



# CITY OF MILES CITY AGENDA

*Regular Council Meeting  
City Council Chambers*

*February 26, 2019  
6:00 p.m.*

## CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

### 1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES

- |                                 |           |
|---------------------------------|-----------|
| A. Regular City Council Meeting | 2/12/2019 |
| B. Flood Control Meeting        | 2/19/2019 |
| C. Public Service Meeting       | 2/20/2019 |

### 2. SCHEDULE MEETINGS

#### REQUEST OF CITIZENS & PUBLIC COMMENT

### 3. APPOINTMENTS

### 4. PROCLAMATIONS

### 5. STAFF REPORTS

Samantha Malenovsky- USACE Alternative Meeting  
Support Letter

### 6. CITY COUNCIL COMMENTS

### 7. MAYOR COMMENTS

### 8. COMMITTEE RECOMMENDATIONS

Public Service Committee Recommendations:

Recommend installing a one hour parking sign at **1620 Main Street** (If MC Electric, LLC pays for the sign)

Recommend installing yield sign on each side of **Palmer and 12<sup>th</sup> Street**

Recommends designating a one way street on **Dickinson Street from South Montana to South Lake Street** (Signs would point toward Haynes and designation would be implemented after letters are sent to residents in that area and returned as the majority approves)

### 9. BID OPENINGS

### 10. BID AWARDS

### 11. PUBLIC HEARINGS

- A. **Appeal of Floodplain Permit Denial on Ellis Rentals, located at 900 Albert Ave. lots 37 & 47**

- B. **Floodplain Variance Application re: Variance Exception on Ellis Rentals, located at 900 Albert Ave. lots 37& 47**

**12. UNFINISHED BUSINESS**

- A. **RESOLUTION NO. 4230- A Resolution Authorizing the Assignment of a Certain Lease Agreement Between the City of Miles City and Russell E. Van Dyke to Mike Miller For the Lease of Mobile Home Space in Bender Park**

**13. NEW BUSINESS**

- A. **Appeal of Floodplain Permit Denial on Ellis Rentals, located at 900 Albert Ave. lots 37 & 47**
- B. **Floodplain Variance Application re: Variance Exception on Ellis Rentals, located at 900 Albert Ave. lots 37& 47**
- C. **RESOLUTION NO. 4236- A Resolution Adopting a Revised Program for Public Information Pertaining to the Miles City Floodplain and Floodway**
- D. **RESOLUTION NO. 4237- A Resolution Establishing Wages and Salaries for City Employees for Fiscal Year 2018-2019**

**14. ADJOURNMENT**

Public comment on any public matter that is not on the agenda of this meeting can be presented under Request of Citizens, provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings

# Minutes

# **REGULAR COUNCIL MEETING February 12, 2019**

**6:00 p.m.**

## **CALL TO ORDER**

The Regular Council meeting was held Tuesday, February 12, 2019, in the City Hall Conference Room at City Hall, 17 S. 8<sup>th</sup> Street, Miles City, Montana. Mayor John Hollowell called the meeting to order. Council Members present were Brant Kassner, Dwayne Andrews, John Uden, Rick Huber, Jeff Erlenbusch, Kathy Wilcox and Susanne Galbraith. Councilperson Ken Gardner was excused.

Also present were Fire Chief Branden Stevens, City Attorney Dan Rice, Public Utilities Director Tom Speelmon, Police Chief Doug Colombik and City Clerk/Minute Recorder Lorrie Pearce.

## **PLEDGE OF ALLEGIANCE**

Mayor Hollowell led the Council in the Pledge of Allegiance.

## **APPROVAL OF COUNCIL & COMMITTEE MINUTES**

### **City Council Minutes: 1/22/2019**

\*\* *Councilperson Uden moved to approve the minutes of the Regular Council Meeting, subject to correction or changes of January 22, 2019 and seconded by Councilperson Huber. The motion **passed** by unanimous consent, 7-0.*

### **Finance Committee Minutes: 1/17/2019**

\*\* *Councilperson Andrews moved to approve the minutes of the Finance Committee Meeting of January 17, 2019, and seconded by Councilperson Galbraith. The motion **passed** by unanimous consent, 7-0.*

### **Finance Committee Minutes: 1/31/2019**

\*\* *Councilperson Galbraith moved to approve the minutes of the Finance Committee Meeting of January 31, 2019, and seconded by Councilperson Erlenbusch. The motion **passed** by unanimous consent, 7-0.*

### **Human Resource Committee Minutes: 2/05/2019**

\*\* *Councilperson Erlenbusch moved to approve the minutes of the Human Resource Committee Meeting of February 5, 2019, and seconded by Councilperson Wilcox. The motion **passed** by unanimous consent, 7-0.*

## **SCHEDULE MEETINGS**

*The following meetings will be held in the City Hall Conference Room:*

Public Service	February 20 <sup>th</sup> @6 p.m.
Flood Control	February 19 <sup>th</sup> @ 6:30 p.m.

## REQUEST OF CITIZENS & PUBLIC COMMENT

Dennis Pluhar- Fire Training Center and effects on Lyman Drive residents-  
**Cancelled by Mr. Pluhar**

SouthEastern Montana Development Representative Jim Atchison presented a certificate of appreciation to the City of Miles City. The certificate was to celebrate the partnership between SEMD and the City of Miles City. He recapped the 2018 Community meeting which included the needs of the community. The needs with the most votes were: VA Complex, Event/Convention Center, Fire Building/Police Building, and Marketing of Miles City to promote Tourism, Entrepreneurs, Businesses and attracting potential young residents. He added that there are two House Bills that he is paying a lot of attention to. They are HB 52- Economic Development Program and HB 292 the Coal Board Grant Program. He will keep Council updated on the progress of these two Bills. He announced Elizabeth Patten the new Executive Director and Loan Officer for Miles City Area Economic Development Council. Director Patten explained she started her new position the beginning of January and is actively working on a new website that would promote marketing, which would be used to bring good things together and build on them.

## APPOINTMENTS

None

## PROCLAMATIONS

None

## STAFF REPORTS

**Branden Stevens-** Volume calls have increased from this time last year, with 18 trips to Billings. Ambulance 20 has an injection driver module issue and will not be able to use until repaired. Ambulance 30 has a fuel system issue and is being repaired. Housing units are set up and insulation and skirting will be completed next week. The sewer line at the fire department is fixed.

## CITY COUNCIL COMMENTS

**Kathy Wilcox-** Human Resource Committee has completed two goals which were the writing of the job description for the Civil Engineer position and development of a new wage scale to coincide with MMIA.

**John Uden-** Thanked Chief Colombik for getting the School Safety Officer issue in order.

## MAYOR COMMENTS

Received an email from 9-1-1 Supervisor Lyne Anderson complimenting Firefighter Casey Miller on the CPR training at Dispatch.

**COMMITTEE RECOMMENDATIONS**

None

**BID OPENINGS**

None

**BID AWARDS**

None

**PUBLIC HEARINGS**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

- A. RESOLUTION NO. 4227- A Resolution Authorizing the Mayor to Submit an Application to Treasure State Endowment Program for a Planning Grant to Prepare a Preliminary Engineering Report (PER) for the Miles City Water Facility and Agreeing to Conform to the Requirements of Said Application**

**\*\*** *Councilperson Galbraith moved to approve the Resolution, read by title only, and seconded by Councilperson Uden. On roll call vote, the motion passed by unanimous consent, 7-0. Resolution No. 4227 passed.*

- B. RESOLUTION NO. 4228- A Resolution Approving an Amendment to Professional Services Agreement Between the City and JGA Architects, PC, for Services Related to the Miles City Fire and Rescue Preliminary Architectural Report PAR**

**\*\*** *Councilperson Kassner moved to approve the Resolution, read by title only, and seconded by Councilperson Erlenbusch. On roll call vote, the motion passed by 7-0. Resolution No. 4228 passed.*

- C. RESOLUTION NO.4229- A Resolution Requesting Distribution of Bridge and Road Safety and Accountability Program Funds**

**\*\*** *Councilperson Uden moved to approve the Resolution, read by title only, and seconded by Councilperson Kassner. On roll call vote, the motion passed by 7-0. Resolution No. 4229 passed.*

- D. RESOLUTION NO. 4230- A Resolution Authorizing the Assignment of a Certain Lease Agreement Between the City of Miles City and**

**Russell E. Van Dyke to Mike Miller for the Lease of Mobile Home Space in Bender Park**

*\*\* Councilperson Erlenbusch moved to approve the Resolution, read by title only, and seconded by Councilperson Galbraith.*

After a short discussion, the consensus of Council was the lease would be approved if the new lessee cleaned up the property and had no problem calling 911 if there was a disturbance at the Park. Also, the new lessee had not read the Bender Park Lease Agreement and it felt that the Resolution should be tabled until Mr. Miller had a chance to read it.

*\*\* Councilperson Uden moved to table the Resolution until the February 26<sup>th</sup> Council meeting, seconded by Councilperson Erlenbusch. The motion passed 7-0*

**E. RESOLUTION NO. 4231- A Resolution Authorizing Certain Officers of the City of Miles City as Signatories Upon Bank Accounts of the City of Miles City at Stockman Bank**

*\*\* Councilperson Galbraith moved to approve the Resolution, read by title only, and seconded by Councilperson Erlenbusch. On roll call vote, the motion passed by 7-0. Resolution No. 4231 passed.*

**F. RESOLUTION NO. 4232- A Resolution Approving the Donation of a 2004 Ford Crown Victoria to Miles City Public Schools for Use as a School Safety Office Vehicle**

*\*\* Councilperson Uden moved to approve the Resolution, read by title only, and seconded by Councilperson Andrews. On roll call vote, the motion passed by 7-0. Resolution No. 4232 passed.*

**G. RESOLUTION NO. 4233- A Resolution Approving a Revised Collective Bargaining Agreement Between the City of Miles City and the Local No. 600 Union**

*\*\* Councilperson Erlenbusch moved to approve the Resolution, read by title only, and seconded by Councilperson Kassner. On roll call vote, the motion passed by 7-0. Resolution No. 4233 passed.*

**H. RESOLUTION NO. 4234- A Resolution Approving a Revised Collective Bargaining Agreement Between the City of Miles City and the Local No. 283-A Union**

\*\* *Councilperson Galbraith moved to approve the Resolution, read by title only, and seconded by Councilperson Wilcox. On roll call vote, the motion passed by 7-0. Resolution No. 4234 passed.*

**I. RESOLUTION NO. 4235- A Resolution Approving a Revised Collective Bargaining Agreement Between the City of Miles City and the Local No. 283-B Union**

\*\* *Councilperson Erlenbusch moved to approve the Resolution, read by title only, and seconded by Councilperson Kassner. On roll call vote, the motion passed by 7-0. Resolution No. 4235 passed.*

**J. Review and discussion on Decembers Statement of Expenditures and Revenues on General Fund and Ambulance Fund**

**K. Discussion on Fiscal Year 2018 Schedule of Findings**

There was a long discussion on ideas as to how the City can clean up public nuisance properties and if the Ad Hoc Committee had come up with any ideas to save General Fund money before next budget. Several Councilpersons suggested a Public Meeting be scheduled by the Mayor to discuss what the City residents are willing to pay for or what services the City residents want. Consensus of the Council was that the City needs to make the residents aware of the General Fund financial situation, sooner than later. It was felt that residents need to know the facts and given options.

**L. Approval of January Claims**

\*\* *Councilperson Uden moved to approve the January claims, seconded by Councilperson Andrews and passed unanimously.*

**ADJOURNMENT**

\*\* *Councilperson Uden moved to adjourn the meeting, seconded by Councilperson Huber and passed unanimously.*

The meeting was adjourned at 7:40 p.m.

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**John Hollowell, Mayor**

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**Lorrie Pearce, City Clerk**



**Flood Control Committee**  
**February 19, 2019**

The Flood Control Committee met Tuesday, February 19, 2019, at 6:30 p.m. in the City Hall Conference Room. Present were Committee Chair Jeff Erlenbusch, Committee Members: Grant Kassner and Rick Huber. Excused was: Committee Member Ken Gardner

Also present were: Floodplain Administrator Samantha Malenovsky and Committee Recorder Mary Roberts.

**1. Elect Chairperson:**

*\*\*Committee Member Kassner nominated Committee Member Erlenbusch and seconded by Committee Member Huber and passed unanimously, 3-0.*

**2. Request of Citizens/Public Comment:**

-None-

**3. Committee Members Comments:**

- Committee Member Kassner asked when the dike is expected to start.
  - Floodplain Administrator Sam Malenovsky replied the dike study is expected to be complete in 1 ½ to 2 years. Then property purchases and grant funding are expected to start after the study is complete.

**4. Discussion and Recommendation to Council; Resolution No. 4236. A resolution adopting a revised program for public information pertaining to the Miles City floodplain and floodway.**

*\*\*Committee Member Kassner moved to open discussion, seconded by Committee Member Huber.*

- Floodplain Administer Sam Malenovsky gave a brief overview of the changes to the Program for Public Information. Changes in the number of insurance policies which will help with insurance rates and 2018 standards were stated.

*\*\*Committee Member Kassner moved to recommend the revised program to Council and was seconded by Committee Member Huber and passed 3-0.*

**4. Adjournment**

*\*\*Committee Member Kassner moved to adjourn the meeting, seconded by Committee Member Huber and passed unanimously, 3-0.*

There being no further business, the Committee adjourned at 6:37 p.m.

Respectfully Submitted,

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Jeff Erlenbusch, Chairperson

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Mary Roberts, Recorder

## **PUBLIC SERVICE COMMITTEE MEETING**

### **February 20, 2019**

The Public Service Committee met Wednesday, February 20, 2019 at 6:00 pm in the City Hall Conference Room. 17 S. 8<sup>th</sup> Street, Miles City, Montana. Present were Committee Members Kathy Wilcox, Dwayne Andrews and John Uden. Committee Member Ken Gardner was excused.

Also present: Councilperson Rick Huber, Councilperson Jeff Erlenbusch, and Minute Recorder Mary Roberts.

#### **1. Elect Committee Chair:**

*\*\* Committee Member Andrews made a motion to elect Committee Member Uden as 2019 Committee Chair, seconded by Committee Member Wilcox. On a roll-call vote, the Motion passed 2-1 with Committee Member Uden voting no.*

#### **2. Request of Citizens/Public Comment:**

**-None-**

#### **3. Committee Member Comments:**

Committee Member Wilcox stated a complaint was brought to her attention by Councilperson Kassner about the snow around Garfield School and he wanted to get on a snow removal schedule with the other schools. Chairperson Uden stated that it should be brought up at the next council meeting.

#### **4. Unfinished Business:**

**-None-**

#### **5. New Business:**

- **Review and make recommendation for 1 hour parking signs at business address of 1620 Main Street**
  - Chairperson Uden brought up that there are now four electricians at this business and there is not enough parking to accommodate the employees, customers, and High School students. They request a one hour parking sign be placed outside of their business.
  - Councilperson Erlenbusch stated that he had spoken to MC Electric, LLC and they didn't have a problem before because there were only two

employees. They request a one hour parking sign be put up on South Cottage on the west side. They noted that there is a one hour parking sign next door to them and they think that is appropriate to fix the parking issue.

- Committee Member Andrews stated that the business needs to pay for the sign, not the City.

*\*\*Committee Member Andrews moved to approve the 1 hour sign as long as MC Electric, LLC pays for it, seconded by Committee Member Wilcox with same stipulation. On a roll-call vote, the Motion **passed** unanimously 3-0.*

**- Citizen Request to consider traffic control signs (stop signs or yield right of way signs) at 12<sup>th</sup> and Palmer**

- Chairperson Uden pointed out that there have been several accidents, some significant, because of people failing to yield right of way. He also noted that there are school children that walk through there, children that live around there, and the residents of Eagles Manor that walk there. He requested that signs be placed on each side of Palmer Street yielding traffic north and south on 12<sup>th</sup> Street.

*\*\* Chairperson Uden motioned that there be yield signs posted on north and south sides of Palmer Street controlling traffic on 12<sup>th</sup> Street, seconded by Committee Member Andrews. On roll-call vote, the motion **passed** 3-0.*

**- Request by Council Member to consider one way street designation for Dickinson Street from South Montana to South Lake streets**

- Councilperson Huber made a request, on behalf of a Ward 2 resident, to turn four blocks of Dickinson Street from a two-way street to a one-way street heading west between South Montana and South Lake because the road narrows in this area. This will help control and eliminate congestion in the area. There is no room for two vehicles to drive down the street now. It is especially narrow if cars are parked on both sides of the street.
- Chairperson Uden asked if it is wide enough for a fire truck to drive through. Committee Member Huber stated that the Fire Chief be asked about regulations regarding the width of the road.
- Councilperson Erlenbusch suggested talking to residents in the area to get their thoughts on the idea and to gain a better understanding of how their parking is now.
- Committee Member Andrews suggested sending out a letter/notification to residents about the suggested change prior to implementation.

*\*\*Committee Member Wilcox moved to turn a portion of Dickinson Street into a one-way if a letter/notification goes out to residents of the area **and if** the one-way heads east, seconded by Chairperson Uden with same stipulations. On roll call vote, the motion **passed** 3-0.*

**6. Adjournment:**

*\*\*Committee Member Wilcox moved to adjourn, seconded by Chairperson Uden, motion passed unanimously 3-0.*

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John Uden, Chairperson

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Mary Roberts, Recorder

# STAFF REPORT

# USACE Alternative Formulation Workshop

CCMC steering committee, City staff and officials, County officials, USACE, KLJ

## Attendance

Sam Malenovsky, Miles City FPA  
Jeff Erlenbusch, Miles City City Council  
Ken Gardner, Miles City City Council  
Ally Capps, Miles City Planner  
Tom Speelman, Miles City Public Works  
Kevin Krause, Custer County Commissioner  
Jason Strouf, Custer County Commissioner


Greg Johnson, USACE  
Chris Fassero, USACE  
Terry Matuska, USACE  
Curtis Miller, USACE  
Jamie Prochno, USACE  
Joshua Porter, USACE  
Carl Jackson, KLJ  
Molly Herrington, KLJ

Sam Malenovsky called the meeting to order on December 10, 2018 at 9:30 am. Chris (USACE) provided an overview of the Section 205 program and Miles City's current status. Chris noted that existing conditions have been established, and the most likely project is levee/protection along the Tongue with selective, non-structural flood protection around critical facilities in the Yellowstone floodplain.

## Overview of Section 205 and Miles City's Status

- Cost share: 65% federal, 35% local
- The image below outlines the study area which includes both banks of Tongue to Yellowstone Rivers along both city and county property.

### STUDY AREA



- Miles City
- Tongue River (both banks) from upstream of Interstate 94 to the confluence
- Yellowstone River (right bank) from upstream of the water treatment plant to downstream of the wastewater treatment plant
- Study area could be expanded if additional issues or areas of interest are identified.

## Alternative Analysis and Selection

Through this workshop, the group will identify alternatives and potential solutions to Miles City's flood risk. Each selected alternative will need to have a positive benefit-cost ratio of 1.0 or greater (meaning that benefits are at least equal to costs). Selected alternatives will also be evaluated for economic feasibility against the National Economic Development plan (NED). The NED allows projects to be compared to projects across the United States to establish economic need and benefit.

The project that the USACE will be in alignment with the NED and will have a benefit-cost ratio of 1.0 or greater. If the community prefers a different alternative than what the USACE selects as the most economically feasible, there is an option for the community to request a locally preferred plan. If the locally preferred plan is selected over the NED alternative, the city would need to pay the difference. The locally preferred plan must also have a benefit cost ratio of 1.0 or greater.

## Additional Funding Opportunity

### [WIFIA](#) – Water Infrastructure Finance and Innovation Act

The WIFIA program accelerates investment in our nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects. WIFIA is managed through the EPA and offers low interest treasury-rate loans with 30-35 year term for up to 49% of project cost. Repayment terms can be flexible to make the annual payment more tolerable. Rates for communities with a very good credit rating can be as low as ½ - ¾% below market rate.

While WIFIA has not yet been extended to USACE project, there is a potential, that if extended, WIFIA funding could be leveraged without federalizing the project, which would allow the project sponsor to directly manage the implementation of the project. If WIFIA were to extend to USACE, projects done in conjunction with the USACE but have high costs or low benefit-cost ratios that would be challenging to get an appropriation for may be ideal candidates for funding. These could be projects that don't meet USACE criteria but work in tandem with a USACE project to deliver a complete solution.

## Alternative Discussion/Questions

- What is the possibility of doing a Section 205 for the Tongue and a Section 205 for the Yellowstone?  
USACE Response:
  - The Section 205 for the Tongue would need to be implemented before Yellowstone Section 205, so the Tongue does not cause more damages by acting as a wall holding water in if the Yellowstone were breached. Additionally, total damages from the Yellowstone flooding will most likely be less than total damages from the Tongue River flooding.
- Grant funding opportunities need to be identified and re-visited for impacted critical facilities such as waste water or water treatment plant to provide protection.
- Is there an option to relocate water treatment plant?
  - It was quickly determined that this would not be feasible due to the high cost to relocate facility (\$150M+).

- How will the Tongue Section 205 solution protect the people along the Yellowstone?
  - The project sponsor cannot depend on the USACE to pay for the entire project if the Section 205 is not feasible. It may be possible to stagger a second Section 205 to see if the Yellowstone protection project is feasible after the Tongue is completed.
  - Additionally, residents could consider non-structural protection measures (floodproofing, elevating properties, relocations, etc.). It is possible that these non-structural improvements for properties along the Yellowstone could be included in the current Section 205 focusing on the Tongue River.

**See alternatives charts below to see brainstorming session results.**

Tuesday – December 11, 2018

The group reconvened to vet through the alternatives identified in Monday's brainstorming session. **See Alternatives Chart below.** General discussion points not included in the alternatives chart is document below:

- Consider allowing the levee to trail off along the Yellowstone and then remove the berms around the old lagoons to facilitate water flowing out.
- The group's desire is to develop a levee where the top is not a road, rather a pedestrian trail or something similar. Small sections need to be made available for vehicles as access points, with the remainder reserved for pedestrians.
  - The group does not want a road on the levee crest due to the higher cost of a road, the increased additional levee length, and the additional maintenance required for a road.
- For any selected alternative, an interior drainage analysis will be completed to identify options for maintaining storm drainage service (i.e., ditch, slough, etc.). USACE design requirements drainage structures are very stringent.
- ERDC/USACE ice jam mitigation
- Tradeoffs with the levee alignments will take into account if the height and maintenance needs depending on if the levee was on the current alignment (closer to the river) or set back 100 feet. If you set the levee back, you can build it less high reducing the cost of the levee and the maintenance, but this would require additional properties to be acquired. If the levee can't be build less high by setting it back, it may not be worth impacting the additional properties.
- All alternatives are evaluated against the 2D modeling.
  - 1D model covers the river and the ice
  - 2D model takes output from the 1D model and models everything from the existing level to the north and east



# Alternatives to Consider

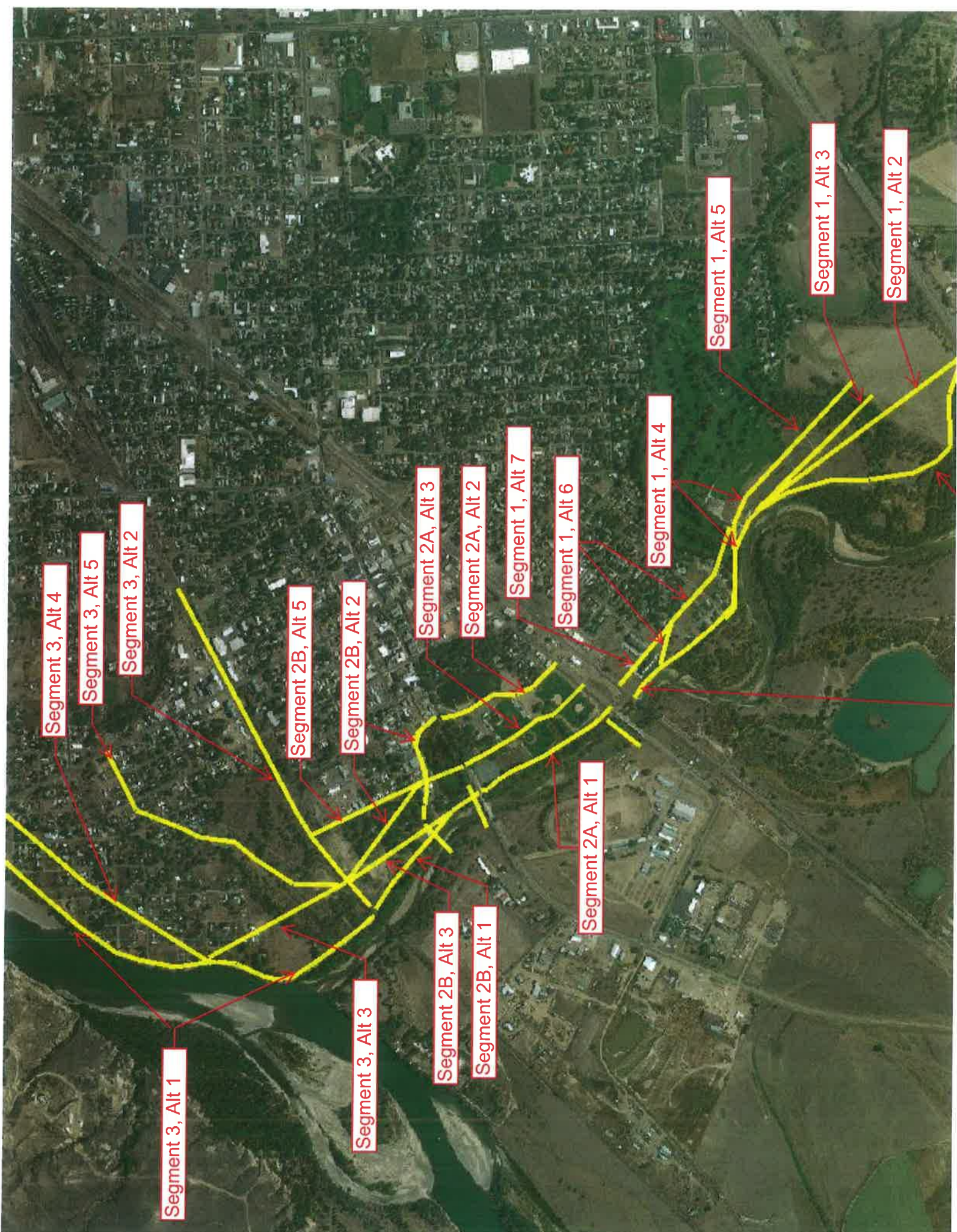
	Solution	Detail	Discussion	Screening Alternatives
1	2D mapping	<ul style="list-style-type: none"> <li>- Remap using the updated modeling and mapping (2D modeling techniques) for a more accurate representation of impacts</li> <li>- Breach modeling vs removing the whole levee, as well as fluctuating flows</li> </ul>	<ul style="list-style-type: none"> <li>- This will be done regardless as part of the Section 205 process</li> <li>- Does not reduce risk, but would pull properties out of the floodplain (reduced NFIP requirement)</li> <li>- Cost effective alternative, but may just address properties that already have LOMRs</li> <li>- Combine with another measure/alternative</li> </ul>	<p>Review</p> <p>Will be included with levee analysis</p>
2	Construction of a levee	<ul style="list-style-type: none"> <li>- Full length Tongue River right bank levee</li> <li>- Move the levee back from the river to allow great space for the river to flow (consider setbacks)</li> <li>- Consider using existing alignment</li> <li>- Consider alternative alignment</li> </ul>	<ul style="list-style-type: none"> <li>- Expensive, construction and O&amp;M</li> <li>- Provides protection</li> <li>- Reduces floodplain</li> <li>- Based on feasibility constraints we may consider option 9 (levee tie back)</li> </ul>	<p>Review</p> <p>Addressed in "levee segment alignments" tab</p>
3	Invisible floodwall	<ul style="list-style-type: none"> <li>- low wall with columns and removable wall panels to protect area during a flood event</li> <li>- Sheet pile below ground or t-wall to address seepage</li> </ul>	<ul style="list-style-type: none"> <li>- Combine with another measure/alternative (levee set back)</li> <li>- Could be part of a levee alignment if there were real estate constraints or areas where this makes more sense than a traditional levee</li> <li>- What are the design requirements with holding back ice jams rather than just water flow</li> </ul>	<p>Review</p> <p>Will be considered where appropriate in various levee segments</p>
4	Non-structural measures	<ul style="list-style-type: none"> <li>- structure elevation, relocations, acquisitions, flood-proofing, zoning changes</li> </ul>	<ul style="list-style-type: none"> <li>- Review critical facilities</li> <li>- Identify areas of town where people are interested in these types of solutions</li> <li>- Pull data from multi-hazard mitigation plan, structure inventory, etc.</li> <li>- Survey homeowners' levels of interest</li> <li>- How much does the physical location of the home matter to the owners? Open to new neighborhood?</li> <li>- See Freemont, NE as an example</li> </ul>	<p>Review</p> <p>Appropriate areas:</p> <ul style="list-style-type: none"> <li>- West bank of the Tongue</li> <li>- Reach 3</li> <li>- Critical Facilities - Water and Wastewater</li> <li>- Homes in the Hardesty Tracks (south of the interstate, west of the Aye Addition, just upstream of the project area)</li> <li>- Anticipate discussing non-structural measures at the October 2019 meeting</li> </ul>

