



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*July 8, 2014
7:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
 - a. City Council Meeting 6/24/2014
 - b. Public Safety Meeting 7/01/2014
2. SCHEDULE MEETINGS
3. REQUEST OF CITIZENS & PUBLIC COMMENT

Alex Burkhalter: Stower Commons - Affordable Housing for Miles City
4. APPOINTMENTS
5. PROCLAMATIONS
6. STAFF REPORTS
7. CITY COUNCIL COMMENTS
8. MAYOR COMMENTS
9. COMMITTEE RECOMMENDATIONS
10. BID OPENING - None
BID AWARDS - None
11. PUBLIC HEARINGS
 - A. **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"
 - B. **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"

- C. **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

12. **UNFINISHED BUSINESS**

- A. Council decision on Zoning Committee's recommendation to deny rezoning on behalf of Diamond J Construction, LLC, on property located at 722 Hwy 59 South, Tract "B," from Agriculture (AG) to General Commercial (GC)
- B. **ORDINANCE NO. 1273 (Second 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: (Second 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. 3697: (Second 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
- E. **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

13. **NEW BUSINESS**

- A. **ORDINANCE NO. 1272: (First Reading)** 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
- B. **RESOLUTION NO. 3678:** A Resolution Authorizing The City Of Miles City, Montana To Enter Into A Memorandum Of Understanding With Miles Community College For The Use Of Equipment And Facilities For Student Training And Community And Local Government Project Completion
- C. **RESOLUTION NO. 3703:** A Resolution Authorizing The City Of Miles City To Enter Into A Construction Contract With Century Companies, Inc., A Montana Corporation, For Paving In Maintenance Districts 204 And 205
- D. **RESOLUTION NO. 3704:** A Resolution Authorizing The City Of Miles City To Enter Into A Construction Contract With Century Companies, Inc., A Montana Corporation, For Replacement Of Curb, Gutter, Sidewalks And ADA Ramps At Triangle Park
- E. **RESOLUTION NO. 3705:** A Resolution Declaring The City Council Intent To Create A Miles City Downtown Urban Renewal District With Tax Increment Authority; Declaring The Existence Of Blight Within The Miles City Downtown Urban Renewal Area

- F. **RESOLUTION NO. 3707:** A Resolution Authorizing The City Of Miles City To Enter Into A Contract For Attorney Services With W. G. Gilbert, Iii, P.C., A Montana Professional Corporation, For Special Legal Services Related To Montana Water Court Case No. 42c-184.

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

CALL TO ORDER

The Regular Council meeting was held Tuesday, June 24, 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, Ken Gardner and Jerry Partridge. John Hollowell, Susanna Galbraith and Sheena Martin were excused.

Also present were City Attorney Dan Rice, Police Chief Doug Colombik, Public Works Director Scott Gray, Public Utilities Director Al Kelm, Historic Preservation Officer Connie Muggli, Grant Administrator/Planner in Training Dawn Colton, City Clerk Lorrie Pearce and Deputy City Clerk/Minute Recorder Connie Watts.

PLEDGE OF ALLEGIANCE

Mayor Grenz led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 6/10/2014

****** *Councilperson Ahner moved to approve the minutes of the Regular Council Meeting of June 10, 2014, seconded by Councilperson Brush and passed unanimously, 5-0.*

Finance Committee Meeting: 6/5/14

****** *Councilperson Gardner moved to approve the minutes of the Finance Committee Meeting of June 5, 2014, seconded by Councilperson Gardner and passed unanimously, 5-0.*

Finance Committee Meeting: 6/18/14

****** *Councilperson Gardner moved to approve the minutes of the Finance Committee Meeting of June 18, 2014, seconded by Councilperson Andrews and passed unanimously, 5-0.*

SCHEDULE MEETINGS

None

REQUEST OF CITIZENS & PUBLIC COMMENT

Mike Coryell, Executive Director, Miles City Economic Development Council

- Presented the Council with a plaque and letter of appreciation for the City's support over the years.
- Assured the Finance Committee that he is preparing the packet requested by that committee and should have it completed the beginning of next week.

APPOINTMENTS

None

PROCLAMATIONS

None

STAFF REPORTS

Connie Muggli, Historical Preservation Officer

- Distributed copies of a memo from Steve Zeier of Zeier Consulting regarding boundary selection for the proposed TIF District. He will be contacting Council members for their input. Because he has a fairly tight deadline, she asked that everyone respond to him as quickly as possible.
- The Brownsfields workshop was extremely successful. She thanked everyone who attended the workshop and also for being great hosts.

CITY COUNCIL COMMENTS

None

MAYOR COMMENTS

None

STANDING COMMITTEE RECOMMENDATIONS

Finance Committee: 6/18/14: Reject Century Paving Bid for new Curb and Gutter and Paving at Arrowhead Drive in MD #204

Public Works Director Gray said only one bid was received, and he felt that bid of \$256,000 was way too high. Many residents in that area concurred. He wanted to rebid, with an option for asphalt or concrete.

****** *Councilperson Ahner moved to approve the Finance Committee's recommendation to reject the Century Paving bid, seconded by Councilperson Andrews and passed unanimously, 5-0.*

BID OPENING

None

BID AWARDS

None

PUBLIC HEARINGS

A. Zoning Commission's Recommendation to DENY Rezoning on behalf of Diamond J Construction, LLC

City Attorney Rice, Attorney Gary Ryder, Attorney Mark Noennig and Mayor Grenz discussed whether or not to hold this public hearing tonight, as only five councilmembers were present. Although five is enough for a quorum, it would not be enough to vote to approve the zone change, as that would require a three-fourths vote of the entire Council, or six members. It was decided to hold the public hearing but delay vote of the Council until the next meeting. The Council would then issue written findings based on the outcome of that vote.

PROPOSERS COMMENTS:

Mayor Grenz opened the public hearing, calling for comments from proponents.

John Peila, 216 Silo Lane, Kinsey – Co-owner of Diamond J Construction: Mr. Peila said he was not aware that the City had jurisdiction outside of the City limits, which is why he did not contact the City when he began his project. The intended use for the property is an office and shop, and it will be a tidy and well-kept area. He noted they have received a permit from the State, a septic permit from the County, a storm water permit from the Montana Department of Environmental Quality and plans from a local engineering firm. Not once did they ever hear they might not be in zoning compliance.

Five years ago when they built their last shop on the south end, the City required them to install and pay for a larger water and sewer line to accommodate development in that area, which they did do. Now that they want to grow further on the south end, they are being told they cannot build there.

As far as the spot zoning argument, the largest contiguous neighbor next to him has recently filed for commercial zoning also, so it seems that spot zoning would not be an issue.

He said the company is willing to do whatever the City may request – covenants, annexation, planting trees as a buffer zone, etc. He said they have quite a bit of money in the project already, and would like to do whatever it may take to get the project moving forward.

Mr. Peila feels this project will be a benefit to the community. The company pumps millions of dollars a year into the community; they have about 40 employees who live and work in Miles City, and they want to be a part of the community and help it grow. He asked the Council to approve the zone change.

Emmett Willson, N. Saturday Drive: Co-owner of Diamond J, also asked the Council to approve the zone change and help them grow with Miles City.

Fred Wacker, 71 Dent Addition: Rancher and businessman in Miles City. He supports developing along Highway 59 South in a very orderly way. He gave a brief history of development along North Haynes, Horizon Park and Southgate Meadows, saying the community needs to stop the bickering and support the individuals and companies who want to grow and develop Miles City.

He noted that the City can only really grow one direction – south. There's a river on the north, a large government landowner on the west, and a large government landowner to the east.

Mr. Wacker felt there would have not been a problem to begin with if this community had a city/county planning board. There was one, but the City & County couldn't get along so it was dissolved. Our two local governments need to work hand in hand so this type of thing doesn't happen in the future.

He encouraged the Council to move forward, be progressive, support development and support these individuals who are trying to help Miles City grow. They are citizens of Montana, citizens of this community, and this community needs people like that – young people, who can make things happen.

Gardner, Miles City. Felt the Council was crippling these people who are trying to help Miles City grow. He asked for support for the zoning.

Howard Shawver, 46 Agate Drive, asked that the Council not cripple young businessmen who are willing to make things happen, and asked for its support for the zone change.

Brad Certain, 1022 Cottonwood: He is the largest landowner next to the Diamond J property, and said he is in favor of the zone change. The development south of town, which is the way it has to go, can be done properly with covenants. Miles City has already lost some businesses to Sidney and Glendive and is in the process of losing more, due to the lack of commercial property available. He asked for Council support of the zone change.

Monte Lesh, 182 River Run Drive. Mr. Lesh also said growth has to be to the south. He is a real estate broker and has received numerous requests for property outside of the two-mile zone so they can build what they need to build without having to deal with these zoning issues.

Other proponents encouraging the Council to pass the rezoning request were *Dave Gillette*, *Karl Drga*, *Robert Tooke* and a few others. These people were also concerned that without growth, young people in Miles City will not be able to stay, but will have to leave town to find jobs.

Mark Noennig, Billings, is the attorney for Diamond J. Mr. Noennig summarized the staff's report, noting that spot zoning was addressed and was deferred to the City Attorney, whose report was in the Council packet. The staff also concluded that changing the zoning would conserve the value of the building and would be an appropriate use of the land.

He said the City staff had recommended the zone change be passed, contingent upon the City Attorney's opinion on spot zoning. The Montana Supreme Court has found that just because one person is benefiting from the land doesn't necessarily mean it is spot zoning, because it must also be shown to be detrimental to the general public. He encouraged the Council to adopt its staff recommendations instead of the Zoning Commission's recommendations.

OPPONENTS COMMENTS:

Mayor Grenz then called for comments from opponents.

Gary Ryder, attorney for Barbara Todoroff, owner of one of the affected properties, agreed with Mr. Wacker that the County and the City need to work

together to smooth out the development issues. He noted that all the property owners within 150 feet have protested the rezone. Peila and Certain both have experience with real estate and he felt they should have known about the two-mile zone outside of the City. Mr. Ryder also said this tract was done without a subdivision review.

Sharon Oftedal, Hwy 59 South, was concerned about the Veteran's Cemetery, which she felt should not be adjacent to commercial property. She said the Zoning Board felt the petition to rezone should be denied, as do the majority of surrounding property owners, who do not desire the zone change.

Barbie Nicholas, 114 Wells, Richmond, Kentucky – As an owner of property along Hwy 59 South, she feels her land will be devalued if the rezone takes place.

Bill Oftedal, Hwy 59 South, said he is not against progress, as he has been involved in much progress over the years. However, this is not being done properly. He also said the City and County need to get together to “develop a road map” for development. As growth will naturally go south, new homes will also have to go south. This proposal, he feels, will mix homes and businesses.

ON REBUTTAL:

John Peila, responding to a comment from one of the opponents, said he is aware that the location on Truscott is not in good shape; however, that is why a bigger location is needed.

COUNCIL COMMENTS:

Councilperson Ahner: The request to rezone did not talk about annexation, but if the owners were to request annexation, then that irrevocable request would result in site plan review, building permits, plan for services, etc. There is currently no plan for development in this area. He felt that annexation into the City might change some of the factors such as orderly growth, provision of City services, etc. He was also concerned about the lack of process that occurred regarding this property, as is required by Montana Subdivision and Planning Act for subdivisions less than 160 acres.

Councilperson Gardner: Said he is pro-growth, but he felt it must be done in an orderly fashion. He would feel very uncomfortable supporting this rezone.

Councilperson Brush/County Commissioner Vicki Hamilton: Asked County Commissioner Vicki Hamilton, in the audience, how she felt about this issue. Commissioner Hamilton said the commissioners are pro-growth. She also said

the City/County Planning Board fell apart because the County was unfairly represented – only one County member was on the Board. The two-mile zone, she pointed out, is entirely in the City’s jurisdiction.

Councilperson Andrews: Said he will support the rezone because he believes it will be good for Miles City’s economic development. Mr. Andrews thinks the spot zoning issue will be resolved, and he feels the City needs to support economic development, not hinder it.

Councilperson Brush: Said she is for responsible growth. As the Truscott property is the only example she has regarding Diamond J’s management of its property, she will vote no on this issue.

** *Councilperson Andrews then moved to send the rezone to ordinance. The motion died for lack of a second.*

** *Councilperson Brush moved to set the matter for discussion and final vote at the next council meeting, seconded by Councilperson Andrews. On roll call vote, the motion passed by unanimous consent.*

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

Mayor Grenz opened the public hearing, calling for **comments from proponents.**

Erik Doeden, Paul Oakland John Peila, Marty Lesh and Karl Drga all expressed their support for the Ordinance.

Attorney Gary Ryder, who represents adjacent land owners, said they had no objection as long as the property remained residential.

Mayor Grenz then called for **comments from opponents.**

Dave Jewell, Southgate Meadows. Said he was concerned about a lack of a second exit out of Southgate.

Betty Jewell, Southgate Meadows, also expressed a concern about a lack of a second exit.

Mayor Grenz explained that a temporary emergency exit has been arranged for with Butch Krutzfeldt, who had years ago constructed a road toward

the east. He has agreed to allow the road to be used as an emergency exit in exchange for the City graveling it. A permanent exit will be looked at this fall. The State is in the process of making some decisions regarding the Broadus Interchange on South Haynes/Hwy 59 South, and nothing can be decided until that has been settled.

Hearing no more comments, the hearing was declared closed.

10 MINUTE RECESS – 8:37 pm TO 8:47 pm

** *Councilperson Gardner moved to suspend the rules to allow the Mayor to move up Ordinance 1268 on the agenda, as the attorney representing one of the parties needed to get back to Billings. The motion was seconded by Councilperson Andrews and, on roll call vote, the motion passed, 4-1, with Councilperson Ahner voting no.*

** *Councilperson Gardner moved to move "Unfinished Business, Ordinance 1268" up on the agenda to directly after the public hearing for Ordinance No. 1268, seconded by Councilperson Brush and passed unanimously, 5-0.*

** *Councilperson Andrews moved to adopt Ordinance No. 1268, read by title only and seconded by Councilperson Gardner.*

Councilperson Ahner noted the Zoning Commission recommended approval with the condition that a second exit be seriously considered. He said he cannot support this without a commitment for a second exit.

Mayor Grenz again explained that he has a commitment from Butch Krutzfeldt for a temporary emergency exit. Mr. Krutzfeldt owns a road toward the east of Southgate. He has agreed to allow the road to be used as an emergency exit in exchange for the City graveling it. He has also contacted the Fire Department, and the road has been approved by the Department as an emergency exit.

A permanent exit will be looked at this fall. The State is in the process of making some decisions regarding the Broadus Interchange on South Haynes/Hwy 59 South, and nothing can be decided until that has been settled.

* *On roll call vote, Councilperson Andrews' motion to adopt Ordinance No. 1268 was approved 4-1, with Councilperson Ahner voting no.*

- 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

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

- 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

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

- 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

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

- 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

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

- 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 N0.165 Fund 2400 For Electrical Utilities

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

- 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 N0.167 Fund 2420 For Electrical Utilities

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

Councilperson Ahner asked City Clerk Pearce if the third line under “Now, Therefore....” should be deleted, as it refers to Lighting District No. 165. Clerk Pearce will correct the resolution.

UNFINISHED BUSINESS

- 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

** *Councilperson Ahner moved to approve Resolution 3689, read by title only. The motion was seconded by Councilperson Brush and, on roll call vote, passed unanimously, 5-0. Resolution 3689 was adopted.*

- 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

** *Councilperson Ahner moved to approve Resolution 3691, read by title only. The motion was seconded by Councilperson Brush and, on roll call vote, passed unanimously, 5-0. Resolution 3691 was adopted.*

- 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

- **** *Councilperson Gardner moved to approve Resolution 3692, read by title only. The motion was seconded by Councilperson Brush and, on roll call vote, passed unanimously, 5-0. Resolution 3692 was adopted.*
- 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
- **** *Councilperson Brush moved to approve Resolution 3689, read by title only. The motion was seconded by Councilperson Gardner and, on roll call vote, passed 4-1. Resolution 3693 was adopted.*
- 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 N0.165 Fund 2400 For Electrical Utilities
- **** *Councilperson Brush moved to approve Resolution 3694, read by title only. The motion was seconded by Councilperson Gardner and, on roll call vote, passed unanimously, 5-0. Resolution 3694 was adopted.*
- 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 N0.167 Fund 2420 For Electrical Utilities
- **** *Councilperson Gardner moved to approve Resolution 3695, read by title only. The motion was seconded by Councilperson Brush and, on roll call vote, passed unanimously, 5-0. Resolution 3695 was adopted.*

NEW BUSINESS

- A. **RESOLUTION NO. 3702:** A Resolution Accepting The Dedication Of A Frisbee Golf Course At Milwaukee Park

** *Councilperson Brush moved to adopt Resolution No. 3702, read by title only. The motion was seconded by Councilperson Andrews and, on roll call vote, the motion passed 5-0. Resolution No. 3702 was adopted.*

Miles City Improvement, Inc. announced they will be sponsoring a Bar-B-Q on Sunday, July 27th at 4:00 and encouraged everyone to come down and see the improvements that they have completed in 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"

** *Councilperson Ahner moved to adopt, on first reading, Ordinance No. 1273, read by title only. The motion was seconded by Councilperson Brush and, after discussion and on roll call vote, the motion passed 5-0. The Ordinance was referred to the Public Services Committee.*

- 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"

** *Councilperson Ahner moved to adopt, on first reading, Ordinance No. 1274, read by title only. The motion was seconded by Councilperson Gardner and, on roll call vote, the motion passed 5-0. The Ordinance was referred to the Public Safety Committee.*

- D. **RESOLUTION NO. 3696:** A Resolution Adopting A Special Prosecution Policy For The City Of Miles City, Montana

** *Councilperson Gardner moved to adopt the Resolution, read by title only. The motion was seconded by Councilperson Brush and, on roll call vote, the motion passed 5-0. Resolution No. 3696 was adopted.*

- 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

****** *Councilperson Ahner moved to adopt, on first reading, Resolution No. 3697, read by title only. The motion was seconded by Councilperson Partridge and, on roll call vote, the motion passed 5-0. The Ordinance was referred to the Finance Committee.*

F. **RESOLUTION NO. 3698:** A Resolution Authorizing The Miles City To Enter Into A Gravel Stockpile Lease Agreement With The Montana Department Of Transportation

****** *Councilperson Brush moved to adopt Resolution 3698, read by title only and seconded by Councilperson Gardner.*

Director Gray explained that there is a limited amount of gravel that can come out of there because the county road is on one side and the old dump is on another side; the gravel is mostly for the City to use for maintenance.

On roll call vote, the motion passed 5-0. Resolution No. 3698 was adopted.

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

****** *Councilperson Ahner moved to adopt Resolution 3699, read by title only and seconded by Councilperson Gardner.*

Councilperson Brush asked the public to please clean up their fireworks debris in the parks.

On roll call vote, the motion passed 5-0. Resolution 3699 was adopted.

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

****** *Councilperson Ahner moved to refer the resolution to the Public Services Committee for review and recommendations and whether it is consistent with our donation policy. The motion was seconded by Councilperson*

Gardner and, on roll call vote, the motion passed 5-0. Resolution No. 3700 was referred to the Public Services Committee.

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

*** Councilperson Brush moved to adopt Resolution 3701, read by title only. The motion was seconded by Councilperson Ahner and, on roll call vote, the motion passed 5-0. Resolution 3701 was adopted.*

Resignation of Fire Chief Dale Berg

Mayor Grenz noted that Fire Chief Dale Berg has tendered his resignation after 20 years of service. He said he wanted to thank Chief Berg for his service, and feels that the Fire Department has a better working relationship with the Rural Fire Department and the City Administration than it has had in many years, thanks to Chief Berg. He will be missed.

ADJOURNMENT.

*** Councilperson Brush moved to adjourn the meeting, seconded by Councilperson Ahner and passed unanimously, 5-0.*

The meeting was adjourned at 9:35 p.m.

C.A. Grenz, Mayor

**Lorrie Pearce
City Clerk**

Public Safety Committee Meeting July 1, 2014

The Public Safety Committee met Tuesday, July 1, 2014, at 6:00 pm in the City Hall Conference Room. Present were Committee Members Sue Galbraith, Jerry Partridge, Roxanna Brush and Mark Ahner. Also present were Mayor C.A. Grenz, Police Captain Mark Reddick and Committee Recorder/Deputy City Clerk Connie Watts.

Committee Member Ahner brought the meeting to order.

ELECTION OF CHAIRPERSON

Committee Member Ahner opened the floor for nominations.

****** *Committee Member Galbraith moved to nominate Committee Member Ahner for chairperson, seconded by Committee Member Brush.*

Committee Member Ahner asked for other nominations; there were none.

