



# CITY ZONING COMMISSION

AGENDA-Tuesday, February 2, 2021, 4:30 p.m.  
VIRTUAL ZOOM MEETING

## VIDEO CONFERENCE FORMAT

### NOTICE TO THE PUBLIC

**\*\*ATTENTION\*\***

Due to the COVID-19 health concerns, this meeting will be held in a virtual videoconferencing environment. Zoning Commission members will attend the meeting via a remote location, using a virtual meeting method. The regular meeting rooms will be closed during the meeting. In order to honor the Right of Participation and the Right to Know in Article II, sections 8 and 9, of the Montana Constitution, the City/County Planning Division is making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook:  
<https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda. Comments may be sent to Board via email before 10:00 AM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101
  - Email: [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov)
- Call in during the Public Comment periods as indicated on the agenda:
  - Citizens may call in during specific Public Comment periods at **406.237.6165**.  
All callers will be placed in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be limited to 3 minutes of testimony as is customary.  
Future delivery methods may be explored as best practice is learned.

Please direct questions to Administrative Secretary Robbin Bartley at [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov) or 406-247-8676

**Call the meeting to order.**

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

**Public Comment - 406-237-6165**

**Approval of Minutes:**

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

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

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

**Regular Business:**

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

**Public Hearings:**

- a. **City Zone Change 987– Hwy 3 & AJ Way** - A zone change request from Agricultural Open Space (A-1 or A) to Highway Commercial (HC (CX) - Tracts 1A & 1B of C/S 1889, a 20-acre parcel of land. A pre-application neighborhood meeting was held on December 9, 2020, at 3655 AJ Way, Billings, MT. The original application was for a total of 138 acres, but the applicant modified the request to just two parcels with Highway 3 frontage. Presented by Nicole Cromwell, AICP, Zoning Coordinator
- b. **City Zone Change 988– 2526 Hawthorne Lane** - A zone change request from Agricultural to Residential-7000 (R-70), on Tract 2A-1 of Certificate of Survey 2317 2<sup>nd</sup> Amended, a 16.41-acre parcel of land. A pre-application neighborhood meeting was held on December 14, 2020, via virtual Zoom meeting. Presented by Nicole Cromwell, AICP, Zoning Coordinator
- c. Place holder
- d. Place holder

#### Other Business/Announcements

- a. **Election of Chair and Vice Chair 2021**
- b. City IPAD usage

#### Adjournment

**The City Council has designated Monday, February 22, 2021, at 5:30 p.m.** as the date and time to receive the Zoning Commission recommendation on each **zone change** request.

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

As provided in Montana Code Annotated, Section 76-2-305(2), in the event of a protest petition against such **zone change** signed by the owners of twenty-five (25) percent or more of: (1) the area of the lots included in any proposed change; or (2) those lots or units, as defined in MCA 70-23-102, **one hundred fifty (150) feet from a lot included in a proposed change**, such proposed amendment shall not become effective except by the favorable vote of two-thirds ( 2/3) of the present and voting members of the city council. For purposes of this protest provision interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located. The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change or by the presiding officer of the association of unit owners. The protest petition must be received in the Planning Division office by 5:00 p.m. on the Friday preceding the first reading of the amendment by the City Council.

Testimony regarding the above-mentioned item may also be submitted in writing to the Planning Division, 2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor, Miller Building, Billings, MT 59101 (247-8676) or to the Mayor and City Council, P.O. Box 1178, Billings, MT 59103.

Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartleyr@ci.billings.mt.us](mailto:bartleyr@ci.billings.mt.us)

**City Zoning Commission**

**Meeting Date:** 02/02/2021

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**Information**

**Subject**

**Approval of Minutes:**

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**Attachments**

BZC\_2021\_0105

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## City of Billings Zoning Commission Meeting Minutes January 5, 2021

The City of Billings Zoning Commission met on Tuesday, January 5, 2021 at 4:30 p.m in a Virtual Zoom meeting,

Chairman Larson called the meeting to order at 4:30 p.m. The City Council has designated **Monday, January 25, 2021** at 5:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

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

<b>Total Number of 2021 Applications</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>T O T A L</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>0</b>	<b>1</b>	<b>2</b>	
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	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	
<b>Zone Change</b>	-												
<b>Special Review</b>	2											2	

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

**In Attendance :**

**Public Comment**

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

**Approval of Minutes:**

**Chairman Larson** called for approval of the October 6, 2020 meeting minutes.

**Motion**

Commissioner Brooks made a motion and Commissioner White seconded the motion to approve the October 6, 2020 meeting minutes.

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

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

**Disclosure of Conflict of Interest**

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

**Disclosure of Outside Communication**

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

**Public Hearings:**

Nicole Cromwell reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and advised the audience this would be heard by the City Council on January 25, 2021.

Applicant or agent for Special Review 988 had not yet joined the meeting, therefore, Chairman Larson revised the hearing order. Special Review 989 was heard first.

**Item #2**

Nicole Cromwell read aloud the legal notice for this application:

**City Special Review – 989 – 3189 King Ave. W. – For An all Beverage License with Gaming and allow outdoor seating** – A special review request to allow an all beverage liquor license with gaming, and to allow outdoor seating for a 2,500 square foot tenant space within a 7,913 multi-

tenant building, in a Community Commercial (CC) zone, on Block 17A, Lot 2, Lampman Sub., a 39,907 square foot parcel of land. Tax ID: C07979

**Recommendation**

The Planning Division recommends conditional approval, per Section 27-1503, based on the criteria for Special Review, with the following conditions:

1. For an all beverage license with gaming into 2,500 square foot unit in the existing building, addition of an outdoor patio, at 3189 King Avenue West, Block 17, Lot 2, Lampman Subdivision,. No other use is intended or implied.
2. No outdoor music or outdoor public announcement systems will be allowed with this application.
3. Lighting on the building or parking lot shall have full cut-off shields
4. Lighting of signs shall be as allowed within the City Sign Code in place at the time of sign permit application.
5. Comply with all other city codes that may apply to expansion and use of the building and outdoor seating.
6. All other limitations shall apply.

**Questions for staff:**

**Public Hearing** Chairman Larson opened the public hearing at 4:40PM and asked for anyone wishing to speak in favor or against **City Special Review 989**.

**Applicant: Josh Benson, Agent**

It is a small patio area, not busy and without music. He invisions it as being a summertime pizza and beverage area for Pie Guys, as their table space is limited.

**Favor:** None

**Opposed:** None

**Rebuttal:** None

Public Hearing CLOSED at 4:53PM

**Discussion**

Chairman Larson called for questions and discussion from the Board.

**Motion**

**Commissioner White made a motion and Commissioner Brooks seconded the motion to approve City Special Review 989 with Staff recommendations.**

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

**The Motion carried to approve City Special Review 989 with a 4-0 vote.**

**Item #1**

Nicole Cromwell read aloud the legal notice for this application:

**City Special Review 988 – 2499 Gabel Road - Relocation of an all Beverage License with Gaming** – A special review request to allow an existing all beverage liquor license to relocate to 2499 Gabel Road, a 3,128 square foot building, on Block 4, Lot 3, Cenex Park Sub., an 68,520 square foot parcel of land. Tax ID: A26159

**Recommendation**

The Planning Division recommends conditional approval, per Section 27-1503, based on the criteria for Special Review, with the following conditions:

1. Approval is for an existing all beverage liquor license to relocate to 2499 Gabel Road No other use is intended or implied.
2. No outdoor seating, music or announcement systems
3. New exterior & parking lot lighting shall have full cut-off shields.
4. The applicant will comply with all other codes that may apply.
5. These conditions shall run with the land described.

**Questions for staff:**

Chairman Larson opened the Public hearing at 4:59PM

**Applicant: Scott Hurd, Attorney, 3936 Ave B, Suite C, Billings, MT 59102**

Available for questions.

**Favor:** None

**Opposed:** None

**Rebuttal:** None

Public Hearing CLOSED at 5:00PM

**Discussion**

Chairman Larson called for questions and discussion from the Board.

**Motion**

**Commissioner Brooks made a motion and Commissioner King seconded the motion to approve City Special Review 988 with staff recommendations.**

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

**The Motion to approve of City Special Review 988 carried with a 4-0 vote.**

**Other Business:** 2 Zone Changes will be heard February 2, 2021. Staff is predicting a long meeting. New IPADS for each Commissioner will be distributed this month to facilitate meeting attendance and staff review packets, eliminating the paper mailing. We are waiting a State directive to resume public meetings going forward.

**Adjournment:** The meeting adjourned at 5:04PM.

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



**City Zoning Commission**

**Meeting Date:** 02/02/2021

**SUBJECT:** Zone Change 987 - Highway 3 and AJ Way

**THROUGH:** Monica Plecker

**PRESENTED BY:** Nicole Cromwell

**Information**

**REQUEST**

**City Zone Change 987– Hwy 3 & AJ Way** - A zone change request from Agricultural Open Space (A-1 or A) to Highway Commercial (HC (CX) - Tracts 1A & 1B of C/S 1889, a 20-acre parcel of land. A pre-application neighborhood meeting was held on December 9, 2020, at 3655 AJ Way, Billings, MT. The original application was for a total of 138 acres, but the applicant modified the request to just two parcels with Highway 3 frontage. Presented by Nicole Cromwell, AICP, Zoning Coordinator

**RECOMMENDATION**

Planning staff is recommending approval of Zone Change 987 and adoption of the findings of the 10 review criteria.

