



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*August 12, 2014
7:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
 - a. City Council Meeting 7/22/2014
 - b. Human Resources Committee 7/29/2014
 - c. Finance Committee 7/30/2014
 - d. Human Resources Committee 8/04/2014
 - e. Public Safety Committee 8/05/2014
2. SCHEDULE MEETINGS
3. REQUEST OF CITIZENS & PUBLIC COMMENT
4. APPOINTMENTS
5. PROCLAMATIONS
6. STAFF REPORTS
Connie Muggli: Tax Increment Finance District Update
7. CITY COUNCIL COMMENTS
8. MAYOR COMMENTS
9. COMMITTEE RECOMMENDATIONS
Human Resources: July 29, 2014: Confirm Firefighter Sarah Young
Finance Committee: July 30, 2014: Approve Arrowhead Drive Maintenance District #204 Proposal
10. BID OPENING
None
BID AWARDS
None

11. **PUBLIC HEARINGS**

- A. **RESOLUTION NO. 3709:** A Resolution Revising And Correcting Resolution 3697, And 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
- B. **HOUSING SOLUTIONS, LLC:** Whether Its Proposed Qualifying Low-Income Rental Housing Complex, Located Behind Albertson's and Referred To As Stower Commons, Meets A Community Housing Need In Miles City, Montana
- C. **OPEN PUBLIC HEARING on Preliminary Budget for Fiscal Year 14-15**

12. **UNFINISHED BUSINESS**

- A. **RESOLUTION NO. 3709:** *(Second Reading)* A Resolution Revising And Correcting Resolution 3697, And 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
- B. **RESOLUTION NO. 3706:** *(Tabled at July 22, 2014 meeting)* A Resolution Vacating, Discontinuing, And Closing A Portion Of Yellowstone Boulevard In Block 4 And The Alley In Block 2 Of The Milwaukee Park Addition To The City Of Miles City, Montana

13. **NEW BUSINESS**

- A. **BUDGET AMENDMENTS to FY 14-15 Preliminary Budget**
- B. **ORDINANCE NO. 1275:** An Ordinance Changing The Zoning Of Tract A Of Document #153542, Envelope 500b, And Located Within Section 11 Of Township 7 North, Range 47 East, M.P.M., From Agriculture District Zone To General Commercial Zone, And Providing For A Hearing Thereon *(Request from Brad Certain on Highway 59 South)*
- C. **COUNCIL HEARING: Grievance from Tony Shipp, Water/Wastewater Plant**
- D. **ORDINANCE NO. 1276:** An Ordinance Enacting A New Section 2-108 Of The Code Of Ordinances Of The City Of Miles City, Entitled "Executive Clemency"
- E. **RESOLUTION NO. 3712:** A Resolution Of The City Council Submitting To The Qualified Electors Of The City Of Miles City, Montana, The Question Of Authorizing The City Of Miles City To Exceed The Statutory Mill Levy Limit Provided For In Section 15-10-420, Montana Code Annotated, By Levying Fifty (50) Mills To Fund Over Expenditure In Ambulance Fund No. 5510, All Pursuant To Section 15-10-425, Montana Code Annotated
- F. **RESOLUTION NO. 3713:** A Resolution Of The City Council Of The City Of Miles City, Montana Establishing Administrative Fees And Charges For Processing Citations In City Court
- G. **RESOLUTION NO. 3714:** A Resolution To Open South Custer Avenue Between Pearl Street And Fort Street During Limited Hours
- H. **RESOLUTION NO. 3715:** *(First Reading)* A Resolution Pursuant To §2-9-212 Of The Montana Code Annotated, Authorizing A Permissive Medical Levy For FY 2014-2015 To Fund Group Health Insurance Premium Contributions By The City And Providing For Hearing Thereon

- I. **RESOLUTION NO. 3716:** *(First Reading)* A Resolution Pursuant To §15-10-203 Of The Montana Code Annotated, Authorizing The Budgeting Of An Increased Amount Of Ad Valorem Tax Revenues In FY 2014-2015 In Excess Of The Property Tax Revenues For The Prior Fiscal Year And Providing For Hearing Thereon
- J. **RESOLUTION NO. 3717:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Property In Special Improvement Lighting District No. 165 To Defray The Cost Of Leasing, Maintenance And Electrical Current In Said Special Improvement Lighting District And Authorizing And Directing Payment Therefore, For The Fiscal Year 2014-2015
- K. **RESOLUTION NO. 3718:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Property In Special Improvement Lighting District No. 167 To Defray The Cost Of Leasing, Maintenance And Electrical Current In Said Special Improvement Lighting District And Authorizing And Directing Payment Therefore, For The Fiscal Year 2014-2015
- L. **RESOLUTION NO. 3719:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Property In Special Improvement Lighting District No. 171 To Defray The Cost Of Leasing, Maintenance And Electrical Current In Said Special Improvement Lighting District And Authorizing And Directing Payment Therefore, For The Fiscal Year 2014-2015
- M. **RESOLUTION NO. 3720:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Property In Special Improvement Lighting District No. 172 To Defray The Cost Of Leasing, Maintenance And Electrical Current In Said Special Improvement Lighting District And Authorizing And Directing Payment Therefore, For The Fiscal Year 2014-2015
- N. **RESOLUTION NO. 3721:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Property In Special Improvement Lighting District No. 195 To Defray The Cost Of Leasing, Maintenance And Electrical Current In Said Special Improvement Lighting District And Authorizing And Directing Payment Therefore, For The Fiscal Year 2014-2015
- O. **RESOLUTION NO. 3722:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Property In Special Improvement Lighting District No. 202 To Defray The Cost Of Leasing, Maintenance And Electrical Current In Said Special Improvement Lighting District And Authorizing And Directing Payment Therefore, For The Fiscal Year 2014-2015
- P. **RESOLUTION NO. 3723:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Property In Special Improvement Lighting District No. 173 To Defray The Cost Of Leasing, Maintenance And Electrical Current In Said Special Improvement Lighting District And Authorizing And Directing Payment Therefore, For The Fiscal Year 2014-2015
- Q. **RESOLUTION NO. 3724:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Of The Property Within Maintenance District No. 204 To Defray The Cost Of Maintaining The Improvements In The Said Maintenance District No. 204 For The Fiscal Year 2014-2015
- R. **RESOLUTION NO. 3725:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Of The Property Within Maintenance District No. 205 To Defray The Cost

Of Maintaining The Improvements In The Said Maintenance District No. 205 For The Fiscal Year 2014-2015

- S. **RESOLUTION NO. 3726:** *(First Reading)* A Resolution Levying And Assessing A Tax Upon All Of The Property Within Maintenance District No. 207 To Defray The Cost Of Maintaining The Improvements In The Said Maintenance District No. 207 For The Fiscal Year 2014-2015
- T. **RESOLUTION NO. 3727:** *(First Reading)* A Resolution Approving The Work Plan And Budget For Fiscal Year 2014-2015 For Business Improvement District No. 101, And Providing For Hearing Thereon
- U. **RESOLUTION NO. 3728:** A Resolution Authorizing The City Of Miles City To Enter Into An Agreement With The Custer County Water And Sewer District For Flushing Hydrants In Calendar Year 2014
- V. **RESOLUTION NO. 3729:** A Resolution Amending Special Improvement District Number 211, For Improvement And Paving Of Certain Portions Of Arrowhead Lane Within The Southgate Meadows Subdivision In Miles City, Montana
- W. **RESOLUTION NO. 3730:** A Resolution Approving The Waiver Of 50% Of Building Permit Fees And 50% Of Water And Sewer Connection Fees And Reducing Parking Requirements To 1.5 Stalls Per Unit For The Stower Commons Affordable Housing Property
- X. **RESOLUTION NO. 3731:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District NO. 202 Fund 2470 For Machinery And Equipment Expenses
- Y. **RESOLUTION NO. 3732:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Emergency Disaster Fund 2260 For Transfers To Other Funds
- Z. **RESOLUTION NO. 3733:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Retired Senior Volunteer Program Fund 2985 For Vacation Expenses
- AA. **RESOLUTION NO. 3734:** *(First Reading)* A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 To Appropriate Unanticipated Expenses To Lighting District NO.165 Fund 2400 For Electrical Utilities Expenses And Machinery/Equipment Expenses
- BB. **RESOLUTION NO. 3735:** A Resolution Authorizing The City Of Miles City To Enter Into A Renewable Resource Grant Agreement With The Conservation And Resource Development Division Of The Montana Department Of Natural Resources And Conservation
- CC. **RESOLUTION NO. 3736:** A Resolution Authorizing The City Of Miles City To Enter Into An Engineering Services Agreement With Kadrmas, Lee & Jackson, Inc., A North Dakota Corporation

- DD. RESOLUTION NO. 3737:** A Resolution Approving An Agreement Between The City Of Miles City And M&L Enterprises Inc., A Montana Corporation, For The Installation Of Curb, Gutter, And Gravel Work For Certain Portions Of Arrowhead Drive
- EE. RESOLUTION NO. 3738:** A Resolution Authorizing The City Of Miles City To Enter Into An Agreement With The County Of Custer County, Montana, And The School Board Of Trustees, Miles City Unified School District, For The Funding Of A School Resource Officer For FY 2014-2015
- FF. Approval of July Claims**

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 **July 22, 2014**
7:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, July 22, 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, Susanne Galbraith, Sheena Martin, John Hollowell and Jerry Partridge.

Also present were Public Works Director Scott Gray, City Attorney Dan Rice, Historic Preservation Officer Connie Muggli, Interim Fire Chief/Battalion Chief Scott Moore, City Clerk Lorric 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: 7/8/2014

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

Public Services Committee Meeting: 7/3/2014

- ** *Councilperson Galbraith moved to approve the minutes of the Public Services Committee Meeting of July 3, 2014, seconded by Councilperson Hollowell and passed unanimously, 8-0.*

Public Services Committee Meeting: 7/9/2014

- ** *Councilperson Partridge moved to approve the minutes of the Public Services Committee Meeting of July 9, 2014, seconded by Councilperson Hollowell and passed unanimously, 8-0.*

Finance Committee Meeting: 7/16/2014

- ** *Councilperson Gardner moved to approve the minutes of the Finance Committee Meeting of July 16, 2014, seconded by Councilperson Galbraith and passed unanimously, 8-0.*

SCHEDULE MEETINGS

- Human Resources Committee: 6:00 Tuesday, July 29
- Finance Committee: 6:00 Wednesday, July 30

REQUEST OF CITIZENS & PUBLIC COMMENT

None

APPOINTMENTS

None

PROCLAMATIONS

None

STAFF REPORTS

Connie Muggli, Historical Preservation Officer

- Reported on the TIF District, saying the project is still well within budget, as only about 1/3 of the total has been expended to date. She anticipates a public meeting about August 20th, where she will solicit input from citizens. She and Scott Zeier will be meeting with staff and hope to have a steering committee appointed by mid-August.
- The Oasis and Washington School may be added to the District. A resolution with the final plan and boundaries will need to be adopted, probably in September.

CITY COUNCIL COMMENTS

Ken Gardner

- In light of the recent tragedy at Spotted Eagle, he felt the number of "No Lifeguard" signs should be increased, and the current ones repainted. He also suggested a new sign be posted in a more visible place by the swimming area.
- He felt that more trash cans are needed, possibly four more. Director Gray will address this.

- He commended Walleyes Unlimited for the wonderful job they do in maintaining and improving the area.

Mark Ahner

- Agreed with Ken – feels the “No Lifeguard” signs need to be refurbished.

Roxanna Brush

- Noted that the signs at Triangle Park have been blown around. The Yield Signs have been purchased and will be installed soon.
- Asked how the clean-up on Fourth and Mississippi is progressing. The Mayor said that Director Gray should have the court order on his desk in the morning.

John Hollowell

- Heard from a citizen who reported that there may be a salvage yard on the 3100 block of Box Elder. He will visit with Police Chief Colombik regarding this issue.
- As a member of the Economic Development Committee, he reported that group feels a City/County Planning Board needs to be formed. A straw poll was taken to gauge the thoughts of the Council on this issue. Mayor Grenz then asked for a motion.

** *Councilperson Hollowell moved the Council show its support for a City/County Planning Board, seconded by Councilperson Brush and passed unanimously.*

MAYOR COMMENTS

None

STANDING COMMITTEE RECOMMENDATIONS

None

BID OPENING

Paving on Arrowhead Drive SID #211

Two bids were received, as follows:

EHC, LLC:	Asphalt:	No bid
	Concrete:	\$344,794

Century Companies: Asphalt: \$258,025
Concrete: \$386,375

Mayor Grenz referred the bids to the Finance Committee.

BID AWARDS

None

PUBLIC HEARINGS

Petition by Jerry and Kathy Doeden to Vacate an Alley and a Portion of Yellowstone Blvd located in Blocks 4 & 2, Milwaukee Park Addition, in the City of Miles City, Montana

Mayor Grenz called for comments from proponents.

Kathy Doeden explained that she is trying to update the old plats to reflect how the property stands currently. Most of the non-existent streets and alleys have previously been vacated, but half of an alley and a portion of Yellowstone Boulevard were inadvertently missed when the others were vacated. They are trying to get a loan on the property and comply with FEMA requirements. FEMA requires the property be contiguous, and claims that the alley breaks the continuity.

Mayor Grenz then called for comments from opponents. There were no proponent comments, and the hearing was closed.

UNFINISHED BUSINESS

RESOLUTION NO. 3707: *(Deferred from July 8, 2014, Council Meeting)* 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

** *Councilperson Galbraith moved to approve Resolution 3707, read by title only and seconded by Councilperson Gardner.*

City Attorney Rice explained that water rights law is a very specialized area of law, with its own court system. Mr. Gilbert is an expert in this field. Attorney Rice had written memos to the Council outlining Mr. Gilbert's credentials and explaining the need for his services.

Councilperson Ahner noted that the City Attorney had answered most of his questions; however, he said that Mr. Gilbert has estimated between four and five thousand dollars, but there was no guarantee it would not go higher.

