uses to include certain light manufacturing, ancillary warehousing and preparation facilities. The amendment also clarifies offices and manufacturing facilities shall conform to the setbacks in the Billings zoning code for all NC zone districts, however, any ancillary warehouse facilities shall be set back a minimum of 40 feet from the front property line along King Avenue West. Mini storage facilities will continue to be set back a minimum of 150 feet from the King Avenue West property line. The amendment includes an allowance for a 45-foot building height limit in the NC zone district. The amendment applies to Lots 2 & 3, Block 1, Western Sky Subdivision Amended, a 9.128 acre parcel of land. A pre-application neighborhood meeting was held on November 25, 2019, at the offices of Sanderson Stewart, 1300 N. Transtech Way. Presented by Nicole Cromwell, Zoning Coordinator

**RECOMMENDATION**

Planning staff recommends approval of Zone Change 975 for an amendment to the Planned Development agreement for Western Sky Subdivision.

**APPLICATION DATA**

OWNER: Mont Vista, LLC - Tracy Haag

AGENT: Sanderson Stewart - Rick Leuthold, P.E. and Bill Morgan, P.E.

LEGAL DESCRIPTION: Lots 2 & 3, Block 1 Western Sky Subdivision amended

ADDRESS: 4600 Block of King Ave West - Crescent Street (internal street)

CURRENT ZONING: Planned Development - Neighborhood Commercial

EXISTING LAND USE: Vacant

PROPOSED USE: Coffee roasting and warehouse (Lot 2), personal storage warehouses (Lot 3)

SIZE OF PARCEL: 9.128 acres

**CONCURRENT APPLICATIONS**

None.

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	Zone Change	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
Western Sky Sub	City ZC 802	May 17, 2007	A-1 to CC, RMF-R, R-50, R-70, R-96 & Public	Y	Included entire NW section of 160 acres
Western Sky Sub	City ZC 957	Sept 11, 2017	CC, RMF-R, R-50, R-70, R-96 & Public to Planned Development	Y	Underlying zones CC, NC RMF & RMH
SURROUNDING PROPERTY	Zone Change	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
Hoop Dreams – Apartments	City ZC 900	Aug 13, 2012	R-50 to RMF-R	Y	Apartment Developments at 44 <sup>th</sup> St W and King Ave W
Hoop Dreams – Apartments	City ZC 912	July 8, 2013	Public & R-50 to RMF-R	Y	Additional apartments

Lenhardt Square 44th St W & north of King Ave W	City ZC 829	Feb 25, 2008	A-1 to Planned Development	Y	PD for mixed uses
St. Vincent Healthcare Shiloh Rd & King Ave W	City ZC 722	May 24, 2004	A-1 to Planned Development	Y	PD for healthcare & ancillary commercial uses
St. Vincent Healthcare Shiloh Rd & King Ave W	City ZC 870	Jan 24, 2011	PD Amendment	Y	Adjustment to allow flexibility
Montana Sapphire Sub	City ZC 673	July 9, 2001	A-1 to Entryway Light Industrial (ELI)	Y	New industrial park
Montana Sapphire Sub	City ZC 903	Sept 24, 2012	ELI to HC	Y	Affinity of Billings Fuel Fitness Divide Bar & Grill
Montana Sapphire Sub Long Beach Apts	City ZC 878	Aug 22, 2011	ELI to HC	Y	New apartments
3815 Hesper Road	City ZC 907	March 25, 2013	A-1 to CI	Y	New FedEx Ground Terminal

### SURROUNDING LAND USE & ZONING

NORTH: Zoning: PD - Lenhardt SQ and A-1  
Land Use: Vacant land and Agriculture

SOUTH: Zoning: PD-RMH  
Land Use: Vacant land

EAST: Zoning: RMF-R  
Land Use: Vacant land

WEST: Zoning: PD-CC  
Land Use: Vacant land

### BACKGROUND

This is a zone change request to allow a modification to the existing Western Sky Planned Development zoning to add some uses to the underlying Neighborhood Commercial (NC) zone (Lots 2 & 3 of Block 1), allow an increase from a maximum building height of 34 feet to allow 45 feet, and to allow ancillary warehouses for primary uses to be setback 40 feet from King Avenue West while keeping the required 150-foot setback for personal storage warehousing. The proposed amendment to the zoning is to accommodate the pending sale of Lot 2 to a coffee roasting company. The developers have included a concept drawing of the proposed facility.

Planned Development zoning is a customized zone district developed and applied to specific properties. The PD zone is a recorded document that includes a master plan of the zone districts and the specific requirements for each district. In addition, the developer often includes enforceable and specialized regulations for landscaping, trails and parks, screening and buffering of uses to mitigate potential conflicts. Several PD zone districts exist in the immediate area including Lenhardt Square (2008) north of King Avenue West, St Vincent's Health Care at King Ave West and Shiloh Road (2004 and updated 2015), Olympic Park on the northeast corner of King Avenue West and Shiloh Road (1981) and Golden Meadows at King Avenue West and 32nd St West (1978). Currently, the City of Billings administers 41 Planned Development zone districts.

Minor adjustments to approved Planned Developments can be administratively approved for issues such as slight increases in density or reductions in open space. Minor adjustments cannot add uses, increase height limits or decrease setbacks. These changes require a zone change application and approval. All zone changes, including Planned Development zone changes, must have findings of the ten review criteria that support the proposed change including whether the zoning is conforming to the adopted growth policy, allows for adequate and efficient provision of city services, and is generally compatible with the surrounding land uses and districts.

Planning staff conducted a Preliminary Review meeting as required for any Planned Development zone change. The surrounding property owners and city staff are invited to the meeting to discuss the specifics of the proposed zoning and if concerns or conflicts are identified how the developer may adjust the zoning to eliminate or mitigate the issues. No surrounding property owners attended the review meeting and Planning staff did not received communication from any owner prior to the meeting. City Engineering provided comment prior to the meeting to request the developer review its current traffic analysis to ensure it included information relevant to the proposed use. No other comments from city staff were received.

Planning staff has reviewed the proposed amendment and is recommending approval to the Zoning Commission based of the findings of the ten review criteria. The developer has proposed language that is general enough to accommodate the potential coffee roaster as well as other custom or craft-made retail goods such as pottery, artwork, clothing, candy and bakery products. A growing market exists for locally produced retail goods and the proposed amendment will accommodate some of these uses in a small portion (9.1 acres) of the 64-acre Western Sky Planned Development. The current building height limit of 34 feet does not easily or always accommodate the proposed uses so the amendment includes a proposed height limit of 45 feet. The underlying Community Commercial zoning on Lot 1 to the west is also 45 feet so this building height increase is compatible and will not be out-of-place when the adjacent lot is developed. Many custom or crafted retail goods require some amount of warehousing but the current Planned Development agreement requires all warehousing to be setback at least 150 feet from King Avenue West. The proposed amendment allows ancillary warehousing with a primary use to be setback 40 feet from King Avenue West while keeping the 150-foot setback for personal storage warehousing. The proposed amendment allows some flexibility within the existing PD without burdening adjacent property or introducing incompatible uses to the underlying zoning. The

PD will keep the other features of the zone district intact and these uses and recreational facilities will not be detrimentally affected.

## RECOMMENDATION

Planning staff recommends approval based on the following findings of the ten review criteria.

Prior to any recommendation to the City Council, the Zoning Commission shall consider these proposed findings:

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

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

The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer a range of housing choices and development densities. The West Billings Plan adopted a number of Goals, Policies, and Implementation Strategies. The proposed zone change is consistent with the following adopted Policies of **Planned Growth Goal 1: Establish Development Patterns that Use Land More Efficiently**

*Policy R "Encourage innovative land-use planning techniques to be used in building higher density and mixed-use developments as well as infill developments."*

- The proposed adjustments to the PD-NC zone is compatible with goals of the West Billings Neighborhood Plan. The proposed amendment will accommodate uses that are compatible in a mixed-use environment and will fulfill a growing market for locally produced retail goods. The proposed development will also have good access to outdoor activities and is in close proximity to commercial centers and transportation options.

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

### **Prosperity:**

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

The proposed zoning would accommodate a growing business and retail market for locally produced retail goods including crafted foods. These types of businesses are sustainable and will help create and stabilize the economic base for Billings. Along with the proposed inter-connected system of trails and paths in Western Sky, the diverse housing choices and other commercial service options, Western Sky will help create a solid neighborhood in this area of West Billings. The concept development plan includes cottage court residential areas, a clubhouse and outdoor area, trail connections to the Shiloh Conservation Area and will be compatible with the intended development to the west. The proposed landscaping and streetscape will ensure the livability of this neighborhood .

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 and public safety will be promoted by the proposed zoning. The proposed amendment will allow a limited number of additional uses in the underlying NC zone that will be compatible with the adjacent residential and planned commercial uses.

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

**Transportation:** The proposed amendment will not have a measurable effect on the transportation system. The city has reviewed a traffic study for the entire subdivision and proposed uses. The developer will be implementing the required mitigation and traffic improvements stipulated by engineering. City Engineering has requested the developer ensure the proposed use will not change the current findings of the traffic analysis.

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

**Schools and Parks:** Schools and parks will not be effected by the proposed amendment.

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

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

The 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?*

The traffic study prepared by the applicant for the city has been approved and the developer will implement the recommendations of the study. Non-motorized travel – walking and biking – is an essential part of the circulation plan both within the proposed development and connecting to adjacent areas including Hogan's Slough, Hoop Dreams development to the north and the Shiloh Conservation Area Trail system to the east. The Subdivision Improvement Agreement (SIA) for this new subdivision has conditions for trail and sidewalk improvements as well as pedestrian safety measures.

Traffic counts in the area on King Ave West and 48<sup>th</sup> St West are well below the expected volume on a principal arterial street. King Avenue West has an average daily traffic volume of 8,010 vehicles per day at this location, less than Poly Drive at 13<sup>th</sup> Street West. 48<sup>th</sup> Street West is less than most local streets with about 860 vehicles per day. As development increases in the area, these 2 arterial streets will need to build in additional controls, management facilities and safety features. MDT retains jurisdiction over the management of King Avenue West and the City will manage 48<sup>th</sup> St West where it has been annexed to the city. The accepted traffic analysis includes contributions to improvements as well as improvement required as development phases are initiated.

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

The new zoning does promote compatible urban growth in this area. The proposed amendment will allow limited crafting and manufacturing in a small area of the proposed development. This will accommodate and support local job creation and will be scaled to be compatible with the surrounding 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 consider the character of the district and the suitability of the property for the proposed use. This area between Shiloh Road and 48<sup>th</sup> St West is an area undergoing rapid growth population growth. The proposed amendment will allow this area to support additional businesses and jobs close to where people live. The property is suitable for the proposed use given its location in the area.