**APPLICATION DATA**

OWNER: Aviation Properties, LLC  
 AGENT: Jeff Kanning - Collaborative Design Architects  
 LEGAL DESCRIPTION: Tracts 1A & 1B of C/S 1889  
 ADDRESS: None assigned  
 CURRENT ZONING: A-1 - A (Agriculture)  
 EXISTING LAND USE: Vacant - grazing land  
 PROPOSED USE: Same with potential heavy commercial uses  
 SIZE OF PARCEL: 20 acres for HC (CX)

**CONCURRENT APPLICATIONS**

AN 20-05 - Annexation petition for 46 acres of land including existing CX zoned area of Tracts 13 & 14 of C/S 2037 to the east

**APPLICABLE ZONING HISTORY**

<b>SUBJECT PROPERTY</b>	<b>Zone Change #</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
C/S 1889 – A-1 (A)	<b>None – Original Zoning</b>				
<b>SURROUNDING PROPERTY</b>	<b>Zone Change #</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
C/S 2037 – Tracts 13 & 14	<b>County ZC 669</b>	3/1/2016	A to Public & CI	Y	
C/S 2037 – South 600 feet of Tracts 13 & 14	<b>County ZC 676</b>	9/27/2016	A to HC	Y	Highway 3 frontage
C/S 2037 – reducing CI zone	<b>County ZC 680</b>	2/28/2017	CI to HC	Y	Part of lawsuit settlement with adjoining owners
Rehberg Ranch Estates	<b>City ZC 690</b>	4/22/2002	A to Planned Development	Y	
Airport Land – C/S 2037 Tract 1-9 and 11	<b>City ZC 792</b>	10/10/2006	A-1 to Public	Y	Council initiated zone change
Zimmerman Trail Sub	<b>City ZC 402</b>	8/25/1987	A to Planned Development	Y	Townhomes
Skyline Heights	<b>County ZC 55</b>	7/29/1975	A to R-70	Y	Townhomes

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: A-1 (A) Land Use: City Airport Land and agricultural land
SOUTH:	Zoning: R-96 (N3) Land Use: Low density residential
EAST:	Zoning: Public (P2), CI (I1), HC (CX) Land Use: Billings Flying Service, City Airport Land
WEST:	Zoning: A-1 (A) Land Use: Agriculture

## **BACKGROUND**

This is a zone change request of Aviation Properties for land east of their current location for Billings Flying Service at 3655 AJ Way. The applicants purchased the property with the intent of providing additional land for ancillary and support businesses for the aviation industry. At one time, the Montana Air National Guard was in discussions with Aviation Properties about purchase and development on some of these acres to the west of Billings Flying Service. The owner has no definitive use or buyer for the land at this time. The zone change will entitle the owner to uses included in the proposed Heavy Commercial (CX) zone district for Tracts 1A and 1B of C/S 1889. The original application included an additional 118 acres (Tracts 2,3,4,5, 6A & 6B) proposed for Controlled Industrial (CI - I1) zoning. The applicant withdrew these parcels from the request. The proposed HC zoning will update to Heavy Commercial (CX) zoning if the City Council approves the zone change.

The proposed zone change will cover 20 acres in two parcels of land described as Tracts 1A and 1B of C/S 1889. Most of this land has been used for low intensity agricultural uses such as grazing and dry land hay production. There is currently one physical access to the property (AJ Way) but an additional access point from Highway 3 may be proposed in the future on the west side of Tract 1A. Highway 3 is a high speed arterial that provides a unique entryway to Billings from the north and west. The City and County completed a corridor study in 2015 to achieve several safety, access and stormwater control objectives. The adopted study also included an objective to maintain the scenic entry to Billings, study the effects of the Inner Belt Loop (connecting to the west of this parcel) and to optimize the function of the highway corridor. The study predicted that average daily traffic on this corridor segment would grow about 1.9% per year over the 20-year study horizon. In the 5 years since the completion of the study, the increase in traffic year over year has matched this estimate. Currently, this segment of Highway 3 carries about 12,500 vehicles per day. This proposed zone change will likely increase the average daily traffic over these estimates. Any new development that adds a new type of traffic or includes a significant increase to the current traffic load will require a traffic study. The study would be reviewed and approved by both MDT and City Engineering.

The property is within the Airport Influence area adopted for land surrounding the Billings Logan Airport. This influence area was adopted originally in 1983 in order to protect the substantial public investment in the airport and ensure adjacent private development does not hamper the utility of the airport and future airport expansions. The influence area has a height restricted area as well as a noise gradient where certain uses - residential, hospitals or other noise sensitive uses - would have to provide additional sound-proofing in building materials to be compatible with the airport. The proposed zoning and associated land uses would not be incompatible with the airport influence area for height or noise-sensitive uses. Each building permit or development proposal would be evaluated based on the Airport Influence Area regulations (BMCC 5-400). As part of the annexation concurrent to this proposed zone change, city staff will recommend that as a condition of annexation approval, the city will be provided with a Perpetual Air Rights Easement over the property. This will grant to the City of Billings free and unobstructed navigation and passage of all types of aircraft in and through the airspace above the real property involved in the annexation.

The county has approved three zone changes for the 60 acres directly east of the subject property. The original zone change for these parcels in 2016 was controversial especially in regard to the proposed heliport just west of the airport. In addition, the CI zoning would be the first instance of this zone district above the Yellowstone valley and in Billings Heights. The CI zoning was chosen to support uses that would serve the heliport including avionics, aircraft engine repair and rebuilding. The County Commissioners approved the zone change but adjacent landowners appealed the approval to District Court. As part of the court settlement with the owners, the CI zone district was reduced from 20 acres to about 12.5 acres between the Public zone on the north and the HC zone along the highway frontage. A large concern was the aircraft noise from the heliport and impact on residential properties just below the rim top. The heliport has been in operation since early 2017. There are several smaller fixed wing aircraft on the property as well for storage. The largest building is the hangar for the helicopters. There is also a shop/repair building to the south and a storage building to the west of the hangar.

The applicant has adjusted the zone change request from 118 acres of CI (I1) and 20 acres of HC (CX) to include just the proposed 20 acres of HC (CX) zoning. The proposed CX zone allows a wide variety of commercial uses and will provide all the flexibility the owner desires for potential marketing and buyers of this 20 acres and the adjacent 26 acres to the east.

Planning staff reviewed the proposal and is recommending approval based on the proposed findings of the 10 review criteria. The proposed zoning is in conformance with the 2016 Billings Growth Policy Guidelines and the Preferred Growth Scenario for this area of Billings Heights. The location is separated from nearby residential neighborhoods by the high-speed state Highway 3. The adjacent city airport land increases the possibility of uses that support aviation in general and cater to the business services in demand for aviation. The existing Airport Influence regulations within the city code will keep incompatible uses from developing on the property that might interfere with airport activity. The area does support some very low density agricultural uses that are compatible with the airport and can be compatible with any future uses on the subject property. The city has the ability to serve the property with municipal water and sewer at least in the first phase of the annexation.

## **SUMMARY**

Prior to any recommendation to the City Council, the Zoning Commission shall consider the findings of the 10 review criteria.

1. *Is the new zoning designed in accordance with the City of Billings 2016 Growth Policy?*

The proposed zoning does conform to the following City of Billings 2016 Growth Policy and guidelines:

**Prosperity (promoting equal opportunity and economic advancement)**

- Predictable, reasonable City taxes and assessments are important to Billings' taxpayers
- A diversity of available jobs can ensure a strong Billings' economy
- Successful businesses that provide local jobs benefit the community
- Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses
- Retaining and supporting existing businesses helps sustain a healthy economy
- Continued workforce training benefits the community and helps attract and retain businesses
- Strategically placed industrial parks will encourage a more diverse city economy, and will better help manage effluent and emission from industrial processes

*The potential uses with a HC (CX) zone are currently limited until the property is annexed to the city limits. The proposed zoning is consistent with the character of the area and the preferred land use patterns along high speed highway corridors. This area includes zoning for agriculture including commercial greenhouses, commercial horse stables, riding arenas, veterinarians, commercial dog kennels as well as low density residential uses. The adjacent property has been developed for a heliport and support services for Billings Flying Service. The 2016 Billings Growth Policy examined this area of Billings Heights to identify a preferred growth scenario. The Inner Belt Loop will provide a much-needed transportation connection from the northern part of the Heights to Highway 3 west of the airport. This corridor will activate some development interest west of Main Street and north of the airport. The preferred growth scenario included some heavier commercial uses west of the airport along Highway 3. There is a growing demand for a workforce skilled in aviation and aviation support. The proposed zoning will help support the growth in this economic sector. The proposed zoning can also support a wider range of commercial uses and services than a less intense commercial district that is more appropriate to a slower speed transportation corridor.*

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

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations to provide security from fire and other dangers. Buildings developed within the city limits will comply with building and fire safety codes.

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

The proposed zoning may promote the health and general welfare. The proposed HC (CX) zoning will allow the owner to ensure future development is not intrusive to property across Highway 3 while still allowing compatible uses adjacent to the CX & I1 zoning to the north and east.

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

*Transportation:* The proposed zoning will have a measurable effect on traffic generation. The property currently has one access point. The primary access is along the east property line of tract 1B and tract 13 of C/S 2037 to the east. The access is named AJ Way. The current use of the property – occasional grazing of livestock – generates little or no traffic on a daily basis. When new development is proposed the state MDT and City Engineering will review the proposal and any traffic access plan for the use. Traffic control and potential mitigation of impacts may be necessary.

The City and County recently completed a Highway 3 Corridor transportation study in partnership with the Montana Department of Transportation (MDT). The study has several recommendations for improving traffic safety, pedestrian access and storm water management. The study included traffic volume projections out to 2035. It appears Highway 3, with improvements, may handle any additional traffic. The study recommended upgrades to the intersections with Rod & Gun Club Road and to Zimmerman Trail. The types of traffic generated from HC zoning are different than current traffic patterns in the area. MDT may require some traffic analysis and improvements depending on the type and volume of traffic generated from specific developments on the property. The City Traffic Engineer may require a traffic impact analysis to determine the appropriate mitigation or street development to accommodate the new uses.

