



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers
and online at zoom.us (ID- 4062343462 Passcode- 59301)*

*November 28, 2023
6:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. **APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**
 - A. Regular City Council Meeting 11/14/2023
 - B. Finance Committee Meeting 11/20/2023
2. **SCHEDULE MEETINGS**
3. **REQUEST OF CITIZENS & PUBLIC COMMENT**
4. **COUNCIL INTERVIEWS**

Ward I Council Member
5. **APPOINTMENTS**

Ward I Council Member
6. **STAFF REPORTS**
7. **CITY COUNCIL COMMENTS**
8. **MAYOR COMMENTS**
9. **COMMITTEE RECOMMENDATIONS**

Finance Committee recommends accepting RDO Equipment bid with smartweigh scale option.
10. **BID AWARDS**

Current Production Model of a 4-Wheel Drive Loader
11. **NEW BUSINESS**
 - A. **ORDINANCE NO. 1374 – (First Reading) AN ORDINANCE CHANGING THE ZONING OF LOT 14 AND THE NORTHEASTERLY 30’ OF LOT 15 OF BLOCK 107 OF THE ORIGINAL PLAT OF THE TOWN OF MILES CITY FROM THE RESIDENTIAL A DISTRICT TO THE GENERAL COMMERCIAL DISTRICT, AND PROVIDING FOR A HEARING THEREON.**
 - B. **RESOLUTION NO. 4540 - A RESOLUTION OF INTENT TO TRANSFER OWNERSHIP OF STADIUM BLEACHERS TO CUSTER COUNTY, MONTANA.**

- C. **ACCEPT COPS OFFICE FY23 COPS HIRING PROGRAM AWARD NUMBER 15JCOPS-23-GG-05057-UHPX.**
- D. **RESOLUTION NO. 4542 - A RESOLUTION OF THE CITY OF MILES CITY APPROVING A TASK ORDER WITH KADRMAS, LEE & JACKSON, INC. RELATED TO THE SOUTHGATE WATER TANK REHAB PROJECT.**

12. 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 November 14, 2023

6:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, November 14, 2023, in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana and online at zoom.us. Mayor John Hollowell called the meeting to order. Council Members present were Pamela Bovee, Rick Huber, Chris Grenz, Mathew Regan (via zoom), Kathy Wilcox, Donald Simpson, and Dwayne Andrews.

Also present were City Attorney Dan Rice, Public Works Director Scott Gray, Fire Chief Branden Stevens, Police Chief Doug Colombik, Flood Plain Administrator/Auto Cad/Assistant PWPU Samantha Malenovsky, Dispatch Director Lyne Anderson, Contract Planner Joel Nelson, and City Clerk/Minute Recorder Mary Rowe.

PLEDGE OF ALLEGIANCE

Mayor Hollowell led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 10/10/2023

- ** *Councilperson Grenz moved to approve the minutes of the Regular Council Meeting of October 10, 2023, subject to any changes, and seconded by Councilperson Simpson. The motion passed by unanimous consent, 7-0.*

City Council Minutes: 10/24/2023

- ** *Councilperson Simpson moved to approve the minutes of the Regular Council Meeting of October 24, 2023, subject to any changes, and seconded by Councilperson Bovee. The motion passed by unanimous consent, 7-0.*

Human Resources Committee Minutes: 08/03/2023

- ** *Councilperson Andrews moved to approve the minutes of the Human Resources Committee Meeting of August 3, 2023, subject to any changes, and seconded by Councilperson Wilcox. The motion passed by unanimous consent, 7-0.*

Human Resources Committee Minutes: 10/26/2023

** *Councilperson Andrews moved to approve the minutes of the Human Resources Committee Meeting of October 26, 2023, subject to any changes, and seconded by Councilperson Simpson.*

Councilperson Grenz asked what criteria was met to close the meeting to protect privacy. Attorney Rice explained that he had sent the MCA to the Human Resources Committee chair and to Human Resource Officer Linda Wilkins to determine. Chairperson Wilcox stated she made the determination that the privacy of an employee outweighed the public's right to know and closed a portion of the meeting.

** *The motion passed by unanimous consent, 7-0.*

Human Resources Committee Minutes: 11/02/2023

** *Councilperson Andrews moved to approve the minutes of the Human Resources Committee Meeting of November 2, 2023, subject to any changes, and seconded by Councilperson Simpson. The motion passed by unanimous consent, 7-0.*

SCHEDULE MEETINGS

Human Resources Committee Meeting	12/05/2023	@5:00pm
Finance Committee Meeting	11/20/2023	@5:00pm

REQUEST OF CITIZENS & PUBLIC COMMENT

John Laney, 511 Pleasant St, representing the County fairgrounds, 4-H and hockey league gave compliments to Director Gray and Attorney Rice. The City currently owns three sets of bleachers that are needed at the fairgrounds and are surplus to the City. He spoke with Director Gray and Attorney Rice about his request and came to a proposed agreement that will favor all parties involved. The request is that the City sell or donate the bleachers to the County and the Tourism Business Improvement District (TBID) will make a one-time donation of \$7,500 to the City parks department to fund the oasis. The sale or donation of the bleachers to the county would relieve the City of all liability. Attorney Rice stated that according to City policy, first there would need to be a resolution of intent, then a public hearing with both a motion and a second in the minutes to transfer the property.

APPOINTMENTS

Building Inspector

** *Councilperson Huber moved to approve the appointment of Gabe Martinsen to the Building Inspector position, seconded by Councilperson Wilcox.*

Mayor Hollowell explained that he is not currently certified, but could shadow the state building inspector for six days, then come back and act in the full capacity of a Building Inspector until certified, but not to exceed six months.

Councilperson Huber asked if he would be contracting on the side, to which Gabe replied no as it would be a conflict of interest.

Kevin Ott, 208 S. 5th, had nothing but good things to say about him.

Chief Stevens disclosed that he had worked with Gabe on several projects and he is great to work with.

**** *The motion passed unanimously, 7-0.***

STAFF REPORTS

Chief Columbik stated that he had emailed everyone the School Resource Officer (SRO) award for \$125,000 and there were about thirty days remaining to accept it. He explained how critical it is to have an SRO in the schools and is shooting for having him year-round instead of just during the school year because he is vital in de-escalating situations involving children as he connects with them on a level that other officers do not.

Chief Stevens introduced Captain Ed Kanduch to everyone and informed them that beginning December 1st, Ed will be interim Fire Chief until the position is filled. He gave kudos to the fire fighters and EMT's on their outstanding work and explained that they respond to approximately six calls per day and a lot of them are overlapping calls. He also noted that overtime is down about 20%. He read the following letter he had received from the Glendive Mayor and presented a plaque they had received for the 16-hour day they spent in Glendive helping fight a large fire.

CITY OF GLENDIVE
300 S. MERRILL AVE
GLENDIVE, MT 59330
PHONE (406)-377-3318



November 7, 2023

Dear Miles City Fire Department,

On behalf of all the citizens of Glendive we wish to express our sincere thanks for your assistance during the devastating fire in Glendive on October 24, 2023. Without the assistance from your department, and help from neighboring towns, we would have faced even more damage to our downtown.

This may have been the largest fire in the history of Glendive and without the quick response and support from your department, we would have lost the entire block of businesses.

We are so thankful to live in Eastern Montana where people come together to help each other. We are forever grateful for all your help!

Sincerely,

A handwritten signature in cursive script, appearing to read "Deb Dion".

Deb Dion
Mayor of Glendive

CITY COUNCIL COMMENTS

Councilperson Grenz congratulated Mayor Hollowell on winning the election.

Councilperson Wilcox stated that she did not win the election, but has really enjoyed being on City Council. She has learned and grown so much and appreciates everything that all directors and staff does.

Councilperson Huber stated that the current overtime was \$31,377.75.

MAYOR COMMENTS

None

COMMITTEE RECOMMENDATIONS

Human Resources Committee

1. Approve a \$2.00 per hour stipend to be paid to the Public Works Director for additional duties being performed associated with a vacated Planner-in-Training position, from Oct 1, 2021 through the present and until a Planning Assistant position is filled.
2. Approve a \$2.00 per hour stipend to be paid to the Flood Plain Director for additional duties being performed associated with a vacated Planner-in-Training position, from Oct 1, 2021 through the present and until a Planning Assistant position is filled.
3. Approve a \$1.00 per hour stipend to be paid to the City Clerk for additional duties being performed associated with a vacated Historic Preservation and Urban Development position, from Oct 1, 2021 through the present and until these positions are filled.
4. Resume internal advertising to fill the part-time Planning Assistant and part-time Historic Preservation/Urban Development position within one week of this report.

BID OPENINGS

Current Production Model of a 4-Wheel Drive Loader

Director Gray said that there was only one bid received from RDO Equipment. They are bonded and the bid packet is complete. The total cost is \$243,250, but with the buyback program the trade in would reduce the cost by \$133,000, leaving a balance due of \$110,250. The balance would be divided between streets, water, and sewer.

****** *Councilperson Wilcox moved to refer the bid to Finance, seconded by Councilperson Andrews and passed unanimously, 7-0.*

NEW BUSINESS

A. **ACCEPT MT DES HAZARD MITIGATION GRANT PROGRAM-
POST FIRE FM5392.**

****** *Councilperson Huber moved to accept the grant and seconded by Councilperson Wilcox.*

Administrator Malenovsky explained that this is for the first phase of the Yellowstone Levy which gives opportunity for options. It is a \$486,000 grant with a 25% match, so the City would be obligated to \$121,500 in matching funds. With an InterCap loan that would amount to approximately \$30,000 a year.

****** *The motion passed unanimously, 7-0.*

B. APPROVE GROWTH POLICY UPDATE TASK ORDER AND SCOPE OF WORK BY GREAT WEST ENGINEERING.

****** *Councilperson Grenz moved to approve the updates, seconded by Councilperson Simpson and passed unanimously, 7-0.*

C. APPROVE HUMAN RESOURCE COMMITTEE RECOMMENDATIONS.

1. Approve a \$2.00 per hour stipend to be paid to the Public Works Director for additional duties being performed associated with a vacated Planner-in-Training position, from Oct 1, 2021 through the present and until a Planning Assistant position is filled.

****** *Councilperson Wilcox moved to approve recommendation 1, and seconded by Councilperson Simpson.*

Councilperson Grenz asked where the money comes from and stated that the City is already spending more than we are receiving and have little cash carryover. He read MCA 7-6-4006 regarding budget amendments, to which Attorney Rice explained that it did not apply here. Grenz noted that this recommendation had been brought up prior and was voted down. He inquired as to what was different now. Mayor Hollowell and Attorney Rice explained the grievance procedure according to City policy.

Councilperson Wilcox explained that all three of the grievants have been performing the additional duties for two years already. This is how the process works and they need their piece of the pie.

****** *Councilperson Andrews moved to change the payment to a lump sum instead of an hourly stipend. Without a second the motion failed.*

Director Gray explained that the grievance was filed in February and the duties are still being performed. He noted that based on past practice the additional duties should be compensated. The compensation being requested is little compared to the duties. He stated that he works in the evenings and on weekends performing the planner-in-training duties on his own time.

****** *Councilperson Wilcox moved to approve a lump sum payment of \$6,800 for twenty months of duties, then an additional \$4,160 for the current fiscal year from July 1, 2023 thru current. Without a second the motion failed.*

The budget was discussed ensuring that the payments were budgeted for this year. Councilperson Wilcox explained that the money allocated to

these wages was not spent in the last two years and so it has carried over to this fiscal year.

Councilperson Reagan asked if there were documentation of the overtime hours and duties performed, to which Director Gray replied that he does not claim the overtime for the duties.

Pam Menne, 336 Sunday Creek Drive, verified the total amount to be paid to Director Gray for the duties performed and noted that if it is already budgeted then the employees should receive compensation for the additional duties they were doing. She recommended that Council not reallocate the funds anywhere else. She also stated as a concerned citizen, if the City is not broke, then stop spreading it around as such.

****** *Councilperson Wilcox called for question, seconded by Councilperson Bovee and passed, 6-1, with Councilperson Andrews voting no.*

****** *On roll call vote, the main motion **failed**, 4-3, with Councilpersons Grenz, Huber, Regan, and Andrews voting no.*

2. Approve a \$2.00 per hour stipend to be paid to the Flood Plain Director for additional duties being performed associated with a vacated Planner-in-Training position, from Oct 1, 2021 through the present and until a Planning Assistant position is filled.

****** *Councilperson Wilcox moved to approve recommendation 2, and seconded by Councilperson Simpson.*

Administrator Malenovsky explained that she had asked for compensation from October of 2021 thru February of 2023 as she had stopped performing planner duties at that time.

****** *Councilperson Wilcox moved to amend the main motion to approve a lump sum payment of \$5,042 for duties performed from 10 of 2021 thru 02 of 2023, seconded by Councilperson Andrews and **passed** 5-2, with Councilpersons Grenz and Huber voting no.*

****** *On a roll call vote, the amended main motion **passed**, 4-3, with Councilpersons Grenz, Huber, and Regan voting no.*

Attorney Rice and Mayor Hollowell explained that any councilperson who was on the availing side of a vote can move to reconsider the item.

** *Councilperson Andrews moved to reconsider Human Resources Committee recommendation 1, seconded by Councilperson Wilcox and **passed 4-3**, with Councilpersons Grenz, Huber, and Regan voting no.*

** *Councilperson Wilcox moved to amend the recommendation to pay a lump sum of \$6,933 for duties performed from 10/21 thru 06/23 and an additional prorated lump sum from planner assistant duties performed from 7/23 thru 06/24 or until position is filled based on a \$2 per hour rate, seconded by Councilperson Andrews and **passed 4-3**, with Councilpersons Grenz, Huber, and Regan voting no.*

** *On a roll call vote the amended main motion **passed 4-3**, with Councilpersons Grenz, Huber, and Regan voting no.*

3. Approve a \$1.00 per hour stipend to be paid to the City Clerk for additional duties being performed associated with a vacated Historic Preservation and Urban Development position, from Oct 1, 2021 through the present and until these positions are filled.

** *Councilperson Wilcox moved to approve recommendation 3, and seconded by Councilperson Bovee.*

Clerk Rowe explained that the recommendation did not fully address her grievance, but that it should include one third of the planner-in-training wages (\$5,042) for the same 15-month period (10/21-01/23) for duties performed as originally recommended, with additional compensation of half of the budgeted Historic Preservation wages (\$4,365) for the Historic Preservation/Urban Renewal duties performed.

Pam Menne, 336 Sunday Creek Drive, stated that additional work should have tracked hours for a paper trail. Mayor Hollowell explained that they are not paid hourly so tracking the hours are not necessary, they are paid on a set salary.

Brenda Little, 219 S. Jordan, stated that tracking the hours would assist in calculating how much work was done.

** *Councilperson Bovee moved to amend the main motion to approve a lump sum payment of \$9,407 for additional duties performed from 10 of 2021 thru 01 of 2023, seconded by Councilperson Wilcox.*

** *On a roll call vote the amended main motion **passed 5-2**, with Councilpersons Grenz and Regan voting no.*

4. Resume internal advertising to fill the part-time Planning Assistant and part-time Historic Preservation/Urban Development position within one week of this report.

****** *Councilperson Wilcox moved to approve the recommendation, seconded by Councilperson Andrews.*

Councilperson Huber clarified that this is only reopening the positions.

****** *On roll call vote, the motion passed, 6-1, with Councilperson Regan voting no..*

D. ORDINANCE NO. 1374 – (First Reading) AN ORDINANCE CHANGING THE ZONING OF LOT 14 AND THE NORTHEASTERLY 30’ OF LOT 15 OF BLOCK 107 OF THE ORIGINAL PLAT OF THE TOWN OF MILES CITY FROM THE RESIDENTIAL A DISTRICT TO THE GENERAL COMMERCIAL DISTRICT, AND PROVIDING FOR A HEARING THEREON.

Mayor Hollowell pulled item D from the agenda as the noticing requirements could not be met.

E. RESOLUTION NO. 4539 - A RESOLUTION ESTABLISHING CITY OF MILES CITY SOUTHEASTERN MONTANA DISPATCH PUBLIC SAFETY ANSWERING POINT (PSAP) POLICY AND GUIDELINES

****** *Councilperson Andrews moved to approve the Resolution read by title only, and seconded by Councilperson Grenz.*

Councilperson Huber asked for an explanation. Director Anderson explained that since Dispatch is no longer under the Police Department, the policy is revamped to meet the needs of dispatch and clarified that the City is in charge of the dispatch employees.

****** *On roll call vote, the motion passed unanimously, 7-0.*

F. APPROVE OCTOBER CLAIMS

****** *Councilperson Bovee moved to approve October claims, seconded by Councilperson Wilcox and passed unanimously, 7-0.*

Councilperson Grenz asked when the appointments to the Council seats will take place. Mayor Hollowell informed him that the vacant seat is on the next agenda

and the elected Council members do not need to be appointed.

ADJOURNMENT

****** *Councilperson Huber moved to adjourn the meeting, seconded by Councilperson Simpson, and passed unanimously, 7-0.*

The meeting was adjourned at 8:07 p.m.

John Hollowell, Mayor

Mary Rowe, City Clerk

Finance Committee Meeting

November 20, 2023

The Finance Committee met Monday, November 20, 2023 at 5:00 p.m. in the Miles City, City Hall Conference Room and online at zoom.us. Present were Committee Chair Rick Huber, and Committee Members Donald Simpson and Kathy Wilcox. Committee member Pamela Bovee arrived at 5:15pm.

Also present were Utility Director Tom Speelmon, and City Clerk/Recorder Mary Rowe.

Chairperson Huber called the meeting to order.

1. Request of Citizens and Public Comment

None

2. Review and Recommend Current Production Model of a 4-Wheel Drive Loader Bid.

Director Speelmon explained that we received only the one bid from RDO Equipment and all specs and requirements are met. He also added that since the bid came in lower than they had budgeted for, they would like to add the Smartweigh scale option to the purchase. He also explained the buyback program, maintenance logs, and overall great working relationship the City has with RDO Equipment. He added that the cost would be broke up between Director Gray, Public works (50%) and himself, Water (25%)/Sewer (25%). The maintenance and repairs are split the same also.

** *Committee Member Wilcox moved to recommend accepting the bid with the Smartweigh scale addition, seconded by Committee Member Simpson. On a roll call vote the motion passed unanimously, 4-0.*

3. Adjournment

** *Committee Member Wilcox moved to adjourn the meeting, seconded by Committee Member Simpson and passed unanimously, 3-0.*

The meeting was adjourned at 5:19 p.m.