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

The property is currently undeveloped. Approval of the zone change will provide more certainty to surrounding land owners and may help to stabilize property values of adjacent buildings.

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

The proposed zoning may encourage the most appropriate use of this land in Billings. This specific location and use is appropriate.

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### **Attachments**

Zoning Map & Site Photos

Application and Letter

Amended Subdivision

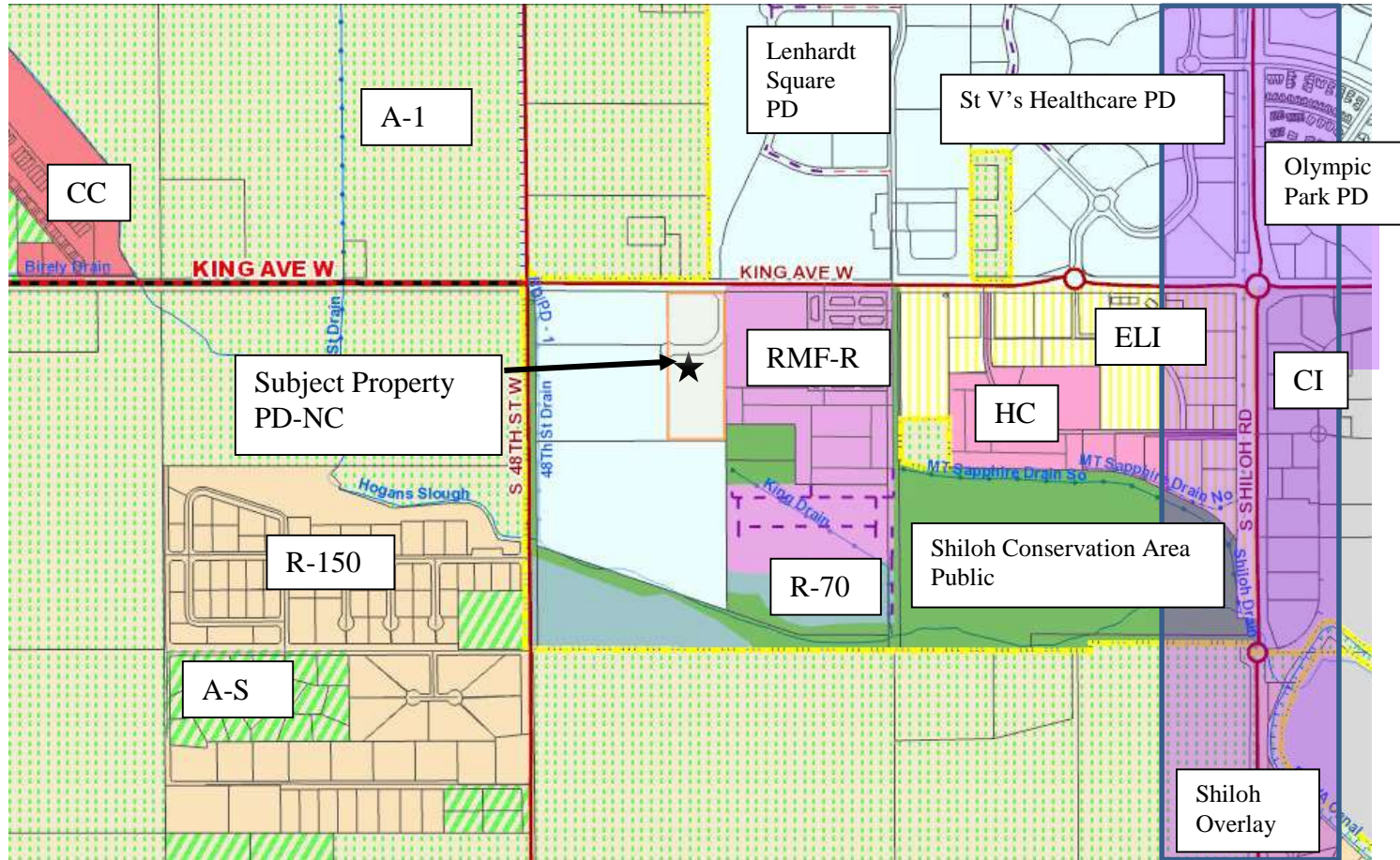
PD Amended Draft

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# Surrounding Zoning

## Zone Change 975 – Western Sky PD





**Subject Property Photos**



Subject Property – view east



View east along King Avenue West

**Subject Property Photos**



View west along King Avenue West



View north and west across King Avenue West

## Subject Property Photos



Lenhardt Square

View north and east across King Avenue West



APPLICATION FORM

CITY ZONE CHANGE

Billings Zone Change # 975 - Project # P2-19-00251

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

Present Zoning: Planned Development Recorded 10/13/17 - 3830283

Proposed Zoning: See Attached

TAX ID# Old #'s C15620 & D00614 CITY ELECTION WARD # V

Legal Description of Property: Lots 2 & 3, Block 1, Western Sky Subdivision Amended

Address or General Location (If unknown, contact City Engineering): Southwest Corner of S. 46th St. W & King Ave. West

Size of Parcel (Area & Dimensions): Lot 2, Block 1 = 3.109 Acres, Lot 3, Block 1 = 6.079 Acres

Present Land-Use: Vacant - Neighborhood Commercial

Proposed Land-Use: Neighborhood Commercial with Uses & Set Backs as Noted on the Attached

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

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

Owner(s): Mont Vista, LLC c/o Tracy Haag  
(Recorded Owner)  
P.O. Box 333, Reed Point, MT 59069  
(Address)  
406-855-4168 tracy@beartoothholding.com  
(Phone Number) (email)

Agent(s): Sanderson Stewart c/o Rick Leuthold  
(Name)  
1300 N Transtech Way, Billings, MT 59102  
(Address)  
406-698-6910 rleuthold@sandersonstewart.com  
(Phone Number) (email)

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

Signature: [Handwritten Signature] Date: 12/2/19  
(Recorded Owner)



PLANNED DEVELOPMENT ZONE CHANGE AMENDMENT ADDING CERTAIN  
LAND USES AND CLARIFYING ADDITIONAL SETBACKS  
IN THE NEIGHBORHOOD COMMERCIAL (NC) AREA

**Statement of Proposal**

The owner, Mont Vista, LLC, is seeking a zone change amendment for Lots 2 and 3, Block 1 Western Sky Subdivision Amended located at the southwest corner of S. 46th Street West and King Ave West. The property is 9.128 acres in size.

**Accompanying Responses to Questions in Zoning Application Form**

**1A. In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?**

**Essential Investments (Relating Public and Private Expenditures to Public Values)**

- *Landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors*

New development on the noted lots will be subject to the City of Billings requirements for site development, including landscaping. This will ensure the visual appeal of the project development.

- *Infill development and development near existing City infrastructure may be the most cost effective*

This property is annexed and has existing City infrastructure adjacent to the site and being extended into the development. This zone change amendment will allow for efficient use of City infrastructure improvements and assure that it is secure from fire and other dangers.

- *Neighborhoods that are safe and attractive and provide essential services are much desired*

The development will be able to accommodate the needs of the community if the zoning of Neighborhood Commercial is amended to include the additional uses identified and clarify the included setbacks. There will be no adverse impact to the public health, safety and welfare from the proposed land uses or setbacks to the City or other adjacent developments.

**Place Making (Enhance, Maintain, Preserve, and Improve Existing Public Places)**

- *Enhancements and maintenance of public spaces and buildings through City stewardship is integral to a vibrant community*

The proposed uses help to accommodate an important service sector in this west end area. The development area has adequate transportation, water, sewerage, schools, parks and

**Prosperity (Promoting Equal Opportunity and Economic Advancement)**

- *Successful businesses that provide local jobs benefit the community*

There are business's looking to locate to and/or expand into areas such as the Western Sky Subdivision 2nd Amended. This will help to promote local jobs that bring benefit to the overall community while protecting the integrity and value of the localized development area.

- *Retaining and supporting existing businesses helps sustain a healthy economy*

By supporting this zone change amendment, existing businesses that help sustain and build a healthy economy will be retained and supported.

***1B. 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 in the immediate area.***

As many of the business delivery systems and localized small business practices have changed over the years, it has become ever more difficult for certain light manufacturing facilities to find appropriate spots to locate and/or expand. The owners do not want to locate in a heavy industrial zoning area, but rather be near their employee and customer bases. The facilities are attractive and much more compatible with retail and professional types of developments. These types of uses fit easily into the rainbow of uses that surround the Shiloh Road and King Avenue West intersection and are a logical and appropriate extension within the immediate area.



Lot 2, Block 1, Western Sky Subdivision Approved  
Zoning Change Amendment Concept Building Exhibit  
November 12, 2011, Landmark Street View 1 400001 01

Concept Drawing of Coffee Roasting and Warehouse – Lot 2, Block 1 , Western Sky PD

# PLAT OF WESTERN SKY SUBDIVISION, 2ND AMENDED

BEING LOTS 3 & 4, BLOCK 1, WESTERN SKY SUBDIVISION  
SITUATED IN THE NW1/4 OF SECTION 15, T. 1 S., R. 25 E., P.M.M.,  
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : MONT VISTA, LLC

JULY, 2019

PREPARED BY : SANDERSON STEWART

BILLINGS, MONTANA

BASIS OF BEARING: THE BASIS OF BEARINGS FOR THIS SURVEY HAS BEEN DERIVED FROM GPS OBSERVATIONS AND IS BASED ON A NAD 83 LAMBERT CONFORMAL CONIC, SINGLE PARALLEL, LOW DISTORTION PROJECTION FOR THE CITY OF BILLINGS, HAVING A POINT OF ORIGIN AT 43°47'00"N LATITUDE AND 108°25'00"W LONGITUDE WITH A SCALE FACTOR OF 1.0001619. THE GRID TO GROUND COMBINED SCALE FACTOR AT THE 25 CORNER OF THE INTERSECTION OF KING AVE. AND 48TH ST. W. BEING A REBAR WITH YELLOW CAP MARKED "03 1778151", IS 0.9999982338. THE CONVERSION ANGLE IS -0°09'31". DISTANCES AND INTERNATIONAL FEET FOR THIS SURVEY, GRID DISTANCE IS ESSENTIALLY EQUAL TO GROUND DISTANCE.

