



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*June 24, 2014
7:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
 - a. City Council Meeting 6/10/2014
 - b. Finance Committee Meeting 6/05/2014
 - c. Finance Committee Meeting 6/18/2014
2. SCHEDULE MEETINGS
3. REQUEST OF CITIZENS & PUBLIC COMMENT
4. APPOINTMENTS
5. PROCLAMATIONS
6. STAFF REPORTS
7. CITY COUNCIL COMMENTS
8. MAYOR COMMENTS
9. COMMITTEE RECOMMENDATIONS

Finance Committee of 6/18/2014: Recommendation to reject Century Paving bid for Paving and Curb and Gutter at Arrowhead Drive District #204
10. BID OPENING - None
BID AWARDS - None
11. PUBLIC HEARINGS
 - A. **Zoning Commission's Recommendation to DENY Rezoning on behalf of Diamond J Construction, LLC, on property located on 722 Hwy 59 South, Tract "B", from Agriculture (AG) to General Commercial (GC)**

- B. **ORDINANCE NO. 1268:** An Ordinance Changing The Zoning Of Block 5 Of The Southgate Meadows Subdivision From Local Commercial To General Commercial And Providing For A Hearing Thereon
- C. **RESOLUTION NO. 3689:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 For Unanticipated Grant Revenue To Historic Preservation Fund 2935 And Providing For Hearing Thereon
- D. **RESOLUTION NO. 3691:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Revenues To Building Inspector Fund No. 2394 For Contracted Professional Services
- E. **RESOLUTION NO. 3692:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Revenues To Airport Fund 5610 For Federal Aeronautics Grant Funds
- F. **RESOLUTION NO. 3693:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unappropriated Cash Balances From The Capital Improvement Fund No. 4000 For The Purchase Of Two Police Vehicles
- G. **RESOLUTION NO. 3694:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District NO.165 Fund 2400 For Electrical Utilities
- H. **RESOLUTION NO. 3695:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District NO.167 Fund 2420 For Electrical Utilities

12. **UNFINISHED BUSINESS**

- D. **ORDINANCE NO. 1268:** *(Second Reading)* An Ordinance Changing The Zoning Of Block 5 Of The Southgate Meadows Subdivision From Local Commercial To General Commercial And Providing For A Hearing Thereon
- A. **RESOLUTION NO. 3689:** *(Second Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 For Unanticipated Grant Revenue To Historic Preservation Fund 2935 And Providing For Hearing Thereon
- B. **RESOLUTION NO. 3691:** *(Second Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Revenues To Building Inspector Fund No. 2394 For Contracted Professional Services

- C. **RESOLUTION NO. 3692:** *(Second Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Revenues To Airport Fund 5610 For Federal Aeronautics Grant Funds
- D. **RESOLUTION NO. 3693:** *(Second Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unappropriated Cash Balances From The Capital Improvement Fund No. 4000 For The Purchase Of Two Police Vehicles
- E. **RESOLUTION NO. 3694:** *(Second Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District NO.165 Fund 2400 For Electrical Utilities
- F. **RESOLUTION NO. 3695:** *(Second Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District NO.167 Fund 2420 For Electrical Utilities

13. **NEW BUSINESS**

- A. **RESOLUTION NO. 3702:** A Resolution Accepting The Dedication Of A Frisbee Golf Course At Milwaukee Park
- B. **ORDINANCE NO. 1273:** *(First Reading)* An Ordinance Enacting A New Section 20-11 Of The Code Of Ordinances Of The City Of Miles City, Entitled “Maintenance Of Public Right Of Way”
- C. **ORDINANCE NO. 1274:** *(First Reading)* An Ordinance Enacting A New Section 22-151 Of The Code Of Ordinances Of The City Of Miles City, Entitled “Refusal To Submit To Alcohol/Drug Breath And/Or Blood Test”
- D. **RESOLUTION NO. 3696:** A Resolution Adopting A Special Prosecution Policy For The City Of Miles City, Montana
- E. **RESOLUTION NO. 3697:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 For State Of Montana Payments On Behalf Of Retirement Accounts And Providing For Hearing Thereon
- F. **RESOLUTION NO. 3698:** A Resolution Authorizing The Miles City To Enter Into A Gravel Stockpile Lease Agreement With The Montana Department Of Transportation
- G. **RESOLUTION NO. 3699:** A Resolution Pursuant To §16-48 Of The Miles City Code Of Ordinances, Establishing Dates, Times And Locations For Discharge Of Fireworks Within The City Limits For The Year 2014
- H. **RESOLUTION NO. 3700:** A Resolution Authorizing The Outlaw Baseball Club To Place A Concrete Monument At Tedesco Field In Honor Of The Tedesco Family And Sponsors Of Tedesco Field
- I. **RESOLUTION NO. 3701:** A Resolution Adopting Findings Of Fact And Approving The Amended Plat For The Purpose Of Boundary Line Relocation Of Lots 17-20 In Block 3 Of The Highland Park Addition To The City Of Miles City

14. ADJOURNMENT

Public comment on any public matter that is not on the agenda of this meeting can be presented under Request of Citizens, provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings

REGULAR COUNCIL MEETING **June 10, 2014**
7:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, June 10, 2014, in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana. Mayor C.A. Grenz called the meeting to order. Council Members present were Roxanna Brush, Mark Ahner, Dwayne Andrews, John Hollowell, Sheena Martin, Ken Gardner, Jerry Partridge and Susanne Galbraith.

Also present were City Attorney Dan Rice, Police Chief Doug Colombik, Police Officer Denise Bontrager, Police Sgt. Mike Willems, Public Works Director Scott Gray, Public Utilities Director Al Kelm, Historic Preservation Officer Connie Muggli, Fire Chief Dale Berg, City Clerk Lorrie Pearce and HR/Payroll Officer/Minute Recorder Billie Burkhalter.

PLEDGE OF ALLEGIANCE

Mayor Grenz led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 5/27/2014

- ** *Councilperson Gardner moved to approve the minutes of the Regular Council Meeting of May 27, 2014, seconded by Councilperson Galbraith and **passed** unanimously, 8-0.*

Special Council Meeting: 5/27/14

- ** *Councilperson Brush moved to approve the minutes of the Special Council Meeting of May 27, 2014, seconded by Councilperson Gardner and **passed** unanimously, 8-0.*

Human Resources Meeting: 6/3/14

- ** *Councilperson Brush moved to approve the minutes of the Human Resources Committee Meeting of June 3, 2014, seconded by Councilperson Galbraith and **passed** unanimously, 8-0.*

Flood Control Meeting: 6/3/14

- ** *Councilperson Hollowell moved to approve the minutes of the Flood Control Committee Meeting of June 3, 2014, seconded by Councilperson Gardner and **passed** unanimously, 8-0.*

SCHEDULE MEETINGS

None

REQUEST OF CITIZENS & PUBLIC COMMENT

None

APPOINTMENTS

None

PROCLAMATIONS

None

STAFF REPORTS

None

CITY COUNCIL COMMENTS

Jerry Partridge

- Said he feels a **code enforcement officer** is needed in Miles City. He has noticed an increased amount of junk piling up around town. Councilpersons Brush and Gardner agreed. Attorney Rice also agreed, noting that the **business licenses** also need addressed, as the City has an Ordinance that addresses it but there are no fees and no teeth for enforcement.

Police Chief Colombik felt a part-time or seasonal person could handle this position. HR/Payroll Officer Burkhalter will locate an appropriate job description.

Mark Ahner

- Did not receive a copy of the Budget Meeting schedule.
- Regarding the packet Councilmembers received on property outside the City limits but still in the “donut” (City’s jurisdiction) – asked if any action has been taken on that issue. Mayor Grenz said he emailed Allison Mouch, Community Planning Bureau Chief, Montana Department of Commerce. He asked who would have

jurisdiction in that area. Attorney Rice said zoning enforcement in the “donut” is the City’s responsibility. He said Chief Colombik is working on an investigative file for the City Prosecutor.

Roxanna Brush

- On May 31st it was reported on the Weather Channel that two tornadoes were spotted 20 miles outside of Miles City. She was concerned that no emergency sirens or alerts were sounded. As the long-time county EMS coordinator has retired, the alert should have gone to the interim EMS coordinator. Police Chief Colombik will look into this.

MAYOR COMMENTS

- **Discussion on City Policy for Donations, Memorial Plaques, Monuments, etc.** The mayor had received a letter from a former resident who suggested a plaque be installed at the swimming pool with name plates for individuals and/or businesses who had donated over a certain amount of money.

A donation policy had been previously approved on September 8, 2009. Councilperson Ahner suggested the Public Service Committee might be the place to start to investigate whether changes need to be made to this policy, and how to handle the plaque request. Councilperson Partridge mentioned that Sigrid Laird might be a valuable person to consult for suggestions. As Chairperson of the Public Service Committee, Councilperson Partridge will set a meeting in the next couple of weeks to discuss this issue. Mayor Grenz will contact Sigrid Laird and ask her to contact Councilperson Partridge.

STANDING COMMITTEE RECOMMENDATIONS

Human Resources Committee: 6/4/14

Approval of Police Officers Mike Willems and Denise Bontrager

- ** *Councilperson Ahner moved to approve the confirmation of Police Officers Mike Willems and Denise Bontrager, seconded by Councilperson Brush and passed unanimously, 8-0.*

Finance Committee of 6/5/14:

Approval of purchase of a used pickup, culvert pipe and a new dump box

No action required by Council – informational only

BID OPENING

Arrowhead Drive District #204: Paving; New Curb and Gutter

One bid was received: Century Companies \$256,937

** *Councilperson Ahner moved to refer the bid to the Finance Committee to see if it falls within the original bid parameters for this project. The motion was seconded by Councilperson Hollowell.*

Councilperson Ahner said he thought the original deposit for this project was about \$55,000, or half of the total cost. Attorney Rice concurred, and noted this bid is much higher than the estimated cost.

* *On roll call vote, the motion passed by unanimous consent, 8-0.*

BID AWARDS

None

PUBLIC HEARINGS

ORDINANCE NO. 1271: An Ordinance Repealing Section 12 Of The Code Of Ordinances Of The City Of Miles City And Enacting A New Section 12 Of Said Code Of Ordinances Of The City Of Miles City, Correcting Internal Citations Within The Flood Code Passed By Ordinance 1264

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

UNFINISHED BUSINESS

- A. **ORDINANCE NO. 1271: (*Second Reading*)** An Ordinance Repealing Section 12 Of The Code Of Ordinances Of The City Of Miles City And Enacting A New Section 12 Of Said Code Of Ordinances Of The City Of Miles City, Correcting Internal Citations Within The Flood Code Passed By Ordinance 1264

****** *Councilperson Hollowell moved to adopt the resolution, read by title only and seconded by Councilperson Gardner. After a brief discussion and on roll call vote, the motion passed 8-0.*

Ordinance No. 1264 was adopted.

- B. RESOLUTION NO. 3682:** A Resolution Authorizing The City of Miles City To Enter Into Janitorial Service Agreements With Dale Petroff D/B/A Dale's Cleaning Service

****** *Councilperson Ahner moved to adopt the resolution, read by title only and seconded by Councilperson Hollowell. After a brief discussion and on roll call vote, the motion passed 8-0. Resolution*

No. 3682 was adopted.

- C. RESOLUTION NO. 3683:** A Resolution Authorizing The City of Miles City To Enter Into Janitorial Service Agreements With Marilyn Forman D/B/A MMF Cleaning

****** *Councilperson Ahner moved to adopt the resolution, read by title only and seconded by Councilperson Hollowell.*

Councilperson Ahner said he thought there had been a clause in the previous contracts regarding "continuing under the same terms and conditions and compensation." If neither party requested changes, the contract was simply renewed for another year. He suggested this be looked at for these contracts next year.

***** *On roll call vote, the motion passed 8-0. Resolution No. 3683 was adopted.*

NEW BUSINESS

- A. Approval of Site Plan Review** for Simpson Honey Farm property at 702 Pacific Avenue

****** *Councilperson Brush moved to approve the Site Plan Review for Simpson Honey Farm property, seconded by Councilperson Hollowell. After a brief discussion and on roll call vote, the motion passed 8-0. The Site Plan Review was approved.*

- B. RESOLUTION NO. 3684:** A Resolution Authorizing The City Of Miles City To Enter Into An Agreement With The Montana Department Of Transportation For Street Sweeping For Fiscal Year 2014-2015

****** *Councilperson Galbraith moved to adopt the resolution, read by title only and seconded by Councilperson Hollowell. After a brief discussion and on roll call vote, the motion passed 8-0. Resolution No. 3684 was adopted.*

C. RESOLUTION NO. 3686: A Resolution Adopting A Memorandum For The Determination Of Feasibility Of An Urban Renewal Plan With A Tax Increment Finance District Provision For The Downtown Core Of The City Of Miles City

****** *Councilperson Ahner moved to adopt the resolution, read by title only and seconded by Councilperson Gardner. On roll call vote, the motion passed 8-0. Resolution No. 3686 was adopted.*

D. RESOLUTION NO. 3687: A Resolution Authorizing The City Of Miles City To Enter Into A Main Street Program Grant Contract With The Montana Department Of Commerce

****** *Councilperson Galbraith moved to adopt the resolution, read by title only and seconded by Councilperson Gardner. On roll call vote, the motion passed 8-0. Resolution No. 3687 was adopted.*

E. RESOLUTION NO. 3688: A Resolution Approving The Receipt Of Grants In The Amount Of \$3,000 And \$2,750 From The Sandra Anderson Donor Advised Fund To Be Applied To The Miles City Tax Increment Finance District Project

****** *Councilperson Gardner moved to adopt the resolution, read by title only and seconded by Councilperson Brush. On roll call vote, the motion passed 8-0. Resolution No. 3688 was adopted.*

F. RESOLUTION NO. 3689: *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 For Unanticipated Grant Revenue To Historic Preservation Fund 2935 And Providing For Hearing Thereon

****** *Councilperson Hollowell moved to adopt the resolution, read by title only and seconded by Councilperson Gardner. After brief discussion and on roll call vote, the motion passed 8-0. The resolution was referred to the Finance Committee.*

- G. RESOLUTION NO. 3690:** A Resolution Authorizing The Outlaw Baseball Club To Place A Plaque In The New Pressbox At Tedesco Field In Honor Of C.W. Wilcox

****** *Councilperson Hollowell moved to adopt the resolution, read by title only and seconded by Councilperson Galbraith. After discussion and on roll call vote, the motion passed 8-0. Resolution No. 3690 was adopted.*

CONSENT AGENDA

****** *Councilperson Ahner moved to place Resolutions No. 3691 through No. 3695 on the Consent Agenda and that they be referred to the Finance Committee. The motion was seconded by Councilperson Gardner and, on roll call vote, the motion passed 8-0.*

- H. RESOLUTION NO. 3691:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Revenues To Building Inspector Fund No. 2394 For Contracted Professional Services
- I. RESOLUTION NO. 3692:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Revenues To Airport Fund 5610 For Federal Aeronautics Grant Funds
- J. RESOLUTION NO. 3693:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unappropriated Cash Balances From The Capital Improvement Fund No. 4000 For The Purchase Of Two Police Vehicles
- K. RESOLUTION NO. 3694:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District N0.165 Fund 2400 For Electrical Utilities
- L. RESOLUTION NO. 3695:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District N0.167 Fund 2420 For Electrical Utilities

M. Approval of May Claims

****** *Councilperson Galbraith moved to approve May claims, seconded by Councilperson Andrews. After discussion and on roll call vote, the motion passed 8-0. May claims were approved.*

ADJOURNMENT.

****** *Councilperson Galbraith moved to adjourn the meeting, seconded by Councilperson Brush and passed unanimously, 8-0.*

The meeting was adjourned at 7:55 p.m.

C.A. Grenz, Mayor

**Lorrie Pearce
City Clerk**

Finance Committee Meeting June 5, 2014

The **Finance Committee** met Thursday, June 5, 2014, at 6:00 p.m. in the City Hall Conference Room. Present were Committee members Sue Galbraith, Dwayne Andrews, John Hollowell and Sheena Martin.

Also present were Mayor C.A. Grenz, Public Works Director Scott Gray, Historic Preservation Officer Connie Muggli and Recorder/City Clerk Lorrie Pearce.

Request of Citizens

None

Resolution No. 3686: A Resolution Adopting A Memorandum For The Determination Of Feasibility Of An Urban Renewal Plan With A Tax Increment Finance District Provision For The Downtown Core Of The City Of Miles City

Steve Zeier from Zeier Consulting, LLC explained that the feasibility of a Tax Increment Finance District in Miles City relates directly to the likelihood that such a District would successfully address the slow economic decline of the area and encourage investment in the main business corridor. He highlighted some facts that would make the TIFD a success.

- There are significant issues with multiple properties in the downtown such as empty storefronts, infrastructure deficiencies, and lack of investment that could be addressed.
- There is an upswing in the regional economy due to energy development in the Bakken area, and as a result there is increased market interest in Miles City to locate businesses as evidenced in the development of the South Haynes corridor.
- The increased volume of interstate traffic to and from the Bakken area, also results in increased market interest in Miles City to locate businesses, as evidenced in the development of the South Haynes corridor.
- There is an increased demand for housing across all income levels in the region.
- The downtown area generates higher per square foot tax revenues than large paved areas in surrounding business districts.
- The City is located in Census Tract 30017962000, making it eligible for New Market Tax Credits.
- The business corridor is listed on the National Register of Historic Places making a high percentage of properties eligible for Historic Preservation Tax Credits.

* * *Committee Member Martin moved to recommend that the City Council approve Resolution No. 3686. The motion was seconded by Committee Member Andrews. After discussion, the motion carried unanimously, 4-0.*

Resolution No. 3687: A Resolution Authorizing The City Of Miles City To Enter Into A Main Street Program Grant Contract With The Montana Department Of Commerce

Preservation Officer Muggli explained Resolution No. 3687 is a resolution to give approval to the Mayor to sign the contract.

- * * *Committee Member Andrews moved to recommend that the City Council approve Resolution No. 3687. The motion was seconded by Chairperson Martin; the motion carried unanimously, 4-0.*

Resolution No. 3688: A Resolution Approving The Receipt Of Grants In The Amount Of \$3,000 And \$2,750 From The Sandra Anderson Donor Advised Fund To Be Applied To The Miles City Tax Increment Finance District Project

Preservation Officer Muggli explained that, by passing this resolution the City of Miles City is authorized to accept the grant money.

- * * *Committee Member Martin moved to recommend that the City Council approve Resolution No. 3688. The motion was seconded by Chairperson Andrews; the motion carried unanimously, 4-0.*

Resolution No. 3689: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For Fy 2013-2014 For Unanticipated Grant Revenue To Historic Preservation Fund 2935 And Providing For Hearing Thereon

Preservation Officer Muggli explained the resolution will authorize the City of Miles City to appropriate in the budget, money accepted through the grant that were discussed earlier.

- * * *Committee Member Andrews moved to recommend that the City Council approve Resolution No. 3689. The motion was seconded by Chairperson Martin; the motion carried unanimously, 4-0.*

Approval to purchase a used pickup for the Parks Department

Public Works Director Gray said the used pickup is budgeted for \$ 15,000. He received three bids.

- Auto Advantage- A 2003 4X4 has a lift kit, glass pak and more mileage for an amount of \$12,642
- Jack's Body Shop- A 2009 4X4 for an amount of \$18,900
- Mac's Frontier- A 2005 4X4 for an amount of \$ 12,500

Director Gray recommended purchasing the pickup from Mac's Frontier.

- * * *Committee Member Andrews moved to approve purchasing the used pickup from Mac's Frontier for an amount of \$ 12,500. The motion was seconded by Chairperson Martin and, after a brief discussion, the motion carried unanimously, 4-0.*

Approval to purchase a culvert pipe for Maintenance District # 205

Public Works Director Gray explained that the culvert pipe will be used at the slough on Woodbury Street because the ends are crushed on the existing culvert and needs replaced to improve drainage. Maintenance District # 205 had \$50,000 budgeted for this item. He received three bids, and they were on the same pipe. He recommended accepting Agri Industries because it was the lowest.

- * * *Committee Member Andrews moved to approve purchasing culvert pipe from Agri Industries for an amount of \$ 17,889.10. The motion was seconded by Chairperson Martin and, after a brief discussion, the motion carried unanimously, 4-0.*

Approval to purchase a new dump box for tandem axle truck

Public Works Director Gray explained that he had \$25,000 in the budget to purchase a new dump box. The old dump box needs replaced because the floor is rotting beyond repair. Two quotes were received:

- Custom Equipment- The box is a Henderson box which, through his experience, is a better box and it's fully painted. The price quoted was \$23,135.
- Kois Brothers- The box is not quite as good as the Henderson box and would need to be painted. The price quoted was \$ 20,299.

Director Gray recommended purchasing the Henderson box from Custom Equipment.

- * * *Committee Member Andrews moved to approve purchasing a new dump box from Custom Equipment for an amount of \$ 23,135. The motion was seconded by Chairperson Martin and, after a brief discussion, the motion carried unanimously, 4-0.*

Review and Discussion of over expended accounts

City Clerk Pearce explained there are five funds that will need resolutions to approve appropriations. She said her goal was to get them on the June 10, 2014, Council meeting agenda.

- Airport- Fund 5610
- Lighting District 165- Fund 2400
- Lighting District 167- Fund 2420
- Building Code Inspector- Fund 2394
- Police Department/2 vehicles- Fund 1000-05

Adjournment

There being no further business, *Committee Member Andrews* moved to adjourn the meeting, seconded by *Chairperson Martin*. The meeting was adjourned at 7:15 p.m.