*** Councilperson Galbraith moved to amend her motion so that, on Page 3, Item 6c, the payment clause would read 30 days instead of 7 days. Councilperson Brush seconded the motion, which passed 7 to 1, with Councilperson Partridge voting no.*

*** Councilperson Ahner moved to amend Councilperson Galbraith's motion so that, on Page 3, Item 6c, the payment clause would read, "...below; total compensation not to exceed \$5,000 without the prior written approval of the City Council." The motion was seconded by Councilperson Brush and, on roll call vote, passed 7-1, with Councilperson Partridge voting no.*

** Councilperson Galbraith's original motion to approve Resolution 3707, as amended, was then passed unanimously, on roll call vote, 8-0.
Resolution No. 3707 was adopted.*

NEW BUSINESS

A. **RESOLUTION 3668:** A Resolution Authorizing The City Of Miles City To Enter Into An Agreement Entitled "Interlocal Agreement For Montana Firefighters Testing Consortium" With Certain Cities And Fire Districts In The State Of Montana

*** Councilperson Gardner moved to approve Resolution 3668, read by title only and seconded by Councilperson Galbraith. After brief discussion and on roll call vote, the motion passed by unanimous consent, 8-0.
Resolution No. 3668 was adopted.*

B. **RESOLUTION NO. 3706:** A Resolution Vacating, Discontinuing, And Closing A Portion Of Yellowstone Boulevard In Block 4 And The Alley In Block 2 Of The Milwaukee Park Addition To The City Of Miles City, Montana

****** *Councilperson Galbraith moved to approve Resolution 3706, read by title only and seconded by Councilperson Gardner.*

Councilperson Ahner expressed concern that some of the property the City would be vacating may need to be condemned and purchased by the City when it comes time to build a new dike, as recommended by FEMA or the Corps of Engineers. Councilperson Galbraith said she had the same concern.

It was also suggested that the alley could be “closed” or “abandoned” instead of “vacated”, which would retain ownership for the City. It still may not satisfy FEMA, however.

Doedens are attempting to procure a loan on the property, which would require a LOMA (Letter of Map Amendment.) She has only 90 days to do this, and has already used up 45 of them.

****** *Councilperson Brush moved to table the issue, seconded by Councilperson Partridge and, on roll call vote, passed 7-1, with Councilperson Andrews voting no.*

Councilperson Hollowell suggested Mrs. Doeden talk with the Flood Plain Administrator and other City Staff to see how this could be resolved.

C. **RESOLUTION NO. 3709:** *(First Reading)* A Resolution Revising And Correcting Resolution 3697, And 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 Brush moved to approve Resolution No. 3709, read by title only and seconded by Councilperson Galbraith. On roll call vote, the motion passed by unanimous consent, 8-0. A public hearing on Resolution No. 3709 will be held August 12th, 2014.*

Approval of June Claims

****** *Councilperson Galbraith moved to approve June claims, seconded by Councilperson Brush. After discussion, the motion passed by unanimous consent, 8-0. June claims were approved.*

ADJOURNMENT.

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

The meeting was adjourned at 8:10 p.m.

C.A. Grenz, Mayor

**Lorrie Pearce
City Clerk**

Human Resources Committee

July 29, 2014

The **Human Resources Committee** met Tuesday, July 29, 2014, at 6:00 p.m. in the Conference Room at City Hall. Present were Chairperson Roxanna Brush and Committee Members Sheena Martin, Ken Gardner and Mark Ahner. Also present was Interim Fire Chief Scott Moore, Firefighter Sarah Young, Mayor C.A. Grenz and Committee Recorder HR/Payroll Officer Billie Burkhalter.

1. Firefighter Confirmation

- **Sarah Young**

Interim Fire Chief Moore stated he was very pleased to have hired Sarah Young, and that she is an asset to the Miles City Fire Department. He then read to the Committee Firefighter Young's performance appraisals that were submitted by Officers in the department: "Sarah has been an excellent addition to the fire department"; "Sarah is the hardest working employee we have, her dedication and loyalty is exemplary"; "Firefighter Young shows great promise in becoming a very knowledgeable EMT and firefighter. I highly recommend Young's advancement to a confirmed Firefighter"; "Sarah's level of dedication and involvement with the Department has far surpassed many members. I feel if we had more individuals that are as meditative and committed like Sarah, we could have the best Department in the State". Interim Chief Moore explained that he concurred with all the statements and would highly recommend confirmation of Sarah Young.

Interim Fire Chief Moore added that after the incident at Spotted Eagle, Firefighter Young and Firefighter Kanduch, took it upon themselves to head up and organize a water safety day that will be held August 2nd.

*** Committee Member Ahner moved to recommend to City Council to confirm Firefighter Sarah Young. Motion seconded by Committee Member Martin and on roll call vote, motion passed unanimously.*

2. Review and Recommendation of updated Personnel Policy manual

- **Section 1: Recruiting and Hiring**

HR/Payroll Officer Burkhalter presented the Committee with changes to "Section 1: Recruiting and Hiring" of the Personnel Policy Manual. HR/Payroll Officer Burkhalter stated that she had split this policy into three different sections: "Section 1: Employment Anti-Discrimination Practices"; "Section 2-A Recruitment and Selection" and "Section 2-B Recruitment and Selection Forms". She explained that the current policy is over 10 years old and it is hard to follow. She further stated that due to it being so unorganized and outdated, Directors and employees are not reading it or utilizing it. She explained that she had thoroughly researched updating this policy and had City Attorney Rice review and approve all changes.

HR/Payroll Officer Burkhalter went through the old policy and the new policy explaining the updates and/or changes. The Committee requested the following additions and/or clarifications:

- Section 2-A Recruitment and Selection: **“Recruitment and Selection-Employment Confirmation”**; language be added stating the Mayors ability to establish a salary based on the guidelines of the 2012 Wage and Benefits Analysis.
- Section 2-A Recruitment and Selection: **“Nepotism”**; language be added concerning direct supervision of employees related to each other.
- Section 2-A Recruitment and Selection: **“Employment Preference Guide- Persons with Disabilities Employment Preference”**; clarification on qualifications for applying for a preference.
- Section 2-B Recruitment and Selection Forms: **“Applicant Screening Form”**; Relevant Education be added into the scoring form and information on percentage points for Veterans be added.

HR/Payroll Officer Burkhalter explained that when she brings these additions and/or clarifications back to the Committee, she will also add to the City of Miles City employment application an “Employment Preference Form”.

3. Request of Citizens

-None.

4. Committee Member Comments

-None

5. Adjournment

The meeting was adjourned at 7:35 p.m.

Respectfully submitted,

Billie D. Burkhalter, Recorder

Chairperson Roxanna Brush

Finance Committee Meeting July 30, 2014

The **Finance Committee** met Wednesday, July 30, 2014, at 6:00 p.m. in the City Hall Conference Room. Present were Committee Members Sue Galbraith, Sheena Martin, Dwayne Andrews and John Hollowell. Also present were Mayor C.A. Grenz, Utility Director Scott Gray, City Attorney Dan Rice and Recorder/City Clerk Lorrie Pearce.

Arley and Stephanie Irish and Becky Stanton, owner of property in SID 211 were also present. As was Paul Oakland and Eric Doedon, owners of M&L Enterprises.

Request of Citizens

Review Paving, New Curb and Gutter Bid for Arrowhead Drive in District #204

Utility Director Scott Gray explained the new proposal for SID #211. He said M&L Enterprise, at its own expense, would install the curb and gutter and prepare the road for paving. He thought all three projects would be completed by this fall. He added that, by doing this, it would save the property owners about 30 percent on special assessments cost.

Property owner Becky Stanton, 333 Arrowhead Drive expressed concerns on accountability, timeline and if the work performed would meet the City's specifications. Director Gray said that the work would have to meet City's specifications, which meant that M&L Enterprise would have a contract with the City. He added by having M&L Enterprise complete the work, prevailing wages wouldn't be a factor.

** * Committee Member Andrews moved to recommend to Council approval of Arrowhead Drive Maintenance District #204 proposal. The motion was seconded by Committee Member Hollowell; and by roll call vote, passed unanimously 4-0.*

Review Land Lease at Water Treatment Plant/Jim Dighans

Discussion

- Committee Member Hollowell said there was no legal description of the land in the contract.
- Chairperson Galbraith said it was not fenced, and was concerned as to who would be responsible for it.
- Committee Member Andrews said there was no management agreement for the site. He was concerned the area would be overgrazed, if cattle were going on the site.

- * * *Committee Member Hollowell moved to table the land lease proposal. The motion was seconded by Chairperson Galbraith; and passed unanimously 4-0.*

Discussion on Purchase of a Blower for the Wastewater Plant

Chairperson Galbraith explained that three blowers are not working at the wastewater treatment plant. These blowers help with putting micro-organisms back into the system and the purchase of the blowers are in the fiscal year 2014-2015 budget.

- * * *Committee Member Hollowell moved to approve the purchase of the blower for the wastewater plant. The motion was seconded by Committee Member Andrews; and by roll call vote, passed unanimously 4-0.*

Customer Appeal of Water/Sewer Deposit

Pulled from agenda

Discussion on Resolution No 3709: A Resolution Pursuant Revising And Correcting Resolution 3697, And Pursuant To 7-6-4006 Of The montana Code Annotated, Authorizing Amending Of Final Budget For FY 2013-2014 For State Of Montana Payments On Behalf Of Retirement Accounts And Providing For Hearing Thereon

- * * *Committee Member Hollowell moved to recommend approval of Resolution No 3709 to Council. The motion was seconded by Committee Member Martin; and passed unanimously 4-0.*

Adjournment

There being no further business, Committee Member Andrews moved to adjourn the meeting, seconded by Chairperson Galbraith. The meeting was adjourned at 6:40 p.m.

Respectfully Submitted:

Chairperson Susan Galbraith

City Clerk Lorrie Pearce

Human Resources Committee
August 4, 2014

The **Human Resources Committee** met Monday, August 4, 2014, at 5:30 p.m. in the Conference Room at City Hall. Present were Chairperson Roxanna Brush, Committee Members Sheena Martin, Ken Gardner, and Mark Ahner. Also present was Mayor C.A. Grenz, Fire Captain Cameron Duffin and Committee Recorder HR/Payroll Officer Billie Burkhalter.

1. Request of Citizens

-None.

2. Committee Member Comments

-None.

3. Fire Chief Interview - Closed

4. Adjournment

The meeting was adjourned at 7:00 p.m.

Respectfully submitted,

Billie D. Burkhalter, Recorder

Chairperson Roxanna Brush

Public Safety Committee Meeting

August 5, 2014

The Public Safety Committee met Tuesday, August 5, 2014, at 6:00 pm in the City Hall Conference Room. Present were Chairperson Mark Ahner and Committee Members Sue Galbraith, Jerry Partridge and Roxanna Brush. Also present were Mayor C.A. Grenz, Public Works Director Scott Gray and Committee Recorder/Deputy City Clerk Connie Watts.

Chairperson Ahner brought the meeting to order.

REQUESTS OF CITIZENS

None

REQUEST TO OPEN S. CUSTER AVE. BETWEEN PEARL AND FORT STREETS DURING LIMITED HOURS

Chairperson Ahner gave a brief summary of the request, stating that the School Board meets August 12th, and that body will address this issue at that time. If this request is approved by the School Board, a formal request from the Board would have to be submitted to the Council for consideration at its regular meeting on August 26th. Since the first day of school is August 27th, having the Council look at the issue at its August 12th meeting would clear one hurdle if the Board decides it wants to open the street. The Council would then have all information needed on August 26th in the event it wanted to approve the School Board's official request.

Chairperson Ahner said he had spoken to Police Chief Doug Colombik, who said he felt opening the street during pick-up and drop-off times would be beneficial in relieving congestion.

John Gorton, Principal of Lincoln School, informed the committee that there will be approximately 80 more students at Lincoln School this coming school year. He is concerned about the increased traffic this will cause while parents are picking up and dropping off their children.

Currently S. Custer Avenue, which runs on the east side of Lincoln School, is closed by a solid barrier over half of the street and a swinging barrier over the other half. Mr. Gorton would like to open the swinging barrier to allow traffic to pass by the school S. Custer, which would give parents another access point.

He has done extensive research, but has not been able to find when or how the street was originally closed. Director Gray said the City has no record of the street being closed, abandoned or vacated. Chairperson Ahner has read about five years' worth of minutes to try to find some reference to the street closure, and has found nothing. When he checked at the courthouse, he found no record of the City vacating its ownership of that portion of S. Custer.

Committee Member Partridge, who has lived within a block of the school for 35 years, said he thought it had been closed in the early 90's.

Mr. Gorton would like the street to be open only one way: entering on Fort Street and exiting on Pearl. The committee felt that, when exiting, the cars should not be allowed to turn left. A "one way" sign could be erected at Fort and S. Custer, as well as a "right turn only" sign at the intersection of S. Custer and Pearl to encourage the smooth traffic flow. The School would take the responsibility for opening and closing the gates during the limited hours, which he suggested should be 7:30 a.m. to 8:30 a.m. and 1:45 to 3:45 p.m.

Director Gray said that, if the Council would approve the School Board's request at the August 26th meeting, his department will have everything ready to go by the morning of the 27th.

** *Councilperson Partridge moved to recommend approval of the request to open S. Custer between Fort and Pearl Streets during limited hours, seconded by Councilperson Galbraith. On roll call vote, the motion passed unanimously, 4-0.*

REQUEST TO BUILD A FENCE AT 2214 TOMPY ST.

Adam and Ashley Murnion are requesting to build a 6' privacy fence on S. Stacy where it intersects with Tompy Street. They have a small child and another one on the way, and need to put a fence around their yard. Currently City ordinance requires no more than a 3-foot fence the first 25 feet from the curb back toward the house (3.5 if the fence is chain link.) After the 25 feet, the fence would be allowed to be six feet high.

Chairperson Ahner asked Police Chief Colombik to look at the area, and his letter addressing this issue is attached to these minutes. He felt that "the view of the intersection will be severely affected by a 6-foot cedar privacy fence." Chairperson Ahner has consulted with Dennis Hirsch, the City Building Inspector, also would recommend against the solid 6 foot fence in the first 25' from the curb.

No motion was made regarding this issue.