- FOUND SURVEY MONUMENT, AS NOTED
- SET 5/8" X 16" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "SANDERSON STEWART"
- SET INTERSECTION MONUMENT, 5/8" X 16" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "SANDERSON STEWART BILLINGS M.T.". WILL BE REPLACED WITH BRASS CAP MONUMENT BOX UPON COMPLETION OF STREET IMPROVEMENTS

NOTE: ALL CURVES ARE TANGENT AND ALL PROPERTY LINES INTERSECTING CURVES ARE RADIAL UNLESS OTHERWISE NOTED (CXX" RAD).

RECORD:

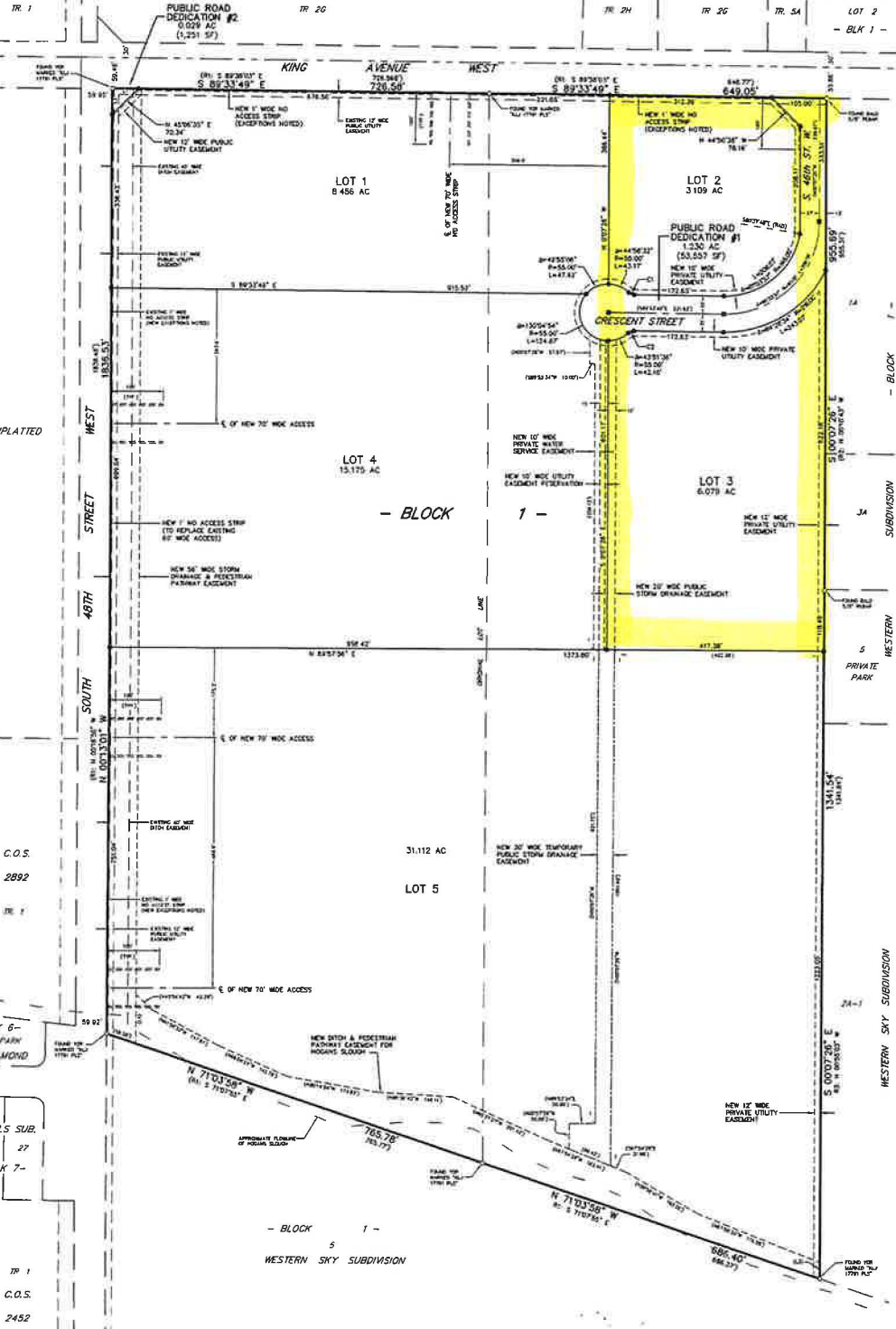
- R1: PLAT OF WESTERN SKY SUBDIVISION, DOCUMENT NO. 3374385
- R2: PLAT OF WESTERN SUBDIVISION, DOCUMENT NO. 3658541
- R3: AMENDED PLAT OF LOT 2A OF AMENDED PLAT OF LOTS 1 & 2, WESTERN SKY SUBDIVISION, DOCUMENT NO. 3720149

C.O.S.  
3630  
TR. 1

CERTIFICATE OF SURVEY No. 983

C.O.S.  
2063  
AM

LENHARDT  
SQUARE SUB  
SECOND FILING



Curve #	Data	Radius	Length
C1	44°24'30"	18.00'	11.83'
C2	44°52'40"	15.00'	11.62'

Line #	Bearing	Distance
L1	N 82°32'40" E	50.92'
L2	S 00°32'01" E	30.02'
L3	N 80°07'28" E	31.89'
L4	S 00°23'01" E	95.40'

SP 3902604  
11/14/2019 11:49:00 AM  
BILLINGS, MONTANA

Return to: ~~Kadmas, Lee & Jackson, Inc.~~  
~~P.O. Box 80303~~  
~~Billings, MT 59108-0303~~

Sanderson Stewart  
1300 N Transtech Way  
Billings, MT 59102

# **AMENDED** PLANNED DEVELOPMENT AGREEMENT

**FOR**

Western Sky **Subdivision, 2<sup>nd</sup> Amended**

~~By and Between:~~

~~Mont Vista, LLC  
PO Box 333  
Reedpoint, Montana 59069~~

~~And~~

~~The City of Billings, Montana~~

**PLANNED DEVELOPMENT AGREEMENT  
FOR WESTERN SKY SUBDIVISION**

~~In accordance with the Unified Zoning Code Section 27-1310, the parties to the Planned Development Agreement for Western Sky (“Agreement”)~~

~~Lot 3 and 4 of Block 1 of Plat of Western Sky Subdivision, recorded in the office of the clerk and recorder, Yellowstone County, under Document No. 3374355.~~

~~The parties to the Agreement consent to this re-zoning, said parties being the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 N 27<sup>th</sup> Street, Billings, Montana, 59101 and MONT VISTA, LLC, a Montana limited liability corporation, of PO Box 333, Reedpoint, Montana 59069, and Gareld F. Krieg and Barbara B Krieg, 3115 Sycamore Lane, Billings, MT 59102.~~

~~IN AGREEMENT WITH THE FOREGOING, the authorized representatives of the foregoing parties have executed this document on the date or dates appearing below. The parties agree that this document may be signed in counterparts using separate signature pages.~~

This **AMENDED PLANNED DEVELOPMENT AGREEMENT FOR WESTERN SKY** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Mont Vista, LLC, a Montana limited liability company (“Developer”) whose address for the purposes of this agreement is of PO Box 333, Billings Reed Point, MT 59069, and ~~Gareld F. Krieg and Barbara B Krieg, 3115 Sycamore Lane, Billings, MT 59102~~ and the City of Billings, a Montana municipality, (“City”) whose address for the purposes of this agreement is of 210 North 27<sup>th</sup> Street, Billings, MT 59101.

## **RECITALS**

### **WITNESSETH:**

WHEREAS, MONT VISTA, LLC is the owner of a portion of the following described property situated ~~all of Lots 1 through 5, Block 1 of Western Sky Subdivision, 2<sup>nd</sup> Amended (Subdivision) located~~ in the NW ¼ of Section 15, Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana ~~as recorded on November 14, 2019, under Document Number 3902604:~~

~~Lot 3 and 4 of Block 1 of Plat of Western Sky Subdivision, recorded in the office of the clerk and recorder, Yellowstone County, under Document No. 3374355~~

WHEREAS, a portion of the above described property is referred to herein as “Western Sky Planned Development”~~the Subdivision is subject to the terms and conditions of a certain Planned Development Agreement recorded on October 13, 2017, under Document Number 3830283; and~~

~~WHEREAS, the Developer desires to file an Amended Planned Development Agreement which shall supersede the previously recorded Planned Development Agreement; and~~

WHEREAS, the Western Sky ~~Planned Development~~ **Subdivision, 2<sup>nd</sup> Amended** may consist of a mixture of community commercial, neighborhood commercial and residential housing and Mont Vista, LLC desires to place certain Planned Development zoning and land use restrictions on the property; and

WHEREAS, Mont Vista, LLC enters into this Agreement with the City of Billings to ensure that the Western Sky ~~Planned Development~~ **Subdivision, 2<sup>nd</sup> Amended** will be developed and maintained consistent with the standards described in this, ~~Agreement~~ **the Western Sky Planned Development**.

NOW, THEREFORE, ~~the undersigned hereby establish and declare the following development plan shall apply to all of the real estate described hereinabove~~ **THE PARTIES TO THIS AGREEMENT**, for and in consideration of the mutual promises herein contained and for other and good and valuable considerations, do hereby establish and declare the following **Development Plan, which shall apply to all of the real estate described herein and shall bind the present and future property owners to such real property and shall run with the land.**

## AGREEMENT

### ARTICLE I - PURPOSES

Section 1. Greater or Lesser Standards. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, height, lot coverage, parking, signage, traffic circulation, landscaping or other land use conditions, the City has determined in accordance with Section 27-1303 of the Unified Zoning Regulations, these unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise provided by law or regulation. Some of these amenities that shall be incorporated into the Western Sky Planned Development include:

- A. Open Space and Park Land above the minimum of eleven percent (11%) dedicated to the residential portion which is required by the Subdivision Regulations.
- B. Construction and landscaping of a functional and attractive pedestrian and bicycle facility that will promote the safe and convenient transportation of children and adults while interfacing with the Private Park Areas located throughout the Western Sky Planned Development.

Section 2. Natural Environment. A natural and healthy environment will be emphasized with ample Park Land and Open Space. Sidewalks, bicycle and walking trails will interconnect with Park Land and Open Space to encourage physical activity.

Section 3. Mixed Residential Use Purpose. The Western Sky Planned Development will effectively define a variety of commercial and residential uses allowing for a planned mix of community and neighborhood commercial and housing types creating a diverse and aesthetically pleasing community.

