

September 1, 2020

To the Members of the City Zoning Commission,

The Heights Task Force wishes to express its opposition to the proposed zone change that would facilitate new development to the west of the Cherry Creek mobile home park. Heights Task Force members have been actively involved in conversations with representatives of the developer, seeking answers on a number of critical concerns. To date, those concerns have been either dismissed or ignored. The concerns of the Heights Task Force, as outlined below, show that on a number of points, the proposed zone change falls short of the 10 criteria that the Commission considers in approving a zone change. Because the proposed zone change does not meet all 10 criteria, the Heights Task Force respectfully requested that the application be denied.

The Cherry Creek Manufactured Home Park (Cherry Creek MHP) is a high-density neighborhood that is already experiencing challenges with public safety, transportation, student safety, and access to parks and recreation. Facility operations and maintenance by the previous Cherry Creek MHP owners – the same developers on this proposed zone change and project – have been problematic for many residents. A satellite image of the neighborhood is provided on the last page of this letter to allow the Commission a better visual on the density of the area.

### **Criterion #3 – Public Health/Public Safety/General Welfare**

Crime in this neighborhood is already a significant concern. Allowing higher density development that exacerbates the overcrowding in the area will certainly continue to place the safety and general welfare of people living in this neighborhood at risk. During multiple Heights Task Force meetings, residents of the Cherry Creek MHP have indicated that crime is a serious concern. In just the last week, there has been a theft, an assault, and three disturbing the peace incidents in the area of the proposed zone change.

Allowing more high-density development will make these conditions worse, not better. During a recent Task Force meeting, a member of the Billings Police Department indicated that calls to the area typically require two police cars to respond, as weapons are often involved. Increasing the density of development in this area is not consistent with promoting public safety or the general welfare of the neighborhood.

### **Criterion #4 – Transportation/Water/ Sewerage/Schools/Parks/Other Public Requirements**

Traffic congestion in the area remains a significant concern at current levels, without the addition of 600-800 vehicle trips per day. In particular, neighbors have indicated that a large number of students are waiting on the corner for busing, as school buses do not enter the Cherry Creek MHP. The combination of additional students waiting for the bus with no shelter or safe waiting area and hundreds of additional vehicle trips per day is a meaningful safety concern that the Zoning Commission should consider.

Similarly, both the developer application and the staff memo seem to disregard the measurable impact on nearby public schools. Beartooth Elementary serves this neighborhood and is already, according to the developer, at 92% occupancy. Medicine Crow Middle School is currently operating at a similar

enrollment rate. The proposed zone change would allow a higher density of housing, meaning that more children are likely than if the area retained its current zoning. An influx of families to the project area would push both Beartooth and Medicine Crow to near capacity, and that is without factoring in other projects under development in the same area. Further, Billings Public Schools is indicating record enrollment this year, meaning that ordinary community growth is already putting a strain on existing elementary facilities. Retaining the current zoning is the best way to limit adverse impacts on neighborhood schools.

The project developers have indicated they will not develop any parks or recreation facilities in the area. The Cherry Creek MHP has virtually no recreational space available and residents are indicating that the current property owners are directing that outdoor play equipment be removed. While the current operations of the Cherry Creek MHP are no longer the responsibility of the Applicant, it bears upon the Zoning Commission's consideration that existing recreational options are already severely constrained in the neighborhood. The addition of 66 units to the area without any additional improvements to parks, trails, or recreational space falls far short of the criterion to facilitate the provision of parks through a zoning change.

Finally, many neighbors and property owners in the area have raised multiple questions regarding impacts on water that have been unanswered by the Applicant. Specifically, it is not clear how the proposed zone change, allowing higher density building, would impact neighbors on wells. Because the Applicant does plan to use well water for irrigating the development, neighbors are rightfully concerned about the water table and no information has been provided in response to that concern.

#### **Criterion #6 -- Motorized/Non-motorized Transportation**

As stated above, neighbors in the area have concerns over the current traffic congestion as well as the lack of proposed solutions if the zoning were changed to allow higher density development. The Applicant does not propose to develop any walking trails, bike paths or other neighborhood amenities that would promote the use of non-motorized transportation options.

#### **Availability of Housing Options**

Many of the zoning criteria speak to the desire for diversity in housing options. Throughout the staff memo and the Applicant documents, the need for options other than detached single-family homes is repeated frequently. Yet, the analysis of the zoning change appears to completely ignore the 96-unit duplex and four-plex development in the vicinity of Medicine Crow Middle School. The analysis provided characterizes this area of the Heights as lacking in housing options but fails to mention the Barrett Road project as providing a meaningful number of additional housing options. Further, the Barrett Road project includes improvements to traffic routes, sidewalks and pedestrian pathways, and recreational options – all of which have been expressly rejected as options by the developers of the Cherry Creek project. Considering that there will be an influx of higher density options in the immediate vicinity of the proposed new development, there is no need to change the zoning to facilitate housing diversity in the neighborhood.

#### **Homeowners' Association**

Residents of the Cherry Creek MHP and neighbors in the area have spoken at both task force meetings and the community meeting for this project about the long legacy of broken promises by the Applicant.

Commitments to develop park space, maintain streets and common areas, and improve safety have not been upheld. Residents in the area are rightfully concerned that the same history will be repeated in this project if higher density development is allowed.

It appears that, in response to these concerns, the Applicant is offering to establish a Homeowners' Association (HOA) in the area, which would ostensibly be tasked with maintaining the character of the neighborhood and acting in a way to preserve property values. Unfortunately, establishing an HOA in no way solves the very legitimate concerns of residents in this area. The developer has indicated that some units might be sold, others will be retained by the developers as rental units, and it is impossible to predict now how many units might be sold or rented. Because the developers intend to retain units for rentals, there is a clearly foreseeable scenario in which the developers simply control the HOA. Typically, an HOA operates on the concept of one vote per home, to be exercised by the homeowners themselves. Thus, rental properties held by the developers will give the Applicant multiple votes in an HOA, as it is the property owner, not renter, who votes in a typical HOA. If 51% of the units are retained by the developers, they would then fully control the HOA and have the capacity to override the wishes of other owners in the Association. Both neighborhood residents and the Task Force have requested drafts of the HOA proposal, but no documents have been provided.

The Zoning Commission does not need to consider the existence of an HOA in its evaluation of the 10 zoning criteria, but to the extent that the Applicant is suggesting that concerns about safety, property values, or general development impact can be addressed through the proposed HOA, we would submit that is simply not the case. Absent assurances that the HOA is structured in a way to serve as an entity fully independent of the property developers, the proposed HOA will have no impact on any of the concerns raised by residents or the zoning criteria.

Based on the concerns identified in this letter, the Heights Task Force requests that the proposed zone change be rejected, as it fails to meet all 10 of the zone change criteria. The current zoning allows for responsible housing development that is consistent with the character of the neighborhood without the volume of negative impacts that would be caused by higher-density development.

Thank you for your consideration of these comments.

Sincerely,



Jennifer Owen  
Chair, Heights Neighborhood Task Force



September 1, 2020

Zoning Commission  
2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor  
Billings, MT 59101

Dear Zoning Commission, City Council and Yellowstone County Commissioners:

We are writing this letter in opposition to the proposed zoning change in Cherry Creek Estates from R-96 and P to R-8000. The zoning change will have long term negative effects on the neighborhood and surrounding area. There is no support in the neighborhood for this zoning change.

This is the list of criteria for a zone change from the City of Billings website:

- Whether the new zoning was designed in accordance with the comprehensive plan

This expansion does not comply with the comprehensive plan. In the plan that Cherry Creek submitted in order to get approval for initial buildout, the owners agreed that these areas would be a 'buffer zone' between the trailer houses and the landowners on Bitterroot. That is detailed in the documents that Jason and Lindsay McGimpsey submitted.

- Whether the new zoning was designed to lessen congestion in the streets

This expansion adds 66 new homes in this area. The engineer on this project admitted he had not done a traffic study to assess the current usage. The area already has 370 trailers and now to add 66 more residents, the traffic will only increase. The entry in and out of Cherry Creek is backed up on a regular basis.

- Whether the new zoning will promote health and general welfare.

Adding another 66 units in this area will not promote the health and welfare – the engineer has not yet done a study on how the water/sewer in the new development will affect the wells and septic systems of the homes on Bitterroot Drive. Since the ownership of these units will remain with the Clause family, the idea that the duplexes will be kept up any differently than the trailer court has been is not believable. The trailer court has a long history of buildings that are outside of zoning codes, abandoned vehicles, police visits and convicted sex offenders in residence next to children. While Cherry Creek now is under new ownership, the past history of the Clause family's management of the facility and refusal to enforce zoning regulations indicates that this property would be maintained in a similar fashion. The Clause family has a total disregard to the neighborhood and the overall Heights neighborhoods.

- Whether the new zoning will be secure from fire, panic and other dangers

The duplexes will be dead end streets - the schematic we saw at the meeting does not appear to address whether a fire truck could enter and exit the area safely.

- Whether the new zoning will provide adequate light and air

This new facility will not provide adequate light and air for the existing homeowners. It infringes upon their properties with a large fence and will most likely add to the crime and misc vandalism issues that the current property owners experience.

- Whether the new zoning will prevent the overcrowding of land

Absolutely will be overcrowding – 66 units in that small of an area? There will absolutely be overcrowding.

- Whether the new zoning will avoid undue concentration of population

Absolutely will concentrate people on a small plot of land, with at least 66 new cars in and out, up to 120 cars.

- Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks, fire, police and other public requirements

Given the current level of police calls and fire calls, adding 66 more residences will only add to the number of police and fire calls. Currently, the City of Billings Police department responds to several calls a day at Cherry Creek. The previous management at Cherry Creek (Clause) would not screen residents. It is reasonable based on that previous management style that this new 66 unit development will be the same.

- Whether the new zoning gives reasonable consideration to the character of the district

Absolutely not. All the housing around this area is single family, with the exception of the south side of Wicks lane to the north. Those units are owner occupied and maintained. The single family housing across the street and adjacent to Cherry Creek makes this densely populated proposal foolish.

- Whether the new zoning gives reasonable consideration to peculiar suitability of the property for particular uses

Absolutely not – no consideration to the suitability of the property has been given. This property was meant to be a buffer between the trailer park and the residents. Building 66 units on it will only overcrowd the property

- Whether the new zoning was adopted with a view to conserving the value of buildings

Absolutely not. With the building of these units, the houses to the west will lose their value. The area was meant to be a 'buffer' between the trailers and the house – for the very intent to preserve the value of the existing houses. Adding 66 units of duplexes will undermine the value of the homes.

- Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings.

The most appropriate use of this land is the buffer it was set aside for. The fact that the units will be owned and maintained by the same landowner that built and maintained Cherry Creek should be enough to shut this down.

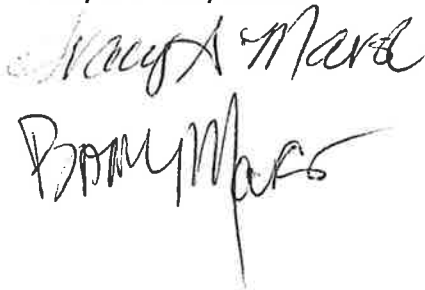
Prior to this application, one was submitted to expand into this area in 2016. After touring the trailer park and looking over the condition of the area and the lack of maintenance and lack of zoning enforcement for buildings, the Zoning board made a recommendation NOT to allow the change. I would like the commission to examine that decision and the reasons for it before considering this one. While Cherry Creek has been sold to a new management group and there is now hope that it will become a more suitable community for the Heights, no guarantees are made.

Since this would be managed by the same people that couldn't manage and maintain Cherry Creek, I would ask the commission to vote "NO" on this expansion request also.

Sincerely,

Tracy Marsh

Barry and Tracy Marsh

The image shows two handwritten signatures in black ink. The top signature is for Tracy Marsh, written in a cursive style. The bottom signature is for Barry Marsh, also in cursive, with a long vertical stroke extending downwards from the end of the name.

## **Bartley, Robbin**

---

**From:** Ed Hostettler <edhostettler@yahoo.com>  
**Sent:** Tuesday, September 1, 2020 10:16 AM  
**To:** Bartley, Robbin  
**Subject:** [EXTERNAL] Comment for Zoning Commission meeting 9/1/20

---

**ATTENTION:** This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

---

Dear Members:

I am asking you to reject the request to change from single family to multi-family zoning requested by the owners of Cherry Creek MHP. At the last Heights Task Force meeting, two residents of Cherry Creek MHP recommended rejection for this change. These residents sited the continual lying and deception by the ownership of this mobile park. The Billings Police reports at our task force meetings site numerous calls to Cherry Creek. Your approval of this zone change will result in significantly increasing density and consequent impact on traffic, schools, and probably even more Billings Police calls for service.

You know that a fire call last year resulted in the loss of a manufactured home because the management of Cherry Creek turned off the water to the hydrants. By the time the Billings Fire Dept. was able to get water for suppression, the home was a total loss. This is typical of the management of Cherry Creek by all accounts. Please deny this application for change.

Edwin Hostettler  
1305 Nutter Cir  
Billings MT 59105

09/01/2020

RE: Zone Change

Robbin / Tammy,

The original agreement upon approve of Cherry Creek, was to be used at a “undeveloped” buffer zone. I am writing you to express my concern for this new development. Cherry Creek is the worst and most problem area in Billings. As a lifelong Heights resident, in my option, your approval of this will degrade the Heights area even more so. This new development is owned by the same people who developed Cherry Creek. It has been nothing but a thorn in the City as well as the police and first responders.

This land was setup as a buffer zone by Cherry Creek Land Developers and as agreed upon, should remain exactly that. This will effect over populated schools and property values of surrounding houses negatively.

Therefor I am strongly against this development.

Sincerely,

Aaron & Karmen Higginbotham

1315 Bitterroot Dr.

Billings, MT 59105

September 1, 2020

Zoning Commissioners  
2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor  
Billings, MT 59101

Dear Zoning Commission, City Council, and Yellowstone County Commissioners,

We are writing this letter in opposition to the proposed zoning change in Cherry Creek Estates from R-96 and P to R-8000. This zoning change would have long-term negative impacts on our neighborhood and the surrounding area. There is no support within our neighborhood or our community for this proposed zoning change and no citizen in good conscious could support any additional dwelling units of any kind within this development.

Several documents and meeting minutes have been discovered which reference the 300' buffer zone (the area which is up for consideration of a zone change) zoned R96 to satisfy surrounding property owners, community members, and Commissioners, in order to develop the trailer park in the first place. Neighborhood concerns have not changed (they, in fact, have gotten greater as the development has become what we all feared), nor should the buffer zone be eliminated.

The zone change request does not meet several of the 11 criteria that you use to aide in your review of proposed zone changes. Cherry Creek Estates does not meet the criteria set forth in items 1, 2, 3, 4, 6, 7, 8, 9, or 11. A series of flimsy justifications have been provided as part of the application which all do not stand upon any type of further research.

The proposed zone change is not in accordance with the City of Billings Growth Policy. Cherry Creek most certainly does not provide neighborhood character, visual appeal, or quality of life for its residents. The majority of the 370 trailer homes as well as the "parks" and common areas located within the development are in a constant state of disrepair. They are not providing a service to low income people. The development does not fit the criteria of MCA 76-3-102, specifically Items 2, 3, 5, and 6. Cherry Creek is already overcrowded and has been developed far beyond the 300 unit maximum outlined within the development agreement. With close to 370 units, an additional 66 dwelling units this area will be the most densely populated in Yellowstone County.