ADJOURNMENT

** *Having no more business to come before the Committee, Committee Member Brush moved to adjourn the meeting, seconded by Committee Member Galbraith and passed unanimously, 4-0. The meeting was adjourned at 6:45 p.m.*

Respectfully Submitted:

Public Safety Committee Chairperson:

Connie L. Watts, Recorder

Chairperson Mark Ahner



Miles City Police Department
2420 BRIDGE STREET
MILES CITY, MT 59301 - 406-234-6273 Fax: 406-234-4270
Doug Colombik Chief of Police



8/04/2014

To: Mark Ahner

From: Chief Colombik

Ref: Request for fence at 2214 Tompy Street

Dear Mark,

I have taken photos of the property in question where the owner is requesting to build a privacy fence on S. Stacey where it intersects with Tompy Street. Pictures #2 and #3 show a view as one is headed east on Tompy Street. As you can see the large pine tree obstructs a large portion of the intersection as a person continues to head east on Tompy. Picture #4 is a view that is closer to the intersection and a driver does have a view of what would be headed north on S. Stacey before the pine tree. The problem with this is if a vehicle is behind the tree and does not stop at the yield sign there will be an accident. A privacy fence along the east side of the property would completely eliminate any view at all of another vehicle headed north.

Picture #5 shows a view headed north on S. Stacey. Pictures #6 and 7 show the view closing in on the intersection. A driver does have an opportunity to view other drivers on Tompy at the current status but with a privacy fence up that would be eliminated. If a 6 foot privacy fence is built, anybody driving on S. Stacey headed north toward Tompy would have to almost come to a complete stop before proceeding into the intersection. I cannot predict if we will have an increase in accidents at this intersection, but I believe that the view of the intersection will be severely affected by a 6 foot cedar privacy fence.


Doug Colombik
Chief of Police
Miles City Police Department

RESOLUTION NO. 3709

A RESOLUTION REVISING AND CORRECTING RESOLUTION 3697, AND 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 passed Resolution No. 3697 on July 8, 2014, amending the final budget for FY 2013-2014 for State of Montana Payments on Behalf of Retirement Account;

AND WHEREAS, Resolution No. 3697 contained incorrect amounts and as such is being amended by this Resolution, which shall supersede and replace Resolution No. 3697;

AND WHEREAS, the City of Miles City has been credited with \$404,986.00 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 to the following amount:

Fund No. 1000-330000: \$404,986.00

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

Fund No. 1000.001.410200.190 of the General Fund 1000 shall be increased to the sum of \$1,651.00.

Fund No. 1000.005.420140.190 of the General Fund 1000 shall be increased to the sum of \$212,480.00.

Fund No. 1000.007.420460.190 of the General Fund 1000 shall be increased to the sum of \$190,855.00.

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 12th day of August, 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 22nd DAY OF JULY, 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 AUGUST, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk



HOUSING
SOLUTIONS

"Unless the Lord builds the house, its builders labor in vain"

July 18, 2014

Mayor Grenz
City of Miles City
17 S 8th St.
Miles City, MT 59301

RE: Stower Commons, Affordable Housing
Request for Support of Application to MBOH for Housing Tax Credits

Dear Mayor Grenz,

I am writing to follow up on my presentation at the City Council Meeting on July 8th, 2014. Progress towards the full application for Housing Tax Credits for Stower Commons continues. As shared at the meeting, I would like to again present to council on August 12th to request three items that will make the project competitive in the upcoming housing Tax Credit round. The three items are outlined below.

Building Permit & Water/Sewer Fees:

Attached please find a summary of the anticipated city fee's that would be paid specifically related to the construction of the proposed Stower Commons; Building Permit Fee and Water/Sewer Fee. Based on my estimates at this time, the total Fee's paid to the city would be \$14,932.44 for a building permit and Water/Sewer Fee's of \$11,790.00. In order to position the Housing Tax Credit application best, I request the council approve a 50% reduction in these to fee's for this project in exchange for a commitment from the project to serve lower income households 46 years.

Parking Requirements:

In addition to the fee reduction, a non-financial concession from the city that will demonstrate the city's support and commitment to affordable housing is a reduction in the parking requirements. The 2.5 stalls per unit required under Section 24-67 C. Residential of the Zoning Code is onerous on, and I feel not directed at, affordable housing. I have attached a summary of zoning requirements from several other cities around Montana. Miles City is the heaviest. I understand the concern of under parking an apartment complex, but mitigating factors built into the Housing Tax Credit program make 2.5 stalls

per unit unnecessary. The income limit keeps nearly all households to one working adult, therefore one car is all that is necessary and often can be afforded under the income limit. I would like to request the council approve a 30% reduction of the parking requirement, making it 1.5 stalls per unit in place of 2.5 stall per unit.

Letter of Support

The last item requested would be the council's support of the project. This, at a minimum, would be in the form of a letter. It would be greatly beneficial to the projects success in earning Housing Tax Credits if the council designated a council person to speak in favor of the project, and about the need in Miles City, at the Montana Board of Housing Meeting on September 15th, 2014 in Helena.

Thank you for your help and ongoing support of this project. I look forward to seeing you again at the August 12th meeting. Please feel free to call me anytime with questions.

Kindest Regards,

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

Alex Burkhalter

Enclosure

Building Permit Fee

Cost	Discription	This Project
\$5,608.75	First \$1,000,00 in cost	
	\$3.15 per each additional \$1,000 cost	
\$3,959,900.00	Project Costs	
	First \$1,000,00 in cost	\$5,608.75
	per each additional \$1,000 cost	\$9,323.69
	<u>Total Building Permit Fee</u>	<u>\$14,932.44</u>
	<i>50% Reduction</i>	<i>\$7,466.22</i>

Water/Sewer Fees

Cost	Discription	This Project
\$300.00	2" Water Tap Fee	
\$1,920.00	2" Water Meter Fee	
\$1,920.00	2" Water/Sewer Development Fee	
	<u>\$4,140.00 Total 2" Tap</u>	
\$450.00	3" Water Tap Fee	
\$3,600.00	3" Water Meter Fee	
\$3,600.00	3" Water/Sewer Development Fee	
	<u>\$7,650.00 Total 3" Tap</u>	
	One - 2" Tap - Total	\$4,140.00
	One - 3" Tap - Total	\$7,650.00
	<u>Total Water/Sewer Fees</u>	<u>\$11,790.00</u>
	<i>50% Reduction</i>	<i>\$5,895.00</i>

Parking Requirements

City	Multi Family Parking Requirement	Stalls Required for Stower under zoning code
Miles City	2.5 stalls per unit	75
Bozeman	1.5 stall per 1 bed, 2 stall per 2 bed, 3 stall per 3 bed	67.5
Kalispell	1 stall per efficiency, 2 per 1 bed or more	60
Sidney	2 stall per unit	60
Bozeman-Affordable	1.5 stall per 1 bed, 2 stall per 2 or more bed	58.5
Havre	1.3 stalls per 1 bed, 1.5 per 2 bed, 2 per 3 bed	48.9
Glendive	1.5 stalls per unit	45
Lewistown	1.5 stalls per unit	45
Manhattan	1.5 stalls per unit	45
Billings	1 stall per 1 bed, 1.5 stall per 2 or more bedrooms	43.5
Missoula	1 stall per < 850 sq ft, 1.5 stall per 850 - 1999 sq ft	43.5
Missoula- Affordable	.75 stall per < 850 sq ft, 1 stall per 850 - 1999 sq ft	29.25
Average		51.8
Proposed Parking Stalls		50
<i>Reduction from Requirement</i>		<i>33%</i>

RESOLUTION NO. 3706

A RESOLUTION VACATING, DISCONTINUING, AND CLOSING A PORTION OF YELLOWSTONE BOULEVARD IN BLOCK 4 AND THE ALLEY IN BLOCK 2 OF THE MILWAUKEE PARK ADDITION TO THE CITY OF MILES CITY, MONTANA

WHEREAS, a Petition has been filed by Jerry D. Doeden and Katherine F. Doeden to vacate, discontinue and close the following street and alley:

All of the alley between Lots 1-6 and Lots 17-22 of Block 4 of the Milwaukee Park Addition to the City of Miles City, according to the official plat and survey thereof now on file and of record in the office of the County Clerk and Recorder in and for Custer County, Montana;

and

All of Yellowstone Boulevard adjacent to Lots 1 and 2 of Block 2, as well as that portion of Yellowstone Boulevard which is adjacent to the now vacated portion of Alice Street which had run between Blocks 2 and 4, of the Milwaukee Park Addition to the City of Miles City, according to the official plat and survey thereof now on file and of record in the office of the County Clerk and Recorder in and for Custer County, Montana;

AND WHEREAS the Petition was signed by more than 50% of the owners of lots on the street and alley, pursuant to MCA 7-14-4114(1)(b);

AND WHEREAS a public hearing was noticed and held on the 22nd day of July, 2014, pursuant to MCA 7-14-4114(3);

AND WHEREAS the City Council has duly considered the hereinbefore referenced petition, and finds that the closing of the street and alley as requested may be done without detriment or inconvenience to the public;

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

1. The following alley is hereby vacated, discontinued and closed:

All of the alley between Lots 1-6 and Lots 17-22 of Block 4 of the Milwaukee Park Addition to the City of Miles City, according to the official plat and survey thereof now on file and of record in the office of the County Clerk and Recorder in and for Custer County, Montana;

2. The following street is hereby vacated, discontinued and closed:

All of Yellowstone Boulevard adjacent to Lots 1 and 2 of Block 2, as well as that portion of Yellowstone Boulevard which is adjacent to the now vacated portion of Alice Street which had run between Blocks 2 and 4, of the Milwaukee Park Addition to the City of Miles City, according to the official plat and survey thereof now on file and of record in the office of the County Clerk and Recorder in and for Custer County, Montana;

3. The foregoing closures shall be subject to the right of the City of Miles City and the County of Custer to enter and construct and maintain any necessary utilities, mains, conduits or wiring pursuant to MCA 7-14-4115, as well as the right of entry and egress by the foregoing bodies or their agents to view, inspect, repair and maintain the dike.

4. Pursuant to MCA 76-3-305, ownership of: the north half of the vacated alley shall revert to each of the respective Lots 1-6 in Block 4 of the Milwaukee Park Addition; the south half of the vacated alley shall revert to each of the respective Lots 17-22 in Block 4 of the Milwaukee Park Addition; the vacated portion of Yellowstone Boulevard shall revert to each of the respective Lots 1 and 2 in Block 2 of the Milwaukee Park Addition to the south of said discontinued portion of Yellowstone Boulevard.

5. 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 12th DAY OF AUGUST, 2014.**

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

ORDINANCE NO. 1275

AN ORDINANCE CHANGING THE ZONING OF TRACT A OF DOCUMENT #153542, ENVELOPE 500B, AND LOCATED WITHIN SECTION 11 OF TOWNSHIP 7 NORTH, RANGE 47 EAST, M.P.M., FROM AGRICULTURE DISTRICT ZONE TO GENERAL COMMERCIAL ZONE, AND PROVIDING FOR A HEARING THEREON

WHEREAS, the owners of the below described real property, Bradley J. Certain and Dean A. Gillette, have made application for the property to be rezoned from Agriculture District (AG) zone to General Commercial District (GC) zone;

AND WHEREAS, such property is situated outside of the boundary of the incorporated city limits of the City of Miles City, but within the 2 mile area surrounding the City of Miles City where the City maintains zoning jurisdiction pursuant to Montana Code Annotated Section 76-2-310 and Section 24-3 of the Miles City Code;

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

AND WHEREAS, the Miles City Zoning Commission, on July 24, 2014, held a public hearing upon said application, pursuant to notice, and tabled the making of a decision until a subsequent noticed meeting on August 6, 2014;

AND WHEREAS, on August 6, 2014, the Miles City Zoning Commission heard additional public comment, and upon deliberation, recommended to the City Council that such zoning change be approved, with the condition that there be no protest for annexation.

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

Section 1. Zoning for the following described real property located within the two mile area surrounding the incorporated city limits of the City of Miles City, Custer County, Montana, is hereby rezoned from Agriculture District (AG) zone to General Commercial District (GC) zone, to wit:

TOWNSHIP 7 NORTH, RANGE 47 EAST, M.P.M.

Section 11: Tract A of Document #15342, Envelope 500B, on file with the Clerk and Recorder in and for Custer County, Montana.

Section 2. A public hearing shall be held upon this proposed zoning change before the City Council at 7:00 P.M. on the 9th day of September, 2014, in the Council Chambers at City Hall, 17 S. Eighth Street, Miles City, Montana.

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

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

Said Ordinance read and put on its passage this 12th day of August, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this 9th day of September, 2014.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

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

August 8, 2014

Mayor Grenz and City Council,

RE: Proposed re-zone for Tract A, owned by Brad Certain/Dave Gillette, located at 685 Hwy 59 South from Agriculture (AG) to General Commercial (GC).

The Miles City Zoning Commission conducted its public hearing on July 24, 2014 to consider the request to re-zone the above described area. After reviewing comments from the public hearing and additional comments from the August 6, 2014 special meeting, the Zoning Commission recommends approval of the zone change, to general commercial, with the condition that there be No Protest for Annexation.

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

Respectfully,

A handwritten signature in black ink, appearing to read 'Amber Trenka', written in a cursive style.

Amber Trenka, Chair
Zoning Commission

**RE-ZONE
Property Owner List
for
Brad Certain/Dean Gillette**

Dean Gillette
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

Brad Certain
1022 Cottonwood Lane
Miles City, MT 59301

Mike & Linda Corbett
917 S. Cale
Miles City, MT 59301

John Todoroff Jr.
986 Oilmont Street
Oilmont, MT 59466

Clifford A & Marilyn M Schantz
136 Schantz Lane
Miles City, MT 59301

Revenue Code: 4060-323040

Fee: \$200.00

City of Miles City ZONE CHANGE APPLICATION

Date Received: 6-13-14
to be filled out by City

17 South 8th Street
Miles City, MT 59301

Note: If more than one property/petitioner a list of signatures and legal descriptions may be attached to this application.

I, Brad Certain signature is/are petitioning the City of Miles City to rezone the following property:

LEGAL DESCRIPTION OF PROPERTY:

Street Address or General Location 685 US 59 S
Tract/s A in Section 11 Township 07N Range 47E OR
Lot/Tract/s _____ of _____ Subdivision Name _____ in Section _____ Township _____ Range _____
Assessor Number/s or Geocode 14-1640-11-2-03-03-000

PRIMARY CONTACT:

Applicant Name: Brad Certain Please print If a business: Contact Name Brad Certain Please print
Address: 1022 Cottonwood
Miles City MT 59301
Phone: 951-1234 Cell Phone: Same Email: bradc@midriver.com

DESCRIPTIVE DATA:

Total area in acres: 55.02
Existing Zoning: AR Agricultural Proposed Zoning General Commercial
Existing Use None / grass land
 Yes No Purpose of the zone change is for pending development/sale. If so please explain the nature of the proposal or state any other reason for requested change to sell land

Note: All information must be filled in for the application to be complete. Submission of an application is not a guarantee that a zone change will be approved.

