

**Proposed Re-Zone
Omni Corp
2300 Plaza Blvd.**

Chris & Gloria Grenz
506 Mississippi Ave.
Miles City, MT 59301

Liberty Estell
900 Albert Dr.; Trlr. #6
Miles City, MT 59301

Break Forth Bible Church Inc.
PO Box 192
Glendive, MT 59330

Matthew Kercheval
702 N. Earling; Trlr. #13
Miles City, MT 59301

Robert & Joni Magnuson
2304 Valley Dr. E.
Miles City, MT 59301

Regan Plumbing & Heating
PO Box 1164
Miles City, MT 59301

GBP Properties LLC
216 Cooke Street
Glendive, MT 59330

Fossil Development Co. LLC
2200 Box Elder Street
Miles City, MT 59301

Lisa Blunt & Lori McRae
518 N. Strevell Ave.
Miles City, MT 59301

Leann Harrison
2212 Otter Street
Miles City, MT 59301

Lloyd & Gladys Comer
517 N. Stacy Ave.
Miles City, MT 59301

Shane Balsam
PO Box 970
Miles City, MT 59301

Randy Meade
515 N. Winchester
Miles City, MT 59301

Royce & Jolene Paxson
519 N. Winchester
Miles City, MT 59301

Kristofer & Angela Lohrke
520 N. Winchester
Miles City, MT 59301

Tom Boschee
19730 N. Wagner Rd.
Dodson, MT 59524

Harvey & Linda Wolff
515 N. Earling
Miles City, MT 59301

MC Habitat for Humanity
PO Box 1362
Miles City, MT 59301

Rockin SR LLC
PO Box 3486
Bozeman, MT 59772

Jerrold Dusatko
56 Cornhusker Rd.
Miles City, MT 59301

Stockton Oil Co.
PO Box 1756
Billings, MT 59103

Tom Falconer
OmniCorp
PO Box 879
Miles City, MT 59301

Ryan & Lorilee Becker
702 N. Sewell Ave.
Miles City, MT 59301

James Lee, LLC
508 W. Arnold Street
Bozeman, MT 59715

ORDINANCE NO. 1328

AN ORDINANCE CHANGING THE ZONING OF LOT F, TRACT No. 2, OF THE DYBA ADDITION TO THE CITY OF MILES CITY FROM GENERAL COMMERCIAL ZONE TO HIGHWAY COMMERCIAL ZONE, AND PROVIDING FOR A HEARING THEREON.

WHEREAS, Misty Carey, on behalf of Lee James LLC, has made application for the property described as Lot F, Tract No. 2, of the Dyba Addition to the City of Miles City, Montana, to be rezoned from mixed zones of General Commercial District (GC), to Highway Commercial District (HWC) zone;

AND WHEREAS, such property is situated within the city limits of the City of Miles City, Montana, and subject to the zoning jurisdiction of the City of Miles City;

AND WHEREAS, Section 24-96 of the Code of Ordinances of Miles City, Montana 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 September 25, 2018, upon public hearing and deliberation, recommended to the City Council that such zoning change be approved.

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 City of Miles City, Custer County, Montana, is hereby rezoned from General Commercial District (GC), to Highway Commercial District (HWC) zone, to wit:

Lot F, Tract No. 2, of the Dyba Addition to the City of Miles City,
according to the official plat and survey thereof on file with the Clerk and
Recorder in and for Custer County, Montana.

Section 2. The City of Miles City Staff Report prepared as part of the review of this application, and attached hereto as Exhibit "A," is hereby adopted as Findings of Fact to support the Council's decision.

Section 3. Prior to final passage, a public hearing shall be held upon this proposed zoning change before the City Council at 6:00 P.M. on the 13th day of November, 2018, in the Council Chambers at City Hall, 17 S. Eighth Street, Miles City, Montana.

Section 4. 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, as well as notice by certified mail at least 15 calendar days prior to such hearing to the applicant, landowner, and all adjoining property owners and owners of land within 150 feet of the subject property, containing all information required by, and in accordance with, MCA Sections 76-2-303 and 305, as well as Section 24-97 of the Code of Ordinances of Miles City, Montana.

Section 5. 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 9th day of October, 2018.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this 13th day of November, 2018.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Miles City City Council
Zone Map Amendment Request From General Commercial to Highway
Commercial
Staff Report
Misty Carey, Lee James, LLC
Public Hearing Date: November 13th, 2018

The Miles City Zoning Commission met on September 25, 2018 and held a public hearing to consider a request from Misty Carey of Lee James, LLC for a zone map amendment from General Commercial to Highway Commercial on property northeast of the intersection of Valley Drive East and North Strevell Avenue and addressed as 2317 and 2319 Melrose Avenue, Miles City, MT 59301. Dave DeGrandpre, contract planner with Land Solutions, presented the staff report below (MCZC-2018-01), recommending that the Zoning Commission adopt the staff report as findings of fact and make a recommendation to the Miles City City Council to approve the zone map amendment from General Commercial to Highway Commercial.

At the public hearing one person spoke in support of the proposed zone map amendment and three people spoke in opposition.

After the close of the public hearing, the Zoning Commission discussed the proposed zone map amendment and passed a motion recommending this zone map amendment for approval by the City Council on a 3-1, vote.

Staff Recommendation: Approve

Recommended Zoning Motion: Having reviewed and considered the staff report, application materials, public comment, recommendation of the Zoning Commission, and all information presented, I hereby adopt the findings presented in the staff report and move to approve the Lee James, LLC zone map amendment.

Alternatives:

1. Approve the application with modifications
2. Deny the application based on the Council's findings of non-compliance with the applicable criteria contained within the staff report; or
3. Open and continue the public hearing on the application, with specific direction to staff or the applicant to supply additional information or to address specific items.

Background Information

Misty Carey, on behalf of Lee James LLC, has requested an amendment to the City of Miles City Zoning Map to rezone one existing lot totaling approximately 0.29 acres / 12,458 square feet, from General

Commercial to Highway Commercial. The property is located northeast of the intersection of Valley Drive East and North Strevell Avenue and addressed as 2317 and 2319 Melrose Avenue, Miles City, MT 59301. The applicant's intent in requesting the proposed zone change is to make it possible to apply for a conditional use permit to operate a medical marijuana dispensary.

A. Applicant

Misty Carey, Lee James, LLC
508 West Arnold Street
Bozeman, MT 59715

B. Owner

Lee James, LLC
508 West Arnold Street
Bozeman, MT 59715

C. Location and Legal Description of Property

The property is located northeast of the intersection of Valley Drive East and North Strevell Avenue and addressed as 2317 and 2319 Melrose Avenue, Miles City, MT 59301 – see vicinity map below. The legal description of the property is Lot F, of Tract No. 2, of the Dyba Addition located in Section 27, Township 8 North, Range 47 East, P.M.M., City of Miles City, Custer County, Montana.