Respectfully Submitted:

Chairperson Susanne Galbraith

City Clerk Lorrie Pearce

Finance Committee Meeting June 18, 2014

The **Finance Committee** met Wednesday June 18, 2014, at 6:00 p.m. in the City Hall Conference Room. Present were Committee members Sue Galbraith, Dwayne Andrews, John Hollowell and Sheena Martin.

Also present were Public Works Director Scott Gray, City Attorney Dan Rice and Recorder/City Clerk Lorrie Pearce.

Request of Citizens

None

RESOLUTION No. 3691: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Revenues To Building Inspector Fund No. 2394 For Contracted Professional Services

City Clerk Pearce explained that the resolution would increase the spending and the revenue for the building inspector's fund. The increase is needed because the cost for the inspection of the jail was higher than originally appropriated.

*** Committee Member Hollowell moved to recommend that the City Council approve Resolution No. 3691. The motion was seconded by Committee Member Andrews; the motion carried unanimously, 4-0.*

RESOLUTION No. 3692: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Revenues To Airport Fund 5610 For Federal Aeronautics Grant Fund

City Clerk Pearce explained that the resolution would increase the spending appropriation and the revenue for the airport fund. The increase is needed because the fund received an unexpected grant, which was associated with the increase in spending.

*** Committee Member Hollowell moved to recommend that the City Council approve Resolution No 3692. The motion was seconded by Chairperson Martin; after a short discussion, the motion carried unanimously, 4-0.*

RESOLUTION No. 3693: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unappropriated Cash Balances From The Capital Improvement Fund No. 4000 For The Purchase Of Two Police Vehicles

Councilperson Andrews said he was not going to support the resolution; he thought there was a better way to pay for the vehicles.

Councilperson Hollowell said that the Police Department has two vehicles that are not operable anymore, and thought the Police Department needed the vehicles.

- * * *Committee Member Hollowell moved to recommend that the City Council approve Resolution No. 3693. The motion was seconded by Chairperson Martin; on roll call vote, the motion passed 3-1, with Councilperson Andrews voting no.*

RESOLUTION No. 3694: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District NO.165 Fund 2400 For Electrical Utilities

City Clerk Pearce explained that Lighting District No. 165 and 167 seem to always need adjustment at the end of the year. The resolution would increase the spending in the electric account. She also said there should be enough money in the Special assessment account at the end of the year to pay for the overexpendure.

- * * *Committee Member Andrews moved to recommend that the City Council approve Resolution No. 3694. The motion was seconded by Committee Member Hollowell; after a short discussion, motion passed unanimously, 4-0.*

RESOLUTION NO. 3695: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District NO.167 Fund 2420 For Electrical Utilities

- * * *Committee Member Martin moved to recommend that the City Council approve Resolution No. 3695. The motion was seconded by Chairperson Andrews; the motion carried unanimously, 4-0.*

RESOLUTION No. 3696: A Resolution Adopting A Special Prosecution Policy For The City of Miles City, Montana

City Attorney Rice explained that Shawn Quinlan will not be working for the prosecution after June 30, 2014. This policy would give the City Attorney authority to screen other attorneys and, with the Mayor's approval, a list of the combined pool would be available for the City Prosecutor to call when needed. They would be contracted and not paid through City's payroll. He explained that the list would be used in the busier half of the year. He also explained that there is a limit as to how many cases a prosecutor can have in a year, and City Prosecutor Jeff Noble is at his maximum of 300. The process would save the City about \$1200 a month.

- * * *Committee Member Andrews moved to recommend that the City Council approve Resolution No. 3696. The motion was seconded by Chairperson Galbraith; after a long*

discussion, and on roll call vote, the motion carried unanimously, 4-0.

RESOLUTION NO.3697: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 For State Of Montana Payments On Behalf Of Retirement Accounts And Providing For Hearing Thereon

City Clerk Pearce said this resolution is accepting money from the State and transferring it to the Mayor, Police, and Fireman's retirement accounts.

*** Committee Member Andrews moved to recommend that the City Council approves Resolution No. 3697. The motion was seconded by Chairperson Galbraith; the motion carried unanimously, 4-0.*

ORDINANCE NO. 1272: An Ordinance Enacting Section 17-114 Of The City Code Of The City of Miles City, Montana, So As To Require Liability Insurance In Specified Amounts Prior To Issuance Of A Park Use Permit

*** Committee Member Andrews moved to recommend that the City Council approved Ordinance 1272. The motion was seconded by Committee Member Martin.*

City Attorney Rice explained that Montana Municipal Interlocal Authority (MMIA) suggested the City adopts an Ordinance that specifies an amount of insurance coverage for special events.

Committee Member Hollowell asked where the street dance and alcohol would be included.

*** Committee Member Hollowell moved to amend number three to read "Any use of City property, regardless of exclusivity, which includes, but not limited to any of the following activities. After a short discussion, Committee Member Hollowell withdrew his motion.*

*** Committee Member Hollowell moved to amend his motion to include to number three **k: consumption of alcohol**. The motion was second by Chairperson Galbraith.*

After a long discussion, it was decided the Ordinance should be table until the Ordinance is revised to clarify policy on alcohol and street dances.

*** Committee Member Hollowell moved to table Ordinance No. 1272 until the next meeting. The motion was seconded by Committee Member Andrews; and on roll call vote, the motion carried passed, 4-0.*

Review Bid of Arrowhead Drive District # 204: Paving, New Curb and Gutter

Public Work Director Gray said that the City received one bid for the Arrowhead Drive project and he thought it was very high. The one bid received from Century Construction for an

amount of \$256,937. There were four line item bids that stood out to him:

- Curb and gutter- The quote of \$27.50 per linear foot was a little high
- Dirt work- The quote of \$62,000 was high because they are charging for equipment usage
- Paving- The quote of \$66,000 was high, though it should be closer to \$60,000.
- Pit run- The quote of \$50 per ton was very high. He said that you can buy pit run locally at about \$ 11.25 a ton.

Director Gray said Century Construction is charging 17.5% for a mobilization fee, which is usually 10%. He thought that since Century was going to be in Miles City completing other projects, the quote was too high.

Eric Doedon, M&L Enterprise, thought it was in the City's best interest to reject the bid.

Becky Stanton, Arrowhead Drive resident, expressed concerns that if the project was rebid, the work may not be completed until next year, and the price would increase anyway. She personally would hesitate to reject the bid, and felt the project should be completed this year.

Eric Doedon asked that if the project was rebid, could it be concrete instead of asphalt.

Resident Becky Stanton thought if it was rebid, it should include both.

* * *Committee Member Andrews moved to recommend that the City Council reject the bid received from Century Construction. The motion was seconded by Councilperson Galbraith. After a long discussion and on roll call vote, the motion passed unanimously, 4-0.*

Adjournment

There being no further business, *Committee Member Hollowell moved to adjourn the meeting, seconded by Chairperson Galbraith.* The meeting was adjourned at 5:55 p.m.

Respectfully Submitted:

Chairperson Susanne Galbraith

City Clerk Lorrie Pearce

CITY OF MILES CITY
Zoning Commission
PO Box 910
Miles City, MT 59301

1270

May 9, 2014

Mayor Grenz and City Council,

RE: Proposed re-zone on behalf of Diamond J Construction, LLC on property located on 722 Hwy 59 South, Tract "B" from Agriculture (AG) to General Commercial (GC).

The Miles City Zoning Commission conducted its public hearing on April 24, 2014 and again on May 7, 2014 to consider the request to re-zone the above described area. After reviewing comments from the public hearing and meeting, the Zoning Commission recommends for the zone change request be denied (see attached letters for clarification).

Please schedule this for review by the City Council at your earliest convenience.

Respectfully,



Amber Trenka, Chair
Zoning Commission

RECOMMENDATION:

To the City Council of Miles City to DENY the zone change based on review and modification of the Staff Report written by Scott Gray, public input/opinions of the proponents and opponents to the zone change, and the legal precedent Little vs. County Commissioners of Flathead County, 193 Mont. 334 (1981), wherein the Montana Supreme Court identified three factors that enter into a determination of whether illegal spot zoning exists.

In Little the Montana Supreme Court stated:

There is no single, comprehensive definition of spot zoning applicable to all fact situations. Generally, however, three factors enter into determining whether spot zoning exists in any given instance. First, in spot zoning, the requested use is significantly different from the prevailing use in the area. Second, the area in which the requested use is to apply is rather small. This test, however, is concerned more with the number of separate landowners benefited by the requested change than it is with the actual size of the area benefited. Third, the requested change is more in the nature of special legislation. In other words, it is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public. (From Legal Opinion 2011-002, dated January 10, 2011, from Jim Nugent, City Attorney for City of Missoula, MT.)

See Evaluation of Diamond J Zoning Map Amendment Request under the 'Little Factors' written by Dave DeGrandpre, dated April 23, 2014, determining that all three 'Little Factors' are present in this case of spot zoning.

Sincerely,

MILES CITY ZONING COMMISSION

The following are my reasons for denying a zone change request by John Peila (Diamond J Construction) for Tract B Section 11 Township 7N Range 47E from Ag to General Commercial.

1. I believe a zone change would constitute spot zoning. Having read and studied information from Dave DeGrandpre, AICP and Dan Rice, Miles City Attorney citing a Montana Supreme Court Case I feel a zone change would be illegal.
2. The number of opponents outnumbered the proponents, some being employees of Mr. Peila. I feel it is important to take into consideration the concerns of citizens who would be affected by the zoning change. (Information per Gary Ryder, attorney and a concerned citizen phone call, a letter and attendance at public hearing.
3. The fact Mr. Peila said he was unaware he needed a zone change for the land in question. I feel this is his responsibility as a responsible citizen. Mr. Peila on being questioned as to what the appearance of the property of the zoning change would be, replied it would be "neat and tidy" as his other properties. Observing his property at 840 Truscott (zone MH-A) which is being used as a construction business I did not find it "neat and tidy". Note he is not using the property as zoned which also demonstrates a lack of responsibility for compliance.
4. I do not think a truck yard falls under GC zoning if this is the use Mr. Peila is requesting for the zone change. It would be better described as fitting under HC # 24-61.

According to the Growth Plan of 2006/2008 future growth is predicted to be south in direction, the area of the requested zone change. Growth should be planned and orderly taking into consideration the community as a whole which would prevent future zone change requests resulting in spot zoning.

I would strongly suggest the city consider the advice of Mr. Dave DeGrandpre on this issue.

Sincerely,



Muriel Rost

5-5-2014

RE-ZONE
Property Owner List
for
Diamond J Construction, LLC

Dean Gillette & Brad Certain
53 Balsam Circle
Miles City, MT 59301

Peggy Pyle
268 Cemetery Road
Miles City, MT 59301

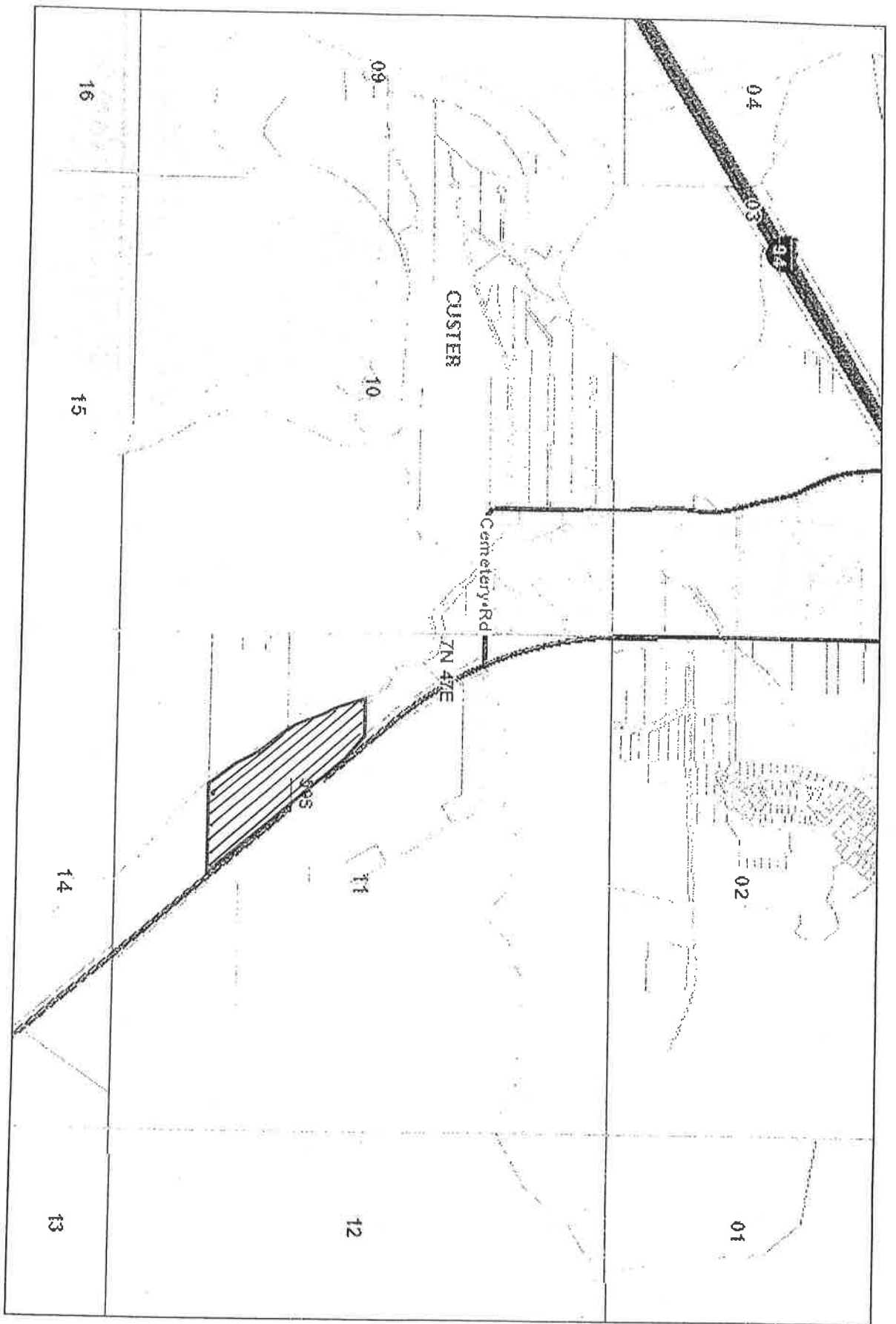
Susan L. Colvin & Mary Jo Zent
287 Mciver Road
Great Falls, MT 59404-6311

Arlo D Nansel
11 Nansel Lane
Miles City, MT 59301

Certain Enterprises, LLC
Diamond J Construction, LLC
PO Box 520
Miles City, MT 59301

Barbara Ann Nicholas
778 Hwy 59S
Miles City, MT 59301

Frank E & Mary Jane Nelson
PO Box 396
Miles City, MT 59301





CITY OF MILES CITY
OFFICE OF THE CITY ATTORNEY

513 Main Street, P.O. Box 728
Miles City, MT 59301
Telephone: 406-232-4070
Fax: 406-232-4093

DANIEL Z. RICE
City Attorney

April 22, 2014

Zoning Commission
City of Miles City
17 South 8th
Miles City, Montana 59301

Re: Spot Zoning – Diamond J Construction, LLC

Dear Zoning Commission,

I have been asked to address the issue of the validity of “spot zoning” in relation to a rezone request by Diamond J Construction, LLC, to change zoning from Agriculture zone to General Commercial zone for certain property located approximately 1 mile south of the City of Miles City, but within the “zoning donut” surrounding the City.

FACTS:

The subject property is located south of the City of Miles City, along Highway 59 South, approximately ½ of a mile beyond the intersection of Cemetery Road and Highway 59. The surrounding properties are all zoned AG (Agriculture District). The property immediately to the north of the subject property is zoned AG, but previously had a pre-existing commercial use for some time, to include the storage of heavy equipment. It is my understanding that this pre-existing commercial use was discontinued last year. The applicant has requested a rezone of the subject property from AG to GC (General Commercial).

ISSUE:

1. What is required to approve a zone change, when the requested zone change would result in “spot” or “island” zoning?

DISCUSSION:

“Spot” or “Island” zoning occurs when a piece of property is zoned differently than the properties surrounding it. Spot zoning is not necessarily illegal. In order for spot zoning to be unlawful, all three of the following factors (referred to as the “Little factors”) must exist:

1. The proposed use is significantly different from the prevailing use in the area;
2. The area in which the requested use is to apply is rather small from the perspective of concern with the number of separate landowners benefitted from the proposed change;
3. The change is special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public.
- *Little v. Board of County Com'rs*, 193 Mont. 334 (1981).

LITTLE FACTOR #1

The first Little Factor is whether the proposed use is significantly different from the prevailing use in the area. The area is zoned entirely AG, with the caveat that the Pyle property located to the north has had some pre-existing commercial use (which is no longer in use) but is also zoned AG. To answer the question of the first factor, the Commission will need to decide whether the proposed use is significantly different from the prevailing use in the area of the subject property.

LITTLE FACTOR #2

The second Little Factor is whether the area in which the requested use is to apply is rather small from the perspective of concern with the number of separate landowners benefitted from the proposed change. Simplified, the second factor is whether the land to be rezoned constitutes a relatively small amount of the agriculturally zoned land in the region. Further, the Montana Supreme Court in *Little* states that “...size may not be the vital factor if the real issue is a question of preferential treatment for one or a few persons as against the general public.” In this instance, both the size of the area, as well as the number of landowners, are relatively small. Absent evidence to the contrary, this factor is met.

LITTLE FACTOR #3

The third Little Factor is whether the change is special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public. The facts suggest that the change, if approved, would only benefit “one or a few” landowners. As such, the first consideration in Factor #3 is met. The question which must

be decided by the Commission is whether the change, if approved, would be “at the expense of the surrounding landowners or the general public.”

CASES ON POINT

Spot zoning related to agriculturally zoned property is not an issue which has been addressed by the Montana Supreme Court as frequently as urban spot zoning. One case which does address agriculturally zoned property and spot zoning is *Plains Grains Ltd. Partnership v. Board of County Com'rs of Cascade County*, 357 Mont. 61 (2010). The facts of the foregoing case are a bit more extreme than the facts at hand, in that the zone change which had been approved by the County Commissioners, which was struck down by the Court as unlawful spot zoning, was to rezone from agriculture zone to heavy industrial zone for the construction of a coal fired power plant.

The Court discussed the Little Factors as they pertained to the unlawful zone change from agricultural to heavy industrial.

In the analysis of Little Factor #1, the Court referred to its analysis in another spot zoning case, *North 93 Neighbors, Inc. v. Bd. Of County Comm'rs*, 2006 Mont. 132 (2006), indicating that a review of both the existing uses in the area and the uses allowed by current zoning should be considered, and in that order. The Court further discussed that in the *Neighbors* case, the proposed shopping mall was similar in nature to the surrounding uses including “large box” retailers, thus Little Factor #1 was not met in *North 93 Neighbors*. The Court also discussed that the fact that a special use permit may be obtained in the original zone for the requested use does not justify a rezone to allow for such use, and to avoid the requirement to obtain a special use permit. Presumably, variances would be treated the same as special use permits in the analysis of this factor, as they accomplish similar results. In the *Plains Grains Ltd. Partnership* case, the proposed coal fired power plant was seen by the Court as differing significantly from the surrounding agricultural uses, and that the fact that the applicant could have obtained a special use permit under the existing zone did not change the analysis regarding the significantly differing use. Based on the foregoing, Little Factor #1 was satisfied.

In the analysis of Little Factor #2, the Court pointed out that although the subject parcel was several hundred acres in size, that it was relatively small percentage of the land zoned for agriculture in the county, satisfying Factor #2.

In the analysis of Little Fact or #3, the Court discussed that “the number of landowners benefitted by the zone change speaks directly to the issue of whether the requested change constitutes special legislation in favor of one or a small number of

landowners.” The Court further states that “[t]his inquiry should focus on the benefits of the proposed rezone to *the surrounding landowners*, not the benefits – financial or otherwise – that would accrue from the proposed development.” [emphasis added] In this particular case, the impact on the neighboring property owners was significant, to include the erection and construction of power lines, rail spurs, and other incidentals to a power plant, some of which would be imposed by way of eminent domain. The Court stated that the proposed rezone for accommodation of a power plant “smacks of ‘special legislation’ in that the benefits would accrue to a single landowner to the detriment of the surrounding farmers and ranchers.”

ADDITIONAL CASES


Boland v. City of Great Falls, 275 Mont. 128 (1996). The MT Supreme Court held when the zoning change would benefit the adjacent property owners by virtue of their **property values** increasing as a result of the project development, that the benefit was not special legislation designed to benefit only one landowner. (Note: the opposite would also be true, and a decrease in property values would be considered a detriment to neighboring landowners)

Lake County First v. Polson City Council, 2009 MT 322 (2009). The MT Supreme Court held that Wal-Mart rezoned from low density residential to heavy highway commercial was not illegal spot zoning because the Court “cannot conclude that the benefit is inappropriately conferred at the expense of the general public.”

North 93 Neighbors, Inc. v. Bd. Of County Comm’rs, 2006 MT 132 (2006). The MT Supreme Court held that despite the benefit to only one owner, being the applicant, that the zoning amendment **was not done at the expense** of the surrounding landowners or the general public.

CONCLUSION:

Spot zoning is only unlawful when all three of the Little Factors have been met. In order for the Zoning Commission to determine whether the requested zoning change may be considered, the Commission must first determine that the rezone, if approved, would not constitute unlawful spot zoning. In order to determine whether the rezone would be unlawful, the Little Factors must be applied.

