



CITY ZONING COMMISSION
AGENDA-Tuesday, October 6, 2020, 4:30 p.m.
Video Conference Format

NOTICE TO THE PUBLIC

Notice is hereby given that the **Zoning Commission of the City of Billings, Montana will hold a public hearing on Tuesday, October 6, 2020, at 4:30 p.m.** Due to the COVID-19 health concerns, the format of the City Zoning Commission meeting will be held in a virtual videoconferencing environment. The normal hearing room on the 1st Floor at 2825 3rd Ave North (Miller Building) will be closed during the meeting and no one will be attending this hearing in person. Public comment will be taken only during the Public Comment periods as indicated on the agenda, and during the Public Hearings under the Regular agenda. Comments may be sent to **Board via email before 1:00 PM on Tuesday, October 6, 2020.** All emails received prior to this time will be read into the record for the public hearing.

Call the meeting to order.

Introduction of City Zoning Commission Members and Planning Department Staff.

Public Comment: The Public may call in during specific Public Comment periods at **(406) 237-6165**. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to 3 minutes of testimony as is customary. Live coverage can be viewed on the City of Billings Facebook page here;
<https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260/?ref=bookmarks>

Approval of Minutes: September 1, 2020

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 984 – 1219 12th Street West- from R-70 to RMF-R** - A zone change request from Residential 7,000 (R-70) to Residential Multi Family-Restricted (RMF-R), on Block 2, Lot 6, Sunset Subdivision, a 10,056 square foot parcel of land. A pre-application neighborhood meeting was held on August 21, 2020, at Spring Creek Park. Presented by Nicole Cromwell, Zoning Coordinator
- b. **City Zone Change 985 – 3121 & 3125 Boulder Ave- from R-60 to RMF-R** - A zone change request from Residential 6,000 (R-60) to Residential Multi Family-Restricted (RMF-R), on the East ½ of Lot 13 & the West ½ of lot 14, Wolf Subdivision, a 40,500 foot parcel of land. A pre-application neighborhood meeting was held on September 1, 2020, at 3125 Boulder Ave. Presented by Nicole Cromwell, Zoning Coordinator
- c. **City Zone Change 986 – 3340 Sagegrass Dr. & 1310 30th St. W – Cardwell Ranch PD Amendment** - A Planned Development zone change request to amend the Master Plan Map to move Lot 15A, Block 2, from Planning Area 1 (Commercial) to Planning Area 2 (Commercial or Multi-family), and amend the text of the Planned Development Agreement to eliminate the additional special review requirements (Article IV.B & D). Lot 4A and 15A, Block 2, new Planning Area 2, will comprise a 10.051 acre parcel of land. A pre-application neighborhood meeting was held on September 1, 2020, at 3100 Meadow View Dr. Presented by Nicole Cromwell, Zoning Coordinator
- d. **Special Review 986 – 3189 King Ave. W. Beer & Wine with Gaming** – A special review request to allow a beer and wine license with gaming for a 2,500 square foot tenant space within a 7,913 square foot multi-tenant building, in a Community Commercial (CC) zone, on Block 17A, Lot 2, Lampman Sub., a 39,907 square foot parcel of land. Presented by: Karen Husman, Planner I.
- e. **Special Review 987 - 2499 Gabel Road** - A special review request to allow an existing all beverage liquor license to relocate from 1911 King Avenue West, Unit 10, to 2499 Gabel Road, a 3,128 square foot building, on Block 4, Lot 3, Cenex Park Sub., an 68,520 square foot parcel of land. Presented by Karen Husman, Planner I

Other Business/Announcements

Adjournment

The City Council has designated Monday, October 26, 2020, at 5:30 p.m. as the date and time to receive the Zoning Commission recommendation on each **zone change** and **special review** request.

Before taking any action on an application for a **special review use**, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The City Council shall take one of the following actions on these Special Review requests: 1) approve the application; 2) conditionally approve the application; 3) deny the application; 4) allow withdrawal of the application; or 5) delay the application for a period not to exceed thirty (30) days.

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 3rd Avenue North, 4th 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 bartleyr@ci.billings.mt.us

City Zoning Commission

Meeting Date: 10/06/2020

Information

Subject

Approval of Minutes: September 1, 2020

Attachments

2020_09_01_draft

City of Billings Zoning Commission Meeting Minutes September 1, 2020

The City of Billings Zoning Commission met on Tuesday, September 1, 2020 in the Virtual Zoom meeting,

Chairman Larson called the meeting to order at 4:30 p.m. The City Council has designated **Monday, September 28, 2020 at 5:30** p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

Commission and Staff		0	0	0	0	0	0	0	0	0	0	1	1	1
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Mike Larson	Chairman	1	1	-	-	-	1	1	1	1				
Daniel J. Brooks	Commissioner	E	1	-	-	-	1	1	1	1				
Jack King	Commissioner	1	1	-	-	-	1	1	1	1				
Greg McCall	Vice Chairman	1	E	-	-	-	1	1	1	1				
Trina White	Commissioner		-	-	-	-	1	1	1	1				
Wyeth Friday	Director, Planning & Community Services	-	-	-	-	-	-	-	-	-	-	-	-	
Monica Plecker	Division Planning Manager	-	-	-	-	-	-	-	-	1	-	-	-	
Nicole Cromwell	Planner Zoning Coordinator	1	1	-	-	-	1	1	1	1				
Tammy Deines	Planning Clerk	-	-	-	-	-	-	-	-	-	-	-	-	
Dave Green	Planner II	-	-	-	-	-	-	-	-	-	-	-	-	
Karen Husman	Planner I	1	1	-	-	-	1	-	1	1				
Robbin Bartley	Administrative Support	1	1	-	-	-	1	1	1	1				

Total Number of 2019 Applications	0	0	0	0	0	0	0	0	0	1	1	1	T O T A L
	1	2	3	4	5	6	7	8	9	0	1	2	
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	2	2	2	2	2	2	2	2	2	2	2	2	
	0	0	0	0	0	0	0	0	0	0	0	0	
Zone Change	2	0	-	-	-	1	2	1	2				8
Special Review	0	1	-	-	-	0	2	2	0				5

Chairman Larson introduced the Planning Division Staff and Commission: Attending Staff were Nicole Cromwell, Zoning Coordinator, Karen Husman, Planner I, Monica Plecker, Division Manager and Robbin Bartley, Administrative Assistant.

In Attendance : Jason McGimpsey, Cherry Island Group, Michael Burke

Public Comment

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

Approval of Minutes:

Chairman Larson called for approval of the August 4, 2020 meeting minutes.

Motion

Commissioner King made a motion and Commissioner Brooks seconded the motion to approve the August 4, 2020 meeting minutes.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson	X			
Daniel J. Brooks	X			
Jack King	X			
Greg McCall	X			
Trina White	X			

The motion for approval then carried with a unanimous voice vote 5-0.

Disclosure of Conflict of Interest

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson		X		
Daniel J. Brooks		X		
Jack King		X		
Greg McCall		X		
Trina White		X		

Disclosure of Outside Communication

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson		X		
Daniel J. Brooks		X		
Jack King		X		
Greg McCall		X		
Trina White		X		

Public Hearings:

Chairman Larson reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and advised the audience this would be heard by the City Council on September 28, 2020.

Item #1

Nicole Cromwell read aloud the legal notice for this application:

City Zone Change 982 – 1127 Alderson Ave - RP to RMF - A zone change request from Residential Professional (RP) to Residential Multi-Family (RMF) on Block 4, Lot 4-8, Sunset Subdivision, a 39,793 square foot parcel of land. A pre-application neighborhood meeting was held on July 23, 2020, at 1127 Alderson Ave. Tax ID: A16641

Recommendation

Planning staff recommends approval of the zone change based on the findings of the 10 review criteria.

- ✓ The proposed zone change is compatible with existing development in the immediate neighborhood.
- ✓ Is Consistent with 2016 Growth Policy
 - Essential Investments: Upgrade of site, infill development, near existing infrastructure
 - Community Fabric: New development on the site with new landscaping will be more visually appealing

Staff received 3 letters and 1 email in opposition. Also submitted was a protest. However, the protest could not be validated because it did not contain the requirement of 25 percent of the landowners in a 150 foot radius. A new protest was received today, but has not been validated as yet.

Questions for staff:

Commissioner Brooks asked about the parking lot lighting improvements. Staff deferred to the applicant for explanation. The idea is to make a secure parking area for dark times.

Commissioner White asked about the building changes both interior and exterior.

Chairman Larson asked for explanation of a “valid protest”. Staff explained the protocol. Upon validation it will be submitted to City Council and would require a 2/3 vote for approval.

Public Hearing Chairman Larson opened the public hearing at 4:49PM and asked for anyone wishing to speak in favor or against **City Zone Change 982**.

Applicant: Jeff Winkler, HGA Architects

The existing landscaping will remain. Site lighting will include pole lighting for security and convenience. 44-45 parking spots will be provided for tenants, the Code only requires 30. The exterior will not change, clean it up. Plans are available for viewing.

Max Griffin, 1655, Valley Heights

We have met with the neighbors and recognize their issues and concerns. The alley will be fenced off and the entire building will be fenced for children’s safety. Overflow parking will be provided in the property to the north that closes at 5pm. There will be 13 studio apartments, 14 one bedroom apartments and 2, 2 bedroom apartments. Affordable with access to the bus, shopping center very walkable. Currently there are no new apartments available for rent in the mid town area. There have never been problems with the neighbors.

Commissioner Brooks asked if the 6 foot site obscuring fence is standard or if something like McKinley school could be used. The applicants replied saying the obscuring fence will be along

the alley and a 4 foot fence would be used for the childrens area. There will also be a full security system installed around the building.

Commissioner White asked what the building to the north, also owned by the applicant, is. The applicant replied it is multi tenant and was once the Cornerstone Church.

Favor: None

Opposed:

A zoom participant spoke up, he indicated there are 6 property owners present.

Jane Henman, 1120 Alderson

She is absolutely opposed to the new zoning. Her mother has lived there 40 years. They have experienced the parking issues and traffic problems first hand. People deposited their garbage every where. Too many people. The JanMar Apartment building is very close and creates its own parking issues. She is concerned about public safety and property values.

Brandon Jasper, 1126 Alderson

He is opposed for the same reasons mentioned.

Tim Gulbranson, 1130 Alderson

He is opposed for the same reasons mentioned.

Larry Green, 1140 Alderson

In the last 5 years there have been many incidences that were dangerous. He has a wife 3 daughters and 13 grandchildren that play in the backyard. Too many scary people are lurking around.

He is opposed to the new zoning.

Inaudible name and address

He is opposed to the zone change, the parking is a true issue. Other concerns are noise and safety in the the neighborhood. There is no elementary school in the neighborhood making it a problem for new residences with children. Motorcycle speeding has become an issue as well as break ins and homeless persons hanging about.

Kelly Sanders, 5088 Dovetail Ave, 1307 12th Street West

The neighborhood cannot deal with the traffic that will this will bring.

Kathy Schaefer, 1048 Alderson

She is opposed to this zone change, there will not be adequate parking. She is concerned about her property value.

A caller

Michael Schaefer, 1048 Alderson

He is opposed to the zone change. He has specific responses to the criteria stated in the staff report. Specifically #3, regarding health and safety. The staff comments only reference benefits to the City and property owner including utility increases, tax increases and subsequent property value increases. It does not address a potential increase in crime and safety of the neighborhood and a significant increase in traffic on Alderson Ave. These risks have been realized with the similar zone change regarding the JanMar Apartments. My family have been residents of this area since 1956. Criteria #4 recognizes the increase in traffic which supports the issue of safety in the neighborhood. While the property owner at 1127 Alderson has stated he is addressing the safety of the residents there, he has not considered the safety of the neighbors. Criteria #6 regarding vehicle traffic, supports his argument regarding increased traffic. Criteria #9, staff comments on the increase of the property value, but ignores the decrease in the neighboring properties.

Rebuttal, Max Griffin

Michael and Kathy Schaefer of 1048 Alderson are competitors in the same neighborhood. They have a complex that has no parking lot. It is ironic they are disputing my proposal when they have a multiplex in the same area. He really tried to be a good neighbor. This entire area is rentals with only 31 percent being owner occupied.

Public Hearing CLOSED at 5:26PM

Discussion

Chairman Larson called for questions and discussion from the Board.

Motion

Commissioner Brooks made a motion and Commissioner White seconded the motion to approve City Zone Change 982 with staff recommendations & findings of fact.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson	X			
Daniel J. Brooks	X			
Jack King		X		
Greg McCall	X			
Trina White	X			

The Motion to approve of City Zone Change 982 carried with a 4-1 vote.

Item #2

Nicole Cromwell read aloud the legal notice for this application:

City Zone Change 983 – Cherry Creek Loop - Public to R-80 - A zone change request from Public (P) to Residential- 8000 (R-80), on the southern 3.42 acres of Lot 2, Block 1, Cherry Creek Estates Sub., a 20.196 acre parcel of land. A pre-application neighborhood meeting was held on July 27, 2020, at the subject property on Cherry Creek Loop. Tax ID: A31450

Recommendation

Planning staff recommends approval and adoption of the findings of the ten criteria for Zone Change 983.

- ✓ The proposed zoning is conforming to the 2016 Growth Policy and the 2006 Billings Heights Neighborhood Plan
- ✓ Development of infill is encouraged
- ✓ The proposed two-family dwellings will fill a housing need in the area
- ✓ Will provide a reasonable transition from a manufactured home park to the low density County lots on Bitterroot Drive
- ✓ City infrastructure exists and has capacity to serve the property

Questions for staff:

Commissioner White asked about the north area is in the county. Staff confirmed it is in the county.

Public Hearing Chairman Larson opened the public hearing at 5:49PM and asked for anyone wishing to speak in favor or against **City Zone Change 983**.

Applicant:

Marshall Phil, Blueline Engineering, 724 1st Ave North

A transitional zoning is being proposed, townhomes for individual ownership. This proposal is being submitted after careful review with staff of past zone changes and property information. The issues of concern are being addressed with the lowest density of zoning for townhomes. These are not to be rentals. The HOA will provide property maintenance, and snow removal. The HOA document was submitted today. There is a 20 foot no build zone on the west end. 1 tree for each home will be planted to provide buffer. A traffic study has been reviewed. The increase is relatively insignificant.

Jeff Engle, contractor

33 duplex townhomes

66 residences, 1 level with no basement

A vinyl perimeter fence

The target price will be in the range of 240 to 250,000

2 and 3 bedroom units

The HOA fees will be \$175.00 monthly

Exterior colors will be earth tones

Commissioner King asked about rentals in the area. Mr. Engle replied there is not law dictating how many rentals are allowed. This will be addressed in the HOA requirements.

Staff presented citizen correspondence received from area residences. She named the submitters.

Favor:

Miles Egan, 2690 Southridge Drive

He has been involved in New Home development since 1975. 51 percent must be owner occupied to obtain FHA financing. The intent here is to have 100 percent owner occupied dwellings.

Opposed:

Jason McGimpsey, 1327 Bitterroot Drive

He is opposed to this zone change. Cherry Creek was to have a maximum occupancy of 300 units. Currently there are 370 units. He does not understand why a R-8000 zoning would be necessary to transition. This development is not a good idea, in his opinion. He has submitted documents to support his opinion regarding property overcrowding and land use. He asks the Commission to take into consideration the crime and aesthetics of the current Cherry Creek development when making their decision.

Pam Ellis, 2000 Outlook Drive

She sent in 2 letters, not referenced by staff, apparently not received. 500 neighbors opposed the Cherry Creek development initially, water installation was fraudulently done as well. They did not honor the promises made when developing the area. There have been many issues in this court. There is no space for children or recreation. The schools will be over populated. This density will put a lot of pressure on the police and fire. There is a lot of suspicious activity in the court. Too much density creates problems.

Staff encouraged resubmittal of the documents.

Ming Cabrera, 1734 Poly Drive

He is a member of the Heights Task Force. The crime is a concern. How is the HOA going to manage rental verses home owner ship. This will cause degradation of the area. The past history of ownership does not show much hope of decent development. The HOA will not be able to control this ownership. This zone change needs to be rejected. The schools are at 92 percent now.

Lindsay McGimpsey, 1327 Bitterroot Drive

This area is riddled with problems. It does not take a lot of investigation to realize what a poor idea this zone change and development is. The current condition of Cherry Creek does not speak well of the direction the city should go. While it is not an expansion of the Mobile Home park, this new development is owned by the same persons who developed the Cherry Creek Mobile Home Court. The PSML is laughable because most of our services are dedicated to this area. The schools are overcrowded. Code compliance is always an issue in the court. A buffer zone was promised between the court and existing residences. They have not held true to their promises. This will be rentals again, no one would build a single family home here. She begs the commission to reject this zone change.

Rebuttal Marshall Phil

The 300 unit agreement included language defining the City's ability to restrict to 300 units. However the allowable number of units is currently 363. The new ownership of Cherry Creek is enforcing evictions and restrictions, addressing storm drains and asphalt improvements. The parcels will be sold off, a small percentage will be retained by the developer. The national average is being met regarding schools. The traffic intersections function well. The buffer zone was a planned Golf Course that never happened. This was never intended to be a vacant piece of land.

Public Hearing CLOSED at 6:15PM

Discussion

Chairman Larson called for questions and discussion from the Board.

Commissioner Brooks asked about the proposed HOA document, he was not able to review it.

Commissioner McCall replied he had reviewed everything submitted. He also drove the sites under review. There have been some very nice properties built in transitional areas by the same builders. He does not understand how it would be possible for anyone to hold someones property and make it unusable. Trying to seam this together is very challenging. The duplex idea is a good choice with large back yards.

Chairman Larson requested a motion before discussion. He also stated the City has no ability to enforce any HOA. It would be up to the homeowners to enforce the agreement.

Commissioner White has concerns about the traffic. She drove the entire loop. Children were walking down the street and missing sidewalks.

Commissioner McCall also saw activity in the area. He has not been out there for a couple years. It was in better condition than 2 years ago. He sees no other way to develop the area.

Staff offered the development would be required to go thru a master site plan review, including sidewalks. Install them or fund the City install them.

Chairman Larson was on the City Council when the Cherry Creek development was implemented. He has confidence in the people involved in this proposal. Anytime there is an interface between the City and the County there are going to be issues.

Motion

Commissioner McCall made a motion and Commissioner Brooks seconded the motion to approve City Zone Change 983 with Staff recommendations and 10 criteria.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson	X			
Daniel J. Brooks	X			
Jack King		X		
Greg McCall	X			
Trina White	X			

The Motion carried to approve City Zone Change 983 with a 4-1 vote.

Other Business: Joint commission public hearings for Project RE:Code will be September 15 and 16, 2020 @ 4:30pm.

Adjournment: The meeting adjourned at 6:25PM.

ATTEST: To be Approved by a motion at the next scheduled meeting.



City Zoning Commission

Meeting Date: 10/06/2020

SUBJECT: Zone change 984 - 1219 12th St West - R-70 to RMF-R

THROUGH: Nicole Cromwell

PRESENTED BY: Nicole Cromwell

Information

REQUEST

City Zone Change 984 – 1219 12th Street West- from R-70 to RMF-R - A zone change request from Residential 7,000 (R-70) to Residential Multi Family-Restricted (RMF-R), on Block 2, Lot 6, Sunset Subdivision, a 10,056 square foot parcel of land. A pre-application neighborhood meeting was held on August 21, 2020, at Spring Creek Park. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

Planning staff is recommending approval and adoption of the findings for the 10 criteria for Zone Change 984.

APPLICATION DATA

OWNER: Christian Helland
 AGENT: NA
 LEGAL DESCRIPTION: Lot 6, Block 2, Sunset Subdivision
 ADDRESS: 1219 12th St West
 CURRENT ZONING: R-70
 EXISTING LAND USE: Two dwelling units and two nonconforming commercial spaces
 PROPOSED USE: Three dwelling units
 SIZE OF PARCEL: 10,056 square feet

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
1219 12th St W	117	5/24/1976	R-70 to NC-L	No	For music school
SURROUNDING PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
1107 Alderson Ave	8	3/26/1973	R-60 to RMF-R	Yes	Apt building
1248 Clark Ave	815	9/24/2007	R-70 to R-60	No	For new MF
1212 10th St W	446	10/22/1984	R-70 to R-60	No	Adding 1 unit to duplex
1214 8th St W	287	5/8/1980	R-70 to R-60	Withdrawn	For new MF
845/855 Yellowstone Ave	151	11/23/1976	R-70 to R-60	No	For new MF
945 Lewis Ave	258	7/10/1979	R-70 to R-60	No	For new MF
1217-1225 Clark	195	3/22/1978	R-70 to R-60	No	For new MF
1101-1153 Yellowstone	80	3/24/1975	R-70 to R-60	No	For new MF
1000 block of Yellowstone Ave	931	2/23/2015	R-70 to R-60	Yes	New townhomes
1236-1240 Avenue D	952	1/23/2017	R-70 to R-60	Yes	Renovation of townhomes
940 Avenue B	53	4/22/1974	R-60 to RMF-R	Yes	Renovation of MF
828 Grand	595	5/22/1995	RMF-R to NC	Yes	Existing MF

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: CC, RP & RMF-R Land Use: Big B Bingo, vacant office building, apartment building
SOUTH:	Zoning: R-70 Land Use: Two-family dwellings
EAST:	Zoning: R-70 Land Use: Single family and two-family dwellings
WEST:	Zoning: CC and R-70 Land Use: Grand Center (shopping center) and two-family dwellings

BACKGROUND

This is a zone change application for an existing development at the corner of 12th St West and Alderson Avenue. The current construction consists of one building with two dwelling units and two legally nonconforming business uses. The applicant is a new owner who intends to remodel the structure to remove the two business uses and create one additional dwelling unit. The current zoning of R-70 does not allow three attached dwelling units.

This property was the subject of one previous zone change attempt in 1976. That owner wanted a zone change to a limited commercial district (NC-L) to make the existing commercial uses conforming to zoning. That zone change was denied. The current owner states the structure has been vacant for about one year. City water service was shut off in January 2018. The new owner activated the city water service in August 2020. Vacant structures tend to bring down property values in neighborhoods, and create opportunities for vandalism and trespassing. This location is a challenging area where some intense commercial uses are directly adjacent to a residential neighborhood.

The City Council recently considered a zone change for property on the north side of Alderson Avenue (1127 Alderson) to allow the renovation of an existing vacant commercial office building to apartments. Planning staff recommended approval to the Zoning Commission. The Zoning Commission concurred with this recommendation. The surrounding property owners within 150 feet of this zone change submitted a valid protest petition to the City Council opposing the zone change.

Planning staff reviewed the application and the review criteria for zone changes. Staff is recommending approval based on the proposed findings. The area is a mixed residential area with few housing choices available in the "middle" spectrum of housing types. The housing spectrum ranges from single family detached dwellings up to and including multi-unit apartments. Many cities across the country are "missing" the middle section of this spectrum. These include small apartment buildings (3-4 units), cottage courts (4 to 10 units arrange around a courtyard), and townhomes (side-by-side attached units). Missing Middle Housing is a range of house-scale buildings with multiple units—compatible in scale and form with detached single-family homes—located in a walkable neighborhood.

The city zoning currently only has two zone districts where the missing middle type housing choice is an option: RMF and RMF-R. The R-60 zone only allows multi-family (more than 2 attached units) by special review approval of the City Council. Both the RMF and RMF-R also allow single family dwellings and the large multi-unit apartment buildings. Project ReCode has drafted new Neighborhood zone districts that increase the predictability of different zone districts. For example, the NX1 - Mixed Residential 1 - zone district only allows 1 to 4 unit structures. If this zone change is approved, the property would update to the NX1 zone district. The proposed zoning will meet the goals of the 2016 Growth Policy by encouraging the re-use and renovation of an existing building in a well established neighborhood in Billings. Vacant buildings and land tend to bring down property values in the surrounding area. This area of town is highly walkable and the addition of one dwelling unit to this existing building will have no measurable effect on the surrounding neighborhood. There is good access to transportation options, shopping and services.

SUMMARY

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 2016 Growth Policy:

Strong Neighborhoods:

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Neighborhoods that are safe and attractive and provide essential services are much desired

Home Base:

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- To provide safe, good quality and affordable housing and develop patterns that are compatible with existing neighborhoods.

The proposed zoning will allow another housing choice in an area with primarily the two ends of the housing choice spectrum - multi-unit apartment buildings or single family and two family dwellings. This is a diverse area with different zoning districts of commercial and residential. The new zoning will allow a "middle" housing choice in the area.

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

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

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

Public health and public safety will be promoted by the proposed zoning. Renovation of a vacant structure for new residents will improve the health and safety of the neighborhood. Vacant structures tend to create opportunities for vandalism and trespassing and bring down adjacent property values.

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

Transportation: The proposed zoning will not have a measurable effect on the existing transportation system. If the zone change is approved, the sidewalk missing along the 12th St West frontage will be replaced as part of the renovation work on the property.

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

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?

There will be no measurable effect on motorized transportation. If the zone change is approved, the renovation work on the property will require the missing sidewalk on 12th St West to be installed.

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 better housing choice in the area and is 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 a housing choice that is in demand in the area. The proposed zoning will allow the existing structure to be renovated into a conforming use and a housing choice that fits into the existing area.

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

Approval of the zone change will conserve the value of the property by allowing renovation of the existing property, potentially increasing the value of the existing building.

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 and upgrade the current use. This is the most appropriate use of the land.

RECOMMENDATION

Staff recommends approval and adoption of the findings of the 10 criteria for Zone Change 984.

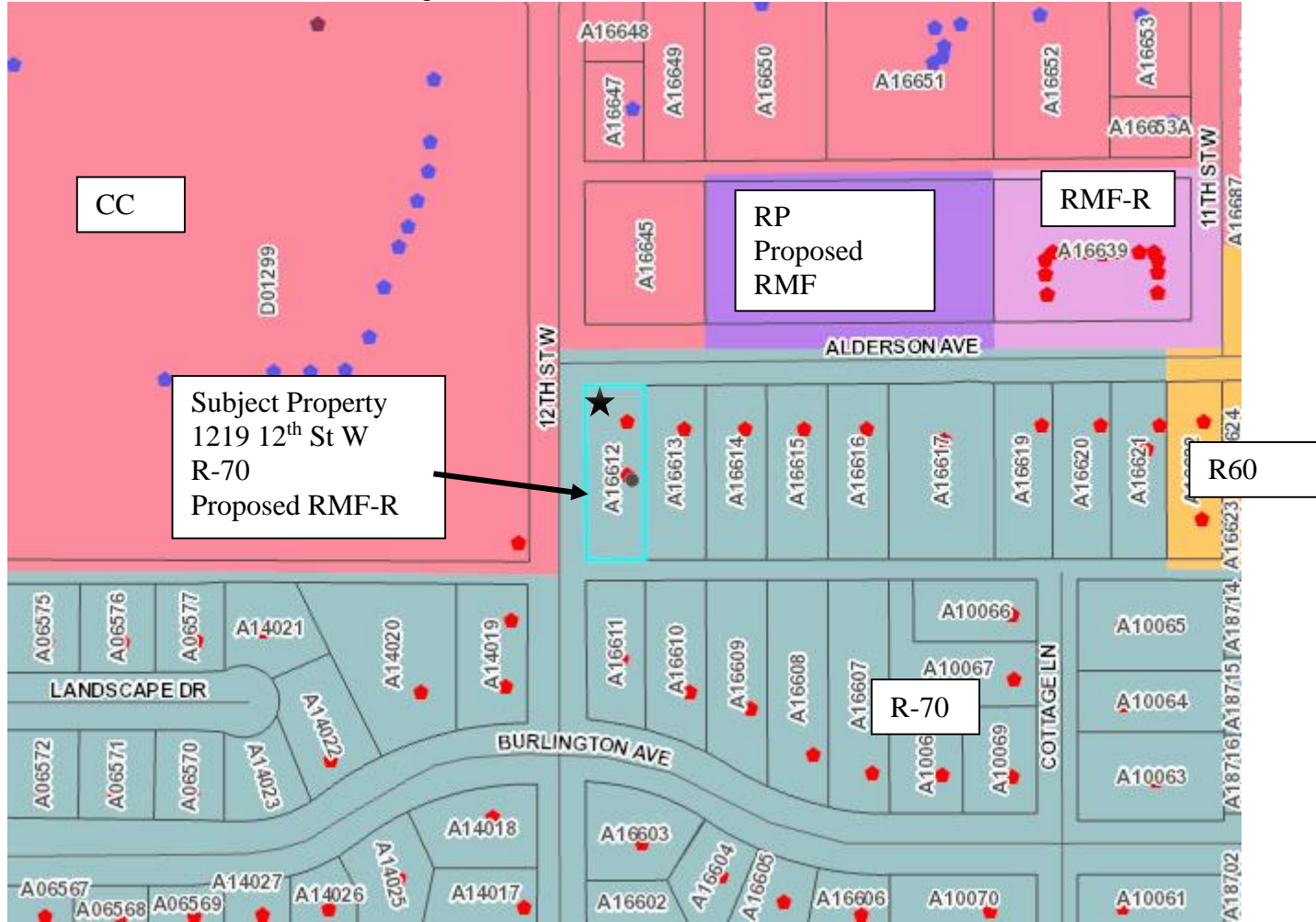
Attachments

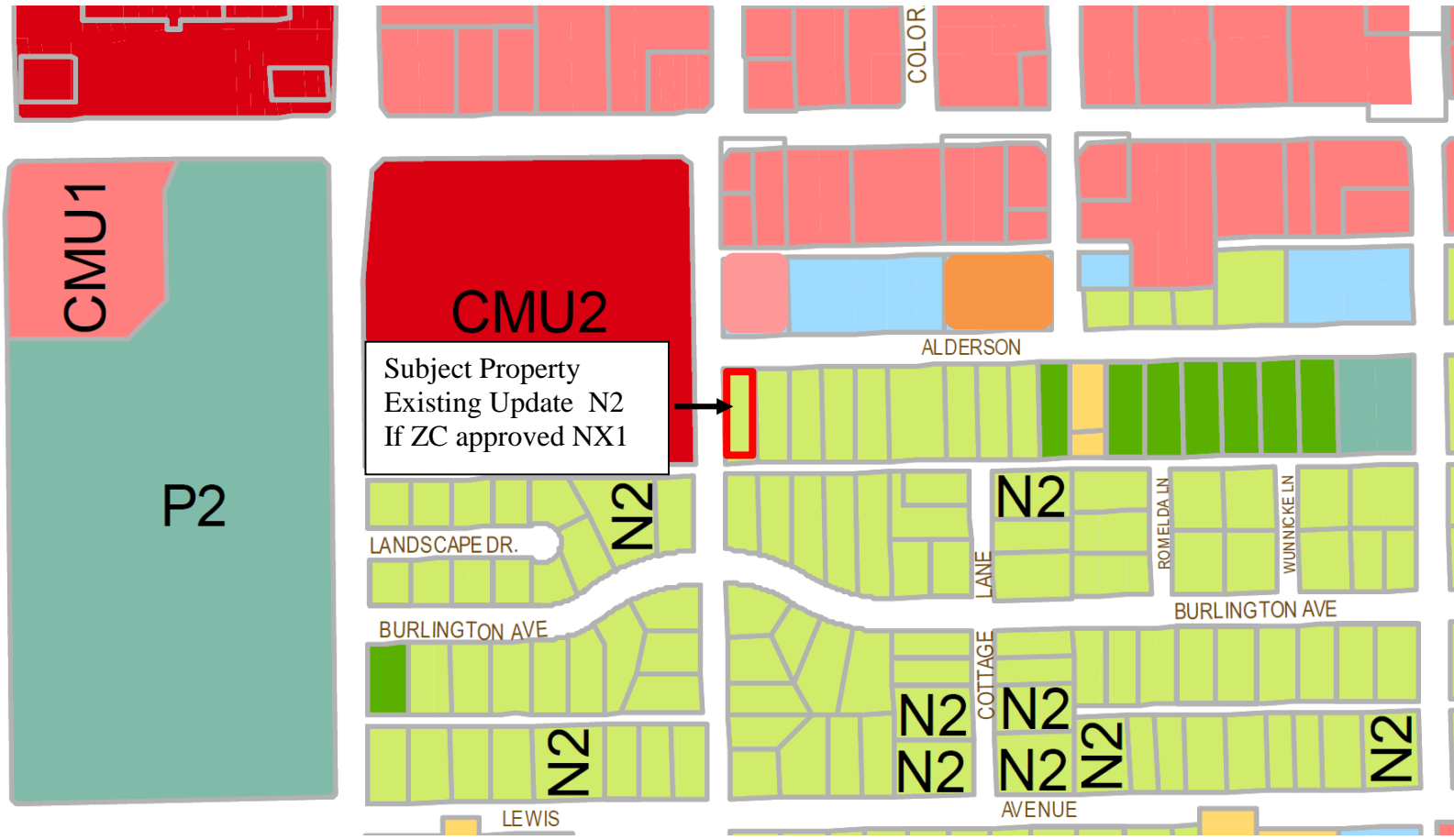
Zoning Map and Site Photos

Application and Letter

Surrounding Zoning

Zone Change 984 – 1219 12th St West – R-70 to RMF-R





Pending Zoning Map Update



Subject Property

Alderson Ave

12th St W

1108

D01299

1210

1144

1219

1140

1136

1130

1126

A11013

A11014

A11015

A11016

A11011

1206

A11023

1207

A11019

1201

1205

A11010

1141

A11009

1137

A11008

A11007

1135

Subject Property Photos



Subject Property – view from 12th St West



View south along 12th St West



View north along 12th St West



View east along Alderson Avenue



View west across 12th St West – The Beat – Ballroom Dancing instruction

APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #** 984 - **Project #** PZ-20-00198

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: R-70

Proposed Zoning: ~~R-70~~ RMFR

TAX ID# A16612 CITY ELECTION WARD # 3

Legal Description of Property: SUNSET SUBD, S05, T01 S, R26 E, BLOCK 2, Lot 6

Address or General Location (If unknown, contact City Engineering): 1219 12th Street West, Billings, 59102

Size of Parcel (Area & Dimensions): 10,056 A

Present Land-Use: Dueplex with 2 Commercial Units

Proposed Land-Use: Triplex-

Covenants or Deed Restrictions on Property: Yes _____ No XX

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): Christian Helland (Purchased property 8/10/2020

(Recorded Owner)
3300 2nd Ave North #6, Billings, MT. 59101

(Address)
406/206/5186 Christian.z.Helland@gmail.com

(Phone Number) (email)

Agent(s): _____

(Name)

(Address)

(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: C. Helland Date: 9-2-2020

(Recorded Owner)



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

My proposal to rezone 1219 12th Street West to RMF-R is consistent with the goal and policies of the adopted Growth Policy, as detailed below. The goal of this project is to turn the current structure, which has been vacant for over a year, into a home to accommodate three separate families, as well as make the yard visually appealing for the neighborhood. The "commercial" spaces currently within the house are not usable nor a utilized space. The zoning change will help efficiently use the full space of the home. I will be investing in the community with the remodel by purchasing supplies from local business and recycling materials where possible. This project will also be completed by local contactors in addition to myself. I have a vested interest in the safety of the neighborhood, turning this vacant home into contributing part of the community by bringing in responsible tenants to the neighborhood.