*Water and Sewerage:* The property will be served by public water and sewer systems when it is annexed to the City. There is a pending petition to annex the subject property and some of the adjacent property to the east.

*Schools and Parks:* The proposed zoning should not impact the student population. Residential uses are not planned for the property.

*Fire and Police:* The subject property is serviced by BUFSA and the Yellowstone County Sheriff's Department. Once annexed, fire protection and building plan review will be done at the time of building permit application. Public safety services will be provided by the City Police Department.

5. *Whether the new zoning will provide adequate light and air.*

The proposed zoning would require minimum setbacks, maximum building heights and maximum lot coverage. The Airport Influence and Noise Overlay zone will also limit some uses and building heights. These requirements should allow adequate light and air to reach the subject property and adjacent properties.

6. *Whether the new zoning will effect motorized and non-motorized transportation.*

The proposed zoning itself will not generate more traffic on any of the adjacent streets. When development is proposed impacts to transportation systems will be evaluated. Pedestrian traffic in the area is limited due to the lack of sidewalks and trails on a high-speed state highway. The Highway 3 Corridor Study identified the need for a multi-use trail on the north side of Highway 3 at this location and pedestrian tunnel connections to the south side of Highway 3 to access the public park area along the rims. Residential development is generally located south of the property and the main motorized access to the rim top parks are along the south side of Highway 3.

7. Whether the new zoning will promote compatible urban growth.

The proposed zoning is compatible with the adjacent zoning and existing urban growth in the vicinity. Property west of the subject parcels is zoned A-1 and used for occasional grazing and very low density residential purposes. Property to the south is zoned for higher density residential neighborhoods within the city limits. There is no current plan for urban growth to the north and west. This area is within the City's Limits of Annexation Map and is petitioning for annexation for some of the property with future phases of annexation. The proposed zoning is compatible with the adjacent zoning and existing land uses.

8. Whether the new zoning considers the character of the district and the peculiar suitability of the property for particular uses.

The subject property is in an area adjacent to a high-speed highway entry corridor to the City and County. The property is near Billings Logan Airport property and there are several aviation and highway oriented land uses to the east. The current and proposed zoning is compatible with the character of the highway and aviation uses to the east. There are no immediate developments plan for the subject property.

9. Whether the new zoning will conserve the value of buildings.

The new zoning is not expected to alter the value of any buildings in the area. It is not known if its proximity to residential property in the area will affect the value of residential buildings. The value of the residential homes on the south side of Highway 3 are based on their location with the valley view as opposed to frontage along a highway corridor. Any development of the property will need to meet the site development requirements in the zoning code, including landscaping, screening, building heights and setbacks.

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

The proposed zoning does encourage the most appropriate use of land in this area of the City given it is adjacent to the Billings Airport and allows the same uses as are permitted on the Airport property. It is also in an area where aircraft are arriving and departing regularly. HC (CX) zoning could allow more intense uses than currently allowed in adjacent zoning districts but the potential universe of intense uses may be limited based on the Airport Influence area regulations.

## **RECOMMENDATION**

Staff recommends approval of Zone Change 987 and adoption of the findings of the 10 review criteria.

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## **Attachments**

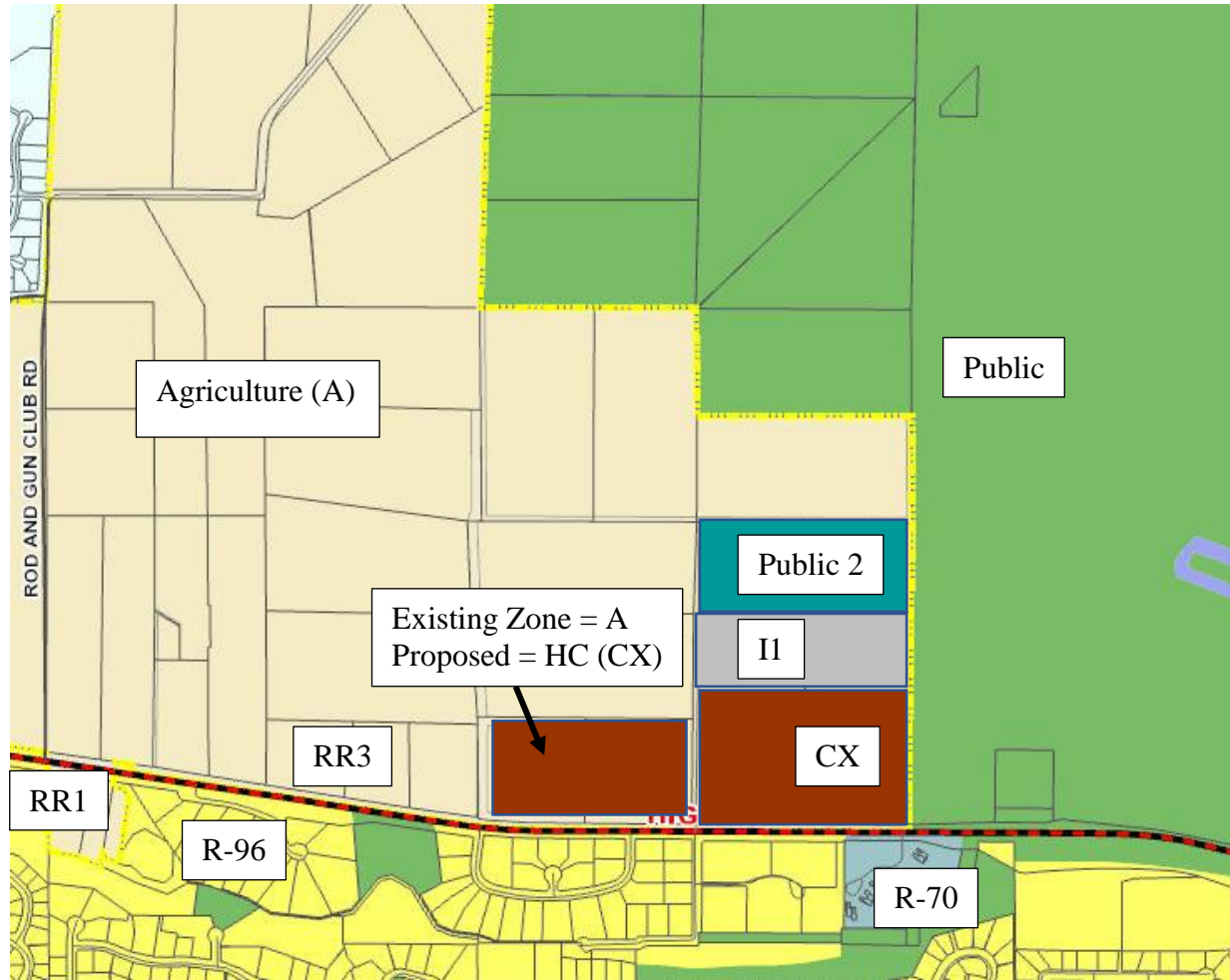
Zoning Map and Site Photos

Application and Letter

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# City Zone Change 987

## Zoning Map and Site Photos





Subject Property  
Tracts 1A & 1B C/S 1889  
20 acres

**HIGHWAY 3**



Subject Property from Highway 3 view north



Subject property view north and east



Subject property view north and west



View south and west across Highway 3



View south across Highway 3 to intersection of Stony Ridge Rd



View east along Highway 3

Zone Change 987  
Applicant's Letter and Information

**APPLICATION FORM**

CITY ZONE CHANGE Billings Zone Change # 987 - Project # PZ-21-00001

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

Present Zoning: Open Ag

Proposed Zoning: HC : C1

TAX ID# see Attached CITY ELECTORAL DISTRICT # \_\_\_\_\_

Modified to Tr 1A & 1B  
C/S 1889 only - HC (CX)  
20 acres

Legal Description of Property: see Attached  
CS 1889; TR 6A, 6B, 1A, 1B, 2, 3 & 4

Address or General Location (If unknown, contact City Engineering): None Assigned

Size of Parcel (Area & Dimensions): see Attached

Present Land-Use: Agricultural

Proposed Land-Use: Commercial Development

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

If yes, please attach to application

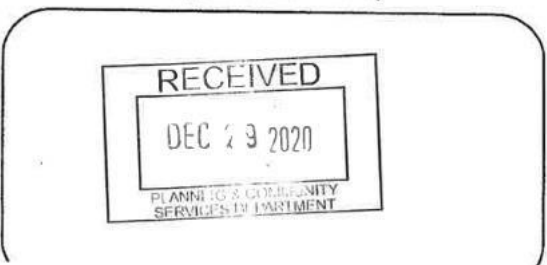
\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Aviation Properties, LLC  
(Recorded Owner) \_\_\_\_\_  
(Address) 3055 AJ Way, Billings, MT 59001  
(Phone Number) 406-292-6927 (email) erin@flybty.com

Agent(s): Collaborative Design Architects  
(Name) \_\_\_\_\_  
(Address) 1280 Grant Road, Billings, MT 59002  
(Phone Number) 406-249-7443 (email) jett@cd-mt.com

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

Signature: [Signature] Date: 12/29/20  
(Recorded Owner)



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

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

1. **Present Zoning:** Open Ag
2. **Written description of the Zone Change Plan** including square footage or acres of proposed new zoning: \_\_\_\_\_
3. **Subject Property Map:** please attach to this form
4. **Legal Description of Property:** see Attached
5. **Neighborhood Task Force Area:** Yes  No  If Yes, Name of Task Force and mailing address of Chairperson: \_\_\_\_\_
6. **Roster of persons who attended the pre-application neighborhood meeting:** please attach to this form
7. **A copy of the meeting notice.** please attach to this form
8. **A brief synopsis of the meeting results.** please attach to this form
9. **The undersigned affirm the following:**
  - 1) The pre-application neighborhood meeting was held on the 9<sup>th</sup> day of December 2020
  - 2) The zone change application is based on materials presented at the meeting.