Sincerely,

Daniel L. Rice

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2011-002

TO: John Engen, Mayor; City Council; Bruce Bender, Chief Administrative Officer; Mike Barton, Interim Director of OPG; Denise Alexander, Principal Planner, Permits & Projects OPG; Mary McCrea, Senior Planner OPG; Tim Worley, Planner III OPG; Janet Rhoades, Planner II OPG; Pat Keiley, Planner III OPG; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Don Verrue, Building Official

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE January 10, 2011

RE: Validity of "spot" or "island" zoning depends on the factual circumstances reviewed in each instance

FACTS:

Territorial Landworks Inc., representing TLI Properties LLC at 620 Addison, and adjacent McCue Construction at 826 Kern seek rezoning from RM1-45 (residential multi-dwelling) to B1-1 (neighborhood commercial, intensity designator =1) for existing decades old light commercial type uses prior to potentially investing further in their respective properties. These lands are located in the northwest portion of Slant Street area east of Russell Street.

The 620 Addison applicant requests rezoning to make an existing legal non-conforming use legally conforming. Reportedly there is documentation that commercial type uses have existed at 620 Addison for at least 53 years, since 1958. The applicant is also considering the possibility of future building remodel and expansion. Adjacent McCue Construction at 826 Kern requests rezoning to bring an existing non-conforming use in to greater conformity. McCue Construction reportedly has existed at 826 Kern for at least 57 years, since 1954. Nearby, roughly one full block south of the property proposed for rezoning, east of Russell and south of Harlem the properties are zoned with a commercial land use designation. Actual existing decades old land uses for the two properties seeking rezoning are apparently not identified in the growth policy even though growth policies are expected to include surveys of existing land uses as they exist pursuant to Mont. Code Ann. § 76-1-601; Citizen Advocates for a Livable Missoula, Inc. v. City Council (CALM), 2006 MT 47; 331 Mont. 269; 130 P.3d 1259; 2006 Mont. LEXIS 59; and Ash Grove Cement Co. v. Jefferson County, 283 Mont. 486; 943 P.2d 85; 1997 Mont. LEXIS 155; (1997). Here in both instances the general land uses for

these properties proposed for rezoning existed as light commercial land uses for more than five decades, more than 50 years.

A 2004 zoning compliance permit authorized a professional office use at 620 Addison.

ISSUES:

1. May "spot" or "island" zoning be legal?
2. Generally what are the primary factors to consider when attempting to review the legality or illegality of "spot" or "island" zoning?

CONCLUSIONS:

1. Yes. "Spot" or "island" zoning may be justified and may be legal. Reasonable basis for the "spot" or "island" zoning is reviewed upon its own facts and circumstances.
2. A zoning change is not invalid merely because only one or two parcels of land or one or two properties are involved. Spot zoning practices may be valid or invalid depending upon the facts of the specific case.

LEGAL DISCUSSION:

Purported spot zoning is not necessarily illegal simply because someone alleges it is spot zoning. In Little v. Board of County Comm'rs the Montana Supreme Court identified three factors that enter into a determination of whether illegal spot zoning exists in any zoning action. All three of these factors must exist for the "spot" or "island" zoning to constitute unlawful spot zoning:

- (1) the proposed use is significantly different from the prevailing use in the area;
- (2) the area in which the requested use is to apply is rather small from the perspective of concern with the number of separate landowners benefited from the proposed change;
- (3) the change is special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public.

Little v. Board of County Comm'rs, 193 Mont. 334; 631 P.2d 1282; 1981 Mont. LEXIS 784 (1981)

The Court went on in Little to note a qualification that if spot zoning is invalid usually all three of the above mentioned elements are present.

In several subsequent decisions the Montana Supreme Court continued to rely on the three factors as the review criteria for determination of validity of spot zoning. Several subsequent decisions have found specific spot zoning to be legal.

1. Boland v. City of Great Falls, 275 Mont. 128; 910 P.2d 890; 1996 Mont. LEXIS 17; (1996), the Supreme Court held that no illegal spot zoning occurred and indicated that the zoning change would benefit the adjacent property owners whose property values would tend to increase from the project development; and that there would be benefit to more landowners than the individuals whose property was being zoned and therefore the zoning was not in the nature of special legislation designed to benefit only one landowner;
2. Citizen Advocates for a Livable Missoula, Inc. v. City Council (CALM), 2006 MT 47; 331 Mont. 269; 130 P.3d 1259; 2006 Mont. LEXIS 59, Broadway-Scott Gateway Special District rezoning proposal for West Broadway Safeway did not constitute illegal spot zoning, the benefit was not conferred at the expense of the general public;
3. North 93 Neighbors, Inc. v. Bd. of County Comm'rs, 2006 MT 132; 332 Mont. 327; 137 P.3d 557; 2006 Mont. LEXIS 228, despite Wolford's sole ownership of the parcel, county commissioners did not enact zoning amendment at expense of surrounding land owners or the general public; and
4. Lake County First v. Polson City Council, 2009 MT 322; Mont. 489; 218 P.3d 816; 2009 Mont. LEXIS 470, Wal-mart annexation and zoning from low density residential to a heavy highway commercial zoning district not illegal spot zoning because Supreme Court "cannot conclude that the benefit is inappropriately conferred at the expense of the general public."

Charles S. Rhyne in *The Law of Local Government Operations*, at 761, explains:

However, a zoning change is not invalid merely because only one parcel of land or only one owner is involved. While the size of the parcel involved is important, the validity or invalidity of alleged "spot zoning" depends upon more than the size of the parcel, and while spot zoning is not looked upon with favor, it is not necessarily illegal. "Spot zoning" is a descriptive term and not a term of art, the validity or invalidity depending upon the facts and circumstances involved. (Emphasis added.)



McQuillan, *Municipal Corporations*, 3rd Edition Revised, Vol. 8, § 25.90, provides:

§25.90. - Valid "spot" zoning.

"Island" or "spot" zoning may be justified where it is germane to an object within the police power, and no hard and fast rule that such zoning is illegal can be announced. The matter involved is essentially legislative in character and the determination made concerning it may be attacked in the courts only if it is without a reasonable basis. When "spot" zoning is permitted in any district, the

legislative body must determine where the boundary is to be placed, attempting as far as possible to minimize resulting inconveniences. Moreover, it is largely within the discretion of the legislative body of a city to determine whether a proper use "island" in a district restricted to other uses should be enlarged.

As previously stated, spot zoning is not per se illegal, but rather illegal only if lacking a reasonable basis. Although there may be an absence of a presumption as to the validity of such spot zoning, it may constitute a valid exercise of the zoning power when there is a substantial change of conditions in an area or where the original zoning was erroneous. Indeed, to permit particular uses in a small area within a larger area devoted to other uses well may fall within the scope of a zoning law requiring a comprehensive plan made with a reasonable consideration of the character of the district, its peculiar suitability and particular uses, conservation of values and the most appropriate use of the land. Thus, the validity of "spot" or "island" zoning depends upon more than the size of the "spot" or the fact that it is surrounded by uses of another character than those for which the "spot" is zoned. In other words, there are exceptional cases in which "island" or "spot" zoning is a valid exercise of the police power; the decision in each case turns upon its own facts and circumstances. (Emphasis added.)

Earlier in § 25.89, *McQuillin*, provides: "The burden of demonstrating that a particular zoning amendment is illegal "spot zoning" rests with the party attacking the ordinance." (Emphasis added.)

In Little the Montana Supreme Court stated:

There is no single, comprehensive definition of spot zoning applicable to all fact situations. Generally, however, three factors enter into determining whether spot zoning exists in any given instance. First, in spot zoning, the requested use is significantly different from the prevailing use in the area. Second, the area in which the requested use is to apply is rather small. This test, however, is concerned more with the number of separate landowners benefited by the requested change than it is with the actual size of the area benefited. Third, the requested change is more in the nature of special legislation. In other words, it is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public. See, Williams, 1 American Land Planning Law, at 563; Hagman, Urban Planning and Land Development Control Law (1971), at 169; Rhyne, The Law of Local Government Operations (1980), at 760-761.

In explaining the third test, Hagman gives this qualification:

"The list is not meant to suggest that the three tests are mutually exclusive. If spot zoning is invalid, usually all three elements are present, or, said another way, the three statements may merely be nuances of one another." Hagman at 169.

This qualification must be heeded because any definition of spot zoning must be flexible enough to cover the constantly changing circumstances under which the test may be applied. . . .

Rather, it is really a question of preferential treatment for one or two persons as against the general public, regardless of the size of the tract involved. (Emphasis added.)

Little v. Board of County Comm'rs, 193 Mont. 334; 631 P.2d 1282; 1981 Mont. LEXIS 784 (1981)

Later in Boland the Montana Supreme Court analyzed Little and spot zoning and concluded no illegal spot zoning occurred in the Great Falls case explaining:

In Little v. Board of County Commissioners of Flathead County (1981), 193 Mont. 334, 631 P.2d 1282, we identified the following three factors that are generally present when illegal spot zoning occurs, which we restate as follows:

1. The requested use is significantly different from the prevailing use in the area.

2. The area in which the requested use is to apply is rather small, however, this factor is more concerned with the number of separate landowners benefited by the requested change than it is with the actual size of the area benefited.

3. The requested change is more in the nature of special legislation. In other words, it is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public.

Little, 631 P.2d at 1289. We noted that the three factors are not mutually exclusive and cautioned that any definition of spot zoning must be flexible enough to cover the constantly changing circumstances under which the test may be applied. Little, 631 P.2d at 1289. . . .

While the maximum density level will be twenty-nine percent higher than if the Property were developed solely as single family detached residences, it is important to note that the "A" residence zone permits "town-houses" as a conditional use.

We conclude that the proposed condominium project is essentially residential in nature and not significantly different from the prevailing use in the area. Therefore, the first prong of the Little test is not satisfied.

Having made that determination, we now must determine whether it is necessary to proceed to the final two elements of the Little test. In explaining the test, we stated that "[i]f spot zoning is invalid, usually all three elements are present or, said another way, the three statements may merely be nuances of one another." Little, 631 P.2d at 1289 (citing Hagman, Urban Planning and Land Development Control Law (1971) at 169). Since we held in Little that "usually" all three elements are required to establish illegal spot zoning, it is possible illegal spot zoning can occur in the absence of an element. . . .

The second and third elements of the Little test must be analyzed together. The number of separate landowners affected by the rezoning relates directly to whether or not the rezoning constitutes special legislation in favor of only one person. Since none of the surrounding landowners have been granted permission to build condominiums on their property, plaintiffs argue that rezoning the

Property benefits only the condominium developer. We determine that the plaintiffs' viewpoint is too narrow in its scope.

We agree with the plaintiffs that the primary focus of the second and third Little factors is not the benefit resulting from the development of the Property, but rather the benefit to landowners as a result of the rezoning. However, we disagree with plaintiffs' contention that only the condominium developer will benefit as a landowner from the zoning change.

Our review of the record indicates that the orphanage was razed on or about March 1983. After the building was razed, the Property was placed for sale and for approximately seven years prior to the proposed development the Sisters had received no serious offers to purchase the land. The Property has deteriorated over the years to the extent that it now contains a variety of nuisances and eyesores, including broken glass, animal excrement, noxious weeds, unkempt and dead vegetation, unfilled basements, and abandoned boilers. The City offered testimony that the zoning change would increase the value and salability of the surrounding property by eliminating the existing blight resulting from the nonuse of the lots and by eliminating the uncertainty of the future use of the Property, thereby benefiting the surrounding neighborhood. We therefore agree with the District Court which found that the zoning change would benefit the adjacent property owners whose property values would tend to increase from the project development. Thus, rezoning the Property will directly benefit more landowners than merely the individual developer. We therefore conclude the zoning change is not in the nature of special legislation designed to benefit only one landowner. (Emphasis added.)

Boland v. City of Great Falls, 275 Mont. 128; 910 P.2d 890; 1996 Mont. LEXIS 17; (1996)

Later the Montana Supreme Court in CALM held that no illegal spot zoning occurred stating:

Here, the zoning proposal and proposed Safeway facility are not significantly different from prior uses and zoning within the 800 and 900 blocks of the West Broadway community. Similar to the former zoning classifications of C (Commercial), RH (High Rise), and P-2 (Public Lands and Institutions), the current zoning proposal continues to provide for a mixed use of residential and business uses. Furthermore, the Planning Board noted that other "big box" grocery stores have historically used the area, specifically " the Big Broadway," illustrating that the proposed Safeway is not " significantly different" from past uses.

Finally, while the zoning proposal certainly benefits Safeway and SPH, we cannot conclude that the benefit is conferred at the expense of the general public. To the contrary, as a matter of adopted policy under the neighborhood plans, the health of Safeway and SPH is deemed to be in the public's interest. For that reason, and for the others listed above, we agree with the District Court that the zoning proposal does not constitute illegal spot zoning. (Emphasis added.)

Citizen Advocates for a Livable Missoula, Inc. v. City Council, 2006 MT 47, ¶33 ¶34; 331 Mont. 269; 130 P.3d 1259; 2006 Mont. LEXIS 59.

Later in 2006, the Montana Supreme Court concluded that there was no illegal spot in North 93 Neighbors zoning concluding its analysis stating that:

We therefore conclude that despite Wolford's sole ownership of the parcel, the Board did not enact the Zoning Amendment at the expense of surrounding landowners or the general public. (Emphasis added.)

North 93 Neighbors, Inc. v. Bd. of County Comm'rs, 2006 MT 132 ¶70; 332 Mont. 327; 137 P.3d 557; 2006 Mont. LEXIS 228.

It should also be noted that the Montana Supreme Court found illegal spot zoning with respect to a 323 acre PUD zoning proposal near Yellowstone Park in a Hebgen Lake zoning district proposing a golf course, 10 acres of commercial land, 11 acres of multi-family and 65 acres of single family residential. The proposed zoning changes conflicted with prevailing land use in the area at the expense of the general public and surrounding land uses. Greater Yellowstone Coalition, Inc. v. Bd. of County Comm'rs, 2001 MT 99; 305 Mont. 232; 25 P.3d 168; 2001 Mont. LEXIS 119. A similar conclusion was reached for a 668 acre rezoning of agricultural land to heavy industrial to allow for construction of a power plant which was out of character with existing agricultural land uses in the vicinity. Plains Grains L.P. v. Bd. of County Comm'rs, 2010 MT 155; 357 Mont. 61; 238 P.3d 332; 2010 Mont. LEXIS 238.

83 Am.Jur.2d, Zoning and Planning, § 146, cites in abbreviated form these three factors from the Little decision.

§ 146. Generally.

Definition: "Spot zoning" is a descriptive term rather than a legal term of art, and spot zoning practices may be valid or invalid depending on the facts of the particular case.

....

Central to the analysis of a spot zoning question is whether the rezoned land is being treated unjustifiably different from similar surrounding land, as where a zoning amendment attempts to wrench a single small lot from its environment and give it a new rating which disturbs the tenor of the neighborhood. The determination also requires consideration of whether the proposed "spot" is inherently distinguishable from other property in the district. Thus, spot zoning occurs where a small parcel is singled out and given lesser or greater rights than the surrounding property for a reason that cannot be justified on the basis of the health, safety, morals, or general welfare of the community, as where a lot in the center of a business or commercial district is limited to use for residential purposes thereby creating an "island" in the middle of a larger area devoted to other uses.

Observation: Three factors need be considered when determining whether spot zoning exists: first, the requested use is significantly different from the

prevailing use in the area; second, the area in which the requested use is to apply is small; and third, the requested change is more in the nature of special legislation. (Emphasis added.)

The footnote for this observation cites as authority the Montana Supreme Court decision in Little.

Rathkopf, *The Law of Zoning and Planning*, Vol. 3, §§ 41:2, 41-3 and 41-4 provides:

NIMBY lawsuits that challenge the validity of a specific rezoning based on an illegal spot zoning claim usually prove unsuccessful. Today, courts generally hold that the “spot zoning” of an individual tract or relatively small parcel of land is not per se invalid. (Emphasis added.)

Rathkopf, Vol. 3, § 41:5 indicates that zoning amendments are often upheld if they promote the general welfare. Rathkopf goes on at 41-29 to state:

Where the interest of the general community and the immediate neighborhood do coalesce, the rezoning of a small parcel is even more likely to be upheld.

Courts have also held that small-parcel rezoning of a small parcel is even more likely to be upheld.

Courts have also held that small parcel rezoning to permit the continuation of a destroyed or previously abandoned nonconforming use is valid if necessary to prevent deterioration of the property and depreciation of neighboring property values. (Emphasis added.)

83 Am.Jur.2d, *Zoning and Planning*, § 149, discusses the public good or benefit test providing:

§149. Benefit or detriment to public test.

What appears to be spot zoning may be legal where the rezoning is for the public good. On the other hand, where a zoning ordinance which rezones a parcel of land is shown to be unreasonable and unrelated to the public health, safety, or welfare, it constitutes invalid spot zoning. Thus, a relevant consideration in determining whether purported spot zoning is valid is whether the ordinance or proposed amendment provides a public benefit.

In order to have property rezoned, the person seeking the change may be required to establish that there is a public need for the proposed use of the property. The standard is not the advantage or detriment to particular neighboring landowners, but rather the effect upon the entire community as a social, economic, and political unit. If the legislative purpose is to further the welfare of the county or city as part of its overall zoning plan, the ordinance will not be spot zoning even though private interests are simultaneously served. (Emphasis added.)

CONCLUSIONS:

1. Yes. "Spot" or "island" zoning may be justified and may be legal. Reasonable basis for the "spot" or "island" zoning is reviewed upon its own facts and circumstances.

2. A zoning change is not invalid merely because only one or two parcels of land or one or two properties are involved. Spot zoning practices may be valid or invalid depending upon the facts of the specific case.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney
JN:kmr

GARY RYDER
LAWYER
P.O. Box 72
HYSHAM, MONTANA 59038
406-342-5546

April 24, 2014

Ms. Amber Trenka, Chairperson
Zoning Commission
City of Miles City
17 South 8th
Miles City, Montana 59301

RE: *Proposed zoning change*

Dear Chairperson and Members of the Zoning Commission,

This letter is to submit formal opposition to the proposed zoning change submitted on behalf of Diamond J Construction, LLC on property located on Highway 59 South, identified as Tract B on Certificate of Survey Document 153542, Custer County, Montana.

I represent the interest of a neighboring landowner, Barbara Ann Todoroff-Nicholas. My client's mother, Dottie Johnson, currently resides next to the construction project.

First, and our primary objection, is that constructing the unauthorized building will decrease the value of my client's property. The existing property use is agricultural and rural residential. There is currently a modest trailer house on the property, and it has existing septic and water services. It is a nice and well-situated seven (7) acre tract, which would have significant value as a residential home site.

My client was preparing to sell the property that is now in question as a result of the construction of the 11,800 square foot building in this zoned agricultural area.

The Miles City Growth Policy adopted in 2008 states that zoning members shall consider the needs of the petitioner, surrounding property owners, and the greater community. The concerns of the neighboring property owners are the greater community interest are not addressed in Planner Scott Greg's report.

The concerns we have are the devaluation of my client's property is consistent with the laws and policies against spot zoning. Diamond J's proposal would currently benefit one (1) landowner for preferential zoning designation. If there is going to be development south of the Interstate exit I38, it should be done in a planned and safe manner, meant to benefit other property owners and the public interest. The Diamond J requested exemption does not do this.

An additional concern is that the tract of land in question, Tract B, did not go through the required County subdivision process. Under Montana law, any tract of land that is less than 160 acres must go through subdivision review, unless there is a qualified exemption. No such exemption appears in the survey for this tract. There were two (2) other tracts in that survey, Tract C and D, which also did not receive subdivision exemption.

I would request the Zoning Commission take note of the quality of the established agricultural and rural residential community located south of town and the Tongue River valley. If this zoning change is granted, it will subject Tracts C and D to commercial development. It will adversely affect the safe transportation in the surrounding area. The City Planner concludes that it will not change. I don't know how he reached that conclusion.

The consequences of this zoning change will start a precedent to turn this area into something to similar to the mixed development on North Haynes Avenue. This will decrease the property value of surrounding landowners.

For the benefit of the Commission, I have attached the following:

1. A summary of the Montana Supreme Court case, Plains Grains Partnership v. Board of County Commissioners, 357 MT 61.
2. The current tax records involving the property in question.
3. The language on the Certificate of Survey, which indicates that only one (1) tract, Tract A, was exempt from subdivision regulation.
4. The statutory requirement for zoning change, and
5. Statutory requirement for subdivision review.

I appreciate your consideration of my client's position and the community's interest at large in having the zoning ordinances and related law applied equally to all interested parties.

Sincerely yours,



Gary Ryder
Attorney at Law

GR/cabs

c. Dan Rice, City Attorney

The Urquharts owned 668 acres of land that they agreed to sell to Southern Montana Electrical (SME), a public utility which sought to construct a natural gas fired electric generating station on the land. In 2007 the Urquharts requested that the county rezone the land from Agricultural (A-2) to Heavy Industrial (I-2). The planning department noted that the A-2 zone permitted electrical generation facilities through the special use permit process and concluded that although the operation of an electric station would be “out of character with the existing agricultural land uses in the vicinity of the proposed rezoning,” it would not necessarily be “out of character with the land uses allowed under the existing A-2 zoning district.” The Board of Commissioners approved the requested rezoning. The Plains Grains Limited Partnership challenged the rezoning, alleging among other things, that it amounted to illegal spot zoning. The district court ruled in favor of the county on the grounds that the special use permit option had rendered the rezoning request unnecessary.