Rick Huber, Chairperson

Mary Rowe, Clerk/Recorder

Staff Reports

Clerk Staff Report

October 6 – November 21, 2023

- Public Requests: 6
- Fraud Alerts: 4
- Obtaining Signatures/Filing Contracts for Agreements
- A/R Billing & Reconciliation
- Typing Minutes from Previous Meetings
- Maintain Conference Room Scheduling
- City Website updates
- Obtaining quotes for new website host, new domain name, and new telephone system.
- Public Information, Press Releases, and posts on Social Media (Highest Viewed Post to date in June. 6,972 people to date saw post, and shared 71 times about Splash Pad and Oasis)
- Quarterly reports
- Finalize Annual Financial Report
- Notice all upcoming meetings
- Preparing & Processing Claims
- Ambulance Reconciliation
- Start Audit Process

Meetings

Finance Committee Meeting – 11/20/23 @ 5pm – City Hall Conference Room

Human Resource Committee Meeting – 12/05/23 @ 5pm – City Hall Conference Room



Miles City Fire Rescue

CITY OF MILES CITY

www.milescityfirerescue.com



2800 Main Street
Miles City, MT 59301

Telephone (406) 234-2235
Fax (406) 874-8666

November 28, 2023

Total call volume year to date: **1572 (as of 11-20-23)**

Total call volume last year on this date: **1447**

Difference: **125 More** calls this year

Total call volume 2022: **1,642**

Staffing Issues:

- a. Applied for FEMA Safer Grant (waiting to hear)
- b. Deputy Fire Inspector position (conducting interviews)
- c. Deputy EMS Officer (conducting interviews)
- d. Kanduch is Interim Fire Chief (Dec 1st) putting Miller as Acting Captain (filling open spots with OT)

Apparatus Issues:

- a. Tender 23 still out of service and no replacement
- b. Ambulance 20 (is now a reserve vehicle)
- c. Ambulance 26 (repaired and back in service)
- d. Applied for a pumper/tender AFG grant (did not get)
- e. E-9 (Pump shaft issue) received quote \$24,000 to repair (making a decision on direction)

Equipment Issues:

- a. Slide in Pump unit from the County – Need to buy a 1 Ton truck (for wildland)
- b. Applied for a Cardiac Monitor AFG grant (did not get)
- c. Retro-fitted old tire chains to fit several fire vehicles
- d. Purchased new four gas monitor
- e. New Knoxbox key system mounts ordered

Community Issues:

- a. Training Center can be moved – Mofi said we are good to go (land by the pumping plant)
- b. CMS reporting – Our reporting period will be July 1st 2023 through June 30th 2024
- c. Working with P.D. on active shooter protocol
- d. Currently covering part of Prairie County for ambulance due to bridge closure
- e. MCFR staff completed rope rescue training course at training center 11-13-2023
- f. Miles City firefighters Toy Dance and Auction (12-9-2023 5:30pm) Custer County Event Center – supports the partners with Toys for Tots and the benevolent fund

Facility Issues:

- a. Environmental Assessment ESA Phase 1 site work completed
- b. Working on training center move plan
- c. Work started on inventory for fire station and storage buildings

Response Issues:

- a. Call volume increase has caused delayed response due crews being on multiple calls at once
- b. Have accepted **81** out of town transfers this year
- c. Have taken **62** out of town transfers this year
- d. Last year at this time had taken **72** out of town transfers
- e. Have turned down **39** out of town transfers this year (Due to no staff available, higher level of care needed, mechanical problems or out of area)
- f. Last year at this time had turn down **79** out of town transfers
- g. Cancelled by facility/Pt: **19** (corrected data error 11-21-23)
- h. Out of town transfers so far this year requested **120** (.37 per day)

Miles City (Top Cardiac Arrest Survival Rate in the State for 2022)

23.8%

Montana

10.2%

National

7.5%

**Staff Report to City Council
Ask/Johnson/Rabe
Amended Plat for Boundary Line Relocation &
Aggregation Exemptions
November 9, 2023**

I. GENERAL INFORMATION

A. City Council meeting: December 12, 2023 at 6:00 pm to consider the amended plat and resolution for approval (in conjunction with zone change public hearing and second reading)

B. Project Proponents:

1. Applicants: Troy Ask and John & Frances Johnson (Lot 14)
Eric & Sandra Rabe (Lots 15 & 16)

2. Landowners: Troy Ask and John E. & Frances A. Johnson
317 Yellowstone Avenue
Miles City, MT 59301

Eric B. & Sandra K. Rabe
307 Yellowstone Avenue
Miles City, MT 59301

3. Technical Assistance: Cory Wilhelm, PLS, CFedS
Wilhelm Land Surveying
713 Pleasant Street
P.O. Box 1518
Miles City, MT 59301

C. Property and Project Descriptions:

The properties proposed for a boundary line relocation and aggregation of three lots into two lots are located at 315 and 317 Yellowstone Avenue. The properties are currently zoned Residential A (RA) District by the Miles City Zoning Code, and Lot 14A of the proposed amended plat is proposed for a zone change to the General Commercial (GC) District in conjunction with the amended plat.

The tracts involved in the amended plat are currently legally described as Lots 14, 15, & 16 of Block 107 of the original Plat of the Town of Miles City (also known as the 'Miles City Original Townsite'), located in Section 33 of Township 8 North, Range 47 East, PMM, City of Miles City, Custer County, Montana. The purpose of this review is to obtain City Council approval of the amended plat that involves a relocation of common boundaries and aggregation of lots between Lot 14, 15, and 16, whereas Troy Ask (contract

purchaser of Lot 14) and John E. & Frances A. Johnson (current owners and contract sellers of Lot 14) will acquire a 30' strip of Lot 15 from Eric B. & Sandra K. Rabe, and the three ±7,000 square foot lots will become two lots: Lot 14A (Ask/Johnson) at 11,140 square feet in size and Lot 16A (Rabe) at 9,823 square feet in size; both of the proposed amended plat entitled "Amended Plat Of Lots 14, 15, & 16, Block 107, Miles City Original Townsite".

The original plat was completed and recorded in approximately 1878, prior to incorporation of the City of Miles City in 1887 and Montana's 1889 statehood. Given the age of the townsite and it being platted before the City's incorporation, there is no existing subdivision approval letter, conditions of approval, or approved land uses from the governing body that could be impacted by the modifications to the plat. The modifications are therefore not subject to any further review under the subdivision regulations or previous approvals, and the survey can be approved by City Council at an appropriate time when zoning compliance will adequately be achieved. Alternatively, if the Zone Change is denied, the amended plat could still be approved; however, the use of Lot 14A would need to be brought into compliance with the zoning regulations for the current RA District, through discontinuance of exterior commercial storage use and any other commercial usage, with the exception of storage within the building(s).

The proposed zone change is the subject of the Zoning Commission's final report and recommendation that is to be reviewed and acted on by the City Council at the same meeting as consideration of the amended plat. The project has also been approved for the exemptions from subdivision review as outlined in Sec. 21-17 of the Miles City Subdivision Regulations. The approved exemptions are found in 76-3-207, MCA as follows:

76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

- (d) for five or fewer lots within a platted subdivision, the relocation of common boundaries; and*
- (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.*

Sec. 21-17 of the Miles City Subdivision Regulations (MCSR) outlines the procedures for obtaining approval of exemptions from subdivision review. The section requires the subdivision administrator to cause the documents to be reviewed by the designated agents of the governing body (e.g., subdivision administrator, city sanitarian, zoning administrator, city attorney). Surveys for exemptions require review by the examining land surveyor (ELS) if required by the subdivision administrator or county clerk and recorder (the Custer County Clerk & Recorder requires ELS review, therefore, the subdivision administrator does as well). The Custer County Examining Land Surveyor Carl R. (Russ) Kluesner issued an ELS approval of the amended plat on October 5, 2023

When the subdivision administrator requested comments on the exclusion from the Sanitation in Subdivisions Act from the City Sanitarian, Mike Rinaldi, he stated the verbiage is correct on the face of the plat; therefore, the sanitation exclusion has been verified as valid.

Dan Rice, City Attorney had no specific comments on the proposed exemptions, but has been informed of each step in the process, and has reviewed and approved the draft resolution to approve the amended plat.

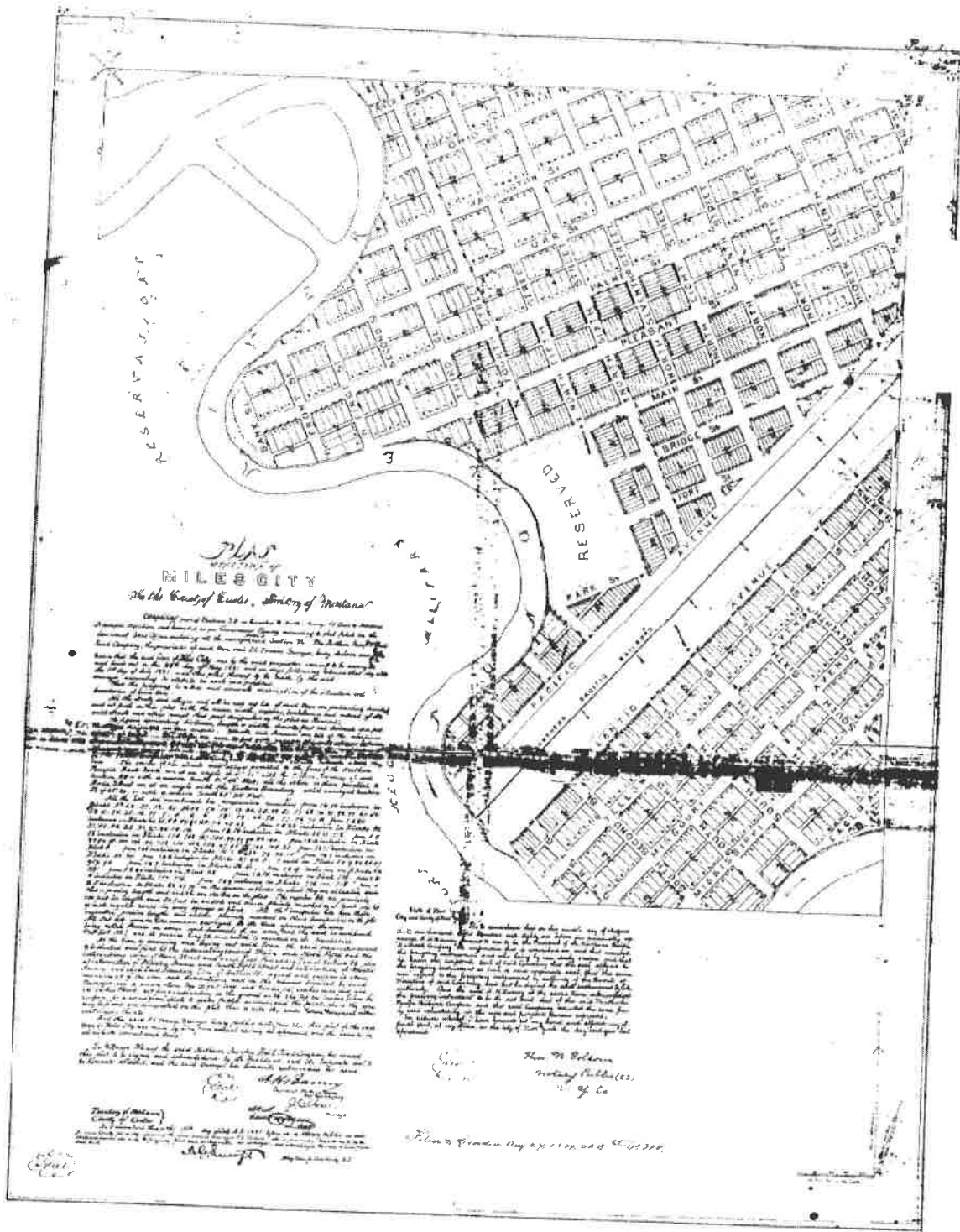
Scott Gray, Zoning Administrator, has been involved through the processes and has worked with the reviewer and applicants/agent regarding the plans for zoning compliance, including the proposed zone change.

After the Zone Change is acted on and if approved by City Council, the last step prior to the landowners being approved to execute and record the attached proposed 'AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE' is to obtain approval of the amended plat by the City Council.

D. Maps:

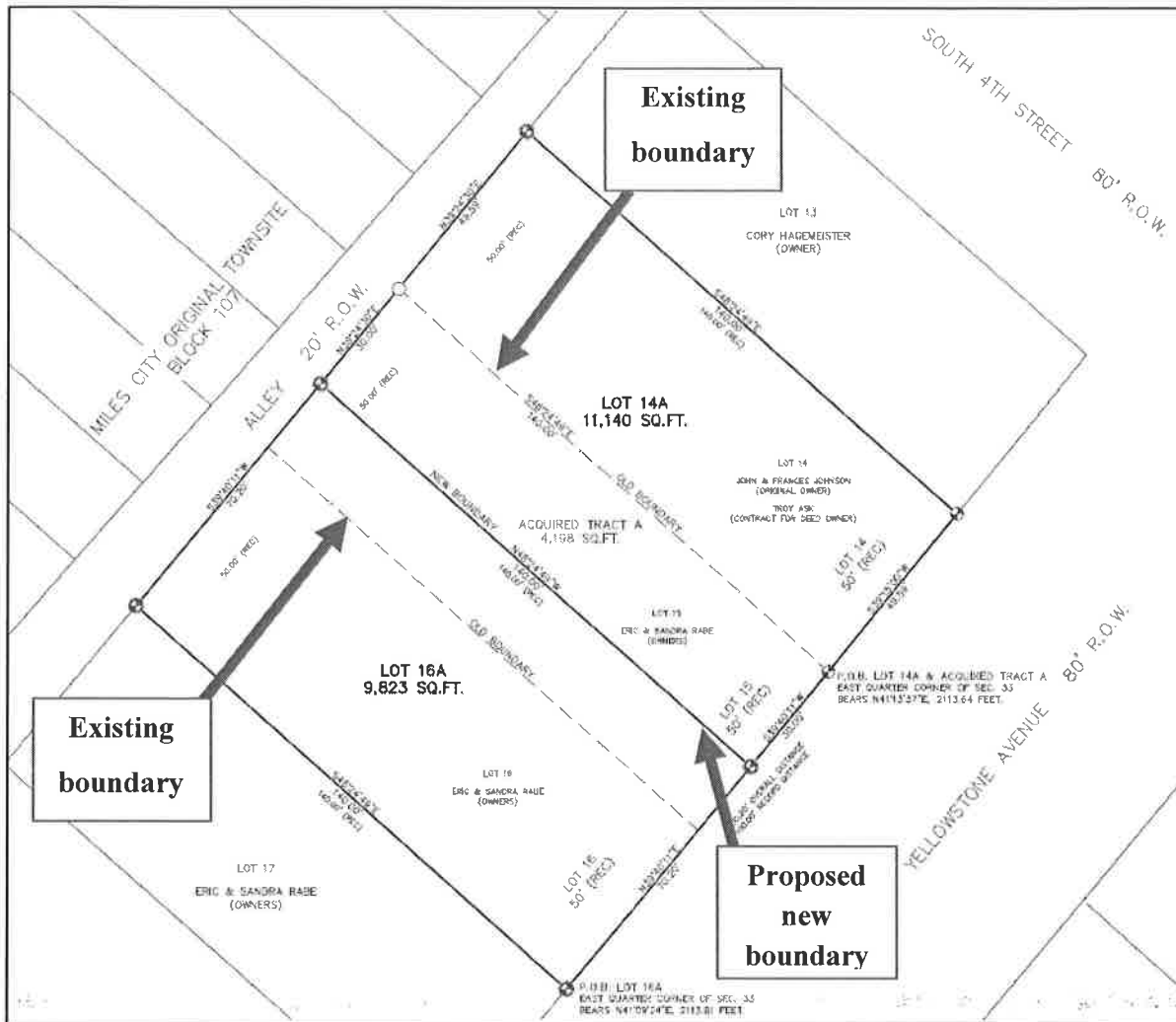
Figure 1 is the original Plat of the Town of Miles City. Figure 2 is an excerpt of the proposed amended plat showing the proposed reconfiguration of lots, with the full version attached to this report as Attachment 4.

Figure 1: Existing 1878 original Plat of the Town of Miles City
 (also known as the 'Miles City Original Townsite'):



384 A
 MILES CITY

Figure 2: Excerpt of the draft Amended Plat, showing existing and proposed new boundaries:



E. Attachments:

The following are attached to this report:

1. Attachment 1: Cover letter from the applicants' agent Cory Wilhelm explaining the project, submitted September 6, 2023.
2. Attachment 2: Subdivision Exemption Claim Application, submitted September 6, 2023.
3. Attachment 3: Exemption approval letter dated September 27, 2023, from subdivision administrator Joel Nelson.
4. Attachment 4: Proposed Amended Plat (revised since original September 6 submittal), submitted September 20, 2023 and approved by the Custer County Examining Land Surveyor on October 5, 2023.

5. Attachment 5: Examining Land Surveyor approval of the September 20 Amended Plat, issued by the Custer County Examining Land Surveyor Carl R. (Russ) Kluesner on October 5, 2023.
6. Attachment 6: Draft City Council Resolution No. 4538 to approve the Amended Plat.

II. PROJECT DETAILS AND APPLICABLE REGULATIONS

A. Boundary Line Adjustment Details:

The following table identifies the existing and proposed lot sizes:

Existing Lots	Current Lot Size (square feet)	Proposed Lots	Proposed Lot Size (square feet)
Lot 14 (Ask/Johnson)	7,000	Lot 14A (Ask/Johnson)	11,140
Lot 15 (Rabe)	7,000	n/a (lot eliminated)	n/a
Lot 16 (Rabe)	7,000	Lot 16 (Rabe)	9,823

B. Easements

The existing amended plat depicts the publicly dedicated streets and alley. No additional easements are proposed or expected to become necessary with the proposal.

C. Zoning & Land Use

As stated above, the proposed exemption that is intended to relocate common boundaries may be exempt from subdivision review by 76-3-207(1), MCA, but the proposal is subject to zoning regulations. The following provides an evaluation of zoning compliance.

1. **Current Zoning:** Residential A (RA) District
2. **Proposed Zoning:** Lot 14A is proposed for a zone change to the General Commercial (GC) District, while Lot 16A will remain in the RA District.
3. **Surrounding Zoning:** RA District to the northeast, southeast, and southwest; GC District to the northwest.
4. **Land Uses:** The area currently in proposed Lot 14A is used for storage of commercial construction equipment and other personal property and contains a shop building and

small, old dwelling; the commercial use is proposed to continue and become a permitted use upon approval of the zone change to the GC District. The area currently in proposed Lot 16A is developed with a shop building, which is used as an accessory building for the landowners' adjacent single-family dwelling on Lot 17 of Block 107.

5. **Surrounding Land Uses:** The predominant land uses to the northeast, southeast, and southwest are single-family residential; To the northwest is a health care clinic, across the alley from the site.
6. **Zoning Compliance:** The proposed exemptions are subject to zoning requirements. The proposal includes a zone change request for proposed Lot 14A to change from the RA District to the GC District, the subject of the Zoning Commission's Final Report and recommendation to approve the zone change. The zone change would allow for the commercial use of Lot 14A to be permitted, subject to compliance with various provisions of the zoning regulations, such as implementation of a landscaping plan. Approval of the zone change would actually bring the buildings on the lot into compliance with the setback requirements of the GC District, whereas the current buildings are nonconforming relative to the RA District specifications. The boundary line relocation and aggregation of lots would also bring the shop building on proposed Lot 16A into compliance with the side yard setback, which the building does not currently comply with due to the building being built over the existing internal property line between the landowners' Lots 15 & 16. With the applicants' plans for zoning compliance, the exemptions and amended plat comply with the zoning regulations.

D. Survey Requirements

According to 76-3-207(1), MCA, the proposed exemption is subject to survey requirements. Applicable survey requirements are found in the Administrative Rules of Montana's (ARM's) Uniform Standards for Final Subdivision Plats outlined by [ARM 24.183.1107](#) and the Uniform Standards for Certificates of Survey outlined by [ARM 24.183.1104](#), which are adopted by the City of Miles City by reference under Sec. 21-62 of the MCSR.

The application included a draft amended plat prepared by a licensed professional land surveyor. The subdivision administrator reviewed the draft amended plat for compliance with the Uniform Standards for Final Subdivision Plats and Certificates of Survey, and the plat appears to comply with the Administrative Rules of Montana. Custer County also requires review by the county's Examining Land Surveyor (ELS) to ensure compliance with the Uniform Standards for Final Subdivision Plats and Certificates of Survey. The Custer County ELS has approved the draft amended plat, which occurred on October 5, 2023.

E. Subdivision Regulations

Sec. 21-17 of the MCSR provides for “Divisions and aggregations of land exempt from subdivision review”. Subsection (a) addresses “Exemptions, generally” as follows: “The MSPA provides that certain divisions of land are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3, MCA. Subdivision regulations, must, at a minimum, establish criteria that the governing body or reviewing authority will use to determine whether a proposed methods of disposition, using the exemptions provided in MCA 76-3-201 or 76-3-207, are attempts to evade comprehensive subdivision review.” Subsection (b) outlines the “General procedures” for exemptions. An evaluation of these provisions, along with subdivision administrator findings, are as follows:

- (1) Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator a certificate of survey or, where a survey is not required, an instrument of conveyance and evidence of, and an affidavit affirming entitlement to the claimed exemption.

Finding 1: *The applicants submitted the appropriate Exemption Claim Application along with the required fees and draft amended plat, to the City and subdivision administrator on September 6 & 7, 2023. The effective submittal date was September 7, 2023.*

- (2) When a certificate of survey, instrument of conveyance, and/or affidavit are submitted, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., subdivision administrator, city sanitarian, zoning administrator, city attorney). The agents shall review the proposed use of the exemptions within 30 calendar days of submittal to determine whether it complies with the requirements set forth in this section, the MSPA, and the Montana Sanitation in Subdivisions Act.

Finding 2: *The subdivision administrator sent the application and draft amended plat to the City Sanitarian, Zoning Administrator, and City Attorney on September 12, 2023. Sanitarian Mike Rinaldi sent his approval of the exclusion cited on the draft amended plat to address compliance with the Montana Sanitation in Subdivisions Act. Zoning compliance for the commercial use on the resulting Ask/Johnson lot is being addressed with a zone change petition. The subdivision administrator has corresponded with Zoning Administrator Scott Gray about other elements of zoning compliance, and it has been determined the boundary line relocation and aggregation of lots otherwise comply with the zoning code. City Attorney Dan Rice has been in correspondence with the subdivision administrator Joel Nelson throughout the review. On September 27, 2023, an exemption approval letter is being issued, subject to Custer County Examining Land Surveyor review*

and approval of the amended plat, and a survey correction to add a signature block for certification of approval for the City Council. The exemption approval letter included a determination that the proposal complies with the requirements set forth in Sec. 21-17 of the MCSR, the MSPA, and the Montana Sanitation in Subdivisions Act, which occurred on Day 20 of the 30 calendar day review period outlined in the MCSR and Day 14 of the 20 working day review period outlined in 76-3-207(4)(c), MCA, per Senate Bill 131.

- (3) If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, after appropriate review of the survey by the examining land surveyor (if required by the subdivision administrator or county clerk and recorder) and when all appropriate signatures are in place, they shall advise the Custer County Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the agents find the proposed use of the exemption does not comply with the statutes and the criteria in this section, the subdivision administrator shall advise the clerk and recorder to not file or record the documents and return the documents to the landowner.