As a community, we recently passed the School District #2 bond issue (the owners of Cherry Creek actively fought the bond issue – not wanting to pay their fair share for the impact that their development's residents have had on the overcrowding of local schools). This bond money has gone, in big part, to addressing our District overcrowding issues. Our local elementary school, Beartooth Elementary, has experienced extreme overcrowding, and this issue has been resolved with the redistricting and addition of Medicine Crow Middle School. If Cherry Creek adds additional dwelling units (which were not accounted for in the projected growth of our area), this will easily result in a significant number of additional children flooding into the schools and again creating overcrowding / accreditation issues. The recently approved zone change adjacent to Medicine Crow will also have to be factored into this decision.

This area requires **multiple** daily visits from the City of Billings Police **and** Fire Department (please reference reports which are available from the City of Billings Police Department), and is a known area for drug use, drug distribution, child abuse and neglect, burglary, property damage, assault, vandalism, noise disturbances, harassment, DUI, restraining order violations, forgery, fraud, firework use, custodial interferences, trespassing, and weapons violations. The attached headlines from the Billings Gazette offers further evidence illustrating the problems this development has faced in recent years. An additional 66 dwelling units will only increase the burden on already strained City services.

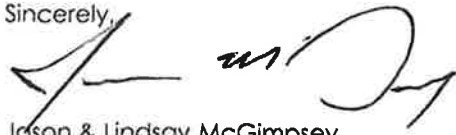
On top of all of this illegal activity, there are many registered violent/sex offenders in this development (including a Level 3 and a Level 2 offender). At the time of the last zone change request in 2016, over half of the registered violent/sex offenders east of Main St. live within Cherry Creek.

We invite you to tour Cherry Creek Estates and witness first-hand the reasons that our neighborhood and the Heights community are not in support of adding additional dwelling units to the existing 370. The owners did not and could not maintain what they had. Now the same family would like an opportunity to create another large low-income development with more empty promises utilizing the same ownership model in which they are able to take financial advantage of low income families. The two class action lawsuits which they lost are enough evidence of their business practices and ethics.

Our neighborhood is made up of hundreds of single-family, owner-occupied homes adjacent to and bordering Cherry Creek Estates. We have a pride of ownership, and an eye towards making Billings and our local community the best it can be. We do not appreciate being subjected to a slight variation of the same zoning change request presented in 2016. There is no logical reason to again subject the community and neighborhood to yet another attempt by this developer at creating a significantly worse situation than currently exists in this development.

Please help us in our efforts to keep Billings great!

Sincerely,

A handwritten signature in black ink, appearing to read "Jason & Lindsay McGimpsey". The signature is stylized and cursive, with a large initial "J" and "L" and a prominent flourish at the end.

Jason & Lindsay McGimpsey

Attachments

MCA 76-3-102

Cherry Creek rules/regulations

Development plan for Cherry Creek Estates

8/24/01 County Commissioners Meeting Minutes

Aerial map of Cherry Creek and buffer area

Cherry Creek Development responses

Environmental Assessment of Cherry Creek

Cherry Creek headlines

# Montana Code Annotated 2015

[Previous Section](#)   [MCA Contents](#)   [Part Contents](#)   [Search](#)   [Help](#)   [Next Section](#)

**76-3-102. Statement of purpose.** It is the purpose of this chapter to:

- (1) promote the public health, safety, and general welfare by regulating the subdivision of land;
- ~~(2)~~ prevent overcrowding of land;
- ~~(3)~~ lessen congestion in the streets and highways;
- (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
- ~~(5)~~ require development in harmony with the natural environment;
- ~~(6)~~ promote preservation of open space;
- (7) promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;
- (8) protect the rights of property owners; and
- (9) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

**History:** En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993; amd. Sec. 2, Ch. 468, L. 1995; amd. Sec. 2, Ch. 348, L. 2001.

*Provided by Montana Legislative Services*

**GENERAL TERMS OF RULES AND REGULATIONS  
FOR  
CHERRY CREEK ESTATES SUBDIVISION**

1. Each lot in the manufactured home park shall be known as a residential lot and shall be used solely for residential purposes. No structure shall be erected, altered, placed or permitted upon any lot other than one (1) single family manufactured home per lot; a garage and storage building not to exceed a combined size of 720 SF. No additions or enclosed entries shall be constructed to any manufactured home.
2. No structure other than a manufactured home exceeding 1,000 SF in size which shall be used for residential purposes. All manufactured homes shall be at least 14 feet wide and shall not be over five years old at the time of placement on to a lot. Axles and tires shall be removed upon placement and before skirting.
3. The exterior of any garage or storage unit shall be constructed of new materials and be completed in its entirety before it can be used for any purpose. All wooden structures shall be sided with conventional siding and shall be kept well maintained at all times. Other prefab storage units must be approved by the Board of Directors of Cherry Creek Development, Inc. and thereafter kept well maintained.
4. Plans and specifications for all garages to be built on any lot shall be submitted by the lessee to the Board of Directors for review, and upon receiving written approval, the lessee shall purchase a City of Billings building permit.
5. No swine, poultry, or other livestock shall be kept on said premises; however domestic pets may be kept by the lessee of which domestic pet shall be defined as meaning not more than two dogs and not more than two cats per living unit. All pets shall be confined to the lessee's premises at all times, or kept on a leash.
6. No construction equipment or materials of any nature can be stored unless for the purpose of immediate construction. No trash, obsolete materials, non-operating or non-licensed vehicles or portions thereof, or other refuse shall be allowed to accumulate on any of the above-described lots. No camp trailers, trailers, boats and such shall be stored on the lot, unless it can be stored inside a building meeting the above size requirements.
7. No noxious, offensive or illegal activity shall be carried out upon any lot, nor shall anything be done thereon which may become a nuisance or annoyance or to the extent that the same becomes unsightly or unsafe; nor shall any motor vehicle used in organized automobile or stock car races be stored or maintained on said premises.

8. All garbage containers shall be stored so that they will be concealed from the view of streets.
9. All manufactured homes shall be located in accordance with the regulations of the City of Billings. The front setback shall be at least 20 feet. No structure shall be built within 8 feet of the manufactured home.
10. No fence or hedge shall be of more than 4 feet in height. All fence materials must be new at the time of installation. Placement of fence, hedge or trees will be restricted per City of Billings ordinance line of clear vision at intersections.
11. The lessee of any lot shall be responsible for keeping the grass and weeds cut on his lot, even though he may not have a home on the lot at all times. The Board of Directors reserves the right to enter onto any lot to cut any grass and weeds that may appear to be unsightly, and the cost of same may be assessed against the renter of the lot or living unit.
12. Each manufactured home shall be skirted within 30 days after it is moved onto the lot. Skirting shall be of a color similar to the home and shall be kept well maintained and in good repair.

# DEVELOPMENT PLAN FOR CHERRY CREEK ESTATES SUBDIVISION

LEGAL DESCRIPTION: Lot 1, Block 1, Cherry Creek Estates Subdivision located in the NW¼ and SW¼ Section 24, T.1N., R.26E., P.P.M., Yellowstone County.

THE PURPOSE of this development is to provide for and satisfy some of the need for modern manufactured housing. In recent years, there have become fewer and fewer available manufactured housing lots for rent. This low is creating increased lot rents and hardships for the elderly on fixed income and young families starting out. The location of this development is ideal because of the landscaped buffer that can be provided, the ability to connect to public utilities, the assurance that the proposed design is the limit of the expansion, the large amount of open space that can be retained, and the ability to provide amenities for public as well as the residents of the development.

## A. BUILDING AND USE RESTRICTIONS:

Unless expressly designated to the contrary, all standards or requirements of the City of Billings and Yellowstone County Zoning Regulations shall be followed for the type of use within each of the areas listed below:

### 1. LAND USES :

- a. Single family, double and triple wide manufactured homes. The entire development shall be privately owned lots for rent.

### 2. USES PERMITTED:

- a. Single-family residential manufactured home structures shall be built to HUD code and will meet all standards as stated in the Unified Zoning Regulations, Section 27-608, Item 2, Manufactured Homes, Class A. Structures shall be built with conventional materials used in the housing industry. No specific requirement for foundation shall be required.
- b. All other uses allowed by right in the R-9600 zoning district as set forth in Section 27-305 of the BMCC.
- c. Uses requiring special review approval as defined in Section 27-305 shall be required to proceed through the special review process set forth in Section 27-1503 of the BMCC.

**B. SUPPLEMENTAL AREA YARD AND HEIGHT REQUIREMENTS FOR BOTH UNDERLYING ZONES:**

All set backs will be per fire code requirements.

**C. BUILDING DESIGN:**

1. Exterior portion of development shall have homes built post 1995 of a minimum size of 1,100 square feet. The exterior of the home shall have at least two architectural options, such as dormer, a window option, or other as approved by Cherry Creek Development, Inc. Garages and one shed shall be allowed, combined total square footage not to exceed 800 square feet. Garage and shed shall be similar color of home.
2. Interior portion of development must have homes at least a minimum of 960 square feet and homes shall be built post 1990. The home exterior shall be built of conventional materials.

**D. ESTIMATED DEVELOPMENT SCHEDULE: All improvements in the Planned Development will be constructed within five years of the date of the Council approval.**

1. Within six months of development approval: Begin grading and layout of project.
2. Within twelve months of Preliminary Plat approval:
  - a. Begin construction of sewer and water infrastructure, electrical, telephone, gas, and roads for Phase I.
  - b. Begin construction of some of the amenities.
  - c. Begin grading work on proposed 9 hole golf course.
3. Within 18 months of Preliminary Plat approval:
  - a. Begin work on the greens area of the first 9-holes of proposed 18 hole golf course.
  - b. Start Construction of Phase II.
  - c. Construction will be complete on Phase I (150 units).
4. Within 24 months of Preliminary Plat approval:
  - a. Construction of road, sewer and water infrastructure will be completed on Phase II.

- b. Completion of first 9 hole of proposed 18 hole golf course.
  - c. Completion of Clubhouse.
5. At 36 months after Preliminary Plat approval:
- a. Begin construction of remaining amenities.
6. All items of construction will be completed by 60 months after preliminary plat is approved.

**E. OTHER SPECIAL AGREEMENT:**

- 1. Easements: To be established. Possibility for Storm Drain Easement, Bikepath Easement, lift station provision issues to discuss to with the City.
- 2. Screening bordering neighbors to west: A 6-foot fence shall be provided specifically along the border of neighbors to the west. In no event shall the screening be placed as to obstruct clear site vision of street intersections.
- 3. Other requirements: Unless expressly designated above, all other standards or requirements of the City of Billings development standards, building, zoning and site development ordinances shall be followed.

**F. REVERSION:**

If for any reason this Planned Development is not implemented and construction improvements within the development schedule in above Paragraph I.4 and in conformance with this Development Plan, nor are any dwelling units in place within five years of zone change approval, then this property shall revert back to the previous zoning.

**IN WITNESS WHEREOF**, the parties have set their hands and seals the day and year first above written.

CHERRY CREEK DEVELOPMENT, INC.

By \_\_\_\_\_

Its \_\_\_\_\_



**REGULAR MEETING OF THE BOARD OF COUNTY COMMISSIONERS**

**Billings, Montana**

**Friday, August 24, 2001**

The meeting was called to order at 10:00 a.m.

PRESENT - Commissioners Reno, Chairman, Ziegler, and Kennedy; Board Clerk, Tammy Dexter; Clerk and Recorder, Tony Nave.

PLEDGE TO THE FLAG - Held.

**ADD-ON REQUEST - COMMISSIONERS** - TO REGULAR AGENDA - Letter to John Althof, Montana Department of Transportation re: Closure of Railroad Crossings in Huntley Experiment Station. Commissioner Kennedy MOVED to add this item to the Agenda. Commissioner Reno seconded the motion. Unanimous.

Commissioner Reno noted that item #3a. - Court Services - Federal Appropriation Grant Application had been removed from the Agenda. This item will be on the August 28, 2001 Agenda.

**10:00 A.M. - PUBLIC HEARING - Closing Assets and Liabilities of Human Services Fund to the General Fund.** Now was the time, date, and place for the above public hearing. Commissioner Reno called on Scott Turner, Finance Director. Mr. Turner informed the Board that the 2001 legislature passed Senate Bill 339 effective July 1, 2001. Mr. Turner explained that this bill transfers all counties public assistance programs and administration to the State of Montana. Mr. Turner noted that fund 2120 (Human Services Fund) had a fairly sizeable reserve, and became available at the discretion of the Board of County Commissioners. Mr. Turner reminded the Board that the General Fund was going to be one-time appropriated with \$1,000,000 of these assets in the FY02 County's Health Insurance Fund. Mr. Turner noted that \$50,000 of the Human Services Capital Improvement Funds would be designated to Riverside Cemetery, and \$24,000 of the Capital Improvement Funds would be designated as a reserve for possible leasehold improvements, and the balance of the Human Services Capital Improvement Funds would be designated for projects by the Board of County Commissioners. Commissioner Kennedy noted that the County only owes state expenses from FY01.

Commissioner Reno opened the public hearing and called for proponents and/or opponents. None. Commissioner Reno closed the public hearing. Commissioner Kennedy MOVED to execute Resolution #01-65 (Closing Assets and Liabilities of Human Services Fund (2120) to the General Fund). Commissioner Ziegler seconded the motion. Unanimous.

**ADD-ON ITEM - COMMISSIONERS** - Letter to John Althoff, Montana Department of Transportation re: Closing Railroad Crossings at Huntley Experiment Station. Commissioner Reno read the letter aloud for the record. Commissioner Kennedy noted that after visiting with users of Osborn Park, a Huntley Experiment Station employee, and Huntley Museum Board members, they were very adamant that these railroad crossings were needed and should not be closed. Commissioner Ziegler asked if the letter was appropriate, or if a public hearing should be held regarding the issue. John Ostlund, County Road Superintendent, was present and stated that he agreed with the people from Huntley - these should remain open. Commissioner Kennedy MOVED to execute the above letter to John Althof, Montana Department of Transportation. Commissioner Ziegler seconded the motion. Unanimous.

**10:15 A.M. - FINAL BUDGET HEARING - Adoption of FY02 Budget.** Now was the time, date, and place for the above public hearing. Commissioner Reno called on Scott Turner, Finance Director. Mr. Turner informed the Board that many pieces of new legislature had some major impacts on county budgets. Mr. Turner stated that the State had taken some revenue resources away from local governments. Mr. Turner noted that there was a 3% inflationary growth factor that the State would be assuming. Mr. Turner reminded the Board that 3.3 mills was given to the County Attorney's budget last year, and they were now separated from the General Fund; they are now the Public Safety County Attorney Fund. Mr. Turner stated there was an increase of 5.1 mills county-wide. Mr. Turner noted that \$1,000,000 would be transferred into the County's Health Insurance Fund as a one-time bonus (from closing the Human Services Fund). Mr. Turner stated there were nine (9) new FTE positions, mostly for the County Attorney's Office and the Detention Facility. Mr. Turner went briefly over the Detention Facility expenses. Mr. Turner reminded the Board that the Youth Services Center had \$89,000 reallocated to bring their staff up to comparability of employees doing similar jobs at better pay. Mr. Turner noted that, overall, the budget was balanced. Mr. Turner alerted the Board that next year could be a little different with union contracts, higher costs of utilities, and health insurance, just to name a few.

Commissioner Reno opened the public hearing and called for proponents and/or opponents. **Joe White** 1403 1<sup>st</sup> Avenue North, recommended that the Board hire an executive assistant to carry out orders for the Board. Commissioner Reno closed the public hearing. Commissioner Ziegler MOVED to approve the FY02 Yellowstone County Budget. Commissioner Kennedy seconded the motion. Unanimous.