Zoning Comm. Hearing

July 24, 2014

6:00 PM

Name

Address

Cory Ryder

Hwy 103 MT

~~Brod Carter~~

Miles City 1022 Cottonwood

Frank E. Nelson

791 Hwy 595

Bryan Horn

MC

Amorette Allin

MC Star

**Letter of Recommendation
and
Supporting Documents**

August 6, 2014

In the matter of a Zone Change Application by Brad Certain requesting a zone change from Agricultural to General Commercial for Tract A Section 11 Township 077 Range 47E, I vote YES to the requested change. One consideration I requested with the passage of this zone change and would be included in the sale contract, would be a no protest when annexation were to take place.

Following are my reasons for a YES vote.

1. The receipt of an email from Dawn Colton, dated July 23, 2014, stating the MT Dept. of Commerce Planning Bureau has a new Community Technical Assistance program which has confirmed the City of Miles City is the first recipient to receive funding from this program. These plans are fully funded with no match required from the city. This program will provide the city of Miles City with assistance in forming an annexation plan and growth policy.

In voting yes to the zone request, I feel that a change from Agriculture to General Commercial would "fit" with the potential changes in the area of the zone change application.

(email attached)

2. In an email from Dave DeGranpre of Land Solutions, dated July 29, 2014 he addresses the situation in changing zones at this time but states if zoning is changed it is not an ideal choice but a pragmatic one. He goes on to say later this summer he will be helping the city with MT Dept. of Commerce Planning Bureau technical assistance program.

(email attached)

3. Addressing the "Little Factors", #1 - is the proposed use significantly different from the prevailing use in the area? Yes, it is currently agriculture. No, there are numbers of commercial businesses in close proximity to the proposed zone change area.

#2 - would granting the request amount to preferential treatment for one or a few as against the general public?

No, this is an expanding area of commercial growth and would be expected to be zoned commercial with the completion of annexation and a growth plan.

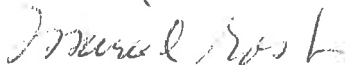
#3 - would the zoning map amendment constitute special legislation to benefit one or a few at the expense of surrounding landowners or the general public? No, only one land owner

was against the proposed zone change at the public meeting. The zone change would benefit the general public with increased commercial businesses.

There are other factors which I took into consideration in voting YES. Brad followed procedures when applying for a zone change. There were only two protests at the public meeting to the zone change. Having seen his other sites of business the sites are clean, well maintained and an asset to the community. He has been cooperative in meeting suggestions from the zoning board, such as a no protest for annexation in the sale contract.

I recommend the zone change requested by Brad Certain be passed.

Sincerely,

A handwritten signature in cursive script that reads "Muriel Rost".

Muriel Rost

Zoning Board

Muriel Rost

From: "Dawn Colton" <dawncolton@milescity-mt.org>
Date: Wednesday, July 23, 2014 3:34 PM
To: "Dianna Larson" <dlarson@milescity-mt.org>; "Muriel Rost" <mlrost@midrivers.com>
Subject: RE: Annexation and Growth Plans

Both plans require extensive public involvement and, hopefully, both boards will assist with that aspect of the process. We won't know the details until we see Dave's contract and even more as the plan for the plan comes together. I believe CTAP is putting the wheels in motion later this week.

Dawn Colton

City of Miles City
 Community Services and Planning
 P - 406-234-3493 F - 406-234-6392
 E - dawncolton@milescity-mt.org

From: Dianna Larson [mailto:dlarson@milescity-mt.org]
Sent: Wednesday, July 23, 2014 2:37 PM
To: Dawn Colton
Subject: FW: Annexation and Growth Plans

From: Muriel Rost [mailto:mlrost@midrivers.com]
Sent: Wednesday, July 23, 2014 2:17 PM
To: Dianna Larson
Subject: Re: Annexation and Growth Plans

What great news – now I have all kinds of questions – how soon does this process begin, will this involve the zone commission, interested citizens as well as the city planning board, etc.,etc., etc.? I think it would be very worthwhile for Dawn to explain to the zoning commission what she knows and anticipates how the process will take place. It is important the commission is aware and in the loop. I see the potential for progress (planned) in the development of Miles City.

muriel

ps would you give this to Dawn – I don't have her email - thank you

From: Dianna Larson
Sent: Wednesday, July 23, 2014 1:39 PM
To: Amber Trunkel; dianna@midrivers.com; Brad Renner; Muriel Rost; Scott Gray
Subject: FW: Annexation and Growth Plans

From: Dawn Colton [mailto:dawncolton@milescity-mt.org]
Sent: Wednesday, July 23, 2014 1:35 PM
To: Butch Grenz; Connie Muggli; Dave DeGrandpre; Dwayne Andrews; Joel Nelson; John Hollowell; Lorrie Pearce; Roxanna Brush; dawncolton@milescity-mt.org; Muriel Rost; Scott Gray; Suzanne Galbraith; Brad

Certain; Carol Hardesty; Colette Butcher; Dale Barta; Dawn Colton; Dawn Leidholt; Dianna Larson; Spencer Haynes; Twila Wilhelm

Cc: Scott Gray; Vickie Hamilton; Keith Holmlund; Kevin Krausz; John Laney; Mike Coryell

Subject: Annexation and Growth Plans

The MT Dept of Commerce Planning Bureau has a new Community Technical Assistance program (CTAP) this year. They have contracted with several planners to assist Eastern Montana communities with planning issues. Dave DeGrandpre is one of those chosen.

The City of Miles City has been confirmed as the first recipient to receive funding from this program. We have been approved to have Dave assist us with both an Annexation Plan and the Growth Policy. These plans are FULLY FUNDED with no match required from the City and we don't even have to administer the funds!

Dawn Colton

City of Miles City

Community Services and Planning

P - 406-234-3493 F - 406-234-6392

E - dawncolton@milescity-mt.org

Muriel Rost

From: "Nancy" <gizmo@midrivers.com>
Date: Tuesday, July 29, 2014 9:41 PM
To: "muriel rost" <mlrost@midrivers.com>
Subject: Fw: Certain Rezone

From:
Sent: Tuesday, July 29, 2014 4:18 PM
To: Nancy
Subject: RE: Certain Rezone

Hi Nancy,

Proper planning is to view the community needs, trends and projections in a more comprehensive, big-picture fashion and adjust the rules accordingly, although that is not always possible or realistic. The zoning commission and city council can take whatever action they deem appropriate. I don't dispute that your ideas present a logical plan. In my opinion this is not an ideal approach but is a pragmatic one.

The risks I see are twofold:

- 1) a neighbor appeals council's decision to district court and the court overturns the decision, whereby the city has spent time, money and possibly attorney's fees defending the suit, and
- 2) establishing a precedent.

The zoning commission and city council will have to weigh those risks with their ideas of justice, what is right for the community and what makes sense. I suggest you talk with Dan Rice regarding potential risk. In my experience, unless a neighbor is likely to pony up the significant amount of money necessary to appeal, there isn't much risk. However, it is important to make decisions in a consistent manner.

Regarding annexation, later this summer and fall I will be helping the city develop an annexation plan that may include this area south of town. I don't know off the top of my head what the procedure would be to annex this and other properties in the area and don't have time to research it right now.

Thanks,

Dave DeGrandpre

From: Nancy [mailto:gizmo@midrivers.com]
Sent: Tuesday, July 29, 2014 3:52 PM
To: Dave DeGrandpre
Subject: Certain Rezone

Hi Dave,

Thank you for your prompt response. You are probably frantically trying to get everything done before you leave town, and I empathize – it's hard to get out of Dodge!

MEMO

DATE: AUGUST 7, 2014

TO: CITY COUNCIL OF MILES CITY, MT

FROM: NANCY MITCHELL, VICE CHAIR
MILES CITY ZONING COMMISSION

RE: BRAD CERTAIN ZONE CHANGE REQUEST FROM AGRICULTURAL (AG) TO
GENERAL COMMERCIAL (GC) - Tract A (55 acres), located in Sec. 11, T7N-
R47E, recorded as Doc. #153542, Env. 500B

Please find enclosed alternate sets of Potential Findings of Fact for the Brad Certain rezone request, with attachments. One set is Potential Findings of Fact for APPROVAL, the other set is Potential Findings of Fact for DENIAL.

The findings are based on input from hearings and discussion at the Zoning Commission level and letters from opponents and proponents, to assist in your discussion and consideration, and ultimately your issuance of written findings.

DATE: August 6, 2014

(APPROVAL)

TO: Miles City Zoning Commission

FROM: Nancy Mitchell, Vice Chair

RE: Potential Findings of Fact - Brad Certain Zone Change Request from Agricultural (AG) to General Commercial (GC). Tract A (55 acres), located in Sec. 11, T7N-R47E, recorded as Document #153542, Env. 500B.

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

The Staff Report states that "a GC designation would result in allowing the property owners to sell the property to a developer for future commercial use. 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." "Zoning amendments shall consider the needs of the petitioner, neighboring property owners, and the greater community." (Zoning, p. 36).

The Miles City Growth Policy was written in 2006, revised in 2008, is somewhat outdated and vague. Even though our current Growth Policy generally states that development will most likely be to the east and south, it isn't specific about what kind of development (i.e. residential, commercial businesses, industrial).

The good news is that the City of Miles City will soon have a new Annexation Plan and Growth Policy written, proposed by Dave DeGrandpre and staff, of Land Solutions, Charlo, MT, and can be expected to take 10-12 months. According to an email from Dawn Colton dated July 23, 2014, the MT Dept. of Commerce Planning Bureau (CTAP) has fully funded the new Annexation Plan and Growth Policy which will also include updated Zoning Regulations and map update for the City of Miles City.

Since a new Growth Policy is a reality, the GC designation is a possible fit if the plan for Miles City is to grow commercially to the south.

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

The staff report states that "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 this would provide access for emergency personnel."

Regarding fire, ambulance and other emergency services, concerns from neighbors have been raised that Highway 59 S is becoming increasingly more congested with trucks that could create a problem for emergency vehicles. Other dangers may include an increase in vehicular accidents as a result of additional trucks and vehicles using this highway.

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

The staff report states that "The property is not located in a designated floodplain. There is a high voltage power line that crosses the property; gas lines are located along the

easement next to the highway. At times, there is a congestion problem just north of this site as you enter into the city limits. 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."

Mr. Certain has stated he has applied for three accesses from the MDOT. Mr. Certain is planning to sell the property, but the buyer is unknown at this time. Mr. Certain and Realtor Bryan Holmen said Brawler Industries (formerly Western Industries) has expressed an interest in the land; it is a company that cuts, sews, glues, and assembles tarps and pit liners, and Mr. Certain has been told by Dennis Hirsch and Mike Rinaldi that it would fit into the GC category.

Dave DeGrandpre of Land Solutions stated in an email, "the General Commercial district is intended to provide for those businesses and services which may require large storage space, may be open in the evenings, may generate large volumes of traffic, and are serving the extraordinary needs of the entire community," and "what comes to mind when I read this (GC) language are restaurants, car dealers, hotels, gas stations, grocery stores, hardware stores and the like."

Applications for water, sanitation, sewer and any other hazardous materials would need to be approved for public health, safety and welfare assurances.

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

The staff report states "The property is served by one road, that road being Highway 59 South. There are no city water or sewer services to this property. School facilities are available to the surrounding properties. There are no bus services or transportation services available to this area. No parks are available to this property. Mail delivery and utilities are available to this property."

Depending on who purchases the property, many large trucks and heavy equipment could be going in and out of the property at all times of day, affecting general transportation. 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, private school buses use Highway 59 S to transport students to Kircher School and CCDHS. 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?

The staff report states "The proposed property is approximately 55.02 acres in size, which is sufficient size to provide adequate light and air."

There is adequate light and air, unless exhaust from traffic, emissions from a business, or burning of materials were an issue.

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

The staff report states "motorized vehicular access is available via a state highway, which the MDOT would have to authorize. Also, as stated previously, there are no transportation systems available to this area, and there would be no impact....."

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, which usually stay inside city limits. There are no transportation systems serving south of Miles City for the general public. Additional vehicles on this Highway from business could have an impact if the road became more congested.

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

The staff report states "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. Changing the zoning to GC would allow for another option for property owners and one of those options would be to sell the property. A question of spot zoning has been raised about this property...."

The definition of urban growth is "an urban area or community where in which the population of the area increases." Miles City is growing, and there is a need for more commercial and residential properties. The portion of South Haynes Ave. located in the city limits currently has numerous businesses along the corridor, with two residential neighborhoods behind them (Michels Addition and Southgate Meadows). The progression of growth to the south would be suitable.

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

The staff report states "Changing the zoning on the subject property to GC would conserve the value of building and could be appropriate use of the land."

It has now been confirmed that Miles City will have a new growth plan written within the next 10-12 months, and if the City thinks a commercial corridor should be developed to the south of town, then this could be appropriate use of the land.

A question of spot zoning has been raised, and an evaluation of the Little Factors is as follows:

LITTLE FACTOR #1

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

The use is predominantly agricultural with some rural residential development and some general commercial a short distance to the north (Horizon Equipment, a Truck Wash, RMC, Bobcat, etc.), and a pre-existing commercial use to the northwest (Pyle, Inc.). These uses would be properly considered "in the area" and it is noted that the proposed property, despite being an island/spot, is only separated from commercial zoning by one property, being the property which is currently marketed at a commercial price.

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 General Commercial Zoning?

It is the intent of the GC district regulations to provide a general commercial district for those businesses and services which may require large storage space, may be open in the evenings, may generate large volumes of traffic, and are serving the extraordinary needs of the entire community. Permitted uses are:

1. All general business
2. Theatres, lodges and assembly facilities
3. Churches
4. Multifamily dwellings, except townhouse developments
5. Multifamily dwellings in combination with uses listed in 1, 2 and 3 above
6. Animal rescue shelters

The regulations also consider land uses like bulk fuel stations, loading facilities and junkyards (which shall be concealed from view, and require City Council approval).

