

# PROCEEDINGS OF CITY COUNCIL

## MILES CITY, MONTANA

### REGULAR COUNCIL MEETING December 23, 2014 7:00 p.m.

#### CALL TO ORDER

The Regular Council meeting was held Tuesday, December 23, 2014, in the City Hall Conference Room at City Hall, 17 S. 8<sup>th</sup> Street, Miles City, Montana. Mayor Grenz called the meeting to order. Council Members present were Roxanna Brush, Mark Ahner, Susanne Galbraith, Sheena Martin, Dwayne Andrews, John Hollowell, Ken Gardner and Jerry Partridge.

Also present were Public Works Director Scott Gray, Public Utilities Director Al Kelm, Interim Fire Chief Cameron Duffin, Grant Writer/Planner in Training Dawn Colton, Grant Administrator/Historic Preservation Officer Connie Muggli, Firefighter/Lieutenant Justin Russell and City Clerk/Minute Recorder Lorrie Pearce.

#### PLEDGE OF ALLEGIANCE

Mayor Grenz led the Council in the Pledge of Allegiance.

#### APPROVAL OF COUNCIL & COMMITTEE MINUTES

##### **City Council Minutes: 12/09/2014**

**\*\*** Councilperson Galbraith moved to approve the minutes of the Regular Council Meeting of December 9, 2014, subject to corrections, seconded by Councilperson Gardner. On roll call vote the motion **passed** unanimously.

##### **Finance Committee Meeting: 12/08/14**

##### ***Finance Committee Meeting December 8, 2014***

*The Finance Committee met Monday, December 8, 2014, at 5:00 p.m. in the City Hall Conference Room. Chairperson Galbraith called the meeting to order. Members present were Sheena Martin, John Hollowell and Dwayne Andrews.*

*Also present were Public Works Director Scott Gray, Public Utility Director Al Kelm, Historic Preservation Officer Connie Muggli, Interim Fire Chief/Battalion Chief Cameron Duffin and City Clerk/Minute Recorder Lorrie Pearce.*

#### **REQUEST OF CITIZENS & PUBLIC COMMENT**

*None*

#### **NEW BUSINESS**

##### **A. Review and recommendation on contract from Peccia and Associates on Phase II of the Waste Water Treatment Plant**

**\*\*** Committee Member Andrews moved to recommend to Council approval of Peccia and Associates contract for Phase II of the Waste Water Treatment Plant, seconded by Chairperson Galbraith. After a brief discussion the motion passed by roll call vote, 4-0.

##### **B. Water Collection write-offs**

**\*\*** Committee Member Andrews moved to recommend to Council approval of \$3,394.34 to be sent to collection. The motion was seconded

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## MILES CITY, MONTANA

by Committee Member Martin. After a brief discussion the motion passed by unanimous consent, 4-0.

### **C. Review Ambulance write offs**

**\*\*** Committee Member Andrews moved to recommend to Council approval of an amount of \$28,146.46 to be sent to collections, seconded by Committee Member Martin. The motion passed by unanimous consent, 4-0

### **D. Review Amendment for TIF District**

Officer Muggli explained that the additional money is to pay Consultant Steve Zier for attending crucial meetings in her absence. She added that up to this point the project had been completely funded by grants.

**\*\*** Chairperson Galbraith moved to recommend to Council approval of the TIFD budget amendment for an amount of \$2,500, seconded by Committee Member Hollowell. On roll call vote the motion passed, 4-0.

### **D. RESOLUTION NO. 3760: A Joint Resolution Of The Board Of Commissioners Of Custer County, Montana And The City Council Of Miles City, Montana, Approving A Letter Of Agreement Pertaining To Rates For Services For FY2014-2015**

**\*\*** Committee Member Andrews moved to recommend to Council the approval of Resolution No. 3760, seconded by Committee Member Martin. After a brief discussion and on roll call vote the motion passed, 4-0.

### **E. ORDINANCE NO. 1281: An Ordinance Changing The Zoning Of Tract 1 Of The Armory Subdivision, From Residential District Zone To General Commercial Zone, And Providing For A Hearing Thereon**

**\*\*** Committee Member Hollowell moved to recommend to Council to approve Ordinance No. 1281, seconded by Committee Member Martin. After a brief discussion and on roll call vote the motion passed, 4-0.

### **F. ORDINANCE NO. 1282: An Ordinance Changing The Zoning Of Tract B Of Document #153542, Envelope 500b, And Located Within Section 11 Of Township 7 North, Range 47 East, M.P.M., From Agriculture District Zone To General Commercial Zone, And Providing For A Hearing Thereon**

**\*\*** Committee Member Hollowell moved to recommend to Council to approve Ordinance No. 1282, seconded by Committee Member Martin. After a brief discussion and on roll call vote the motion passed, 4-0.

### **ADJOURNMENT**

**\*\*** Committee Member Hollowell moved to adjourn the meeting, seconded by Committee Member Andrews and passed unanimously, 4-0.

The meeting was adjourned at 5:19 p.m.

**\*\*** Councilperson Galbraith moved to approve the minutes of the Finance Committee Meeting of December 8, 2014, seconded by Councilperson Andrews. On roll call vote the motion **passed** unanimously.

### **SCHEDULE MEETINGS**

- Health Board Meeting: Monday, January 5<sup>th</sup> @ 5:30 pm

**PROCEEDINGS OF CITY COUNCIL**  
**MILES CITY, MONTANA**

**REQUEST OF CITIZENS & PUBLIC COMMENT**

Mayor Grenz asked that the record reflect that all letters of protest and the petition received for Ordinance No. 1282 be attached to the minutes and made a part hereof.

There were fifteen residents and one attorney representing two residents of Southgate who spoke opposing Brawler Industries building in the area. No one spoke as proponent.

**APPOINTMENTS**

None

**PROCLAMATIONS**

None

**STAFF REPORTS**

Interim Fire Chief Duffin announced that the Fire Department received a \$610.00 grant to purchase training manuals.

Firefighter/Lieutenant Russell said through the local Toys for Tots program they were able to help 305 children and 75 disabled adults have a better Christmas. They collected over 600 toys locally and, with help from Toys for Tots and funds raised at the annual toy dance and action, they distributed 1220 presents directly back into the community.

**CITY COUNCIL COMMENTS**

Councilperson Andrews presented a plaque that was awarded to the City that signifies our good standing as a community in the Community Rate System. The community moved from Class 9 to Class 8, which give a 10% discount on flood insurance policies. He thanked Sammi Malenovsky for all her hard work.