Finding 3: *The Custer County Clerk & Recorder requires Examining Land Surveyor review and approval of amended plats to be recorded at that office. The draft amended plat has been submitted to the Custer County Examining Land Surveyor for review and approval. After review and approval of the amended plat by the Examining Land Surveyor, all appropriate signatures will need to be in place, and then upon approval and signature(s) by the City Council, the Clerk & Recorder will be advised that the amended plat and associated documents may be recorded.*

Sec. 21-17(c)(4) of the MCSR addresses circumstances where exemptions are denied, which is not applicable to this proposal, which was approved.

Sec. 21-17(c)(5) of the MCSR encourages an advisory examination of exemptions, which occurred prior to submittal of the applications associated with the exemptions.

- (6) The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction(s) is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review. (State ex rel. Dreher v. Fuller, 50 St. Rpt. 454, 1993)

***Finding 4:** The designated agents considered all surrounding circumstances, and there appears to be no intent to evade the MSPA.*

- (7) Exempt divisions of land that would result in a pattern of development equivalent to a subdivision may be presumed to be adopted for purposes of evading the MSPA based on the surrounding circumstances in section 21-17(b)(6), above.

***Finding 5:** The designated agents did not find any attempt to evade the MSPA, and the proposal would not result in a pattern of development equivalent to a subdivision. This is a minor modification to three lots in an old platted townsite, which will become two lots on the amended plat.*

- (8) All parcels and the use of all parcels created or amended through the use of an exemption shall comply with the zoning regulations. This does not allow the City of Miles City to require lots resulting from exempt divisions to comply with section 21-18, Design and improvement standards, unless the exemption seeks to alter a lot that was subject to the design and improvement standards of the subdivision regulations during subdivision review.

***Finding 6:** The applicants have submitted plans for zoning compliance, which has been addressed in part through submittal of a zone change petition for proposed Lot 14A, a working landscaping plan for Lot 14A, and through the subdivision administrator's and Zoning Administrator's review of the plans for other elements of zoning compliance. The applicants' plans will achieve compliance with the zoning code upon City approval and landowner implementation of the plans. The lots are not subject to design and improvement standards of the MCSR because the townsite/subdivision was platted long prior to adoption of Miles City Subdivision Regulations.*

- (9) To exempt divisions and/or remaining parcels of land resulting from the exemptions in MCA 76-3-207 from the survey requirements of MCA 76-3-401, the parcel(s) must be able to be described as a 1/32 or larger aliquot part of a United States Government section.

***Finding 7:** The boundary line relocation does not qualify for this potential exemption from survey requirements, and requires an amended plat to be recorded.*

- (10) Subject to the following, a division of land exempt from subdivision review by MCA 76-3-207 (a gift or sale to a member of the immediate family, exemption for agricultural purposes, or relocation of common boundaries) may not be made unless

the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

- a. If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.
- b. The county treasurer may accept the amount of the tax prorated pursuant to the above subsection (10) a as a partial payment of the total tax that is due.

Finding 8: *The draft amended plat includes the appropriate certification language, which will need to be signed by the County Treasurer's Office prior to recording.*

Finding 9: *The applicants have followed the procedural requirements of Sec. 21-17(b) of the MCSR by submitting the exemption claim application and draft amended plat for examination by the City of Miles City, which have been determined to comply with applicable requirements.*

Sec. 21-17(c) of the MCSR addresses requirements applicable to specific exemptions, including (3): "*Relocation of common boundaries and aggregation of lots*". An evaluation of these provisions, along with the subdivision administrator findings, are as follows:

- (a) *Statement of Intent.* The intended purpose of this exemption is to allow a change in the location of one or more boundary line between parcels and to allow transfer of the land without subdivision review.

Finding 10: *The proposal meets the statement of intent of allowing the relocation of common boundaries and to allow the transfer of land without subdivision review – it would result in the change in the location of an existing boundary between three adjoining lots in a platted townsite/subdivision to become two lots.*

- (b) Certificates of survey, or amended plats for those altering platted subdivisions, claiming one of these exemptions must clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by showing the existing boundary with a dashed line and the new relocated boundary with a solid line. The appropriate certification set forth in ARM 24.183.1104(1)(f) must be included on the certificate of survey or amended plat.

Finding 11: *The proposal includes a draft amended plat that depicts the old (existing) boundary lines with dashed lines and the new/relocated boundary with a solid line, along with the appropriate certifications set forth in ARM 24.183.1104(1)(f).*

- (c) When presented to the county clerk and recorder for filing, certificates of survey or amended plats showing the relocation of common boundary lines or aggregation of lots must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) being affected.

Finding 12: *The amended plat will need to be accompanied by a deed or recordable agreement for the entire newly described parcels or the portion of the tracts being affected to execute the proposed exemptions as shown on the amended plat.*

- (d) If the relocation of common boundaries would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.

Finding 13: *The relocation of common boundaries would not result in the permanent creation of an additional parcel of land. Therefore it is not necessary that it be reviewed as a subdivision, and is exempt from subdivision review.*

- (e) If a change is made to a platted subdivision which results in a redesign or rearrangement of six or more lots in a platted subdivision, the division of land must be reviewed as a major subdivision.

Finding 14: *The change being made to the existing subdivision results in the redesign or rearrangement of three existing lots to result in two lots. Therefore it is not necessary that it be reviewed as a subdivision, and is exempt from subdivision review.*

- (f) The use of the boundary line exemption will be presumed to have been adopted for the purpose of evading the MSPA if the proposed relocation results in a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

Finding 15: *The proposal would not alter a 160+ acre tract to result in a tract less than 160 acres in size. Therefore the use of the boundary line exemption does not raise a presumption that the exemption has been adopted for the purpose of evading the MSPA. The proposal utilizes the proper exemptions.*

Subsection 21-14.b.11 of the MCSR, “Amending filed plats”, addresses potential changes to filed subdivision plats. In short, this subsection addresses how such amendments are

processed and certain limitations for changes that might result from amended plats using exemptions and otherwise. An evaluation of these provisions, along with recommended findings, is as follows:

- (a) Changes that will substantially alter the contents of the original approved subdivision application, do not comply with the conditions of preliminary plat approval, or will materially alter any portion of a filed plat (not to include minor boundary adjustments), its land divisions or improvements, that is determined by the subdivision administrator to have the potential to negatively impact one or more of the primary review criteria for subdivisions, or that will modify the approved use of land within the subdivision, must be reviewed and approved by the governing body using the procedure for material amendments described in subsection (8), *Amending approved preliminary plats before Final plat approval*, above.

***Finding 16:** The proposal involves a minor boundary adjustment and aggregation of lots among three involved tracts of record that exist per the Miles City Original Townsite plat, to become two lots. The original plat was completed and recorded in approximately 1878, prior to incorporation of the City of Miles City in 1887 and Montana's 1889 statehood. Given the age of the townsite and it being platted before the City's incorporation, there is no existing subdivision approval letter, conditions of approval, or approved land uses from the governing body that could be impacted by the modifications to the plat. The modifications are therefore not subject to any further review under the subdivision regulations or previous approvals, and the survey can be approved at an appropriate time when zoning compliance will adequately be achieved.*

- (b) Any alteration which increases the number of lots, modifies six or more lots, or abandons or alters a public road right-of-way or park land dedication shall be reviewed and approved by the governing body pursuant to subdivision review procedures or vacation or abandonment laws, as applicable.

***Finding 17:** The proposal would not increase the number of lots, modify six or more lots, or abandon or alter any public road rights-of-way or park land dedications. Therefore the change does not need to be further reviewed or approved by the governing body under the subdivision review procedures, and the City Council may approve and sign the amended plat at a future City Council meeting.*

- (c) An amended plat may be subject to the procedures for reviewing minor or major subdivisions, as appropriate.

Finding 18: *Because the proposal does not constitute a material change to any applicable subdivision approvals and meets the criteria for exemption approval, the amended plat is not subject to any subdivision review procedures.*

- (d) The governing body reserves the right to require a current abstract of title for the impacted properties and may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.

Finding 19: *The designated agents of the governing body found no need to require a current abstract of title for the impacted properties, so no lienholders have been identified.*

- (e) The governing body may not approve an amendment that will place a lot in non-conformance with the design and improvement standards contained in Section 21-18 of these regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to subsection 21-22(a), Variances.

Finding 20: *The amended plat would not create any non-conformities with the design and improvement standards contained in Section 21-18 of the MCSR. Therefore no public hearing or variance is necessary.*

- (f) The governing body may not approve an amendment that will place a lot in non-conformance with zoning regulations unless the Miles City Board of Adjustment has granted a zoning variance to the applicable standard.

Finding 21: *The amended plat itself complies with the City zoning code, with no variances being required for the boundary line relocations and aggregation of lots. The only applicable zoning issues are regarding the commercial use on Lot 14A and an associated requirement for a landscaping plan, which are being addressed with a zone change petition for that lot, and a landscaping plan (currently under review) in accordance with the zoning code.*

- (g) The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats (Section 21-62).

Finding 22: *The draft amended plat submitted with the application has been prepared by a licensed professional land surveyor, and will need to be reviewed and approved by the*

county's Examining Land Surveyor. Certification by the governing body that the plat is approved will be required per the Uniform Standards for Final Plats.

III. REVIEWER RECOMMENDATION

The subdivision administrator recommends that the City Council adopt this report as findings of fact, approve the amended plat subject to appropriate signatures on the record set of the plat, and approve and sign the attached Resolution No. 4538. Upon issuance of the City Council approvals, all remaining parties will need to sign the amended plat so that the amended plat may be recorded and the exemption properly executed with the Custer County Clerk & Recorder's Office along with appropriate deeds or other conveyance documents.

Attachment 1



8/24/2023

City of Miles City Planning Department
17 South 8th Street
Miles City, MT 59301

RE: Amended Plat – Boundary Relocation/Aggregation – Ask-Rabe-Johnson

Planning Department,

This proposed Amended Plat is for the addresses 315 Yellowstone, owned by Eric & Sandra Rabe; and 317 Yellowstone Avenue, under contract by Troy Ask through John & Frances Johnson. Troy Ask is interested in purchasing a thirty-foot strip from Eric & Sandra Rabe. We are proposing to accomplish this with an Amended Plat using the Boundary Line Relocation Exemption and the Aggregation Exemption.

Both properties are currently zoned as Residential A, but Troy ask will be using the property as General Commercial. He is including a request for a zoning change by the City of Miles City. We are planning on this zone change to be reviewed at the same time as the Amended Plat submittal.

If the zone change is approved, all the existing buildings will meet the setback, lot coverage, and parking space zoning requirements. If the zone change is denied, the applicant would need to submit a variance request for the 317 Yellowstone Avenue property in order to meet the zoning requirements.

Please find the attached documents and required fees for the review process to begin.

If you have any questions, please let us know.

Thank you,

Cory Wilhelm, PLS, CFedS

Attachment 2

File No. _____
(for official use only)



SUBDIVISION EXEMPTION CLAIM APPLICATION

Miles City Community Services & Planning
17 South 8th Street, PO Box 910
Miles City, MT 59301

Date Received: _____
(for official use only)

Attach a check payable to the City of Miles City for \$200.00 and submit the application materials (Original, plus 2 copies) to the City of Miles City Community Services and Planning Department, 17 S. 8th Street, Miles City, MT, 59301.

1. Property owner(s): (If more than 2, please attach additional sheets)

a. Name: Troy Ask and John & Frances Johnson Occupation: Self Employed
Address: 317 Yellowstone Avenue Phone: 406-852-4839
City, State, Zip: Miles City, MT 59301 Email: troyask10@gmail.com

b. Name: Eric & Sandra Rabe Occupation: Retired
Address: 315 Yellowstone Avenue Phone: 406-853-4041
City, State, Zip: Miles City, MT 59301 Email: N/A

2. Surveyor/Representative:

Name: Cory Wilhelm Firm: Wilhelm Land Surveying
Address: Physical: 713 Pleasant Street Mailing: PO Box 1518 Phone: 406-234-3924
City, State, Zip: Miles City, MT 59301 Email: wilhelmlandsurveying@outlook.com

3. Parcel Description(s) of Existing Tract(s): (If more than 2, please attach additional sheets)

a. Address: 317 Yellowstone Avenue

Tax ID Number: RMS3082 Geocode: 14-1740-33-4-17-05-0000

Section: 33 Township: 8N Range: 47E

Other legal description: _____

Zoning District: Residential A Minimum Lot Size: 11,140 square feet

How and when was the parcel was created (example: Subdivision: X Addition, 10/3/92):

Miles City Original Townsite, Envelope 384A, Filed in the year 1881

b. Address: 315 Yellowstone Avenue

Tax ID Number: RMS2867 Geocode: 14-1740-33-4-17-04-0000

Section: 33 Township: 8N Range: 47E

Other legal description: _____

Zoning District: Residential A Minimum Lot Size: 9,823 square feet

How and when the existing parcel was created (example: Subdivision: X Addition, 10/3/92):

Miles City Original Townsite, Envelope 384A, Filed in the year 1881

4. Proposed Exemption(s):

This application is used for proposals to relocate common boundaries between adjoining properties, and/or the aggregation of lots, or miscellaneous exemptions (MCA 76-3-. Please indicate which exemptions apply to this proposal by checking the appropriate box(es):

- A division made outside of platted subdivisions for the purpose of relocating common boundary line(s) between adjoining properties. [76-3-207(1)(a), MCA]
- For five or fewer lots within a platted subdivision, the relocation of common boundaries. [76-3-207(1)(d), MCA]
- A division made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas. [76-3-207(1)(e), MCA]
- Aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas. [76-3-207(1)(f), MCA]
- A division of land that is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter [76-3-201(1)(h), MCA]
- Other (please describe) _____

a. Reasons/justification for use of the exemption:

The Rabe's do not use the land on the northeast side of their shop and Troy Ask would like to buy it.

b. Intentions for uses of the property (List or discuss the property owners' intentions for the use of each resulting parcel. For example, will the parcel(s) be used for agriculture, commercial, residences, etc.):

315 Yellowstone Avenue will remain residential and meets the existing zoning regulations.

317 Yellowstone Avenue is requesting a zoning change to General Commercial at the same time of the exemption review submittal.

c. Intentions for disposition (For example, is the intent to correct a building or fence encroachment, to bring the property into compliance with zoning requirements, to prepare tracts for sale, etc.):

To transfer land that the current landowner owns and that the neighbor would like to do. By doing this, it also fixes zoning setbacks on the 317 Yellowstone Avenue property with a zone change.

5. Required attachments:

Submit the original, signed application, along with two additional copies of the completed application and the information listed below.

- a. Copies of recorded deeds documenting present ownership of affected parcels.
- b. Copies of all deeds, contracts, restrictions, and covenants related to this property recorded or entered into within the past year.
- c. Site plan (or draft certificate of survey or subdivision/amended plat) showing the approximate gross and net lot sizes (in acreage or square feet), proposed property lines, and all existing and proposed structures. The site plan should also identify property line setbacks, parking spaces, and any other information necessary to demonstrate compliance with the zoning code.
- d. Documentation of approved variances from zoning requirements related to the affected parcels.
- e. Copies of existing and proposed deed restrictions or covenants, if any.
- f. All documentation in support of the sanitation exemption(s), if applicable.
- g. Copies of any existing permits for the development on the property (building permits, floodplain permits, etc.), as applicable.

6. Acknowledgments:

I/We, the undersigned landowner(s) and exemption claimant(s) understand that the State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Montana Subdivision and Platting Act or local subdivision regulations.

I/We affirm that this exemption claim is not an attempt to evade the Montana Subdivision and Platting Act or the Miles City Subdivision Regulations.

I/We recognize that I/We may be subject to penalties if my actions are deemed to be an effort to evade subdivision review, as set forth in Montana law:

- 76-3-301(3), MCA: If transfers not in accordance with the Montana Subdivision and Platting Act are made, the City Attorney shall commence action to enjoin further sales or transfers and complete compliance with all provision of the Montana Subdivision and Platting Act. The cost of such action shall be imposed against the party not prevailing.
- Violations: Any person who violates any provision of the Montana Subdivision and Platting Act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.
- I/We also recognize that making false statements on this form could subject me to criminal prosecution for False Swearing (per MCA 45-7-202) and Perjury (per MCA 45-7-201).
- I/We also recognize that per 45-7-203(1), MCA (Unsworn falsification to authorities), A person commits an offense under 45-7-203 if, with the purpose to mislead a public servant in performing an official function, the person:
 - (a) makes any written false statement that the person does not believe to be true;
 - (b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements from being misleading;
 - (c) submits or invites reliance on any writing that the person knows to be forged, altered, or otherwise lacking in authenticity; or
 - (d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object that the person knows to be false.

7. Signatures:

I/We, as Claimant(s), has/have read the foregoing Exemption Claim Application, and affirm that my/our statements and information are true and correct to the best of my/our knowledge.

John E. Johnson Date: 8/30/23
Property owner's/Claimant's signature

EB Role Date: 9/6/2023
Property owner's/Claimant's signature



CITY OF MILES CITY
PLANNING & COMMUNITY SERVICES

17 S. 8th Street, PO Box 910
Miles City, MT 59301-0910

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

September 27, 2023

Eric B. & Sandra K. Rabe
315 Yellowstone Ave.
Miles City, MT 59301

Troy Ask and John E. & Frances A. Johnson
317 Yellowstone Ave.
Miles City, MT 59301

Cory Wilhelm, PLS, CFedS
Wilhelm Land Surveying, LLC
713 Pleasant Street
P.O. Box 1518
Miles City, MT 59301

RE: Approval of the Exemption Claim Application for the boundary line relocation and aggregation of lots involving the proposed amended plat entitled 'AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE'

Dear Mr. & Mrs. Rabe, Mr. & Mrs. Johnson, Mr. Ask, and Mr. Wilhelm:

The Exemption Claim Application and supporting material for the above claimants have been reviewed. The exemption involves a boundary line relocation and aggregation of lots involving Lots 14, 15, & 16, Block 107, Miles City Original Townsite, located in Section 33 of Township 8 North, Range 47 East, PMM, City of Miles City, Custer County, Montana.

The application indicates the intent to utilize the following exemptions from subdivision review:

76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division.

(1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

- (d) for five or fewer lots within a platted subdivision, the relocation of common boundaries; and*
- (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.*

Based on the City's designated agents' review of the proposal, the exemption from subdivision review is approved, subject to Custer County Examining Land Surveyor review and approval of the amended plat.

The Custer County Examining Land Surveyor (ELS) has been provided the draft amended plat for review. After ELS approval, to complete the amended plat process will then require City Council approval of the proposed amended plat and proper execution and recordation of the applicable documents. This approval of the exemption is based on the attached findings.

Because a Zone Change Petition is under review and the amended plat requires the zone change to be approved for zoning compliance, the proposed zone change will be scheduled for Zoning Commission review followed by City Council reviews. The City Council's amended plat review and potential signatures will be scheduled in conjunction with the final Council meeting for the zone change. You will be notified of each public hearing and meeting through the various steps in the processes.

Please do not hesitate to contact me with any questions or concerns regarding this letter or the remaining steps in the process.

Sincerely,



Joel Nelson
Contract Planner, Subdivision Administrator
Geoplant LLC
joel@geoplant.com

406.261.3021

Copies via email:

Dan Rice, City Attorney
Mike Rinaldi, Sanitarian
Scott Gray, Zoning Administrator

Subdivision Administrator’s findings of fact in support of the exemption approval for Troy Ask, John E. & Frances A. Johnson, and Eric B. & Sandra K. Rabe:

Sec. 21-17 of the MCSR provides for “Divisions and aggregations of land exempt from subdivision review”. Subsection (a) addresses “Exemptions, generally” as follows: “The MSPA provides that certain divisions of land are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3, MCA. Subdivision regulations, must, at a minimum, establish criteria that the governing body or reviewing authority will use to determine whether a proposed methods of disposition, using the exemptions provided in MCA 76-3-201 or 76-3-207, are attempts to evade comprehensive subdivision review.” Subsection (b) outlines the “General procedures” for exemptions. An evaluation of these provisions, along with subdivision administrator findings, are as follows:

- (1) Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator a certificate of survey or, where a survey is not required, an instrument of conveyance and evidence of, and an affidavit affirming entitlement to the claimed exemption.

Finding 1: *The applicants submitted the appropriate Exemption Claim Application along with the required fees and draft amended plat, to the City and subdivision administrator on September 6 & 7, 2023. The effective submittal date was September 7, 2023.*

- (2) When a certificate of survey, instrument of conveyance, and/or affidavit are submitted, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., subdivision administrator, city sanitarian, zoning administrator, city attorney). The agents shall review the proposed use of the exemptions within 30 calendar days of submittal to determine whether it complies with the requirements set forth in this section, the MSPA, and the Montana Sanitation in Subdivisions Act.