D. Existing Land Use(s) and Zoning

The property is currently occupied by two vacant buildings. The existing zoning is General Commercial. The General Commercial zone is intended to provide for commercial districts in close proximity to and serving the ordinary shopping needs of residents and visitors, and which do not attract large volumes of traffic. Examples of general commercial uses include community oriented retail establishments, eating establishments, hardware stores, auto parts stores, grocery and convenience stores, neighborhood lodges and assembly facilities, banks and other financial institutions, medical and dental clinics, professional and personal services, print shops, fitness centers, and other similar uses serving the commercial needs of the community.

E. Proposed Land Use(s) and Zoning

The proposed land use is a medical marijuana dispensary and the proposed zoning is Highway Commercial. The Highway Commercial zone is intended to provide for commercial oriented uses around highways and arterials that rely on convenient automobile access. Examples of highway oriented businesses include overnight accommodations, casinos, gas stations, eating and drinking establishments, hardware stores, grocery stores, vehicle and equipment sales, and retail. In the Highway Commercial district, medical marijuana dispensaries are a conditional use and thus the applicant will need to obtain a conditional use permit in the event the proposed zone change is approved.

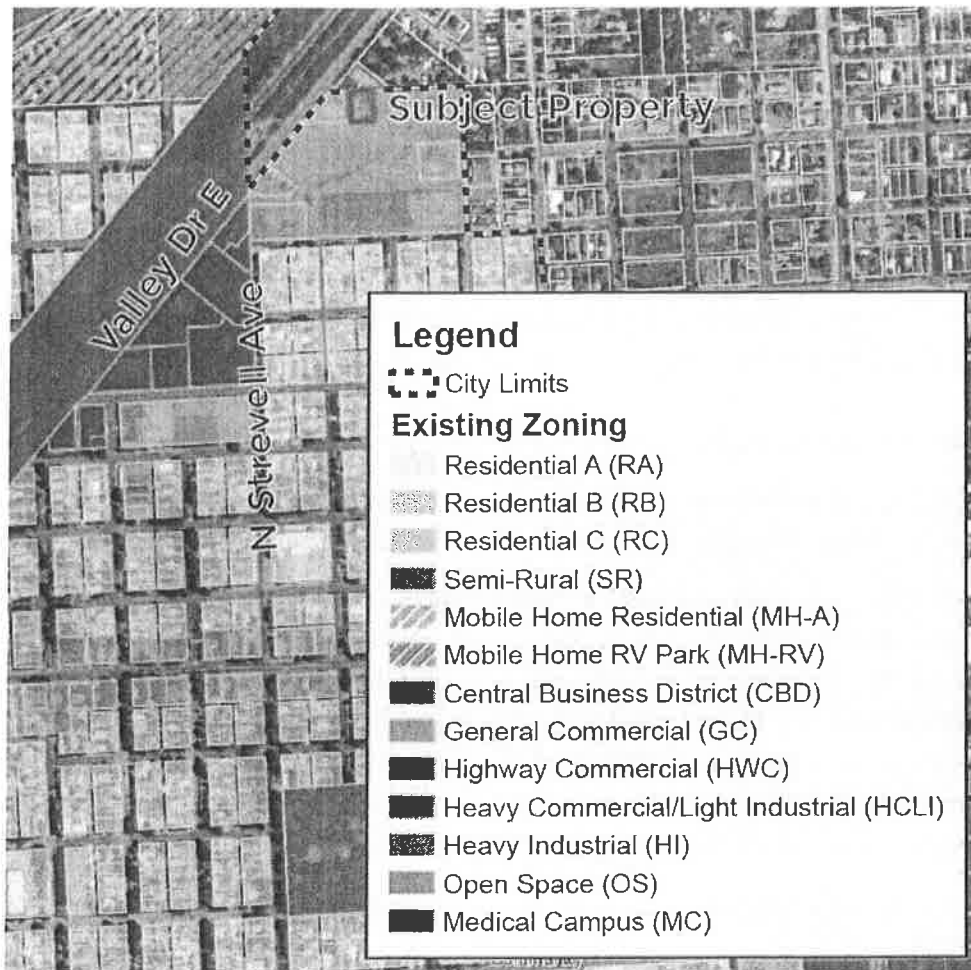
F. Adjacent Zoning and Land Uses

North: Zoning – County C-1 Commercial. Land Uses – Commercial business (Lennox Heating and Cooling).

East: Zoning – General Commercial. Land Uses – Vacant land.

South: Zoning – General Commercial. Land Uses – Parking lot of Omni Center.

West: Zoning – General Commercial. Land Uses – Commercial business (Regan Plumbing and Heating).



G. Size

The property is approximately 0.29 acres / 12,458 square feet

H. General Land Use Characteristics

The general land use characteristics of the area can be described as auto-oriented commercial.

Evaluation of Zone Change Criteria

The following is an evaluation of the zone change request under the criteria outlined in 76-2-304, M.C.A. and in section 24-96(c) of Miles City’s Zoning Regulations. In considering the criteria the analysis must show that the zone change accomplishes criteria 1-4. Criteria 5-12 must be considered. A favorable decision on the proposed application must find that the application meets all of criteria 1-4 and that the positive outcomes of the amendment outweigh negative outcomes for criteria 5-12.

1. Is the proposed zone change in accordance with the Miles City Growth Policy?

Yes. The future land use map in Miles City’s growth policy identifies future land uses for properties outside of Miles City limits only. As the property in question is within Miles City limits, it does not have a designation on the future land use map. However, Miles City’s Growth Policy states, “Miles City also intends to ensure that new development is compatible with

existing development by adopting zoning that generally extends the existing pattern of development (i.e., more residential near existing residential areas and more commercial near existing commercial areas)." The property is surrounded by commercial land uses, with the existing pattern of development along Valley Drive East between Leighton Blvd. and the Baker Highway (US 12) being primarily auto-oriented commercial. While surrounding zoning is General Commercial and County C-1 Commercial, the surrounding development patterns are compatible with the Highway Commercial district's permitted uses and regulations. As a result a change from General Commercial to Highway Commercial will not result in incompatible development patterns in the area.

Additionally, the proposed zone change advances multiple objectives of the growth policy:

Economy objective 2.2: *Encourage infill development on vacant lots and in vacant buildings.* The proposed zone change would facilitate the use of an existing vacant building within City limits.

Land use objective 3.1: *Protect private property rights and respect property owners' wishes to enjoy and gain economic return from their properties and investments while ensuring that other public and private interests are not unreasonably compromised or impacted by land uses and development projects.* The proposed zone change would allow the property owners to gain economic return from their investments. If the zone change is approved, Miles City zoning regulations and permit processes would help to ensure that other public and private interests are not unreasonably compromised or impacted by future development or land uses.

Based on this information, the proposed zone change generally complies with Miles City's Growth Policy.