**COMMISSIONERS - A.) Public Board Discussion** - Decision on Zone Change #543 - Cherry Creek Development. This item was brought back to the Board due to a misunderstood motion at the original public hearing. This was a zone change request from Agricultural-Open Space to Residential Manufactured Home and Public on property generally located south of Wicks Lane and east of Bitterroot Drive. Commissioner Kennedy MOVED to deny Zone Change #543. Commissioner Ziegler seconded, noting that

5-24-01

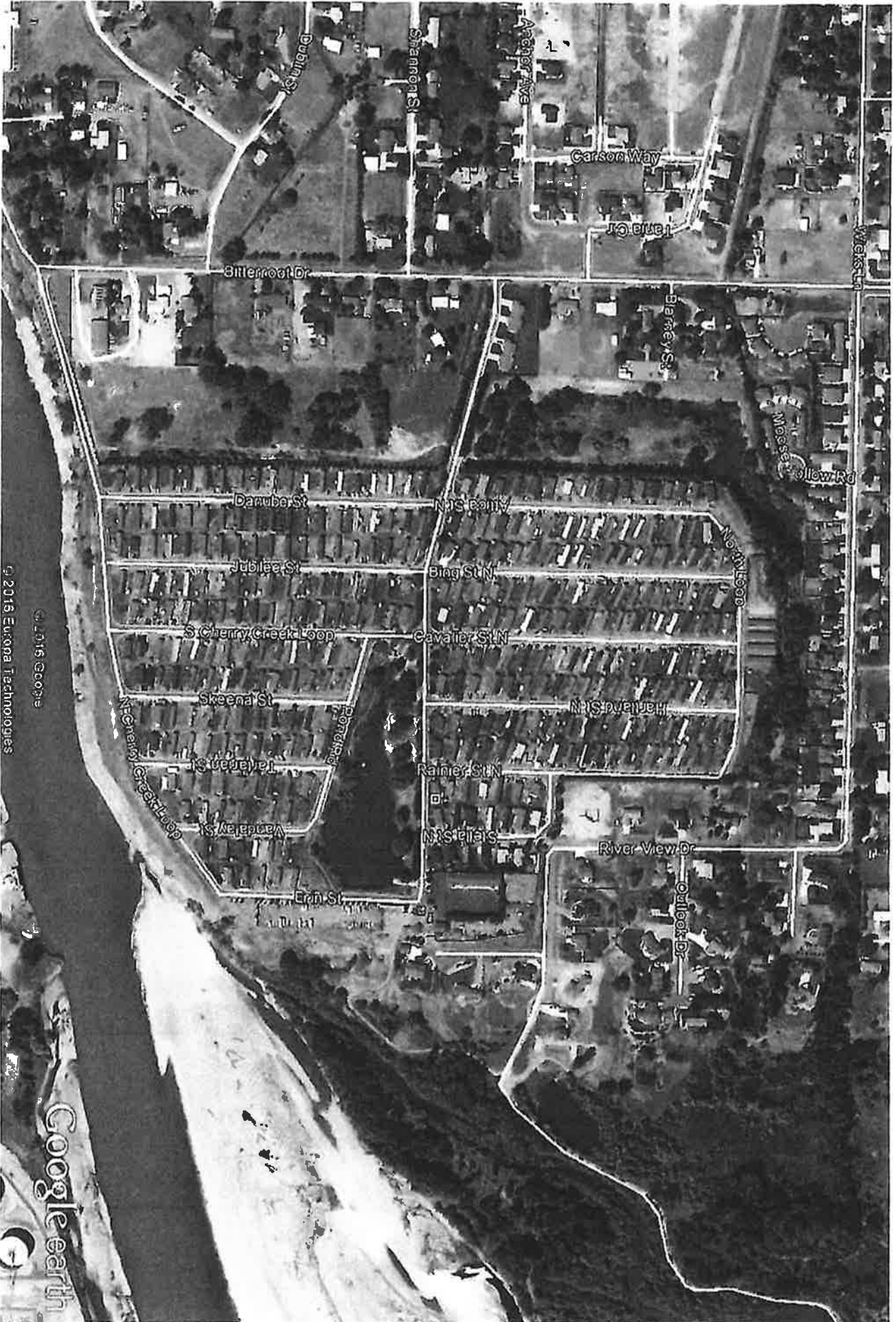
he was only seconding the motion to open the floor for discussion. Commissioner Kennedy noted that he was basing his motion on the recommendation of the Planning staff and Zoning Commission, along with the 12 criteria required for a zone change. Commissioner Kennedy went over the 12 criteria and gave reasons for each: 1) Is the new zoning designed in accordance with the Comprehensive Plan? The new zoning may not protect against the encroachment of incompatible or unrelated uses. The new zoning may not prevent establishment of new uses that conflict with adjacent or nearby existing uses. The new zoning does not capitalize on using existing public sewage service; 2) Is the new zoning designed to lessen congestion in the streets? The portion of the property included in this zone change is zoned Agricultural-Open Space, and would allow 1 dwelling unit per 10 acres, for a maximum density of 8 dwelling units. It should be noted that any change to a different residential classification will allow for more dwelling units and in turn create more traffic than the existing agricultural zoning. The proposed change to Residential Manufactured Home will substantially increase traffic on the surrounding street network. The maximum potential density for this development is 597 manufactured homes. Nothing has been submitted with this application that would limit the number of allowed manufactured homes other than the 6,000 square feet per unit requirement. A Traffic Accessibility Study was previously completed for this property; however, the current proposal is substantially different than the previous proposal; 3) Will the new zoning secure safety from fire, panic, and other dangers? Applicable codes will look at this. This property is currently located in the Billings Urban Fire Service Area. At the time of subdivision submittal, the Fire Department will examine hydrant location and the widths of the interior streets; 4) Will the new zoning promote health and general welfare? Applicable codes will look at this. At the time of subdivision submittal, the C/C Health Department, along with the Department of Environmental Quality, will review the proposed sewage disposal system; 5) Will the new zoning provide adequate light and air? Applicable codes should assure this; 6) Will the new zoning prevent overcrowding of land? Applicable codes should assure this. The Zoning Regulations require a minimum of 6,000 square feet of lot area per dwelling unit the RMH zone; 7) Will the new zoning avoid undue concentration of population? Applicable codes should assure this. The property will be subject to the minimum lot area requirements found in the Zoning Regulations; 8) Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements? Transportation: Approval of this zone change would cause significant increases in the amount of traffic on the surrounding street network; Water and sewerage: This property can be served by the Heights Water District and is currently proposed to have some type of on-site sewage treatment. The effects of this on-site treatment may be much more deleterious to the surrounding environment, especially the Yellowstone River, than connecting to City sanitary sewer service; Schools: This development will cause an increase in the number of children attending the surrounding schools. In addition, the closest elementary school, Beartooth Elementary, was closed by the School Board for the upcoming 2001-2002 school year; Parks: This property will be required to provide parkland dedication and/or cash-in-lieu at the time that the property is subdivided or reviewed for a manufactured home court; Fire and police: Any significant residential development on this property will cause an increase in the need for both of these services. The property is currently within the Billings Urban Fire Service Area and would get primary law enforcement from the County Sheriff; 9) Does the new zoning give reasonable consideration to the character of the district? The subject property has Residential-9,600, Residential 7,000, and Public Zoning surrounding it, with most of this development consisting of larger lot single family development. The Public zoning is an appropriate district in the area proposed; 10) Does the new zoning give consideration to peculiar suitability of the property for particular uses? The zone change as proposed does try to take advantage of the potential unsuitability of the site for structures on permanent foundations. In addition, the area proposed as Public would provide an area for a future trail corridor along the Yellowstone River; 11) Was the new zoning adopted with a view to conserving the value of buildings? The new zoning may adversely affect the value of adjacent buildings and properties; 12) Will the new zoning encourage the most appropriate uses of land throughout such county or municipal areas? No, for reasons mentioned previously. Commissioner Ziegler noted that staff contends that a project of this size produces a huge impact on the County, when annexation from the City could be obtained. Commissioner Ziegler noted that the applicant did apply for annexation, but was rejected; the argument was also presented that the City was not gaining any tax benefits to address these alleged impacts. Commissioner Ziegler stated that 6 of the 12 criteria have the same connotation that the "applicable codes should assure this." Commissioner Ziegler stated that he felt the main discussion was with condition #8 which addresses transportation, water, sewer, schools, parks, fire, and police. Commissioner Ziegler stated that if that is all the Board has to stand on, since the Board was unable to place conditions on the zone change, he would stand not in support of denial, but in proceeding with approval. Commissioner Ziegler addressed the 12 criteria noting that the criteria for approval would be almost the same, except on #2 - the size of the units was discussed, and access off of Bitterroot Drive was discussed, which was designated as a principal arterial street; #3 - applicable codes; #4 - applicable codes; #5 - applicable codes; #6 - applicable codes; #7 - applicable codes; #8 - discussed on July 3, 2001 at great length; #9, #10, #11 - same responses that Commissioner Kennedy read aloud; #12 - yes, for reasons mentioned previously. Commissioner Reno stated that the developer had controlled the destiny of the 300' surrounding this potential development. Commissioner Reno stated that the notice needed to be for 300' adjacent landowners, "didn't say 301, didn't say 1/2 a mile, it says 300'." Commissioner Reno stated that he would like to know the impact this would have on properties outside the 300'. Commissioner Reno stated that item #1 primarily talks about adjacent land values; the developer controls the adjacent land values with earlier actions the Board had taken approving R-9,600. Commissioner Reno addressed #2. Commissioner Reno stated that there was a city councilman who stated in the *Billings Gazette* that the city needed more high density housing, and building it on a high arterial street like Wicks, seemed like the best place for it. Commissioner Reno noted that items #3, #4, and #5 the Zoning Board had no problems with; #6, #7, #8 - transportation had been addressed. Commissioner Reno noted again that the city councilman would like to have Wicks as a higher volume street. Commissioner Reno noted that the Board does not condition water and sewer - the State of Montana does that. Commissioner Reno stated that the schools were looking for students - Beartooth Elementary was closed due to lack of students. Commissioner Reno noted there was no issue with park or fire. Commissioner Reno addressed #9 - "I would like to vote against this, but can't. I don't know how many uses you have for an abandoned gravel pit." Commissioner Reno stated that it seemed reasonable to have affordable housing, somewhat out of view, in an abandoned gravel pit. Commissioner Reno stated, "as such, I cannot support the motion to deny." Commissioner Reno

called for the vote on the motion to deny Zone Change #543. Commissioner Kennedy voted yes. Commissioners Reno and Ziegler voted no. Commissioner Ziegler MOVED to approve Zone Change #543 (Resolution of Intent to Approve #01-70). Commissioner Reno seconded the motion. Commissioner Reno called for the vote. Commissioners Ziegler and Reno voted yes. Commissioner Kennedy voted no. Motion duly carried. Commissioner Kennedy noted that what happened today was completely different from July 3, 2001. Mark English stated that the Board decided to approve the zone change, and it was fine that they changed their decision. Mr. English informed the Board that they would need to provide a written order of why they approved the zone change, and the County Attorney's Office would help them prepare that document. Commissioner Ziegler MOVED to execute a written order stating why the Board reversed their previous decision, and was now approving Zone Change #543. Commissioner Reno seconded the motion. Commissioner Reno called for the vote. Commissioners Ziegler and Reno voted yes. Commissioner Kennedy voted no. Motion duly carried. B.) Resolution Recognizing Big Sky Economic Development Authority as Lead Organization for Economic Development throughout Yellowstone County. Commissioner Ziegler MOVED to execute Resolution #01-66. Commissioner Kennedy seconded the motion. Unanimous.

**CLAIMS** - None were presented.

**CONSENT AGENDA - 1. COMMISSIONERS** - A.) Beartooth RC & D - Agreement - Participation in Beartooth RC & D Economic Development District. Yellowstone County is assessed a base fee of \$1,250 plus \$0.1107 cents per capita (based on the 1990 census population of 127,258) for a total assessment of \$15,337; B.) Letter to Montana Migrant Council re: Appointment of County Auditor, Susan Lupo, as County Representative on Billings Community Housing Resource Board; C.) Amusement Gaming Application & Permit - Alkali Creek PTA; 2. **PURCHASING** - Bridge Department - Request to Expend - New Forklift in the amount of \$40,932.00; 3. **COURT SERVICES** - A.) Federal Appropriation Grant Application - REMOVED; B.) Agreement with Justice System Assessment & Training. The purpose of this contract was to purchase the services of approximately 20 hours of training in assessment tools including, but not limited to Risk Assessment for Training and the Substance Use Survey. The financial consideration of the contract was \$4,100, payable upon completion of training and upon receipt of an invoice submitted by JSAT. The contract shall be effective August 1, 2001 and end September 30, 2001; 4. **WEED DEPARTMENT** - FY02 Special County Weed District/Reservation Grant Agreement - Purchase of Four-Wheeler (\$6,200.00); 5. **DES/GSA** - Montana Disaster & Emergency Services Division - Payroll Authorization Forms; 6. **FINANCE** - A.) Bond Resolution #01-67 - R.S.I.D. #679/679M - 69<sup>th</sup> Street West & Yellowstone Place; B.) Bond for Lost Warrant - HAD Management (Michelle L. Fisher); 7. **HUMAN RESOURCES** - Personnel Action Report: **WESTERN HERITAGE CENTER** - RESIGNATION - Wanda Bronson, Office Manager; **FILE ITEMS** - 1. **YELLOWSTONE COUNTY TRAFFIC SAFETY** - FY02 Plan & Budget; 2. **CITY OF LAUREL** - Notice re: Expansion of Special Improvement Lighting District #2. Commissioner Kennedy MOVED to execute and file all items on the Consent Agenda, with #3a removed. Commissioner Ziegler seconded the motion. Unanimous.

The meeting was adjourned at 11:04 a.m. by Commissioner Reno.



Google earth  
353 TOTAL

feet  
meters



© 2016 Google  
© 2016 Europa Technologies

Google earth

## CHERRY CREEK DEVELOPMENT 12 CONSIDERATIONS AND RESPONSES

1. IS THE NEW ZONING DESIGNED IN ACCORDANCE WITH THE COMPREHENSIVE PLAN?

Yes. This development will protect against encroachment of incompatible or unrelated land uses by allowing orderly and rational residential development during the various stages of economic and residential growth cycles. This development will help provide greatly needed housing for moderate income people, as well as provide infill.

The zoning will retain and improve the existing residential neighborhood by permitting orderly development that will enhance the area. The proposed buffer area will assure green open space between adjacent developments and this one. The new zoning will assure compatible housing to surrounding owners. Zoned as it is now, the surrounding owners are not assured of compatible housing; more particular, they are not even assured residential use.

Furthermore, this planned manufactured housing development, in an area that is buffered by open land to the north and west, and bordered by the river on the south and east, is in accordance with the comprehensive plan. This planned development zoning will provide the most benefit to all members of the community, by providing needed spaces for manufactured homes in an area that can be served by public utilities. This is private property and is not there for the adjoining property owners exclusive recreational enjoyment and use. However, with the proposed plan development, the community, as a whole, can gain from the benefits.

The following pages of the Yellowstone County Comprehensive Plan seem to concur with points regarding this property and its particular use.

- A. Page B-13: States there is a need for this type of housing as over half of the census work in the retail trade and service industries and their wages are below the county average of \$16,187.00 per year.
- B. Page C-1: Encourages adequate housing supply for all income levels and new housing construction in ALL neighborhoods.
- C. Page C-2: Refers to Mixed Housing Development Policy, encourages a variety of housing types and/or styles within proposed housing developments. Alternative housing types should be available within the county. Strategy is to inventory Residential Manufactured Housing (RMH) zoning districts in the City to

ESTABLISH THE AVAILABILITY of lots for manufactured housing as well as the suitability of the sites for residential development. This is done by and coordinated by the Planning Department, City, County Zoning Commissions and elected officials.