Finding 2: *The subdivision administrator sent the application and draft amended plat to the City Sanitarian, Zoning Administrator, and City Attorney on September 12, 2023. Sanitarian Mike Rinaldi sent his approval of the exclusion cited on the draft amended plat to address compliance with the Montana Sanitation in Subdivisions Act. Zoning compliance for the commercial use on the resulting Ask/Johnson lot is being addressed with a zone change petition. The subdivision administrator has corresponded with Zoning Administrator Scott Gray about other elements of zoning compliance, and it has been determined the boundary line relocation and aggregation of lots otherwise comply with the zoning code. City Attorney Dan Rice has been in correspondence with the subdivision administrator Joel Nelson throughout the review. On September 27, 2023, an exemption approval letter is being issued, subject to Custer County Examining Land Surveyor review and approval of the amended plat, and a survey correction to add a signature block for certification of approval for the City Council. The exemption approval letter included a determination that the proposal complies with the requirements set forth in Sec. 21-17 of the MCSR, the MSPA, and the Montana Sanitation in Subdivisions Act, which occurred on Day 20 of the 30 calendar day review period outlined in the MCSR and Day 14 of the 20 working day review period outlined in 76-3-207(4)(c), MCA, per Senate Bill 131.*

- (3) If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, after appropriate review of the survey by the examining land surveyor (if required by the subdivision administrator or county clerk and recorder) and when all appropriate signatures are in place, they shall advise the Custer County Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the agents find the proposed use of the exemption does not comply with the statutes and the criteria in this section, the subdivision administrator shall advise the clerk and recorder to not file or record the documents and return the documents to the landowner.

***Finding 3:** The Custer County Clerk & Recorder requires Examining Land Surveyor review and approval of amended plats to be recorded at that office. The draft amended plat has been submitted to the Custer County Examining Land Surveyor for review and approval. After review and approval of the amended plat by the Examining Land Surveyor, all appropriate signatures will need to be in place, and then upon approval and signature(s) by the City Council, the Clerk & Recorder will be advised that the amended plat and associated documents may be recorded.*

Sec. 21-17(c)(4) of the MCSR addresses circumstances where exemptions are denied, which is not applicable to this proposal, which was approved.

Sec. 21-17(c)(5) of the MCSR encourages an advisory examination of exemptions, which occurred prior to submittal of the applications associated with the exemptions.

- (6) The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction(s) is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review. (State ex rel. Dreher v. Fuller, 50 St. Rpt. 454, 1993)

***Finding 4:** The designated agents considered all surrounding circumstances, and there appears to be no intent to evade the MSPA.*

- (7) Exempt divisions of land that would result in a pattern of development equivalent to a subdivision may be presumed to be adopted for purposes of evading the MSPA based on the surrounding circumstances in section 21-17(b)(6), above.

***Finding 5:** The designated agents did not find any attempt to evade the MSPA, and the proposal would not result in a pattern of development equivalent to a subdivision. This is a minor modification to three lots in an old platted townsite, which will become two lots on the amended plat.*

- (8) All parcels and the use of all parcels created or amended through the use of an exemption shall comply with the zoning regulations. This does not allow the City of Miles City to require lots resulting from exempt divisions to comply with section 21-18, Design and improvement standards, unless the exemption seeks to alter a lot that was subject to the

design and improvement standards of the subdivision regulations during subdivision review.

Finding 6: *The applicants have submitted plans for zoning compliance, which has been addressed in part through submittal of a zone change petition for proposed Lot 14A, a working landscaping plan for Lot 14A, and through the subdivision administrator's and Zoning Administrator's review of the plans for other elements of zoning compliance. The applicants' plans will achieve compliance with the zoning code upon City approval and landowner implementation of the plans. The lots are not subject to design and improvement standards of the MCSR because the townsite/subdivision was platted long prior to adoption of Miles City Subdivision Regulations.*

- (9) To exempt divisions and/or remaining parcels of land resulting from the exemptions in MCA 76-3-207 from the survey requirements of MCA 76-3-401, the parcel(s) must be able to be described as a 1/32 or larger aliquot part of a United States Government section.

Finding 7: *The boundary line relocation does not qualify for this potential exemption from survey requirements, and requires an amended plat to be recorded.*

- (10) Subject to the following, a division of land exempt from subdivision review by MCA 76-3-207 (a gift or sale to a member of the immediate family, exemption for agricultural purposes, or relocation of common boundaries) may not be made unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

- a. If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.
- b. The county treasurer may accept the amount of the tax prorated pursuant to the above subsection (10) a as a partial payment of the total tax that is due.

Finding 8: *The draft amended plat includes the appropriate certification language, which will need to be signed by the County Treasurer's Office prior to recording.*

Finding 9: *The applicants have followed the procedural requirements of Sec. 21-17(b) of the MCSR by submitting the exemption claim application and draft amended plat for examination by the City of Miles City, which have been determined to comply with applicable requirements.*

Sec. 21-17(c) of the MCSR addresses requirements applicable to specific exemptions, including (3): "Relocation of common boundaries and aggregation of lots". An evaluation of these provisions, along with the subdivision administrator findings, are as follows:

- (a) *Statement of Intent.* The intended purpose of this exemption is to allow a change in the location of one or more boundary line between parcels and to allow transfer of the land without subdivision review.

Finding 10: *The proposal meets the statement of intent of allowing the relocation of common boundaries and to allow the transfer of land without subdivision review – it would result in the change in the location of an existing boundary between three adjoining lots in a platted townsite/subdivision to become two lots.*

- (b) Certificates of survey, or amended plats for those altering platted subdivisions, claiming one of these exemptions must clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by showing the existing boundary with a dashed line and the new relocated boundary with a solid line. The appropriate certification set forth in ARM 24.183.1104(1)(f) must be included on the certificate of survey or amended plat.

Finding 11: *The proposal includes a draft amended plat that depicts the old (existing) boundary lines with dashed lines and the new/relocated boundary with a solid line, along with the appropriate certifications set forth in ARM 24.183.1104(1)(f).*

- (c) When presented to the county clerk and recorder for filing, certificates of survey or amended plats showing the relocation of common boundary lines or aggregation of lots must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) being affected.

Finding 12: *The amended plat will need to be accompanied by a deed or recordable agreement for the entire newly described parcels or the portion of the tracts being affected to execute the proposed exemptions as shown on the amended plat.*

- (d) If the relocation of common boundaries would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.

Finding 13: *The relocation of common boundaries would not result in the permanent creation of an additional parcel of land. Therefore it is not necessary that it be reviewed as a subdivision, and is exempt from subdivision review.*

- (e) If a change is made to a platted subdivision which results in a redesign or rearrangement of six or more lots in a platted subdivision, the division of land must be reviewed as a major subdivision.

Finding 14: *The change being made to the existing subdivision results in the redesign or rearrangement of three existing lots to result in two lots. Therefore it is not necessary that it be reviewed as a subdivision, and is exempt from subdivision review.*

- (f) The use of the boundary line exemption will be presumed to have been adopted for the purpose of evading the MSPA if the proposed relocation results in a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

Finding 15: *The proposal would not alter a 160+ acre tract to result in a tract less than 160 acres in size. Therefore the use of the boundary line exemption does not raise a presumption that the exemption has been adopted for the purpose of evading the MSPA. The proposal utilizes the proper exemptions.*

Subsection 21-14.b.11 of the MCSR, “*Amending filed plats*”, addresses potential changes to filed subdivision plats. In short, this subsection addresses how such amendments are processed and certain limitations for changes that might result from amended plats using exemptions and otherwise. An evaluation of these provisions, along with recommended findings, is as follows:

- (a) Changes that will substantially alter the contents of the original approved subdivision application, do not comply with the conditions of preliminary plat approval, or will materially alter any portion of a filed plat (not to include minor boundary adjustments), its land divisions or improvements, that is determined by the subdivision administrator to have the potential to negatively impact one or more of the primary review criteria for subdivisions, or that will modify the approved use of land within the subdivision, must be reviewed and approved by the governing body using the procedure for material amendments described in subsection (8), *Amending approved preliminary plats before Final plat approval*, above.

Finding 16: *The proposal involves a minor boundary adjustment and aggregation of lots among three involved tracts of record that exist per the Miles City Original Townsite plat, to become two lots. The original plat was completed and recorded in approximately 1878, prior to incorporation of the City of Miles City in 1887 and Montana’s 1889 statehood. Given the age of the townsite and it being platted before the City’ incorporation, there is no existing subdivision approval letter, conditions of approval, or approved land uses from the governing body that could be impacted by the modifications to the plat. The modifications are therefore not subject to any further review under the subdivision regulations or previous approvals, and the survey can be approved at an appropriate time when zoning compliance will adequately be achieved.*

- (b) Any alteration which increases the number of lots, modifies six or more lots, or abandons or alters a public road right-of-way or park land dedication shall be reviewed and approved by the governing body pursuant to subdivision review procedures or vacation or abandonment laws, as applicable.

Finding 17: *The proposal would not increase the number of lots, modify six or more lots, or abandon or alter any public road rights-of-way or park land dedications. Therefore the change does not need to be further reviewed or approved by the governing body under the subdivision review procedures, and the City Council may approve and sign the amended plat at a future City Council meeting.*

- (c) An amended plat may be subject to the procedures for reviewing minor or major subdivisions, as appropriate.

Finding 18: *Because the proposal does not constitute a material change to any applicable subdivision approvals and meets the criteria for exemption approval, the amended plat is not subject to any subdivision review procedures.*

- (d) The governing body reserves the right to require a current abstract of title for the impacted properties and may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.

Finding 19: *The designated agents of the governing body found no need to require a current abstract of title for the impacted properties, so no lienholders have been identified.*

- (e) The governing body may not approve an amendment that will place a lot in non-conformance with the design and improvement standards contained in Section 21-18 of these regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to subsection 21-22(a), Variances.

Finding 20: *The amended plat would not create any non-conformities with the design and improvement standards contained in Section 21-18 of the MCSR. Therefore no public hearing or variance is necessary.*

- (f) The governing body may not approve an amendment that will place a lot in non-conformance with zoning regulations unless the Miles City Board of Adjustment has granted a zoning variance to the applicable standard.

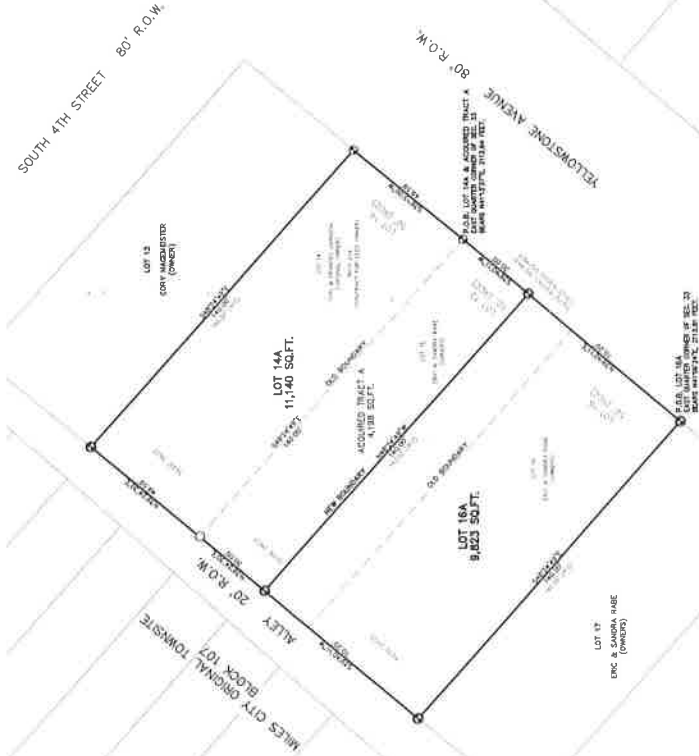
Finding 21: *The amended plat itself complies with the City zoning code, with no variances being required for the boundary line relocations and aggregation of lots. The only applicable zoning issues are regarding the commercial use on Lot 14A and an associated requirement for a landscaping plan, which are being addressed with a zone change petition for that lot, and a landscaping plan (currently under review) in accordance with the zoning code.*

- (g) The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats (Section 21-62).

Finding 22: *The draft amended plat submitted with the application has been prepared by a licensed professional land surveyor, and will need to be reviewed and approved by the county's Examining Land Surveyor. Certification by the governing body that the plat is approved will be required per the Uniform Standards for Final Plats.*

AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE

RELOCATION OF COMMON BOUNDARY LINE/AGGREGATION OF LOTS
S701/4SE1/4, Section 33, Township 8 North, Range 47 East, P.M.M.
Miles City, Custer County, Montana



Purpose of Survey
We, the undersigned, hereby certify that this division of land is exempt from review as a subdivision pursuant to § 7-201(16), M.C.A., for the following reasons:
1. The lots are not being subdivided into parcels of less than one acre.
2. The lots are being subdivided for the purpose of the subdivision.

Each Lot 14A and Lot 16A are excluded from subdivision review by the Department of Environmental Quality pursuant to 17-206(2)(c) as a parcel that is being subdivided for the purpose of the subdivision, and the boundaries of a larger aggregate of lots are not being subdivided. The survey is exempt from review as a subdivision pursuant to section 78-3-201(10), M.C.A.

Troy Ask
John E. Johnson
Francis A. Johnson
Eric B. Fahn
Sandra K. Rebe

Metes and Bounds

LOT 14A, a parcel of land being Lot 14, and the northwesterly 30 feet of Lot 15, Block 107, Miles City Original Townsite, lying in the SW1/4 Section 33, Township 8 North, Range 47 East, P.M.M., Custer County, Montana, being more particularly described as follows:
Beginning at the southerly corner of said Lot 14, add point being the POINT OF BEGINNING (P.O.B.); thence S39°40'17" along the southeasterly boundary line of said Lot 14, a distance of 70.20 feet; thence S89°40'17" along the southeasterly boundary line of said Lot 14, a distance of 140.00 feet; thence S39°40'17" along the northwesterly boundary line of said Lot 14, a distance of 48.29 feet; thence along the northwesterly boundary line of said Lot 14, a distance of 140.00 feet; thence along the northwesterly boundary line of said Lot 14, a distance of 48.29 feet; thence along the northwesterly boundary line of said Lot 14, a distance of 140.00 feet; thence along the northwesterly boundary line of said Lot 14, a distance of 48.29 feet, more or less, to the POINT OF BEGINNING.
Containing 11,140 square feet, more or less.

LOT 15A, a parcel of land being Lot 15, and the northwesterly 30 feet of Lot 16, Block 107, Miles City Original Townsite, lying in the SW1/4 Section 33, Township 8 North, Range 47 East, P.M.M., Custer County, Montana, being more particularly described as follows:
Beginning at the southerly corner of said Lot 15, add point being the POINT OF BEGINNING (P.O.B.); thence N23°40'17" along the southeasterly boundary line of said Lot 15 & 16, a distance of 70.20 feet; thence along said southeasterly boundary line of said Lot 15 & 16, a distance of 140.00 feet; thence S39°40'17" along the northwesterly boundary line of said Lot 15, a distance of 48.29 feet; thence along said northwesterly boundary line of said Lot 15, a distance of 140.00 feet; thence along said northwesterly boundary line of said Lot 15, a distance of 48.29 feet, more or less, to the POINT OF BEGINNING.
Containing 9,823 square feet, more or less.

Certificate of Surveyor

I, Cory Wilhelm, P.E., of Miles City, Montana, for Wilhelm Land Surveying, LLC, do hereby certify that I am a duly Licensed Professional Engineer in the State of Montana, that as a result of a survey made in Montana, this plat was prepared from notes taken during that survey conducted in accordance with the Montana Surveying Act and the Montana Professional Engineers Act, and that the monuments found and set are of the character and occupy the positions shown hereon.
Cory Wilhelm, P.E.
Miles City, Montana
This is a PRELIMINARY PLAT



Certification of Plat Approval

The City Council of Miles City, Montana, hereby certifies that they have examined this Amended Plat and having found the same to conform to the provisions of the Montana Surveying Act, do hereby certify that the same is correct and approved.

Mayor _____ Attest _____

NOTE: This plat is being set of record for one (1) year from the date of recording. The plat shall not be available as a public record until the plat is recorded with the Montana Department of Records and Administration. The plat is being set of record for one (1) year from the date of recording.

Filed this 21st day of 2023 A.D. at _____, Montana.
Custer County Clerk and Recorder _____
Clerk _____ Document # _____

County Treasurer's Certification

I hereby certify that all real property taxes and other charges levied on the land hereon subdivided have been paid.
Custer County Treasurer _____

LEGEND

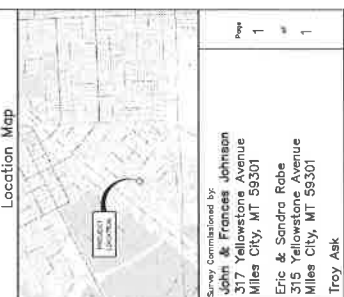
- ⊙ Property Corner - Found 3/4" Rebar with 1" Yellow Cap Stamp: 374623 (Found)
- ⊙ Property Corner - Set 3/24" Rebar with 1" Orange Plastic Cap Stamp: 402414 034405
- Cornered Point (No Monument Set)
- (rc) = Record Measurement P.O.B. = Point of Beginning

BASIS OF BEARING

Basis of bearing is true north obtained by GPS observations. All measurements shown are from a Traverse Measur Projection. File Name: MILES CITY.dwg File Path: 20000,000 ft. File Origin: MILES CITY.dwg File Scale Factor: 1.000148220. Distance shown on annotations is 5,118.42 feet from the east corner of Section 33, Township 8 North, Range 47 East, P.M.M.
Date Drafted: 9/20/2023



Survey Commissioned by
John & Frances Johnson
317 Yellowstone Avenue
Miles City, MT 59301
Eric & Sandra Rebe
315 Yellowstone Avenue
Miles City, MT 59301
Troy Ask



Certificate of Examination

Checked for errors and omissions in writing and calculations
On this _____ day of _____, 2023.

Signature

Certificate of Sanitarian

I, Michael Bredt, Sanitarian for the City of Miles City/Custer County Health Board, hereby certify that the survey shown on this plat conforms to the Montana Surveying Act and the Montana Professional Engineers Act and the Montana Surveying Act and the Montana Professional Engineers Act.
DATED this _____ day of _____, 2023.
Michael Bredt, P.E.
Miles City/Custer County Environmental Health Officer

STATE OF MONTANA
COUNTY OF CUSTER

On this _____ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the person named in the foregoing, and acknowledged to me that they executed the same as their free act and deed for the uses and purposes therein mentioned.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year this certificate first above written.

STATE OF MONTANA
COUNTY OF CUSTER

On this _____ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared John E. and Francis A. Johnson, known to me to be the person named in the foregoing, and acknowledged to me that they executed the same as their free act and deed for the uses and purposes therein mentioned.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year this certificate first above written.

STATE OF MONTANA
COUNTY OF CUSTER

On this _____ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Eric B. Fahn and Sandra K. Rebe, known to me to be the person named in the foregoing, and acknowledged to me that they executed the same as their free act and deed for the uses and purposes therein mentioned.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year this certificate first above written.

STATE OF MONTANA
COUNTY OF CUSTER

On this _____ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Eric B. Fahn and Sandra K. Rebe, known to me to be the person named in the foregoing, and acknowledged to me that they executed the same as their free act and deed for the uses and purposes therein mentioned.
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COUNTY OF CUSTER

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COUNTY OF CUSTER

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

Attachment 5

Carl R. Kluesner PLS KLUESNER SURVEYING AND MAPPING 406-480-4449

MT REG #12447LS P.O. Box 201 / 320 South Main St.

Lima, MT 59739

OCTOBER 5, 2023

TUMBLEWOOD ENVIRONMENTAL INC.

ATTN: MIKE RINALDI R.S.

1024 W. EVELYN ST.

LEWISTOWN, MT 59457

RE: AMENDED PLAT OF LOTS 14,15,16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE
SW1/4SE1/4, S.33, T.8N., R.47E., PMM , CUSTER COUNTY, MONTANA

Owners:

TROY ASK

ERIC B. AND SANDRA K. RABE

JOHN E. AND FRANCES A. JOHNSON

I have examined the aforementioned Amended Subdivision Plat, and find it meets all the criteria set forth in the Montana Subdivision and platting Act, and for Errors and Omissions, and Calculations, and Drafting, pursuant to 76-3-611(2)(a), MCA.

Please do not hesitate to contact me with any questions or comments you may have.

Respectfully,

Carl R. Kluesner P.L.S., MT Registration 12447LS

Cc

CORY WILHELM PLS

Attachment 6

RESOLUTION NO. 4538

A RESOLUTION ADOPTING FINDINGS OF FACT AND APPROVING THE AMENDED PLAT FOR THE PURPOSE OF A BOUNDARY LINE RELOCATION AND AGGREGATION OF LOTS INVOLVING LOTS 14, 15, & 16 OF BLOCK 107 OF THE ORIGINAL PLAT OF THE TOWN OF MILES CITY, IN THE CITY OF MILES CITY, MONTANA.