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

Yes. The property is served by Miles City Fire and Rescue and Miles City Police Department. The property is accessible by Valley Drive East (a principal arterial) which provides emergency vehicle access. The proposed zone change from General Commercial to Highway Commercial is not likely to adversely impact safety from fire and other dangers.

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

Yes. The health, safety, and general welfare of the public will be upheld through Miles City regulations and specifically through the Highway Commercial district regulations, which specify permitted and conditional uses as well as regulations for setbacks, building height, and lot coverage. Based on this information public health, safety, and general welfare will be promoted in the event of the proposed zone change is approved.

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

Yes. The subject property is served by Miles City water and sewer. Adequate access to the property is provided from Valley Drive East to the west. School facilities and bus services are

available to the property if necessary. However, it is unlikely that the zone change would impact Miles City schools as residential uses are not permitted in the Highway Commercial district. No parks are immediately adjacent to the property. Based on the allowed uses in the Highway Commercial district, the proposed zone change is not likely to place additional demand on Miles City's parks. Mail delivery and utilities are available to the property.

Based on the above information, the proposed zone change will facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other facilities.

5. Does the proposed zone change provide reasonable provision of adequate light and air?

Yes. The property is currently developed with two one-story vacant buildings. The property is bordered to the north by a two-story commercial building, to the east by vacant land, to the south by a large parking lot, and to the west by a one-story commercial building. Given this information there is currently adequate light and air on the property. Furthermore, Miles City's zoning regulations and building codes are intended to provide for adequate light and air, which will apply to any future development or use of the property. Based on this information the proposed zone change provides reasonable provision of adequate light and air.

6. How would the proposed zone change effect motorized and non-motorized transportation systems?

The proposed zone change is not likely to have a significant impact on motorized or non-motorized transportation. As the current buildings on the property are vacant, any future use will increase the number of vehicles going to and from the site, though it is unlikely that the level of increased traffic will have a detrimental impact on traffic flows or safety on Valley Drive East. In terms of non-motorized transportation, Valley Drive East is not heavily traveled by pedestrians or bicycles as there are currently no sidewalks or bike lanes and adjacent land uses are auto-oriented.

In the end the proposed zone change will not likely change the overall development pattern of the site given that the allowed uses and standards in the Highway Commercial district are similar to what exists on the subject property currently. As a result, the proposed zone change will have little, if any, impact on the motorized or non-motorized transportation systems.

7. Does the proposed zone change promote compatible urban growth?

Yes. Development patterns along Valley Drive East between Leighton Blvd and the Baker Highway (US 12) are predominantly auto-oriented commercial uses, which are in-line with the Highway Commercial district. The proposed zone change will promote compatible urban growth by further encouraging development patterns which currently exist along Valley Drive East.

8. Does the proposed zone change consider the character of the district, and its peculiar suitability for particular uses?

Yes. The Highway Commercial zoning designation is intended to provide for commercial oriented uses around highways and arterials that rely on convenient automobile access. Valley

Drive East between Leighton Blvd and the Baker Highway (US 12) is classified as a principal arterial and primarily serves auto-oriented commercial uses in this area of the City. While this portion of Valley Drive East contains both Highway Commercial and General Commercial zoning designations, overall the development pattern along Valley Drive East between Leighton Blvd and the Baker Highway is compatible with the character of the Highway Commercial district and is generally suitable for allowed uses in the district.

9. Would the proposed zone change conserve the value of buildings and encourage the most appropriate use of the land?

Yes. The proposed zone change would modify what land uses are considered permitted and conditional on the property. Residential uses would no longer be allowed, although a wider array of commercial uses would be permitted. As the property is adjacent to a principal arterial and has an established auto-oriented development pattern, it is better suited for commercial uses permitted in the Highway Commercial district than residential uses which are permitted in the General Commercial district. Based on this information the proposed zone change may conserve the value of buildings and encourage the most appropriate use of the land

10. Would the proposed zone change be considered illegal spot zoning?

The following is an evaluation of the Little Factors for Spot Zoning based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions.

In the Little case, the Court noted that for a zone change to be considered illegal spot zoning usually all three of the below factors are present.

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

No. The property is surround by auto-oriented commercial uses. Because the area is predominately highway oriented commercial, the proposed land use would not be significantly different from the prevailing uses in the area.

2. Is the area rather small from the perspective of the number of separate landowners benefited from the proposed change?

Yes. A zone change requested by one landowner is small from the perspective of the number of separate landowners benefited from the proposed change.

3. Would the change be special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public?

No. The proposed zone change is being requested by one landowner to provide the opportunity to apply for a conditional use permit to operate a medical marijuana dispensary. In this sense, the proposed zone change could be viewed as special legislation designed to benefit one landowner. However, it is not at the expense of surrounding landowners as the potential development patterns and uses allowed in the Highway Commercial district would not be dissimilar to what exists on the site currently.

11. Does the proposed zone change correct an inconsistency in the zoning?

No. The zone change does not correct an inconsistency in the zoning.

12. Does the proposed zone change address changing conditions or further a specific public challenge?

No. The proposed zone change does not address changing conditions or further a specific public challenge.

Appendix A

Table of Permitted and Conditional Uses in the General Commercial and Highway Commercial districts

General Commercial		Highway Commercial	
Permitted Uses	Conditional Uses	Permitted Uses	Conditional Uses
General commercial uses up to 15,000 square feet	General commercial uses in excess of 15,000 square feet	Highway oriented commercial uses up to 30,000 square feet	Highway oriented commercial uses in excess of 30,000 square feet
Continued use of residences	Wireless communication facilities	Accessory uses associated with primary use	Wholesale
Multifamily dwellings		Schools	Wireless communication facilities
Accessory uses associated with primary use		Public parks, buildings, and playgrounds	Day care centers
Bars and taverns		Religious institutions	Medical marijuana providers
Schools and other educational facilities		Animal rescue shelters	
Public parks, buildings, and playgrounds		Recreational vehicle parks	
Religious institutions		Amateur radio antenna support structures, antenna support structures, alternative antenna support structures, antennae, and amateur radio antennae in compliance with section 24-70(c).	
Day care centers		Minor utility installations	

General Commercial		Highway Commercial	
Permitted Uses	Conditional Uses	Permitted Uses	Conditional Uses
Home occupations			
Accommodations serving up to ten guest rooms			
Animal rescue shelters			
Neighborhood lodges and places of assembly			
Recreational vehicle parks			
Amateur radio antenna support structures, antenna support structures, alternative antenna support structures, antennae, and amateur radio antennae in compliance with section 24-70(c).			
Minor utility installations			

**CITY OF MILES CITY
Zoning Commission**

Box 910
Miles City, MT 59301

September 26, 2018

Mayor Hollowell and City Council Members,

RE: Proposed re-zone for the property located at 2317 and 2319 Melrose Avenue, Miles City. The legal description of the property is Lot F, of Tract No. 2 of the Dyba Addition. The owner of said property is Lee James, LLC – Misty Carey.