Councilperson Brush apologized to the public for being misinformed on how curb and gutter were paid for in the Southgate area. She asked if anyone on City Council would be against installing a 15,000 gallon fuel tank above ground on City property at Peggy Lane. Most of the Council agreed that they could not comment until plans of the installation were presented. She asked the Mayor to talk to County Commissioner Kevin Krausz about combining the City and County Health Board, and commented on the length of time she had to wait for a BNSF train, which was 50 minutes. She thought it was very dangerous and was concerned about how emergency personnel would get to the North side of town. Also, she congratulated Colton Pederson for completion of pre court duties.

Councilperson Gardner thanked the Walleye Unlimited for everything it has done for Spotted Eagle and said they were going to install a beautiful new sign. He warned others that the ice at Spotted Eagle is very thin and to be careful.

**MAYOR COMMENTS**

Mayor Grenz thanked Utility Billing Clerk Bissell for her hard work on the new water/sewer policy and stated that it has proven to save the City of Miles City a lot of money.

**STANDING COMMITTEE RECOMMENDATIONS**

**BID OPENING**

None

# PROCEEDINGS OF CITY COUNCIL

## MILES CITY, MONTANA

### BID AWARDS

None

### PUBLIC HEARINGS

- A. **RESOLUTION NO. 3766:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2014-2015 To Increase The Budgeted Amount In Fund # 1000-011-411840-350 And #1000-011-411840-370 To Provide Funding For TIFD Project For Historic Preservation

Mayor Grenz called for comments from proponents three times, then opponents three times and, hearing none, **the hearing was closed.**

- B. **ORDINANCE NO. 1281:** An Ordinance Changing The Zoning Of Tract 1 Of The Armory Subdivision , From Residential Zone To General Commercial Zone, And Providing For A Hearing Thereon

Mayor Grenz called for comments from proponents three times, then opponents three times and, hearing none, **the hearing was closed.**

- C. **ORDINANCE NO. 1282:** An Ordinance Changing The Zoning Of Tract B Of Document #153542, Envelope 500b, And Located Within Section 11 Of Township 7 North, Range 47 East, M.P.M., From Agriculture District Zone To General Commercial Zone, And Providing For A Hearing Thereon

Mayor Grenz called for comments from proponents three times. No comments from proponents were offered.

Mayor Grenz then called for comments from opponents three times.

Attorney Gary Ryder said he didn't see pictures of the site in the staff report and reminded Council that the rezone was passed by the planning board on a 2-1 vote with one member not voting. He felt there were too many conflicts on the issue and asked Council to vote against Ordinance No. 1282.

No one else spoke after Mr. Ryder's comments and **the hearing was closed.**

### UNFINISHED BUSINESS

- A. **RESOLUTION NO. 3766:** (Second Reading) A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2014-2015 To Increase The Budgeted Amount In Fund # 1000-011-411840-350 And #1000-011-411840-370 To Provide Funding For TIFD Project For Historic Preservation

**\*\*** *Councilperson Galbraith move to approve Resolution No. 3766 by title only and seconded by Councilperson Andrews. On roll call vote, the motion **passed** by unanimous consent. **Resolution No. 3766 was adopted.***

- B. **ORDINANCE NO. 1281:** (Second Reading) An Ordinance Changing The Zoning Of Tract 1 Of The Armory Subdivision , From Residential Zone To General Commercial Zone, And Providing For A Hearing Thereon

# PROCEEDINGS OF CITY COUNCIL

## MILES CITY, MONTANA

- \*\*** *Councilperson Gardner move to approve Ordinance No. 1281 by title only and seconded by Councilperson Ahner.*

Director Gray read the finding of facts dated 11/5/2014 to Council.

- \*\*** *Councilperson Galbraith moved to amend the motion to include the staff report of finding of facts and made a part thereof, seconded by Councilperson Hollowell. On roll call vote, the motion passed by unanimous consent.*

- \*** *Councilperson Gardner's original motion to approve Ordinance No. 1281 then **passed**, as amended, on roll call vote. **Ordinance No. 1281 was Adopted.***

**C. ORDINANCE NO. 1282: (Second Reading)** An Ordinance Changing The Zoning Of Tract B Of Document #153542, Envelope 500b, And Located Within Section 11 Of Township 7 North, Range 47 East, M.P.M., From Agriculture District Zone To General Commercial Zone, And Providing For A Hearing Thereon

- \*\*** *Councilperson Brush move to approve Ordinance No. 1282 by title only and to adopt the staff report of finding of facts and made a part hereof, and to require the Property owner to sign a "no protest agreement of annexation" to the City, seconded by Councilperson Galbraith.*

Councilperson Ahner asked if it was the same tract of ground that was looked at in July and denied by the Zoning Commission and Council. Director Gray said it was looked at under a different applicant. Councilperson Ahner then asked what had changed from July to now besides who owns the property. Director Gray said that during that time, an area across the street was approved by the Zoning Commission and Council which was rezoned from Agriculture to General Commercial. Councilperson Ahner asked if the rezone is approved would it include annexation by the applicant. Director Gray said he was not sure. Attorney Rice recommended that the motion be amended to include the annexation. Attorney Rice also added that spot zoning is not an issue anymore because of the approval of rezone from Agriculture to General Commercial to a tract across the street.

Councilperson Ahner asked if other property owners are still opposed of the rezoning. Director Gray said that Attorney Ryder has informed him that they are, but he hadn't received any protest letters on this particular rezone. Councilperson Ahner asked how many of the surrounding property owners had protested in writing. Attorney Rice said that one protest letter was received by Attorney Ryder who was representing two property owners within the 150 feet radius. With that information, it was decided that there would be a simple majority vote for the ordinance to pass.

Mayor Grenz read Attorney Ryder's letter of protest.

Director Gray read the staff report of finding of facts dated 11/5/2014 and a letter from Mr. Mullen.

- \*** *Councilperson's Brush's original motion to approve Ordinance No. 1282 passed, as amended, on roll call vote 6-2. Councilpersons Ahner and Partridge voted no. **Ordinance No. 1282 was adopted.***

# PROCEEDINGS OF CITY COUNCIL

## MILES CITY, MONTANA

### NEW BUSINESS

#### A. Approval of Sanjel Site Plan Review

- \*\*** Councilperson Brush moved to approve the Sanjel Site Plan review, subject to conditions in the memo to Mayor Grenz from Planning Board President Brush, dated 12/23/2014, and to include the staff report to the minutes and made a part hereof, seconded by Councilperson Gardner.