The Montana Supreme Court reversed, holding that the rezoning was illegal spot zoning. The Court said, “[t]he fact that SME arguably could have pursued a special use permit [did] not undermine Plains Grains’ spot zoning claim.” Whether a special use permit would have been granted to SME would have been at the discretion of the county’s board of adjustment. Also, the Urquharts and SME opted to pursue the rezoning option rather than the special permit option. Therefore, said the court, the special use permit option did not render unnecessary the zone change request.

The court then set to determine whether the rezone constituted illegal spot zoning by applying a three-part test. A rezone constitutes illegal spot zoning, explained the court, “regardless of variations in factual scenarios,” if the following three conditions are met: (1) the requested use differs significantly from the prevailing land use in the area; (2) the area requested for rezone is “‘rather small’ in terms of the number of landowners benefitted by the requested zone change”; and (3) the requested zone change is “in the nature of ‘special legislation’ designed to benefit one or a few landowners at the expense of the surrounding landowners or the public.” The court found that in this instance, these three conditions were met: (1) The proposed rezone to facilitate construction of the Electric Station would have “create[d] an island of heavy industrial zoning within a large area zoned for agricultural use.” The requested use of the 668 acres for the Electric Station would have “differ[ed] significantly from surrounding uses.” (2) The 668 acres “comprise [d] a ... small percentage of the land zoned for agriculture in [the county].” Also, the number of landowners affected by the rezone was one—“viewed either as the Urquharts or SME.” (3) Given the number of landowners affected, the zoning constituted “special legislation designed to benefit one person” at the expense of others since “[n]o discernible benefit for the rezone would [have] accrue[d] to the neighboring farmers and ranchers.”

STATE OF MONTANA PROPERTY RECORD CARD

Parcel ID: 14-1640-11-3-02-02-0000

Tax Year: 2014

Run Date: 4/21/2014 9:00:54 AM

Page 1 of 2

Assessment Code: 000RGCC2182

Location / DBA:

OWNER NAME AND MAILING ADDRESS

CERTAIN ENTERPRISES LLC
 CB: DIAMOND J CONSTRUCTION LLC
 MAIL TO: DIAMOND J CONSTRUCTION LLC
 2714 S HAYNES AVE
 MILES CITY, MT 59301

PROPERTY SITUS ADDRESS

722 HIGHWAY 59 S
 MILES CITY, MT 59301

LEGAL DESCRIPTION

S11, T07 N, R47 E, C.O.S. 153542, ACRES 28.859,
 TR B, ENV 500B

GENERAL PROPERTY INFORMATION

Nbhd: 007
 Living Units:
 Zoning: AR - Agricultural Rural
 Property Type: 14-172-1R
 Lev Dist:
 Exemptions:
 Ownership %: 100.000
 Linked Property: 14-1640-11-2-03-03-0000
 Link Type: 8 - Split
 Linked Property:
 Link Type:
 Condo Ownership:
 General: Limited:

PROPERTY FACTORS

Topography: 8 - Ag/Forest Land
 Utilities: 0 - None
 Access: 0 - Landlocked / None
 Location: 0 - Rural Land
 Frontage: 0 - None
 Parking Type:
 Parking Quantity:
 Parking Proximity:

INSPECTION HISTORY

Date	Time	Rsn Code	Reason	User ID	Contact Code	Contact Name
04/01/2014			Building Permit	Hubbert, Dulcy		
02/08/2013			Sales Verification	Hubbert, Dulcy		
02/07/2013			Sales Verification	Hubbert, Dulcy		
01/03/2013			Sales Verification	Hubbert, Dulcy		
01/01/2013		8 - New Construction	Field Check Needed	Hubbert, Dulcy		
12/12/2012			Split/Combination	Zuelke, Lee		

BUILDING PERMITS

Number	Status	Issue Date	Amount	Type	Description
2014-ECON-	Open	03/17/2014		COM	NEW
2013 SPLIT	Closed	12/11/2012			2013 SPLIT PROCESSED PER COS 153542 CREATING TR B, C & D.

MARKET LAND INFORMATION

Method	Type	FF	DP	Sq Ft	Acres	Inf Cds	%	Unit Price	Class Code	Value Est

RECENT APPEAL HISTORY

Year	Level	Case #	Status	Action

IMPROVEMENT COST SUMMARY

Year	Land	Building	Total	Method
2013	1,668	0	1,668	COST
2012	0	0	0	Prior
2011	0	0	0	Cost
	0	0	0	Income
	0	0	0	MRA
				Ovr

ASSESSMENT VALUE HISTORY

Year	Land	Building	Total
2013	\$1,668	\$0	\$1,668
2012	\$0	\$0	\$0
2011	\$0	\$0	\$0

APPRAISED VALUES

Year	Land	Building	Total	Method
2013	1,668	0	1,668	COST
2012	1,668	0	1,668	COST
2011	1,668	0	1,668	COST

PARCEL COMMENTS

Link: - 14-1640-11-2-03-03-0000 Conv Note: SPLIT TRACT 4B TO RGC2175 PER COS #149846. APPRAISER REVIEW AND APPROVAL NEEDED. AG LAND CHANGES NEED REVIEWED AS WELL. SPLIT TRACT 4 TO RGC1947(PYLE) PER WD FILED /89. 2013 SPLIT PROCESSED PER COS 153542 CREATING TR B, C & D. LAND SIZE UPDATED. APPRAISER REVIEW AND APPROVAL NEEDED. DLH

CONDO VALUE TO BE ALLOCATED

General: Limited:
 Land: Land:
 Imps: Imps:

Metes & Bounds

TRACT A

A tract of land lying in the southwest quarter of the northwest quarter, the northwest quarter of the southwest quarter, the northeast quarter of the southwest quarter and the north half of the north half of the south half of the southwest quarter of Section 11, Township 7 North, Range 47 East of the Principal Meridian Montana, Custer County Montana, more particularly described as follows:

Commencing at the northwest corner of the southwest quarter of the northwest quarter of said Section 11; thence South 65 degrees 09 minutes 11 seconds East, a distance of 571.90 feet to southwest corner of Tract 2A shown in Envelope 258B as Document #82949 records of Custer County and the northeasterly right-of-way line of Montana Highway #59 and the POINT OF BEGINNING; thence South 89 degrees 40 minutes 57 seconds East along the boundary of said Tract 2A, a distance of 1,192.21 feet; thence South 30 degrees 50 minutes 24 seconds East along the boundary of said Tract 2A, a distance of 235.74 feet; thence North 59 degrees 11 minutes 05 seconds East along the boundary of said Tract 2A, a distance of 208.53 feet; thence South 30 degrees 48 minutes 21 seconds East a distance of 796.48 feet to the northeasterly corner of Tract 2A shown in Envelope 234A as Document #72047 records of Custer County; thence South 59 degrees 12 minutes 03 seconds West along the boundary of said Tract 2A, a distance of 208.67 feet; thence South 30 degrees 46 minutes 54 seconds East along the boundary of said Tract 2A, a distance of 388.85 feet; thence South 00 degrees 12 minutes 02 seconds East along the boundary of said Tract 2A, a distance of 389.88 feet; thence North 89 degrees 31 minutes 45 seconds East along the boundary of said Tract 2A, a distance of 208.18 feet to the east line of the northeast quarter of the southwest quarter of said Section 11; thence South 00 degrees 07 minutes 08 seconds East, a distance of 781.35 feet to the southeast corner of the northeast quarter of the southwest quarter of said Section 11; thence South 00 degrees 07 minutes 08 seconds East, a distance of 301.86 feet to the northeasterly right-of-way line of said Montana Highway #59; thence North 40 degrees 13 minutes 43 seconds West along said right-of-way, a distance of 2,523.34 feet; thence North 26 degrees 11 minutes 55 seconds West along said right-of-way, a distance of 123.27 feet to the point of curvature of a non tangent curve to the right, said curve having a radial distance of 3,729.80 feet, a chord bearing of North 04 degrees 04 minutes 44 seconds West and a chord distance of 798.62 feet; thence northwesterly along said right-of-way and the arc, through a central angle of 12 degrees 17 minutes 30 seconds, a distance of 800.15 feet to the POINT OF BEGINNING and containing 55.020 acres, more or less.

Purpose of Survey

We, the undersigned property owners, do hereby certify that the purpose of this survey is to retrace the boundary of an existing tract of land "Tract A" that was created by the acquisition of Highway right-of-way. Therefore "Tract A" is not subject to review as a subdivision under both the Montana Subdivision and Platting Act and the Montana Sanitation in Subdivision's Act.

AND

that We have caused to be surveyed and platted into tracts, as shown on the plat hereto annexed, the following described land in Custer County, Montana, to-wit:

A tract of land lying in the southwest quarter of the northwest quarter, the northwest quarter of the southwest quarter, the northeast quarter of the southwest quarter and the north half of the north half of the south half of the southwest quarter of Section 11, Township 7 North, Range 47 East of the Principal Meridian Montana, Custer County Montana; more particularly described as follows:
Beginning at the west quarter corner of said Section 11, said point being the POINT OF BEGINNING; thence North 00 degrees 14 minutes 34 seconds West along the west line of said Section 11, a distance of 794.43 feet to the center line of the Tongue and Yellowstone River canal and the boundary of the Pyle Minor Subdivision as shown on the plat filed in Envelope 492A as Document #149846 records of Custer County; thence North 82 degrees 35 minutes 01 seconds East along said centerline and boundary, a distance of 41.30 feet; thence South 77 degrees 26 minutes 57 seconds East said centerline and boundary, a distance of 170.24 feet; thence South 46 degrees 57 minutes 29 seconds East said centerline and boundary, a distance of 50.14 feet; thence South 24 degrees 57 minutes 50 seconds East said centerline and boundary, a distance of 144.16 feet; thence South 15 degrees 27 minutes 15 seconds East said centerline and boundary, a distance of 285.92 feet; thence South 68 degrees 59 minutes 21 seconds East said centerline and boundary, a distance of 270.37 feet; thence South 21 degrees 54 minutes 44 seconds East said centerline and boundary, a distance of 241.63 feet; thence North 89 degrees 54 minutes 30 seconds East along said boundary, a distance of 40.00 feet; thence North 89 degrees 54 minutes 29 seconds East along said boundary, a distance of 353.81 feet to the southwesterly right-of-way line of Montana Highway #59; thence South 40 degrees 13 minutes 35 seconds East along said right-of-way line, a distance of 1,139.13 feet; thence South 54 degrees 09 minutes 03 seconds East along said right-of-way line, a distance of 41.39 feet; thence South 40 degrees 13 minutes 53 seconds East along said right-of-way line, a distance of 996.67 feet to the south line of the north half of the north half of the south half of the southwest quarter of said Section 11; thence South 89 degrees 59 minutes 12 seconds West along said line, a distance of 917.13 feet; thence continue westerly along said line, a distance of 1,601.27 feet to the west line of said Section 11; thence North 00 degrees 17 minutes 43 seconds West along said west line, a distance of 331.61 feet to the southwest corner of a Tract of land shown on the plat filed in Envelope 23 as Document #12027 records of Custer County; thence North 89 degrees 58 minutes 10 seconds East along the boundary of said Tract, a distance of 192.50 feet; thence North 00 degrees 11 minutes 09 seconds West along the boundary of said Tract, a distance of 231.65 feet; thence South 89 degrees 58 minutes 02 seconds West along the boundary of said Tract, a distance of 54.55 feet; thence North 00 degrees 19 minutes 19 seconds West along the boundary of said Tract, a distance of 66.35 feet; thence South 89 degrees 58 minutes 21 seconds West along the boundary of said Tract, a distance of 138.50 feet to the west line of said Section 11; thence North 00 degrees 16 minutes 40 seconds West along said line, a distance of 196.18 feet; thence continue northerly along said line, a distance of 827.86 feet to the POINT OF BEGINNING containing 75.607 acres, more or less.

76-2-303. Procedure to administer certain annexations and zoning laws -- hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning regulations for the annexed property:

- (i) authorize land uses comparable to the land uses authorized by county zoning;
- (ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2; or
- (iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to Title 76, chapter 1, for the annexed property.

(b) A joint hearing authorized under this subsection (3) fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation.

76-2-304. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with a growth policy; and
- (b) designed to:
 - (i) secure safety from fire and other dangers;
 - (ii) promote public health, public safety, and the general welfare; and
 - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) promotion of compatible urban growth;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

76-3-501. Local subdivision regulations. The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (1) the orderly development of their jurisdictional areas;
- (2) the coordination of roads within subdivided land with other roads, both existing and planned;
- (3) the dedication of land for roadways and for public utility easements;
- (4) the improvement of roads;
- (5) the provision of adequate open spaces for travel, light, air, and recreation;
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;

(8) the avoidance or minimization of congestion; and

(9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

May 01, 2014

Letter of Protest

The McFauland land, located on Highway 59 South, has been in the McFauland family for 105 years. It has always been agricultural based since our grandparents came from Ireland and built their home on the land.

We as landowners are not objecting to change. We do not think change should be a construction business built in an agricultural area. Our concerns:

- Highway 59 is narrow and we feel it will be hazardous with trucks and equipment entering the highway at that location with oncoming traffic.
- Chemicals and waste with proper disposal of such and potential contamination of groundwater.
- Depreciation of our property if in the future it is sold for housing development.

Page 2

- The question of how do you beautify a reconstruction site

- All permits needed to build, secured and in his (Mr. Pula) hands

Finally, we feel it will decrease the aesthetic value we now have of a pastoral scene.

Andy McInland Hays

Robert C. McInland

5-5-14

To
Zoning Commission,

I, Frank E. Nelson, Live at 791 Hiway 59 South of Miles City on the East Side of the hiway.

I am writing this Letter of opposition to the change of Diamond J Property from Agricultural to Commercial on the west side of hiway 59 South of Miles City. My Northwest property corner is directly across hiway 59 about 100' to 120' of hiway right of way from the South East corner of his Property.

If the quality of Cleanliness is continued at this location as is currently practiced at his property on Truscott, I will be the garbage collection point for every thing that Blows across the hiway due to the prevailing wind being North westerly in this area.

Frank E. Nelson

May 3, 2014

To the members of the zoning commission,

I am writing this letter asking you to deny the application of Diamond J Construction for the re-zoning of 722 Highway 59 South.

The re-zoning request will simply result in the move of Diamond J's junk from the north side of Miles City to the south side of Miles City, and thereby decrease the value of the surrounding agricultural land and indirectly decrease the value and beauty of our city.

If the zoning variance is approved the surface drainage from this property will ultimately enter the T & Y ditch, carrying silt, weeds, hydrocarbons, acids and other contaminants. This is a violation of federal law and could cause great harm to downstream users, as well as wildlife.

General commercial zoning should never be considered in this area until a detailed plan is approved that ensures our environmental quality.

Thank you,

A handwritten signature in black ink, appearing to read "Bill Oftedal", written over a horizontal line.

Bill Oftedal

May 4, 2014

To the Zoning Board, Miles City, Montana

I would like to strongly urge you to DENY the request of change in zoning (from agricultural to commercial) at 722 Hwy. 59 South, Miles City, Montana.

I live on a farm about 2 miles south of the site, and use that highway daily (often more than once) to travel to Miles City. This is a main north-south artery for the Bakken oil development. We currently see more truck traffic than we ever have, some of it travelling at high rates of speed. To have slow moving trucks entering and exiting from Diamond J Construction could create some very hazardous situations for drivers, whether it be slow moving farm vehicles or fast moving over-the-road trucks. This could also create difficulties for emergency vehicles trying to travel either north or south (ambulances often transport patients from Broadus and other points south to Miles City). Fire responders would be affected as well.

Also, make no mistake that this construction company is just another commercial concern similar to the one on the property owned by the Pyles. The land owned by the Pyle family is strictly used as an area to park equipment--I haven't seen any vehicles leave or enter that area in months. They don't impede the flow of traffic in any manner whatsoever. Yet, they were required to obtain an approved approach from the highway department (as they should be).

Diamond J Construction has yet to put in an approved, safe approach, although that approach is used daily by more than one vehicle. All this activity on property that has yet to be zoned as commercial. It would be my strong suggestion that this company should be required to provide all paperwork before they do anything--their record speaks for itself.

I thank you for all the time that's gone into this.

Sincerely,

A handwritten signature in black ink that reads "Sharon Oftedal". The signature is written in a cursive, flowing style.

Sharon Oftedal

May __, 2014

RE: Protest zoning change – Diamond J Construction LLC

To the Zoning Commission City of Miles City,

This is a written protest to the proposed zoning change made by Diamond J Construction on property that was formerly owned by Susan L. Colvin and Mary Jo Colvin Kane. I run cattle on my property adjacent to the construction site. The Colvin's have been good neighbors for years.

The placing of a construction business, including the potential contamination, and other related issues are of significant concern to me. This construction business is not the best use for property in this area. If there is a zoning change for this property, it should be for rural residential.

We appreciate you taking in account our protest, and concerns in making your decisions.

Sincerely yours,


Ron Nansel

Rec'd
5-7-14
J. Harman



April 27, 2014
Amber Trenka
Zoning Commission
Miles City, MT 59301

Dear Amber Trenka,

My sister, Susan Colvin, and I own 40+ acres along Becker Lane that is across the ditch from John Payla's property that has been requested for a zone change from Agricultural to Commercial.

I am writing to encourage the Miles City Zoning Commission to not change the current zoning. Our property (Colvin) is going on to the 3rd generation of family ownership. It was always my parent's wish that it stay zoned as Agricultural. Not only will the zone change devalue the property but will also ruin a natural pristine area.

Please, lets keep the zoning Agricultural, as it should be!

Sincerely yours,

Mary Jo Colvin Kane

April 26, 2014

287 McDuer Rd
Great Falls, MT 59404

Miles City Zoning Comm.
17 S. 8th St.
Miles City, MT 59301

Re: Re-Zoning Request

As the owner in common of 43 acres on the west side of the TY Ditch, I am opposing the proposed re-zoning change for Sec 11, Twp 07N, Range 47E, Tract B (722 Hwy 59 S.) my land adjoins the proposed area along the TY Ditch.

My sister, Mary Jo Colvin Kane (zent) and I looked into doing a subdivision on this farm some years ago. The cost and future of the project was more than we wanted to venture. When we sold Tracts A and B it was our hope the lands would be turned into residential.

We are still hoping the 43 acres we still own will someday find its way into either a residential area or remain farm land. This re-zoning into General Commercial will reduce our ability to use our land as we desire in the future.

Sincerely,
Susan L. Colvin

Rec'd
4-30-14
(2)

Zoning Board

I was unable to attend the last Zoning meeting and again unable to be here tonight; my apologies.

I have been following with great interest the Zoning Boards task of approving Mr. John Peila's request to rezone his property south of Miles City. I am disgusted and disappointed in a recent letter to the editor that resorted to name calling and complete disrespect for the zoning process. The letter clearly demonstrates how one individual is more concerned about himself and his property vice the growth of Miles City.

Miles City must grow to the south. The City of Miles City clearly sees it that way, as they required Mr. Peila, when building his former building across from John Deere, to install larger sewer pipes, to allow for that growth. Mr. Peila paid several thousand dollars to satisfy their requirements.

Mr. Dan Rice indicated this could be considered "spot zoning". That concern is no longer a valid, as of last week, Brad Certain, who owns 55 acres directly across Highway 59, submitted his paperwork and fees to rezone his property to "Industrial" as well.

Mr. Pyle's position on this matter is a moot point, as his operation next door has been operating out of his house for decades. I question if this is even legal for Pyle to operate in this manner? I feel this should be addressed and possibly require him to operate his heavy equipment business in a commercial location.

I also feel the Todoroffs should be in favor of this zone change, due to the fact they have property listed for sale, at commercial prices, just south of Mr. Peila's former building. This one I completely don't understand.

I know what John Peila is going through as I've been there more than once. It finally became clear to me that (zoning and planning) becomes nothing but a conflict with city hall when wanting to develop. Seems people will work against you rather than help. Last week I was in Helena and Bozeman securing commercial property to buy and develop so I won't have conflicts with the City of Miles City.

I urge your approval of this zoning tonight.


R/S Roger L. Lothspeich

When the Department of Veterans Affairs Veterans Cemetery Grants Program initially approved the Eastern Montana Veterans Cemetery for funding, careful consideration was given to surrounding land use that made this parcel ideal for a state cemetery. More specifically the parcel was in full compliance with the following grant requirements for site selection:

"Surrounding Land Use - Surrounding land should be free from noise or adverse environmental impact(s) (nuisance, landfills or hazardous waste sites). Consider the attractiveness and compatibility of adjacent land. Sites adjacent to visually objectionable, loud noise, high traffic, or other nuisance elements should be avoided. Both current and future projected land use are considered."

Sharon Oftedal

From: Sharon Oftedal [sharono@midrivers.com]
Sent: Friday, April 18, 2014 6:49 AM
To: sharon
Subject: FW: EMSVC Zoning.docx (UNCLASSIFIED)

From: Sharon Oftedal [mailto:sharono@midrivers.com]
Sent: Thursday, April 17, 2014 12:52 PM
To: 'Foster, Joseph'; 'Balsam, Wreford J (Wref) NFG NG (US)'
Cc: 'Holmund,Kurt'; 'Hall, Tom'
Subject: RE: EMSVC Zoning.docx (UNCLASSIFIED)

Dear Mr. Foster,

While we appreciate your consideration of this matter, we feel more thought might have been put into your decision.