The Miles City Zoning Commission conducted a public hearing on September 25, 2018 to consider a zone map amendment for the above described property from a General Commercial zone to a Highway Commercial zone.

After reviewing the proposal and comments from the public hearing, the Zoning Commission recommends *to approve* the re-zone of the property.

Respectfully,



LeRoy Meidinger, Chairman
Zoning Commission

**Proposed Re-Zone
KannaKare
2317 & 2319 Melrose Ave.**

Lee James, LLC
c/o Misty Carey
508 W. Arnold
Bozeman, MT 59715

Robert & Joni Magnuson
2304 Valley Dr. E.
Miles City, MT 59301

Regan Plumbing & Heating
PO Box 1164
Miles City, MT 59301

Omni Corp.
PO Box 879
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Matthew Kercheval
702 N. Earling; Trl #13
Miles City, MT 59301

Ordinance 1329 with strikeouts

Sec. 21-1. Title of chapter.

This chapter will be known and may be cited as the "Miles City Subdivision Regulations", hereinafter referred to as "these regulations."

Sec. 21-2. Authority.

Authorization for these regulations is contained in the Montana Subdivision and Platting Act ("MSPA"), MCA Title 76, Chapter 3.

Sec. 21-3. Purposes.

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey (*See MCA 76-3-102*). MCA 76-3-102.

These regulations are intended to comply with Part 5 of the MSPA and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- The orderly development of the jurisdictional area;
- The coordination of roads within subdivided land with other roads, both existing and planned;
- The dedication of land for roadways and for public utility easements;
- The improvement of roads;
- The provision of proper physical and legal access, including obtaining necessary easements;
- The provision of adequate open spaces for travel, light, air, and recreation;
- The provision of adequate transportation, water, drainage, and regulation of sanitary facilities;
- The avoidance or minimizing of congestion;
- The avoidance of subdivisions which would involve unnecessary environmental degradation;
- The avoidance of subdivisions which would involve danger or of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public improvements;
- ~~The avoidance of excessive expenditure of public funds for the supply of public services or services that would necessitate an excessive expenditure of public funds for the supply of the services;~~
- The manner and form of making and filing of any plat for subdivided lands; and
- The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

Sec. 21-4. Jurisdiction.

These regulations govern the subdivision of land within the City of Miles City, including land proposed for subdivision outside the city limits officially proposed to be annexed into the city limits of Miles City.

Sec. 21-5. Definitions.

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the plural the singular; the word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions.

Access (legal and physical):

- (1) *Legal access* means that each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed on that property, and has or is proposed to dedicate the easement for public use or for private use specific to the proposed subdivision.
- (2) *Physical access* means that a street or road conforming to the subdivision design standards provides vehicular access to each lot in the subdivision, either from a public street or road, from a street or road constructed to local standards in the obtained easements which are dedicated to public use, or from a private road improved to local standards which has been dedicated to public use.

Adjoining landowner (adjacent property owner) means the owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road or directly across watercourse or deeded right-of-way.

Agriculture means the direct use of land for grazing and cropping to produce food, feed, and fiber commodities. This includes crop cultivation and tillage of the soil; grazing for milk, egg, meat, and breeding animal production; and animal feed production. It does not include farm animal confinement facilities or structures associated with farming and ranching.

Agricultural water user facilities means those facilities which provide water for agricultural land or the production of agricultural crops or animals including, but not limited to, canals, ditches, pipes, water-control devices, springs, dams and dugouts with associated collection areas, and water-spreading systems.

ARM means the Administrative Rules of Montana. (*See the ARM*)

Block means a group of lots, tracts or parcels within well-defined and fixed boundaries.

Certificate of survey means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations. (MCA 76-3-103(1)).
~~purpose of disclosing facts pertaining to boundary locations. (MCA 76-3-103(1)).~~
surveyor for the purpose of disclosing facts pertaining to boundary locations. (MCA 76-3-103(1)).

Cluster development means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and

utilities, while allowing other lands to remain undeveloped. (MCA 76-3-103(2)). ~~(MCA 76-3-103(2))~~. *Comprehensive plan: See Growth Policy.*

Comprehensive plan: See Growth Policy.

Commencement of a phase means submitting a final plat application for that phase.

Condominium means the ownership of single units with common elements located on property submitted to the provisions of the Montana Unit Ownership Act, MCA Title 70, Chapter 23. The term does not include a townhome or townhouse. (MCA 70-23-102(5)). ~~(MCA 70-23-102(6))~~

Covenant (restrictive covenant) means a limitation contained in a deed or other document that restricts or regulates the use of the real property.

Dedication means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. (MCA 76-3-103(3)). ~~(MCA 76-3-103(3))~~.

DEQ means the Montana Department of Environmental Quality.

Division of land means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. (MCA 76-3-103(4)). ~~(MCA 76-3-103(4))~~.

Dwelling unit means any structure or portion thereof providing complete, independent and permanent living facilities for one household.

Easement means authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.

Engineer (professional engineer) means a person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (MCA Title 37, Chapter 67) ~~(MCA Title 37, Chapter 67)~~ to practice engineering in the State of Montana.

First Minor Subdivision means a proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under MCA 76-3-201 or 76-3-207 since July 1, 1973. (MCA 76-3-609). ~~(MCA 76-3-609)~~.

Flood means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway (MCA 76-5-103(8)).

~~(MCA 76-5-103(8))~~ *Flood of 100-year frequency* means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year. (MCA 76-5-103(9)). ~~(MCA 76-5-103(9))~~.

Floodplain means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" or a "shaded X zone" by the Federal Emergency Management Agency. (MCA 76-5-103(10)).~~(MCA 76-5-103(10)).~~

Floodway means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway. (MCA 76-5-103(11)).~~(MCA 76-5-103(11)).~~

Governing body means the governing authority of a county, city, or town organized pursuant to law. (MCA 76-3-103(7)).~~(MCA 76-3-103(7)).~~ In the jurisdictional area of the City of Miles City, the governing body is the City Council.

Growth policy means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to MCA Title 76, Chapter 1 before October 1, 1999, or a policy that was adopted pursuant to MCA Title 76, Chapter 1 on or after October 1, 1999. (MCA 76-1-103(4))

Improvement agreement means a contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.

Landowner means all individuals, groups, or parties with a title interest in the property. For purposes of MCA 76-3-207, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM).~~(24.183.1104 ARM).~~ For all other purposes of these regulations, the terms "property owner," "landowner," and "owner" mean both the seller and the purchaser under a contract for deed.

Local services means any and all services and facilities that local government entities are authorized to provide.

Lot means a parcel, plot, or other land area created by subdivision for sale, rent, or lease.