****** *Committee Member Galbraith moved the nominations cease, seconded by Committee Member Brush. The motion passed by unanimous consent.*

***** *Committee Member Galbraith's motion to nominate Committee Member Ahner then passed unanimously.*

REQUESTS OF CITIZENS

Mayor Grenz noted that there are some intersections in town where the view is obstructed by trees and/or bushes. Chairperson Ahner said he would address that at the next meeting.

REVIEW OF 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"

Captain Reddick said the City has seen a significant increase in DUI's, resulting in an increase in costs to the City for conducting blood tests at a medical facility when the individual refuses to provide a breath and/or blood test. It takes 4 to 5 hours to obtain search warrants, process the DUI and prepare for court, as well as the actual time spent in court (minimum of two hours overtime.)

Regarding questions about whether the Breathalyzer is frequently broken down, he noted that the Intoxilyzer used by the Department is extremely accurate and has never "broken down." Although he admitted there have been some legal challenges, it has always held up scientifically.

Chairperson Ahner noted the proposed ordinance allows the judge no discretion in suspending, waiving or deferring the fines. He wondered how Judge Homme felt about this and whether it was unusual language.

Captain Reddick said the ordinance was almost an exact match of the ordinance in Missoula, and City Attorney Rice had approved it before it was submitted to the Council and the Public Safety Committee. He will, however, visit with the Judge about it before the next Council meeting.

Committee Member Brush wondered whether the fine of \$300 actually covers the City's costs, and whether it should be higher. After discussion, the Committee decided that, with the fine of \$685 for a DUI conviction and the \$300 fine in this ordinance, it should be sufficient. Captain Reddick said he will monitor the costs and request a review if he feels it is necessary.

*** Committee Member Galbraith moved to recommend to the Council adoption of Ordinance No. 1274, seconded by Committee Member Partridge and, on roll call vote, passed unanimously, 4-0.*

ADJOURNMENT

*** Having no more business to come before the Committee, Committee Member Brush moved to adjourn the meeting, seconded by Committee Member Partridge and passed unanimously, 4-0. The meeting was adjourned at 6:30 p.m.*

Respectfully Submitted:

Public Safety Committee Chairperson:

Connie L. Watts, Recorder

Chairperson Mark Ahner



**Affordable
Family Living**



Unit Mix:

- ✓ 3: 1 Bedroom, 1 Bath - 700 sq ft
- ✓ 18: 2 Bedroom, 2 Bath - 1,000 sq ft
- ✓ 9: 3 Bedroom, 2 Bath - 1,260 sq ft

Monthly Rental Rates:

- ✓ 1 Bedroom - \$345 to \$465
- ✓ 2 Bedroom - \$450 to \$610
- ✓ 3 Bedroom - \$515 to \$750

Max Family Income:

- ✓ 1 Person Household - \$24,420
- ✓ 2 Person Household - \$27,900
- ✓ 4 Person Household - \$34,860

Unit Amenities:

- ✓ Frost Free Refrigerator
- ✓ Range - Stove/Oven
- ✓ Dishwasher
- ✓ Disposal
- ✓ Microwave
- ✓ Washer Dryer in Unit
- ✓ Air Conditioning
- ✓ Blinds
- ✓ Master Bedroom Ceiling Fan
- ✓ Neutral Paint Colors
- ✓ Hardwood Cabinets
- ✓ Large Closets

Project Amenities:

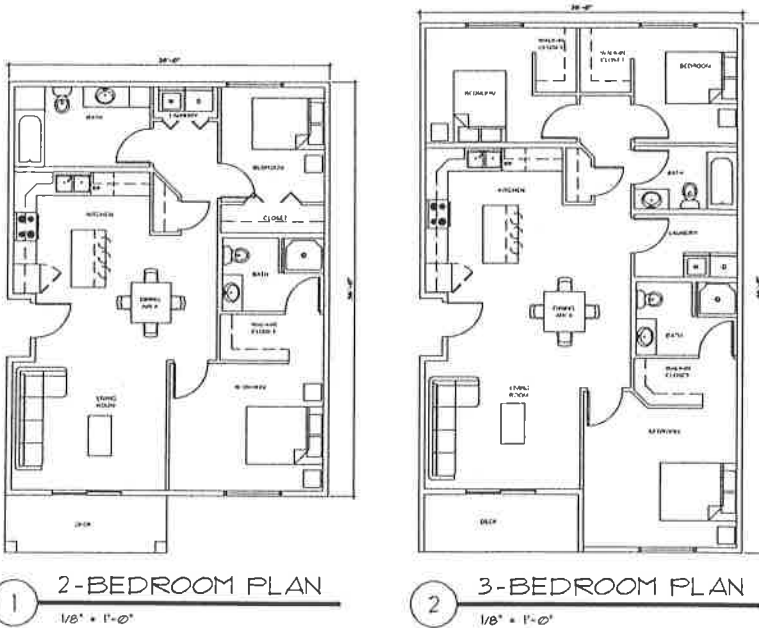
- ✓ On Site Managers Office
- ✓ Community Room w/ Kitchen
- ✓ Covered Parking
- ✓ BBQ Area w/ Tables

Stower Commons

MILES CITY, MONTANA

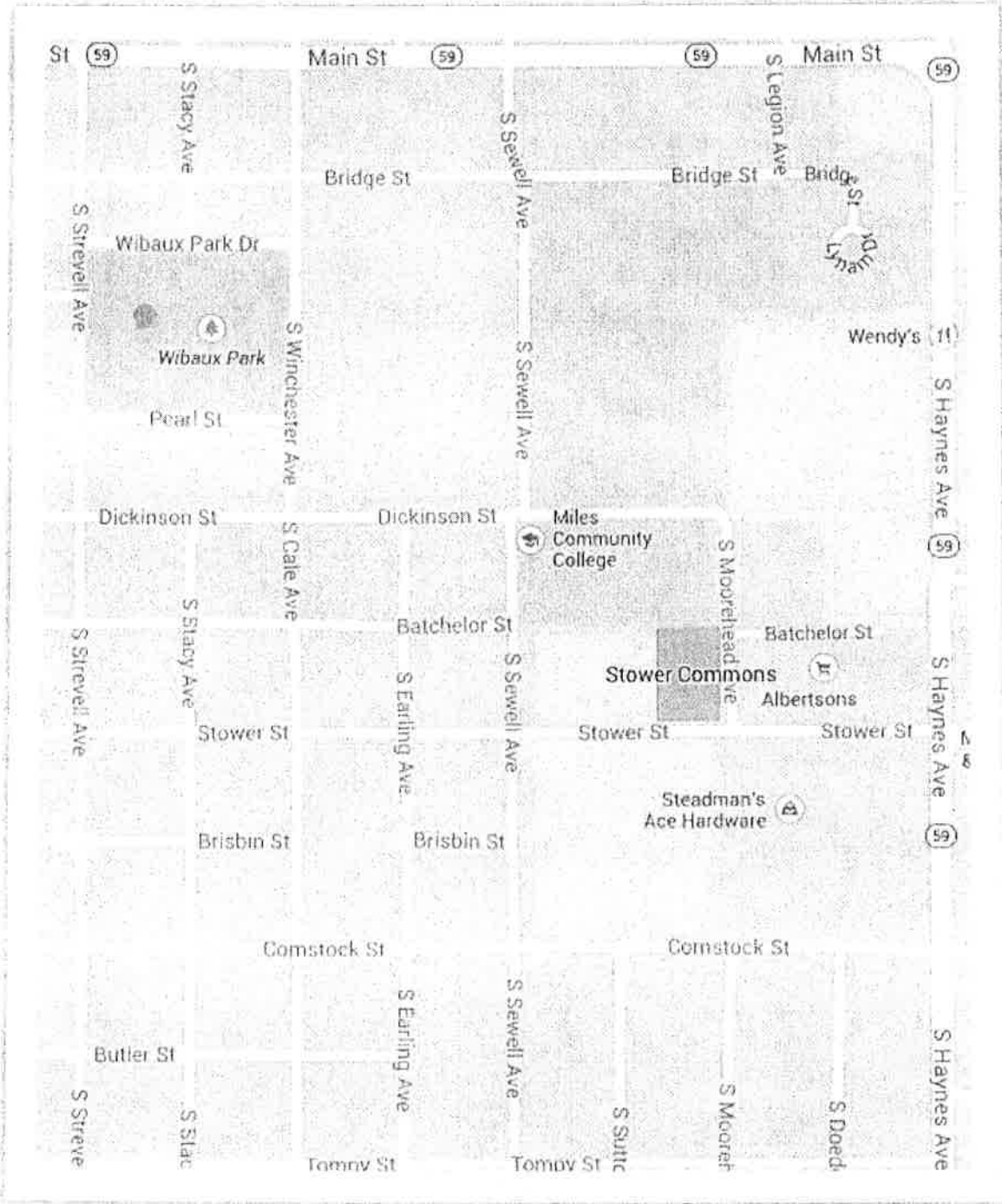
Stower Commons is designed with luxury and class for families in Miles City. This affordable rental property will be conveniently located near schools, parks, shopping, restaurants, medical services and job opportunities.

Just one block off S. Haynes Ave, behind Albertsons on Stower, the apartment community will provide 30 one, two and three bedroom homes with covered parking for a reasonable price.



Stower Commons

Miles City, Montana



Project Location

Introduction

- Alex Burkhalter
 - 10 Years Experience with HTC
 - 14 Properties
 - 561 Apartment Homes
 - Montana, North Dakota, Wyoming
- Housing Solutions LLC
 - Formed in 2012
 - 3 Properties (Kalispell, Missoula, Glendive)



Stower Commons

Projects



Union Place, Missoula, MT



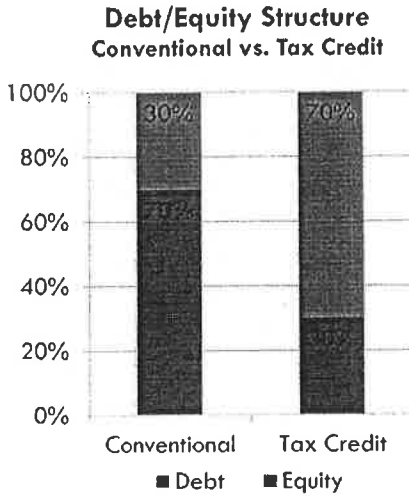
Depot Place, Kalispell, MT



Stower Commons

Housing Tax Credits

- Federal Program, enacted 1986
- For Households at or below 60% AMI
 - Custer County Income Limit @ 60% AMT
4 people - \$34,860
- 90% of New Affordable Rental Housing created with HTC's
- Success comes from Public/Private Partnership
- Assistance with Construction and Development Costs, no rental assistance
 - By creating tax incentive for investors, equity is increased and debt is lowered.
 - Lower debt servicing allows lower rents.



Stower Commons

Montana Board of Housing

- State Agency designated by the IRS to administer the the program
- 7 person board – appointed by Governor
- Monitors projects under development and throughout operations
- Enforcement of remedies against non-compliant projects
- Tasked with awarding the Housing Tax Credits annually
- Publish the Qualified Allocation Plan
- *Very strong demand for this valuable resource*



Stower Commons



STOWER COMMONS



HOUSING
SOLUTIONS

Miles City, MT

Unit Features

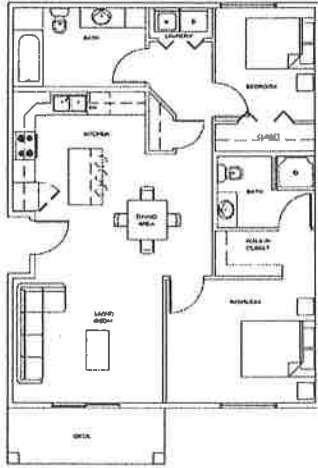
- 30 Apartment Homes
 - 3 One Bedroom, One Bath
 - 18 Two Bedroom, Two Bath
 - 9 Three Bedroom, Two Bath
- Individual Amenities
 - all standard appliances
 - dishwasher, microwave/hood combo, garbage disposal, double sink, hardwood cabinets
 - In unit washer/dryer, machines included!
 - Patio or Balcony
 - Forced air heating, air conditioning, programmable thermostats, blinds and ceiling fans



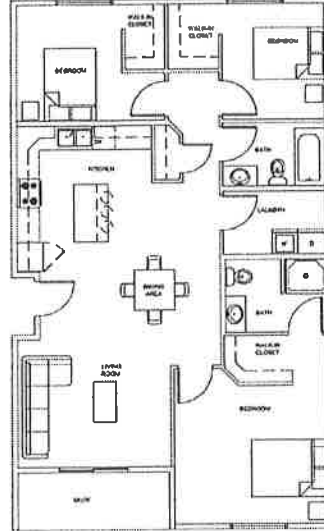
Stower Commons

Floor Plans

2 Bedroom – 1,000 sq ft



3 Bedroom – 1,260 sq ft



Stower Commons

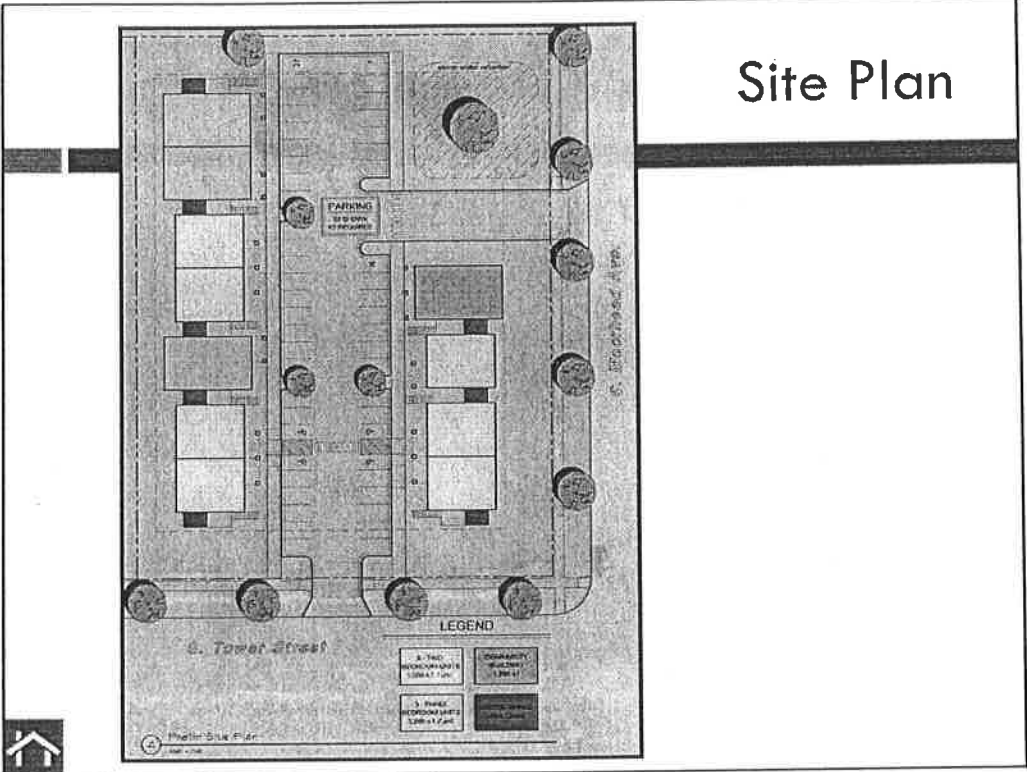
Building & Amenities

- ❑ Community Room with Kitchen
- ❑ Onsite Manager's Office
- ❑ Covered Parking
- ❑ Children's Play Area
- ❑ Covered Parking
- ❑ Energy & Green Items
 - ❑ Photovoltaic Panels
 - ❑ LED Exterior Lighting
 - ❑ Motion sensing, dimmable switches
 - ❑ Smoke Free Policy
 - ❑ Project Location, walk able!

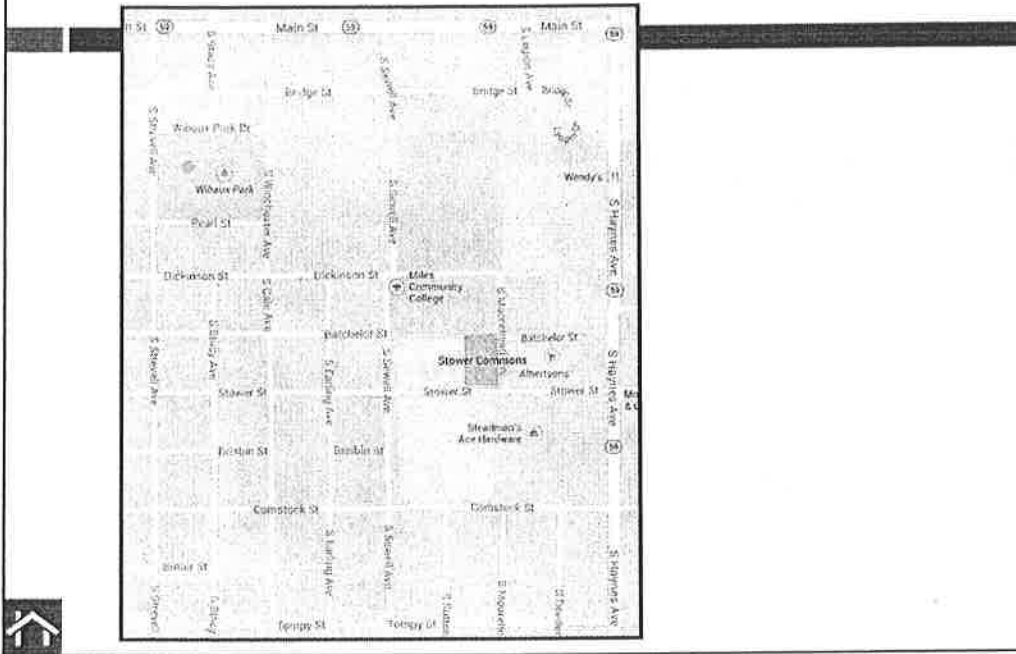


Stower Commons

Site Plan



Project Location



Affordability

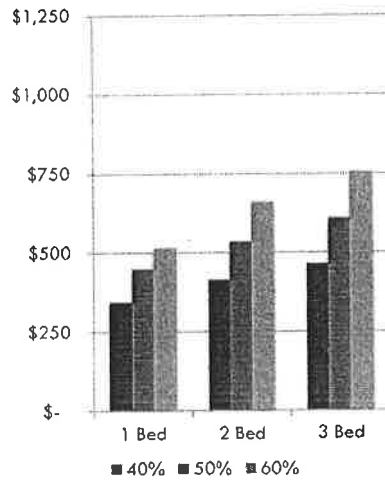
Tenant Income Limits

AMI	1 Person	2 Person	4 Person	6 Person
40%	16,280	18,600	20,335	26,960
50%	20,350	23,535	26,145	30,330
60%	24,420	27,900	34,860	40,440

4 Person 100% AMI

AMI	4 Person
Custer County	53,800
National Non-Metro	52,500

Monthly Rental Rates



Stower Commons

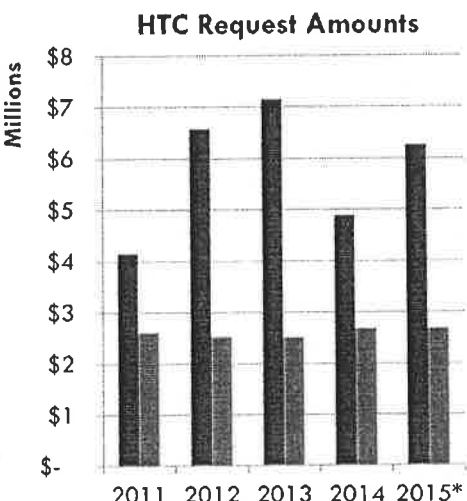
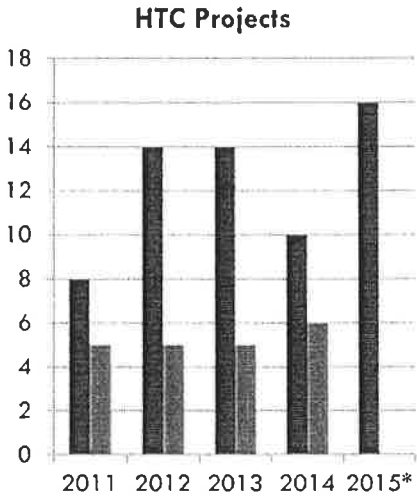
Development Timeline

- Application and Award
 - ▣ Submit Letter of Intent – May 12th, 2014
 - ▣ Board Discussion of Projects – June 9th
 - ▣ Complete Application Due – August 25th
 - ▣ Presentations to Board of Housing – September 15th
 - ▣ Projects Selected for Awards – November 17th
- Development
 - ▣ Complete Plans & Construction Start – April 2015
 - ▣ Construction Complete – March 2016



Stower Commons

Housing Tax Credits in Montana



Stower Commons

■ Application ■ Award

Miles City and Housing Tax Credits

- "Geographical Distribution"
- No New Construction HTC in Miles City, ever
- Last Award was 2006
 - Cornerstone Apartments
 - Acquisition/Rehab
- Miles City expected to be very competitive
 - Low Vacancy Rates 1-2%
 - Long waiting lists at existing affordable properties
- Bakken



Stower Commons

Miles City and Housing Tax Credits

- Ways the City can help position the project for to compete successfully



Stower Commons

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. 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

CITY COUNCIL – MILES CITY

In Re the Zoning Change

*

PROPOSED

*

FINDINGS OF FACTS

Petition of Diamond J. Construction, LLC

*

AND

*

CONCLUSIONS OF LAW –

*

OPPONENTS

A public hearing on this matter was held before the City council on June 24th, 2014. The Zoning Commission held a previous public hearing on this matter on April 24th, 2014 and took additional comments on May 7th, 2014.