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

There is no specific use of the property proposed, and the zone application states the property is to be sold. At the public hearing, Brad Certain indicated he is trying to sell the property to a business, and mentioned that Brawler Industries has shown an interest in his property. While GC land uses are significantly different from AG use, there is GC use very nearby (Pyle, Inc., Horizon Equipment, the Truck Wash, etc.).

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 consists of 55 acres." (Taken from Dave DeGrandpre's evaluation of the Little Factors.)

Fifty-five acres is a sizable portion of land, which is relatively small compared to the 1420 acres of AG land, but also situated very near a sizable area of commercial land.

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

At the public hearing, one person, Gary Ryder, spoke in protest against the zone change. Mr. Ryder is an attorney who represents Barbara Todoroff Nicholas (non-resident) and John Todoroff, Jr.

Two people spoke in favor of the zone change at the public hearing, Brad Certain and Bryan Holmen, and a letter from Roger Lothspeich was read in favor of the zone change.

During the week following the public hearing, zoning commission members have received nine letters against the zone change from Peggy Pyle, Susan Colvin/Mary Jo Colvin Kane (non-residents), Sandy McFarland Hayes/Robert McFarland (non-resident), Duane Mathison, Duane Leidholt, Sharon Oftedal, Bill Oftedal, Ron Nansel, and Frank Nelson.

And also during the week following the public hearing, zoning commission members have received 30 (including 2 duplicate) letters in favor of the zone change from various local businessmen and women in the community.

From the number of letters written in favor of the zone change, it appears that the general public is very positive in seeing the extension of general commercial to the south of Miles City, as many letters stated it would be good for Miles City's growth and economy.

Mr. Certain has always maintained his home and business property in a well-kept, orderly and clean manner, and therefore, wants to be conscientious about what is developed on the property he wishes to sell. He stated at the public hearing that he had asked attorney Jeanette Jones to prepare covenants for his property in order to have some control over how the property is maintained. Zoning commission members have now received a copy of the draft covenants (see attached).

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?

Of the few surrounding landowners objecting to the zone change, only one person actually lives near the subject property. Her home is located across the highway from the subject property, and even though her property is zoned AG, it has not been used for that purpose for many years.

Another protesting family owns land adjacent to the subject property that has been for sale for quite some time, and the asking price is over 1 million dollars, which realtors have said is a commercial price, not agricultural.

As stated before, the zoning commission has received several favorable letters from the general public in response to the zone change to GC, and it doesn't appear to be

preferential treatment benefitting only one or a few landowners at the expense of the surrounding landowners.

Comments from proponents are as follows:

1. "We can't afford to lose opportunities for growth.
2. Change to GC would add more businesses and increase our tax base.
3. We should be more business-friendly.
4. Miles City is blocked by the Yellowstone River to the North, Ft. Keogh to the West and the Interstate to the East – the South is the only way to grow.
5. More businesses would create more revenue for the City/County.
6. There is availability of utilities and the scale of the property is appropriate for a large business.
7. Direct highway frontage is an ideal place to encourage valuable commercial property development.
8. Create more opportunities.
9. Create future jobs for the next generation.
10. The property is located only 1000 feet from commercial property (Rolling Rubber).
11. I developed 48 acres at 5 different locations on Haynes Ave. I simply don't understand why these boards are against any development and continue to make it difficult for the developer. I'm in the process of buying property out of the two mile donut to avoid zoning and other development issues.
12. I studied a map of Miles City at length this week and the city has spot zoning all over the city from one end to the other. Spot zoning at this location is a non-issue as precedence has already been set many times over.
13. Why did the city require enlarged sewer lines when the Rolling Rubber building was built? The city at that time said it was needed for growth to the south. Ask yourselves where is the city going to grow and in what direction?"

RECOMMENDATION:

To the City Council of Miles City to conditionally APPROVE the zone change, with the condition that there be a Waiver of No Protest to Annexation to the City of Miles City. Decision was based on review of the Staff Report, public input and opinions at the public hearing of the proponents and opponents to the zone change, and Dave DeGrandpre's evaluation of Brad Certain's Zoning Map Amendment Request, dated July 24, 2014 (see attached).

Sincerely,



Nancy Mitchell, Vice Chair
Miles City Zoning Commission

DATE: August 6, 2014 (DENIAL)

TO: Miles City Zoning Commission

FROM: Nancy Mitchell, Vice Chair

RE: Potential Findings of Fact - Brad Certain Zone Change Request from Agricultural (AG) to General Commercial (GC). Tract A (55 acres), located in Sec. 11, T7N-R47E, recorded as Document #153542, Env. 500B.

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

The Staff Report states that "a GC designation would result in allowing the property owners to sell the property to a developer for future commercial use. 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." "Zoning amendments shall consider the needs of the petitioner, neighboring property owners, and the greater community." (Zoning, p. 36).

The Miles City Growth Policy was written in 2006, revised in 2008, is somewhat outdated and vague. Even though our current Growth Policy generally states that development will most likely be to the east and south, it isn't specific about what kind of development (i.e. residential, commercial businesses, industrial).

The good news is that the City of Miles City will soon have a new Annexation Plan and Growth Policy written, proposed by Dave DeGrandpre and staff, of Land Solutions, Charlo, MT, and can be expected to take 10-12 months. According to an email from Dawn Colton dated July 23, 2014, the MT Dept. of Commerce Planning Bureau (CTAP) has fully funded the new Annexation Plan and Growth Policy which will also include updated Zoning Regulations and map update for the City of Miles City.

It is important to have a thorough, comprehensive growth plan that has been thought out and well-written, including input from neighboring property owners as well as the general public/community. As long as we are this close to having a new Growth Policy written, it would be prudent and sensible to incorporate long-range planning for growth to the south before fragmented zone changes are granted, and then it could be in compliance with the Miles City Growth Policy.

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

The staff report states that "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 this would provide access for emergency personnel."

The criteria for GC zoning is pretty general, and a zone change to GC may be interpreted to allow safety and fire dangers with chemical, toxic waste and other hazardous materials. Regarding fire, ambulance and other emergency services, concerns from neighbors have been raised that Highway 59 S is becoming increasingly more congested with trucks that could create a problem for emergency vehicles. Other dangers may include an increase in vehicular accidents as a result of additional trucks and vehicles using this highway.

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

The staff report states that "The property is not located in a designated floodplain. There is a high voltage power line that crosses the property; gas lines are located along the easement next to the highway. At times, there is a congestion problem just north of this site as you enter into the city limits. 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."

Mr. Certain has stated he has applied for three accesses from the MDOT, so it looks like there is some preparation for extra traffic to enter and exit this property, which would add congestion on Highway 59 South. Mr. Certain is planning to sell the property, but the buyer is unknown at this time. Mr. Certain and Realtor Bryan Holman said Brawler Industries (formerly Western Industries) has expressed an interest in the land, which is a company that cuts, sews, glues, and assembles tarps and pit liners.

Dave DeGrandpre of Land Solutions stated in an email, "the General Commercial district is intended to provide for 'those businesses and services which may require large storage space, may be open in the evenings, may generate large volumes of traffic, and are serving the extraordinary needs of the entire community,'" and "what comes to mind when I read this (GC) language are restaurants, car dealers, hotels, gas stations, grocery stores, hardware stores and the like."

Applications for water, sanitation, sewer and any other hazardous materials would need to be approved for public health, safety and welfare assurances.

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

The staff report states "The property is served by one road, that road being Highway 59 South. There are no city water or sewer services to this property. School facilities are available to the surrounding properties. There are no bus services or transportation services available to this area. No parks are available to this property. Mail delivery and utilities are available to this property."

Depending on who purchases the property, many large trucks and heavy equipment could be going in and out of the property at all times of day, affecting general transportation. 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, private school buses use Highway 59 S to transport students to Kircher School and CCDHS. 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?

The staff report states "The proposed property is approximately 55.02 acres in size, which is sufficient size to provide adequate light and air."

There is adequate light and air, unless exhaust from traffic, emissions from a business, or burning of materials were an issue.

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

The staff report states "motorized vehicular access is available via a state highway, which the MDOT would have to authorize. Also, as stated previously, there are no transportation systems available to this area, and there would be no impact...."

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 activity, and would definitely increase if the zone were changed to GC. Another resident stated that "according to MDOT statistics, the daily truck load at the south end of town is 1,871 vehicles." Therefore, a zone change could negatively impact and affect motorized vehicles with added truck traffic.

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

The staff report states "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. Changing the zoning to GC would allow for another option for property owners and one of those options would be to sell the property. A question of spot zoning has been raised about this property...."

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.

Individuals who have protested against the GC zone change for the subject property are Barbara Todoroff Nicholas, John Todoroff, Jr. Peggy Pyle, Susan Colvin, Mary Jo Colvin Kane, Sandy McFarland Hayes, Robert McFarland, Duane Leidholt, Duane Mathison, Ron Nansel, Frank Nelson, Sharon Oftedal and Bill Oftedal. They have written letters stating that they would like the zoning to remain AG. 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 Colvin sisters sold Tracts A and B, they were hoping the new owners would also want residential development, or the property would remain Agricultural. 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. However, General Commercial zoning criteria does list multifamily dwellings, (except townhouse developments), which would be suitable for the proposed land use.

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

The staff report states "Changing the zoning on the subject property to GC would conserve the value of building and could be appropriate use of the land."

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 does not establish a public need for the use of the property, and may benefit only one or a few persons. 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.

A question of spot zoning has been raised, and an evaluation of the Little Factors is as follows:

LITTLE FACTOR #1

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

Predominantly agricultural with some rural residential development.

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 General Commercial Zoning?

It is the intent of the GC district regulations to provide a general commercial district for those businesses and services which may require large storage space, may be open in the evenings, may generate large volumes of traffic, and are serving the extraordinary needs of the entire community. Permitted uses are:

1. All general business
2. Theatres, lodges and assembly facilities
3. Churches
4. Multifamily dwellings, except townhouse developments
5. Multifamily dwellings in combination with uses listed in 1, 2 and 3 above
6. Animal rescue shelters

The regulations also consider land uses like bulk fuel stations, loading facilities and junkyards (which shall be concealed from view, and require City Council approval).

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

There is no specific use of the property proposed, and the zone application states the property is to be sold. At the public hearing, Brad Certain indicated he is trying to sell the property to a business, and mentioned that Brawler Industries has shown an interest in his property. GC land uses are significantly different from AG use.

The current prevailing AG use is rural residential and agricultural (i.e. grazing, alfalfa, etc.), and all the property to the south is commercially zoned property (Horizon, RMC, Bobcat, Truck Wash). Therefore, an AG use would be significantly different from a GC use.

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 consists of 55 acres." (Taken from Dave DeGrandpre's evaluation of the Little Factors – see attached.)

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

At the public hearing, one person, Gary Ryder, spoke in protest against the zone change. Mr. Ryder is an attorney who represents Barbara Todoroff Nicholas (non-resident) and John Todoroff, Jr.

Two people spoke in favor of the zone change at the public hearing, Brad Certain and Realtor Bryan Holmen, and a letter from Roger Lothspeich was read in favor of the zone change.

During the week following the public hearing, zoning commission members have received nine letters against the zone change from Peggy Pyle, Susan Colvin/Mary Jo Colvin Kane (non-residents), Sandy McFarland Hayes/Robert McFarland (non-resident), Duane Mathison, Duane Leidholt, Sharon Oftedal, Bill Oftedal, Ron Nansel, and Frank Nelson.

And also during the week following the public hearing, zoning commission members have received 30 letters in favor of the zone change from various local businessmen and a businesswoman in the community.

Of the nine people who have expressed opposition to this zone change, most of them are residents in the area. They all agree this is spot zoning, and feel it would be preferential treatment for one or two people, the owners of the property, and the realtors.

Of the 30+ people who are proponents of the zone change, four of them live in the area of the subject property, but the rest are local businessmen and a businesswoman who want to see commercial development happen south of Miles City and expect Miles City to grow that direction. Commercial growth may happen in the end, but now that a new growth policy is to be written, it is important to be patient and see how the plan develops along with input from the community.

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?

According to the opponents, they believe this zone change would only benefit one or a few landowners, because the owner of the land as well as the realtor would gain monetarily from the sale of the property to a commercial business. The opponents wish to maintain the AG zoning designation, as most of them live there want it to remain a quiet, rural residential area.

Comments made from the opponents include:

1. "Fringe developments adjacent to a city frequently use rate-based services and enjoy tax-based services without having to pay city taxes.
2. Changing to GC is incompatible with their existing property rights.
3. They are open to growth, such as rural residential and commercial that is closer to the city limits.
4. They feel the application is inadequate; it does not disclose what, if any, the proposed use is on the property.
5. Having a certified and experienced planner work through zoning and annexation issues on behalf of the City would be in the public's best interest. Patience and direction in the re-zoning process makes sense.
6. There are some proposed changes to Interstate 94 Exit 138. The proposed changes made by the MDOT could significantly affect that exit.
7. The zone change should be denied on the grounds that it is inadequate. This recommendation by the Zoning Commission would not prevent Mr. Certain or Mr. Gillette from selling the property a business or developer willing to accept responsibility and present a workable proposal to the City and surrounding landowners.
8. Rezoning this property from AG to GC would devalue, not only our land, but also properties nearby, raise our taxes, and diminish the quality of life in our community.
9. My reasons for being against re-zoning the land to GC is really about a quality of life for my family and other families in the area. I believe I have to fight for not only the value of my land and home, but to preserve the future of this serene and private neighborhood. In the future, several of my grown children have planned to build homes on the land I own. This area is a prime location for family housing and small farm acreage...a wonderful place to raise children and be close to town, but still far enough away to feel like you're living in the country.

10. It would be a travesty for my home or my children's homes to be surrounded by businesses. This is exactly what's happened on Haynes Ave., where businesses are interspersed with homes.
11. Mr. Certain stated the land wasn't of good quality and owners weren't raising crops or running cattle on the property near him. I hay my property and one of my neighbors runs cattle and hays his land as well.
12. There are grants available with the State for up to a million dollars to people who will develop businesses East of Miles City.
13. Several businesses are located north of town and that would be an acceptable area to locate others, and alleviate truck traffic."

In summary, based on the above Evaluation, and also the Evaluation by Dave DeGrandpre of Land Solutions, it is apparent that all three 'Little Factors' are present in this case of spot zoning. The property cannot properly be rezoned, as it would constitute unlawful spot zoning.