**Owner (s):** Aviation Properties LLC Telephone: 400-252-6937  
**Address:** 3055 Airport Email: erin@flybfz.com  
Billings, MT 59101

**Agent (s):** Collaborative Design Telephone: 400-248-2443  
**Address:** 2290 Grant Rd, Ste. C Email: jeff@cd-mt.com  
Billings, MT 59102

**Aviation Properties  
 Neighborhood rezoning meeting  
 December 9, 2020**

NAME	SIGNATURE	DATE
NORM Boyd	<i>Norm Boyd</i>	12/9/2020
PAUL R. SCARPARI	PAUL R. SCARPARI	DEC 9, 2020
Jim & Theresa Helus	<i>Jim Helus</i>	12-9-2020
Jim Mahan	<i>Jim Mahan</i>	12-9-2020
Dick Bell	<i>Dick Bell</i>	12-9-2020
Barb Ramlow	BARB RAMLOW	12-9-20
Donna Delevy	<i>Donna Delevy</i>	12-9-20
Lyle Gabrián	<i>Lyle Gabrián</i>	12/9/20 RNTF
RODIE BLATTIE	<i>Rodie Blattie</i>	12-9-20

Hello Neighbors,

Lyle Gabrian, Chair and Alice Lahren, Vice-Chair, RNTF, attended a pre-application neighborhood meeting hosted by Aviation Properties on 12/9/20 along with nine other neighbors who were sent meeting invitations. The meeting was about their pending zone change request. They did not give any opening presentation; however, one of the owners of Aviation Properties and a representative from Collaborative Design Architects opened the meeting with only a short statement that they are requesting a zone change from Agricultural (Ag) zoning to Controlled Industrial (CI) on six tracts of land and a zone change from (Ag) zoning to Highway Commercial (HC) zoning on two tracts they also own, all shown on a large site plan map in the room (see attached site map). They shared with us some types of businesses that could be allowed in (CI) and (HC) zoning; however, they said that there are no immediate plans for any development at this time.

Most of the information we gathered from them was from questions of the attending neighbors and their answers were very guarded. To our questions regarding development, they repeatedly answered that there was no development plan and no immediate plans to do any development at this time. We asked if their intention was to develop the land in the future within the City with water and sewer services or within the County without these services. They answered this question indirectly as they don't have a current development plan for the properties that they are asking for a zone change; however, they do plan to request annexation into the City for tracts 13 and 14 which are currently zoned (CI) and (HC) (see attached site map). We also asked if it was their intention to sell or lease any of the properties they own. They said they didn't have any intention now. When asked why they are asking for a zone change now without any development plans, they said it would be better to do the zone changes now rather than just before any future development, saving time, etc. They also shared that the City has purchased tract(s) 12 (white on the site map) for airport expansion and it should be annexed into the City soon.

Aviation Properties will apply for the zone changes on the eight tracts they own currently zoned (Ag) and also ask for City annexation of two tracts currently zoned (CI) and (HC) on Monday 1/4/2021 (see attached site map).

They said that they want to be good neighbors and want to continue the communication and will share information with us as it develops. We are open to continued communication with them and others since these zone change requests are very important to the neighbors living in the RNTF area. We will continue to share with you information regarding this zone change application, as appropriate.

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Rimrock Neighborhoods Task Force  
[www.ci.billings.mt.us/index.aspx?NID=1730](http://www.ci.billings.mt.us/index.aspx?NID=1730)




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**STATEMENT OF PRE-APPLICATION MEETING – AVIATION PROPERTIES, LLC**

Per the City of Billings Zone Change Information Packet, the required Pre-Application Neighborhood Meeting was held at 10:00 am on Wednesday December 9, 2020 in a hangar on the Billings Flying Service property located at 3655 AJ Way, Billings, MT. A Pre-Application map and a description of the proposed zone change was mailed to the addresses provided by the Planning Department. That same map and description was presented at the meeting for comments and discussion. A copy of the map used, and the sign-in sheet of attendees is attached. Below is a brief synopsis of the meeting discussion.

- Attendees on the behalf of Aviation Properties, LLC were Erin Heringer – Billings Flying Service, Jeff Kanning – Collaborative Design Architects, and Tyler Dugger – Toliver Law Firm.
- Erin opened the meet providing an overview of the zoning request and provided the description of the two current zoning classifications. There was discussion about Project Re-Code and the proposed comparable zoning districts.
- Erin further confirmed coordination meetings were held with the City Planning Division, City Engineering and the Public Utilities Division. An additional meeting was held with Kevin Ploehn at the Billings Logan Airport.
- Jeff discussed the potential impact of Project Re-Code and some of the new development requirements.
- Neighbors expressed concern about increased vehicular traffic – Jeff noted future development that had more than 500 trips per day would require a Traffic Accessibility Study to be completed and any new development would be required to follow the mandates of the study.
- Neighbors asked about future annexation plans.
- Neighbors raised concerns about noise, light, and billboards – Jeff referenced sections of the zoning code regulating the same as well as the Area of Influence Ordinance requirements from the airport.
- Neighbors raised potential concerns about property values.
- Most questions concerned future development plans for the property – Erin confirmed no set plans were in place.

  
Agent – Jeff Kanning, AIA

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

In the current Billings Growth Policy Scenario Planning, three separate scenarios are proposed. The North Public Preferred Scenario calls for this area to be developed to Commercial High Density and Industrial Light-Craftsman land uses. The zone changes proposal's request for Highway Commercial and Controlled Industrial are the most closely aligned with and consistent with the Preferred Growth Scenario.

The property, for which the zone change is being requested, has been submitted for annexation as it borders the current city limits and is adjacent to both public water and sewer services. This will allow for adequate provision for those services as well as transportation and other public requirements.

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





Under the current Open Ag zoning, the property cannot be developed to the Preferred Growth Scenario and for a development of a commercial service area to support the Billings Logan Airport. A supporting airport service area will provide a diversity of jobs to ensure a strong Billings economy. This type of community investment can attract and retain a strong, skilled and diverse workforce. A strategically placed commercial development like this will encourage a more diverse City economy and can provide predictable, reasonable City tax assessments.

Essential investments like this will provide for landscaping of public rights-of-way and entryways to make Billings more visually appealing to residents and visitors. This infrastructure and service investment will stabilize or improve property values, secure future utility costs and be cost effective.




The final scenarios showing the added hypothetical transportation network, bus routes, and other facilities used as indicators are shown in the following series of images.

**Scenario Map Legend**

**Hypothetical Facilities/Infrastructure**

-  Branch Libraries
-  Elementary Schools
-  Community Parks
-  Co-located Police/Fire Stations
-  Bus Routes
-  Arterials & Collectors

**Land Use Type**

-  Commercial High Density
-  Commercial Low Density
-  Commercial Medium Density
-  Industrial Light-Craftsman
-  Institutional
-  Mixed Use
-  Open Space Conservation
-  Open Space Park
-  Residential High Density
-  Residential Low Density
-  Residential Medium Density

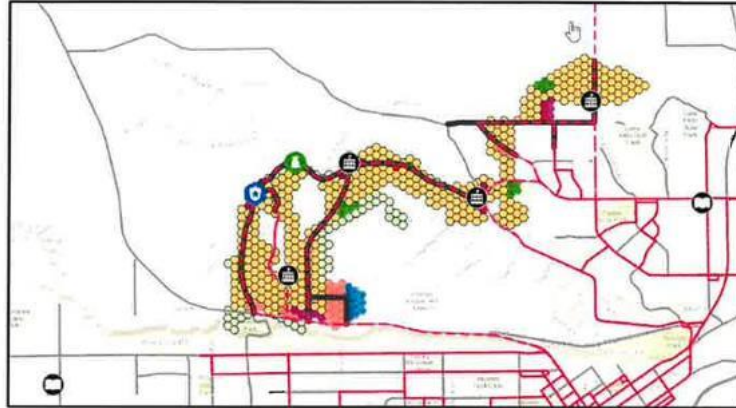
1 hexagon = 5.739 acres or approximately  
2.8 city blocks

Residential high & mixed use density = 16 d.u./acre

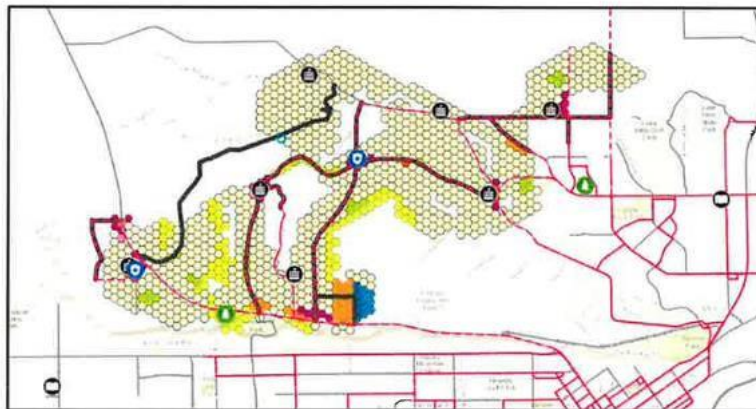
Residential medium density = 9 d.u./acre