5	Keeping the existing levee in place as a secondary level of protection	- Provide additional protection	Review	<ul style="list-style-type: none"> <li>- Existing levee materials could be reused to build the new levee. What is the salvage value.</li> <li>- There is limited/no intent to maintain the existing levee which could cause safety issues for those that use the levee as a road and increasing force of water against the new levee in the event of a failure.</li> <li>- Need to investigate what material from the existing levee can be reused.</li> <li>- If the current levee needs to be removed, how will it be disposed?</li> <li>- What if the levee could be built upon to and achieve certification; would be beneficial to use what currently exists vs building entirely new?</li> </ul>
6	Highly detailed geotechnical investigation and evaluation of current structures to try to achieve certification (all or part of the levee)	<ul style="list-style-type: none"> <li>- Would be unlikely due to unsuitable foundation conditions</li> <li>- If a detailed investigation was completed, there is a possibility that the amount of the levee that would need to be replaced could be limited</li> <li>- Add sheet piling to address foundation seepage</li> </ul>	<ul style="list-style-type: none"> <li>- Does USACE or FEMA certify?</li> <li>- Are the levees high enough to meet freeboard requirements? If not they will need to be modified.</li> <li>- Do you want the USACE involved in the accreditation since the design requirements of USACE exceeds FEMA's requirements (44CFR)?</li> <li>- Keep the existing levee as a buffer to the new levee for a second level of protection.</li> <li>- Review pending if formulated alignments align with the existing levee, can the existing levee be incorporated?</li> </ul>	<ul style="list-style-type: none"> <li>- In Tuesday's discussion, the group determined that the certification of the existing levee is not a viable option, but determine opportunity to reuse materials</li> <li>- will be evaluated as part of the current feasibility study.</li> </ul>
7	Ice trap	Force the ice jam to occur upstream in an area where the damages would be significantly less.	Review	<ul style="list-style-type: none"> <li>- Needs further information to discuss and determine viability</li> </ul>
8	Add "ice breakers" on or near bridges on the Yellowstone and Tongue	- reduce ice jams	Review	<ul style="list-style-type: none"> <li>- Needs further information to discuss and determine viability</li> <li>- Review options from ERDC/USACE presentation and feasibility in the Tongue River</li> </ul>
9	Diversion into old oxbow south of the interstate (south of Spotted Eagle Lake)	<ul style="list-style-type: none"> <li>- Limited storage capacity</li> <li>- Limited infrastructure impacts</li> <li>- Combination with another alternative</li> </ul>	No	Deemed not viable in Tuesday's discussion due to physical location and limited water capacity.

10	Levee set back from the confluence to old lagoons	- aid in managing ice jams - Confluence to bridge and then bridge to old lagoons	- On the Yellowstone - Hydraulically, would opening this area up to relieve pressure from the Tongue? - Would provide limited benefits. - Consider removing berms between old lagoon and river	No	Reviewed Tuesday - West side of the set back is being considered in the levee alignments, but with no levee construction anticipated to the east of the Yellowstone bridge to the lagoons, this is not feasible at this point. - If the city or county do something on their own or if another Section 205 is initiated for the Yellowstone, this should be reconsidered.  This was discussed in Tuesday's session.
11	Wide the river channel	- Widen in selected areas for a specific effect	- May increase the ice jam potential since it would catch on the bars - Design a bench - Combine with another measure/alternative (levee set back)	No	If a new levee is constructed, would the existing levee remain in place as a secondary level of protection, or would it be removed? If not removed, the river channel is not widened; if removed, widening could occur. - Perhaps this could take place at the confluence where there are fewer trees that would need to be removed.
12	Upstream dam on the Tongue river	Dry dam that would allow water to flow through normally, but when an event occurs could hold water	- Expensive - Off stream storage may be more effective - Will not mitigate runoff - Environmental concerns and permitting issues - Ongoing safety and O&M concerns	No	
13	Identify and create dry storage areas	- Use golf course and park area as a water storage location (old oxbow) - combine with dry dam upstream	- Feasibility could be challenging during peak flows in this area - Expensive construction and ongoing O&M - Should not be done in "high value" areas - Limited infrastructure impacts - Location may not be feasible due to the need of a diversion channel	No	
14	Use old lagoon site as off channel storage		- How much flow needs to be diverted? - 3,000 – 6,000 CFS - Limited infrastructure impacts - Limited storage capacity in lake - High value area - Concerns with state approvals	No	
15	Diversion into Spotted Eagle Lake			No	
16	Flood the fish hatchery during a flood event			No	

17	Use the slough as an overflow channel		<ul style="list-style-type: none"> <li>- would need to significantly increase capacity to create a meaningful impact</li> <li>- Limited real estate to expand</li> <li>- May cause complexities with internal drainage needs</li> <li>- Outfall of the slough is upstream of the likely ice jams</li> </ul>	No	
18	Diversion of the Tongue River before it gets to Miles City (East of Miles City)	<ul style="list-style-type: none"> <li>- Tongue irrigation ditch which is dry in the winter (T&amp;Y ditch)</li> <li>- starts at 12-Mile Dam</li> <li>- District separate from the county</li> </ul>	<ul style="list-style-type: none"> <li>- structurally diverting the river upstream may have an impact on the existing levee becoming certifiable</li> <li>- The diversion would lower the water level and allow for the appropriate amount of freeboard, but seepage concerns would still exist</li> <li>- What is the diversion capacity?</li> <li>- Cost prohibitive due to bridge replacement and land acquisition</li> </ul>	No	
19	Realign the Tongue River to the West		<ul style="list-style-type: none"> <li>- Too expensive</li> <li>- Environmental and permitting issues</li> </ul>	No	
20	Widen the confluence	<ul style="list-style-type: none"> <li>- Purchase property at the SW corner of the confluence to widen the confluence</li> </ul>	<ul style="list-style-type: none"> <li>- Could add additional pressure to the levee on the East side causing increased risk.</li> <li>- Benefit is likely not worth the risk to breaching the levee.</li> </ul>	No	
21	Dusting or blasting of ice jams	<ul style="list-style-type: none"> <li>- Ice cover and ice jams are dusted with fly ash to weaken the ice jams and reduce severity</li> <li>- on the Tongue and the Yellowstone</li> </ul>	<ul style="list-style-type: none"> <li>- need to have sun to allow dusting to work properly</li> <li>- Done in Nebraska</li> <li>- Incorporate in multi-hazard mitigation plan</li> <li>- would not impact flood boundary or risk, or lower NFIP costs</li> <li>- Silver Jackets project to increase knowledge of these techniques</li> </ul>	No	
22	Management plan/changes for Tongue River Reservoir and Big Horn River	<ul style="list-style-type: none"> <li>- Control the flows</li> </ul>	<ul style="list-style-type: none"> <li>- State in consolidation with the Northern Cheyenne Tribe operate the dam</li> <li>- Uncontrolled drainage areas (Pumpkin Creek)</li> <li>- Could unintentionally worsen conditions for Miles City or upstream</li> <li>- would not impact flood boundary or risk, or lower NFIP costs</li> <li>- High degree of uncertainty</li> </ul>	No	

23	Dredge the river(s)	Create a larger (wider/deeper) cross section to allow more conveyance in the river	<ul style="list-style-type: none"> <li>- Public has discussed dredging both</li> <li>- Maintenance dredging would be necessary</li> <li>- High initial and O&amp;M costs</li> <li>- Environmental and permitting issues</li> </ul>	No	
24	Line the channel	Smooth the channel for greater conveyance	<ul style="list-style-type: none"> <li>- Expensive</li> <li>- Environmental and permitting issues</li> <li>- High O&amp;M costs</li> </ul>	No	
25	Construction of a levee - Full length Tongue River right and left bank levee		<ul style="list-style-type: none"> <li>- High expense to address the flood risk on the left bank</li> <li>- Non-structural enhancements</li> </ul>	No	
26	Construction of a levee - Break levee at Pacific rail line as tie back	- other segments could be considered as well	<ul style="list-style-type: none"> <li>- Expensive</li> <li>- May be more difficult from a real estate and O&amp;M standpoint to break into sections</li> </ul>	No	
27	Relocation of Miles City or high-risk sections	- Reach 3	<ul style="list-style-type: none"> <li>- Captured under number 15, non-structural measures</li> <li>- expensive</li> </ul>	No	
28	Remove trees from the bridge to the Yellowstone River	<ul style="list-style-type: none"> <li>- allow for more area to flow and reduce ice jams</li> <li>- same idea as increasing set backs</li> <li>- remove trees along south side of the Yellowstone</li> </ul>	<ul style="list-style-type: none"> <li>- trees are currently on the wet side of the levee and are there to help protect the levee from ice jam damage; erosion is limited on the levee</li> <li>- sandbar at this point may be more of an issue for ice jams than the trees (provides protection to the bridge)</li> </ul>	No	
29	Lengthen the bridges on the Tongue	<ul style="list-style-type: none"> <li>- reduce ice jams</li> <li>- increase more capacity for ice to pass through</li> <li>- 2 railroad bridges and 2 road bridges</li> </ul>	<ul style="list-style-type: none"> <li>- Consider removing the Old Milwaukee bridge and relocating it for county use. This would reduce a barrier near the confluence.</li> <li>- Cost barrier to replace the other three bridges</li> <li>- Bridges are generally not an issue for holding up ice on the Tongue</li> <li>- High costs for limited impacts</li> </ul>	No	



## Levee Alternatives

## Notes

### Reach 1 (Segment 1)

Segment 1, Alt 1	Determine if the Homes in the Hardesty Tracks (south of the interstate, west of the Aye Addition, just upstream of the project area) is in the floodplain and if 2D mapping or non-structural accommodations could address the risk in this area. Possibility for a ring levee.	
Segment 1, Alt 1 Segment 1, Alt 2 Segment 1, Alt 3	Evaluate running the levee along existing alignment vs straight cutoff. The straight cut off to interstate would save 700 feet of levee.	
Segment 1, Alt 5	Start levee at the end of the Balsam Addition cul-de-sac.	
Segment 1, Alt 4	Meander cutoff/channel adjustment on the west side of the river across from the golf course.	
Segment 1, Alt 4	Floodwall along Miles Town Estates.	
Segment 1, Alt 4 Segment 1, Alt 6	Neu Vu Addition and Miles Town Estates - floodwall and non-structural enhancements to protect properties on wet side of the levee (Miles Town Estates).	
Segment 1, Alt 6 Segment 1, Alt 7	Riverview Apartments - discussion around relocating the structure to be parallel to Prairieview Apartments or building a floodwall on either the east or the west side of the building. Riverview is already a floodproofed structure.	
Segment 1, Alt 6 Segment 1, Alt 7	Will need to address closures or tying off the levee at the railroad tracks along Pacific Ave	

### Reach 2 (Segment 2)

Segment 2A, Alt 1	Ball parks - land is owned by the City and the Legion. 1. Align closest to the river (this would align with the existing levee and presently has some set back)  - 10-12" water main on along Pacific Ave (buried)	Review Alt 1
Segment 2A, Alt 2	2. Set back with the ballparks on the wet side of the levee (this option would impact parking and traffic flow during football and baseball seasons) - along Sloan Road/3rd Street	Alt 2 has too many concerns related to traffic flow, parking, closure structures, and real estate.
Segment 2A, Alt 3	3. Set back between ballparks	Review Alt 3
Segment 2A, Alt 4	4. Set back east of the oasis was considered, not shown on map	Alt 4 has too many concerns given utilities, water tower, oasis, real estate, and closure structures.
Segment 2B, Alt 1	Segment 2B - Main Ave to Old Milwaukee sub-alignment - Water mains (20", 14") and sewer force main (4") - 2 storm sewer lines to be accounted for in this section. On in the west corner of Cook Lake  1. Along exiting alignment	Cook Lake is very shallow and only holds intermittent water.
Segment 2B, Alt 2	2. Jogs on the east side of Cook like and then up through the KOA campground in treed area north of Cook Lake.	
Segment 2B, Alt 3	3. Connects to Segment 2A, Alt 1.	
Segment 2B, Alt 5	5. Connects to Segment 2A, Alt 3. Cuts through Cook Lake and KOA campground	*Missing Segment 2B, Alt 4 on map, numbering skips to Alt 5

**Reach 3 (Segment 3)**

Segment 3, Alt 1	1. Run the levee along the existing alignment and wrap around to 7th Street	
Segment 3, Alt 2	2. Run levee along the Old Milwaukee railroad (owned by Trans-cisco/TransCo)	Alt 2 would leave Reach 3 on the wet side of the levee
Segment 3, Alt 3	3. Trailing levee straight north of existing alignment running along with west of Cook Lake	Alt 3 affects approximately 300 homes and several businesses.
Segment 3, Alt 4	4. Run levee straight north of existing alignment running along with west of Cook Lake, then turning east when you meet the Yellowstone and run to the Yellowstone bridge. (combines segment 3, alt 3 with the addition of an eastern segment)	
Segment 3, Alt 5	5. Run levee across Old Milwaukee railroad and along the south side of the slough.	





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# CITY OF MILES CITY

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17 S. 8th, P.O. Box 910  
Miles City, MT 59301-0910

Telephone: 406-234-3462  
Fax: 406-234-2903

February 26, 2019

Senior Advisory Committee  
C/O MT DES  
1956 Mt. Majo Street  
Fort Harrison, MT 59636

Senior Advisory Committee Members:

The City of Miles City is in support of Custer County Department of Emergency Service's application for the Relocation and Replacement of the Law Enforcement and Fire Repeaters under the FY 2019 State Homeland Security Program grant.

This project of relocation and replace repeaters will improve radio transmissions communication between Law Enforcement, Fire, EMS, and dispatch. Currently there are some dead spots within the community where these first responders cannot communicate effective or efficiently with each other, or dispatch which is unsafe for the responders and the citizens. In the event of a terrorist attack, natural disaster, or other emergency event it is imperative that communication between law enforcement, responders, and jurisdiction officials is possible from any location that they are trying to serve and protect before, during, and after any incident.

For any questions regarding this letter of support please contact Bill Ellis at 406-874-3424 or [B.Ellis@co.custer.mt.us](mailto:B.Ellis@co.custer.mt.us)

Respectfully,

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John Hollowell, Mayor

---

Ken Gardner, Councilperson Ward I

---

Sue Galbraith, Councilperson Ward I

---

Rick Huber, Councilperson Ward II

---

John Uden, Councilperson Ward II

---

Brant Kassner, Councilperson Ward III

---

Kathy Wilcox, Councilperson Ward III

---

Dwayne Andrews, Councilperson Ward IV

---

Jeff Erlenbusch, Councilperson Ward IV

**COMMITTEE  
RECOMMENDATION**

Google Maps

1620 Main St

Recommendation # 1



Map data ©2019 Google 50 ft



1620 Main St

Miles City, MT 59301

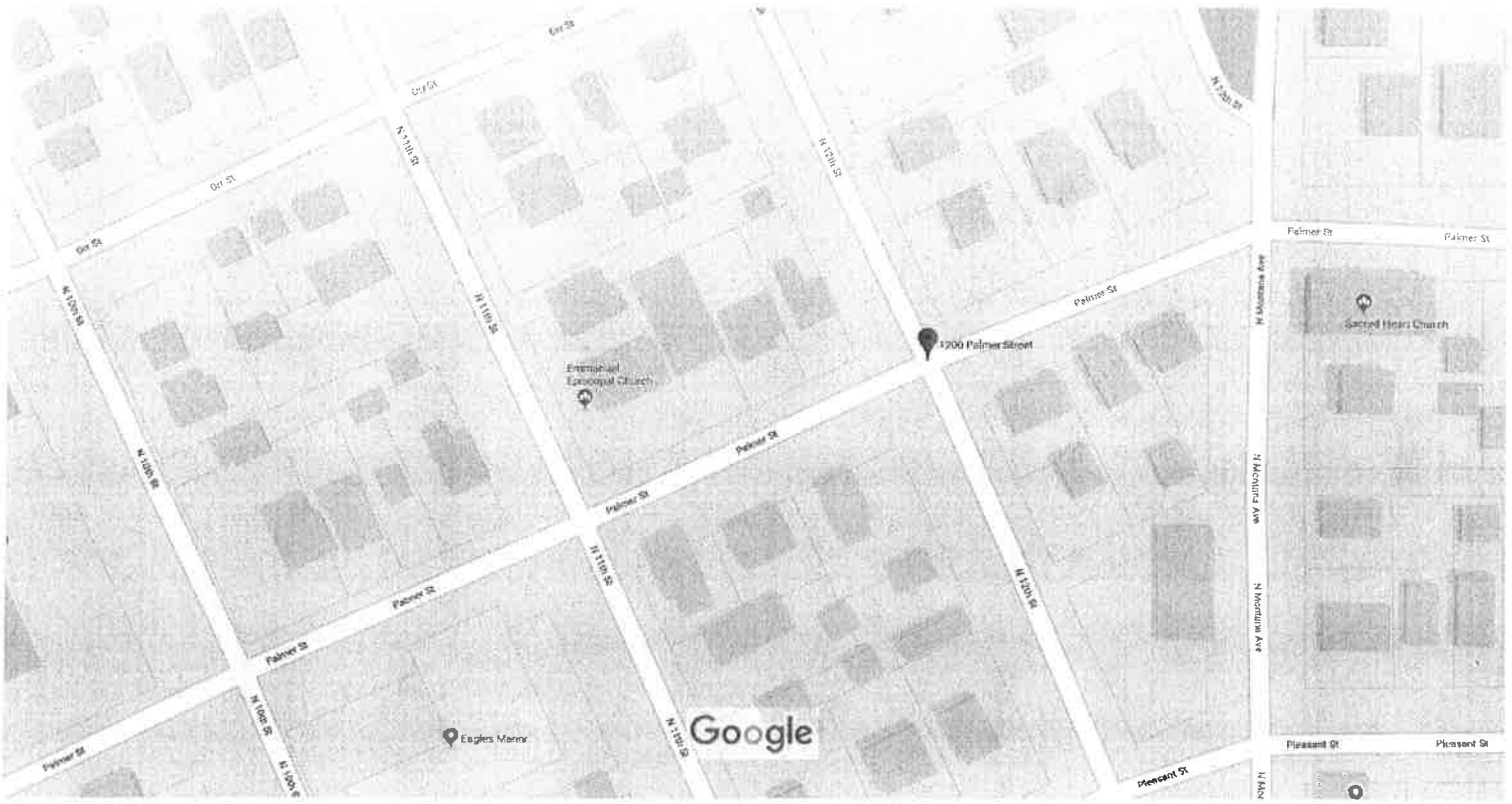
Photos





1200 Palmer St

Recommendation # 2



Map data ©2019 Google 50 ft



1200 Palmer St  
Miles City, MT 59301

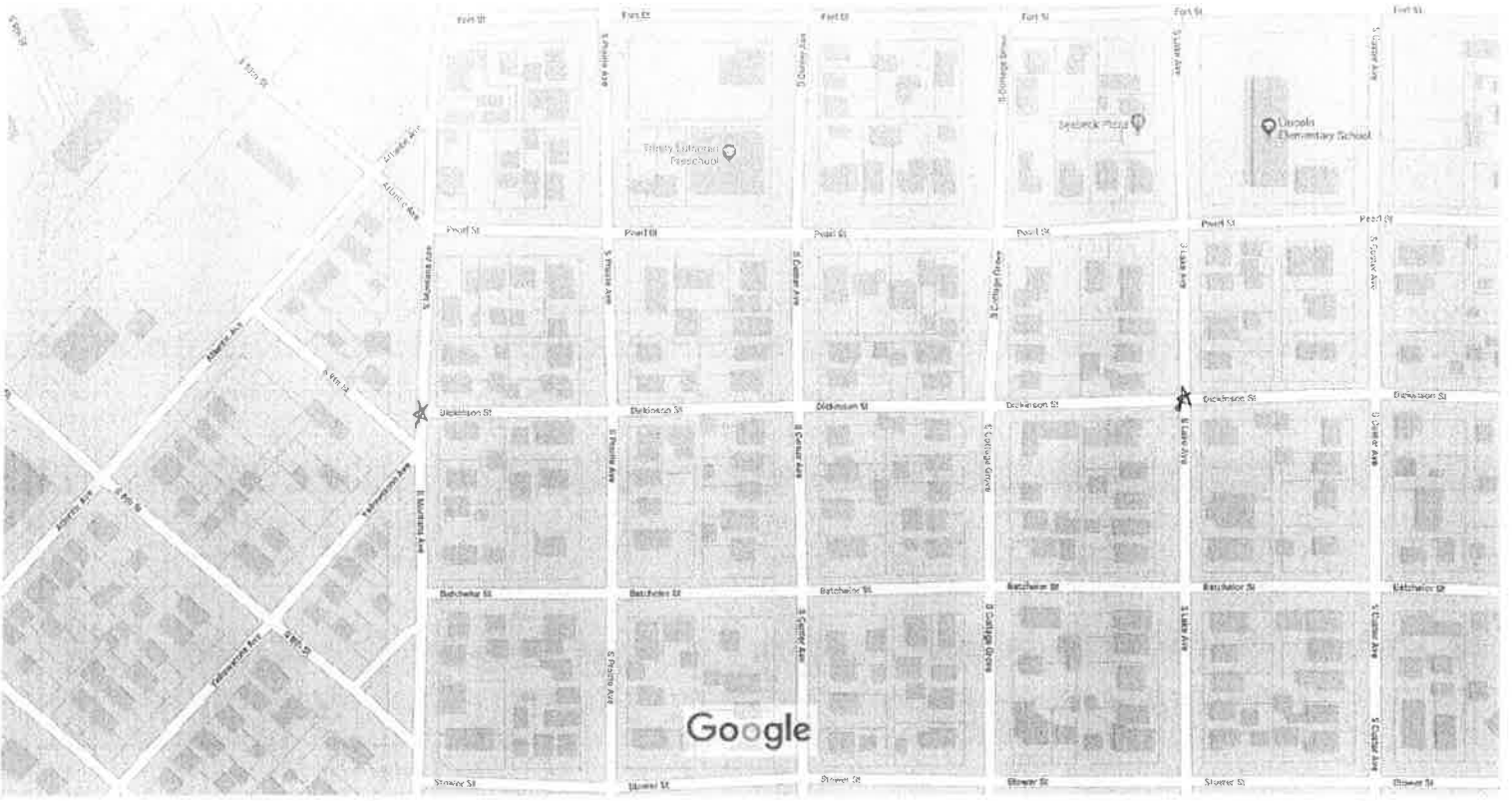
Photos



Google Maps

# Dickinson St

Recommendation # 3



Map data ©2019 Google 100 ft



Dickinson St  
Miles City, MT 59301

## Photos



**PUBLIC HEARING  
AND  
NEW BUSINESS**

APPEAL



Christopher B. Gray  
GRAY LAW OFFICE  
P.O. BOX 1065  
Bozeman, Montana 59771  
406-551-4511  
[cgray@cgraylaw.com](mailto:cgray@cgraylaw.com)

*ATTORNEY FOR ELLIS RENTALS, LLC*

**BEFORE THE CITY COUNCIL  
MILES CITY, MONTANA**

---

**NOTICE OF ADMINISTRATIVE APPEAL  
FROM A DECISION OF THE CITY FLOODPLAIN ADMINISTRATOR**

---

Ellis Rentals, LLC, through the undersigned counsel, appeals the December 21, 2018 decision of the Miles City, Montana Floodplain Administrator pursuant to Article 13 of the *Floodplain Hazard Management Regulations*, City of Miles City, Feb. 13, 2018 (FHMR). The December 21, 2018 decision of the Floodplain Administrator is attached (Decision).

Ellis Rentals, LLC as the applicant and an aggrieved party appeals the Decision on the basis that it is arbitrary, capricious and unlawful. The grounds of the appeal are a plain reading of the provisions of the FMHR, state and federal law and specific rulings of the Montana Supreme Court relevant to the replacement of mobile homes at the same site and within the same scope of use. The appeal is based on all of the information supplied to the Floodplain Administrator in Ellis

Rentals, LLC application submitted on September 24, 2018 and the supplemental application materials submitted on October 18 and 30, 2018 (collectively, Application).

The specific findings and conclusion appealed are as follows:

1. That part of the Decision denying the Application on the basis that it was to “replace an existing dwelling with a newer improved dwelling” requiring a flood plain permit. *Decision*, Conclusion 2.
2. The Decision did not address nor did the Floodplain Administrator schedule a hearing for that part of the Application requesting an “exception to the variance criteria” under the FMHR Section 12-59, Subsection 2-1 (44CFR60.6(a)).

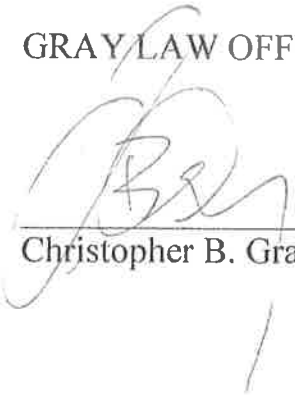
WHEREFORE, The City Council should:

1. AFFIRM that part of the Decision of the Floodplain Administrator which establishes *all of the elements* of the Westwood Mobile Home Park as an artificial obstructions and nonconforming use as set forth in Section 12-28.1 of the FHMR.
2. OVERTURN that part of the Decision that requires any mobile home replaced or repaired at its original site and within its original scope to obtain any additional permit from the Floodplain Administrator.