- D. Page C-9: "Court rental spaces in 1987 were approximately \$130/month". Today, rents are as high as \$275/month. For retired persons on fixed income, this is becoming a large burden. State statutes recommend that a comprehensive plan include setting forth development, improvements and extensions of areas to be set aside for use as trailer court and sites for mobile or manufactured homes.
- E. Page C-16: Needs assessment by household type shows a trend toward smaller household, single person and non-family householders.
- F. Page H-2: Capitalize on existing public water supply systems. Strategy encourage new development within areas already provided with public water systems by stimulating developer interest with benefits analysis and by creating an incentive system. The City and County should explore the possibility of a relaxed SID policy for infill areas with less than 50 percent development.
- G. Page H-14: Contamination of drinking water by underground sewage systems is of serious concern to Yellowstone County, therefore, the intent is to be in complete compliance with State and County sanitary regulations. It should be noted that wells that do not meet state standards also contribute to the contamination.
- H. Page H-15: The formation of the Billings Heights Water District was in large part due to the widespread contamination of drinking wells by septic systems. This development intends to utilize Heights Water District.
- I. Page I-1: Policy to protect the County agriculture industry from encroaching land uses which are not compatible with agriculture. Strategy - Promote the use of cluster development, throughout the Planned Development process, which will concentrate residential areas and maintain open space.
- J. Page K-39: Infill development, one of the most strategic ways to limit urban sprawl is to identify and utilize existing vacant land within areas already developed and served with adequate roads and public facilities.

2. IS THE NEW ZONING DESIGNED TO LESSEN CONGESTION ON THE STREETS?

Any residential development will increase traffic to some extent. This property has two major arterial streets that are designed to carry and will carry the traffic flow on Bitterroot Drive and Wicks Lane.

Scott Walker, the transportation planner of Yellowstone County, has confirmed that Bitterroot Drive at the present time could easily handle another 1,500 trips each way and Wicks Lane can take an extra 1,500 trips to the west.

This proposed development area is included in the Transportation Study of 1990 and the recent update. The travel demand forecast for Heights area is to "grow a little faster than average". In addition, capacities according to the comprehensive plan (Software of 1985) showed a two-lane urban street capacity of 6,000 to 8,000 average daily trips.

The City of Billings Met Transit System runs directly west of the development, which may be a benefit for the City of Billings by filling partially full buses. There is also STI, special transportation to assist elderly and handicapped citizens who cannot use other public transportation. In addition, the development will give consideration to running daily van shuttle to shopping malls, courthouse, etc.

As development progresses in the general area and new links to major highways redirect traffic flows on Main Street, congestive traffic areas will be identified and the necessary steps will be implemented to reduce congestion.

The comprehensive plan (Page K-25) states that the journey to work as compared to other larger communities, Billings still has relatively moderate traffic congestion and commuter time.

Please refer to the Traffic Accessibility Study on this project for additional information.

3. WILL THE NEW ZONING SECURE SAFETY FROM FIRE, PANIC, AND OTHER DANGERS?

Yes, the new zoning will require that the development be constructed according to the State of Montana requirements and those requirements will assure that all safety issues are taken into account. The development of this property may even reduce the fire possibility by reducing the large number of dried weed areas and replacing with green grass and landscaping and by bringing the availability of water within the property boundaries. The residents along Bitterroot Drive may benefit also by being able to connect to Heights Water District.

Fire hydrants will be installed as required. Any other dangers will be identified and protected by following all applicable codes and laws.

4. WILL THE NEW ZONING PROMOTE HEALTH AND GENERAL WELFARE?

Yes. This zoning will promote health and general welfare of the residents and community. Providing public sewer and water service to the development will better benefit the community. This development will take nothing from the surrounding owners and will offer the benefit of improved services to their property, thereby increasing their property values. It will promote the health of the surrounding property owners. This development will not effect groundwater of the surrounding owners. The comprehensive plan states, in general, groundwater is plentiful and close to the surface. This is evident at the property site. Webster's Dictionary describes *health* as the overall condition of an organism, *general* as involving the whole, and *welfare* as an organized effort to improve the circumstances of disadvantaged.

5. WILL THE NEW ZONING PROVIDE ADEQUATE LIGHT AND AIR?

Yes. There is currently adequate light and air and the proposed development density with the use of land buffers and open space will not detract from either issue.

6. WILL THE NEW ZONING PREVENT OVERCROWDING OF LAND?

Yes, by providing the proposed buffer area and the use of the lands for public benefit along the Yellowstone River corridor. The development will provide a certain amount of land that will never be developed but set aside for the enjoyment of the public forever. The surrounding neighbors have requested a zoning of 9600, which would allow around 475 residences on the 105 acres. Our proposal is designed as a cluster development that allows for plenty of open space and is in agreement with the comprehensive plan and only plans for approximately 300 households.

7. WILL THE NEW ZONING AVOID UNDUE CONCENTRATION OF POPULATION?

Yes, the area is presently underdeveloped for the City services that are being provided. With other residential zoning on this property and public facilities, the population concentrations could potentially be as high as 760 households. However, this planned development zone request with the proposed buffer area will limit the number of households and assure undue concentrations of population.

8. WILL THE NEW ZONING FACILITATE THE ADEQUATE PROVISIONS OF TRANSPORTATION, WATER, SEWERAGE, SCHOOLS, PARKS, FIRE, POLICE, AND OTHER PUBLIC REQUIREMENTS?

Transportation: Wicks Lane and Bitterroot Drive are already designated as major arterial streets. Improvements required to these existing streets will be as required and needed to develop the area. ~~The planned development number of residences will be less than the City residential zone 9600 would allow.~~

Water: Plans are to have municipal water service provided by Billings Heights Water District to the development. Comprehensive Plan H-15 states City of Billings can easily serve 168,000 and could serve as many as 250,000 households if necessary by the year 2000.

Sewerage: Sewer service will be provided by City of Billings.

Schools: ~~Impact on the schools should be minimal~~ and very well may help the schools financially. Manufactured home facilities today are seeing much higher percentages of young married couples and older retired persons. Beartooth Elementary School, when built, was designed to hold an additional 200 students than are attending at present. Castle Rock Middle School and Skyview High School also were both designed to hold more students than are attending today. The planned development anticipates that a large segment of residents will be households without children.

Park: There will be an on-site park provided. It will be built and maintained by the development.

Fire: Fire hydrants will be installed per fire district designation. There should be no significant impact to the local department.

Police: ~~This development will not have a significant impact on the existing law enforcement.~~ Street lights will be installed and a local security firm will be hired to make nightly rounds. This will help curb crime and vandalism. Increased tax revenues generated by this development will help to offset any increased costs to the local infrastructure and service agencies.

9. DOES THE NEW ZONING GIVE REASONABLE CONSIDERATION TO THE CHARACTER OF THE DISTRICT?

There has been considerable thought given to the character of the district and the existing neighborhood. The character of the district is partly County and partly City of Billings. There is the rural surrounding along Bitterroot Drive directly west of the proposed development due to the one acre lots. There is more of an urban surrounding along

Wicks Lane as the homes have been built on 10,000 square foot lots. We have worked with the surrounding neighbors for well over a year, and have presented many different proposals. The surrounding neighbors have not been open to any changes or suggestions presented. Stating they will only agree with 9600 zoning in this area. However, this zoning allows for over 475 units and creates a new set of disagreements for everyone involved. The development of this parcel as proposed, limits the population density, proposes a cluster development and maintains the character of the residential district by providing an open space buffer. The buffer should greatly improve and increase the value of all bordering properties and the community as a whole.

10. DOES THE NEW ZONING GIVE CONSIDERATION TO PECULIAR SUITABILITY OF THE PROPERTY FOR PARTICULAR USES?

This property is currently zoned agricultural and it is not suitable for any type of agricultural use. The proposed zone change is highly suitable for a cluster development. There is plenty of room to allow for a buffered zone away from neighboring areas. According to the comprehensive plan, it is in the best interest of any community to be connected to municipal services, which the parcel of land can provide. In addition, the benefit this parcel of land can provide back to the community as a whole is abundant. The need for manufactured home spaces is so great, it is imperative that provisions be made available for the residents of the community.

11. WAS THE NEW ZONING ADOPTED WITH A VIEW TO CONSERVING THE VALUE OF BUILDING?

Yes, this is one reason the planned development has designated the proposed buffer area. The area will enhance and increase the value of the buildings and homes adjacent to it and offer beautiful open space. Additional buffers, such as a fence, are planned along the western portion of property.

12. WILL THE NEW ZONING ENCOURAGE THE MOST APPROPRIATE USE OF LAND THROUGHOUT SUCH COUNTY OR MUNICIPAL AREAS?

Yes. This planned development allowing residential manufactured housing is the most appropriate use of this land. Other residential zoning allows for stick-built construction on basements, which cannot be used on this land. In addition, the property overlooks the river facing a refinery, therefore, high-end residential housing is probably not a workable plan. This development may even help direct development away from good agricultural land, which the comprehensive plan seeks to protect. The zone change will slow urban sprawl of small acreage's out in the County, the only remaining place where HUD approved manufactured homes can be placed. HUD is a federal housing code and cannot be discriminated against. Yellowstone County with more population than any

other county has the least HUD housing of any other County in Montana. There is an intense need for this type zoning in Yellowstone County.

# ENVIRONMENTAL ASSESSMENT FOR CHERRY CREEK MANUFACTURED HOME PARK

*- Biblio graphic*

Total Acreage : 105 acres

Buffer Area : 46.6 acres

RMH : 58.4 acres

## A. CURRENT LAND USE:

Vacant. This property is currently zoned Agricultural Open. Due to the fact that this property is next to the City of Billings within the 4½ mile jurisdiction and in the comprehensive plan. There are certain restrictions on this property that make it of no use for agricultural purposes.

## B. ENVIRONMENTAL AND EFFECT ON THE NATURAL ENVIRONMENT:

1. **Surface Water:** The particular area where the manufactured home park is proposed was a mined gravel pit. The material removed from the existing terrain during the mining process varies from 14 feet to 24 feet deep. The surface water that is flowing on-site is seepage from the existing banks. We plan to collect such water in pipe and ditches and divert it to the large holding pond along with stormwater. There is an irrigation ditch on the northwest corner of the site. All water in and around the proposed manufactured home park site was created when the site was mined. This pond was an old sand washing pit. We plan to improve flowing water by diverting it around project and adding irrigation water to it during the summer. We also plan to upgrade and make the old sand washing pond larger and appropriately landscape the area. Of course any and all work will be done according to State of Montana Environmental Quality Specifications.
2. **Groundwater:** The area of the proposed manufactured home park has been mined out and there is no gravel or sand to classify a water aquifer. The complete site is setting on a sandstone layer at varying depths of 10 feet to 30 feet. At present there is some water that sets on the sandstone and gradually flows toward the Yellowstone River. The majority of the surface water is picked up with drain ditches and collected in two ponds and eventually runs into the river. There is a potable water aquifer at a depth of 100 feet to 250 feet through the sandstone layer. Any development to the site will not impact this aquifer.

3. Geology-Soils-Slopes:
  - a. Rock falls or slides: The south side edge of the property has a steep sandstone cliff that could be a hazard. This area will be fenced to eliminate injury from a fall.
  - b. Slides - land, mud, snow: None.
  - c. High water table: Ponds will be constructed as to eliminate any problems. River water is one-fourth mile away and situated on a lower tier that is 30 plus feet lower than development.
  - d. Unstable and expansive soils: The site proposed as the manufactured home park is the upper terrace which has been mined for gravel and reclaimed. The areas that were not mined according to the soil survey of Yellowstone County is dominated by Keiser Silty Clay Loam and Bew Clay. These soils are among the best in Yellowstone County in terms of SCS capability classification. The lower terrace (part of the proposed buffer area/green space) along the river is comprised of Haverson/Hysham Loams. No material on-site fits as unstable or expansive soil.
  - e. Excessive slope: The site proposed for the manufactured home park is a fairly flat piece of property that is gently sloping within a range of 0-7 percent. The transition slope between the upper terrace and lower terrace ranges from abrupt to easily negotiable, with most of it falling into the 7-10 percent range. The lower terrace is relatively level again.
4. Vegetation: The upper terrace has been mined and reclaimed and has a mixture of smaller cottonwood trees, willows, some grasses and weeds. The lower terrace has a mixture of old growth cottonwoods and willows. The slopes and river bottom is grassed in with native grasses along with small trees and willows.
5. Wildlife: There are no known key wildlife areas on the property and no endangered species. The known wildlife on the property are white tailed deer, beaver, and squirrel.
6. Historical Features: There are no historic, archeological or cultural sites, structures or objects on the site.
7. Visual Impact: The area of the proposed manufactured home park is located on the upper terrace, however, it is approximately 20 plus feet lower than both roadways (Bitterroot Drive and Wicks Lane) and other bordering properties. In addition, the distance between bordering properties and the development is

approximately 300 feet and will have a landscaped buffer. With the proposed development setting lower and encircled with a green space buffer, the site will be virtually unseen from Bitterroot Drive and Wicks Lane. The buffer area will also be landscaped with trees in conjunction with other bordering property enhancements.

**C. COMMUNITY IMPACT AND CRITERIA FOR PUBLIC INTEREST:**

**1. Effects on Agriculture:**

- a. The effects on agriculture have already occurred during the period the property was mined for gravel. The property cannot be used for agricultural purposes. The proposed residential use will protect other parcels of good agricultural land from being used for manufactured home parks.
- b. There is no productivity of the land.
- c. The property was purchased for development.
- d. The surrounding properties are currently used for residential housing.

**2. Effects on Local Services and the Public Health and Safety:**

**a. Water:**

1. Water for fire and domestic uses will come from the Billings Heights Water District.
2. The proposed manufactured home park, when complete, will require 100,000 gallons of water for day to day domestic use (estimated at 330 gal per household). With an 8-inch existing water main at Wicks and Duran, this development can be looped in with an 8-inch water main that would conservatively be able to provide 1,000,000 plus gallons of water per day.
3. The Billings Heights Water District meets all State Department of Health and Environmental Sciences for quality, quantity and construction.
4. N/A.
5. N/A.

6. N/A.
7. N/A.
8. N/A.
9. The development will be privately owned and will be maintained as such.

b. Sewage Disposal:

1. It is the intent of the owners to connect to City of Billings sewer system. A lift station will need to be installed. All proposed new development will be per Department of Health and Environmental Sciences.
2. N/A.
3. The manufactured unit has not been determined yet.
4. N/A.
5. N/A.
6. The system will be installed on Phase I of the project and it will be financed with a construction loan.
7. As the proposed development will be privately owned, the proper qualified person will be retained to maintain the system.

c. Solid Waste Disposal:

1. Solid waste collection will be collected by City of Billings.
2. N/A.
3. N/A.
4. N/A.
5. The proposed disposal method meets Department of Health and Environmental Sciences.

d. Roads:

1. New roads within the development will be built and maintained for private use.
2. Necessary improvements or deletions will be done when such problems are identified and will be included in the Development Agreement.
3. Dust will be controlled by paved streets, a green space buffer surrounding the development and by the development landscaping of trees and grasses.
4. An approved storm drain system will be installed to eliminate erosion and water pollution. Street maintenance will be provided by the owner of the development.
5. When fully developed and operating at a 90 percent fill ratio the estimated traffic flow will be:
  - a. 90 percent = 270 households
  - b. On any day 20 percent will not leave their home = 54.
  - c. On any day 55 percent of households will leave with home and return once = 148 or 297 trips.
  - d. On any day 25 percent of households will leave and return twice = 67 or 135 trips.
  - e. On any day 25 percent of households will receive at least one visitor = 67 or 135 trips.

Traffic  
Impacts?