The Zoning Commission submitted a written recommendation to the council recommending a denial of the change.

Zoning Commission members, Nancy Mitchell and Muriel Rost, provided a written basis for the recommendation.

With that background, the City council of Miles City submits the following Findings of Facts and Conclusions of Law.

FINDINGS OF FACTS - BACKGROUND

1. Diamond J, LLC, is a local construction contractor, John Peila, owner. Diamond J started construction for a building on property zoned agricultural south of town in February of 2014.

They submitted an application for a zoning change was submitted to the City in March of 2014.

2. Diamond J Construction is a concrete and excavation contractor, and the building being constructed was approximately 11,800 square feet in size and used as a shop to store supplies and maintain equipment, in addition to office space. The exterior would contain some

landscaping and a parking area for vehicles. The proposed use would be significantly different than the prevailing use in the area.

3. The property where the building is being constructed is located on a tract of property located approximately two (2) miles south of Miles City on Highway 59 South. The land was recently subdivided. It did not go through the required subdivision review. The tract where the construction is taking place is designated, Tract B of the Colvin Minor Subdivision. The land is approximately twenty-eight (28) acres.

4. The site plan for the property shows two (2) proposed buildings. Diamond J purchased the property from developer, Brad Certain, who owns Tract A of the Colvin Minor Subdivision. Tract C and D of that subdivision are owned by Susan Colvin of Great Falls, Montana and Mary Jo Colvin Kane of Liberty Lake, Washington.

5. The proponent had indicated at the May 28th, 2014 zoning hearing on the Certain property that he disagreed with the Zoning Commission's recommendation on this property, but had other suitable property elsewhere. He indicated he would hold on to this property (Tract B) until he received sufficient value.

WRITTEN PROTEST

6. The staff for the City of Miles City prepared a list of property owners for the proposed Diamond J Construction rezoning request. With the exception of Diamond J, Brad Certain and his partner, Dave Gillette, all of the other affected landowners filed written protests. Those landowners are: Peggy Pyle, Susan L Colvin and Mary Jane Kane, Arlo D. Nansel, Barbara Ann Todoroff-Nicholas (now of Richmond, Kentucky), and Frank and Mary Jane Nelson of Miles City.

7. In addition to the written protest by the property owners, other surrounding property owners outside the 150 feet project zone objected to the re-zone.
8. At the April hearing, landowner, Bill Oftedahl, also in the construction business, cited a variety of factors involving the high number of trucks entering in and out of the property, off hours of operation, and the general nature of the construction contracting business. Oftedahl's construction business is located north of town in the vicinity of other construction and trucking businesses.
9. At the June hearing, Mr. Oftedahl also testified that there is a need for additional residential housing, and that given the current nature and use of the property, if re-zoning the area, that residential property is the more appropriate use.
10. In their written protests, the majority of the other property owners indicate that a change of zoning would adversely affect the value of their properties. Todoroff indicated that she would have difficulties in selling a current seven (7) acre tract she owns, located next to the Diamond J construction site. The current use of Todoroff's property is for a rural residential. Her mother has been residing there.
11. Property owner, Susan L. Colvin, indicates that her wish for the remaining forty-three (43) acres that her and her sister own would either remain in farm land or residential use.
12. Property owner, Ron Nansel, also believes that a construction business is not the best use of for their property as it should be considered for rural residential.
13. Property owner, Fred Nelson, currently has a residential property across the street from the property and believes his property value will decrease as a result of a re-zoning.
14. Other than developer Certain, none of the other surrounding property owners are in favor of the re-zone proposal.

GROWTH POLICY

15. The City of Miles City Growth Policy was adopted in April of 2008. Montana law requires that zoning changes comply with a growth policy. It is very comprehensive and addresses issues involving zoning, annexation, and development. Both the Growth Policy and the City of Miles City ordinance establish a two (2) mile jurisdiction outside the City limits as their jurisdiction. The Tract B of the proposed zoning change is within that two (2) miles jurisdiction. The City's two (2) mile zoning jurisdiction is clearly stated in the introduction of the Growth Policy and in several places in that document.

16. Mr. Peila's contention that he was unaware of the zoning regulations did not carry much persuasion with either the Zoning Commission or with the City council.

WATER AND SEWER SERVICES - ANNEXATION

17. The property in question does not currently have access to water and sewer services either through the Custer County Water and Sewer District or the City of Miles City. Diamond J owner, John Peila, stated that he would be willing to consider annexation as a condition of approval. There is no indication that Peila has taken any attempts to initiate annexation and meet the necessary legal requirements. The annexation issue is addressed on page 35 and 36 of the City of Miles City Growth Policy.

18. The determination is made that the proper steps for annexation have not been undertaken Diamond J Construction.

ZONING STANDARDS – GROWTH POLICY

19. The existing land is zoned as agricultural. The City of Miles City's Growth Policy addresses issues for consideration in zoning. The Zoning Commission will consider the needs of the Petitioner, neighboring property owners, and the greater community. Taking into account

both the legal effect of the protest, and the stated concerns of the neighboring property owners, the criteria for a zoning amendment has not been met by Diamond J, LLC. See page 36, Growth Policy.

SPOT ZONING

20. The City council of the City of Miles City adopts the determination submitted by the Zoning Commission and the recommendations of the City Planner, Dave DeGrandpre on the spot zoning issue. Allowing the zoning amendment as presented would amount to spot zoning, as it would be only to the benefit of one entity, Diamond J Construction, LLC and to the detriment of the surrounding landowners. There is no apparent benefit of this construction company to the surrounding landowners, and those landowners all had a reasonable basis to believe their value of property would be decreased. The applicants existing business site located in north Miles City on Truscott, gave concern to the other landowners.

CONCLUSIONS OF LAW

1. The City of Miles City has jurisdiction over the proposed re-zoning change. See MCA §76-2-310.
2. The City council has considered the guidelines and zoning regulations under MCA §76-2-304. Zoning regulations and amendments should be made in conformance with the Growth Policy, as adopted by the City in April, 2008. Such Growth Policy requires the consideration of the surrounding property owners and the best use of the land, as a criteria to approve re-zoning.

The City council determines that because of the strong opposition of the surrounding property owners, in addition to the lack of planning of this development, is an adequate basis for the denial of this re-zoning request by the proponent. See also Englin v. Board of County Commissioners, 2002 MT 115 48 P.3d 39 (2002).

3. In addition, there have been sufficient protests filed to require an affirmative vote to recommend re-zoning by 75% of the City council.

4. The council finally determines that in addition to the zoning criteria under statute, and zoning references in the Growth Policy, that to grant this proposed re-zone would be in violation of the restriction against spot zoning. See the DeGrandpre report, Zoning Commission recommendation, also Little v. Board of County Commissioners, 193 MT 334, 631 P.2d 1282 (1981), and Greater Yellowstone Coalition, Inc. v. Board of County Commissioners of Gallatin County, 2001 MT 99 25 P.3d 168 (2001).

FINAL RECOMMENDATION

Based upon the information contained and referenced above, the City council determines that the re-zoning change as submitted is DENIED.

DATED this ____ day of July, 2014.

Miles City council, President

Supreme Court of Montana.

**GREATER YELLOWSTONE COALITION, INC., a Nonprofit Corporation, and
Gallatin Wildlife Association, Inc., a Nonprofit Corporation, Plaintiffs and
Respondents, v. The BOARD OF COUNTY COMMISSIONERS OF GALLATIN
COUNTY, Defendant and Appellant, Duck Creek Properties, a Florida general
partnership, Defendant, Intervenor, and Appellant.**

No. 00-468.

Decided: June 7, 2001

Michael J. Lilly, Berg, Lilly & Tollefsen, P.C., for Duck Creek Properties, Inc. Susan B. Swimley, Attorney at Law, Bozeman, MT, for Board of County Commissioners of Gallatin County. Richard J. Dolan, Attorney at Law, Bozeman, MT, for Respondents.

¶ 1 The Plaintiffs, Greater Yellowstone Coalition and Gallatin Wildlife Association, brought this action in the District Court for the Eighteenth Judicial District in Gallatin County to set aside the Gallatin County Commissioners' decision to amend the zoning designation of real property owned by Duck Creek Properties. The District Court concluded that the zoning amendment was illegal spot zoning and voided the County Commissioners' zoning amendment resolution. The Gallatin County Commissioners and Duck Creek Properties appeal from the judgment of the District Court. We affirm the District Court.

¶ 2 The sole issue presented on appeal is whether the District Court erred when it concluded that the Commissioners' zoning resolution constituted illegal spot zoning.

FACTUAL BACKGROUND

¶ 3 Duck Creek Properties, a Florida general partnership, owns 323 acres of undeveloped land in the Hebgen Lake Zoning District in Gallatin County, Montana. The Zoning District, which was established by the Gallatin County Commissioners as part of an overall development plan, consists of 13,280 acres of land—5,444.8 acres (about 41%) privately owned and 7,835.2 acres (59%) owned by the public.

¶ 4 The Zoning District Ordinance established several zoning classifications for private property. The Land Use Map for the District originally designated the Duck Creek property as residential, limited to one single family unit per 10 acres (R-10). The R-10 zoning classification would have permitted a maximum 32 single family residences on the 323 acre parcel. However, Duck Creek Properties requested a zoning change from R-10 to Planned Unit Development (PUD), which permits more diverse uses at much higher densities. The reason given for pursuing the zoning change was to increase the development options and value of the property.

¶ 5 PUD designation permits any and all of the 23 uses set forth in section 14.2 of the Zoning Regulations for the Zoning District. These permitted uses include agriculture, bars, gasoline service stations, home occupations, laundromats, motels, multi-family dwellings, recreational facilities (golf courses, club houses, tennis courts, swimming pools, ski facilities), restaurants, retail stores, signs, single family dwellings, RV parks, storage unit facilities, guest houses, fire stations, marinas, and guest ranches. PUD zoning for the Duck Creek parcel would permit a maximum density of 969 single family residences or 1,615 multi-family residences or a combination of each. PUD zoning also requires that 35% of the land be dedicated to open space.

¶ 6 No commercial development currently exists on the Duck Creek parcel. The only commercial development in the area is Eino's Bar and a home taxidermy business located across Highway 191, which borders Duck Creek's properties on the west. To the east of Duck Creek is a narrow section of United States Forest Service land. Immediately to the east of that property is Yellowstone National Park.

¶ 7 On the southern side of Duck Creek are five residences that were developed before adoption of the Hebgen Lake Comprehensive Plan. These residences are on land zoned as COS-X, Existing Residential Certificate of Survey. A Montana Department of Highways facility is also located in this COS-X district. COS-X zoning permits limited development including: accessory uses, home occupations, signs, single family dwellings on each existing lot, temporary buildings for construction, and agriculture.

¶ 8 Eino's Bar, across Highway 191 from the Duck Creek parcel, sits on a small triangle of land zoned for commercial establishments. A small log home building operation and a State Highway gravel pit are across Highway 191 to the southwest of the Duck Creek parcel on land zoned for Resource Development District (RD). RD zoned areas permit timber growing and harvesting, agriculture, grazing, livestock breeding, and hunting on the premises.

¶ 9 The property to the north of the Duck Creek parcel is owned by the United States Forest Service. A cemetery on Forest Service land borders the Duck Creek parcel on the north side.

¶ 10 The property across Highway 191 to the northwest of the Duck Creek parcel is zoned Existing Residential (RX), which is intended to provide for residential buildings on lots within existing subdivisions recorded prior to adoption of zoning regulations. The RX zoning designation permits accessory uses, home occupations, signs, and one single family dwelling per existing lot. The taxidermy business is in a home within the RX district.

¶ 11 Finally, the property that borders Duck Creek to the northeast is zoned Residential District (R-10). This R-10 district is the only property in the neighborhood with the same zoning designation as Duck Creek.

¶ 12 The area around the Duck Creek parcel contains important wildlife habitat. The northern portion of the parcel along Fir Ridge serves as a corridor for grizzly bears traveling between Yellowstone National Park and the Madison Range. Evidence in the record estimates that 16 grizzly bears use the Duck Creek parcel as part of their habitat and another 17 grizzly bears have been found in adjacent habitat. These bears represent approximately 10% of the entire grizzly population in the Greater Yellowstone area. Elk, moose, and bison from Yellowstone National Park use the area in and around Duck Creek for winter range. Duck Creek itself is important trout habitat. Testimony indicated that increased density in development on the Duck Creek parcel will displace wildlife, affect habitat, lead to an increase in human-wildlife conflict, and degrade the water quality in Duck Creek.

¶ 13 The Hebgen Lake Development Plan lists six goals and objectives. The first goal of the Development Plan is stated as follows: "[s]cenic beauties and the natural environment are the greatest resources of the area and should be protected to the fullest extent possible while yet allowing a minimal amount of development." Goal No. 2 recognizes the need to protect wildlife habitat. Goal No. 4 restricts commercial development to a few key locations in the District and encourages meeting future needs by expanding the size of existing commercial locations rather than zoning new commercial locations.

¶ 14 Duck Creek Properties first presented its rezone request on June 14, 1996, to the Hebgen Lake Zoning Advisory Committee, a committee of citizens within the District that reviews applications and forwards recommendations to the Hebgen Lake Zoning Commission. The Advisory Committee voted 3-2 to recommend to the Zoning Commission that the requested zone change be granted.

¶ 15 The Hebgen Lake Zoning Commission considered the rezone request on August 15, 1996. The Zoning Commission has the statutory authority to administer Hebgen Lake Zoning Regulations and forward recommendations regarding changes in zoning regulations to the Gallatin County Commissioners. The Zoning Commission is comprised of all 3 Gallatin County Commissioners, the Gallatin County Treasurer, and the Gallatin County Clerk and Recorder.

¶ 16 At the August 15, 1996, meeting, Duck Creek Properties presented a “preliminary concept plan.” The preliminary development plans for the Duck Creek parcel included an 18-hole golf course, approximately 10 acres of commercial development, 11 acres of multi-family development, and 65 acres of single-family development. Following public comment, the Hebgen Lake Zoning Commission voted 2-1 in favor of the proposed rezone. Two of the five members of the Zoning Commission abstained. Following approval of the PUD, however, Duck Creek Properties was not limited to the development proposed in the concept plan. It was free to apply for approval of any development permitted pursuant to a PUD designation.

¶ 17 The Zoning Commission recommendation was then forwarded to the Gallatin County Commission. The County Commission considered the proposed zone change on September 10, 1996. No additional public comment was heard. The measure was approved 2-0, with the same two Gallatin County Commissioners who had participated in the Zoning Commission voting in favor of the zone change and one County Commissioner abstaining.

¶ 18 GYA and GWC then filed this lawsuit to challenge the validity of Gallatin County Resolution 1996-55. Following a trial, the District Court voided the resolution as illegal spot zoning. The County Commission and Duck Creek Properties now appeal the District Court's decision.

DISCUSSION

¶ 19 Did the District Court err when it concluded that the Commissioners' zoning resolution constituted illegal spot zoning?

¶ 20 We review a district court's findings of fact to determine whether they are clearly erroneous. *State v. Wooster*, 1999 MT 22, ¶ 2, 293 Mont. 195, ¶ 2, 974 P.2d 640, ¶ 2. We review a district court's conclusions of law to determine whether the interpretation is correct. *Cenex Pipeline L.L.C. v. Fly Creek Angus, Inc.*, 1998 MT 334, ¶ 22, 292 Mont. 300, ¶ 22, 971 P.2d 781, ¶ 22.

¶ 21 This appeal concerns the District Court's conclusion that the County Commission engaged in illegal spot zoning. We adopted a three-part test for spot zoning in *Little v. Board of County Commissioners* (1981), 193 Mont. 334, 631 P.2d 1282. That test, which was correctly applied by the District Court, is as follows:

1. Whether the requested use is significantly different from the prevailing use in the area;
2. Whether the area in which the requested use is to apply is small, although not solely in physical size. An important inquiry under this factor is how many separate landowners will benefit from the zone classification;
3. Whether the requested change is more in the nature of special legislation designed to benefit one or a few landowners at the expense of the surrounding landowners or general public. Under the third factor for spot zoning, the inquiry should also involve whether the requested use is in accord with a comprehensive plan.

See *Little*, 193 Mont. at 346-47, 631 P.2d at 1289-90.

Since the parties agree that *Little* correctly states the applicable law, the Appellants essentially seek review of factual determinations by the District Court. However, if substantial evidence supports the District Court's findings and they are not otherwise clearly erroneous, we will not substitute our judgment for the trier of fact.

¶ 22 Addressing the first prong of the Little test, the District Court concluded that the density and uses allowed as a PUD zoned parcel “differs significantly from the R-10 zoning designation and from prevailing rural residential use in the area.” Appellants contend that the District Court erred in reaching this conclusion. Appellants argue that the District Court erroneously compared the existing use of the R-10 zoned parcel to the proposed use as a PUD parcel rather than comparing the proposed use to usage in the neighborhood. Next, the Appellants contend that the District Court erred in comparing the potential increased densities and potential level of commercial development as a PUD parcel to the prevailing uses in the area.

¶ 23 We agree that the Little test specifically requires courts to compare the requested land use with the “prevailing use in the area.” Little, 193 Mont. at 346, 631 P.2d at 1289. However, prevailing use need not exclude the existing use. Furthermore, the District Court also determined that PUD designation would conflict with the predominantly rural and residential character of the surrounding properties. The District Court found that:

Duck Creek's 323 acre parcel sits in a rural area and is presently undeveloped. The property is bordered along the southern property line by Duck Creek and an existing residential area. A narrow section of National Forest Service land separates the eastern boundary of the property from Yellowstone National Park. Highway 191 forms the western boundary of the property.

¶ 24 The District Court further explained how permitted use pursuant to the proposed PUD classification differed from prevailing uses on surrounding properties. The District Court's findings were supported by the testimony of planning experts Lee Nellis and Keith Swenson.

¶ 25 We also disagree with the assertion that the District Court impermissibly speculated when it examined the potential for development at increased densities if the parcel was zoned PUD. Testimony at trial demonstrated that once the parcel was rezoned, the developer would be free to submit any development proposal allowed on a PUD zoned parcel for later approval by the Gallatin County Commission. Testimony further demonstrated that PUD designation allows for a much broader range of development rights at greater densities than the R-10 designation. In fact, the owner of the Duck Creek parcel admitted that he wanted to rezone in order to increase the value of and development options on the property. The “preliminary concept plan” Duck Creek Properties presented to the Zoning Commission at the August 15, 1996 hearing included an 18-hole golf course, approximately 10 acres of commercial development, 11 acres of multi-family development, and 65 acres of single family development. In contrast, R-10 zoning classification would have allowed a maximum 32 single family residences on the 323 acre parcel. Finally, the Gallatin County Planning Staff Report instructed the Zoning Commission and the County Commission to consider the “allowable number of residential units which could be built within the 323 acre property.” Therefore, the District Court properly considered the higher density uses available if the property is rezoned PUD; its finding that PUD designation conflicted with prevailing land use in the area was supported by substantial credible evidence, and we conclude that it was not clearly erroneous.

2. Size

¶ 26 The second prong of the Little test for spot zoning focuses on the size of the area in which the requested use is to apply, but is not limited to the physical size of the parcel. It also includes analysis of how many separate landowners stand to benefit from the proposed zoning change. The District Court found that the Duck Creek parcel was small in relation to the Hebgen Lake Zoning District—the 323 acres at issue comprise a mere 2% of the District's 13,280 acres. The District Court further found that the Duck Creek parcel was owned by a single entity.