- 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 use of the immediate area.

The property currently exists as a legal duplex with two commercial units attached, I wish to remove the two commercial units and turn the building into a triplex. The catalyst for seeking the variance is to receive a rebuild letter to obtain traditional bank financing. The changes will not impact any of the exterior walls.

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:** R-7000
2. **Written description of the Zone Change Plan** including square footage or acres of proposed new zoning: Changing from R-7000 to R-6000 will allow the building to be used as a triplex
Current area of lot is 10,080 SQFT- RMFR
3. **Subject Property Map:** please attach to this form
4. **Legal Description of Property:** _____
SUNSET SUBD, S05, T01 S, R26 E, BLOCK 2, Lot 6
5. **Neighborhood Task Force Area:** Yes // No . If Yes, Name of Task Force and mailing address of Chairperson: Yes, Central Terry Task Force - L.A. Trudeau - 930 Miles Ave -
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 August, 2020
 - 2) The zone change application is based on materials presented at the meeting.

Owner (s): Christian Helland Telephone: 406/206/5186
Address: 3300 2nd Ave North #6, Billings, MT. 59101 Email: Christian.z.Helland@gmail.com

Agent (s): _____ Telephone: _____
Address: _____ Email: _____

Synopsis of neighborhood meeting held on 8/21/20 at 5:30 at Spring Creek Park.

Mrs. Margene Hall and I visited about the rezoning project and what the proposed use of the building if the zoning was changed. We discussed how the house and landscaping would be changed and be a nice addition to the neighborhood with off-street parking available for the tenants. We discussed the project from 5:30- 5:35.





City Zoning Commission

Meeting Date: 10/06/2020

SUBJECT: Zone Change 985 - 3121 & 3125 Boulder Ave - R-60 to RMF-R

THROUGH: Monica Plecker

PRESENTED BY: Nicole Cromwell

Information

REQUEST

City Zone Change 985 – 3121 & 3125 Boulder Ave- from R-60 to RMF-R - A zone change request from Residential 6,000 (R-60) to Residential Multi Family-Restricted (RMF-R)), on the East ½ of Lot 13 & the West ½ of lot 14, Wolf Subdivision, a 40,500 foot parcel of land. A pre-application neighborhood meeting was held on September 1, 2020, at 3125 Boulder Ave. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

Planning staff is recommending approval and adoption of the findings of the ten criteria for Zone Change 985.

APPLICATION DATA

OWNER: Edith Nelson
 AGENT: Rob Pasquarello
 LEGAL DESCRIPTION: Lot 14 (West 1/2) - 3121 Boulder and Lot 13 (East 1/2) - 3125 Boulder
 ADDRESS: 3121 and 3125 Boulder Avenue
 CURRENT ZONING: R-60
 EXISTING LAND USE: Single family dwellings
 PROPOSED USE: Two family and multi-family dwellings
 SIZE OF PARCEL: 40,500 square feet (20,250 sf each parcel)

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None – Original Zoning					
SURROUNDING PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
1550 41st St W	718	10/14/2003	R-96 to RMF-R	Y	Wheatbaker Apts 2016
1550 Country Manor Blvd	426	3/5/1984	A-1 to RMF-R	Y	Country Meadow Apts 1997
3981 Avenue D	426	3/5/1984	A-1 to RMF-R	Y	Circle Fifty Townhomes 2001
Swanson Lane	426	3/5/1984	A-1 to RMF-R	Y	Fox Run Townhomes 2002
34th St West & Colton Blvd	667	11/6/2000	R-96 to R-80	Y	Wyndham West Townhomes 2002
1500 Golden Blvd	572	2/28/1994	A-1 to RMF	Y	Carriage Homes 1997
3155 Avenue C	413	10/25/1983	R-96 to RMF-R	Y	Aspen Meadows 2005
2291 Avenue C	68	8/26/1974	PD to R-60	Y	Rosepark Plaza Apts 1981
1545 Hawthorne	936	7/17/2015	R-50 to RMF-R	Withdrawn	
1229-1239 Poly Dr	933	3/23/2015	R-96 to R-60	Y	Council initiated existing 6-unit apts

301-317 Covert Ln	955	5/22/2017	R-70 to R-60	N	3 existing 4-unit bldgs
1041 N 24th St	968	8/13/2018	R-70 to RMF-R	Y	Existing apts

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: R-60 Land Use: Rock Creek Apartments
SOUTH:	Zoning: R-60 Land Use: Single family and Multi-unit townhomes
EAST:	Zoning: R-60 Land Use: Single family and Rock Creek Apartments
WEST:	Zoning: R-60 Land Use: Single family

BACKGROUND

This is a zone change request for two adjacent parcels of land at 3121 and 3125 Boulder Avenue. The lots are 20,250 square feet each and three dwellings exist on the parcels. The current owner is selling the property and the prospective buyer, Rob Pasquarello, is acting as the agent. The proposed zoning is Residential Multi-family-Restricted (RMF-R). The current zoning of R-60 allows single family and two family dwellings by right but requires special review approval for three or more attached dwelling units (multi-family). Under current zoning, up to 10 units could be developed on each property in one apartment building with special review approval. Other configurations of multi-family dwellings could also be allowed based on the lot area. If the owner chose to use the "by right" development of single family or two family dwellings, each property could have up to five dwelling units. The proposed zone of RMF-R would allow a 10-unit building on each property by right and not by special review approval.

The prospective buyer conducted a pre-application neighborhood meeting at 3125 Boulder Avenue to discuss the proposed zoning and Mr. Pasquarello's plans for updating the property. Ten of the surrounding owners attended the meeting and several owners submitted a letter to Mr. Pasquarello with concerns about increased traffic, higher crime and lower property values for surrounding single family dwellings. One of the surrounding owners sent a letter to the City Council members for Ward IV. Planning staff received an email from Michael Klepperich a new owner at 3111 Boulder Avenue (directly east of 3121 Boulder Avenue). He stated concerns about more multi-family dwellings in the neighborhood as there seems to be an adequate supply, and the lack of sidewalks on Boulder Avenue a route to Boulder elementary school. During school hours, heavy vehicle and pedestrian traffic moves along Boulder Avenue, Colton Boulevard and 32nd Street West (the street fronting Boulder Elementary School). The traffic congestion leads drivers to drop off students along Boulder Avenue and Colton Boulevard and avoid the traffic directly in front of the school. Drivers look for ways to exit the area as quickly as possible.

Normal daily traffic on Rehberg Lane (east) is about 6,830 vehicle trips per day. There are no average daily traffic count numbers collected for Boulder Avenue, 32nd St West (Poly to Grand Ave), or Colton Blvd west of Rehberg Lane. Rehberg Lane serves as a major north/south connector between Rimrock Rd and Grand Avenue and is designated a collector street. Boulder Avenue and 32nd St West are local streets and are not intended or constructed as collector or arterial streets. There are over 470 students in Boulder Elementary School and it is likely daily traffic on Boulder Avenue and Colton Blvd west of Rehberg Lane during the school year is quite heavy. If half the student population is dropped off by car each day that would be over 1,000 vehicle trips just for these students and would not include staff or school bus traffic. The school district staff along with the city staff manage the daily school traffic along 32nd St West in front of the school so the safety of students is ensured. Adding sidewalks to Boulder Avenue would be an additional safety measure for students walking to school and would make this street safer for residents of the area as well. Typically, new sidewalk is added when new development or significant re-development occurs.

Boulder Avenue has a diverse range of housing options on both ends of the choice spectrum - 17 single family detached dwellings (between Rehberg Ln and 32nd St West), eight 4-plex apartment buildings, 13, 8-unit apartment buildings (includes Rock Creek apartments), and four 4-unit townhomes (total of 16 single family attached units). The proposed zoning could allow any housing choice along this spectrum although the proposal is for smaller apartment buildings (not more than five in a single structure). A concept plan was submitted showing 11 dwelling units on the property with a shared private driveway off Boulder Avenue. The 5-unit building is shown

on the north end of the property, a 4-unit building about mid-way and then a two-family dwelling at the frontage on Boulder Avenue. As drawn, the 5 -unit building would have access from the Rock Creek apartments internal driveway.

Planning staff has reviewed the request and is recommending approval to the Zoning Commission based on the proposed findings of the 10 review criteria. The Wolf Subdivision is an older county subdivision where lots were platted at a minimum of 1/2 acre in area to accommodate on site water wells and septic drainfields. The subdivision was annexed to the city in 1963, and these larger lots have gradually increased the number of dwelling units and housing choices over the past 57 years. The single family dwellings date to the mid 1940s to the mid to late 1950s. The oldest multi-family dwellings were constructed in the mid 1970s after city water and sewer was available. The water line was replaced in Boulder Avenue in 1989, but the sewer line is original from 1963 when the SID was approved and the property was annexed to the city. The City Engineering Division has not expressed any concerns with providing water and sewer to the project.

The city adopted an Infill Policy in 2011, that supports the re-development of vacant or under-developed land within the city limits. Land where the building value and the land value are nearly equal or where the land value exceeds the building value demonstrate where re-development or significant building upgrades are needed to ensure adjacent property values are sustained. Under-development includes unfinished site improvements such as unpaved driveways, lack of walkways, missing curbs, gutters, sidewalks, small dwellings on very large lots and similar characteristics. The proposed zoning and development is in character with the surrounding development as 80% of the area is devoted to apartments. The owner could also build a townhome (unit ownership) project where each unit would have a separate owner with property maintenance accomplished by an HOA. This would be similar to two developments across the street from the subject property. Townhomes are a type of housing choice that is in demand now.

SUMMARY

Before making its recommendation to the City Council, the Zoning Commission shall consider the findings of the 10 review criteria:

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

The proposed zone change is consistent with the following guidelines of the 2016 Growth Policy:

Strong Neighborhoods:

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Neighborhoods that are safe and attractive and provide essential services are much desired

Home Base:

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- To provide safe, good quality and affordable housing and develop patterns that are compatible with existing neighborhoods.

The proposed zoning will allow another housing choice in an area with primarily the two ends of the housing choice spectrum - multi-unit apartment buildings or single family dwellings. This area is about 20% single family detached or attached dwellings, 20% small apartment buildings (4 units) and 60% large apartment buildings. The new zoning will allow the owner to make an informed choice of the type of housing choice in demand for this area. This will likely be a mix of building types and choices on this large parcel of land.

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. Re-development of the property will improve the health and safety of the neighborhood. Vacant or buildings with maintenance deficits tend to create opportunities for vandalism and trespassing and bring down adjacent property values. Well maintained property and new construction tends to bring property values up.

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

Transportation: The proposed zoning will not have a measurable effect on the existing transportation system. If the zone change is approved, the re-development of the property will require either installation of sidewalk, curb & gutter or a guarantee of a future contribution to the sidewalk construction. Current vehicle traffic from the two dwellings is about 20 to 26 vehicle trips per day. If 20 apartments were constructed then this would contribute approximately 133 vehicle trips per day, a significant increase. The concept site plan shows 11 dwelling units. The current "by right" zoning would allow five dwelling units per parcel or 10 dwelling units total. The increase in traffic from either scenario would be about 3 times the current traffic generation for 2 single family dwellings. Boulder Avenue is a local street. The city recently did an overlay of the asphalt surface to preserve the pavement for a few more years, but no further improvements were made. The street has the necessary construction to handle this small (10%) increase in total traffic volume.

Water and Sewer: The City provides water and sewer to the property. If new service lines are required, these will be installed at the time of property re-development.

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?

There will be a slight effect and increase of motorized transportation. The current street and intersections should be able to handle the additional traffic. If the zone change is approved, the renovation work on the property will require the developer to install sidewalk, curb and gutter or provide a future guarantee of its installation.

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 better housing choice in the area and is 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 a housing choice that is in demand in the area. The proposed zoning will allow the existing out of date buildings to be removed and new, safer buildings to be constructed.

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

Approval of the zone change will conserve the value of the property by allowing renovation of the existing property, potentially increasing the value of the existing property and surrounding properties.

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 and upgrade the current use. This is the most appropriate use of the land.

RECOMMENDATION

Staff recommends approval and adoption of the findings of the 10 criteria for Zone Change 985.

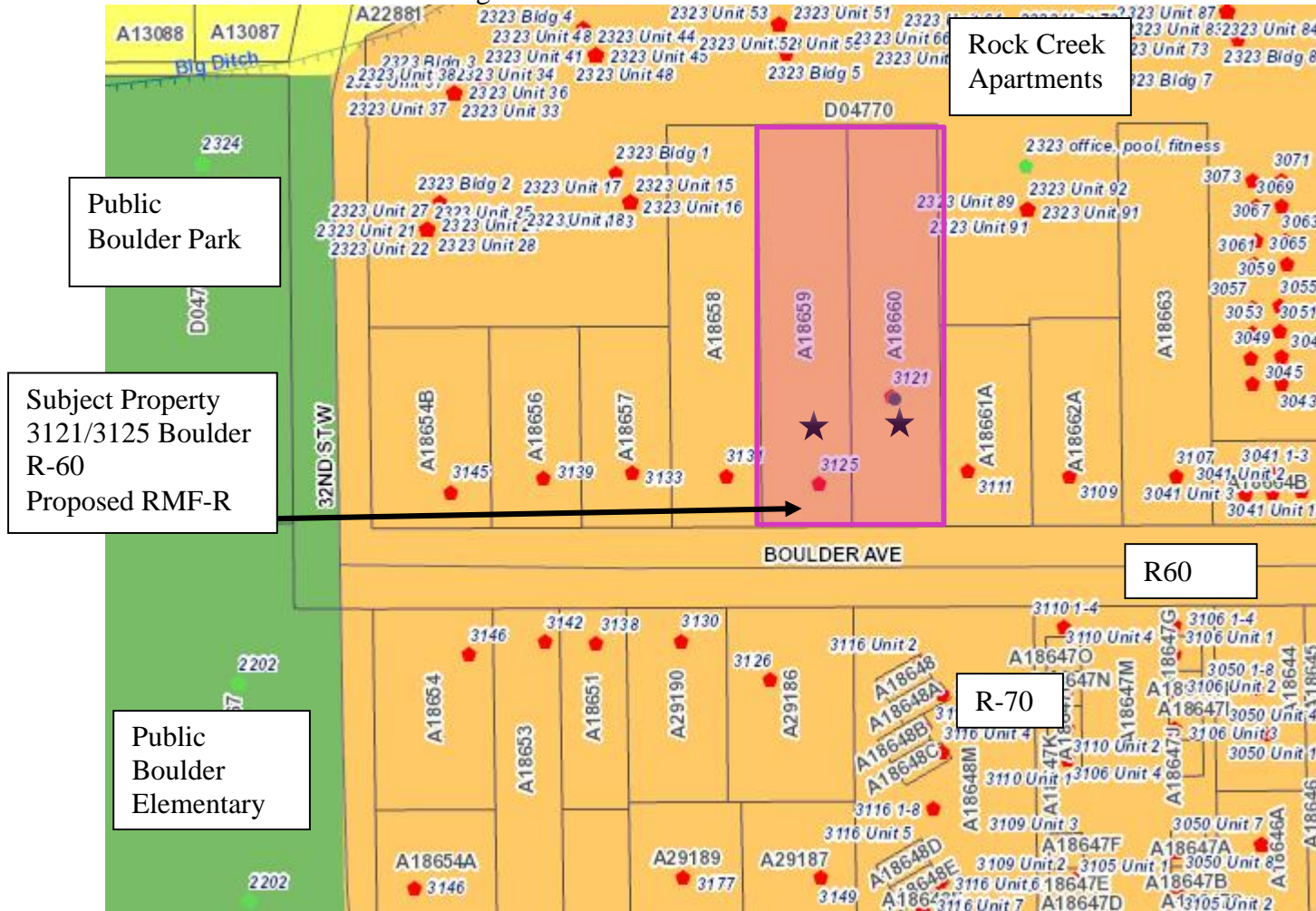
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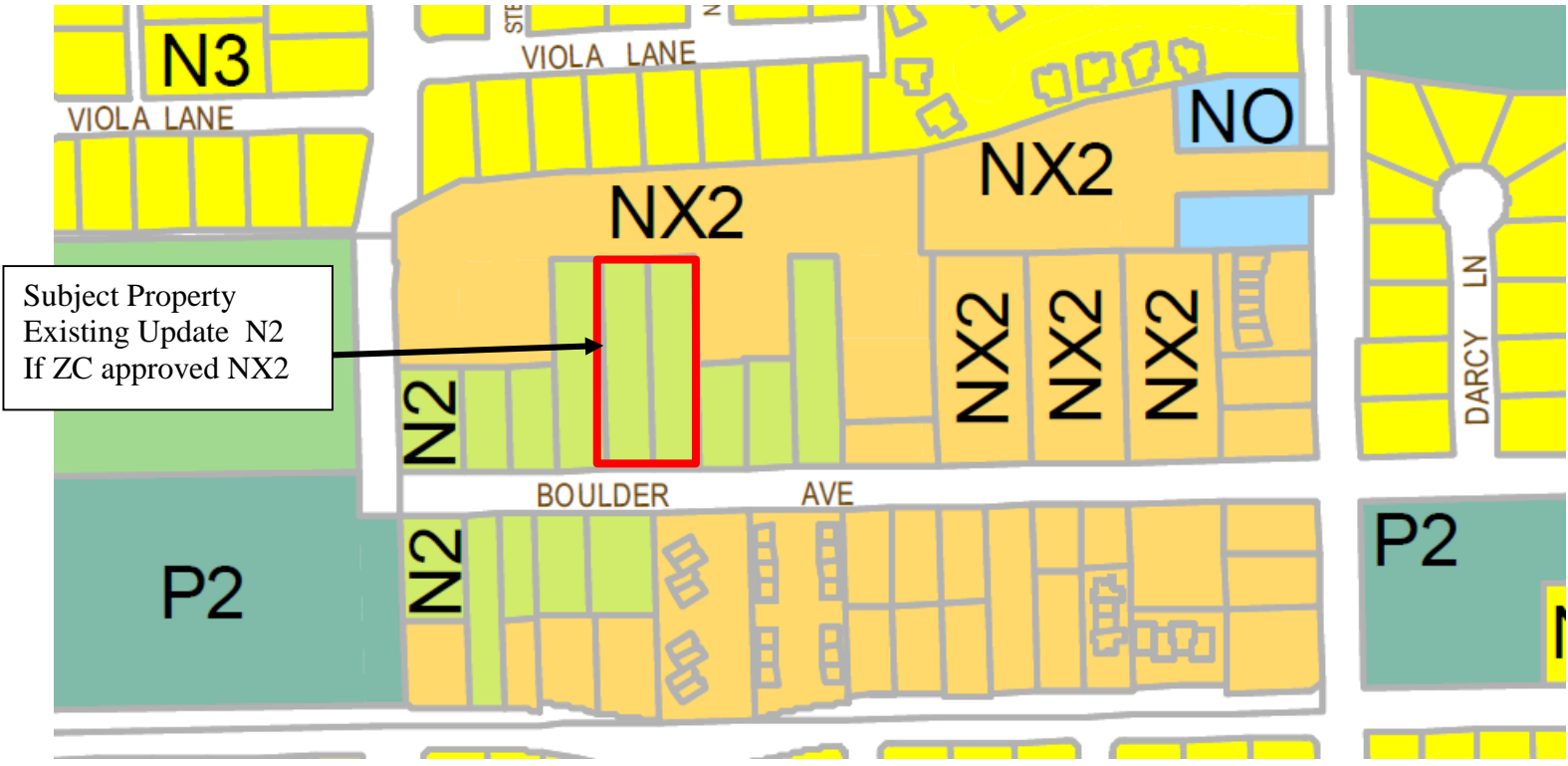
Zoning Map and Site Photos

Application and Materials

Surrounding Zoning

Zone Change 985 – 3121/3125 Boulder Ave – R-60 to RMF-R





Pending Zoning Map Update

Subject Property Photos



Subject Property – view from Boulder Ave



View east along Boulder Ave



View west along Boulder Ave



View south west across Boulder Ave



View south across Boulder Ave



View south east across Boulder Ave

APPLICATION FORM

CITY ZONE CHANGE Billings Zone Change # 985 - Project # P2-20-00203

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: R-60

Proposed Zoning: RMF-R

TAX ID# A18660 and A18659 CITY ELECTION WARD # 4

Legal Description of Property: 3121 Boulder Ave, WOLF SUBD, S34, T01N, 75E, LOT 14, W2 LT 14 and 3125 Boulder Ave, WOLF SUBD, S34, T01N, 75E, LOT 13, E2 LT 13

Address or General Location (If unknown, contact City Engineering): 3121 Boulder Ave and 3125 Boulder Av

Size of Parcel (Area & Dimensions): 20,750 sq. ft each lot, 40,500 sq. ft. total

Present Land-Use: Residential Single family homes

Proposed Land-Use: Mult. family, planning 4 plexes, duplex options

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): Edith Nelson

(Recorded Owner)
2832 Beartooth Dr. Billings, MT 59102
(Address)

(Phone Number) (email)

Agent(s): Rob Pasquavalle

(Name)
2923 Broadway Dr., Laurel, MT 59044
(Address)

(Phone Number) 706-591-1399 (email) rob.pasquavalle.com

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: Edith Nelson Date: 9-3-2020
(Recorded Owner)



APPLICATION FORM

CITY ZONE CHANGE Billings Zone Change # _____ - Project # _____

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: R-60

Proposed Zoning: RMF-R

TAX ID# A18660 and A18659 CITY ELECTION WARD # 4

Legal Description of Property: 3121 Boulder Ave, WOLF SUBD, 534, TOWN, 75E, LOT 14, W2 LT 14 and 3125 Boulder Ave., WOLF SUBD, 534, TOWN, 75E, LOT 13, E2 LT 13

Address or General Location (If unknown, contact City Engineering): 3121 Boulder Ave. and 3125 Boulder Av

Size of Parcel (Area & Dimensions): 20,750 sq. ft each lot, 40,500 sq. ft. total

Present Land-Use: Residential Single family homes

Proposed Land-Use: Mult. family, planning 4 plexes, duplex options

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): Edith Nelson

(Recorded Owner)
2832 Bear Tooth Dr. Billings, MT 59102
(Address)

(Phone Number) (email)

Agent(s): Rob Pasquavella

(Name)
2923 Broadway Dr., Laurel, MT 59044
(Address)

(Phone Number) 706-591-1399 (email) rob@rentals.com

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: Edith Nelson Trustee / noDell Nelson date: 9-3-2020
(Recorded Owner)



Rob Pasquarello
2923 Brookway Dr.
Laurel, MT 59044
Tel 406-591-1399

September 3, 2020

SUBJECT: Enclosed Proposed Zone Change from R60 to RMF-R 3121/3125 Boulder Ave

To: Whom it May Concern,

I am proposing a zone change for these two properties so we can move forward with some planned renovations and construction of new multifamily apartment building(s). The current zoning only allows multi-family by special review approval. The proposed zoning of RMF-R would allow more flexibility for our re-development plans. There are two homes on the lots right now (one on each ½ acre lot). These two homes have both been used as rental properties since the 1960s. We are currently evaluating our options to add multi-family units at 3121 and 3125 Boulder Avenue.

We believe curb and gutter should be added in this area to provide a safe route to school for those children attending Boulder Elementary, only a half block away. As part of any future project, we will add curb, gutter and sidewalk and 3 trees near the street. If the City would rather we wait until later, we will waive our right to protest a future curb, gutter and sidewalk SID. We are totally on board with safe routes to school.

The houses need some work, especially 3125 Boulder. The front steps, windows and siding are in poor condition. There is interior water damage in the basement that needs remediation. Realtor Brem Fellman and the neighbors who attended the pre-planning meeting all advised me that there have been multiple problems with the tenants that have resided at these two houses over the years. My wife and I manage our own rentals. We have a thorough screening process, complete regular inspections and will obtain high quality tenants for this neighborhood.

This is an infill project. The rear half of these lots is currently being used for nothing, and while both yards have been mowed they are burning up. By adding nice new buildings and/or a combination of renovating the old we will increase the value of the nearby real estate and use this open land. We have done this before on the west end. At 532 Hurdle Circle, we purchased 30 total units 4 years ago. We replaced the roofs, siding, most windows, resurfaced the parking lot and renovated the interiors. We have received many compliments from the people who own single family homes across the street. They enjoy having us as neighbors. We believe the residents on Boulder will feel the same way about us in the future.

All the people who attended the pre-planning meeting clearly advised they did not want more multi-family in the area. However, this is already a heavily populated multi-family

area. This will allow us to service our diverse population. Every person living on the block acknowledged these houses have been used as rentals for many years, need work and there have been major issues with the quality of tenant in the past. They made it clear they would rather not see more multi-family.

If the zoning is approved, we will improve the buildings, the yards, add curb, gutter, sidewalk and to add quality tenants to this area. We will also add significant tax revenue to the area.

Photos of the property, the layout and heights of the buildings we plan to build will follow.

Sincerely,



Rob Pasquarello
406-591-1399

Enc.

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:** R-60
2. **Written description of the Zone Change Plan** including square footage or acres of proposed new zoning: RMF-R, 40,500 square feet - total of the 2 lots
3. **Subject Property Map:** please attach to this form
4. **Legal Description of Property:** 3121 Boulder Avenue, WOLF SUBD, S34, T02 N, R25 E, Lot 14, W2 LT 14 and 3125 Boulder Ave, WOLF SUBD, S34, T02 N, R25 E, LOT 13, E2 LT 13
5. **Neighborhood Task Force Area:** Yes // No . If Yes, Name of Task Force and mailing address of Chairperson: Howard Holz
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 1st, day of September, 2020
 - 2) The zone change application is based on materials presented at the meeting.

Owner (s): Edith Nelson Telephone: _____

Address: 2832 Bearcreek Drive Email: _____
Billings, MT 59102

Agent (s): Rob Pasquarello Telephone: 406-591-1399

Address: 7977 Brookway Dr. Email: robperknrentals.com
Laurel, MT 59044

August 29, 2020

Dear Mr. Pasquarello,

I am opposed to the potential zone change proposed for my neighborhood.

I have several concerns including an unsafe increase in traffic and crime, lower property values, and the damage to the charming neighborhood feel of the west half of Boulder Avenue that would occur by turning two small homes into eight or more larger housing units.

I have sincere concerns over the unavoidable increase in automobile traffic that would arise by turning two homes into eight or more homes. Our street—which has no sidewalk—is heavily used as a walking route for school children at Boulder Elementary. We recently saw the re-zoning and development of a different lot on the block and subsequent increased traffic. The street was not designed or intended to safely move this volume of automobile traffic.

It can be noted that Boulder Avenue is already a blend of multi-family and single-family homes—comprised of modest single-family homes on the west half of the block and large multi-family units on the east half. I do not think this is reason or precedent for the proposed zone change. I feel that such a shift in home composition would undesirably impact the feeling and aesthetic of the neighborhood. The houses on the lots proposed for re-zone fit naturally with their neighbors—they are low-rise, quaint and simple homes which are perfect for the young family or first-time homeowner.

Additionally, multi-unit dwellings are regularly associated with increased crime rates and calls for police assistance, as well as lower property values for surrounding single-family dwellings.

Please consider alternate plans to upgrade the existing single-family homes as rental properties. We don't want more multi-family dwellings on our street.

Sincerely,

Virginia Ohm
Bob
Sofiedad Guerrero
June Johnson
Bob
Bob
Bob
Bob

Attended Meeting

- ~~3142~~ ^{ATTENDED MEETING} - Angelica Johnson
- 3181 - Jason Flick
& Amie
- 3146 - Mark Halley
- 3145 - Buzz Tolliver
- 3126 - Shawn Callahan
- 3107 - Soledad Guerrero
& Jesse Hidalgo
- 3133 - Matt Schatzke
& Beth

Boulder Ave.

Rob Pasquarello
3031 Grand Avenue #146
Billings, MT 59102
Tel 406-591-1399

August 25, 2020

Dear Neighbor,

We are going to have a meeting on September 1, 2020, 6:00 PM at 3125 Boulder Avenue to discuss the potential zone change of 3121 and 3125 Boulder Avenue.

The legal owner of the properties is Edith Nelson, 2832 Beartooth Dr., Billings, MT 59102. The full legal description of 3121 Boulder Avenue is: WOLF SUBD, S34, T01 N, R25 E, Lot 14, W2 LT 14. The full legal description of 3125 Boulder Avenue is: WOLF SUBD, S34, T01 N, R25 E, Lot 13, E2 LT 13

We are considering changing the zoning on these properties to Residential Multi-family Restricted. A map of the properties is enclosed. Each property is 20,250 square feet. The total combined square feet of these properties is 40,500.

Sincerely,


Rob Pasquarello

Enc.



Brem Fellman

For Sale By Fellman's @ Metro Realtors LLP
2029 Grand Avenue
Billings, MT 59102

September 23, 2020

Billings City Council and Planning

Hello,

I recently received an opportunity to market and sell 2 properties located at 3121 and 3125 Boulder Avenue. When talking to the owner of the properties, we discussed that the homes have a large unused land tract to the North of each home and throughout our conversations decided the highest and best use for both properties would be for future city development with an infill project in mind.

The seller appreciated this idea since she's had concerns over the condition of each home as they've been utilized as rental properties since the mid 1960's. The owner also indicated that she's had several challenges with past tenants which brought her to the decision to sell.

We came up with the idea for marketing the homes to someone with a development strategy in mind and believe that this could help improve the overall quality of the neighborhood. Since the vacant land isn't being utilized to it's fullest potential, we began to get excited when we found a buyer who shared our vision for the property who also has a long-term goal of improving the living experience for Billings residents.

We are very excited for what this project could mean to the City of Billings and its residents. It would give close walking access for families to Boulder School and all of the amenities the neighborhood offers. Please consider this letter as my support for the vision the buyer has for this property and improvement to the neighborhood. This could prove to be an exciting opportunity for both the City of Billings and community.