Lot measurement:

(1)-

i.(1) *Lot depth* means the horizontal distance between the front and the rear lot lines.

ii.(2) *Lot width* means the average width of the lot.

iii.(3) *Lot frontage* means the length of the front lot line.

iv.(4) *Lot area* means the area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

Lot types:

(1)

i.(1) *Corner lot* means a lot located at the intersection of two streets.

ii.(2) *Interior lot* means a lot other than a corner lot.

iii.(3) *Through lot or double-frontage lot* means a lot whose front and rear lines both abut streets (except alleys).

iv.(4) *Flag lot* means a lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.

Major subdivision means a subdivision that creates six or more lots.

Material (as in a material change or amendment to an application or plat) means a change or amendment that is significant, that substantially alters the proposal, has an impact on any of the primary review criteria (MCA 76-3-608(3)(a)), brings the proposal out of conformance with the growth policy, zoning or subdivision regulations, or impacts the public's opportunity to provide meaningful comment.

Minor subdivision means a subdivision that creates five or fewer lots.

Mobile (manufactured) home means a detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers," and "manufactured homes" whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include "modular" or "factory-built buildings" that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

Mobile (manufactured) home space means a designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

Mobile (manufactured) home park means a tract of land that provides or will provide spaces for two or more mobile homes.

Mobile (manufactured) home pad means that area of a mobile home space which has been prepared for the placement of a mobile home.

Montana Department of Environmental Quality Minimum Standards means minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to MCA Title 76, Chapter 4, Part 1. MCA Title 76, Chapter 4, Part 1.

Monument (permanent monument) means any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference. (ARM 24.183.1101(1)(a)).

MSPA means Montana Subdivision and Platting Act, MCA Title 76, Chapter 3, Chapter Three.

Natural environment means the physical conditions which that exist within a given area, including land, air, water, mineral, flora, fauna, sights, sound, and smells and objects of historic, aesthetic, or community significance.

Open space means land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.

Phasing plan means the design plan showing phases and timing for a subdivision proposed to be subdivided in stages.

Phased Development is a subdivision application and preliminary plat that at the time of submission, consists of independently platted development phases that are reviewed on a schedule proposed by the subdivider.

Planned unit development (PUD) means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use. (MCA 76-3-103(10)). (MCA 76-3-103(10)).

Planning board means a planning board formed pursuant to MCA Title 76, Chapter 1. In the jurisdictional area of the City of Miles City, the planning board is the Miles City Planning Board.

Plat means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications. (MCA 76-3-103(11)). (MCA 76-3-103(11)).

The term "plat" includes the following types of plats, with definitions:

- (1) *Preliminary plat* means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the MSPA. (MCA 76-3-103(12)). (MCA 76-3-103(12)).
- (2) *Final plat* means the final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. (MCA 76-3-103(6)). (MCA 76-3-103(6)).
- (3) *Amended plat* means the final drawing of any change to a filed platted subdivision or any lots within a filed platted subdivision.
- (4) *Vacated plat* means a plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616, 7-14-2617, and 7-14-4114, as applicable.

Pre-application sketch (or drawing) means a legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision.

Private improvements are the same types of improvements as defined under public improvements, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.

Private road means a road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted.

Public health and safety means a condition of optimal well-being, free from danger, risk, or injury for the community at large or for all people, not merely for the welfare of a specific individual or a small class of persons. Examples of conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards; rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.

Public improvement means any structure or facility constructed to serve more than one lot in a subdivision which that is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.

Public road or street means a road or street is public if its right-of-way has been dedicated or acquired for public use.

Public utility (per MSPA) has the meaning provided in MCA 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44. (MCA 76-3-103(13)). (MCA 76-3-103(13)).

Recreational camping vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

Recreational vehicle park means a tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.

Recreational vehicle space means a designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.

Reviewing authority means the DEQ or local board of health or sanitarian as authorized under MCA Title 76, Chapter 4.

Right-of-way means a linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

State means the State of Montana.

Street means a way for vehicular traffic designated as a street, highway, boulevard, thoroughfare, parkway, throughway, avenue, road or court.

Street types. For purposes of these subdivision regulations¹, street types are defined as follows:

- (1) *Alley* means a public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.
- (2) *Arterial* means a street, road or highway having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials carry more than 1,000 vehicle trips per 24-hour period. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
- (3) *Collector* means a street, road or highway having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes. Collectors may be major or minor, as follows:
 - (a) *Major collectors.* Major collectors are roads that carry more than 300 but less than 1,000 vehicle trips per 24-hour period. Major collectors connect to other streets at each end and do not dead end.
 - (b) *Minor collectors.* Minor collectors are roads that carry more than 100 but less than 300 vehicle trips per 24-hour period. Minor collectors may or may not end at a cul-de-sac bulb or other turnaround, subject to design standards.
- (4) *Minor street* means a street the primary function of providing access to adjacent land and a secondary function of moving traffic. Minor streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties. Minor streets carry less than 100 but more than 20 vehicle trips per 24-hour period.
- (5) *Local street* means a street having the function of providing primary access to two or fewer lots and that is expected to carry less than 20 vehicle trips per 24-hour period.
- (6) *Half-street* means a portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
- (7) *Cul-de-sac* means a street having only one outlet for vehicular traffic and terminating in a turn-around area.

¹ Other ordinances and regulations adopted by Miles City may assign conflicting definitions, classifications, and standards to streets; these definitions are for purposes of subdivision review only.

(8) *Frontage access (street)* means a local, minor, or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

(9) *Primary access streets* are streets comprising the network of streets, roads, and highways that provide the public access to a subdivision and the lots within.

Subdivider means a person who causes land to be subdivided or who proposes a subdivision of land (MCA 76-3-103(14)). When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the subdivision administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.

Subdivision means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed. (MCA 76-3-103(15)). ~~(MCA 76-3-103(15))~~.

Subdivision administrator means the person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.

Subsequent Minor Subdivision (or Second or Subsequent Minor Subdivision) means any subdivision of five or fewer parcels that is not a first minor subdivision.

Surveyor (professional land surveyor) means a person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (MCA Title 37, Chapter 67) to practice surveying in the State of Montana.

Surveyor (examining land surveyor) means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing. (MCA 76-3-103(5)). ~~(MCA 76-3-103(5))~~.

Swale means a drainage channel or depression designed to direct surface water flow.

Title report (abstract of title, subdivision guarantee, or platting report) means a report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.

Topography is a general term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

Townhome or townhouse means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their

units, but under which they may jointly own the common areas and facilities. (MCA 70-23-102(14)).

Townhouse lot means an arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.

Tract of record means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office (MCA 76-3-103(16)). ~~(MCA 76-3-103(16))~~.

Vicinity sketch means a map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.

Vehicle trip calculation means the number of vehicle trips anticipated to occur on a street, road, or highway, typically expressed in average trips per day or in a 24-hour period. For purposes of these regulations, vehicle trips generated by a residential subdivision shall be calculated on the basis of eight trips per household per day. Actual official traffic counts or a certified traffic study may be used for traffic loads. Vehicle trips for non-residential subdivisions such as commercial and industrial developments are determined through a traffic study that is completed by a registered engineer.