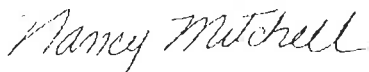
RECOMMENDATION:

To the City Council of Miles City to DENY the zone change based on review of the Staff Report, 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, as well as Evaluation by Dave DeGrandpre of Brad Certain's Zoning Map Amendment Request under the 'Little Factors' dated July 24, 2014. (See Attached)

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 Attached).

Sincerely,



Nancy Mitchell, Vice Chair
Miles City Zoning Commission

Staff Reports

Miles City Zoning Committee

Staff Report

July 24, 2014

Zone Change Request

Brad Certain has requested a change in the zoning designation from Agricultural to General Commercial on property he owns on the east side of Highway 59 South. The proposed zone change would make it possible for the owner to sell the property to a potential developer for future use. 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. No concerns have been voiced to date by neighboring property owners. General Commercial designation would result in allowing the property owners to sell the property to a developer for future commercial use. 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.

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 this would provide access for emergency personnel. 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 that crosses the property; gas lines are located along the easement next to the highway. At times there is a congestion problem just north of this site as you enter into the city limits. 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.

Schools – School facilities are available to the surrounding properties.

Bus Service – There are no bus services or transportation services available to this area.

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 55.02 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. Also, as stated previously, there are no transportation systems available to this area. There would be no impact to motorized or non- motorized transportation systems with this zone change.

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 would allow for another option for the property owner and one of those options would be to sell the property. 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, so the commission would need to cover the three Little factors to determine if this would be spot zoning.

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 could 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 zoning commission's interpretation of the spot zone issue and the reporting of facts from the public hearing.

To: Scott Gray, Miles City Public Works Director

From: Dave DeGrandpre, AICP

Date: July 24, 2014

Re: Evaluation of Brad Certain's Zoning Map Amendment Request under the 'Little Factors' for spot zoning

Brad Certain has submitted a request to amend the zoning map designation from Agriculture (AG) to General Commercial (GC) on 55 acres of land located along the east side of Highway 59. The property is south of the Miles City limits but within Miles City's zoning jurisdiction. The property can be described as Tract A of Document #153542, Envelope 500B, located in Section 11, Township 7 North, Range 47 East.

All of the land surrounding the subject property is zoned AG and the issue has been raised whether this zone change would constitute illegal 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, the Zoning Commission's and City Council's consideration.

LITTLE FACTOR #1

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

Predominantly agricultural with some rural residential development.

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 General Commercial zoning?

It is the intent of the GC district regulations to provide a general commercial district for those businesses and services which may require large storage space, may be open in the evenings, may generate large volumes of traffic, and are serving the extraordinary needs of the entire community. Permitted uses are:

1. All general business

2. Theatres, lodges and assembly facilities
3. Churches
4. Multifamily dwellings, except townhouse developments
5. Multifamily dwellings in combination with uses listed in 1, 2 and 3 above
6. Animal rescue shelters

The regulations also consider land uses like bulk fuel stations and junkyards,

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

No specific use of the property is proposed. The zone change application form indicates the purpose of the zone change request is for future sale, but no other information is given. Because of the wide open nature of the General Commercial district in terms of variety of allowed land uses and range of potential impacts, the future use could be substantially 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 consists of 55 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, which are community planning documents that are publicly vetted and can be considered to be in the public interest.

Changing the zoning to General Commercial would clearly benefit one landowner with a preferential zoning designation because General Commercial zoning allows a wide range of commercial land uses including “all general businesses.” This wide range of land use options should be contrasted with the AG designation, which is quite limited.

Given the fact no public comment has been received to date, it is not clear whether the amendment would be ‘against’ the general public, although one can imagine significant traffic, noise, dust, glare, odors and other side effects of some commercial uses. What is clear is 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. Because no specific land use is proposed it is difficult to measure what the impacts to surrounding landowners might be. As stated above, no public comments have been submitted to date 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 impacts, even potentially major ones, depending on the future land uses developed on the property. It seems unlikely the surrounding landowners would benefit 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 General Commercial 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 May letter to the Miles City Zoning Commission describing the criteria for spot zoning as well as past precedent, I recommend denial of the zoning amendment request because the request generally meets all three of the criteria for illegal 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).

OFFICE OF THE CITY ATTORNEY

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

Legal Opinion 2011-002

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

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE January 10, 2011

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

FACTS:

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

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

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

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

ISSUES:

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

CONCLUSIONS:

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

LEGAL DISCUSSION:

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

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

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

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

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

1. Boland v. City of Great Falls, 275 Mont. 128; 910 P.2d 890; 1996 Mont. LEXIS 17; (1996), the Supreme Court held that no illegal spot zoning occurred and indicated that the zoning change would benefit the adjacent property owners whose property values would tend to increase from the project development; and that there would be benefit to more landowners than the individuals whose property was being zoned and therefore the zoning was not in the nature of special legislation designed to benefit only one landowner;

2. Citizen Advocates for a Livable Missoula, Inc. v. City Council (CALM), 2006 MT 47; 331 Mont. 269; 130 P.3d 1259; 2006 Mont. LEXIS 59, Broadway-Scott Gateway Special District rezoning proposal for West Broadway Safeway did not constitute illegal spot zoning, the benefit was not conferred at the expense of the general public;

3. North 93 Neighbors, Inc. v. Bd. of County Comm'rs, 2006 MT 132; 332 Mont. 327; 137 P.3d 557; 2006 Mont. LEXIS 228, despite Wolford's sole ownership of the parcel, county commissioners did not enact zoning amendment at expense of surrounding land owners or the general public; and

4. Lake County First v. Polson City Council, 2009 MT 322; Mont. 489; 218 P.3d 816; 2009 Mont. LEXIS 470, Wal-mart annexation and zoning from low density residential to a heavy highway commercial zoning district not illegal spot zoning because Supreme Court "cannot conclude that the benefit is inappropriately conferred at the expense of the general public."

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

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

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

§25.90. - Valid "spot" zoning.

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

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

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

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

In Little the Montana Supreme Court stated:

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

In explaining the third test, Hagman gives this qualification:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We therefore conclude that despite Woford'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

Letters of Support

2447 Highway 59 So.
Miles City, Mt.
July 31, 2014

To Whom It May Concern:

We are writing this letter in regard to the minor subdivision on Highway 59 South that has been proposed by Brad Certain.

We own a farm and ranch operation 11 miles south on Highway 59. Please let the record show that we have no objection to Mr. Certain's proposal. It is our opinion that if Miles City is going to expand this direction we would far rather see the expansion on dry land tracts than on prime irrigated farm land.

Thank you for your consideration on this matter.

Sincerely,

Bill and Pansy Jones

MC Miles City Area Chamber of Commerce

July 30, 2014

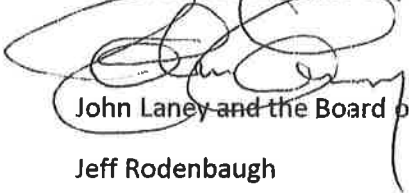
To Whom It May Concern;

I am writing this letter to you today on behalf of the Miles City Area Chamber of Commerce Board of Directors and myself. We have been following your decisions with the utmost concern because we exist to trumpet business development and growth in Miles City and Custer County. If you would allow us to speak to our major concerns. Our first concern is that looking upon Miles City and the donut area as a business, we consider zoned commercial property to be our inventory. Without zoning changes Miles City will very shortly run out of inventory. In the business world a business with no inventory is no longer a viable business. While we fully respect and appreciate your commitment to do the best for all citizens we would suggest that the future of business growth in Miles City lies in commercial zoning to the south of Miles City.

Secondly, it has been stated that the zoning process is quite time consuming. We are aware that in some instances statute dictates a certain amount of time, but if a mechanism could be put into place to expedite this process we would certainly encourage such steps.

We certainly appreciate the monumental task you have voluntarily taken on, but we feel we need to bring these concerns to light. We need to grow to be able to afford the services we currently enjoy and to bring new jobs to our community and the growth of the area requires an aggressive approach to new zoning. Thank You for your time and energy on these matters.

With the best for Miles City in mind:



John Laney and the Board of Directors of the Miles City Area Chamber of Commerce

Jeff Rodenbaugh

John Scheurering

Danette Cremer

Nancy Abel

Brandi Gray

Jeff Harding

Terri Newby

July 31st, 2014

To whom it may concern:

I fully support Brad Certain for the commercial land development project on Highway 59 South of Miles City. I believe it is the only way to expand.

If you don't progress you'll regress.

Sincerely,


Kenny Hom

July 31, 2014

To whom it my concern,

My husband, Morris, and I live south of town about 7 miles out. We travel on the Broadus highway at least twice a day coming in and out of town.

It has come to our attention that Brad Certain owns some land along the highway and would like to turn it into General Commercial. We are not opposed to him doing this. In fact, we think it is a great idea! It is nice to see growth in Miles City.

Thank You!

Ragna & Morris Bartholomew

You got our 2 votes and support...

Alane Stabler

Stabler Pilot Service

Sent from my Verizon Wireless 4G LTE DROID

ABC

From: bryan@milescityproperty.com
Sent: Wednesday, July 30, 2014 10:53 AM
To: Mike South
Subject: letter of support .

I , Bryan Holmen , am writing in support of rezoning and establishment of a potential commercial development project on Highway 59 S . There is a definite need of property zoned correctly and established in advance for expansion of current Miles City businesses and potential new businesses coming to our community.

The results of a project like this would let these businesses know that we as a community want them to succeed and/or become a part of our community . Besides the fact that this project would increase our tax base and possibly provide new jobs .

Please give a yes to this project !

Respectfully ,
Bryan Holmen

ABC

From: Shell Muggli <Shell@mugglicontractingmc.com>
Sent: Wednesday, July 30, 2014 12:23 PM
To: abc@midrivers.com
Subject: Zoning Change Letter of Support

To whom it may concern,

It appears that the City of Miles City should grant Brad Certain the requested Zoning change, from Agricultural to General Commercial, intended for the property located within the two-mile City boundary line on the Eastern side of Highway 59, (the Broadus Highway). This area's direct Highway frontage makes this an ideal place for the City to encourage valuable Commercial Property Development. Development in this area would keep the Commercial traffic from impacting the rest of Haynes Ave as well as the truck route through down town. Tax revenues, and the addition of better paying jobs, as well as the potential for future businesses development along this route would allow the City of Miles City, the Tax payers, the potential customers all to benefit from this zoning change. These are all reasons why we believe the zoning change is the right thing to do for Certain, for Miles City, and for Custer County.

Thanks,

John and Michelle Muggli
John Muggli Contracting LLC
PO Box 67
Miles City MT 59301
406-232-4032 office
406-232-1859 fax

NEW E-MAIL ADDRESS

Shell@MuggliContractingMC.com

Website: <http://MuggliContractingMC.com>

July 30, 2014

To whom it may concern:

I am writing this letter to show my support to get the 55 acres zoned for general commercial use and minor sub divide into 5 parcels, located just past cemetery road on the east side of the Broadus Highway.

Southeastern Montana has a great opportunity here to expand our state's small business growth. Change is inevitable and I feel Southeastern Montana needs to do its best to accept and manage the growth and impacts that coming from the Bakken. Miles City has a responsibility to its community to provide opportunities and future jobs for the next generation, and we should choose prosperity over fear. Brad Certain should be applauded for trying to move the community forward by providing future growth.

I think if everyone took a step back and thought of the long term benefits to Miles City and outline areas. I think everyone would be in agreement that this is the right choice. Again, I fully support this area be zoned for General Commercial use.

Sincerely;

Melody R. Peterson
Hometown Lighting, LLC.

LESH & COMPANY

REAL ESTATE

July 31, 2014

Miles City zoning review

RE: rezoning application on the 55 acre parcel south of Miles City, Certain & Gillette

To whom it may concern,

I am writing to express my support of the rezoning application on this parcel from Agriculture to Commercial.

As Miles City experiences growth it is important to have property locations that will support development. Ease of access, availability of utilities and the scale of this property make it a good candidate for commercial development.

Thank you for your consideration.

Respectfully,



Monty Lesh.

Phone: 406-234-1523 • Fax: 406-234-5374 • E-mail: frontierml@midrivers.com
2515 Main, P.O. Box 1231 • Miles City, MT • 59301
www.leshandcompany.com

July 31, 2014

We are writing to support the proposed zoning change, of the 55 acres owned by Mr. Certain, for general commercial use. We would also support the division of that area into 5 parcels.

Bob & Lisa Wagner



2615 Bridge Street Suite 102 Miles City, MT 59301
Ren Gardner –Petroleum Engineer - 406-853-5913

To Miles City City Council and Zoning Board,

This letter is written in full support of Mr. Brad Certain's plan to develop 55 acres of currently agriculturally zoned land into commercially zoned land south of Miles City on Highway 59. As all citizens of Miles City know there is very limited directions this town and community can grow commercially. The Highway 59 corridor to the south is the logical answer and it follows the accepted Growth Plan as put forward a number of years ago. In this economic environment today costs and budgets seem to grow exponentially every year, the only way for a town/community/county to keep up is to have growth and in turn more revenue.

Commercial growth is the engine creating the revenue due to two large reasons:

The land and buildings having a greater tax revenue than agricultural land. As soon as the land/building plan is appraised, the tax amount is raised from agricultural land therefore increasing tax revenue due twice a year.

The day to day workers coming to and from work to a new commercial business. They make a wage, pay taxes, buy a house and pay taxes on their new upgraded house. The economic cycle is not hard to follow, if growth is happening the community economy is improving.

This brings me to my next point of emphasis. At a previous council meeting a gentleman approached the council to bring Affordable Housing units to the community. Our mayor and numerous council members applauded his idea. This seems ironic and backwards that there is community opposition to a local business owner (Brad Certain) who has paid his dues for the past 20 years and wants to see this community grow and flourish. Mr. Certain is taking a risk using local money to create local jobs which completely contradicts the gentleman out of Missoula. The gentleman proposing the housing development will use federally funded dollars which essentially creates giant hoops for local contractors due to certain requirements with working for the federal government and using federal money. As he stated at the council meeting he will use a management company out of Billings to manage the facility which allows the tax revenue in Billings to keep growing. The housing facility will go on the tax rolls but at what discount to Miles City? How many years worth of tax credit is he asking for?