Sincerely yours,

-Brem Fellman



PREMIER HOME INSPECTION LLC

406-698-2875

premierinspec@gmail.com

<https://montanahomeinspections.net>



RESIDENTIAL REPORT

3121-3125 Boulder Ave
Billings MT 59102

Rob Pasquarello

SEPTEMBER 7, 2020



Inspector

Douglas Corbridge

Certified Inspection Expert; interNACHI;
FHA Fee Inspector; Certified Professional
Inspector

406-698-2875

premierinspec@gmail.com



Agent

Brem Fellman

Metro Realtors, LLP

(406) 860-2223

brem@bresnan.net

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SUMMARY



MAINTENANCE ITEM



RECOMMENDATIONS



SAFETY HAZARD/IMMEDIATE
ATTENTION

- ⊖ 2.1.1 Roof - Coverings: Damaged (General)
- ⊖ 2.2.1 Roof - Roof Drainage Systems: Debris
- ⊖ 2.2.2 Roof - Roof Drainage Systems: Downspouts Drain Near House
- ⊖ 2.2.3 Roof - Roof Drainage Systems: Gutter Damaged
- ⊖ 2.2.4 Roof - Roof Drainage Systems: Gutters Missing
- ⊖ 3.1.1 Exterior - Siding, Flashing & Trim: Minor Hail Damage
- ⚠ 3.1.2 Exterior - Siding, Flashing & Trim: Missing
- ⊖ 3.1.3 Exterior - Siding, Flashing & Trim: Water Damaged Siding
- ⊖ 3.1.4 Exterior - Siding, Flashing & Trim: Paint
- ⊖ 3.2.1 Exterior - Exterior Doors: Weatherstripping
- ⊖ 3.4.1 Exterior - Decks, Balconies, Porches & Steps: Concrete Cracking
- ⊖ 3.4.2 Exterior - Decks, Balconies, Porches & Steps: Loose Railing
- ⊖ 3.4.3 Exterior - Decks, Balconies, Porches & Steps: Spalling
- ⊖ 3.5.1 Exterior - Eaves, Soffits & Fascia: Fascia - Rotted
- ⊖ 4.1.1 Basement, Foundation, Crawlspace & Structure - Foundation: Heaving/Settling
- ⊖ 4.1.2 Basement, Foundation, Crawlspace & Structure - Foundation: Gap
- ⊖ 4.2.1 Basement, Foundation, Crawlspace & Structure - Basements & Crawlspaces: Odor
- ⊖ 4.2.2 Basement, Foundation, Crawlspace & Structure - Basements & Crawlspaces: Water Intrusion
- ⊖ 4.3.1 Basement, Foundation, Crawlspace & Structure - Floor Structure: Floor sloping
- ⊖ 5.1.1 Heating - Equipment: Near End of Service Life
- ⊖ 5.1.2 Heating - Equipment: Needs Servicing/Cleaning
- 🔧 5.1.3 Heating - Equipment: Annual service
- ⊖ 7.2.1 Plumbing - Drain, Waste, & Vent Systems: Bathtub - Poor drainage
- ⊖ 7.2.2 Plumbing - Drain, Waste, & Vent Systems: Cast Iron Drain Pipe
- ⚠ 7.2.3 Plumbing - Drain, Waste, & Vent Systems: Drain Line Leaking
- ⊖ 7.2.4 Plumbing - Drain, Waste, & Vent Systems: No Drain Present
- ⊖ 7.2.5 Plumbing - Drain, Waste, & Vent Systems: Slab on Grade
- ⚠ 7.3.1 Plumbing - Water Supply, Distribution Systems & Fixtures: Faucet leaks

- ⊖ 7.4.1 Plumbing - Hot Water Systems, Controls, Flues & Vents: Corrosion
- ⊖ 7.6.1 Plumbing - Sump Pump: Inoperable
- ⊖ 7.6.2 Plumbing - Sump Pump: Sump
- ⚠ 8.2.1 Electrical - Main & Subpanels, Service & Grounding, Main Overcurrent Device: Breaker Incorrectly Wired
- ⊖ 8.2.2 Electrical - Main & Subpanels, Service & Grounding, Main Overcurrent Device: Federal Pacific Panel
- ⊖ 8.2.3 Electrical - Main & Subpanels, Service & Grounding, Main Overcurrent Device: Inadequate Load
- ⊖ 8.2.4 Electrical - Main & Subpanels, Service & Grounding, Main Overcurrent Device: Missing Labels on Panel
- ⊖ 8.2.5 Electrical - Main & Subpanels, Service & Grounding, Main Overcurrent Device: No Ground Wire
- ⊖ 8.2.6 Electrical - Main & Subpanels, Service & Grounding, Main Overcurrent Device: No Main Disconnect
- ⊖ 8.4.1 Electrical - Lighting Fixtures, Switches & Receptacles: Cover Plates Damaged
- ⊖ 8.4.2 Electrical - Lighting Fixtures, Switches & Receptacles: Junction box cover(s) missing
- ⊖ 8.4.3 Electrical - Lighting Fixtures, Switches & Receptacles: Open Ground Outlets
- ⊖ 8.4.4 Electrical - Lighting Fixtures, Switches & Receptacles: Not Operable
- ⊖ 8.5.1 Electrical - GFCI & AFCI: Recommend GFCI Installation
- ⊖ 8.6.1 Electrical - Smoke Detectors: Change Batteries
- ⊖ 8.6.2 Electrical - Smoke Detectors: Smoke/CO Detectors
- ⊖ 9.4.1 Attic, Insulation & Ventilation - Exhaust Systems: No bathroom vent fans.
- ⊖ 10.1.1 Doors, Windows & Interior - Doors: Binding
- ⊖ 10.2.1 Doors, Windows & Interior - Windows: Broken Glass
- ⊖ 10.2.2 Doors, Windows & Interior - Windows: Hail Damage
- ⊖ 10.2.3 Doors, Windows & Interior - Windows: Locking Hardware
- ⊖ 10.2.4 Doors, Windows & Interior - Windows: Missing or damaged Screen
- ⊖ 10.2.5 Doors, Windows & Interior - Windows: Painted Shut
- ⊖ 10.2.6 Doors, Windows & Interior - Windows: Window Operation
- ⊖ 10.2.7 Doors, Windows & Interior - Windows: Wood Deterioration
- ⊖ 10.2.8 Doors, Windows & Interior - Windows: Paint Peeling
- ⊖ 10.2.9 Doors, Windows & Interior - Windows: Air and Light
- ⊖ 10.3.1 Doors, Windows & Interior - Floors: Floor Structure
- ⊖ 10.3.2 Doors, Windows & Interior - Floors: Damaged
- ⊖ 10.4.1 Doors, Windows & Interior - Walls: Minor Cracks
- ⊖ 10.4.2 Doors, Windows & Interior - Walls: Moisture Damage
- ⚠ 10.4.3 Doors, Windows & Interior - Walls: Water Damage/Mold
- ⊖ 10.4.4 Doors, Windows & Interior - Walls: Patching
- ⚠ 10.5.1 Doors, Windows & Interior - Ceilings: Water Damage
- ⊖ 10.6.1 Doors, Windows & Interior - Steps, Stairways & Railings: Handrail
- ⊖ 11.2.1 Built-in Appliances - Refrigerator: No Power
- ⊖ 11.3.1 Built-in Appliances - Range/Oven/Cooktop: Exhaust System Missing

1: INSPECTION DETAILS

Information

In Attendance

Client, Client's Agent

Occupancy

Vacant

Style

Ranch, Bungalow

Temperature (approximate)

42 Fahrenheit (F)

Type of Building

Multi-Family

Weather Conditions

Light Rain

2: ROOF

		IN	NI	NP	R
2.1	Coverings	X			X
2.2	Roof Drainage Systems	X			X
2.3	Flashings	X			
2.4	Skylights, Chimneys & Other Roof Penetrations	X			

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Inspection Method

Roof, Ladder, Eave

Roof Type/Style

Gable

Coverings: Material

Asphalt

Roof Drainage Systems: Gutter Material

Aluminum

Flashings: Material

Aluminum

Recommendations

2.1.1 Coverings

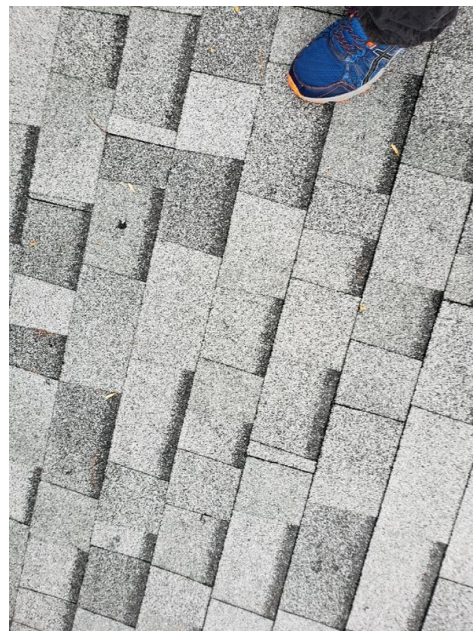
DAMAGED (GENERAL)



General damaged noted including Hail damage and damaged shingles on all 3 roofs. Recommend further evaluation by a qualified roofing professional.

Recommendation

Contact a qualified roofing professional.





2.2.1 Roof Drainage Systems

DEBRIS

Debris has accumulated in the gutters. Recommend cleaning to facilitate water flow.

[Here is a DIY resource](#) for cleaning your gutters.

Recommendation

Recommended DIY Project



2.2.2 Roof Drainage Systems

DOWNSPOUTS DRAIN NEAR HOUSE

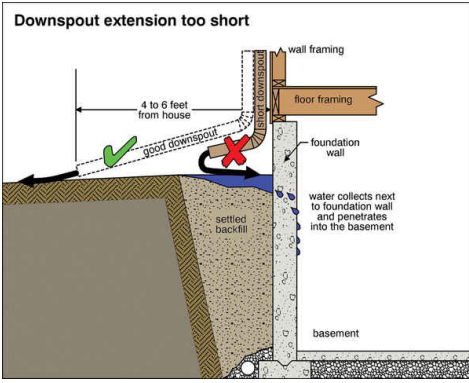
One or more downspouts drain too close to the home's foundation. This can result in excessive moisture in the soil at the foundation, which can lead to foundation/structural movement. Recommend adjusting downspout extensions to drain at least 6 feet from the foundation.

[Here is a helpful DIY link](#) and video on draining water flow away from your house.

Recommendation

Contact a handyman or DIY project





2.2.3 Roof Drainage Systems

Recommendations

GUTTER DAMAGED

Gutters were damaged. This can result in excessive moisture in the soil at the foundation, which can lead to foundation/structural movement. Recommend repair.

Recommendation

Contact a qualified professional.

2.2.4 Roof Drainage Systems

Recommendations

GUTTERS MISSING

BACK HOUSE

Gutters and downspouts missing on the house. Installation recommended to keep water away from structure. Water can damage the soffit and siding and weaken the foundation/footings.

Recommendation

Contact a qualified professional.



3: EXTERIOR

		IN	NI	NP	R
3.1	Siding, Flashing & Trim	X			X
3.2	Exterior Doors	X			X
3.3	Walkways, Patios & Driveways	X			
3.4	Decks, Balconies, Porches & Steps	X			X
3.5	Eaves, Soffits & Fascia	X			X
3.6	Vegetation, Grading, Drainage & Retaining Walls	X			

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Inspection Method

Visual

Siding, Flashing & Trim: Siding Material

Asbestos, Stone Veneer, Shake, Composition Wood

Siding, Flashing & Trim: Siding Style

Applied, Shakes, Clapboard

Exterior Doors: Exterior Entry Door

Metal, Wood

Walkways, Patios & Driveways: Driveway Material

Gravel

Decks, Balconies, Porches & Steps: Appurtenance

Patio, Front Steps

Decks, Balconies, Porches & Steps: Material

Concrete

Recommendations

3.1.1 Siding, Flashing & Trim

MINOR HAIL DAMAGE

3121

Siding showed areas of minor hail damage. Recommend sealing.

Recommendation

Contact a qualified professional.



3.1.2 Siding, Flashing & Trim

 Safety Hazard/Immediate Attention

MISSING

3125

Siding corner cover at some corners of the house. Water intrusion and water damage possible. Recommend repair.

Recommendation

Contact a qualified professional.



3.1.3 Siding, Flashing & Trim

 Recommendations

WATER DAMAGED SIDING

Water damaged/rotted siding noted. These areas have been painted/sealed over. Repair may eventually be needed.

Recommendation

Contact a qualified professional.

3.1.4 Siding, Flashing & Trim

 Recommendations

PAINT

Paint peeling or missing. Recommend sealing all areas of exposed wood to help prevent further water damage.

Recommendation

Contact a qualified professional.

3.2.1 Exterior Doors

 Recommendations

WEATHERSTRIPPING

3121

Front Door is missing adequate weatherstripping at the side. Air and light entering. This can result in significant energy loss and moisture intrusion. Recommend installation of standard weatherstripping.

[Here is a DIY guide on weatherstripping.](#)

Recommendation

Recommended DIY Project



3.4.1 Decks, Balconies, Porches & Steps

CONCRETE CRACKING

3125

Concrete cracking at the back patio. Recommend sealing to help prevent water intrusion and further cracking. Repair may eventually be needed.

Recommendation

Contact a qualified professional.



3.4.2 Decks, Balconies, Porches & Steps

LOOSE RAILING

Railing is loose on front steps. Safety hazard. Recommend repair.

Recommendation

Contact a qualified professional.



3.4.3 Decks, Balconies, Porches & Steps

SPALLING

Concrete spalling and cracking noted at the front steps. This loosening the top, smooth layer of the cement is a common occurrence, possibly due to an improper curing process, age, or use of snow-melting materials or lack of gutters. Repair may eventually be needed.

Recommendation

Contact a qualified professional.





3.5.1 Eaves, Soffits & Fascia

FASCIA - ROTTED

3121

One or more sections of the fascia or rake board are rotted. Repair will eventually be needed. Possible hidden damage.

Recommendation

Contact a qualified professional.

 Recommendations



4: BASEMENT, FOUNDATION, CRAWLSPACE & STRUCTURE

		IN	NI	NP	R
4.1	Foundation	X			X
4.2	Basements & Crawlspace	X			X
4.3	Floor Structure	X			X
4.4	Wall Structure	X			
4.5	Ceiling Structure	X			
4.6	Roof Structure & Attic	X			

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Inspection Method

Visual

Foundation: Material

Concrete, Slab on Grade

Floor Structure: Material

Wood Joists

Floor Structure: Sub-floor

Plank

Floor Structure:

Basement/Crawlspace Floor
Concrete

Roof Structure & Attic: Material

Wood, Plank, Plywood

Roof Structure & Attic: Type

Gable

Recommendations

4.1.1 Foundation

HEAVING/SETTLING



The basement floor slab slopes indicating movement/heaving due to soil movement. This is caused by soil's expanding when absorbing moisture due to negative drainage, lack of gutters, ground water or broken pipes.

Recommendation

Contact a qualified professional.

4.1.2 Foundation

GAP

3125



Gap in front foundation wall. Possible water intrusion into basement. Recommend sealing.

Recommendation

Contact a qualified professional.



4.2.1 Basements & Crawlspaces

 Recommendations

ODOR

There was a musty smell in the basement at the time of inspection. This smell can be an indication of past water intrusion. Possible hidden damage.

Recommendation

Contact a qualified professional.

4.2.2 Basements & Crawlspaces

 Recommendations

WATER INTRUSION

Evidence of past water intrusion at base of the wall in Sw basement room. Possible organic substance and hidden damage. Dry at the time of inspection.

Recommendation

Contact a qualified professional.



4.3.1 Floor Structure

 Recommendations

FLOOR SLOPING

Basement concrete Floor slopes to the west wall in the SW room. Cracks and sloping are an indication of past settlement. This can be the result of negative drainage.

5: HEATING

		IN	NI	NP	R
5.1	Equipment	X			X
5.2	Normal Operating Controls	X			
5.3	Distribution Systems	X			
5.4	Vents, Flues & Chimneys			X	
5.5	Presence of Installed Heat Source in Each Room	X			

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Equipment: Brand

Rheem

Equipment: Energy Source

Natural Gas

Equipment: Heat Type

Forced Air

Normal Operating Controls: Thermostat locations

Located on the wall in the hallway 3125, living room 3121.

Distribution Systems: Ductwork

Non-insulated

Distribution Systems: Attic

Ducts located in the attic.

AFUE Rating

80+/-

AFUE (Annual fuel utilization efficiency) is a metric used to measure furnace efficiency in converting fuel to energy. A higher AFUE rating means greater energy efficiency. 90% or higher meets the Department of Energy's Energy Star program standard.

Equipment: Age

3125 Unit manufactured in September of 1986.

3121 Unit manufactured in February of 1999.

Typical life span of a furnace is 20 to 25 years depending on usage and maintenance.

Distribution Systems: Asbestos

- What appears to be asbestos is visible on some ductwork. For information on asbestos hazards in the home, visit <https://www.epa.gov/asbestos/protect-your-family>

Recommendations

5.1.1 Equipment

NEAR END OF SERVICE LIFE



Both Furnaces are at or near the end of the projected service life. Replacement can be expected soon.

Recommendation

Contact a qualified HVAC professional.

5.1.2 Equipment

NEEDS SERVICING/CLEANING



Furnace should be cleaned and serviced annually. Recommend a qualified HVAC contractor clean, service and certify furnace.

[Here is a resource](#) on the importance of furnace maintenance.

Recommendation

Contact a qualified HVAC professional.

5.1.3 Equipment

ANNUAL SERVICE



Recommend HVAC technician annually service furnace.

Recommendation

Contact a qualified professional.

6: COOLING

		IN	NI	NP	R
6.1	Cooling Equipment			X	
6.2	Normal Operating Controls			X	
6.3	Distribution System			X	
6.4	Presence of Installed Cooling Source in Each Room			X	

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Window Units

Window Air Conditioners or swamp coolers were not inspected. No representation made to the working order of these unit(s).

7: PLUMBING

		IN	NI	NP	R
7.1	Main Water Shut-off Device	X			
7.2	Drain, Waste, & Vent Systems	X			X
7.3	Water Supply, Distribution Systems & Fixtures	X			X
7.4	Hot Water Systems, Controls, Flues & Vents	X			X
7.5	Fuel Storage & Distribution Systems	X			
7.6	Sump Pump	X			X

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Filters

None

Water Source

Public

Main Water Shut-off Device:

Location

Basement

Drain, Waste, & Vent Systems:

Drain Size

Unknown

Drain, Waste, & Vent Systems:

Material

Iron, PVC, Steel

Water Supply, Distribution Systems & Fixtures: Distribution Material

Copper

Water Supply, Distribution Systems & Fixtures: Water Supply Material

Copper

Hot Water Systems, Controls, Flues & Vents: Power Source/Type

Gas

Hot Water Systems, Controls, Flues & Vents: Capacity

40 gallons

Hot Water Systems, Controls, Flues & Vents: Location

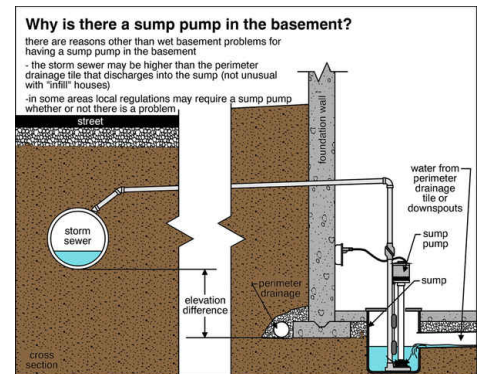
Washer/Dryer Area, Basement

Fuel Storage & Distribution Systems: Main Gas Shut-off Location

Gas Meter

Sump Pump: Location

Basement, Under Stairs



Main Water Shut-off Device: Main water shut off

Basement in 3125. Kitchen in 3121.



Basement



Kitchen

Hot Water Systems, Controls, Flues & Vents: Manufacturer

AO Smith

I recommend flushing & servicing your water heater tank annually for optimal performance. Water temperature should be set to at least 120 degrees F to kill microbes and no higher than 130 degrees F to prevent scalding.

[Here is a nice maintenance guide from Lowe's to help.](#)

Hot Water Systems, Controls, Flues & Vents: Age

A.O. Smith Unit manufactured in August of 2017.

Rheem unit manufactured in May of 2013.

Average service life of a water heater is 10 to 12 years depending on usage.

Tankless around 20 years.

Recommendations

7.2.1 Drain, Waste, & Vent Systems

BATHTUB - POOR DRAINAGE

3125

Bathtub had poor drainage. Recommend clearing drain line.

Recommendation

Contact a qualified professional.



7.2.2 Drain, Waste, & Vent Systems

**CAST IRON DRAIN PIPE**

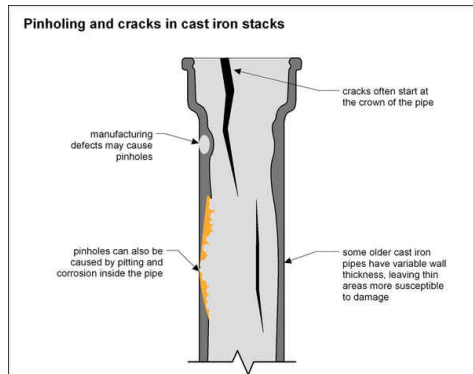
3125

Deferred Cost: There are portions of the plumbing system with older cast iron piping. Expect unexpected repairs in any older original plumbing.

Recommend scoping main drain line.

Recommendation

Contact a qualified plumbing contractor.



7.2.3 Drain, Waste, & Vent Systems

**DRAIN LINE LEAKING**

Drain line in the kitchen of 3125 has significant leaking. Bathroom drain line in 3121 is leaking. Recommend repair.

Recommendation

Contact a qualified professional.



3121



3125



3125

7.2.4 Drain, Waste, & Vent Systems

NO DRAIN PRESENT

BOTH HOUSES

No drains were present in area with water heater and/or washing machine. Water damage or flooding possible. Recommend installing a water sensor alarm or pan under water heater and washing machine.

Recommendations

Recommendation

Contact a qualified professional.

7.2.5 Drain, Waste, & Vent Systems

SLAB ON GRADE

3121

Main drain piping not visible.

Recommendation

Recommended DIY Project

Recommendations

7.3.1 Water Supply, Distribution Systems & Fixtures

FAUCET LEAKS

3121

Kitchen Sink faucet leaks from handle and is leaking under the sink. Recommended repair.

Recommendation

Contact a qualified professional.

Safety Hazard/Immediate Attention



7.4.1 Hot Water Systems, Controls, Flues & Vents

 Recommendations

CORROSION

3121

Corrosion was noted at the burn chamber or pipe fittings. Recommend a qualified plumber evaluate for repair/replacement.

Recommendation

Contact a qualified plumbing contractor.



7.6.1 Sump Pump

 Recommendations

INOPERABLE

Sump pump was inoperable at the time of inspection. Recommend qualified plumber evaluate and repair.

Recommendation

Contact a qualified plumbing contractor.



7.6.2 Sump Pump

 Recommendations

SUMP

Sump Pump is being used to expell water from washing machine. This can cause debris to plug pump if not filtered out. Flooding possible if pump fails.

Recommendation

Contact a qualified professional.

8: ELECTRICAL

		IN	NI	NP	R
8.1	Service Entrance Conductors	X			
8.2	Main & Subpanels, Service & Grounding, Main Overcurrent Device	X			X
8.3	Branch Wiring Circuits, Breakers & Fuses	X			
8.4	Lighting Fixtures, Switches & Receptacles	X			X
8.5	GFCI & AFCI	X			X
8.6	Smoke Detectors	X			X
8.7	Carbon Monoxide Detectors	X			

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Service Entrance Conductors: Electrical Service Conductors
Overhead

Main & Subpanels, Service & Grounding, Main Overcurrent Device: Main Panel Location
Laundry Room, Stairwell

Main & Subpanels, Service & Grounding, Main Overcurrent Device: Panel Capacity
Unknown

Main & Subpanels, Service & Grounding, Main Overcurrent Device: Panel Manufacturer
Cutler Hammer, Federal Pacific

Main & Subpanels, Service & Grounding, Main Overcurrent Device: Panel Type
Circuit Breaker

Main & Subpanels, Service & Grounding, Main Overcurrent Device: Sub Panel Location
None

Branch Wiring Circuits, Breakers & Fuses: Branch Wire 15 and 20 AMP
Copper

Branch Wiring Circuits, Breakers & Fuses: Wiring Method
Romex, Fabric/Cloth

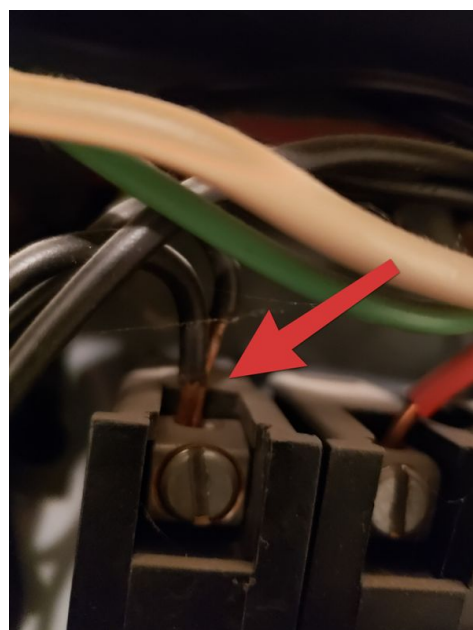
Carbon Monoxide Detectors: Plug In
3125
May not be present after closing.

Recommendations

8.2.1 Main & Subpanels, Service & Grounding, Main Overcurrent Device

 Safety Hazard/Immediate Attention

BREAKER INCORRECTLY WIRED
3121



Circuit breaker was incorrectly wired / installed. There is a double tap on a 20 AMP breaker that poses a safety hazard. Recommend that a licensed electrician repair. Double tapping and lugging can create hot spots on breakers and neutral bars because they are not tightened to the correct torque--especially if two different size conductors are used. Because the hot [black] and neutral [white]wires are both current carrying conductors, the chance is then greater for potential hot spots. If the double tap or lug becomes loose, it begins to arc. As it arcs it builds up carbon. Carbon is then resistance and with more carbon buildup the more difficult it is for the conductor to make contact, thus increasing the current. The end result can be the breaker tripping because of the loose connection [current exceeding the rating of the breaker], or signs of overheating such as discolored wires, melted wires, etc, or even fire.

Recommendation

Contact a qualified electrical contractor.

8.2.2 Main & Subpanels, Service & Grounding, Main Overcurrent Device



FEDERAL PACIFIC PANEL

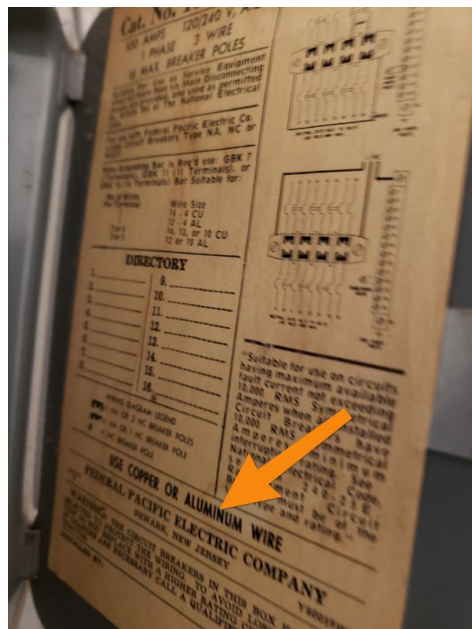
There is a Federal Pacific Electric service panel in the utility room of 3121 and stairwell of 3125. There are studies that show that some FPE circuit breakers are prone to problems that can lead to failures, lack of proper protection of circuits and other serious issues, including fire and electrocution. Although the Consumer Products Safety Commission has not issued a formal product recall, the panel is old and the company is now out of business. We cannot definitively call this panel defective, but recommend, for your peace of mind, to consult a qualified electrical contractor to get their opinion on this matter. You can learn more about this issue by searching "Federal Pacific Stab-Lok Panels". **Strongly advice replacing panel. Some insurance** companies will not insure a home with a Federal Pacific panel.

Recommendation

Contact a qualified electrical contractor.



3121



3121



3125



3121

8.2.3 Main & Subpanels, Service & Grounding, Main Overcurrent Device

Recommendations

INADEQUATE LOAD

Less than 100 amps is generally considered inadequate by todays standards. Many insurance companies will not insure a home with electrical service less than 100 amps. Unable to determine amperage for houses.

Recommendation

Contact a qualified electrical contractor.

8.2.4 Main & Subpanels, Service & Grounding, Main Overcurrent Device

Recommendations

MISSING LABELS ON PANEL

At the time of inspection, panel was missing labeling. Recommend labeling all breaker locations.

Recommendation

Recommended DIY Project

8.2.5 Main & Subpanels, Service & Grounding, Main Overcurrent Device

Recommendations

NO GROUND WIRE

Missing ground wire or not visible. Recommend qualified electrician verify ground is installed.

Recommendation

Contact a qualified electrical contractor.

8.2.6 Main & Subpanels, Service & Grounding, Main Overcurrent Device

Recommendations

NO MAIN DISCONNECT

3121

There is no main disconnect for electrical service. Advise considering upgrading electrical panel and having a main shut off breaker installed. Some insurance companies will not insure a property without a main shutoff breaker. Current standards usually require a main shutoff if there are more than 6 breakers in a panel.

Recommendation

Contact a qualified electrical contractor.

8.4.1 Lighting Fixtures, Switches & Receptacles

COVER PLATES DAMAGED



One or more receptacles have a damaged cover plate. Recommend replacement.

Recommendation

Recommended DIY Project

8.4.2 Lighting Fixtures, Switches & Receptacles

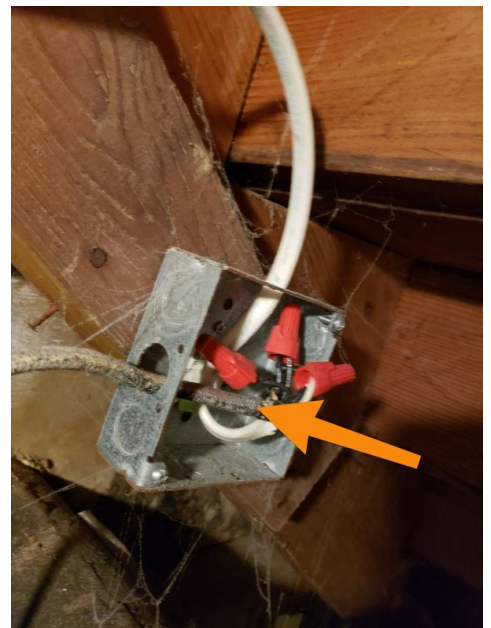
JUNCTION BOX COVER(S) MISSING

UNDER STAIRS IN 3125

Junction Box Cover(s) missing.. This is a potential shock, fire or electrocution hazard. Repair.

Recommendation

Contact a qualified electrical contractor.



8.4.3 Lighting Fixtures, Switches & Receptacles

OPEN GROUND OUTLETS

BOTH HOUSES

Open ground (2-wire or hot/neutral reverse) outlets present in the house. This means that the 3rd (round) part of an appliance plug is not getting ground protection. This may be a concern with items such as computers and electronic devices. Note: you can not ground an ungrounded outlet without running a new ground wire to the outlet. Installing a GFCI will protect you but not your TV, computer, etc. Surge protectors may offer some protection for your devices.

Recommendation

Contact a qualified electrical contractor.



8.4.4 Lighting Fixtures, Switches & Receptacles

NOT OPERABLE

Outlet not operable in basement laundry room inside closet.



Recommendation

Contact a qualified professional.



8.5.1 GFCI & AFCI

RECOMMEND GFCI INSTALLATION

Recommend installing in kitchen of both houses.

Recommendation

Contact a qualified professional.



8.6.1 Smoke Detectors

CHANGE BATTERIES

Recommend changing batteries in all smoke detectors and install new if detectors are 10 years or older.

Recommendation

Recommended DIY Project



8.6.2 Smoke Detectors

SMOKE/CO DETECTORS

Smoke-carbon monoxide combination detector(s) recommended near utilities and bedrooms.

Recommendation

Recommended DIY Project



9: ATTIC, INSULATION & VENTILATION

		IN	NI	NP	R
9.1	Attic Insulation	X			
9.2	Vapor Retarders (Crawlspace or Basement)			X	
9.3	Ventilation	X			
9.4	Exhaust Systems	X			X

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Dryer Power Source

220 Electric

Dryer Vent

Metal

Vinyl venting is a fire hazard and should be replaced with metal.

Flooring Insulation

None

Attic Insulation: R-value

19

Attic Insulation: Depth

4 to 6 inches.

Ventilation: Ventilation Type

Gable Vents

Exhaust Systems: Exhaust Fans

None

Attic Insulation: Insulation Type

Fiberglass, Batt, Cellulose, Loose-fill



Recommendations

9.4.1 Exhaust Systems

NO BATHROOM VENT FANS.

No operable exhaust fan in bathroom with shower. Even if a window that opens exists, this may not be adequate ventilation during the cold weather. Recommend installing properly vented bathroom exhaust fan.

Recommendation

Contact a qualified professional.