¶ 27 Duck Creek Properties admits that the property is owned by one individual but points to other instances where this Court held that the rezoning of parcels owned by a single owner was not spot zoning. ~~This contention, however, only establishes that zone changes for property owned by one person are not~~
always spot zoning pursuant to the Little test.

¶ 28 More importantly, the Little test focuses on the number of owners who stand to benefit from the zoning change. Little, 193 Mont. at 346, 631 P.2d at 1289. It is undisputed that the parcel in question is owned by one owner-Duck Creek Properties. Furthermore, it is undisputed that Duck Creek Properties requested a rezone in order to increase the development options on and value of the property. Finally, the Plaintiffs' land use planning expert testified that only one landowner, Duck Creek Properties, benefitted from the rezone. Consequently, we conclude that the District Court's findings regarding the size of the area in question are not clearly erroneous and its conclusion that those findings satisfy the second prong of the Little test is correct.

3. Special Legislation

¶ 29 The issue presented by the third prong is whether the zoning request is in the nature of special legislation designed to benefit one or a few landowners at the expense of surrounding landowners or the general public. Little, 193 Mont. at 346, 631 P.2d at 1289. This inquiry should include an evaluation of whether the requested use is consistent with the comprehensive land use plan for the area. Little, 193 Mont. at 347, 631 P.2d at 1290.

¶ 30 The Appellants contend that the zone change will not be permitted at the expense of the general public or the surrounding landowners. Moreover, the Appellants argue that the District Court's conclusion that the zone change harmed the general public ignored the findings of the Advisory Committee, Zoning Commission, and Gallatin County Commissioners, which found "that PUD designation met the general welfare, public necessity and convenience by providing for the protection of wildlife, fire protection, weed control and water and sewer."

¶ 31 However, the District Court held its own evidentiary hearing and found that the "extremely sensitive nature of the Duck Creek parcel and its importance to wildlife and wildlife habitat . is a significant factor to be weighed in evaluating the public welfare, convenience and necessity." We conclude that substantial evidence supports the District Court's finding that the proposed zone change benefitted Duck Creek Properties at the expense of the surrounding landowners and the general public, and that its finding is not clearly erroneous.

¶ 32 The evidence is clear that the proposed zone change benefitted one landowner, Duck Creek Properties. In addition, several parties testified that the proposed benefit to Duck Creek Properties would come at great cost to the surrounding landowners and the general public. The largest and most significant surrounding landowner is the general public-59% of the Hebgen Lake Zoning District is public land. The area immediately surrounding the Duck Creek parcel is predominantly public land and includes some of the most significant wildlife habitat in the country.

¶ 33 Officials from those agencies managing that habitat for the general public opposed the rezone. The Assistant Superintendent of Yellowstone National Park submitted a letter on behalf of the park which outlined the deleterious effects the rezone would have on the public lands and resources. The Montana Department of Fish, Wildlife and Parks submitted written comments which expressed concern about the pressure the rezone would put on grizzly bear habitat. An official from the National Forest Service, when asked by the Zoning Commission what his reaction would be if the parcel was developed with the number of residential units allowed by the PUD designation, said that he would "have a heart attack." Wildlife biologist Dr. Lance Craighead testified that developed property east of Highway 191, such as the Duck Creek parcel, will deprive wildlife of crucial habitat. Dr. Craighead further testified that regardless of how PUD development was configured, the increased human density would have a negative effect on the significant portion of the Greater Yellowstone area's grizzly bears which reside in and around the Duck Creek parcel. Finally, Dr. Craighead noted the negative impacts the rezone would have on elk, bison, moose, and trout.

¶ 34 These concerns were shared by members of the general public who spoke at the June 14, 1996 ~~Advisory Committee and August 15, 1996 Zoning Commission meetings, as well as those who submitted~~ written comments. Therefore, the record contains substantial evidence that the general public,

including the general public living in the area, would be adversely affected by the proposed change in zoning. We conclude that the District Court's findings to that effect were not clearly erroneous.

¶ 35 The Appellants also argue that the District Court erred when it found that the proposed rezone was in conflict with the comprehensive land use plan. However, we also conclude that substantial evidence supports this finding and that it was not clearly erroneous. The first goal and objective of the Hebgen Lake Development Plan states that the scenic beauties and the natural environment are the greatest resources and "should be protected to the fullest extent possible while yet allowing a minimal amount of development." The District Court found that the diverse and dense usage permitted by the proposed PUD classification was in conflict with the goal of protecting the natural environment to the fullest extent possible and allowing only minimal development. The testimony of the Plaintiffs' experts supported that finding and conclusion.

¶ 36 The District Court also found that PUD classification would conflict with Goal No. 4 of the Development Plan. Goal No. 4 restricts commercial development to a few key locations in the District. The Duck Creek property is not among those locations. The PUD classification permits commercial development in an area which is otherwise without significant commercial development. The only existing commercial development in the area is the bar and taxidermy business.

¶ 37 We conclude that the District Court did not err when, based on its findings, it concluded that the PUD zoning request represented special legislation designed to benefit one landowner at the expense of surrounding landowners and the general public. Based on its findings, which are fully supported by the evidence, the District Court correctly concluded, pursuant to the three prong Little test, that the zoning amendment constituted illegal spot zoning. Accordingly, we affirm the judgment of the District Court.

Justice TERRY N. TRIEWEILER delivered the Opinion of the Court.

We Concur: KARLA M. GRAY, C.J., JAMES C. NELSON and JIM REGNIER, JJ.

No. 01-654

IN THE SUPREME COURT OF THE STATE OF MONTANA

2002 MT 115

HAROLD ENGLIN and MARY A. BROWN,

Plaintiffs and Appellants,

v.

BOARD OF COUNTY COMMISSIONERS,
YELLOWSTONE COUNTY, MONTANA,

Defendant and Respondent.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone,
Honorable Russell C. Fagg, Judge Presiding

COUNSEL OF RECORD:

For Appellants:

Kelly J. Varnes, Hendrickson, Everson, Noennig and Woodward,
Billings, Montana

For Respondent:

Dennis Paxinos, County Attorney; Mark A. English, Deputy County
Attorney, Billings, Montana

Submitted on Briefs: January 31, 2002

Decided: June 4, 2002

Filed:

Clerk

Justice W. William Leaphart delivered the Opinion of the Court.

¶1 Harold Englin and Mary Brown (Owners) appeal from the judgment entered by the Thirteenth Judicial District Court, Yellowstone County, holding that the Board of County Commissioners' (Commissioners) denial of the Owners' zone change request was not arbitrary or capricious. We affirm.

¶2 Englin and Brown raise the following issues on appeal:

¶3 1. Did the District Court err when it held that the Commissioners' zoning decision was not arbitrary or capricious?

¶4 2. Did the District Court abuse its discretion by excluding evidence of a subsequent zone change application?

Facts and Procedural Background

¶5 Englin and Brown own three acres of land (the Property) located at 1442 Ethelyn Avenue, Billings, Montana. They acquired the Property by inheritance in 1982, at which time the Property was zoned as Residential-9600. This zoning classification permits single family residences with lot sizes no smaller than 9600 square feet. The Property is bordered on the north by Beall Trucking which is zoned Highway Commercial. To the south, the Property is bordered by a single family residence and a vacant lot, both zoned Residential-9600. To the east is a storage barn for a local limousine service which is zoned Controlled Industrial. To the west is the Lockwood Evangelical Church which is zoned Residential-9600.

¶6 In December 1989 the Owners applied for a zone change on the Property from Residential-9600 to Highway Commercial. Highway Commercial zoning classification permits commercial and service businesses intended to provide services to the traveling public. The Yellowstone County Zoning Commission (Zoning Commission) recommended that the application for zone change be granted. On December 21, 1989, the Commissioners denied the application.

¶7 In November 1997, the Owners again applied for a zone change of the Property from Residential-9600 to Highway Commercial. The Zoning Commission held a public hearing and subsequently recommended denying the application. In a letter dated December 2, 1997, the Commissioners informed the Owners that it had denied their application for a zone change.

¶8 The Owners then filed this action in the District Court, arguing that the Commissioners' denial of their 1997 zone change application violated their due process rights because it was arbitrary or capricious and that it constituted a taking by inverse condemnation. The Commissioners filed a motion for summary judgment and, after a hearing on the motion, the District Court granted summary judgment in favor of the Commissioners.

¶9 The Owners appealed the summary judgment to this Court. We affirmed the District Court as to the takings issue, but remanded on the substantive due process claim because the Commissioners had not issued specific findings in support of the denial of the zone change request.

¶10 After remittitur was filed, the District Court remanded the case to the Commissioners "to provide separate findings as to why it denied Appellants zone change request." The Commissioners provided the findings and the District Court held a hearing on the substantive due process claim on July 11, 2001. Subsequently, the court entered findings of fact and conclusions of law, dismissing the claim. The Owners appeal.

Discussion

¶11 Did the District Court err when it held that the Commissioners' zoning decision was not arbitrary or capricious?

¶12 We review a district court's findings of fact to determine whether they are clearly erroneous. We review a district court's conclusions of law to determine whether the interpretation is correct. *Greater Yellowstone Coalition, Inc. v. Board of County Commissioners of Gallatin County*, 2001 MT 99, ¶ 20, 305 Mont. 232, ¶ 20, 25 P.3d 168, ¶ 20.

¶13 This appeal concerns the District Court's conclusion that the Commissioners did not act arbitrarily in denying the Owners' zoning change application. The Owners essentially seek review of factual determinations by the District Court. However, if substantial evidence supports the District Court's findings and they are not otherwise clearly erroneous, we will not substitute our judgment for that of the trier of fact. *Greater Yellowstone*, ¶ 21.

¶14 The Fourteenth Amendment to the United States Constitution and Article II, Section 17 of the Montana Constitution protect persons from being deprived of life, liberty or property by state

governmental action without due process of law. The guarantee of due process has both a procedural and a substantive component. Substantive due process bars arbitrary governmental actions regardless of the procedures used to implement them and serves as a check on oppressive governmental action. *Newville v. State, Dept. of Family Services* (1994), 267 Mont. 237, 249, 883 P.2d 793, 800. An examination of whether a person's substantive due process rights have been violated requires that we decide whether the challenged governmental act is reasonably related to a legitimate governmental objective. *Newville*, 267 Mont. at 249, 883 P.2d at 800.

¶15 Section 76-2-201, MCA, states that zoning regulations may be adopted "[f]or the purpose of promoting the public health, safety, morals, and general welfare." Section 76-2-203(1), MCA, provides that zoning regulations must be made:

in accordance with the growth policy and must be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote public health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

¶16 "The purpose of zoning is not to provide for the highest or best use of each particular lot or parcel of land within the zones or community, rather it is to benefit the *community generally* by the sensible planning of land uses taking into consideration the peculiar suitabilities and most appropriate use of land *throughout the community.*" *Mack T. Anderson Insurance Agency v. City of Belgrade* (1990), 246 Mont. 112, 117, 803 P.2d 648, 651 (emphasis in original). This Court will not sit as a super-legislature or

super-zoning board. *Anderson Ins.*, 246 Mont. at 120, 803 P.2d at 652.

¶17 In 1989, the Zoning Commission considered the factors enumerated in § 76-2-203, MCA, and recommended that the Commissioners approve the Owners' zone change request. Although the Commissioners copied verbatim the Zoning Commission's findings, they denied the zone change request. However, not all of the findings relating to the statutory factors were positive. The findings stated that the zone change was designed in accordance with the comprehensive plan, it "should not create any more congestion in the area than what is already found until improvements of Ethelyn Avenue are made," it "possibly may not promote health and general welfare to the adjacent residential uses due to the potential increase of noise, traffic, etc.," and it may decrease the value of a nearby church and residential dwelling.

¶18 In 1997, the Zoning Commission again considered the same twelve factors after holding a public hearing and, unlike in 1989, it recommended that the application for zone change be denied. It found that the zone change "will not retain and improve existing residential neighborhoods . . . will not protect against the encroachment of incompatible or unrelated uses . . . could increase traffic in the general area . . . [and] could alter the value of buildings in the area." The Commissioners again denied the zone change request.

¶19 The Owners argue that the conflicting recommendations of the Zoning Commission in 1989 and 1997 show that the Commissioners'

decision was arbitrary. They state that "[p]roperty cannot rationally at one time be acceptable for a Highway Commercial zoning classification and then at another time be unacceptable when none of the adjoining uses has been altered."

¶20 County planning boards are required to make written recommendations to the Commissioners, but these recommendations are advisory only. Section 76-2-204, MCA. The Commissioners had the discretion to reject the recommendation, particularly because the 1989 findings had both negative and positive factors. The conflicting recommendations of the Zoning Commission do not establish that the Commissioners acted arbitrarily. In any event, the Commissioners had the discretion to accept or reject the planning staff's recommendation. The Owners did not appeal the Commissioners' 1989 denial, and it is not for this Court to address that decision now.

¶21 Next, the Owners argue that the following findings of fact are clearly erroneous: (1) "the Property's access is not adjacent to a primary or secondary highway as required, and, thus, the Property would be difficult to serve the needs of tourist, traveler, recreationist or the general traveling public;" (2) "granting the zone change would increase the noise and traffic in a relatively placid neighborhood;" (3) "granting the zone change would not be compatible with the majority of surrounding land uses;" and (4) "designating the Property as Highway Commercial would not be in accord with the County's Comprehensive Plan."

¶22 The Owners argue that the Property is only 330 feet from Highway 87 East and is located in "very close proximity to the Interstate 90, Lockwood/Billings interchange." They note that Highway Commercial zoning does not require the property to be adjacent to an interstate highway.

¶23 Englin testified that the only access to the Property is over a dirt road, the Property does not front a paved road or a major roadway and the Property is not easily accessible. A map of the area indicates as much. Therefore, after reviewing the record, we conclude that substantial evidence exists for the District Court's finding that the location of the Property would make it difficult to serve the needs of travelers.

¶24 Next, the Owners argue that noise was already a problem in the neighborhood and that the neighborhood was not "placid." Several owners of adjoining lots testified at the public hearing about the noise level from Beall Trucking and their concern that changing the zoning on the Property would increase the noise in the neighborhood. Although the evidence does not support the court's finding that the neighborhood is "placid," substantial evidence exists to support the finding that the zone change would increase noise and traffic in the neighborhood.

¶25 The Owners argue that the Property is surrounded on three sides by commercial use and the finding that the zone change is not compatible with the majority of surrounding uses is "simply wrong. It is a whitewash."

¶26 The evidence before the Commissioners and before the District Court established that the Property is surrounded on one side by high intensity commercial use and on three sides by either low intensity commercial use or residential use. One neighbor testified before the Commissioners that he uses his property to produce "a large amount of produce of garden vegetables." A representative from the Lockwood Community Church testified that the church's playground is adjacent to the Property. The church also maintains a softball field and a volleyball court near the Property.

¶27 After reviewing the record, we conclude that substantial evidence supports the District Court's finding that the zone change would not be compatible with the majority of the surrounding land uses.

¶28 Finally, the Owners argue that the Zoning Commission's finding in 1989 that the zone change accords with the Comprehensive Plan supports their contention that the 1997 finding is erroneous. In 1989, the Zoning Commission stated that "the Billings Area Comprehensive Plan shows this particular location as being an area that is not suitable for cropland. . . . The use of this land is currently transitional in nature. A few head of cattle are presently grazing on this piece of ground." In 1997, the Zoning Commission stated, "The new zoning will not retain and improve existing residential neighborhoods. The new zoning will not protect against the encroachment of incompatible or unrelated uses."

¶29 As stated previously, the record shows the majority of the surrounding land usage is residential or low intensity commercial use. A designation of the Property as Highway Commercial would not retain or improve the character of this area.

¶30 This sentiment was reflected at the hearing before the Commissioners. The Commissioners seemed to agree that Residential-9600 was not the appropriate zoning for the Property. Their concern, though, centered around the wide gap between Residential-9600 zoning and Highway Commercial zoning. The senior planner for the county noted that "there's a wide range of other zoning districts; multi-family or light commercial that maybe the applicant can pursue."

¶31 After reviewing the record, we conclude that substantial evidence supports the District Court's finding that the zone change would not be in accord with the County Comprehensive Plan.

¶32 We conclude that the District Court correctly held that the Commissioners adequately considered the statutory factors, that the Commissioners properly based their decision on the statutory factors and that the Commissioners' decision was reasonably related to the legitimate governmental objective of promoting public health, safety and welfare. We hold that the Commissioners' denial of the Owners' zone change application was not arbitrary or capricious.

¶33 Did the District Court abuse its discretion by excluding evidence of a subsequent zone change application?

¶34 The Owners argue that the District Court abused its discretion by refusing to hear testimony and receive exhibits concerning a zone change application that they submitted to the Commissioners on the same property in July 2000. This zone change application requested a less intense commercial designation than the commercial designation sought in the present case, yet it was also denied. The Owners argue that this evidence was relevant because it showed "the continued intent by the Commissioners to act arbitrarily concerning the property at bar."

¶35 The Commissioners argue that what occurred three years after the decision in this case is not relevant to the issue of whether the Commissioners acted arbitrarily or capriciously in 1997.

¶36 The District Court excluded the evidence of the subsequent zone change request, stating that the case had been ongoing since 1997 and had been before the Supreme Court and that "if I allowed you now to go beyond the information that the Supreme Court had, that Judge Baugh had, really would be a new case."

¶37 Rule 401, M.R.Evid., provides that relevant evidence is any evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

¶38 Whether evidence is relevant and admissible is left to the sound discretion of the district court, and the determination will not be overturned on appeal absent an abuse of that discretion. *Lopez v. Josephson*, 2001 MT 133, ¶ 14, 305 Mont. 446, ¶ 14, 30 P.3d 326, ¶ 14. "The question is not whether this Court would have

reached the same decision, but, whether the district court acted arbitrarily without conscientious judgment or exceeded the bounds of reason." *Lopez*, ¶ 14.

¶39 On remand, this Court noted that, "Without any separate findings made by the Board in support of its denial of Appellants' zone change request, we are unable to determine the basis of the Board's consistent denial." Therefore, the District Court remanded the case to the Commissioners, directing them to issue specific findings supporting their denial of the zone change request in 1997. Under these circumstances, we agree that evidence concerning a 2000 zone change request was irrelevant and immaterial to the question before the District Court—that is, whether the Commissioners acted arbitrarily or capriciously in denying the zone change request in 1997. We also agree with the District Court that injecting the 2000 request into this proceeding would be tantamount to amending the petition and that would be inappropriate at this late date.

¶40 We conclude that the District Court did not abuse its discretion by excluding evidence of the subsequent zone change application.

¶41 The District Court is affirmed.

/S/ W. WILLIAM LEAPHART

We concur:

/S/ JAMES C. NELSON
/S/ PATRICIA COTTER
/S/ JIM REGNIER
/S/ TERRY N. TRIEWEILER

- Effects on scenic resources
- Effects on historic or cultural resources
- Proliferation of noxious weeds

Impacts on wildlife and wildlife habitat

- Loss of significant, important, or critical habitat, as defined
- Effects on protected or endangered species
- Effects on wildlife or habitat due to roads, increased traffic, increased access
- Effects of humans and pet on wildlife

Impacts on public health and safety

- Creation of unsafe roads or the lack of all-weather access
- Effects of development in high fire-hazard areas
- Effects from natural hazards, including slopes, soil conditions, flooding, wildlife
- Effects from man-made hazards, including high-tension lines, high-pressure pipelines
- Effects on traffic safety
- Effects on emergency access
- Effects from septic systems
- Effects on law enforcement
- Effects of development that endanger public health and safety

Annexation

Developments in rural areas are seldom willing to shoulder the true costs of development. Natural and environmental limitations such as potable water availability, ground water tables, primitive roads and low levels of road maintenance, seasonal flooding, isolation from law and fire protective services and obtainable medical services are often unavailable or are limited due to distance, weather or other conditions. Citizens locating in rural areas generally desire the rural lifestyle, but demand city-type services. Typically county government is unable or unwilling to provide these services.

Fringe developments adjacent to a city frequently use rate-based services and enjoy tax-based services without having to pay city taxes. Annexation allows a city to expand its boundaries and include developments into the city. Annexation requires the city to provide services, but also allows the city to tax for services provided. As a city grows, development becomes eligible for annexation.

This Growth Policy, in regard to annexation, shall provide that:

1. The City shall abide by state statute which details the requirements and procedures for annexation.
2. Residential properties adjacent to the corporate city boundary which are receiving a high level of city services shall be annexed into the city.
3. Commercial properties demanding city services shall be annexed into the City in conjunction with a waiver of no protest to annexation delivery of services.

4. The City of Miles City shall coordinate with Custer County in regard to county-provided services in areas proposed for annexation.
5. The County shall coordinate infrastructure design and improvement standards with the City in order to encourage seamless annexation.
6. Developments that have rural special improvement districts (RSID's) in place to finance improvements shall have those improvements continued by the City.