Mr. Certain is not asking for anything other than a change from agricultural zoned land to commercially zoned land with no risk and all reward to this city council and zoning board. If the opposition to this zone change would like to fork up the extra money to handle our city's budget problems I am all for it. Yet we all know that the opposition would like to keep our city/community exactly the same as it has been and yet not worry about any budget/revenue shortfalls.

Ren Gardner
Petroleum Engineer
ren@welterconsulting.com

Mike South

From: Todd Steadman <steadman@midrivers.com>
Sent: Tuesday, July 29, 2014 4:29 PM
To: 'Mike South'

To whom it concerns,

I'd like to write a letter of support for Brad Certain in order for him to develop his track of land south of Miles City on HWY 59. As a community..... If we have a local individual with a strong track record of doing what's right, for creating employment in Miles City, in creating tax basis, in supporting Miles City then, now and in the future..... WE Owe support in this situation! Opportunities like this don't come along very often....there are NO logical tracks to develop other than in this area South of town.....as a community we need to create the situation where logical, planned growth can occur! I'm happy to visit with the entire council or anyone individually if you would desire.....for the sake of our Future I hope you find support of this area and what Mr.. Certain is proposing!

Appreciate your consideration,
Todd Steadman

July 29, 2014

To Whom It May Concern:

Re: Commercial Development

As a Business Owner in Miles City, I would like to voice my support in developing the land to the South of Miles City. As most people already know, it is the only logical way to expand our community. We are blocked by the Yellowstone River to the North, Ft. Keogh to the West & the Interstate to the East. Miles City has already lost millions in tax revenue to businesses that were interested in moving here, only to be shut down by government laws & policies. I feel it's time for Miles City to welcome the increased business & revenue that would follow.

Sincerely,

David Fiechtner



First Interstate Bank
1115 Main St.
P.O. Box 1237
Miles City, MT 59301-1237
406-232-5590
www.firstinterstatebank.com

July 30, 2014

To Whom It May Concern;

First Interstate Bank has a strong commitment to the communities we serve. Our employees live, work, raise families, volunteer and support the places we call home. We aspire to make our communities a better place to live and certainly feel business development remains a critical component to our future. It is our understanding that we presently have an economic growth and development plan in place that is supportive of progression for new business ventures and opportunities. We likewise understand the limited opportunities we face as a community with the current inventory and zoning issues. It remains important that we consider what is in the best interest of our community as we deliberate proposals for zoning and new business development in and around Miles City.

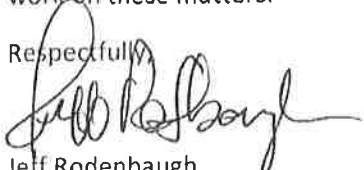
Without common sense zoning considerations, Miles City offers little optimism to plan for the future. We would like to encourage you to carefully consider the present confines of future business growth in Miles City without the potential for new commercial zoning to the south of Miles City.

We further support all ways to expedite and to streamline zoning request decisions. It remains important for all expectations to be clearly communicated early in the process to eliminate surprises for all participating parties. Our goal as a community should be to encourage and support beneficial development and our process should not discourage timely progress.

New business growth is fundamental for our community to afford the services we currently enjoy and require. Our future then demands a determined approach to new zoning that creates opportunity.

We unquestionably appreciate the responsibility of your position. Thank you for your time and hard work on these matters.

Respectfully,


Jeff Rodenbaugh
President
First Interstate Bank
Miles City Branch

ABC

From: James T. Carr <carrncarr@middrivers.com>
Sent: Thursday, July 31, 2014 2:47 PM
To: abc@middrivers.com
Subject: Zoning

Brad,

Include me among those who support your efforts to rezone your property south of town to commercial. As you know, Miles City is lacking in large commercial tracts and south is the logical direction to go. Large commercial tracts close to town will make Miles a more attractive place to locate and should help economic development.

Jim Carr


07/30/14

To whom it may concern,

In my opinion the proposed mini-subdivision will be extremely beneficial for the City of Miles City.

The zoning change from agricultural to commercial will allow for business growth in our community. This in turn will increase both the tax and employment base. Not only do I fully support this zoning change, I am an adjacent land owner to the parcel.

Respectfully,


Joe Stevenson

07/30/14

To whom it may concern,

For the economic good and future of Miles City I do endorse the zoning change being sought from agricultural to commercial.

The proposed minor sub-division will increase our tax base and employment opportunities.

Respectfully,



Todd Stevenson

Heather Certain
3835 Sandpiper Lane
Billings, MT 59102
(406)951-0202

July 31, 2014

RE: Brad Certain Rezone

To whom it may concern,

Thank you so much for taking the opportunity and time to present Miles City and surrounding areas with the chance for economic expansion. Along with your eagerness to promote community development you have a great sense of community culture. This culture is apparent in your values, knowledge, experiences, and future ideas for the community.

According to the *Growth Policy* of Miles City-Custer County, adopted April 22, 2008, "The zoning code, modernized in the late 1970's, allows for a variety of uses including single, multiple, and mobile home residential; several types of commercial, industrial, and agricultural uses, and open space. At its inception, the zoning code followed the existing land uses. It has been occasionally amended to follow development patterns." With this in mind, the growth policy also declares, that the development of policies to accommodate the potential growth and changes in this community are of value, with an emphasis of ideas coming forth from community members.

Therefore, I believe zoning and commercial development of your land supports all aspects of the zoning regulations noted in the *Growth Policy* of Miles City-Custer County. Additionally, this will provide appropriate community development as well as enhance, promote, and preserve community culture by creating an increased tax base and incentive for more jobs for Miles City's community members.

Sincerely,

Heather Certain

ABC

From: Garve Gieke <garve@midrivers.com>
Sent: Friday, August 01, 2014 7:14 AM
To: abc@midrivers.com
Subject: Support Development

To Whom it May Concern,

I am writing to support the development of this parcel (Brad Certain's 55 acres) and ask that it be rezoned as requested. For years I have listened to members of our community complain about the lack of opportunities available to keep our young people here. Now we are seeing some much needed influx and it appears that our city representatives are content to push it away. I would encourage these representatives to take a more business friendly approach to the planning and zoning process or risk losing not only future prospects but current businesses as well. This is an eastern Montana rural community and should not be compared to other western communities with entirely different circumstances.

Thank you for your consideration.

Garve E. Gierke
117 S. Jordan
Miles City, MT 59301

ABC

From: CO-Miles City, Dave Corbin <Dave.Corbin@chsinc.com>
Sent: Friday, August 01, 2014 9:55 AM
To: abc@midrivers.com
Cc: afab@midrivers.com
Subject: [SPAM]Brad Certain's rezoning request

To : Rezoning Commission

From: David H Corbin

Re: This letter is written in support of the rezoning request of Brad Certain. Development to the South of Miles City along Hi Way 59 S is a logical solution for Commercial development. Long term growth of the Miles City area is dependent on Commercial Business being able to adequately predict and depend on a reasonable request being approved. This request will meet all requirements to be in the best interests of the community as a whole. Expanded business opportunity can only mean more income for residents and larger tax base for the city and county in return. A local government that supports a planned development such as this will only grow and prosper in the future. As an alternative, we can wonder why we don't have the money for this project or that. Or why mill levies and such get voted down. It would be because the tax base is too low to support it all at the same time. Which I dare say we are quickly approaching now. Approving this rezoning is the first correct step to enlarging Miles City's tax base and ensuring a solvent future with opportunity for employment, business growth and quality of life.

Respectfully
David H Corbin
Miles City, MT

406-951-0997

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Dear Members of the zoning commission,

I am writing this letter in support of Brad Certain's rezoning request for the land along highway 59 south of town. I feel that Miles City has sat on their hands and let several big time businesses pass them by. As a taxpayer of the city I think it would be a huge boost to the community if the powers to be would look towards the future. There is only one direction for the town to grow and going south makes perfect sense. I am very disappointed that Mr. Peila was denied his request, but Mr. Certain is going about this in a near perfect manner. He is trying to bring to town big businesses that are interested in locating in Miles City, thus bringing in more good paying jobs and more tax dollars. If the local government keeps denying these requests then the town will continue to struggle. Years ago when the city decided to allow the sewer project on South Haynes Avenue it opened the door for the town to expand. It seems now that the doors are being shut and it will end up being at the cost of the taxpayers. I am beginning to think that there are several people in higher places that like little ol' Miles City just the way it is, but the younger generation will be the ones stuck to foot the bill. **WE CANNOT AFFORD TO LOSE ANY MORE OPPORTUNITIES FOR GROWTH.** Please take this into consideration when you are making your zoning recommendations and please keep personal interests out of the mix and do what is best for MILES CITY.

Regards,

Howard Shawver

Miles City, MT

To Whom it may concern,

I would like to voice my support for Mr. Certain and his plans for a rezone and minor sub division on highway 59 south. As a nearby landowner I believe we need to safely and responsibly grow Miles City and Custer County and Mr. Certain is addressing these issues.

Respectfully,

Corey Jones

ABC

From: Kevin Thomason <kthomason@bloedornlumber.com>
Sent: Friday, August 01, 2014 2:55 PM
To: abc@midrivers.com
Subject: Commercial Property

August 1, 2014

To Whom It May Concern:

Brad Certain is planning to subdivide some land south of town into a Commercial Zoned large lots, for a Commercial Business. We are in need of both! I believe this is a good area to bulld a Commercial Business District. We need some Commercial Building sites to attract more Businesses to Miles City.

I am for this proposal.

Sincerely;
Kevin Thomason

Bloedorn Lumber – Miles City
2919 Main St.
Miles City, MT 59301

406-232-0164

ABC

From: Jason Strouf <msbs2@midrivers.com>
Sent: Monday, August 04, 2014 8:17 AM
To: Brad Certain
Subject: Zoning in 2 mile radius

To whom it may concern,

I am writing in support of zoning more property with in the two mile radius of the existing city limits to allow commercial development. A highway commercial corridor along major road ways would make Miles City more attractive to prospective business looking to establish in Miles City. One of the biggest obstacales Custer County has is its limited tax base, with development comes an increase to the tax base for maintenance and improvements to the community we reside. We should take action on this and establish more property for commercial development.

Thank you,
Jason Strouf

1840 Tongue River Road

Miles City, MT 59301

September 2, 2014

To Whom It May Concern:

Subject: Brad Certain Zoning

I would encourage you to allow the change in zoning to General Commercial from its current Agricultural Designation. I'm confident that Brad Certain will develop the land responsibly.

Miles City needs to grow and Highway 59 South is the only option. Zoning is complicated but I trust you can work it out. Again, Miles City needs new businesses.

Respectfully,

Les Hirsch
Donna Hirsch

Les and Donna Hirsch

Nancy

From: "ROGER" <rlmcc@hotmail.com>
Date: Thursday, July 24, 2014 5:26 PM
To: <gizmo@midrivers.com>
Subject: Fwd: Zone change request (Certain Property)

Subject: Zone change request (Certain Property)

Zoning Board,

I'm sure the zoning board clearly knows Miles City needs to grow to the south as there is simply no other direction it can grow.

The land in question is only 1000 feet away from commercial property (Rolling Rubber) and I was told at city hall that the property owners to the north of Brads property are going to request rezoning on their tract as well in the future and is listed for sale at commercial prices. This property will be divided into 5 tracts with legal access from highway 59.

I developed 48 acres at five different locations on Haynes Ave. and had issues at every tract with zoning, planning and site review. I simply don't understand why these boards are against any development and continue to make it difficult for the developer. Today, I was in conversation again with a firm that is very interested in the 6 remaining acres I own across from Arby's. I'm in the process of buying property out of the two mile donut to avoid zoning and other development issues.

I studied a map of Miles City at length this week and the city has spot zoning all over the city from one end to the other. Spot zoning at this location is a non issue as precedence has already been set many times over.

Why did the city require enlarged sewer lines when the Rolling Rubber building was built? The city at that time said it was needed for growth to the south. Ask yourselves where is the city going to grow and in what direction?

Do the right thing and approve this zone change and help bring more business to Miles City.

Roger Lothspeich
Sent from my iPad

Oakland Improvements, Inc.
715 Washington
Miles City, MT 59301
July 24, 2014

Zoning Board Members

This letter is to show my support to rezone Brad Certain's property from agricultural to general commercial. The growth of Miles City needs to go south of town.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Oakland".

Paul Oakland

ABC

From: Rocky Swanson <bbs.rws@gmail.com>
Sent: Monday, August 04, 2014 7:14 PM
To: abc@midrivers.com
Subject: letter

I Rocky Swanson, have been a business man in Miles City for the past 20 years. I am all for commercializing the properties on HWY 59 South. As you know Miles City is expanding, we the residents of Miles City need new businesses for many reasons. This will bring in more revenue. create more jobs, and most importantly continue expanding Miles City.

Rocky Swanson
Butcher Block Specialties
713 Knight
Miles City, MT 59301
4062343556

ABC

From: ROGER <rlrmcc@hotmail.com>
Sent: Monday, August 04, 2014 3:21 PM
To: abc@midrivers.com
Subject: Letter

To whom it may concern,

I am writing in support of re-zoning Brad Certains 55 acres to Commercial. Miles City has only one direction to grow and that is to the south. There is very little land left in Miles City zoned commercial and the demand is there for more. If Miles City is going to grow we need more commercial property.

Please do the right thing for the community and approve this zone request.

Roger Lothspeich

Sent from my iPad

August 7th, 2014

RE: Zoning Request

To whom it may concern:

I completely support the zoning request for the 55 acres South of Miles City to general commercial. Time is of the essence, every day that passes is the opportunity lost to competing cities in Eastern Montana that have an inventory of commercial property. It is the logical direction for the expansion of commercial property and currently has a commercial business operating across the hi-way.

Miles City accepted a growth policy on 4/22/2008 and it is vital to implement the expansion for commercial property with-in the 2 mile radius. A vote for the re-zoning is a vote that embraces growth and benefits the entire community as per the growth policy. The argument has been made that the growth policy is out of date. The growth policy is as relevant today as it was in 2008. It cannot just be dismissed, as it is the guide to growth for many years. As a property owner and tax payer I expect my elected officials to promote and vote for growth. I believe the public has general consensus for growth.

This is one of the most opportune times in the history of Miles City for growth. Please vote for better jobs, higher wages and more opportunity. Not only will the tax base increase for the City of Miles City but we would create more opportunities for small businesses. More opportunities could have the potential in a resurgence of Main Street businesses.