Wildlife means living creatures (e.g. mammals, birds, reptiles, fish) which are neither human nor domesticated.

Wildlife habitat includes geographic areas containing physical or biological features essential to wildlife for living, breeding, or nesting either permanently or seasonally, or essential to the conservation of listed endangered and threatened species under the Endangered Species Act.

Sec. 21-6. Violations and penalties.

Any person who violates any of the provisions of the MSPA or these regulations (Chapter 21) is guilty of a misdemeanor punishable by a fine of not less than \$100.00 nor more than \$500.00 or by imprisonment in a county jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations (Chapter 21) shall be deemed a separate and distinct offense.

Sec. 21-7. Amendment of regulations.

These regulations may be amended by the City Council. Before the governing body adopts amended subdivision regulations, it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt amendments to the regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 calendar days prior to the date of the hearing.

Sec. 21-8. Reserved.

Sec. 21-9. Fees.

Fees, charges and expenses to be paid by subdividers to defray the expenses of all subdivision reviewreviews and exemption reviewreviews and any inspections necessary for plat approval shall be set from time to time by resolution of the City Council. Applications for subdivision review shall not be accepted unless accompanied by all applicable fees.

Sec. 21-10. Postal and Written Notices.

- A.** Any postal notices required of the city by the Montana Subdivision and Platting Act and these regulations, unless otherwise specified, shall be deemed complete when deposited in a United States Post Office addressed to the applicant with proper postage attached.
- B.** Any written notices required by the Montana Subdivision and Platting Act and these regulations, unless otherwise specified, may be provided via electronic means or hard copies.

~~Secs. 21-10--21-11--21-13. Reserved.~~

Sec. 21-14. General procedures.

(a)**A.** *Pre-applications and Preliminary plats.*

A.1. (1) *Construction timing.* Construction work shall not occur on a proposed subdivision until the governing body has given conditional approval of the preliminary plat. Construction work undertaken prior to the preliminary plat approval subjects the subdivider to the possibility the work will have to be redone or removed. In addition, ~~MCA 76-4-121~~. In addition, ~~MCA 76-4-121~~ regulates subdivision activities.

B.2. (2) *Transfers of title.* Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met (~~MCA 76-3-303~~): (~~MCA 76-3-303~~):

- (a.) That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- (b.) That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;
- (c.) That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract; the subdivider shall be responsible for adhering to this requirement, and for phased developments, the City of

Miles City interprets this provision of state law and these regulations to be referring to preliminary plat approval of the overall phased development, therefore this provision is generally not appropriate for phased developments, except for the phase(s) the subdivider will complete within two years of the preliminary plat approval;

(d.) That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner"; and

(e.) That the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent.

(3). *Permission to enter.*

The governing body or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision pre-application or any other subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents, and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit.

(4). *Pre-application process.*

(a.) Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the subdivision administrator by submitting, along with required fees as adopted by the City Council, a pre-application form provided by the subdivision administrator. The meeting shall occur within 30 calendar days after the subdivider submits a written request for the meeting to the subdivision administrator.

(b.) At the time of the pre-application meeting request, the subdivider shall provide to the subdivision administrator information sufficient for a comprehensive review by the subdivision administrator, including a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions together with other relevant documents. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of one-inch-to-400-feet or larger that is adequate to show the property and to show relevant information. The sketch and materials must should include the following, as applicable, and sufficient for the subdivision administrator to guide the subdivider toward preparation of a preliminary plat application that appropriately addresses various city requirements:

(1.) Information on the current status of the site, including:

- i. ~~i.~~ Site location;
- ~~iii.~~ ~~ii.~~ Approximate tract and lot boundaries of existing tracts of record;
- ~~v.~~ ~~iii.~~ Description of general terrain;

~~vii.iv. iv.~~ Natural features including water bodies, floodplains geologic hazards, and soil types;

~~ix.v. v.~~ Existing structures and improvements;

~~xi.vi. vi.~~ Existing utility lines and facilities serving the area to be subdivided;

~~xiii.vii. vii.~~ Existing easements and rights-of-way;

~~xv.viii. viii.~~ Existing zoning or development regulation standards;

~~xvii.ix. ix.~~ Existing conservation easements;

~~xix.x. x.~~ Existing covenants or deed restrictions.

(2.) Documentation on the current status of the site, including:

(a)i. i. Ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;

(e)ii. ~~ii.~~ For proposed minor subdivisions, a copy of each certificate of survey or subdivision plat(s) pertaining to the subject parcel since July 1, 1973

(e)iii. ~~iii.~~ Water rights, including location of agricultural water user facilities; and

(g)iv. ~~iv.~~ Any special improvement districts.;

(i)v. ~~v.~~ Any rights of first refusal for the property.

(3.) Information on the proposed subdivision, including:

(a)i. ~~i.~~ Tract and proposed lot boundaries;

(e)ii. ~~ii.~~ Proposed public and private improvements;

(e)iii. ~~iii.~~ Location of utility lines and facilities;

(g)iv. ~~iv.~~ Easements and rights-of-way; and

(i)v. ~~v.~~ Parks and open space and existing and proposed conservation easements.

(c.) At the pre-application meeting:

(1.) The subdivision administrator shall identify, for informational purposes only, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process including, but not limited to zoning regulations and floodplain regulations;

(2.) The subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted by the subdivision administrator or planning board on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and

(3.) The subdivision administrator may identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application. This does not limit the ability of the subdivision administrator to request additional information at a later time.

(d.) Unless the subdivider submits a subdivision application within one year of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application. The subdivision administrator has the discretion to extend this time period for up to one additional year upon written request if it is determined that the information required of with preliminary plat submittal will be the same based on site and area specific conditions and the regulations in effect at the time of the request.

(5). *Subdivision application and preliminary plat submittal.* The subdivider shall submit to the Miles City Planning Department a subdivision application addressing the topics discussed at the pre-application meeting and containing the following materials, all described in in-forms or a comprehensive list of the following information required for the specific subdivision provided by the subdivision administrator, as applicable²:

(a) As supplements to the preliminary plat:

- A completed and signed subdivision application form;
- The required review fee;
- A preliminary plat;
- A vicinity sketch;
- A topographic map;
- A conceptual grading and drainage plan;
- Engineering plans for all public and private improvements;
- Overall phasing A Phased Development plan if development is proposed to be completed in 2 or more phases including:
 - aj. A time frame for each phase;
 - bii. An improvement plan showing which ----- improvements will be completed with each phase;
- Abstract of title (or title report);
- Lienholders' acknowledgment of subdivision;
- Documentation of legal and physical access;
- Documentation of existing easements, including those for agricultural water user facilities;
- Existing covenants and deed restrictions;

² The original application materials are submitted at initial submittal. Once the application is determined sufficient for review, 15 copies of the complete and sufficient application shall be submitted to the subdivision administrator (within 3 working days of notification of a sufficient application).

