

Agenda Item #11

## **PUBLIC HEARINGS**

A. Ordinance No. 1275: Certain/Gillette Re-zone

## **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 9<sup>th</sup> 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 12<sup>th</sup> day of August, 2014.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

**FINALLY PASSED AND ADOPTED** this 23<sup>rd</sup> day of September, 2014.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

# **Letters of Support**



Since 1915

WATTS INSURANCE INC.  
Ron, Ryan and Blayne - Agents  
2503 Main Street PO Box 370  
Miles City, MT 59301  
116 S Logan Avenue PO Box 35  
Terry, MT 59349

August 6, 2014

To whom it may concern:

Watts Insurance Inc. strongly supports Brad Certain in his attempt to obtain the correct zoning to build a subdivision on property he has purchased adjoining Highway 12 South of Miles City. Brad has been a long time Miles City businessman and has been involved with developing other properties. He has done an excellent job at the other locations and I have no doubt that he will do the same here.

There is a definite need for this type of development, and I firmly believe this is an excellent location for it.

Sincerely,

A handwritten signature in cursive script that reads "Ron J Watts".

Ron J Watts

*new support  
letters  
( B )*



usbank.com

**Miles City Branch**  
619 Main Street  
PO Box 1139  
Miles City, MT 59301  
406 232-0810  
406 232-1515 fax

August 11, 2014

To whom it may concern;

I am writing this letter in support of Brad Certain's development project south of Miles City.

The lack of commercially zoned property continues to be a problem in Miles City. Most larger companies looking to expand in our area, almost always need access to rail car loading, or interstate access. The area south of town provides a great opportunity for commercial development for companies with a need of easy interstate access.

As Miles City continues to grow, this issue is will continue to be a problem & possibly stunt further economic development.

Please consider Mr. Certain's request to change the zoning for this area.

Sincerely,

Pat Cline

U.S. Bank Miles City Market President.



# Martin Fence, LLC

407 Palmer  
Miles City, MT 59301  
406-951-0980

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To whom it may concern,

I Matt Ronning of Martin Fence llc, believe it is in the communities' best interest to allow the rezoning for Brad Certain just south of Miles City on Highway 59, to commercial. A few reasons follow:

- Benefit community by broadening our economic base
- Miles City deserves the growth that outside industry is willing to provide
- Our city should foster and encourage business development in areas that have previously been disallowed.
- This direction is the most logical direction for commercial zoning. (There is no room on airport hill. There is no room towards baker. There is no room towards Kinsey/Sundial.)
- Let's provided sustainable growth to our community by re-zoning property and allowing respectable businesses to develop assets that will improve our real estate base and overall long term economic outlook.

Thanks,

Matt Ronning

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 sub-division 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





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

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**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

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**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](mailto:frontierml@midrivers.com)  
2515 Main, P.O. Box 1231 • Miles City, MT • 59301  
[www.leshandcompany.com](http://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

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**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,

A handwritten signature in black ink, appearing to read 'Jeff Rodenbaugh', written over the word 'Respectfully'.

Jeff Rodenbaugh  
President  
First Interstate Bank  
Miles City Branch

ABC

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

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

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

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**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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For more information please visit <http://www.symanteccloud.com>

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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**

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**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 build 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**

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**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**

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**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

7/24/2014

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 black ink, appearing to read "Paul Oakland", written in a cursive style.

Paul Oakland

**ABC**

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**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**

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**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](http://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

one

Something to feel good about

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,



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	John Gorton	John Laney
Monte Lesh	Dennis Hirsh	Brad Certain
Mike Coryell	Dawn Colton	Jason Strouf
Ken Holmlund	Lew Vadheim	





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**

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

To the City council of the City of Miles City

Whereas Brad Certain and Dave Gillette have petitioned the City of Miles City for a zoning change to change the following described property from agricultural to commercial zoning:

*Tract A on Certificate of Survey Document 153542, Custer County, Montana located South of Miles City*

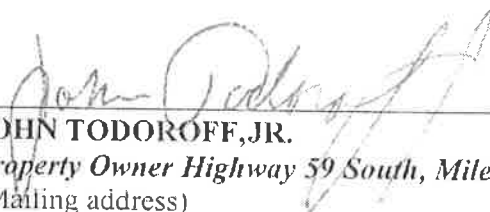
The surrounding property is either zoned or used for agricultural purposes, I, **John Todoroff, Jr.**, the undersigned, own real property described as follows:

*S11, T07N, R47E, COS 137290, Env 459B, Portion of SWSE lying S & W of Hwy R/W*

that is within 150 feet of the property Certain / Gillette that is requesting a zoning change.

The property is presently zoned for agricultural. I am the adjoining landowner north of the property proposed for re-zone. My family is in favor of growth, but it needs to be done in accordance with a plan that is supported by a majority of the surrounding property owners. This has not been done. I would encourage the City of Miles City to put a hold on this proposal until they can get sufficient information and input from professionals in developing property. It appears that Certain has talked about several difference proposals. None of them are reliable.

This protest is filed pursuant to MCA §76-2-305. The application for the proposed zoning change should be denied as they have not shown why it is in the public's interest and detrimental to my property and the property of the other surrounding landowners.

  
\_\_\_\_\_  
**JOHN TODOROFF, JR.**  
*Property Owner Highway 59 South, Miles City, MT 59301*  
(Mailing address)  
4 Big West Lane  
Oilmont, Montana 59466

9-15-2012  
Date

new  
Protest  
(6)

**Mullen Appraisal Service**  
**Dennis Mullen**  
**P.O. Box 1125**  
**Miles City, MT 59301**  
**(406) 234-3681**  
**mullenappr@midrivers.com**

Mayor Butch Grenz  
City Council Members  
17 S. 8<sup>th</sup> St.  
Miles City, MT 59301

RE: Proposed Zone Change, Highway 59 South

August 27, 2014

Dear Mr. Grenz and City Council Members,

I have been asked to determine what, if any, impact the proposed zone change on Highway 59 South may have on neighboring residential property. It has been my experience as both a Real Estate Broker and Certified Residential Real Estate Appraiser that the proposed zone change from Agricultural use to Commercial use will have a negative impact on any adjacent existing or proposed residential property. It may also have a negative impact on the process of obtaining long-term secondary market residential financing for these properties. Commercial zoning allows a wide range of uses, which may have an equally expansive impact on the neighboring residential properties.

Please feel free to contact me if I may be of further assistance at any time.

Sincerely,



Dennis Mullen  
Real Estate Broker, Certified Residential Appraiser

September 9, 2014

To Mayor Grenz and the City Council,

The continued concerns about rezoning the agricultural property south of Miles City have been somewhat bewildering for me. At each of the Zoning Board meetings, we were all instructed to produce only "new" facts. But facts are facts--there isn't an infinite number of them that we can manufacture out of thin air.

The facts are:

1. Rezoning the land to a designation of commercial/industrial is clearly spot zoning. Even though this is a larger tract of land than the former Peila property, it's still surrounded by a much larger area of agricultural ground.
2. Spot Zoning has been declared illegal in the state of Montana.
3. The majority of the neighboring land owners are opposed to the change.
4. Property values in the area will decline for the existing residences and ag land. This might not be the case if every property was sold as commercial land, but there's never going to be that much demand.
5. These facts are going to remain the facts, even if the property changes hands and a new owner is involved.