WHEREAS, applicants and landowners Troy Ask, John E. & Frances A. Johnson, and Eric B. & Sandra K. Rabe have requested that the City of Miles City approve an amended plat that will relocate common boundaries and aggregate lots involving Lots 14, 15, & 16 of Block 107 of the original Plat of the Town of Miles City (also known as the 'Miles City Original Townsite'), located in Section 33 of Township 8 North, Range 47 East, PMM, City of Miles City, Custer County, Montana;

AND WHEREAS, an amended plat entitled 'AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE' would relocate the common boundaries and aggregate the three lots into two lots upon being recorded;

AND WHEREAS, the City of Miles City is authorized to approve the relocation of common boundary lines for five or fewer lots within a platted subdivision pursuant to Section 76-3-207(1)(d), MCA;

AND WHEREAS, the City of Miles City is authorized to approve the aggregation of lots pursuant to Section 76-3-207(1)(f), MCA;

AND WHEREAS, the City of Miles City City Council has reviewed the staff report along with findings of fact that support the approval of the exemptions and amended plat, and concurs with and adopts the staff report and findings.

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

The City Council does hereby adopt the November 9, 2023 Staff Report to City Council for the Ask/Johnson/Rabe Amended Plat for Boundary Line Relocation & Aggregation Exemptions, attached hereto as Exhibit "A" as findings of fact, and based on such findings of fact, approves the proposed 'AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE', which will amend Lots 14, 15, & 16 of Block 107 of the original Plat of the Town of Miles City.

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 ____ DAY OF
_____, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk

DRAFT

New Business

ORDINANCE NO. 1374

AN ORDINANCE CHANGING THE ZONING OF LOT 14 AND THE NORTHEASTERLY 30' OF LOT 15 OF BLOCK 107 OF THE ORIGINAL PLAT OF THE TOWN OF MILES CITY FROM THE RESIDENTIAL A DISTRICT TO THE GENERAL COMMERCIAL DISTRICT, AND PROVIDING FOR A HEARING THEREON.

WHEREAS, Troy Ask, John & Frances Johnson, and Eric & Sandra Rabe have made application for the property described as Lot 14 and the northeasterly 30' of Lot 15 of Block 107 of the original Plat of the Town of Miles City (also known as the 'Miles City Original Townsite') to be rezoned from the Residential A (RA) District to the General Commercial (GC) District;

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

AND WHEREAS, Section 24-96 of the Code of Ordinances of Miles City, Montana requires that such application be referred to the City Zoning Commission for public hearing and recommendation to the City Council prior to any action by the City Council upon such application;

AND WHEREAS, the Miles City Zoning Commission, on October 26, 2023, upon public hearing and deliberation, recommended to the City Council that such zone change be approved.

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

Section 1. Zoning for the following described real property located within the City of Miles City, Custer County, Montana, is hereby rezoned from the Residential A (RA) District to the General Commercial (GC) District, to wit:

Lot 14 and the northeasterly 30' of Lot 15 of Block 107 of the original Plat of the Town of Miles City, located in Section 33 of Township 8 North, Range 47 East, PMM, City of Miles City, Custer County, Montana. Said property is proposed to be described as Lot 14A of the 'AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE'.

Section 2. The Final Report of the Zoning Commission of the City of Miles City, prepared as part of the review of this application, and attached hereto as Exhibit “A,” is hereby adopted as Findings of Fact to support the Council’s decision.

Section 3. Prior to final passage, a public hearing shall be held upon this proposed zone change before the City Council at 6:00 P.M. on the 12th day of December, 2023, in the Council Chambers at City Hall, 17 S. Eighth Street, Miles City, Montana.

Section 4. The City Clerk shall give notice of the date, time and place of such hearing by publication in the Miles City Star at least 15 days prior to the date of such hearing, as well as notice by certified mail at least 15 calendar days prior to such hearing to the applicants, landowners, all adjoining property owners, and owners of land within 150 feet of the subject property, containing all information required by, and in accordance with, MCA Sections 76-2-303 and 305, as well as Section 24-97 of the Code of Ordinances of Miles City, Montana.

Section 5. This ordinance shall be in full force and effect thirty (30) days after its final passage and approval.

Said Ordinance read and put on its passage this 28th day of November, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk

FINALLY PASSED AND ADOPTED this 12th day of December, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk



PUBLIC WORKS & UTILITIES
DEPARTMENT



CITY OF MILES CITY

17 So. 8th Street
P.O. Box 910
Miles City, Montana 59301

Telephone: (406) 234-3493
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Miles City Zoning Commission
P.O. Box 910
Miles City, MT 89301

October 26, 2023

Mayor Hollowell and City Council:

RE: 317 Yellowstone Avenue, Zone Change

The Miles City Zoning Commission conducted its public hearing on Thursday, October 26, 2023 to consider the zone change to a property described as Lot 14 and the northeasterly 30' of Lot 15 of Block 107 of the original Plat of the Town of Miles City, located in Section 33 of Township 8 North, Range 47 East, PMM, City of Miles City, Custer County, Montana from the Residential A (RA) District to the General Commercial (GC) District. Said property is proposed to be described as Lot 14A of the 'AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE'.

After reviewing comments from the hearing, the Zoning Commission recommends approval of the Zone Change at 317 Yellowstone Avenue.

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

Respectfully submitted,

Leif Ronning, Chairman
Miles City Zoning Commission

Miles City Zoning Commission

17 S. 8th Street
Miles City, Montana 59301
(406)234-3493

Meeting Minutes

October 26, 2023
2:00 pm

Call to Order: Leif Ronning called the meeting to order at approximately 2:02 p.m.

Roll Call: Leif Ronning, Amber Trinka and Nancy Mitchell were present. Leroy Meidinger was not present.

Approval of Past Meeting Minutes: Meeting minutes from the July 28, 2022 Zoning Commission meeting were approved unanimously.

Citizen/Visitor Requests/Comments: None

Unfinished Business: None

New Business: Zone Change Public Hearing: Petition for Zone Change at 317 Yellowstone Avenue: Leif introduced the agenda item, a Zone Change Petition from RA District to GC District, and asked Contract Planner Joel Nelson (via Zoom) for the staff report. Joel then gave an overview of the report, with which he recommended Zoning Commission findings and approval of the zone change.

Nancy asked about the old house in the 30' strip on the Rabe lot that would become part of the Ask/Johnson lot. Eric Rabe and Troy Ask answered that it is probably a teardown. It's used for dry storage and hasn't been lived in since about two years before 2002 when the Rabes bought the property. Nancy then asked about the apparent violation mentioned in the report, and Joel clarified that when Cory initially inquired about the project, zoning was discussed, and Scott brought up the commercial use of the Ask shop and outside the shop, which they addressed with the zone change petition. Nancy questioned the Rabe shop, which Eric Rabe clarified was just for RV storage, and Joel clarified the apparent violation was the commercial storage on the Ask's/Johnson's Lot 14. Nancy asked if there would be another zone change for the Rabe lot in the future, and Eric Rabe clarified there were no plans for that because it is just used for RV storage.

Scott touched on the landscaping plan and proposed fencing. He asked Troy to be sure to talk to the City about the fence, because there are various standards, such as the height at certain distances from the street.

Cory said this was pretty well covered, and added that the zone change fixes some nonconformities like the RA setbacks.

Leif opened the public hearing to public comments, and there were no further public comments.

Amber moved to approve the zone change, Leif seconded, and the motion carried unanimously, 3 – 0.

Board Member/Staff Comment(s): None

Adjournment: Nancy Mitchell motioned to adjourn; Leif Ronning seconded the motion. Meeting Adjourned at approximately 2:27 p.m.

Respectfully Submitted,


Zoning Commission Chair

Final Report of Zoning Commission
317 Yellowstone Avenue Zone Change Application
RA District to GC District
November 9, 2023

I. GENERAL INFORMATION

A. Meetings

- 1. Zoning Commission Hearing:** Thursday, October 26, 2023
- 2. City Council 1st Reading:** Tuesday, November 28, 2023 at 6:00 p.m. in the City Hall Conference Room
- 3. City Council 2nd Reading & Public Hearing:** Tuesday, December 12, 2023 at 6:00 p.m. in the City Hall Conference Room

B. Project Proponents

- 1. Applicants:** Troy Ask and John & Frances Johnson (Lot 14)
Eric & Sandra Rabe (Lot 15)
- 2. Landowners:** Troy Ask and John E. & Frances A. Johnson
317 Yellowstone Avenue
Miles City, MT 59301

Eric B. & Sandra K. Rabe
307 Yellowstone Avenue
Miles City, MT 59301
- 3. Technical Assistance:** Cory Wilhelm, PLS, CFedS
Wilhelm Land Surveying, LLC
713 Pleasant Street
P.O. Box 1518
Miles City, MT 59301

C. Property Descriptions

The tracts involved in the zone change petition are currently legally described as Lots 14 & 15 of Block 107 of the original Plat of the Town of Miles City (also known as the 'Miles City Original Townsite'), located in Section 33 of Township 8 North, Range 47 East, PMM, City of Miles City, Custer County, Montana. The applicants are currently in the process of a relocation of common boundaries and aggregation of lots between Lot 14, 15, and 16, whereas Troy Ask (contract purchaser of Lot 14) and John E. & Frances A. Johnson (current owners and contract sellers of Lot 14) will acquire a 30' strip of Lot 15 from Eric B. & Sandra K. Rabe, and the three \pm 7,000 square foot lots will become two lots: Lot 14A

(Ask/Johnson) at 11,140 square feet in size and Lot 16A (Rabe) at 9,823 square feet in size; both of the proposed amended plat entitled “Amended Plat Of Lots 14, 15, & 16, Block 107, Miles City Original Townsite”.

The proposed zone change from the Residential A (RA) District to the General Commercial (GC) District would apply only to the resulting Lot 14A, for a zone change area of 11,140 square feet in size.

D. Project Description

Lot 14, located at 317 Yellowstone Avenue, is currently developed with a 30’ by 40’ (1,200 square feet) shop building that was built in 2012. Lot 15 contains a small, old home in the 30’ strip (“Acquired Tract A” on the proposed amended plat) that does not appear on the Property Record Card for Lots 15 & 16 on the Montana Cadastral program, which would become a part of proposed Lot 14A. Lot 14 is used for storage of commercial construction equipment in the shop building and outside the building, which is proposed to continue on Lot 14A. **The commercial use is prompting the proposed zone change from the RA District to the GC District for proposed Lot 14A.**

E. Area Zoning and Land Uses

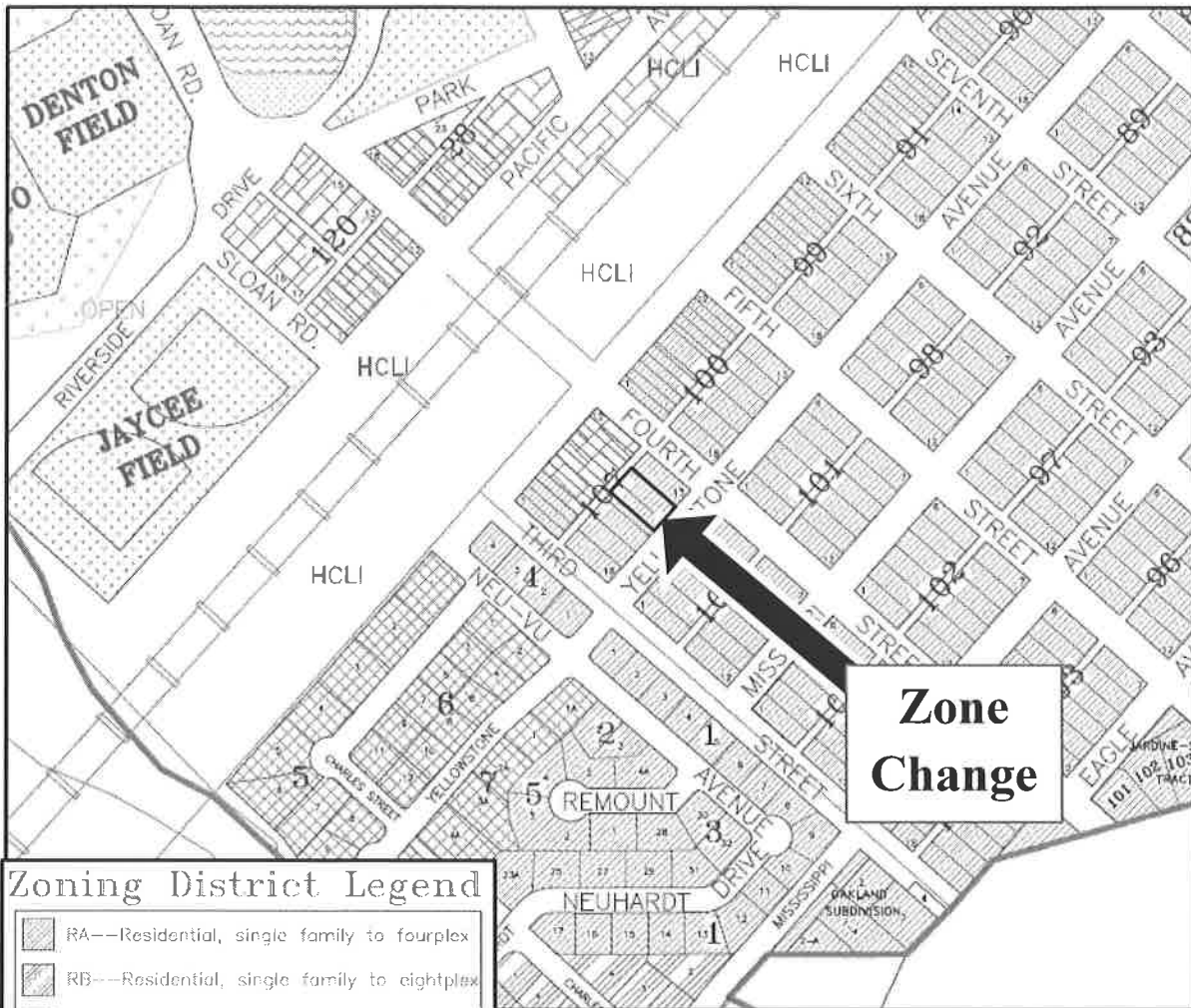
The property proposed for the zone change is surrounded on three sides (northeast, southeast, and southwest) by other tracts also zoned RA District, with the requested GC District located to the northwest across the alley. Please see the Zoning Map, Figure 1 on Page 3.

The prevailing land uses in the immediate vicinity in the RA District are single-family residential and accessory uses. The One Health health care clinic is located to the northwest, across the alley from the site in the adjacent GC District. Further to the north and northwest is the Heavy Commercial/Light Industrial (HCLI) District, where commercial and industrial uses are located.

F. Maps/Plats

The following pages and attachments include maps and plats pertinent to the proposal. Figure I is an excerpt of the City Zoning Map in the area, with the proposed zone change noted.

Figure 1: Zoning Map in the area:

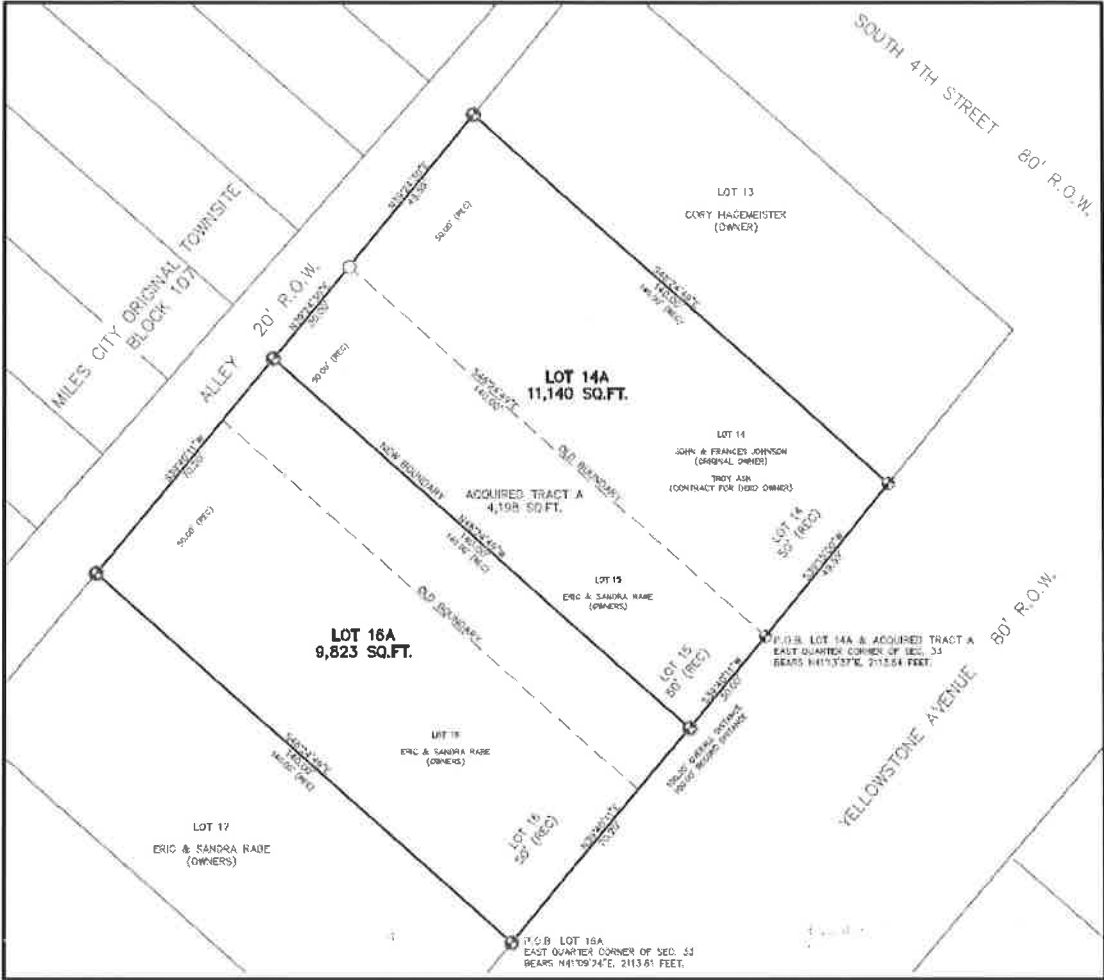


Zoning District Legend

	RA--Residential, single family to fourplex
	RB--Residential, single family to eightplex
	RC--Residential, in excess of eightplex
	MH-A--Mobile Home Residential
	MH-RV--Mobile Home-RV Park
	CBD--Central Business
	GC--General Commercial
	HCLI--Heavy Commercial/Light Industrial
	HI-- Heavy Industrial
	HWC--Highway Commercial
	OS--Open Space
	SR--Semi-Rural
	MC--Medical Campus
	SOB--Sex Oriented Business Overlay

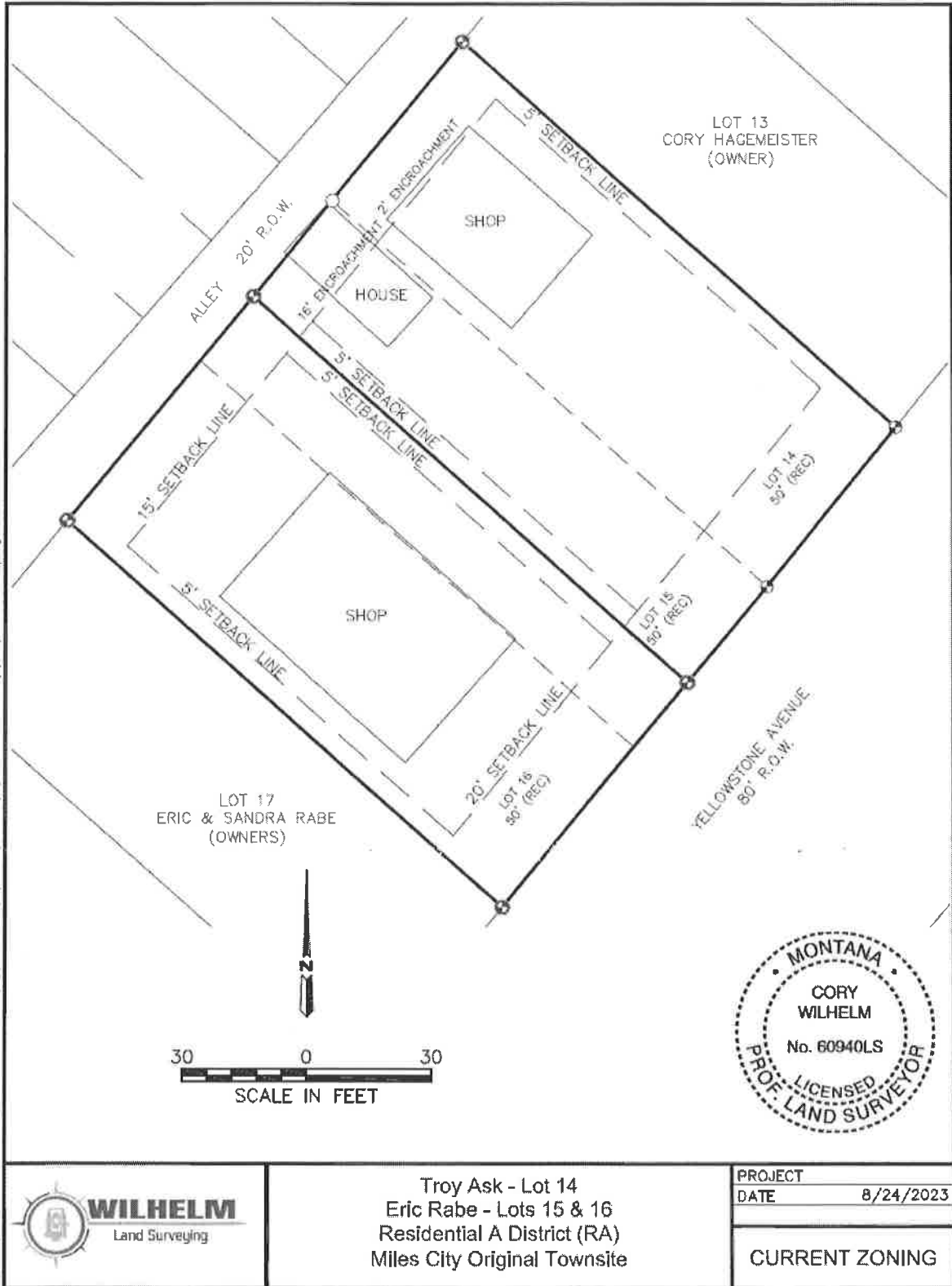
The draft amended plat is attached to this report in full as Attachment 4. The following excerpt of the draft amended plat (Figure 2) depicts the proposed lot configuration.

