

**REQUEST TO VACATE PUBLIC RIGHT-OF-WAY  
CITY OF BILLINGS**

**Description of Right-of-Way to be vacated:**

A parcel of land 1 foot in width and 140 feet in depth along the north portion of the 20 foot public alley between Western Towers and the YMCA as depicted in the attached survey.

We, being all the abutting property owners, request of the City Council the vacation of the above described:

Street                       X Alley                       Other R/W  
SIGNATURE                                      DATE                                      PROPERTY OWNERSHIP

Apex Billings, LLC  
 By: *Justin Hunt*  
 Its: Justin Hunt - Member

5-6-21

See Exhibit A attached

Young Men's Christian  
 Association  
 By: *[Signature]*  
 Its: CEO

10/27/2020

T01S, R26E  
  
 Section 3: Block 5, Lot 1-12, & ADJ  
 80'X 140'  
 Abandoned RR Row, Lots 16-A 17-  
 20 E2 Lots 21-24 & Vac Alley (01)

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

	<u>Approved By/Date</u>	<u>Disapproved By/Date</u>
City Public Works	<u>ATTACHED</u>	_____
Heights Water	<u>ATTACHED</u>	_____
Montana Dakota Utilities	<u>ATTACHED</u>	_____
Northwestern Energy	<u>ATTACHED</u>	_____
Charter	<u>ATTACHED</u>	_____
CenturyLink	<u>ATTACHED</u>	_____
City/Co. Planning	<u>ATTACHED</u>	_____

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** See Attached Letter.



**From:** Duke Nieskens <cwdbh@hotmail.com>  
**Sent:** Wednesday, February 10, 2021 8:38 AM  
**To:** Pete Knapp  
**Subject:** RE: 20001 - APEX Apartments YMCA alley vacation

Pete,

The District is a governmental agency, not a private utility and has no say in what another government agency does within its jurisdiction.

Thanks,

Duke Nieskens  
Manager  
County Water District of Billings Heights



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**From:** Pete Knapp <[pknapp@sandersonstewart.com](mailto:pknapp@sandersonstewart.com)>  
**Sent:** Tuesday, February 9, 2021 4:20 PM  
**To:** Duke Nieskens ([cwdbh@hotmail.com](mailto:cwdbh@hotmail.com)) <[cwdbh@hotmail.com](mailto:cwdbh@hotmail.com)>  
**Cc:** Tim Filz <[filz@cflawfirm.net](mailto:filz@cflawfirm.net)>  
**Subject:** 20001 - APEX Apartments YMCA alley vacation

Duke,

This is more of a formality than anything else for Height Water.

Tim Filz and Chris Hertz have been in a discussion on a solution to an apparent encroachment onto the alley in Block 5 of the Original Town of Billings.

Tim has prepared the attached petition and we are collecting the needed signatures.

Please sign on Page 3 and return a copy to me and Tim via e-mail.

Thanks.

Pete

**Pete Knapp PLS**  
Senior Professional Land Surveyor

t: 406-869-3312

SANDERSONSTEWART

Billings • Bozeman • Denver • Fort Collins

we **design** better  
**together.**  
virtually, **for now**

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Street                       X Alley                       Other R/W  
SIGNATURE                                      DATE                                      PROPERTY OWNERSHIP

<u>Apex Billings, LLC</u> By: _____ Its: _____	_____ _____ _____	<u>See Exhibit A attached</u>   <u>T01S, R26E</u> Section 3: Block 5, Lot 1-12, & ADJ 80'X 140' Abandoned RR Row, Lots 16-A 17-20 E2 Lots 21-24 & Vac Alley (01)
<u>Young Men's Christian Association</u> By: _____ Its: _____	_____ _____ _____	

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

	Approved By/Date	Disapproved By/Date
City Public Works	_____	_____
Heights Water	_____	_____
Montana Dakota Utilities	<u>MAJ 2-9-21</u>	_____
Northwestern Energy	_____	_____
Charter	_____	_____
CenturyLink	_____	_____
City/Co. Planning	_____	_____

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

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<u>      </u> Street	<u>  X  </u> Alley	<u>      </u> Other R/W
<u>SIGNATURE</u>	<u>DATE</u>	<u>PROPERTY OWNERSHIP</u>

Apex Billings, LLC  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

See Exhibit A attached

Young Men's Christian Association  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