3. In the alternative, the City Council should PROCEED WITH A HEARING ON THE EXCEPTION to the variance criteria pursuant to Section 12-59, Subsection 2-1 of the FHMR and GRANT THE EXCEPTION with the conditions requested.

DATED this 8<sup>th</sup> day of January, 2019.

GRAY LAW OFFICE



---

Christopher B. Gray

\* \* \*

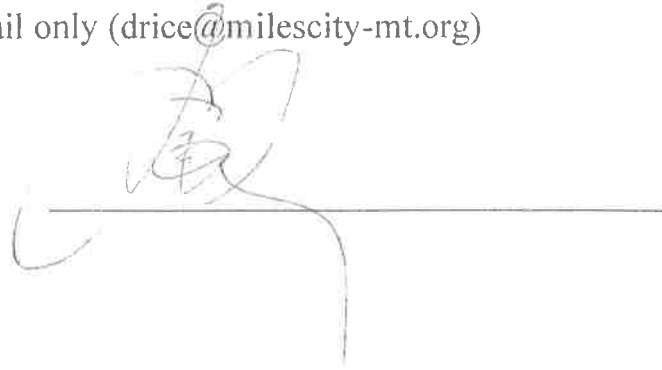
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following counsel of record, by the method indicated on 1/8/2019, addressed as follows:

Samantha Malenovsky  
Floodplain Administrator  
City of Miles City  
PO Box 910  
17 S. 8<sup>th</sup> Street  
Miles City, MT 59301

City Clerk  
City of Miles City  
PO Box 910  
17 S. 8<sup>th</sup> Street  
Miles City, MT 59301

Dan Rice  
City Attorney  
City of Miles City -- via email only (drice@milescity-mt.org)

A handwritten signature in blue ink is written over a solid horizontal line. The signature is stylized and appears to be the name 'Dan Rice'. The line extends across the width of the signature.

32

**City of Miles City  
STAFF REPORT-APPEAL  
Alberts Trailer Court- Paul Ellis  
Hearing date: February 26, 2019**

**APPEAL DESCRIPTION:**

This is a request for an appeal of the floodplain administrator's December 21, 2018 denial of a floodplain application dated September 26, 2018 requesting to replace existing mobile homes without elevating to the required regulations of Base Flood Elevation plus 2'.

Article 10, Section 12-52: **Residential building, exceptions or additional requirements** states that New construction, alterations, and substantial improvements of residential dwellings, manufactured home, including replacement of manufactured homes must be constructed such that

1. **Elevation of the Lowest Floor** The Lowest Floor of the building including an attached garage or basement must be two (2) feet or more above the Base Flood Elevation; (ARM 36.15.701(3))
2. **Enclosure** Enclosures of elevated buildings cannot be dry flood proofed. Use for an enclosure is limited to facilitating building component access. The enclosure including a crawlspace must be wet flood proofed and the enclosure floor must be at or above the Base Flood Elevation. An attached garage floor must be two (2) or more feet above the Base Flood Elevation;

For this reason the floodplain permit was denied and applicant then submitted an appeal.

**BACKGROUND:**

**A. Owner/Applicant:**

**Current:** Paul Ellis  
Ellis Rentals, LLC c/o Gray Law Office  
P.O. Box 1065  
Bozeman, Montana 59771  
(406) 551-4511

**B. Location:**

The property is located at 900 Alberts, Miles City, Montana and is further described as C.O.S. 45294, Tracts A & B, Env. 106, and M&B Tracts in the NESW & NWSE between Milwaukee & Burlington Northern Railroad Tracts, Miles City, Montana.

**C. Existing Land Use:**

A residential structure of approximately 900 square feet existed on a lot that was approximately 6,000 sq. ft. The property is currently zoned as Mobile Home—RV Park district, and is located within an established mobile home park.

Note: It was determined during the writing of this report that this park was developed in the 1970's. The Flood Insurance Study for Miles City was not completed until early 1980's. The property was not placed in an 'A' zone until the 2010 DFIRM took effect. Therefore, the structures were considered "Pre-FIRM" and the base flood elevation for the property would not have been identified at the time of original development.

**D. Adjacent Land Uses:**

Properties in the neighborhood are all mobile homes. There are residences located to the south and the old Milwaukee Railroad tracks are to the north.

**REVIEW AND FINDINGS OF FACT**

The request is submitted by Paul Ellis to obtain an appeal from the decision requiring elevations of all the structures contained with the Westwood Estates of Ellis Rentals, LLC as described in Section 12-52.1 of the Miles City Floodplain and Floodway Regulations. The information listed below was founded by another structure located in proximately of this structure (survey report attached):

Base Flood Elevation:	2357.5 feet
Lowest Elevation of surrounding area	approx. 2351.4 feet
Elevation difference from ground to lowest floor (as per regulations)	+8.1 feet

The appeal proposes to allow all structure within all of Westwood Estates to not have to be elevated per regulations.

**STAFF RECOMMENDATION:**

Deny the appeal on the basis that is defies State and Local regulations. By not elevating to the required regulations the community may lose Community Rating System (CRS) points or be removed from CRS, which provides discounted insurance rates to over 900 residents. The applicant has other alternatives as opposed to having to elevate to BFE +2' which will help the community remain in good standing within the National Flood Insurance Program and CRS.

The applicant also does not address how he plans on handling any plumbing, electrical, heating, and/or cooling fixtures, which also need to be elevated to BFE+2' as per Section 12-51.10,11, and 12.

NOTE: Section 12-65 states 'a decision on an appeal of a permit cannot grant or issue a variance.'



**CITY OF MILES CITY**  
**FLOODPLAIN APPEAL APPLICATION**

An appeal is a formal review of the Floodplain Administrator's order, decision to grant, condition or deny a floodplain permit or interpretation of the Regulated flood hazard Area boundary. An appeal may be submitted by a landowner or party affected by the order, the permit applicant, or any other party aggrieved by the issuance of a permit. Appeals must be received within 30 days of the date of the decision or order of the Floodplain Administrator. A decision on an appeal of a permit does not grant or issue a variance, this must be filled for separately.

**Section A: Owner Information**

Applicant Name: Ellis Rentals, LLC c/o Gray Law Office

Address PO Box 1065, Bozeman, Montana 59771 Phone 406-551-4511

Owner Name (if different from above) Please see original application package

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Section B: Property Information**

NAME OF STREAM or WATER BODY at project location: *Yellowstone River* Nearest Town: *Miles City, Montana*

*Westwood Mobile Home Park*

Address/Location: *Tracts A and B, COS 45294 and M&B Tracts in the NESW*

Geocode (if available): *14-1740-27-3-35-06-0000 and 14-1740-27-3-35-01-0000*

*SW 1/4, Section 27, Township 8N, Range 47E County Custer*

The proposed development is in the N/A Floodway N/A Flood Fringe N/A Floodplain with no elevation

The Base Flood Elevation (BFE) at the project site is: 2357.5<sup>1</sup>

The lowest adjacent grade of the property is: 2351.6<sup>2</sup>

The lowest floor of the proposed structure is: N/A

**Section C: Basis of Appeal and Supporting Information**

What action are you requesting-                     Modify the FPA Order

<sup>1</sup> BFE may vary throughout the Westwood Mobile Home Park

<sup>2</sup> Id.

Describe the information, data, and witnesses you will be presenting at the appeal hearing? Please see the entire application package on file with the Floodplain Administrator. Ellis Rentals' will also provide briefing materials for the benefit of the Council and public prior to (and in time to meet Montana public meeting law requirements) the set hearing in this appeal.

What portion of the application, permit, and/or regulations is applicable to the basis of this appeal request? Please see attached "Notice of Administrative Appeal from a Decision of the City Floodplain Administrator," dated January 8, 2019 and received by the City of Miles City before the time for appeal expired.

Applicant Signature [Signature] for Ellis Rentals, LLC

Date 2/4/2019 retroactive to 1/8/2019

OFFICE USE ONLY	
Date of Appeal Hearing: _____	Date complete appeal application submitted: _____
Date of Appeal Board Action: _____	
Action of Appeals – FPA’s Order: <input type="checkbox"/> Concur <input type="checkbox"/> Reject <input type="checkbox"/> Remain	
Notes/Conditions: _____	
_____	



Christopher B. Gray  
GRAY LAW OFFICE  
P.O. BOX 1065  
Bozeman, Montana 59771  
406-551-4511  
[cgray@cgraylaw.com](mailto:cgray@cgraylaw.com)

*ATTORNEY FOR ELLIS RENTALS, LLC*

**BEFORE THE CITY COUNCIL  
MILES CITY, MONTANA**

---

**NOTICE OF ADMINISTRATIVE APPEAL  
FROM A DECISION OF THE CITY FLOODPLAIN ADMINISTRATOR**

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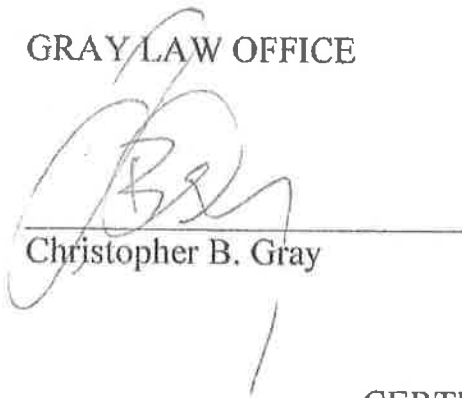
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DATED this 8<sup>th</sup> day of January, 2019.

GRAY LAW OFFICE



Christopher B. Gray

\* \* \*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following counsel of record, by the method indicated on 1/8/2019, addressed as follows:

Samantha Malenovsky  
Floodplain Administrator  
City of Miles City  
PO Box 910  
17 S. 8<sup>th</sup> Street  
Miles City, MT 59301

City Clerk  
City of Miles City  
PO Box 910  
17 S. 8<sup>th</sup> Street  
Miles City, MT 59301

Dan Rice  
City Attorney  
City of Miles City -- via email only (drice@milescity-mt.org)

A handwritten signature in black ink, appearing to be 'DRICE', is written over a horizontal line. The signature is stylized and somewhat cursive. The horizontal line extends to the right of the signature and then curves downwards at the end.



PUBLIC WORKS & UTILITIES  
DEPARTMENT



---

CITY OF MILES CITY

---

17 So. 8<sup>th</sup> Street  
P.O. Box 910  
Miles City, Montana 59301

Telephone: (406) 234-3193  
Fax: (406) 234-6392

December 21, 2018

Mr. Gray,

Your application on behalf of Ellis Rentals, Westwood Estates, for a Flood plain Development Permit is

**Denied.** The attached statement of facts and conclusions outlines the basis for the denial of your application.

Respectfully,

Samantha Malenovsky  
City of Miles City Flood Plain Administrator

Findings of Fact:

1. The purpose of the floodplain permitting process is to promote public health, safety and general welfare of the residents and minimize public and private losses due to flood conditions in the Regulated Flood Hazard Areas (RFHA) (Section 12-4 City of Miles City Floodplain Ordinance).
2. Article 2 Section 12-18 states:  
**Manufactured Home Park or Subdivision** – Includes the construction of facilities for servicing the manufactured home lots and at a minimum includes the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads. (44CFR 59.1)  
**Manufactured or Mobile Home** – A building that may be residential or non-residential, is transportable in one or more sections, built on a permanent chassis, and designed to be used with a permanent foundation when connected to the required utilities and includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days (ARM 36.15.101(15)).
3. Article 5, Section 12-24 states: Existing artificial obstruction or nonconforming uses established before land use regulations pursuant to Section 76-5-301, MCA were effective, are allowed without a permit. However, alteration or substantial improvement of an existing artificial obstruction or nonconforming use requires a floodplain permit. Maintenance of an existing artificial obstruction or nonconforming use does not require a floodplain permit if it does not cause an alteration or substantial improvement (MCA 76-5-404(3)).
4. Article 10 Section 12-52 states: Residential building, exceptions or additional requirements  
New construction, alterations, and substantial improvements of residential dwellings, manufactured homes, including replacement of manufactured homes must be constructed such that...
5. Manufactured Home Park or Subdivision was developed before 1980. Area has not increased in size and remains as a Manufactured Home Park or Subdivision.

Based upon the facts set forth above, the Flood Plain Administrator for the City of Miles City makes the following conclusions:

1. The Manufactured Home Park or Subdivision is pre-existing and allowable under the above listed facts as non-conforming. When a Manufactured or mobile home structures is replaced, altered, or substantially improved, it falls under the regulations that are in place at the time of the improvement.
2. This application is to replace an existing dwelling with a newer, improved dwelling and therefore requires a flood plain permit as stated above.

Therefore:

The Flood Plain Application is Denied.

You may request a variance based on this decision before the City Council. The Variance process is addressed in Section 12-56 through Section 12-61 of the City of Miles City Code of Ordinances Chapter 12.



PUBLIC WORKS & UTILITIES  
DEPARTMENT



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**CITY OF MILES CITY**

---

17 So. 8<sup>th</sup> Street  
P.O. Box 910  
Miles City, Montana 59301

Telephone: (406) 234-3493  
Fax: (406) 234-6392

**NOTICE FOR PUBLIC COMMENT**

**REQUEST FOR FLOODPLAIN APPEAL AND VARIANCE**

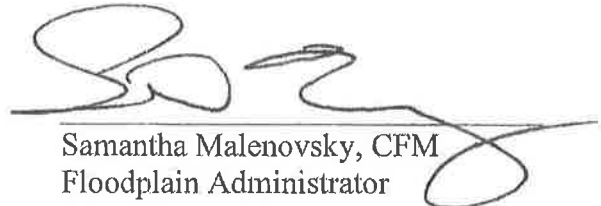
The City of Miles City Council has received the following Floodplain Appeal and Variance request:

An appeal and variance request has been made by Ellis Rentals for two lots in the 100-year floodplain. The site is located at 900 Albert Ave. lot # 37 & 47 and is legal described as section 27, Township 08N, Range 47E, Tract A & B, in the NESW & NWSE between Milwaukee and Burlington Northern RR in Miles City, Montana. The applicant is seeking an appeal to the floodplain administrator's decision and an exception to the variance criteria.

The site is currently mapped as an AE flood hazard zone with Base Flood Elevation given.

A more precise map and description of the proposal, appeal, and variance is available for review at City Hall, 17 South Eighth Street, Miles City, Montana. Written or oral comments concerning the above request should be directed to the Floodplain Administrator at the City of Miles City, PO Box 910, Miles City, MT 59301; or via phone: (406) 234-3493 or email: [smalenovsky@milescity-mt.org](mailto:smalenovsky@milescity-mt.org)

Comments will be received through Tuesday, February 26, 2019 until 5:00 p.m. The hearing will be held the same day at 6:00 p.m. in the City Hall Conference Room, 17 South Eighth Street, Miles City, MT 59301.



Samantha Malenovsky, CFM  
Floodplain Administrator  
City of Miles City



Ellis Rentals LLC.  
PO Box 3486  
Bozeman, MT 59772-3486

Diane Grutkowski  
818 N. Lake Ave.  
Miles City, MT 59301-2631

Trinity Railcar Repair Inc.  
200 N. La Salle St. Ste. 1550  
Chicago, IL 60601-1034

Myron & Arlene Lindberg  
900 Albert Dr.  
Miles City, MT 59301-2238

Mary Jo Kramer  
900 Albert Dr. Trlr 22  
Miles City, MT 59301-2236

Marvin Starck  
811 N. Merriam Ave.  
Miles City, MT 59301-2721

Jeanne & Michael Huston  
801 N. Merriam Ave.  
Miles City, MT 59301-2721

Alec Kiltie  
814 N. Jordan Ave.  
Miles City, MT 59301-2719

David & Ronda Worlie  
808 N. Jordan Ave.  
Miles City, MT 59301-2719

Wade Camp  
811 N. Jordan Ave.  
Miles City, MT 59301-2718

Kevin Johnsgard  
809 N. Jordan Ave.  
Miles City, MT 59301-2718

Robert & Marilyn Dickson  
816 N. Custer Ave.  
Miles City, MT 59301-2708

Jeremy & Marcy Stradley  
63 Prima Vista Dr.  
Miles City, MT 59301-8722

Sheila Capek  
817 N. Custer Ave.  
Miles City, MT 59301-2707

Thomas & Janet Beyl  
811 N. Custer Ave.  
Miles City, MT 59301-2707

Guy Lund  
807 N. Custer Ave.  
Miles City, Mt 59301-2707

Quinton Crow  
501 S. Jordan Ave.  
Miles City, MT 59301-4812

Austin & Harmony Lott  
813 N. Lake Ave.  
Miles City, MT 59301-2630

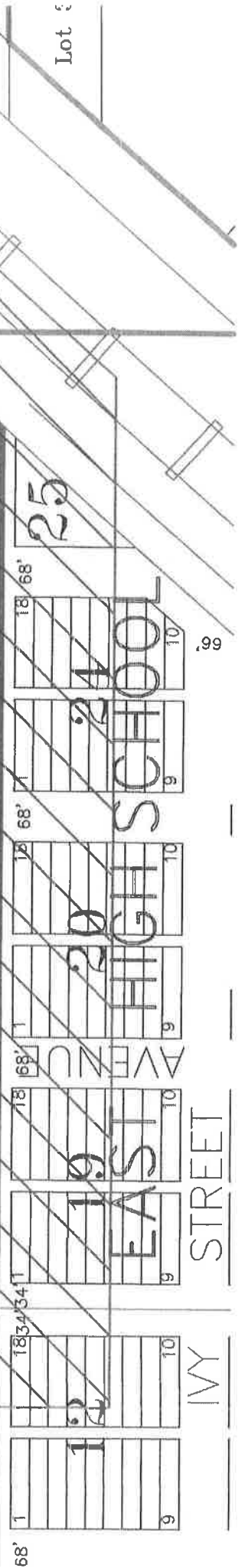
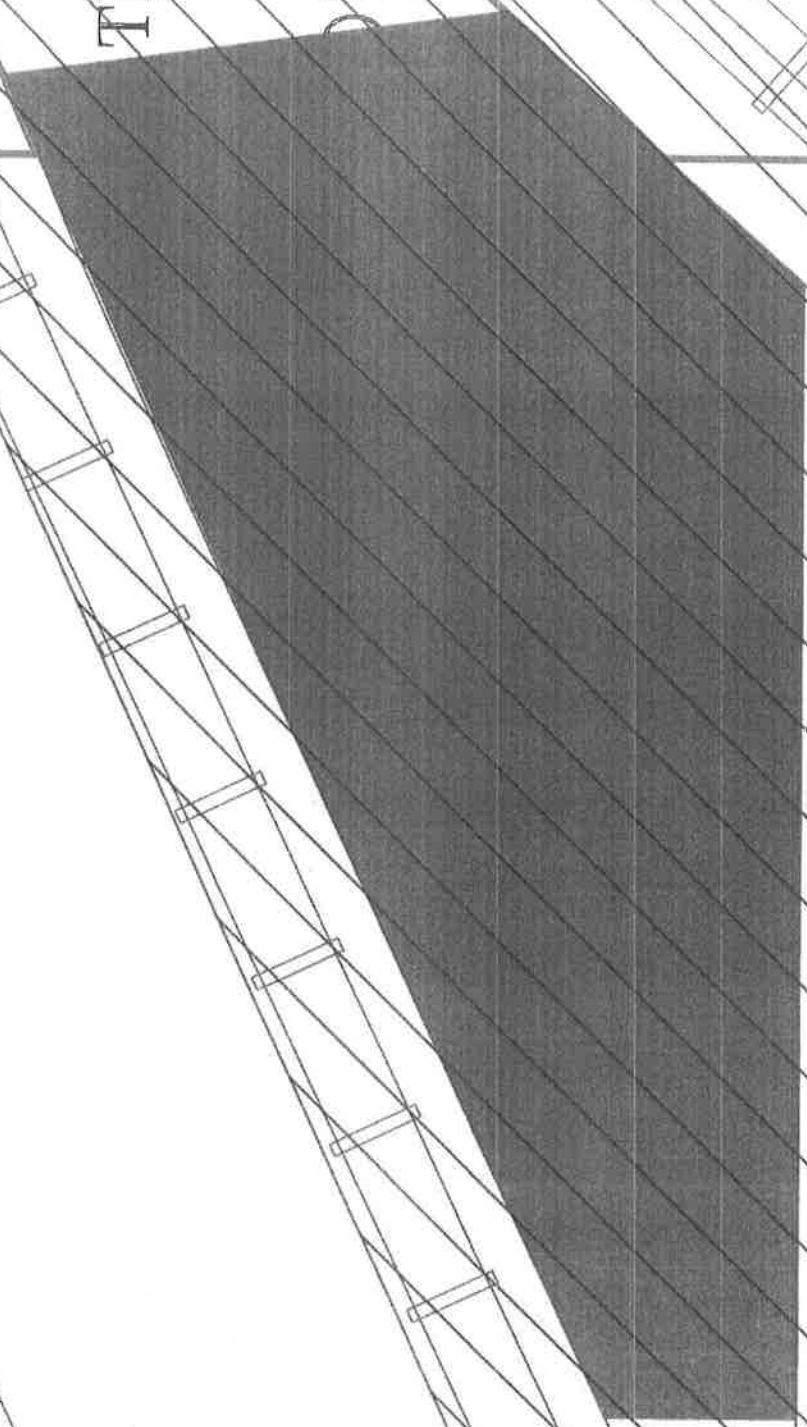
Alyce Jerrel  
809 N. Lake Ave.  
Miles City, MT 59301-2630

Gina Wolff  
805 N. Lake Ave.  
Miles City, MT 59301-2830

GRC  
10  
STREET  
1  
COTTAGE  
10

10  
19  
21  
9  
15  
33

TRACT A  
ON



68' 1  
12  
9  
10

18  
34  
11  
9  
10

68' 1  
18  
9  
10

68' 1  
18  
9  
10

18  
68' 1  
25  
10

1  
Lot 1

IVY STREET

EAST STREET

AVENUE

HIGH SCHOOL

.99

Revised: 6/5/15 (310 form 270). Form may be downloaded from: [www.dnr.mt.gov/licenses-and-permits/stream-permitting](http://www.dnr.mt.gov/licenses-and-permits/stream-permitting)

AGENCY USE ONLY: Application # 260918 Date Received 9-26-18  
Date Accepted \_\_\_\_\_ / Initials \_\_\_\_\_ Date Forwarded to DFWP \_\_\_\_\_

This space is for all Department of Transportation and SPA 124 permits (government projects).

Project Name \_\_\_\_\_  
Control Number \_\_\_\_\_ Contract letting date \_\_\_\_\_  
MEPA/NEPA Compliance  Yes  No If yes, #14 of this application does not apply.

### JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES

Use this form to apply for one or all local, state, or federal permits listed below. The applicant is the responsible party for the project and the point of contact unless otherwise designated. "Information for Applicant" includes agency contacts and instructions for completing this application. To avoid delays, submit all required information, including a project site map and drawings. Incomplete applications will result in the delay of the application process. Other laws may apply.

**The applicant is responsible for obtaining all necessary permits and landowner permission before beginning work.**

✓	PERMIT	AGENCY	FEE
	310 Permit	Local Conservation District	No fee
	SPA 124 Permit	Department of Fish, Wildlife and Parks	No fee
x	Floodplain Permit	Local Floodplain Administrator	Varies by city/county (\$25 - \$500+)
	Section 404 Permit, Section 10 Permit	U. S. Army Corps of Engineers	Varies (\$0 - \$100)
	318 Authorization 401 Certification	Department of Environmental Quality	\$250 (318); \$400 - \$20,000 (401)
	Navigable Rivers Land Use License, Lease, or Easement	Department of Natural Resources and Conservation, Trust Lands Management Division	\$50, plus additional fee

#### A. APPLICANT INFORMATION

NAME OF APPLICANT (person responsible for project): **Ellis Rentals, LLC**

Has the landowner consented to this project?  Yes  No

Mailing Address: **PO BOX 3486, BOZEMAN, Montana, 59772**

Physical Address: \_\_\_\_\_

Day Phone: **406-581-2717** Evening Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

NAME OF LANDOWNER (if different from applicant): same

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Day Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

NAME OF CONTRACTOR/AGENT (if one is used): **Gray Law Office**

Mailing Address: **PO Box 1065, Bozeman, MT 59715**

Physical Address: \_\_\_\_\_

Day Phone: **406-551-4511** Evening Phone: \_\_\_\_\_ E-Mail: **cgray@cgraylaw.com**

#### B. PROJECT SITE INFORMATION

NAME OF STREAM or WATER BODY at project location: **Yellowstone River** Nearest Town: **Miles City, Montana**

**Westwood Mobile Home Park**

Address/Location: **Tracts A and B, COS 45294 and M&B Tracts in the NESW**

Geocode (if available): **14-1740-27-3-35-06-0000 and 14-1740-27-3-35-01-0000**

**SW 1/4, Section 27, Township 8N, Range 47E County Custer**

Longitude \_\_\_\_\_, Latitude \_\_\_\_\_

The state owns the beds of certain state navigable waterways. Is this a state navigable waterway? Yes or No. If yes, send copy of this application to appropriate DNRC land office – see Information for Applicant.

**ATTACH A PROJECT SITE MAP OR A SKETCH** that includes: 1) the water body where the project will take place, roads, tributaries, landmarks; 2) a circled "X" representing the exact project location. IF NOT CLEARLY STATED ON THE MAP OR SKETCH, **PROVIDE WRITTEN DIRECTIONS TO THE SITE.**

**C. PROJECT INFORMATION**

**1. TYPE OF PROJECT** (check all that apply)

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Bridge/Culvert/Ford Construction | <input type="checkbox"/> Fish Habitat  | <input type="checkbox"/> Mining            |
| <input type="checkbox"/> Bridge/Culvert/Ford Removal      | <input type="checkbox"/> Recreation (docks, marinas, etc.)                       | <input type="checkbox"/> Dredging          |
| <input type="checkbox"/> Road Construction/Maintenance    | <input type="checkbox"/> New Residential Structure                               | <input type="checkbox"/> Core Drill        |
| <input type="checkbox"/> Bank Stabilization/Alteration    | <input type="checkbox"/> Manufactured Home                                       | <input type="checkbox"/> Placement of Fill |
| <input type="checkbox"/> Flood Protection                 | <input type="checkbox"/> Improvement to Existing Structure                       | <input type="checkbox"/> Diversion Dam     |
| <input type="checkbox"/> Channel Alteration               | <input type="checkbox"/> Commercial Structure                                    | <input type="checkbox"/> Utilities         |
| <input type="checkbox"/> Irrigation Structure             | <input type="checkbox"/> Wetland Alteration                                      | <input type="checkbox"/> Pond              |
| <input type="checkbox"/> Water Well/Cistern               | <input type="checkbox"/> Temporary Construction Access                           | <input type="checkbox"/> Debris Removal    |
| <input type="checkbox"/> Excavation/Pit                   | xx Other: <i>Establishment of Artificial Obstructions and Non-conforming use</i> |  |

**2. PLAN OR DRAWING** of the proposed project **MUST** be attached. **This plan or drawing must include:**

- a plan view (looking at the project from above)
- dimensions of the project (height, width, depth in feet)
- location of storage or stockpile materials
- drainage facilities
- an arrow indicating north
- a cross section or profile view
- an elevation view
- dimensions and location of fill or excavation sites
- location of existing or proposed structures, such as buildings, utilities, roads, or bridges

**3. IS THIS APPLICATION FOR** an annual maintenance permit?  Yes  No  
(If yes, an annual plan of operation must be attached to this application – see "Information for Applicant")

**4. PROPOSED CONSTRUCTION DATE.** Include a project timeline. Start date \_\_\_\_/\_\_\_\_/\_\_\_\_  
Finish date \_\_\_\_/\_\_\_\_/\_\_\_\_ Is any portion of the work already completed?  Yes  No  
(If yes, describe the completed work.)

n/a

**5. WHAT IS THE PURPOSE** of the proposed project? *Establishment of artificial obstructions and non-conforming use within the Regulated Flood Hazard Area. Please see attached.*

**6. PROVIDE A BRIEF DESCRIPTION** of the proposed project. *Establishment of artificial obstructions and non-conforming use within the Regulated Flood Hazard Area. Please see attached.*

**7. WHAT IS THE CURRENT CONDITION** of the proposed project site? Describe the existing bank condition, bank slope, height, nearby structures, and wetlands.