Zoning

Land use is controlled by ordinances known as zoning. Both County and City governments have the authority to enforce zoning, albeit by different state enabling statutes. Currently, Custer County does not have a zoning ordinance. The City of Miles City has a long history of zoning and currently extends its extraterritorial jurisdiction to two miles outside the corporate city limits as allowed by state statute.

Zoning allows a government to control private land use for the purposes of protecting life, protecting property, maintaining land values, providing for the different land uses pertinent to a community, and to encourage growth in certain manners and directions. Adjacent incompatible uses are discouraged. Incompatibility may be based upon sights, sounds, smells, environmental conditions, service demands and other issues of one form of land use relative to another.

This Growth Policy, in regard to zoning, shall provide that:

1. Zoning ordinances shall abide by the state enabling statutes in regards to procedures and requirements.
2. Zoning ordinances shall provide for a broad range of land use zones as needed by the community.
3. Zoning ordinances shall be enforced to the benefit and protection of the greater community.
4. Zoning ordinances shall include opportunities for open space and protection of rural areas for the benefit and enjoyment of the greater community.
5. Zoning ordinances shall reflect the existing development patterns to the extent that the needs of the greater community are served.
6. Zoning amendments shall consider the needs of the petitioner, neighboring property owners, and the greater community.

Public Hearing Statement

Public hearings are required for major subdivisions. For minor subdivisions that qualify as the first subdivision from a tract of record, the requirements for a public hearing may be waived by the Board. Minor subdivisions which are eligible for summary review are exempt from the public hearing requirements. Public hearings for subdivision review are governed by 76-3-605 MCA.

City of Miles City, MT City Council
Zone change application - Agriculture (AG) to General Commercial (GC)
Tract B of Document #153542, Envelope 500B, Sec. 11, T7N, R47E, MPM
755 Highway 59 South, 28.85 Acres
Diamond J Construction, LLC, Applicant
Public Hearing June 24, 2014 on Zoning Commission's Recommendation - DENIAL

APPLICANT'S PROPOSED FINDINGS

1. A public hearing was held in the City Council Chambers of Miles City, Montana on June 24, 2014 at 7:00 p.m. on the City Zoning Commission's recommendation to deny the applicant's zone change request.
2. Thirteen people, including John Peila, a member of the applicant, and applicant's counsel, spoke in favor of the zone change. They stated that the city must grow and that the only available area of growth is to the south and east. Applicant's business has run out of room. It employs many Miles City residents, contributes to the local economy, and is and wants to remain an important part of the community.
3. Applicant was not aware of the need for a zone change when the construction of the building began. All of the required permits had been obtained and no one mentioned any need for a zone change. When John heard by word of mouth that there were objections he stopped work and applied for the zone change.
4. The applicant agreed to include buffer trees, landscaping, and other accommodations, including entering into restrictive covenants. John stated they would be good neighbors and apologized for the appearance of the current property which was overcrowded because they ran out of room.
5. John stated that he welcomed annexation to the city.
6. Brad Certain, owner of approximately 55 acres directly across the highway from the

subject property, supports the change and is in the process of attempting to change the zoning on his property. The Pyle property, one of two between the subject property and the city, is used for commercial purposes as a preexisting use. Many properties in the area between the subject property and the city are also listed for sale at commercial prices, which are well in excess of agricultural prices.

7. The Planning Staff recommended approval of the zone change subject to the City Attorney's review of the issue of spot zoning, including an analysis of the statutory factors to be considered in the change. The Zoning commission overrode the staff recommendation but did not adopt any findings directed to the statutory factors to be considered.
8. The City Attorney reported the three "Little" factors must all be met before a property is illegally spot zoned. Under the third factor the Council must determine whether the zoning would be done at the expense of surrounding landowners or the general public.
9. Although Land Solutions, LLC, the city's consultant, recommended denial based on spot zoning, it acknowledged that it did not have the benefit of hearing the testimony and evidence at the hearings, that the impact on surrounding landowners is "subjective," and that it would be a "stretch" to say it was against the general public.
10. The Montana Supreme Court has held that changes for the benefit of only one or a few people is not automatic spot zoning, and extending an adjacent use is not spot zoning. It has held that use for a Safeway in the middle of a mix of residential and business use, and a Wal-Mart in the middle of Highway Commercial zoning, were not at the expense of the general public and therefore were not spot zoning. In a particularly egregious case, the Court has held that a power plant in the middle of agricultural use is illegal spot

zoning.

11. Four opponents to the zone change spoke, including the attorney for the Todoroff family with neighboring property.
12. There were objections to commercial use and assertions that the property value would decrease, but no evidence of such devaluation, and no appraisals or other expert opinion to rebut the fact that property in the area is listed at high commercial prices.
13. Although some nearby property owners objected, many objectors and protesters do not live near the property. Only two are adjacent to the property. Bill and Susan Oftedal both objected but their property is about two miles south.
14. Pyle submitted a letter of protest but owns the property adjacent that is being used as commercial.
15. Many agreed they were for growth and some simply objected to the project beginning without approval of the zone change, implying or stating, without proof, that the applicant did it intentionally. Such a consideration of motive and violation is not appropriate in this proceeding, in any event, because this is not a proceeding to determine if the zoning ordinance was violated, but rather to determine if the zone change is appropriate.
16. Counsel for the Todoroffs asserted, without proof, that the property improperly avoided subdivision review. This consideration is also inappropriate, as the approval of the subdivision was made prior to applicant's ownership, is not relevant to whether the zone should be changed, and the subdivision most likely met an exemption from review.
17. The following is an evaluation of the zone change request under the criteria and guidelines for zoning regulations provided in §76-2-304, MCA:
 - A. 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 be carefully considered." The needs of neighbors and the community should be carefully considered. In this case, the applicant 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.

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

The property would be served by fire protection from the Rural Fire Department. The property is accessible by 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.

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

The property is not located in a designated flood plain. 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 70 mph. There is a congestion problem just north of the site as you enter into the city limits, and this could add to that congestion. Therefore, the proposed change will have some impact on public health, safety or general welfare. However, the Montana Department of transportation has reviewed the request and has approved the proposal with 2 of the 3 requested access points.

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

Transportation – The property is served by one road. That road is highway 59 South.

Water and sewer – There are no city water or sewer services to this property. A well will provide for water and sewer design has been approved 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.

- E. 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.

- F. How will the proposed zone change affect motorized and nonmotorized transportation systems?

Motorized vehicle access is available via a state highway which has been authorized by the Montana Department of Transportation.

- G. 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 and Surrounding Jurisdiction Zoning Map (9/20/12), the zoning designation surrounding this property is all agriculturally zoned. One of the properties is used for commercial purposes. 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 states that future growth in the Miles City community will most likely be located to the east and to the south of the established community.

The three "Little" factors have been considered to determine if there is spot zoning. ***All three factors must be met before there is spot zoning.*** Meeting only one or two of the factors does not make the zoning illegal. If any factor is not met, there is no spot zoning.

The first factor is any significant difference from the surrounding predominant use. The adjoining land use is zoned agricultural, but there is one nonconforming commercial use and the nearby city is multiple uses. No animals have been seen on the surrounding property for 10 years. The use could be considered not significantly different from the surrounding predominant use.

Second is whether it is small, although not solely in physical size. Again, much larger nearby uses are zoned agricultural, but when considering the nonconforming use, the mixed uses in the city very nearby, and the marketing of property as commercial, the predominant use can be considered mixed.

Third is whether it is in the nature of special legislation that will benefit one or a few

landowners at the expense of the surrounding landowners or the general public. The zoning would benefit the applicant but even if the other factors were met, that does not require a determination of spot zoning. There was little evidence of detriment such as decrease in value or increased traffic or congestion different from what exists as a result of the nearness to the city. Brad Certain, the neighbor, stated he will benefit. There was much testimony about the benefit to the community of the growth south and east, and of the benefit of this business and others to the community. Only two of the written protests were from bordering neighbors. The consultant, although it recommended denial, conceded that the impact to the adjacent owners is "subjective" and it would be a "stretch" to say it was against the general public. Many protesting parties would not be directly affected because they are remotely located or the increase in traffic and other impacts would not be substantial. The proposed zoning would not be at the expense of the surrounding landowners or the general public.

At least the third factor, and perhaps all of them fail to be met. Because one or more of the three of the "Little" factors are not met, the proposed zone change is not illegal spot zoning.

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

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

18. Based on the foregoing, the Council agrees with the staff recommendation, finds there is no illegal spot zoning, and rejects the Zoning Commission recommendation. The zone change is granted.

Passed on this _____ day of _____, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Respectfully submitted on this 2nd day of July, 2014

HENDRICKSON LAW FIRM, P.C.

By: /s/Mark E. Noennig

Mark E. Noennig

Attorney for Applicant

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

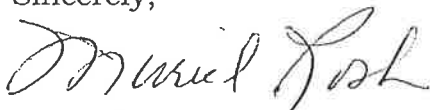
The following are my reasons for denying a zone change request by John Peila (Diamond J Construction) for Tract B Section 11 Township 7N Range 47E from Ag to General Commercial.

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 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

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

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

Peggy Pyle
268 Cemetery Road
Miles City, MT 59301

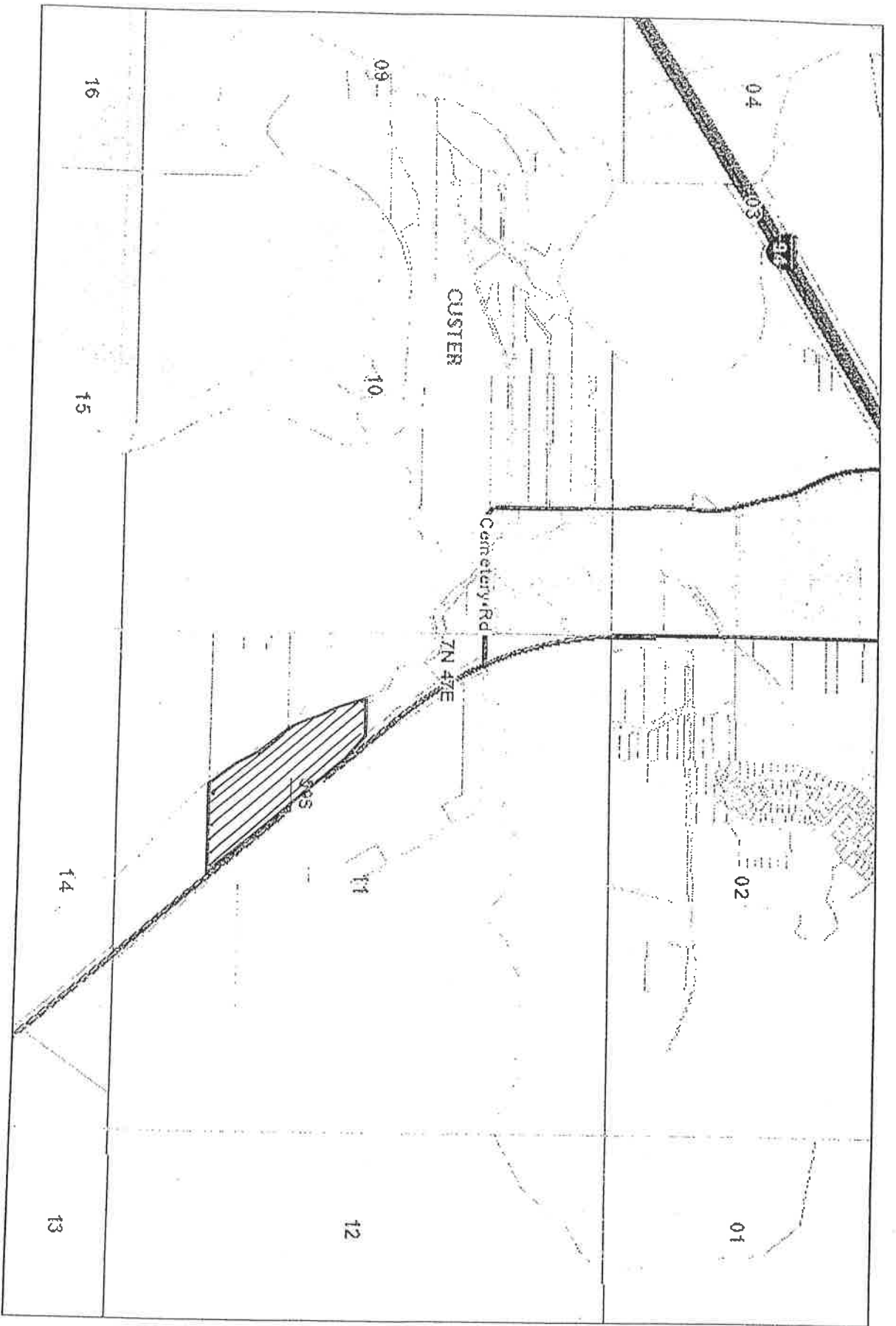
Susan L. Colvin & Mary Jo Zent
287 Mciver Road
Great Falls, MT 59404-6311

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
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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 Factor #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 rezone 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 A. Rice

OFFICE OF THE CITY ATTORNEY

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(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

Zoning Board

Letter in
support of
zone change

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.

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.

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.

urge your approval of this zoning tonight.



Roger L. Lothspeich

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: 000RGC2182

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 STATUS 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: 14-1172-1R
 Levy 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:

CONDO VALUE TO BE ALLOCATED
 General: Limited:
 Land: Imposed:
 Imposed:
 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 /99. 2013 SPLIT PROCESSED PER COS 153542 CREATING TR B, C & D. LAND SIZE UPDATED. APPRAISER REVIEW AND APPROVAL NEEDED. DLH

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			Field Check Needed	Hubbert, Dulcy		
12/12/2012		8 - New Construction	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 Cd	%	Unit Price	Class Code	Value Est
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RECENT APPEAL HISTORY

Year	Level	Case #	Status	Action	Year	Land	Building	Total
2013					2013	\$1,668	\$0	\$1,668
2012					2012	\$0	\$0	\$0
2011					2011	\$0	\$0	\$0

ASSESSMENT VALUE HISTORY

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

OBV/Flat Values	Cost	Market	Ovr
Total Improvement	0	1,668	1,668
	Income	MRA	

IMPROVEMENT COST SUMMARY

Year	Level	Case #	Status	Action	Year	Land	Building	Total
2013					2013	\$1,668	\$0	\$1,668
2012					2012	\$0	\$0	\$0
2011					2011	\$0	\$0	\$0

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 /99. 2013 SPLIT PROCESSED PER COS 153542 CREATING TR B, C & D. LAND SIZE UPDATED. APPRAISER REVIEW AND APPROVAL NEEDED. DLH

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 McFarland land, located on Highway 59 South, has been in the McFarland 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 construction 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

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 printed name.

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 style with a large, looped 'S' at the beginning.

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.

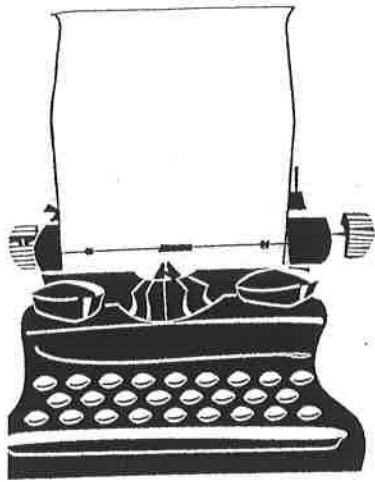
The placing of a construction business, including the potential contamination, and other related issues are of significant concern to me. This construction business is not the best use for property in this area. If there is a zoning change for this property, it should be for rural residential.

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

Sincerely yours,


Ron Nansel

Rec'd
5-7-14
J. Yarnall



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 McIver 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

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

June 23, 2014

To the City of Miles City Zoning Commission and the City council of Miles City

This letter is in protest of the purposed re-zoning of Diamond J Construction LLC from Agriculture Rural to General Commercial.

I am a neighboring land owner. I own 5.5 acres that borders Mr. Peila's property to the north along Hwy 59S. This area is zoned Agriculture Rural at present. The proposed spot zoning causes concern.

With the construction of an 11,800 sq. ft. building, numerous large trucks entering and exiting and possible chemical hazards, this property would be used significantly different from previous uses. My husband hayed our property until his death in 2007. Since then my brother-in-law has cut the hay on my property and sells it. The people that own land in my area also farm their land and run cattle.

I am concerned that this zone change will also devalue my property and benefit only one land owner, Diamond J Construction.

This will also open the door for other unplanned development. There are several other lots for sale along Haynes Ave. that are already zoned for commercial use. I see the signs on my way to work every morning. This area would be better suited for Diamond J Construction than in the middle of Agriculture Rural land.

I respectfully ask you to consider my concerns when making your decision.

Sincerely,

A handwritten signature in cursive script that reads "Peggy Pyle".

Peggy Pyle

PROTEST AGAINST ZONING CHANGE, PURSUANT TO MCA §76-2-305

To the City of Miles City Zoning Commission and the City council of Miles City

Whereas Diamond J Construction, through John Peila, has petitioned the City of Miles City for a zoning change to change the following described property from agricultural to commercial zoning:

Tract B on Certificate of Survey Document 153542, Custer County, Montana

The property is presently zoned for agricultural. The surrounding property is either zoned or used for agricultural purposes, I, **Barbara Ann Todoroff-Nicholas**, the undersigned, owns real property that is within 150 feet of Diamond J Construction that is requesting a zoning change. This protest is filed pursuant to MCA §76-2-305. The application for the proposed zoning change should be denied. My protest is based on the following grounds:

1. Allowing this change of zoning would adversely affect the value of my adjacent property and other neighbors in the surrounding agricultural and the rural residential community.
2. There are several other industrial / commercial sites available for this business in Miles City vicinity.
3. That by granting such zoning change would violate the current zoning ordinance and the restriction against spot zoning.
4. There were no attempts by Diamond J Construction to either consult or make any accommodations with surrounding landowners prior to the start of this construction project.
5. The commercial zoning designation that is being requested is still not the appropriate designation for the proposed use by the petitioner, John Peila / Diamond J Construction. This construction business is better defined as heavy commercial than general commercial.



BARBARA ANN TODOROFF-NICHOLAS,
Property Owner Highway 59 South, Miles City, MT 59301
(Mailing address)
114 Wells Rd
Richmond, Kentucky 40473

6/23/14
Date

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."

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.

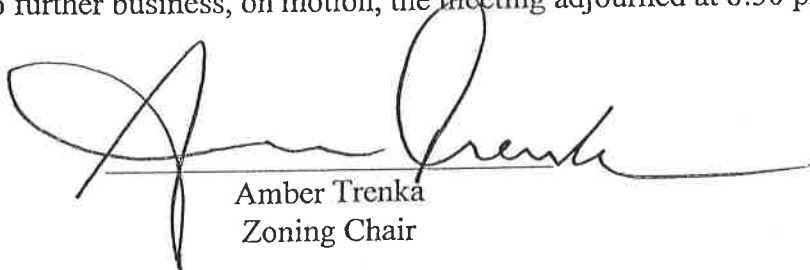
Chair Trenka reported due to the fact that more information was presented to the Commission, prior to the hearing, she would like to table making a decision. CM Meidinger was not in favor of tabling the issue, he contended the information was received and reviewed. Other members wanted to be fair and 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
<i>[Signature]</i>	1022 Cottonwood
Tara & John Peila	260 Silo Loop Kinsey, MT
DAVE Gillette	53 BAKER MC
Jared Payne	♂
Ernst Wilson	
Robert Toole	1717 Tompy
TOM Beil	811 N. Custer
Staci Ketchum & Tyne Ketchum	3792 US Hwy 12 MT
Jenny & Colter Paxson	718 N Custer MC
Peggy Lyle	268 Cemetery Rd
Ron Jones	11 Nausel Ln.
Eve Douder	53 Bridger Circle
<i>[Signature]</i>	414 Missouri
Dawn Mats	976 MT 599
Caregn Mathison	: ' '
Mike Blum	1124 Hwy 59 S
Wheeler Simpson	1016 N. First

Zoning Comm. Public Hearing Apr. 24, 2014 7:00 PM

Name Address

MARK ANKER 135. STACY AVE.
MILLS CT

Monty Lesh 182 River Run Dr MC. MT.

Bill Ellis 5108 Valley Dr East MC MT

Dennis Hirsch 26 Sabet Drive

C.A. GRENZ 506 Mississippi MD

Frank E. Nelson 791 Hwy 59 S.

Sharm Qledal 960 Hwy 59 So

Bill O'Neal 960 Hwy 59 So

Dawn Cotton 519 Hubble St

Dottie Johnstone 778 Hwy 59 S. MC

John Todoroff 4 Big West Lane Oilmont Mt

Gary Rydner Box 72, Tlyshan, MI

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).