Grant Writer/Planner in Training Colton reviewed the staff report dated 12/17/14.

- \*\*** Councilperson Hollowell moved to amend the original motion to change IBC 2009 to IBC2012 in the memo, paragraph 2, and before the plan is approved that the entire site be zoned to heavy commercial, seconded by Councilperson Brush. On roll call vote the motion **passed** by unanimous consent.
- \*** Councilperson Brush's original motion to approve the Sanjel Site Plan Review **passed** on a roll call vote 8-0.

#### B. Approval of Mac's Frontierland Site Plan Review

- \*\*** Councilperson Brush moved to approve Mac's Frontierland Site Plan review, subject to conditions in the memo to Mayor Grenz from Planning Board President Brush, dated 12/23/14, and include the staff report of finding of facts and made a part hereof, seconded by Councilperson Gardner. On roll call vote, the motion **passed** by unanimous consent.

#### C. **ORDINANCE NO. 1283:** (First Reading) Ordinance Changing The Zoning Of The S1/2SW 1/4SE1/4, Less 7.5 Acres Of Section 25, Township 8 North Range 47 East M.P.M. From Agriculture District Zone To Semi Rural Zone, And Providing For A Hearing Thereon

- \*\*** Councilperson Galbraith moved to approve the first reading of Ordinance No. 1283, seconded by Councilperson Hollowell. After a brief conversation and on roll call vote, the motion passed by unanimous consent. **Ordinance No. 1283 was referred to the Finance Committee.**

#### D. **ORDINANCE NO. 1284:** (First Reading) An Ordinance Amending Section 20-68 Of The Code Of Ordinances Of The City Of Miles City, Montana, So As To Allow Alternate Forms Of Surety For Persons Making Utility Connections

- \*\*** Councilperson Galbraith moved to approve the first reading of Ordinance No. 1284, seconded by Councilperson Andrews. After a brief discussion and on roll call vote, the motion passed by unanimous consent. **Ordinance No. 1284 was referred to the Finance Committee.**

#### E. **RESOLUTION NO. 3768:** A Resolution Of The City Council Of The City Of Miles City, Montana, Approving Attachment Of A Remark Defining The Water Right As Nonconsumptive To Resolve Issues And Contentions About Water Court Case No 42C 184, And Concluding Litigation Concerning The Water Right Identified As Claim No. 42C 1735316-00, Owned By The City, To Use The Waters Of The Tongue River

# PROCEEDINGS OF CITY COUNCIL

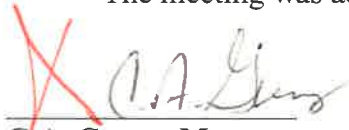
## MILES CITY, MONTANA

- \*\* *Councilperson Ahner moved to approve Resolution No. 3768 by title only, seconded by Councilperson Partridge. After a brief discussion and on roll call vote, the motion passed by unanimous consent. **Resolution No. 3768 was adopted.***

### ADJOURNMENT

- \*\* *Councilperson Ahner moved to adjourn the meeting, seconded by Councilperson Andrews and passed unanimously.*

The meeting was adjourned at 9:45 p.m.

  
C.A. Grenz, Mayor

  
Lorrie Pearce, City Clerk

## Miles City Zoning Committee

## Staff Report

November 5, 2014

## Zone Change Request-National Guard Armory

Debra Lafontaine from The Department of Military Affairs has requested a change in the zoning designation from Residential A to General Commercial on property the State of Montana owns in the Armory Addition. Located on the property today is the National Guard Armory. The proposed zone change would make it possible for the Department of Military Affairs to have the property assessed so that it can be sold in the future. Surrounding land uses include General Commercial to the north, east and west, and Residential to the south of the property.

## Finding of facts

The following is an evaluation of the zone change request under the criteria and guidelines for zoning regulations provided in Montana code Annotated 76-2-304.

1. Does the proposed zone change comply with the Miles City Growth Policy?

- The Growth policy does not include a future land use map or other information designating the property for specific land uses or zoning designations.

The Growth Policy includes a statement that is applicable to this proposal:

"Zoning amendments shall consider the needs of the petitioner, neighboring property owners, and the greater community." (Zoning, p.36). In this case, the landowner (petitioner) has requested a change in zoning designation. No concerns have been voiced to date by neighboring property owners and a general commercial designation would result in better options for this property. Based on this information, the proposal generally complies with the 2008 Miles City Growth Policy.

2. Is the proposed zone change designed to secure safety from fire and other dangers?

- The property would be served by city water with a fire hydrant to the northwest of the property, a fire hydrant to the south of the property on VA property, a fire hydrant to the southeast on VA property, and a fire hydrant to the northwest of the property, which would help with fire protection. The property is assessable by Main St to the north of the property, Bridge St. to the south of the property, and S.Sewell St. to the east of the property and would provide adequate emergency access. Therefore, the proposal is generally designed to secure safety from fire and other dangers.

3. Is the proposed zone change designed to promote public health, public safety, and the general welfare?

The building is not located in a designated floodplain, but the storage lot area for their equipment is located in the designated floodplain. There is power lines located to the south on VA property, and fiber optic and utilities are also located to the south. Therefore, the proposed



zone change will have little impact on public health, safety or general welfare other than possibly providing more commercial property for this area, which could be considered a benefit to the public.

4. Is the proposed zone change designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public facilities?

Transportation – The property is served by three roads. Pedestrian traffic is available by a sidewalk to the north and no bicycle facilities are available to the property.

Water and Sewer – Adequate city water and sewer are available.

Schools – School facilities are available to the surrounding properties.

Parks – Adequate parks are available to this property.

Other Public Requirements – Solid waste, mail delivery, and public utilities are available to this property.

Based on the above information, the proposed zone change is generally designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public facilities.

5. Does the proposed zone change provide reasonable provision of adequate light and air?  
The proposed property is 2.63 acres in size, which is sufficient size to provide adequate light and air.

6. How would the proposed zone change effect motorized and non- motorized transportation systems?

As stated previously, adequate motorized vehicular access is available via a state highway, and city streets. There is pedestrian traffic available by a sidewalk, but no bicycle facilities are available in the vicinity of the property.