Our estimated traffic flow is 567 trips per 24-hour period.

6. The present traffic flow on Bitterroot Drive is 1,600 vehicles per day. Terry Smith, Traffic Engineer for the City of Billings said this roadway can handle another 6,400 vehicular trips a day with no changes. Wicks Lane directly west of Bitterroot Drive has a traffic count of 1,600 at present. This street can also handle substantially more traffic.

7. The development will have two main egress roadways, one at Bitterroot Drive and Erin Street and the other at the end of Yellowstone River Road where it transcends to Bitterroot Drive. Both of these egress locations will handle the anticipated traffic and will be constructed for safe travel.

e. Utilities:

1. The plat has not been submitted, but we have spoken with all utilities.
2. Natural gas will be supplied by MDU. Electricity supplied by MPC. Telephone will be supplied by USWEST. All utilities are readily available.
3. All utilities will be placed in a common trench and will be placed per each phase of construction.

f. Emergency Services:

1. Fire protection. As this development is in the jurisdiction of City of Billings, the project will require placement of fire hydrants and the City of Billings will provide fire protection.
2. Police protection will be provided by the City of Billings. We will also implement a neighborhood watch program and employ the services of a private security patrol.
3. Ambulance Service will be provided by all ambulance service available and provided in the City of Billings.
4. Medical Services will be available the same as anyone else in the City of Billings.
5. Fire, police, ambulance and medical services can all be handled with the present personnel and facilities.
6. N/A.
7. The additional taxes paid by this development will serve to offset additional costs.

**g. Schools:**

1. The available educational facilities are Beartooth Elementary, Castle Rock Middle School, and Skyview High School which at present can accept another 128, 58, and 65 students, respectively. The superintendents office stated they were not at capacity.
2. Our estimate of school children from this development based on past experience associated with manufactured housing. All figures are based on full capacity. Past experience has shown that 7 out of 10 households will not have any children.

Elementary:	60 students
Middle School:	30 students
High School:	30 students

**h. Land Use:**

1. All project development will be discussed with all departments and all work will be done to meet any and all land use regulations and all comprehensive requirements.
2. The property does not border any public lands, however, majority of property will be used for recreation.
3. Development will have no effects on adjacent land uses.
4. There is one concrete structure that will be removed as it may be considered a safety hazard.
5. There is no on-site or off-site uses that create a nuisance.

**i. Housing:**

1. This development will be designed for a maximum of 300 single family residences. The units will be manufactured homes.
2. The development is not planned specifically for second homes, but the development will have in place a care-taking facility for vacationing residents.
3. With the necessary department approvals, State approvals and preliminary plat approval we anticipate starting construction spring

of 2000. It is our estimate that Phase I homes will be placed by the end of 2001. We anticipate Phase II to be 90 percent filled by the end of 2003.

4. The density of the manufactured home portion only will be 8,600 square feet per household.

j. Parks and Recreation Facilities:

The development will have the buffer area surrounding it. The river bottom will be included in this area. We also propose to have some ground set aside for a park and recreation facility. This facility would include a picnic area, horseshoe, basketball, and community hall. A trail system will be designed so they can be used and utilized as nature trails for the residents within the development.

k. Effects on Taxation:

1. Prior land assessments were on 189.15 acres in Yellowstone County and 6.55 acres in the City of Billings.
2. The annual tax revenue prior to development is a combined assessment of \$4,670.09. Based on County Assessor input and the review of other similar properties, we estimate when the property is fully developed and all homes are placed on property, that Yellowstone County will receive approximately \$405,000.00 tax revenue per year. This would amount to 8,762 percent more than what the property is contributing at the present time. In addition, according to the Montana Board of Housing and research done by MSU-B this development will contribute another \$1.1 million in taxes and fees to the community.
3. The only proposed special assessment planned is street lighting for the development.

l. Effects on wildlife, wildlife habitat and areas of rare endangered or unique plan species:

The development will not have an adverse effect on wildlife and wildlife habitat. The measures that will be taken do not disturb and preserve lush areas of trees, brush, willows, and grasses will be left intact. Within and near the development and the buffer area we will plant trees, shrubs, and grasses therefore adding to the pleasant environment.

### Cherry Creek Headlines

- 15-year-old charged with negligent homicide in teen's accidental gun death in Billings' Heights
- Saturday night fire guts Heights home as firefighters battle dry hydrants
- 5-year-old boy riding a bicycle injured in Heights accident
- City Council puts off action on irksome mobile home park
- Heights developers seek annexation again
- Commissioners vote no on Heights project
- Mobile home plan lacks supporters
- Cherry Creek lots filling after years of controversy
- Boy accused of planning school massacre held without bail
- Man who forced way on Billings school bus arrested
- Developers, city again in dispute 9/15/2009
- Poisoning likely at Cherry Creek
- Water main work to resume on Heights mobile home park; Developers follow court ruling on water main extension
- Teen shooting suspect held on charges of assault with a weapon, endangerment
- Cherry Creek mobile home expansion denied
- Trailer home fire causes \$20,000 in damage
- Man pleads not guilty in Cherry Creek subdivision shooting that injured a pregnant woman.
- Billings Fire Department calls in extra crews after back-to-back structure fires in the Heights
- Man served 216 days in jail for shooting at man who owed him \$100

### Cherry Creek Homes accused of charging undisclosed, illegal fees

Local residents have brought a class-action suit against Cherry Creek Development after a similar lawsuit found in part that Cherry Creek was incorrectly charging late fees.

Adam and Breea Somers are suing Cherry Creek Development and RJC Investment after the companies failed to disclose finance fees.

Cherry Creek is a mobile home park in the Billings Heights with 362 trailer lot spaces.

The class action suit follows a favorable ruling earlier this year for another couple living in the mobile home park. Stevee Mallas and Jacob Tallbull sued after Cherry Creek posted a delinquency notice on their mobile home. Cherry Creek was acting as an agent of RJC Investment, according to the lawsuit.

Mallas and Tallbull paid a \$3,512 down payment on a mobile home. The couple financed the additional \$40,388 needed to purchase the mobile home, according to the suit. They began making monthly payments toward the principal in 2010.

Cherry Creek's contract with the couple violated multiple consumer protections of the Montana Retail Installment Sales Act, the Mallas and Tallbull lawsuit alleged. The contract did not state how much the finance charge would be over the life of the contract, according to the lawsuit. The contract also stated the couple would be charged \$50 if payments were five or more days late.

Yellowstone County District Court Judge Russell Fagg entered judgement on the nondisclosure of the finance charge and the legality of the late fees. Because the contract did not disclose the finance charge and because late fees can only be evaluated by a creditor after a payment is 10 days late, Fagg ruled Cherry Creek and RJC are barred from collecting any "finance, delinquency or collection charge on the contract."

In his judgement, Fagg found the Cherry Creek contracts violated at least four parts of the Montana Retail Installment Sales Act.

The same attorney who represented Mallas and Tallbull, Michael Eakin, was hired to represent the Somerses in their class action suit. The Somerses' lawsuit seeks to prevent Cherry Creek from collecting finance charges against mobile home residents who have similar contracts and illegal late fees.

The Somerses justified the class action suit by noting that many of the tenants of the mobile park cannot afford legal representation for their claims.

Eakin declined to comment on the Mallas and Tallbull suit, which is ongoing. He also declined to comment on the class action lawsuit, which will go before Yellowstone County District Court Judge Gregory Todd. Cherry Creek has not yet issued a response to the class action.

Cherry Creek resident Maria Kraftenberg said she has lived at the mobile home park for less than a year. Over the past few months, the park's management has changed and last month residents received new rules about maintenance of the area, Kraftenberg said. The park now has a curfew and rules about how many people can live in each trailer, Kraftenberg said.

September 1, 2020

TO: Members of the City of Billings Zoning Commission

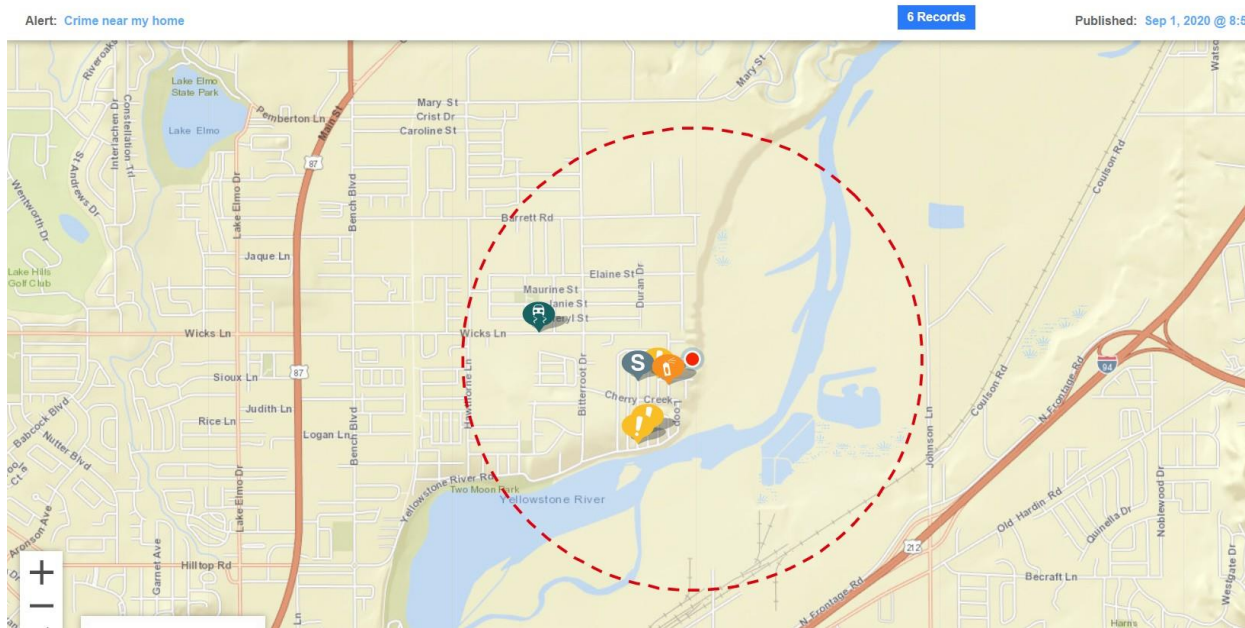
FROM: Pam Ellis

# CRIME AND CHERRY CREEK

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 additional dwelling units will help increase the number of rate payers to the city utility systems and increase the taxable value of the property.

BELOW IS A PICTURE OF POLICE CALLS AT CHERRY CREEK 8/31/2020. We have had as many as 15 police calls in one day within the last 2 months; there have been 0 days that have no police calls to Cherry Creek.





### Disturbing the Peace

#### Disturbance

0 BLK LAPIN ST | 8/31/2020 @ 12:36 PM  
Billings Police



### Disturbing the Peace

#### Disturbance

0 BLK RAINIER ST | 8/30/2020 @ 8:39 PM  
Billings Police



### Disturbing the Peace

#### Disturbance

0 BLK SKEENA ST | 8/30/2020 @ 12:22 PM  
Billings Police



### Vandalism

#### Vandalism

0 BLK STELLA ST | 8/29/2020 @ 10:01 PM  
Billings Police



## Sex Crimes

### Sex Offense

0 BLK CAVALIER ST | 8/28/2020 @ 8:32 PM  
Billings Police

## Billings Police Department: Heights TF Area Crime Stats: August 2019-July 2020

### Heights TF/Cherry Creek Calls for Service: August 2019 - July 2020

*Cherry Creek %: what percentage of total Heights calls occurred in Cherry Creek*

	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Total
Heights TF	282	207	258	215	249	251	251	216	224	236	261	243	2,893
Cherry Creek	9	11	10	10	8	13	14	18	10	15	17	11	146
Cherry Creek %	3.19	5.31	3.88	4.65	3.21	5.18	5.58	8.33	4.46	6.36	6.51	4.53	5.05

*Cherry Creek %: what percentage of total Heights reports occurred in Cherry Creek*

*\* Heights TF data is for all of Heights, including Cherry Creek*

*Bobbi Johnson | Crime Analyst | 08.14.2020*

**Is there census data for how many people in the HTF area vs how many live in Cherry Creek?**

**Johnson, Bobbi**

Aug 19, 2020,  
9:02 AM (13 days  
ago)

to me

Last year, I estimated the population of each task force using the Census block groups data. However, Census boundaries do not match the Heights (or any task force area) exactly, so it is a ballpark estimate at best.

The number I use for the Heights population is 28,426. Below is the caveat I put in the task force report concerning this number.

I don't have a population for Cherry Creek.

It is within block group 3, which includes other areas beyond Cherry Creek. However the population estimate could be close as the other area doesn't seem to include a lot of housing.

You can see the block group area in the attached pic.

According to the Census 2017 5-year population estimate, this block group (block group 3, geoid: 301110007023) had a population of 2,734. But again, you have to take this number with a grain of salt.

Hope this helps.

Let me know if you have any other questions,

***Bobbi Johnson***

*Crime Analyst*

*Billings Police*

*406.657.8455*

**Cherry Creek % of Heights Population = 2734/28,426 or 10%**

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

There are no accessible parks for children living in the current Cherry Creek Mobile Home Park.

# Billings mobile home owner picking up pieces after fire

Park-owned hydrants went dry as fire burned

By: [Zoe Zandora](#)

Posted at 6:27 PM, Oct 28, 2019 <https://www.ktvq.com/news/local-news/billings-mobile-home-owner-picking-up-pieces-after-fire>

*and last updated 2:17 PM, Oct 29, 2019*

BILLINGS — It was an emotional day for Chad Morrison as he walked through the ashes left behind of his belongings lost in a weekend fire at his Billings Heights mobile home.

"I tried to see if there was anything I could do. I tried a fire extinguisher. I couldn't do nothing. I had to back off," he said Monday.

An accidental fire destroyed Morrison's mobile home Saturday evening, and two malfunctioning fire hydrants didn't help.

Those hydrants are private property that is the responsibility of the owners of the mobile home park, Cherry Creek Homes.

"The owner and his wife, they- bless their heart- they brought by two gift cards. One for Ginger and one for myself. And their exact statement was they are going to make this right," Morrison said.

While battling the fire, the Billings Fire Department had trouble using two fire hydrants that seemed to be malfunctioning. That struggle didn't necessarily slow firefighters' ability to combat the fire, but it could have

hindered the mop up, according to Billings Fire Marshal Michael E. Spini.

These hydrants are on private property, which means it is Cherry Creek's responsibility. So what happened? Why didn't the hydrants work?

"The hydrants didn't work due to an underground gate valve being partially closed," Cherry Creek homes owner Jock Clause said.

But how that happened- he doesn't know.

"First thing Sunday morning, Jock and family members were down here checking all of the hydrants cause it was completely unknown. Nobody knew. So they came down and made sure everything was up to par and going. So everything is charged and working the way they should," Morrison said.

Clause says the last time they checked the valves was back in 2018. The valve was open and all pipes were tested and charged fully, ready to use.

The fire caused an estimated \$35,000 in property and content damages. Yet Morrison says he has no ill will against the property owners.

Adding that they are going to make it right, he said, "I can't thank them enough. They are such wonderful people."

## Fire marshal: Heights mobile home fire was caused by gas fireplace valve

[Mike Kordenbrock](https://billingsgazette.com/news/local/fire-marshal-heights-mobile-home-fire-was-caused-by-gas-fireplace-valve/article_3437b8a0-8e79-57a3-918e-2c153974aab0.html) Oct 27, 2019 [https://billingsgazette.com/news/local/fire-marshal-heights-mobile-home-fire-was-caused-by-gas-fireplace-valve/article\\_3437b8a0-8e79-57a3-918e-2c153974aab0.html](https://billingsgazette.com/news/local/fire-marshal-heights-mobile-home-fire-was-caused-by-gas-fireplace-valve/article_3437b8a0-8e79-57a3-918e-2c153974aab0.html)

A fire that burned through a mobile home in the Billings Heights Saturday night was caused by the failure of a valve on a gas fireplace, according to the Billings Fire Department.