A number of people who live south of Miles City are concerned about the increased traffic that the changes would bring. The Montana DOT has statistics showing that currently there is a daily traffic load on Highway 59 South of 1871 vehicles. This includes over-the-road semis, school busses, ambulances, and slow-moving farm equipment and cars.

On the Baker highway, however, there are only 607 vehicles daily. And contrary to popular belief, there is ground available on that highway--in fact, there have been some purchases in the last 3 months proving that.

While I certainly can't speak for everyone, I don't think there would be opposition to residential development south of town. This is NOT opposition to growth for Miles City--it's simply a request for sensible, well-thought-out progress.

Thank You,

Sharon Oftedal



September 7, 2014

To the City Council of Miles City,

In regard to the request made by Brad Certain to change the zoning of agricultural land on Highway 59 South to General Commercial, there are several points that need to be considered

We've all been assured that covenants will be in place to protect the property after it has been sold. My question is: Who is going to enforce those covenants? Mr. Certain? The City? The County? Who? I don't know of any enforcement person, group or agency in the area. Will a new agency be created just to enforce the covenants on this specific property?

Several weeks ago the City denied the request of Diamond J Construction to change the zoning for its property from Agricultural to General Commercial. That was determined to be a clear example of Spot Zoning, which has been declared illegal by the Montana State Supreme Court. Why is Mr. Certain's request any different? Since the Diamond J request was refused, that property has changed ownership and is now owned by Mr. Certain and Roger Lothspeich. Because that land was deemed to be Agricultural, it should be put back into its original condition. That would require removal of the illegal foundation that still exists (and is a huge eye sore). It would also require regrading and reseeding of the disturbed property. These repairs should be completed before winter, and before any action is taken on any of the property in question.

At this time we have no idea who will be buying Mr. Certain's property, but we have to speculate that it will be a company connected with the oil industry. These types of companies will require level land in order to store their various products. Therefore the ground will have to be totally regraded in order to be usable. This will create weeds and soil erosion--surrounding land owners would be impacted negatively.

Commercial and Industrial zoning are two very different things, and create different environments for neighbors. Would people living nearby be looking at a commercial business or an industrial site with constant activity and heavy traffic? This is exactly why the Spot Zoning Law was passed--it protects property owners who already have an investment in the area. It protects them from lower property values, and from a less attractive life style. I doubt the members of the City Council or any of the people who have written letters of support for the change would like to live in an area like this. And they certainly wouldn't like to see the value of their home decline.

Thank you for considering my concerns,

  
Bill Oftedal

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

To the City council of the City of Miles City

Whereas Brad Certain and Dean Gillette have petitioned the City of Miles City for a zoning change to change the following described property from agricultural to commercial zoning:

*Tract A on Certificate of Survey Document 153542, Custer County, Montana located South of Miles City*

The property is presently zoned for agricultural. The surrounding property is either zoned or used for agricultural purposes, I, **Barbara Ann Todoroff-Nicholas**, the undersigned, owns real property described as follows:

*S11, T07N, R47E, COS 137290, Env 459B, Portion of SWSE lying S & W of Hwy R/W*

that is within 150 feet of the property Certain / Gillette that is requesting a zoning change. This protest is filed pursuant to MCA §76-2-305. The application for the proposed zoning change should be denied. My protest is based on the following grounds:

1. Allowing this change of zoning would adversely affect the value of my adjacent property and other neighbors in the surrounding agricultural and the rural residential community.
2. There are several other industrial / commercial sites available in the Miles City vicinity.
3. Certain has stated he plans to subdivide the property. He has no subdivision approval.
4. That by granting such zoning change would violate the current zoning ordinance and the restriction against spot zoning.
5. Despite contrary statements to the Zoning Commission, Certain has made no attempts to either consult or make any accommodations to the surrounding landowners prior to the Zoning Commission decision.
6. The commercial zoning designation that is being requested is still not appropriate for the proposed use by the petitioners, Brad Certain / Dave Gillette. There is no indication that it will be retail commercial, it appears it will be industrial.

*Barbara Ann Todoroff Nicholas*

**BARBARA ANN TODOROFF NICHOLAS,**  
*Property Owner Highway 59 South, Miles City, MT 59301*  
(Mailing address)  
114 Wells Rd  
Richmond, Kentucky 4047

*8/15/14*  
Date

August 19, 2014

287 McClellan Rd  
Great Falls, MT 59404

To Whom It May Concern,

The land on the East Side of the  
Broadus Highway is being considered  
for a zone change.

This appears to be "spot zoning".  
As the previous owner we did  
enjoy the antelope herd that always  
hang out there. Our hopes were that  
if anything was done with this  
land it would be for residential  
development and not any kind  
of commercial activity.

With the old and the Veterans  
Cemetery so near this is the  
best use of this land.

Thank you for my consideration  
in this matter.

Susan Colvin



**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 8<sup>th</sup>  
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 23<sup>rd</sup>, 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.

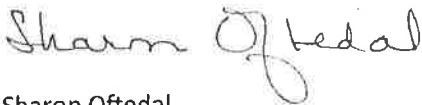
Previously I talked about traffic issues south of town, and this continues to be a concern for me. The MDOT statistics show that there is a daily traffic load on the south end of town of 1871 vehicles. To add even more truck traffic to this, when we already have fast-moving over-the-road trucks, farm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

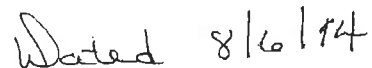
The spot zoning law obviously protects the nearby land owners, but it also protects this Zoning Commission and the City Council. Both groups adhered to this law with the Peila property, as they should have. I definitely appreciate that you have another tough decision to make, but the law is in place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

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

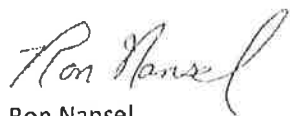
RE: PROTEST ZONING CHANGE, CERTAIN/GILLETTE PROPERTY EAST OF HWY 59 SOUTH

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



8/05/14

Letter to the Miles City Zoning Commission protesting zone change for Certain/Gillette land

IT'S STILL SPOT ZONING! Here we are again, attending the same meeting that we've attended repeatedly, talking about the same problem, with the same people, on the same land--but some are looking for a different outcome. The only thing that's been accomplished is that the community has become split and no one is presently happy with the situation. Threats are being made, and on and on it goes. IT'S STILL SPOT ZONING.

We now have Brad Certain requesting a zoning change from Agricultural to General Commercial on Highway 59 South. this change will allow Brawler Linings to move their business from Airport Hill to Certain's property.