Residential low density = 5 d.u./acre

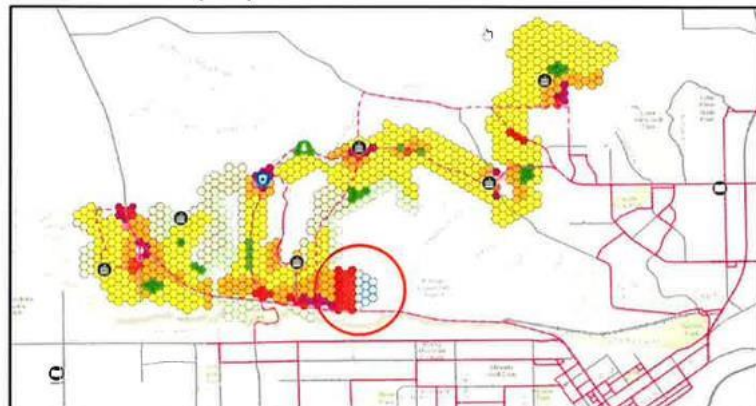
**NORTH HIGH DENSITY SCENARIO (NHD)**



**NORTH LOW DENSITY SCENARIO (NLD)**



**NORTH PUBLIC PREFERRED SCENARIO (NPP)**





## City Zoning Commission

**Meeting Date:** 02/02/2021

**SUBJECT:** Zone Change 988 - 2526 Hawthorne Lane

**THROUGH:** Nicole Cromwell

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**City Zone Change 988– 2526 Hawthorne Lane** - A zone change request from Agricultural to Residential-7000 (R-70), on Tract 2A-1 of Certificate of Survey 2317 2<sup>nd</sup> Amended, a 16.41-acre parcel of land. A pre-application neighborhood meeting was held on December 14, 2020, via virtual Zoom meeting. Presented by Nicole Cromwell, AICP, Zoning Coordinator

#### RECOMMENDATION

Planning staff recommends approval of Zone Change 988 and adoption of the findings of the 10 review criteria.

#### APPLICATION DATA

OWNER: BCJM Properties, LLC

AGENT: Performance Engineering - Rob Neihart

LEGAL DESCRIPTION: Tract 2A-1 of C/S 2317

ADDRESS: 2526 Hawthorne Lane

CURRENT ZONING: Agriculture (A)

EXISTING LAND USE: Vacant

PROPOSED USE: Single family and two-family dwellings

SIZE OF PARCEL: 16.41 acres

#### CONCURRENT APPLICATIONS

AN 21-01 Petition for Annexation

#### SURROUNDING LAND USE & ZONING

NORTH: Zoning: Agriculture (A)  
Land Use: Agricultural uses

SOUTH: Zoning: R-70-R (N2)  
Land Use: Vacant (within city limits)

EAST: Zoning: R-70-R  
Land Use: Single family homes - Bitterroot Heights Sub 2nd Filing

WEST: Zoning: A  
Land Use: Agricultural uses

#### BACKGROUND

This is a zone change request for two sections of C/S 2317 Tract 2A-1, currently outside the city limits, to change from Agriculture, a county zoning district, to Residential 7,000. The proposed zoning would update to the new N2 zone district upon annexation and the effective date of the new zoning code and districts. The N2 and R-70 zone districts are analogous and both districts allow one or two-family dwellings on mid-sized lots. The current zoning uses a minimum lot area for zoning and the new zoning uses minimum lot frontage per principal structure for lot design. Both zone districts can allow single family dwellings on individual lots or on common land as in a townhome style development.

The adjacent property has gone through four zone change processes over the past 35 years. In 1985, the owners of the former gravel mine on this property proposed a manufactured home park. The proposal was met with stiff resistance from the surrounding owners and was well beyond the city limits making city service provision challenging. This application was withdrawn. In 1991, the owners proposed a small zone change from the A-1 zone to R-70 on the northern 29 acres of Lot 3A. This area was annexed and the zoning approved but was never developed. In 2003, the remaining 100+ acres of Tract 3A was annexed to the city and zoned R-96 and single family only zone district. In 2004, the owner proposed a zone change to R-70. This was also approved but had much opposition from the surrounding owners, county

neighborhoods and Heights Task Force. The owners signed a pre-subdivision covenant and restriction for Tract 3A stating no lot within a future subdivision of Tract 3A would be used for "a duplex or multi-family use", and that lots along the perimeter of Tract 3A on the south and east would be at least 9,600 square feet in area. This covenant does not apply to Tract 2A-1, the subject property of this zone change request. In early 2005, the city approved the last zone change for Lot 3A (Bitterroot Heights, 1st Filing and 2nd Filing) from R-70 to R-70-R. This zoning district allowed smaller lots (7,000 square feet) but restricted uses to single-family only on any lot in the subdivision. Private covenants and restrictions for Bitterroot Heights, 1st and 2nd Filings included the restriction on "duplex or multi-family uses". The original covenant from 2004 for Tract 3A expires in 2029.

The proposed 2004 subdivision master plan for Bitterroot Heights included Tract 2A - now Tract 2A-1. The layout of the lots was not definitive but the filings of the subdivisions intended to connect streets and utilities throughout. This proposed zone change could allow the same level of density in the existing filings of Bitterroot Heights of about 4 to 6 dwelling units per acre. Any new subdivision would require compliance with city engineering requirements, street designs, utility design and stormwater control. The current number of dwellings in the first two filings of Bitterroot Heights is 115 single family dwellings on about 35 acres of land (including street right of ways). The Billings Heights Neighborhood Plan (2006) indicates this area of Billings Heights should continue to develop with the same types of housing and density. In the adopted plan, the areas closer to Bench Boulevard, Main Street and Lake Elmo Road were chosen for higher densities and for mixed uses including mixed use buildings. New development tends to sustain and support existing development property values especially in new neighborhoods.

The property has a legal and physical access at the gate at the dead end of Hawthorne Lane. There is one existing storage building on the property. The proposed zoning should not affect the value or utility of this existing structure. Any development of the property for a subdivision will require two full access points. A connection to the existing Bitterroot Heights Subdivision is possible although the owner may choose a different second access point.

The Planning staff has reviewed the request and is recommending approval based on the findings of the 10 review criteria. The adjacent zoning and development is similar and will provide continuity between the developments. County land uses to the north and west are agricultural but there is sufficient land area to ensure compatibility. Planning staff received one letter of comment concerned about the possibility of townhomes (two-family dwellings) and not just single family dwellings for sale on individual lots. The adopted Growth Policy of Billings does support compatibility of development however, single family and two-family dwellings are not considered incompatible uses. The type of two-family townhomes developed by this owner include units on the 800 block of Avenue D that command a market price of up to \$400,000 per unit (\$800,000 per structure). This area of Billings Heights is at the edge of the limits of annexation, and is the last piece of the owners property to petition for annexation. The proposed zoning and uses are conforming to the growth policy and development can occur without disrupting the existing neighborhood fabric.

## SUMMARY

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

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

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

#### **Strong Neighborhoods:**

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

#### **Home Base:**

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe

The proposed zone change is consistent with the following goals of the 2006 Billings Heights Neighborhood Plan:

- To provide safe, good quality and affordable housing in the Heights. Develop housing patterns that are compatible with existing neighborhoods. Encourage high density multi-family development along arterial routes. Maintain similar housing in established neighborhoods.

The proposed zoning will allow another housing choice in an area with primarily only one housing choice. The Bitterroot Heights Subdivision to the east has allowed only one housing choice. Existing demand for housing choice is going up for all ages of buyers including "boomers" and millennials just buying a first home. The proposed zoning would allow a townhome choice in an area where the only choice right now is a detached single family residence on a larger lot. The overall density will remain essentially the same throughout the area.

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

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

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

Public health and public safety will be promoted by the proposed zoning. 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.

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

Transportation: The proposed zoning will not significantly increase post-development traffic volume. A traffic impact study (TIS) or an update to an existing TIS will be necessary at the time of development.

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

Schools and Parks: Schools and parks should not be negatively affected by the proposed zoning. The existing Bitterroot Heights Subdivision has dedicated parkland and trail easements. If any additional parkland is necessary, this will be determined at the time of

development.

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

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

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

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

Traffic generation from a potential 60 to 90 new dwelling units will be between 480 and 720 new vehicle trips per day. This trip counts includes trips to the new residences for services such as mail, deliveries, solid waste and similar as well as the trips by the occupants. The new development will have sidewalks and will connect to other sidewalks and pedestrian facilities in the neighborhood. The new zoning designation itself should not have any increase effect on the transportation system.

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

The new zoning does promote compatibility with urban growth. The proposed zoning will allow this parcel to provide new housing compatible with the existing neighborhood.

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

The proposed zoning does consider the character of the district and the suitability of the property for the proposed use. The proposed zoning will allow a housing choice that is in demand in the area.

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

There is one existing buildings on the property and the closest existing residence is about 130 feet to the west on Bowles Way.

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

The proposed zoning will allow the development of another housing choice in this area of Billings Heights. This is the most appropriate use of the land.

## **RECOMMENDATION**

Staff recommends approval of Zone Change 988 and adoption of the findings of the 10 review criteria.