7. Does the proposed zone change promote compatible urban growth and is it suitable for the proposed land use?

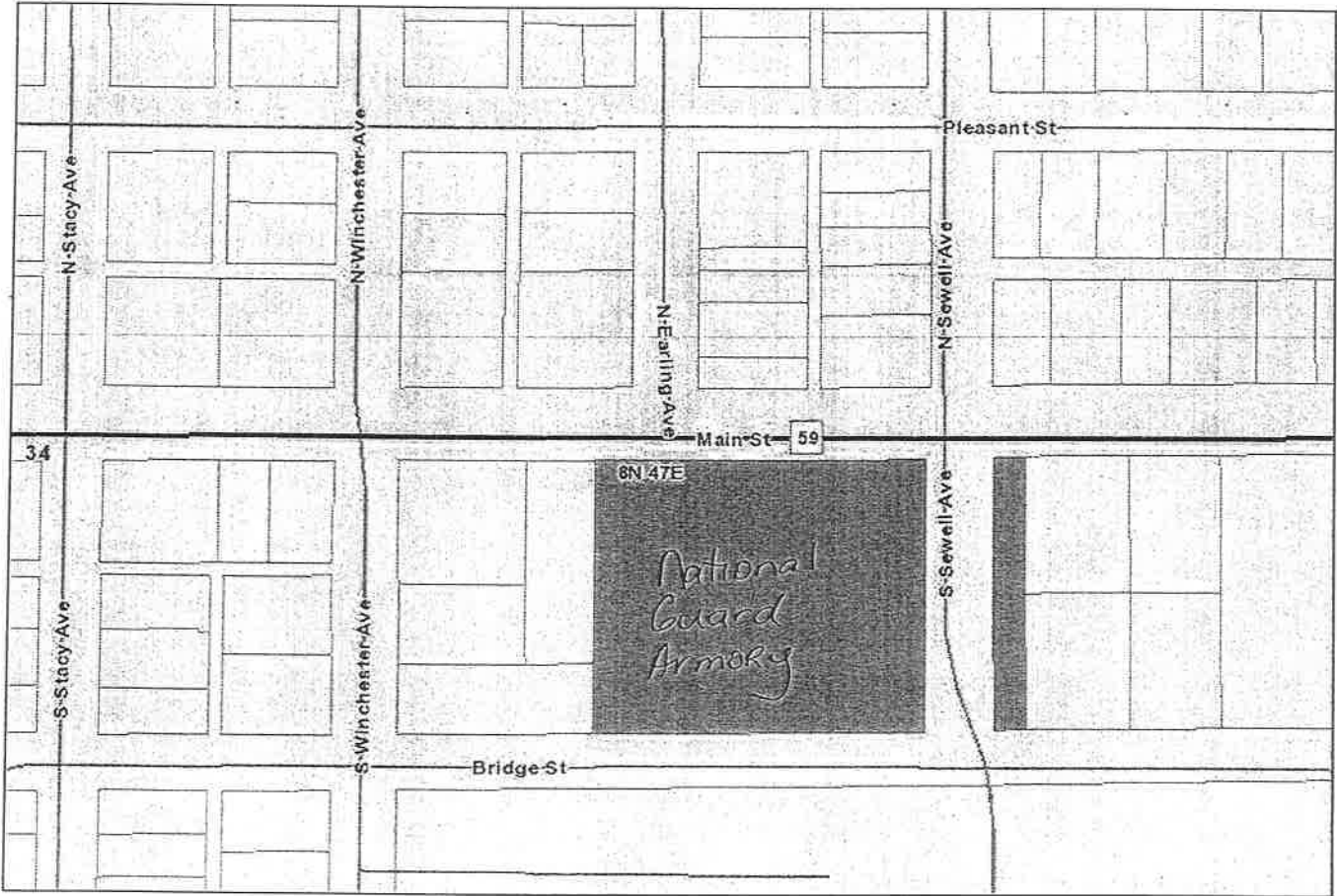
According to the map entitled, Miles City & Surrounding Jurisdiction Zoning Map (9/20/12), the zoning designation to the north is residential, zoning to the west is heavy commercial, and zoning to the south and east is agricultural. This is an area with a mixture of General Commercial and Residential nearby. Changing the zoning to general commercial, will allow a mixture of land uses and would therefore promote compatible urban growth. The proposed land use is for the property to be sold as General commercial to bring in more revenue with the sale of the land.

8. Would the proposed zone change conserve the value of building and encourage the most appropriate use of the land?

As stated above, this area contains a mixture of land uses, ranging from residential to General Commercial. Changing the zoning on the subject property to general commercial would continue this pattern and therefore conserve the value of building and encourage the most appropriate use of the land.

Recommendation:

Adopt this report as findings of fact and recommend approval of the zone change to City Council.



Miles City Zoning Committee

Staff Report

November 5, 2014

Zone Change Request

Brad Certain has requested a change in the zoning designation from Agricultural to General Commercial on property he owns on the west side of Highway 59 South. The proposed zone change would make it possible for a Commercial shop to be built on the property, among other land uses. Surrounding land uses include Agricultural use to the south and west of the property and General Commercial to the east of the property.

## FINDINGS OF FACT

### Part 1

The following is an evaluation of the zone change request under the criteria and guidelines for zoning regulations provided in Montana code Annotated 76-2-304.

1. Does the proposed zone change comply with the Miles City Growth Policy?

The growth policy does not include a future land use map or other information designating the property for specific land uses or zoning designations. The Growth Policy includes a statement that is applicable to this proposal: "Zoning amendments shall consider the needs of the petitioner, neighboring property owners, and the greater community." (Zoning, p.36).

The needs of neighbors and the community should be carefully considered. In this case, the landowner (petitioner) has requested a change in zoning designation to provide greater options for development of the property. Some concerns have been voiced to date by neighboring property owners because, depending on what future land use is developed on the property, land uses allowed in the GC district could result in greater impacts to neighboring landowners than typical AG district land uses.

The growth policy states that future growth in the Miles City community will most likely be to the east and to the south of the established community. Based on this information, the proposal generally complies with the 2008 Miles City Growth Policy.

2. Is the proposed zone change designed to secure safety from fire and other dangers?

The property would be served by fire protection from the Rural Fire Department. The property is accessible by State Highway 59 South to the east of the property and the highway would provide emergency access. As stated in #3 below, there could be a visibility issue with accessing the highway from the property, which must be addressed by the Montana Department of Transportation (MDOT) prior to a zone change being final. Assuming this issue can be adequately addressed, the proposal would generally designed to secure safety from fire and other dangers.