"A gas valve failed in a natural gas fireplace in the home and ignited the wood paneling on the wall behind the fireplace," Assistant Fire Marshal Bill Tatum said by email Sunday.

There were no people inside when the fire began, but multiple pets inside the home died. The fire took place at around 7:36 p.m. on the 30 block of Lapin Street. The firefighting effort was complicated by dry hydrants in the area that forced the fire department to rely on water tenders to supply hoses with water.

"The fire gutted the back end of the mobile home and spread throughout the rest of the structure," a BFD press release said.

It was initially unclear what caused the fire. The fire department had planned to return to the scene of the fire Sunday and continue investigating during daylight hours but the investigation eventually concluded that the fire was accidental.

Neither the property nor its contents were insured. The property and content loss is estimated to be \$35,000, according to the fire department.

# Billings fire department says hydrants are functioning again in Heights mobile home park

Mike Kordenbrock Oct 29, 2019 [https://billingsgazette.com/news/local/billings-fire-department-says-hydrants-are-functioning-again-in-heights-mobile-home-park/article\\_dec4c6fe-e4b5-5a0a-bcd4-7934de00f83f.html](https://billingsgazette.com/news/local/billings-fire-department-says-hydrants-are-functioning-again-in-heights-mobile-home-park/article_dec4c6fe-e4b5-5a0a-bcd4-7934de00f83f.html)



Chad Morrison and Stacy Foley share the story of the fire that destroyed a mobile home and killed the pets inside on Lapin Street Saturday night. The pets included a pug dog named Rick, a Pomeranian named Fred, four ferrets, an Guinea pig and fish. Many of the pets were owned by Ginger Avery, the resident of the mobile home. Morrison said a faulty gas fireplace valve caused the fire. He praised the owners of the mobile home park for their promise to help with the uninsured home. "They're fantastic people," Morrison said. A Billings Fire Department fire marshal was testing fire hydrants in the area after it was reported firefighters were unable to get water from the closest hydrant during the fire.

LARRY MAYER, Billings Gazette

A valve that was shut off resulted in multiple fire hydrants not functioning Saturday night during a house fire in the Cherry Creek Homes mobile home park, according to the Billings Fire Department.

The lack of water supply to the hydrants was discovered as firefighters worked to extinguish [a fire that burned through a mobile home](#), destroying the interior and killing multiple pets.

The battalion chief on scene Saturday night, Darrek Mitchell, had said during the fire response that the blaze was knocked down before the hydrant issue was discovered, but that the fire rekindled as firefighters tested a second nearby hydrant that also wasn't functioning.

Engine tanks and tender trucks, which carry their own limited supply of water, were used to contain the fire.

Testing done Monday morning determined the switched off valve affected only Lapin Street, Fire Marshal Mike Spini said. After the valve, opened the hydrants again were functional, Spini said.

The water lines, valves and other infrastructure in Cherry Creek are privately owned by the mobile home park.

"They're responsible for maintaining them," Spini said. "They don't know how it got shut off."

Spini said the issue appeared accidental and that following the testing the fire department has no other immediate plans related to the issue.

Water is supplied to Cherry Creek from the Billings Heights Water District.

The fire department's investigation determined the fire Saturday night was accidental and caused by a gas valve that failed in a natural gas fire place. The wood paneling behind the fireplace ignited, causing the fire to spread.

The owner of the mobile home that burned, Chad Morrison, remained emotional Monday morning, crying at times as he described his situation. Neither the mobile home nor its contents were insured.

For the past several years Morrison had lived with Ginger Avery at 32 Lapin St. where they had numerous pets including a pug named Rick, a Pomeranian named Fred, four ferrets, a guinea pig and a fish. Many of the pets belonged to Avery. All died as a result of the fire.

Morrison had recently been in the process of moving next door. Avery said that ownership of the mobile home would have been transferred to her soon, but all that has been put on hold because of the fire.

He was not home when the fire happened and Avery was out of town, Morrison said. The fire department estimated the value of the property and contents lost at \$35,000.

Morrison said he does maintenance work at the mobile home park. He said he knows that the hydrant issue has led to criticism of the Cherry Creek owners, Jock and Kathy Clause. He defended them and said knowing how hard this has hit him they've offered to help him out going forward.

"They're good people," he said.

Morrison said he has a place to stay and is now focused on trying to help out Avery. The public can donate to help both people at the Cherry Creek front office. Dawna Webster, a front office assistant, said the most pressing issue right now is that Avery needs a place to stay as things continue to be sorted out after the fire. The fire destroyed most of her possessions.

"People know that bad things happen to good people, and we have a really large community here," Webster said of why she was organizing the donation drive. "Trying to take care of people within our community is really important to us."

Morrison was working Monday to board up windows. He said it's unclear what, if anything, can be saved from the burned out trailer.

# Cherry Creek Homes accused of charging undisclosed, illegal fees

By ASHLEY NERBOVIG Nov 8, 2016 [https://billingsgazette.com/news/state-and-regional/crime-and-courts/cherry-creek-homes-accused-of-charging-undisclosed-illegal-fees/article\\_ca93c4ea-e1c6-58c3-9bbf-9df686ecc7a5.html](https://billingsgazette.com/news/state-and-regional/crime-and-courts/cherry-creek-homes-accused-of-charging-undisclosed-illegal-fees/article_ca93c4ea-e1c6-58c3-9bbf-9df686ecc7a5.html)

Two local residents have brought a class-action suit against Cherry Creek Development after a similar lawsuit found in part that Cherry Creek was incorrectly charging late fees.

Adam and Breea Somers are suing Cherry Creek Development and RJC Investment after the companies failed to disclose finance fees.

Cherry Creek is a mobile home park in the Billings Heights with 362 trailer lot spaces.

The class action suit follows a favorable ruling earlier this year for another couple living in the mobile home park. Stevee Mallas and Jacob Tallbull sued after Cherry Creek posted a delinquency notice on their mobile home. Cherry Creek was acting as an agent of RJC Investment, according to the lawsuit.

Mallas and Tallbull paid a \$3,512 down payment on a mobile home. The couple financed the additional \$40,388 needed to purchase the mobile home, according to the suit. They began making monthly payments toward the principal in 2010.

Cherry Creek's contract with the couple violated multiple consumer protections of the Montana Retail Installment Sales Act, the Mallas and Tallbull lawsuit alleged. The contract did not state how much the finance charge would be over the life of the contract, according to the lawsuit. The contract also stated the couple would be charged \$50 if payments were five or more days late.

Yellowstone County District Court Judge Russell Fagg entered judgement on the nondisclosure of the finance charge and the legality of the late fees. Because the contract did not disclose the finance

charge and because late fees can only be evaluated by a creditor after a payment is 10 days late, Fagg ruled Cherry Creek and RJC are barred from collecting any "finance, delinquency or collection charge on the contract."

In his judgement, Fagg found the Cherry Creek contracts violated at least four parts of the Montana Retail Installment Sales Act.

The same attorney who represented Mallas and Tallbull, Michael Eakin, was hired to represent the Somerses in their class action suit. The Somerses' lawsuit seeks to prevent Cherry Creek from collecting finance charges against mobile home residents who have similar contracts and illegal late fees.

The Somerses justified the class action suit by noting that many of the tenants of the mobile park cannot afford legal representation for their claims.

Eakin declined to comment on the Mallas and Tallbull suit, which is ongoing. He also declined to comment on the class action lawsuit, which will go before Yellowstone County District Court Judge Gregory Todd. Cherry Creek has not yet issued a response to the class action.

Cherry Creek resident Maria Kraftenberg said she has lived at the mobile home park for less than a year. Over the past few months, the park's management has changed and last month residents received new rules about maintenance of the area, Kraftenberg said. The park now has a curfew and rules about how many people can live in each trailer, Kraftenberg said.

Cherry Creek applied to expand the subdivision by 80 mobile homes [earlier this year](#), but the Yellowstone County Zoning Commission denied the zoning change request.

Cherry Creek did not respond to requests for comment.

## 15-year-old girl pronounced dead after shooting in Billings Heights

Montana Standard | 2019-05-12

[https://mtstandard.com/news/state-and-regional/year-old-girl-pronounced-dead-after-shooting-in-billings-heights/article\\_0964456f-cbdd-5d0c-9f84-3b550a447d36.html](https://mtstandard.com/news/state-and-regional/year-old-girl-pronounced-dead-after-shooting-in-billings-heights/article_0964456f-cbdd-5d0c-9f84-3b550a447d36.html)

The Billings Police Department responded to a shooting in a trailer park in the Billings Heights that left one teen dead on Saturday night.

A 15-year-old girl was pronounced dead on scene by law enforcement. The shooting occurred on 12 Stella Street in the Cherry Creek Estates trailer park in the Heights around 7:30 p.m. Saturday, according to BPD Sgt. Nate West.

The girl had a single gunshot wound when officers arrived, West said. No suspects were taken into custody. No other injuries were reported and no one was taken to a hospital, he said.

Police are treating the incident as a "suspicious shooting," but there is currently no threat to public safety, West said.

A detective unit was on scene investigating the incident, he said.

A coroner's unit was also on scene as of 8:45 p.m.

The Billings police and American Medical Response responded to the incident.

An investigation is ongoing.

# Teen killed in Billings shooting identified; police still investigating

Mike Kordenbrock May 14, 2019 [https://billingsgazette.com/news/local/teen-killed-in-billings-shooting-identified-police-still-investigating/article\\_c5a958be-7ab7-5dc3-b43e-1e0547ebe7a8.html](https://billingsgazette.com/news/local/teen-killed-in-billings-shooting-identified-police-still-investigating/article_c5a958be-7ab7-5dc3-b43e-1e0547ebe7a8.html)



The Billings Police Department responds to a reported shooting in a mobile home park in the Billings Heights that left one teen dead on Saturday night.

BETHANY BAKER, Billings Gazette

The 15-year-old girl killed Saturday night by a single gunshot wound was identified Tuesday morning by the Yellowstone County Coroner's Office as Tionna Rowland of Billings.

The Billings Police Department has continued investigating Rowland's death after she was fatally shot at around 7:30 p.m. at an address on Stella Street, a part of the Cherry Creek Estates mobile home park in the Heights.

"The investigation is ongoing, and there have been no charges or arrests made," BPD Lt. Brandon Wooley said in an email to The Gazette early Monday evening, in which he referred to Rowland's death as a tragedy. "There is still more to be done before we can come to conclusions regarding the nature of death."

In a press release sent out on Tuesday afternoon Wooley said no further details could be released due to "the on-going nature of the investigation and the involvement of juveniles."

Saturday night, BPD Sgt. Nate West had said there was no current threat to public safety and that detectives were on scene. No other injuries were reported, he said.

Rowland was a freshman at Skyview High School. School District 2 Superintendent Greg Upham said the district had activated its crisis team of counselors to provide support to Skyview, Medicine Crow Middle School and if needed, Beartooth Elementary.

Upham said the crisis team is made up of counselors at other SD2 locations who can mobilize to deal with tragedies affecting students. Bringing the crisis team to a school allows counselors already in place to continue their normal work duties, while the crisis team handles additional students' needs as the circumstances may warrant.

"We strive in tragedies obviously to support our students, staff and any adults that need help," Upham said. "But at the same time we

want to keep our operations as normal as possible just for the stability of all students."

# Low-key council meeting likely

MATT HAGENGRUBER Of The Gazette Staff Oct 21, 2007

[https://billingsgazette.com/news/local/low-key-council-meeting-likely/article\\_7b113d1d-eb1e-592e-b27b-9ac194b8d9c3.html](https://billingsgazette.com/news/local/low-key-council-meeting-likely/article_7b113d1d-eb1e-592e-b27b-9ac194b8d9c3.html)

Bucking a recent trend, tonight's City Council meeting may not run until early Tuesday morning, but the council still has a bevy of issues before it. Some are routine and some may draw discussion, but none should be as controversial as recent changes to the city's electronic sign ordinance.

First up, the council will consider a request from the developers of the Cherry Creek mobile home park in the Heights to allow for a planned expansion. The first phase of the mobile home park began after council approval in 2003. The city stipulated then that a second phase could be developed once the first phase was built and reviewed by the city.

That review is done, and the council must decide how many homes will be allowed in the second phase. In the agreement between the city and the developers, Roy and Jock Clause, the park can expand to include another 174 homes if it has met all of the conditions set in 2003. If the conditions aren't all met, the city can limit the new expansion to as few as 111 new homes.

City staff reviewed the agreement and found that the first phase of the park mostly met the conditions. But for phase two, city planners recommend that all required improvements, like utilities, landscaping and streets, be completed or guaranteed before the city issues any building permits. Also, the park must add a few trees to lots in the first phase, resolve a few code violations and adjust how much money it will contribute for building intersections near the park.

Then, the council will consider expanding the boundaries of the Downtown Business Improvement District to include the future site of the Stockman Bank building at the corner of Fourth Avenue North and North 28th Street.

In late August, Stockman Bank asked the council to expand the district to include its property. Assistant City Administrator Bruce McCandless said the move is minor but another step toward a new downtown bank.

"This shows that Stockman's commitment to downtown is real and it's strong," said Greg Krueger of the Downtown Billings Partnership.

The district is a group of business owners who pay Downtown Billings Partnership workers to keep sidewalks clean and promote downtown Billings. BID workers are known for their distinctive purple shirts.

The council will also consider a zone change on 400 acres recently annexed by the city along Roundup Road past the Billings Heights. The developer of the land, Gary Oakland, wants to build up to 1,200 single-family homes on lots averaging 8,200 square feet.

Oakland is asking the city to rezone the land from Residential 9600 to Residential 7000, which means smaller lots and more affordable housing, he said. The subdivision would have 10 to 12 phases, each with 75 to 100 homes, built over 10 to 15 years.

The development would be built using a design concept called coving, in which the streets and lots are curvy and include more open space. Oakland's subdivision plan includes 36 acres of parks.

Although on the agenda, the council will not vote on an agreement with the Lockwood Sewer and Water District to provide wastewater

treatment to the district. The council is expected to table the issue until Nov. 13 after it decided last week to allow city staff to add more stringent language and safeguards to the agreement.

## City Council puts off action on irksome mobile home park

MATT HAGENGRUBER Of The Gazette Staff Oct 22, 2007

[https://billingsgazette.com/news/local/city-council-puts-off-action-on-irksome-mobile-home-park/article\\_c3ce9fd2-81e0-5627-a0cc-24f8afbc9096.html](https://billingsgazette.com/news/local/city-council-puts-off-action-on-irksome-mobile-home-park/article_c3ce9fd2-81e0-5627-a0cc-24f8afbc9096.html)

The City Council on Monday night delayed action on expanding a mobile home park in the Heights, but council members couldn't hide their displeasure with the park or its developer for not following city guidelines.

The developers of the Cherry Creek Estates mobile home park want to go ahead with a planned expansion of the park. Under a 2003 development agreement, a future City Council could limit the expansion to 111 new homes only if the park failed to meet certain development conditions.

Council members, angry at their seeming inability to cancel the project outright, voted 9-1 to revisit the issue on Nov. 26. In that time, they have asked City Attorney Brent Brooks to see if the city could back out of the agreement.

In the 2003 agreement, the park could add another 174 homes if it met all of the conditions from the city, which include one tree per lot, a fence surrounding the park and traffic limits.