*As indicated in the Exhibits A and B 1-8 attached.*

**8. PROJECT DIMENSIONS.** How many linear feet of bank will be impacted? How far will the proposed project encroach into and extend away from the water body?

*None.*

9. **VEGETATION.** Describe the vegetation present on site. How much vegetation will be disturbed or covered with fill material during project installation? (Agencies require that only vegetation necessary to do the work be removed.) Describe the revegetation plan for all disturbed areas of the project site in detail.

*n/a*

10. **MATERIALS.** Describe the materials proposed to be used. Note: This may be modified during the permitting process. It is recommended you do not purchase material until all permits are issued.

Cubic yards/Linear feet

Size and Type

Source

*n/a*

11. **EQUIPMENT.** List all equipment that will be used for construction of the project. How will the equipment be used on the bank and/or in the water? Note: Make sure equipment is clean and free of weeds, weed seeds, and excess grease before using it in the water waterway. To prevent the spread of aquatic invasive species, to the extent practical, remove mud and aquatic plants from heavy machinery and other equipment before moving between waters and work sites, especially in waters known to be infested with aquatic invasive species. Drain water from machinery and let dry before moving to another location.

*n/a*

12. **DESCRIBE PLANNED EFFORTS TO MINIMIZE PROJECT IMPACTS.** Consider the impacts of the proposed project, even if temporary. What efforts will be taken to:

*n/a to all factors below*

- Minimize erosion, sedimentation, or turbidity?
- Minimize stream channel alterations?
- Minimize effects to stream flow or water quality caused by materials used or removal of ground cover?
- Minimize effects on fish and aquatic habitat?
- Minimize risks of flooding or erosion problems upstream and downstream?
- Minimize vegetation disturbance, protect existing vegetation, and control weeds?

13. **WHAT ARE THE NATURAL RESOURCE BENEFITS** of the proposed project?

*n/a*

14. LIST ALTERNATIVES to the proposed project. Why was the proposed alternative selected?

*n/a*

**D. ADDITIONAL INFORMATION FOR SECTION 404, SECTION 10, AND FLOODPLAIN PERMITS ONLY.**

If applying for a Section 404 or Section 10 permit, fill out questions 1-3. If applying for a floodplain permit, fill out questions 3-6. (Additional information is required for floodplain permits – See “Information for Applicant.”)

1. Will the project involve placement of dredged (excavated) and/or fill material below the ordinary high water mark, in a wetland, or other waters of the US? If yes, what is the surface area to be filled? How many cubic yards of fill material will be used? Note: Wetland delineations are required if wetlands are affected.

*n/a*

2. Description of avoidance, mitigation, and compensation (see Information for Applicant). Attach additional sheets if necessary.

*n/a*

3. List the names and address of landowners adjacent to the project site. This includes properties adjacent to and across from the project site. (Some floodplain communities require certified adjoining landowner lists).

*As previously provided in former application*

4. List all applicable local, state, and federal permits and indicate whether they were issued, waived, denied, or pending. Note: All required local, state, and federal permits, or proof of waiver must be issued prior to the issuance of a floodplain permit.

*Building Permit from City of Miles City*

5. Floodplain Map Number: *30017C0662D*

6. Does this project comply with local planning or zoning regulations?  Yes  No

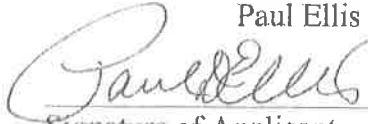
**E. SIGNATURES/AUTHORIZATIONS -- Each agency must have original signatures signed in blue ink.**

**After completing the form**, make the required number of copies and **then sign each copy**. Send the copies with original signatures and additional information required directly to each applicable agency.

The statements contained in this application are true and correct. The applicant possess' the authority to undertake the work described herein or is acting as the duly authorized agent of the landowner. The applicant understands that the granting of a permit does not include landowner permission to access land or construct a project. Inspections of the project site after notice by inspection authorities are hereby authorized.

APPLICANT (Person responsible for project):

Print Name: Ellis Rentals, LLC  
Paul Ellis

  
Signature of Applicant

9/21/2018  
Date

LANDOWNER:


Print Name: Ellis Rentals, LLC  
Paul Ellis, Manager

  
Signature of Landowner

9/21/2018  
Date

\*CONTRACTOR/AGENT:

Print Name: Gray Law Office, Christopher B. Gray

  
Signature of Contractor/Agent

9/21/2018  
Date

\*Contact agency to determine if contractor signature is required.

which predate the FHMR, are identified by photographic means in Exhibit A and through copies of submittals to Custer County, Montana dating back to 1980 which are included in Exhibit B 1-8 (full size representations available upon request) to the Application. The Park and all of its constituent parts, including the ability to use a lot to place an appropriately sized mobile home, are all “artificial obstructions” and “nonconforming uses” as defined in the FHMR.

The Application is made exclusively for establishment of the artificial obstructions and nonconforming use as set forth in Section 12-28.1. of the FHMR. No other permits are necessary in accordance with Art. 5, Section 12-24, FHMR as long as no “alteration” or “substantial improvement” is made. Maintenance of an existing artificial obstruction or nonconforming use does not require a permit under any provision of the FHMR. Art. 5, Section 12-24, FHMR. Because the Park and its artificial obstructions and nonconforming uses are only being established under this Application and no new construction, substantial improvements or alterations are being completed, no permits are required under Article 10 of the FHMR.

The Application is an affirmation of the status quo. That is, the operation of the real property as a location where mobile homes are used as residences and where such mobile homes are used, repaired and replaced. For over thirty years that use has been consistent where residents or the owner of the Park repair, remove and replace mobile homes on and off the lots at the site locations set forth in Exhibits A and B. Ellis Rentals, LLC does not seek to expand or increase the volume of the artificial obstructions or nonconforming uses, just to sustain its vested property rights and to operate the Park as it has been for a long time before the establishment of the FHMR.

It is settled, bright line law in Montana that land use regulations, such as the FHMR, will not be enforced against owners of land which have a vested right for mobile home uses which are continuously used as such even though the mobile homes are repaired, removed and replaced. *Kensmoe v. City of Missoula* (1971) 156 Mont. 401, 480 P.2d 835; *See, Russell v. Flathead County* 2003 MT 867, ¶¶42-44, 314 Mont. 26.

The Application is for an administrative establishment of Ellis Rental’s vested rights to all of the artificial obstructions and nonconforming uses in the Park and to confirm its right to the “precise pre-existing, nonconforming use” when it repairs and replaces mobile homes on established lots “with a newer trailer home.” *Russell* at ¶44. If and when the purpose or volume



of the use of the individual lots in the Park as mobile home sites is changed or expanded, then the time will come for the additional permitting requirements of the FHMR.

In sum, the Application is to establish the following “artificial obstructions” and “nonconforming uses” as defined in the FHMR for the Park and as depicted in Exhibits A and B 1-8, including:

- 1) All property, equipment, material, development, conduit, culvert, building or improvements contained in the Park including the lots with mobile home site footprints, buildings, roads, potable water lines and sewer lines.
- 2) The nonconforming use of 70 lots to locate mobile homes fixing the site, size and scope of where any mobile home, either existing, repaired or replaced can be located.

The Application is not for a permit to alter, make substantial improvements to or for replacement of any dwellings or mobile homes. That type of permit is not necessary under the FHMR as written. The Application is to fix in time and establish the artificial obstructions and nonconforming uses maintained and conducted in the Park. Ellis Rentals, LLC has vested property rights to do so which can be utilized consistently and continuously as established in accordance with Montana law and within a reasonable interpretation of the FHMR.

163

SURVEY REPORT

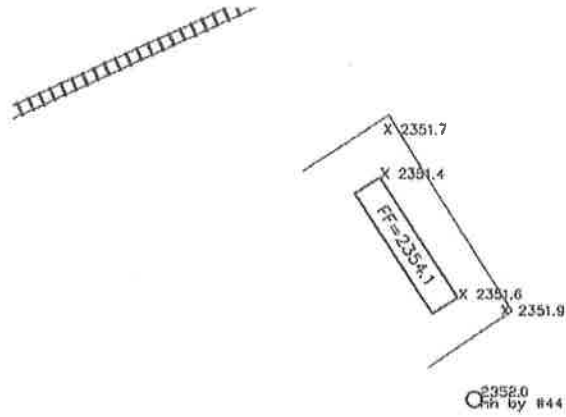
I, Quinn Wright PLS, a duly licensed land surveyor, hereby certify that I have personally examined the survey, by personnel under my supervision, which determined the elevations of the parcel of land in Miles City, Custer County, State of Montana.

Described as follows: Albert Traller Court # 44

For: David Olguin

Purpose: To determine the elevation above mean sea level (NAVD 1988)

Sketch of elevations determined:



DOWL HKM 713 PLEASANT P.O. BOX 1516 MILES CITY, MT 59301 406-234-6666 406-234-7066 (FAX) DOWLHKM.DDM



No Scale

NOTE: THIS IS NOT A BOUNDARY SURVEY

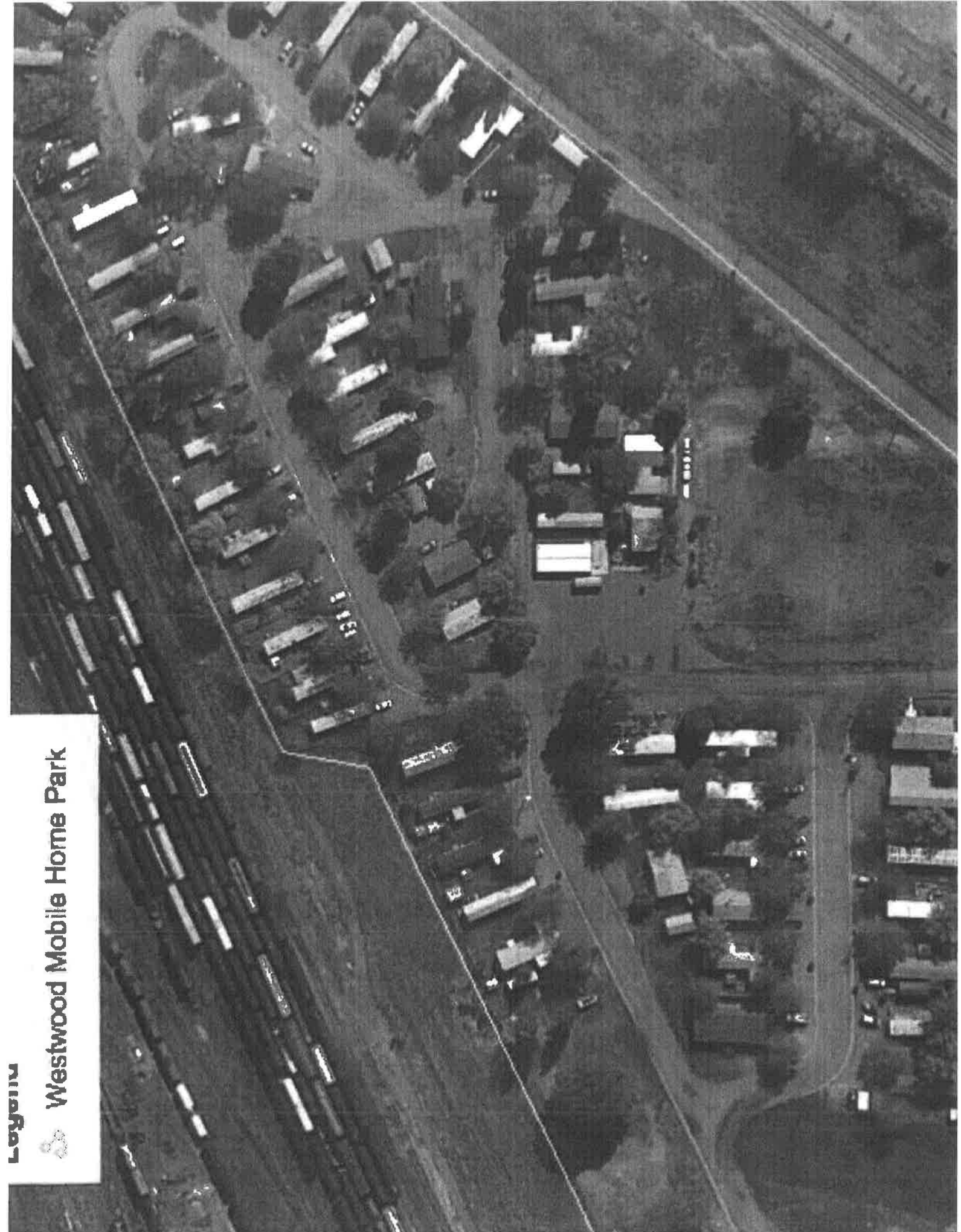
FLOOD PROFILE  
TONGUE RIVER SPLIT 2A  
BFE = 2357.5'



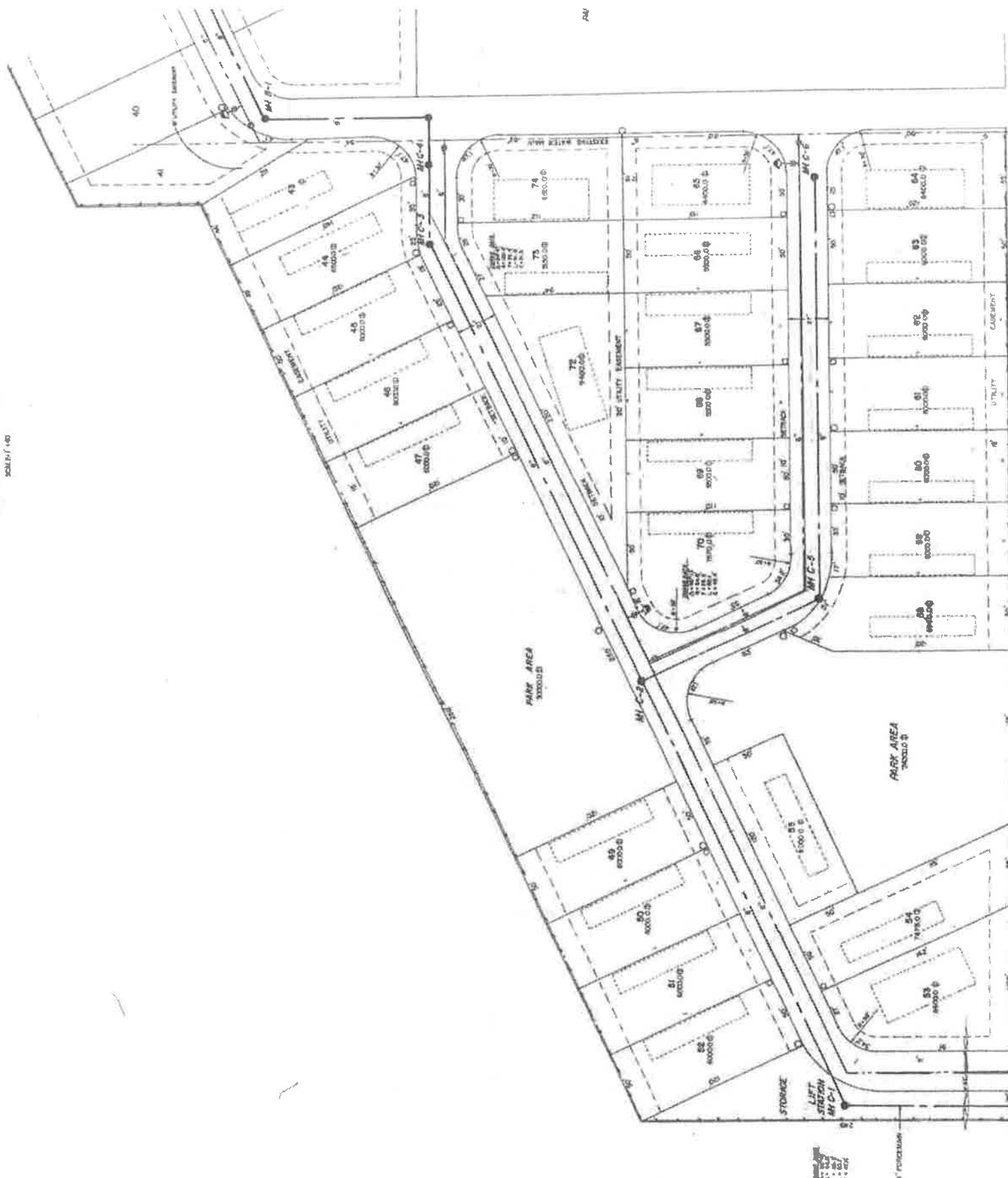
**DOWL HKM**  
713 PLEASANT  
P.O. BOX 1516  
MILES CITY, MT 59301  
406-234-6666  
406-234-7066 (FAX)  
DOWLHKM.DDM