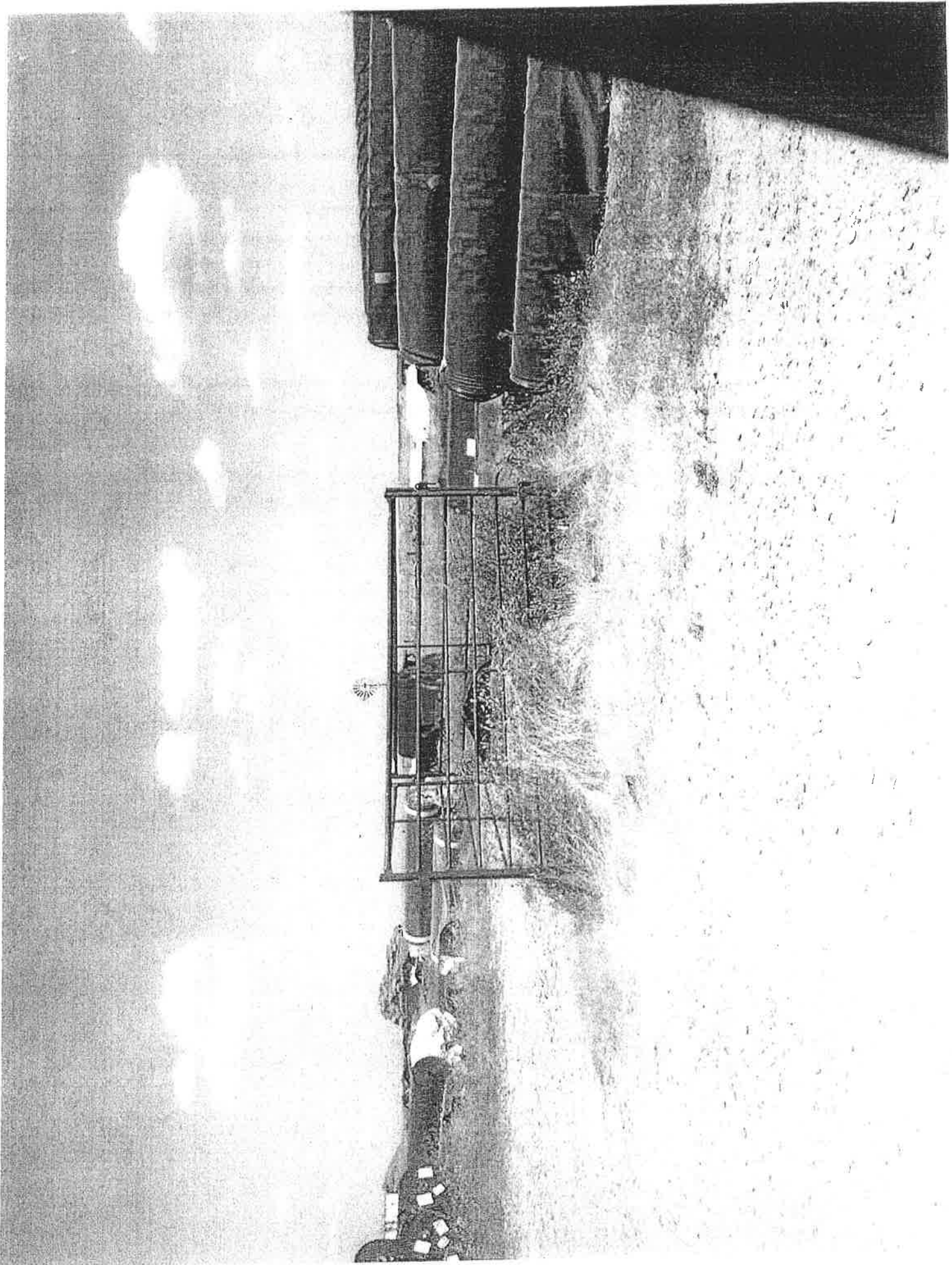
We're hearing that if this zoning change is denied, the community will lose Brawler. Don't worry--they won't be leaving, because this is a great labor market for them. There is other property available for them locally.

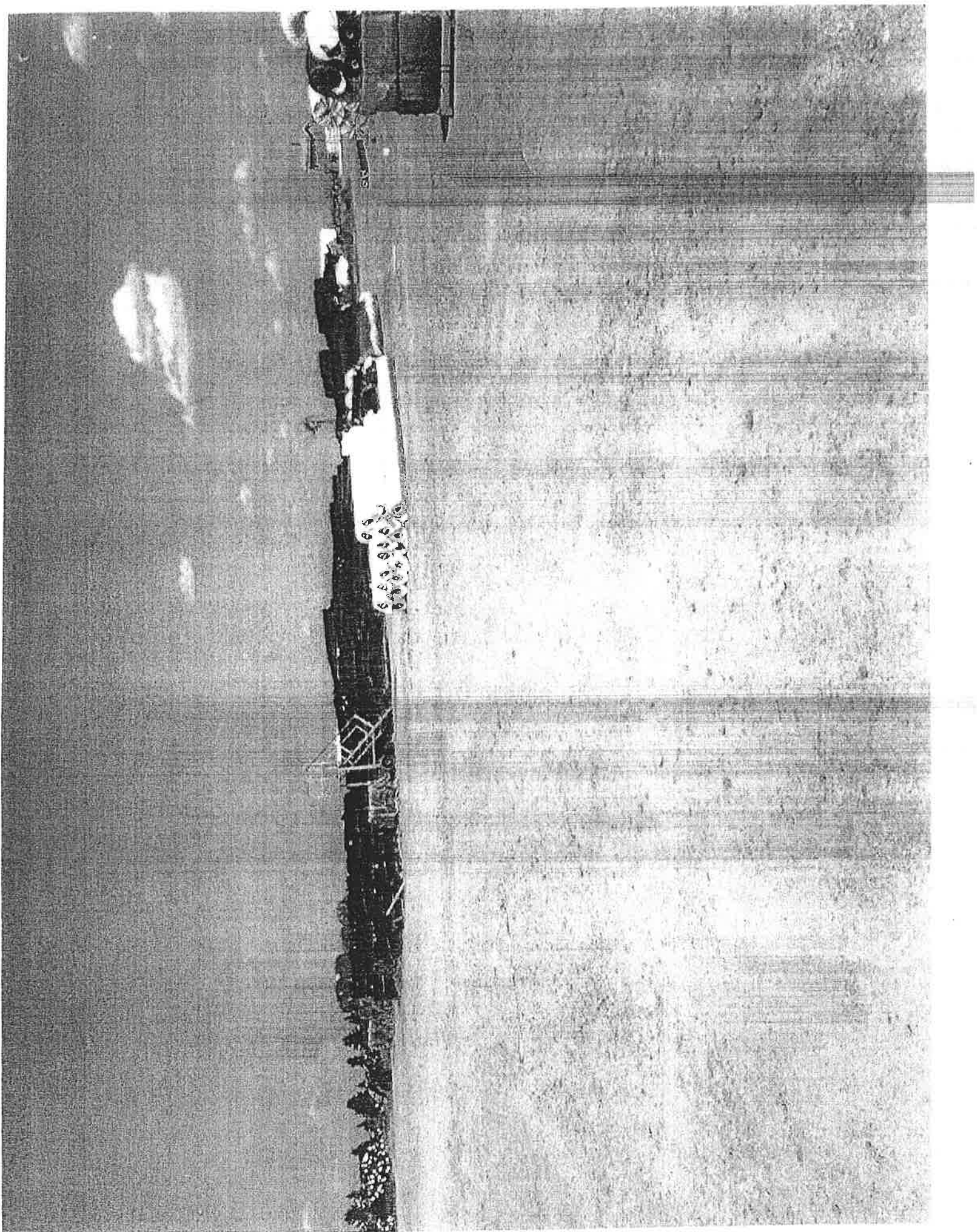
Brawler Linings is not Western Industries. Western Industries was a well-run, neat, and orderly business. I've personally looked at Brawler's back yard. It's a mess. Is this what we want along our southern entrance to Miles City?