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## **Attachments**

Zoning Map and Site Photos

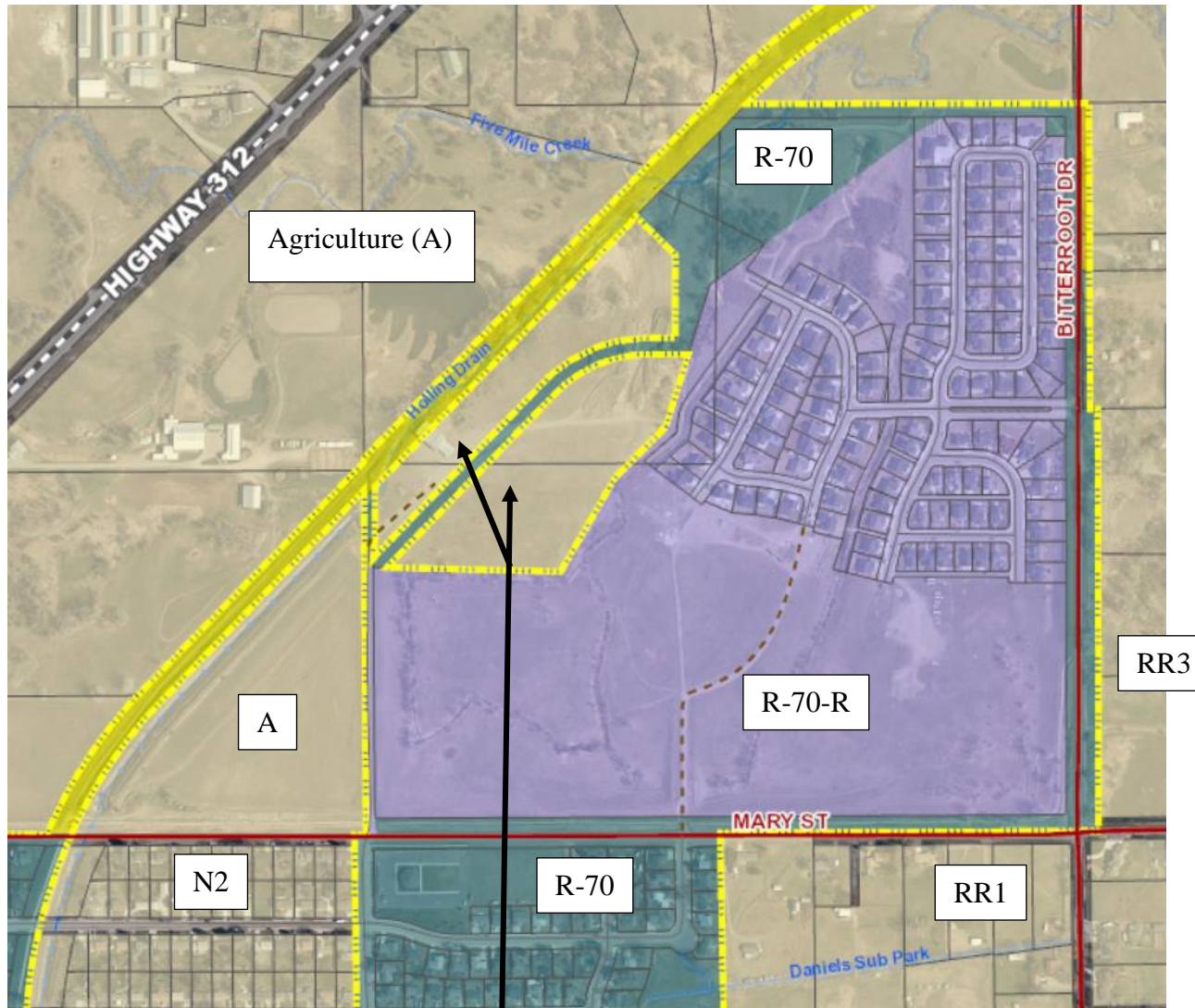
Application and Letter

Letter of comment

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City Zone Change 988

Zoning Map and Site Photos



Existing Zone = A  
Proposed = R-70 (N2)





Subject Property from Hawthorne Lane gate



Subject property view north and east



Subject property view north and east



View of Bitterroot Heights Subdivision north and east



View south across Mary Street at intersection with Hawthorne Lane



View south west at Mary St and Hawthorne Lane



Entrance to Bitterroot Heights Subdivision from Bitterroot Drive (2015)





**ZONE CHANGE PRE-APPLICATION MEETING AFFIRMATION**

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a zone change application.



Check one:  **City of Billings Zone Change**

**Yellowstone County Zone Change**

Property Address 2526 HAWTHORNE LN

Legal Description Tract 2A-1 of COS 2317 2nd Amd less previous annexed portion as part of City Resolution 91-16418

Present Zoning A-1 Agricultural-Open Space (County Only) Proposed Zoning R-70 Residential 7,000

Neighborhood Task Force Area? Heights Task Force

Task Force Chairperson Jennifer Owen

Task Force Chairperson Mailing Address SecretaryHeightsTaskForce@gmail.com

**Required Uploads to Online Project Attachments:**

- o **Zone Change Pre-application Meeting Affirmation Form**
- o **STATEMENT:**  
Written description of the Zone Change Plan including square footage or acres of proposed new zoning.
- o **Subject Property Map**
- o **Roster of persons who attended the pre-application neighborhood meeting**
- o **Meeting Notice and a brief synopsis of the meeting results**

**Affirmation:**

1) *The pre-application neighborhood meeting was held on:* December 14th, 2020

2) *The zone change application is based on materials presented at the meeting.*

Recorded Owner(s) BCJM Properties, LLC

Owner's Address 2409 Nina Clare Rd, Billings, MT 59102

Owner's Phone Number 406-672-8916 E-mail brosovich@bresnan.net

Applicant/Agent Performance Engineering

Applicant/Agent's Address 608 N. 29th St.

Applicant/Agent's Phone Number 406-384-0080 E-mail rob@performance-ec.com

Date 01/04/21

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



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

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## Bitterroot Heights – Zone Change Neighborhood Meeting Notes

The meeting began at 6:05 pm on December 14, 2020 via a virtual Zoom meeting. Those in hosting the meeting were Craig Dalton & Robert Neihart (Performance Engineering).

Approximately thirteen (13) people from the public logged into the meeting at some point during the discussion. Questions from the individuals and subsequent responses are shown below:

- Will this zone change drop home values on lots within the existing subdivision?

It is anticipated that the proposed development will not have a detrimental effect on existing home values. The developer plans to develop covenants and restrictions in effort to maintain quality and aesthetic consistency throughout the subdivision.

- Questions on what the target audience is for the proposed townhomes (i.e. single family with kids, retirees, etc)?

Target audience is difficult to pin down at this point and is likely to be dictated by the market. Generally, it is young families, young professionals, or older people downsizing.

- What are the price points of the proposed townhomes?

The market will ultimately dictate pricing, however, the anticipated price point for the townhomes will be in the \$250-300k range for each unit. The developer intends to develop covenants and restrictions to maintain quality and aesthetic consistency throughout the development.

- What are the landowner's plans for developing the area south to Mary St.?

At this point in time the developer does not have a plan for the undeveloped area south to Mary St. This will be determined at the time the landowner intends to develop this area and what the housing market looks like at that time. With that said, Project ReCode is proposing the entire development be classified as N2 which limits structures to two units or less.

- Will this zone change request set a precedence for the land south to Mary St.?

This zone change will have no effect and not set precedence on the land south to Mary St. Each zone change is looked at independently. Under the new Project ReCode the entire development is proposed to go to one consistent zoning (N2).

- What is the difference between a townhome and a duplex?

The definition of a townhome and duplex according to the City Code is listed below:

Duplex: A building constructed and designed for occupancy by two (2) families living independently of each other, and containing two (2) dwelling units, where the dwelling units share a common separation such as a ceiling, wall, etc. (including, without limitation, the wall of an attached garage or porch) and where access cannot be gained between the units through an internal doorway.

Townhome or townhouse: Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

- **Will this zone change cause traffic to increase?**

The proposed zone change will have minimal effect on traffic generated from the development. A Traffic Impact Study (TIS) was already completed for the preliminary master planned development. The Engineering Department will determine if an updated TIS will need to be completed during the subdivision process.

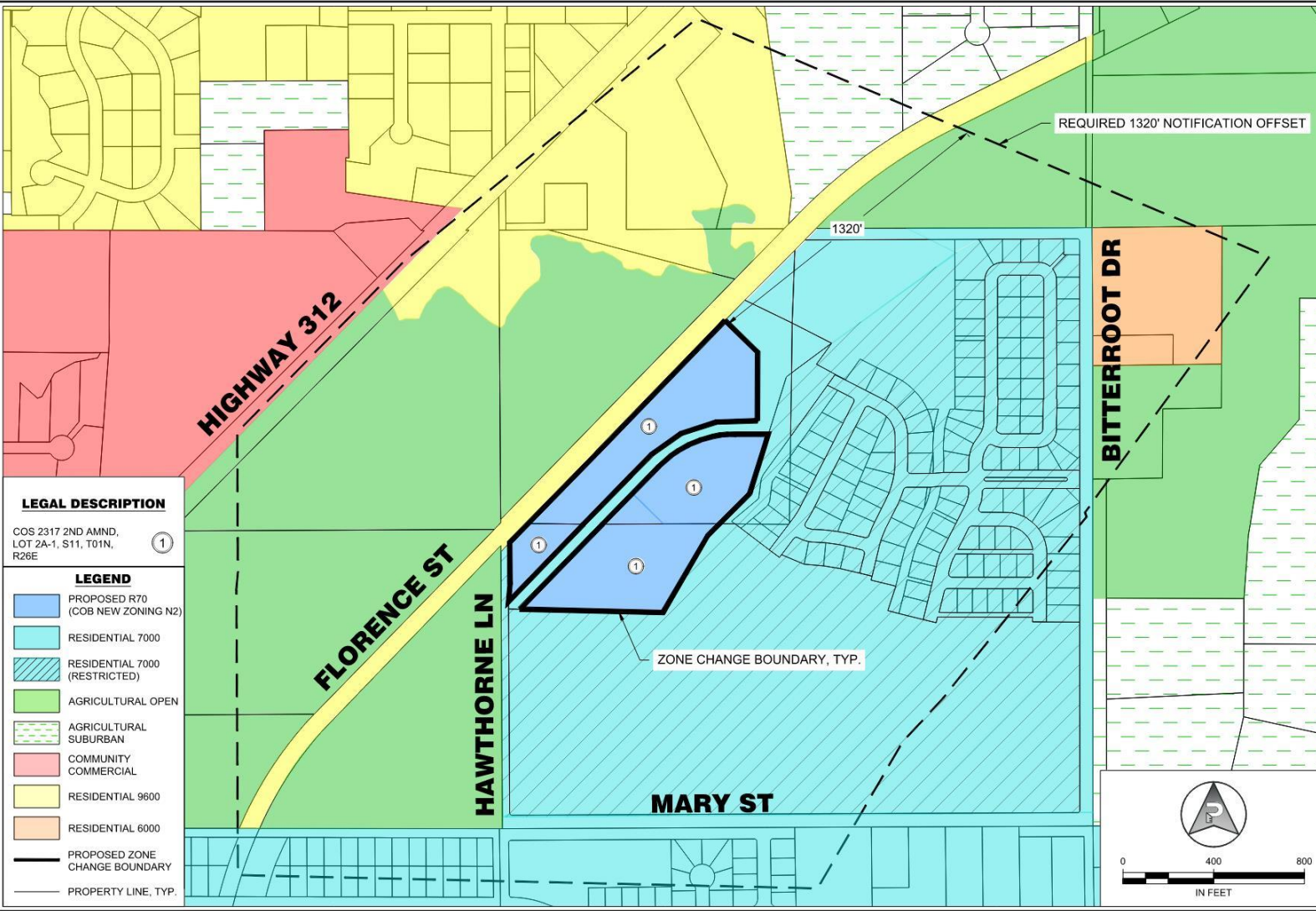
- **Will this zone change increase rentals within the subdivision?**