Concerning the "rise" between the cemetery and the proposed construction site, the builder has clearly stated (in his exact words) that he plans to "knock down that hill". This removes any doubt that a two story building would be clearly visible from the cemetery. And I can promise you that the vast majority of property owners in the area, from as far away as 5-10 miles, are very unhappy and are doing everything to stop this. An adjacent neighbor has hired an attorney who is prepared to site zoning laws indicating that spot zoning is not legal in Montana.

This might lead you to believe that we're going to succeed in stopping this project, but that is hardly the case. Your support would have meant a great deal, and while you tell me you don't want to become involved in "community affairs of this nature", the reason we contacted you in the first place is because we feel we need outside expertise.

Military cemeteries are of special importance to my husband and me. We're planning a trip that will include 5 days in Normandy, with one of those spent at Utah Beach and 2 full days at Omaha Beach. This is our second trip to the area, and we don't take it lightly. While our local Veteran's Cemetery may pale in comparison, we've spent several emotional times there. Few things have made more impact on me than going to close friend's father's funeral. As taps was playing and the gun salute was given, the only other sound I heard was some very enthusiastic meadow larks playing their own form of taps. If I'd had to listen to back-up alarms and truck engines, I don't think it would have been very moving.

If ultimately, signage is an issue, I'll know I failed miserably.

Sincerely,
Sharon Oftedal

From: Foster, Joseph [mailto:jofoster@mt.gov]
Sent: Tuesday, April 15, 2014 2:02 PM
To: 'Balsam, Wreford J (Wref) NFG NG (US)'
Cc: Sharon Oftedal; Holmund,Kurt; Hall, Tom
Subject: RE: EMSVC Zoning.docx (UNCLASSIFIED)

Wref and Mr. and Mrs. Oftedal –

I appreciate your drafting the letter and your expressed concerns regarding potential negative impacts the proposed truck-stop business may have on our Eastern Montana State Veterans Cemetery. However, after much thought, I will not be writing a letter of concern regarding this development. The reasons are:

+ My Eastern Montana State Veterans Cemetery sexton has viewed the location of the potential development and does not believe that its existence will negatively impact the cemetery.

+ I am very reluctant to insert myself in community affairs of this nature – in this case, business interests – unless there is compelling reason to do so. Per Kurt Holmlund's (cemetery sexton) input, I do not believe there is a compelling reason. Whatever concerns that may exist must be expressed by the community and development's proximate neighbors. Being approximately one-half mile away and on the other side of a "rise," the cemetery is not proximate to the proposed development.

+ That being said, I do have a concern regarding potential signage (if the development is approved) if placed alongside the cemetery's "frontage" to the highway. I have conveyed that to Kurt. Kurt, in turn, told me that he would ensure that our concerns – in this regard – are conveyed to his uncle, a Custer County commissioner.

The bottom line – based upon the on-site assessment of my cemetery sexton – is that the proposed development poses no foreseeable detrimental impacts to our veteran cemetery. Therefore, I do not feel it appropriate that I insert myself in this county business.

"Cced" are Kurt and Tom Hall, my veteran cemetery program manager.

Best regards, Joe

From: Balsam, Wreford J (Wref) NFG NG (US) [<mailto:wreford.j.balsam.nfg@mail.mil>]

Sent: Tuesday, April 15, 2014 1:17 PM

To: Foster, Joseph

Cc: Sharon Oftedal

Subject: EMSVC Zoning.docx (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: FOUO

Joe, Please find attached the amended letter with the revised recipient. –
Thanks, Wref

Classification: UNCLASSIFIED

Caveats: FOUO

CITY OF MILES CITY

Zoning Commission

Public Hearing Minutes

April 24, 2014

7:00 pm

The Miles City Zoning Commission met for a public hearing and regular meeting. Chair Trenka called the meeting to order at 7:00 pm and requested a roll call. Members present were Amber Trenka, Muriel Rost, LeRoy Meidinger, Leif Ronning and Nancy Mitchell. Also present were Public Works Director Scott Gray and City Attorney Dan Rice. Others were listed on the attached sign-in sheet. Dianna Larson served as the recorder. A quorum was present.

Chair Trenka noted this is a public hearing to receive comments/concerns on a proposed re-zone for Diamond J Construction located at 722 Hwy South from agriculture to general commercial. She opened the public hearing and asked for *proponents* to speak. The petitioner, John Peila-Diamond J Construction, explained his re-zone request. He reported purchasing 29 acres about a year ago to construct a new building for his business and construction company. Since the property is located in the County, he did not realize the City's zoning authority extended out 2 miles. Peila reported he poured the new foundation, heard grumbling about zoning and stopped construction until the zoning issues could be resolved. Brad Certain - sold this property to Mr. Peila under the impression that it would be commercial. Mr. Certain and partner, own another 55 acres directly to the east of Mr. Peila with the intentions of commercial zone also. They have left the property zoned agriculture due to the difference in the tax base. Monty Lesh, Real Estate Agent - spoke about progress and economic development. He stated Miles City is limited in the direction it can grow due to geological, flood plain and land ownership issues. Growing east and south is the logical progression. Emmett Willson - part owner with Mr. Peila, growth is headed that way, Diamond J outgrew their old building, most all their money is spent in Miles City. Jared Payne, Project Manager for Diamond J Construction - moved his wife and family across the state to work here, feels the City is moving in this direction. Eric Doeden, Doeden Construction - driven past this property for years and never seen more than a few horses on the land. Paul Oakland, Local Contractor - fully supports Diamond J Construction, we need progression in our town. Robert Tooke - need more businesses like Peila's. Ty Ketchum - sits on the County Planning Board and the County has not established their zoning as of date. Zoning in this area is a mismatch of everything and need to accommodate new businesses if we expect Miles City to grow. Mark Noennig - Attorney and representing John Peila - stated he reviewed the memo from our City Attorney regarding the spot zoning issue. He feels spot zoning is not the case, the natural development of Miles City, according to the Growth Policy, is in this direction and would benefit to the entire community not just Diamond J Construction.

Chair Trenka asked for *opponents* to speak. Gary Ryder - Attorney and representing Barbara Todoroff (owns 7 acres next to this project). Stated his client was surprised when the construction began and to hear Mr. Peila did not know about zoning outside the City limits. Mr. Ryder disagrees with this benefitting the community. Discussed zoning issues generally outside the city limits. Does not think the project was well planned and could adversely affect other surrounding property, along with decrease land values if the project is allowed. Ryder mentioned increased truck traffic, site is not good for this type of industry, several issues that need to be addressed before allowed. Dottie

Johnstone - opposes Mr. Peila's project, should be done the right way. Bill Oftedal- Highway Contractor, stated that highway contractors do not make good neighbors. He cited materials that could be stored in the yard, possible chemical hazards and the odd hours when large trucks will be entering and existing the property. He believes most people think of general commercial as motel, restaurants and shopping centers, as opposed to trucking and construction firms. He suggested industrial zone would be more applicable for construction rather than general commercial. John Todoroff Jr. - explained he has run cattle on his adjacent property and is opposed to the change. Sharon Oftedal - stated that Tracts A & D were in CRP. Mark Ahner - not opposed to the growth, just in the manner on how the process was handled by the developer. He commented on property tax values (agricultural vs commercial). If re-zone is approved, place a condition regarding landscaping for a buffer zone. Peggy Pyle - owns approximately 5 acres that borders the north of the proposed re-zone site, her children have requested to build a home in that vicinity and is opposed to having a business in the same area. Jenny Paxson (Pyle) - does not want a shop at her back door.

Rebuttals:

Mr. Peila reported his last shop was in the City for about 5 years and was kept clean and neat. He has no problem planting a row of trees and landscaping. He reiterated he has never went through the zoning process before and was genuinely unaware of the zone change requirement. Peila explained he applied for all the needed permits from the state (building permit, MDOT, and DEQ). He noted that commercial construction activities have taken place in this area and still taking place on the Pyle property. Peila again stated he wants to have a nice facility, not a junk yard as perceived.

Chair Trenka called for questions, comments from the commission members and staff. Public Works Director Scott Gray questioned the approval of the approaches into the property. Peila reported he applied for 3 approaches and 2 were approved. Commission Member (CM) Mitchell noted the site plan shows 2 buildings. Peila reported he currently has no plan for two buildings, possibly in the future. Chair Trenka inquired what type of material would be hauled. Peila reported they haul dirt and gravel, no chemicals, nothing toxic.

Hearing no further comments, the public hearing was closed at 7:40 pm.

Open the Zoning Commission Meeting

Approval of Minutes: Chair Trenka called for approval of the minutes from the March 31, 2014 public hearing and meeting.

****** *Ronning moved to approve the minutes from the March 31, 2014 public hearing and meeting, as written, second by Meidinger. Motion approved.*

Chair Trenka called for approval of the minutes from the April 7, 2014 meeting. Commission Member (CM) Rost had an addition to the minutes. She had requested Mr. Peila provide to the Commission permits, etc.

****** *Rost moved to approve the minutes from the April 7, 2014 meeting to include that she*

*requested for Mr. Peila to provide the Commission permits, etc., second by Mitchell.
Motion approved.*

New Business: Discuss and make recommendation to City Council for the re-zone of Diamond J Construction from Agriculture to General Commercial - Chair Trenka asked PW Director Scott Gray to read the staff report on the re-zone (attached). CM Mitchell had concerns with the T&Y Ditch and possible water contamination. Peila reported he spoke with Roger Muggli, Manager of T&Y Ditch, and found no problems and willing to write a letter to that affect. CM Rost had concerns about sanitation issues. Peila contended the State had approved the designs and the City Sanitarian had reviewed them. City Attorney Dan Rice discussed the issue of spot zoning and the three criteria: 1) the new use is significantly different from previous uses; 2) the re-zone is a relatively small amount of land; and 3) the re-zone primarily benefits one or a small number of landowners at the expense of surrounding landowners and the general public. CM Mitchell noted that both the Zoning Commission and City Council will have to consider whether the property meets the criteria for spot zoning. Planner/Grant Writer Dawn Colton presented a report prepared by the City's planning consultant Dave DeGrandpre (attached). CM Meidinger and Ronning were concerned with spot zoning and questioned Attorney Rice on the issue. Rice explained both the Commission and City Council are the judge and jury regarding spot zoning and it is up to them to make that determination.

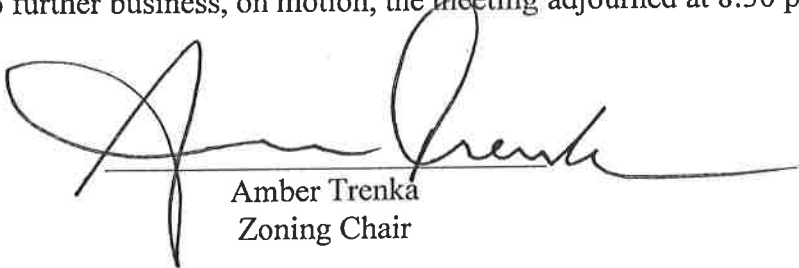
Chair Trenka reported due to the fact that more information was presented to the Commission, prior to the hearing, she would like to table making a decision. CM Meidinger was not in favor of tabling the issue, he contended the information was received and reviewed. Other members wanted to be fair and make an accurate decision. It was reiterated the Zoning Commission is an advisory board and the City Council would rule on the final re-zone. After more discussion, the commission tabled the request until a special meeting could be scheduled.

*** Rost moved to table the proposed re-zone for Diamond J Construction, second by Mitchell. Members were polled for their vote. Meidinger - opposed, Ronning - aye, Trenka - aye, Rost - aye, Mitchell - aye. Motion approved.*

The consensus of the Commission was to hold a special meeting on Wednesday, May 7th at 6 pm.

Unfinished Business: Nothing at this time.

Adjournment: With no further business, on motion, the meeting adjourned at 8:30 pm.



Amber Trenka
Zoning Chair

Zoning Comm. Public Hearing	Apr. 24, 2014 7:00 PM
Name	Address
David Curtis	1022 Cottonwood
Tara & John Peila	260 Silo Loop Kinsey, MT
DAVE Gillette	53 BAKER MC
Jared Payne	♫
Ernst Wilson	
Robert Toole	1717 Tompy
Tom Beryl	811 N. Custer
Staci Ketchum & Tyre Ketchum	3792 US Hwy 12 MC
Jenny & Colter Paxson	718 N Custer MC
Peggy Pyle	268 Cemetery Rd
Ron Yansel	11 Nausel Ln.
Eric Douder	53 Bridges Circle
K. D. D.	414 Missouri
Diane Mats	976 MT 599
Cassidy Mathison	: ' ' '
Mike Blum	1124 Hwy 59 S
Michelle Simpson	1016 N. First

Zoning Comm. Public Hearing	Apr. 24, 2014 7:00 PM
Name	Address
MARK ANKER	13 S. STACY AVE. MILES CITY
MONTY LESH	182 River Run Dr MC MT
Bill Ellis	5108 Valley Dr East MC MT
Dennis Hirsch	26 Sunset Drive
C.A. GRENZ	506 Mississippi MC
Frank E. Nelson	791 Hwy 59 S.
Sharm Qledat	960 Hwy 59 So
Bill O'Neal	960 Hwy 59 So
Dawn Colton	519 Hubble St
Dottie Johnstone	778 Hwy 59 S. MC
John Todoroff	4 Big West Lane Oilmont Mt
Gary Ryden	Box 72, Tullyhon, MT

Miles City Zoning Committee

Staff Report

April 24, 2014

Zone Change Request

John Peila of Diamond J Construction 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. Surrounding land uses include Agricultural use in every direction surrounding this property, and as such, spot zoning is an issue which should be considered.

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). The needs of neighbors and the community should be carefully considered. In this case, the landowner (petitioner) has requested a change in zoning designation. Some concerns have been voiced to date by neighboring property owners but a general commercial designation would result in additional options for this property 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 by Highway 59 South to the west of the property 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. 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 is a visibility problem with traffic entering onto a busy road with highway speeds at

70mph. There is a congestion problem just north of this site as you enter into the city limits and this could add to that congestion. 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.

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. That road being Highway 59 South.

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

Schools – School facilities and bus service are available to the surrounding properties.

Parks – No parks are available to this property.

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.

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 all agriculturally zoned. Changing the zoning to general commercial, will allow a mixture of land uses, one being a truck shop that is proposed at this site. The growth policy does state that future growth in the Miles City community will most likely be located to the east and to the south of the established community.

A question of spot zoning has been raised about this property and the city attorney will advise more on this.

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.

Recommendation:

Adopt this report as findings of fact for the zone change and that the rezone be contingent on the city attorney's interpretation of the spot zone issue and the reporting of facts from the public hearing.

To: Scott Gray and Dan Rice, City of Miles City, Montana
Copy: Dawn Colton, City of Miles City, Montana
From: Dave DeGrandpre, AICP
Date: April 23, 2014
Re: Evaluation of Diamond J Zoning Map Amendment Request under the 'Little Factors' for spot zoning

Diamond J Construction, LLC has submitted a request to amend the zoning map designation from Agriculture (AG) to General Commercial (GC) on 28.86 acres of land located approximately $\frac{3}{4}$ of a mile beyond the intersection of Cemetery Road and Highway 59. The subject property can be identified as, Tract B of Document #153542, Envelope 500B, located in Section 11, Township 7 North, Range 47 East. The property is located south of the City of Miles City but within Miles City's zoning jurisdiction.

All of the land surrounding the subject property is zoned AG and the issue has been raised whether this zone change would constitute spot zoning and might therefore be prohibited based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions. Below is an evaluation of the pertinent factors for your and the Miles City Zoning Commission's and City Council's consideration.

LITTLE FACTOR #1

A. What are the existing land uses in the area?

Predominantly agricultural with one pre-existing commercial operation.

B. What are the land uses allowed by AG zoning?

1. Grazing
2. Keeping poultry
3. Breeding of animals
4. Growing of crops
5. Pasturing livestock
6. Dairies and processing of dairy products
7. Animal rescue shelter

C. What are the land uses allowed by GC zoning?

1. All general business and services
2. Theatres, lodges and assembly facilities
3. Churches
4. Multifamily dwellings, except townhouse developments

5. Multifamily dwellings in combination with uses listed in (C1),(C2) and (C3) above
6. Animal rescue shelters.

D. Is the proposed use significantly different from the prevailing use in the area?

On April 23, 2014 I spoke with Staci Ketchum of Diamond J Construction. Ms. Ketchum indicated that Diamond J Construction is a concrete and excavation contractor. She stated the building would be approximately 11,800 square feet in size and be used as a 'shop' to store supplies and maintain equipment. The building would also contain office space. The exterior would contain some landscaping and a parking area for vehicles.

Below is an aerial photo dated August 14, 2013 taken from Google Earth. Surrounding land uses appear to be predominantly agricultural and rural residential. An irrigation ditch borders the property to the west. Based on this information, the proposed use would be significantly different than the prevailing use in the area.



LITTLE FACTOR #2

A. Does the land proposed to be rezoned constitute a relatively small amount of the agriculturally zoned land in the region?

Yes—based on the Miles City & Surrounding Jurisdiction Zoning Map dated September 20, 2012 and property information from the Montana Cadastral website, roughly 1,420 acres are zoned AG in this area and the subject property is approximately 29 acres.

B. Would granting the zoning map amendment amount to preferential treatment for one or a few persons as against the general public?

General commercial zoning for this property or the immediate area is not called out in an adopted planning document like a growth policy or neighborhood plan. Changing the zoning to GC would clearly benefit one landowner with a preferential zoning designation because GC allows virtually any commercial use of property. This should be contrasted with the AG designation which is quite limited. It might be a stretch to say the amendment would be 'against' the general public, but the amendment would confer a benefit (increased monetary value) to one landowner that is not available to the surrounding landowners under current circumstances.

LITTLE FACTOR #3

A. Would the zoning map amendment constitute special legislation or preferential treatment designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public?

Similar to factor #2 above, the amendment would constitute special legislation designed to benefit only one landowner. Whether this would be 'at the expense' of surrounding landowners or the general public is more subjective and may depend on the impacts the land use would have on surrounding landowners. To my knowledge no public comments have been submitted and it is not clear that the property values or quality of life of surrounding landowners would suffer due to the proposed land use, although there would likely be some noise and dust. It is also not clear the surrounding landowners would benefit in any way from the zoning amendment.

What is clear is only one landowner would benefit as opposed to the public in general or the surrounding landowners in particular. Further, the GC zoning designation was not adopted along with the original zoning, which was made to advance and protect the public health, safety and general welfare.

RECOMMENDATION

Based on the above and in light of Dan Rice's letter to the Miles City Zoning Commission describing the criteria for spot zoning, I recommend denial of the zoning amendment request because the request generally meets all three of the criteria for spot zoning.

Regardless of my recommendation, it is critical the Zoning Commission and City Council deliberate on this issue as well as the statutory criteria for zoning called out in Scott Gray's staff report, and adopt findings of fact to support their recommendation (Zoning Commission) and decision (City Council).

CITY OF MILES CITY

Zoning Commission Minutes

May 7, 2014

6:00 pm

The Miles City Zoning Commission met for a special meeting. Chair Trenka called the meeting to order at 6:00 pm and requested a roll call. Members present were Amber Trenka, Muriel Rost, Nancy Mitchell and Leif Ronning. Commission member Meidinger was excused. Also present was Public Works Director Scott Gray. Others present were listed on the attached sign-in sheet. Dianna Larson served as the recorder. A quorum was present.

Unfinished Business: Discuss and make recommendation to City Council for re-zone of Diamond J Construction, 722 Hwy 59 South from agriculture to general commercial - Chair Trenka opened the meeting and received more testimony. Doug Leidholt - stated the City is going to develop this direction, this new development will help out the tax base, last 10 years never seen any animals on the land, wants the commission to make a decision that is best for the entire community, not just a few. Eric Doeden - follow the Growth Policy. John Peila - has a lot of respect for agriculture, feeds 7,000 head of cattle through his feedlot, need both commercial and agriculture to survive. Gary Ryder - he spoke of different properties that have been re-zoned, asked the City to look at developing south of exit 138 for growth. Hearing nothing further, Chair Trenka closed the testimony at 6:15 pm.

Commission Members (CM) were asked to convey their comments/questions. CM Mitchell stated this has been a difficult decision to make. The commission reviewed the staff report written by Public Works Director - Scott Gray dated April 24, 2014 and commented on each item (attached). CM Ronning stated concerns, on both sides, are legitimate and agreed the town is moving towards this direction. He questioned the land being worth millions of dollars for agriculture. Has concerns with increased truck traffic and Mr. Peila keeping the area neat and clean. Peila replied that truck traffic should not be increased that much, already is used that way. Also he is invested in the land, and reported that whatever the zone, he will use the land for a feed lot yard, a farrowing barn or something with trucks entering and exiting. Public Works Director Gray stated the City has a great opportunity to grow and need to make sure it is accomplished correctly. CM Mitchell read from Dave DeGrandpre's, planning/zoning consultant, in regards to the "Little Factors" (attached). Peila feels that Factor #3 should not apply, this change would benefit at least 2 to 3 owners, not just himself. CM Mitchell noted the commission needs to look at each re-zone separately without adding other issues. Other concerns discussed included the County's lack of participation in zoning outside the city limits and the importance of having an updated Growth Policy. Peila reassured the Commission that if the re-zone to general commercial is granted, he would be more than willing to sign papers stating to keep it neat and clean, plant trees, landscaping, etc. The commission appreciated hearing his statement along with all the other comments. CM Mitchell read the recommendation, citing the three factors in determining whether spot zoning exists (attached).