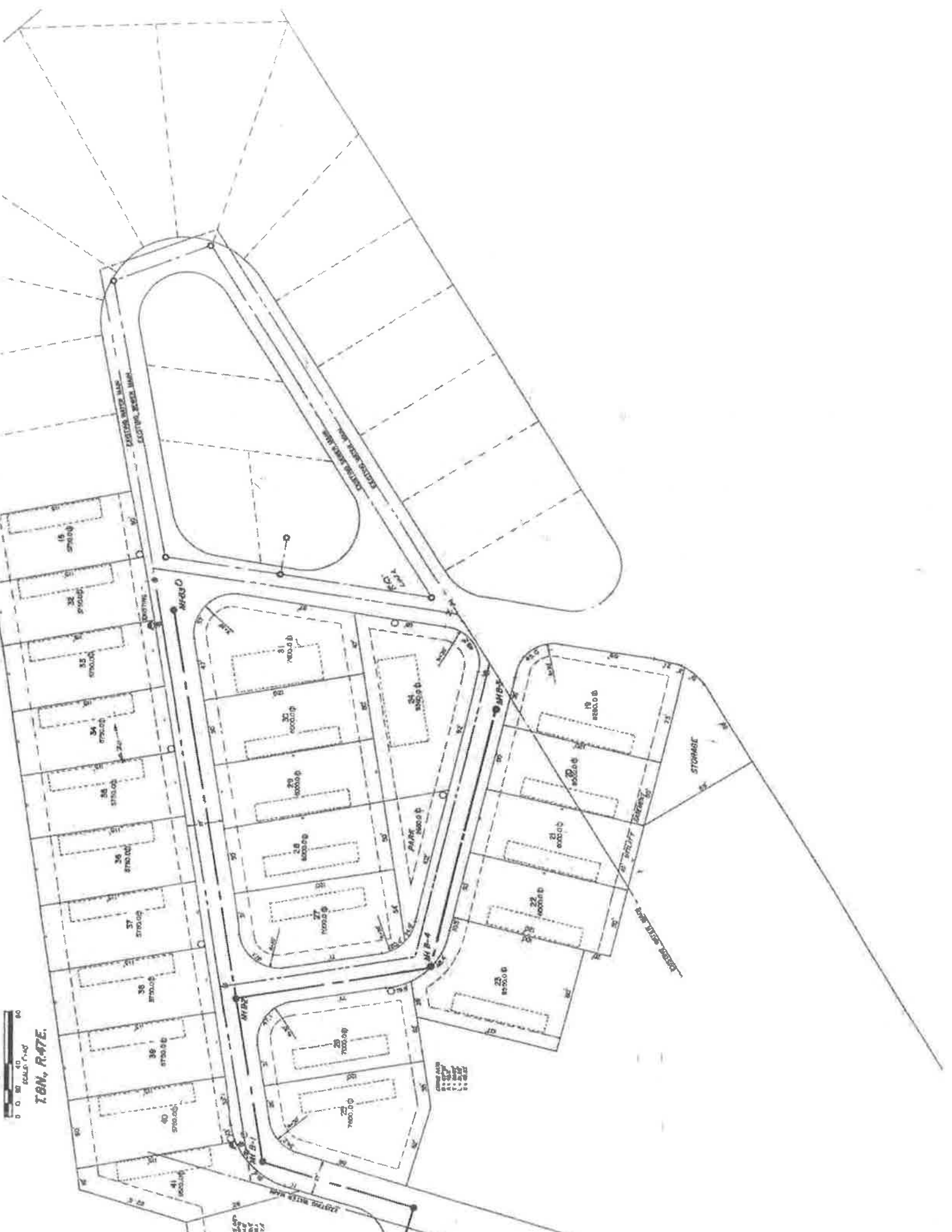


*Quinn W. Wright*  
QUINN W. WRIGHT PLS  
Montana Reg. No 9334LS  
5/8/2012



# EXHIBITS B 1-8

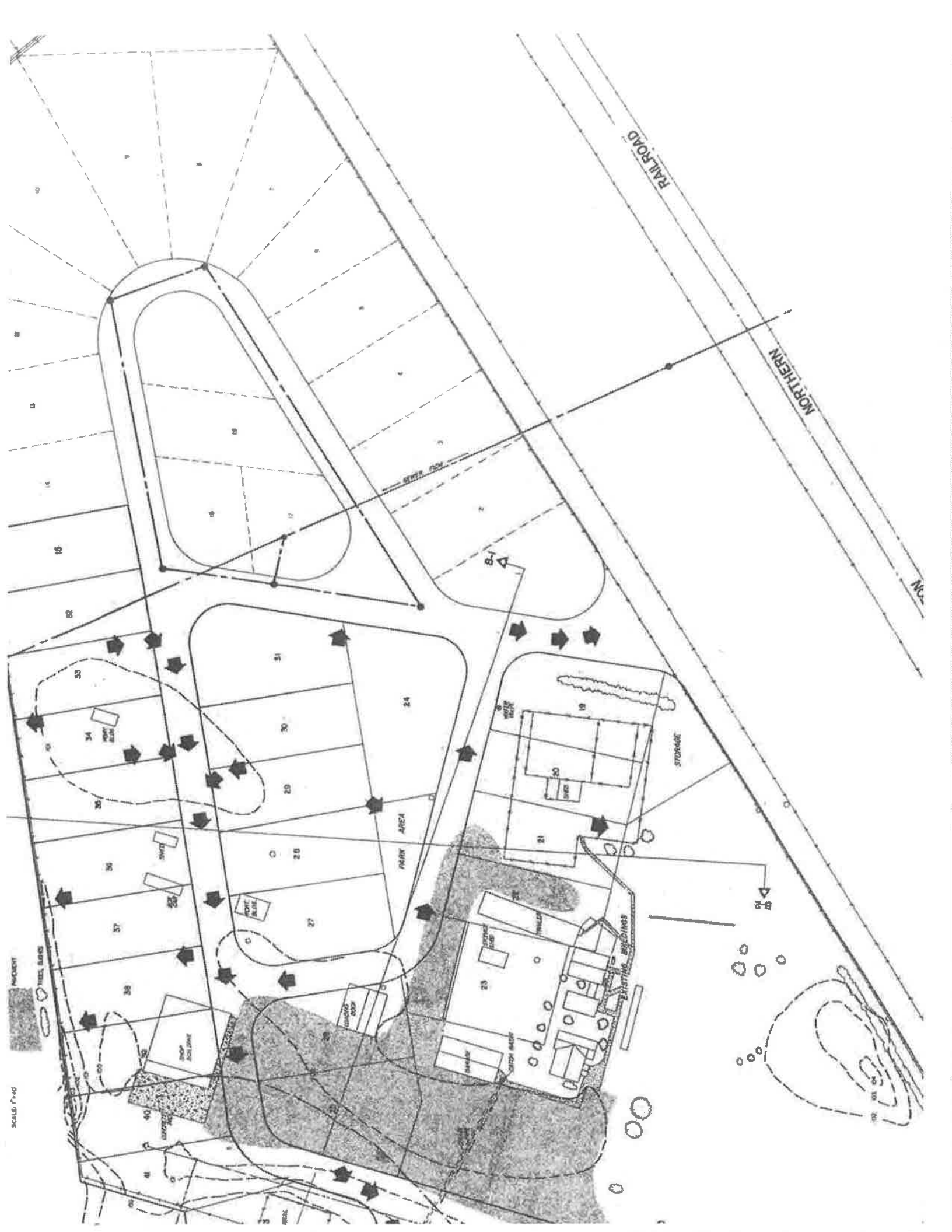




**T.O.N. RATE.**

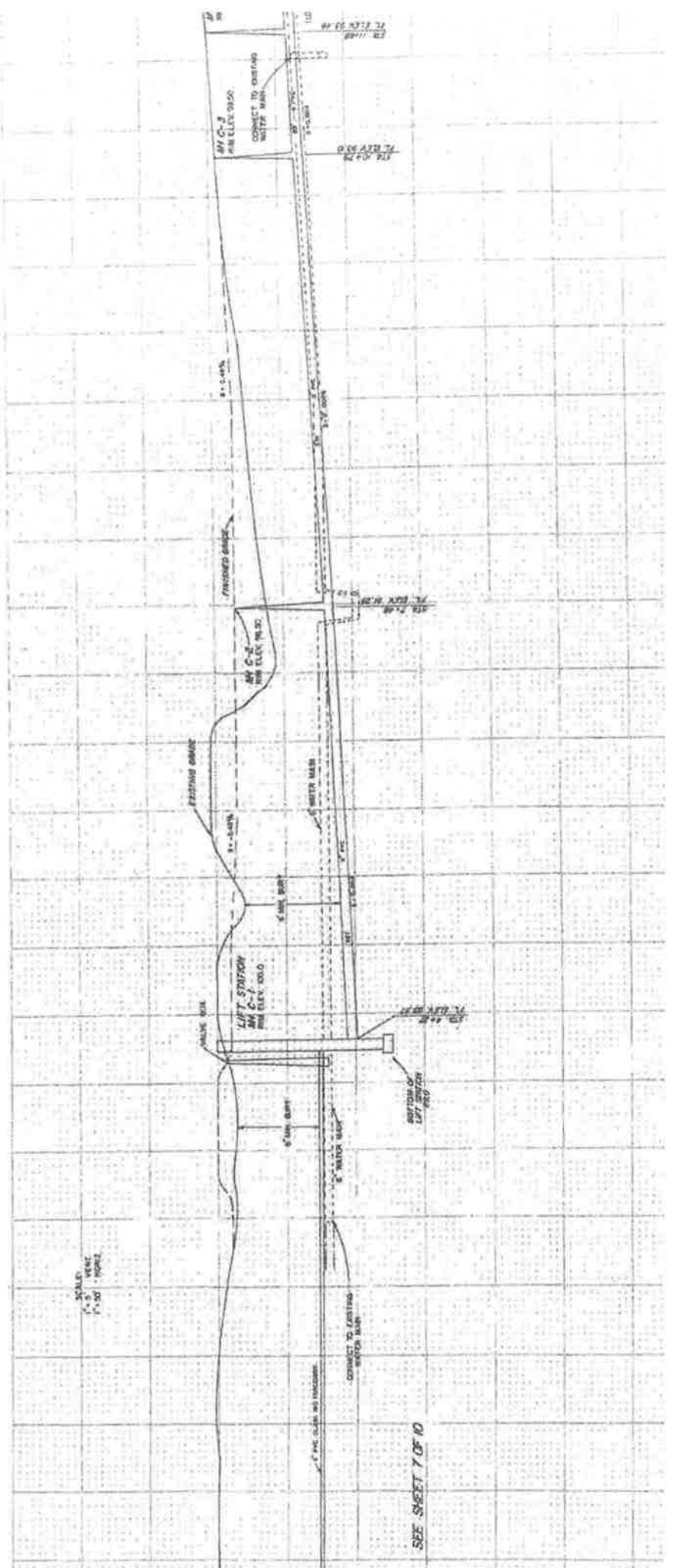
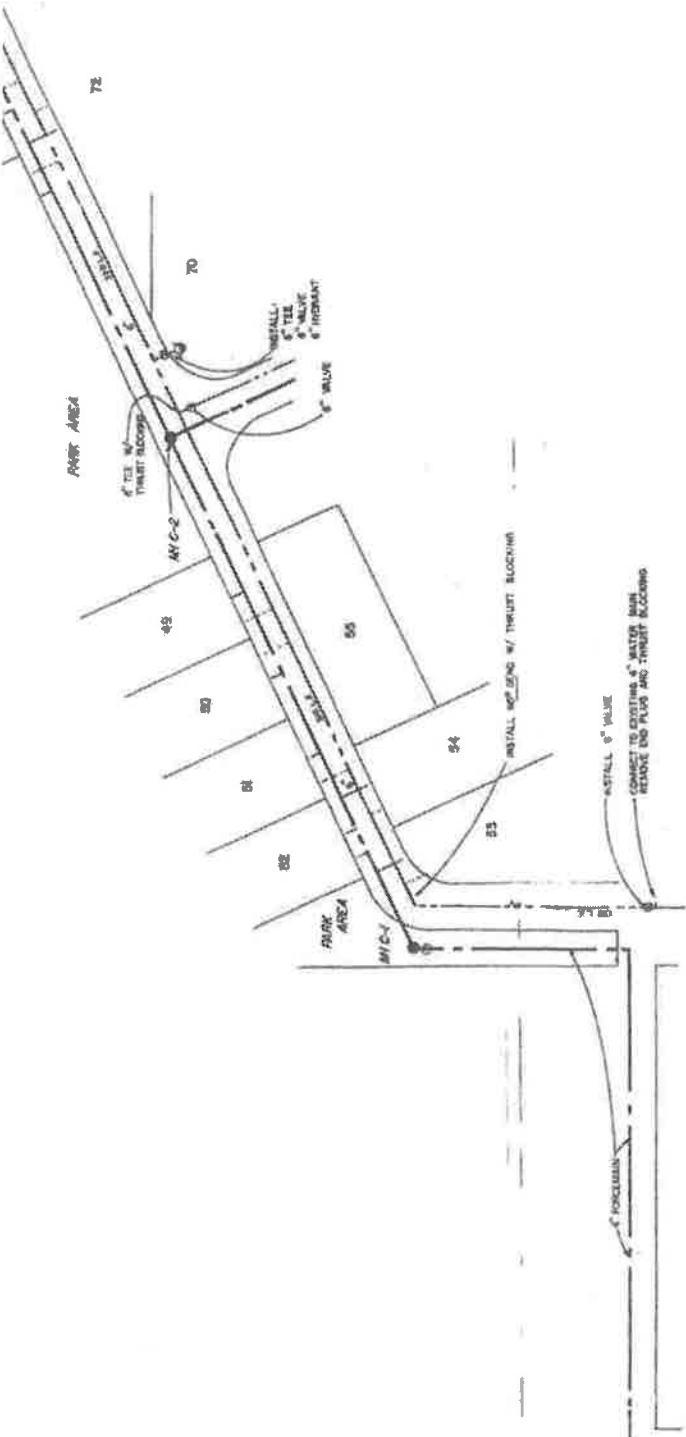
1. 1" = 40'  
 2. 1" = 20'  
 3. 1" = 10'  
 4. 1" = 5'

1. 1" = 40'  
 2. 1" = 20'  
 3. 1" = 10'  
 4. 1" = 5'



SCALE: 1"=40'

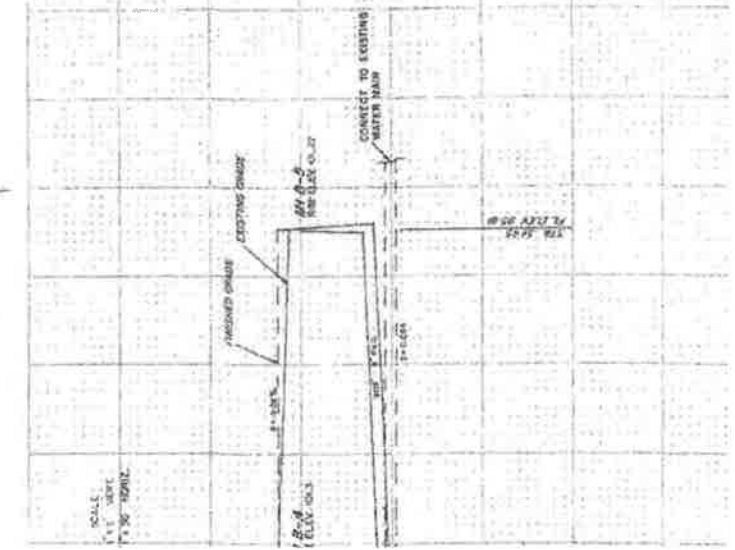
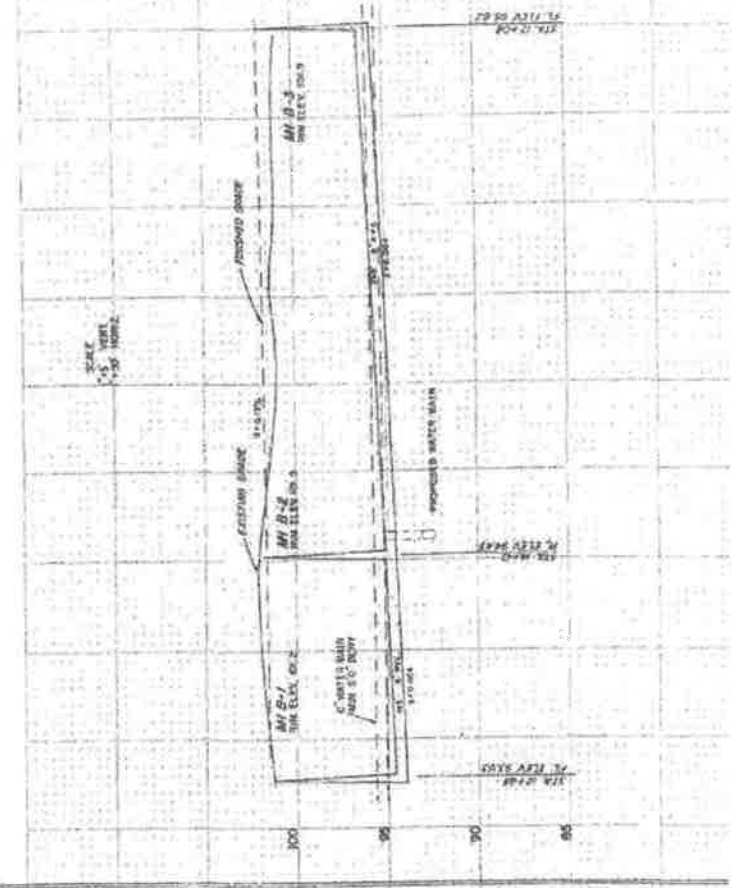
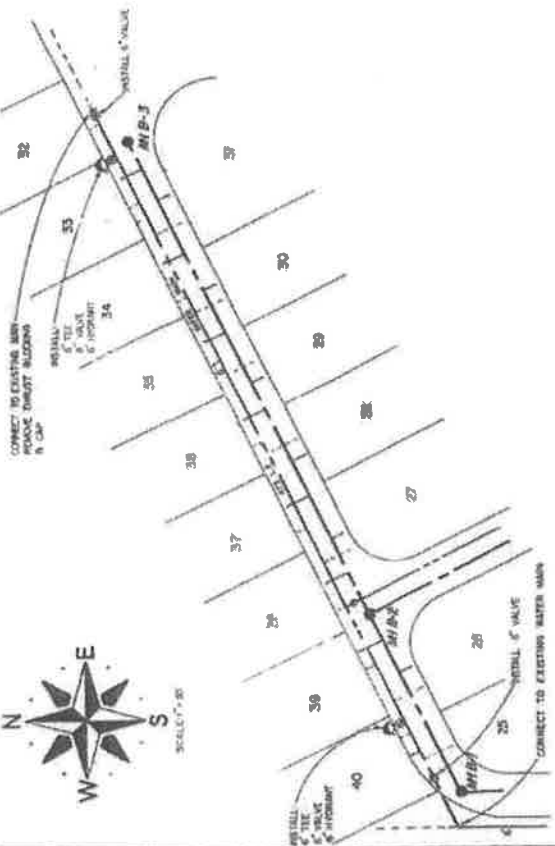
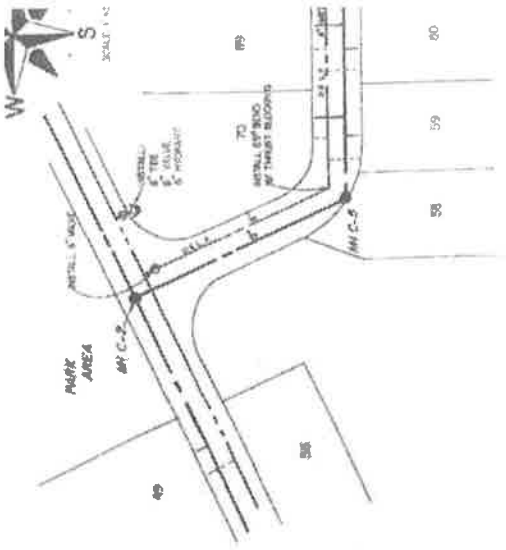
74  
73  
INSTALL 24 1/2" BOMB W/ THRUST BLOCKS



SCALE  
1" = 10' HORIZ  
1" = 10' VERT

SEE SHEET 7 OF 10





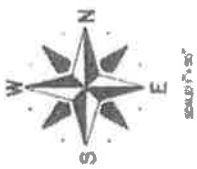
GORDON STREET



IVY STREET

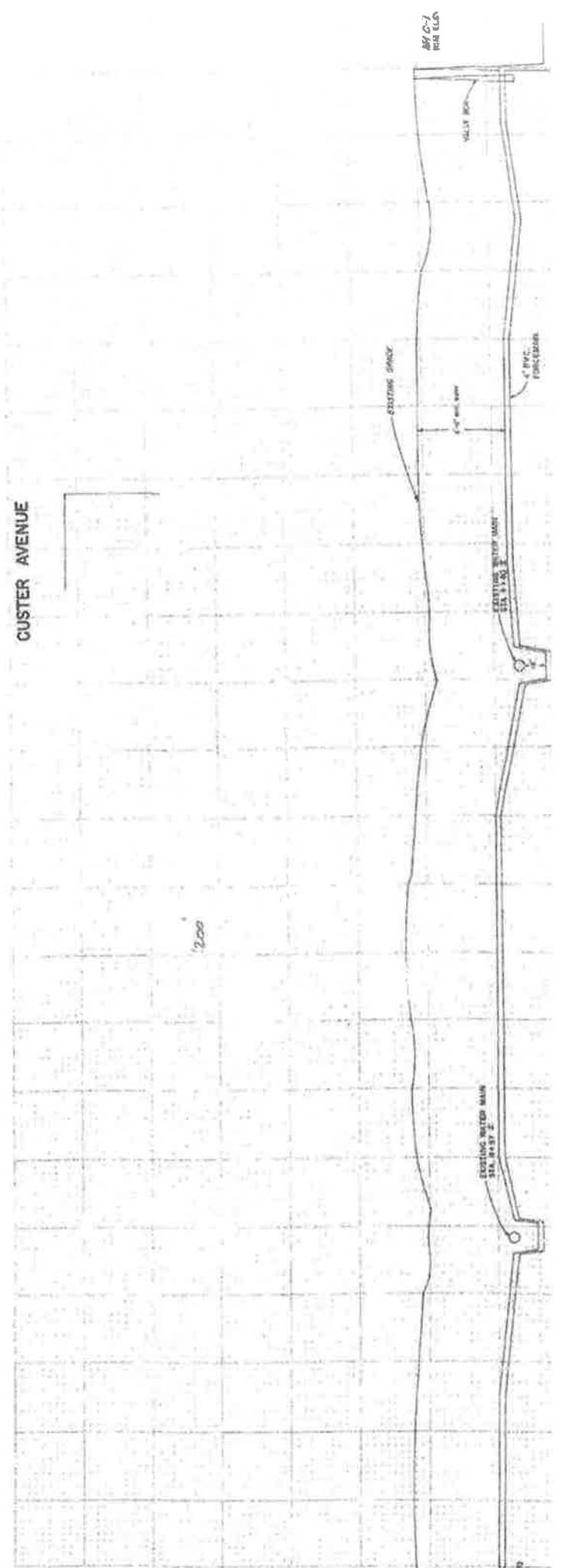


LAKE AVENUE

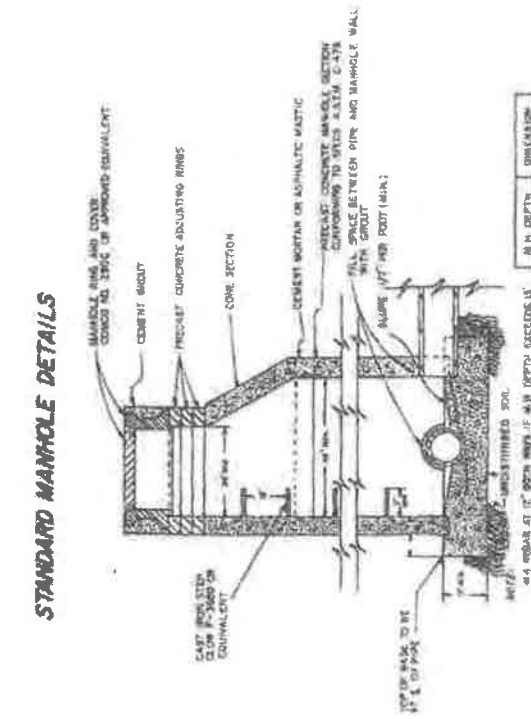
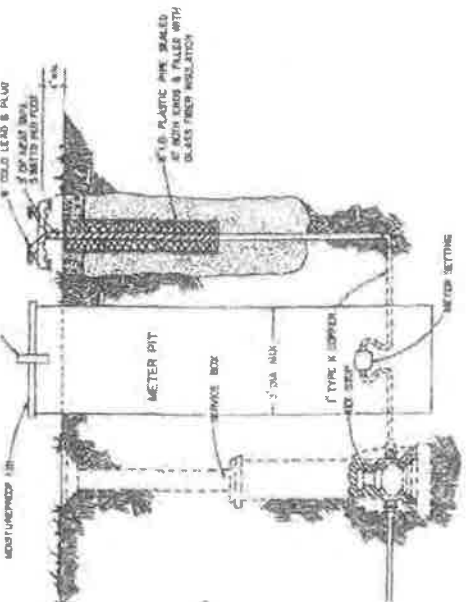


BRUNNEN LIFT STATION

CUSTER AVENUE



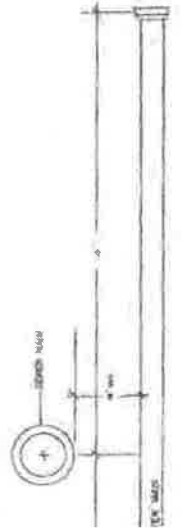
**STANDARD MANHOLE DETAILS**



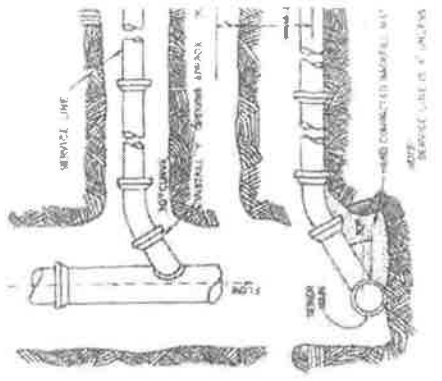
MIN. DEPTH	DIMENSIONS	
	A	B
0' TO 10'	3'	6"
DEEPER 6"	6'	10"

NOTE: THE 6" VERTICAL SEPARATION APPLIES ALSO TO WATER AND SEWER SERVICE LINES

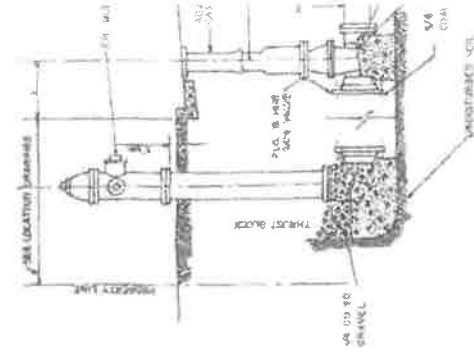
**MAIN - SEWER MAIN CROSSING**



**STANDARD SEWER SERVICE**



**TYPICAL FIRE HYDR**

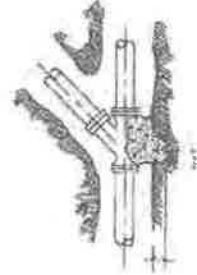
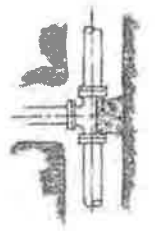


**TABLE OF BEARING AREAS IN SQ. FT. FOR CONCRETE THRUST BLOCKING**

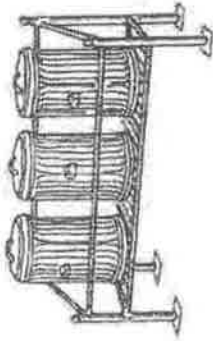
FOR 100 PSI INTERNAL STATIC PRESSURE AND 400 LBS. PER SQ. FT. SOIL BEARING CAPACITY

SIZE	BENDS		TEES	GATE VALVE	DEAD ENDS	CAST IRON PIPE FITTINGS
	90°	45°				
8"	4.0	2.2	3.1	0	7.0	3.1
12"	22 1/2	11 3/4	0	0	2.8	2.8

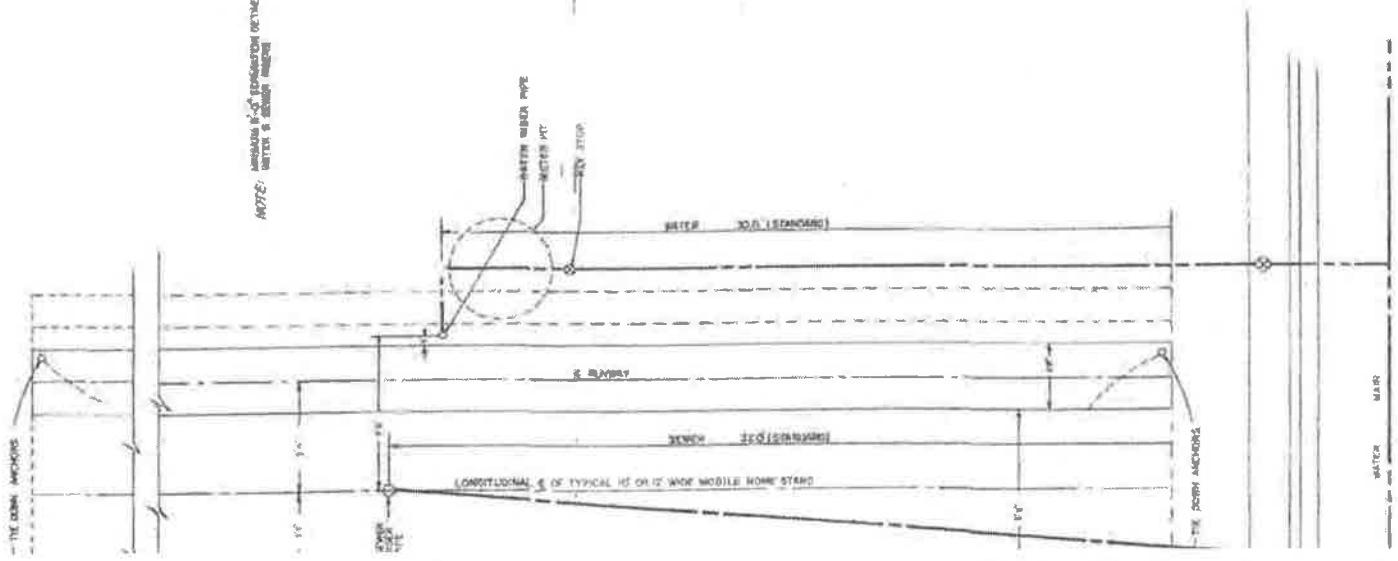
**BLOCKING DETAIL**



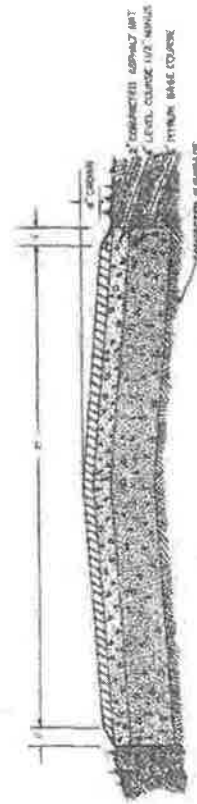
**GARBAGE BARREL RACK**



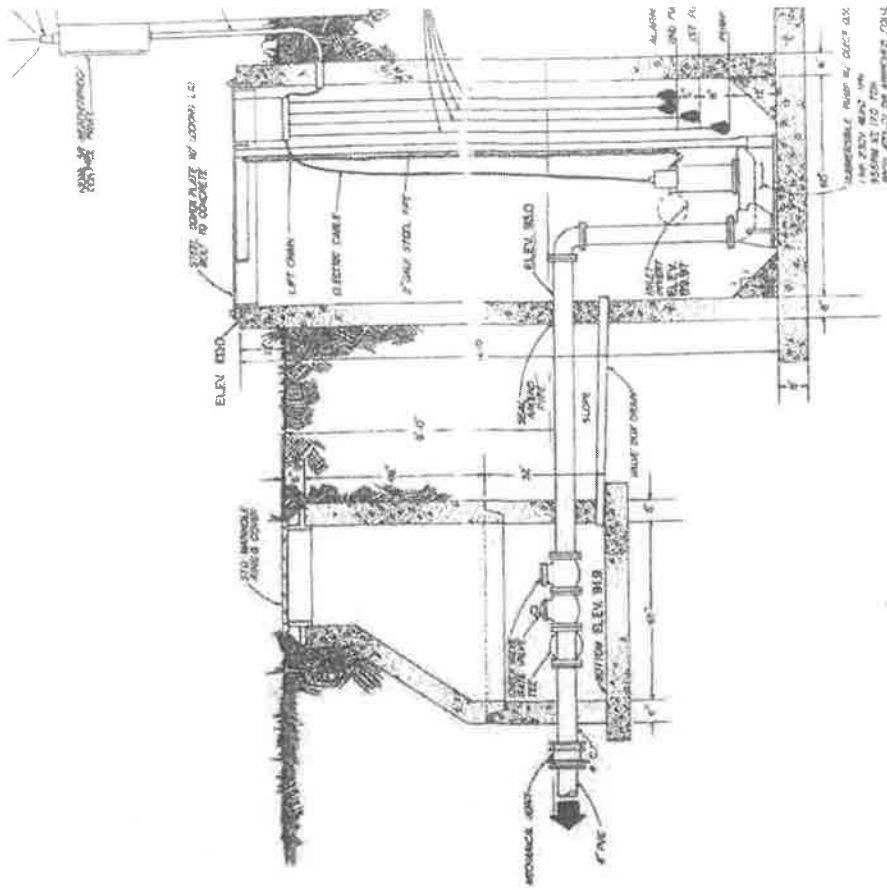
NOTE: PROVIDE 6" CLEARANCE BETWEEN RACKS IN STREET WIDTH



**TYPICAL STREET SECTION**



**LIFT STATION DETAIL**



Christopher B. Gray  
GRAY LAW OFFICE  
P.O. BOX 1065  
Bozeman, Montana 59771  
406-551-4511  
[cgray@cgraylaw.com](mailto:cgray@cgraylaw.com)

*ATTORNEY FOR ELLIS RENTALS, LLC*

**BEFORE THE CITY COUNCIL  
MILES CITY, MONTANA**

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**ELLIS RENTALS, LLC STATEMENT OF FACTS AND LAW FOR  
ADMINISTRATIVE APPEAL  
FROM A DECISION OF THE CITY FLOODPLAIN ADMINISTRATOR**

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**I. BACKGROUND**

On December 21, 2018 the Floodplain Administrator for the City of Miles City issued a decision (FPA Decision) regarding an application for a Floodplain permit for the Westwood Mobile Home Park. The FPA Decision was based on Ellis Rentals, LLC application under the *Floodplain Hazard Management Regulations*, City of Miles City, Feb. 13, 2018 (City Regulations). Her conclusions effectively came in two parts. First, she agreed that the Park itself “is pre-existing and allowable under the above listed facts.” *FPA Decision*, Conclusion 1. She also concluded that if a “Manufactured or mobile home structure is replaced, altered or substantially improved, it falls under the regulations that are in place at the time of the improvement” and an “application ... to replace an existing dwelling with a newer, improved dwelling...requires a flood plain permit.” *FPA Decision*, Conclusions 1 and 2. Ellis Rentals appealed the FPA Decision on January 8, 2019.

## **II. APPEAL REQUEST**

Ellis Rentals, LLC agrees with the first conclusion but appeals the decision based on the remainder of the conclusions and asks the City Council make the following modification of the FPA Decision in this appeal:

1. To affirm the conclusion of the Floodplain Administrator that the Westwood Mobile Home Park constitutes a non-conforming use and artificial obstruction and issue or direct the Floodplain Administrator to issue a Floodplain Permit for Westwood Mobile Home Park and all of its existing components consistent with Ellis Rentals' original application.
2. Overturn the conclusion of the Floodplain Administrator requiring additional Floodplain permits for the repair or replacement of any mobile home in the Westwood Mobile Home Park without an additional Floodplain permit.
3. Require, as condition the Floodplain Permit for Westwood Mobile Home Park, the repair or replacement of any mobile home as long as the size and scope of the repair or replacement does not exceed that of the existing home.