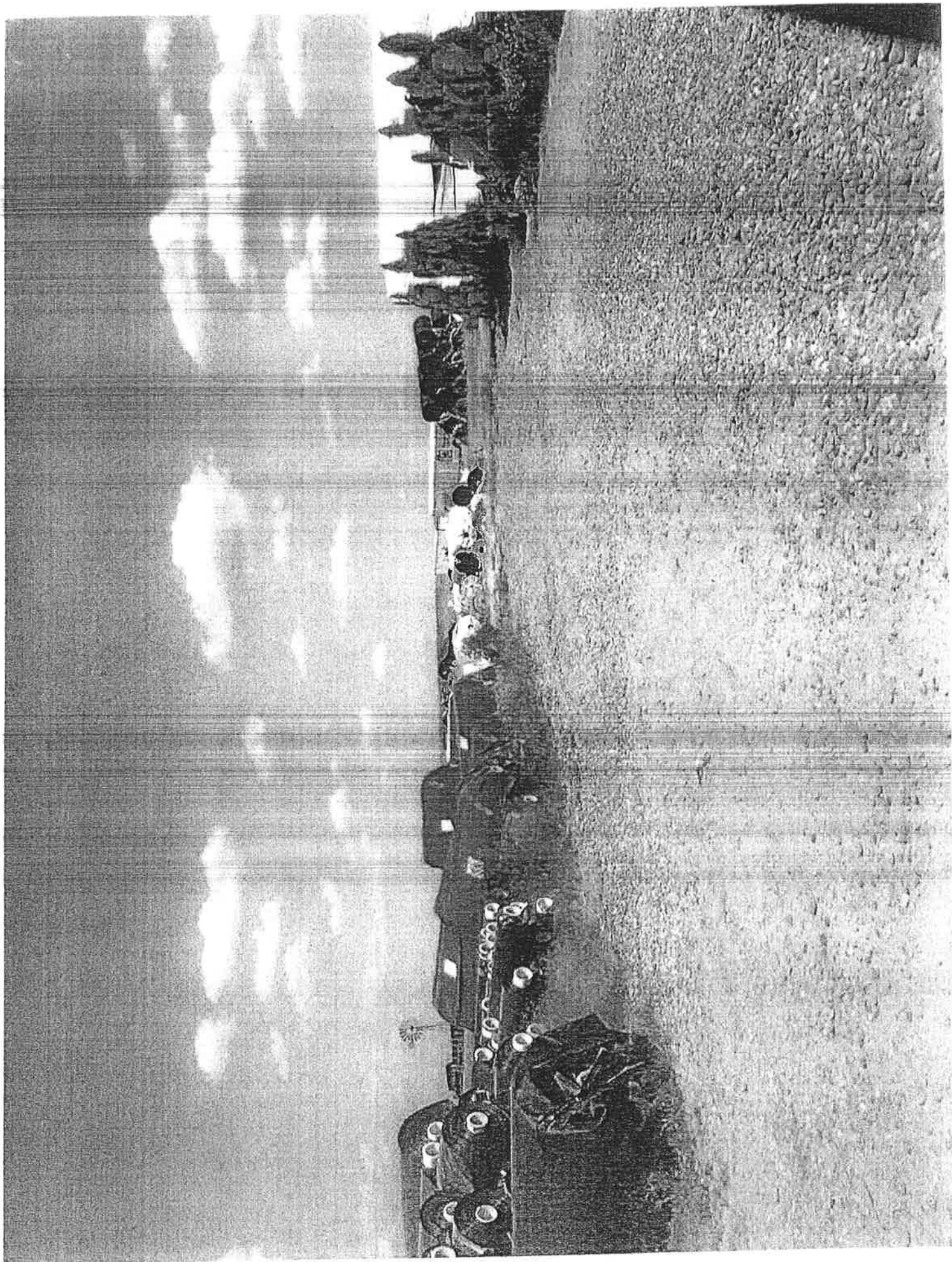
Remember-- IT'S STILL SPOT ZONING !!