Figure 2: Excerpt of draft amended plat showing the reconfiguration of the lots:



The following Figure 3 site plan shows the existing buildings and boundaries, and RA District setbacks. The Figure 4 site plan shows the existing buildings and boundaries, as well as proposed zoning and resulting setbacks for Lot 16A in the RA District and Lot 14A in the GC District; however, the required 5' side yard setbacks for GC uses abutting residential districts are not shown on Lot 14A in Figure 4.

Figure 3: Site plan with existing buildings, old & new boundaries, and RA District setbacks:



Troy Ask - Lot 14
 Eric Rabe - Lots 15 & 16
 Residential A District (RA)
 Miles City Original Townsite

PROJECT	
DATE	8/24/2023
CURRENT ZONING	

Figure 4: Site plan with existing buildings and boundaries, as well as proposed zoning and resulting setbacks for Lot 16A in the RA District and Lot 14A in the GC District (note: the required 5' side yard setbacks for GC uses abutting residential districts are not shown on Lot 14A):

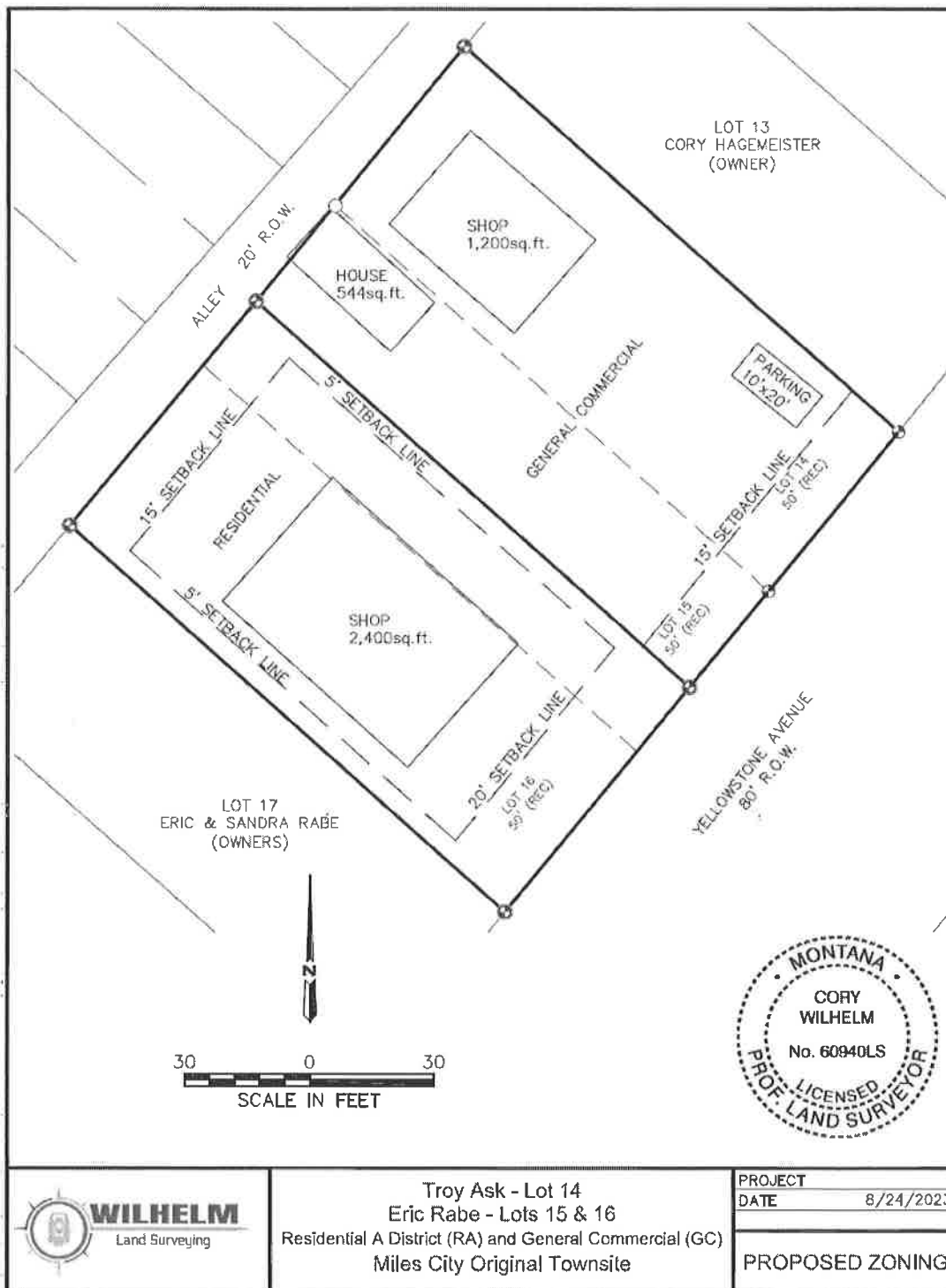
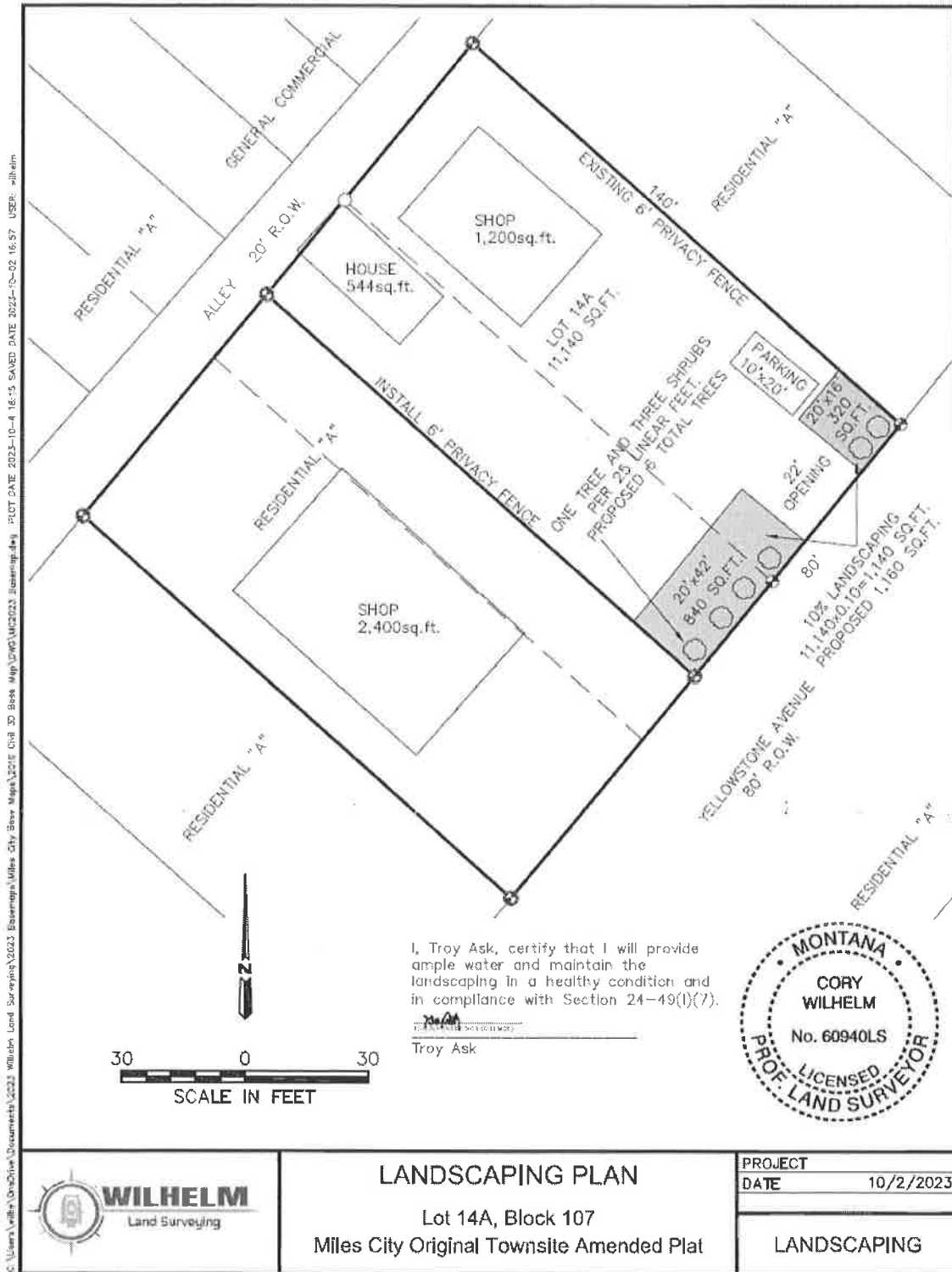


Figure 5 is a proposed landscaping plan for Lot 14A, which is further discussed in the following section of this report.

Figure 5: Proposed Landscaping Plan for Lot 14A:



G. Landscaping Requirements

Sec. 24-49 of the zoning code requires landscaping on all new, redeveloped, and expanded land uses listed in Table III.1. In the case of the commercial shop building and storage on the subject Lot 14, the use falls within “All commercial uses not listed below”, which requires a minimum of 10% of the lot to be landscaped in accordance with that section, with Category B perimeter buffers along adjacent residential uses and districts. A landscaping plan was not required when the shop building was permitted and built in approximately 2012, because the building preceded the landscaping requirements, which also would not apply currently to a non-commercial, private storage use. With the new and/or expanded commercial land use under the current zoning, the use triggers the landscaping requirements.

To address the landscape requirements, the applicants have submitted a landscaping plan for proposed Lot 14A, along with a request for administrative relief from various requirements in Sec. 24-49; see Attachment 5 for the administrative relief request. The Zoning Administrator is typically required to render a decision on administrative relief requests within 5 working days of receipt of the material; however, in this case with a zone change petition involved, with the zone change needing to be approved prior to the commercial use being approved, the administrative relief review is on hold pending the City Council’s decision on the zone change and comments on the request and landscaping plan.

Although comments will be accepted on the pending landscaping plan and administrative relief request, the Zoning Administrator intends to approve the administrative relief request for the following:

- The plan lacks landscaped Category B perimeter buffers along the adjacent Residential A District along each side lot line. The landscaping section would typically require buffers along or near each side lot line to be five feet wide with one tree and three shrubs per 25 linear feet. To comply with the standards, each 140’ side buffer (calculated at 135’ after eliminating overlap with the minimum 5’ Category B buffer along Yellowstone Avenue) would be required 5 trees (5.4 rounded down) and 16 shrubs (16.2 rounded down), or 10 trees and no shrubs each (any 3 shrubs can be replaced by 1 tree). Applicant Troy Ask is requesting administrative relief for these side buffer requirements to allow no landscaping in those areas. Instead, the applicant proposes to utilize an existing 6’ privacy fence along the northeasterly lot line and install a 6’ privacy fence along the southwesterly lot line, both to provide visual screening from adjacent residential uses and the RA District.

Since the Zoning Administrator cannot approve the commercial use, associated landscaping plan, and administrative relief request until after the public review process, the Zoning Administrator intends to consider comments on that element of the application and

render a decision on the relief request at an appropriate time. The following are the Zoning Administrator's findings on the relief request at this time, pending comments:

Per Sec. 24-49(m)(4), the administrator must make all of the following findings in order to grant administrative relief:

- b. The strict application of the regulation in question is unreasonable given the development proposal or that the property has extraordinary or exceptional physical conditions that will not allow a reasonable use of the property in its current zone in absence of relief;

Finding A: Strict compliance to require landscaped buffers along or near the side lot lines is not reasonable considering the size, scope, and anticipated impacts of the proposed commercial storage use, as well as mitigation provided by privacy fencing.

- b. The granting of administrative relief will not result in an adverse impact upon surrounding properties.

Finding B: Granting administrative relief to allow no landscaping along or near the side lot lines will not result in adverse impacts on surrounding properties if the side lot lines include privacy fences as proposed.

H. Photographs

Zoning Administrator Scott Gray conducted a site visit on September 11, 2023 and took the following photographs of the site:

Photograph 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Photo 1: The Rabe shop on Lot 16 on the left (outside the zone change area), and the Ask/Johnson shop on the right on Lot 14, viewed from Yellowstone Avenue:

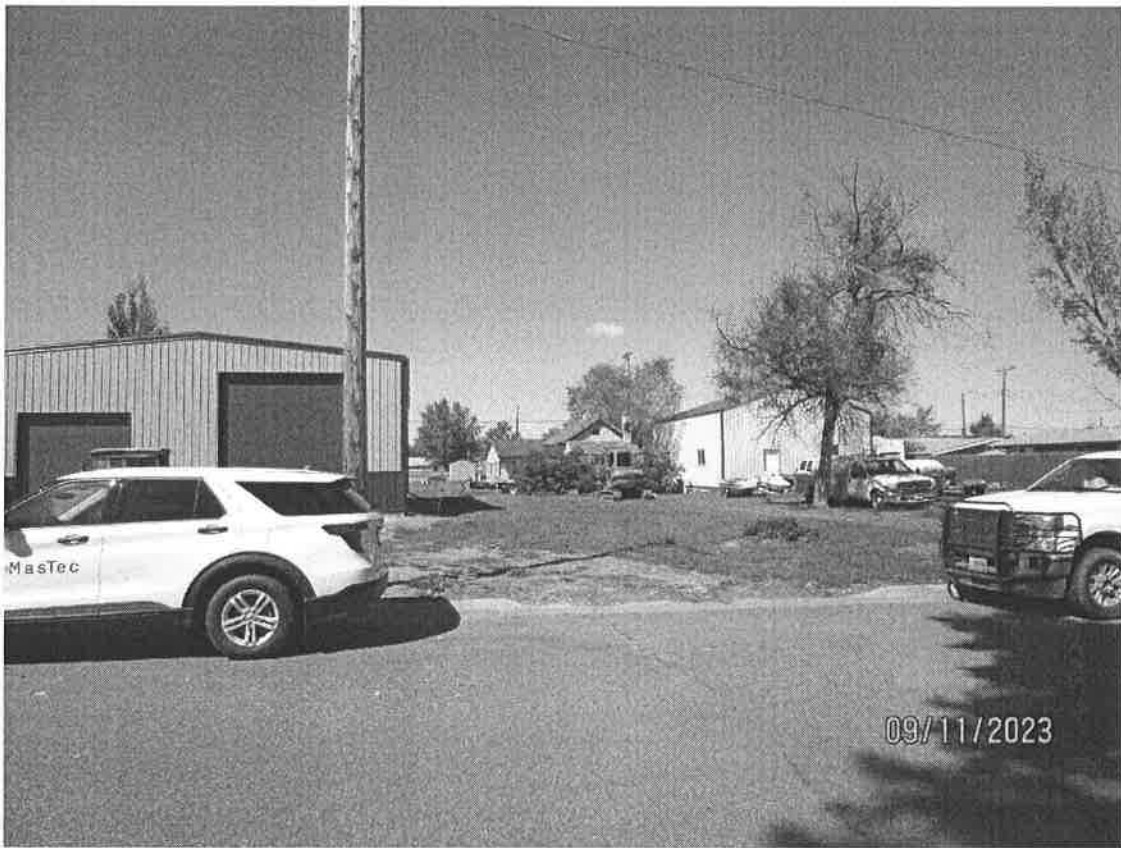


Photo 2: Closer view of the Rabe shop on Lot 16 on the left and the Ask/Johnson shop on the right on Lot 14:



Photo 3: Viewed from across the alley, the Ask/Johnson shop on Lot 14 on the left, the old home on Lot 15 in the middle, and the Rabe shop on the right on Lot 16 in the background on the right:



I. Attachments

The following are attached to this report:

1. Attachment 1: Cover letter from the applicants' agent Cory Wilhelm explaining the project, submitted September 6, 2023.
2. Attachment 2: Petition for Zone Change, revised and submitted September 18, 2023.
3. Attachment 3: Narrative response to zone change criteria from the applicants' agent Cory Wilhelm, submitted September 13, 2023.
4. Attachment 4: Proposed Amended Plat (revised since original September 6 submittal), submitted September 20, 2023 and approved by the Custer County Examining Land Surveyor on October 5, 2023.
5. Attachment 5: Landscaping Administrative Relief Request, revised and submitted October 5, 2023.
6. Attachment 6: Letter from Yellowstone Environmental Contracting LLC, providing a statement from a qualified professional that the landscaping plan has been designed such that an irrigation system is not appropriate per Sec. 24-49(i)(7) of the zoning code, along with a tree care pamphlet, submitted October 10, 2023.
7. Attachment 7: Draft City Council Ordinance No. 1374 for the proposed zone change.

II. APPLICABLE REGULATIONS AND RECOMMENDED FINDINGS

A. Zoning & Land Use

1. **Current Zoning:** Residential A District (RA).
2. **Proposed Zoning:** General Commercial District (GC) on proposed Lot 14A.
3. **Surrounding Zoning:** RA District to the southwest, southeast, and northeast, and GC District to the northwest.
4. **Current Land Use:** Commercial construction equipment storage.
5. **Proposed Land Uses:** Continued commercial construction equipment storage.
6. **Comparison of District Specifications:** The following tables outline the permitted and conditional uses, and specifications for the existing RA District and proposed GC District district:

TABLE A: ALLOWED USES IN RA AND GC DISTRICTS

RA District Permitted and Conditional Uses (from Table II.1)		GC District Permitted and Conditional Uses (from Table II.15)	
Permitted Uses	Conditional Uses	Permitted Uses	Conditional Uses
Single-family dwellings	Small scale retail and restaurants less than 5,000 square feet that serve the immediate needs of the neighborhood in which they are located	General commercial uses up to 15,000 square feet	General commercial uses in excess of 15,000 square feet
Multifamily dwellings not in excess of four units	Day care centers in excess of 12 children	Continued use of residences	Wireless communication facilities
Schools	Bed and breakfasts	Multifamily dwellings	
Public parks, buildings, and playgrounds	Accessory dwelling units	Accessory uses associated with primary use	
Religious institutions		Bars and taverns	
Home occupations with no more than one on site employee (in addition to a homeowner or renter)		Schools and other educational facilities	
Accessory uses		Public parks, buildings, and playgrounds	
Home day cares up to 12 children		Religious institutions	
Amateur radio antenna support structures, antenna support structures, alternative antenna support structures, antennae, and amateur radio antennae in compliance with section 24-70(c).		Day care centers	

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

TABLE B: SPECIFICATIONS FOR RA AND GC DISTRICTS

RA District Specifications (from Table II.2)		GC District Specifications (from Table II.16)	
Regulations	Specifications	Regulations	Specifications
Minimum lot width	50 feet	Minimum lot width	50 feet
Minimum lot size	5,500 square feet	Minimum lot size	None
Minimum front yard setback	20 feet	Minimum front yard setback	15 feet
Minimum side yard setback	5 feet	Minimum side yard setback	0 feet
			Corner lots—10 feet for side yard adjacent to street

	Corner lots—10 feet for side yard adjacent to street		Uses abutting residential districts—5 feet
Minimum rear yard setback	15 feet	Minimum rear yard setback	0 feet
			Uses abutting residential districts—15 feet
Maximum lot coverage	45%	Maximum lot coverage	80%
Maximum building height	Primary building—35 feet	Maximum building height	Primary building—40 feet
	Accessory buildings—18 feet		Accessory buildings—18 feet

B. Zone changes and zoning amendments – Purpose and Process

Administration of zone changes is outlined in Sec. 24-96 of the zoning code. The following are the ‘purpose’ and ‘amendment process’ for review of a zone change. Other sections for applicable to the Zoning Commission review, with recommended findings based on the zone change criteria, are provided in the next section.