If not all the conditions were met, the city could limit the expansion to 111 new homes. City staff said the park had numerous violations, including many junk cars in yards. Opposition to the expansion grew quickly.

"I don't want to approve this," Mayor Ron Tussing said. "I'd understand if there was one problem, but the fence, traffic, code enforcement. What other choice do we have? The only thing we can do is scratch off a few units from (the developer's) proposal."

Several council members said they want to stop the expansion entirely and questioned how the city could accept an agreement where it can't stop development.

Ward 2 Councilman Larry Brewster said the developers, Roy and Jock Clause, would probably sue the city if the expansion is stopped. The developers didn't attend the meeting.

In other business, the council adopted zoning changes for a proposed 400-acre subdivision along Roundup Road in the Heights.

Developer Gary Oakland wants to build up to 1,200 homes on the site and asked the city to change the zoning from Residential 9600 to Residential 7000, which allows for smaller lots. A 100-foot buffer strip along the northeastern edge of the property would stay at Residential 9600 zoning to please neighboring homeowners, who worried that their 15,000-square-foot lots would sit awkwardly with the newer 8,200-square-foot lots. Several homeowners came to the meeting and persuaded the council to change the eastern edge of the buffer to 200 feet.

Near the end of the meeting, council members got into a heated debate over the firefighters' lawsuit and how the city plans to pay the firefighters.

In 2000, 116 current and former firefighters sued the city, claiming that they had been underpaid. The city recently lost that lawsuit and could have to pay more than \$4 million to the firefighters. A more definitive sum will probably be announced at a Nov. 1 hearing.

Tussing said he thinks the city has done a poor job in explaining that it won't pay for the lawsuit using money from the public safety mill levy that began in 2004.

The city plans to pay for the lawsuit by making cuts to the Fire Department, including rescinding seven job offers. Firefighters have criticized that decision.

Ward 3 Councilman Vince Ruegamer said the city will pay the firefighters and that it's "none of their damn business" where the money comes from.

The council also passed several minor budget amendments, expanded the Downtown Business Improvement District to include Stockman Bank property and delayed action on an agreement with the Lockwood Water and Sewer District until Nov. 13.

# Mobile-home park developer fears city's mind is made up

## Owner says violations noted by city will be, or have been, cleared up

MATT HAGENGRUBER Of The Gazette Staff Nov 23, 2007

[https://billingsgazette.com/news/local/mobile-home-park-developer-fears-citys-mind-is-made-up/article\\_b9c410a2-dbb1-512c-94b9-ff75dc9d9ffc.html](https://billingsgazette.com/news/local/mobile-home-park-developer-fears-citys-mind-is-made-up/article_b9c410a2-dbb1-512c-94b9-ff75dc9d9ffc.html)

The developer of a Heights mobile-home park under review by the Billings City Council said his park has complied with conditions set by the city, but council members are still trying to thwart expansion plans.

In 2003, Jock Clause and his father, Roy, built the first phase of Cherry Creek Estates. The pair now wants to build a second phase according to a development agreement with the city signed in April 2003. The park is located at Wicks Lane and Bitterroot Drive.

In the development agreement, the Clauses could develop 189 lots in the first phase and another 174 in the second phase, for a total of 363.

But if the City Council determined that the developers didn't comply with all requirements, the council could limit the second phase to as few as 111 lots. At a council meeting Oct. 22, several council members expressed anger with the development and said conditions hadn't been met.

The council is expected to decide the issue at its Monday night meeting, and Jock Clause is worried that council members have made up their minds to limit the park's expansion.

"We have approval for 363 lots, and it was just a formality to go before the City Council for this," he said. "We feel we've complied with everything they've asked. But only being able to build 300 lots won't work for us."

At the Oct. 22 council meeting, council members realized that they were mostly forced to stick with the 2003 agreement. Several asked if the agreement could be canceled entirely, but City Attorney Brent Brooks told the council to act cautiously to avoid legal trouble. Jock Clause said legal action is a last resort.

"We'll look at our options. We may have to seek a neutral party to make a decision," he said. "But we don't want to go there. It's a waste of money."

At the Oct. 22 meeting, Heights Councilwoman Joy Stevens asked Brooks to clarify language in the development agreement saying that the agreement could be declared "obsolete" by the council, and whether that meant the council could stop the expansion entirely. At a planning session Monday night, Brooks told council members that the city thinks violations can be mitigated, so stopping the expansion is unlikely. Limiting the expansion is more realistic, he said.

City planning officials told council members at the Oct. 22 meeting that the development had several violations, including an insufficient number of trees, junk cars in yards, gaps in a required fence, an emergency access gate that was open and being used by construction trucks, and 27 percent more car traffic than expected. Officials also pointed to a swale on the edge of the property that filled with water.

A month later, Jock Clause said all of those violations have been fixed or that Cherry Creek has financially guaranteed that they will be fixed.

Each lot is required to have one tree, and Clause said they can't be planted until spring.

The park will probably contribute more money to have several nearby intersections improved, and Clause told the city he'd fix gaps in the wooden fence. The emergency gate now has a chain holding it closed, and water from the swale will be pumped back into one of two storm water ponds.

The park sits on a reclaimed gravel pit and overlooks the Yellowstone River. Across the river sits the ExxonMobil refinery. The entire development is about 80 acres, and each phase covers about half of that area. Some minor construction has already begun on the second phase, and about 50 lots sit empty in the first phase. The park has a new community center, overlooking a pond, that is used for meetings, weddings and other events.

Clause said most construction of the second phase will begin in the spring, and he expects it to be filled with mobile homes within three to four years.

The development has caused some controversy since it was first planned, but Jock Clause said he's pushing for full development because manufactured homes are affordable homes, and demand will be rising.

"There's nothing wrong with this project," he said. "They want affordable housing; that's what we're providing there now. I think (the council) has some people out there putting pressure on them" against the project.

# Businesses on council agenda

MATT HAGENGRUBER of The Gazette Staff Nov 25, 2007

[https://billingsgazette.com/news/local/businesses-on-council-agenda/article\\_6a4621c1-84aa-594c-9ff1-3e72da00906a.html](https://billingsgazette.com/news/local/businesses-on-council-agenda/article_6a4621c1-84aa-594c-9ff1-3e72da00906a.html)

The City Council faces a relatively light agenda for tonight's meeting. The most contentious issue may be approving the second phase of the Cherry Creek Estates mobile home park.

The council will likely pass numerous plats, subdivision changes and minor annexations in its consent agenda before taking up a few other issues: the Cherry Creek plan, a public hearing for the South Billings Boulevard urban renewal plan and a public hearing on allowing small retail businesses in residential neighborhoods.

Citizens will have an opportunity to comment on an urban renewal plan for a large area in south Billings. If approved, a tax increment finance district would be created in early 2008, which would allow infrastructure improvements in the area over the next 15 years. The district includes the site of the planned Cabela's store.

Also, the council will hold a public hearing and take up a zone change that would allow small retail businesses in residential neighborhoods. The city's zoning commission voted 4-0 this month to approve the zone change.

The change would allow for bakeries, restaurants, laundries and small grocers up to 3,000 square feet, but not gas stations. City officials said the change keeps neighborhoods diverse and decreases traffic, since people can walk to nearby businesses instead of driving.

No special review is needed for businesses in neighborhoods already zoned for high-density residential complexes, like apartments. Special review is needed, however, for businesses in lower-density neighborhoods. Current businesses would be exempt until they remodel or make major changes.

## Cherry Creek expansion OK'd

MATT HAGENGRUBER Of The Gazette Staff Nov 26, 2007

[https://billingsgazette.com/news/local/cherry-creek-expansion-okd/article\\_2b36bb0a-c00a-5a9b-acbc-7a9cb2c6688e.html](https://billingsgazette.com/news/local/cherry-creek-expansion-okd/article_2b36bb0a-c00a-5a9b-acbc-7a9cb2c6688e.html)

The City Council gave reluctant approval Monday night to a second phase at Cherry Creek Estates mobile home park in the Heights, assuming the developers bring the first phase into compliance.

The park's developers, Roy and Jock Clause, want to add 174 lots to the 189 built in the first phase, for a total of 363. According to the development agreement signed in 2003, the city couldn't prevent the second phase; it could only limit it to 111 lots if it determined that the park wasn't in compliance with the agreement.

Saying the park wasn't in compliance in several areas, the council voted 10-1 to limit the development to 300 lots. The council's motion stated that the second phase can't be built until the first phase is brought into compliance.

"The threat of not having additional units approved is the only way to ensure compliance," Councilman Larry Brewster said. "They could have had all these things up to snuff before they applied (for the

second phase). They could have been in compliance, and they were not."

City planning staff told the council that the park was required to have one tree per lot, and it was missing 58 trees. The city also found gaps in a fence surrounding the park, an extra storm water retention pond, an unsecured emergency access gate and 27 percent more traffic than expected.

City staff and Jock Clause said most of the problems are already fixed and that the remaining problems will be fixed by spring. Frustrated after the meeting, Clause said his development was based on 363 lots. Having just 300 lots makes things much more difficult financially.

"We financially cannot comply with the conditions with only 300 units," he said. "We bent over backward for these people."

In other business, the council:

n Voted 11-0 to create a South Billings Boulevard urban renewal district. A few people spoke for the plan and a few spoke against it, expressing concern that their taxes would rise if the district is created. Several council members assured them that their taxes would not increase any more than if the district didn't exist.

Council members said the taxes from any new businesses or improvements in the district stay in the district and will be used mostly for infrastructure improvements, including streets or sewer lines.

The district would run generally from State Avenue and Laurel Road on the north to south of the interstate in some places and from Mallowney Lane on the west to Washington Street on the east.

On an 8-3 vote, the council added language to the plan that allows the city to use its power of eminent domain to facilitate infrastructure improvements in some cases. The original plan didn't allow for the use of eminent domain in the district. That power allows the city to acquire private property for public uses. City officials said eminent domain is rarely used.

n Tabled until March an ordinance that would have allowed small retail businesses in residential neighborhoods. Concerned about tattoo parlors and alcohol sales, the council sent the ordinance back to city staff for more clarification on what types of businesses would be allowed.

City planner Nicole Cromwell said the new rules would diversify neighborhoods and prevent divisions between neighborhoods and business districts. But Ward 1 Councilman Jim Ronquillo said the era of small-time groceries in his neighborhood is over.

"There used to be 10 of those mom-and-pop stores. How many are left today? Not a one," he said.

# Developers fight for water in court

ED KEMMICK Of The Gazette Staff Mar 8, 2004 [https://billingsgazette.com/news/local/developers-fight-for-water-in-court/article\\_9f2e02b8-781a-5464-b245-358defadfc45.html](https://billingsgazette.com/news/local/developers-fight-for-water-in-court/article_9f2e02b8-781a-5464-b245-358defadfc45.html)

The owners of a mobile home park under construction in the Heights are in a courtroom battle with the County Water District of Billings Heights over water connections to the site.

In late February, the water district obtained a temporary injunction barring Cherry Creek Development from hooking up any more mobile homes to its water distribution system, and now it is seeking a permanent injunction until the case can be settled in court. District Judge Gregory Todd issued the temporary order on Feb. 13, and on Friday attorneys for both sides submitted briefs arguing their positions.

The Cherry Creek Estates Subdivision, an 81-acre site just south of Wicks Lane and east of Bitterroot Drive, is being developed by Roy and Jock Clause, who entered into an agreement with the water district last April. The district agreed to provide water service and the Clauses agreed to install a water main to serve the subdivision.

The water district contends that the Clauses have put in a water main from Shannon Street to Erin Lane, but have not completed the larger portion of what is called the Bitterroot main extension, from Erin to Wicks Lane.

The water district, represented by Kristin Omgig of the Crowley law firm, said the Clauses have been aware since at least April 16, 2003, that they needed to complete the water line extension all the way to Wicks before the district would allow them to hook up to its system.

Even though the extension wasn't completed, the district says, one of its employees noticed in mid-December that a mobile home was parked in the Cherry Creek Estates Subdivision, and the resident of the home confirmed that it had water service.

The employee, Gary Crick, said he checked the main valve going into the subdivision and noticed that the top of the valve box had been broken off, and the box had been filled with gravel and dirt. He said he dug down to the valve and saw that it had been turned on.

"The valve appeared to have been tampered with because the District did not open the valve and has never authorized or approved water service to the Subdivision," the water district said in court documents.

The district learned that an additional mobile home was being moved into the subdivision on Feb. 6, and another on Feb. 12. The next day, Judge Todd issued the temporary order barring the Clauses from "any further placement of mobile homes within the Cherry Creek Subdivision and connection of such mobile homes to the District's water system."

As of Feb. 25, Crick said, eight mobile homes - five double-wides and three singles - had been moved into the subdivision.

The Clauses' attorney, Bruce Fain, said the judge's order didn't prohibit placing any more mobile homes on the site. He said it only barred the Clauses from moving any homes there and hooking them up to the water district's lines.

As for the larger issue, the Clauses said in papers filed Friday that the agreement between the district and the Clauses says nothing about the water main from Erin to Wicks, and any requirements added afterward, whether in letters or verbally, have no legal standing.

Entities like the water district "can't simply issue unwritten and un-memorialized imperial decrees," the Clauses said.

In its court briefs, the district noted that William Enright, an engineer with Morrison, Maierle Inc., testified that without the Bitterroot main extension, if there was a main break on Wicks near Walter Road, water pressure in some of the district's lines would drop below 20 pounds per square inch. Below that pressure level, he said, non-potable water could back up and contaminate the entire water system, which services more than 10,000 clients.

The Clauses argued that Enright based his comments on guidelines established by the state Department of Environmental Quality, and yet the "requirement makes no reference whatsoever to a water main break, which certainly would have been included if it was to be analyzed." They also say the DEQ approved their plans for the subdivision.

The Clauses' brief says "possible injury to the District, predicated upon its Doomsday scenario, is not as certain as the damage that will happen to the Defendants if they are not permitted to continue with their project."

They suggested that the best way to handle the dispute would be for the water district to pay for extending the water main to Wicks and then to sue the Clauses for breach of contract. They also asked the judge to deny the restraining order or, if he does grant it, to require the water district to post a bond large enough to protect the Clauses if they are unable to repay \$2 million in loans on the project.

The Clauses have been working for six or seven years to develop the mobile home park, often against the opposition of a group of

neighbors who organized under the name United Residents of East Billings.

After the land was annexed by the city, the City Council voted last spring to allow development on the former gravel pit. The Clauses were to develop up to 160 sites during Phase 1 of the project, and then, if the development won the approval of the council, up to more than 300 in a second phase.

## **Water main work to resume on Heights mobile home park; Developers follow court ruling on water main extension**

ED KEMMICK Of The Gazette Staff Mar 24, 2004

[https://billingsgazette.com/news/local/water-main-work-to-resume-on-heights-mobile-home-park-developers-follow-court-ruling-on/article\\_d3513d54-7313-51d4-9905-91446e36ff3c.html](https://billingsgazette.com/news/local/water-main-work-to-resume-on-heights-mobile-home-park-developers-follow-court-ruling-on/article_d3513d54-7313-51d4-9905-91446e36ff3c.html)

The developer of an 81-acre mobile home park in Billings Heights said Wednesday that construction should begin today on the final segment of a water main that will service his subdivision.

Roy Clause of Cherry Creek Development said he and his son, Jock Clause, will complete the project, estimated to cost \$80,000, so they can continue filling up their mobile home park at Wicks Lane and Bitterroot Drive.

"You'd think that would satisfy everybody," Roy Clause said.

The Clauses' decision to proceed with the project came after a district judge ruled Monday in favor of the County Water District of Billings Heights in its lawsuit against the developers.