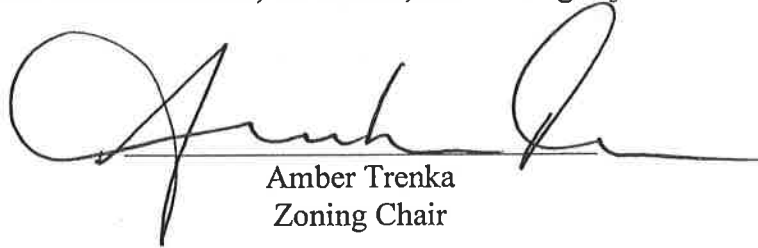
*** Mitchell moved to recommend for the City Council to deny the re-zone request for Diamond J Construction, 722 Hwy 59 South from Agriculture to General Commercial, second by Rost. Members were polled for their vote. Trenka - aye,*

Ronning - aye, Rost - aye, and Mitchell - aye. Motion denied. NOTE: See attached letter from Commission member Rost.

New Business: Set a public hearing date for a proposed re-zone for Brad Certain located at 685 Hwy 59 South (Tract A) from Agriculture to Industrial - Mr. Certain explained he is going to sell the land. He stated the land is horrible for any agriculture need, no water on the property and will not grow grass. Certain claims the City will develop to the south, the other direction you have flood plain issues and positioned between 2 rivers. He contended the property would be worth more as industrial commercial than agriculture. The consensus of the commission was to hold the public hearing on Wednesday, May 28, 2014 at 6:00 pm.

CM Rost stated the more zoning requests the commission receives, the more pressure will be placed on the City/County to look towards these areas south of town.

Adjournment: With no further business, on motion, the meeting adjourned at 6:45 pm.



Amber Trenka
Zoning Chair

Zoning Commission Mtg.	May 7, 2014 6:00 PM
Name	Address
Kelly Draper	810 Schmalste
John Reila	260 Silo loop Kinsey
Donne Stagg	907 S Center
Michelle Simpson	1016 N First
Dottie Johnstone	778 Hwy 59 S. MC.
Bill Oftedal	960 Highway 59 S, Miles City
Shann Oftedal	960 Hwy 59 S, Miles City
Peggy Pyle	268 Cemetery Rd MC
Jenny Paxson	718 N Custer MC, MT
Gary Rydar	Myshon, MI
Chy. Gulth	53 BA/SR MC
Monty Lesh.	182 River Park Dr MC
Eric Doeden	53 Bridger Circle
Rudolf	414 Missouri
Dory Leidholt	100 prima vista Dr
Cherette Allison	Miles City Sta
Bred Carter	1022 Cottonwood

Zoning Commission Mtg.

May 7, 2014

6:00 PM

Name

Address

Tara Peita

200 Silo Loop Rd.
Kinsey MT 59301

MAY 6, 2014

REVIEW OF STAFF REPORT WRITTEN BY SCOTT GRAY, DATED APRIL 24, 2014 BY
MILES CITY ZONING COMMISSION

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

The Staff Report states that "a GC designation would result in better options for this property."

The Miles City Growth Policy was written in 2006, and should be updated to reflect current growth, and address Miles City's need for expansion. Although the Growth Policy states that the south and the east are the only directions Miles City can grow, there is no proposed or adopted plan at this time. "Considering the needs of the neighboring property owners (p. 36)," has been strongly voiced by owners of neighboring properties, and they are adamantly opposed to the zoning change to General Commercial. It may also be illegal spot zoning, based on the court case Little vs Board of County Commissioners of Flathead County 193 Mont. 334 (1981).

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

It is not clear how a zone change could be "designed" to security safety from fire and other dangers. There are concerns from the public that a zone change to GC could open up more safety and fire dangers with chemical, toxic waste and other hazardous materials. Regarding fire, ambulance and other emergency services, neighbors are concerned that Highway 59 S is becoming increasingly more congested with trucks that could be a problem with emergency vehicles. Other dangers: an increase in vehicular accidents resulting due to additional trucks and vehicles using this highway.

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

Concerns from the public have been voiced about chemicals, oil, etc., entering the T & Y canal and the affecting the groundwater. Applications for water, sanitation, sewer and any other hazardous materials need to be approved for public health, safety and welfare assurances. If the applicant is allowed to have a commercial site, and he uses it to store contractor supplies, pipes, trucks, etc., it could look like the property Mr. Peila owns on Truscott, which is an eyesore, and would not be promoting general welfare of the public aesthetically.

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

It is not clear how the zone change is "designed" to facilitate adequate provision of transportation, water, sewage, schools, parks, and other public facilities; it almost seems like the zone change would hinder them. Transportation: the MT DOT has allowed 2 of the 3 accesses applied for; many large trucks and heavy equipment would be going in and out of the property. As far as water/well and sewage goes, permits need to be approved by the County Sanitarian. Schools: There are no schools in the area, however, school buses use Highway 59 S to pick up and drop off neighboring children. The zone change may affect school bus use and mail carrier vehicles on the highway, i.e., added traffic and buses and mail trucks causing traffic to start and stop, rather than facilitate their use. There are no parks or other public facilities, so zone change will not affect this.

5. Adequate light and air?

There is adequate light and air, unless burning of toxic materials by a commercial/industrial owner that would cause smoke that would affect surrounding neighbors.

6. How does zone change affect motorized and non-motorized transportation systems?

In Miles City, we do not have "transportation systems" such as rail or bus services for the general public, except for some small hospital and nursing home vans and a senior citizen bus for the elderly. There are no transportation systems serving south of Miles City for the general public, except school buses. One resident living on Highway 59 S has stated that the number of motorized vehicles/trucks using Highway 59 S has already increased with the Bakken oil field, and would definitely increase if the zone were changed to commercial.

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

The definition of urban growth is "an urban area or community where in which the population of the area increases." The zone change to General Commercial would not promote compatible urban growth or be suitable, unless the entire corridor would be a planned extension of General Commercial south of Miles City, with Residential planned behind the Commercial, which may be compatible and suitable. There are 87 acres for sale by the Todoroff family along this corridor, at a commercial price per acre. However, at this time, the neighbors who have protested against the zone change for the subject property (Dotty Johnstone, Barbara Todoroff, John Todoroff, Jr., Bill & Sharon Oftedal, Peggy Pyle, Jenny Paxton, Susan Colvin, Mary Jo Colvin Kane, Frank Nelson, Sandy McFarland Hayes, Robert McFarland), have stated and also written letters that they would like the zoning to remain Agricultural. Susan Colvin and Mary Jo Colvin Kane were owners of the entire subdivision when they considered making it a residential subdivision at one time, but costs were prohibitive. When the Colvins sold Tracts A and B, they were hoping the new owners would also want residential development, but John Peila (Tract B) has requested a zone change to General Commercial, and Brad Certain (Tract A) has submitted an application for a zone change to Industrial. Urban growth would be suitable and more aesthetic than commercial or industrial for the pastoral setting where the land is located. And Miles City has run out of and needs more residential building sites, low income housing, apartments and retirement housing.

8. Would change conserve value of building and encourage most appropriate use?

The surrounding neighbors have expressed concern that their property values will go down if commercial development is allowed. Individuals protesting this zone change seem to think the most appropriate use of the land would be either AG or residential, as surrounding property is currently AG and rural residential. The value of building (residences) would certainly address a need in Miles City, and would be appropriate. The value of building a commercial building for Mr. Peila's use does not establish a public need for the proposed use of the property. If the City/County had a growth plan in place for expanding commercial growth to the south, with residential behind it, that would also be an appropriate use of the land. But at this time, no growth plan has been written, and there is a legal issue before the Zoning Commission of whether or not this is spot zoning for this particular piece of property.

To: Scott Gray and Dan Rice, City of Miles City, Montana
Copy: Dawn Colton, City of Miles City, Montana
From: Dave DeGrandpre, AICP
Date: April 23, 2014
Re: Evaluation of Diamond J Zoning Map Amendment Request under the 'Little Factors' for spot zoning

Diamond J Construction, LLC has submitted a request to amend the zoning map designation from Agriculture (AG) to General Commercial (GC) on 28.86 acres of land located approximately $\frac{3}{4}$ of a mile beyond the intersection of Cemetery Road and Highway 59. The subject property can be identified as, Tract B of Document #153542, Envelope 500B, located in Section 11, Township 7 North, Range 47 East. The property is located south of the City of Miles City but within Miles City's zoning jurisdiction.

All of the land surrounding the subject property is zoned AG and the issue has been raised whether this zone change would constitute spot zoning and might therefore be prohibited based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions. Below is an evaluation of the pertinent factors for your and the Miles City Zoning Commission's and City Council's consideration.

LITTLE FACTOR #1

A. What are the existing land uses in the area?

Predominantly agricultural with one pre-existing commercial operation.

B. What are the land uses allowed by AG zoning?

1. Grazing
2. Keeping poultry
3. Breeding of animals
4. Growing of crops
5. Pasturing livestock
6. Dairies and processing of dairy products
7. Animal rescue shelter

C. What are the land uses allowed by GC zoning?

1. All general business and services
2. Theatres, lodges and assembly facilities
3. Churches
4. Multifamily dwellings, except townhouse developments

5. Multifamily dwellings in combination with uses listed in (C1),(C2) and (C3) above
6. Animal rescue shelters.

D. Is the proposed use significantly different from the prevailing use in the area?

On April 23, 2014 I spoke with Staci Ketchum of Diamond J Construction. Ms. Ketchum indicated that Diamond J Construction is a concrete and excavation contractor. She stated the building would be approximately 11,800 square feet in size and be used as a 'shop' to store supplies and maintain equipment. The building would also contain office space. The exterior would contain some landscaping and a parking area for vehicles.

Below is an aerial photo dated August 14, 2013 taken from Google Earth. Surrounding land uses appear to be predominantly agricultural and rural residential. An irrigation ditch borders the property to the west. Based on this information, the proposed use would be significantly different than the prevailing use in the area.



LITTLE FACTOR #2

A. Does the land proposed to be rezoned constitute a relatively small amount of the agriculturally zoned land in the region?

Yes—based on the Miles City & Surrounding Jurisdiction Zoning Map dated September 20, 2012 and property information from the Montana Cadastral website, roughly 1,420 acres are zoned AG in this area and the subject property is approximately 29 acres.

B. Would granting the zoning map amendment amount to preferential treatment for one or a few persons as against the general public?

General commercial zoning for this property or the immediate area is not called out in an adopted planning document like a growth policy or neighborhood plan. Changing the zoning to GC would clearly benefit one landowner with a preferential zoning designation because GC allows virtually any commercial use of property. This should be contrasted with the AG designation which is quite limited. It might be a stretch to say the amendment would be 'against' the general public, but the amendment would confer a benefit (increased monetary value) to one landowner that is not available to the surrounding landowners under current circumstances.

LITTLE FACTOR #3

A. Would the zoning map amendment constitute special legislation or preferential treatment designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public?

Similar to factor #2 above, the amendment would constitute special legislation designed to benefit only one landowner. Whether this would be 'at the expense' of surrounding landowners or the general public is more subjective and may depend on the impacts the land use would have on surrounding landowners. To my knowledge no public comments have been submitted and it is not clear that the property values or quality of life of surrounding landowners would suffer due to the proposed land use, although there would likely be some noise and dust. It is also not clear the surrounding landowners would benefit in any way from the zoning amendment.

What is clear is only one landowner would benefit as opposed to the public in general or the surrounding landowners in particular. Further, the GC zoning designation was not adopted along with the original zoning, which was made to advance and protect the public health, safety and general welfare.

RECOMMENDATION

Based on the above and in light of Dan Rice's letter to the Miles City Zoning Commission describing the criteria for spot zoning, I recommend denial of the zoning amendment request because the request generally meets all three of the criteria for spot zoning.

Regardless of my recommendation, it is critical the Zoning Commission and City Council deliberate on this issue as well as the statutory criteria for zoning called out in Scott Gray's staff report, and adopt findings of fact to support their recommendation (Zoning Commission) and decision (City Council).

RECOMMENDATION:

To the City Council of Miles City to DENY the zone change based on review and modification of the Staff Report written by Scott Gray, public input/opinions of the proponents and opponents to the zone change, and the legal precedent Little vs. County Commissioners of Flathead County, 193 Mont. 334 (1981), wherein the Montana Supreme Court identified three factors that enter into a determination of whether illegal spot zoning exists.

In Little the Montana Supreme Court stated:

There is no single, comprehensive definition of spot zoning applicable to all fact situations. Generally, however, three factors enter into determining whether spot zoning exists in any given instance. First, in spot zoning, the requested use is significantly different from the prevailing use in the area. Second, the area in which the requested use is to apply is rather small. This test, however, is concerned more with the number of separate landowners benefited by the requested change than it is with the actual size of the area benefited. Third, the requested change is more in the nature of special legislation. In other words, it is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public. (From Legal Opinion 2011-002, dated January 10, 2011, from Jim Nugent, City Attorney for City of Missoula, MT.)

See Evaluation of Diamond J Zoning Map Amendment Request under the 'Little Factors' written by Dave DeGrandpre, dated April 23, 2014, determining that all three 'Little Factors' are present in this case of spot zoning.

Sincerely,

MILES CITY ZONING COMMISSION

The following are my reasons for denying a zone change request by John Peila (Diamond J Construction) for Tract B Section 11 Township 7N Range 47E from Ag to General Commercial.

1. I believe a zone change would constitute spot zoning. Having read and studied information from Dave DeGrandpre, AICP and Dan Rice, Miles City Attorney citing a Montana Supreme Court Case I feel a zone change would be illegal.
2. The number of opponents out numbered the proponents, some being employees of Mr. Peila. I feel it is important to take into consideration the concerns of citizens who would be affected by the zoning change. (Information per Gary Ryder, attorney and a concerned citizen phone call, a letter and attendance at public hearing.
3. The fact Mr. Peila said he was unaware he needed a zone change for the land in question. I feel this is his responsibility as a responsible citizen. Mr. Peila on being questioned as to what the appearance of the property of the zoning change would be, replied it would be "neat and tidy" as his other properties. Observing his property at 840 Truscott (zone MH-A) which is being used as a construction business I did not find it "neat and tidy". Note he is not using the property as zoned which also demonstrates a lack of responsibility for compliance.
4. I do not think a truck yard falls under GC zoning if this is the use Mr. Peila is requesting for the zone change. It would be better described as fitting under HC # 24-61.

According to the Growth Plan of 2006/2008 future growth is predicted to be south in direction, the area of the requested zone change. Growth should be planned and orderly taking into consideration the community as a whole which would prevent future zone change requests resulting in spot zoning.

I would strongly suggest the city consider the advice of Mr. Dave DeGrandpre on this issue.

Sincerely,



Muriel Rost

5-5-2014

Partial transcript from Zoning Commission Meeting held on 5-28-2014

John Peila (10:05 time into meeting) "I'm the culprit with the previous property that did not pass. I still stand and believe that it should have, and that with these guys it's the only way it can go, and with anything there's always gonna to be **opponents**. I found it funny that the MC Star ran a poll on the whole thing, which I don't know who asked em to do it, but they did it & 79% of the community said absolutely pass it and 21% said no - so I thought that was a pretty interesting number that the majority of the community is for it and you guys are trying to make the best decisions for community. I think you should take some of those things into to heart and really think about it cuz it's going to run business away. We've already acquired more land. We're probably going to move on and build somewhere else. I hate to say that but at some point the land we own there will become worth money and we'll sell at that point - but we're not gonna to fight the system anymore, so I hope you don't keep shutting people down or Miles City will keep dwindling, the high school classes will keep getting smaller and graduates will keep leaving town and getting jobs elsewhere cuz there's nothing here that'll pay nice wages. So good luck."

ORDINANCE NO. 1268

AN ORDINANCE CHANGING THE ZONING OF BLOCK 5 OF THE SOUTHGATE MEADOWS SUBDIVISION FROM LOCAL COMMERCIAL TO GENERAL COMMERCIAL AND PROVIDING FOR A HEARING THEREON

WHEREAS, the owner of the below described real property has made application for the property to be rezoned from Local Commercial (LC) zone to General Commercial District (GC) zone;

AND WHEREAS, such property is situated within the City of Miles City, Montana

AND WHEREAS, Section 24-8 of the Miles City Code requires that such application be referred to the City Zoning Commission for public hearing and recommendation to the City Council prior to any action by the City Council upon such application;

AND WHEREAS, the Miles City Zoning Commission, on March 31, 2014, held a public hearing upon said application, pursuant to notice, and following such hearing recommended to the City Council that such zoning change be adopted;

BE IT ORDAINED by the City Council of the City of Miles City, Montana as follows:

Section 1. Zoning for the following described real property located within the incorporated city limits of the City of Miles City, Custer County, Montana, is hereby rezoned from Local Commercial (LC) zone to General Commercial (GC) zone, to wit:

Block 5 of the Southgate Meadows Subdivision, according to the official plat and survey thereof on file with the Clerk and Recorder in and for Custer County, Montana.

Section 2. A public hearing shall be held upon this proposed zoning change before the City Council at 7:00 P.M. on the 13th day of May, 2014, in the Council Chambers at City Hall, 17 S. Eighth Street, Miles City, Montana.

Section 3. The City Clerk shall give notice of the date, time and place of such hearing by publication in the Miles City Star at least 15 days prior to the date of such hearing, in accordance with Sections 76-2-303 and 76-2-305, MCA.

Section 4. This ordinance shall be in full force and effect thirty (30) days after its final passage and approval.

SAID ORDINANCE READ AND PUT UPON ITS PASSAGE THIS 22nd DAY OF APRIL, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

**SAID ORDINANCE FINALLY PASSED AND APPROVED BY A DULY
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES
CITY, MONTANA, THIS 13th DAY OF MAY, 2014.**

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

CITY OF MILES CITY
Zoning Commission
approach Box 910
Miles City, MT 59301

April 7, 2014


Mayor Grenz and City Council,

RE: Proposed re-zone for Block 5 of the Southgate Meadows Subdivisions from Local Commercial (LC) to General Commercial (GC).

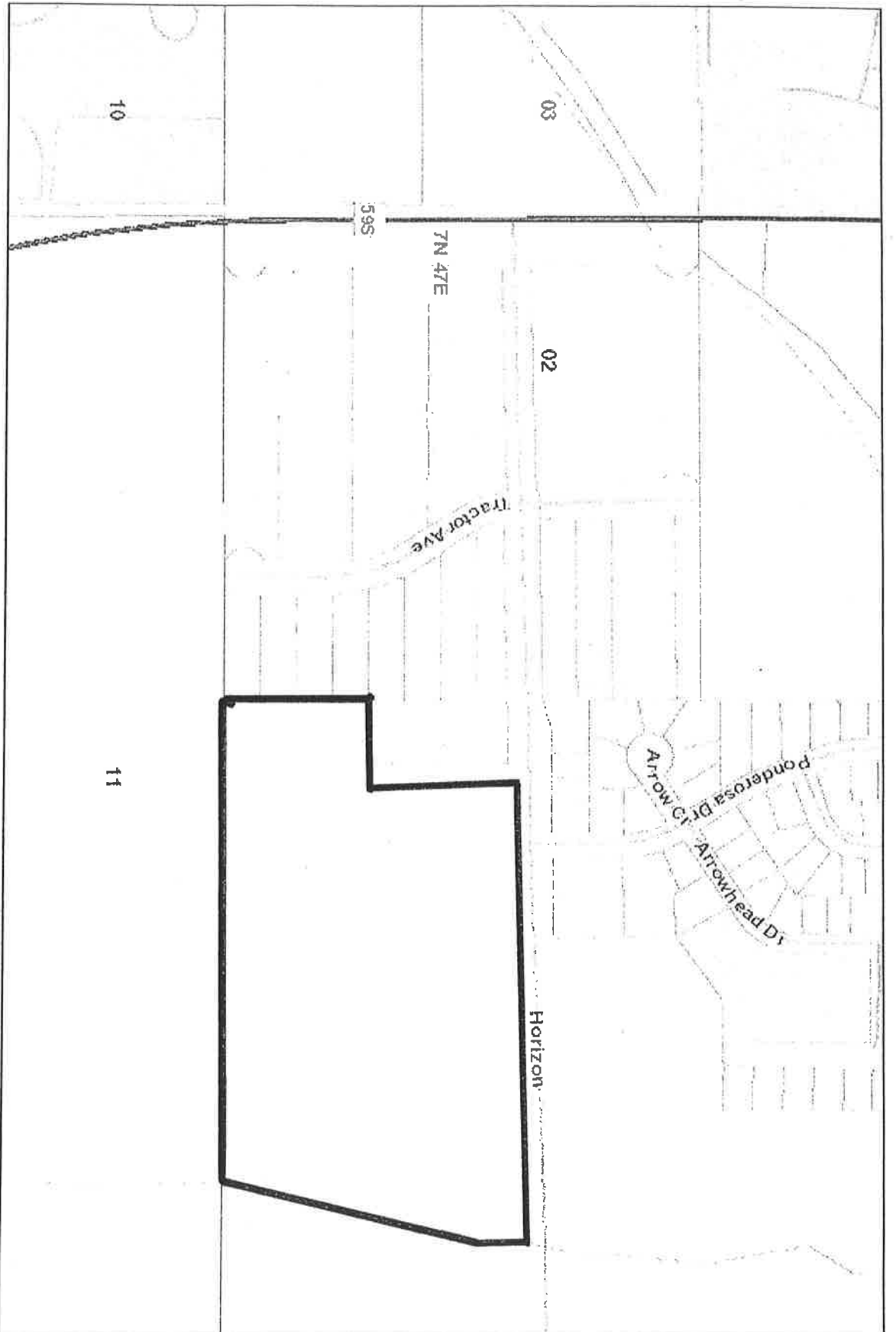
The Miles City Zoning Commission conducted its public hearing on March 31, 2014 to consider the request to re-zone the above described area in the Southgate Meadows Subdivision. After reviewing comments from the public hearing, the Zoning Commission recommends approval of the zone change, to general commercial, with the condition that the second access into Southgate be seriously looked at by either the residents of Southgate, the City, State or developers to help alleviate the issue for the lack of a second exit.