T01S, R26E  
Section 3: Block 5, Lot 1-12, &  
ADJ 80'X 140'  
Abandoned RR Row, Lots 16-A  
17-20 E2 Lots 21-24 & Vac Alley  
(01)

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

	Approved By/Date	Disapproved By/Date
City Public Works	_____	_____
Heights Water	_____	_____
Montana Dakota Utilities	_____	_____
Northwestern Energy	<u>Jordan Robinson 11/16/20</u>	_____
Charter	_____	_____
CenturyLink	_____	_____
City/Co. Planning	_____	_____

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

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_____ Street	_ <u>X</u> _ Alley	_____ Other R/W
<u>SIGNATURE</u>	<u>DATE</u>	<u>PROPERTY OWNERSHIP</u>
Apex Billings, LLC By: _____ Its: _____	_____	<u>See Exhibit A attached</u>
Young Men's Christian Association By: _____ Its: _____	_____	<u>T01S, R26E</u> Section 3: Block 5, Lot 1-12, & ADJ 80'X 140' Abandoned RR Row, Lots 16-A 17-20 E2 Lots 21-24 & Vac Alley (01)

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City Public Works	_____	_____
Heights Water	_____	_____
Montana Dakota Utilities	_____	_____
Northwestern Energy	_____	_____
Charter	 _____	_____
CenturyLink	_____	_____
City/Co. Planning	_____	_____

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)



Petitioner's interest in vacating the public right-of-way: See Attached Letter.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

**ATTACHMENTS:**

- Title Report(s)
- Comments from all Utilities
- Map of R/W to be Vacated
- Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

Fee Received By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Engineers Office

**A DEPOSIT FOR AN APPRAISAL MUST ALSO ACCOMPANY THIS REQUEST.**

Deposit Amount: \_\_\_\_\_

Received By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Clerk

Copies of City of Billings Ordinance No. 80-4269 and 90-4822, establishing the procedure and compensation to the City of Billings for Discontinuance and Vacation of City Streets, Alleys, and Rights-of-Way, are attached for reference.

The application fee, as stated in BMC 22-602, will be set by the City Administrator after review by the staff. The City Clerk will advertise the public hearing at least one week before the petition is acted upon by the City Council.

This petition is to be returned to the City Clerk, PO Box 1178, Billings, MT 59103. (First Floor, City Hall)

This petition must be accompanied by the statements and reports as listed in BMC 22-601 (a), (b), (c), (d), (e), and (f). (Copy attached)

**CONTACT PERSON FOR PETITION:**

Tim Filz

Telephone No.: 406 869-4472 \_\_\_\_\_

Mailing Address: 19 36<sup>th</sup> Street

West, Suite 3, Billings MT 59012

Date: \_\_\_\_\_

**CITY COUNCIL ACTION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## **EXHIBIT A**

Parcel A:

Block 3: Lots 22, 23, 24 and the Southerly 10.69 feet of Lot 21;

Block 5: Lots 13 and 14;

all in Town of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #16312.

TOGETHER with vacated Fifth Avenue North lying Easterly of the East line of North 33<sup>rd</sup> Street and Easterly of the Eastline of Division Street as said vacated Fifth Avenue North adjoins said Lot 24 of Block 3 on the South and as said vacated Fifth Avenue adjoins said Lot 13 of Block 5 on the North.

Parcel B:

Lots 45 and 46, Block 6, of West Side Addition, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

**EXHIBIT B**  
PARTIAL ALLEY VACATION  
WITHIN

**BLOCK 5, ORIGINAL TOWN OF BILLINGS**

PREPARED FOR : APEX BILLINGS LLC

PREPARED BY : **SANDERSON STEWART** 

NOVEMBER 2020  
BILLINGS, MONTANA

**DIVISION STREET**

**N. 32nd STREET**

— BLOCK 3 —

WESTERN  
TOWER  
APARTMENTS

20' WIDE ALLEY

1' WIDE  
VACATED  
ALLEY

YMCA

— BLOCK 5 —

20' WIDE ALLEY

1' WIDE  
ALLEY  
DEDICATION

**N. 33rd STREET**



**NORTH**

SCALE: 1" = 60'



**First American Title Company**

**1001 South 24th Street West Ste 200  
Billings, MT 59102  
(406)248-7877- Fax (406)248-7875**

**"Deed and Encumbrance Report"**

**Effective Date:** October 15, 2020 at 7:30 A.M.

*Important Notice: This is not an insurance product. Please review the enclosed Contractual Limitation of Liability carefully. If you use or rely upon the information provided in this Report, any damages you suffer as a result of your use or reliance are expressly limited to the amount paid as a fee for this Report.*