3. Is the proposed zone change designed to promote public health, public safety, and the general welfare?

The property is not located in a designated floodplain. There is a high voltage power line to the south of the property; gas lines are located along the easement next to the highway. It appears there could be a visibility problem with traffic entering onto a busy road ,therefore the proposed zone change will have some impact on public health, safety or general welfare and the MDOT would have to address this with the property owner as to what the approved right away approaches or highway improvements would be required prior to the zone change being finalized.

4. Is the proposed zone change designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public facilities?

Transportation – The property is served by one road: Highway 59 South. MDOT will be consulted in order to ensure adequate transportation.

Water and Sewer – There are no city water or sewer services to this property. A well will provide for water and the wastewater system design is being handled by the sanitarian and the state in accordance with adopted policies.

Schools – School facilities and bus service are available if necessary.

Parks – No parks are immediately available to this property. Assuming a commercial business is developed on the property, the proposal should not generate additional demand for city parks.

Other Public Requirements – Mail delivery and utilities are available to this property.

Based on the above information, the proposed zone change is generally designed to facilitate the adequate provision of transportation, water, sewerage, schools, and other facilities.

5. Does the proposed zone change provide reasonable provision of adequate light and air?

The proposed property is approximately 28.85 acres in size, which is sufficient size to provide adequate light and air.

6. How would the proposed zone change effect motorized and non- motorized transportation systems?

As stated previously, motorized vehicular access is available via a state highway which the MDOT would have to authorize in order to ensure impacts from the development of this property are minimal.

7. Does the proposed zone change promote compatible urban growth and is it suitable for the proposed land use?

According to the map entitled, Miles City & Surrounding Jurisdiction Zoning Map (9/20/12), the zoning designation surrounding this property is Agricultural to the south and west of this property, General Commercial to the east of this property and the property to the north is zoned Agricultural, but some debate arose during another recent rezone request across the road. A General Commercial business has been operated on this property for the last 50 years so there has been some debate as to what designation this property really is.

To the north of this property toward Miles City are several commercial developments. During a recent, similar zone change request, the City Council found extending GC designation to the south in this area is a logical and compatible extension of the South Haynes commercial development.

8. Would the proposed zone change conserve the value of building and encourage the most appropriate use of the land?

Changing the zoning on the subject property to general commercial would conserve the value of building and would be appropriate use of the land.

## Part 2

The following is an evaluation of the Little Factors for Spot Zoning based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions.

Little Factor 1: Is the proposed land use significantly different from the prevailing use in the area?

A change to GC would allow for a wide range of commercial land use options and also multiple-family residential. To the north approximately 1,000 feet is a similar mix of commercial and (away from Haynes Avenue) multi-family residential. Immediately surrounding the subject property are residential, agricultural and commercial land uses. Because of the mixture of existing uses in the area, the proposed land use would not be significantly different from the prevailing uses in the area.

Little Factor 2: Is the area rather small from the perspective of the number of separate landowners benefited from the proposed change?

A zone change requested by one landowner is small from the perspective of the number of separate landowners benefited from the proposed change.

Little Factor 3: Would the change be special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public?

In a way this would be special legislation designed to benefit one landowner. However, City Council recently recognized in a similar zone change decision that commercial use with some residential is likely to be the future land use in this area. Changing the designation would open the door for other landowners to benefit due to the establishment of precedent. Also, while acknowledging that certain members of the public might be harmed by the impacts of commercial development on this property, other segments of the public might benefit due to additional jobs, tax base and the goods and services that will be produced at the site. On balance, this proposal would primarily benefit one landowner but not at the overall expense of the general public.

Finding: Based on the above analysis of the three Little Factors for Spot Zoning, this proposal does not appear to be illegal spot zoning.

### Part 3

Recommendation: Adopt this report as findings of fact and recommend approval of the zone change to City Council contingent upon the applicant meeting the access requirements of the Montana Department of Transportation prior to the zone change being finalized by City Council.

Sanjel - Miles City

Narrative - 10.20.14

1 - Water & Sewer)

Connection to water and sewer services for the Sanjel facilities are currently being coordinated with the Custer County Water & Sewer District. The final locations are yet to be determined, but all buildings will be connected to the water and sewer services provided by Custer County Water & Sewer District. Due to the nature of this project being design build, final calculations and sizes for things such as the water meter and backflow prevention, are not yet finalized but in process.

2 - Existing Building)

The existing building is going to be demolished and will make way for the new facilities to be constructed.

3 - Landscaping)

The proposed landscaping will consist of stabilizing any exposed ground not covered by asphalt, gravel and buildings. Native and regular grasses will be planted to stabilize the site. We anticipate the open channel ditches and ponds to have this grassy ground cover upon project completion. Trees (Amur Maples) or equivalent will be planted all along the frontage of the project.

4 - Storm Water Separation)

There is currently an existing pond in front of the proposed project site, between the highway and the right of way line, where the state manages its storm water runoff. The proposed project has a new pond next to the existing state pond. It is the intention of the project to contain all of the post development storm water runoff within the onsite ponds without discharging any post development runoff into the state ponds. The top of our ponds in conjunction with the top of the state ponds will create a 'berm' that will act as a separation barrier between the two ponds and keep the storage capacities intact and separate.

5 - Structural Elevations)

The proposed buildings on this project range from approximately 25 feet to 50 feet in height. The heights are not expected to exceed the 65' maximum height requirement.

Heavy  
Commercial  
Height not to  
exceed 65 feet  
High  
Equipment

6 - Traffic)

The proposed site will have 184 car parking spaces with 6 of those being van accessible. There will be another 113 stalls for truck parking. The total parking comes to 297 spaces. It is anticipated that the traffic for the project will not exceed 400 average daily trips.

7 - Signage)

The project will have a company sign at the front of the property. Final location and size are still being determined.





**City Council Staff Report SPR 2014-07**  
**Site Plan Review - Sanjel**  
**Meeting Date: December 23, 2014**

**I. REVIEW PROCEDURE**

This proposal requires Site Plan Review by the Miles City Planning Board and City Council under Section 24-96 of the Code of Ordinances (Ordinance No. 1258). The application was received on October 21, 2014. The Planning Board public hearing was conducted December 10, 2014 at 5:00 PM in the City Hall Conference Room. Following the public hearing, the Planning Board's recommendation for approval, conditional approval or denial has been forwarded to the City Council.