The requested zone change will allow for either single-family or townhouse structures to be built on each lot within the subdivision. Similar to the existing development, there is the possibility that either a single-family or townhouse could be rented out.

- **Concern that the development will not be consistent with the original master plan?**

The developer is requesting this zone change concurrently with an annexation application to bring the remaining portions of Tract 2A-1 of COS 2713 into the City for subsequent subdivision and construction in the Spring of 2021. Currently, the annexed portion of Tract 2A-1 of COS 2713 (City Resolution R91-16418) is zoned R-7000, with the County portions zoned as Agricultural Open. With this request, one consistent zoning will be created for Tract 2A-1 as it enters into the City. Furthermore, the requested zoning aligns with the future zoning classification proposed in Project ReCode (N2), limiting structures to two units or less.

The meeting ended at 6:45 pm.



**LEGAL DESCRIPTION**  
 COS 2317 2ND AMND,  
 LOT 2A-1, S11, T01N,  
 RZ6E

**LEGEND**

- PROPOSED R70 (COB NEW ZONING N2)
- RESIDENTIAL 7000
- RESIDENTIAL 7000 (RESTRICTED)
- AGRICULTURAL OPEN
- AGRICULTURAL SUBURBAN
- COMMUNITY COMMERCIAL
- RESIDENTIAL 9600
- RESIDENTIAL 6000
- PROPOSED ZONE CHANGE BOUNDARY
- PROPERTY LINE, TYP.



**BCJM, LLC**  
 BILLINGS, MT 59105

DESIGNED BY	QUALITY ASSURANCE
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DATE	CHKD BY

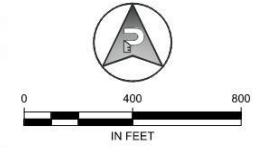
**BITTERROOT HEIGHTS ZONING MAP**

PROJECT NUMBER  
2020-146

SHEET NUMBER  
1 OF 1

DRAWING NUMBER  
**EX 1**

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**From:** LuAnn Herring <LHerring@sullinscorp.com>  
**Sent:** Monday, January 25, 2021 2:16 PM  
**To:** Cromwell, Nicole <CromwellN@billingsmt.gov>  
**Subject:** [EXTERNAL] FW: Bitterroot CITY Zone Change 988 Project# PZX-21-00004

Hi Nicole Cromwell,  
I am writing regarding Bitterroot CITY Zone Change 988 Project# PZX-21-00004

This just seems very wrong to me that you can promise one thing and then change. Please see attached. I tried to put as much information as I could starting with Billing Gazette 2004 meeting about multi-family homes on this property.

I would not have had my home built here if I knew this would change. ( other people on the Phone call on Dec. 14<sup>th</sup> stated the same). It was never brought up to me when building in 2018-2019 That this would be happening. All pictures and paperwork showed, this area would be single family homes.

This is one of the reasons I did not want to buy a McCall home in the Josephine Crossing Development because of town homes.

This seems very dishonest.

It seems they do not have issues selling homes here after being built. They seem to sell pretty fast.

I understand they want to make more money with their land but at a cost to home owner?

I have the most expensive home here I paid \$651,000 which I knew would be the highest home, but I liked the area. At the time I was at the architect before I built. I was worried about the other home owners because my home is more modern. (Yes I cared about the other homeowners)

I stated this and was told that this would be checked into. I was told that the other homeowners would be glad to have my home here because it would bring their home values up because of my home cost.

I really feel If a promise was made to this development and people around it. It should be kept.

Sincerely,  
LuAnn Herring  
2626 Meadow Creek Loop  
858-735-7236

undersigned from any liability arising out of the implementation, or enforcement of these Protective Covenants and any amendment thereto.

**7.6 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**7.7 Amendment.** Any provisions herein may be amended or revoked, and additional provisions added, at any time by a written instrument recorded in the office of the Clerk and Recorder of Yellowstone County, Montana, duly signed and acknowledged by the Owners of record of not less than seventy percent (70%) of the lots subject to this Declaration; provided, however, that so long as Declarant owns any lots in the Subdivision, then the consent of Declarant shall be required before these covenants and restriction may be altered or amended.

8

**RES 3721474**  
10/21/2014 10:21 AM Pages: 9 of 9 Fees: 63.00  
Jeff Martin Clerk & Recorder, Yellowstone MT

**7.8 Term.** These Covenants shall be binding for a term of thirty (30) years from the date of these Covenants, after which time the Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of not less than sixty percent (60%) of the lots has been recorded in the real estate records of the Yellowstone County Clerk, and Recorder, agreeing to revoke or terminate these Covenants.

**RES 3721474**  
10/21/2014 10:21 AM Pages: 9 of 9 Fees: 63.00  
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**III.  
REAL ESTATE TO WHICH COVENANTS APPLY**

3.1 These Covenants shall apply to the Subdivision which includes the following described lots and blocks within the Subdivision:

All Blocks of and Lots within the Bitterroot Heights Subdivision, 2<sup>nd</sup> Filing

**IV.  
BUILDING USE AND RESTRICTIONS**

- 4.1 **Lot Purpose.** Each lot in the Subdivision, shall be known and described as a residential lot. None of the lots may be used or improved for other than private residential purposes, and no structure shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling with a private attached or semi-attached, or detached garage. Total garage or workshop space shall not exceed 50% of the total size of the dwelling unit.
- 4.2 **Subdivision.** No single family lot shall be subdivided, re-subdivided, split, altered or reduced to smaller than 7500 square feet. Only one dwelling with its associated garage will be permitted per

2

[https://billingsgazette.com/news/local/heights/developer-may-alter-plans-for-subdivision/article\\_ce0c365a-6147-57f6-a79d-bbba431d1711.html](https://billingsgazette.com/news/local/heights/developer-may-alter-plans-for-subdivision/article_ce0c365a-6147-57f6-a79d-bbba431d1711.html)

## Developer may alter plans for subdivision

DIANE COCHRAN Of The Gazette Staff  
May 13, 2004

SALE! Subscribe for \$1/mo.

**H**eeding concerns expressed by neighbors, a Billings development company has agreed to consider changing its proposed subdivision on Mary Street in the Heights.

During a contentious public meeting last week, **owners of B&R Development** said they would look at creating a buffer zone of large lots around the proposed 127-acre Bitterroot Heights subdivision and **include a provision against duplexes in the property's covenants.**

"I feel a whole lot better now than I did before," said neighbor Lori Ankrum as the meeting ended.

Ankrum was among about 20 Heights residents who peppered developers **Gene Brosovich and George Rosenfeld** and engineer Chuck Strum with questions about the project for more than two hours last Wednesday.

Brosovich and Rosenfeld organized the meeting after the Billings City Council postponed voting on their request for a zoning change because neighbors to the proposed subdivision filed a valid protest against it. Almost 30 residents signed a petition opposing the project.

The company requested changing the zoning from Residential 9600 to Residential 7000 to allow for a greater number of affordable lots. Bitterroot Heights would target first-time home buyers who cannot afford properties larger than 7,000 square feet, Brosovich said.

But duplexes can be built under Residential 7000 zoning, and neighbors fear they will see multifamily homes go up in Bitterroot Heights. **Rosenfeld and Brosovich have promised not to build duplexes**, but some neighbors say they don't know whether to trust them.

"Why don't you take a look at our record?" he asked. "We've built 300 homes in this town. I don't know what else we can do to get more trust from you folks."

Brosovich and Rosenfeld said they will consider changing the lot sizes along Mary and Bitterroot to 9,600 square feet or requesting Residential 9600 zoning for the project's perimeter with interior Residential 7000 zoning.

To change their zoning application, they would have to withdraw their pending request and wait four months to bring it before the council again. B&R's original request is scheduled to go before the council again on May 24.

Although meant to address only the zoning issue, the meeting covered a raft of concerns related to the Bitterroot Heights project.

Attorney Phil Oliver, who lives on Bitterroot, said he strongly advises his clients against making verbal contracts. Although the developers say they will write a covenant against duplexes, that cannot be done until after the Residential 7000 zoning is approved and the project moves forward. That makes Oliver uneasy.