- Existing water rights;
- Existing mineral rights;
- Names and addresses of all adjoining property owners;
- Comment on the proposed subdivision from police department, fire department, school superintendent, utility companies, engineering department, public works department, post office, medical service providers (hospital, ambulance, etc.), floodplain administrator, Montana Department of Natural Resources & Conservation, state historic preservation office, Montana Fish, Wildlife, & Parks, United States Fish & Wildlife Service, and any other entity deemed applicable by the subdivision administrator;
- Copies of all correspondence with the public utilities, local, state and federal agencies and any other entities identified during the pre-application meeting;
- Proposed road plans and profiles;
- Encroachment permits and approach permits from Montana Department of Transportation or the local jurisdiction;
- Proposed easements;
- Proposed disposition of water rights;
- Proposed disposition of mineral rights;
- A list of lot sizes (spreadsheet format preferred) for the purpose of park land dedication calculations;
- Environmental assessment when required and summary of probable impacts;
- Transportation impact analysis or transportation plan;
- Fire risk rating analysis and fire prevention plan;
- Noxious weed management plan and re-vegetation plan;
- Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
- FIRM or FEMA panel map and letter identifying floodplain status;
- Flood hazard evaluation;
- Required water and sanitation information (MCA 76-3-622); (MCA 76-3-622);
- A form of subdivision improvements agreement, if proposed;
- Letter requesting a revocation of agricultural covenant, if applicable;
- Letter indicating locations of cultural or historic resources;
- Variance request or approval;
- Re-zoning application or approval;
- Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
- Such additional relevant and reasonable information as identified by the subdivision administrator during the pre-application meeting that is pertinent to the required elements of this section.

(b) Information That May Be Required to be Included On The Preliminary Plat or a Preliminary Plat Supplement

Note: The plat must be drawn to scale on 24-inch by 36-inch paper. The plat may consist of one or more sheets.

1. A standard title block and information to include scale bar, north arrow, and date of preparation;

2. A name for the subdivision (names cannot be duplicated, but amended plats may be entitled "the amended plat of [existing subdivision name]);
3. The exterior boundaries of the tract and the approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
4. A metes and bounds or other legal description, or notation of previously recorded certificate of surveys or subdivision plats;
5. All lots and blocks, designated by numbers and/or letters;
6. The proposed lot boundaries;
7. The gross and net acreage of each lot;
8. All existing and proposed streets, alleys, avenues, roads and highways on, adjacent to, and serving the property, and the width of the rights-of-way, grades and curvature of each, existing and proposed street names, and proposed locations of intersections or other access points for any subdivision requiring access to arterial or collector highways;
9. The location, boundaries, dimensions and areas of any parks, common grounds, or other grounds dedicated for public or private use;
10. The portions of each lot with slopes greater than 25 percent;
11. Proposed property line setbacks or any setbacks required by the applicable zoning regulations;
12. Topographic ground contours at required intervals or as appropriate to easily identify grades;
13. All surface waters, to include irrigation water, on the property and within 100-feet of the exterior boundaries of the subdivision;
14. All federally recognized wetlands on the property and within 100-feet of the exterior boundaries of the subdivision;
15. All known wetlands on the property and within 100-feet of the exterior boundaries of the subdivision as well as the sources of information upon which this is based (National Wetlands Inventory, US Army Corp of Engineer comments, etc.);
16. The location of all 100-year flood plains;
17. Structural setbacks and vegetated buffers along wetlands and waterways;
18. The location of all existing and proposed fences, lighting, signage, sidewalks, paths, storage areas, and other existing or proposed man-made improvements;
19. The locations and types of all existing and proposed traffic control devices and directional signs;
20. Traffic study by a registered engineer for non-residential subdivisions;
21. Existing and proposed landscape buffers;
22. Any proposed or existing "no build zones" and/or building envelopes;
23. Any existing and proposed utilities located on or adjacent to the property including:
 - a.i. The approximate location, size and depth of water mains, sanitary and storm sewers, and fire hydrants.
 - b.ii. The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the property;
 - c.iii. The approximate location of gas, electric and telephone lines, and streetlights.
- (1) The locations and identity of all existing easements and rights-of-way of record and proposed public and private easements and rights-of-ways, including descriptions of their width and purpose;
- (2) The location of any existing or proposed easements for existing or proposed utility services to the proposed lots;
- (3) The proposed driveways and approaches serving each lot;
 - (4) A building site on each proposed lot;

- ~~(5).~~ The location of existing and/or potential buildings/building sites, structures and other improvements;
- ~~(6).~~ Proposed locations of all stormwater management infrastructure;
- ~~(7).~~ All existing and proposed primary and 100% replacement drainfields on the property and within 100-feet of the exterior boundaries of the subdivision;
- ~~(8).~~ Locations of the soils test pits for data submitted with the subdivision application;
- ~~(9).~~ All proposed or existing wells on the property and within 100-feet of the exterior boundaries of the subdivision;
- ~~(10).~~ Such additional relevant information as identified by the subdivision administrator during the pre-application meeting that is pertinent to the review of the subdivision proposal; and
- ~~(11).~~ Any other requirements of these regulations that does not appear on this list.

~~(6).~~ *Review process.*

For both minor and/or major subdivisions, including phased development, the initial review process is as follows:

~~(a.)~~ *Element review.* Within 5 working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required by subsection ~~(d)(5)(a)(5)~~ above, and shall give written notice to the subdivider of the subdivision administrator's determination. A subdivision application is considered to be received on the date of delivery to the Miles City Planning Department and when accompanied by the required review fees (MCA ~~76-3-604(1)(a)~~). (MCA 76-3-604(1)(a)).

~~(1.)~~ If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall notify the subdivider of the missing elements and identify those elements that are missing. No further action shall be taken on the application by the subdivision administrator until the missing elements are submitted.

~~(2.)~~ The subdivider may correct the deficiencies and submit the missing elements or withdraw the application.

3i. If the subdivider corrects the deficiencies and submits the missing elements, the subdivision administrator shall have 5 working days to notify the subdivider whether the submitted information contains all the materials required by subsection ~~(d)(5)A.5.~~ above, as applicable.

~~4.(3)~~ This process shall be repeated until the subdivider submits an application containing all the materials required by subsection ~~(d)(A.5)~~ above, or the application is withdrawn.

~~5.(4)~~ If the missing elements are not corrected and submitted to the subdivision administrator within 60 days following the date of the deficiency letter, the subdivision administrator may terminate the application and file, and notify the subdivider within 5 working days of termination. The Miles City Planning Department may retain a reasonable portion of the review fees for processing the application and for the element review.

(b.) *Sufficiency review.* Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection (6)(a)5 above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give (written) notice to the subdivider of the subdivision administrator's determination.