Section 4. Flexibility for Future Development. The Western Sky Planned Development shall permit maximum flexibility of design and materials to meet commercial and residential demands as they change over time. The planned development zoning described in this Agreement is intended to provide an opportunity for future development that will create an attractive and functional neighborhood community with a variety of living and commercial opportunities.

### ARTICLE II – DEFINITIONS

Section 1. The Billings Unified Regulations means, “The Billings Unified Regulation” in effect, June 5, 2017.

Section 2. Unified Zoning Regulation Definitions. All terms used herein shall have the same definition and meaning as specified in the City of Billings Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. If a definition is not provided, the term shall be deemed to have a common and ordinary meaning.

Section 3. Western Sky Planned Development. “Western Sky Planned Development” or “Planned Development” or “development” consists of a portion of the land situated in the NW 1/4 of Section 15, Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana described as Lot 3 and 4 of Block 1 of Plat of Western Sky Subdivision, recorded in the office of

the clerk and recorder, Yellowstone County, under Document No. 3374355 is planned to be in the Western Sky Subdivision plat including commercial and residential lots and space, streets, Open Space and Park Land within in the Western Sky Planned Development. Attached hereto and by reference incorporated herein is the attached **Planned Development Exhibit** illustrating the land and streets included in the Planned Development. The development will feature community, neighborhood commercial and mixed residential uses.

Section 4. Western Sky Homeowners Association. The term “Association” or “Western Sky Homeowners Association” shall mean the association of owners of property within the Western Sky Planned Development that may be organized by Mont Vista, LLC.

Section 5. Design Review Committee. “Design Review Committee” means the person, entity or committee appointed by Mont Vista, LLC to exercise the rights, duties and responsibilities assigned to it by Mont Vista, LLC under this Planned Development Agreement or under any Declaration of Covenants and Restrictions recorded by Mont Vista, LLC.

Section 6. Developer. “Developer” means Mont Vista, LLC or any person or entity to whom Mont Vista, LLC transfers or assigns its development rights hereunder.

Section 7. Neighborhood Commercial. “Neighborhood Commercial” means commercial centers and limited retail activities conducted in a unified development designed to serve the surrounding neighborhood with facilities consisting of convenience retail, personal service establishments and mini-storage units as permitted uses.

Section 8. Community Commercial. “Community Commercial” means to provide locations for planned and integrated retail, service and office facilities in close proximity to high and medium density residential neighborhoods.

Section 9. Residential Multi-Family. “Residential Multi-Family” means to provide adequate sites for multi-family developments including high-rise apartment complexes. Dwelling unit density is increased in this classification to encourage development in areas where it will complement existing developments. Land within the classification be located with access to major arterial transportation routes plus financial, cultural and retail stores and be served by public water and sewer services.

Section 10. Dwelling Unit. “Dwelling Unit” means one (1) or more rooms designed for or occupied by one (1) family for living or sleeping purposes and may contain kitchen and/or bathroom facilities for use solely by one (1) family. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit. A residence building may contain one (1) or more dwelling units.

Section 11. Grade. “Grade” is the lowest point of elevation of the finished surface of the ground, or the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and the property line, if it is less than five (5) feet distance from the wall. In cases where walls are parallel to and within five (5) feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley, or public way.

Section 12. Height. “Height” or “Building Height” means the vertical distance from the highest point of a structure to the “grade”.

Section 13. Lot. “Lot” or “lot” means a portion of the Mont Vista Planned Development depicted as a separately identified parcel on a recorded subdivision plat that may be

independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Park Land and Open Space or property dedicated to the public.

Section 14. Park Land and Open Space. “Park Land” and “Open Space” means any property or facility that Mont Vista, LLC has identified on the Mont Vista Subdivision plat as Open Space and/or Park Land, except “Public Park Land” as defined below. In addition, Park Land may include but is not limited to park areas, open spaces, common areas, water amenities, bike trails, sidewalks, walking paths, exercise or play areas, sitting areas, picnic areas, landscaped entryways, community sign areas. “Public Park Land” means suitable land dedicated to the City of Billings in a location, size and configuration with amenities acceptable to the Billings Parks and Recreation Department. The park land shall have a minimum of 50% of the park’s perimeter adjacent to public streets. Amenities in the park may include playgrounds, exercise areas, picnic shelters, trails, sidewalks, sport courts, open programmable space, trees, shrubs, grass, irrigation and appropriate park signage etc. Park land shall not include utility easements, Rights of Way, entryways, community or commercial signage areas, stormwater management facilities or ditch, drainage, canal or piping conveyance systems. “Public Park Land” shall be clearly identified on a plat. Land not identified as “Public Park Land” on a plat, and not included as a development parcel, shall be considered “Private Park Land”.

Section 15. Owner. “Owner” or “owner” shall mean any person or entity owning a fee simple interest in a lot or a purchaser by a contract, whether one or more persons or entities, owning or purchasing a lot, but excluding Developer and/or those having a mortgage or an interest merely as security for the performance of an obligation.

Section 16. Single Family. “Single Family” or “single family residential” means a building constructed and designed for occupancy by one (1) family and containing one (1) dwelling unit.

Section 17. Story. “Story” means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six (6) feet above grade as defined herein for more than fifty percent (50%) of the total perimeter or is more than twelve (12) feet above grade as defined herein at any point, such basement, cellar or underused under-floor space shall be considered a story.

Section 18. Town Home. “Town Home” or “town home residential” or “townhouse” means a building or structure that has two (2) or more one (1) family dwelling units erected as a single building, each being separated from the adjoining unit or units by an approved fire wall or walls and providing for fee simple ownership of land and dwelling unit. In contrast to a “condominium” a town home includes deeded ownership of the land underneath the dwelling unit in the town home, whereas a condominium may not.

Section 19. Twin Home. “Twin Home” or “twin home” or “twin home residential” means a building constructed and designed for occupancy by two (2) families living independently of each other, and containing two (2) dwelling units, where the dwelling units share a common separation such as a hallway, covered lane, ceiling, wall, including without limitation, the wall of an attached garage or porch.

Section 20. Residential Manufactured Home Park or Court. “Residential Manufactured Home” means a space designed or used that contains temporary or permanent parking for two (2) or more manufactured homes spaces which are available to the general public for use as residences. The land or parcel is not composed of individually platted lots which contain only one manufactured home per lot.

Section 21. Unit Ownership Act. “Unit Ownership Act” means the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq., Montana Code Annotated. At the discretion of Developer(s), the Unit Ownership Act may be used to develop Patio Homes, Town Homes, and Twin Homes in the Areas identified herein for such use. However, the terms and limitations in this Planned Development Agreement shall remain applicable.

Section 22. Trail Easement. “Trail Easement” means a minimum 20 foot wide corridor for the purpose of establishing a 10 foot wide concrete or asphalt trail in accordance with the most recent Billings Bikeway and Trails Master Plan. The location of Trail Easements shall be agreeable to the City and clearly identified on a plat. Conditions of the Trail Easement shall be agreeable to the City of Billings.

### **ARTICLE III – PERSONS BOUND BY THIS AGREEMENT**

Section 1. Persons and Entities Bound. The City of Billings and all individuals, corporations or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within the Western Sky Planned Development shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement, the terms of which shall run with the land unless modified by subsequent zoning amendments approved by the City of Billings.

### **ARTICLE IV – LAND USES**

Section 1. Underlying Land Use Classifications. Lots and underlying land use classifications are illustrated on the attached **Planned Development Exhibit**. The lots are divided into the following Areas with described underlying land use classification.

#### Underlying Land Use Classification(s)

AREA NO. 1 PD-CC	Community Commercial- no minimum lot size
AREA NO. 2 PD-NC	Neighborhood Commercial- no minimum lot size
AREA NO. 3 PD-RMF	Residential Multi-Family- no minimum lot size
AREA NO. 4 PD-RMH	Residential Manufactured Home - 3300 SF Minimum space area Single Family Home- 4800 SF Minimum lot area Twin Homes- 5300 SF Minimum lot area

Section 2. Permitted Area Uses.

Area No. 1 PD-CC lots may be used for community commercial purposes found in the Unified Zoning Regulations.

Area No. 2 PD-NC lots may be used for neighborhood commercial purposes found in the Unified Zoning Regulations including mini-storage units and certain light manufacturing facilities including the ancillary enclosed and attached warehousing and preparation activities as associated with bakery products, candy, chocolate, salted and roasted nuts, roasted coffee, pretzels, potato and corn chips, meal and meal kit preparations, apparel and other finished products made from fabrics and cloth material, custom furniture, leather products, pottery and custom artwork, as permitted uses.

~~as a permitted use .~~

Area No. 3 PD-RMF lots may be used for residential multi-family purposes.

Area No. 4 PD-RMH lots or spaces may be used for residential manufactured home, single family home, townhome and/or twin home purposes.

Land not described in lots and not identified as Public Park Land or Trail Easement shall be used for Private Park Land/Open Space which may include streets, boulevards, sidewalks, drainage ponds, Hogan's Slough, Irrigation ditches and structures, ingress and egress and utility easements and such other uses as may be reserved or required by Developer. Developer, at its discretion, may transfer Private Park Land/Open Space to a Western Sky Homeowners Association company.

Section 3. Special Review Uses. Special Review Procedures for the underlying land use classifications set forth in Article IV hereinabove are allowed and shall comply with the Unified Zoning Regulations as established by the City of Billings.

Section 4. Special Review Criteria to be Considered. In considering a special review or variance request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

A. Mont Vista, LLC must have given its written consent to the special review or variance request.

B. The proposed use meets architectural guidelines as may be established by Mont Vista, LLC.

Section 5. Commercial Uses Prohibited. All lots or spaces located within Area 3 and Area 4 of the Western Sky Planned Development shall only be used for residential purposes which include lots or spaces used for storm drain ponds and parks with the exception of sales offices or club houses. No lot or space may be used at any time for any business, trade, manufacture or other commercial purpose; however, spaces may be rented or leased and in-home business using telephone, internet and other telecommunications is allowed but such in home business shall be regulated as may be required by City zoning regulations or municipal code.

Section 6. Accessory Dwelling Units. Guesthouses, Apartments over garage are not allowed.

Section 7. Overhead Lines. Overhead utility lines including electrical, telephone, cable lines are prohibited.

Section 8. Lot Size. The spaces or lot sizes are varied and will be set forth in the final plat or equivalent of each phase of the Western Sky Subdivision. In no case will the lot or space size be less than the minimums found in Article 4, Section 1.