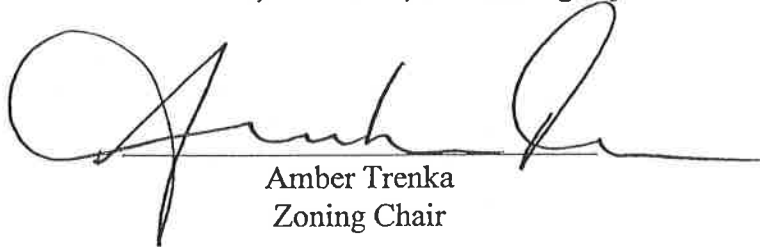
** *Mitchell moved to recommend for the City Council to deny the re-zone request for Diamond J Construction, 722 Hwy 59 South from Agriculture to General Commercial, second by Rost. Members were polled for their vote. Trenka - aye,*

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 Reika

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

Sharon Oftedal

960 Hwy 59 S, Miles City

Peggy Pyle

268 Cemetery Rd MC

Jenny Paxson

718 N Custer MC, MT

Gary Ryder

Myshu, MI

Ray Latta

53 BA/SR MC

Monty Lesh.

182 River Port Dr MC

Eric Doelen

53 Bridger Circle

Paul

414 Missouri

Dory Leidholt

100 prima vista Dr

Christie Allison

Miles City, Sta

Brend Kertner

1022 Cottonwood

Zoning Commission Mtg.

May 7, 2014

6:00 PM

Name

Address

Tara Peila

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 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

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."

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

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.

WHEREAS, the City Code of the City of Miles City authorizes the use of City park grounds and recreational facilities so long as an application is filed and park use permit is issued;

AND WHEREAS, the City of Miles City desires to establish criteria for the type and amount of liability insurance which shall be carried by the applicant;

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

Section 1. A new Section 17-114 is hereby enacted, and shall read as follows:

Sec. 17-114. – Liability Insurance Required. Proof of liability insurance in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) per claim, One Million Five Hundred Thousand Dollars (\$1,500,000.00) per occurrence, or such higher amount as may be required by the city depending on the requested use, and which must name the City of Miles City, Montana, as an additional named insured, is required prior to the issuance of a park use permit, or a permit for the use of any other City owned property, for the following uses:

- (1) Any exclusive use of any portion of City property, including, but not limited to: weddings or wedding receptions, class reunions, photo shoots involving more than ____ people, dances, or any other similar private exclusive use. The following shall be excepted from the requirements of this provision: reservation of seating in a park shelter for a birthday party or similar use, which does not involve commercial catering, consumption of alcohol, or attendance in excess of ____ people;
- (2) Privately hosted events on City property, regardless of exclusivity, which include the commercial catering of food or beverages, anticipated attendance in excess of _____ people, or involves vendors of goods or services,

(3) Any use of City property, regardless of exclusivity, which includes any of the following activities:

- a. Air shows involving the aerial display of Aircraft;
- b. Circuses;
- c. Rodeos;
- d. Fireworks;
- e. Animal racing;
- f. Carnival or amusement rides;
- g. Motorized vehicle racing;
- h. Water sports other than those associated with city swimming pools, lakes or other city designated aquatic areas;
- i. The rental of any motorized vehicle or apparatus used for individual conveyance or entertainment;
- j. Boxing or other martial arts competition.

Section 2. This ordinance shall be in full force and effect thirty (30) days after its final passage and approval.

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. 3678

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY, MONTANA TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH MILES COMMUNITY COLLEGE FOR THE USE OF EQUIPMENT AND FACILITIES FOR STUDENT TRAINING AND COMMUNITY AND LOCAL GOVERNMENT PROJECT COMPLETION

WHEREAS, Miles Community College offers a Heavy Equipment Operations program to its students;

AND WHEREAS, the City of Miles City wishes to support said program by providing certain equipment to be used by the students for community and local government projects;

AND WHEREAS, Miles Community College has prepared a Memorandum of Understanding outlining the roles and responsibilities of the college and the City with regards to the use of such equipment;

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

It does hereby approve the Memorandum of Understanding between the City of Miles City, Montana and Miles Community College, attached hereto as Exhibit "A," and hereby authorizes the Mayor of the City of Miles City to execute such Memorandum of Understanding, and bind the City of Miles City thereto.

It further authorizes the Public Works Director and Public Utilities Director to carry out the terms of such Memorandum of Understanding on behalf of the City of Miles City.

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

EXHIBIT "A"

MEMORANDUM OF UNDERSTANDING

between
CITY OF MILES CITY

and
MILES COMMUNITY COLLEGE

concerning:
City of Miles City Equipment and Facilities
MCC Student Training
Community and Local Government Project Completion

I. PURPOSE: This Memorandum of Understanding defines the roles and responsibilities for coordination and cooperation between Miles Community College (MCC) and the City of Miles City (City) for the completion of community and local government projects and equipment training for MCC's Heavy Equipment Operations students.

II. OBJECTIVE: To provide quality "hands on" training for students enrolled in MCC's Heavy Equipment Operations / CDL ("HEO/CDL") Program through the leasing and use of City heavy equipment for the training of students and quality completion of community and local government projects.

III. PROCEDURE: City will:

1. Lease and provide heavy equipment to MCC for "hands on" training of HEO students such as but not limited to motor graders, backhoe, loader, excavator and dozer.
2. Negotiate the schedule for the heavy equipment with MCC's Heavy Equipment Operations Instructor and the Public Works Director or Public Utilities Director.
3. Conduct equipment inspections before releasing equipment to MCC. Inspection will be conducted by the Public Works Director or Public Utilities Director or designee.
4. Jointly inspect equipment with the Public Works Director or Public Utilities Director or designee and MCC's Heavy Equipment Operations Instructor both before and after MCC's use of equipment.
5. Document any visible or known equipment defects or damages on individual equipment inspection sheets.
6. Sign and date individual inspection sheets. The City will retain a copy of all inspection sheets and provide MCC a copy of the sheets.
7. Repair any known equipment defects prior to MCC's use.
8. Assume responsibility associated with the normal wear and tear on equipment.
9. Supply consumables for equipment when City or MCC equipment is used for City Projects.
10. Provide shop facilities and hand tools for training of MCC's HEO/CDL students as needed as determined by the Public Works Director or Public Utilities Director.
11. Assist MCC's Heavy Equipment Operations instructor in the use and history of equipment, facilities and hand tools when needed and as available.
12. This agreement must meet the approval of the City's insurer.

MCC will:

1. Maintain hazard and liability insurance on the leased equipment sufficient to cover any loss or liability arising from MCC's use of the equipment.
2. Indemnify, defend, and hold harmless the City of Miles City, its agents and employees acting within scope of employment from and against any and all losses, expenses, liabilities, obligations, damages or costs, including but not limited to attorney's fees and court costs, resulting from or arising out of MCC's use of the equipment or any breach of MCC's responsibilities or obligations set forth in this Agreement or for any injury to persons or damage to property caused by MCC's equipment use. MCC will immediately notify the City in writing of any claimed injury or damage.

3. Supply the consumables for the equipment or reimburse the City for expenses incurred when equipment is used for a non-City project.
4. Reimburse the City for repairs and maintenance resulting from the intentional or negligent misuse of equipment by MCC or its students, including but not limited to loss of equipment, theft or vandalism while in the possession of MCC. This does not include normal wear and tear as discussed above.
5. Jointly inspect equipment both before and after use with Public Works Director or Public Utilities Director or designee and complete and sign individual equipment inspection sheets.
6. Insure the City equipment will be operated by or used by students under the direct supervision of the Heavy Equipment Operations Instructor.
7. Notify the City representative immediately if equipment breaks down.
8. Refrain from altering or modifying the equipment or making equipment repairs.

IV: ADMINISTRATION

- A. Scheduling shall be made through the City of Miles City's Operations Director or designee and MCC's Heavy Equipment Operations Instructors (Jerry Forman 874-6154 or Dale Marcil 853-3856). In the case of equipment breakdown or inclement weather conditions, it may be necessary to reschedule use of equipment.
- B. No charge will be assessed MCC for the lease and use of City equipment or facilities.
- C. Any participant may propose changes to this MOU during this term. Such changes will be in the form of an amendment and will become effective upon signature by all of the participants.

The term of this agreement shall be reviewed every two years by the City of Miles City and Miles Community College. The effective date of this MOU will begin on July 1, 2014 and will be reviewed on or about December 31, 2015 and every two years afterwards. Notwithstanding the foregoing, either party may terminate this agreement, with or without cause, upon providing to the other party thirty (30) days prior written notice.

The terms and conditions of this Memorandum of Understanding are hereby accepted and its provisions agreed to by the undersigned representatives of Miles Community College and the City of Miles City.

MILES COMMUNITY COLLEGE

CITY OF MILES CITY

By: _____
Lisa Watson, Vice President

Butch Grenz, Mayor

Date: _____

Date: _____

Jerry Forman, HEO/CDL Instructor

Alan Kelm, Public Utilities Director

Date: _____

Date: _____

Dale Marcil, HEO/CDL Instructor

Scott Gray, Public Works Director

Date: _____

Date: _____

RESOLUTION NO. 3703

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSTRUCTION CONTRACT WITH CENTURY COMPANIES, INC., A MONTANA CORPORATION, FOR PAVING IN MAINTENANCE DISTRICTS 204 AND 205.

WHEREAS, the City has advertised for and accepted bids for paving within Maintenance Districts 204 and 205 in Miles City, Montana;

AND WHEREAS Century Companies, Inc., a Montana corporation, of Lewistown, Montana was the lowest responsible bidder for such project;

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

1. The Contract for paving services attached hereto as Exhibit "A," is hereby approved and adopted by this Council;
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Contract on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Contract 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"

3703

CONTRACT

THIS CONTRACT, made as of the 21st of May 2014, by and between the **CITY OF MILES CITY, MONTANA**, hereinafter called the **OWNER** and Century Construction, hereinafter called **CONTRACTOR**, that said **CONTRACTOR**, if a corporation organized under the laws of any state or other jurisdiction other than the State of Montana, represents that it is licensed and registered to do business in the State of Montana.

WHEREAS, the **OWNER** desires to have the following work completed by **CONTRACTOR**: mix, pave, overlay, roll, blade, compact, haul and the doing of all other work necessary and incidental to the performance of all in maintenance districts 204 and 205, hereinafter called the **PROJECT**, in accordance with the Drawings, Specifications and other Contract Documents prepared by the City Public Works Office, City of Miles City, Miles City, Montana, 59301, hereinafter called **PUBLIC WORKS**;

AND WHEREAS, the **CONTRACTOR** desires to complete said **PROJECT**;

NOW, THEREFORE, THE OWNER and **CONTRACTOR** for the considerations herein set forth, agree as follows:

THE CONTRACTOR AGREES to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all work required for the construction of the **PROJECT** described herein, in strict compliance with the **CONTRACT DOCUMENTS**, which are hereby made a part of the Contract. Contractor has examined and carefully studied the **CONTRACT DOCUMENTS**, has visited the **PROJECT** site, and is familiar with and satisfied as to all federal, state and local laws and regulations that may affect cost, progress or performance of its obligations hereunder, and agrees

that the **CONTRACT DOCUMENTS** are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of work necessary to complete the **PROJECT**.

A. CONTRACT TIME: Work under this Contract shall be commenced upon written notice to proceed and shall be completed within **45** working days of the commencement of the Contract Time as defined in the General Conditions. All time limits in this **CONTRACT**, including but not limited to milestones, substantial completion, and completion, are material requirements under this **CONTRACT**.

B. LIQUIDATED DAMAGES: Subject to the provisions of the General Conditions, the **OWNER** shall be entitled to liquidate damages in the amount of **TWO HUNDRED DOLLARS (\$200.00)**, for each working day delay in the completion of the **CONTRACT**.

C. SUB-CONTRACTORS: **THE CONTRACTOR** agrees to bind every sub-contractor by the terms of the **CONTRACT DOCUMENTS**. The **CONTRACT DOCUMENTS** shall not be construed as creating any contractual relation between any sub-contractor and the **OWNER**.

THE OWNER AGREES to pay and the **CONTRACTOR** agrees to accept, in full payment for the performance of this **CONTRACT**, the **CONTRACT** amount of **Two Hundred Seventy Thousand and no cents, (\$270,000)** for maintenance districts 204 & 205 based on the prices stipulated in the **PROPOSAL**, and in accordance with the provisions of the **CONTRACT DOCUMENTS**.

D. PROGRESS PAYMENTS will be made in accordance with the **GENERAL CONDITIONS**.

E. "CONTRACT DOCUMENTS": The term "**CONTRACT DOCUMENTS**" as

Each CONTRACTOR is required to post a statement of all wages and fringe benefits in compliance with 18-2-423 MCA.

Attached hereto as Exhibit "A", and made a part hereof, is a statement, for each job classification, the standard prevailing wage rate, including fringe benefits, that the CONTRACTOR and employers shall pay during construction of the project;

I. NON-DISCRIMINATION: All hiring by CONTRACTOR must be on the basis of merit and qualifications and there shall not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this CONTRACT.

IN WITNESS WHEREOF, the parties have made and executed this CONTRACT the day and year first above written.

City of Miles City
OWNER
BY: Chris Grenz
Chris Grenz

TITLE: Mayor

City of Miles City

BUSINESS ADDRESS

P.O. Box 910

Miles City, MT 59301
CITY STATE

Century Construction
CONTRACTOR
BY: [Signature]

TITLE: V.P.

BUSINESS ADDRESS

PO Box 579, 510 1st Ave. North

Lewistown, MT 59457
CITY STATE

EXHIBIT "A"
MONTANA

PREVAILING WAGE RATES FOR HIGHWAY CONSTRUCTION SERVICES 2013

Effective: February 1, 2013

Steve Bullock, Governor
State of Montana

Pam Bucy, Commissioner
Department of Labor & Industry

To obtain copies of prevailing wage rate schedules, or for information relating to public works projects and payment of prevailing wage rates visit ERD at www.mtwagehourbopa.com or contact them at:

Employment Relations Division
Montana Department of Labor and Industry
P. O. Box 201503
Helena, MT 59620-1503
Phone 406-444-5600
TDD 406-444-5549

The Labor Standards Bureau welcomes questions, comments and suggestions from the public. In addition, we'll do our best to provide information in an accessible format, upon request, in compliance with the Americans with Disabilities Act.

MONTANA PREVAILING WAGE REQUIREMENTS

The Commissioner of the Department of Labor and Industry, in accordance with Sections 18-2-401 and 18-2-402 of the Montana Code Annotated (MCA), has determined the standard prevailing rate of wages for the occupations listed in this publication.

The wages specified herein control the prevailing rate of wages for the purposes of Section 18-2-401 et seq., MCA. It is required that each employer pay (as a minimum) the rate of wages, including fringe benefits, travel allowance and per diem applicable to the district in which the work is being performed, as provided in the attached wage determinations.

All Montana Prevailing Wage Rates are available on the internet at www.mtwagehourbopa.com or by contacting the Labor Standards Bureau at (406) 444-5600 or TDD (406) 444-5549.

In addition, this publication provides general information concerning compliance with Montana's Prevailing Wage Law and the payment of prevailing wages. For detailed compliance information relating to public works contracts and payment of prevailing wage rates, please consult the regulations on the internet at www.mtwagehourbopa.com or contact the Labor Standards Bureau at (406) 444-5600 or TDD (406) 444-5549.

PAM BUCY
Commissioner
Department of Labor and Industry
State of Montana

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A. Date of Publication February 1, 2013

B. Definition of Highway Construction

The Administrative Rules of Montana (ARM) 24.17.501(3) – (3)(a), Public Works Contracts For Construction Services Subject to Prevailing Rates, states: *“Highway construction projects include, but are not limited to, the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, and parking areas, bridges constructed or repaired in conjunction with highway work, and other similar projects not incidental to building construction or heavy construction.*

Highway construction projects include, but are not limited to, alleys, base courses, bituminous treatments, bridle paths, concrete pavement, curbs, excavation and embankment (for road construction), fencing (highway, grade crossing elimination (overpasses or underpasses), guard rails on highways, highway signs, highway bridges (overpasses, underpasses, grade separation), medians, parking lots, parkways, resurfacing streets and highways, roadbeds, roadways, runways, shoulders, stabilizing courses, storm sewers incidental to road construction, street paving, surface courses, taxiways, and trails.”

Federal Davis-Bacon wage rates as published in U.S. Department of Labor General Wage Decision No. MT120001 Modification No.5 have been adopted by the Montana Department of Labor and Industry for use in Highway Construction projects and are included in this publication. These rates apply statewide or as shown in MT120001 Modification No. 5.

C. Definition of Public Works Contracts

Montana Code Annotated (MCA), section 18-2-401(11)(a), defines *“public works contract”* as *“a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000...”*

D. Prevailing Wage Schedule

This publication covers only Highway Construction occupations and rates in the specific localities mentioned herein. These rates will remain in effect until superseded by a more current publication. Current prevailing wage rate schedules for Building Construction, Heavy Construction and Nonconstruction Services occupations can be found on the internet at www.mtwagehourbopa.com or by contacting the Labor Standards Bureau at (406) 444-5600 or TDD (406) 444-5549.

E. Rates to Use for Projects

Rates to be used on a public works project are those that are in effect at the time the project and bid specifications are advertised.

F. Wage Rate Adjustments for Multiyear Contracts

Section 18-2-417, MCA states:

"(1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.

(2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.

(3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency."

G. Fringe Benefits

Section 18-2-412 MCA states:

"(1) To fulfill the obligation...a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the U. S. department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits and travel allowances, applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the U. S. department of labor."

Fringe benefits are paid for all hours worked (straight time and overtime hours). However, fringe benefits are not to be considered a part of the hourly rate of pay for calculating overtime, unless there is a collectively bargained agreement in effect that specifies otherwise.

H. Apprentices

Wage rates for apprentices registered in approved federal or state apprenticeship programs are contained in those programs. Additionally, section 18-2-416(2), MCA states, *"...The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract."* Apprentices not registered in approved federal or state apprenticeship programs will be paid the appropriate prevailing wage rate when working on a public works contract.

I. Posting Notice of Prevailing Wages

Section 18-2-406, MCA provides that contractors, subcontractors, and employers who are *"performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages to be paid to the employees."*

J. Employment Preference

Sections 18-2-403 and 18-2-409, MCA require contractors to give preference to the employment of bona fide Montana residents in the performance of work on public works contracts.

**MONTANA STATEWIDE PREVAILING
DAVIS-BACON**

Effective: February 1, 2013

HIGHWAY CONSTRUCTION WAGE RATES

General Wage Determinations Issued Under
the Davis-Bacon and Related Acts

State: Montana

Construction Types: Highway

Counties: Montana Statewide.

****ZONE PAY****

CEMENTS MASONS, IRON WORKERS, LABORERS, POWER EQUIPMENT OPERATORS, TRUCK DRIVERS

The hourly wage rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Courthouse of the following towns to the center of the job:

BILLINGS, BOZEMAN, BUTTE, GREAT FALLS, HAVRE, HELENA, KALISPELL, LEWISTOWN, MILES CITY, MISSOULA

ZONE 1: 0 to 30 miles - Free
ZONE 2: 30 to 60 miles - Base Pay + \$2.50
ZONE 3: Over 60 miles - Base Pay + \$4.00

CARPENTERS:

ZONE 1: 0 to 30 miles - Free
ZONE 2: 30 to 50 miles - Base Pay + \$3.00
ZONE 3: Over 50 miles - Base Pay + \$4.80

	Rates	Fringes
CARPENTER		
Carpenter, Piledriverman	\$22.71	\$10.15
Millwright	\$24.78	\$10.15

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	\$21.37	\$9.80

	Rates	Fringe
ELECTRICIAN		
Area 1	\$18.74	\$4.23 + 3.8%
Area 2	\$20.13	\$6.06 + 3.8%
Area 3	\$19.98	\$4.74 + 3.8%
Area 4	\$19.84	\$4.81 + 3.8%
Area 5	\$20.54	\$4.84 + 3.8%
Area 6	\$18.02	\$4.74 + 3.8%

	Rates	Fringes
LINE CONSTRUCTION		
Equipment Operator	\$19.16	\$6.35
Groundman	\$15.40	\$6.35

ELECTRICIANS AREA DESCRIPTIONS

AREA 1: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Silver Bow, and Powell Counties

AREA 2: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Treasure, Wibaux, and Yellowstone Counties

AREA 3: Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, McCone, Petroleum, Pondera, Phillips, Richland, Roosevelt, Sheridan, Teton, Toole, Valley, and Wheatland Counties

AREA 4: Broadwater, Lewis and Clark, and Meagher Counties

AREA 5: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties

AREA 6: Gallatin, Park, and Sweet Grass Counties

IRONWORKER

Flathead, Glacier, Lake, Lincoln, Mineral, Missoula and Sanders Counties

Rates	Fringes
\$25.50	\$15.66

Remaining Counties

Rates	Fringes
\$23.15	\$15.01

LABORER

	Rates	Fringes
Group 1	\$17.18	\$8.05
Group 2	\$19.97	\$8.05
Group 3	\$20.17	\$8.05
Group 4	\$21.07	\$8.05

LABORERS CLASSIFICATION**GROUP 1:** Flag person

GROUP 2: All General Labor Work; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-Lay Down; Crusher and Batch Plant Worker; Fence Erector; Form Setter; Form Stripper; Heater Tender; Landscaper; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Ripraper; Sealants for Concrete and other materials; Sign Erection, Guard Rail and Jersey Rail; Stake Jumper; Splke Driver; Signalman; Tail Hoseman; Tool Checker and Houseman; Traffic Control Worker.