**II. GENERAL INFORMATION**

**A. Project Applicant**

<b>Applicant:</b>	J. Mitchell Greer 2043 E Center Street Pocatella, ID 83201
<b>Owner:</b>	MacBain Properties LTD Michael Shipley 500 2 <sup>nd</sup> Street, SW Calgary, Alberta T2P 1N8

**B. Project Description**

The applicant and owner propose to construct three new buildings to serve as a base of operations and expansion of the Sanjel business for the eastern Montana region. The existing building will be demolished. New buildings will be one combined office/laboratory/truck service bay area; one wash bay building, and one bulk plant/warehouse building.

The existing facility currently has many different operations including office and laboratory space, truck maintenance, equipment storage, chemical mixing and chemical storage. The proposed facilities will have the same uses. The owner will also be consolidating the existing operations from across Highway 12 and bringing them onto the proposed site in order to have all facilities on one property.

All hazardous materials on site are listed with the Hazmat Emergency Management System as required by state law. This digital database is available to the Miles City Fire Department and Custer County Department of Emergency Services in case of spill or other emergency.

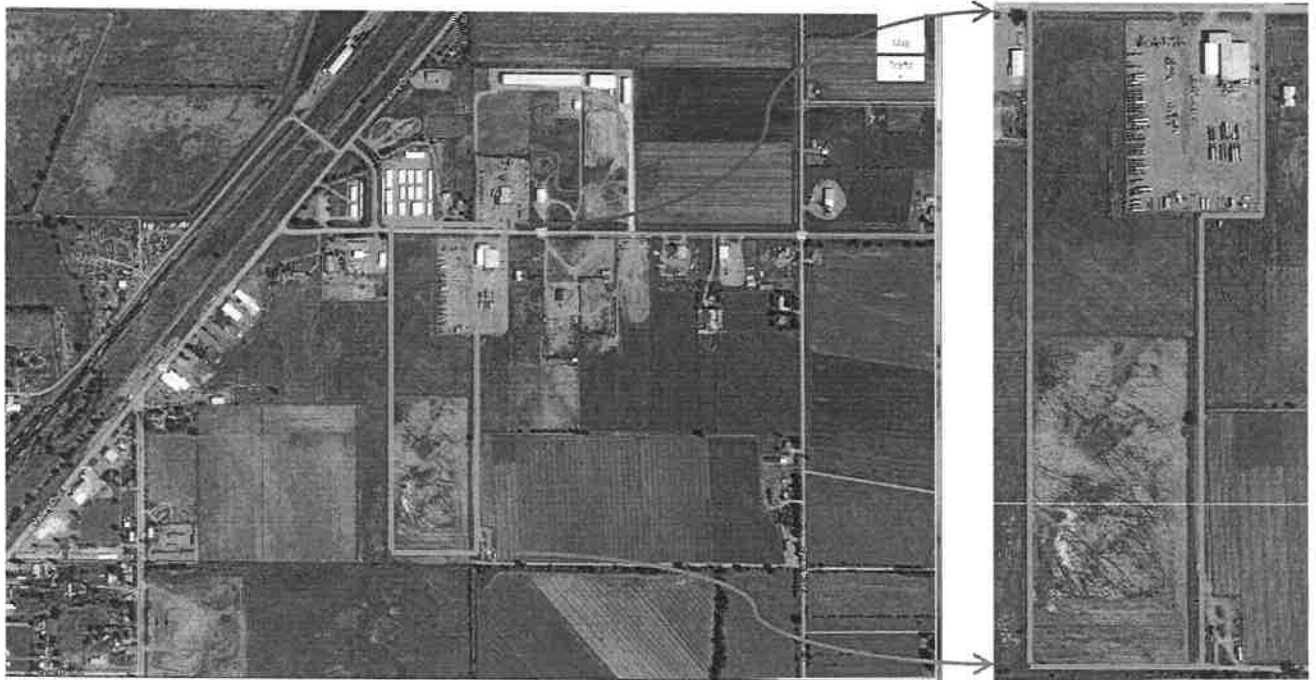
**C. Legal Description of Subject Property**

Tract 1 of the Ponderosa Tract A in the Hardesty Tracts as filed at the Custer County Courthouse as Doc #171781, Env #474B; and Tracts A and B, located in the NE ¼ of Section 26, Township 8 North, Range 47 E, MPM as filed at the Custer County Courthouse in Env #520A.

**D. Location**

The project site is located on the south side of Highway 12 approximately ¼ mile east of the Valley Drive East intersection. Cadastral mapping does not show a USPS address.

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**Figure 1: The subject property**

**E. Land Use & Zoning**

**Existing Land Use:** The property is currently utilized by Sanjel as an extension or satellite of the original site across Hwy 12. Sanjel is an oilfield services company specializing in pressure pumping and well completion.

**Proposed Land Use:** Office and laboratory space, truck maintenance, equipment storage, chemical mixing and chemical storage.

**Zoning:** Part of the property is zoned General Commercial (GC), part is zoned Heavy Commercial (HC) and part is zoned Agricultural (AG). The oilfield support use occurs primarily on the GC portion of the property today (and also across the highway on a separate parcel of land zoned HC).

**Proposed Zoning:** A zoning amendment application has been submitted to change the zoning on the entire property to HC to accommodate the proposed use. The rezoning application is being processed concurrently with the site plan review application.

**F. Surrounding Land Use & Zoning**

**General Description:** The property is surrounded by GC, HC, AG and Industrial (I) districts, which provide for a large variety of uses including general businesses and multi-family dwellings; heavy commercial businesses; agriculture and manufacturing, respectively. The surrounding zones and existing development are generally compatible with the proposed use.

**III. COMMENTS RECIEVED**

**Public Comment:** Notice of the Planning Board's public hearing was satisfied according to Subsection 24-96(f)(6) of the city codes. The Planning Board heard the following comments on the application during the public hearing:

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Cody Steinert (opponent): inquired about the locations of similar operations around the State and if those properties were surrounded by both agriculture and residential; years in operation; square footage of the proposed building; recirculating the wash bay water; the irrigation ditch; on site chemicals and the public road access.

Butch Grenz (proponent): stated that Sanjel has been good neighbors and have provided a lot of economic hope into Miles City.

**IV. SUBMITTAL REQUIREMENTS**

The applicant is required to submit all of the materials listed in Subsection 24-96(e)(1) through (6). If it becomes apparent during review that a reasonable decision cannot be reached based on the existing submittal, the review period timeline will be suspended until the required information is submitted. If the required information is not submitted within 60 days, the application will be deemed expired.