## Section 9. Minimum Setbacks and Landscaping Requirements

### Minimum Community Commercial Setbacks, Heights and Landscaping Requirements.

Minimum Building Setback, **maximum building height** and Landscaping Requirements for lots in all PD-CC area is as follows:

- Building Setbacks - no changes from BMCC - except no personal storage warehouse, general warehouse or storage yard shall be constructed or established within 150 feet of the King Avenue West property line. **Ancillary warehousing shall be allowed by must be a minimum of forty (40) feet from King Avenue West.**
- Street frontage landscaping - no changes from BMCC
- Perimeter Landscaping - no changes from BMCC

### Minimum Neighborhood Commercial Setbacks, Heights and Landscaping Requirements.

Minimum Building Setback, **Height** and Landscaping Requirements for lots in PD-NC area is as follows:

- A. ~~Building setbacks—no changes from BMCC—except no personal storage warehouse, general warehouse or storage yard shall be constructed or established within 150 feet of the King Avenue West property line.~~ **Offices, light manufacturing facilities and other buildings not specifically designated as follows shall conform to the requirements of the BMCC. Any ancillary warehousing facilities shall be set back from King Avenue West a minimum of forty (40) feet. Mini Storage facilities will continue to be required to be set back a minimum one-hundred and fifty (150) feet from King Avenue West. Maximum building height shall be forty-five (45) feet.**
- B. Street frontage landscaping – no change to BMCC
- C. Perimeter Landscaping:
- For buffer yards, along common boundary lines between RMF developments and NC developments, replace perimeter landscaping requirements in BMCC 27-1105, Section b.2 with the following:
    - Provide 30’ wide buffer yard with trees spaced diagonal at 20’ on center
  - For buffer yards, along common boundary lines between RMH developments and NC developments, replace perimeter landscaping requirements in BMCC 27-1105, Section b.2 with the following:
    - No buffer yard is required where adjacent RMH area is to be developed as park land.

### Minimum Residential Multi-Family Setbacks, Height and Landscaping Requirements.

Minimum Building Setback Requirements for lots in PD-RMF area is as follows:

- Building setbacks other than garages and accessory buildings – no change from BMCC
- Setbacks for garages:
  - Replace setback requirements in BMCC 27-310, Table 1 with the following:
    - 15 Feet from internal private street
    - 3 Feet Rear Yard

- 3' Side yards including side adjacent to 48<sup>th</sup> Street West
- Street frontage landscaping:
  - Replace street frontage landscaping requirements in BMCC 27-1105, Section b.1 with the following:
    - No buffer yard is required along 48<sup>th</sup> Street West.
    - In lieu of a buffer yard, 116' of right of way shall be provided measured from the centerline of 48<sup>th</sup> Street West. Right of way is to accommodate construction of a 10' foot wide shared use path, 40' wide drainage ditch, and landscape buffers.
- Perimeter Landscaping:
  - For buffer yards, along common boundary lines between PD-RMF developments and PD-NC developments, replace perimeter landscaping requirements in BMCC 27-1105, Section b.2 with the following:
    - No buffer yard is required. Where detached garages are not provided on the property line between the PD-RMF and the PD-NC, the developer will install a solid wall at a minimum height of 8 feet.

Minimum RMH Setbacks, Height and Landscaping Requirements.

Minimum Building Setback Requirements for lots in all Areas is as follows:

The premise of setbacks for RHM is there are no implied lots, only spaces for rent or lease. Setbacks are applied to the external boundaries and not the implied internal lines. Separation between a manufactured home and another manufactured home is 15 feet.

- Building Setbacks –
  - Front yard- no changes from BMCC
  - Side Yard Setback- no changes from BMCC
  - Rear Yard Setback- 8 Feet
- Street frontage landscaping - no changes from BMCC
- Perimeter Landscaping - On the eastern property line, the developer will install a minimum 6-foot high screening fence where building structures are located closer than 100 feet from the property line. On the western property line, the developer will install a minimum 6-foot high decorative wall between the 10-foot wide multi-use path and the manufactured home park.

Section 12. Permitted Projections. With Design Review Committee approval, the following projections may be permitted in the PD-RMH area:

- A. Front porches, steps, balconies, stoops, open porches, and covered walkways may encroach 5 feet into the 20 feet front yard setback; Side and Rear porches, steps, balconies, stoops, open porches, and covered walkways may not encroach more than 5 feet on the required 15' separation between manufactured homes and their respective attachments.
- B. Roof overhangs, eaves, gutters, cornices or other architectural features not to exceed two (2) feet.

Section 13. Maximum Density. The City calculates density by determining total dwelling units divided by total gross acres. The City has adopted an Annexation Policy to encourage a minimum density of 6 units per acre.

There are no changes to Area 1 and Area 2 to dwelling density requirements. Maximum average dwelling unit density to Area 3 and Area 4 for 487 dwelling units divided by 46.4 gross acres is an average density of 10.5.

The dwelling units are located in Areas shown on the attached **Planned Development Exhibit** as follows:

Area No. 3 Up to and including 312 Multi-family dwelling units

Area No. 4 Up to and including 175 Single family dwelling units

## **ARTICLE V – BUILDINGS, SIGNS, FENCES DESIGN STANDARDS**

Section 1. General Building Design Standards. Unless expressly designated herein, the building design standards of the Unified Zoning Regulations, the Site Development Ordinance and the Building Code shall be followed for properties in this Planned Development.

Section 2. Design Considerations. Design Considerations shall include five (5) of the following considerations in any application to the Design Review Committee and to the City:

- A. Relationships to open space, pedestrian circulation, landscape features on and adjacent to the site;
- B. Views of the architecture from pedestrian and vehicular perspectives;
- C. Satisfaction of physical, psychological, social and functional needs of users;
- D. Orientation of buildings in relation to streets;
- E. Vehicular versus pedestrian flows.
- F. Character of surrounding developments;
- G. Solar orientation, climate and solar reflection
- H. Potential environmental hazards;
- I. Enhancement of the overall landscape;
- J. Scale of adjacent facilities and open space;
- K. Mountain views.

Section 3. Design Features. Design features shall include three (3) of the following as features of the finished construction:

- A. Landscaped entrance drives;
- B. Decorative walkways;
- C. Dynamic building and roof forms;
- D. Window patterns;
- E. Light and shadow patterns;

F. Color accent.

Section 4. New Construction Required. Any building or residence erected upon lots in any of Areas 1, 2 and 3 shall be of new construction with concrete footings and foundation walls, mat slabs or other appropriately designed permanent foundation systems.

Section 5. Construction Equipment Time Limit. No construction equipment or materials of any nature shall be moved on to a lot more than sixty (60) days prior to the start of construction to be initiated thereon.

Section 6. Additional and Supplemental Design Guidelines. In addition to the design rules set forth herein, Mont Vista, LLC may record a Declaration of Covenants and Restrictions that provides additions, amendments and supplemental design and restriction guidelines.

Section 7. Signs Comply with Zoning Regulations. All signs shall comply with the Unified Zoning Regulations unless limited herein or as provided in any restrictive covenants recorded by Mont Vista, LLC. Lighted signs are allowed only in Areas 1, 2 and 3.

Section 8. Fences Comply with Zoning Regulations. Fences, walls, berms, hedges and other improvements shall comply with the clear vision standards of the Unified Zoning Regulations. Rear and side yard fences, walls, berms or hedges on a lot and not on a street or Open Space or Parkland shall not exceed eight (8) feet. An earth berm or hill on Private Park Land/Open Space may exceed eight (8) feet.

## **VI – LANDSCAPING**

Section 1. Parkland Landscaping. Developer, at its expense, shall develop all Public Park Land and Trail Easements to City Standards. The Parks and Recreation Department shall be involved with and approve the design and construction of each portion of Public Park Land and Trail Easement development. This landscaping obligation occurs after fifty percent (50%) of the lots or spaces in a filing have been sold or leased. Private Park Land/ Open Space shall be developed at Developer's expense.

## **VII – PARK LAND**

Park land will be created in excess of that required by the City of Billings Subdivision Regulations, through a combination of private parks, public parks, open space and right-of-way dedications for multi-user paths along the Hogan Slough and Shiloh Drain, and Trail Easements.

## **VIII – BICYCLE AND PEDESTRIAN FACILITIES**

Section 1. Bicycle and Pedestrian Paths and Trail Easements. The development shall provide for Trail Easements through lots, and Private Park Land/Open Space. Trails shall also connect to and be part of the Public Park Land. The Trail Easement "system" shall allow pedestrian and bicycle access through the subdivision and reasonably connect to adjacent property and trail corridors on them when identified.

Trail Easements shall be built to City standards which include a minimum of ten (10) feet wide and constructed of concrete or asphalt. Location of Trail Easements shall be as determined by Developer in consultation with and agreeable to the City.

Maintenance of Public Park Land and Trail Easements. To provide proper maintenance of Public Park Land and Trail Easements, a Park Maintenance District (PMD) shall be created by the Developer as part of the first filing including the entire Western Sky development and expanded in each subsequent filings.

## **IX – SITE DEVELOPMENT STANDARDS**

Section 1. Street Types and Standards. In the absence of a contrary agreement, all streets shall be developed to the City of Billings Subdivision Regulations for width, curb, gutter, sidewalk, cross-section, and surface treatment with the exception of Area 4. All streets developed within Area 4 shall be private and conform to the City of Billings Subdivision Regulations for width only. Curb, gutter, sidewalk, cross-section and surface treatment shall be per the PD engineering design.

Section 2. Zone Boundaries. The transitional areas between different commercial and residential use classifications should be designed to complement the adjacent land uses. Use of buffering landscaping is encouraged to achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

Section 3. Outside Storage. No storage area shall be permitted in the front portion of any lot with the exception of Area 2. Storage areas, shall be screened from the ground-level view of adjacent properties and streets with the exception of Area 2. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structures. Storage areas shall comply with applicable building setbacks as set forth in the PD and must be approved by the Design Review Committee.

Section 4. Parking Area Development Standards. All parking, access drives and loading areas shall be paved and properly graded to ensure adequate drainage. Minimum parking requirements shall meet the City of Billings Subdivision Regulations.

Section 5. Loading and Unloading Areas. Owners may load and unload on their Lot(s) for purposes of their respective uses in accordance City of Billings Subdivision Regulations.

## **X – INSTALLATION OF IMPROVEMENTS**

Section 1. Site Lighting Standards.

- A. All outdoor pole lighting shall be as set forth in the engineering design standards and fully shielded (no light emitted by a fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than twenty (20) feet above grade.
- B. All outdoor lighting, except street lights, shall be located and aimed or shielded to minimize stray light going across property boundaries.
- C. Security lighting-
  - Commercial Corner- structures may be illuminated to address security concerns and measures. Exterior lighting adjacent to residential uses shall be directed away from the residential use and public streets.