10: DOORS, WINDOWS & INTERIOR

		IN	NI	NP	R
10.1	Doors	X			X
10.2	Windows	X			X
10.3	Floors	X			X
10.4	Walls	X			X
10.5	Ceilings	X			X
10.6	Steps, Stairways & Railings	X			X
10.7	Countertops & Cabinets	X			

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Windows: Window Type

Double-hung

Windows: Window Manufacturer

Unknown

Floors: Floor Coverings

Carpet, Hardwood, Linoleum, Laminate

Walls: Wall Material

Paneling, Drywall

Ceilings: Ceiling Material

Drywall

Countertops & Cabinets:

Countertop Material

Laminate

Countertops & Cabinets:

Cabinetry

Laminate, Wood

Recommendations

10.1.1 Doors

BINDING

Door binds in frame in basement SW room. This can be an indication of settlement.

Recommendation

Contact a qualified professional.



10.2.1 Windows

BROKEN GLASS

3125

Two basement windows and two living room windows have broken or cracked glass. Recommend replacement.

Recommendation

Contact a qualified window repair/installation contractor.





10.2.2 Windows

HAIL DAMAGE

3125

West side window has hail damage to the vinyl on outside trim. Recommend repairing vinyl damage.

Recommendation

Contact a qualified professional.



10.2.3 Windows

LOCKING HARDWARE

Some window locks are missing or do not latch or do not latch properly in both houses. Recommend repair.

Recommendation

Contact a qualified professional.



10.2.4 Windows

MISSING OR DAMAGED SCREEN

 Recommendations

Some window screens missing or damaged. Recommend replacement.

Recommendation

Recommended DIY Project

10.2.5 Windows

PAINTED SHUT

 Recommendations

One or more windows are painted or swollen shut. Recommend windows be restored to functional use.

Recommendation

Recommended DIY Project

10.2.6 Windows

WINDOW OPERATION

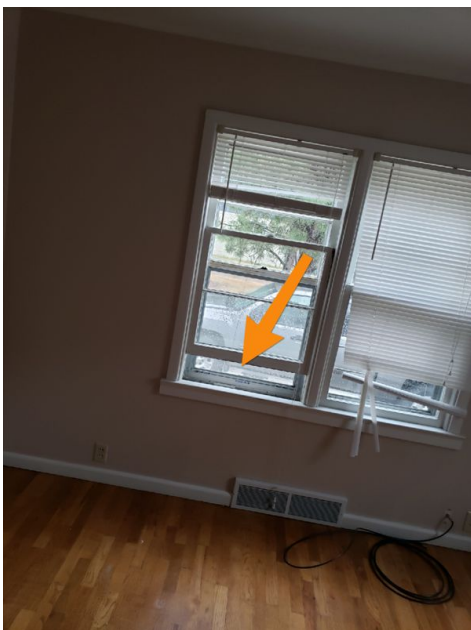
 Recommendations

3125

Window in living room is damaged and will not close.. Recommend repair.

Recommendation

Contact a qualified window repair/installation contractor.



10.2.7 Windows

WOOD DETERIORATION

 Recommendations

3125

Wood deterioration and possible wood rot noted at the bottom frame board of the north windows. Repair may eventually be needed.

Recommendation

Contact a qualified professional.



10.2.8 Windows

PAINT PEELING

Recommendations

Peeling paint at exterior windows. Recommend sealing to help prevent further water damage.

Recommendation

Contact a qualified professional.

10.2.9 Windows

AIR AND LIGHT

Recommendations

Air and light entering at east basement room windows. Recommend sealing.

Recommendation

Contact a qualified professional.



10.3.1 Floors

FLOOR STRUCTURE

Recommendations

Upstairs floor slopes or sags. This is usually the result of the age and framing design of the building.

10.3.2 Floors

DAMAGED

Recommendations

3121

Floor is damaged in the living room.

Recommendation

Contact a qualified professional.



10.4.1 Walls

MINOR CRACKS

Recommendations

Minor settlement cracks at the corners and above or under windows in walls. Appeared to be the result of long-term settling. Some settling is not unusual in a home of this age.

Recommendation

Contact a qualified professional.

10.4.2 Walls

MOISTURE DAMAGE

Recommendations

3121AT TOP OF WATER HEATER CLOSET OUTSIDE WALL

Stains and damage on the wall visible at the time of the inspection appeared to be the result of moisture intrusion. Dry at the time of inspection. Source of moisture should be identified and corrected.

Recommendation

Contact a qualified professional.



10.4.3 Walls

WATER DAMAGE/MOLD

Safety Hazard/Immediate Attention

Water damage and mold noted to walls inside basement stairwell. Possible hidden damage. Recommend further evaluation and repair as necessary.

Recommendation

Contact a qualified professional.



10.4.4 Walls

PATCHING

Recommendations

Moderate patching noted to walls.

10.5.1 Ceilings

WATER DAMAGE

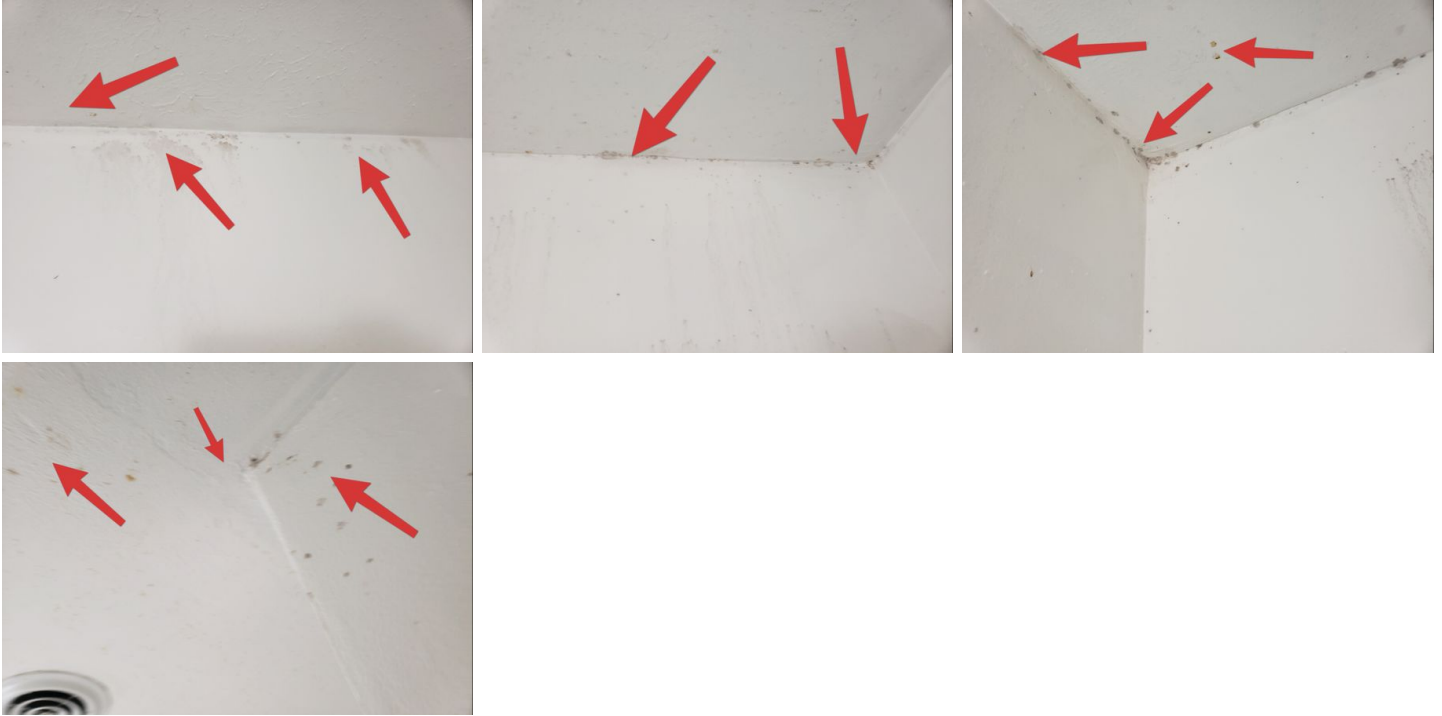
3121

Water damage to the bathroom ceiling. Possible hidden damage including mold. Recommend further evaluation by a qualified professional and repair as necessary.

Recommendation

Contact a qualified professional.

 Safety Hazard/Immediate Attention



10.6.1 Steps, Stairways & Railings

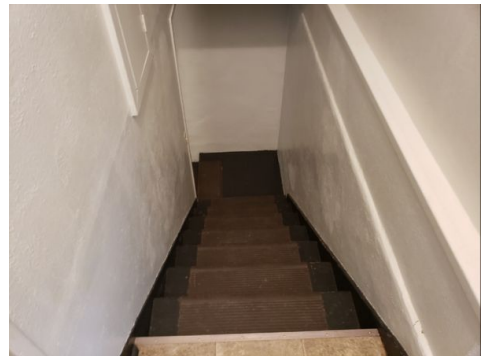
HANDRAIL

Staircase missing handrails. This is a safety hazard. Recommend installation.

Recommendation

Contact a qualified professional.

 Recommendations



11: BUILT-IN APPLIANCES

		IN	NI	NP	R
11.1	Dishwasher			X	
11.2	Refrigerator	X			X
11.3	Range/Oven/Cooktop	X			X
11.4	Garbage Disposal			X	

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Refrigerator: Brand

Whirlpool

Range/Oven/Cooktop:

Range/Oven Energy Source

Electric

Range/Oven/Cooktop:

Range/Oven Brand

Whirlpool

Range/Oven/Cooktop: Exhaust

Hood Type

None

Recommendations

11.2.1 Refrigerator

NO POWER

Refrigerator was plugged in and check for power. Not evaluated for function.

Recommendation

Contact a qualified appliance repair professional.



11.3.1 Range/Oven/Cooktop

EXHAUST SYSTEM MISSING

No exhaust system present to prevent moisture and grease in kitchen area. Recommend qualified contractor install range hood or exhaust system.

[Here is a resource on choosing a range hood.](#)

Recommendation

Contact a qualified professional.



12: GARAGE

		IN	NI	NP	R
12.1	Ceiling	X			
12.2	Floor	X			
12.3	Walls & Firewalls	X			
12.4	Garage Door	X			
12.5	Garage Door Opener			X	
12.6	Occupant Door (From garage to inside of home)			X	

IN = Inspected NI = Not Inspected NP = Not Present R = Recommendations

Information

Floor: View Limited

Personal storage limited evaluation.

Garage Door: Material

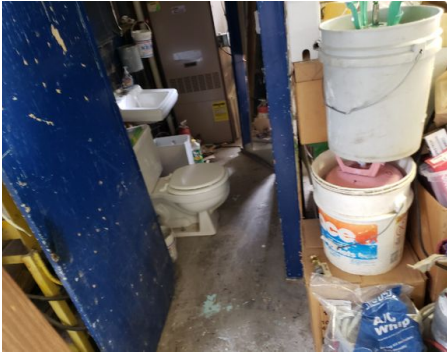
Aluminum

Garage Door: Type

Sectional

Limited Evaluation

Personal items in garages block complete inspection of all floor, wall and ceiling areas in garage.



STANDARDS OF PRACTICE

Roof

I. The inspector shall inspect from ground level or the eaves: A. the roof-covering materials; B. the gutters; C. the downspouts; D. the vents, flashing, skylights, chimney, and other roof penetrations; and E. the general structure of the roof from the readily accessible panels, doors or stairs. II. The inspector shall describe: A. the type of roof-covering materials. III. The inspector shall report as in need of correction: A. observed indications of active roof leaks. IV. The inspector is not required to: A. walk on any roof surface. B. predict the service life expectancy. C. inspect underground downspout diverter drainage pipes. D. remove snow, ice, debris or other conditions that prohibit the observation of the roof surfaces. E. move insulation. F. inspect antennae, satellite dishes, lightning arresters, de-icing equipment, or similar attachments. G. walk on any roof areas that appear, in the inspector's opinion, to be unsafe. H. walk on any roof areas if doing so might, in the inspector's opinion, cause damage. I. perform a water test. J. warrant or certify the roof. K. confirm proper fastening or installation of any roof-covering material.

Exterior

I. The inspector shall inspect: A. the exterior wall-covering materials, flashing and trim; B. all exterior doors; C. adjacent walkways and driveways; D. stairs, steps, stoops, stairways and ramps; E. porches, patios, decks, balconies and carports; F. railings, guards and handrails; G. the eaves, soffits and fascia; H. a representative number of windows; and I. vegetation, surface drainage, retaining walls and grading of the property, where they may adversely affect the structure due to moisture intrusion. II. The inspector shall describe: A. the type of exterior wall-covering materials. III. The inspector shall report as in need of correction: A. any improper spacing between intermediate balusters, spindles and rails. IV. The inspector is not required to: A. inspect or operate screens, storm windows, shutters, awnings, fences, outbuildings, or exterior accent lighting. B. inspect items that are not visible or readily accessible from the ground, including window and door flashing. C. inspect or identify geological, geotechnical, hydrological or soil conditions. D. inspect recreational facilities or playground equipment. E. inspect seawalls, breakwalls or docks. F. inspect erosion-control or earth-stabilization measures. G. inspect for safety-type glass. H. inspect underground utilities. I. inspect underground items. J. inspect wells or springs. K. inspect solar, wind or geothermal systems. L. inspect swimming pools or spas. M. inspect wastewater treatment systems, septic systems or cesspools. N. inspect irrigation or sprinkler systems. O. inspect drainfields or dry wells. P. determine the integrity of multiple-pane window glazing or thermal window seals.

Basement, Foundation, Crawlspace & Structure

I. The inspector shall inspect: A. the foundation; B. the basement; C. the crawlspace; and D. structural components. II. The inspector shall describe: A. the type of foundation; and B. the location of the access to the under-floor space. III. The inspector shall report as in need of correction: A. observed indications of wood in contact with or near soil; B. observed indications of active water penetration; C. observed indications of possible foundation movement, such as sheetrock cracks, brick cracks, out-of-square door frames, and unlevel floors; and D. any observed cutting, notching and boring of framing members that may, in the inspector's opinion, present a structural or safety concern. IV. The inspector is not required to: A. enter any crawlspace that is not readily accessible, or where entry could cause damage or pose a hazard to him/herself. B. move stored items or debris. C. operate sump pumps with inaccessible floats. D. identify the size, spacing, span or location or determine the adequacy of foundation bolting, bracing, joists, joist spans or support systems. E. provide any engineering or architectural service. F. report on the adequacy of any structural system or component.

Heating

I. The inspector shall inspect: A. the heating system, using normal operating controls. II. The inspector shall describe: A. the location of the thermostat for the heating system; B. the energy source; and C. the heating method. III. The inspector shall report as in need of correction: A. any heating system that did not operate; and B. if the heating system was deemed inaccessible. IV. The inspector is not required to: A. inspect or evaluate the interior of flues or chimneys, fire chambers, heat exchangers, combustion air systems, fresh-air intakes, humidifiers, dehumidifiers, electronic air filters, geothermal systems, or solar heating systems. B. inspect fuel tanks or underground or concealed fuel supply systems. C. determine the uniformity, temperature, flow, balance, distribution, size, capacity, BTU, or supply adequacy of the heating system. D. light or ignite pilot flames. E. activate heating, heat pump systems, or other heating systems when ambient temperatures or other circumstances are not conducive to safe operation or may damage the equipment. F. override electronic thermostats. G. evaluate fuel quality. H. verify thermostat calibration, heat anticipation, or automatic setbacks, timers, programs or clocks.

Cooling

I. The inspector shall inspect: A. the cooling system, using normal operating controls. II. The inspector shall describe: A. the location of the thermostat for the cooling system; and B. the cooling method. III. The inspector shall report as in need of correction: A. any cooling system that did not operate; and B. if the cooling system was deemed inaccessible. IV. The inspector is not required to: A. determine the uniformity, temperature, flow, balance, distribution, size, capacity, BTU, or supply adequacy of the cooling system. B. inspect portable window units, through-wall units, or electronic air filters. C. operate equipment or systems if the exterior temperature is below 65° Fahrenheit, or when other circumstances are not conducive to safe operation or may damage the equipment. D. inspect or determine thermostat calibration, cooling anticipation, or automatic setbacks or clocks. E. examine electrical current, coolant fluids or gases, or coolant leakage.

Plumbing

I. The inspector shall inspect: A. the main water supply shut-off valve; B. the main fuel supply shut-off valve; C. the water heating equipment, including the energy source, venting connections, temperature/pressure-relief (TPR) valves, Watts 210 valves, and seismic bracing; D. interior water supply, including all fixtures and faucets, by running the water; E. all toilets for proper operation by flushing; F. all sinks, tubs and showers for functional drainage; G. the drain, waste and vent system; and H. drainage sump pumps with accessible floats. II. The inspector shall describe: A. whether the water supply is public or private based upon observed evidence; B. the location of the main water supply shut-off valve; C. the location of the main fuel supply shut-off valve; D. the location of any observed fuel-storage system; and E. the capacity of the water heating equipment, if labeled. III. The inspector shall report as in need of correction: A. deficiencies in the water supply by viewing the functional flow in two fixtures operated simultaneously; B. deficiencies in the installation of hot and cold water faucets; C. mechanical drain stops that were missing or did not operate if installed in sinks, lavatories and tubs; and D. toilets that were damaged, had loose connections to the floor, were leaking, or had tank components that did not operate. IV. The inspector is not required to: A. light or ignite pilot flames. B. measure the capacity, temperature, age, life expectancy or adequacy of the water heater. C. inspect the interior of flues or chimneys, combustion air systems, water softener or filtering systems, well pumps or tanks, safety or shut-off valves, floor drains, lawn sprinkler systems, or fire sprinkler systems. D. determine the exact flow rate, volume, pressure, temperature or adequacy of the water supply. E. determine the water quality, potability or reliability of the water supply or source. F. open sealed plumbing access panels. G. inspect clothes washing machines or their connections. H. operate any valve. I. test shower pans, tub and shower surrounds or enclosures for leakage or functional overflow protection. J. evaluate the compliance with conservation, energy or building standards, or the proper design or sizing of any water, waste or venting components, fixtures or piping. K. determine the effectiveness of anti-siphon, backflow prevention or drain-stop devices. L. determine whether there are sufficient cleanouts for effective cleaning of drains. M. evaluate fuel storage tanks or supply systems. N. inspect wastewater treatment systems. O. inspect water treatment systems or water filters. P. inspect water storage tanks, pressure pumps, or bladder tanks. Q. evaluate wait time to obtain hot water at fixtures, or perform testing of any kind to water heater elements. R. evaluate or determine the adequacy of combustion air. S. test, operate, open or close: safety controls, manual stop valves, temperature/pressure-relief valves, control valves, or check valves. T. examine ancillary or auxiliary systems or components, such as, but not limited to, those related to solar water heating and hot water circulation. U. determine the existence or condition of polybutylene plumbing. V. inspect or test for gas or fuel leaks, or indications thereof.

Electrical

I. The inspector shall inspect: A. the service drop; B. the overhead service conductors and attachment point; C. the service head, gooseneck and drip loops; D. the service mast, service conduit and raceway; E. the electric meter and base; F. service-entrance conductors; G. the main service disconnect; H. panelboards and over-current protection devices (circuit breakers and fuses); I. service grounding and bonding; J. a representative number of switches, lighting fixtures and receptacles, including receptacles observed and deemed to be arc-fault circuit interrupter (AFCI)-protected using the AFCI test button, where possible; K. all ground-fault circuit interrupter receptacles and circuit breakers observed and deemed to be GFICs using a GFCI tester, where possible; and L. smoke and carbon-monoxide detectors. II. The inspector shall describe: A. the main service disconnect's amperage rating, if labeled; and B. the type of wiring observed. III. The inspector shall report as in need of correction: A. deficiencies in the integrity of the serviceentrance conductors' insulation, drip loop, and vertical clearances from grade and roofs; B. any unused circuit-breaker panel opening that was not filled; C. the presence of solid conductor aluminum branch-circuit wiring, if readily visible; D. any tested receptacle in which power was not present, polarity was incorrect, the cover was not in place, the GFCI devices were not properly installed or did not operate properly, evidence of arcing or excessive heat, and where the receptacle was not grounded or was not secured to the wall; and E. the absence of smoke detectors. IV. The inspector is not required to: A. insert any tool, probe or device into the main panelboard, sub-panels, distribution panelboards, or electrical fixtures. B. operate electrical systems that are shut down. C. remove panelboard cabinet covers or dead fronts. D. operate or re-set over-current protection devices or overload devices. E. operate or test smoke or carbon-monoxide detectors or alarms. F. inspect, operate or test any security, fire or alarms systems or components, or other warning or signaling systems. G. measure or determine the amperage or voltage of the main service equipment, if not visibly labeled. H. inspect ancillary wiring or remote-control devices. I. activate any electrical systems or branch circuits that are not energized. J. inspect low-voltage systems, electrical de-icing tapes, swimming pool wiring, or any timecontrolled devices. K. verify the service ground. L. inspect private or emergency electrical supply sources, including, but not limited to: generators, windmills, photovoltaic solar collectors, or battery or electrical storage facility. M. inspect spark or lightning arrestors. N. inspect or test de-icing equipment. O. conduct voltage-drop calculations. P. determine the accuracy of labeling. Q. inspect exterior lighting.

Attic, Insulation & Ventilation

I. The inspector shall inspect: A. insulation in unfinished spaces, including attics, crawlspaces and foundation areas; B. ventilation of unfinished spaces, including attics, crawlspaces and foundation areas; and C. mechanical exhaust systems in the kitchen, bathrooms and laundry area. II. The inspector shall describe: A. the type of insulation observed; and B. the approximate average depth of insulation observed at the unfinished attic floor area or roof structure. III. The inspector shall report as in need of correction: A. the general absence of insulation or ventilation in unfinished spaces. IV. The inspector is not required to: A. enter the attic or any unfinished spaces that are not readily accessible, or where entry could cause damage or, in the inspector's opinion, pose a safety hazard. B. move, touch or disturb insulation. C. move, touch or disturb vapor retarders. D. break or otherwise damage the surface finish or weather seal on or around access panels or covers. E. identify the composition or R-value of insulation material. F. activate thermostatically operated fans. G. determine the types of materials used in insulation or wrapping of pipes, ducts, jackets, boilers or wiring. H. determine the adequacy of ventilation.

Doors, Windows & Interior

I. The inspector shall inspect: A. a representative number of doors and windows by opening and closing them; B. floors, walls and ceilings; C. stairs, steps, landings, stairways and ramps; D. railings, guards and handrails; and E. garage vehicle doors and the operation of garage vehicle door openers, using normal operating controls. II. The inspector shall describe: A. a garage vehicle door as manually-operated or installed with a garage door opener. III. The inspector shall report as in need of correction: A. improper spacing between intermediate balusters, spindles and rails for steps, stairways, guards and railings; B. photo-electric safety sensors that did not operate properly; and C. any window that was obviously fogged or displayed other evidence of broken seals. IV. The inspector is not required to: A. inspect paint, wallpaper, window treatments or finish treatments. B. inspect floor coverings or carpeting. C. inspect central vacuum systems. D. inspect for safety glazing. E. inspect security systems or components. F. evaluate the fastening of islands, countertops, cabinets, sink tops or fixtures. G. move furniture, stored items, or any coverings, such as carpets or rugs, in order to inspect the concealed floor structure. H. move suspended-ceiling tiles. I. inspect or move any household appliances. J. inspect or operate equipment housed in the garage, except as otherwise noted. K. verify or certify the proper operation of any pressure-activated auto-reverse or related safety feature of a garage door. L. operate or evaluate any security bar release and opening mechanisms, whether interior or exterior, including their compliance with local, state or federal standards. M. operate any system, appliance or component that requires the use of special keys, codes, combinations or devices. N. operate or evaluate self-cleaning oven cycles, tilt guards/latches, or signal lights. O. inspect microwave ovens or test leakage from microwave ovens. P. operate or examine any sauna, steamgenerating equipment, kiln, toaster, ice maker, coffee maker, can opener, bread warmer, blender, instant hot-water dispenser, or other small, ancillary appliances or devices. Q. inspect elevators. R. inspect remote controls. S. inspect appliances. T. inspect items not permanently installed. U. discover firewall compromises. V. inspect pools, spas or fountains. W. determine the adequacy of whirlpool or spa jets, water force, or bubble effects. X. determine the structural integrity or leakage of pools or spas.

Built-in Appliances

10.1 The inspector shall inspect: F. installed ovens, ranges, surface cooking appliances, microwave ovens, dishwashing machines, and food waste grinders by using normal operating controls to activate the primary function. 10.2 The inspector is NOT required to inspect: G. installed and free-standing kitchen and laundry appliances not listed in Section 10.1.F. H. appliance thermostats including their calibration, adequacy of heating elements, self cleaning oven cycles, indicator lights, door seals, timers, clocks, timed features, and other specialized features of the appliance. I. operate, or con rm the operation of every control and feature of an inspected appliance.



Rental Properties Owned and Managed by Rob Pasquarello









ROCKCREEK BILLINGS 81 LLC



September 28, 2020

Rob Pasquarello
Moccasin Trail Properties,
38th St. West Properties, RKN

Dear Rob:

Thank you for your inquiry to the Rock Creek partnership to see if we would consider an easement for the adjacent property you intend to purchase and develop. We would consider an easement to allow usage of our drive from your entity.

We would of course need to work out an agreement that is mutually beneficial to our apartment community, Rock Creek Apartments.

Look forward to having further discussions in regards to this matter.

Sincerely,

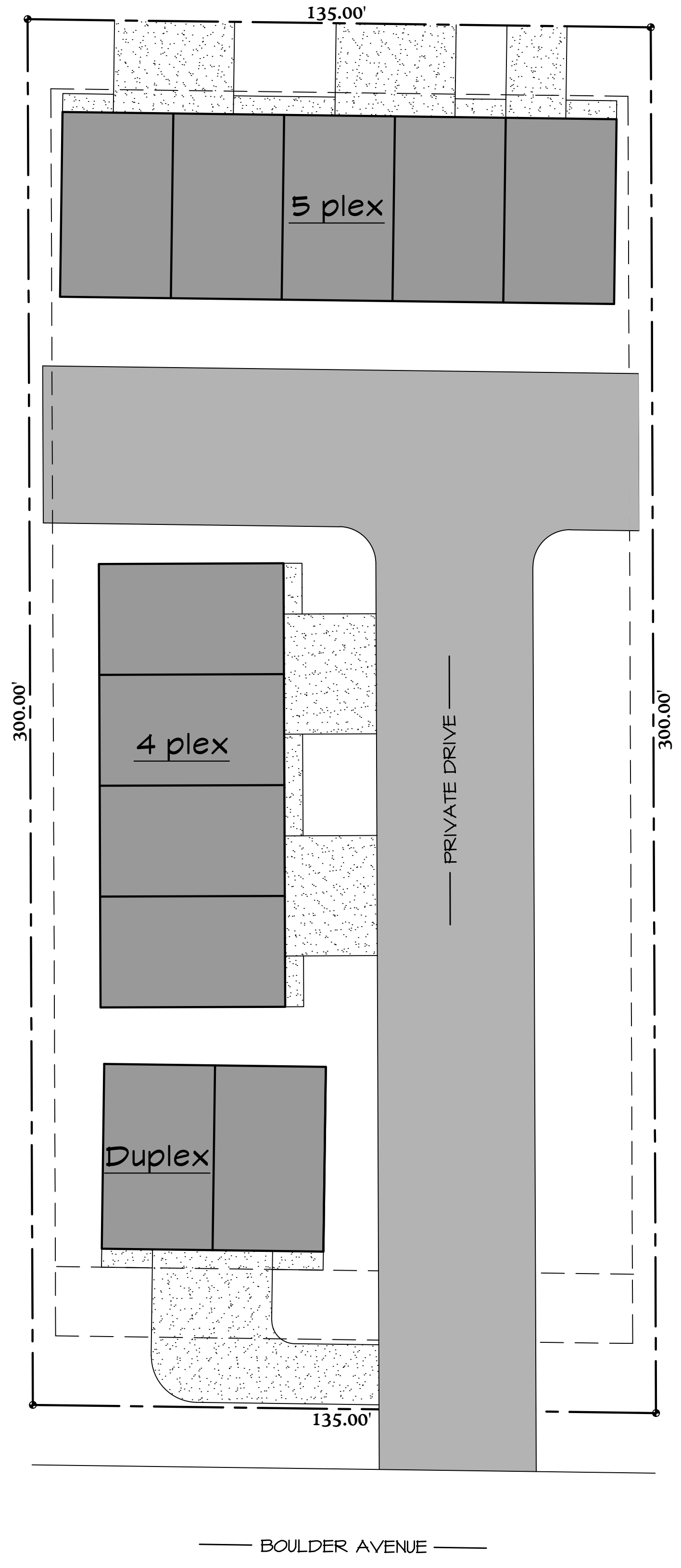
A handwritten signature in blue ink, appearing to read "Jeff Miller", with a long horizontal flourish extending to the right.

Jeff Miller
Managing Partner

LEGAL DESCRIPTION
 EAST 1/2 OF LOT 13
 WEST 1/2 OF LOT 14
 WOLF SUBDIVISION
 40,500 S.F.

LOT COVERAGE:
 Total Lot Area: 40,500 s.f.
 Max. Lot Coverage = 55% 22,275 s.f.
 Actual Lot Coverage = 27% 11,044 s.f.

BUILDING HEIGHT:
 Max. Height = 40'-0"
 Actual Height = 27'-0"



1
A2

SITE PLAN - 9/24/20
 Scale: 1" = 20'-0"

1 1 UNITS
 .93 acres
 1 1.8 units / acre





Proposed Duplex Style



City Zoning Commission

Meeting Date: 10/06/2020

SUBJECT: Zone Change 986 - Planned Development Amendment - Cardwell Ranch

THROUGH: Monica Plecker

PRESENTED BY: Nicole Cromwell

Information

REQUEST

City Zone Change 986 – 3340 Sagegrass Dr. & 1310 30th St. W – Cardwell Ranch PD Amendment - A

Planned Development zone change request to amend the Master Plan Map to move Lot 15A, Block 2, from Planning Area 1 (Commercial) to Planning Area 2 (Commercial or Multi-family), and amend the text of the Planned Development Agreement to eliminate the additional special review requirements (Article IV.B & D). Lot 4A and 15A, Block 2, new Planning Area 2, will comprise a 10.051 acre parcel of land. A pre-application neighborhood meeting was held on September 1, 2020, at 3100 Meadow View Dr. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

Planning staff recommends approval and adoption of the findings of the 10 criteria for Zone Change 986.

APPLICATION DATA

OWNER: Yegen Grand Avenue Farm, Inc
 AGENT: Charles G. Yegen
 LEGAL DESCRIPTION: Lots 4A and 15A, Block 2 Cardwell Ranch Subdivision 1st Filing
 ADDRESS: 3340 Sagegrass Dr (4A) and 1310 30th St West (15A)
 CURRENT ZONING: PD
 EXISTING LAND USE: Vacant and Agriculture
 PROPOSED USE: Same with potential for additional multi-family developments
 SIZE OF PARCEL: 10.051 acres (lot 4A & 15A)

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
Cardwell Ranch	848	10/14/2008	A-1 to PD-CC & PD-RMF	Y	Annexation & Zone Change
SURROUNDING PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
Zimmerman Home Place	675 (County)	8/2/2016	A-1 to CC, NC, RP, Public, RMF-R, R-50, R-70 and R-96	Y	CC & NC parcels annexed for Town Pump development 3411 Grand Ave
E.D. King Sub	782	7/10/2006	A-1 to CC	Y	Country Meadow Apts 1997
1501 Zimmerman Trail	807	7/9/2007	R-60-R to CC & RP	Y	Ace Hardware & Offices
3737 Grand Ave	779	6/26/2006	RP to NC	Y	Multi-tenant office/retail
1500 Golden Blvd	572	2/28/1994	A-1 to RMF	Y	Carriage Homes 1997
3155 Avenue C	413	10/25/1983	R-96 to RMF-R	Y	Aspen Meadows 2005

2291 Avenue C	68	8/26/1974	PD to R-60	Y	Rosepark Plaza Apts 1981
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SURROUNDING LAND USE & ZONING

NORTH:	Zoning: CC & RP Land Use: Walgreen's, Offices, A-1 Storage, Grand Lumber, First Interstate Bank, Billings Hardware, Albertson's
SOUTH:	Zoning: Public & A-1 Land Use: Will James Middle School, Yegen Golf Club
EAST:	Zoning: CC & R-96 Land Use: Multi-tenant retail, church and single family dwellings
WEST:	Zoning: A-1 Land Use: Yegen Golf Club, Grand Avenue Farms

BACKGROUND

This is a zone change request to amend the existing Planned Development (PD) zone for Cardwell Ranch on Zimmerman Trail and Grand Avenue. The intent of the amendment is to expand the existing Planning Area 2 to include Lot 15A, Block 2 and to remove the additional special review uses from the list of allowed uses within Planning Area 1 and Area 2. When the PD document was originally drafted over 12 years ago, the owner wanted to ensure that most of the land would develop for commercial uses and limited the potential multi-family development to just one area. Cardwell Ranch has two significant developments in the past decade - the Frontier Cancer Center and the City Brew/City Vineyard directly west of the Cancer Center. The owner now wants to open up the development possibilities on the property to allow more area for potential multi-family or mixed use developments, and remove the additional special reviews originally written into the zoning. The underlying zoning of CC would still govern when a special review would be triggered for a new development - e.g. restaurants with alcohol service, but the PD would not require any additional special reviews beyond the standard CC zone district. All other provisions in the existing PD would remain in place and the owner will retain site development approval in addition to any permits issued by the city.