Sincerely,

Mike South



Miles City Zoning Board

Miles City, MT 59301

8-4-2014

RE: Zoning changes south of Miles City

Miles City Zoning Board;

The DOWL HKM office in Miles City has always been a supporter of a control growth of Miles City that is well planned and makes common sense. Miles City is in need of commercial sites that are large enough, out of the flood plain with easy access to the interstate. Currently there are very few locations. It just makes common sense that Miles City should take the initiative; make a well thought out plan to control the growth of Miles City. South of Miles City along Hwy 59 is a good location. Pyles have been using ag land for a commercial site for as long as I can remember. The property that Brad Certain owns is prime example of a good commercial site, it's outside of the city limits, there's a large WAPA overhead electrical transmission line running thru the property, it is outside the control access for south Hynes Ave, out of the flood plain and has easy access to the interstate. Being an engineering and survey firm here in Miles city we are on the front line when firms want to locate in this area. They will call and ask our advice on locations to build prior to buying. At this point in time the options are few and far between. If Miles City wants to grow and have a strong tax base we need to explore all options.

Thank you for your time.

A handwritten signature in black ink that reads "Quinn Wright".

Quinn Wright, PLS, CFedS

DOWL HKM

713 Pleasant Street

Miles City, MT 59301

406-234-6666

406-234-6666 ■ 406-234-7065 (fax) ■ 713 Pleasant ■ Miles City, Montana 59301 ■ www.dowlhkm.com

Alaska - Anchorage, Juneau, Kodiak, Palmer ■ Arizona - Tucson, Phoenix ■ Montana - Billings, Bozeman, Butte, Great Falls, Helena, Miles City
Washington - Redmond ■ Wyoming - Gillette, Lander, Laramie, Sheridan



oneHealth and Grounds For Change
210 South Winchester
Miles City, MT 59301

August 1, 2014

Brad Certain
ABC Glass and Signs
1920 Valley Drive
Miles City, MT 59301

To Whom It May Concern:

Part of the mission of oneHealth is to help meet the needs of children and families in our community. Through our key partnerships and support of community leaders such as Brad Certain, we can help meet these needs improve overall health and wellness behaviors of our community.

21 % of Custer County residents live at or below poverty level. oneHealth serves primarily the underserved or sensitive populations of not only the city, but the entire county as well.

Mr. Certain has been a partner of oneHealth as well as our non-profit foundation, Grounds For Change in order providing innovation, striving to develop partnerships throughout eastern Montana, and advocating for the underserved in order to promote positive changes for families and their children.

This project would address challenges specific to families in our community striving to work their way into the middle class and achieve economic security. This project will increase economic opportunity, boost the economy and strengthen the fabric our surrounding communities.

oneHealth and Grounds For Change would like to express our strong support of the potential commercial development project south of Miles City brought forth by Mr. Certain.

Sincerely,

A handwritten signature in dark ink, appearing to read "Molly Wendland". The signature is fluid and cursive, with a large loop at the end.

Molly Wendland oneHealth Marketing Director
Grounds For Change Coordinator

MILES CITY PLANNING COMMITTEE

1010 Main Street, Miles City, Montana 59301

Phone: 406-234-2705

Miles City Zoning Board

To Whom This May Concern:

On behalf of the Miles City Planning Committee (MCPC) I am submitting this letter of encouragement to the City Zoning Committee regarding business development in our community of Miles City (which includes city and donut area of Miles City.) The MCPC was formed as an arm of Economic Development to include representatives of all areas of our community to address issues facing our community. It is made up of city and county planners, councilman, commissioner, economic development, real estate, education, Fort Keogh, chamber of commerce and others to facilitate discussion on any area of concern and provide assistance any way we can to the city or county.

The committee has met three times in the past four weeks over the issues of helping streamline the business development process, as well a city-county planning board. In the most recent meeting the group concurred in writing this letter of supporting focused efforts by the zoning board and planning board to streamline the process of zoning and creating more efficiency in our community planning to become more pro business growth. Providing a clearer plan for community growth areas to grow our business development inventory is paramount in becoming business friendly and promoting our community. Currently we have very little planned business inventory or business zoning. We are losing potential business.

We all support the efforts of the city and county to develop business areas to facility positive growth. This is a big task and we also appreciate all the efforts to facilitate growth needs. Our concern is developing a plan for growth that will outline where we want our community to grow. This would have a direct impact on the efficiency of the zoning and the zoning process. Within that plan our community can define areas of business growth and work to build zoning plans and infrastructure needs in advance of potential business development. We believe that will lead to more efficient and organized business growth in Miles City.

We agree on the need for an aggressive approach to new zoning. One that will streamline the method and create a more efficient process for business development. We encourage and support your efforts toward this endeavor.

Thank you all for your time and efforts to assist the community and your efforts in this matter.

Sincerely,

Mark Peterson
Monte Lesh
Mike Coryell
Ken Holmlund

John Gorton
Dennis Hirsh
Dawn Colton
Lew Vadheim

John Laney
Brad Certain
Jason Strouf



700 Main Street • 800 S Haynes Ave • PO Box 250 • Miles City MT 59301-0250
406.234.8420 • Fax 406.234.8419

August 6, 2014

Dear Custer County Commissioners and Miles City Officials:

Economic growth is paramount to the sustainability of any community. It provides new jobs, higher paying jobs, population growth and an increased tax base. Growth must be planned and harnessed so that it ultimately is in the best interest of the community as a whole. Progressive towns have long ago established a plan for future expansion of their commercial districts, housing developments and municipal needs. They are now enjoying the prosperity resulting from their foresight. Billings is a great example of a city that anticipates growth and has a progressive outlook.

I strongly encourage you to approve a plan that will allow for commercial growth in our city and county while giving prospective entrepreneurs clarity in the rules and a reasonable plan for development. Failure to do so puts our community at a disadvantage and makes it harder for Miles City to continue as a vibrant community well into the future.

Very Truly Yours,

Stanley A. Markuson
President – Stockman Bank Miles City



Member FDIC

Letters of Protest

GARY A. RYDER
Attorney at Law
P.O. Box 72
Hysham, Montana 59038

July 24, 2014

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

RE: *Certain updated zoning request*

Dear Chairperson Trenka:

I am writing on behalf of landowners, Barbara Ann Todoroff-Nicholas and John Todoroff Jr., who oppose the zoning change request of Brad Certain. This objection has the support of other surrounding landowners.

The Zoning Commission has reviewed the previous application of Mr. Certain, in addition to the application of Diamond J Construction, LLC. David DeGrandpre submitted a report on May 23rd, 2014 on the Certain property. The Miles City Council denied Diamond J, LLC re-zoning request at the July 8, 2014 meeting, and filed with a written opinion. The legal issues and evidence of spot zoning that have been reviewed in the past apply to Mr. Certain's new request. We continue to renew our objection on the spot zoning issue.

The following are additional concerns of the landowners:

ANNEXATION – GROWTH POLICY

The one new significant issue brought up at the City council hearing on the Diamond J, LLC re-zoning was annexation. The growth policy discusses both zoning and annexation. The growth policy indicates the City of Miles City's intention is to include and annex commercial properties outside of Miles City. The following statements are from pages 36 and 37 of the Growth Policy:

- 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.

- Commercial properties demanding city services shall be annexed into the city in conjunction with a waiver of no protest to annexation delivery of services.
- 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.

LANDOWNER OPPOSITION

Based on past discussions, with both adjoining and surrounding landowners which include Don Nansel, Fred Nelson, Sandy McFarland Hayes, Bill and Sharon Oftedahl, Peggy Pyle, and Linda and Mike Corbit, their belief is that changing zoning to commercial use is incompatible with their existing property rights. They are open to growth, such as rural residential and commercial that is closer to the city limits. Written protests will be filed with the City council prior to their public hearing.

APPLICANT'S RESPONSIBILITIES

The application as submitted is inadequate. It does not disclose what, if any, the proposed use is on the property. Mr. Certain and Mr. Gillette discussed using covenants and restrictions to address concerns, but nothing in their proposal requires these covenants.

In a recent interview, noted Boise land use attorney, JoAnn Butler, responded to a question about litigation as follows: *When do you get into court battles?*

Very little winds up in court, to tell you the truth.

Clients put the money, effort and time up front; they involve planners in the community ahead of time. They say, "This is what we're thinking," and they actually build in people's comments. During the public hearing process, of course, people will give you their opinions. That's where you have your battles – in the public hearing process, before the planning and zoning commission and the city council.

Traffic is always an issue. It's always, "We don't want to turn this two-lane road into a three-lane road." Some people believe that maybe if we stop all development we won't have to change the roads. For other people, it's, "How do we work with developers in their municipalities to channel traffic? Do we send them away from existing residential areas towards more state highways?"

We also have a lot of folks that move to Idaho from other communities, especially Southern California. For many of them it's, "I moved to get away from that. I don't want anything happening here that reminds me of that."

None of the time or effort discussed above has been presented to the Zoning Commission by the applicants.

CLOSING ISSUES

The Miles City council adopted the recommendations of the Zoning Commission, and turned down the Diamond J, LLC zoning application. Peila's attorney has indicated that they will ask for a Judicial review. It would make sense to have that issue go through the courts before any significant zoning change is granted.

The City of Miles City is close to obtaining funds from the Montana Department of Commerce CTAP program. The City Planner can provide more details. Having a certified and experienced planner work through zoning and annexation issues on behalf of the City, would be in the public's best interest. Patience and direction in the re-zoning process makes sense.

Finally, there are some proposed changes to Interstate 94 Exit 138. The proposed changes made by the State Department of Transportation could significantly affect that exit.

This zone change should be denied on the grounds that it is inadequate. This recommendation by the Zoning Commission would not prevent Mr. Certain or Mr. Gillette from selling the property to a business or developer willing to accept responsibility and present a workable proposal to the City and surrounding landowners.

We would request that the Zoning Commission make a recommendation that the Certain application be denied.

Sincerely yours,



Gary Ryder
Attorney at Law

GR/cabs

LETTER OPPOSING CERTAIN REQUEST FOR ZONING CHANGE FROM AG TO COMMERCIAL

To Who It May Concern:

My name is Sharon Oftedal. My husband and I own a home at 960 Hwy 59 South. We've lived at this location for 36 years, adding to our farm as irrigated land became available.

Frankly, I'm surprised we're addressing the same issue we dealt with only a few weeks ago. You may be familiar with the game "Whack A Mole", which in eastern Montana might be more accurately called "Whack a Prairie Dog". As soon as we whack one vermin, two more pop up.

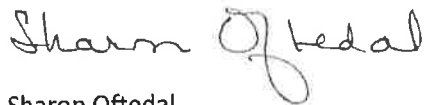
Previously I talked about traffic issues south of town, and this continues to be a concern for me. The MDOT statistics show that there is a daily traffic load on the south end of town of 1871 vehicles . To add even more truck traffic to this, when we already have fast-moving over- the- road trucks, farm equipment, school busses, ambulances, and all other sorts of vehicles seems to me something we want to consider carefully.

Also, once again we're facing a request for rezoning that's obviously spot zoning. There is a law preventing this. Most of the nearby neighbors are opposed to this zoning change, just as they were before. We cannot lose sight of the law. It's not a popularity contest. It's not an issue of how many businesses owners in Miles City or distant neighbors are in favor--spot zoning is illegal. And once again, there's no doubt that most of the adjacent neighbors will see a decline in their property values if this passes. We've been told that benefiting one land owner to the detriment of others in the area is illegal.

The spot zoning law obviously protects the nearby land owners, but it also protects this Zoning Commission and the City Council. Both groups adhered to this law with the Peila property, as they should have. I definitely appreciate that you have another tough decision to make, but the law is in place to help you with it, and for that we should all be thankful.

Thank you for all the time and effort that you've put into these requests--let's send a strong message that Miles City intends to grow with forethought so that you don't have to keep addressing this matter again and again.

Sincerely,



Sharon Oftedal



8/05/2014

Miles City Zoning Commission

My name is Duane Leidholt. I live south of Miles City, and own farmland in that area.

I understand that Brad Certain is attempting to obtain a zoning change, changing agricultural property to general commercial along Highway 59 South. This is not a good idea, in that there are many other locations to place commercial businesses. I am opposed to this change, and hope you will not allow this to happen.

Duane Leidholt

A handwritten signature in cursive script that reads "Duane A. Leidholt". The signature is written in dark ink and is positioned below the printed name.

Aug. 5, 2014

Dear Zoning Board,

My name is Duane Mathison, and I live on Highway 59 South about 5 miles south of Miles City. This has been my residence for a number of years--I run an irrigated farm, and take great pride in the crops I produce.

I am totally opposed to the zoning change proposal for land belonging to Brad Certain and Dave Gillette. The property they're attempting to rezone should remain agricultural, rather than becoming general commercial. Contrary to popular opinion, there is other commercial space available in areas more suited to that type of land use.

Thank you for your time.

A handwritten signature in cursive script that reads "Duane Mathison". The signature is written in dark ink and is positioned above the printed name.

Duane Mathison

August 4, 2014

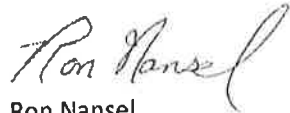
RE: PROTEST ZONING CHANGE, CERTAIN/GILLETTE PROPERTY EAST OF HWY 59 SOUTH

To the Zoning Commission City of Miles City,

This is a written protest to the proposed zoning change made by Brad Certain and Dean Gillette on property that was formerly owned by Susan Colvin and Mary Jo Colvin Kane. I run cattle on my property across Hwy 59 South, to the west of the site in question.

If the land is rezoned to general commercial, there is probability of contamination, including dust pollution. If there is to be any change from the current agricultural zoning, it should be for rural residential.

Sincerely yours,

A handwritten signature in cursive script that reads "Ron Nansel". The signature is written in dark ink and is positioned above the printed name.

Ron Nansel

4 Aug 2014

Planning Board;

I live at 791 Hwy 59 South of Miles City and border the property that Brad Certain is wanting to re-zone to General Commercial. I am opposed to this change because after attending the last re-zone meeting, there doesn't seem to be much done on permits & all the paperwork that this involves. I feel there is a lot of work yet undone before this should come before the board for a vote. We in the area still have no idea what will be done if it is re-zoned, and if proper regulations will be followed through.

Frank E. Nelson
791 Hwy 59 South
Box 396
Miles City, MT.
57301