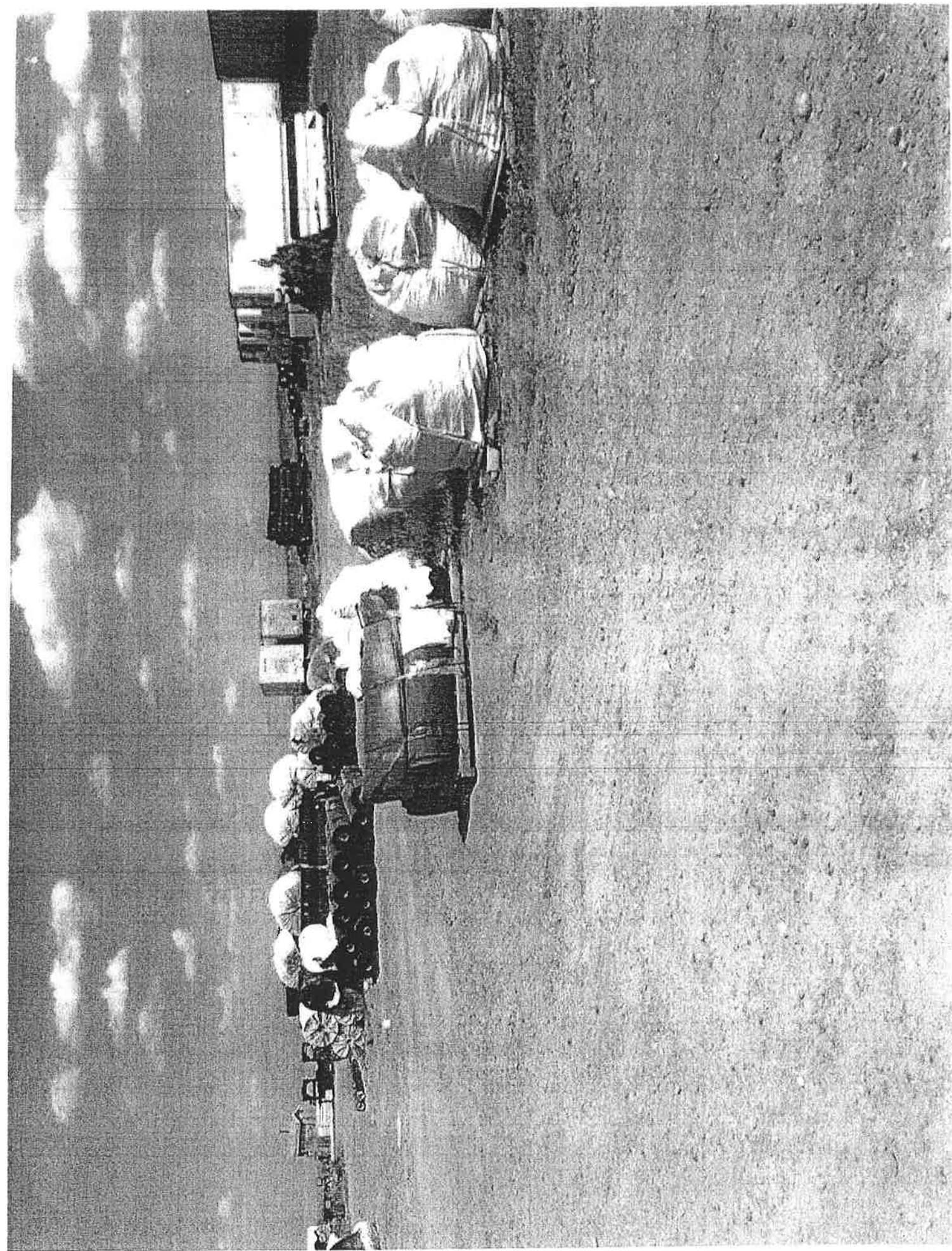
  
W. T. Oftedal

attached: photos of Brawler Linings taken 8/3/2014









## Dianna Larson

---

**From:** Treasure County <gryder@rangeweb.net>  
**Sent:** Monday, August 04, 2014 8:14 AM  
**To:** Dan Rice; Dianna Larson; Dave DeGrandpre  
**Subject:** FW: Wednesday's Zoning Meeting

-----Original Message-----

**From:** Sandy hays [<mailto:smhays1945@gmail.com>]  
**Sent:** Saturday, August 02, 2014 7:28 PM  
**To:** [gryder@rangeweb.net](mailto:gryder@rangeweb.net)  
**Subject:** Wednesday's Zoning Meeting

Hi Gary, My brother, Bob McFarland, and myself give you our permission to use the previous letter to present to the Zoning Board.

Also, I would like to know why they feel they have to have industrial development building south of Miles City. There is this type of development going on or already completed in every other direction out of Miles and it would be nice to have one area not under that type of development.

I was talking to a real estate agent in Miles and they said they should let it go and develop it the way they want. I asked the person if they would buy acreage and build a \$200 to \$300,000.00 home next to a construction site or production plant and they said no.

This is what I am trying to get across is that it needs to be residential/retail/restaurants etc. we have a housing shortage in Miles City, so if you want to develop something why don't they do something like Balsam Estates or Milestown Estates with parks. I realize it is not the QUICK BIG money but it is more eye appealing and would help with the housing shortage we seem to be having.

Again, if this type of construction is allowed to progress, it will diminish the integrity and beauty of the farm land that we have had in our family for over 100 years. Thank you.

Robert McFarland

Sandra McFarland Hays

Gary - I am in California and will try to make it home for the meeting but if I don't, this will give you permission to use the previous letter we wrote and I have added a few of my thoughts as well if you choose to use them. Thanks. Sandy

Thanks,  
Sandy

## Dianna Larson

---

**From:** Treasure County <gryder@rangeweb.net>  
**Sent:** Monday, August 04, 2014 8:13 AM  
**To:** Dianna Larson; Dan Rice; Dave DeGrandpre  
**Subject:** FW: Zoning protest for Brad Certain's land

**From:** bgw3000@juno.com [mailto:bgw3000@juno.com]  
**Sent:** Sunday, August 03, 2014 2:24 PM  
**To:** gryder@rangeweb.net  
**Subject:** Zoning protest for Brad Certain's land

Gary,

Sharon let me know what is going on again with the land re-zoning. I hear I have new neighbors, as John Peila sold his land back to Brad Certain and Brad is requesting a zone change again. Sharon said there was a meeting last week. Unfortunately, I was not aware of the meeting or I would have been there. I don't get the paper and I didn't get a letter telling me of a meeting. I was out of town on vacation on July 29 and I am still out of town until August 6th or 7th. I will be home sometime late Wednesday or Thursday evening, I believe, but I don't know what time. Here is my letter of protest in case I am not there.

To whom it may concern:

Unfortunately, I was unaware of a meeting last week about the re-zoning of the property that borders mine on Highway 59. I didn't receive a letter informing me that a meeting was to be held and I don't get the paper or I would have been there. I was out of state for my parent's 60th wedding anniversary from July 29 through August 7th.

This document serves as my formal letter of protest against the re-zoning of property owned by Brad Certain. My feelings have not changed since the last protest for re-zoning Diamond J Construction land that borders mine to the south. I am vehemently opposed for all of the same reasons! I maintain that this proposal is spot zoning, which was deemed illegal and was recently denied by the City Council. I was informed that Mr. Peila sold his piece of property back to Brad Certain who is wanting to get the zoning changed again. My land borders Brad Certain's on the north and west.

My reasons for being against re-zoning the land to commercial property 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, thus the reason it needs to remain residential. It would be such 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. For example, you'll see a very nice home located next to Super 8, another family home, Agri Drain, a residential property, BobCat, a truck wash all on one side of the road. On the other side of the road, there are several businesses. How can that possibly be efficient city/county planning?

The proposed re-zoning will devalue my property and raise my taxes. I have been at all of the previous meetings where Brad Certain was asked by the board what he planned to do with that property he wants rezoned. Interestingly enough, he would never give a clear answer. He stated that he couldn't say what he was

going to do with the land, but maintained that it wouldn't be a rendering plant or a city dump. It seems to me that an owner/developer should have a very clear picture of how they would propose to develop this land into commercial space. It makes me very uncomfortable not knowing what Brad has planned and it seems very unethical that he is unable to present a clear proposal. Why would the city be willing to grant this re-zoning without complete knowledge of what the plans are for this land? Why is this such a secret if it will be so beneficial for the community?

Brad also stated that the land wasn't of good quality and the owners weren't raising crops or running cattle on the property near him. He is definitely misinformed! I hay my property and one of my neighbors runs cattle and hays his land as well. Brad also stated there is no other direction to go but south for growth in Miles City. This is simply not true and I wholeheartedly disagree. My Ryder stated there are grants available with the State for up to a million dollars to people who will develop businesses East of Miles City. Mr. Oftedal also expressed that several businesses are located north of town and that would be an acceptable area to locate others. Currently, there are several areas along Haynes Ave. that are already zoned commercial and ready for development. I feel that if the east exit was built up with businesses, it would help alleviate the truck traffic that already exists on Haynes Ave. Apparently the Government feels that way too or they wouldn't be offering grants for this area.

I am all for growth in Miles City, but growth that benefits everyone and not just a select few. The south area of town is a peaceful, beautiful part of our community. A number of people have wanted to build their homes in this area for that reason, including my husband and I. It was a wonderful place to raise our four children and be close to town, but still far enough away to feel like you're living in the country. If the land that borders mine is rezoned to commercial, all that will change. It will devalue my home and others in this area, raise the taxes on my property, and diminish the quality of life in our community. My family and I just can't stand by and watch this happen!

Please consider this my protest against the zone change of Brad Certain's land.

Peggy Pyle  
268 Cemetery Road  
Miles City, MT

406-234-7953

---

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Click to Learn #1 Carb that Kills Your Blood Sugar (Don't Eat This!)  
[FixYourBloodSugar.com](http://FixYourBloodSugar.com)



August 3, 2014  
Amber Trenka  
Miles City Zoning Commission  
Miles City, MT 59301

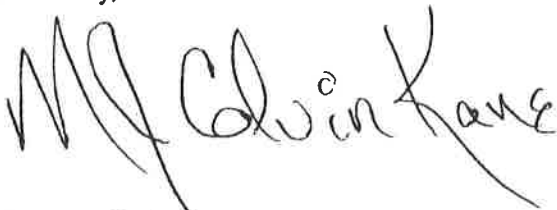
To the City of Miles City Zoning Commission

We are writing this letter as extremely concerned land owners. We own 40 acres along Becker Lane that is near Brad Certain's property, east of Highway 59, that he has requested to rezone from Agricultural to Commercial.