Please schedule this for review by the City Council at your earliest convenience.

Respectfully,

A handwritten signature in black ink, appearing to read 'Amber Trenka', written over a horizontal line.

Amber Trenka, Chair
Zoning Commission



RESOLUTION NO. 3689

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2013-2014 FOR UNANTICIPATED GRANT REVENUE TO HISTORIC PRESERVATION FUND 2935 AND PROVIDING FOR HEARING THEREON

WHEREAS, the City of Miles City has received unanticipated grant revenues from the Community Development Block Grant (CBDG), Montana Main Street Grant, and Sandra Anderson Donor Advised Fund to be applied to Historic Preservation Fund No. 2935 in the combined sum of \$10,284.00;

AND WHEREAS, as permitted by §7-6-4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2013-2014 to appropriate the total amount of such unanticipated revenues in the sum of \$10,284.00 to Historic Preservation Fund No. 2935;

AND WHEREAS, such amendment of the Final Budget for Fiscal Year 2013 -2014 will result in an overall increase in appropriation authority in Historic Preservation Fund No. 2935,

AND WHEREAS, the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

The appropriations for the Final Budget for Fiscal Year 2013 - 2014 for Historic Preservation Fund No. 2935 shall be increased in the following amounts:

INCREASED REVENUE RECEIVED:

CBDG: Fund No. 2935-331171(101036) in the sum of \$2,750.00;

Montana Main Street: Fund No. 2935-331172(101037) in the sum of \$1,784.00;

Sandra Anderson Grant: Fund No. 2935-365020(101038) in the sum of \$5,750.00;

INCREASED APPROPRIATIONS FY13-14:

CBDG: 2935-11-460465-350 in the amount of \$2,750.00;

Montana Main Street: 2935-11-460466-350 in the amount of \$905.00;
2935-11-460466-370 in the amount of \$879.00;

Sandra Anderson: 2935-11-460467-210 in the amount of \$350.00
 2935-11-460467-311 in the amount of \$350.00;
 2935-11-460467-320 in the amount of \$500.00;
 2935-11-460467-350 in the amount of \$2,442.00;
 2935-11-460467-370 in the amount of \$1,489.00;
 2935-11-460467-111 in the amount of \$619.00;

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2013 - 2014 on the 24th day of June, 2014 at 7:00p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7 1-4127 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 10th DAY OF JUNE, 2014.

C. A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 24th DAY OF JUNE, 2014.

C. A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3691

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2013-2014 TO APPROPRIATE UNANTICIPATED REVENUES TO BUILDING INSPECTOR FUND NO. 2394 FOR CONTRACTED PROFESSIONAL SERVICES

WHEREAS, the City of Miles City has received unanticipated building permit revenues in Building Inspector Fund No. 2394 in the sum of \$22,000.00;

AND WHEREAS, as permitted by §7-6-4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2013-2014 to appropriate the total amount of such unanticipated revenues in the sum of \$22,000.00 to Building Inspector Fund No. 2394 for contracted professional services;

AND WHEREAS, such amendment of the Final Budget for Fiscal Year 2013-2014 will result in an overall increase in appropriation authority in Building Inspector Fund No. 2394,

AND WHEREAS, the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

The appropriations for the Final Budget for Fiscal Year 2013-2014 for Building Inspector Fund No. 2394 shall be increased in the following amount:

Fund No. 2394-018-420531-350 (Building Inspector Fund No. 2394, Contracted Professional Services), in the sum of \$22,000.00.

Such increased appropriation shall be made from the following Building Inspector Fund No. 2394 account:

Account No. 2394 323010 (Building Inspector Fund No. 2394- Permit Fees) in the amount of \$22,000.00,

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2013-2014 on the 24th day of June, 2014, at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7 1-4127 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 10TH DAY OF JUNE, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 24TH DAY OF JUNE, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3692

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2013-2014 TO APPROPRIATE UNANTICIPATED REVENUES TO AIRPORT FUND 5610 FOR FEDERAL AERONAUTICS GRANT FUNDS

WHEREAS, the City of Miles City Airport has received unanticipated Federal Aeronautics Grant revenues in Airport Fund No. 5610 in the sum of \$180,000;

AND WHEREAS, as permitted by §7-6-4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2013-2014 to appropriate the total amount of such unanticipated revenues in the sum of \$180,000 to Airport Fund No. 5610 for Professional Services;

AND WHEREAS, such amendment of the Final Budget for Fiscal Year 2013 - 2014 will result in an overall increase in appropriation authority in Airport Fund No. 5610,

AND WHEREAS, the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

The appropriations for the Final Budget for Fiscal Year 2013-2014 for Airport Fund No. 5610 shall be increased in the following amount:

Fund No. 5610-087-430300-350 (Airport Fund No. 5610, Professional Services), in the sum of \$150,000.00.

Such increased appropriation shall be made from the following Airport Fund No. 5610 account:

Account No. 5610-331129 (Airport Fund No. 5610- Federal Aeronautic Administration Grant) in the amount of \$180,000.00,

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2013 - 2014 on the 24th day of June, 2014, at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 10TH DAY OF JUNE, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED
QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS
24TH DAY OF JUNE, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION 3692

RESOLUTION NO. 3693

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2013-2014 TO APPROPRIATE UNAPPROPRIATED CASH BALANCES FROM THE CAPITAL IMPROVEMENT FUND NO. 4000 FOR THE PURCHASE OF TWO POLICE VEHICLES

WHEREAS, the City of Miles City has cash balances for Fiscal Year 2013-2014 in the Capital Improvement Fund No. 4000 which were not appropriated in the Final Budget for Fiscal Year 2013-2014.

AND WHEREAS, as permitted by §7-6-4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2013-2014 to appropriate and expend a portion of such unappropriated cash balance in Fund No. 4000 to purchase a two police vehicles;

AND WHEREAS, such amendment of the final budget will result in an overall increase in appropriation authority within such fund,

AND WHEREAS the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

The appropriations for the Final Budget for Fiscal Year 2013-2014 for Capital Improvement Fund No. 4000 shall be increased in the following amount:

Fund No. 4000-501-410100-940 (Capital Improvement Fund No. 4000, Capital Machinery & Equipment), in the sum of \$78,002;

Such increased appropriation shall be made from the following Capital Improvement Fund No. 4000 account:

Account No. 4000-101000 - (Capital Improvement Fund No. 4000 - Cash) in the amount of \$78,002.

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendments to the Final Budget for Fiscal Year 2013-2014 on the 24th day of June, 2014, at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 10TH DAY OF JUNE, 2014.

C. A. GRENZ, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED
QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA,
THIS 24TH DAY OF JUNE, 2014.

C. A. GRENZ, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3694

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2013-2014 TO APPROPRIATE UNANTICIPATED EXPENSES TO LIGHTING DISTRICT NO.165 FUND 2400 FOR ELECTRICAL UTILITIES EXPENSES

WHEREAS, the City of Miles City has accumulated unanticipated expenses in Lighting District No. 165 Fund No. 2400 in the sum of \$10,500.00,

AND WHEREAS, as permitted by §7-6.4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2013-2014 to appropriate the total amount of such unanticipated expenses in the sum of \$10,500.00 to Lighting District No. 165 Fund No. 2400 for electrical utility charges;

AND WHEREAS, such amendment of the Final Budget for Fiscal Year 2013-2014 will result in an overall increase in appropriation authority in Lighting District No. 165 Fund No. 2400,

AND WHEREAS the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

The appropriations for the Final Budget for Fiscal Year 2013-2014 for Lighting District No. 165 Fund No. 2400 shall be increased in the following amount:

Fund No. 2400-046-430263-341 (Lighting District No. 165 Fund No. 2400, Electrical Utilities), in the sum of \$6,300.00.

Fund No. 2400-046-430263-533 (Lighting District No. 165 Fund No. 2400, Electrical Utilities), in the sum of \$4,200.00.

Such increased appropriation shall be made from the following Lighting District No. 165, Fund No. 2400 account:

Account No. 2400-363010 (Lighting District No. 165 Fund No. 2400 Assessments) in the amount of \$10,500.

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2013-2014 on the 24th day of June, 2014, at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 10TH DAY OF JUNE, 2014.

C. A. GRENZ, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED
QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS
24TH DAY OF JUNE, 2014.

C. A. GRENZ, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3695

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2013-2014 TO APPROPRIATE UNANTICIPATED EXPENSES TO LIGHTING DISTRICT NO.167 FUND 2420 FOR ELECTRICAL UTILITIES EXPENSES

WHEREAS, the City of Miles City has accumulated unanticipated expenses in Lighting District No. 167 Fund No. 2420 in the sum of \$1,665.00,

AND WHEREAS, as permitted by §7-6.4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2013-2014 to appropriate the total amount of such unanticipated expenses in the sum of \$1,665.00 to Lighting District No. 167 Fund No. 2420 for electrical utility charges;

AND WHEREAS, such amendment of the Final Budget for Fiscal Year 2013-2014 will result in an overall increase in appropriation authority in Lighting District No. 167 Fund No. 2420,

AND WHEREAS the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

The appropriations for the Final Budget for Fiscal Year 2013-2014 for Lighting District No. 167 Fund No. 2420 shall be increased in the following amount:

Fund No. 2420-046-430263-341 (Lighting District No. 167 Fund No. 2420, Electrical Utilities), in the sum of \$1,665.00.

Fund No. 2420-046-430263-533 (Lighting District No. 165 Fund No. 2420, Electrical Utilities), in the sum of \$4,200.00.

Such increased appropriation shall be made from the following Lighting District No. 167, Fund No. 2420 account:

Account No. 2420-363010 (Lighting District No. 167 Fund No. 2420 Assessments) in the amount of \$1,665.00.

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2013-2014 on the 24th day of June, 2014, at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 10TH DAY OF JUNE, 2014.

C. A. GRENZ, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED
QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS
24TH DAY OF JUNE, 2014.

C. A. GRENZ, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3702

**A RESOLUTION ACCEPTING THE DEDICATION OF A FRISBEE GOLF COURSE
AT MILWAUKEE PARK**

WHEREAS, the City of Miles City has agreed that Milestown Community Improvement, Inc., a Montana non-profit corporation, may make certain improvements to Milwaukee Park, in the form of a Frisbee Golf Course;

AND WHEREAS said project has been completed as evidenced in writing by the Public Works Director, in accordance with the City's donations policy;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. The City of Miles City hereby accepts the donation and dedication of certain improvements from Milestown Community Improvement, Inc., generally described as a Frisbee Golf Course which is located in Milwaukee Park, and consisting of nine goals and nine tee boxes, and related signage.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY,
MONTANA, THIS 24th DAY OF JUNE, 2014.**

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk



PUBLIC WORKS & UTILITIES
DEPARTMENT



CITY OF MILES CITY

17 So. 8th Street
P.O. Box 910
Miles City, Montana 59301

Telephone: (406) 234-3493
Fax: (406) 234-6392

June 19, 2014

Mayor and City Council,

I am writing to inform you that the MCI2 organization has completed the construction of the folf Frisbee course at Milwaukee Park. They constructed a nine hole course for folf enthusiast to enjoy their sport and to encourage others to try. Their dedicated effort has added a nice addition to the Miles City park system. I would ask that each and every council member go by add take a look at the improvements that this organization has added to our parks. I would ask that you accept their work and donation of the Frisbee folf course. Thank you.

Scott Gray, Director

Public Works

ORDINANCE NO. 1273

AN ORDINANCE ENACTING A NEW SECTION 20-11 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, ENTITLED "MAINTENANCE OF PUBLIC RIGHT OF WAY."

BE IT ORDAINED, by the City Council of the City of Miles City, Montana, as follows:

Section 1. Chapter 20 shall be amended by adding a new Section 20-11 entitled "Maintenance of Public Right of Way," as follows:

Section 20-11. Maintenance of Public Right of Way. The owner of real property within the city limits shall be responsible for maintaining the areas between the city street and the surveyed and platted boundaries of the owner's property, commonly referred to as the "public right of way." The city reserves the right to enter the right of way to expand roadways, erect street signs, install sidewalks, trim or remove trees, install, remove and maintain water and sewer lines, shut off valves and fire hydrants, and any other necessary public use. The property owner shall be required to maintain the public right of way by preventing the accumulation of junk vehicles, trash, and debris, as well as the overgrowth of trees, grass and/or weeds. The provisions of Section 20-9 shall apply to the owner's maintenance of trees within the public right of way. Failure to maintain the same shall be a violation of the city's public nuisance regulations in chapter 15. Failure to control trees, grass and/or weeds in the public right of way may be addressed in accordance with Section 20-10 at the election of the city.

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this ____ day of _____, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this ____ day of _____, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

ORDINANCE NO. 1274

AN ORDINANCE ENACTING A NEW SECTION 22-151 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, ENTITLED “REFUSAL TO SUBMIT TO ALCOHOL/DRUG BREATH AND/OR BLOOD TEST.”

BE IT ORDAINED, by the City Council of the City of Miles City, Montana, as follows:

Section 1. Chapter 22 shall be amended by adding a new Section 22-151 entitled “Refusal to Submit to Alcohol/Drug Breath and/or Blood Test,” as follows:

Section 22-151. Refusal to Submit to Alcohol/Drug Breath and/or Blood Test.

(a) Any person operating or in actual physical control of a motor vehicle while under the influence of alcohol and/or drugs creates a significant risk to public safety, health and general welfare. To help secure public safety, health and general welfare for all persons, the City of Miles City adopts this section in an effort to deter persons from engaging in this dangerous activity. This section is adopted pursuant to Montana Code Annotated 61-12-101 which grants authority and powers to local authorities to regulate the operation of motor vehicles by a person while under the influence of alcohol and/or drugs. This section is also adopted pursuant to other provisions of Montana State Law allowing municipal governments to regulate traffic upon streets such as Montana Code Annotated 7-14-4102 and 7-14-4103 as well as pursuant to the exercise of the City of Miles City’s self-government powers.

(b) It is unlawful to refuse to submit to a breath or blood test for alcohol and/or drugs. It is unlawful and it constitutes a misdemeanor offense for any person operating or in actual physical control of a motor vehicle suspected of doing so under the influence of alcohol and/or drugs to refuse to submit to one or more tests to detect alcohol and/or drugs requested and designated by any peace officer as defined by Montana State Law. Prior to charging a person with a violation of this section, a peace officer must inform the person requested to take the designated breath and/or blood test that refusing the test is a misdemeanor offense under Miles City Municipal Code and identify the penalties associated with the offense. If any arrested person refuses to submit to one or more tests requested and designated by a peace officer as provided for pursuant to Montana State Law, the refused test may not be given. However, the person refusing to submit to any such requested tests may be charged with a misdemeanor offense pursuant to this section.

(c) The Penalties for violations of Section 22-151 are established as follows. Incarceration is not a penalty for a violation of this section. A person convicted under section 22-151 shall be subject to fines of:

1. For a first offense, the fine is \$300.00; no portion may be suspended, waived or deferred by the court; and

2. For a second or subsequent offense, the fine is \$500.00; no portion may be suspended, waived or deferred by the court.

(d) If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this ____ day of _____, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this ____ day of _____, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3696

A RESOLUTION ADOPTING A SPECIAL PROSECUTION POLICY FOR THE CITY OF MILES CITY, MONTANA.

WHEREAS, the City of Miles City is responsible for the prosecution of misdemeanor offenses occurring within the incorporated city limits of said city, as well as violation of city ordinances;

AND WHEREAS the City of Miles City wishes to engage the services of attorneys to work as special prosecutors to supplement and support the Deputy City Attorney who serves as the City Prosecutor;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The Special Prosecution Policy attached hereto as Exhibit "A" is hereby approved and adopted by the Council.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS ____ DAY OF _____, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Exhibit "A"

SPECIAL PROSECUTION POLICY

It is the policy of the City of Miles City and the Office of the City Attorney that Special Prosecutors may be used to assist in prosecution of the caseload of the Deputy City Attorney (who is the City Prosecutor) on a supplemental basis.

The City Attorney may nominate individuals and recommend appointment of such individuals as Special Prosecutors to the Mayor, and the Mayor may appoint the same based on the City Attorney's nomination. Such individuals shall be admitted to practice law in the State of Montana and be in good standing.

Special Prosecutors shall be independent contractors and shall carry "errors and omissions" insurance in an amount not less than one millions dollars per occurrence, and shall provide proof of the same upon appointment and before commencement of prosecution.

Special Prosecutors shall be subordinate to both the City Attorney and the Deputy City Attorney. Cases shall be offered to the Special Prosecutor by the Deputy City Attorney or staff, and the Special Prosecutor shall promptly indicate whether they are willing to prosecute the matter. In the event a Special Prosecutor routinely refuses to take cases offered by the Deputy City Attorney, or does not perform satisfactorily, the City Attorney may remove the contractor from the list of active Special Prosecutors in the City Attorney's sole discretion, and as evidenced in writing to the Special Prosecutor.

Special Prosecutors shall be compensated at the contract rate of \$75.00 per billable hour of legal work. Special Prosecutors shall bill to the nearest 1/10 of an hour, and shall generate a detailed invoice indicating the matter worked on, as well as each task performed. No compensation shall be paid for travel time, however, mileage shall be paid for necessary travel (as approved by the City Attorney or Deputy City Attorney) at the current Federal IRS rate. For appearances which may require travel, Judicial Vision Net shall be used whenever possible. Special Prosecutors shall be reimbursed for all necessary and properly tracked postage. Special Prosecutors shall be responsible for costs associated with office supplies (including envelopes) and photocopies as part of the hourly contract rate.

All invoices shall be submitted to the City Clerk, the City Attorney, and the Deputy City Attorney.

Special Prosecutors may not represent criminal defendants within Custer County, Montana, during an active appointment as a Special Prosecutor for the City of Miles City.

This policy shall become effective upon the approval of the City Council of the City of Miles City, Montana.

RESOLUTION NO. 3697

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2013-2014 FOR STATE OF MONTANA PAYMENTS ON BEHALF OF RETIREMENT ACCOUNTS AND PROVIDING FOR HEARING THEREON

WHEREAS, the City of Miles City has been credited with \$377,387.00 from State of Montana for payments by the State on behalf of Public Employee Retirement System (PERS), Montana Peace Officer Retirement System (MPORS) and Montana Firefighters Unified Retirement System (FURS) contributions and for which additional funds no provision was made in the Final Budget for Fiscal Year 2013-2014;

AND WHEREAS, as permitted by §7-6-4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2013-2014 to appropriate and expend such additional funds for PERS, MPORS and FURS contributions;

AND WHEREAS, such amendment of the final budget will result in an overall increase in appropriation authority,

AND WHEREAS the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

1. The revenues for the Final Budget for Fiscal Year 2013-2014 for the General Fund 1000 shall be increased in the following fund in the following amount:

Fund No. 1000-330000- \$377,387.00

2. The appropriations for the Final Budget for Fiscal Year 2013-2014 for Fund 1000 General Fund shall be amended in the following fund as follows:

Fund No. 1000.001.410200.190 of the General Fund 1000 shall be increased in the sum of \$2,223.00;

Fund No. 1000.005.420140.190 of the General Fund 1000 shall be increased in the sum of \$181,459.00;

Fund No. 1000.007.420460.190 of the General Fund 1000 shall be increased in the sum of \$193,705.00;

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendments to the Final Budget for Fiscal Year 2013-2014 on the 8th day of July, 2014 at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 24TH DAY OF JUNE, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 8TH DAY OF JULY, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3698

A RESOLUTION AUTHORIZING THE MILES CITY TO ENTER INTO A GRAVEL STOCKPILE LEASE AGREEMENT WITH THE MONTANA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the City of Miles City owns certain real property upon which the Montana Department of Transportation presently stores gravel stockpiles and other construction materials pursuant to a lease agreement with the City which expires on the 30th day of June, 2014;

AND WHEREAS the City of Miles City wishes to enter into a lease with the Montana Department of Transportation for an additional 10 year term;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The Lease Agreement attached hereto as Exhibit "A" is hereby approved and adopted by the Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said agreements on behalf of the City of Miles City and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS ____ DAY OF _____, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

EXHIBIT "A"

LEASE AGREEMENT

THIS AGREEMENT, made entered into this ____ day of _____, 2014, by and between the **CITY OF MILES CITY**, a Montana municipal corporation of 17 S. Eighth Street, Miles City, Montana 59301, hereinafter referred to as the "*CITY*" and **THE STATE OF MONTANA**, acting through its **MONTANA DEPARTMENT OF TRANSPORTATION**, of 217 N 4th Street, Miles City, Montana 59301, hereinafter referred to as "*TENANT*".

RECITALS:

WHEREAS, CITY owns certain real property in Section 19, Township 8 North, Range 47 East, MPM, Custer County, Montana, and more particularly described as follows:

A portion of NE¹/₄NE¹/₄ Section 19, Township 8 North, Range 47 East, MPM, Custer County, Montana, south of State Highway 59 right-of-way, more particularly set forth in the diagram attached hereto as Exhibit "A" and made a part hereof. Such property is hereinafter referred to as "*Leasehold*".

AND WHEREAS it is the desire of TENANT to lease the above described Leasehold for a term of ten (10) years.

AND WHEREAS CITY is agreeable to providing such ten (10) year term lease upon the Leasehold under the following terms and conditions.