The subject property is in a developing commercial node on Grand Avenue and Zimmerman Trail, two principal arterial streets. Both Grand Avenue and Zimmerman Trail handle and average of over 15,000 vehicle trips per day. Arterial streets are intended to handle this amount of traffic. The city intends to install a traffic signal at Grand Avenue and 32nd Street West in the near future and this should help with some of the turning movements from local streets on to Grand Avenue. Currently, Grand has traffic signals at Zimmerman Trail (34th St W), Rehberg Lane (30th St W) and 24th St West. Traffic flow does not have enough breaks for safe turning onto Grand Avenue from stop sign controlled intersections with this level of traffic flow control. The additional signal should help those entering and leaving Cardwell Ranch do so in a safe manner.

Planning staff has reviewed the application, conducted the Preliminary Review Meeting with the applicant, staff and surrounding owners, and is recommending approval based on the findings of the 10 review criteria. A surrounding owner at 2942 Grand Avenue, Cynthia Del Priori, attended the Preliminary review meeting to discuss the specifics of the PD amendments. She expressed concern with the potential for further school traffic conflicts (Lot 15A), and buildings that might be out of scale or not in the same character or style of the neighborhood. Mr. Yegen stated there is no prospective buyer at this time, and all covenants and restrictions are staying in place and will be enforced by the Yegen family as developments are proposed. Mr. Yegen stated the intent was not to build out of character with the area and it was his hope the new traffic signal would also help out with the school traffic. The owner would like to allow uses without the additional burden of a special review, when those uses appear to fit well with the other intended uses in the PD. For example, the existing PD now requires a special review for churches, a car wash, or auto parts store although these uses are all allowed uses within the underlying CC zone district. This has placed this property at a disadvantage compared to other property in the area.

The current PD only allows multi-family uses by special review approval in Planning Area 2, and by right in Planning Area 3. The size and location of these lots limits the market for these uses in the Cardwell Ranch PD. The proposed change would allow multi-family or mixed use projects by right in Planning Area 2, expand Planning Area 2 to include Lot 15A, and remove the extraneous special review designated uses. This zone change is supported by the 2001 West Billings Neighborhood Plan, the 2016 Growth Policy and the 2011 City Infill Policy. The change will increase the opportunity for development on these annexed parcels of land.

SUMMARY

Before making its recommendation to the City Council, the Zoning Commission shall consider the findings of the 10 review criteria:

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

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

The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer 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-CC 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 more housing choices in Billings including apartments and townhomes. 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:
Strong Neighborhoods:

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, good will and social interaction
- Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale street lights, street trees and walkable access to public spaces
- Neighborhoods that are safe and attractive and provide essential services are much desired
- Implementation of the Infill Policy is important to encourage development of underutilized properties

Home Base:

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings
- Public safety and emergency service response are critical to the well-being of Billings' residents
- Homes that are safe and sound support a healthy community

The proposed change to the PD agreement will expand the area allowed for multi-family development and even mixed-uses where neighborhood service businesses are paired with apartments without the added regulatory burden of a special review process. In the commercial zone districts in Billings, multi-family uses are allowed by right. The special review requirement in this PD zone puts this property at a market disadvantage compared to surrounding property.

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 Planning Area 2 to be expanded to include Lot 15A, and remove the additional special review requirements from the list of uses. The general welfare will be promoted by allowing development of land already annexed to the city with all services available. The proposed changes 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. All of the infrastructure for a new traffic signal at 32nd St W and Grand Avenue was installed underground when Cardwell Ranch Subdivision was approved. A change from all commercial to multi-family should actually reduce the predicted number of vehicle trips to and from the property.

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 may be effected by the proposed amendment but no specific comments were received from School District #2. Allowing additional residential uses will likely increase the future student population for attendance in School District #2.

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 was prepared by the applicant for the city when the subdivision was approved. The developer has implemented 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 Zimmerman Trail, Broadwater Avenue and the Shiloh Rd bikepath. The PD Agreement has specific requirements in Articles VI and VII regarding landscaping and parks for Cardwell Ranch developments. These include parking lot landscaping, parking lot interior landscaping, screening of mechanical equipment and development of plazas, parks, trails and parkways within the subdivision. City streets, sidewalks and a traffic circle are already installed for Lot 15A, and will be installed when Lot 4A is developed.

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 more residential uses within the Cardwell Ranch subdivision and will help support additional commercial businesses in the subdivision.

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 Grand and Broadwater is an area undergoing growth and development. 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.

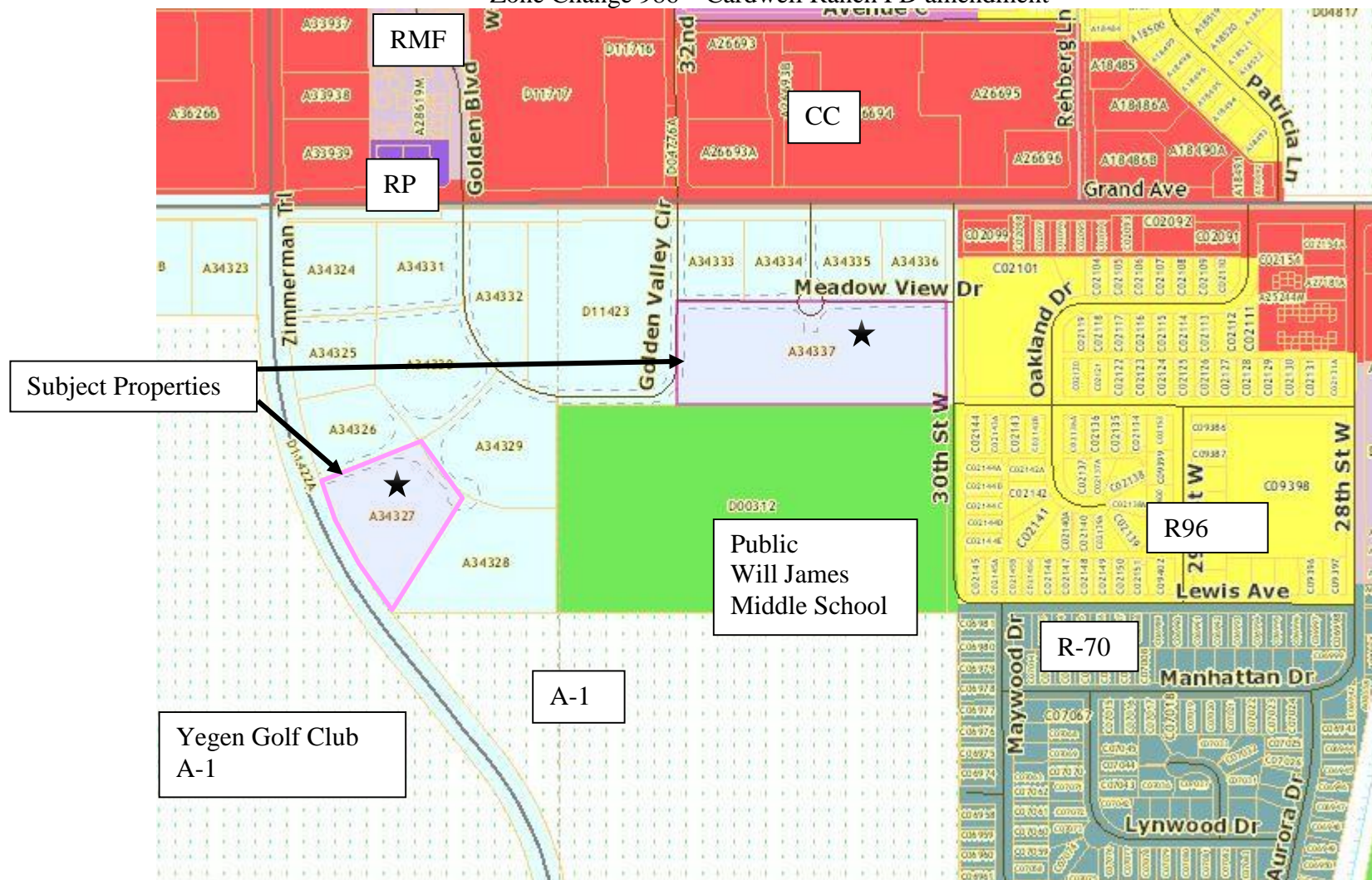
RECOMMENDATION

Planning staff recommends approval and adoption of the findings of the 10 criteria for Zone Change 986.

Attachments

Zoning Map and Site Photos
Existing PD Agreement Cardwell Ranch
Application and Materials
Proposed PD Amendments

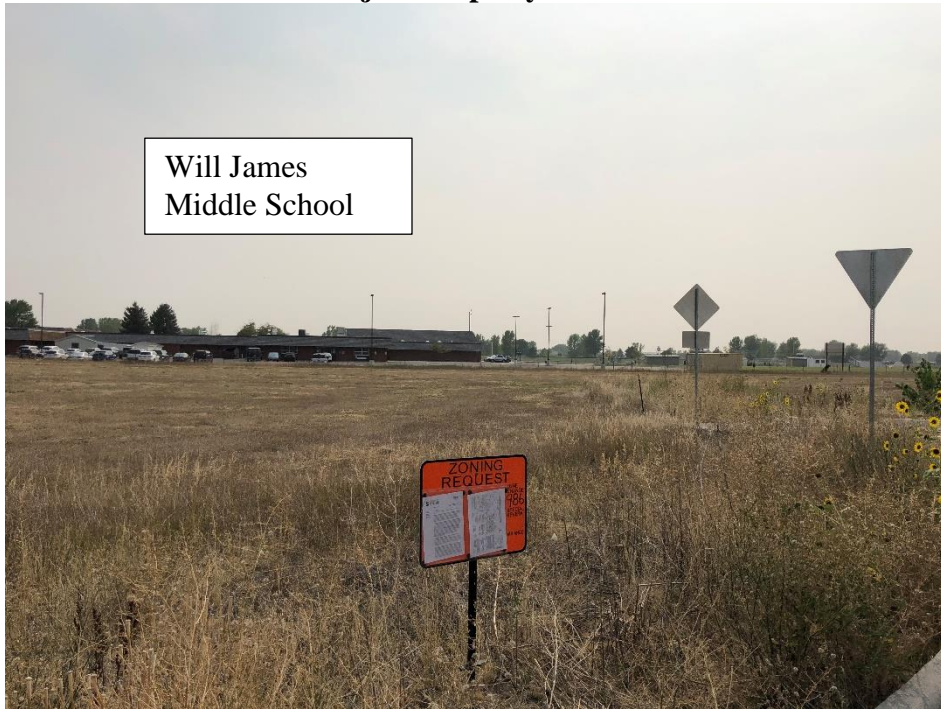
Surrounding Zoning
Zone Change 986 – Cardwell Ranch PD amendment





Subject Properties

Subject Property Photos



Will James
Middle School

Subject Property – Lot 15A



Latter Day Saints
Church

View east along Meadow View Dr



View south and west across Lot 15A



View west along Meadow View Dr



View north to Grand Avenue from Meadow View Dr



View north east from Zimmerman Trail – Lot 4A



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Page: 1 of 35
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Yellowstone County AG 265.00

Return to: William A. Cole
Cole Law Firm, PLLC
3860 Avenue B, Suite C West
Billings, MT 59102-7550

**PLANNED DEVELOPMENT AGREEMENT FOR
THE EAST 80 AT CARDWELL RANCH**

BY AND BETWEEN:

YEGEN GRAND AVENUE FARM, INC.

AND

THE CITY OF BILLINGS, MONTANA



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**PLANNED DEVELOPMENT AGREEMENT FOR
THE EAST 80 AT CARDWELL RANCH**

This PLANNED DEVELOPMENT AGREEMENT ("Agreement" or "PDA") is made and entered into this 14th day of October, 2008, by and between Yegen Grand Avenue Farm, Inc. ("YGAF, Inc."), a Montana limited liability company, of P. O. Box 959, Billings, MT 59103 and the CITY OF BILLINGS, a Montana municipality ("the City"), of 210 North 27th Street, Billings, MT 59101.

RECITALS

NOW WHEREAS:

A. YGAF, Inc. owns approximately 47 acres of real property in Billings, Montana, more particularly described as:

Tract 6-A-1 of Amended Tract 6-A, Certificate of Survey No. 2314 Amended;
Tract 7-A, Certificate of Survey No. 2314, Amended; and Tract 1-A-1 of
Amended Tracts 1-A and 2, Certificate of Survey No. 2702

The foregoing property shall be known as "The East 80 at Cardwell Ranch," or a related name that may be assigned at a later date.

B. The East 80 at Cardwell Ranch may consist of a mixture of commercial, retail, office, professional, medical and related uses, and multi-family residential housing.

C. YGAF, Inc. desires to place certain building and use restrictions on the property, specify certain land use and design regulations, and create a pattern of development that promotes economy, convenience, and amenity in The East 80 at Cardwell Ranch.

D. YGAF, Inc. enters into this Agreement with the City to ensure that The East 80 at Cardwell Ranch will be developed and maintained as a first-class development consistent with the standards described in this Agreement.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for The East 80 at Cardwell Ranch as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

AGREEMENT

ARTICLE I - PURPOSES

A. This planned development is intended to create a multi-use, interactive



neighborhood with its own recognizable identity that integrates well with the surrounding community. Circulation patterns will encourage easy pedestrian access and limit vehicular congestion and pedestrian/vehicular conflicts. The development will encourage smart building development in terms of orientation, access, energy consumption and efficiency and create great places to live and work with many necessary services and businesses that are well-integrated and within easy walking distance of each other and adjacent residential areas.

B. This Agreement shall permit flexibility sufficient to meet the demands of commercial, professional and residential markets as they change over time. In accordance with that goal, this Agreement is intended to afford the future owner of each Lot within The East 80 at Cardwell Ranch latitude to design and construct in a way that meets the needs and desires of the time while still ensuring responsible and enduring development for the benefit of the remaining Lots, The East 80 at Cardwell Ranch, and Cardwell Ranch generally.

C. The parties understand, acknowledge and agree that the plan for The East 80 at Cardwell Ranch includes and promotes the following:

1. Creates a planned development zone that permits commercial, retail, office, professional, medical and related uses, and multi-family residential housing in proximity to one another, while protecting and respecting the character and quality of adjacent uses.
2. Encourages flexibility in design and use of commercial and residential zones to allow for economy, convenience, variety and amenity.
3. Enhances the aesthetics of the west Grand Avenue area.
4. Ensures adequate provision of public services such as water, sewer, public safety, open space, storm water control, and vehicular and pedestrian/bicycle circulation consistent with the 2004 Heritage Trail Plan, as updated.
5. Promotes traffic movement and circulation and as many pedestrian connections as possible.

D. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements found in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, bulk, height, parking, signage, traffic circulation, landscaping, or other land use conditions, the City has determined, in accordance with Sec. 27-1303 of the Unified Zoning Regulations, these unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise required by law or regulation. Some of these that shall be incorporated into The East 80 at Cardwell Ranch and/or Cardwell Ranch include:

1. Construction and landscaping of a functional and attractive pedestrian and bicycle underpass under Shiloh Road to be located south of Grand Avenue and north of Broadwater Avenue that will promote the safe and convenient transportation of children and adults in west Billings while interfacing with the Heritage Trail and other bicycle and pedestrian pathways.



2. Construction and maintenance of trails, landscaping, benches, lighting, signage and other pedestrian and bike pathways, including along the Heritage Park Trail System, at the expense of YGAF, Inc. or subsequent developers and without cost to local taxpayers; and

3. Developed Park Land and Open Space in excess of required minimums, constructed and maintained at the expense of YGAF, Inc. or subsequent developers in conjunction with the City of Billings.

ARTICLE II – DEFINITIONS

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. The following definitions shall apply to this Agreement:

A. Association: "Association" means the association established to own, operate, and/or maintain the various Heritage Park Trail System segments, Park Land and Open Space, and other improvements.

B. Cardwell Ranch: "Cardwell Ranch" refers to a group of parcels located generally contiguous to The East 80 at Cardwell Ranch and including The East 80 at Cardwell Ranch that YGAF, Inc. believes will eventually be developed to create a single development area featuring the same or complementary zoning requirements, private covenants, and consistent design themes as well as substantial vehicular and pedestrian interconnectivity between the various parcels.

C. Design Review Committee: "Design Review Committee" means the person, entity, or committee appointed by the Association to exercise the rights, duties and responsibilities assigned to it by the Association.

D. Lot. "Lot" means a portion of The East 80 at Cardwell Ranch depicted as a separately identified parcel of land on a recorded subdivision plat or survey 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, as defined below, or property dedicated to the public.

E. Manufacturing. "Manufacturing" means to produce something industrially or to make something into a finished product using raw materials, especially on a large industrial scale.

F. Master Plan: "Master Plan" means a concept plan and drawing showing existing Lots and zones as well as proposed streets, access points, and Park Land and Open Space and other site improvements intended for The East 80 at Cardwell Ranch. The current Master Plan of The East 80 at Cardwell Ranch is attached to this Agreement and marked "Exhibit A."



G. Park Land and Open Space: "Park Land and Open Space" means any property or facility that the Association owns or in which it holds possessory, use, or maintenance rights for the common use or benefit of property owners in The East 80 at Cardwell Ranch. Park Land and Open Spaces may include but are not limited to park areas, open spaces, common areas, water amenities, community gardens, athletic fields, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, community sign areas, and community centers.

H. Special Review approval: "Special Review approval" means approval by the City of Billings pursuant to the Special Review approval process established in the Unified Zoning Regulations and as modified by this Agreement, including the requirement that applicants for special review first obtain approval from YGAF, Inc., which YGAF, Inc. may grant or deny in its discretion, before submitting an application for Special Review Approval to the City.

ARTICLE III – PERSONS BOUND BY THIS AGREEMENT

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 East 80 at Cardwell Ranch 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.

ARTICLE IV – REGULATION OF USES ACCORDING TO PLANNING AREA

A. Land Use Classifications. Lots located within The East 80 at Cardwell Ranch shall be classified according to use. Uses shall be limited to the locations shown on the Master Plan. No use shall be permitted on any Lot outside the areas indicated on the Master Plan and as permitted by this Agreement. If the actual boundaries of any proposed Lot referenced in the Master Plan or in this Agreement changes upon final platting or thereafter for any reason, including, but not limited to, as a result of re-platting, road dedication, or boundary line adjustment, the zoning classification and other Lot-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area where the change occurred has the same zoning classification and restrictions as the successor Lot or Lots of which the area becomes a part. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with this Agreement to specifically address any issue created as a result of a change in the external boundaries of any Lot.

B. Permitted Uses in Planning Area 1 and Planning Area 2 (Community Commercial). The uses listed below are permitted in Planning Area 1 of The East 80 at Cardwell Ranch. Planning Area 1 shall consist of proposed Lots 1 and 2 of Block 1, and proposed Lots 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of Block 2. These uses, which are generally commercial in nature, are also permitted in Planning Area 2. Planning Area 2



shall consist of proposed Lot 4 of Block 2. Multi-family uses are only allowed in Planning Area 2, and then only upon Special Review approval. No uses are permitted other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F. Uses followed by "SR" (Special Review) may only be permitted with consent of YGAF, Inc. and after Special Review approval as described in Article IV.D. Some uses may also be subject to a special level of review by YGAF, Inc. or the Association under private covenants or other agreements, including in particular, but not limited to, those designated with an asterisk (*).

- Accessory detached structures associated with a permitted principal structure *
- Adult foster family care homes (up to four aged or disabled adults) *
- Animal boarding facilities (SR) *
- Administrative and research facilities *
- Animal groomers
- Art galleries
- Assisted living facilities (SR) *
- Auto parts supply (SR) *
- Bakeries
- Banks, credit unions, and savings and loan facilities
- Barber and beauty shops
- Bicycle sales, rental, and repair shops
- Boarding, lodging and bed and breakfast houses
- Bookstores
- Breweries associated with eating establishments (SR) *
- Broadcast station offices (but all antennae and satellite dishes must comply with other provisions of this Agreement) *
- Building supply stores and hardware stores (but no lumber yards) (SR)
- Bus stops
- Camera, hobby, toy, and gift stores
- Car wash, only if incidental to fuel sales (SR) *
- Casinos and gambling activity, as defined in M.C.A. § 23-5-112, if incidental to another permitted use and with written consent of YGAF, Inc. *
- Ceramics and pottery shops
- Charitable, educational or nonprofit institutions
- Child day care centers (up to 13 children)
- Churches, synagogues, and places of worship (SR) *
- Clinics, medical, dental, and surgical for the care of human patients
- Clothing and apparel stores
- Community centers
- Convalescent, nursing, and retirement homes
- Convenience and specialty food stores (but no fuel sales except upon Special Review)
- Cultural, educational, and instructional facilities
- Denturists



- Department stores *
- Drive-through facility (SR) *
- Drug stores (SR) *
- Eating establishments (alcohol served) (SR) *
- Eating establishments (no alcohol served) (SR) *
- Educational and instructional facilities including public and private elementary and secondary schools, colleges, universities, professional schools, and junior colleges (but not trade schools) (SR) *
- Finance and loan companies
- Fire stations (SR) *
- Florists
- Flower shops and nurseries (provided that there is no outside storage)
- Food and grocery stores
- Fuel stations – gas or diesel (but not to include truck stops as defined by Section 27-201 of the Unified Zoning Regulations and prohibited below) (SR) *
- Furniture – retail only
- Greenhouses for on-site, retail sales if incidental to another permitted use
- Hardware and appliance – retail only
- Health clubs and fitness related businesses
- Hospitals *
- Hotels and motels
- Jewelry stores
- Laundry and/or dry cleaning drop-off and pickup store without drive-through facility
- Laundry and/or dry cleaning drop-off and pickup store with drive-through facility (SR) *
- Libraries, museums, and art galleries
- Liquor stores
- Medical clinics
- Membership organization offices
- Minor component assembly incidental to another permitted use
- Multi-family residential (Planning Area 2 only) (SR)
- Offices – all, including business professional, medical, and dental
- Office equipment stores – retail only
- Office supply and equipment, copying and mail services stores – retail only
- Open spaces, park areas, water amenities, community gardens, athletic fields, bike trails, playgrounds, and walking paths
- Park Land and Open Space
- Parking facilities, including above or below ground parking garages *
- Pet stores
- Pharmacies
- Photo studios, shops, and processing – retail only
- Physical therapy facilities
- Police stations (SR) *



- Postal service facilities without truck terminal facilities
- Public administration facilities, including government facilities, except correctional institutions
- Rehabilitation centers
- Rental car dealerships (SR) *
- Retail stores
- Retirement homes *
- Same-day medical care centers
- Sports medicine and rehabilitation facilities
- Surgery centers *
- Theaters
- Veterinary clinics and hospitals *
- Wine stores
- Any additional use permitted in a Community Commercial zoning district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not otherwise limited or prohibited herein. *

C. Permitted Uses in Planning Area 3 (Residential Multi-family). Residential multi-family use is permitted in Planning Area 3 of The East 80 at Cardwell Ranch. Planning Area 3 shall consist of proposed Lots 5 and 6 of Block 2. This area is intended primarily to accommodate apartments, townhomes, condominiums, multi-plexes, and other multi-family complexes (but not detached single family homes) and uses permitted in the Residential Multi-Family district as defined in the Unified Zoning Regulations. Multi-family residential use may also be permitted in Planning Area 2 (proposed Lot 4 of Block 2) upon Special Review approval. No uses are permitted in these areas other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F.

- Accessory detached structures associated with a permitted principal structure
- Bus stops
- Community centers
- Home occupations
- Multi-family residential buildings
- Park Land and Open Space
- Any additional use permitted in a Residential Multi-Family district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not limited or prohibited herein.

D. Special Review Procedure and Criteria.

1. Procedure. The City of Billings may authorize the uses described in Article IV by granting Special Review approval if the proposed use conforms to the following standards and criteria. All applications for special review shall include the information required by the Unified Zoning Regulations. The procedure for



reviewing the request shall conform to the Unified Zoning Regulations.

2. Criteria to be Considered. In considering a special review request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

- a. YGAF, Inc. has given its written consent to the special review request.
- b. The proposed use is consistent with the terms, intent and objectives of this Agreement.
- c. The proposed use is compatible with surrounding uses or is otherwise sufficiently screened and separated from adjacent land in such a way that any adverse effects are adequately mitigated.
- d. The proposed use will not attract large volumes of vehicular traffic that will create traffic congestion that cannot be safely and effectively managed and regulated with proper design and traffic control equipment.
- e. The proposed use meets architectural design guidelines or will use an existing building for its purposes.
- f. Minimum visual and functional conflict will be created between the proposed use and nearby uses.
- g. Anticipated noise and congestion created by the use will be comparable to the levels created by other uses in the vicinity.
- h. The use shall not require servicing or deliveries of materials, stocks, or supplies by trucks having more than three (3) axles.
- i. The proposed use will not be materially detrimental to other properties.

E. Prohibited Uses in All Areas. The following operations and uses shall not be permitted on any property in The East 80 at Cardwell Ranch, regardless of where the property is located:

- Amusement park services or facilities
- Apparel fabrication and fabrication of products made from fabrics and similar materials
- Arcades, including but not limited to video arcades
- Auction houses or auction yards
- Auto body and collision repair
- Automotive sales, leasing, repair, service, salvage, or storage
- Beverage bottling plant or wholesaling operations



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- Billboard signs
- Body alternation salons – any establishment engaged in body painting, body piercing, or tattooing
- Building fabrication except construction of buildings for use on-site
- Building subcontractor operations other than offices only
- Bus terminal and maintenance facilities
- Campground
- Casinos and gambling or gambling activity, as defined in M.C.A. § 23-5-112, unless incidental to another permitted use with written consent of YGAF, Inc.
- Cellular towers not included in building structures
- Crematoriums
- Dry cleaning or laundry plant or public Laundromat, (not applicable to facilities for pickup and delivery by the ultimate consumer)
- Drug paraphernalia – any business engaging in the sale of so-called drug paraphernalia
- Dumping of concrete, cement residue, refuse, dirt, garbage or fill materials without authority of property owner
- Electronic component manufacturing, unless light manufacturing and incidental to a permitted use
- Equipment rental shop
- Excavation – businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction
- Exotic dancing – any establishment permitting exotic dancing, including semi-nude and nude clubs
- Fire sale or bankruptcy sale
- Fireworks – fireworks manufacture and/or sales
- Flea markets
- Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations
- Foundries and plant operations
- Furniture fabrication
- Garbage – any dumping, disposing, incineration or reduction of garbage provided, however this prohibition shall not be applicable to garbage compactors located near the rear of any building
- Go-cart tracks
- Greenhouses for wholesale purposes
- Gun and archery range
- Guns and ammunition – the sale of firearms and ammunition, unless ancillary to a general retail store or sporting goods store
- Heavy equipment sales, service, and storage
- Ice manufacturing for resale of ice if not intended for use on-site
- Illegal drugs – the sale, manufacture, or possession of illegal drugs
- Industrial production or manufacturing facilities
- Jails, prisons, half-way houses for pre-release inmates, and/or detention



- facilities
- Junk shops
 - Labor or migrant worker camps
 - Lumber yards
 - Machine and welding shops
 - Manufactured housing – the sale, maintenance, and repair and/or storage of manufactured housing, mobile homes, boats, trailers, or recreational vehicles
 - Manufacturing
 - Massage parlors (excluding therapeutic massage)
 - Metal fabrication and manufacturing
 - Mill work and cabinet shops
 - Mineral extraction – any non-office sale, extraction, or storage of sand, gravel, or minerals
 - Mini storage facilities
 - Motorized sports vehicle repair, storage, and/or sales (including parts sales)
 - Mining and related activities – mining, drilling for, or removing oil, gas, or other hydrocarbon substances
 - Motocross tracks
 - Motorcycle racing
 - Obnoxious odors, etc. – any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in The East 80 at Cardwell Ranch
 - Paper warehouses
 - Pawn shops
 - Power poles and overhead power lines – installing new power poles and overhead power and above-ground utility lines as well as upgrading any existing poles to larger structures; provided, however, this shall not prohibit any existing power poles and above-ground lines, and shall not prohibit adding new lines to any existing poles
 - Propane sales unless incidental to a fueling station as permitted by special review, or as incidental to hardware sales
 - Race tracks
 - Recreational vehicles – the commercial sale, maintenance, rental or repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.
 - Recycling centers
 - Repair shops, if the shop facilities include open or visible storage
 - Roller skating rinks
 - Roping and rodeo arenas
 - Sanitary dumps
 - Scrap or waste material processing
 - Septic systems
 - Sexually oriented businesses – sexually oriented businesses as defined by



Section 27-611 of the Unified Zoning Regulations

- Stables – not to be construed to exclude existing farming operations or a continuation of existing farming operations
- Storage facilities other than garages associated with residential structures
- Super Stores – defined as any structure over 40,000 square feet in total useable area
- Surplus store
- Taxidermists
- Tire sales, except as incidental to the operation of a general retail store
- Title loan businesses
- Towers and dishes – freestanding communication towers and satellite dishes greater than 98 inches in diameter
- Trailer parks and campgrounds – mobile home parks, trailer parks, or recreational vehicle campgrounds or any commercial establishment that permits overnight parking of recreational vehicles
- Truck stop as defined by Section 27-201 of the Unified Zoning Regulations
- Truck terminals cartage operations, and similar uses
- Truck wash as defined by Section 27-201 of the Unified Zoning Regulations
- Trucks – sale, leasing, manufacture, and repair of trucks
- Trucking operation warehouses
- Utility sub-stations, utility maintenance facilities or buildings, and other utility installations other than utility lines, utility boxes, and other facilities used to serve an individual Lot
- Warehouses
- Wholesale lumber and building materials
- Wholesale distribution and sales

F. Analogous Uses. If a use is not specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by YGAF, Inc.

G. Procedure for Obtaining YGAF, Inc. Approval. Any developer of property in The East 80 at Cardwell Ranch shall obtain the written approval of YGAF, Inc. prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the developer first presents written evidence of YGAF, Inc.'s approval. Neither YGAF, Inc. nor the City shall approve the developer's application unless the proposed development complies with the requirements of this Agreement.

ARTICLE V – OTHER REGULATIONS GOVERNING USE



A. Continued Farming Operations. YGAF, Inc. may, in its sole and unreviewable discretion, permit farming operations and livestock grazing on undeveloped parcels. Permission shall be granted exclusively for the continuation of prior and existing livestock and farming operations, whether on ground leased or owned, and shall allow the use of stables, machinery, storage, and any other uses, infrastructure or equipment incidental to or necessary for operations associated with approved or existing farming operations.

B. Parking Limitations. No parking shall be permitted on any street or any place other than in paved and designated parking spots. Each owner of property within The East 80 at Cardwell Ranch shall be responsible for compliance with the foregoing by all tenants, customers, visitors and employees. Adequate parking sufficient to meet City requirements shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, and employees. All off-street parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscaping and screening elements as provided in this Agreement.

C. Storage of Inoperable, Junk and Recreational Vehicles. Owners and residents of The East 80 at Cardwell Ranch shall comply with Section 27-601 of the Unified Zoning Regulations and all other laws or regulations governing vehicle storage. In addition, no inoperable or junk vehicle shall be permitted to park on any property within The East 80 at Cardwell Ranch outside an enclosed structure for a period of more than two days, and after this period it shall be deemed abandoned. No snowmobiles, all-terrain vehicles, off-road motorcycles, trailers (utility, horse, boat, snowmobile, etc.), boats, campers, motorhomes, recreational vehicles, or other equipment generally associated with recreation and leisure time activity shall be permitted to operate within the confines of The East 80 at Cardwell Ranch, except while being transported into and out of The East 80 at Cardwell Ranch, and all such vehicles shall only be stored within an enclosed structure and shall not be parked on the street or in any driveway, parking lot, or other area visible to neighboring properties for a period of more than two days.

