

**ORDINANCE NO. 1270**

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

*Denied 6-24-14*

*For*  
**ORDINANCE NO. 1270**

**CITY COUNCIL – MILES CITY**

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**In Re the Zoning Change**

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**FINDINGS OF FACTS**

**Petition of Diamond J. Construction, LLC**

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**AND**

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**CONCLUSIONS OF LAW –**

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

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

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

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

**FINDINGS OF FACTS - BACKGROUND**

1. Diamond J, LLC, is a local construction contractor, John Peila, owner. Diamond J started construction for a building on property zoned agricultural south of town in February of 2014. They submitted an application for a zoning change was submitted to the City in March of 2014.
2. Diamond J Construction is a concrete and excavation contractor, and the building being constructed was approximately 11,800 square feet in size and used as a shop to store supplies and maintain equipment, in addition to office space. The exterior would contain some

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

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

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

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

#### **WRITTEN PROTEST**

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

7. In addition to the written protest by the property owners, other surrounding property owners outside the 150 feet project zone objected to the re-zone.

8. At the April hearing, landowner, Bill Oftedahl, also in the construction business, cited a variety of factors involving the high number of trucks entering in and out of the property, off hours of operation, and the general nature of the construction contracting business. Oftedahl's construction business is located north of town in the vicinity of other construction and trucking businesses.

9. At the June hearing, Mr. Oftedahl also testified that there is a need for additional residential housing. Given the current nature and use of the property, if the area is rezoned, that residential property is the more appropriate use.

10. In their written protests, the majority of the other property owners indicate that a change of zoning would adversely affect the value of their properties. Todoroff indicated that she would have difficulties in selling a current seven (7) acre tract she owns, located next to the Diamond J construction site. The current use of Todoroff's property is for a rural residential. Her mother has been residing there.

11. Property owner, Susan L. Colvin, indicates that her wish for the remaining forty-three (43) acres that her and her sister own would either remain in farm land or residential use.

12. Property owner, Ron Nansel, also believes that a construction business is not the best use of for their property as it should be considered for rural residential.

13. Property owner, Fred Nelson, currently has a residential property across the street from the property and believes his property value will decrease as a result of a re-zoning.

14. Other than developer Certain, none of the other surrounding property owners are in favor of the re-zone proposal.

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

### **SPOT ZONING**

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

### **CONCLUSIONS OF LAW**

1. The City of Miles City has jurisdiction over the proposed re-zoning change. See MCA §76-2-310.
2. The City council has considered the guidelines and zoning regulations under MCA §76-2-304. Zoning regulations and amendments should be made in conformance with the Growth Policy, as adopted by the City in April, 2008. Such Growth Policy requires the consideration of the surrounding property owners and the best use of the land, as a criteria to approve re-zoning.
3. The City council determines that because of the strong opposition of the surrounding property owners, in addition to the lack of planning of this development, is an adequate basis for the denial of this re-zoning request by the proponent. See also Englin v. Board of County Commissioners, 2002 MT 115 48 P.3d 39 (2002).

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

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

**FINAL DETERMINATION**

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

**DATED** this 16 day of July, 2014.



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City Council President – City of Miles City