(1.) If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in the notification and no further action shall be taken on the application by the subdivision administrator until the identified material is resubmitted.

(2.) The subdivider may correct the deficiencies and resubmit the identified material, or withdraw the application.

(3.) If the subdivider corrects the deficiencies and resubmits the identified material the subdivision administrator shall have 15 working days to notify the subdivider whether the additional information and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.

(4.) This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.

i. A determination that an application contains sufficient information for review does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process.

ii. A determination of sufficiency by the subdivision administrator does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

iii. Once the application is determined sufficient for review, 15 copies of the complete and sufficient application shall be submitted to the subdivision administrator within 3 working days of notification of a sufficient application. If the required copies are not submitted to the subdivision administrator within 3 working days, the review period is suspended until the proper copies are submitted.

iv.

iv. The subdivision administrator shall determine number of copies to be submitted and request submittal by electronic or hard copy.

v. Upon determination of a sufficient application, the preliminary plat application proceeds to the review procedures for first minor subdivisions (Section 21-15) or

the review procedures for major and subsequent minor subdivisions (Section 21-16), as applicable.

- (5.) If the deficiencies are not corrected and submitted to the subdivision administrator within 60 calendar days following the date of the deficiency letter, the subdivision administrator may terminate the application and file, and notify the subdivider within 5 working days of termination. The Miles City Planning Department may retain a reasonable portion of the review fees for processing the application and for the element and sufficiency reviews.

7. Applicable regulations. Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a non-phased subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information shall be based on the new regulations.

8. Phased Developments – Special Provisions.

(a) Overview. This subsection details additional procedural requirements for subdivisions proposed as phased developments. As defined in *Sec. 21-5* of these regulations, a “phased development” is a subdivision application and preliminary plat that, at the time of submission, consists of independently platted development phases that are reviewed on a schedule proposed by the subdivider. A phased subdivision includes three distinct review stages. The first stage review is of the overall preliminary plat for the entire project. At the end of this stage, the project’s overall plan and preliminary plat are approved, conditionally approved or denied by the governing body, with a timeframe of up to 20 years from the approval to obtain each phase’s independent one- to three-year preliminary approval/conditional approval of each phase. The second stage review of any independent phase occurs prior to final plat submittal for that phase; the second stage review is that of each independent phase, at the end of which, each phase obtains a review by the governing body to determine whether any changed primary criteria impacts or new information exist that create new potentially significant adverse impacts for the phase or phases at that time. The governing body then issues any changed findings and/or conditions of approval for that phase(s). Following the governing body decision on the independent phase(s) up for consideration in the second stage, the subdivider may submit the final plat application to “commence” that phase, which is intended to lead to final plat approval and filing the plat for each phase. Throughout these stages of reviews, there are certain activities which may occur to result in platting and development of the subdivision, such as installing subdivision improvements and meeting other conditions of preliminary plat approval, obtaining other approvals such as that from DEQ, and other steps typically involved in subdivisions. This section is intended to outline special provisions applicable to phased developments.

(b) Phased Development Preliminary Plat Application - Overall Plan. A subdivider applying for phased development review shall submit with the phased development preliminary plat application an overall phased development preliminary plat on which independent platted

development phases must be presented. The phased development preliminary plat application must contain the information required pursuant to parts 5 and 6 of the MSPA and Sec. 21-14 A-5 of these regulations for all phases of the development and a schedule for when the subdivider plans to submit for preliminary review each phase of the development.

(1) The subdivider may change the schedule for review of each phase of the development upon written notice to and approval of the governing body after a public hearing as provided in subsection 10 below.

i. The governing body may approve a schedule change only if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

9. Subsequent Review Stages for Independent Phases.

An "independent phase", for the purpose of this section, is any phase the subdivider intends to plat on a different final plat than the other phases.

(a) Prior to the preliminary review of each independent phase, the subdivider shall provide written notice to the governing body of the intent to proceed with commencement of that phase. The governing body shall hold a public hearing pursuant to subsection 10 *Public Hearing* below.

(b) A review of the preliminary plat(s) for proposed initial phase(s) may run concurrently with the Overall Plan review. This review shall be conducted in accordance with Sections 21-15 or 21-16, as appropriate, except for the special provisions listed in this section. Phase(s) following the preliminary application shall be reviewed under Section 21-16, except for the special provisions listed in this section.

(c) The City of Miles City may impose a reasonable periodic fee for each review under subsections 8 and 9 of the phases in the phased development.

10. Public Hearing.

(a) The governing body shall hold a public hearing on each phase and/or changes to an approved phasing schedule within 30 working days after receipt of the written notice from the subdivider pursuant to 8(b)(1) and 9(a) above. After the hearing, the governing body shall determine whether there are new potentially significant adverse impacts from: (1) Changes to the primary criteria impacts (MCA 76-3-608(3)).

(2) New information presented that was not available during overall plan review

i. The governing body's public hearing will be held and noticed in the same manner as described in subsection 21-16 A-8 '*Subsequent public hearing*', with the exception that the governing body holds the hearing instead of the planning board and the hearing is scheduled within 20 working days in lieu of 45 days.

ii. (b) Final plats.

Regardless of the provisions of MCA 76-3-610(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing and may impose only necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information. Any additional conditions must be met before preliminary plat approval for each particular phase and the approval, in accordance with MCA 76-3-611, is in force for not more than three calendar years or less than one calendar year within the maximum time frame provided in subsection 11.

11. Timeframes of Preliminary Approvals for Phased Developments.

(a) Each phase of the phased development must be submitted for review and be approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat was approved by the governing body. Any phase of a phased development not approved by the governing body within 20 years of the date of the overall phased development preliminary plat approval shall be deemed dead and the preliminary approval applicable to that phase null and void.

(b) Failure to meet the 20-year timeframe does not preclude a subdivider from beginning the preliminary subdivision approval process again under regulations and laws in effect on the new application date. The governing body may preliminarily approve phased developments that extend beyond the one to three calendar years set forth in 76-3-610, MCA, and Sec. 21-15 or Sec. 21-16 of these regulations, (c) Each phase of any phased development must be reviewed as provided in Sec 21-15 or 21-16, which is a separate process from overall preliminary plat review as described in 21-14-8-b above. The review of the overall preliminary plat and that of the initial phase or phases may occur concurrently, but notices and agenda items must distinguish between preliminary plat review of the overall phased development and the phase up for consideration.

12. Additional Reviews of Phases and Phasing Schedule Changes. The following applies to the phase review and/or changes to an approved phasing schedule:

(a) Prior to the commencement of each phase, the subdivider shall provide written notice to the governing body through the subdivision administrator. For purposes of this section, "commencement" of a phase means submitting a final plat application for that phase.

(b) The subdivider shall provide written notice to the governing body requesting changes to the approved schedule.

B. Final plats.

1.

(1) Final plat contents. The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required