"I have to admit, if you guys stand up in front of the City Council, you would have permanent egg on your face if you didn't do what you say you're going to do, which is better than nothing," Oliver said.

Brosovich said his company wants to accommodate the project's neighbors. He spoke highly of B&R's other Billings project, the Daniels Subdivision, which is east of Hawthorne Lane between Crist and Peony drives.

### **Project Location**

Bitterroot Heights is a new residential subdivision located at the northeast corner of the Heights neighborhood in Billings. The subdivision is bordered by two arterial streets: Bitterroot Drive, Mary Street, and collector street, Hawthorne Lane. The remainder of the property is contained by the railroad bed and Five Mile Creek. Prior to subdividing the property, almost 75% of the property was used as a gravel pit. The south side of the property contains a branch line of the BBWA Canal. Several existing drainages are on site. Ground water appearing at the surface runs constantly through these shallow ditches. The old branch of the BNSF railroad transcends the northwest corner of the site. The City of Billings now owns the right-of-way. It is identified as a bicycle corridor on the Heritage Trail Plan.

### **Subdivision Requirements**

The gross area of the subdivision is 127 acres. It is projected that a total of 380-390 lots will be developed. The zoning for the subdivision is R-7000 Restricted, which limits the build-out to single-family homes. Parkland dedication requirements according to The City of Billings Subdivision Regulations require that 11% of the net area of land proposed to be subdivided into parcels of one-half acre or smaller be contributed to the parkland dedication. The total lot area is 77.49 acres. The resulting dedication required equates to 8.52 acres.

According to the Subdivision Master Plan, a total of 18.99 acres of parkland and public open space is proposed. According to this park master plan, approximately 8.33 acres of park land is planned to be fully developed. According to the subdivision improvement agreement (SIA) the proposed improvements described in the master plan is to be implemented at 51 percent of the build-out. It is proposed that the implementation will be funded through a park special improvement district (PSID). The SID will be a developer-initiated SID (private contract) to implement the park system. The proposed PSID coverage is all areas within the Bitterroot Heights subdivision. During the master plan process, it was evaluated to expand the coverage to include property owners outside of the subdivision, however, at this time Daniels Park fulfills the parkland requirements of those adjacent subdivisions. If, however, Daniels Park is liquidated, a reconsideration of the PSID must be considered. Likewise, all property owners within the Bitterroot Heights subdivision will be signing waivers of protest to the creation of a Parks Maintenance District (PMD). It is the policy of the Parks Department to create a PMD with any parkland improvements.

### **Parkland and Public Open Space Improvements**

In the Parks 2020 plan, Framework A, "Essential Recreation Park Land," Diagram 2, identifies this area as a need for a future community park in this area of Billings. The parkland dedication tract was provided in a configuration and acreage that allows for improvements desirable in today's park systems. According to the diagram, a "Community Park" has a service area of 1-1/2 mile radius, and is typically 10-20 acres. The projected user groups are Community residents, Neighborhood residents and

## **MUNITY IMPACT AND CRITERIA FOR PUBLIC INTEREST**

### *of need for the subdivision:*

**Bitterroot Heights Subdivision is proposed to be a single-family residential subdivision with lot sizes varying from just over 7,000 square feet, up to more than 12,000 square feet.** Development character will include a significant quantity of single family homes priced and targeted towards first-time home buyers. Also included will be a section of the subdivision developed with a "bungalow" style, utilizing alleys for rear garage access, and developed with front (street side) porches. Portions of the subdivision will also offer "premium" lots adjacent to drainageway or natural area amenities. The intent is to build a development with a stronger sense of community. The development will fill a need for entry-priced single family housing.

Homes within the Bitterroot Heights Subdivision are anticipated to be sold for prices over a wide range, beginning from the mid -\$100,000's. With the exception of large lot residential areas to the north and east, homes in developed areas near the Bitterroot Heights Subdivision are comparable to that proposed. The Bitterroot Heights Subdivision is anticipated to appeal to first-time buyers and buyers wanting the unique development character offered by the "bungalow" style of front porches and rear alley garage access. Large tracts of habitat preserved within the subdivision, as well as the preservation of the open channel drainages throughout the subdivision will also offer unique characteristics and special qualities for this subdivision. These characteristics make Bitterroot Heights Subdivision unique for this part of the City.

### *sed public opinion:*

Names and addresses of property owners of record immediately adjoining or surrounding the land are shown on sheet 3 of the Preliminary Plat. The



using:

- a. At build-out of the subdivision, it is anticipated that 381 single family residential dwellings will exist. No multi-family dwellings or mobile homes are proposed.
- b. The type of structures anticipated for this subdivision does not include recreational or second homes.
- c. It is estimated that the subdivision will be developed in six (6) to eight (8) phases over the next 6-8 years. It is estimated the subdivision will be 50% developed in the year 2009, and 100% developed by the year 2013.
- d. It is projected that the subdivision will develop with a total of 381 lots on a gross area of 127 acres, resulting with a density of about 3.0 dwelling units per acre.

- d. All subdivision roads will be constructed with approval by the City of Billings Public Works Department and will be designed with sufficient stormwater management provisions to meet the state department of health and environmental sciences guidelines for prevention of water pollution and erosion.
- e. When fully developed, this subdivision is expected to generate approximately 3,972 daily vehicle trips. Traffic will be directed to adjacent principle arterial streets (Mary Street and/or Bitterroot Drive). No existing local or neighborhood streets will be impacted by subdivision traffic. The reader is referred to the Traffic Accessibility Study developed for this subdivision for additional detail.
- f. Capacity of existing and proposed streets and intersections is fully documented in the Traffic Accessibility Study developed for this subdivision.
- g. A Traffic Accessibility Study has been developed for the proposed subdivision as required by section 23-702(a) as a separate document.

ilities:

- a. The subdivision concept plan has been submitted to affected utilities for review. Affected utilities have responded by indicating their needs for easements. Necessary utility easements are shown on the Preliminary Plat.
- b. On-site services for electric, natural gas, telephone and cable will be installed coincident with construction of roads and other utilities (water and sewer). The subdivider will pay for installation of utilities where required.
- c. All new on-site utilities will be placed underground. The existing overhead electric utility currently located adjacent to the property along Bitterroot Drive and Mary Street will remain.
- d. Utility completion will be coincident with completion of road construction, anticipated by the winter of 2004.

ergency services:

- a. Fire protection services will be provided by the City of Billings Fire Department. The proposed subdivision is within the City Limits and within the urban fire district.
- b. Police protection services will be provided by the City of Billings Police Department as the subdivision is located within the City Limits.
- c. Ambulance services are available for the subdivision and can be provided by American Medical Response.

# Bitterroot HEIGHTS

unique property, Bitterroot Heights is a quality subdivision located in the heart area of Billings, with all city services included. Conveniently located to shopping, schools, and health facilities, this new neighborhood features colonial and burglar-style single-family homes.



During the design of the subdivision, creation of natural areas and waterways, greenways and an active key features to overall enjoyment of the development, you will have access to approximately 200 acres of park lands which include two ponds, a picnic shelter, basketball court, tennis and track.

2. In fact, which are the far ends of subdivision to see park, will sit to the Heritage bicycle corridor, along the west side. In addition,



Large natural areas and wetland will provide bird and wildlife habitats along the Snake Creek corridor.

Bitterroot Heights provides several recreational amenities while preserving the natural beauty of existing landscape features. Combined with quality housing, trails, and park lands, Bitterroot Heights is an attractive, desirable and exciting neighborhood to live.



Bitterroot Blvd

MCN 111

Herstate Engineering  
1505 Hwy 7  
Billings MT 59102



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**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS ON THE BRV DEVELOPMENT, LLC REAL PROPERTY**

THIS DECLARATION is made November 22, 2004, by

the undersigned, hereinafter called "Declarant".

**RECITALS:**

Declarant makes this Declaration of Covenants, Conditions and Restrictions upon the following facts:

1. Declarant is the owner of the following described real property situated in Yellowstone County, Montana:

Tract 3A of Certificate of Survey No. 2317 in the SE ¼ of Section 11, Township 1 N., Range 28E. P.M.M.

2. Declarant desires and intends to place covenants, conditions and restrictions on the above described real property for the benefit of the real property and the adjacent owners of real property within One Hundred Fifty Feet (150') of the exterior boundaries of the above-described property on the South and East of said real property.

3. Declarant states that the purpose of the Declaration of Covenants, Conditions and Restrictions is to cause the above-described real property to be more compatible with residential property to the South and East of said real property.

**GENERAL CONDITIONS**

- 4. Duplex or multi-family dwelling uses are prohibited.
- 5. Residential lots adjacent to Bitterroot Drive and Mary Street along the property's east and south boundaries shall be 9,600 square feet or larger.



3289174

Page: 2 of 3  
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1 costs of the action including reasonable attorney fees for all action taken to enforce  
2 these covenants, conditions and restrictions.  
3

4 **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
5 **ON THE B & R DEVELOPMENT PROPERTY DATED May 19, 2004.**  
6

7 **B & R DEVELOPMENT**

8  
9 By: Eugene Brosovich  
10 Eugene Brosovich,  
11 President  
12

By: George Rosenfeld  
George Rosenfeld  
Secretary-Treasurer

State of: Montana  
County of: Yellowstone

On this 19 day of May 2004; personally appeared Eugene Brosovich  
and George Rosenfeld before me a notary public for the State of  
Montana; signing of Declaration of Covenants, Conditions, &  
Restrictions on the B & R Development Real Property.

\* signing as President - Secretary-Treasurer  
of B & R Development



Whitney Jagelski  
Whitney J. Jagelski  
Notary Public for State of MT  
residing at: Billings, MT  
my commission expires June 25, 2005