***Finding # 1:** The applicant has submitted all of the required materials listed in 24-96(e)(1) through (6).*

**V. EVALUATION CRITERIA PER SECTION 24-96**

According to Subsection 24-96(g)(1), reviewers shall consider the applicant's plans to ensure safety of circulation patterns, emergency access/fire prevention measures, traffic impacts to the surrounding road network, adequate storm drainage, provisions for water, sewer, and other utilities, the city's historic preservation policies, and adequate parking. Plans shall also be reviewed to ensure they comply with other standards in the zoning regulations such as setbacks, height restrictions, signage, and design requirements.

All evaluation criteria are listed below. Following each criterion is a draft finding by the administrator in *italics* evaluating how the plans relate to the criterion:

**1.1 Safety of circulation patterns**

***Finding #2:** The circulation pattern is shown on the site plan. Three improved approaches to Highway 12 are proposed. The westernmost approach leads to a private road that can be used to directly access the wash bays and bulk plant without having to drive through the extensive parking areas and office/lab/truck bay area. The property is over 34 acres in size. Given the size of the property, the layout of the buildings, the proposed access, parking and driving areas, the site plan provides safe on-site traffic circulation.*

**1.2 Emergency access/fire prevention measures**

***Finding #3:** Emergency access to the site and buildings will be readily available given the three road approaches and internal circulation system. Four fire hydrants are proposed; one each for the wash bay and bulk plant, two to cover the office/lab/service bay building. The Miles City Fire Department has discussed the project with the applicant. Due to fire and safety concerns, the applicant will be required to secure approval from the MCFD prior to occupancy.*

**1.3 Traffic impacts to the surrounding road network**

***Finding #4:** Highway 12 is a moderate - high capacity roadway serving this and other properties with no major deficiencies. The application indicates an Average Daily Traffic of*

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*less than 400 vehicle trips (after development) from the site. The surrounding road network will not be significantly impacted by the proposed business expansion.*

1.4 Adequate storm drainage

**Finding #5:** *Storm water runoff will increase substantially at the site due to construction of three new structures (25,460 sq ft, 10,500 sq ft, and 12,720 sq ft) and hard surfaced roadways. The application states all of the post development storm water runoff is intended to be retained on the property. In general terms, the center of the site, including the proposed buildings, will be elevated and runoff will be collected along the site boundaries. The 'Project Grading Overview' plan shows drainage ditches and culverts intended to channel runoff leading to a retention pond near the northwest corner of the property and also a retention pond in the northeast portion of the property, in addition to the ditches located along Highway 12.*

*Drainage calculations indicate that the total water retention capacity required is 88,968 cubic feet based on the 2-yr, 24 hour rainfall event. The two main retention ponds are planned at 91,600 cubic feet with additional storage in the drainage ditches.*

1.5 Provisions for water, sewer, and other utilities

**Finding #6:** *The proposed site is currently served by the Custer County Water & Sewer District. Construction is underway for the East Valley Water Line that will serve this site when completed. All other utilities are existing or available to serve the site within appropriate easements. During a conference call on November 25, 2014, Miles City Public Utilities Director Allen Kelm expressed concern with hydraulic fracturing fluids and other chemicals entering the City's wastewater treatment plant and requested additional information from the applicant regarding the proposed wash bay re-circulation system. Sanjel has since satisfied all concerns about wastewater treatment at the site.*

1.6 The City's historic preservation policies

**Finding #7:** *The proposed structures do not impact the City's historic preservation policies. The site is not located in a designated historic district and does not have a structure that is historic (50+ years old) nor is it eligible for listing on the National Register of Historic Places.*

1.7 Adequate parking

**Finding #8:** *The site plan indicates a total of 184 auto parking spaces (including 6 handicap accessible and one van accessible space) and 113 truck parking spaces are planned, which exceeds the requirements of the zoning. There is adequate parking on site to accommodate employees and company work vehicles.*

In addition to Subsection 24-96(g)(1), Subsection 24-96(g)(2) adds the following criteria (following each criterion is a draft finding by the administrator in *italics*): No site plan application approval shall be given unless it is determined that:

- a. The use complies with all applicable regulations in the district in which it is located.

**Finding #9:** *The proposal has been reviewed for compliance with the applicable regulations for the HC district, such as setbacks, height restrictions, signage, and design requirements. The use complies with all applicable regulations for this district.*

- b. The use complies with all adopted regulations and policies.

**Finding #10:** *Prior to occupancy the applicant must demonstrate compliance with Fire*

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*Codes and IBC 2009 Building Codes through the building permit process. There are no known conflicts with other adopted regulations and policies in the Miles City Code of Ordinances.*

- c. The use will not be detrimental to or endanger public health, safety or general welfare.

***Finding #11:*** *The proposed project is located in an established commercial area where the business is currently operating. The proposal includes relocation of operations at the facility on the north side of Highway 12 to the proposed site in order to consolidate business operations. Public health and safety concerns related to hazardous materials stored in a floodplain and the ability of emergency services to respond to a spill or other emergency are present. The applicant has indicated hazardous material storage may occur within the enclosed buildings, which are planned to be elevated above of the floodplain at this time (although no floodplain permit application or letter of map amendment [LOMA] have been submitted to date). Because of these concerns it is necessary for the Miles City Fire Department to approve the final plans and for a Custer County floodplain permit or LOMA to be issued prior to occupancy. When those issues are addressed, the proposed development can be expected to have no detrimental effect on public health, safety or general welfare.*

- d. The existing and reasonably anticipated permitted uses in the area will not be substantially impaired or diminished by the establishment of the proposed use.

***Finding #12:*** *The proposed expansion of business operations will not substantially impair or diminish the permitted uses in this area as it is historically been used for commercial, industrial and agricultural land uses.*

- e. Adequate utilities, access ways, drainage, and other necessary site improvement have been provided or will be provided prior to the use being initiated.

***Finding #13:*** *All utilities, access ways, drainage and other site improvements will be required prior to the use being initiated.*

- f. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on public streets.

***Finding #14:*** *The ingress and egress points will be improved to minimize traffic congestion on US Hwy 12. The private access road on the west boundary of the site property will also be improved by paving the surface.*

**VI. RECOMMENDATION**

The Planning Board recommends that the City Council adopt this staff report as findings of fact and grant approval of this project, subject to the following conditions.

**VII. CONDITIONS**

***Standard Conditions:***

1. All site development and use of the property shall be in accordance with the Miles City Zoning Codes, the approved application and plans, and as discussed in Staff Report SPR 2014-07. Any modifications shall require additional review by the City of Miles City.