Our pristine 40 acres is currently being turned over to the third generation of (Colvin) family ownership. It was always our parents wish that it stay zoned as Agricultural. Rezoning this property along Highway 59 South from Agricultural to general Commercial would devalue, not only our land, but also properties nearby.

This land should be Preserved And Remain Agricultural!

Sincerely,



Mary Jo Colvin Kane



Susan Love Colvin

# Miscellaneous

Return to:  
KRUTZFELDT & JONES, LLP  
507 Pleasant Street  
Miles City, Montana 59301

DRAFT  
DECLARATION OF COMMERCIAL COVENANTS  
for

*C & G COMMERCIAL DEVELOPMENT SUBDIVISION*

---

THIS DECLARATION OF COVENANTS is made by BRADLEY J. CERTAIN And DEAN A. (DAVE) GILLETTE, of 53 Balsam Circle, Miles City, Montana 59301, whether one or more, herein referred to as the "DEVELOPER."

ARTICLE I

DECLARATION OF PURPOSE AND BINDING EFFECT

1. LEGAL DESCRIPTION. Developer is the present owner of real property herein referred to as the C & G Commercial Development Subdivision, the Property, located in the County of Custer, State of Montana, and more particularly described on Exhibit "A," attached hereto and by reference incorporated herein.
2. PURPOSE. Developer desires to hold, sell and convey the Property subject to the following easements, restrictions, covenants, and conditions, all for the purpose that use and development of The Property shall conform to these Covenants to maintain fair and adequate standards for all units, preventing nuisances, and to protect the value, attractiveness, and desirability of The Property.
3. USE. The Units and any structures erected thereon shall be used for professional or commercial purposes, as specified and allowed for in the City of Miles City as zoned from time to time, except for the following uses which will not be allowed.  
Fuel oil, gasoline, and petroleum products bulk storage for sale; or  
Gases or liquefied petroleum gases in approved portable metal storage containers for sale.
4. ENCUMBRANCES TO RUN WITH THE LAND. These Covenants shall constitute encumbrances which shall run with the real property and shall be binding upon all Owners and their heirs, successors and assigns, and all Persons having or acquiring

any right, title or interest in or to any part or related appurtenance of the Property, and shall inure to the benefit of the Developer, each Owner and their heirs successors and assigns, and the Association named herein.

5. BINDING EFFECT. All Owners by acceptance of a deed to any Unit in The Property agree to be bound by these Covenants and to accept the control of the Association, its Board of Directors and Design Review Committee in all matters defined by these Covenants.

6. GRANT. Developer does hereby confirm, make, establish and impress upon all of the Property the following Covenants, Easements and equitable servitude, all for the purpose to sustain the value, attractiveness and desirability of The Property.

## ARTICLE II DEFINITIONS

1. COVENANTS. This Declaration of Covenants for The Property.
2. DEVELOPER. Bradley J. Certain and Dean A. (Dave) Gillette, their successors and assigns.
3. EASEMENTS. Easements granted to utility service providers, the City of Miles City, and to Developer, by Developer for utilities, roadways, and irrigation.
5. IMPROVEMENT. Any man made undertaking including, but not limited to, excavation, erection, establishment of a driveway, building, Structure, or other construction activities which will result in consequences for adjoining Units or Owners, or which significantly modify the physical appearance of a Unit.
6. UNIT. Any of the designated parcels of real property intended for Improvement as indicated by a Unit number on the plat of The Property, First Filing, in the County of Custer, Montana and Units in any subsequent filing of The Property.
7. THE PROPERTY. The\*, First Filing, in the County of Custer, Montana, and Units in any subsequent filing of The Property.
8. OWNER/OWNERS. The record owner, whether one or more persons or entities, of a fee simple title to any numbered Unit which is a part of The Property, but excluding those having only security interests therein. If a Unit is sold under a recorded contract for purchase, the purchaser under such contract shall be considered the "Owner" rather than the fee owner.
9. PERSON. Any natural person, corporation, partnership, association, trustee, personal representative of a decedent's estate, or other legal entity.
10. PROPERTY. The real property described above which is subject to these Covenants, and every Easement or right appurtenant thereto, and all Improvements thereto.
11. STRUCTURE. A man-made edifice including, but not limited to garages, shops, sheds, gazebos, platforms, decks and constructed patios in excess of 100 square feet in area or four feet in height.

ARTICLE III  
MAINTENANCE COVENANTS

1. PARKING LOTS. All parking areas shall paved, and supplied with lights, no scoria lots shall be allowed. Parking lots within the property shall be properly maintained year around.

2. WASTE AND REFUSE. Each Unit shall have waste receptacles, emptied on a regular basis. Each Unit Owner shall not allow waste or refuse to accumulate.

3. WEED CONTROL AND BURNING. Each Unit Owner shall control noxious weeds and shall destroy any existing noxious weeds according to county standards. Any burning shall adhere to county standards.

4. ROADS. All road within The Property must be paved, no scoria roads shall be allowed on The Property. Roads within The Property shall be maintained in a reasonable fashion.

5. DRAINAGE. No Owner or Person shall change or interfere with the designed drainage of any part of the Property.

6. NUISANCES. No noxious or offensive activity of any kind, including activities producing noise, odors, or other objectionable manifestations, as determined by the Montana Law, shall be conducted or permitted on any of the Units.

7. MAINTENANCE.

A. GENERAL MAINTENANCE. Each Owner shall maintain all Improvements and landscaping on their Unit in good repair. Each Owner shall keep Improvements painted or stained, lawns cut, shrubbery trimmed, rubbish and debris removed, and otherwise maintain the Unit in a neat condition. Damage to Improvements shall be repaired in a reasonably prompt manner.

B. MAINTENANCE OF VACANT BUILDINGS. A Structure which is vacant for any reason, shall be kept locked to prevent entrance by vandals. No Structure may be abandoned so as to create a nuisance or danger to other Unit Owners.

C. MAINTENANCE OF UNIMPROVED UNITS. Owners shall maintain natural landscaping on unimproved Units with grass or sod. Owners shall keep the grass mowed until construction is commenced on the Unit.

ARTICLE IV  
RIGHT TO ENFORCE .

1. ENFORCEMENT. The covenants, agreements, reservations and restrictions contained herein may be enforced in any, or all, of the following methods:

a. BINDING EFFECT. All purchasers and unit owners of any portion of the subject property shall be deemed conclusively to have consented and agreed to all of the restrictions, covenants, conditions and agreements of this Declaration of Restrictions. All of the restrictions, covenants,

conditions and agreements of this Declaration of Restrictions are covenants running with the land and shall be binding upon and inure to the benefit of all unit owners, their heirs, personal representatives, successors and assigns. It is distinctly understood that if any portion of the subject property is sold under the foreclosure of any mortgage or under the provisions of any deed of trust or trust indenture, or upon execution or sheriff or marshall's sale, any purchaser at such sale, his successor and assigns, shall hold any and all property so purchased subject to all of the restrictions, covenants, conditions and agreements of this Declaration of Restrictions.