GROUP 3: Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzlemen; Jackhammer (Pavement Breaker); Laser Equipment; Non-riding Rollers; Pipelayer; Posthole Digger (power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod Cutter-Power; Tampers.

GROUP 4: Asphalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete); Powderman (\$1.00 per hour above Group 4 rate); Rock & Core Drill; Track or Truck Mounted Wagon Drill; Welder including Air Arc.

	Rates	Fringes
PAINTER	\$24.00	\$9.30

Pavement Marking/Milling and related work. Includes operating marking and all other equipment and all work involved in traffic marking including removal, surface preparation and application of pavement markings including epoxies, paints, tape, buttons, thermo-plastics and any other products applied for traffic marking purposes and for directing and regulating traffic, and cutting Rumble Strips.

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1	\$21.52	\$9.30
Group 2	\$23.55	\$9.30
Group 3	\$24.41	\$9.30
Group 4	\$25.10	\$9.30
Group 5	\$26.44	\$9.30
Group 6	\$27.13	\$9.30
Group 7	\$29.23	\$9.30

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: A-Frame Truck Crane; Air Compressor; Auto Fine Grader; Belt Finishing Machine; Boring Machine (small); Cement Silo, Crane; Crusher Conveyor, DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form-Grader; Front-End Loader under 1 cu yd; Oiler, Heavy Duty Drills; Pumpman; Oiler (All, except Cranes and Shovels).

GROUP 2: Air Doctor; Backhoe/Excavator/Shovel up to & Incl 3 cu yd Bit Grinder; Bituminous Paving Travel Plant; Boring Machine, large; Broom, Self-Propelled; Concrete Bucket Dispatcher; Concrete Conveyor; Concrete Finish Machine; Concrete Float and Spreader; Concrete Travel Batchers; Distributor; Dozer, Rubber Tired, Push, and Side Boom; Drills, Heavy Duty (all types); Elevating Grader/Gradall; Field Equipment Serviceman; Front-End Loader 1 cu yd to and Incl. 5 cu yd; Grade-Setter; Hoist/Tugger (All Hydralift & Similar); Industrial Locomotive; Motor Patrol (Except Finish); Mountain Skidder; Oiler, Cranes & Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete/Grout Machine; Punch Truck; Rollers (All except Asphalt Finish and Breakdown); Ross Carrier; Rotomill under 6 ft; Trenching Machine; Washing/Screening Plant.

GROUP 3: Asphalt Finish Roller; Asphalt Breakdown Roller; Asphalt Paving Machine; Backhoe/Excavator/Shovel larger than 3 cu yd; Asphalt Screed; Concrete Batch Plant; Cableway Highline; Concrete Curing Machine; Cranes, 24 tons & under; Cranes, Creter; Cranes, Electric Overhead; Concrete Pump; Curb Machine/Slip Form Paver; Finish Dozer; Mechanic/Welder; Pioneer Dozer; Rotomill 6 ft and over; Scraper, Single Engine; Scraper Twin or Pulling Belly Dump; Yo Yo Cat Front-End Loader over 5 cu yd.

GROUP 4: Asphalt/Hot Plant Operator; Cranes, 25 tons to 44 tons; Crusher Operator; Finish Motor Patrol; Finish Scraper.

SPECIAL OPERATORS:

GROUP 5: Cranes, 45 tons to and including 74 tons

GROUP 6: Cranes, 75 tons to and including 149 tons

GROUP 7: Cranes, 150 tons to and including 250 tons; Cranes over 250 tons: add \$1.00 for every 100 tons over 250 tons; Crane, Stiff-Leg or Derrick; Crane, Tower (all); Crane, Whirley (all); Helicopter Hoist.

TRUCK DRIVER

	Rates	Fringes
Group 1	\$18.54	\$9.16
Group 2	\$23.69	\$9.16

GROUP 1: Pilot Car

GROUP 2: Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dumpman; Dump Trucks and similar equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/Tireperson; Truck Mechanic; Trucks with Power Equipment; Warehouseman, Partsman, Cardex and Warehouse Expeditor; Water Trucks.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

END OF GENERAL DECISION

RESOLUTION NO. 3704

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSTRUCTION CONTRACT WITH CENTURY COMPANIES, INC., A MONTANA CORPORATION, FOR REPLACEMENT OF CURB, GUTTER, SIDEWALKS AND ADA RAMPS AT TRIANGLE PARK.

WHEREAS, the City has advertised for replacement of curb, gutter, sidewalks and ramps at Triangle Park in Miles City, Montana;

AND WHEREAS Century Companies, Inc., a Montana corporation, of Lewistown, Montana was the lowest responsible bidder for such project;

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

1. The Contract for paving services attached hereto as Exhibit "A," is hereby approved and adopted by this Council;
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Contract on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Contract 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'

3709

CONTRACT

THIS CONTRACT, made as of the 21st of May 2014, by and between the CITY OF MILES CITY, MONTANA, hereinafter called the OWNER and Century Construction Companies, Inc. hereinafter called CONTRACTOR, that said CONTRACTOR, if a corporation organized under the laws of any state or other jurisdiction other than the State of Montana, represents that it is licensed and registered to do business in the State of Montana.

KLE
6/4/14

WHEREAS, the OWNER desires to have the following work completed by CONTRACTOR: Replace all curb, gutter, fillets, and radius', sidewalks, and ADA ramps. - All items of construction must meet the specifications as outlined in the bid package,

Timothy Paul

hereinafter called the PROJECT, in accordance with the Drawings, Specifications and other Contract Documents prepared by the City Public Works Office, City of Miles City, Miles City, Montana, 59301, hereinafter called PUBLIC WORKS;

AND WHEREAS, the CONTRACTOR desires to complete said PROJECT;

NOW, THEREFORE, THE OWNER and CONTRACTOR for the considerations herein set forth, agree as follows:

THE CONTRACTOR AGREES to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all work required for the construction of the PROJECT described herein, in strict compliance with the CONTRACT DOCUMENTS, which are hereby made a part of the Contract. Contractor has examined and carefully studied the CONTRACT DOCUMENTS, has visited the PROJECT site, and is familiar with and satisfied as to all federal, state and local laws and regulations that may affect cost, progress or performance of its obligations hereunder, and agrees

that the **CONTRACT DOCUMENTS** are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of work necessary to complete the **PROJECT**.

A. CONTRACT TIME: Work under this Contract shall be commenced upon written notice to proceed and shall be completed within 45 working days of the commencement of the Contract Time as defined in the General Conditions. All time limits in this **CONTRACT**, including but not limited to milestones, substantial completion, and completion, are material requirements under this **CONTRACT**.

B. LIQUIDATED DAMAGES: Subject to the provisions of the General Conditions, the **OWNER** shall be entitled to liquidate damages in the amount of **TWO HUNDRED DOLLARS (\$200.00)**, for each working day delay in the completion of the **CONTRACT**.

C. SUB-CONTRACTORS: **THE CONTRACTOR** agrees to bind every sub-contractor by the terms of the **CONTRACT DOCUMENTS**. The **CONTRACT DOCUMENTS** shall not be construed as creating any contractual relation between any sub-contractor and the **OWNER**.

THE OWNER AGREES to pay and the **CONTRACTOR** agrees to accept, in full payment for the performance of this **CONTRACT**, the **CONTRACT** amount of **Eighty-Eight Thousand and no cents, (\$ 88,000.00)** based on the prices stipulated in the **PROPOSAL**, and in accordance with the provisions of the **CONTRACT DOCUMENTS**.

D. PROGRESS PAYMENTS will be made in accordance with the **GENERAL CONDITIONS**.

E. "CONTRACT DOCUMENTS": The term "**CONTRACT DOCUMENTS**" as used herein shall mean and include the following:

- a. (This Instrument)
- b. Performance and Payment Bond
- c. Addenda to **CONTRACT DOCUMENTS** (if any)
- d. Legal and Procedural Documents:
 - 1. Proposal
 - 2. Information for Bidders
 - 3. Advertisement for Bids
- e. Special Provisions
 - 1. Montana Public Works Standard Specification, Sixth Edition
Available for review in the Engineering Department at City Hall
- f. Drawings
- g. Detailed Specification Requirements
- h. General Conditions
 - 1. EJCDC C-700 Standard General Conditions of the
Construction Contract, as may be revised from time to time
- i. Information for Bidders

F. AUTHORITY AND RESPONSIBILITY OF PUBLIC WORKS: All work shall be done under the general surveillance of **PUBLIC WORKS**. **PUBLIC WORKS** shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of work, interpretation of **DRAWINGS** and **SPECIFICATIONS** and all questions as to the acceptable fulfillment of the **CONTRACT** on the part of **CONTRACTOR**. In acting in this capacity under this **CONTRACT**, **PUBLIC WORKS** is acting as the agent of the **OWNER** to protect the interests of the **OWNER** and to insure that the **CONTRACTOR'S** work is done in full compliance with the terms of this

CONTRACT and this service does not include direction or supervision of the **CONTRACTOR'S** employees, agents or subcontractors, or the inspection of any of the equipment, installations, temporary storing, or any other of the **CONTRACTOR'S** operations or those of his subcontractors, to safeguard their agents or employees, or the general public, or to prevent damage to public or private property, this being the sole responsibility of the **CONTRACTOR**.

G. SUCCESSORS AND ASSIGNS: **THIS CONTRACT** and all of the covenants hereof shall insure to the benefit of, be binding upon the **OWNER** and **CONTRACTOR** respectively, and his partners, successors, assigns and legal representatives. **NEITHER THE OWNER** nor the **CONTRACTOR** shall have the right to assign or transfer his interests or obligations hereunder without written consent of the other party.

H. PREFERENCE FOR EMPLOYMENT OF MONTANA RESIDENTS AND PAYMENT OF PREVAILING WAGES: Pursuant to 18-2-403 MCA the **CONTRACTOR** is required to give preference to the employment of bona fide Montana residents in the performance of the work. The **CONTRACTOR** is required to pay:

- a. the travel allowance that is in effect and applicable to the district in which the work is being performed; and
- b. the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the district in which the work is being performed.

Each **CONTRACTOR** and employer is required to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423 MCA, for not less than 3 years after the **CONTRACTOR'S** or employer's completion of work on the project.

Each **CONTRACTOR** is required to post a statement of all wages and fringe benefits in

compliance with 18-2-423 MCA.

Attached hereto as Exhibit "A", and made a part hereof, is a statement, for each job classification, the standard prevailing wage rate, including fringe benefits; that the CONTRACTOR and employers shall pay during construction of the project;

I. NON-DISCRIMINATION: All hiring by CONTRACTOR must be on the basis of merit and qualifications and there shall not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this CONTRACT.

IN WITNESS WHEREOF, the parties have made and executed this CONTRACT the day and year first above written.

City of Miles City
OWNER
BY: Chris Grenz
Chris Grenz
TITLE: Mayor

Century Construction Companies, Inc
CONTRACTOR
BY: [Signature]
TITLE: Civil Division Manager

City of Miles City
BUSINESS ADDRESS
P.O. Box 910
Miles City, MT 59301
CITY STATE

BUSINESS ADDRESS
PO Box 579, 510 1st Ave. North
Lewistown, MT 59457
CITY STATE

EXHIBIT "A"
MONTANA
PREVAILING WAGE RATES FOR HIGHWAY CONSTRUCTION SERVICES 2013

Effective: February 1, 2013

Steve Bullock, Governor
State of Montana

Pam Bucy, Commissioner
Department of Labor & Industry

To obtain copies of prevailing wage rate schedules, or for information relating to public works projects and payment of prevailing wage rates visit ERD at www.mtwagehourbopa.com or contact them at:

Employment Relations Division
Montana Department of Labor and Industry
P. O. Box 201503
Helena, MT 59620-1503
Phone 406-444-5600
TDD 406-444-5549

The Labor Standards Bureau welcomes questions, comments and suggestions from the public. In addition, we'll do our best to provide information in an accessible format, upon request, in compliance with the Americans with Disabilities Act.

MONTANA PREVAILING WAGE REQUIREMENTS

The Commissioner of the Department of Labor and Industry, in accordance with Sections 18-2-401 and 18-2-402 of the Montana Code Annotated (MCA), has determined the standard prevailing rate of wages for the occupations listed in this publication.

The wages specified herein control the prevailing rate of wages for the purposes of Section 18-2-401 et seq., MCA. It is required that each employer pay (as a minimum) the rate of wages, including fringe benefits, travel allowance and per diem applicable to the district in which the work is being performed, as provided in the attached wage determinations.

All Montana Prevailing Wage Rates are available on the internet at www.mtwagehourbopa.com or by contacting the Labor Standards Bureau at (406) 444-5600 or TDD (406) 444-5549.

In addition, this publication provides general information concerning compliance with Montana's Prevailing Wage Law and the payment of prevailing wages. For detailed compliance information relating to public works contracts and payment of prevailing wage rates, please consult the regulations on the internet at www.mtwagehourbopa.com or contact the Labor Standards Bureau at (406) 444-5600 or TDD (406) 444-5549.

PAM BUCY
Commissioner
Department of Labor and Industry
State of Montana

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A. Date of Publication February 1, 2013

B. Definition of Highway Construction

The Administrative Rules of Montana (ARM) 24.17.501(3) -- (3)(a), Public Works Contracts For Construction Services Subject to Prevailing Rates, states: *"Highway construction projects include, but are not limited to, the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, and parking areas, bridges constructed or repaired in conjunction with highway work, and other similar projects not incidental to building construction or heavy construction.*

Highway construction projects include, but are not limited to, alleys, base courses, bituminous treatments, bridle paths, concrete pavement, curbs, excavation and embankment (for road construction), fencing (highway, grade crossing elimination (overpasses or underpasses), guard rails on highways, highway signs, highway bridges (overpasses, underpasses, grade separation), medians, parking lots, parkways, resurfacing streets and highways, roadbeds, roadways, runways, shoulders, stabilizing courses, storm sewers incidental to road construction, street paving, surface courses, taxiways, and trails."

Federal Davis-Bacon wage rates as published in U.S. Department of Labor General Wage Decision No. MT120001 Modification No.5 have been adopted by the Montana Department of Labor and Industry for use in Highway Construction projects and are included in this publication. These rates apply statewide or as shown in MT120001 Modification No. 5.

C. Definition of Public Works Contracts

Montana Code Annotated (MCA), section 18-2-401(11)(a), defines *"public works contract"* as *"a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000..."*

D. Prevailing Wage Schedule

This publication covers only Highway Construction occupations and rates in the specific localities mentioned herein. These rates will remain in effect until superseded by a more current publication. Current prevailing wage rate schedules for Building Construction, Heavy Construction and Nonconstruction Services occupations can be found on the internet at www.mtwagehourbopa.com or by contacting the Labor Standards Bureau at (406) 444-5600 or TDD (406) 444-5549.

E. Rates to Use for Projects

Rates to be used on a public works project are those that are in effect at the time the project and bid specifications are advertised.

F. Wage Rate Adjustments for Multiyear Contracts

Section 18-2-417, MCA states:

"(1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.

(2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.

(3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency."

G. Fringe Benefits

Section 18-2-412 MCA states:

"(1) To fulfill the obligation...a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the U. S. department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits and travel allowances, applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the U. S. department of labor."

Fringe benefits are paid for all hours worked (straight time and overtime hours). However, fringe benefits are not to be considered a part of the hourly rate of pay for calculating overtime, unless there is a collectively bargained agreement in effect that specifies otherwise.

H. Apprentices

Wage rates for apprentices registered in approved federal or state apprenticeship programs are contained in those programs. Additionally, section 18-2-416(2), MCA states, *"...The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract."* Apprentices not registered in approved federal or state apprenticeship programs will be paid the appropriate prevailing wage rate when working on a public works contract.

I. Posting Notice of Prevailing Wages

Section 18-2-406, MCA provides that contractors, subcontractors, and employers who are *"performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages to be paid to the employees."*

J. Employment Preference

Sections 18-2-403 and 18-2-409, MCA require contractors to give preference to the employment of bona fide Montana residents in the performance of work on public works contracts.

**MONTANA STATEWIDE PREVAILING
DAVIS-BACON**

Effective: February 1, 2013

HIGHWAY CONSTRUCTION WAGE RATES

General Wage Determinations Issued Under
the Davis-Bacon and Related Acts

State: Montana

Construction Types: Highway

Counties: Montana Statewide.

****ZONE PAY****

CEMENTS MASONS, IRON WORKERS, LABORERS, POWER EQUIPMENT OPERATORS, TRUCK DRIVERS

The hourly wage rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Courthouse of the following towns to the center of the job:

BILLINGS, BOZEMAN, BUTTE, GREAT FALLS, HAVRE, HELENA, KALISPELL, LEWISTOWN, MILES CITY, MISSOULA

- ZONE 1: 0 to 30 miles - Free
- ZONE 2: 30 to 60 miles - Base Pay + \$2.50
- ZONE 3: Over 60 miles - Base Pay + \$4.00

CARPENTERS:

- ZONE 1: 0 to 30 miles - Free
- ZONE 2: 30 to 50 miles - Base Pay + \$3.00
- ZONE 3: Over 50 miles - Base Pay + \$4.80

	Rates	Fringes
CARPENTER		
Carpenter, Piledriverman	\$22.71	\$10.15
Millwright	\$24.78	\$10.15

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	\$21.37	\$9.80

	Rates	Fringe
ELECTRICIAN		
Area 1	\$18.74	\$4.23 + 3.8%
Area 2	\$20.13	\$6.06 + 3.8%
Area 3	\$19.98	\$4.74 + 3.8%
Area 4	\$19.84	\$4.81 + 3.8%
Area 5	\$20.54	\$4.84 + 3.8%
Area 6	\$18.02	\$4.74 + 3.8%

	Rates	Fringes
LINE CONSTRUCTION		
Equipment Operator	\$19.16	\$6.35
Groundman	\$15.40	\$6.35

ELECTRICIANS AREA DESCRIPTIONS

AREA 1: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Silver Bow, and Powell Counties

AREA 2: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Treasure, Wibaux, and Yellowstone Counties

AREA 3: Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, McCone, Petroleum, Pondera, Phillips, Richland, Roosevelt, Sheridan, Teton, Toole, Valley, and Wheatland Counties

AREA 4: Broadwater, Lewis and Clark, and Meagher Counties

AREA 5: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties

AREA 6: Gallatin, Park, and Sweet Grass Counties

IRONWORKER

Flathead, Glacier, Lake, Lincoln, Mineral, Missoula and Sanders Counties

	Rates	Fringes
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	\$25.50	\$15.66
--	---------	---------

Remaining Counties

	Rates	Fringes
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	\$23.15	\$15.01
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LABORER

	Rates	Fringes
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Group 1	\$17.18	\$8.05
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Group 2	\$19.97	\$8.05
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Group 3	\$20.17	\$8.05
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Group 4	\$21.07	\$8.05
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LABORERS CLASSIFICATION**GROUP 1:** Flag person

GROUP 2: All General Labor Work; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-Lay Down; Crusher and Batch Plant Worker; Fence Erector; Form Setter; Form Stripper; Heater Tender; Landscaper; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Ripraper; Sealants for Concrete and other materials; Sign Erection, Guard Rail and Jersey Rail; Stake Jumper; Spike Driver; Signalman; Tail Hoseman; Tool Checker and Houseman; Traffic Control Worker.

GROUP 3: Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzlemen; Jackhammer (Pavement Breaker); Laser Equipment; Non-riding Rollers; Pipelayer; Posthole Digger (power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod Cutter-Power; Tampers.

GROUP 4: Asphalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete); Powderman (\$1.00 per hour above Group 4 rate); Rock & Core Drill; Track or Truck Mounted Wagon Drill; Welder including Air Arc.