Judge Gregory Todd's order prohibited the Clauses from moving any more mobile homes onto their Cherry Creek Estates Subdivision and hooking them up to the district's water lines until the dispute was settled in court. Todd also turned down the Clauses' request to require the water district to post a bond large enough to cover their \$2 million investment in the project.

The dispute arose over the Clauses' contention that they were not obligated, as part of their agreement to be serviced by the water district, to build a water main from Shannon Street to Wicks Lane along Bitterroot Drive.

They installed about 20 percent of that line, from Shannon to Erin Lane, but claimed that the agreement did not require them to complete the extension to Wicks. Todd ruled that the Clauses knew as early as April 16 last year that completion of the entire extension was a condition for being annexed into the Heights water district.

Todd said the Clauses never disputed that provision until Sept. 24, when they informed the water district board that the agreement mentioned no such obligation. Although the agreement didn't specially mention the extension, Todd ruled, the requirement was spelled out in many conversations and letters.

"The district was consistent and clear in what Cherry Creek was to do, including the building of the BME," or Bitterroot Main Extension, Todd said, and the Clauses' insistence that they didn't have to build it "refutes the plain language of the agreement."

The water district had argued that the Clauses' failure to put in the full extension would mean that in the event of a water line break, water pressure in some of the district's lines would drop below 20 pounds

per square inch. At that level, the district's engineer said, nonpotable water could back up and contaminate the entire water system.

"Not only the plaintiff, but the 10,000 other customers comprising the Billings Heights Water District, are likely to suffer irreparable harm if the defendants are not enjoined from further placement of the mobile homes within the subdivision prior to completion of the BME," Todd ruled.

In court documents filed earlier in the case, the water district said that even though the Clauses hadn't received permission to connect to its water system, a mobile home was moved into the subdivision in December, and a district employee was told by a resident of the home that it had water service. The employee then found that the main water valve going into the subdivision had been tampered with and turned on.

According to Roy Clause, the mobile home park is designed to accommodate 362 mobile homes - 192 in Phase 1 of the project and 170 homes in Phase 2.

September 1, 2020

TO: Members of the City of Billings Zoning Commission

FROM: Pam Ellis

RE: HISTORY OF CHERRY CREEK IN THE NEWS

Below are quotes from news articles about the development of the Cherry Creek Mobile Home Court arranged in chronological order. I have attached the complete articles in sets of articles that include all on a single topic.

## **Developers fight for water in court**

ED KEMMICK Of The Gazette Staff Mar 8, 2004 [https://billingsgazette.com/news/local/developers-fight-for-water-in-court/article\\_9f2e02b8-781a-5464-b245-358defadfc45.html](https://billingsgazette.com/news/local/developers-fight-for-water-in-court/article_9f2e02b8-781a-5464-b245-358defadfc45.html)

The owners of a mobile home park under construction in the Heights are in a courtroom battle with the County Water District of Billings Heights over water connections to the site. ...

The water district, represented by Kristin Omvig of the Crowley law firm, said the clauses have been aware since at least April 16, 2003, that they needed to complete the water line extension all the way to Wicks before the district would allow them to hook up to its system.

Even though the extension wasn't completed, the district says, one of its employees noticed in mid-December that a mobile home was parked in the Cherry Creek Estates Subdivision, and the resident of the home confirmed that it had water service. ...

In its court briefs, the district noted that William Enright, an engineer with Morrison, Maierle Inc., testified that without the Bitterroot main extension, if there was a main break on Wicks near Walter Road, water pressure in some of the district's lines would drop below 20 pounds per square inch. Below that pressure level, he said, non-potable water could back up and contaminate the entire water system, which services more than 10,000 clients.

## **Water main work to resume on Heights mobile home park; Developers follow court ruling on water main extension**

ED KEMMICK Of The Gazette Staff Mar 24, 2004

[https://billingsgazette.com/news/local/water-main-work-to-resume-on-heights-mobile-home-park-developers-follow-court-ruling-on/article\\_d3513d54-7313-51d4-9905-91446e36ff3c.html](https://billingsgazette.com/news/local/water-main-work-to-resume-on-heights-mobile-home-park-developers-follow-court-ruling-on/article_d3513d54-7313-51d4-9905-91446e36ff3c.html)

The Clauses' decision to proceed with the project came after a district judge ruled Monday in favor of the County Water District of Billings Heights in its lawsuit against the developers. ...

"The district was consistent and clear in what Cherry Creek was to do, including the building of the BME," or Bitterroot Main Extension, Todd said, and the Clauses' insistence that they didn't have to build it "refutes the plain language of the agreement."

## **Low-key council meeting likely**

MATT HAGENGRUBER Of The Gazette Staff Oct 21, 2007

[https://billingsgazette.com/news/local/low-key-council-meeting-likely/article\\_7b113d1d-eb1e-592e-b27b-9ac194b8d9c3.html](https://billingsgazette.com/news/local/low-key-council-meeting-likely/article_7b113d1d-eb1e-592e-b27b-9ac194b8d9c3.html)

In the agreement between the city and the developers, Roy and Jock Clause, the park can expand to include another 174 homes if it has met all of the conditions set in 2003. If the conditions aren't all met, the city can limit the new expansion to as few as 111 new homes.

City staff reviewed the agreement and found that the first phase of the park mostly met the conditions. But for phase two, city planners recommend that all required improvements, like utilities, landscaping and streets, be completed or guaranteed before the city issues any building permits. Also, the park must add a few trees to lots in the first phase, resolve a few code violations and adjust how much money it will contribute for building intersections near the park.

## **City Council puts off action on irksome mobile home park**

MATT HAGENGRUBER Of The Gazette Staff Oct 22, 2007

[https://billingsgazette.com/news/local/city-council-puts-off-action-on-irksome-mobile-home-park/article\\_c3ce9fd2-81e0-5627-a0cc-24f8afbc9096.html](https://billingsgazette.com/news/local/city-council-puts-off-action-on-irksome-mobile-home-park/article_c3ce9fd2-81e0-5627-a0cc-24f8afbc9096.html)

The City Council on Monday night delayed action on expanding a mobile home park in the Heights, but council members couldn't hide their displeasure with the park or its developer for not following city guidelines. ....

"I don't want to approve this," Mayor Ron Tussing said. "I'd understand if there was one problem, but the fence, traffic, code enforcement. What other choice do we have? The only thing we can do is scratch off a few units from (the developer's) proposal."

Several council members said they want to stop the expansion entirely and questioned how the city could accept an agreement where it can't stop development.

Ward 2 Councilman Larry Brewster said the developers, Roy and Jock Clause, would probably sue the city if the expansion is stopped. The developers didn't attend the meeting.

## **Mobile-home park developer fears city's mind is made up Owner says violations noted by city will be, or have been, cleared up**

MATT HAGENGRUBER Of The Gazette Staff Nov 23, 2007

[https://billingsgazette.com/news/local/mobile-home-park-developer-fears-citys-mind-is-made-up/article\\_b9c410a2-dbb1-512c-94b9-ff75dc9d9ffc.html](https://billingsgazette.com/news/local/mobile-home-park-developer-fears-citys-mind-is-made-up/article_b9c410a2-dbb1-512c-94b9-ff75dc9d9ffc.html)

At the Oct. 22 council meeting, council members realized that they were mostly forced to stick with the 2003 agreement. Several asked if the agreement could be canceled entirely, but City Attorney Brent Brooks told the council to act cautiously to avoid legal trouble. Jock Clause said legal action is a last resort.

"We'll look at our options. We may have to seek a neutral party to make a decision," he said. "But we don't want to go there. It's a waste of money."

At the Oct. 22 meeting, Heights Councilwoman Joy Stevens asked Brooks to clarify language in the development agreement saying that the agreement could be declared "obsolete" by the council, and whether that meant the council could stop the expansion entirely. At a planning session Monday night, Brooks told council members that the city thinks violations can be mitigated, so stopping the expansion is unlikely. Limiting the expansion is more realistic, he said.

City planning officials told council members at the Oct. 22 meeting that the development had several violations, including an insufficient number of trees, junk cars in yards, gaps in a required fence, an emergency access gate that was open and being used by construction trucks, and 27 percent more car traffic than expected. Officials also pointed to a swale on the edge of the property that filled with water.

A month later, Jock Clause said all of those violations have been fixed or that Cherry Creek has financially guaranteed that they will be fixed.

## **Businesses on council agenda**

MATT HAGENGRUBER Of The Gazette Staff Nov 25, 2007

[https://billingsgazette.com/news/local/businesses-on-council-agenda/article\\_6a4621c1-84aa-594c-9ff1-3e72da00906a.html](https://billingsgazette.com/news/local/businesses-on-council-agenda/article_6a4621c1-84aa-594c-9ff1-3e72da00906a.html)

The City Council faces a relatively light agenda for tonight's meeting. The most contentious issue may be approving the second phase of the Cherry Creek Estates mobile home park.

## Cherry Creek expansion OK'd

MATT HAGENGRUBER Of The Gazette Staff Nov 26, 2007

[https://billingsgazette.com/news/local/cherry-creek-expansion-okd/article\\_2b36bb0a-c00a-5a9b-acbc-7a9cb2c6688e.html](https://billingsgazette.com/news/local/cherry-creek-expansion-okd/article_2b36bb0a-c00a-5a9b-acbc-7a9cb2c6688e.html)

The park's developers, Roy and Jock Clause, want to add 174 lots to the 189 built in the first phase, for a total of 363. According to the development agreement signed in 2003, the city couldn't prevent the second phase; it could only limit it to 111 lots if it determined that the park wasn't in compliance with the agreement.

Saying the park wasn't in compliance in several areas, the council voted 10-1 to limit the development to 300 lots. The council's motion stated that the second phase can't be built until the first phase is brought into compliance.

"The threat of not having additional units approved is the only way to ensure compliance," Councilman Larry Brewster said. "They could have had all these things up to snuff before they applied (for the second phase). They could have been in compliance, and they were not."

## City Council approves Heights mobile home court

MATT HAGENGRUBER Of The Gazette Staff Sep 22, 2009

[https://billingsgazette.com/news/local/government-and-politics/city-council-approves-heights-mobile-home-court/article\\_f956a358-a73b-11de-b004-001cc4c03286.html](https://billingsgazette.com/news/local/government-and-politics/city-council-approves-heights-mobile-home-court/article_f956a358-a73b-11de-b004-001cc4c03286.html)

The council voted 7-2 - with council members Shoots Veis and Peggie Gaghen voting no - to approve the mobile home court, which is located near the Cherry Creek Estates mobile home court off of Bitterroot Drive.

Called Danube Court, the project angered council members last week when developers Roy and Jock Clause brought it before the council for approval.

In 2007, council members had restricted the second phase of the Cherry Creek Estates park because they said the developers hadn't followed the development agreement. Back then, the council had limited the Clauses to 111 lots in the second phase of Cherry Creek Estates, even though the Clauses wanted to build 174 lots.

The 62 lots in Danube Court are one less than the 63 lots that the council took away from Cherry Creek Estates. But the old development agreement didn't prevent the Clauses from subdividing their property again and building a new mobile home court, which they accomplished with Danube Court. ...

"I understand the heartburn that some of us are having, that there may have been some circumvention," Tussing said. "But they seem to have done it legally."

## **15-year-old girl pronounced dead after shooting in Billings Heights**

Montana Standard | 2019-05-12

[https://mtstandard.com/news/state-and-regional/year-old-girl-pronounced-dead-after-shooting-in-billings-heights/article\\_0964456f-cbdd-5d0c-9f84-3b550a447d36.html](https://mtstandard.com/news/state-and-regional/year-old-girl-pronounced-dead-after-shooting-in-billings-heights/article_0964456f-cbdd-5d0c-9f84-3b550a447d36.html)

A 15-year-old girl was pronounced dead on scene by law enforcement. The shooting occurred on 12 Stella Street in the Cherry Creek Estates trailer park in the Heights around 7:30 p.m. Saturday, according to BPD Sgt. Nate West.

## **Teen killed in Billings shooting identified; police still investigating**

Mike Kordenbrock May 14, 2019 [https://billingsgazette.com/news/local/teen-killed-in-billings-shooting-identified-police-still-investigating/article\\_c5a958be-7ab7-5dc3-b43e-1e0547ebe7a8.html](https://billingsgazette.com/news/local/teen-killed-in-billings-shooting-identified-police-still-investigating/article_c5a958be-7ab7-5dc3-b43e-1e0547ebe7a8.html)

## **Cherry Creek Homes accused of charging undisclosed, illegal fees**

By ASHLEY NERBOVIG Nov 8, 2016 [https://billingsgazette.com/news/state-and-regional/crime-and-courts/cherry-creek-homes-accused-of-charging-undisclosed-illegal-fees/article\\_ca93c4ea-e1c6-58c3-9bbf-9df686ecc7a5.html](https://billingsgazette.com/news/state-and-regional/crime-and-courts/cherry-creek-homes-accused-of-charging-undisclosed-illegal-fees/article_ca93c4ea-e1c6-58c3-9bbf-9df686ecc7a5.html)

The class action suit follows a favorable ruling earlier this year for another couple living in the mobile home park. ...

Cherry Creek's contract with the couple violated multiple consumer protections of the Montana Retail Installment Sales Act, the Mallas and Tallbull lawsuit alleged. The contract did not state how much the finance charge would be over the life of the contract, according to the lawsuit. The contract also stated the couple would be charged \$50 if payments were five or more days late. ...

Yellowstone County District Court Judge Russell Fagg entered judgement on the nondisclosure of the finance charge and the legality of the late fees. Because the contract did not disclose the finance charge and because late fees can only be evaluated by a creditor after a payment is 10 days late, Fagg ruled Cherry Creek and RJC are barred from collecting any "finance, delinquency or collection charge on the contract."

In his judgement, Fagg found the Cherry Creek contracts violated at least four parts of the Montana Retail Installment Sales Act.

## Billings mobile home owner picking up pieces after fire

Park-owned hydrants went dry as fire burned

By: [Zoe Zandora](#)

Posted at 6:27 PM, Oct 28, 2019 <https://www.ktvq.com/news/local-news/billings-mobile-home-owner-picking-up-pieces-after-fire>

While battling the fire, the Billings Fire Department had trouble using two fire hydrants that seemed to be malfunctioning.

## Fire marshal: Heights mobile home fire was caused by gas fireplace valve

[Mike Kordenbrock](#) Oct 27, 2019 [https://billingsgazette.com/news/local/fire-marshal-heights-mobile-home-fire-was-caused-by-gas-fireplace-valve/article\\_3437b8a0-8e79-57a3-918e-2c153974aab0.html](https://billingsgazette.com/news/local/fire-marshal-heights-mobile-home-fire-was-caused-by-gas-fireplace-valve/article_3437b8a0-8e79-57a3-918e-2c153974aab0.html)

## Billings fire department says hydrants are functioning again in Heights mobile home park

[Mike Kordenbrock](#) Oct 29, 2019 [https://billingsgazette.com/news/local/billings-fire-department-says-hydrants-are-functioning-again-in-heights-mobile-home-park/article\\_dec4c6fe-e4b5-5a0a-bcd4-7934de00f83f.html](https://billingsgazette.com/news/local/billings-fire-department-says-hydrants-are-functioning-again-in-heights-mobile-home-park/article_dec4c6fe-e4b5-5a0a-bcd4-7934de00f83f.html)

A valve that was shut off resulted in multiple fire hydrants not functioning Saturday night during a house fire in the Cherry Creek Homes mobile home park, according to the Billings Fire Department.

The lack of water supply to the hydrants was discovered as firefighters worked to extinguish [a fire that burned through a mobile home](#), destroying the interior and killing multiple pets. ...

Testing done Monday morning determined the switched off valve affected only Lapin Street, Fire Marshal Mike Spini said. After the valve, opened the hydrants again were functional, Spini said.