- b. ABATEMENT OF NUISANCE. The result of every action or omission whereby any restriction, covenant, condition or agreement of this Declaration of Restrictions is violated in whole or in part is hereby declared to be and constitute a nuisance and every remedy allowed by law or equity again a nuisance, whether public or private, shall be available to enforce such restrictions, covenants, conditions and agreements. Every remedy shall be deemed cumulative and not exclusive and shall be enforceable by any person to whom the benefits of the Declaration of Restrictions inure.
2. RIGHT TO CURE. In the event of an act or omission violating these Covenants, Developer reserves the right to cure said violation, and reposes the property.

#### ARTICLE V

##### ANNEXATION, EASEMENTS AND UTILITIES

1. ANNEXATION. In the event the City of Miles City, adjacent Unit Owners, or Developer desire to annex a Unit, Unit Owner may not protests such annexation.
2. UNIT UTILITY EASEMENTS. Utility easements for electricity, gas, sewer, communications, telephone, water, television, cable communications and other utility equipment shall be as designated on the The Property Subdivision, First Filing according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Custer County, Montana, and any future filings of the The Property Subdivision. All Owners shall have the right to enter upon and excavate to utilize such Easements upon the approval of the Board of Directors. Owners may grant utility easements to service providers within the boundaries of the Owner's Unit; provided such utilities are maintained below ground and are approved by the Design Review Committee. Easements for ingress and egress and utilities located in Common Areas or public Easement locations shall not be moved, deleted or restricted without the written approval of all the Unit Owners affected. Each Owner shall be responsible for utility installation and maintenance in accord with state and local regulations.
3. EASEMENT USAGE. Utility companies and Owners shall restore disturbed land to a condition as close as possible to the natural condition of the land before work commenced. All utilities of every nature shall be installed and maintained underground.

Piping and wiring shall be concealed. Installation of all underground services shall be coordinated to minimize the amount of excavation required.

#### ARTICLE VI

##### AMENDMENT AND TERMINATION OF COVENANTS.

1. **WAIVER, TERMINATION OR MODIFICATION BY UNANIMOUS CONSENT.** The covenants, agreements, reservations and restrictions created and established in this instrument may be waived, terminated or modified, in whole or in part, by the unanimous written consent of all owners.

2. **RECORDING CHANGES.** Any change to this Declaration shall be promptly recorded in the office of the Custer County Clerk and Recorder.

3. **DURATION.** The Covenants shall run with and bind the Property for a term of thirty (30) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by an affirmative vote of a majority of the Unit Owners (each Unit representing one vote) at the end of the first thirty (30) year period or at the end of any ten (10) year extended period.

#### ARTICLE VII

##### GENERAL PROVISIONS

1. **SEVERABILITY.** Each and every Covenant contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of such Covenants shall be held to be invalid, unenforceable or in conflict with the laws of the state of Montana, all remaining Covenants shall nevertheless remain unaffected and in full force and effect.

2. **NO WARRANTY OF ENFORCEABILITY.** Developer makes no warranty or representation as to the present or future validity or enforceability of any Covenant. Any Owner acquiring a Unit in reliance on one or more of such Covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit, agrees to hold Developer harmless therefrom.

3. **RESERVED RIGHT OF DEVELOPER.** The developer reserves the right to change or cancel any or all of the covenants, conditions or restrictions set forth in this instrument. The developer's right to change or cancel shall cease upon the first transfer of a Unit to an owner other than the developer.

4. **NON-WAIVER.** The various restrictions, measures and provisions of these Covenants are declared to constitute mutual equitable covenants and servitude for the protection and benefit of each Unit in The Property and failure by Developer or any person or the Association to enforce any provision upon violation thereof shall not stop or prevent enforcement thereafter or be deemed a waiver of the right to do so in the future.



John Peila, Owner

PO Box 520

Miles City, MT 59301

406-234-1504 office 406-951-1504 cell 406-234-9036 fax

Email: diamondj1504@live.com

8/5/14

To whom it may concern:

Diamond J Construction LLC will not bring litigation against the City of Miles City or Custer County if the property at 685 Hwy 59 South, owned by Brad Certain and Dave Gillette, is rezoned.

Thank you-

John Peila  
Managing Member

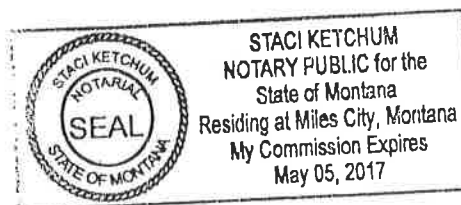
A handwritten signature in black ink, appearing to read "John Peila", written over a horizontal line.

State of Montana  
County of Custer

Sworn to and subscribed before me this 5 day of August 2014 by John Peila, Managing Member of Diamond J Construction LLC.

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

Notary







## MONTANA SECRETARY OF STATE LINDA McCULLOCH

# Business Entity Search

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Data Current as of...

If you are ordering a Certificate of Fact or Certificate of Existence, please make sure the Foreign/Domestic Corporation or Limited Liability Company is in "Good Standing".  
Enter the name of the business, and check to see whether their annual report was filed in the current year.

We are not able to provide a Certificate of Fact or Certificate of Existence unless the current annual report is filed.

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You will be assessed a \$5.00 fee for this service.

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If you would like to purchase information on the principals (i.e., officers, directors, members, managers, partners, etc) associated with this entity, select the button below. You will be assessed \$2.00 for each search you perform.

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[Get Certificate of Fact](#)

[Do another Search](#)

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Name: PYLE CONSTRUCTION LLC  
ID #: C193715  
Type: LLC MANAGED BY MEMBERS  
Jurisdiction State: MT  
Status: ACTIVE  
Status Reason: GOOD STANDING

### Status Dates

Expiration Date:  
Date of Organization: 04/13/2009  
Last AR Filed: 03/05/2013  
Inactive Date:  
Involuntary Intent:  
Diss/Widthdr/Revoke:

*Decals on Trucks  
2-12  
~~Get Certificate of Fact~~*

### Principal Office Address

Street: 513 MAIN ST  
City: MILES CITY  
State: MT  
Zip: 59301-0000

### Additional Info

Term: PERP  
Purpose Code: NONE STATED

### Agent

Registered Agent: JEREMY PYLE  
Address 1: 2026 S HAYNES AVE

**City:** MILES CITY  
**State:** MT  
**Zip:** 59301-0000

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CITY OF MILES CITY  
OFFICE OF THE CITY ATTORNEY

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

DANIEL Z. RICE  
City Attorney

August 25, 2014

Zoning Commission  
City of Miles City  
17 South 8<sup>th</sup>  
Miles City, Montana 59301

Re: Spot Zoning – Brad Certain

Dear City Council,

Please see the attached letter from Brad Certain, as well as the attached opinion written by myself to the Zoning Commission in April of this year, pertaining to the Diamond J Construction, LLC rezone request.

Note that in my opinion, I indicated that the Pyle property which is in the vicinity of both the Certain property and the former Diamond J Construction property, had a preexisting commercial use which is no longer in use. Mr. Certain points out that this statement is incorrect, and indicates that there is ongoing commercial use on at least some of the Pyle property.