**Prepared for:**

Christensen, Fulton & Filz, PLLC  
19 36th Street West, Suite 3  
Billings, MT 59102  
**Attn:** Tim Filz

**File No.:** 937294

**Customer No.:**

**Fee:** \$ 250.00

**Revision No.:**

**Subject Property Address: 429 N. 33rd St, Billings, Montana 59101**

**Legal Description:**

Parcel A:

Block 3: Lots 22, 23,24 and the Southerly 10.69 feet of Lot 21;

Block 5: Lots 13 and 14;

all in Town of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #16312.

Together with vacated Fifth Avenue North lying Easterly of the East line of North 33rd Street and Easterly of the Eastline of Division Street as said vacated Fifth Avenue North adjoins said Lot 24 of Block 3 on the South and as said vacated Fifth Avenue adjoins said Lot 13 of Block 5 on the North.

Parcel B:

Lots 45 and 46, Block 6, of West Side Addition, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

**Grantee(s) on the last deed purporting to transfer title shown in our records:**

Special Warranty Deed executed by Western Towers, LLC, a Montana limited liability company to Apex Billings LLC, a Montana limited liability company, recorded February 28, 2020, as under Document #3912784.

**Documents of Record:** (Includes only the following recorded documents titled as such: Mortgages, Deeds of Trust, liens, judgments, claims of lien and federal tax liens). Our search is only from the date the last deed purporting to transfer title was recorded to the date of this report.

(x) Exhibit Attached

( ) Exhibit not attached

1. Multifamily Trust Indenture, Assignment of Leases and Rents, Security Agreement and Fixture Filing, to secure an original indebtedness of \$3,500,000.00, dated March 24, 2020 and any other amounts and/or obligations secured thereby.  
Recorded: March 24, 2020, under Document #3915099  
Grantor: Apex Billings LLC  
Trustee: First American Title Company of Montana  
Beneficiary: Jones Lang Lasalle Multifamily, LLC.

Assigned to Fannie Mae, by instrument recorded March 24, 2020, under Document #3915114.

2. Financing Statement covering fixture  
Recorded: March 24, 2020, under Document #3915141  
Debtor: Apex Billings LLC  
Secured Party: Fannie Mae.

**Tax Information:**

Parcel Number: A00029; A17747

Status: Full Year Paid

Amount/Year: \$27,700.36 for 2019

**Limitations of Liability:**

**THIS IS NOT A TITLE INSURANCE POLICY, A COMMITMENT FOR TITLE INSURANCE, OR A TITLE OR OWNERSHIP REPORT. THIS REPORT IS BASED UPON A LIMITED SEARCH OF OUR COPIES OF RECORDS THAT IMPART CONSTRUCTIVE NOTICE. NO EXAMINATION OF THE TITLE TO THE PROPERTY DESCRIBED HEREIN HAS BEEN MADE. NO REPRESENTATIONS ARE MADE WITH RESPECT TO THE IDENTITY OF PARTIES OR TO THE VALIDITY, LEGAL EFFECT OR PRIORITY OF ANY MATTER REFLECTED HEREIN. NO ASSURANCES ARE MADE THAT THE LEGAL DESCRIPTION CONTAINED HEREIN CORRESPONDS TO THE STREET ADDRESS OR NAME OF THE PARTY. NO LIABILITY BEYOND THE AMOUNT PAID FOR THIS REPORT IS ASSUMED HEREUNDER, AND THE COMPANY IS NOT RESPONSIBLE BEYOND THE AMOUNT PAID FOR ANY ERRORS OR OMISSIONS CONTAINED HEREIN, OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH MAY RESULT FROM RELIANCE UPON THIS REPORT INSTEAD OF UPON A TITLE INSURANCE OR ASSURANCE PRODUCT.**

**PURCHASE OF THIS REPORT CONSTITUTES: (1) ACCEPTANCE OF ANY AND ALL LIMITATIONS OF LIABILITY CONTAINED HEREIN; (2) ACCEPTANCE OF IT AS A FINAL EXPRESSION OF THE UNDERSTANDING OF THE PARTIES; (3) AND AGREEMENT THAT NO PRIOR REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE.**

**First American Title Company**

**BY:**

A handwritten signature in black ink, appearing to be "T. H. [unclear]", written over a horizontal line.