## **III. FACTS AND LAW**

The Floodplain Administrator is correct in her conclusion that the Westwood Mobile Home Park and all of its elements are “grandfathered” and should be given a permit as a “non-conforming use” and “artificial obstruction.” The Park consists of buildings, building lots with improvements, foundations, lots with delineated locations for mobile homes and upon which mobile homes are located, paved roads, water facilities, sewage facilities and drainage facilities. The Park predates the Floodplain Regulation of the City by decades.

The City's Regulation allows a permit to be issued for such "grandfathered uses" in Section 12-28.1. For some reason, the Floodplain Administrator did not issue a permit for the uses. The FPA Decision makes the conclusion that the pre-existing Park and all of its elements is valid and "allowable." Ellis Rentals agrees with that conclusion. However, she then goes on to make a blanket denial of any permits for different reasons. The FPA Decision provides no valid analysis or basis based on the City's Regulation and her decision should be modified.

The FPA Decision to not issue a permit does not comply with Montana law. The Montana Supreme Court has directly addressed the repair and replacement of mobile homes subject to land use regulations like the City Regulation for floodplains. It is a settled, bright line rule in Montana that land use regulations will not be enforced against owners of land which have a vested right for mobile home uses which are continuously used as such even though the mobile homes are repaired, removed and replaced. *Kensmoe v. City of Missoula* (1971) 156 Mont. 401, 480 P.2d 835; *See, Russell v. Flathead County* 2003 MT 867, ¶¶42-44, 314 Mont. 26.

Land use decisions like the FPA Decision may not be made in an arbitrary, capricious or unlawful manner. *See, generally, Flathead Citizens v. Flathead County Bd.*, 2008 MT 1, 175 P.3d 282, 341 Mont. 1. The FPA Decision needed to be made properly, based on a sound application and analysis of the facts and City

Regulation, for the issuance of the permit and for the repair and replacement of mobile homes subject to land use regulations. It did not.

As Ellis Rental's application stated, over time mobile homes of the same or similar size have been replaced, relocated and repaired on the lots on the same location or footprint as the preceding mobile home in the Park. For over thirty years that use has been consistent where residents or the owner of the Park repair, remove and replace mobile homes on and off the lots at the site locations. The requirement to get a Floodplain permit for every mobile home repaired or replaced now is not only unfair and is not allowed under Montana law.

In denying the Floodplain Permit, the FPA Decision, in Conclusions 1 and 2, apparently reasons that the Park and all of its elements including mobile homes is a non-conforming, artificial obstruction or a "grandfathered" use but must obtain a permit but at the same time needs a permit to repair or replace a mobile home. This conclusion is arbitrary and not proper for two reasons.

First this analysis is arbitrary and disjointed. The FPA Decision, in Finding 3, states and emphasizes that "maintenance of an existing artificial obstruction or nonconforming use does not require a floodplain permit." Again, Ellis Rentals agrees with this conclusion for any component of the Park including any mobile home that is properly sited there.

However, the FPA Decision then makes a leap, without any clear written, factual, or legal support that the City Regulation somehow requires "when a



Manufactured or mobile home structure[s] is replaced, altered, or substantially improved, it falls under the regulations that are in place at the time of the improvement.” In its application Ellis Rentals’ presents a well-founded argument that is not the case. That argument was not discounted, nor any reasoning was given for this conclusion in the FPA Decision. The FPA Decision must give the facts and legal requirements under the City Regulation as the basis of its denial on this issue. None can be seen, just a conclusion based on the language of the City Regulation.

Next, Montana law forbids the FPA Decision’s analysis for mobile homes. The FPA Decision does not address how the City Regulation addresses the eventual “attrition” of a non-conforming use in the form of a mobile home in the Park as it must. *Kensmoe at 838*. It did not address this requirement from the Montana Supreme Court, because it does not seem to exist in the City Regulation. The Regulation, as is required to be adopted by the State of Montana, creates a conflict between maintenance of a “grandfathered use” and the replacement of manufactured home and does not reconcile the requirement of the Supreme Court for mobile homes. Any interpretation to the contrary is not possible based on the ambiguous language of the City Regulation. It is understandable that the FPA decision did not provide a legal basis to reject the permit.

Repairing and replacing mobile homes is just carrying out the “grandfathered” uses granted under the City Regulation. Because the Park and its

artificial obstructions and nonconforming uses are only being permitted under the original Ellis Rental application and no new construction, substantial improvements or alterations are being completed no new permits are required under the City Regulation.

Ellis Rentals asserts that it has only applied for administrative establishment of its vested rights to confirm its right to the “precise pre-existing, nonconforming use” when it repairs and replaces mobile homes on established lots “with a newer trailer home.” *Russell* at ¶44. If and when the purpose or scope of the use of the individual lots in the Park as mobile home sites is changed or expanded, then the time will come for the additional permitting requirements of the City Regulation.

#### **IV. CONCLUSION**

The purpose of Ellis Rentals’ original application was not to expand or increase the volume of the “grandfathered” uses of the Park. It has the right to its vested property rights and to operate the Park as it has been for a long time before the establishment of the City Regulations. The ability to repair or replace mobile homes was part of those vested, “grandfathered” rights before the regulations and continues now according to the Montana Supreme Court.

The City Council should grant the appeal and order the requests numbered 1 through 3 above.

DATED this 20<sup>th</sup> day of February 2019.

Respectfully Submitted,

GRAY LAW OFFICE

/s/ Christopher B. Gray

# VARIANCE

**City of Miles City**  
**STAFF REPORT-Variance**  
**Alberts Trailer Court- Paul Ellis**  
**Hearing date: August 28, 2018**

**VARIANCE DESCRIPTION:**

Applicant is seeking relief with the exception to the variance criteria Article 12, Section 12-59.2.1 and proposing to run for a period of 10 years from the affirmation of the exception as the “project end date.”

The applicant is not applying for a variance as stated in Section C, so no grant or relief from the development requirements of these regulations which would permit construction in a manner that would be otherwise prohibited by these regulations by an approval pursuant Article 12 should be granted. The following are potential requests within the variance application and are commented on to address the application.

There is a request to abstain from the requirements of Chapter 12, Article 7, Section 12-28.1 of the Miles City Code of Ordinance which states that a Floodplain permit is required for a person to establish, alter or substantially improve and artificial obstruction, nonconforming use or development within the Regulated Flood Hazard Area.

And Article 10, Section 12-52.1 of the Miles City Code of Ordinances Floodplain and Floodway Regulations which requires new construction, alterations, and substantial improvements of residential dwellings, manufactured homes, including replacement of manufacture homes to be located such that the lowest point of the building including an attached garage or basement must be two (2) feet or more above the Base Flood Elevation (BFE).

**BACKGROUND:**

**A. Owner/Applicant:**

**Current:** Paul Ellis  
Ellis Rentals, LLC c/o Gray Law Office  
P.O. Box 1065  
Bozeman, Montana 59771  
(406) 551-4511

**B. Location:**

The property is located at 900 Alberts, Miles City, Montana and is further described as C.O.S. 45294, Tracts A & B, Env. 106, and M&B Tracts in the NESW & NWSE between Milwaukee & Burlington Northern Railroad Tracts, Miles City, Montana.

**C. Existing Land Use:**

A residential structure of approximately 900 square feet existed on a lot that was approximately 6,000 sq. ft. The property is currently zoned as Mobile Home—RV Park district, and is located within an established mobile home park.

Note: It was determined during the writing of this report that this park was developed in the 1970's. The Flood Insurance Study for Miles City was not completed until early 1980's. The property was not placed in an 'A' zone until the 2010 DFIRM took effect. Therefore, the structures are considered "Pre-FIRM" and the base flood elevation for the property would not have been identified at the time of original development.

**D. Adjacent Land Uses:**

Properties in the neighborhood are all mobile homes. There are residences located to the south and the old Milwaukee Railroad tracks are to the north.

**REVIEW AND FINDINGS OF FACT**

Below are three requests being submitted by Paul Ellis. It is hard to determine the intent of the request but the three items listed below are mentioned in the variance request application.

1. The request is submitted by Paul Ellis to seek relief with the exception to the variance criteria Article 12, Section 12-59.2.1 and proposing to run for a period of 10 years. Providing a blanket variance for the entire Westwood Estates for 10 years could cause the community to lose its 'good standing' within the NFIP. By losing our 'good standing' the community could potentially lose any grant funding that it is currently, or potential could be receiving. Please refer to attached email dated February 7, 2019 from Thomas Birney, FEMA.

The applicant states in the floodplain application on page 2 of the attached document that 'because the park and its artificial obstruction and nonconforming uses are only being establish under this application and no new construction, substantial improvements or alterations are being completed, no permits are required under Article 10 of the FHMR' yet the applicant wants to seek relief from any new construction, substantial improvements or alterations under the variance criteria. It is hard to determine which way the applicant is going and if they do or don't believe they need a permit. These conflicting arguments make it hard to determine the intent of the application exemption.

Applicant also doesn't state the basis of the exemption to the criteria and how the variance criteria negatively affects the trailer park.

2. Applicant makes mention of not being required to submit a floodplain permit for any structures within Westwood Mobile Home Park. The applicant is agreeing to notify the City if any mobile home is being replaced or repaired, and inspections done during the work along with a final inspection, but not obtain a floodplain permit.

Thomas Birney of FEMA, email dated February 7, 2019, states that 'proposing their variance may result in the City of Miles City being non-compliant with the NFIP and may jeopardize their, the city's', standing within the NFIP. A minimum standard of the NFIP as noted within 44CFR 60.3(b) (1)"require permits for all proposed construction and other developments including the placement of manufactured home..." This is also stated in the City of Miles City Code of Ordinances Chapter 12, Article 7, and Section 12-28. This issue would be in violation of the minimum standards of the NFIP and would negatively affect the 'good standing' by placing the community on probation or suspension and causing the CRS to decline.

3. Finally, the applicant requested that the required elevations of the residential elevations as described in Section 12-52.1 of the Miles City Floodplain and Floodway Regulations. The information

listed below was founded by another structure located in proximately of this structure (survey report attached):

Base Flood Elevation:	2357.5 feet
Lowest Elevation of surrounding area	approx. 2351.4 feet
Elevation difference from ground to lowest floor (as per regulations)	+8.1 feet

The request proposes to allow the structure be elevated to 36” as per FEMA regulations. FEMA Floodplain Management Requirements 44 CFR 60.3 (c) (12) allows for a limited exemption to elevating to the BFE for sites in existing manufactured housing (mobile home) parks. These older manufactured home parks were established before Flood Insurance Rate Maps (FIRMs) were issued for the community and before the community adopted a floodplain management ordinance that meets NFIP requirements. In such older parks, a newly placed manufactured home chassis must be “supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade.”

DNRC representative, Traci Sears, was also asked whether approving this variance would adversely affect Miles City NFIP standing and ISO Rating. Ms. Sears said there may be some concern with CRS points for the freeboard activity. Losing points could potentially cause the community to lose a class rating and reduce the flood insurance premium discount.

## **CONFORMANCE TO REQUIREMENTS**

**1. The hardship is the result of lot size shape, topography or other circumstance over which the applicant has no control.**

The trailer park was established long before Miles City Floodplain and Floodway Regulations were in effect, so no Base Flood Elevation was determined at time of development. The applicant has no control of the circumstances that led to the construction of the trailer park.

**2. The hardship is peculiar to the property.**

The hardship is due to the elevation of the existing property, and the pre-established trailer park. The majority of structures in Miles City are pre-existing structures affected by the floodplain and on small lots of ½ acre or less. The proposed hardship on the applicant is no different than the majority of structures and citizens in Miles City. Variance criteria hardship is not explained in variance application.

**3. The applicant did not create the hardship.**

The applicant was not involved with the creation of the original trailer park.

**4. The hardship is not economic.**

Unable to determine, applicant unclear on issue.

**5. Granting the variance will not adversely affect the neighboring properties or the public.**

The applicant has proposed alternative measures, though is not claiming this as a variance. Although the 36” proposed elevation would not adversely affect the neighboring properties or the public. A variance from the Code of Ordinances will need to be applied for.

**6. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.**

The variance request is proposing that the entire Westwood Estates area receive a blanket variance exception that will last 10 years, and not have to follow any freeboard requirements. By allowing any new projects involving new construction to not have to follow current floodplain regulations would be an issue to anyone in the floodplain that is looking to replace existing trailer parks. This would give an unfair advantage to this applicant since the property would allow any trailer to not have to follow regulations. Other trailer parks and trailer home owners would still be required to elevate and follow any other regulations this could potentially cause the City to face legal, federal, and state issues by granting this exemption to the variance criteria.

**REVIEW CRITERIA**

This application for an exemption to the variance criteria has been reviewed pursuant to the Miles City Floodplain and Floodway Management Regulations, Section 12-59 Evaluation of Variance Application.

**1. There is a good and sufficient cause. Financial hardship is not a good and sufficient cause.**

Applicant does not specify why an exemption to criteria is needed. By elevating to over 8 feet there could be issues with safe access for emergency responders. Since the project in question is located in an existing mobile home park, lot sizes are ½ acre or less, approximately 6,000 sq. ft., the elevation increase could cause access issues for the property owner due to small lot sizes.

**2. Failure to grant the variance would result in exceptional hardship to the applicant.**

Applicant does not specify why an exemption to criteria is needed. The only hardship is due to the elevation of the parcel in the existing trailer park. This area was developed prior to the establishment of the Miles City Floodplain and Floodway Management Regulations and prior to completion of the Flood Insurance Study. Because of the small lot sizes, requiring the structure to be elevated to Base Flood Elevation +2 feet without negatively affecting neighboring structures or access to them would be extremely difficult. It could affect emergency responders if called to this or neighboring properties. For the occupants and emergency responders, access/stairs from the natural ground to the entrance of the structure would be hard to design based on the small lots size, however, granting the variance as written would negatively impact all properties within the floodplain.

**3. Residential and nonresidential buildings are not in the Floodway except for alterations or substantial improvement to existing building. Residential dwellings including basement and attached garages do not have the lowest floor elevation below the Base Flood Elevation.**

The property is completely located in the Flood Fringe.

**4. Any enclosure including a crawl space must meet the requirements of Section 12-51.14, Wet-flood Proofing if the enclosure interior grade is at or below the Base Flood Elevation.**

The applicant did not address this issue.

- 5. Granting of a variance will not result in increased flood heights to existing buildings, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances.**

Applicant states they are not requesting a variance but an exemption to the criteria. A trailer will replace an existing trailer that is damaged or wore out by natural wear and tear. Since the applicant is requesting a blanket variance and not requesting to be absolved of any local and state regulations, there could potentially be an extraordinary public expense and victimize the public by allowing an economic windfall for the applicant and increasing flood insurance premiums for the entire City. The City could potentially lose federal funding for public projects.

- 6. The proposed use is adequately flood proofed.**

Applicant does not specify why and exemption to criteria is needed. The applicant will elevate the trailer to FEMA regulations but is claiming exemption from State and local laws, plus any higher standards as set forth in the CRS. The requested exemption to the variance criteria should not grant or afford relief from any regulations as set forth in the Miles City Code of Ordinance.

- 7. The variance is the minimum necessary, considering the flood hazard, to afford relief.**

Applicant states that this is not a variance but an exemption to the variance criteria.

- 8. Reasonable alternative locations are not available.**

This is a pre-established trailer court, developed before the community adopted any Floodplain and Floodway Management Regulations, FIRMs, or the completion of the Flood Insurance Study. The lot sizes are ½ acre or less, approximately 6,000 sq. ft. and could potential cause access issues for property owner due to small lot sizes.

- 9. An encroachment does not cause an increase to the Base Flood Elevation that is beyond that allowed in these regulations.**

Applicant does not specify why and exemption to criteria is needed. The applicant does not specify the size of the replaced trailer, trailer size could cause an increase to the BFE if the trailer is larger than the one being replaced.

- 10. All other criteria for a Floodplain permit besides the specific development standard requested by variance are met.**

Applicant states that this is not a variance but an exemption to the variance criteria, so no relief or grants are being requested.

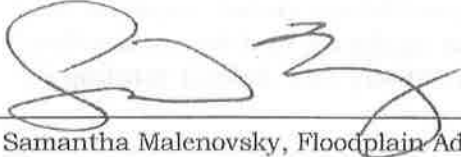
#### **STAFF RECOMMENDATION:**

Deny the exemption to variance criteria. Applicant does not give a good or sufficient cause as to why an exemption is being sought or the basis of the exemption. The conditions set forth in Section C are for granting a relief from floodplain regulations, yet applicant states that they are not applying for a variance. Since the applicant is not requesting a variance, the applicant would need to file for a variance to receive a grant or relief from these regulations. A variance application should be filled out requesting a grant of relief from a specific section of the Miles City Code of Ordinances.

NOTE: FEMA, MT DNRC, and the City of Miles City have worked together to try and find alternatives to help the applicant. In reference to Thomas Birney's email, the applicant has other options such as building to the FEMA requirement of 36" plus one foot of freeboard to meet Federal requirements and



still allow the community to receive freeboard credits. There should be no case where a blanket variance or not requiring a floodplain permit is granted as this could get the community removed from the CRS, increase flood insurance premiums, and cause probation or suspension, plus multiple potential legal issues and loss of federal grant funding.



2-21-19  
Date

Samantha Malenovsky, Floodplain Administrator  
City of Miles City  
17 S. 8<sup>th</sup>  
PO Box 910  
Miles City, MT 59301

cc: Traci Sears  
DNRC Water Operations Bureau  
Floodplain Management Section  
1539 Eleventh Ave.  
Helena, MT 59601



# CITY OF MILES CITY

## FLOODPLAIN VARIANCE APPLICATION

A variance is a grant of relief given by City Council from the terms of the specific standards required in the City's *Floodplain Hazard Management Regulations*. The issuance of the variance is for floodplain management purposes only. In the event of a variance within the floodway this variance is also a grant of relief given by the City Council from the terms listed above and the *ICC Model code Section 104.10.1 Flood Hazard Zone*. Insurance premium rates are determined by the Federal government according to actuarial risk and are not modified by the granting of a variance. **ANY VARIANCE GRANTED BY THE CITY COUNCIL MUST BE CONSISTENT WITH THE CITY'S FLOODPLAIN HAZARD MANAGEMENT REGULATIONS.**

*Per Resolution 4086, a non-refundable fee of \$300.00 must accompany this application.*

Date of Application: February 4, 2019 (retroactive to 1/8/2019 via Notice of Administrative Appeal)

Receipt  
70836

### Section A: Owner Information

Applicant Name: Ellis Rentals, LLC c/o Gray Law Office

Address PO Box 1065, Bozeman, Montana 59771 Phone 406-551-4511

Owner Name (if different from above) Please see original application package

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

### Section B: Property Information

NAME OF STREAM or WATER BODY at project location: Yellowstone River Nearest Town: Miles City, Montana

**Westwood Mobile Home Park**

Address/Location: Tracts A and B, COS 45294 and M&B Tracts in the NESW

Geocode (if available): 14-1740-27-3-35-06-0000 and 14-1740-27-3-35-01-0000

SW 1/4, Section 27, Township 8N, Range 47E County Custer

The proposed development is in the N/A Floodway N/A Flood Fringe N/A Floodplain with no elevation

The Base Flood Elevation (BFE) at the project site is: 2357.5<sup>1</sup>

The lowest adjacent grade of the property is: 2351.6<sup>2</sup>

The lowest floor of the proposed structure is N/A

### Section C: Basis of the Exception Variance Criteria Requested

Cite the minimum development standard of the *Floodplain Hazard Management Regulations* from which a variance is sought: Any mobile home repaired or replaced in Westwood Mobile Home Park must be placed no less than 36

<sup>1</sup> BFE may vary throughout the Westwood Mobile Home Park

<sup>2</sup> Id.

inches in height above grade and be supported by reinforced piers or other foundation elements of at least equivalent strength for all 70 mobile home lots in Westwood Mobile Home Park. The Applicant is not applying for a variance. The applicant is applying for an "Exception" under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

In accepting the grant of the Exception by the City, Ellis Rentals, LLC agrees to the following conditions:

- 1) When any mobile home is to be replaced or repaired the City is notified;
- 2) a completion date is set for the repair or replacement;
- 3) inspections may be made during the repair or replacement; and
- 4) a final inspection will be required upon the completion of the repair or replacement;
- 5) The exception to the variance criteria would run for a period of 10 years from the affirmation of the exception as the "project end date." At that time the City could publicly notice and reconsider the exception under the applicable city procedures.


Explain how proposed development would vary from the provision of the *Floodplain Hazard Management Regulation*: If the federally promulgated Exception were not available then each mobile home would have to be elevated to a level of 2 feet above the Base Flood Elevation every time one was repaired or replaced. Such requirement would render any mobile home practically unusable and the entire park unfeasible to own and operate.

**Section D: Application for Variance**

Complete a Joint Permit Application and the attached worksheet to address the submittal requirements of the City's *Floodplain Hazard Management Regulations*

x Worksheet completed and attached as applicable

**AN APPLICANT RECEIVING A VARIANCE TO BUILD A STRUCTURE NOT MEETING THE MINIMUM STANDARDS OF THE REGULATIONS, ESPECIALLY IF THE LOWEST FLOOR IS CONSTRUCTED BELOW THE BASE FLOOD LEVEL, MAY RESULT IN INCREASED PREMIUM RATES FOR FLOOD INSURANCE. CONSTRUCTION BELOW THE BASE FLOOD LEVEL INCREASES RISK TO LIFE AND PROPERTY (44 CFR 60.6(a) (5))**

Ellis Rentals, LLC  
Applicant's Name 

2/5/2019  
Date

ANY PERSON OR PERSONS AGGRIEVED BY THE DECISION MAY APPEAL SUCH DECISION IN THE COURTS OF COMPETENT JURISDICTION (MCA 76-5-209(1))

**Section E: Affected Landowners**

List the names and address of all property owners within and contiguous to and directly across the street from the parcel or parcels of property referenced by this application: to be determined by Floodplain Administrator.

.....

**RECORD OF VARIANCE ACTIONS: TO BE COMPLETED BY FLOODPLAIN ADMINISTRATOR**

Variance Request submitted on 2/5/19

Fee Paid \$ 300.00

Public Notice Given 2/8/19

Variance Hearing held on 2/26/19

The Council has made a determination that the variance  is or  is not the minimum allowance necessary, considering the flood hazard, to afford relief from these regulations and  meets or  does not meet the criteria in the regulations for approval.

In accordance with the criteria and guidelines of the City of Miles City, *Floodplain Hazard Management Regulations*, City Council hereby  approves,  denies the request for variance. Please refer to attached minutes from meeting.



CITY OF MILES CITY

APPLICATION WORKSHEET FOR VARIANCES TO THE FLOODPLAIN HAZARD MANAGEMENT REGULATIONS

PLEASE NOTE: Your statements and supporting data and information, including a completed Montana joint application or floodplain permit application, will be used to evaluate your variance request. If these questions are not answered, the variance may be denied due to insufficient information to support it. The following will be used as a guide to evaluate your petition. Additional information may be requested.

The City of Miles City's Floodplain Hazard Management Regulations provides the criteria that must be considered and met before a variance may be granted. The City Council must consider the following items when determining a variance request. State in detail the manner in which you believe each of these standards are met in this case:

- 1. Will the structure or proposed activity/use reside on 0.5 acre or less? YES
If NO, what is the size of the lot or parcel? \_\_\_\_\_

(If the new construction or substantial improvements on a lot of one-half acres or less is contiguous to and surrounded by lots of existing structures constructed below the base flood level, a variance may be approved. However, as lot sizes increase beyond one-half acre, additional technical justification may be required.)

- 2. Are the surrounding properties pre-FIRM (built before 1983)? YES
3. Are the lowest floor of the pre-FIRM structures on the adjoining and contiguous lots below the base flood elevation? YES^3
4. Is the proposed work on a recognized historic structure? NO

If yes, will the improvements maintain the historic integrity of the structure and not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

- 5. Is the proposed work the minimum necessary, considering the flood hazard, to afford relief?: N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

- 6. Does the project show good and sufficient cause for the variance? Financial hardship is not a good and sufficient cause. Describe the exceptional hardship. N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

- 7. Are basements and/or the lowest floor elevation of a residential structure below the Base Flood Elevation?: N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

^3 BFE may vary throughout the Westwood Mobile Home Park

8. If crawlspaces or enclosures are proposed, they must meet the requirements of Article 10 of the Floodplain Hazard Management Ordinance. Explain why the minimum building standard cannot be met.

N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

9. Describe your analysis or supporting information that the granting of this variance does not result in increased flood height to the existing insurable building, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances. N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

10. Describe how the structure is/or will be adequately flood proofed. N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations. However, repair or replacement will be supported by enforced piers and other foundation elements and 36 inches above grade.

11. Describe why reasonable alternative locations outside the Floodplain are not available or possible. N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

12. Describe the data or information that there is no danger to life and property by erosion damage or water that may be backed up or diverted by the obstruction or use. N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

13. Describe your supporting information that there will not be a danger of materials being swept onto other lands or the injury of others. N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

14. Describe how the construction or alteration of the obstruction or use in such a manner is designed as to lessen the danger N/A for and Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

15. Describe the permanence of the obstruction or use. N/A for and Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

16. Describe the impacts of the obstruction or use affect the anticipated development in the foreseeable future of the surrounding area N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

17. Describe if the failure to comply with the Floodplain regulations results in an exceptional hardship to the applicant. N/A for and Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

18. Describe how the granting of a variance does not adversely affect existing properties or structures. N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.

19. Describe the estimated cost and damage of the proposed facility and its contents to flood damage and the effect of such damage on the owner. N/A for an Exception under Section 12-59, Subsection 2-1 of the City's Floodplain Hazard Management Regulations.



to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set me hand and affixed my notarial Seal the day and year first above written.



(NOTARIAL SEAL)

A handwritten signature in black ink, appearing to read "George Anthony Aguilar", written over a horizontal line.

Notary's Printed Name: George Anthony Aguilar

Notary Public for the State of ARIZONA

Residing in SUN CITY AZ

My Commission Expires: 8/24/2021



## Samantha Malenovsky

---

**From:** Birney, Thomas  
**Sent:** Thursday, February 07, 2019 12:35 PM  
**To:** Samantha Malenovsky; Traci Sears  
**Cc:** Herd, Jeffrey; Brady, Marijo  
**Subject:** RE: Westwood Estates

Good afternoon Sam,

Thank you very much for supplying this information to FEMA and allowing us to comment on the proposed variance application. In reviewing the application, the proposed variance may result in the City of Miles City being non-compliant with the National Flood Insurance Program (NFIP) and may jeopardize their standing within the NFIP. A minimum standard of the NFIP, as noted within 44 CFR 60.3 (b)1 "require permits for all proposed construction and other developments including the placement of manufactured homes...". The variance request appears to exclude this requirement for any new, placed or repaired manufactured home within the park for the next 10 years. This would be violation of the minimum standards of the NFIP and if enacted, may require FEMA to place sanctions on the community which include probation, suspension and Community Rating System (CRS) retrograde.