***Site-Specific Conditions:***

2. The owner or authorized representative shall obtain a Building Permit prior to start of construction. A permit is required for construction, additions, alterations, repairs, relocation, demolition, change of

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occupancy, or electrical, gas, mechanical or plumbing system projects. Exemptions are listed in IBC 2009 Section 105.2.

3. The owner shall submit a letter of review from the Miles City Fire Department indicating adequate fire protection plans have been developed and the department can adequately respond to emergencies at the facility.
4. The owner shall maintain adequate parking spaces for employees at a minimum of one space per employee and reasonably adequate spaces for visitor parking as required by Miles City Code of Ordinances for the Heavy Commercial (HC) District Section 24-61(c)(1).
5. A floodplain development permit or letter of map amendment must be obtained prior to construction.
6. A Stormwater Pollution Prevention Plan permit from Montana DEQ must be obtained prior to start of site improvements and construction.
7. The proposed washbay recirculation system must be approved by the City Public Utilities Director prior to construction.

Miles City Zoning Committee

Staff Report

December 3, 2014

Moore Zone Change Request

Thomas Moore has requested a change in the zoning designation from Agricultural to Semi Rural on property he owns at the end of Leighton Blvd. The proposed zone change would make it possible to build a house and accessory buildings. The zoning in all directions is Agricultural, and as such, spot zoning may be an issue which should be considered. Surrounding land uses include a single family residence, a landfill and a power station, all of which are nonconforming uses in the Agricultural district.

## FINDINGS OF FACT

### Part 1

The following is an evaluation of the zone change request under the criteria and guidelines for zoning regulations provided in Montana code Annotated 76-2-304.

1. Does the proposed zone change comply with the Miles City Growth Policy?

The Growth policy does not include a future land use map or other information designating the property for specific land uses or zoning designations. The Growth Policy includes a statement that is applicable to this proposal: "Zoning amendments shall consider the needs of the petitioner, neighboring property owners, and the greater community." (Zoning, p.36).

In this case, the landowner (petitioner) has requested a change in zoning designation. No concerns have been voiced to date by neighboring property owners and a semi-rural designation would result in a wider variety of options for this property. Based on this information, the proposal generally complies with the 2008 Miles City Growth Policy.

The growth policy states that future growth in the Miles City community will most likely be to the east and to the south of the established community. Based on this information, the proposal generally complies with the 2008 Miles City Growth Policy.

2. Is the proposed zone change designed to secure safety from fire and other dangers?

The property would be served by fire protection from the Rural Fire Department. The property is assessable from Leighton Blvd. and would provide emergency access. Therefore, the proposal is generally designed to secure safety from fire and other dangers.

3. Is the proposed zone change designed to promote public health, public safety, and the general welfare?

The property is not located in a designated floodplain. A power plant and overhead power lines are located to the west of the property and a landfill is located to the south of the property. The property is 12.47 acres in size so there is ample room for a future home to be located back, away from the property lines. Therefore, the proposed zone change will have little impact on public health, safety or general welfare other than possibly providing for the building of a house and accessory buildings.

4. Is the proposed zone change designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public facilities?

Transportation – The property is served by one road and that road is Leighton Blvd., which is adequate for regular and emergency travel.

Water and Sewer – There are no city water and sewer services available to this property. The owners would install a well and drainfield under Custer County's review authority.

Schools – School facilities are available to the surrounding properties.

Parks – No parks are available to this property but the property is of sufficient size to provide for some of the recreational needs of the owners.

Other Public Requirements – Mail delivery and some utilities are available to this property.

Based on the above information, the proposed zone change is generally designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public facilities.

5. Does the proposed zone change provide reasonable provision of adequate light and air?

The proposed property is 12.47 acres in size, which is sufficient size to provide adequate light and air.

6. How would the proposed zone change effect motorized and non- motorized transportation systems?

Motorized vehicular access is available from Leighton Blvd. to this property. This zone change would not impact non-motorized transportation resources.

7. Does the proposed zone change promote compatible urban growth and is it suitable for the proposed land use?

According to the map entitled, Miles City & Surrounding Jurisdiction Zoning Map (9/20/12), the zoning designation is Agricultural in all directions of the property, but there is a landfill to the south of the property, a power plant to the west, and a residence to the east of the property.

Due to the soils and buttes on the property as well as its size, the property does not provide good agricultural ground. Changing the zoning to Semi Rural will allow for better use of the land and would therefore promote compatible urban growth. The proposed land use is for the



property to be used as Semi Rural to build a house and accessory buildings. A question of spot zoning has been raised about this property and the commission members will need to review the 3 Little Factors.

8. Would the proposed zone change conserve the value of building and encourage the most appropriate use of the land?

As stated above, this area is zoned Agricultural and changing the zoning on the subject property to Semi Rural would conserve the value of building and would be appropriate use of the land.

## Part 2

The following is an evaluation of the Little Factors for Spot Zoning based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions.

Little Factor 1: Is the proposed land use significantly different from the prevailing use in the area?

The Agricultural district regulations allow for agricultural land uses such as grazing, keeping of poultry and livestock, breeding of animals, growing crops, dairies, and animal shelters. The intent of the Semi Rural district is to, "Provide for an area which is primarily residential but where an idealized country life may be followed with some agricultural practice." Allowed land uses are single and multi-family homes (up to 4 living units), churches, schools, bed and breakfasts, animal shelters, stables, mobile homes, gardens and accessory buildings. The Semi Rural district is the closest district to the Agricultural district in terms of the scale and types of land uses. Although the allowed uses are different, the Semi Rural district is generally compatible with the Agricultural district. It would be a natural district to abut the Agricultural district on a zoning map and make a logical transition from rural to more urban. Also, three of the surrounding land uses are not agricultural at all. Therefore, the proposed land use (zoning) is not significantly different from the prevailing use (zoning) in the area.

Little Factor 2: Is the area rather small from the perspective of the number of separate landowners benefited from the proposed change?

A zone change requested by one landowner is small from the perspective of the number of separate landowners benefited from the proposed change.

Little Factor 3: Would the change be special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public?

In a way this would be special legislation designed to benefit one landowner. However, there would be no harm to others because of a change in the zoning district as requested. On balance, this proposal would primarily benefit one landowner but not at the overall expense of the general public.

Based on the above analysis of the three Little Factors for Spot Zoning, this proposal does not appear to be illegal spot zoning.

### Part 3

Recommendation: Adopt this report as findings of fact and recommend approval of the zone change to City Council.