(a) *Purpose.* Any person may petition for the amendment of the zoning district map and/or these regulations. The amendment procedure shall be as provided here and in MCA 76-2-303. Amendments may also be initiated by the zoning commission or administrator, in which cases steps subsections (b)(1) through (b)(3) below, will not be required.

(b) *Amendment process.*

- (1) The applicant shall submit a properly completed application form, the required supporting materials, including a narrative evaluating the amendment request under the amendment criteria in (c) below, and the required application fee at city hall.
- (2) The administrator shall determine whether the application is complete and sufficient. When an application is determined incomplete or insufficient, the administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
- (3) After the application is determined to be complete and sufficient, the administrator shall schedule a public hearing on the application for a zoning amendment on the agenda of the next zoning commission meeting for which the notice requirements can be met (section 24-97), and at which time allows for its proper consideration.

- (4) The administrator shall give notice of the public hearing in accordance with section 24-97.
- (5) The administrator shall prepare, or contract for the preparation of, a report that describes the proposed amendment and how it complies, or fails to comply, with the amendment criteria. The report shall include a recommendation for approval, approval with modifications or denial.
- (6) The zoning commission shall conduct at least one public hearing on the proposed amendment. At the hearing, the zoning commission shall make a report regarding the proposed zone change and consider whether the proposed amendment meets the amendment criteria. The zoning commission shall review the particular facts and circumstances of the proposed amendment and develop findings and conclusions that support its recommendation that the city council approve, approve with modifications, or disapprove it accordingly.
- (7) The zoning commission's action on a proposed amendment may be tabled, but for no more than 35 days.
- (8) The administrator shall convey the zoning commission's recommendation and all public comments to the city council and, unless the application is withdrawn, place a hearing on the agenda of the next city council meeting for which the notice requirements can be met (Section 24-97), and at which time allows for its proper consideration. The city council shall not hold its public hearing or take action until it has received the report of the zoning commission.
- (9) The administrator shall give notice of the city council's public hearing in accordance with section 24-97.
- (10) The city council shall conduct a public hearing on the proposed amendment. At the hearing, the city council shall consider the recommendation of the zoning commission and all testimony received, then approve, reject, or modify and approve the amendment. Action on the proposed amendment may be tabled, but for no more than 35 days.
- (11) If approved or approved with modifications, the city council shall pass an ordinance effectuating the amendment to the zoning map or regulations, as applicable.
- (12) An amendment to the zoning may not become effective except upon favorable vote of two-thirds of the present and voting members of the city council if a protest against a change is signed by the owners of 25 percent or more of:
 - a. The area of the lots included in the proposed change; or

- b. Those lots or units, as defined in MCA 70-23-102, 150 feet from a lot included in a proposed change. For purposes of this protest provision, each unit owner is entitled to have the percentage of the unit owner's undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in MCA 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located. The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest or by the presiding officer of the association of unit owners.

- (13) At the conclusion of the amendment process, the administrator shall notify the applicant of the city council decision within ten days.

C. Amendment Criteria and Recommended Findings

Sec. 24-96(c) of the Zoning Code provides the “Amendment criteria” for Zone changes and zoning amendments. The evaluation criteria are listed below, followed by the reviewer’s and Zoning Commission’s recommended findings in *italics*.

(c) Amendment criteria.

(1) Zoning amendments shall be made:

- a. In accordance with the growth policy;

Finding 1-a: *The applicants’ agent’s response to this criterion is as follows: “It would help correct zoning compliance due to previous construction.” The reviewer and Zoning Commission concur that the zone change to GC would bring the existing development on proposed Lot 14A into compliance with the permitted uses in the GC District and the GC District Specifications, primarily setbacks. The following are additional growth policy findings.*

The 2015 Miles City Growth Policy discusses the use of the zoning codes to implement the growth policy, such as the following on page 14:

“A key tool for Miles City to accommodate these expected projections will be to guide future land uses through the Miles City zoning codes. The zoning text must be revised to provide clear guidelines so that the zoning map and regulations can be a more effective tool to implement this growth policy. The zoning map must be revised to reflect current conditions and expected future trends. The zoning map will be revised as proponents of future development proposals and land uses approach the city with zone change requests, and the city will work to revise the zoning map to guide the

planning area with land use designations in appropriate geographic, physical, and social settings.”

The growth policy includes the zoning map as of 2015. That is the only place that offers parcel-specific guidance for implementation of the growth policy in this location. It is expected that zone changes will occur relative to the zoning map in the growth policy, as stated above.

The primary implementation tools of the growth policy are the goals and objectives. The following are applicable goals and objectives:

- ***Land Use Goal #2: Promote Citizen Involvement in Land Use Issues***
 - ***Objective 2.1: Engage citizens during public review of land use issues and make information available.***
- ***Land Use Goal #3: Balance Property Rights with the Common Interests of the Community***
 - ***Objective 3.1: Protect private property rights and respect property owners' wishes to enjoy and gain economic return from their properties and investments while ensuring that other public and private interests are not unreasonably compromised or impacted by land uses and development projects.***
- ***Economy Goal #3: Support Industrial and Commercial Development***
 - ***Objective 3.3: Work with commercial and industrial developers on how the city can accommodate their needs while mitigating adverse impacts.***

Approval of the requested zone change would support the above-listed goals and objectives. As such, the zone change is in accordance with the 2015 Miles City Growth Policy.

b. To secure safety from fire and other dangers;

Finding 1-b: *The applicants' agent's response to this criterion is as follows: "Miles City Fire Rescue will continue to serve this area." The reviewer and Zoning Commission concur that the zone change to GC is not likely to impact service providers' ability to serve the area, including that of Miles City Fire & Rescue. However, overall, the change from RA to GC is not likely to provide additional safety from fire and other dangers. The zoning code and provision of City services already secure safety from fire and other dangers, and the zone change is unlikely to impact or change this.*

c. To promote public health, safety, and general welfare; and

Finding 1-c: *The applicants' agent's response to this criterion is as follows: "The only change to property would be storing miscellaneous general construction equipment. None of which would cause any health or safety issues." While the City must consider the fact that approval of the zone change could result in the lot being used for other permitted and conditional uses in the GC District, the reviewer and Zoning Commission concur that the zone change from RA to GC and the resulting use of storing construction equipment is not likely to have any specific or measurable benefit or detriment to public health, safety, or general welfare. Commercial uses require landscaping and other specifications to be met, which mitigate such impacts.*

- d. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

Finding 1-d: *The applicants' agent's response to this criterion is as follows: "The proposed zone change wouldn't affect any of these. Use would continue as is today." The reviewer and Zoning Commission concur that the zone change to GC would not affect transportation, water, sewerage, schools, parks and other public requirements. It is the reviewer's understanding that the commercial shop is not connected to City water or sewer, but these services are available in this location. The property is well served by the City streets and alley. The property is unlikely to be occupied by school-aged children or result in additional needs for parks. No other needs for public services or facilities have been identified. For these reasons, the zone change from RA to GC is not likely to have any specific or measurable change to the facilitation of the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.*

- (2) In reviewing and making recommendations or decisions on zoning amendments, the administrator, zoning commission, and city council shall also consider:

- a. Reasonable provision of adequate light and air;

Finding 2-a: *The applicants' agent's response to this criterion is as follows: "Nothing proposed would affect light or air." The reviewer and Zoning Commission agree that the zone change from RA to GC is not likely to have any specific or measurable change to provision of adequate light and air because the existing RA and the proposed GC districts provide adequate light and air through providing building setbacks, limited building heights, and maximum lot coverage standards.*

- b. The effect on motorized and non-motorized transportation systems;

Finding 2-b: *The applicants' agent's response to this criterion is as follows: "There would be no effect from the change." The reviewer and Zoning Commission concur that the zone change from RA to GC will not affect motorized or non-motorized transportation systems because the primary result of the zone change is that it would provide for commercial use; and the City's motorized transportation system is already in place and adequately serves the lot and surrounding area. In terms of the non-motorized transportation system, there is no sidewalk along the property's Yellowstone Avenue frontage, but the change to GC and the resulting commercial uses allowed are not likely to significantly impact the non-motorized transportation system. There are mechanisms in place in the City Codes that may trigger installation of a sidewalk along Yellowstone Avenue, such as Sec. 20-41(e), which states, "Areas where construction required. All persons who reside within a six-block radius of a church, school, convenience store or supermarket shall construct a city sidewalk." It is the reviewer's understanding that the Public Works Department administers this provision and determines when it is applied.*

c. The promotion of compatible urban growth;

Finding 2-c: *The applicants' agent's response to this criterion is as follows: "General commercial properties are a need for people in Miles City and there aren't many available." The reviewer and Zoning Commission concur that GC-zoned properties are limited in Miles City, particularly those that would be appropriate and affordable for the specific use of storing commercial construction equipment. The GC District is adjacent to the site, and the permitted and conditional uses of the GC District, including the proposed commercial construction equipment storage use, appear compatible with surrounding uses.*

d. The character of the district, and its peculiar suitability for particular uses;
and

Finding 2-d: *The applicants' agent's response to this criterion is as follows: "Across the alley is the One Health Clinic which is zoned commercial." The One Health clinic is indeed across the alley and zoned GC. The GC District allows "General commercial uses up to 15,000 square feet" as a permitted use, which the proposed use falls under. Many other uses are listed as permitted and conditional uses in the GC District, which are relatively broad. The lot appears suitable for the allowed uses in GC, and there would be no change to the character of the GC District with this zone change. With the GC District already encompassing much of the northwest half of the block, and with the Heavy Commercial/Light Industrial (HCLI) District abutting much of the RA*

District in this area, it is likely the non-residential districts such as GC will continue to expand within the blocks of RA along Atlantic Avenue.

- e. Conserving the value of buildings and encouraging the most appropriate use of the land throughout the jurisdictional area.

Finding 2-e: *The applicants' agent's response to this criterion is as follows: "The current landowner is all for keeping the neighborhood valuable." The reviewer does not question the applicants' intent regarding keeping the neighborhood valuable. However, at issue with this criterion are whether the zone change would work to conserve the value of buildings and encourage the most appropriate land throughout the jurisdictional area.*

The City must consider not only the impacts on property values from the proposed commercial construction equipment storage use, but impacts that may result from the other allowed uses in the GC District. Considering this is already a mixed-use area, with GC zoning and a commercial use across the alley and the HCLI District and commercial and industrial uses within 225' of the site, the addition of one 11,140 square foot lot into the GC District is unlikely to negatively impact the value of any buildings, particularly if an effective landscaping and fencing plan is implemented.

- f. Whether the proposal might be considered illegal spot zoning. Factors to be considered include whether the proposed land use is significantly different from the prevailing use in the area; whether the area of the proposed zone change is relatively small not only in terms of acreage, but from the perspective of the number of separate landowners who would benefit from the proposed change; and whether the change would amount to special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or general public. In order for spot zoning to be considered illegal, all three of the factors must be present.

Finding 2-f: *The applicant's response to this criterion is as follows: "Currently there is a general commercial property across the alley so it's not significantly different use in the area. This is a company that works for a lot of people in the City and would enable them to continue to provide this service. There wouldn't be any special legislative change needed." The reviewer and Zoning Commission concur with this response; however, it should be elaborated on given the above factors, as follows:*

- **Whether the proposed land use is significantly different from the prevailing use in the area:** *The commercial construction equipment storage use is somewhat different from the prevailing residential uses in this area of RA,*

as well as from the health care clinic across the alley in GC. The HCLI District and a commercial/industrial seed plant/grain operation are located ±225 northwest of the site. Because of the wide range of land uses in the area, the commercial use is not significantly different than the prevailing uses in the area. This factor is therefore not present.

- Whether the area of the proposed zone change is relatively small not only in terms of acreage, but from the perspective of the number of separate landowners who would benefit from the proposed change: The area proposed for a zone change is small – approximately 11,140 square feet, and only the landowners/applicants would benefit from the proposed change. This factor is therefore present; however, it is important to consider that the zone change would expand an adjacent district to include the subject property.
- Whether the change would amount to special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or general public: The zone change would, to some extent, amount to special legislation for the current landowners; however, it does not appear there would be an “expense” to the surrounding landowners or general public. If it is determined there are unmitigated impacts on surrounding landowners or the general public from the zone change, thus amounting to an “expense”, this factor would be present.

Because the first spot zoning factor is not present, the third has not been found to be present, and all three of the above factors must be present for it to be considered illegal spot zoning, this zone change would not be illegal spot zoning.

(3) Other criteria include whether the amendment:

- a. Corrects an inconsistency in the zoning; and

Finding 3-a: *The applicants’ agent’s response to this criterion is as follows: “This property has been used as commercial so it should be re-zoned.”. The reviewer notes that the existing and proposed commercial use does not comply with the RA District allowed uses, and was established without City approval. The zone change is not intended to correct an inconsistency in the zoning; rather, it is intended to correct an apparent ongoing zoning violation not previously addressed.*

- b. Addresses changing conditions or furthers a specific public challenge such as the need for affordable housing, economic development, mixed use development or sustainable environmental features.

Finding 3-b: *The applicants' agent's response to this criterion is as follows: "There is a need for small commercial properties in the community." The reviewer and Zoning Commission concur that there are limited commercial properties available in the community, particularly affordable commercial properties that would be appropriate for this specific commercial use. Approval of the zone change would address the public challenge of providing for a commercial lot at a time when affordable commercial properties are limited in Miles City.*

Conclusion on the above findings:

Based on the above findings, the proposed zone change from RA to GC substantially complies with the applicable criteria, and is therefore appropriate.

III. ZONING COMMISSION RECOMMENDATION

The Zoning Commission adopted the preliminary report and reviewer-recommended findings as the Zoning Commission's findings of fact and recommends the City Council approve the zone change from RA to GC for property described as Lot 14 and the northeasterly 30' of Lot 15 of Block 107 of the original Plat of the Town of Miles City (also known as the 'Miles City Original Townsite'), located in Section 33 of Township 8 North, Range 47 East, PMM, City of Miles City, Custer County, Montana. The property is proposed to be described as Lot 14A of the 'AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE'. This report is the Zoning Commission's final report to be transmitted to the City Council. Upon final passage of the zone change ordinance by City Council, if approved without successful protest, the official Miles City zoning district map adopted under Sec. 24-11 of the zoning code will be amended by the City of Miles City.

Attachment 1



8/24/2023

City of Miles City Planning Department
17 South 8th Street
Miles City, MT 59301

RE: Amended Plat – Boundary Relocation/Aggregation – Ask-Rabe-Johnson

Planning Department,

This proposed Amended Plat is for the addresses 315 Yellowstone, owned by Eric & Sandra Rabe; and 317 Yellowstone Avenue, under contract by Troy Ask through John & Frances Johnson. Troy Ask is interested in purchasing a thirty-foot strip from Eric & Sandra Rabe. We are proposing to accomplish this with an Amended Plat using the Boundary Line Relocation Exemption and the Aggregation Exemption.

Both properties are currently zoned as Residential A, but Troy ask will be using the property as General Commercial. He is including a request for a zoning change by the City of Miles City. We are planning on this zone change to be reviewed at the same time as the Amended Plat submittal.

If the zone change is approved, all the existing buildings will meet the setback, lot coverage, and parking space zoning requirements. If the zone change is denied, the applicant would need to submit a variance request for the 317 Yellowstone Avenue property in order to meet the zoning requirements.

Please find the attached documents and required fees for the review process to begin.

If you have any questions, please let us know.

Thank you,

Cory Wilhelm, PLS, CFedS

Attachment 2



PETITION FOR ZONE CHANGE
Community Services & Planning

City of Miles City 17 S. 8th Street, P.O Box 910 Miles City, MT 59301 406-234-3493

Date Received: (to be filled out by City)

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

I, Troy Ask / Frances Johnson / John & Johnson is/are petitioning the City of Miles City to rezone the following property: Eric Rabe Sandra Rabe (Sep 18, 2023 10:12 MDT)

LEGAL DESCRIPTION OF PROPERTY:

Street Address or General Location 317 Yellowstone Avenue
Tract/s in Section Township Range

OR

Lot/Tract/s 14A of Miles City Original Townsite Amended Plat in Section 33 Township 8N Range 47E
Assessor Number/s or Gencode RMS3082 14-1740-33-4-17-05-0000

PRIMARY CONTACT:

Applicant Name: Troy Ask and John & Frances Johnson If a business: Contact Name Troy Ask
Address: 317 Yellowstone Avenue Miles City, MT 59301
Phone: 406-852-4839 Cell Phone: Email: troyask10@gmail.com

DESCRIPTIVE DATA:

Total area in acres: 11,140sq.ft
Existing Zoning: Residential A Proposed Zoning: General Commercial
Existing Use: Shop space and parking area used for storing business equipment.
X Yes No Purpose of the zone change is for pending development/sale. If so please explain the nature of the proposal or state any other reason for requested change: An amended plat is being prepared by the licensed land surveyor, Cory Wilhelm, with Wilhelm Land Surveying. They are moving the existing boundary line approximately 30 feet to the neighbor's property at 315 Yellowstone Avenue.

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

Attachment 3

Questions related to the criteria for zone changes and zoning amendments:

How would the proposed zone change be in accordance with the growth policy?

It would help correct zoning compliance due to previous construction.

How would the proposed zone change secure safety from fire and other dangers?

Miles City Fire Rescue will continue to serve this area.

How would the proposed zone change promote public health, safety, and general welfare?

The only change to property would be storing miscellaneous general construction equipment. None of which would cause any health or safety issues.

How would the proposed zone change facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements?

The proposed zone change wouldn't affect any of these. Use would continue as is today.

How would the proposed zone change ensure the reasonable provision of adequate light and air?

Nothing proposed would affect light or air.

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

There would be no effect from the change.

How would the proposed zone change promote compatible urban growth?

General commercial properties are a need for people in Miles City and there aren't many available.

How would the proposed zone change impact the character of the district, and its peculiar suitability for particular uses?

Across the alley is the One Health Clinic which is zoned commercial.

How would the proposed zone change work to conserve the value of buildings and encourage the most appropriate use of the land throughout the jurisdictional area?

The current landowner is all for keeping the neighborhood valuable.

Describe whether the proposal might be considered illegal spot zoning. Factors to be considered include whether the proposed land use is significantly different from the prevailing use in the area; whether the area of the proposed zone change is relatively small not only in terms of acreage, but from the perspective of the number of separate landowners who would benefit from the proposed change; and whether the change would amount to special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or general public. In order for spot zoning to be considered illegal, all three of the factors must be present.

Currently there is a general commercial property across the alley so it's not significantly different use in the area. This is a company that works for a lot of people in the City and would enable them to continue to provide this service. There wouldn't be any special legislative change needed.

Would the proposed zone change correct an inconsistency in the zoning?

This property has been used as commercial so it should be re-zoned.

Is the zone change intended to address changing conditions or further a specific public challenge such as the need for affordable housing, economic development, mixed use development or sustainable environmental features? There is a need for small commercial properties in the community.

Attachment 5



October 2nd, 2023

City of Miles City Planning Department
17 South 8th Street
Miles City, MT 59301

RE: Administrative Relief Request

Planning Department,

This is a request for administrative relief for the property of 317 Yellowstone Avenue (Lot 14A). We are preparing an Amended Plat that will be adding a 30' strip of land from the 315 Yellowstone Avenue property to the 317 Yellowstone Avenue property. Both properties are currently zoned as Residential A, but Troy Ask, owner of the 317 Yellowstone Avenue property will be using the property as General Commercial.

Under the Miles City Ordinances, Section 24-49 Landscaping Requirements, Table III.1, shows that the property would need 10% landscaping, and a Category "B" Buffer along the northwest, southeast, and southwest lot lines.

- 1) **10% Landscaping** – Lot 14A is 11,140 square feet. Ten percent would be approximately 1,114 square feet of landscaping. The landowner plans to do this in the landscaping plan.
- 2) **Category "B" Southeast Lot Line** – Lot 14A's Southeast Lot Line is approximately 80 feet long. The requirement is 1 tree and 3 shrubs per 25 feet, with 5-foot-wide landscaping. This would amount to 3 trees and 10 shrubs. Per the revision, the landowner would like to plant 6 total trees instead of shrubs. This would amount to a total of 6 trees along the southeast lot line which the landowner is planning to do in the landscaping plan.
- 3) **Category "B" Southwest and Northeast Lot Lines** – Lot 14A's said lot lines are approximately 140 feet long. The requirement is 1 tree and 3 shrubs per 25 feet, with 5-foot-wide landscaping. This would amount to 6 trees and 18 shrubs per lot line. The landowner is requesting administrative relief in this section. There is an existing privacy fence line along the northeast lot line that acts as a buffer from the neighboring property. The landowner is planning on installing a 6-foot solid privacy fence along the southwest lot line in the landscaping plan. This would act as a buffer from this neighboring property and would result in a non-adverse impact on the surrounding properties. Currently there is a shop on the property that was built in 2012 and has been in use since. None of the neighboring properties have complained about the use or lack of landscaping over the last 10 years. There is a commercial property across the alley that has zero landscaping and zero trees or shrubs planted. By planting this number of trees, it would take away any usable land that he is gaining by purchasing a 30-foot-wide parcel and is unreasonable expectations to place on an already developed lot.