D. Outside Storage. Outside storage of junk shall not be permitted on any Lot in The East 80 at Cardwell Ranch for any period of time. Outside storage of merchandise on any non-residential property shall comply with Section 27-601(b) of the Unified Zoning Regulations governing storage and display of merchandise in certain commercial districts.

E. Maintenance of Lots.

1. Maintenance of Property Generally. The owner of any property within The East 80 at Cardwell Ranch shall at all times keep and maintain the owner's property and buildings, improvements, and appurtenances thereon in a good, safe, clean, and attractive condition and comply in all respects, at the property owners' sole expense, with this Agreement, and all applicable governmental, health, fire, and safety laws, ordinances, regulations, requirements, and directives. The property owner shall at regular and frequent intervals remove, at the property owner's sole expense, any garbage or rubbish that may accumulate upon such property.

2. Maintenance of Buildings. It shall be the sole responsibility of the



owner of any property within The East 80 at Cardwell Ranch to maintain all buildings and structures, improvements, and appurtenances located thereon in a good and clean state of repair and condition and in accordance with this Agreement, and all applicable laws, ordinances, regulations, requirements and directives applicable to the property.

3. Maintenance of Unimproved Sites. Property that is not improved or built upon shall be maintained in a good, safe, clean, and attractive condition by the property owner. Weeds, brush, trash, and rubbish must be removed at least every three months. Nothing in this paragraph shall prevent YGAF, Inc. or its agents from carrying on existing or approved agricultural activities consistent with this Agreement.

F. Utilities to be Buried. All utilities, including but not limited to electrical distribution and transmission lines, shall be buried. Any above-ground junction boxes or other surface elements that cannot be buried shall be screened by structural or landscaping elements. Any existing overhead power lines shall be permitted to remain in their present location. Additional lines may be added to any existing power poles so long as the poles remain in substantially the same location. However, if such power poles or power lines are ever moved or their size is changed, or if substantial repairs or replacement is undertaken, the owners of the property and the owner(s) of the power lines shall bury all lines, including the lines being moved, repaired or replaced.

G. Home Occupations. Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by subsequent developers or covenants, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations. A Home Occupation is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

1. The Home Occupation should not generate, on average, more than one (1) vehicle trip during any hour measured between 7:30 A.M. and 6:00 P.M.;
2. The activity must constitute use permitted outright in Planning Area 1 or Planning Area 2 established in this Agreement; and
3. Residents and property owners are advised that carrying on certain Home Occupations may require compliance with special code requirements applicable to commercial establishments. All residents and property owners are advised to consult with local building officials before establishing a Home Occupation. Residents and property owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

ARTICLE VI - SITE DEVELOPMENT, BUILDING & LANDSCAPE STANDARDS

A. Development Standards Generally. These standards are provided to establish minimum guidelines for the development of facilities in The East 80 at Cardwell Ranch, including site work, buildings and accessory structures, landscaping, and signage. These guidelines will not define specific styles of architectural character for the various uses



possible in The East 80 at Cardwell Ranch. They are intended to establish a minimum level of quality for the physical settings within The East 80 at Cardwell Ranch and for the basic architectural design of the structures while allowing flexibility to adjust and evolve with changes in technology and architectural standards. These guidelines will specifically control the treatment of the public areas, streetscape, pedestrian areas, landscaping and signage to create a setting in which a wide variety of individual buildings of high quality can exist in harmony. They will provide developers with a guide that will define the aesthetic quality of The East 80 at Cardwell Ranch's architecture yet allow latitude for unique, individual expressions of the architectural requirements and image of each building development. Subsequent developers and property owners are advised that covenants and other private agreements may also control development in The East 80 at Cardwell Ranch and that it may be necessary to obtain written consent from YGAF, Inc. and/or the Association prior to application for land use approvals and construction.

B. Site Development Standards.

1. Street Types and Standards. In the absence of a contrary agreement with the City of Billings, all streets shall be developed to the standards of the City of Billings for width, curb, gutter, sidewalk, cross-section, and surface treatment. All streets shall be developed as required to accommodate the traffic loads contributed by development within The East 80 at Cardwell Ranch and adjacent properties.

2. Access. Shared driveway accesses between adjacent non-residential Lots are encouraged. If a traffic accessibility study is required for a proposed use on a Lot, the study shall include traffic from an adjacent Lot if the driveway is proposed to be shared.

3. Lot Coverage. The total combined lot coverage for all structures on any non-residential Lot shall not exceed fifty (50) percent of the total square footage of the Lot. The total combined lot coverage for all structures on any residential multi-family Lot shall not exceed fifty-five (55) percent of the total square footage of the Lot.

4. Setbacks.

a. Community Commercial area. The minimum building "front yard" setback from the property line for all non-residential development shall be 25 feet, providing, however, that the clear vision triangle is maintained as required by the Unified Zoning Regulations. The "front yard" shall be determined by the Association's Design Review Committee based on the specific use and site plan for each Lot. Side and rear yard setbacks shall be at least 20 feet from the property line where a residential use abuts a commercial use. There shall be a minimum 10 feet wide side and rear yard setback for all other non-residential Lots. All arterial setbacks as outlined in the Unified Zoning Regulations must also be maintained, but the minimum front setback along Grand Avenue and Zimmerman Trail shall be at least 80 feet (measured from center-line).



b. Residential Multi-family area. Setbacks for multi-family residential Lots must comply with the Unified Zoning Regulations. Setback areas must be landscaped except for driveways and parking areas, which may not exceed 20% of any setback area. All developments are required to landscape adjacent to and along the length of all public rights-of-way, excluding driveways. A lot owner may request a variance from these setback requirements after obtaining the written consent of YGAF, Inc. by following the variance procedures established by the Unified Zoning Regulations.

5. Zone Boundaries. It is recommended that the transitional areas between different use classifications be designed to complement the adjacent land uses. Use of buffering landscaping elements and building mass that approximates that of the adjacent zone in these areas is encouraged to help achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

6. Parking. Adequate parking shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, employees and residents. All parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscape and screening elements as provided herein. Minimum parking requirements shall meet the standards of the City of Billings for each use proposed for a Lot but shall not exceed 110% of the City's minimums. Joint parking and reciprocal access agreements are encouraged.

7. Loading, Storage and Service Areas. No loading, storage or service area shall be permitted in the front portion of any Lot within The East 80 at Cardwell Ranch. All loading and service areas shall be screened from the ground-level view of adjacent properties and streets. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structure. Storage areas shall comply with all applicable building setbacks.

8. Garbage Collection. Lots used for commercial purposes and multi-family housing that includes more than two (2) dwelling units shall store garbage only in an approved garbage collection area. Lots used for other residential purposes may place a garbage container on the sidewalk or driveway on the designated pickup day. At all other times, all residential garbage containers shall be stored in an enclosed garage or in an approved garbage collection area. Garbage collection areas shall adhere to the following standards:

a. All outdoor garbage containers and collection areas shall be screened visually with at least a six foot (6') enclosure so that they are not visible from adjacent properties, streets, or Park Land or Open Space.

b. No garbage containers or collection areas shall be located between a street and the front of a building.

c. Deposited garbage shall not be visible from outside the garbage container or collection area.



d. Garbage containers and collection areas shall be designed with durable structural materials, finishes and colors that coordinate with the overall architectural scheme of the adjacent buildings.

e. Garbage collection areas and containers shall regularly be cleaned, repaired and painted to prevent the accumulation of garbage, grime, grease, and other unsightly or unpleasant conditions.

9. Pedestrian Walkways and Bikeways. All property development shall provide for pedestrian access along or through each Lot to create a system of pedestrian paths and walkways. Pedestrian paths shall be a minimum of five feet (5') wide, constructed of hard surface materials such as concrete or asphalt meeting the requirements of the City of Billings. The location, layout and construction features of bike paths shall conform to the Heritage Trail Plan of the City of Billings and may be extended through The East 80 at Cardwell Ranch to connect to other development at the perimeter of The East 80 at Cardwell Ranch. Bike paths shall be constructed according to the design standards established by The Heritage Trail Plan and shall be located as determined by the developer with the consent of YGAF, Inc. All pedestrian and bikeway access along roads shall be separated from the paved road surface by a landscaped boulevard at least five (5) feet wide.

10. Bicycle Parking. Each non-residential and multi-family residential Lot accommodating more than three (3) Dwelling Units shall provide at least one bike parking space equipped with bicycle racks permanently anchored in marked areas.

11. Accessory Structures, Fences, and Walls. Construction of accessory structures, fences, and walks shall follow these standards:

a. All fences shall comply with the City of Billings, Montana clear vision standards.

b. No chain link fencing shall be installed without the express written approval of YGAF, Inc.

c. No fence or wall shall exceed a height of six feet (6'), except in garbage collection areas.

d. Accessory structures, fences, and walls shall be of a character, color, and material to match the adjacent buildings, shall coordinate with the overall architectural scheme of the adjacent buildings, and shall be integrated into the landscaping of the Lot.

12. Snow Storage. Parking lots or areas adjacent to parking lots shall provide for on-site snow storage. Snow storage areas shall not be adjacent to streets. Common storage areas between adjacent Lots are encouraged. Landscaping shall be maintained if the storage is not done in a paved parking area. Parking spaces needed to satisfy minimum parking requirements shall not be used for snow storage.



13. Site Lighting Standards.

a. All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than eighteen (18) feet above grade.

b. All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

14. Exterior Mechanical and Electrical Equipment and Transformers. All exterior mechanical and electrical equipment and transformers used to service a building or group of buildings shall be screened or enclosed within the structure of a building or otherwise screened from view. Screening may consist of year-round plantings, shrubbery, or durable enclosures of such height and density as may be deemed sufficient by the zoning coordinator and YGAF, Inc.

C. Building Design. The following standards shall govern building design for all property within The East 80 at Cardwell Ranch.

1. Temporary Structures. Temporary structures are not allowed, except temporary structures may be used for construction only during the period of construction and shall be removed from The East 80 at Cardwell Ranch immediately following substantial completion of the permanent structure in accordance with the CCRs.

2. Impact on Other Structures. No building shall be built in a manner that will adversely affect the structural integrity of another building.

3. Building Height Limits. Structures in The East 80 at Cardwell Ranch shall not exceed a height limit of forty-five (45) feet from ground level. This height limitation applies to the uppermost, enclosed portion of the structure. Antennae, satellite receivers, mechanical equipment and other non-enclosed portions of a structure that otherwise comply with this Agreement shall be appropriately screened and may extend no more than ten (10) feet above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

4. Building Size Limits. The enclosed portion of any structure in The East 80 at Cardwell Ranch shall not exceed 40,000 square feet (footprint). Buildings over 40,000 square feet (footprint) may be permitted upon Special Review approval.

The enclosed portion of a structure is the portion that is contained on all sides and overhead and does not include decks, patios, walkways, driveways, etc.

5. Roof-mounted Mechanical Equipment. Mechanical equipment placed on a roof shall be screened to a height at least the height of the mechanical equipment. All roof-mounted equipment, including, but not limited to, HVAC units, exhaust



vents, exhaust vent stacks, and miscellaneous penetrations must be integrated into the overall roof design. Equipment shall be enclosed or screened from view with materials and forms designed into the shape and character of the building's design.

6. Communication Towers, Antennae, and Satellite Receivers. No free-standing communication towers, antennae, or satellite receivers are allowed. No structure-mounted antennae with visible components greater than 60 inches in height or satellite receivers greater than 24 inches in diameter are allowed unless they are screened from the view of adjacent streets and properties by structural components or year-round landscaping elements. No satellite receivers more than 96 inches in diameter are allowed. Satellite receivers more than 24 inches but less than 96 inches are subject to special review under Article IV.B.

7. Metal Buildings. Pre-engineered metal buildings or prefabricated metal buildings are not permitted on any property within The East 80 at Cardwell Ranch.

8. Sloped Roof Elements. Any building with sloped roof elements shall provide protection to pedestrians and other properties from the effects of sliding snow.

D. Landscape Design Standards. The following standards shall govern landscaping for all property within The East 80 at Cardwell Ranch.

1. Minimum Requirements. All landscaping shall, at a minimum, comply with the requirements of the City of Billings and be completed within thirty (30) days after the substantial completion of the building(s) constructed on the property; provided, however, that if weather conditions do not permit such landscaping to be completed within thirty (30) days then such landscaping shall be completed as soon thereafter as weather conditions permit. Bonds shall be required if landscape completion is delayed.

2. Right-of-Way and Setback Areas. The area between any street to the property line and from the property line to the minimum setback line shall be landscaped with a combination of trees, shrubbery, foliage, and grass or ground cover. These areas shall be maintained by the adjacent property owner unless responsibility for maintaining the same has been assumed by the Association.

3. Irrigation. All landscaping must be irrigated with an underground sprinkler system, which must be maintained so as to provide sufficient water for landscaping growth, or by use of a joint or community irrigation plan.

4. Parking Lot Landscaping – Perimeter. The perimeter of all parking areas shall be landscaped with plants that provide intermittent screening but allow some visual penetration into these areas when viewed from adjacent streets, service areas, major building entrances, and significant outdoor spaces. Such screens shall consist of deciduous and evergreen plant material at least two feet (2') in height.



5. Parking Lot Landscaping – Interior. A minimum of twenty (20) square feet of internal landscaping shall be provided for each parking space. Two (2) canopy or evergreen trees and five (5) shrubs shall be required for every eight (8) parking spaces. All landscaped areas shall contain ground cover such as sod, shrubs, flower beds, or living plant material. No more than twenty-five (25) percent of the total landscaped area measured by square footage shall consist of fountains, rock, bark chips, stepping stones, or similar non-living material. Each parking lot landscaped area shall include at least one dimension (width or length) that is at least eight (8) feet. Internal parking lot landscaping shall be proportionately disbursed at the developer's discretion in order to define aisles and limit the length of unbroken rows of parking. The maximum width or length of any unbroken length of paved parking area shall be one hundred (100) feet. Landscaped areas shall be on a scale proportionate to the parking lot. The parking lot landscaping shall, at a minimum, meet all landscaping requirements of the City of Billings. All landscaped areas shall be irrigated, maintained, and kept free of weeds, debris, and litter. Dead or dying materials shall be replaced immediately. Landscaped areas within parking lots or along the perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt, or other approved, permanent barriers. Evergreen trees are discouraged for internal parking areas if they will limit sight lines at full maturity.

6. Non-Parking Lot Landscaping. All areas not covered by structures, parking, circulation surfaces, pedestrian or bicycle paths shall be landscaped. At least seventy-five percent (75%) of this landscaped area should be living plant material. The remaining portion may include: stone, rock, bark ground cover; decorative structures; water features; benches and other landscape features appropriately dispersed and coordinated throughout the live vegetation. The use of native, drought-tolerant plant materials is strongly encouraged and may be required under applicable covenants, conditions, or restrictions. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site.

7. Landscaping Loading and Service Areas. Loading and service areas shall be enclosed either with solid screen walls not to exceed six feet (6'), or landscaping elements planted in such a manner to create a visually opaque screen when mature. The plant material screen must develop its maturity within three (3) years from the time of planting.

- Canopy Tree. A canopy tree is a species of tree that normally bears crown foliage no lower than six feet (6') above ground level upon maturity. The minimum size of canopy trees shall be two and one-half inches (2 1/2") in caliper at the time of installation. Caliper shall be defined by the American Nurseryman Standard Definition.
- Evergreen. An evergreen tree or shrub is a species that normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be six feet (6') in height at the time of installation.
- Shrubs. The minimum size of a shrub shall be at least 2 gallons but



preferably 5 gallons.

ARTICLE VII – PARK LAND AND OPEN SPACES

A. Park Land and Open Spaces Generally. The statutory park dedication requirement for The East 80 at Cardwell Ranch shall be satisfied either by making a donation of cash in lieu of land or the City will waive the park dedication requirement for this planned development if the land permanently set aside for park and recreational use by the residents meets the requirements of M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009. The Park Land and Open Spaces available to residents and users of The East 80 at Cardwell Ranch shall include privately or publicly owned or accessible open space, potentially including parks, plazas, gardens, trails, and/or bikeways. Such Park Land and Open Spaces may be located within The East 80 at Cardwell Ranch or outside The East 80 at Cardwell Ranch in accordance with M.C.A. § 76-3-621(6)(d)(i). All Park Land and Open Spaces shall be maintained to meet or exceed any then-existing City maintenance standards. All Park Land and Open Spaces shall be built and maintained in order to fulfill the purposes set forth in Article I of this Agreement. Park Land and Open Spaces will be developed and constructed at the cost and expense of the property owners.

B. Park Land and Open Space Maintenance. The maintenance of Park Land and Open Spaces will be funded by the Association with possible participation by individual property owners or the City through a park maintenance district for any park land dedicated to the public.

ARTICLE VIII – SIGNS

A. Signage. The following standards shall govern signage for all property within The East 80 at Cardwell Ranch and shall apply to all ground-mounted, pole-mounted, and building-mounted signs.

B. Purpose, Intent and Scope. The purpose and intent of this section is to promote commerce, traffic safety, and community identity while improving the visual environment of residential, commercial, and industrial areas.

C. Exempt Signs. This section of the Agreement shall not regulate traffic and directional signs installed by a governmental entity or in a private parking lot; merchandise displays; national flags; legal notices required by law; or historic site monuments/plaques.

D. Definitions. The definitions used in this Agreement may be found below or in the Unified Zoning Regulations.

Individual Business. One business on one parcel, provided that the parcel is not part of a multiple business complex; and also provided the parcel is not part of a group of multiple contiguous parcels under the same ownership.



Monument Sign. A sign and supporting structure constructed as a solid structure, or one that gives the appearance of a continuous, non-hollow, unbroken mass.

Multiple Businesses. Multiple businesses include businesses that may be located in a single building or in multiple buildings on a single site.

Support Structure(s). Posts or columns and their anchors and bolts that structurally support the sign attached to it.

E. General Provisions.

1. City Ordinances. All signage shall comply with the Unified Zoning Regulations unless further limited herein, or as addressed in the CCRs.

2.

3. Types of Signs. The following standards shall govern the types of signs permitted within The East 80 at Cardwell Ranch:

a. Collective Signage. Adjacent property owners in The East 80 at Cardwell Ranch are encouraged, when appropriate, to utilize collective signage which contains the names of more than a single owner, business, tenant, or store;

b. Wall Signage. Wall signs are limited to no more than one (1) per façade facing a street and two (2) signs per building. All wall signs shall be placed parallel and attached firmly to the building's façade.

F. Exempt Activities. The following shall not require approval, provided that these exemptions shall not be construed as relieving the owner from the responsibility to comply with the provisions of this Agreement or any other law or ordinance, including the Uniform Zoning Regulations.

1. The changing of the advertising copy or message on a lawfully erected sign that is currently in compliance with this Agreement, reader board, or similar sign specifically designed for replaceable copy;

2. Painting, repainting, or normal maintenance, unless a structural, electrical, aesthetic, or color change is made;

G. Prohibited Signs. The following signs are prohibited in all zones unless otherwise specifically permitted:

1. Flashing, blinking, moving, exposed light, iridescent colors, outdoor signs with visible neon or gas tubing, fluorescent materials, animated or audible signs, streamers, balloons and searchlights;

2. Bench signs;



3. Signs which by coloring, shape, working resemble or conflict with traffic control signs or devices;
4. Signs that create a safety hazard for pedestrian or vehicular traffic;
5. All electronic signs, video boards;
6. Portable signs, trailer signs and signs attached to structures with one or more wheels;
7. Rooftop signs;
8. Billboard or off-premises signs;
9. Pole signs;
10. Banner signs unless specifically permitted as addressed in the CCRs.

H. Temporary Signs:

a. Temporary signs can be used for development, construction, design team, sale or leasing information on a temporary basis. Typically such signs are freestanding, ground-mounted signs though banner signs may be approved as specified in the CCRs. Such signs will be unlit and limited in size to 32 square feet and 8 feet in height above grade for commercial uses and five square feet and five feet above grade for residential and agricultural uses.

I. Sign Location and Setback.

b. Freestanding identity signs shall be setback a minimum of 8 feet from the face of curb or edge of pavement of a public street, and shall not be placed within the right-of-way.

J. Sign Area and Calculation.

1. Sign area for wall signs is equal to the message area of a sign, including graphics, letters, figures, symbols, trademarks or written copy per the standards established by the City of Billings for sign area calculation;

2. The sign area of a monument sign consisting of one sign shall be calculated the same as for wall signs;

3. The sign area of a freestanding sign consisting of more than one sign shall be computed by adding together the total area(s) of all signs. Any portion of the sign not necessary for structural support of the sign or any structural support greater than two (2) feet in width shall be considered in the determination of the square footage of the sign. Area calculation does not include decorative rocks or landscaping



adjacent to a monument sign;

4. The sign area for multiple-sided signs shall be calculated as follows:

a. The total sign area for a two-sided sign shall be calculated using one face, therefore allowing both faces to be of equal size (for example a two-sided sign has two faces with 18 square feet per side, therefore the sign area is 18 square feet);

b. The sign area for a three-sided sign shall be equal to the total amount of sign area a one-sided or two-sided sign is allowed. (For example, in item 4A above, a two-sided sign is allowed 18 square feet of sign area per side, which equals 36 total square feet. If a three-sided sign is used instead of a one-sided or two-sided signed, the three-sided sign may allocate the 36 square feet among three sides, therefore allowing three sides with 12 square feet per face for a total of 36 square feet of sign area.);

K. Maintenance of Signs.

1. Any sign that has been approved or that has been issued a permit shall be maintained by the owner or person in possession of the property on which the sign is located. Maintenance shall be such that the signage continues to conform to the conditions imposed by the sign permit and this Agreement;

2. Any damaged sign, including signs with burned out lights, shall be repaired or replaced within ten (10) business days;

3. Any signage which has been damaged to such extent that it may pose a hazard to passersby shall be repaired or removed immediately;

L. Nonconforming Signs. Nonconforming signs are not permitted. If any sign is erected or installed without proper permits or approvals, it shall be considered nonconforming and shall be removed. All signs which do not conform to the sign standards in this Agreement are nonconforming and shall be removed or changed to conform to these standards. Any sign not removed within ten (10) business days of notice of nonconformance will be removed by the YGAF, Inc. or its assigns, and the costs for removal plus a handling fee to be assessed by the YGAF, Inc. or its assigns shall be the responsibility of the owner of the sign.

M. Landscaping for Monument Signs. All monument signs shall be located in a landscaped area. Landscaping should be appropriately sited to ensure that signs are not blocked or obscured by trees or bushes.

N. Sign Illumination. Externally illuminated signs shall have low intensity lighting, confined to the sign, and positioned and shielded to minimize impacts to the surrounding area(s). Internally illuminated signs shall have low intensity lighting.



O. Sign Approval. All signage in The East 80 at Cardwell Ranch shall first be approved by YGAF, Inc. as a condition of any zoning approval issued by the City of Billings.

ARTICLE IX - CROSS EASEMENTS FOR VEHICLES AND PEDESTRIANS

At the time each Lot is developed, or at such earlier time as may be determined by YGAF, Inc. or the developer of the Lot, YGAF, Inc. or the developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all property owners in The East 80 at Cardwell Ranch and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the part of any Park Land, Open Space, or Lot devoted to pedestrian walkways, bike paths, and private roadways intended for common use. At the time each Lot is developed, or at such earlier time as may be determined by YGAF, Inc. or the developer of the Lot, YGAF, Inc. or the developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all developers and property owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of The East 80 at Cardwell Ranch intended for common use.

ARTICLE X - ENFORCEMENT

A. Statement of Purpose. The parties acknowledge that from time to time disputes may arise involving the City, YGAF, Inc., property owners, the Association, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

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

C. Right to Enforce by Property Owners and the Association. 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 East 80 at Cardwell Ranch and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as future property owners within The East 80 at Cardwell Ranch. The parties further agree that the Association shall have standing to enforce the terms of this Agreement relative to the City or any property owner or other property owners' association regardless of whether the Association owns property in The East 80 at Cardwell Ranch. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

D. Right of Abatement and Suit. If at any time YGAF, Inc., the City, or the Association objects ("the objecting party") to any property owner's or other party's breach of



its obligations under 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 its 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 reasonable period, the objecting party may perform whatever reasonable maintenance, repair, operation, or other curative action is 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 obligations under this Agreement. The objecting party may also prosecute a proceeding at law or in equity against the defaulting party to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied, or to recover damages for said violation.

ARTICLE XI – AMENDMENTS AND VARIANCES

A. Amendments or Changes. This Agreement may not be amended, modified, or terminated, in whole or in part, except with the unanimous written consent of YGAF, Inc. (or its assignee) and the City. The consent of landowners who purchase property within The East 80 at Cardwell Ranch shall not be required to amend, modify, or terminate this Agreement. Any modifications requested by YGAF, Inc. 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:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent;
3. Change additional allowed uses;
4. Reduce open space greater than two (2) percent; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

B. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not consistent with those listed within this Agreement or for uses prohibited within the Unified Zoning Regulations. Upon receiving written consent of YGAF, Inc., property owners may apply for a variance from the following required special building features:



1. Increase in the maximum allowed height under Article VI.C.3 of any structure in any planning area from 34 feet to 45 feet.

2. In accordance with Article VI.C.6, increase in the maximum diameter of satellite dishes from 24 inches up to 96 inches.

Covenants or private agreements may also require that an applicant obtain the written consent of YGAF, Inc. for other variances.

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

ARTICLE XII - ARBITRATION

A. Agreement to Arbitrate. Except as otherwise provided in this Agreement and subject to the provisions of the next paragraph below, all property owners and the City agree, upon receipt of written request by any party to the dispute, to submit to binding arbitration any and all claims, disputes, and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents) whether in tort, contract, or otherwise arising out of or relating to in any way this Agreement. YGAF, Inc. may, in its sole and exclusive discretion, elect not to participate in arbitration requested by another party, in which case the dispute shall be resolved by means not involving arbitration.

B. Other Remedies. Nothing in the preceding paragraph, nor the exercise of any right to arbitrate thereunder, shall limit the right of any party hereto to: (1) exercise abatement or other self-help remedies, (2) obtain provisional or ancillary judicial remedies such as injunctive relief, or (3) impose fines as permitted by law before, during, or after the pendency of any arbitration proceeding. The authority of the City to levy and impose fines shall not be limited by this arbitration agreement. The institution and maintenance of any action for such judicial relief, the pursuit of provisional or ancillary remedies, or the exercise of self-help remedies shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration, including those claims or disputes arising from or related to those addressed as part of the exercise of any such judicial relief, pursuit of provisional or ancillary remedies, or exercise of self-help remedies.

C. Arbitration Procedure. Any arbitration proceeding shall proceed in Billings, Montana, and shall be governed by the Montana Uniform Arbitration Act and all applicable Montana statutes of limitation, and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding shall be before a single arbitrator selected according to the Commercial Arbitration Rules of the AAA. The arbitrator shall decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions that are substantially similar to pre-hearing motions to dismiss for failure to state a claim or motions for summary adjudication. Discovery shall be permitted, but shall be subject to scheduling by the arbitrator, and any discovery disputes shall be subject to final determination by the arbitrator. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with this Agreement. Judgment upon any award rendered by the arbitrator may be entered in



any court having jurisdiction.

ARTICLE XIII - GENERAL PROVISIONS

A. Appointment of Agent. YGAF, Inc. may, in its sole and exclusive discretion, hire, appoint, or designate an individual or entity to act as its agent to fulfill the duties and obligations of YGAF, Inc. hereunder. Although not required to be effective, notice of such appointment may be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for The East 80 at Cardwell Ranch, or any portion thereof, affected by the appointment. Notice of appointment shall also be provided to the City at the address specified herein. YGAF, Inc. may, in its sole and exclusive discretion, revoke an agent's appointment or make an additional appointment at any time.

B. Assignment by YGAF, Inc. YGAF, Inc. may, in its sole and exclusive discretion, assign its rights and delegate its duties arising 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 East 80 at Cardwell Ranch, 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, YGAF, Inc. 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.

C. Neutral Interpretation. YGAF, Inc. and the City hereby stipulate and agree that this Agreement has been prepared and negotiated by both parties and shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party based on authorship.

D. Coordination with Other Regulations. In the event that there is any conflict between this Agreement and other zoning regulations or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of The East 80 at Cardwell Ranch either by its 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 version of such regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement.

E. 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 thereof 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 receipt therefore. All notices or demands to YGAF, Inc. or the City shall be



given at the following addresses or such other addresses as YGAF, Inc. or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to YGAF, Inc.: Peter Yegen III
P. O. Box 959
Billings, MT 59101

With copies to: William A. Cole
Cole Law Firm, PLLC
3860 Avenue B, Suite C West
Billings, MT 59102-7550

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

With Copies to: City-County Planning Department
510 N. Broadway, 4th Floor Parnly Library
Billings, MT 59101

City Attorney's Office
P.O. Box 1178
Billings, MT 59103-1178

F. 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.

G. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

H. Limitation on Enforcement. This Agreement is for the benefit of YGAF, Inc., the City, the property owners within The East 80 at Cardwell Ranch, the Association, and their heirs, devisees, assigns, and 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 restrictions contained herein, judicially or otherwise.

I. 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 substitute therefore, governmental restrictions, terrorist acts, governmental regulations, governmental controls, enemy or hostile government 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.



J. Attorneys' Fees and Costs. In the event either party shall file any proceeding, whether at law or in equity or in arbitration, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court or arbitration costs, if any, from the other party.

K. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

L. No Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

M. Entire Agreement. This Agreement contains the entire agreement between the parties hereto 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.

N. Construction. In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

O. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

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

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, 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.

Q. Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon YGAF, Inc., the City, the property owners, and their heirs, successors, and assigns.

R. Contact Person. YGAF, Inc. hereby designates a contact person whom may be contacted with respect to any questions, comments, or concerns. The contact person shall



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be Charles Yegen, P. O. Box 959, Billings, Montana 59101.

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

YEGEN GRAND AVENUE FARM, INC.:

YEGEN GRAND AVENUE FARM, INC.

By: *[Signature]*
Charles Yegen III
Its: President

CITY:

CITY OF BILLINGS



By: *[Signature]*
Ron Tussing
Its: Mayor

By: *[Signature]*
Cari Martin
Its: City Clerk

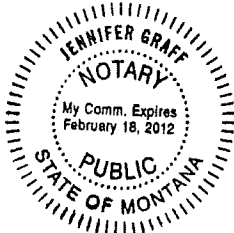


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STATE OF Montana)
)ss.
County of Yellowstone.)

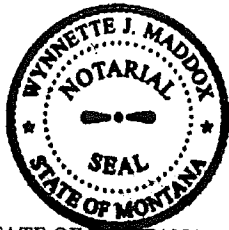
This instrument was acknowledged before me on the 23rd day of October, 2008, by
Peter Yosen III known to me to be
Resident of YGAF, Inc. Yegen Grand Avenue Farm, etc.



Jennifer Graff
[signature]
Jennifer Graff
[typed/printed name]
Notary Public for the State of Montana
Residing at: Billings, Montana
My Commission Expires: February 18, 2012

STATE OF MONTANA)
)ss.
County of Yellowstone)

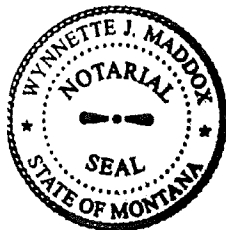
This instrument was acknowledged before me on the 14th day of October, 2008, by
Ron Tussing, known by me to be the Mayor of the City of Billings.