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

I. AGREEMENT TO LEASE

The CITY, for and in consideration of the rents to be paid and the covenants to be performed by TENANT, does hereby demise, lease, and let unto TENANT the above described Leasehold.

II. TERM

The term of this Agreement shall be for a period of ten (10) years, beginning on the 1st day of July, 2014 and expiring at midnight on the 30th day of June, 2024, hereinafter, "*the lease term*".

III. RENTAL

The annual rental for the initial lease term shall be the following: \$100.00 per year, due and payable in advance on July 1st of each year of the lease term, commencing July 1, 2014 through June 30, 2024.

IV. RESPONSIBILITIES OF THE TENANT

TENANT does hereby acknowledge, covenant and agrees as follows:

A. Purpose

TENANT desires to lease the premises for the following general purposes:

Gravel stockpile and construction materials storage for highway construction and maintenance.

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that it will not use or occupy said premises, or allow the same to be used or occupied, for any unlawful purpose or any purpose deemed extra-hazardous on account of fire or otherwise.

B. Compliance with Laws

TENANT shall comply with, conform to, and obey all present and future laws, ordinances, rules and regulations of all governmental authorities or agencies, respecting the use and occupation of the premises.

C. Independent Investigation

TENANT acknowledges that it has carefully examined and inspected the premises and improvements and it is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that it is not leasing the premises because of any warranty, representation, information or promises made by the CITY or anyone acting for on behalf of the CITY, which are not specifically set forth in this Agreement.

D. Maintenance

TENANT agrees to keep the premises and improvements thereon in good repair and upkeep, reasonable wear and tear alone accepted, and further agrees neither to permit nor cause

any waste on the property, or with respect to any improvements thereon. Tenant shall keep the premises reasonably clean and in orderly condition, considering the nature of the business conducted thereon.

E. Improvements to Remain

Within sixty (60) days immediately following the expiration of this lease, the TENANT shall remove any improvements located on the leasehold and shall restore, at TENANT'S expense, the leasehold premises to level with the adjoining property and in such debris free condition. If inclement weather during the sixty (60) day period delays such removal and restoration, CITY shall provide TENANT with a reasonable time, not to exceed an additional sixty (60) days in which to remove the improvements and restore the leasehold. If TENANT fails to remove such improvements within sixty (60) day period, CITY, at its option, may (1) cause the removal of such improvements and restoration of the leasehold premises to be done and shall be entitled to recover all costs and expenses of such removal and restoration from TENANT, or (2) may retain all such improvements as property of CITY without compensation to TENANT. Provided, however, that upon termination of the Lease Agreement, TENANT, within such same sixty (60) day period, shall have the right to sell the improvements upon the Leasehold to a successor tenant.

In the event that any financial institution holds a security interest upon any of the improvements hereon, then, in the event of termination of this lease, whether by expiration of term or uncured default, the financial institution holding such security interest shall be allowed to remove any improvements upon which it holds a security interest within the times provided for the TENANT to remove improvements, as set forth in the first paragraph of this subsection.

F. Right to Inspect

The CITY or the CITY'S authorized agents shall have the right to enter upon the premises after written notice and during normal business hours, in order to inspect and determine whether TENANT is in compliance with the terms of this Agreement.

G. Utilities

TENANT agrees to pay for the use and maintenance of all utility services on the premises, including gas, electricity, telecommunications, water, sewer, and solid waste disposal, if applicable.

H. Indemnification

TENANT shall indemnify and hold the CITY harmless for any loss, damage, claim and/or liability occasioned by, growing out of, or arising or resulting from any default hereunder, or any tortious or negligent act on the part of TENANT, its agents, employees or customers, and TENANT hereby agrees to indemnify and hold harmless the CITY for any such loss or damage. The obligations hereunder shall survive the termination of this lease.

I. Environmental Warranty

TENANT warrants and agrees to neither cause nor allow to be caused any release of hazardous substances from, into, or upon the premises, nor to cause or allow to be caused any contamination by hazardous waste or substances with respect to the premises, and that, when applicable, TENANT shall comply with all local, state and federal environmental laws and regulations.

TENANT agrees to indemnify, defend and hold harmless the CITY, its employees, agents, members, successors and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorneys' fees and other fees, arising out of, or in any way connected to, any condition in, on or of the property, that is caused or allowed to be caused by TENANT, its agents, employees or customers. Such duty of indemnification shall include, but not limited to, damage, liability or loss pursuant to all local, state and federal environmental laws and regulations, strict liability and common law. The obligations hereunder shall survive the termination of this lease.

TENANT shall not be responsible under the Section for preexisting environmental hazards, if any.

J. Nondiscrimination

TENANT hereby agrees that the premises not be used in any manner that would discriminate against any person or persons on the basis of sex, age, physical or mental handicap, race, creed, religion, color, or national origin.

V. ASSIGNABILITY OF INTEREST

TENANT shall not assign the Lease, nor sublet the premise, nor any part thereof, without the prior consent of the CITY, which consent shall not be unreasonably withheld. No permitted sublease shall release TENANT from its obligations under this Lease.

VI. DEFAULT

If TENANT shall at any time be in default in the payment of rent due hereunder, or in the performance of any of the covenants or provisions of the Lease, and TENANT shall fail to remedy such default within thirty (30) days after receipt of written notice thereof from the CITY, then it shall be lawful for the CITY to enter upon the premises, and again repossess and enjoy the same as if the Lease had not been entered into, and thereupon this Lease and everything herein contained on the part of the CITY to be done and performed shall cease and terminate, without prejudice, however, to the right of the CITY to recover from TENANT all rent due up to the time of such entry. In the case of such default and entry by the CITY, the ownership of any and all

improvements on the premises shall vest in the COMMISSION (if the same shall not have already vested), and the CITY may re-let the premises for the remainder of TENANT'S term for the highest rent obtainable and may recover from TENANT any deficiency between the amount so obtained and the rent due hereunder from TENANT. If the default is in the performance of any of the covenants or provisions of this Lease, other than failure to timely pay the rental called for herein, and, by the nature of the default, it cannot reasonably be cured within a thirty (30) day period, so long as TENANT commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then TENANT shall have a further reasonable time to complete such cure, not to exceed and additional sixty (60) days after the expiration of the initial thirty (30) day cure period.

VII. MISCELLANEOUS PROVISIONS

It is further mutually understood and agreed as follows:

A. Notice

TENANT shall, at the commencement of this Lease provide the CITY lease administrator with the name and address of the person to whom notices by CITY to TENANT under this Lease are to be addressed. Notice addressed to such person shall constitute notice to TENANT until such time as TENANT provides the CITY'S lease administrator, in writing, the name and address of some other person to whom notice to TENANT shall be directed. All notices hereunder to CITY shall be addressed as follows:

Lease Administrator
City of Miles City
P.O. Box 910
Miles City, MT 59301

Any notice hereunder shall be in writing and may be delivered personally or by registered or certified mail with postage prepaid. Notice shall be deemed complete when deposited in a United States Post Office addressed to the contact person as set forth above.

B. Oral Modification Prohibited

No modification or alteration of this Agreement shall be valid unless evidenced by a writing signed by the parties hereto.

C. Attorneys' Fees and Costs

Should either party incur any costs or expenses, including reasonable attorney fees, in enforcing this Agreement or any provision hereunder, or protecting its rights and interest hereunder, the other or unsuccessful party shall reimburse the prevailing party upon demand.

D. Binding Effects

This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto; provided, however, that no assignment by, from, through or under TENANT in violation of the provisions

E. Time of the Essence

Time is the essence of this Agreement and all obligations of this Agreement shall be performed on or before the dates set forth herein.

F. Incorporation of Recitals

The Recitals set forth above are incorporated into the terms and conditions of this Agreement and made a part thereof by reference.

G. Executed Copy

Each of the parties hereby acknowledges receiving an executed copy of this Agreement.

H. Interpretation

This Agreement shall be governed and construed in all respects according to the laws of the State of Montana.

I. Warranty of Authority

Each party executing this Agreement represents and warrants to the other party, that this person signing this Agreement on behalf of such party, has full legal authority to bind the party to the terms set forth in this Agreement, that all actions necessary to invest said person with such authority have been taken by the party, and that the signature of said person upon this Agreement binds the party to the terms and conditions of this Agreement.

J. Contingent Upon Arrival of the City Council of City of Miles City

This Agreement shall not become effective until a resolution approving this lease has been adopted by the affirmative vote of two-third of the membership of the City Council of the City of Miles City, pursuant to §7-8-4201(2) MCA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2014.

CITY OF MILES CITY

By: _____
MAYOR

ATTEST:

CITY CLERK

**STATE OF MONTANA, acting through its
MONTANA DEPARTMENT OF TRANSPORTATION**

By: _____

Title: _____

STATE OF MONTANA)
) ss
COUNTY OF CUSTER)

This instrument was acknowledged before me on the _____ day of _____, 2014 by C.A. Grenz in his capacity as Mayor of the City of Miles City.

Notary Signature

(Printed Name of Notary)
Notary Public for the State of Montana
Residing at Miles City, Montana
My Commission Expires: ____/____/____

STATE OF MONTANA)
) ss
COUNTY OF CUSTER)

This instrument was acknowledged before me on the ____ day of _____, 2014 by _____, as authorized agent of THE STATE OF MONTANA, acting through its MONTANA DEPARTMENT OF TRANSPORTATION.

Notary Signature

(Printed Name of Notary)
Notary Public for the State of Montana
Residing at Miles City, Montana
My Commission Expires: ____ / ____ / ____

RESOLUTION NO. 3699

A RESOLUTION PURSUANT TO §16-48 OF THE MILES CITY CODE OF ORDINANCES, ESTABLISHING DATES, TIMES AND LOCATIONS FOR DISCHARGE OF FIREWORKS WITHIN THE CITY LIMITS FOR THE YEAR 2014.

WHEREAS, §16-48 of the Miles City Code of Ordinances permits the City Council to establish special times and places at which fireworks may be discharged within the city limits of the City of Miles City;

AND WHEREAS, the City Council desires to establish certain locations and certain times and dates at which fireworks may be discharged within the city limits during the 4th of July holiday period in 2013;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

1. The discharge of fireworks shall be allowed between the hours of 10:00 a.m. and 10:00 p.m. on Thursday, July 3, 2014, 10:00 a.m. and midnight on Friday, July 4, 2014, and 10:00 a.m. and 10:00 p.m. on Saturday, July 5, 2014 only at the following locations within the City of Miles City, to-wit:

Bender Park , Riverside Park
Jaycee Field, Tedesco Field

2. All fireworks so discharged shall comply with all State of Montana and federal regulations.

3. The discharge of fireworks within the city limits, or upon any property of the City of Miles City, on any other dates, at any other times, or at any other locations is prohibited and such prohibition shall be enforced by the Miles City Police Department.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS _____ DAY OF _____, 2014.

C. A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3700

A RESOLUTION AUTHORIZING THE OUTLAW BASEBALL CLUB TO PLACE A CONCRETE MONUMENT AT TEDESCO FIELD IN HONOR OF THE TEDESCO FAMILY AND SPONSORS OF TEDESCO FIELD.

WHEREAS, the Outlaw Baseball Club has requested permission to place a concrete monument at Tedesco Field in honor of the Tedesco family and sponsors of Tedesco Field;

AND WHEREAS the City of Miles City has deemed the placement of such monument to be appropriate and in the best interests of the City.

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The Outlaw Baseball Club is hereby authorized to place a monument at Tedesco Field in honor of the Tedesco family and sponsors of Tedesco Field.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 24th DAY OF JUNE 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3701

A RESOLUTION ADOPTING FINDINGS OF FACT AND APPROVING THE AMENDED PLAT FOR THE PURPOSE OF BOUNDARY LINE RELOCATION OF LOTS 17-20 IN BLOCK 3 OF THE HIGHLAND PARK ADDITION TO THE CITY OF MILES CITY

WHEREAS, Karl & Joyce Muri have requested that the City of Miles City approve a boundary line relocation involving Lots 17 through 20 in Block 3 of the Highland Park Addition in the City of Miles City, Custer County, Montana;

AND WHEREAS, the Board of Adjustment has adopted City of Miles City Staff's report as findings of fact, and have recommended the approval of the foregoing boundary line relocation to the City Council;

AND WHEREAS, the City of Miles City is authorized to approve the relocation of common boundary lines for five or fewer lots within a platted subdivision pursuant to Section 76-3-207(1)(d), MCA.

NOW THEREFORE BE IT RESOLVED by the City Council of Miles City, Montana, as follows:

It does hereby adopt the Final Staff Report attached hereto as Exhibit "A" as findings of fact, and based on such findings of fact, approves the "Amended Plat of Lots 17, 18, 19 and 20, Block 3, Highland Park Addition" creating Lots 17-A and Lot 20-A within said Block 3 of the Highland Park Addition, said amended plat being attached hereto as Exhibit "B."

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS ____ DAY OF _____, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Staff Report for City Council
File #BLA-2014-04
Muri Common Boundary Line Adjustment
June 24, 2014

I. GENERAL INFORMATION

A. Project Applicant

Applicant/Owner: Karl & Joyce Muri
1110 Palmer Street
Miles City, MT 59301

Technical Assistance: Quinn Wright
Dowl HKM
713 Pleasant
Miles City, MT

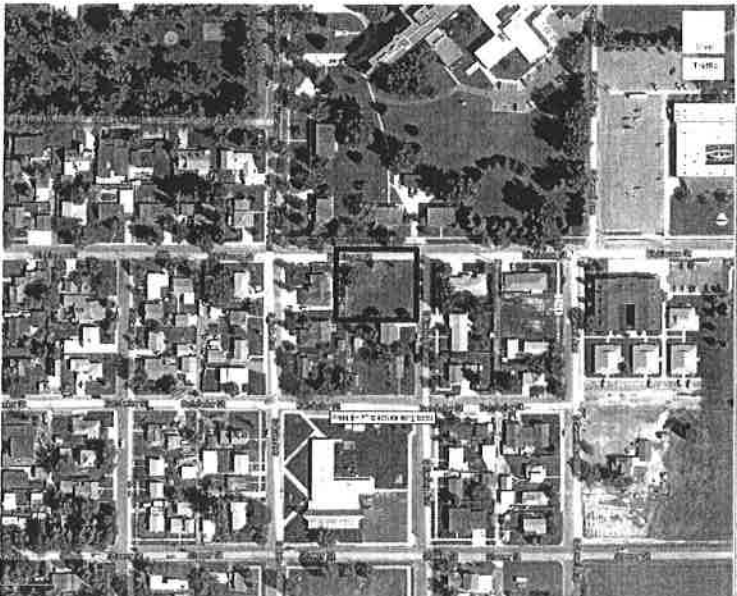
B. Project Description

Aggregation of 4 lots in order to create 2 lots and relocation of common boundary for five or fewer lots within a platted subdivision. This request is exempt from subdivision review per MCA 76-3-207(1)(d) and 76-3-207(1)(f), but is subject to survey requirements and zoning regulations. The aggregation will combine lots 17 through 20, currently oriented east-west. The proposed new boundary line will create 2 new lots, oriented north-side.

C. Legal Description of Subject Property

NE ¼ NW ¼ SE¼ of Sec 34, T8N, R47E, Block 3, Lots 17 - 20, Highland Park Addition

D. Location - See Attachment "A", amended plat



E. Boundary Adjustment Detail

	Current (in square feet)	Proposed (in square feet)
<i>Total Area:</i>	13,032	No change
Lot 17-19	9,225	
Lot 20	3,813	
Lot 17-A		6,513
Lot 20-A		6,519

Easements:

An existing Utility Easement is located on the south property line of the new Lot 17-A, providing for sewer utilities to new Lot 20-A.

F. Land Use & Zoning

Current Land Use: Lot 20-A is currently vacant and a single-family home is under construction on Lot 17-A.

Proposed Land Use: Two single family residences

Current Zoning: Residential A

G. Surrounding Land Use & Zoning

General Description: The subject property consists of vacant land occupying four lots, oriented east-west. The proposed boundary adjustment will divide the four lots from the north to south, creating 2 new lots that are oriented north-south.

Surrounding Uses

The subject property is surrounded by residential neighborhoods. The VA Medical Complex is located across Dickinson St to the north; however, that area is zoned Residential A.

Surrounding Zoning

Residential A

II. EXAMINATION [21-17(f)(2)(b-d)]

Stated Purpose of Boundary Line Adjustment

The property is currently comprised of four tracts of record: Lots 17, 18, 19, and 20 of Block 3 of the Highland Park Addition. The purpose of the survey is to relocate the common boundaries between the lots and aggregate the four lots into two lots using the exemptions found in MCA 76-3-207(1)(d) [for five or fewer lots within a platted subdivision, the relocation of common boundaries] and (f) [aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel(s) are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.] The current property owners intend to construct single family homes on the newly created lots and sell Lot 20-A.

Exemption from Subdivision Review

This is a boundary line adjustment within a platted subdivision. Per MCA 76-3-207(1)(d) and (f), this proposal is exempt from subdivision review.

Conformance with Subdivision Regulations 21-18(1)

This proposal conforms to the Code of Ordinances of Miles City Sec 21-17 (Exemption from Review); Montana Code Annotated Title 76 Chapter 3-Subdivisions; and the Administrative Rules of Montana Surveying Requirements, 24.183.1107.

Compliance with Local Zoning 24-11, 24-59 & 24-62

New Non-Conformities/Variances Required

A single-family home is currently being constructed on Lot 17-A. The sideyard setback on the western property line is 7.5 feet. The owner was granted a 3 foot variance for this setback and a 5 foot variance in anticipation of construction of a single family home on Lot 20-A. The Board of Appeals granted these variances on April 24, 2014. See Attachment "B".

III. DETERMINATION

Staff has determined that the use of the exemption is not intended to evade the purposes of the MSPA and complies with the statutes and criteria set forth in the Code of Ordinances of Miles City. Karl and Joyce Muri currently own the four lots and are requesting the aggregation of land and the relocation of existing boundary lines in order to facilitate the sale of Lot 20-A, as shown on the Amended Plat. There is no intended change in the current usages.

IV. RECOMMENDATION

Staff recommends that the City Council adopt this report as findings of fact and approve the proposed Amended Plat.



**MINUTES OF THE
BOARD OF APPEALS MEETING**

DATE OF MEETING: April 24, 2014

TIME: 5:00 p.m.

PLACE: City Hall Conference Room

MEMBERS PRESENT: Rock Wankel - Chairman
Muriel Rost, David Larsen, Dustin Sloan & Cameron Duffin

OTHERS PRESENT: See sign in sheet and Building Inspector Hirsch

Chairman Wankel opened the meeting, noting a quorum was present.

TO CONSIDER: Owner: Rob & Carrie Pederson
Address: Box 1593
Job Site Address: 308 Washington
Legal Desc: Original Townsite
Block: 17 Lots: 2 & 3
Request: "Land Use Variance" to place a mobile home in a residential zone.

DISCUSSION: Hirsch noted the property was posted and received no protests or concerns. The lot size is adequate and have addressed the flood plain issues.

Ms Pederson noted they own the lot and wanted to place a mobile home. She also reported there were several other mobile homes located in this area.

Board member Duffin inquired about the flood plain elevations.

ACTION: Larsen moved to approve the request, as presented, second by Duffin.

VOTE: Request approved 5 - 0.

TO CONSIDER: Owner: Karl Muri
Address: 1110 Palmer

Job Site Address: Corner of Dickinson & S. Earling
Legal Desc: Highland Park Addition
Block: 3 Lots: 19 & 20
Request: Setback variances. Wants to construct 2 new homes.

DISCUSSION:

Hirsch noted the property was posted and received no protests or concerns. Hirsch reported one of the homes would face Dickinson and the other towards South Earling with adequate space to accommodate both patio homes.

Mr. Muri reported the home on Dickinson needs to be placed close to the alley and is requesting a 3 foot variance and a 5 foot variance on South Earling. He noted if he didn't receive the variances for both homes they would look like pre-built homes and wants them to look nice. Muri contended this was the perfect location to construct these patio homes (close to stores, the clinic and hospital).

Board member Sloan needed clarification on the setback requirements.

ACTION:

Rost moved to approve the requests, as presented, second by Larsen.

VOTE:

Request approved 5 - 0.

TO CONSIDER:

Owner: Ron Hathaway
Address: PO Box 14
Job Site Address: 217 N. Prairie
Legal Desc: Miles Addition
Block: 1 Lots: 31 & 32
Request: Side yard variance & lot size.

DISCUSSION:

Hirsch noted the property was posted and received no protests or concerns. He reported by subdividing the lots they become a non-conforming use, this happens often in the older part of town.

Mr. Hathaway reported he purchased the lot, next to his property, about 35 years ago. He was aware that he infringed onto the adjacent property by constructing a carport and installing a driveway, but he owned both lots. Now he would like to subdivide the properties and sell the residence. He had DOWL-HKM survey the lots, but wants to keep the carport and driveway on his side of the property. The garage would sell with the other residence.

Planner Dawn Colton explain that several non-conforming uses are attached to this property. She stated that if the existing garage is demolished, the easement goes away and another garage cannot be constructed in the same footprint. The lot that is to be sold would be continuing non-conforming use due to the lot size after the subdivision. A variance is needed for a 3' setback on the residence and 8' setback for the carport.

ACTION: Sloan moved to approve the request, as presented, second by Duffin.

VOTE: Request approved 5 - 0.

The next scheduled meeting was set for May 20, 2014. Chair Wankel asked Board member Sloan if he would like to remain on the board, his term is up this month. With reservations, Sloan decided to stay on for another term.

Dennis Hirsch
Building Inspector

DH/dll