I would also reference back to the email that I sent on December 12<sup>th</sup>, 2018 (portions copied below) that describe some other concerns and risk with this variance application. The applicant must demonstrate how all the criteria of the variance are addressed including item 7 which states "The variance is the minimum necessary, considering the flood hazard, to afford relief".

I understand that the hearing is coming up at the end of the month. Please let us know what transpires with this variance request and if you have any other questions. Thanks.

Tom

*Tom Birney, CFM  
National Flood Insurance Program Specialist  
Supportive Action Group  
FEMA Region VIII  
303.235.4802 (office)  
720.281.1278 (cell)  
[thomas.birney@fema.dhs.gov](mailto:thomas.birney@fema.dhs.gov)*

The first issue and the fundamental question is can this type of development occur without violating the minimum standards of the National Flood Insurance Program (NFIP) and jeopardizing the community's standing in the program. As noted by Mr. Rice, 44 CFR 60.3(C) 12 states:

*Require that manufactured homes to be placed on substantially improved on sites in an existing manufactured home park or subdivision within Zone A-1-30, AH, and AE on the community's FIRM that are not subject to the provisions of paragraph (c)(6) of this section be elevated so that either*

- i. The lowest floor of the manufactured home is at or above the base flood elevation, or*

- ii. *The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.*

As the Westwood Estates is an existing development located in an Zone AE, the regulation stated above would apply. Although the Westwood Estates may be a pre-Flood Insurance Rate Map (FIRM) development, floodplain regulations set forth within the community's ordinance and FEMA'S NFIP regulations do apply to this development.

44 CFR 60.3(C) 12 would allow the City of Miles City to permit new manufacture homes, in accordance with the above regulation and any other requirements within the community's ordinance as well as other applicable state and federal regulations, and be compliant with the minimum standards of the NFIP and not jeopardize the community's standing in the program. Although the community may be compliant with the minimum standard of the NFIP, the process noted above would be non-compliant per the community's ordinance. As you have mentioned previously, the community has a 2ft freeboard requirement which would apply in this situation.

This brings the question of a variance to alleviate the requirement of freeboard. The community is within their right to issue variances to the floodplain ordinance as outlined in Sec. 12-56 through Sec. 12-61. As noted in Section 12-59 of the ordinance, a variance can be granted provided that ... "the variance is the minimum allowance necessary, considering the flood hazard, to afford relief from these regulations and provided all of the following criteria are met:". The community will be required to have proper documentation on how each variance complies with this section. This includes item 7 which states "The variance is the minimum necessary, considering the flood hazard, to afford relief". Instead of issuing a variance to the full 2 ft freeboard requirement, the community must look at alternatives such as one foot of freeboard or building to the BFE. Could those actions be required to provide the minimum necessary exception for this development?

FEMA strongly encourages the community not to issue a blanket variance for the Westwood Estates but rather variances as the development occurs, if the community elects to go the variance route. The FIRMs or Special Flood Hazard Area (SFHA) may change over time, elevations within the lot may differ and each development may have differing criteria justifications per the ordinance. **As a floodplain development permit is needed for every new development**, it would make sense to have the variance process done with the permitting process.

It should be noted that if the community were to issues variances for the Westwood Estates subdivision, the community may jeopardize their standing within the Community Rating System (CRS). As Ms. Sears stated, the community receives points for activities that go above and beyond the minimum criteria of the NFIP. Freeboard is one activity that the City is currently receiving credit for. By issuing the variance for the subdivision, the community may lose some or all the points of the freeboard activity. This may result in a class retrograde. The community is currently a CRS Class 8 in which the residents of the community are saving approximately \$45,000 in premiums. If the community is retrograded to a CRS Class 9, that saving would decrease to approximately \$30,000. The community should be aware of this risk and take it into consideration when issuing variances.

As stated in 44 CFR 60.6(a); "The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by the statute according to the actuarial risk and will not be modified by the granting of a variance." By granting variances for the placement of new manufactured homes with floor elevations below the Base Flood Elevation, the insurance rates for those structures can be exceedingly high. The rate of the insurance is based on the risk and with a floor elevation below the BFE, that risk is high, and the insurance rate too will be high. Although the current owner may not have concerns about the insurance ramifications, the high cost of insurance may prevent the sale of the home in the future.

Christopher B. Gray  
GRAY LAW OFFICE  
P.O. BOX 1065  
Bozeman, Montana 59771  
406-551-4511  
[cgray@cgraylaw.com](mailto:cgray@cgraylaw.com)

*ATTORNEY FOR ELLIS RENTALS, LLC*

**BEFORE THE CITY COUNCIL  
MILES CITY, MONTANA**

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**ELLIS RENTALS LLC STATEMENT OF FACTS AND LAW IN SUPPORT  
OF AN EXCEPTION TO VARIANCE CRITERIA**

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**I. INTRODUCTION**

If the City Council denies Ellis Rentals, LLC appeal of the decision of the Floodplain Administrator that individual mobile homes need a Floodplain permit every time they are repaired or replaced in the Westwood Mobile Home Park then Ellis Rentals has applied for relief from the requirement in the *Floodplain Hazard Management Regulations*, City of Miles City, Feb. 13, 2018 (City Regulations) that mobile homes that are repaired or replaced be built 2 feet above the Base Flood Elevation (BFE).

**II. REQUEST**

Ellis Rentals request for relief from the 2 foot above BFE standard is for the City Council to apply a federal standard that any mobile home be at least 36 inches above grade and be supported by a reinforced foundation or piers when repaired or replaced. In order to reasonably administer the City Council's decision to grant

relief from its standards based on the exception, Ellis Rentals has agreed to the following conditions:

- 1) When any mobile home is to be replaced or repaired the City is notified;
- 2) a completion date is set for the repair or replacement;
- 3) inspections may be made during the repair or replacement; and
- 4) a final inspection will be required upon the completion of the repair or replacement;
- 5) The exception to the variance criteria would run for a period of 10 years from the affirmation of the exception as the “project end date.” At that time the City could publicly notice and reconsider the exception under the applicable city procedures.

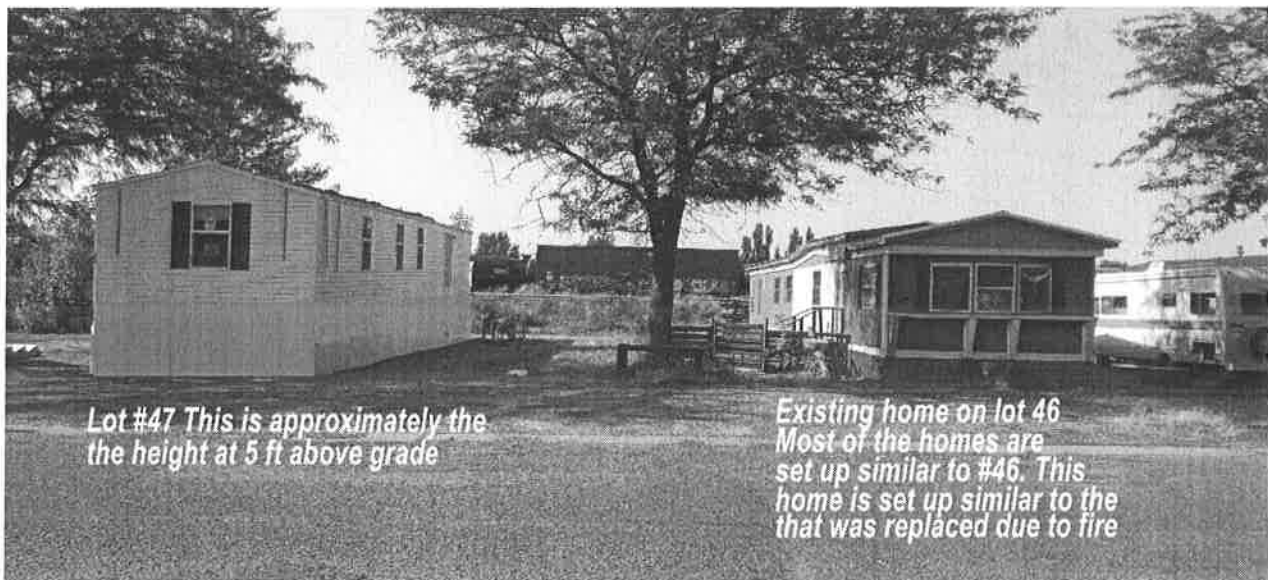
### **III. FACTS AND LAW**

The City Regulation has an exception to the normal variance procedure in Section 12-59 (2) therefore Ellis Rentals does not have to meet the 10 variance criteria in the City Regulation. For this exception to apply the City Regulation requires only two things be shown by Ellis Rentals in order to grant the relief it asks for. First it must show that the mobile homes to be replaced or repaired be located on lots of one-half acres or less and then it must show that all of those mobile home lots be together and constructed below the Base Flood Elevation.

Both of these findings are met easily. As shown in the application the Park contains 70 lots where mobile homes may be located all of which are less than one-half acre. As shown in the application materials, the BFE determination for the land upon which the Westwood Mobile Home Park sits is 2357.5 feet. The lowest adjacent grade of the Park is at 2351.6 feet. Therefore, the exception factors are met and the relief from the City Regulation must be granted.

The City Council may wonder why it is important for Ellis Rentals to obtain the requested relief from the 2 foot above BFE standard. The Park provides housing for Miles City residents and has 70 lots for mobile homes. Owners of mobile homes move them due to their very nature as being mobile. In addition, long term residents of the Park need to make significant repairs to the homes as time passes. It will create an incredible burden to meet the 2 foot above BFE standard every time repair or replacement of a mobile home happens. This burden is both financial to the owners of the homes or Ellis Rentals and it presents a practical burden. Those burdens will especially pertain to the elderly and disabled residents of the Park.

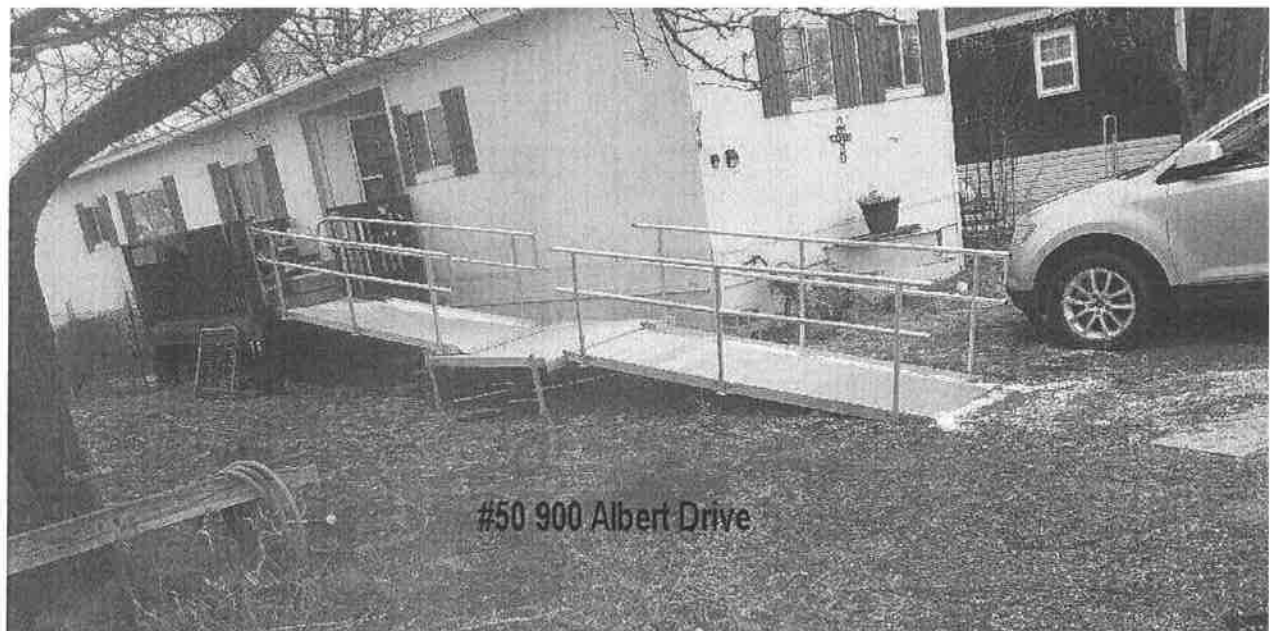
Although a photographic mock-up, here is what the practical results may look like with the 2 foot above BFE requirement applied in a specific instance:

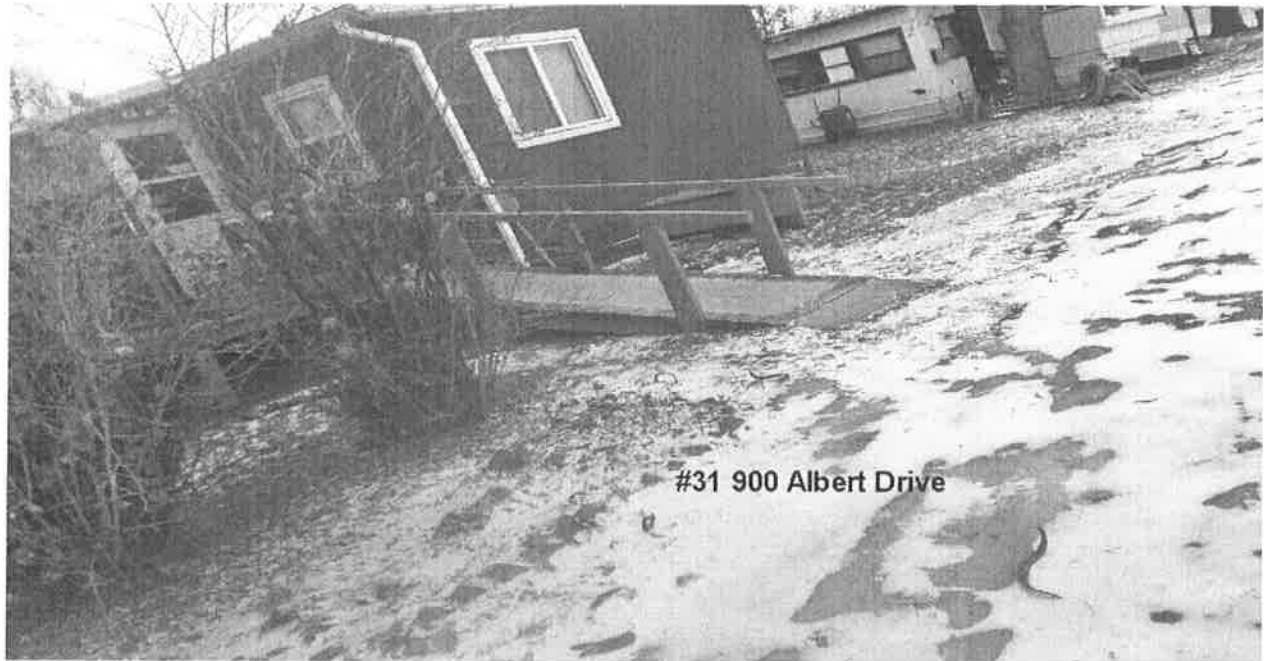


The “photoshopped” representation on the left is shown at a height at location where the approximate BFE would require a rise of 5 feet above grade.

The actual photo on the right is an approximate 36 inches above grade with a reasonable stair way leading to the home. The stair way to the home 5 feet above grade would have to be steep, impractical and a nuisance to the residents. This would provide unreasonable limitations.

Residents will also find themselves needing access to their homes when they get older or become disabled. Here are two instances in the Westwood Mobile Home Park where ramps were necessary as a repairs or alteration to a mobile home:





As strictly applied, without the relief requested, repairs, additions or alterations such as these ramps could trigger the necessity of a new Floodplain Permit. The owners will have to apply for a permit, wait for the time frames in the City Regulations and perhaps even request an actual variance.

However, the City Regulations provide a reasonable method in which to accommodate and mitigate the strict requirements of the 2 foot above BFE standard for the Westwood Mobile Home Park. That is through the exception requested today.

#### **IV. CONCLUSION**

Based on the fact that the Park has 70 lots of one-half acre in size and those lots are contiguous and surround one another below the Base Flood Elevation, the Council must apply the exception and grant Ellis Rentals requested relief. Proof of those two elements is the only thing that must be made in order to grant the



relief from the City Regulation. Ellis Rentals has made such a showing and the City Council should apply the exception and grant the relief.

**V. PROPOSED MOTION AND ACTION**

A motion and findings may be made by a member of the Council in order to grant the request as follows:

“Having reviewed and considered the application, materials, staff report and public comment for the application of Ellis Rentals, LLC, I move to apply the exception to the variance criteria in Section 12-59 (2) of the City Floodplain Regulations in order to provide relief from the requirement that any mobile home that is repaired or replaced in the Westwood Mobile Home Park be built 2 feet above the base flood elevation and to grant the request of Ellis Rentals subject to the agreed conditions in that application.”

“I make this motion finding that the 70 lots in the Westwood Mobile Home Park are one-half acres or less and contiguous or surrounding each other below the Base Flood Elevation based on the record established tonight”

DATED this 20<sup>th</sup> day of February 2019.

Respectfully Submitted,

GRAY LAW OFFICE

/s/ Christopher B. Gray

# Unfinished Business

**RESOLUTION NO. 4230**

**A RESOLUTION AUTHORIZING THE ASSIGNMENT OF A CERTAIN LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND RUSSELL E. VAN DYKE TO MIKE MILLER FOR THE LEASE OF MOBILE HOME SPACE IN BENDER PARK.**

**WHEREAS**, the CITY currently leases certain property within Bender Park to Russell E. Van Dyke for use as a mobile home space pursuant to a lease agreement dated January 24, 2017 (the "Lease Agreement"), as approved by Resolution No. 4026;

**AND WHEREAS**, Russell E. Van Dyke intends to sell said mobile home to Mike Miller and Russell E. Van Dyke and Mike Miller desire that the CITY approve assignment of said Lease Agreement;

**AND WHEREAS**, an "Assignment of Lease Agreement" between the parties has been prepared and presented to the City Council for approval.

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

That the "Assignment of Lease Agreement" attached hereto as Exhibit "A," and made a part hereof, is hereby approved by the City Council of the City of Miles City.

**PASSED AND ADOPTED BY A 2/3 VOTE** of the City Council this 26<sup>th</sup> day of February, 2019.

By: \_\_\_\_\_  
John Hollowell, Mayor

**Attest:**

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

**ASSIGNMENT OF LEASE AGREEMENT**

This ASSIGNMENT, made and entered into this 26<sup>th</sup> day of February, 2019, by and between the City of Miles City, Montana, a Montana municipal corporation, of 17 S. 8<sup>th</sup> Street, Miles City, Montana 59301, hereinafter "CITY," Russell E. Van Dyke, of 907 Doeden Ave, Miles City, Montana, hereinafter "ASSIGNOR," and Mike Miller, of 712 Woodbury, Miles City, Montana, hereinafter "ASSIGNEE,"

**WHEREAS**, the CITY currently leases certain property within Bender Park to ASSIGNOR for use as a mobile home space pursuant to a lease agreement dated January 24, 2017 (the "Lease Agreement"), as approved by Resolution No. 4026

**AND WHEREAS**, ASSIGNOR intends to sell said mobile home to ASSIGNEE, and ASSIGNOR desires to assign his interest in said Lease Agreement with CITY to ASSIGNEE, which requires approval of CITY;

**AND WHEREAS**, ASSIGNEE has agreed to comply with all conditions of said Lease Agreement, and such additional conditions required by CITY as are set forth in this Assignment;

**NOW, THEREFORE**, the parties hereto mutually covenant and agree as follows:

**ASSIGNMENT**

The ASSIGNOR hereby assigns, and the CITY hereby approves, the Lease Agreement between CITY and Russell E. Van Dyke dated January 24, 2017, as approved by Resolution No. 4026, to ASSIGNEE, contingent upon ASSIGNEE purchasing the mobile home which is situated upon the leasehold from ASSIGNOR. ASSIGNEE agrees to be bound by all conditions of said Lease Agreement, to include the requirement that ASSIGNEE report any unusual or illegal activities which he observes within the Bender Park area.

**ADDITIONAL CONDITIONS AND TERMS**

ASSIGNEE agrees to pay monthly rent in the amount of \$150.00, payable in advance, on the 1<sup>st</sup> day of each month, as well as a security deposit in the amount of \$150.00, which is to be held by the CITY until such time as ASSIGNEE vacates the property.

ASSIGNEE may sublease the property to a tenant, however, such sublease shall not relieve ASSIGNEE of any obligations under the Lease Agreement.

The leasehold area for this lease is depicted in the attached Exhibit "A." The maintenance area for this lease is depicted in the attached Exhibit "B."

ASSIGNEE agrees to be responsible for and pay all unpaid rent for the property which accrued during ASSIGNOR'S period of tenancy.

All other provisions of the Lease Agreement shall remain unchanged.

Exhibit "A"

**IN WITNESS WHEREOF**, the parties hereto have executed this ASSIGNMENT OF LEASE AGREEMENT the date and year first hereinabove written.

**CITY OF MILES CITY:**

By: \_\_\_\_\_  
John Hollowell, Mayor

**Attest:**

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

**ASSIGNOR:**

\_\_\_\_\_  
Russell E. Van Dyke

**ASSIGNEE:**

\_\_\_\_\_  
Mike Miller

# New Business

**RESOLUTION NO. 4236**

**A RESOLUTION ADOPTING A REVISED PROGRAM FOR PUBLIC INFORMATION PERTAINING TO THE MILES CITY FLOODPLAIN AND FLOODWAY.**

*WHEREAS*, a substantial portion of the City of Miles City, Montana is located within the flood plain and flood way;

*AND WHEREAS*, a discount is applied to the flood insurance premium amounts which are paid by property owners with the City of Miles City based on the City's "Community Rating System" (CRS) score;

*AND WHEREAS*, the City of Miles City previously adopted a Program for Public Information (PPI) with Resolutions No. 3618, 3635, and 3988, which is in compliance with FEMA requirements can be used to improve the City's CRS score, and the City desires to update said PPI;

*AND WHEREAS*, the PPI Committee has prepared a revised PPI document for the consideration of the City Council, and the City Council finds the adoption of the revised PPI document and the implementation of the program to be in the best interests of the City of Miles City, Montana;

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

1. The revised City of Miles City Program for Public Information, attached hereto as Exhibit "A" and by this reference incorporated herein, is hereby approved and adopted, and the PPI Committee is hereby empowered to implement said program and to undertake the activities called for therein.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2019.**

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John Hollowell, Mayor

ATTEST:

---

Lorrie Pearce, City Clerk

## **City of Miles City, Montana**

### **Program for Public Information (PPI)**

#### **Background**

The City of Miles City has been developing educational and outreach projects with input and support from local volunteers and city staff, by the use of creative and innovative ideas and tools. With the floodplain situation that currently plagues the city an official outreach program was created to educate, prepare, and aid residents on flood and storm water protection.

The City of Miles City became part of the Community Rating System (CRS) on October 1, 1991 and has worked on educating the citizens of Miles City concerning flood and storm water protection. With the new Digital Flood Insurance Rate Maps (DFIRMs) that took effect in August of 2010, approximately 79% of the town was placed in the floodplain. This caused the City to look into a more innovative way to notify and empower the citizens with knowledge on floodplain management and insurance practices. The CRS proposed a new planning tool, the Program for Public Information (PPI), which will prove to be a vast benefit to the City.

The CRS is a part of the National Flood Insurance Program (NFIP). It provides reductions to flood insurance premiums in participating communities. The reductions are based on community floodplain management programs, outreach projects, and public information. To keep these flood insurance premium reductions, communities must continue to implement their programs and provide status reports to the NFIP each year.

When the PPI was formed Miles City was at a CRS Class 9, which gave residents and business up to a 5% discount on their premiums.

The City chose to develop a PPI to help achieve a lower Class rating and higher discounts to flood insurance premiums through coordinated outreach efforts by city personal, elected officials, and stakeholders within the community. The PPI was adopted by Council September 10, 2013 by Resolution 3635.

#### **PPI Committee**

The City had been visiting with stakeholder organizations to spread awareness about this educational program. This is a group created of busy professionals and leaders of the community; the time chosen to meet was noon in the City Hall conference room.

At a minimum there must be at least five stakeholders on the committee with an addition, of at least one councilperson, one insurance agent, one real estate agent, one lender, and a Certified Floodplain Manager (CFM). Stakeholders must make up the majority of the committee with at least 50% of the members being non-city employees or stakeholders from within the community.

Members will be recommended by committee members as soon as reasonable when a vacancy is created by a resignation. Applicants will be approved by all members of the PPI Committee. Members shall be allowed to stay on the Committee until they choose to resign, the Committee



## Exhibit A

may unanimously chose to remove a member due to conduct not pursuant to the Program for Public Information, or the Committee requests replacement of any member engaging in misconduct as defined in Appendix E (MCA 2-2-105).

The PPI committee members include multiple stakeholders, one CFM from the City, the City Public Works Director, one City Councilperson, and one County Commissioner:

- Dannette Cremer - WA Mitchell Agency (Insurance)
- Katy Cain – Miles City Insurance (Insurance)
- Matt Korell – Farm Bureau Financial Services (Insurance)
- Marcy Parks – Stockman Insurance (Insurance)
- Krista Stubblefield - First Interstate Bank (Lender)
- Lori Backes - First Interstate Bank (Lender)
- Paula Kurkowski - Stockman Bank (Lender)
- Carol Hardesty-Hardesty Real Estate (Realtor)
- Dawn Leidholt – Hardesty Real Estate (Realtor)
- Echo Venn – Dave Smith Reality (Realtor)
- Robbin Makelky – Integrity Realty (Realtor)
- Jeff Erlenbush – City Councilperson
- Jason Strouf – County Commissioner
- Scott Gray – Public Works
- Samantha Malenovsky – CFM, Floodplain Administrator

The first Committee meeting lasted one hour, during the meeting the members discussed what we plan to accomplish with the PPI and what avenues need to be addressed within the community. The members had some great suggestions regarding the fate of Miles City with insurance and the assessment study being the main focus. Overall the committee agreed that this is a community wide problem, not a floodplain/no floodplain problem.

Since this was the first meeting, the committee agreed an aggressive campaign needs to happen and the following should be followed:

- Activities should be organized and recorded. Including meetings and all correspondence.
  - The Floodplain Administrator will secure all minutes and correspondence.
- Have stakeholders relieve messages they receive from the public and take comments and advice from stakeholders on ways to improve the program. An annual meeting will be held to get input from members and non-members, and produce an end of the year report.

## Exhibit A

- Start to work with outside organizations on projects, to better improve the way information is handled and reported to the public.
- Any outreach projects done by committee members are productive and should be considered projects and be recorded.
- Use committee members, they reach the public on a daily basis. The more the members are informed and educated on flood issues the better the public will receive new information on flood issues.

This PPI document is being assembled by staff and the committee members are asked to review the plan and to e-mail their comments. After any discussion, revisions or changes the document will be submitted to the City Council for adoption.

### **Community Needs Assessment**

Miles City is located in Eastern Montana, and is primarily made up of residential structures with the majority of businesses being located along the two main highways that run through downtown.

Miles City has 8,410 residents since the 2010 census report. Most structures are located on basements or crawlspaces, which makes them vulnerable to flood damage from ground water, shallow flooding and drainage problems.