- Mini-Storage- structures may be illuminated to address security concerns and measures. Exterior lighting adjacent to residential uses shall be directed away from the residential use and public streets.
- RMF- buildings may be illuminated to address security concerns and measures. Exterior lighting adjacent to residential uses shall be directed away from other residential uses and public streets.

## **XI – OTHER REQUIRED DOCUMENTS**

### Section 1. Other Documents.

- A. Special Improvements Agreement. The City and Developer shall enter into a Special Improvements Agreement that includes provisions for creation of a Western Sky Park Maintenance District for land dedicated to the City for Park Land.
- B. Covenants and Restrictions. Developer may, but is not required to do so, record a declaration of covenants and restrictions that shall supplement this Planned Development Agreement.
- C. Other Documents. Any other documents as may be necessary to implement this agreement shall be executed by the parties hereto.

## **XII – OTHER REGULATIONS**

Section 1. Maintenance. Maintenance by lot and spaces Owners between lot and space lines and the street shall include removal and replacement of dead and dying trees, grass and shrubs, removal of trash and weeds, repair and maintenance of drains, mail boxes whether on or off the Owner's lot or spaces, and repair of light standards, fences, walls, surfacing materials and in general maintain a neat and tidy appearance both on the lot and between the lot and the street.

### **XIII – ENFORCEMENT**

Section 1. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided in the Unified Zoning Regulations.

Section 2. Right to Enforce by Owners. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within the Western Sky Planned Development and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto, the Design Review Committee, as well as future property Owners. The parties agree the Design Review Committee shall have standing to enforce this Agreement relative to the City or any property owner regardless of whether the Design Review Committee owns a Lot. In addition to all rights under this Agreement, the parties enforcing this Agreement reserve all rights and remedies available at law or in equity, by statute or otherwise including the right to recover damages, reasonable attorney fees and costs. All such rights and remedies shall be cumulative.

Section 3. Right of Abatement and Suit. If Developer, the Design Review Committee or the City of Billings objects (“the objecting party”) to any Owner’s or other party’s breach of this Agreement (“the defaulting party”), the objecting party shall have, in addition to any other rights and remedies arising at law or in equity, the right to abate the effects of the defaulting party’s breach. To exercise the right of abatement the objecting party shall provide the defaulting party with written notice of its objection, specifying the particulars of the objection. If within thirty (30) days of receipt of such notice, the defaulting party fails or refuses to commence to remedy its breach under this Agreement, or if after commencing action the defaulting party fails to cure its default within a sixty (60) day period, the objecting party may perform whatever reasonable maintenance, repair, operation or other curative action as needed to remedy the default. The defaulting party shall pay upon demand to the objecting party the costs of such maintenance, repair, operation or other curative action, together with interest allowed by law from the date of disbursement of such costs until paid in full. The objecting party shall not be responsible for the continued maintenance or repair of any structure or Lot or the performance of the defaulting party’s obligation under this Agreement. The objecting party may also prosecute a proceeding at law or in equity to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied or to recover damages for said violation.

Section 4. Limitation on Enforcement. This Agreement is for the benefit of Developer, City, Owners and the Design Review Committee appointed by Developer and their heirs, devisees, assigns, trustees and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce the restrictions contained herein, judicially or otherwise.

### **XIV– AMENDMENTS AND VARIANCES**

Section 1. Amendments or Changes. This Agreement may not be amended, modified or terminated in whole or in part, except with the written consent of Developer and the City. Any modifications requested by Developer, Successors and Assigns, shall be processed using the same procedures as for a new application in accordance with the Unified Zoning Regulations;

however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

- A. Change the overall character of the development;
- B. Change additional allowed uses;
- C. Change the approved minimum setbacks, maximum lots coverage or maximum allowed structure height.
- D. No increase in the number of residential units greater than two (2) percent; and
- E. No reduction in open space greater than two (2) percent.

Section 2. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations. However, in no case shall a variance be granted for a use not consistent with this agreement until the requirements of Article 4, Section 4 been complied with.

Section 3. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

## **XV– GENERAL PROVISIONS**

Section 1. Assignment of Agent. Developer may, in its sole discretion appoint an individual or entity to act as its agent to fulfill the duties and obligations of Developer hereunder. Although not required to be effective, notice of such appointment may be made in writing containing a legal description of the Western Sky Planned Development land, recorded with the real estate records of Yellowstone County, Montana and mailed to the City at the address specified herein for notices.

Section 2. Assignment by Developer. Developer may, in its sole discretion, assign its rights and delegate its duties under this Agreement in whole or in part to any other person or entity. Notice of such assignment shall be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for the Western Sky Planned Development, or any portion thereof, affected by the assignment. Notice of assignment and delegation shall also be provided to the City at the address specified herein. Once any notice of delegation has been recorded in the real estate records of Yellowstone County, Montana, Developer shall have no further responsibility or liability for the future performance or non-performance of this Agreement, and the City and all property Owners shall look exclusively to the appointed person or entity.

Section 3. Coordination with Other Regulations. The City Planned Development (PD) Zoning Regulations are considered to be part of this Agreement and by reference are incorporated herein.

If this Agreement or Covenants do not prescribe rules for a particular aspect of the development or use, either by express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations or ordinances applicable to the property are subsequently amended, the amended regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement or Covenants. If there is any conflict between this Agreement or Covenants recorded by Developer and Planned

Development Zoning Regulations, Unified Zoning Regulations, Subdivision Regulations, or other zoning regulations or ordinances, the terms and conditions of Covenants shall govern.

Section 4. Notices. All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereon in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipts therefore. All notices or demands to Developer or the City shall be given at the following addresses or such other addresses as Developer or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Developer: Mont Vista, LLC  
PO Box 333  
~~Billings~~ Reed Point, MT 59069

With copies to: Sanderson Stewart  
1300 N Transtech Way  
Billings, MT 59102

If to the City: City of Billings  
Attn: City Clerk  
P.O. Box 1178  
Billings, MT 59103

With copies to: Planning Division  
2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor  
Billings, MT 59101

And copies to: City Attorney's Office  
P.O. Box 1178  
Billings, MT 59108-1178

Section 5. Waiver. Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

Section 6. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, terrorist acts, governmental regulations and controls, enemy or hostile governmental action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

Section 7. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, by a court of competent jurisdiction, shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto. Venue for matters concerning this PD shall be adjudicated in the 13<sup>th</sup> Judicial District Court in Yellowstone County, Montana.

Section 8. No Partnership. This Agreement is not intended to create, nor shall it in any way be interpreted to create a joint venture, partnership, or any other similar relationship between the parties.

Section 9. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

Section 10. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of Yellowstone County, Montana.

### **NOTICE**

**THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY OF THE WESTERN SKY PLANNED DEVELOPMENT LOCATED IN THE WESTERN SKY SUBDIVISION OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.**

Section 11. Duties Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon Mont Vista, LLC, the City of Billings, property Owners, and their heirs, successors and assigns.

Section 12. Contact Person. Developer hereby designates a contact person who may be contacted concerning any questions, comments, or concerns. Initially, at the time of recording, the contact person is Tracy Haag, 299 Stephens Hill Rd, PO Box 333, Reedpoint, MT 59069 (Telephone (406) 855-4168). Upon designation of the Design Review Committee, a member of the committee or an entity appointed by Developer shall be the contact person or entity to replace Tracy Haag.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year indicated by the notarial certifications indicated below.

**MONT VISTA, LLC**

By: \_\_\_\_\_

Tracy Haag, Member Agent

STATE OF MONTANA     )  
  : ss.  
County of Yellowstone     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of MONT VISTA, LLC and who acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written

\_\_\_\_\_  
Notary Public in and for the State of Montana

“CITY”

**CITY OF BILLINGS, MONTANA:**

BY: \_\_\_\_\_

William A. Cole, Mayor

ATTEST: \_\_\_\_\_

Denise Bohlman, City Clerk

STATE OF MONTANA     )  
  : ss.  
County of Yellowstone     )

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

\_\_\_\_\_  
Notary Public in and for the State of Montana

# Planned Development Exhibit

## PRELIMINARY PLAT OF WESTERN SKY SUBDIVISION, 2ND AMENDED

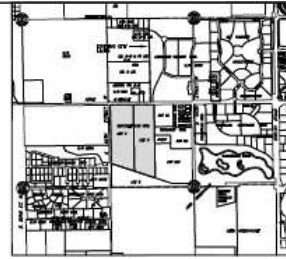
BEING LOTS 3 & 4, BLOCK 1, WESTERN SKY SUBDIVISION  
SITUATED IN THE NW1/4 OF SECTION 15, T. 1 S., R. 25 E., P.M.M.,  
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : MOUNT VISTA, LLC