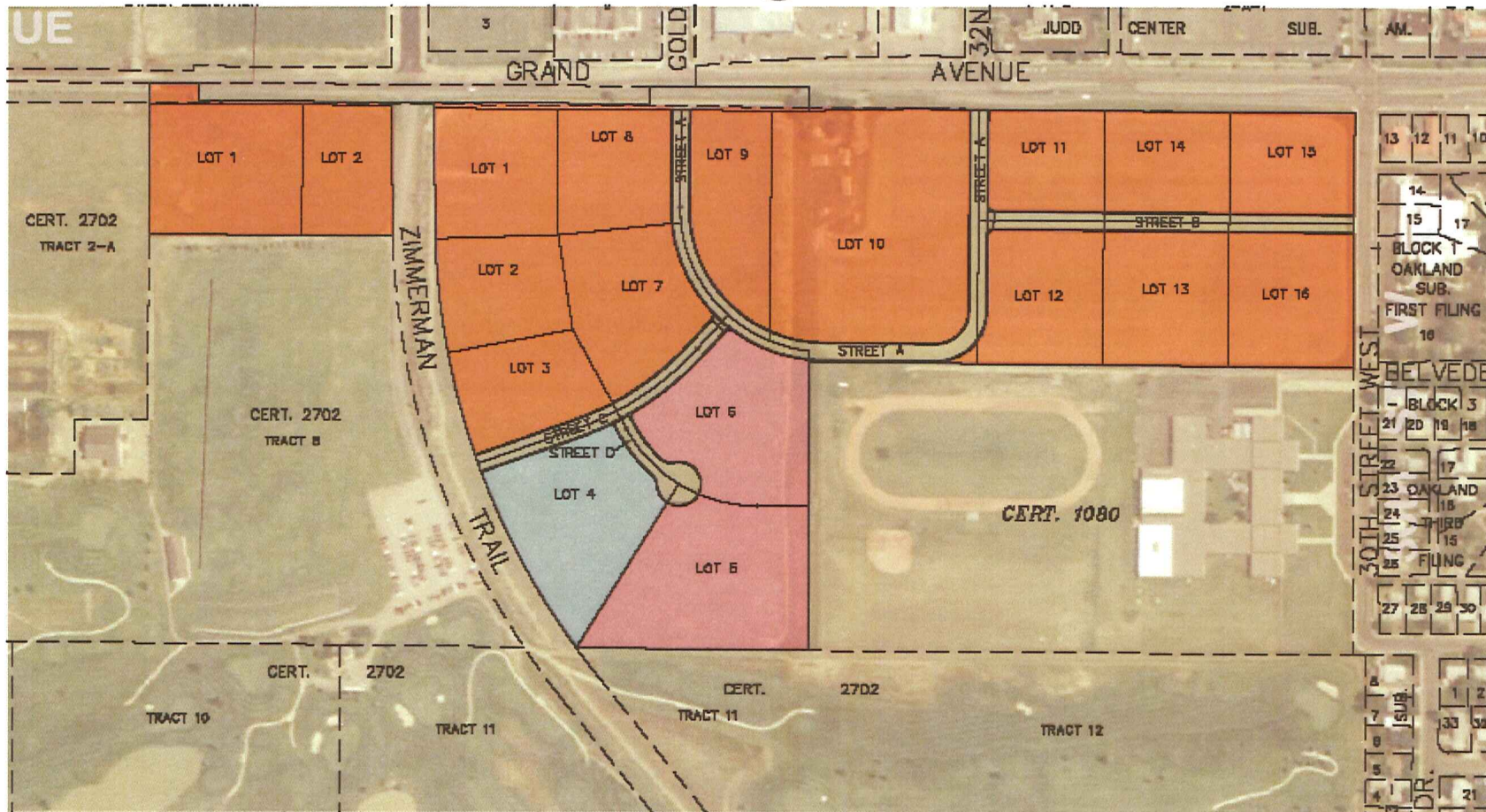
Wynnette J Maddox
[signature]
Wynnette J Maddox
[typed/printed name]
Notary Public for the State of Montana
Residing at: Shepherd, Montana
My Commission Expires: 9.16, 2010

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the 14th day of October, 2008, by
Cari Martin, known by me to be the City Clerk of the City of Billings.



Wynnette J Maddox
[signature]
Wynnette J Maddox
[typed/printed name]
Notary Public for the State of Montana
Residing at: Shepherd, Montana
My Commission Expires: 9.16, 2010



 Planning Area 1 (Commercial)

 Planning Area 2 (Commercial or Multifamily)

 Planning Area 3 (Multifamily)

APPLICATION FORM

CITY ZONE CHANGE Billings Zone Change # 980 - Project # P2-20-00209

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: PDA - Community Commercial

Proposed Zoning: PDA - text change allowing for multi-family w/o special review

TAX ID# 4A - A34327 15A A34327 CITY ELECTION WARD # 4

Legal Description of Property: Cardwell Ranch Sub 1st Filing (10) S01, T01S, R25E, Block 2, Lot 4A Amd (18)
Cardwell Ranch Sub 1st Filing (10) S01, T01S, R25E, Block 2 Lot 15A Amd (18)

Address or General Location (If unknown, contact City Engineering): 3340 Sagegrass Dr # 1310 30th St W

Size of Parcel (Area & Dimensions): 4A - 3.167 Acres Roughly 15A 6,884 ACRES approx 890' x 340'

Present Land-Use: unzoned - Community Commercial

Proposed Land-Use: " Multi-family, Community Commercial

Covenants or Deed Restrictions on Property: Yes No

If yes, please attach to application

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

Owner(s): Yegen Grand Avenue Farm, Inc

(Recorded Owner)

(Address) P.O. Box 959, Billings, MT 59103

(Phone Number) 406-252-0103 (email) chase@pyegen.com

Agent(s): Charles G. Yegen - President

(Name)

(Address) P.O. Box 959, Billings, MT 59103

(Phone Number) 406-252-0103 ext 108 (email) chase@pyegen.com

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: 9-8-2020

(Recorded Owner)



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:** PDA - Community Commercial
2. **Written description of the Zone Change Plan** including square footage or acres of proposed new zoning: text change - Planning Area 2 to permit Multi Family w/ Special Review Lot 4A 3.167AC, More Lot 15A 6.984 Acres, From Planning Area 1 (CC) to Planning Area 2.
3. **Subject Property Map:** please attach to this form
4. **Legal Description of Property:** Cardwell Ranch Sub 1st Filing (10) 501, T01S, R25E, Block 2, Lot 4A Amd (18)
Cardwell Ranch Sub 1st Filing (10) 501, T01S, R25E, Block 2, Lot 15A, Amd (18)
5. **Neighborhood Task Force Area:** Yes // No . If Yes, Name of Task Force and mailing address of Chairperson: WESTFIELD TF; Howard Holz, 1120 Black Berry Way, Billings, MT 59106
6. **Roster of persons who attended the pre-application neighborhood meeting:** please attach to this form Attached
7. **A copy of the meeting notice.** please attach to this form Attached
8. **A brief synopsis of the meeting results.** please attach to this form Attached
9. **The undersigned affirm the following:**
 - 1) The pre-application neighborhood meeting was held on the 1st, day of September, 2020.
 - 2) The zone change application is based on materials presented at the meeting.

Owner (s): Yegen Grand Ave Farm, Inc Telephone: 406-252-0163
Address: P.O. Box 459 Email: chas@pyegen.com
Billings, MT 59103

Agent (s): Charles G. Yegen Telephone: 406-252-0163 ext 108
Address: P.O. Box 459 Email: chas@pyegen.com
Billings, MT 59103

September 8, 2020

Zone Change Request

As a farm in west Billings since the spring of 1889, maintaining an attractive and productive agricultural unit has been a top priority for us.

Over the years it has become increasingly difficult to move equipment and livestock about the place with increased traffic and divisions of the farm as a result of additional community needs to provide safety to the motoring public.

Having now been divided by Zimmerman Trail we decided that the continuation of farming operations amidst the increased traffic flow was difficult and dangerous and that it was time to consider the subdivision and development of the operation to reduce the risk to ourselves and our fellow citizens. We took that first step in the early 2000's.

As we wanted to not have the property run the risk of what we may consider to be development not indicative of our long standing stewardship of the land, we took it upon ourselves to create a detailed and far reaching Planned Development Agreement with the City of Billings. In that effort we restricted a number types of development or sequestered different types of development into different areas. That is where we find ourselves today with this request to amend our PDA.

This effort does not represent a diminution of the established, highly specific, design, architectural and landscaping guidelines, or the oversight thereof, that have been established. Rather, we feel, this will afford us additional opportunities that have come to bear on the current real estate market, to responsibly develop the land.

Considerable time was spent on layout so as to encourage pet ownership, bicycle and pedestrian activities, pleasant landscaping of various types with specific intent related to shielding and safety. We have also been quite specific about lighting and maintenance.

We do feel as though we have a responsibility to Billings and the surrounds areas and as a result our guidelines reflect that desire.

We intend to continue to be good neighbors and support schools, and first responders in any way we can. They have been so important to us in all of our efforts to make Billings and even better place than it now is.

Your time in reviewing this application to our PDA is appreciated.

Sincerely,



Synapsis of Neighborhood Meeting

September 1, 2020, 6:00 PM

Meeting was held at 3100 Meadowview Drive

Handouts of Meeting Notice were available

Visual Aids of requested changes were on site

Discussion of the notice and intent were given to attendees

Questions regarding access were discussed with attendees

Meeting was adjourned

9-1-2020

EBO @ Cardwell Ranch Neighborhood meeting begin 4:00 PM

Charlie Yegen

Jerry Mueller

~~PC Yegen~~
~~Kathy W.~~
~~John J.~~

End 6:35 PM

—

August 25, 2020

Zone Change Pre-Application Neighborhood Meeting Announcement

Date: September 1, 2020

Time: 6PM

Location: 3100 Meadow View Drive (at the round-a-bout)

Regarding: 1. Block 2, Lot 4A, Cardwell Ranch Subdivision 1st Filing, 3340 Sagegrass Dr., and
2. Block 2, Lot 15A, Cardwell Ranch Subdivision 1st Filing, 1310 30th St. W

For the purpose of amending,

Planned Development Agreement of the East 80 at Cardwell Ranch

Yellowstone County Document 3484266 Filed October 24, 2008

Pages 4, 5, 6, 7 & 8 (attached)

Proposed amendments;

Article IV; Permitted Uses in Planning Area 1 and Planning Area 2 (Community Commercial)

1. Remove Lot 15A from Planning Area 1 (IV, B, page 4)
2. Place Lot 15A into Planning Area 2 to allow Multi-Family Development (IV,B, pages 4&5)
3. Remove requirement for Special Review Approval in Planning Area 2 (IV, B, page 5)
4. Remove D, Special Review Procedure and Criteria in its entirety. (IV, D, page 7&8)

The purpose for this request is to provide opportunities for additional multi-family development and increase marketing possibilities by the owner, Yegen Grand Avenue Farm, Inc., while still conforming with the Planned Development Agreement mentioned above. The real estate market in Billings has changed, considerably, since 2008, and changes sought will provide opportunities to react thereto.

Enclosed please find;

1. Cover Page and Pages 4-8 of the Planned Development Agreement for East 80 at Cardwell Ranch.
2. Area maps for lot 4A and 15A showing;
 - a. 300' ownership
 - b. Dimensions
 - c. Acreage
 - d. location

We would like to thank you for your comments and input on these proposed changes.

This will be an out of doors meeting to allow for proper social distancing yet still allow an opportunity for all concerned voices to be heard.

Thanks very much for you time and for being such good neighbors.

Sincerely,



Charlie Yegen

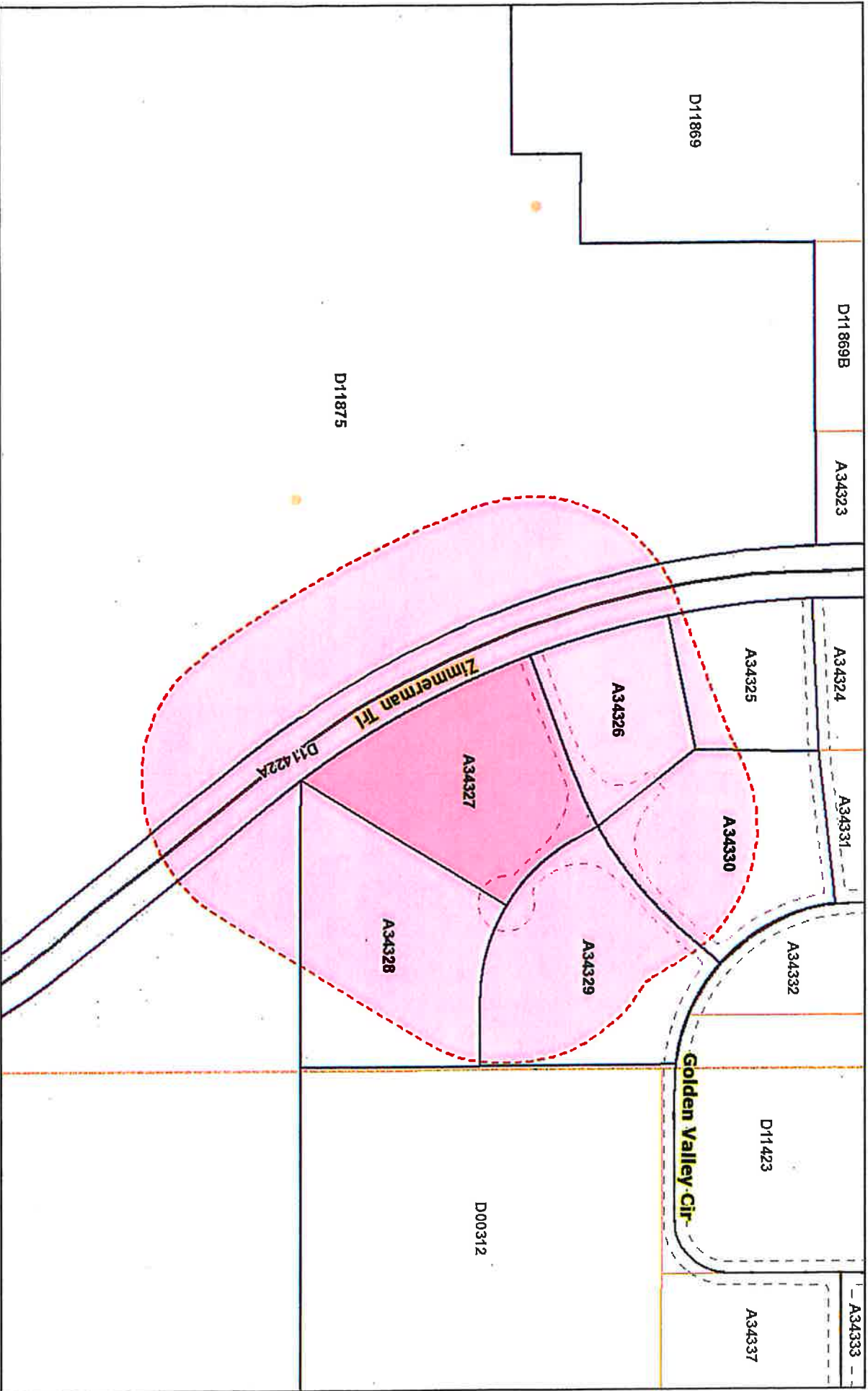
President, Yegen Grand Avenue Farm, Inc.

P.O. Box 959

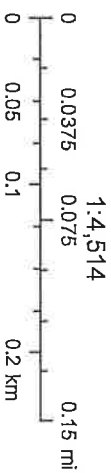
Billings, MT 59103

406-252-0163 ext. 108

Lot 4A Block 2 Cardwell Ranch PD Zone Change



July 24, 2020

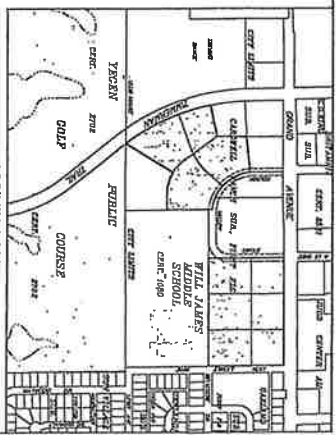
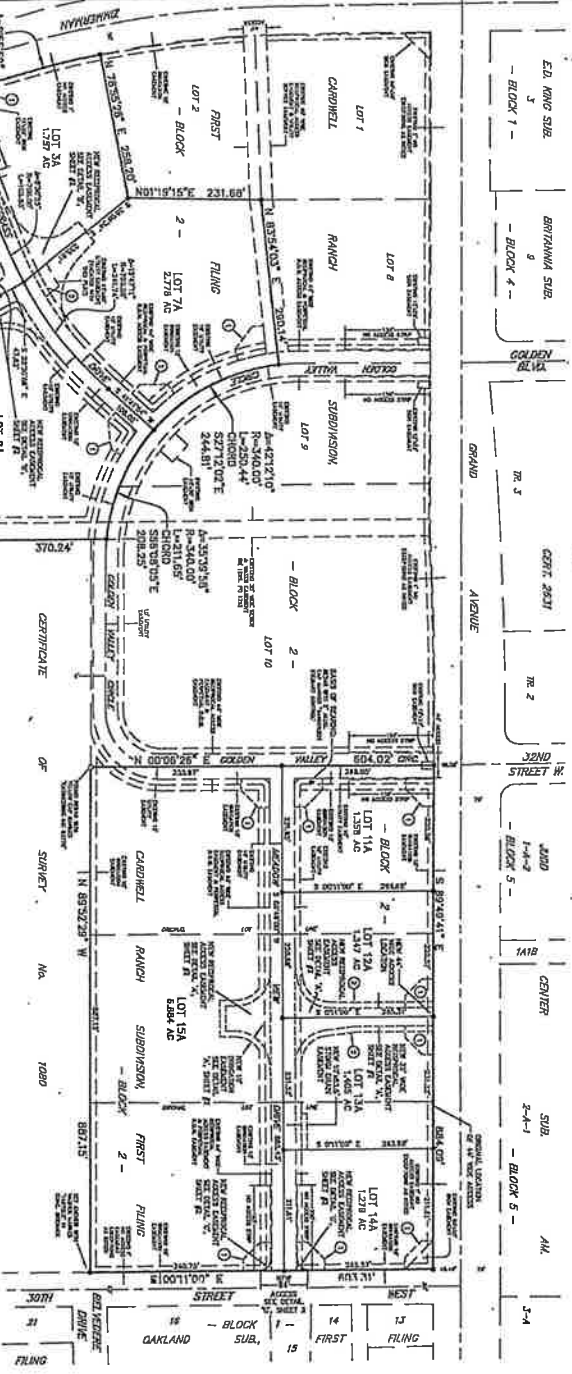


Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

AMENDED PLAT OF LOTS 3, 4, 6, 7, 11, 12, 13, 14, 15 & 16, BLOCK 2,
CARDWELL RANCH SUBDIVISION, FIRST FILING
 SITUATED IN THE NW1/4 OF SECTION 1 & THE NE1/4 OF SECTION 2, T. 1 S., R. 25 E., P.M.M.,
 IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED BY: SANDERSON STEWART

BILLINGS, MONTANA
 AUGUST, 2017



THIS PLAT HAS BEEN PREPARED TO (1) AGGREGATE ADJACENT PARCELS (2) RELOCATE THE BOUNDARY LINES OF ADJACENT PARCELS, (3) RELOCATE AN EXISTING ACCESS ON GRAND AVENUE, (4) REVERSE AN EXISTING ACCESS ON 30TH STREET WEST, (5) CREATE ADDITIONAL RECIPROCAL ACCESS EASEMENTS AND (6) & REVERSE IRRIGATION & UTILITY EASEMENTS. NO ADDITIONAL LOTS ARE BEING CREATED WITH THIS PLAT.

LANDOWNER STATEMENT: AGREEMENT OF LOTS BOUNDARY LINE RELOCATION, ACCESS RELOCATION

The undersigned hereby certify that the purpose of this agreement is to aggregate and relocate the boundary lines of adjacent parcels and to reverse an existing access on Grand Avenue, to reverse an existing access on 30th Street West, to create additional reciprocal access easements and to reverse irrigation and utility easements. No additional lots are being created with this plat. The undersigned hereby certify that the purpose of this agreement is to aggregate and relocate the boundary lines of adjacent parcels and to reverse an existing access on Grand Avenue, to reverse an existing access on 30th Street West, to create additional reciprocal access easements and to reverse irrigation and utility easements. No additional lots are being created with this plat.

YEGEN GRAND AVENUE FARM, INC.
 By: *[Signature]* Title: *[Title]*

CITY OF BILLINGS, MONTANA
 By: *[Signature]* Title: *[Title]*

CERTIFICATE OF CITY ATTORNEY
 This document has been reviewed by the City Attorney's office and is acceptable as to form.

CERTIFICATE OF COUNTY TREASURER
 I hereby certify that I have examined the original and duplicate copies of this plat and find that it is in accordance with the provisions of the Montana Subdivision Act.

CERTIFICATE OF SURVEYOR
 I, the undersigned, a duly licensed and sworn Surveyor of the State of Montana, do hereby certify that I have surveyed the above described land and that the same is correctly and lawfully platted.

SANDERSON STEWART
 By: *[Signature]* Title: *[Title]*

SP 38388865
 BILLINGS, MONTANA

NOTES: ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF. ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.
 1. THE SURVEYOR HAS BEEN ADVISED THAT THE SUBDIVISION IS BEING PLATTED FOR THE PURPOSES OF A RESIDENTIAL DEVELOPMENT.
 2. THE SUBDIVISION IS BEING PLATTED IN ACCORDANCE WITH THE MONTANA SUBDIVISION ACT.
 3. THE SUBDIVISION IS BEING PLATTED IN ACCORDANCE WITH THE MONTANA SUBDIVISION ACT.
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 9. THE SUBDIVISION IS BEING PLATTED IN ACCORDANCE WITH THE MONTANA SUBDIVISION ACT.
 10. THE SUBDIVISION IS BEING PLATTED IN ACCORDANCE WITH THE MONTANA SUBDIVISION ACT.

NEW SIGN
 EASEMENT DETAIL
 NOT TO SCALE

September 8, 2020

Zone Change Pre-Application Meeting Affirmation

City of Billings Zone Change

Property Address

1. 3340 Sagegrass Drive, Billings, MT 59102
2. 1310 30th St. W., Billings, MT 59102

Legal Description;

1. Cardwell Ranch Sub 1st Filing (10), S01, T01S, R25E, Block 2, Lot 4A Amd (18)
2. Cardwell Ranch Sub 1st Filing (10, S01, To1S, R25E, Block 2, Lot 15A Amd (18)

Present Zoning; Planned Development Agreement, Community Commercial

Proposed Zoning; Planned Development Agreement, Community Commercial, text change allowing Planning Area 2 to Permit Multi-Family WITHOUT Special Review, Lot 4A, Planning Area 2, to provide for Multi-family uses without Special Review and to move Lot 15A from Planning Area 1, Community Commercial with no Multi-Family uses, to Planning Area 2, permitted Multi-Family use without Special Review.

Neighborhood Task Force; West End Task Force

Chairman; Howard Holz, 1120 Black Berry Way, Billings, MT 59106

Statement;

For the purpose of amending Planned Development Agreement for the East 80 at Cardwell Ranch Yellowstone County document 3484266, filed 10-24-2008, pages 4,5,6,7 & 8

Article IV; Permitted uses in Planning Area 1 and Planning Area 2 (Community Commercial)

1. Remove Lot 15A from Planning Area 1
2. Place Lot 15A into Planning Area 2 to allow for Muti-Family development
3. Remove requirement for Special Review Approval in Planning Area 2
4. Remove Section D, Special Review Procedure and Criteria in its entirety
Lot 4A is comprised of 3.167 Acres, Lot 15A comprised of 6.884 Acres, Total 10.051 Acres

Subject Property Map; attached in Plat form

Roster of Persons who attended pre-application neighborhood meeting;

1. Charles G. Yegen
2. Jerry Mueller
3. Peter Charles Yegen
4. Peter Yegen IV

Meeting Notice; attached

Synopsis of Meeting;

Called to order, 9-1-2020 at 3100 Meadow View Dr., at 6:10 PM by Charles G. Yegen.

- a. Meeting notices were available, 17"x24" illustrations were posted.
- b. Discussion of notice and intent thereof; to provide additional marketing opportunities for Yegen Grand Avenue Farm Inc., by allowing for Multi-Family development without Special Review.
- c. Question regarding access by Mr. Mueller. Mention was made of west side of Golden Valley Circle, RIRO, across from Golden Blvd, Full access at Golden Valley Circle at Grand and 32nd, and at Grand and 30th St W, RIRO between Golden Valley and 30th St W, and eventual development of Sagegrass Drive to Zimmerman Trail. The concern had to do with school oriented traffic in the morning and the evening and those concerns and access discussion answered Mr. Mueller's concerns.
- d. The meeting was adjourned at 6:35 PM.

Affirmation

- a. The pre-application meeting was held on September 1, 2020, based upon materials provided by mail to all names provided by MT DOR and certified by the Yellowstone County and Recorder
 1. Recorded Owner; Yegen Grand Avenue Farm, Inc.
 2. Owner's address; P.O. Box 959, Billings, MT 59103
 3. Owner's phone; 406-252-0163 E-mail Chas@pyegen.com
 4. Applicant; Charles G. Yegen, President YGAF
 5. Applicant's address; P.O. Box 959, Billings, MT 59103
 6. Applicant's phone; 406-252-0163 E-mail chas@pyegen.com
 7. Date 9-8-2020

Cardwell Ranch PD Amendments
Zone Change 986
September 2020
Proposed PD Amendments

ARTICLE IV - REGULATION OF USES ACCORDING TO PLANNING AREA

B. Permitted Uses in Planning Area 1 and Planning Area 2 (Community Commercial). The uses listed below are permitted in Planning Area 1 of The East 80 at Cardwell Ranch. Planning Area 1 shall consist of ~~proposed~~ Lots 1 and 2 of Block 1, and ~~proposed~~ Lots 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, ~~15~~, and 16 of Block 2 as amended. These uses, which are generally commercial in nature, are also permitted in Planning Area 2. Planning Area 2 shall consist of ~~proposed~~ Lot 4A and Lot 15A of Block 2. Multi-family uses are only allowed in Planning Area 2, ~~and then only upon Special Review approval~~. No uses are permitted other than those specifically listed below or that are determined to be analogous in accordance with Article IV.FE. ~~Uses followed by "SR" (Special Review) may only be permitted with consent of YGAF, Inc. and after Special Review approval as described in Article IV.D.~~ Some uses may also be subject to a special level of review by YGAF, Inc. or the Association under private covenants or other agreements, including in particular, but not limited to, those designated with an asterisk (*).

- Accessory detached structures associated with a permitted principal structure *
- Adult foster family care homes (up to four aged or disabled adults) *
- Animal boarding facilities ~~(SR)~~ *
- Administrative and research facilities *
- Animal groomers
- Art galleries
- Assisted living facilities ~~(SR)~~ *
- Auto parts supply ~~(SR)~~ *
- Bakeries
- Banks, credit unions, and savings and loan facilities
- Barber and beauty shops
- Bicycle sales, rental, and repair shops
- Boarding, lodging and bed and breakfast houses
- Bookstores
- Breweries associated with eating establishments ~~(SR)~~ *
- Broadcast station offices (but all antennae and satellite dishes must comply with other provisions of this Agreement) *
- Building supply stores and hardware stores (but no lumber yards) ~~(SR)~~
- Bus stops
- Camera, hobby, toy, and gift stores
- Car wash, only if incidental to fuel sales ~~(SR)~~ *
- Casinos and gambling activity, as defined in M.C.A. § 23-5-112, if incidental to another permitted use and with written consent of YGAF, Inc. *
- Ceramics and pottery shops
- Charitable, educational or nonprofit institutions
- Child day care centers (up to 13 children)
- Churches, synagogues, and places of worship ~~(SR)~~ *
- Clinics, medical, dental, and surgical for the care of human patients
- Clothing and apparel stores
- Community centers
- Convalescent, nursing, and retirement homes
- Convenience and specialty food stores (but no fuel sales except upon Special Review)
- Cultural, educational, and instructional facilities
- Denturists
- Department stores *
- Drive-through facility ~~(SR)~~ *
- Drug stores ~~(SR)~~ *
- Eating establishments (alcohol served) ~~(SR)~~ *
- Eating establishments (no alcohol served) ~~(SR)~~ *

- Educational and instructional facilities including public and private elementary and secondary schools, colleges, universities, professional schools, and junior colleges (but not trade schools) ~~(SR)~~ *
- Finance and loan companies
- Fire stations ~~(SR)~~ *
- Florists
- Flower shops and nurseries (provided that there is no outside storage)
- Food and grocery stores
- Fuel stations – gas or diesel (but not to include truck stops as defined by Section 27-201 of the Unified Zoning Regulations and prohibited below) ~~(SR)~~ *
- Furniture – retail only
- Greenhouses for on-site, retail sales if incidental to another permitted use
- Hardware and appliance – retail only
- Health clubs and fitness related businesses
- Hospitals *
- Hotels and motels
- Jewelry stores
- Laundry and/or dry cleaning drop-off and pickup store without drive-through facility
- Laundry and/or dry cleaning drop-off and pickup store with drive-through facility (SR) *
- Libraries, museums, and art galleries
- Liquor stores
- Medical clinics
- Membership organization offices
- Minor component assembly incidental to another permitted use
- Multi-family residential (Planning Area 2 only) ~~(SR)~~
- Offices – all, including business professional, medical, and dental
- Office equipment stores – retail only
- Office supply and equipment, copying and mail services stores – retail only
- Open spaces, park areas, water amenities, community gardens, athletic fields, bike trails, playgrounds, and walking paths
- Park Land and Open Space
- Parking facilities, including above or below ground parking garages *
- Pet stores
- Pharmacies
- Photo studios, shops, and processing – retail only
- Physical therapy facilities
- Police stations ~~(SR)~~ *
- Postal service facilities without truck terminal facilities
- Public administration facilities, including government facilities, except correctional institutions
- Rehabilitation centers
- Rental car dealerships ~~(SR)~~ *
- Retail stores
- Retirement homes *
- Same-day medical care centers
- Sports medicine and rehabilitation facilities
- Surgery centers *
- Theaters
- Veterinary clinics and hospitals *
- Wine stores
- Any additional use permitted in a Community Commercial zoning district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning Regulations ~~and after Special Review approval~~, provided that such use is not otherwise limited or prohibited herein. *

~~D. Special Review Procedure and Criteria.~~

~~1. Procedure. The City of Billings may authorize the uses described in Article IV by granting Special Review approval if the proposed use conforms to the following standards and criteria. All applications for special review shall include the information required by the Unified Zoning Regulations. The procedure for reviewing the request shall conform to the Unified Zoning Regulations.~~

~~2. Criteria to be Considered. In considering a special review request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:~~

~~a. YGAF, Inc. has given its written consent to the special review request.~~

~~b. The proposed use is consistent with the terms, intent and objectives of this Agreement.~~

~~c. The proposed use is compatible with surrounding uses or is otherwise sufficiently screened and separated from adjacent land in such a way that any adverse effects are adequately mitigated.~~

~~d. The proposed use will not attract large volumes of vehicular traffic that will create traffic congestion that cannot be safely and effectively managed and regulated with proper design and traffic control equipment.~~

~~e. The proposed use meets architectural design guidelines or will use an existing building for its purposes.~~

~~f. Minimum visual and functional conflict will be created between the proposed use and nearby uses.~~

~~g. Anticipated noise and congestion created by the use will be comparable to the levels created by other uses in the vicinity.~~

~~h. The use shall not require servicing or deliveries of materials, stocks, or supplies by trucks having more than three (3) axles.~~

~~i. The proposed use will not be materially detrimental to other properties.~~

~~E.D. Prohibited Uses in All Areas. The following operations and uses shall not be permitted on any property in The East 80 at Cardwell Ranch, regardless of where the property is located:~~

~~F. E. Analogous Uses. If a use is not specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by YGAF, Inc.~~

~~G. F. Procedure for Obtaining YGAF, Inc. Approval. Any developer of property in The East 80 at Cardwell Ranch shall obtain the written approval of YGAF, Inc. prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the developer first presents written evidence of YGAF, Inc.'s approval. Neither YGAF, Inc. nor the City shall approve the developer's application unless the proposed development complies with the requirements of this Agreement.~~



City Zoning Commission

Meeting Date: 10/06/2020

SUBJECT: Special Review 986 - 3189 King Avenue West - Beer and Wine with Gaming

THROUGH: Monica Plecker

PRESENTED BY: Karen Husman

Information

REQUEST

Special Review 986 – 3189 King Ave. W. Beer & Wine with Gaming – A special review request to allow a beer and wine license with gaming for a 2,500 square foot tenant space within a 7,913 square foot multi-tenant building, in a Community Commercial (CC) zone, on Block 17A, Lot 2, Lampman Sub., a 39,907 square foot parcel of land. Presented by: Karen Husman, Planner I.

RECOMMENDATION

Planning staff is recommending conditional approval of the special review request. The recommendation is based on the findings of the review criteria presented in the Summary section of this report.

APPLICATION DATA

OWNERS: DAJ Enterprises, LLC

AGENT: Josh Benson

PURPOSE: to allow a beer & wine license with gaming

LEGAL DESCRIPTION: Block 17A, Lot 2, Lampman Sub

ADDRESS: 3189 King Ave W

EXISTING LAND USE: Commercial restaurant

PROPOSED LAND USE: Restaurant with beer & wine and gaming

EXISTING ZONING: CC

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	SPECIAL REVIEW #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
SURROUNDING PROPERTY	Special Review #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
3141 King Av. W	435	6/10/92	All Bev.	Y	Western Empire Emporium
3121 King Av. W	527	6/6/94	Beer/Wine	Y	Western Executive Inn
3032 King Av. W	757	5/24/04	Beer/Wine	Y	Johnny Carino's
3042 King Av. W	954	4/24/17	All Bev.	Y	Restricted Gaming
927 S 32nd St W	868	10/27/08	All Bev.	Y	Doc & Eddy's West
927 S 32nd St W	788	6/27/05	Beer/Wine	Y	Doc & Eddy's West
3150 King Av. W	784	6/27/05	All Bev.	Y	Magic Diamond Casino

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-60
Land Use: Residential Single family & Residential Two-family
SOUTH: Zoning: CI
Land Use: Gas Station, Casino, Pawn Shop, Tire Store
EAST: Zoning: CC
Land Use: Western Empire Emporium
WEST: Zoning: PD
Land Use: Multi-tenant retail and office space

BACKGROUND

This is a special review request to allow a beer and wine license with gaming for a 2,500 square foot tenant space within a 7,913 square foot multi-tenant building, in a Community Commercial (CC) zone. The applicant is planning to partner with the Pie Guys Pizza, allowing the expansion of their business to allow sit down dining with the service of beer or wine. They anticipate the placement of the beer and wine with gaming will be consistent with the neighborhood characteristics.