**Flood Hazards:** Miles City is situated with the Tongue River on the West end then running into the Yellowstone River, which runs to the north. Miles City is a fairly flat area, storm drains become inundated with heavy rainfall causing streets to flood for a small amount of time.

Since Miles City is a community that is mainly floodplain, the committee decided to include the entire community in floodplain issues. A major flood could cause serious devastation to the City and residents.

**Flood Insurance Data:** Flood insurance is required as a condition of Federal aid, a mortgage, or loan that is federally insured for a building, located in a high hazard A Zone. There are currently 239 policies in the Special Flood Hazard Area (SFHA), 736 Standard/Preferred B, C & X Zone policies, totaling 975 Flood insurance policies in place as of November 30, 2018. Miles City has the most flood insurance policies in the State of Montana.

The DFIRMs that took effect in 2010 only outlines AE Zones, the above polices are based off of either A Zones, which were always A Zones, or Newly Mapped properties which were originally in Zone B or X and remapped in 2010 to become Zone AE. Currently Miles City only has Zone AE or Zone X.

## Exhibit A

A flood insurance general assessment will be done on Miles City, with the summary attached, Appendix B. This summary will be updated yearly with information provided to council for review. This information will also be available for public review when requested.

**Social and Economic Needs:** The City of Miles City has a variety of religions, education levels, and age ranges. Approximately 48% of the population is considered lower income. As of January 2019 Miles City has approximately 77.39% of its properties in the floodplain with 5.5% of those properties in the floodway.

The Committee is making sure to cover all these barriers and make sure that the right message, tools, and resources will be communicated to each target audience. The committee has noticed that messages will need to be repeated and distributed in different forms, coming from different sources.

**Target Audiences** (Refer to Appendix A for target audiences, messages, and desired outcomes)

**Target Areas:** The PPI Committee decided on two target areas that should be reached. Projects are to be directed to all properties (residential, commercial, industrial, and public) in these two main areas:

Target Audience #1: The entire City of Miles City: With approx. 78% of the town being in the floodplain, we have realized that this is a problem the whole community faces. Even if you live outside of the floodplain, the businesses would be closed and work would slow down to a halt since so many structures would be affected or surrounded by the floodwaters.

Target Audience #2: Structures that were in Zone B on the 1983 map and are now Zone AE in the 2010 map: In 1983 approx. 30% of the town was in an A Zone, after adopting the 2010 DFIRMs an extra 50% of the town was included. At the time, Miles City had no floodway and Zone B was not regulated by the City.

**Other Target Audiences:** Other groups were identified by the committee as groups of people who needed special messages on flood protection (these groups may change throughout the course of the PPI Committee and extra groups may be added):

Target Audience #3: Floodway residents: These residents are extremely restricted with the regulations and have the highest chances of dealing with high velocity, deep flood waters.

Target Audience #4: Builders: Building contractors need to know the construction rules, post-disaster repair rules, and possible mitigation grants that could help their customers protect their homes from flooding.

Target Audience #5: Real estate, lending and insurance companies: These companies are key to conveying information about flood hazards and flood insurance. The Committee wants to make sure that they understand and have all the tools they need.

## Other Public Information Efforts

Miles City has recently been looking at additional public outreach programs to use to help get information out in regards to floodplain management. Currently a few key public information activities that are reaching the public for information:

- Flood Awareness, gives information that covers insurance, regulations, and general questions. Once a year
- Articles in newspaper informing citizens who to contact in regards to a floodplain permit. Once a year
- Hold meetings with local Civic groups. As needed.
- Various press releases regarding numerous floodplain topics. As Needed
- Website covering several floodplain topics. Updated as needed.  
Website will contain the local ordinance, links to FloodSmart, USACE, AMFM, DNRC, and FEMA
- Radio announcement covering various floodplain topics.
- Letter to real estate, lenders and insurance agents that notifies them that the city provides a map determination service. Once a year
- Letter to critical facilities, as referred to in the Multi-Hazard Mitigation Plan, which are located within the floodplain. Once a year
- Real Estate agents should notify property buyers about floodplain determination and flood hazards. The majority of Real Estate agents will give property buyers a copy of Flood Hazards and how it may affect their purchase. These must be signed by property owners to show they have read and understand the hazard. (Appendix C)
- When a floodplain application is approved, the property owner will read and sign the Insurance Implications sheet which explains the flood insurance implication that maybe faced if regulations are not followed. (Appendix D)
- The Floodplain Administrator will provide flood protection advice and assistance to applicants and citizens on a one-on-one basis. This service will be publicized yearly at the annual flood awareness day. Conduct site visits for all floodplain applications submitted and work with the property owner to ensure that the correct regulations are being followed.
- The Floodplain Administer will do monthly visits to all active floodplain projects to confirm that construction is happening correctly and will note any inconsistence that are

Exhibit A

notice and notify the property owner as soon as possible. The property owner may also request a site visit at any time.

**Messages and Outcomes**

The following Messages and Outcomes are set as priorities.

<b>Table 1: Messages and Desired Outcomes</b>		
<b>Message</b>	<b>Outcome</b>	<b>Related CRS topics</b>
1. Know your flood risk	More map inquiries	1. Know your flood hazard
2. You need flood Insurance	Increase in number of flood policies	2. Insure your property for your flood hazard
3. All construction projects must meet flood and water quality rules.	Reduce number of citations.	3. Build flood smart.
4. Know flood building requirements.	Reduce number of citations.	4. Educate contractors
5. Everyone can buy flood insurance	Increase number of flood policies in Zone X	5. Flood insurance available to everyone
6. Turn around, don't drown	Fewer people getting stuck at underpass, Educate on flood water and effects.	6. Protecting people from flooding.
7. Only rain goes down the drain	Educate people on water quality	7. Protect water quality
8. You can protect your house from flooding	Increased number of inquiries on mitigation actions.	8. Incorporate low cost flooding protection measures and mitigation.
9. Avoid contact with rivers after it rains or during ice season.	Educate people on ice jams and high water.	9. Educate public on water safety.
10. 'Talking Point' document for insurance agents, real estate agents, and lender.	Smoother transition of information between agencies	10.

## **Projects and Initiatives**

Certain projects and initiatives were chosen by the PPI Committee to be implemented. These projects and initiatives will be reviewed yearly and can change as situations, and objectives of the committee change. The spreadsheet is located at the end of this document.

## **Flood Response Preparations**

The PPI Committee recommends projects that will be implemented during and after a flood. Documentation will be drafted and made ready for reproduction and disseminations after a flood warning is issued. These will be reviewed and updated every year.

## **Follow Up**

The City of Miles City will monitor the projects as they develop, along with organizations that have volunteered to help, and will report on the results. The City will record all input from the PPI Committee and suggestions from other employees, elected officials, stakeholders participating in the activities, and concerned citizens. This will be available to all committee members at every meeting for consideration.

The PPI committee will meet at a minimum of every six months to review each objective and the desired outcomes. The committee will recommend to the appropriate City offices and the stakeholders who implement projects, whether the projects should be changed or discontinued.

There must be an end of the year meeting that will review current objects and how they are working within the community. Once a year the PPI committee will review the spreadsheet and make comments. The committee will decide whether to change, add, or approve each individual activity. All outcomes and revisions will be submitted as part of the City's annual recertification package to the CRS.

After the annual report is completed by the PPI Committee the report and any other changes will be submitted to Council by way of email and/or place in their city hall box. The Floodplain Administrator shall annually update the Council concerning the PPI including the annual report and the general flood insurance assessment document.

## **Adoption**

This document will become effective when it is adopted by the City Council, if it is revised it will need to go before City Council for amendment.

# APPENDIX A

Exhibit A

Target Audience	Message(s) (See table 1)	Outcome	Project(s)	Assignment	Schedule	Stakeholder	
Entire City of Miles City	1. Know your flood risk.  6. Turn around, don't drown	More map inquiries, Educate on flood water and effects.	Mailing sent to each resident	Floodplain Administrator (FPA)	Yearly		
			Social media outlets	Realtors, lenders, insurance agents (Agents)	Quarterly		
			Miles City Star articles	FPA	Yearly		
	2. You need flood insurance  5. Everyone can buy flood insurance.	Increase number of flood policies.  Increase number of flood policies in Zone X.	Local Real Estate Agents post on all listing if property is located within the floodway/flood fringe	Realtors	Year-round as part of a regular service	Year-round as part of a regular service	Eastern Montana Realtors Board (EMRB)
			Brochures available at Real Estate, Insurance, and Lenders offices for information regarding flood hazards.	Agents	Agents	Year-round as part of a regular service	EMRB, local banks, insurance agents
			Social media outlets	Agents	Agents	Quarterly	
			FEMA brochures on flood insurance	Agents	Agents	Year-round as part of a regular service	
	3. All construction projects must meet flood and waste quality rules. 4. Know flood building regulations	Reduce number of citations	Local insurance agents, lenders, realtors advise their clients of the effects of flood insurance	Agents	Agents	Year-round as part of a regular service	
			Hand out on message to local civic groups and meetings, Miles City website	FPA	FPA	Yearly	
			Social media outlets	Agents	Agents	Quarterly	
7. Only rain goes down the drain	Protect water quality	Permit handout	FPA	FPA	Year-round		
		Miles City Star articles	Public Works Department	Public Works Department	Yearly		
			Storm sewer engraving	Public Works Department	Per project		



Exhibit A

Entire City of Miles City	8. You can protect your house from flooding	Increased number of inquiries on mitigation actions	Presentation at annual outreach on protecting waterways	FPA	Yearly	
			Guidebook	FPA	Year-round	
	9. Avoid contact with rivers during ice events or high water	Educate people on ice jams and high water and effects.	Social media outlets	Agents	Quarterly	
			Link to Floodsmart.org on website	Webmaster	Year-round	
				Miles City Star articles	FPA	Yearly
				Use Nexel to communicate warnings to public.	Dispatch	During events.
				Education during Flood Awareness Day	FPA	Yearly

Exhibit A

Target Audience	Message(s) (See table 1)	Outcome	Project(s)	Assignment	Schedule	Stakeholder
Structures that were in Zone B now Zone AE	1. Know your flood risk	More map inquiries	Mailing sent to each resident  <i>Miles City Star</i> articles	FPA  FPA	Yearly  Yearly	
	2. You need flood insurance	Increase in number of flood policies Increase policies in Zone X.	Local Real Estate Agents post on all listing if property is located within the floodway	Realtors	Year-round	Eastern Montana Realtors Board
	5. Everyone can buy flood insurance.		Brochures available at Real Estate, Insurance, and Lenders offices for information regarding flood hazards.	Agents	Year-round	EMRB, local banks and insurance agents
	4. Know flood building requirements	Reduce number of citations	FEMA brochures on flood insurance  Local insurance agents, lenders, realtors advise their clients of the effects of flood insurance	Agents  Agents	Year-round  Year-round	
			Hand out on message, Miles City website Permit handout	FPA, Webmaster  FPA	Year-round Year-round	

Exhibit A

Target Audience	Message(s) (See table 1)	Outcome	Project(s)	Assignment	Schedule	Stakeholder	
Floodway Residents	1. Know your flood risk. 6. Turn around, don't drown	More number of flood policies, Increase number of flood policies in Zone X.	Mailing sent to each resident	FPA	Year-round		
			Miles City Star articles	FPA	Year-round		
	2. You need flood insurance 5. Everyone can buy flood insurance.	Increase in number of flood policies Increase policies in Zone X.	Local Real Estate Agents post on all listing if property is located within the floodway	Realtors	Year-round	Year-round	Eastern Montana Realtors Board
			Brochures available at Real Estate, Insurance, and Lenders offices for information regarding flood hazards.	Agents	Year-round	Year-round	EMRB, local banks and insurance agents
			FEMA brochures on flood insurance	Agents	Year-round	Year-round	
			Local insurance agents, lenders, realtors advise their clients of the effects of flood insurance	Agents	Year-round	Year-round	
	3. All construction projects must meet flood and waste quality rules. 4. Know flood building requirements	Reduce number of citations	Hand out on message to local civic groups, Miles City website	Floodplain manager & public info officer	Year-round	Year-round	
			Permit handout	Floodplain manager & public info officer	Year-round	Year-round	
	8. You can protect your house from flooding	Increase number of inquiries on mitigation actions	Guidebook	Floodplain manager & public info officer	Year-round	Year-round	
			Link to Floodsmart.org on website	Webmaster	Year-round	Year-round	

Exhibit A

Target Audience	Message(s) (See table 1)	Outcome	Project(s)	Assignment	Schedule	Stakeholder
Building Contractors	3. All construction projects must meet flood and waste quality rules. 4. Know flood building requirements	Reduce number of citations	Hand out on message, Miles City website	Floodplain manager & public info officer	Year-round as part of a regular service	
			Permit handout	Floodplain manager & public info officer	Year-round	

Exhibit A

Target Audience	Message(s) (See table 1)	Outcome	Project(s)	Assignment	Schedule	Stakeholder		
Real Estate, Lending, and Insurance Companies	2. You need flood insurance  5. Everyone can buy flood insurance.  10. 'Talking Point' document for insurance agents, real estate agents, and lenders	Increase in number of flood policies	Local Real Estate Agents post on all listing if property is located within the floodway	Realtors	Year-round	Eastern Montana Realtors Board		
			Brochures available at Real Estate, Insurance, and Lenders offices for information regarding flood hazards.	Agents	Year-round	EMRB, local banks and insurance agents		
			Social media outlets	Agents	Quarterly			
			FEMA brochures on flood insurance	Agents	Year-round			
		Increase policies in Zone X.	Local insurance agents, lenders, realtors advise their clients of the effects of flood insurance	Agents	Year-round	Agents	Year-round	EMRB, local banks and insurance agents

# APPENDIX B

**Total Structures in Miles      3856**

Exhibit A

City

Properties in Flood Fringe	2463
Properties in Floodway (excluding flood fringe)	212
Properties out of floodplain	872
<b>Total LOMR's</b>	<b>309</b>
for partial properties	22
Structures	138
whole properties	141
<b>LOMR-F-S</b>	<b>6</b>
<b>LOMR-F-Partial property</b>	<b>2</b>
<b>Total Structures in SFHA including LOMA</b>	<b>2984</b>
<b>% Total Structures in Floodway</b>	<b>5.50%</b>
<b>Total Structures in SFHA including LOMA's (for regulation purposes)</b>	<b>77.39%</b>

Old Floodplain 100-yr	1170
500-year	2216
<b>% Total Structures in Old 100-yr</b>	<b>30.34%</b>
<b>% of Total Structures in Old 500-year</b>	<b>57.47%</b>

<b>Total Area in SFHA</b>	1370	Acres
<b>Total Area in Floodway</b>	152.69	Acres
<b>Total Area in Miles City</b>	2144	Acres
<b>% of total area in Floodway</b>	7.12%	
<b>% of total area in SFHA</b>	63.90%	

Single Family Homes in Flood Fringe	2043
Single Family Homes in Floodway	180
Single Family Home out of SFHA	830

2-4 Family Homes in Flood Fringe	97
2-4 Family Homes in Floodway	0
2-4 Family Homes out of SFHA	24

Other Residential in Flood Fringe	47
Other Residential in Floodway	1
Other Residential out of SFHA	40

Non-Residential in Flood Fringe	187
Non-Residential in Floodway	5
Non-Residential out of SFHA	228

Accessory Structures in Flood Fringe	55
Accessory Structures in Floodway	12
Accessory Structures out of SFHA	20

Vacant Property	57
Vacant Property in Floodway	14

<b>% of Single Homes in SFHA</b>	<b>72.18%</b>
<b>% of 2-4 Family Homes in SFHA</b>	<b>80.17%</b>
<b>% of Other Residential in SFHA</b>	<b>54.55%</b>
<b>% of Non-Residential in SFHA</b>	<b>45.71%</b>
<b>% of Accessory Structures in SFHA</b>	<b>77.01%</b>

Exhibit A

Flood Zone	# of Bldgs. In SFHA	# of bldgs. in SFHA with coverage	% of Bldgs. Covered	Premium (\$)	Insurance in Force (\$)
Single Family	2223	916	41.21%	504,123	135,591,400
2-4 Family	121	29	23.97%	12,128	4,161,700
All other Residential	88	6	6.82%	4,130	794,000
Non-Residential	192	24	12.50%	33,472	3,895,100
Total	2624	975	37.16%	553.853	144,442,200



# APPENDIX C

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(Put the name of the company on top)

## Flood Hazard: Check Before You Buy

Most everyone knows that flooding occurs various ways such as: ice jams blocking river flow, large amounts of snow runoff, heavy rains that cause flash flooding, and drainage problems. It takes only one major flood event to cause a catastrophe. There are maps that show areas predicted to flood. To find out more about flood-prone area maps, check with the City of Miles City Engineering Office located at 17 S. 8<sup>th</sup> Street.

If you're looking at a property, it's a good idea to check out the possible flood hazard before you buy. Here's why:

- The force of moving water or waves can destroy a building.
- Slow-moving floodwaters can knock people off their feet or float a car.
- Even standing water can float a building, collapse basement walls, or buckle a concrete floor.
- Water-soaked contents, such as carpeting, clothing, upholstered furniture, and mattresses, may have to be thrown away after a flood.
- Some items, such as photographs and heirlooms, may never be restored to their original condition.
- Floodwaters are not clean: floods carry mud, farm chemicals, road oil, and other noxious substances that cause health hazards.
- Flooded buildings breed mold and other problems if they are not repaired quickly and properly.
- The impact of flood clean-up, making repairs and personal losses can cause great stress to you, your family, and your finances.

**Floodplain Regulations:** The City of Miles City regulates construction and development in the floodplain to ensure that buildings will be protected from flood damage. Filling and similar projects are prohibited in certain areas. Houses substantially damaged by fire, flood, or any other cause must be elevated to or above regulatory flood level when they are repaired. More information can be obtained from the City of Miles City Floodplain Administrator, Samantha Malenovsky at 234-3493.

**Check for a Flood Hazard:** Before you commit yourself to buying property, do the following:

- Ask the City of Miles City Floodplain Administrator Samantha Malenovsky (234-3493) if the property is in a floodplain; if it has ever been flooded; what the flood depth, velocity, and warning time are; if it is subject to any other hazards; and what building or zoning regulations are in effect.
- Ask the real estate agent if the property is in a floodplain, if it has ever been flooded, and if it is subject to any other hazards such as sewer backup or subsidence.

Exhibit A

- Ask the seller and the neighbors if the property is in a floodplain, how long they have lived there, if the property has ever been flooded, and if it is subject to any other hazards.
- Check for any deed restriction that may be on the property. Homeowners are required to fill restrictions under certain circumstances.

**Flood Protection:** A building can be protected from most flood hazards, sometimes at a relatively low cost. New buildings and additions can be elevated above flood levels. Existing buildings can be protected from shallow floodwaters by regrading, berms, or floodwalls. There are other retrofitting techniques that can protect a building from surface or subsurface water.

**Flood Insurance:** Homeowners insurance usually does not include coverage for a flood. One of the best protection measures for a building (with a flood problem) is a flood insurance policy under the National Flood Insurance Program, which can be purchased through any licensed property insurance agent. If the building is located in a floodplain, flood insurance will be required by most federally backed mortgage lenders. Ask an insurance agent how much a flood insurance policy would cost.

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Buyer's Printed Name

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Buyer's Signature/Date

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Buyer's Printed Name

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Buyer's Signature/Date

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Realtors Printed Name

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Realtors Signature/Date

## FLOOD INSURANCE DISCLOSURE AND ACKNOWLEDGEMENT

Property flooding can occur any time of the year from both surface water as well as groundwater (water rising up through the ground). Your hazard insurance policy usually will NOT cover property damage due to this type of flooding. If a property is determined to lie within a FEMA-designated 1% Flood Hazard Area and you're obtaining a loan, your lender will likely require you to purchase flood insurance in connection with your purchase of the property.

The National Flood Insurance Program (NFIP) provides for the availability of flood insurance but also establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. Due to recent amendments to federal law governing the NFIP those premiums are increasing, and in some cases will rise by a substantial amount over the premiums previously charged for flood insurance for the property. As a result, you should not rely on the premiums previously-paid for flood insurance on a property as an indication of the premiums that will apply after you complete your purchase.

While the risk of flooding can be higher in a FEMA-designated Flood Hazard Area, flooding can also occur on properties that are NOT located within these Flood Hazard Area. Whether or not a property lies within a FEMA-designated Flood Hazard Area, you are encouraged to contact one or more carries of flood insurance for a better understanding of flood insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may increase in the future.

For more information on flood insurance and the National Flood Insurance Program (NFIP) research:

[www.floodsmart.gov](http://www.floodsmart.gov)

[www.fema.gov/national-flood-insurance-program](http://www.fema.gov/national-flood-insurance-program)

[www.realtor.org/topics/national-flood-insurance-program-nfip](http://www.realtor.org/topics/national-flood-insurance-program-nfip)

Property Address:

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Buyer's Printed Name

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Buyer's Signature/Date

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Buyer's Printed Name

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Buyer's Signature/Date

# APPENDIX D

## INSURANCE IMPLICATIONS

Permit # \_\_\_\_\_

Name: \_\_\_\_\_

Address of Proposed Structure: \_\_\_\_\_

Legal Description: \_\_\_\_\_

The Federal Insurance Administration, by statute, must charge insurance rates commensurate with the risk to which a building is exposed. In some instances the additional cost of insuring these buildings, if they are not elevated or floodproofed in accordance with the NFIP requirements, would approach or even exceed the cost of meeting NFIP elevation or dry floodproofing requirements, and the structure would still be exposed to flood damages.

Some structures within the floodplain will require floodplain insurance, flood insurance will be required by most federally back mortgage lenders. Please talk with your insurance agent and/or lender to review any implications this may have.

It is the property owner's responsibility to ensure that the home is built compliant with all federal, state, and local requirements and will apply for flood insurance as needed.

In signing this statement, the issuance understands and agrees with the above terms.

Property Owner:

\_\_\_\_\_

\_\_\_\_\_

Please Sign Name

Date

# APPENDIX E

**2005 MCA Section 2-2-105 Ethical requirements for public officers and public employees.**

- 1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.
- 2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.
- 3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to other, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.
- 4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.
- 5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.



# RESOLUTION NO. 4237

## A RESOLUTION ESTABLISHING WAGES AND SALARIES FOR CITY EMPLOYEES FOR FISCAL YEAR 2018-2019

*WHEREAS*, § 7-4-4201 MCA requires the City Council to determine by resolution or ordinance the compensation of city employees,

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

That the following wages and salaries paid to city employees for the fiscal year 2018-2019 shall be as follows:

POSITION	AMOUNT	FREQUENCY
<b>Elected and Appointed</b>		
City Council:	\$333.34	per month
City Court Judge:	\$1,833.99	per month
Mayor:	\$1,833.99	per month
Treasurer:	\$1,833.99	per month
City Attorney:	\$150.00	per hour
Deputy City Attorney:	\$3,000.00	per month
HP Officer/Urban Renewal Director: .5 FTE	\$16.10	per hour
<b>Administrative/Finance</b>		
City Clerk:	\$3,968.70	per month
Deputy City Clerk/Human Resource Officer:	\$3,604.86	per month
Accounting/Payroll Clerk:	\$17.19	per hour
General Office Clerk:	\$13.73	per hour
<b>Public Services</b>		
Director of Public Utilities:	\$5,641.43	per month
Director of Public Works:	\$5,660.23	per month
Planner II:	\$3,403.03	per month
Flood Administrator/Engineering Tech:	\$3,657.72	per month
Water/Wastewater Plant Supervisor:	\$4,694.09	per month
<b>Fire Department</b>		
Chief:	\$7,132.33	per month
Probationary Part-paid Firefighters	\$9.00	per hour

Part-paid fire fighters who have achieved the Basic Fire Fighter Certification will be paid a base wage of \$9.00 per hour, during their six-month probationary period. Upon successful completion of their probationary period, the base rate is increased to \$10.00

per hour. Beginning with the initial hiring, part-paid fire fighters are entitled to the following increases to their base pay: \$2.00 per hour for E.M.T., \$1.00 per hour for Fire Fighter 1 certification (upon completion), \$1.50 per hour for Fire Fighter II certification (and after 2 years of service), \$2.00 per hour for Fire Fighter III certification (and after 3 years of service.) The probationary designation means less than six months of service.

**Police Department/Dispatch**

Chief:	\$5,812.79	per month
Captain:	\$5,141.40	per month
Captain:	\$5,156.40	per month
Lieutenant/Detective:	\$4,505.50	per month
Communications Dispatch Supervisor/E911 Coordinator:	\$3,626.70	per month
General Office Clerk:	\$13.73	per hour
Animal Caretaker – PT	\$8.35	per hour

**Swimming Pool**

Pool Manager:	\$2,520.90	per month
Lifeguards (1 <sup>st</sup> year):	\$10.00	per hour
Lifeguards (2 <sup>nd</sup> year):	\$10.31	per hour
Lifeguards (3 <sup>rd</sup> year):	\$10.65	per hour
Lifeguards (4 <sup>th</sup> year):	\$11.60	per hour

Lifeguards receive an additional \$.50 per hour when acting as Head Lifeguard.

**Library**

Director:	\$3,720.24	per month
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**Airport**

Airport Manager:	\$4,598.33	per month
Equipment Operator/Maintenance/Customer Service:	\$17.75	per hour

All hourly wages shall be adjusted to comply with changes to Montana State minimum wage law and regulations.

**LONGEVITY/STIPENDS**

Longevity pay is calculated at the rate of \$.05 per hour (or \$7.50 per month for salaried employees) for each year of service after the employee’s applicable date for new longevity. Nonunion employees retain their present level received as longevity as of June 30, 1993. For each additional year of service after this date, salaried employees shall receive an additional amount of \$7.50 per month and hourly employees shall receive an additional \$.05 per hour. The fire chief, if a certified fire fighter, shall receive as longevity 1% of their base pay per month for each year of service, in accordance with state law.

Elected officials, lifeguards, and part-paid fire fighters do not receive longevity pay.

Any employee who achieves an E.M.T. certification shall be paid an additional \$50 per month.

**EMPLOYEE HEALTH INSURANCE**

A maximum of \$739.70 shall be paid by the employer for medical insurance. (See union contracts for specifics on health insurance for employees who are members of collective bargaining units.)

**COLLECTIVE BARGAINING UNITS**

**AFSCME 283A: City Shop, Treatment Facilities, Library and Clerical.** Wages and Benefits for members of this union shall be paid in accordance with their bargaining agreement dated July 1, 2018, through June 30, 2019. Seasonal members of this union will be paid as approved by Resolution No. 3909.

**AFSCME 283B: Police Officers, Dispatchers, Animal Control and Clerical.** Wages and Benefits for members of this union shall be paid in accordance with their bargaining agreement dated July 1, 2018, through June 30, 2019. Animal Control/Code Enforcement Officer will be paid as approved by Resolution No. 3906.

**INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 600: Firefighters/Ambulance Personnel.** Wages and Benefits for members of this union shall be paid in accordance with their bargaining agreement dated July 1, 2018, through June 30, 2019.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 26<sup>th</sup> DAY OF FEBRUARY, 2019.**

\_\_\_\_\_  
John L. Hollowell, Mayor

ATTEST:

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