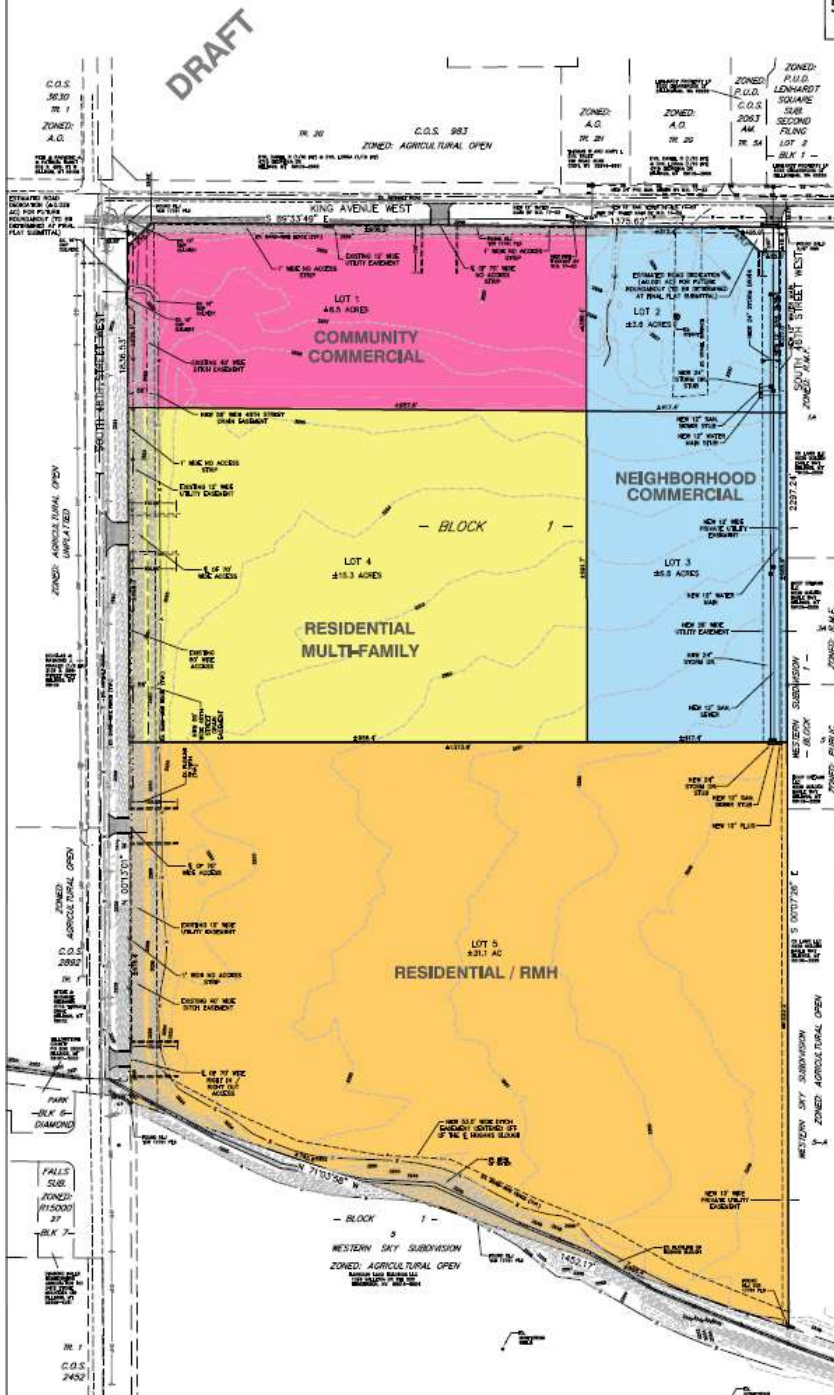
FEBRUARY, 2019

PREPARED BY : SANDERSON STEWART

BILLINGS, MONTANA



VICINITY MAP  
NOT TO SCALE



### ZONING DATA

COMMUNITY COMMERCIAL	= 44.5 ACRES
NEIGHBORHOOD COMMERCIAL	= 416.3 ACRES
RESIDENTIAL MULTI-FAMILY	= 416.3 ACRES
RESIDENTIAL / RMH	= 471.1 ACRES



SCALE: 1" = 100'

### PLAT DATA

GROSS AREA	= 85.18 ACRES
NET AREA	= 445.07 ACRES
NUMBER OF LOTS	= 5
MINIMUM LOT SIZE	= 43.6 AC
MAXIMUM LOT SIZE	= 471.1 AC
LINEAL FEET OF STREET	= 0 LF
PARKLAND REQUIREMENT	= (SEE S.I.A.)
PARKLAND DEDICATION	= (CASH-IN-LIEU)
DISTRICT ZONING	= PLANNED UNIT DEVELOPMENT
SURROUNDING ZONING:	
NORTH	= AD-OPEN & P.U.D.
SOUTH	= PUBLIC & R-7000
EAST	= PUBLIC, R-7000, & R.M.P.
WEST	= AD-OPEN & R-15000
DISTRICT LAND USE	= VACANT
PROPOSED LAND USE	= COMMERCIAL/RESIDENTIAL DEVELOPMENT

### LEGEND

WATER VALVE	---	RESTING CONTOUR
FEED HYDRANT	W	WATER
CURB STOP	SS	SAWTOOTH SWIRE
E.V. WELL	SD	STORM DRAIN
SAWTOOTH SWIRE MARKER	T	TELEPHONE
STORM DRAIN MARKER	G	GAS
CATCH BASIN	P	POWER
TELEPHONE PEDESTAL	PO	FIBER OPTIC
FIBER OPTIC PEDESTAL	FO	OVERHEAD POWER LINE
POWER POLE	OP	PHYSICAL
CULVERT	(TOP)	SEWER
TELEPHONE MARKER		
TV CABLE BOX		

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**City Zoning Commission**

**Meeting Date:** 01/07/2020

**SUBJECT:** Zone Change 976 - 727 Lincoln Lane

**THROUGH:** Karen Husman

**PRESENTED BY:** Karen Husman

**Information**

**REQUEST**

City Zone Change 976 – 727 Lincoln Lane - from R-70 to HC- A zone change request from Residential-7000 (R-70) to Highway Commercial (HC), on Lots 1 & 2, Block 2 Bede Subdivision, a 25,200 square foot parcel of land. A pre-application neighborhood meeting was held on November 21, 2019, at 231 Main Street. Tax ID: A29430. Presented by; Karen Husman, Planner I

**RECOMMENDATION**

Planning staff recommends approval and adoption of the findings of the 10 criteria (per BMCC 27-1502) for Zone Change 976.

**APPLICATION DATA**

OWNER: 4 the store, LLC- Rich Miller  
 AGENT: Scott Aspenlieder, Performance Engineering  
 LEGAL DESCRIPTION: Lot 1-2, Block 2 Bede Sub.  
 ADDRESS: 727 Lincoln Lane  
 CURRENT ZONING: R-70  
 EXISTING LAND USE: Commercial warehouse/storage  
 PROPOSED USE: Commercial warehouse/storage  
 SIZE OF PARCEL: 25,200 sf

**CONCURRENT APPLICATIONS**

None

**APPLICABLE ZONING HISTORY**

SUBJECT PROPERTY	Zone Change	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
727 Lincoln lane	None – Original Zoning	November 1973			R-7000
SURROUNDING PROPERTY	Zone Change	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
517 Lincoln Ln	County-637	8/28/12	R-70 to RMF-R	Y	Annex 12/4/15
517 Lincoln Ln	956	7/12/17	RMF-R to CC	Y	
606 Bench	County-643	8/27/13	R-70-CC	Y	
334 Bench	County-136	8/30/77	R-72 to CC	Y	
Wagner Sub. BK1, L7,8	88	11/26/79	RMH to HC	Y	
705/707 Lincoln Ln	357	6/5/84	RP to CC	Y	

**SURROUNDING LAND USE & ZONING**

NORTH: Zoning: HC  
 Land Use: Commercial  
 SOUTH: Zoning: R-70  
 Land Use: Residential  
 EAST: Zoning: R-70  
 Land Use: Residential  
 WEST: Zoning: HC  
 Land Use: Commercial

## BACKGROUND

A zone change request from Residential-7000 (R-70) to Highway Commercial (HC), on Lots 1 & 2, Block 2, Bede Subdivision, a 25,200 square foot parcel of land. A pre-application neighborhood meeting was held on November 21, 2019, at 231 Main Street.

The Planning Division has reviewed this application and is recommending approval based on the attached ten (10) criteria for zone changes. The subject property is adjacent to commercial uses to the north, and west. Uses allowed in the HC zoning are compatible with the surrounding zoning and neighborhood character. Some uses in the HC zone would only be allowed by special review approval such as on-premise service of alcoholic beverages. Any development or re-development of the property requires compliance with the new zoning and the ability to meet site development requirements and traffic safety standards. The Growth Policy and the Billings Heights Neighborhood Plan encourage predictable land use decisions that are consistent with neighborhood character and land use patterns. The existing commercial structure and proposed zoning are consistent with this neighborhood and land use pattern.

## SUMMARY

### Staff Determinations for Zone Change #976

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 guidelines of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns.

The proposed zoning will allow the clean up a corner in Billings that has been underutilized and fallen into disrepair. The area along Main Street and the property adjacent to the west have been used for commercial purposes since the late 1970s. The proposed zoning is consistent with the neighborhood character and land use patterns between Main Street and Bench Boulevard. Development standards are in place to require screening, buffering, landscaping and mitigation of any potential conflicts with adjacent residential uses to the south and east. The proposed zoning is compatible with the existing uses to the north and west.

- More housing and business choices with each neighborhood.

The existing zoning is restricted to residential uses. The proposed zoning will allow the retention of the commercial use near Main Street and re-development of the property in the future.

- Business development and rejuvenation in the Heights.

The proposed zoning will allow continuation of an existing use and the re-use of land for new business development.

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 and public safety will be promoted by the proposed zoning. The property has an existing structure, a warehouse that would be expanded and used for low impact commercial uses.

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

*Transportation:* The proposed zoning may have some impact on the surrounding streets if the property is redeveloped in the future. A traffic impact study may be required depending on the development that is built on the property in the future

*Water and Sewer:* The City provides sewer to the property and water is provided by Billings Heights Water District.

*Schools and Parks:* Schools and parks should not be affected by the proposed zoning.

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

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

The 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 a commercial site is dependent on the specific uses within the development. The site is currently developed and the change in zoning should not have any significant effect on existing traffic patterns.

7. Will the new zoning promote compatible urban growth?

The new zoning does promote compatibility with urban growth. The proposed zoning will allow this parcel to re-develop into a neighborhood service area with low impact commercial services that are compatible with the existing 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 consider the character of the district and the suitability of the property for the proposed use. The proposed zoning will allow the re-development of the land as a commercial use and improve the property by updating the existing structure.

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

Approval of the zone change will conserve the value of the property by allowing redevelopment of the property. The existing commercial building and development 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 allow re-development of the land as commercial use. The property has been a commercial property for many years and is non-conforming to the R-70 zoning. Commercial development to buffer residential from high traffic on Main Street is the best

use of the land.

**RECOMMENDATION**

Approval and adoption of the findings of the 10 criteria.

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**Attachments**

Zoning Map & Site Photos

Application, Appl. Letter & neighborhood meeting info

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Site Photos



Subject Property



South



South



West



North



East

Application

APPLICATION FORM

CITY ZONE CHANGE Billings Zone Change # 976 - Project # P2-19-00252

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

Present Zoning: Residential 7,000

Proposed Zoning: Highway Commercial

TAX ID# A029430 CITY ELECTION WARD # 1

Legal Description of Property: Lot 1-2, Block 2, Bede Subdivision, Section 27, Township 01 N, Range 26 E.