Warden's Casinos, the prospective tenant and business partner of Pie Guys Pizza, are proactive in neighborhood involvement and local organizations. They are currently involved and communicating with the Billings Heights Business Association. They are members of the Billings Heights Business Association, and are actively seeking to improve the safety and aesthetics of the their businesses. Expanding the established pizzeria would add approximately 10 to 20 full time positions, adding jobs to the local economy.

The Council has expressed concern with the number of alcohol and gaming locations within the city and how to better regulate these uses to protect neighborhoods, and improve the community character along its commercial corridors. Project ReCode has proposed major changes to how these uses will be regulated including adoption of casino, bar and restaurant definitions, making separation distances non-waivable, changing how those separations are measured, and allowing some alcohol service businesses without special review approval. If this special review is approved and the Project ReCode changes are adopted by the City Council, this location would become legally nonconforming to the required separation from a residential zone for a casino use (350 foot minimum separation with 10 or more gaming machines). If the number of gaming machines is 9 or fewer, then a separation distance of 350 feet is not required from a residential zone.

SUMMARY

Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Zoning Regulations and the 2016 Growth Policy, and 3) the application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

This application conforms to the first criteria in so far that the zoning regulations adopted by the City Council has designated all CC zones can have a liquor license with gaming as long as they go through the special review process. The proposed location and site development complies with the zoning requirements.

The application does meet the second criteria, as it is consistent with the objectives of the 2016 Growth Policy:

Strong Neighborhoods:

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

Neighborhoods sharing a boundary with intense commercial uses can experience conditions detrimental to the quiet enjoyment of the area. The existing buffer between this property and the residential multifamily development to the north ensures the potential negative impacts are mitigated.

Prosperity:

- Successful businesses that provide local jobs benefit the community. Retaining and supporting existing

businesses helps sustain a healthy economy.

The proposed expansion would support a local and successful business and help retain this business in Billings. The COVID-19 guidelines for bars, restaurants and casinos requires more indoor space. Allowing this expansion will improve the sustainability of this business at this location.

The third criteria for special review is whether the proposed use is screened and separated for the adjacent uses to minimize adverse impacts:

- The site has sufficient landscaping and buffering for the adjacent residential area. The proposed site is the southern most unit in a multi unit commercial strip, allowing structural as well as landscape buffering to the northern residential development.

PROPOSED CONDITIONS

1. The special review approval is for the proposed Beer and Wine license and gambling into 2,500 square foot commercial unit in the existing building located at 3189 King Avenue West, Block 17, Lot 2, Lampman Subdivision, a 39,907 square foot parcel of land. No other use is intended or implied.
2. No outdoor seating, outdoor music or outdoor public announcement systems either permanent or temporary will be allowed with this application.
3. Any new lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. New light poles, including the base, shall not exceed 15 feet in total height, measured from the ground to the top of the light fixture. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
4. The applicant will comply with all other city codes including building, engineering and fire codes that may apply to the proposed expansion and use of the building.
5. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

RECOMMENDATION

Planning staff is recommending conditional approval of the special review request.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Site Plan



Subject Property



West



South



North West



East

APPLICATION FORM

COUNTY Special Review

COUNTY Special Review # 986 - Project # P2-20-00199

The undersigned as owner(s) of the following described property hereby request a Special Review as outlined in the Yellowstone County Unified Zoning Regulations.

Present Zoning: Community Commercial

Special Review Requested: Beer + Wine w/ Gaming

TAX ID# C07979 COUNTY COMMISSIONER DISTRICT # 1

Legal Description of Property: Lampman SUBD, 912, T01 S, R25 E, BLOCK 17A, LOT 2 L# 2 BLK 17A LAMPMAN SUBD AMD (1-615 HERE)

Address or General Location (If unknown, contact County Public Works): 3189 King Ave W, Suite A Billings, MT 59102

Size of Parcel (Area & Dimensions): 39,907

Present Land-Use: Community Commercial (vacant)

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): DAT Enterprises, LLC (Recorded Owner)

(Address) 11535 E Caribbean LN Scottsdale, AZ 85255

(Phone Number) 480-670-4222 (email) Dougjenkins250@gmail.com

Agent(s): Josh Benson (Name)

(Address) 312 Falcon Ridge Way Billings, MT 59106

(Phone Number) 763.607.3400 (Email) joshbenson@umgads.com

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 Special Review. Also, I attest that all the information presented herein is factual and correct.

Signature: Douglas Jenkins (Recorded Owner) Date: 8/25/2020

DAT ENTERPRISES, LLC



Special Review application

Question 1A:

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

LAND USE ELEMENT

Issue: Neighborhoods are experiencing pressures from the new development and land use changes.

Goal: Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans.

Objectives:

1. Preserve neighborhood integrity.
2. Empower neighborhood groups.

Answer:

We plan to assist Pie Guys Pizza in expanding their long-standing delivery operation into a sit-down restaurant allowing families to enjoy dine-in eating. The placement of our beer/wine/gaming license offers consistency with current neighborhood characteristics and integrity as two gaming licenses already exist within 100 feet- one directly east and one 150 feet south of the proposed location.

Wardens Casinos are proactive in their involvement of local neighborhood organizations. We are to become involved in local organizations. For example, we are involved with the Billings Heights Business Association. Not only are we a member of this organization, we are actively looking to help improve the safety and aesthetics of the areas our businesses are located.

ECONOMIC DEVELOPMENT ELEMENT

Issue: We need to continue a cohesive focus in economic development.

Goal: Coordinated economic development efforts that target business recruitment, retention, and expansion.

Objectives:

1. Strengthen area economy.
2. Create living-wage jobs.
3. Improve quality of life for residents.

Answer:

The expansion of a long-standing pizzeria and addition of a reputable gaming establishment will add living wage jobs into the local economy. The expanded dine-in restaurant along with gaming is estimated to add approximately 10-20 full time positions into our local economy. This concept will add a

tastefully finished dine in service not yet offered in this area. The reputation of our gaming establishments will also add pressure to local competitors to polish the railing of their own businesses ultimately enhancing the look and feel of the area and increasing the overall quality of life for residents. The added dine in pizza restaurant and gaming establishment will also be an upgrade from the abandoned gas station that occupies the space today.

Issue: Lack of living-wage jobs.

Goal: Increase the median income of households and individuals.

Objectives:

1. Improve the quality of life for residents.
2. Attract and retain businesses that offer competitive wages and benefits.
3. Reduce dependency on social programs.

Answer:

The expansion of a reputable long-standing pizzeria along with a reputable gaming operation would add approximately 15-20 living wage jobs to the area. Those working in our gaming establishment will earn approximately \$25.00 – \$35.00 per hour after calculating tips. The jobs created by expanding Pie Guys into dine-in pizza restaurant will pay approximately \$15.00-20.00 per hour after tips. These wages offer above living wage minimums for Yellowstone County which sits at \$11.05/hour. Our gaming establishments are known for their generous hourly wage as well as added paid time off benefits.

AESTHETICS ELEMENT

Issue: There are areas in the city and county that are unattractive and present a poor image of the community.

Goal: Visually appealing communities.

Objectives: Improve the image of the community.

Answer: We will create a state-of-the-art Pizza parlor and casino, not found in the West End. This will provide a visually appealing interior which will be an upgrade from the abandoned gas station previously located there.

Issue: New development and signs, cell towers, power lines, and other structures could reduce the visual quality of the rims.

Goal: Unobstructed views of the rimrocks surrounding the city of Billings.

Objectives:

1. Improve signage standards.

Answer: Re-finish existing sign to enhance look/feel. We would also be willing to landscape around the bottom of the sign enhancing the sign look.

CULTURAL & HISTORIC RESOURCES ELEMENT

Issue: Historic landmarks and structures are being lost to neglect and development.

Goal: Identification and protection of the historical, archaeological, and cultural resources of Yellowstone County.

Objectives: Improve awareness of historic and cultural resources.

Answer: Warden's gaming establishments are all branded and built to tell the story of my father's career as a prison Warden. We use local history, especially as it ties into prisons or stories of "Old Western Outlaws." We intend to showcase stories significant to the cultural history of Yellowstone County and Billings, especially as it correlates to the story my father's career in corrections. We believe people have a natural interest in the history of their community. When we can tie local history into the career of being a prison Warden, we find it to be a winning recipe, peaking people's interest in the "Wardens" brand.

To capture and preserve the history of Billings and Yellowstone county, we use historical photos, memorabilia, and old newspaper articles. Our intent is to create an establishment offering an ambiance that people feel they are taking a step back into time when walking through our doors, but also being able to relax comfortably in an establishment known for cleanliness. Using rustic finishes and reclaimed barnwood, we can build a modernized and clean establishment, while capturing the old western look and feel our state and community is proudly known for.

Issue: Not all neighborhoods are planned with ways to access nutritious foods for everyone.

Goal: Accessible, affordable, and nutritious food for everyone.

Objectives:

1. Ensure equal opportunities to healthy food sources.
2. Support local farm produce.

Answer: Pie Guys Pizza offers all 100% locally sourced topping and ingredients on their pizza. The creation of dine-in services for Pizza Guys would further help local farmers and offer residents a healthy, organically grown, and locally sourced food option.

Question 1B:

Why is there a need for the intended use of the property at this location?

Answer:

The corner of 32nd and King has no dine-in Pizza option other than take out. The location has been sitting vacant and abandon for nearly a year. As an alternative to an abandoned gas station, we are offering this area of Billings a high end, clean, visually appealing pizza and gaming establishment. This offer will also assist in the expansion of a well established entrepreneur looking to take the next step in his business, while at the same time assisting them in mitigating their risk in doing so.

Question 1C:

How will the public interest be served if this application is approved?

Answer:

This would offer two reputable businesses a chance to partner together to bring something special to the area attracting people from different parts of the city. Pie Guy's offers one of a kind "Niche" pizza using locally sourced ingredients which residents already find appealing. The casino portion of this build out will be a high end buildout and will set the bar and motivate other gaming establishments in the area to also re-invest into their businesses, enhancing both interior and exterior looks of their businesses further improving the area.

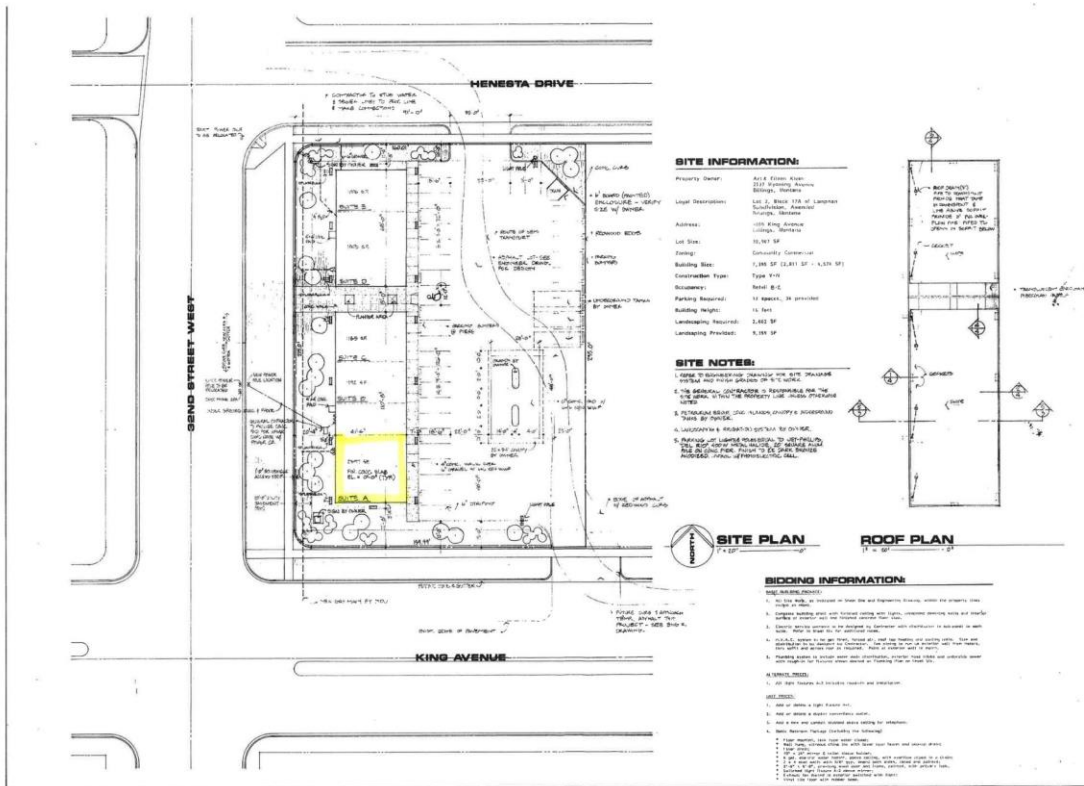
Question 1D:

Prepare a written statement addressing what is intended to be done with the property, and why special review is being sought.

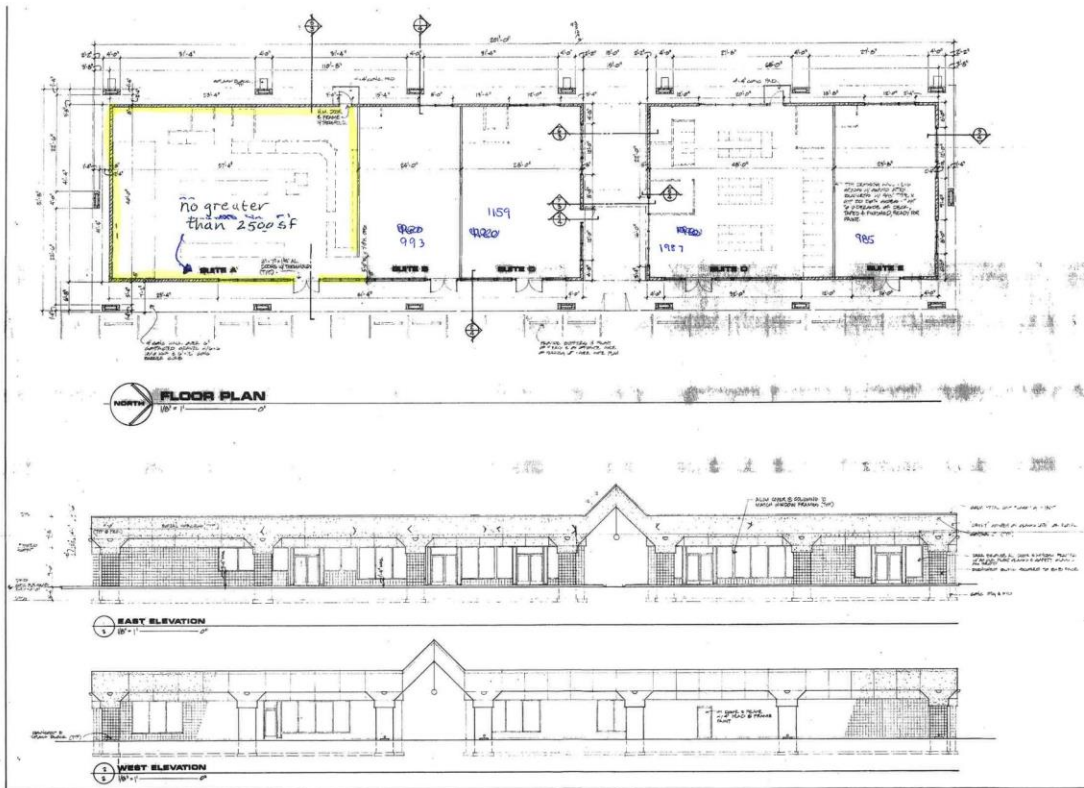
Answer: We intend to place a beer/wine with gaming into this location. The buildout will be a high-end construction project. We intend to partner with the Pie Guys Pizza who currently occupies the suite B next door by helping the business expand their delivery and pick up only, into a full dine-in service pizza establishment. We will serve Pie Guys customers beer/wine with their meals via state approved concession agreement. In addition to the expansion of Pie Guys dine in service, we would like to build a high-end space for 20 gaming machines which would do business as "Wardens Legacy Casino."

Question 2A & B:

See attached



COLLABORATIVE DESIGN ARCHITECTS
 CONVENIENCE/SHOPPING CENTER
 KING AVE. & 32ND STREET WEST
 SITE PLAN & ROOF PLAN
 SET:
 DATE:
 SHEET:
ONE



COLLABORATIVE DESIGN ARCHITECTS
 CONVENIENCE/SHOPPING CENTER
 KING AVE. & 32ND STREET WEST
 FLOOR PLAN & EXTERIOR ELEVATIONS
 SET:
 DATE:
 SHEET:
TWO



City Zoning Commission

Meeting Date: 10/06/2020

SUBJECT: Special Review 987 - 2499 Gabel Road - Relocation of an all Beverage License with Gaming

THROUGH: Karen Husman

PRESENTED BY: Karen Husman

Information

REQUEST

Special Review 987 - 2499 Gabel Road - A special review request to allow an existing all beverage liquor license to relocate from 1911 King Avenue West, Unit 10, to 2499 Gabel Road, a 3,128 square foot building, on Block 4, Lot 3, Cenex Park Sub., an 68,520 square foot parcel of land. Presented by Karen Husman, Planner I

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 3 criteria for Special Review 987.

APPLICATION DATA

OWNERS: King McCall, LLC

AGENT: Jason Palogi

PURPOSE: to allow relocation of an all beverage license with gaming from 1911 King Avenue West

LEGAL DESCRIPTION: Cenex Park Sub. Block 4, Lot 3

ADDRESS: 2499 Gabel Road

EXISTING LAND USE: Commercial

PROPOSED LAND USE: Palagio's Pub and Casino

EXISTING ZONING: CI

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	SPECIAL REVIEW #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
None					
SURROUNDING PROPERTY	Special Review #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
2425 Gabel Rd.	722	6/24/02	All Bev.	Y	And outdoor patio - Jake's Steakhouse
2701 Gabel Rd	769	9/24/04	All Bev.	Y	And outdoor patio - Caribbean Nites Casino
740 S 24th St. W	493	6/21/93	All Bev.	Y	Applebee's
2011 Overland Ave	216	1/7/85	Beer & Wine	Y	Fuddrucker's
2021 Overland Ave	373	1/9/89	All Beverage	Y	Former Jade Palace
2011 Overland Ave	394	11/7/89	All beverage	Y	Fuddrucker's
2250 King Ave	475	11/9/92	All Beverage	Y	Olive Garden/Red Lobster
2300 King Ave	496	8/2/93	Beer & Wine	Y	Rendezvous Casino and Burger Grill
2001 Overland	654	3/22/99	All Bev & patio	Y	Outback Steakhouse
933 S 24th St. W	677	8/28/00	Beer & Wine	Y	No Gaming

SURROUNDING LAND USE & ZONING

NORTH: Zoning: CI
Land Use: Commercial & Industrial
SOUTH: Zoning: CI
Land Use: Commercial & Industrial
EAST: Zoning: CI
Land Use: Commercial & Industrial
WEST: Zoning: CI
Land Use: Commercial & Industrial

BACKGROUND

This is a special review request to allow an existing all beverage liquor license to relocate from 1911 King Avenue West, Unit 10, to 2499 Gabel Road. This is the Palagio's Pub and Casino and is not adding another casino license to the area. The move for this business will add 12 to 15 new positions of employment to the existing staff supporting a need for added jobs in the Billings area. The owner of the establishment has stated (in attachments) the business will bring a safe environment for all who visit as well as staff, stating the 11 years at the current location have had no complaints, robberies or code violations from City of Billings, Department of Revenue, Department of Justice or Gaming Control.

The Council has expressed concern with the number of alcohol and gaming locations within the city and how to better regulate these uses to protect neighborhoods, and improve the community character along its commercial corridors. Project ReCode has proposed major changes to how these uses will be regulated including adoption of casino, bar and restaurant definitions, making separation distances non-waivable, changing how those separations are measured, and allowing some alcohol service businesses without special review approval. If the special review is approved and the Project ReCode amendments are adopted by the City Council, this location will be conforming to the new standards.

SUMMARY

Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Zoning Regulations and the 2016 Growth Policy, and 3) the application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

This application conforms to the first criteria in so far that the zoning regulations adopted by the City Council has designated all CC zones can have a liquor license with gaming as long as they go through the special review process. The proposed location and site development comply with the zoning requirements.

The application does meet the second criteria, as it is consistent with the objectives of the 2016 Growth Policy:

Strong Neighborhoods:

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

Neighborhoods sharing a boundary with intense commercial uses can experience conditions detrimental to the quiet enjoyment of the area. There are no neighborhoods close to this location.

Prosperity:

- Successful businesses that provide local jobs benefit the community. Retaining and supporting existing businesses helps sustain a healthy economy.

The proposed relocation would support a local and successful business and help retain this business in Billings. The COVID-19 guidelines for bars, restaurants and casinos requires more indoor space. Allowing this relocation of license will promote the business at this location.

The third criteria for special review is whether the proposed use is screened and separated for the adjacent uses to minimize adverse impacts:

- The proposed site is not near or adjacent to any residential development. Improvements to the site will include some buffering from neighboring properties, however the impact to these properties from the new business should be minimal.

PROPOSED CONDITIONS

1. The special review approval is for an existing all beverage liquor license to relocate from 1911 King Avenue West, Unit 10, to 2499 Gabel Road, a 3,128 square foot building, on Block 4, Lot 3, Cenex Park Sub., an 68,520 square foot parcel of land. No other use is intended or implied.
2. No outdoor seating, outdoor music or outdoor public announcement systems either permanent or temporary will be allowed with this application.
3. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. All new light standards will be a maximum of 15 feet in height including the base, as measured from the ground to the top of the light fixture. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
4. 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.
5. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

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

Zoning Commission Action

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

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

Before recommending approval of a special review use, the Zoning Commission shall find that the contemplated use:

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

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

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

RECOMMENDATION

The Planning Division recommends conditional approval and adoption of the findings of the 3 criteria for Special Review 987.

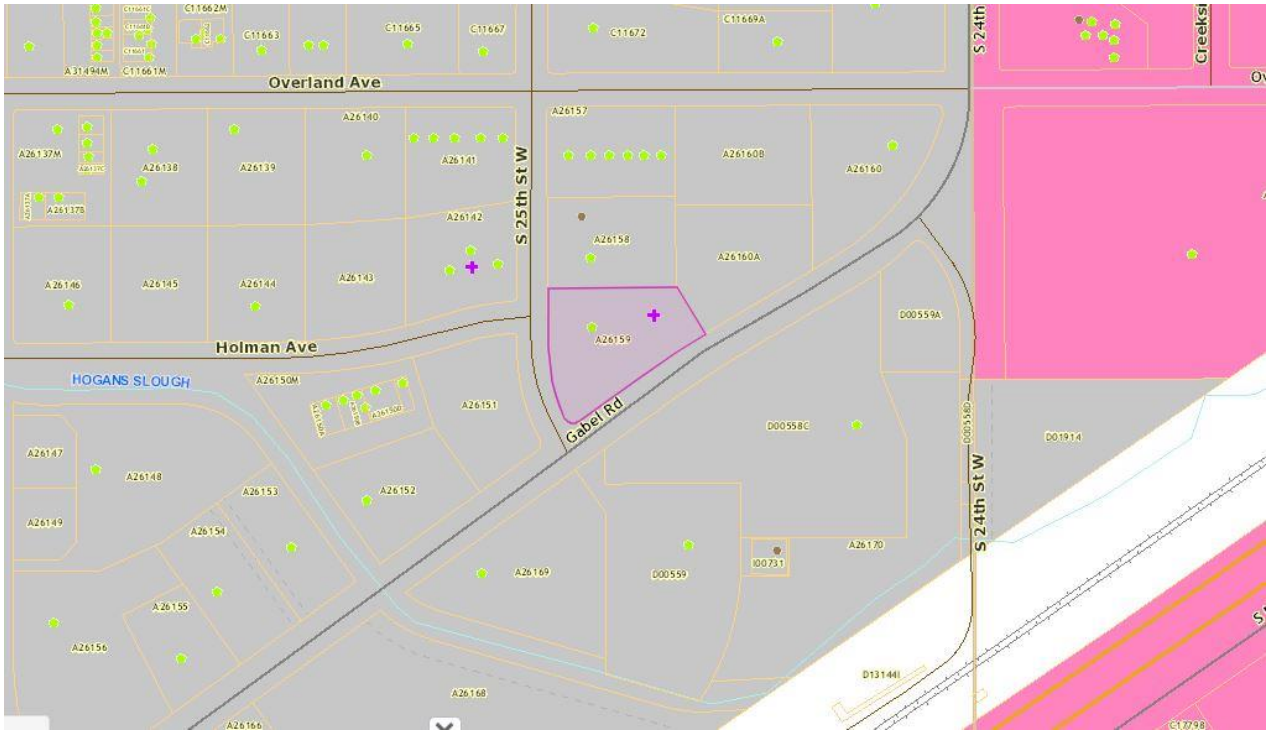
Attachments

Zoning Map & Site Photos

Application & Applicant Letter

Site Plan

Zoning Map & Site Photos





Subject Property



Looking Northeast



North



South west



South



South

APPLICATION FORM

CITY SPECIAL REVIEW

Billings Special Review# 987 - **Project #** P2-20-00208

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

Present Zoning: 374 - multi-purpose, retail, multi-occupancy C1

Special Review Requested: moving location from 1911 King Ave w #10 Billings MT to 2499 Gabel Rd 3128 sf existing building

TAX ID# A26159 CITY ELECTION WARD # _____

Legal Description of Property: Cenex Park Sub, S13, T01, S, R25 E Block 4, Lot 3

Address or General Location (If unknown, contact City Engineering): 2499 Gabel Rd #627 Billings, MT 59102

Size of Parcel (Area & Dimensions): whole building lot 68520

Present Land-Use: Retail, multi-purpose, multi-occupancy

Covenants or Deed Restrictions on Property: Yes _____ No

If yes, please attach to application

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

Owner(s): King McCall LLC / Jim Rantson
(Recorded Owner) P.O. Box 5, 25th St W Billings, MT 59108
(Address) 406-690-4452
(Phone Number) _____ (email) _____

Agent(s): Jason Palosi
(Name) 2931 Stillwater Drive Billings, MT 59102
(Address) 406-697-6393
(Phone Number) _____ (Email) jpalos11@gmail.com

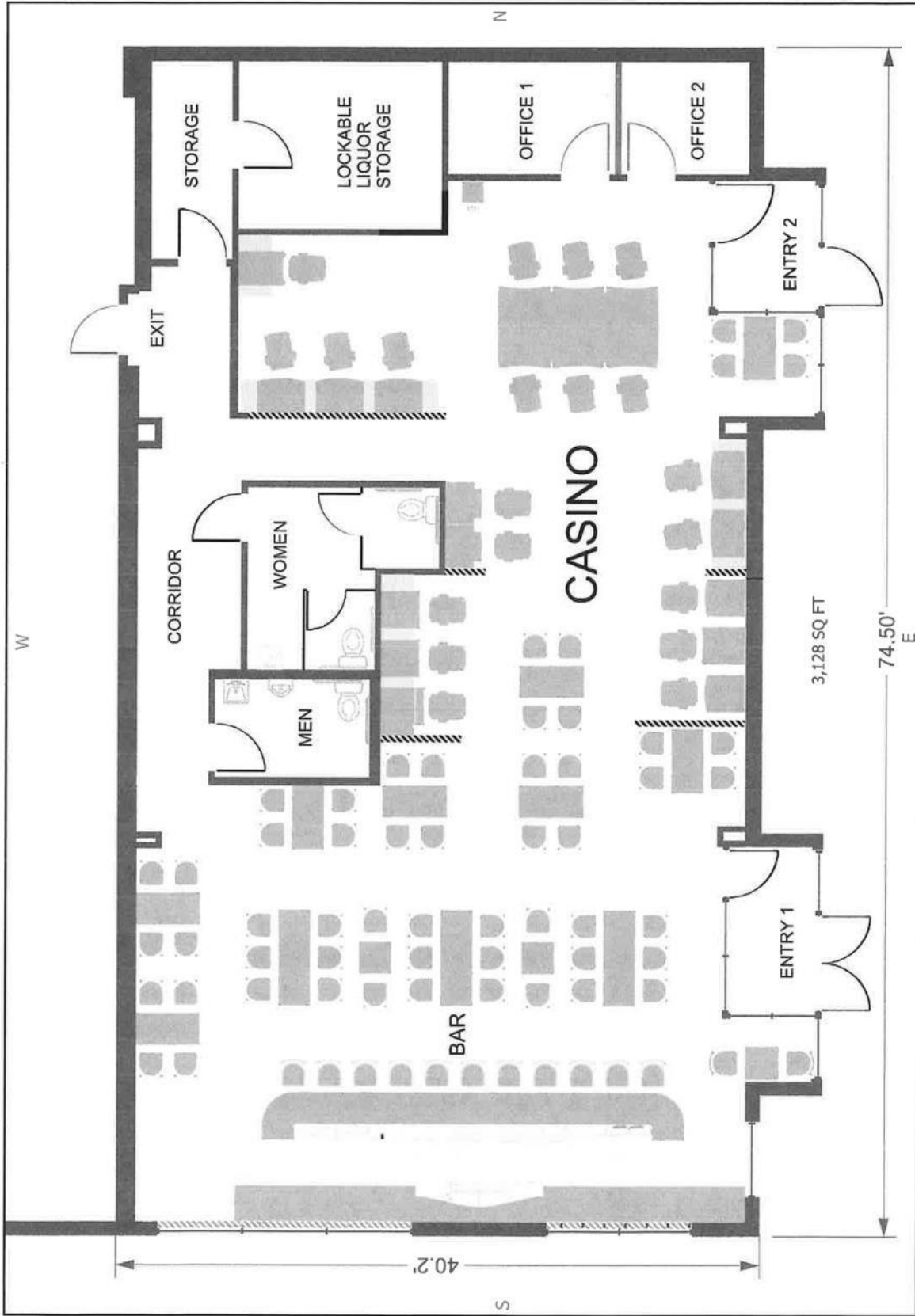
I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Special Review. Also, I attest that all the information presented herein is factual and correct.

Signature: Jason Palosi (Recorded Owner) Date: 9-4-20



Several reasons for Palagio's Pub and Casino relocating is #1 my landlord owns several businesses in my current strip mall (1911 King Ave W. #10 59102) and he now is in the process of opening his own casino and is choosing to either not renew my lease or raise my rent to where the business can't with stand it.

- A. The new move is not adding another license to the west end but just a transfer of our current one. To adapt to the growing challenges of today's time is crucial to the survival of our business, employees and our distributors.
- B. We will bring a fun, clean, and safe environment for all who choose to visit this location. I have been at my location for the past 11 years with no complaints, robberies, no violations on behalf of the city of Billings, the Dept. of Revenue, the Dept. of Justice, or gaming control.
- C. Upon our arrival at this location we will be adding 12-15 new positions from our current employees of 6, and in these uncertain times and people losing their businesses, jobs, home's, etc. we will continue to grow and keep staff employed. Our plan to open is like no other business in that area. Yes there are bars, casinos, restaurants, but we will not serve food, we will not be just a bar or just a casino. Our place will be on the upper end of the spectrum and therefore will keep the business class minded people there, such as the other great business around us (Jakes, Trailhead Spirits, By All Means) we will offer diversification for another great business on Gabel Rd.
- D. There will be minimal work done to the property but the work that is being done, is safety for everyone, owners, and property. We will be putting full sprinklers in with a monitory system as required by the state. We will also insure that all bathrooms, doorways, etc. are ADA quality. Minor plumbing and electrical will need to be done for our bar station, and casino, fire suppression system. All F, F & E will be top notch and will drive and or keep the money in that Gabel district.
- E. In conclusion we hope you accept our option to move and grow our family business. There are no churches, schools, residential zoned areas near our proposed move, therefore we see no issues regarding the move and we look forward to a new challenge and hope you can help us to get there. Thank you very much for your time and consideration.



Cashbox Bar & Casino
 2499 Gable Rd. Billings, MT

1/8" = 1'-0"

8-28-20