The analysis discussed in the April opinion remains unchanged with regards to the review of the rezone request for the Certain property, although I will note that the Council should make a factual inquiry as to the present use of the Pyle property, and to use those facts as part of the analysis of Little Factor #1 in determining whether the requested use is significantly different than the prevailing use in the area. Any statement in my previous opinion that commercial use is not ongoing should be disregarded, and the facts as ascertained by the Council are properly considered instead.

Sincerely,

Daniel Z. Rice

August 15<sup>th</sup>, 2014

Office of the City Attorney  
City of Miles City  
513 Main Street  
Miles City, MT 59301

Re: Spot Zoning – Diamond J Construction, LLC Opinion

Dear Daniel Z. Rice,


We are requesting an updated opinion concerning the operating and property use status of Pyle Construction, LLC as referenced in LITTLE FACTOR #1.

Pyle Construction has for years and generations has had significant operations from the adjacent property. It is evident that they are currently using the property for commercial purposes despite being Ag zoned property.

Pyle Construction, LLC registered on 04/13/2009 with State of Montana and is currently in good standings as an active LLC company. The registered address is 2026 S. Haynes Ave. which appears to be the property adjacent to the formerly Diamond J Construction, LLC owned property.

As you stated in LITTLE FACTOR#1 that *"... the Pyle property located to the north has had some pre-existing commercial use (which is no longer in use) but is also zoned AG."* As per a conversation we had recently you made the comment that contradicted the statement in your opinion. After taking into account these new facts that came into light after your written opinion. We are respectfully requesting an updated opinion concerning the operational status of Pyle Construction, LLC. and the use of the property.

Thank You,

A handwritten signature in black ink, appearing to read "Brad Certain", written over a light blue horizontal line.

Brad Certain



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**CITY OF MILES CITY**  
**OFFICE OF THE CITY ATTORNEY**

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

**DANIEL Z. RICE**  
City Attorney

April 22, 2014

Zoning Commission  
City of Miles City  
17 South 8<sup>th</sup>  
Miles City, Montana 59301

Re: Spot Zoning – Diamond J Construction, LLC

Dear Zoning Commission,

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

**FACTS:**

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

**ISSUE:**

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

## DISCUSSION:

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

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

### LITTLE FACTOR #1

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

### LITTLE FACTOR #2

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

### LITTLE FACTOR #3

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

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

#### CASES ON POINT

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

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

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

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

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

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

#### ADDITIONAL CASES

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

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

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

#### CONCLUSION:

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

Sincerely,

Daniel Z. Rice



**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 8<sup>th</sup> 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 is/are petitioning the City of Miles City to rezone  
signature  
the following property:

**LEGAL DESCRIPTION OF PROPERTY:**

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

**PRIMARY CONTACT:**

Applicant Name: Brad Certain If a business: Contact Name Brad Certain  
Please print 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 595 MT

Brian 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 Hunkler; dlarson@midrivers.com; Leaf Rooden; 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; dlarson@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@miles-city-mt.org](mailto:dawncolton@miles-city-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 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.

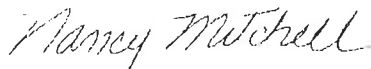
RECOMMENDATION:

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**

*New*

**MEMORANDUM**

To: City of Miles City Council  
From: Dave DeGrandpre, AICP  
Date: September 12, 2014  
Re: Annexation issues related to the Certain / Gillette zone change request

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On August 6, 2014 the City of Miles City Zoning Commission recommended approval of the Brad Certain / Dave Gillette zone change request subject to the condition that the applicants waive their right to protest annexation into the City of Miles City. City Attorney Dan Rice has asked me to look into the issue of annexation with regard to this property and present some thoughts for your consideration.

**Discussion**

1. Montana Code Annotated Title 7, Chapter 2 provides authorization and guidance for Montana communities regarding annexation. There are several ways property can be annexed. Most commonly, landowners petition to be annexed in order to receive sewer and water service, which generally allows for more intensive development than would be permitted on wells and onsite wastewater treatment (septic) systems.
2. Cities also have the ability to require annexation of 'contiguous' and 'wholly surrounded' land under specific circumstances. A street or other roadway (such as Highway 59), irrigation ditch, drainage ditch, stream, river or thin strip of land can be used to make land 'contiguous' to the city limits. A city may annex a group of 'contiguous' parcels using this method (i.e., making several parcels contiguous via a highway or other strip).
3. There are several restrictions on municipalities with regard to their ability to force annexation. For example, land used for industrial, railroad or manufacturing purposes may not be annexed without written consent of the owners of the land. [7-2-4303, MCA] The owners of properties may also protest annexation and may force a vote to be decided by a majority of the owners in the area to be annexed. [7-2-4314, MCA]
4. The way I understand the condition recommended by the Miles City Zoning Commission, when or if the City of Miles City seeks to annex the property at some point in the future, the property owner(s) at that time could not protest annexation.

5. The Draft *Declaration of Commercial Covenants for C&G Commercial Development Subdivision* submitted by Certain and Gillette states no unit (lot) owner may protest the desire of the City of Miles City, adjacent unit owners or the developer to annex into the city. The covenants are proposed to run with the land and be binding on all owners and their heirs, successors and assigns. Dan Rice is most suited to address the enforceability of a covenant waiving the right of future lot owners to protest annexation.
6. In all cases under current Montana law, municipal services must be provided according to a plan provided by the municipality that meets the requirements of 7-2-4732, MCA. At this time Miles City does not have such a plan, but the Montana Department of Commerce Community Technical Assistance Program has approved funding for the development of this plan. Land Solutions and CTA are in the early stages of developing the plan, which is expected to be completed in conjunction with an updated growth policy in 2015.
7. Annexed property that is part of a sanitary district or other special service district which has installed water, sewer or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation. [7-2-4716(2), MCA]

### **Conclusion**

When property is annexed there is an expectation, and in fact a legal requirement, that municipal services will be provided within a reasonable timeframe according to an adopted plan. Miles City does not have such a plan currently although an effort to develop one is getting started. If the City Council chooses to approve the zone change and require the current and future landowners to waive the right to protest annexation, I see no harm but defer to Dan Rice on that matter. However, because Miles City does not have an annexation and extension of services plan I suggest not initiating annexation of the property at this time.

This is neither an endorsement of, nor opposition to, the Certain / Gillett zone change request.

Now

Miles City Council

Staff Report

September 9, 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. There has been letters of protest to date by neighboring property owners and there has been letters of support also, mostly from non-neighbors. 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 council's interpretation of the spot zone issue and the reporting of facts from the public hearing and information gathered from the zoning commission and staff.

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

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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

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## 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

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## 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*, 3<sup>rd</sup> Edition Revised, Vol. 8, § 25.90, provides:

**§25.90. - Valid "spot" zoning.**

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

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

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

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

In Little the Montana Supreme Court stated:

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

In explaining the third test, Hagman gives this qualification:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**§ 146. Generally.**

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

....

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

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

**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/

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Jim Nugent, City Attorney  
JN:kmr

Agenda Item #12

**UNFINISHED BUSINESS**

**Please See Ordinance No. 1275 Under Public Hearings**