Address or General Location (If unknown, contact City Engineering): 727 Lincoln Lane Billings, MT 59105

Size of Parcel (Area & Dimensions): Approximately 0.58 acres, 240' x 105' 25,200 sq

Present Land-Use: Commercial Property (Warehouse)

Proposed Land-Use: Commercial Property (Warehouse)

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

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

Owner(s): 4 the Store, LLC - Rich Miller

(Recorded Owner)  
713 E Main Street, Billings MT 59105  
(Address)  
406-248-3657 rich@richsflooring.com  
(Phone Number) (email)

Agent(s): Scott Aspenlieder

(Name)  
608 North 29th Street, Billings MT 59101  
(Address)  
406-384-0080 scott@performance-ec.com  
(Phone Number) (email)

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

Signature: [Signature] Date: 12/2/19  
(Recorded Owner)



## Applicant Letter

### **1. In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?**

The lots of interest are currently zoned Residential 7,000. The land surrounding the property is Highway Commercial to the north and west and Residential 7,000 to the east and south. The Growth Policy has several goals that would be met by changing the zoning of the property from Residential 7,000 to Highway Commercial. The issues that will be addressed are described below.

The first issue addressed is that the existing site use is incompatible with the current zoning under the current zoning ordinances and subdivision regulations. The existing site contains a warehouse which is allowed in Highway Commercial zones, but not allowed in Residential 7,000 zones. This issue would be resolved by changing the zoning to Highway Commercial which would match the Highway Commercial directly to the north and west and have little to no impact on the Residential 7,000 to the south and east.

Secondly, neighborhoods experiencing pressures from new development and land use changes also cause issues. The surrounding land is zoned Highway Commercial, and Residential 7,000. The goal is to have predictable land use decisions that are consistent with neighborhood character and preferred land use patterns. Having the land zoned Highway Commercial will accomplish these goals and provide continuity and consistency.

Third, the proposed zone change will further develop an infill property which is a priority in the Growth Policy. The existing zoning has prohibited the lot owner from further expanding his warehouse. Rezoning will revitalize the area and create growth in the Billings Heights.

One of the other major factors when considering development within the community is the strain on transportation services. The proposed project would entail expanding the existing warehouse. This type of development is not a high traffic generating facility and would not increase the amount of strain on the adjacent transportation network since the land use is not changing.

### **2. 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.**

The proposed development plan is to expand the existing warehouse located on the lot. Residential 7,000 zoning will not allow this type of development. The Highway Commercial zone will allow the expansion of the warehouse that sits within the lot. The land surrounding the property is Highway Commercial and Residential 7,000. The proposed land use will match the existing land use having an insignificant impact on the surrounding community.

Neighborhood meeting info

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

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

1. **Present Zoning:** Residential 7,000 \_\_\_\_\_
2. **Written description of the Zone Change Plan** including square footage or acres of proposed new zoning: Proposing a zone change from Residential 7,000 to Highway Commercial for an approximately 0.58 acre area of land. \_\_\_\_\_
3. **Subject Property Map:** please attach to this form \_\_\_\_\_
4. **Legal Description of Property:** Lot 1-2, Block 2, Bede Subdivision, Section 27, Township 01 N, Range 26 E. \_\_\_\_\_
5. **Neighborhood Task Force Area:** Heights, Chairperson: Ed Arnold. \_\_\_\_\_
6. **Roster of persons who attended the pre-application neighborhood meeting:** please attach to this form
7. **A copy of the meeting notice.** please attach to this form
8. **A brief synopsis of the meeting results.** please attach to this form
9. **The undersigned affirm the following:**
  - 1) The pre-application neighborhood meeting was held on the 21, day of November, 2019.
  - 2) The zone change application is based on materials presented at the meeting.

**Owner (s):** 4 the Store, LLC - Rich Miller Telephone: 460-248-3657  
Address: 713 E Main Street Email: rich@richsflooring.com  
Billings MT 59105

**Agent (s):** Scott Aspenlieder Telephone: 406-384-0080  
Address: 608 Noth 29th Street Email: scott@performance-ec.com  
Billings, MT 59101



November 14, 2019

Dear Interested Neighbor,

On behalf of 4 the Store, LLC, Performance Engineering, LLC, is writing to inform you of a zoning pre-application neighborhood meeting being held on **Thursday, November 21<sup>st</sup>, at 6:00 p.m. at 231 Main Street, Billings, MT 59105.** The meeting is being held in the Country Inn & Suites by Radisson, to discuss a proposed zone change regarding the existing property. The owner is requesting that the property shown on the attached exhibit and described below be re-zoned to accommodate future development:

**Lots 1-2, Block 2 of Bede Subdivision, S27, T01N, R26E, in Yellowstone County totaling 0.58 acres, located on the south east corner of the intersection of Lincoln Lane and Conway Street.**

The intent of the meeting is to make neighboring property owners aware of the proposed zoning change for the subject property, discuss the potential for redevelopment, and to answer questions about the project. The property is currently zoned as Residential 7,000. The zoning proposal to be presented to Yellowstone County will be to change the zoning of the land described above from Residential 7,000 to Highway Commercial to accommodate modifications to the existing warehouse. A total of 0.58 acres is included in the proposed zone change. The current zoning code definition for Highway Commercial is as follows:

Representatives for Performance Engineering, LLC as well as the Owners, will be present at the meeting to answer questions from those who attend. For those unable to attend the meeting, written letters can be directed to Performance Engineering at 608 North 29<sup>th</sup> Street, Billings, MT 59101, attention Scott Aspenlieder, or emails may be sent to [scott@performance-ec.com](mailto:scott@performance-ec.com). We look forward to discussing the proposed zoning change with you and hope to see you on **November 21<sup>st</sup>.**

Sincerely,

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

Scott Aspenlieder, PE  
Principal





November 21<sup>st</sup> 2019 6:00pm  
Country Inn & Suites by Raddison

Meeting Notes  
4 the Store, LLC

Representatives: Scott Aspenlieder (PE)

#### Points of Discussion

Brief review of Project Development  
Requesting comments from Home/Property owners  
Addressed Comments/Concerns from Home/Property owners  
Review Timeline for Planned Development of Project

#### Project Development

Renovating an existing warehouse.

#### Home/Property Owners Comments & Concerns

Only one person showed up to the meeting and they wanted to know what 4 the Store, LLC was going to be doing on the property.

#### Home/Property Owners Guidance or Suggestions

None

#### Timeline for Planned Development

1. Application - Home/Property owners need to get all requests/comments in as soon as possible with the application being submitted Monday December 2, 2019. Send all letters or emails to Scott and/or Nicole Cromwell at City Planning.
2. Zoning Commission Hearing - Public Welcome - January 7, 2020
3. City Commission Hearing - Public Welcome - January 27, 2020

All three timeline options are for people to express comments and concerns.

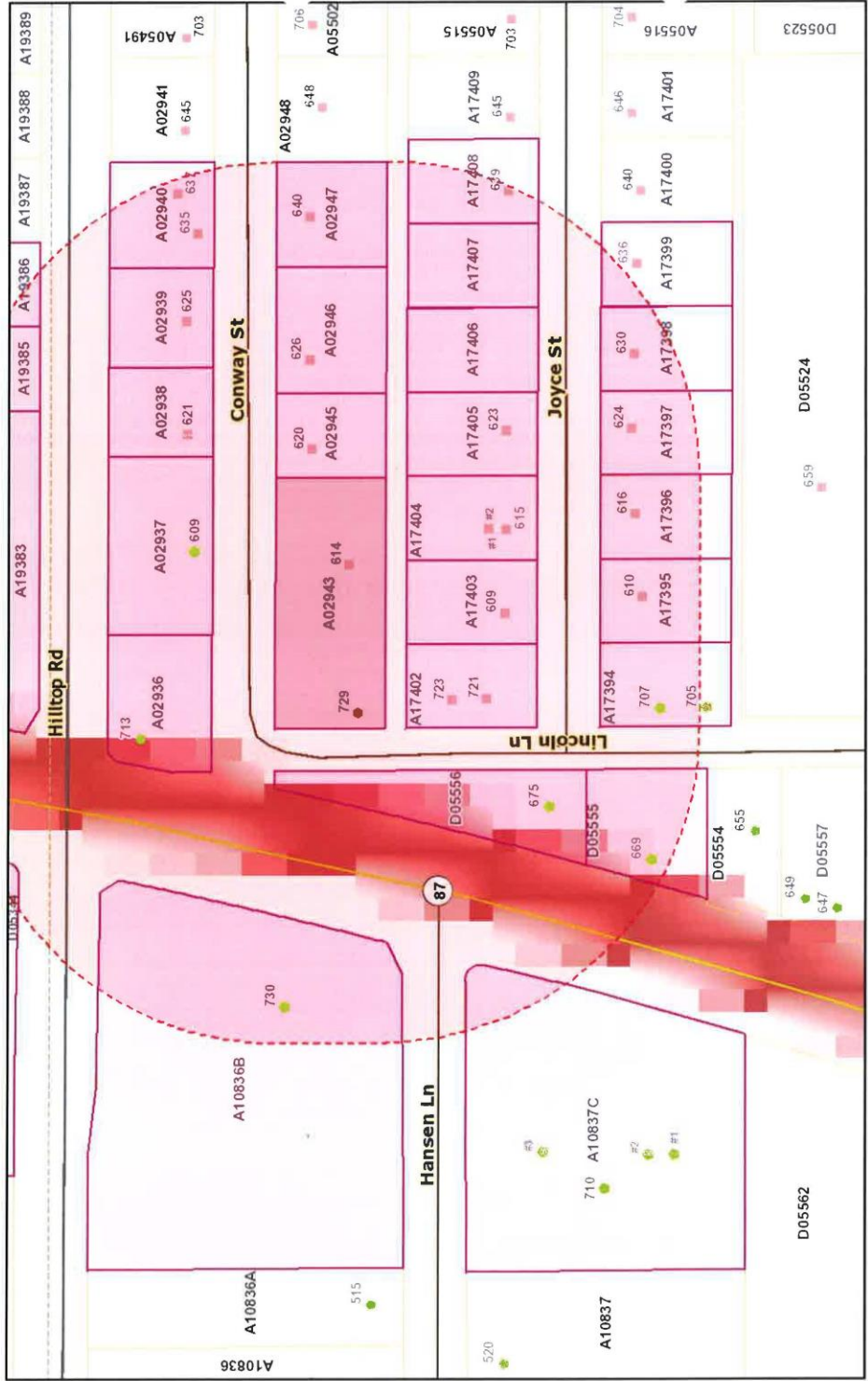
Meeting Adjourned 6:45 pm.

406-384-0080

7100 Commercial Ave. #4  
Billings, Montana 59101

performance-ec.com

# 727 Lincoln Lane - Zone Change R70 to NC



November 14, 2019

*Return to TAMARA FRANK  
406-384-0080  
Performance Engineering*