	Rates	Fringes
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PAINTER

	\$24.00	\$9.30
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Pavement Marking/Milling and related work. Includes operating marking and all other equipment and all work involved in traffic marking including removal, surface preparation and application of pavement markings including epoxies, paints, tape, buttons, thermo-plastics and any other products applied for traffic marking purposes and for directing and regulating traffic, and cutting Rumble Strips.

POWER EQUIPMENT OPERATOR

	Rates	Fringes
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Group 1	\$21.52	\$9.30
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Group 2	\$23.55	\$9.30
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Group 3	\$24.41	\$9.30
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Group 4	\$25.10	\$9.30
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Group 5	\$26.44	\$9.30
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Group 6	\$27.13	\$9.30
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Group 7	\$29.23	\$9.30
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POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: A-Frame Truck Crane; Air Compressor; Auto Fine Grader; Belt Finishing Machine; Boring Machine (small); Cement Silo, Crane; Crusher Conveyor, DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form-Grader; Front-End Loader under 1 cu yd; Oiler, Heavy Duty Drills; Pumpman; Oiler (All, except Cranes and Shovels).

GROUP 2: Air Doctor; Backhoe/Excavator/Shovel up to & incl 3 cu yd Bit Grinder; Bituminous Paving Travel Plant; Boring Machine, large; Broom, Self-Propelled; Concrete Bucket Dispatcher; Concrete Conveyor; Concrete Finish Machine; Concrete Float and Spreader; Concrete Travel Batch; Distributor; Dozer, Rubber Tired, Push, and Side Boom; Drills, Heavy Duty (all types); Elevating Grader/Gradall; Field Equipment Serviceman; Front-End Loader 1 cu yd to and incl. 5 cu yd; Grade Setter; Hoist/Tugger (All Hydrallift & Similar); Industrial Locomotive; Motor Patrol (Except Finish); Mountain Skidder; Oiler, Cranes & Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete/ Grout Machine; Punch Truck; Rollers (All except Asphalt Finish and Breakdown); Ross Carrier; Rotomill under 6 ft; Trenching Machine; Washing/Screening Plant.

GROUP 3: Asphalt Finish Roller; Asphalt Breakdown Roller; Asphalt Paving Machine; Backhoe/Excavator/Shovel larger than 3 cu yd; Asphalt Screed; Concrete Batch Plant; Cableway Highline; Concrete Curing Machine; Cranes, 24 tons & under; Cranes, Creter; Cranes, Electric Overhead; Concrete Pump; Curb Machine/Slip Form Paver; Finish Dozer; Mechanic/Welder; Pioneer Dozer; Rotomill 6 ft and over; Scraper, Single Engine; Scraper Twin or Pulling Belly Dump; Yo Yo Cat Front-End Loader over 5 cu yd.

GROUP 4: Asphalt/Hot Plant Operator; Cranes, 25 tons to 44 tons; Crusher Operator; Finish Motor Patrol; Finish Scraper.

SPECIAL OPERATORS:

GROUP 5: Cranes, 45 tons to and including 74 tons

GROUP 6: Cranes, 75 tons to and including 149 tons

GROUP 7: Cranes, 150 tons to and including 250 tons; Cranes over 250 tons: add \$1.00 for every 100 tons over 250 tons; Crane, Stiff-Leg or Derrick; Crane, Tower (all); Crane, Whirley (all); Helicopter Hoist.

TRUCK DRIVER

	Rates	Fringes
Group 1	\$18.54	\$9.16
Group 2	\$23.69	\$9.16

GROUP 1: Pilot Car

GROUP 2: Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dumpman; Dump Trucks and similar equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/Tireperson; Truck Mechanic; Trucks with Power Equipment; Warehouseman, Partsman, Cardex and Warehouse Expeditor; Water Trucks.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

END OF GENERAL DECISION

RESOLUTION NO: 3705

A RESOLUTION DECLARING THE CITY COUNCIL INTENT TO CREATE A MILES CITY DOWNTOWN URBAN RENEWAL DISTRICT WITH TAX INCREMENT AUTHORITY; DECLARING THE EXISTENCE OF BLIGHT WITHIN THE MILES CITY DOWNTOWN URBAN RENEWAL AREA

WHEREAS, the City wishes to provide the proper public notification of its intent to create the Miles City Downtown Urban Renewal District and follow the process as outlined in State Law, and is adopting this amended resolution as part of the required process;

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), the City of Miles City, Montana (the "City") is authorized, among other things, to identify and declare an area as containing blight with the intention of eliminating it through urban renewal; and

WHEREAS, the City is authorized by the Act to create urban renewal areas with tax increment provisions by adopting an urban renewal plan by ordinance.

NOW, THEREFORE, the City Council of the City of Miles City, Montana, declares and resolves as

1. Legal Description of Miles City Downtown Urban Renewal District The area being considered for inclusion in the proposed urban renewal area is described as:

Beginning at the intersection of Tatro Street and 7th St, continuing east to the municipal limits, paralleling the city limits south and east to the intersection of Ullman St and Gordon St, continuing east to the intersection of Gordon St and Woodbury St, continuing South to the intersection of Woodbury St. and Washington St, continuing west on Washington St to the intersection of Washington St and 8th St, continuing south on 8th St to the intersection of 8th and Pleasant St, continuing east to the intersection of Pleasant St and N Center Ave, continuing South to the intersection of S Center Ave and S Montana Ave, continuing southwest to the intersection of S Montana Ave and Atlantic Ave, continuing southwest to the intersection of Atlantic and NueVu, continuing southeast on NueVu to the intersection of NueVu and Yellowstone, continuing southwest to the city limits and the Tongue River, continuing north to the western terminus of Pacific Ave and the city limits, continuing northeast to the intersection of Pacific Ave and S 3rd St, continuing North to the intersection of S 3rd and Riverside Dr, continuing north and east to the intersection of Main St and N 4th St,

continuing west to the intersection of main and N 3rd St, continuing north to the intersection of N 3rd and Pleasant St, Continuing west to the intersection of Pleasant and Dike Rd, following the municipal limits west, north, and east to the intersection of Wilderness Rd and Hubbell St, continuing east on Hubbell St. to the intersection of Hubbell St and 6th St, continuing north to the intersection of 6th and William ST, continuing east on William St to the intersection of William St and 7th St, continuing north to the intersection of 7th St and Tatro St.

2. Determination of blight. A requirement of Montana Annotated Code 2013 is to justify an urban renewal plan through the determination of blight. Blight is defined as an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodation; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:
 - the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
 - inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate or mixed uses of land or buildings;
 - defective or inadequate street layout;
 - faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions;
 - deterioration of site;
 - improper subdivision or obsolete platting;
 - the existence of conditions that endanger life or property by fire or other causes;

The area in the proposed district contains a great deal of blight. Within the district there is substantial structural deterioration, long-term land vacancy, and significant infrastructure needs. Several of the commercial buildings in the district are vacant or deteriorated and need demolition. Many of the sidewalks are cracked or nonexistent, alleys are deteriorated, and, in general, much of the area is below city standards. Montana Code 7-15-4206(2) provides statutory guidance to determine the eligibility of an area of a city to be deemed as blighted. Specifically MCA 715-4206(a)(i)(j)(n) are all items that relate to the condition of the proposed Miles City Downtown Urban Renewal District. The area is currently undergoing a transition as more commercial uses relocate to

other parts of the community leaving behind vacant storefronts and underutilized parcels. This continued lack of investment requires that action be taken by both public and private parties. Portions of the district fall into the blighted, neglected and under-utilized categories. The Miles City Downtown Urban Renewal District Map shows the current infrastructure conditions within the district, attached hereto as Exhibit "A", and made a part hereof, is hereby approved.

Intent to Create an Urban Renewal District with Tax Increment Authority. Pursuant to the Act and considering the blighted conditions cited above, the City Council declares its intention to create a Miles City Downtown Urban Renewal Area and that public improvements that will stimulate private investment in the area may be financed in part through tax increment generated from the District, subject to a public hearing and adoption of the draft urban renewal plan by ordinance.

APPROVED AND PASSED by the City Council of the City of Miles City this __8th day of July, 2014.

CITY OF MILES CITY

BY: _____

Chris A. Grenz, Mayor

ATTEST:

BY: _____

Lorrie Pearce, City Clerk

EXHIBIT A: MILES CITY URBAN RENEWAL DISTRICT MAP



3707

Connie Watts

From: dzrice@gmail.com on behalf of Dan Rice
Sent: Wednesday, July 02, 2014 4:41 PM
To: W.G. Gilbert, III; Connie Watts; Lorrie Pearce; Billie Burkhalter; Butch Grenz; Scott Gray; Allen Keim
Subject: Fwd: Resolution 3707
Attachments: 3707, Resolution for Legal Services for Water Court.pdf

Please note :

Resolution 3707 is attached.

Again, during Council discussion, please pass on my indication that it is imperative that this passes in order to have competent water court representation and to protect our water rights for the pool.

Thanks

Daniel Z. Rice
City Attorney, Miles City, MT
P.O. Box 728, 513 Main St.
Miles City, MT 59301
(406)232-4070
(406)232-4093 (Fax)

The preceding e-mail message (including attachments, if any) contains information that is confidential, may be protected by the attorney-client, work product, or other applicable privilege, and may constitute non-public information or trade secrets. The e-mail is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this e-mail, please notify the sender, and destroy all copies of this transmittal. Please do not forward this message without the express approval of Daniel Z. Rice. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

----- Forwarded message -----

From: Cassandra <cassandra@lucasandtonn.com>
Date: Wed, Jul 2, 2014 at 4:36 PM
Subject: Resolution 3707
To: Dan Rice <dan@lucasandtonn.com>

Dan,

I attached the PDF of Resolution 3707.

Thank you,

Cassandra

RESOLUTION NO. 3707

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONTRACT FOR ATTORNEY SERVICES WITH W. G. GILBERT, III, P.C., A MONTANA PROFESSIONAL CORPORATION, FOR SPECIAL LEGAL SERVICES RELATED TO MONTANA WATER COURT CASE NO. 42C-184.

WHEREAS, the City is a party to a Montana Water Court Case No. 42C-184 involving a challenge to certain water rights held by the City pertaining to Cook and Scanlan Lakes;

AND WHEREAS the City wishes to engage the legal services of W. G. Gilbert, III, P.C., to represent the City in such case;

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

1. The Contract for Attorney Services attached hereto as Exhibit "A," is hereby approved and adopted by this Council;
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Contract on behalf of the City of Miles City and bind the City of Miles City thereto; and

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

CONTRACT FOR ATTORNEY SERVICES

1. AUTHORITY

This Contract is made by the City Council of the City of Miles City, Montana ("City Council" hereinafter) Resolution No. _____

2. PARTIES

The parties to this Contract are W.O. Gilbert, III, P.C. (d/b/a Gilbert Law Office) ("Gilbert" hereinafter) and the City of Miles City, Montana ("City" hereinafter), by and through the City Council.

3. INDEPENDENT CONTRACTOR

This Contract is for the purpose of retaining Gilbert to perform legal services. Gilbert is an independent contractor, and, subject to the City Council's powers as described in 5g, below, not subject to the control or direction of the City as if Gilbert were a City employee, Gilbert is not subject to any of the payroll deductions that are taken from an employee's salary, nor is Gilbert entitled to any "employee benefit" from the City. Nothing in this Contractor any action of the parties is to be interpreted otherwise.

4. CASES OR MATTERS ASSIGNED

Gilbert shall act as the City's Special Counsel in Montana Water Court Case No. 42C-184 including any appeal or similar proceeding conducted in relation to Water Case 42C-184.

5. GILBERT'S OBLIGATIONS & CITY COUNCIL'S POWERS

- a. Settlement Offers: Gilbert shall communicate in writing any settlement offer received from the opposing party in the case on matter by sending it or providing the settlement offer to the City Attorney for the City of Miles City ("City Attorney" hereinafter) within seven days of the time when Gilbert receives the settlement offer.
- b. Matters within Gilbert's Professional Judgment: Gilbert shall have sole discretion and responsibility over, and exercise the professional judgment of its employed attorneys with regard to, the following:
 - (i) Requesting from the Court or an opposing party any deadline extensions or similar extensions concerning the timing or scheduling of case-related or matter-related events;
 - (ii) Drafting, filing, and serving any motions, briefs, writs, proposed findings of fact and conclusions of law, proposed orders,

interrogatories, requests for production, requests for admission, and any other documents related to the pre-trial or post-trial process ;

- (iii) Attempting the recovery of attorney's fees and costs from any opposing party or any opposing party's attorney(s);
 - (iv) Executing money or other judgments against any opposing party;
 - (v) Conducting any communications with opposing counsel;
 - (vi) Conducting any communications with other counsel hired or retained by the City for any case or matter;
 - (vii) Arguing and presenting factual and legal positions at any hearing, trial, mediation, arbitration, or similar proceeding;
 - (viii) Appealing, moving to amend, or similarly addressing any order, judgment, or similar decision by a court or other fact-finding body; and
 - (ix) Any other act or decision for which an attorney in a similar case or matter could be responsible.
- c. Extensions of Time of Required Filing Dates: Gilbert shall have authority to stipulate to any deadline extensions or similar extensions concerning the timing or scheduling of case-related or matter-related events made by the opposing party or other parties in the case according to his professional judgment.
- d. Copies of Documents Prepared by Gilbert: Gilbert shall provide or send copies of any motions, briefs., writs, proposed findings of fact and conclusions of law, proposed orders, interrogatories, requests for production or requests for admission prepared by Gilbert on or after the date of this Contract to the City Attorney within seven days after the time when such are filed with the Court or served upon the opposing party. Gilbert shall provide or send copies of any other documents to the City Attorney within seven days after receiving a written request from the City Attorney, or other authority designated by the City of Miles City.
- e. Copies of Documents Prepared by Court or Other Fact Finding Body: Gilbert shall provide or send copies of any orders, judgments, findings of fact and conclusions of law, or other documents prepared by a Court or other fact-finding body on or after the date of this Contract in relation to the case that he is representing the City before the Water Court to the City Attorney within seven days of receiving the same.

- f. Invoices: Gilbert shall provide or send the City a monthly invoice for services rendered on or before the 28th of each month by sending or providing the same to the City Clerk as identified in § 7a, below.
- g. City Council's Powers: Gilbert's discretion or responsibility with regard to any case or matter, or particular decisions therein, may be limited or revoked by a Written resolution duly passed by a majority vote of the City Council at a meeting thereof.

6. CITY'S OBLIGATIONS

- a. Hourly Rate: The City shall pay Gilbert the following hourly rates:
 - (i) \$185.00 per hour for work performed by W.G. Gilbert, III;
 - (ii) \$155.00 per hour for work performed by other attorneys employed by Gilbert; and
 - (iii) \$45.00 per hour for work performed by paralegals employed by Gilbert..
 - (iv) Travel time will be billed at one half the hourly rate if it occurs during regular office hours.
- b. Expenses: The City shall pay Gilbert for the following expenses and charges:
 - (1) Mileage at the rate described in Mont. Code Ann. § 2-18-503 (1)(3);
 - (2) Meals at actual cost, not to exceed \$25.00 per day;
 - (3) Lodging, if required, at actual cost;
 - (4) Other reasonable and necessary expenses required to provide representation to the City;
- c. Payments: The City shall pay any invoice submitted by Gilbert pursuant to § 5f, above, within seven days of the date of the invoice, by sending or providing a check to Gilbert for the amount owing on the invoice to or at the address set forth in § 7c, below.
- d. Accurate Disclosure by City: City will fully and accurately disclose to Gilbert all facts and information that may be believed to be related to any matter in which Gilbert represents the City and to keep Gilbert apprised of any developments relating to issues, City program operations,

installations, and personnel and related to the legal services being performed.

- e. Cooperation of Officers and Employees: The City shall take such actions as are necessary to insure that its Officers and Employees cooperate to the fullest, and in a timely manner with Gilbert, in providing Gilbert information data obtaining signatures on documents and other actions that may be required by him to further the case on behalf of the City.

7. TRANSMITTAL OF INVOICES AND OTHER COMMUNICATIONS

- a. Invoices from Gilbert to City: Any invoices from Gilbert shall be sent by Gilbert via conventional mail to the following address to the individual identified therein:

City Clerk--City of Miles City
P.O. Box 910
Miles City, MT 59725

- b. Other Communications from Gilbert to City Attorney: Whenever any portion of this Contract obligates Gilbert to provide or send any document, communication, or notice to the City Attorney, the same shall be sent by Gilbert via conventional mail to the following address:

Dan Rice, Lucas and Tonn
City Attorney---, City of Miles City
P.O. Box 728
513 Main Street
Miles City, MT 59301

- c. Invoice Payments: Any invoice payments made by the City pursuant to § 5b, above, shall be sent by the City via conventional mail to the following address:

W.G. Gilbert, III
W.G. Gilbert, UI, P.C.
15 S. Idaho Street
P.O. Box 345
Dillon, MT 59725

- d. Time Computation: all invoices, invoice payments, documents, communications or notices shall be deemed to be sent when mailed to the City Attorney, City Clerk, or Gilbert as identified in § 7a-c, above.

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8. COMPLETION OF OBLIGATIONS

Whenever in the professional judgment of the attorneys employed by Gilbert all of Gilbert's obligations described in §§ 4 and 5, above, are completed regarding Case 42C-184, above, Gilbert shall provide or send to the City Attorney a written communication asserting that Gilbert believes its obligations regarding Case 42C-184 are completed. Gilbert's obligations shall be deemed complete upon the earlier of the following:

- (a) Gilbert's receipt or a written document from the City Attorney stating that Gilbert's obligations are complete; or
- (b) the passage of seven days from the date when the notice described in § 8, above, was provided or sent to the City Attorney and during which time Gilbert receives no written communication from the City Attorney stating that the City does not concur in Gilbert's assertion that its obligations are complete.

9. REFERRAL TO CITY ATTORNEY

Whenever in the professional judgment of the attorneys employed by Gilbert any part of the work in Case 42C-184 described above, should be referred to the City Attorney for the City of Miles City, Montana ("City Attorney" hereinafter), Gilbert shall provide or send the City Attorney with the file for the case or matter and a written communication stating that the case or matter should be referred to the City Attorney. Gilbert's obligations with regard to the case or matter shall be deemed complete immediately upon Gilbert providing or sending the City Attorney the file for the case or matter and a written communication stating that the case or matter should be referred to the City Attorney.

10. CUSTODY OF FILES

All paper and electronic files for the performance of the work in Case 42C184, shall be kept by Gilbert in Gilbert's office at 15 South Idaho Street, Dillon, Montana 59725. Gilbert may keep duplicate electronic or paper copies of any materials in such files, and such duplicate copies shall be deemed to be Gilbert's exclusive property, regardless of whether the case or matter is completed pursuant to § 8, above, or referred to the City Attorney pursuant to § 9, above.

11. ENTIRE AGREEMENT

Each party acknowledges that this Contract is the entire, sole, and only agreement pertaining to the subject and things referred to herein and that there are no other independent, collateral or additional agreements or obligations to be performed or things to be done except as set out herein.

12. IMPLEMENTATION

Each party shall take all steps necessary and appropriate to implement and carry out the

terms of this Contract.

13. MODIFICATION

Any modification or waiver of any of the provisions of this Contract shall be effective only if made in a writing executed by each of the parties. The failure of either party to insist upon strict performance of any of the provisions of this Contract shall not be construed as a waiver of any subsequent default, regardless of whether such default is of the same or similar nature or otherwise.

14. SEVERABILITY

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

15. JURISDICTION AND VENUE

The Montana 5th Judicial District Court, Beaverhead County, shall have exclusive jurisdiction over this Contract and any claim or cause of action arising out of this Contract.

16. CITY'S PAYMENT OBLIGATION NOT WAIVED BY CERTAIN ACTS OF GILBERT OR COUNCIL

The following shall in no manner waive or vitiate the City's obligation to pay any amounts outstanding owing to Gilbert for work performed in relation to a case or matter:

- a. Gilbert's referral of a case or matter to the City Attorney pursuant to § 9, above;
- b. Gilbert's completion of a case or matter pursuant to § 8, above; or
- c. The City Council's passage of a written resolution limiting or revoking Gilbert's discretion or responsibility pursuant to § 5g, above.

17. Either the City or Gilbert has the right to terminate the relationship between City and Gilbert by giving the other written notice no less than 14 days before the termination.

IT IS SO AGREED this ____ day of July, 2014.

W.G.GILBERT, III, J.C.

By:

W.G. Gilbert, III

CITY OF MILES CITY, MONTANA

By: _____
----- _ Mayor

ATTEST: _____