Attached you will find the proposed landscaping plan. The 10% landscaping will be native dry grass seeds that will be planted in the spring of 2024. The landowner will also plant the 4 trees along the southeast lot line with a 5-foot buffer during the spring of 2024. The trees will be native trees that are safe to grow in the surrounding community.

Thank you for your consideration in reviewing our proposed alternative landscaping plan. Please feel free to contact us with any questions regarding the landscaping plan.

Thank you,

Cory Wilhelm, PLS, CFedS

Department Approval/Denial:

Approved:

Denied:

Printed Name: _____ Signature: _____ Dated: _____

Attachment 6

YELLOWSTONE ENVIRONMENTAL CONTRACTING LLC

2018 Valley Drive East
PO Box 998
MILES CITY, MT
59301

Phone Number: (406) 234-5078
Fax Number: (406) 234-5084
Email: yecllc@gmail.com
www.yecllcmt.com



Tuesday, October 10, 2023

Re: Lot 14A, Block 107 Landscape Plan

To Whom it may concern:

After reviewing the proposed landscape plan design, I can confidently state that the landscaping plan has been designed such that an irrigation system is not appropriate due to the species of vegetation. Canadian Red Chokecherry Trees (*Prunus virginiana* 'Canada Red') with a 2.5" caliper trunk is a hardy tree that's approved for the planting zones which Miles City is located. The general height of the tree is 20' with a spread range of 10-15'. The root system is a deep growing rhizomatous system that will continually spread as the tree grows. These trees are known for having "sucker roots" if over watered and can become invasive. If drip irrigation were added, the root system will stay shallow causing damage to surrounding plants, shrubs, concrete, asphalt, and landscape.

Please see the attached Evergreen Landscaping tree care pamphlet.

X

A handwritten signature in black ink, appearing to be "Zac Mader", written over a horizontal line.

Zac Mader
Member Owner

Please follow these instructions as closely as possible to ensure optimal results and success with your new tree(s).

Thank you for choosing Evergreen Landscaping for your lawn care needs



We use materials of the highest quality available and use proven and professional techniques for installation of your new tree.

Once your tree is planted, it is your responsibility to provide the proper care and maintenance.

YEC, LLC cannot guarantee or warranty the continuing condition of your tree(s) due to weather conditions, disease, and the care you provide.

We are not responsible for acts of nature which may cause damage to your tree(s).



WATERING

- Newly planted trees need to be watered more frequently than established trees due to the stress of a new environment
- Proper watering is essential to bringing moisture and oxygen to the tree's roots
- Watering should be on a regular basis and adjusted for current weather conditions such as rain or drought and adjusted for soil conditions as they vary.
- Start watering tree the same day it is planted, if needed, otherwise start on day 2
- Week 1-2 after planting, water tree every few days, as needed, making sure it reaches a depth of 6 to 9 inches
- Week 3-12 after planting, water every 2-3 days
- After 12 weeks, water weekly until roots are established
- Watering amount will vary depending on caliper of tree trunk, minimum amount is 1 gallon per inch of trunk
- As roots grow and spread, irrigation volume will need to be increased to support growth

Mulching

- Organic mulch is recommended for optimal growth
- Mulch reduces evaporation, delivers nutrients, and helps prevent the growth of weeds
- Mulching is the second most important part of caring for your new tree
- When placing mulch be sure to follow a 3-3-3 Rule: 3 inches away from trunk of the tree, 3 inches deep, in a 2-3 foot radius
- Mulching also helps to insulate soil and acts as a buffer in extreme summer and winter temperatures
- Avoid piling mulch on too high or thick, which can create several issues ranging from poorly oxygenated soil to root rot
- Be sure to replace mulch as it decomposes

Fertilizing

- Regarding fertilization of newly planted trees -- do not fertilize! For at least the first year, their nutrient needs will be minimal. During this time they are establishing their root systems, and fertilizer (especially nitrogen which stimulates stems and leaves) will not be appropriate
- It is best to keep your new tree staked and twined for the first year after planting. This helps provide support during storms and can help protect from other damages

Frequently Asked Questions

How long does it take for a newly planted tree to get established?

On average, proper establishment of a new tree can require 1 year for every 1 inch of trunk caliper (diameter).

Do plants go into shock after transplanting?

Plants suffer shock after transplanting, whether they are newly planted seedlings or mature plants moved from one location to another. Plants suffering shock may wilt, yellow or suffer from overall decline. Proper care helps repair the damage so the plants recover quickly and begin to establish in their new bed.

Can you overwater a newly planted tree?

Too little water and the tree will wilt and die, but too much water can drown the roots and kill the tree just as easily ... The best watering system for a newly planted tree is soaker or drip hose. This should be placed in concentric circles around the root zone of the tree
 90% of newly planted trees in Eastern MT die from overwatering rather than underwatering!

Stakes and Twine

Attachment 7

ORDINANCE NO. 1374

AN ORDINANCE CHANGING THE ZONING OF LOT 14 AND THE NORTHEASTERLY 30' OF LOT 15 OF BLOCK 107 OF THE ORIGINAL PLAT OF THE TOWN OF MILES CITY FROM THE RESIDENTIAL A DISTRICT TO THE GENERAL COMMERCIAL DISTRICT, AND PROVIDING FOR A HEARING THEREON.

WHEREAS, Troy Ask, John & Frances Johnson, and Eric & Sandra Rabe have made application for the property described as Lot 14 and the northeasterly 30' of Lot 15 of Block 107 of the original Plat of the Town of Miles City (also known as the 'Miles City Original Townsite') to be rezoned from the Residential A (RA) District to the General Commercial (GC) District;

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

AND WHEREAS, Section 24-96 of the Code of Ordinances of Miles City, Montana requires that such application be referred to the City Zoning Commission for public hearing and recommendation to the City Council prior to any action by the City Council upon such application;

AND WHEREAS, the Miles City Zoning Commission, on October 26, 2023, upon public hearing and deliberation, recommended to the City Council that such zone change be approved.

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

Section 1. Zoning for the following described real property located within the City of Miles City, Custer County, Montana, is hereby rezoned from the Residential A (RA) District to the General Commercial (GC) District, to wit:

Lot 14 and the northeasterly 30' of Lot 15 of Block 107 of the original Plat of the Town of Miles City, located in Section 33 of Township 8 North, Range 47 East, PMM, City of Miles City, Custer County, Montana. Said property is proposed to be described as Lot 14A of the 'AMENDED PLAT OF LOTS 14, 15, & 16, BLOCK 107, MILES CITY ORIGINAL TOWNSITE'.

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

Section 3. Prior to final passage, a public hearing shall be held upon this proposed zone change before the City Council at 6:00 P.M. on the _____ day of _____, 2023, in the Council Chambers at City Hall, 17 S. Eighth Street, Miles City, Montana.

Section 4. The City Clerk shall give notice of the date, time and place of such hearing by publication in the Miles City Star at least 15 days prior to the date of such hearing, as well as notice by certified mail at least 15 calendar days prior to such hearing to the applicants, landowners, all adjoining property owners, and owners of land within 150 feet of the subject property, containing all information required by, and in accordance with, MCA Sections 76-2-303 and 305, as well as Section 24-97 of the Code of Ordinances of Miles City, Montana.

Section 5. This ordinance shall be in full force and effect thirty (30) days after its final passage and approval.

Said Ordinance read and put on its passage this _____ day of _____, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk

FINALLY PASSED AND ADOPTED this _____ day of _____, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk

RESOLUTION NO. 4540

A RESOLUTION OF INTENT TO TRANSFER OWNERSHIP OF STADIUM BLEACHERS TO CUSTER COUNTY, MONTANA

WHEREAS, the City of Miles City has historically provided the use of three sets of stadium bleachers (each comprised of two sections, upper and lower) to Custer County, Montana, for use at the fairgrounds for various spectator events;

AND WHEREAS, the City Council of the City of Miles City desires to donate the same to Custer County, Montana, who will assume ownership and control of the same for permanent use by Custer County;

AND WHEREAS, Section 7-8-101(2) MCA permits such transfer of government equipment between entities following the passage of a Resolution of Intent and Public Hearing thereon;

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

1. That the City of Miles City is considering the donation of three sets (each comprised of two sections, upper and lower) of stadium bleachers to Custer County, Montana.

BE IT FURTHER RESOLVED that a public hearing shall be held on the of the fees on the 12th day of December, 2023 at 6:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4127 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 28TH DAY OF NOVEMBER, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk

Mary Rowe

From: Doug Colombik <dcolombik@milescity-mt.org> on behalf of Doug Colombik
Sent: Thursday, November 2, 2023 9:13 AM
To: John Hollowell; Mary Rowe; Linda Wilkins; Jody Kinsey
Subject: Fwd: FY23 COPS Hiring Program Announcement

Follow Up Flag: Follow up
Flag Status: Flagged

----- Forwarded message -----

From: Office of Community Oriented Policing Services (COPS) <copsusdoj@service.govdelivery.com>
Date: Thu, Nov 2, 2023 at 8:02 AM
Subject: FY23 COPS Hiring Program Announcement
To: <dcolombik@milescity-mt.org>



U.S. DEPARTMENT OF JUSTICE
OFFICE OF COMMUNITY ORIENTED POLICING SERVICES
145 N Street, NE, Wash DC 20535

Re: COPS Office FY23 COPS Hiring Program award number 15JCOPS-23-GG-05057-UHPX

Dear Chief of Police Colombik:

On behalf of the Attorney General of the United States, Merrick B. Garland, and the Office of Community Oriented Policing Services (COPS Office), it is my pleasure to inform you that we have approved your proposal for the FY23 COPS Hiring Program in the amount of \$125,000. The COPS Office recognizes and appreciates your commitment to this very important initiative.

At the COPS Office, our mission is advancing community policing nationwide. We prioritize this by supporting state, local, tribal, and territorial law enforcement agencies as they carry out their vital public safety missions. The project you will implement with these award funds contributes to the mission of the COPS Office and the

greater goal of reducing crime and building trust between law enforcement and communities served. The team at the COPS Office looks forward to supporting you as you implement this important work.

In the coming days, the COPS Office will release your award package via [the Justice Grant System \(JustGrants\) website](#). At that time, you will receive an automated email with additional information on how to access, review, and accept your award. You will also be contacted separately by your assigned grant manager and you can always seek assistance with your award from AskCOPSRC@usdoj.gov.

I want to extend my personal appreciation for your efforts and congratulate you on this award. On behalf of the staff at the COPS Office, we look forward to working with you on this important project.

Sincerely,



Hugh T. Clements, Jr.
Director



You have received this email because you have requested [Awards](#) updates from the U.S. Department of Justice's [Community Oriented Policing Services \(COPS\) Office](#). Your subscription information may not be used for any other purposes.

[Manage Your Subscriptions](#) | [Department of Justice Privacy Policy](#) | [GovDelivery Privacy Policy](#)

This email was sent to dcolombik@milescity-mt.org using GovDelivery Communications Cloud on behalf of: The Office of Community Oriented Policing Services (COPS Office) · 145 N St. NE · Washington, DC 20530 · 800-421-6770

RESOLUTION NO. 4542

A RESOLUTION OF THE CITY OF MILES CITY APPROVING A TASK ORDER WITH KADRMAS, LEE & JACKSON, INC. RELATED TO THE SOUTHGATE WATER TANK REHAB PROJECT

WHEREAS, The City of Miles City has retained the engineering services of Kadrmas, Lee & Jackson, Inc. (KLJ) to provide engineering services related to the Southgate Water Tank Rehab Project;

AND WHEREAS, the City wishes to approve a Task Order related to certain work to be provided by KLJ pertaining to said project;

AND WHEREAS, KLJ has provided the City with a written task order setting forth the duties and responsibilities of the parties;

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

1. That the Task Order attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said document on behalf of the City of Miles City and bind the City of Miles City thereto.

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 28TH DAY OF NOVEMBER, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk



2611 Gabel Road
Billings, MT 59102-7329
406 245 5499
KLJENG.COM

October 3, 2023

Tom Speelmon
Public Utilities Director
City of Miles City
217 South 8th Street
PO Box 910
Miles City, MT 58301

Re: Southgate Water Tank Rehab – Proposed Task Order Agreement for Professional Services

Dear Tom:

We are pleased to submit to you the attached proposed Task Order Agreement for the above referenced project. Our proposed services generally include researching various tank recoat / lining options, preparation of bid documents, bidding related services and construction administration. The Task Order assumes some welding repairs are needed and provides up to 200 hours of NACE, Level 3 coating inspection and up to 20 hours of inspection by a Certified Welding Inspector, through 62 Archer, KLJ's subconsultant.

The estimated cost to complete our services is not to exceed \$77,300. An adjustment to this amount may be made if additional construction observation is determined to be needed upon evaluation of the interior tank condition at the time of construction.

Please contact me at 406-247-2902 if you have any questions or suggestions regarding anything you would like to see modified in our scope. If the agreement meets City approval, please have it signed and return it for our further processing. Let us know if you prefer hard copies.

Thank you for this opportunity. We are excited to work with you and continue serving Miles City!

Sincerely,

KLJ

A handwritten signature in cursive script, appearing to read 'Travis Copper', written in black ink.

Travis Copper, PE
Project Engineer

Enclosure(s): Proposed Task Order Agreement
Project #: 2304-00124
cc: McKenzie Butcher, KLJ

TASK ORDER

This is Task Order
No. _____, consisting of
_____ pages.

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner: City of Miles City
- c. Engineer: KLJ Engineering LLC
- d. Specific Project (title): Southgate Water Tank Rehabilitation
- e. Specific Project (description): Project involves the rehabilitation of the Southgate Water Tank located in Miles City, MT. Rehabilitation effort shall consist of spot repair to the tank and recoating of the exterior and interior of the tank. Project also includes armoring of down stream tank drainage channel.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:
As Described in Exhibit A

3. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are:
As Described in Exhibit A

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following:

Add any additional Owner's responsibilities as described in Exhibit A

5. Task Order Schedule

Engineer’s scope of work and compensation is based on the following:

- B. Design and permitting: October 2023 – December 2024
- C. Bidding: January 2024
- D. Construction April 2024 – May 2024

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Part 1 of Exhibit A)	\$77,300	Hourly Rates
2. Additional Services (Part 2 of Exhibit A)	(N/A)	Hourly Rates

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C. Payment will be based on revised rate sheet attached to this Task Order.

7. Consultants retained as of the Effective Date of the Task Order:

- a. 62 Archer Inspection Consulting (KLJ will execute contract with sub-consultant following Owner’s written acceptance of this Task Order Agreement.)

8. Other Modifications to Agreement and Exhibits:

- a. none

9. Attachments:

- a. Exhibit A – Engineer’s Services for Task Order
- b. Revised Rate Sheet

10. Other Documents Incorporated by Reference:

- a. no changes from MSA
-

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

OWNER: City of Miles City

ENGINEER: KLJ Engineering LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Firm's Certificate No. (if
required): _____

State of: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _____

Phone: _____

Engineer's Services for Task Order

PROJECT DESCRIPTION

The project consists of repairs and recoat of the interior and exterior to Owners existing Southgate water storage tank, consisting of a 220,000 gallon on-grade, welded steel tank. Repairs will include providing on-site temporary water system to isolate the existing tank; spot welding repairs; interior and exterior sand blasting and recoating or lining; and possibly armoring up to 300-lineal feet of the existing discharge channel from the tanks outlet, downstream to flatter terrain to repair and prevent future erosion. Construction is anticipated to occur in April – May of 2024.

BASIC SERVICES

A1.01 Design Phase

A. Owner shall:

1. Secure agreement from landowner in and adjacent to tank site as needed for work being completed.
2. Provide any available documentation related to construction, prior maintenance, or inspection of the tank, not previous given to Engineer.
3. Negotiate with surrounding property owners if needed for right to access, work on property or secure additional easements.

B. As Basic Services, Engineer shall:

1. Evaluate all record drawings and any other project pertinent information supplied by Owner.
2. Investigate alternatives for tank coating, including exterior/interior epoxy paint, and exterior epoxy paint with interior spray on linear (AmTech, APE or Cogent). Provide Owner with a summary of pros and cons with each option including opinion of the most affordable option.
3. Investigate alternatives for armoring of tank drain discharge channel, including riprap, reinforced concrete block mats and one or two other alternatives to be determined during design. Provide recommendation to Owner as to best alternatives, including opinion of the most affordable option.
4. Prepare a Site Plan of the existing tank site and construction layout, using GIS level areal imagery and topography available through public domain, and property boundary information from existing plats and records of survey. No field survey will be completed. Scope is based on Owner obtaining agreement from affected landowner(s) to work on property based on a general site plan, without the need for meets and bounds legal description of work area. Supply Site Plan to Owner for Owner's negotiations with affected landowner(s).
5. Upon Owner's selection of a tank coating system and tank drain armoring solution, Prepare a construction drawings, specifications and a project manual. Construction drawings to consist of the following:
 - a. Cover Sheet

- b. General Note Sheet
 - c. Site Plan
 - d. Detail Sheet
6. The project manual will include special provisions regarding temporary water requirements. Means and methods to provide for temporary water will be left to Contractor subject to Engineer and Owner approval.
 7. Prepare Engineer's Opinion of Probable Cost (EOC).
 8. Submit Construction Drawings, Specification, Project Manual and EOC to Owner and revise one time per Owner's review comments. Deliver final executed set of these deliverables to Owner.
 9. Apply for DEQ permit and submit closeout package to DEQ upon completion of project.
- C. Engineer's services under the Design Phase will be considered complete on the date when Engineer has delivered to Owner said deliverables and applied for DEQ permit.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one.

A1.02 *Bidding Phase*

- A. As Basic Services, Engineer shall:
1. Assist Owner in advertising for and obtaining bids for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents, maintain a plan holders list and facilitate pre-bid conferences.
 2. Provide responses to Requests for Information from bidders, during the Bidding Phase.
 3. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued bid documents.
 4. Consult with Owner as to the qualifications of contractors, subcontractors and suppliers.
 5. Evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders.
 6. Attend the bid opening, prepare bid tabulation, assist Owner in evaluating bids, assemble final contracts for the Work and in issue notice of award.
 7. If Owner engages in negotiations with bidders, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractor.

A1.03 Construction Phase

A. As Basic Services, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (the Edition of which is to coincide with the current Montana Public Works Standard Specifications in effect at the time of a specific Task Order), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
2. *Construction Observation:* Resident Project Representation is not included in scope. Engineer will provide sub-consultant to perform inspection of weld repairs, surface preparation and coating application for epoxy paint. Scope is based on providing up to 200 hours of NACE qualified inspection for coating preparation and application and up to 20 hours of inspection by a Certified Welding Inspector. Additional inspection time, if needed, will be provided as Additional Services. If other lining alternatives are selected, the engineer will verify typical inspection and certification requirements for the specific type of liner and cost for said inspection and/or certifications will be in addition to the cost of services provided in this scope and will be factored into coating alternative recommendations. Engineer will visit the site to observe construction progress at the following milestones:
 - a. Pre-construction walkthrough to document site conditions.
 - b. Following setup of temporary water system, to observe testing and verify acceptability prior to placement into service.
 - c. Upon completion of interior and exterior welding repairs to interior and exterior (1 visits assumed).
 - d. Substantial completion and punch-list verification walkthroughs.
3. *Pre-Construction Conference:* Facilitate a pre-construction conference prior to commencement of Work at the Site.
4. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
5. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

6. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
7. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
8. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
9. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals.
10. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
11. *Inspections and Tests:* Receive and review all certificates of inspections, tests, and approvals required by Construction Contract Documents. Contractor will be required to provide all needed compliance testing. Engineer will not provide any independent testing.
12. *Change Proposals and Claims:* Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and respond to Contractor and Owner within 30 days after receipt.
13. *Applications for Payment:* Review Applications for Payment and accompanying supporting documentation. Respond to Contractor with requested modifications as needed and respond to Owner with recommendation.
14. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals and approved submittals.
15. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Prepare a punch list of items to be completed.
16. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor.
17. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* This scope includes a 30-day construction period for contractor to reach Substantial Completion and a 14day period thereafter to achieve final completion. The Construction Phase will terminate upon written recommendation by Engineer for final payment to Contractors.

A1.04 *Post-Construction Phase*

- A. During the Post-Construction Phase, as Basic Services, Engineer shall:
1. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor. Assist Owner in request to Contractor to complete corrective work.
- B. The Post-Construction Phase services may commence during the Construction Phase will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2—ADDITIONAL SERVICES

A2.01 *Additional Services not requiring an Amendment to Task Order*

- C. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Assistance with project funding.
 2. Surveying the site.
 3. Services related to environmental assessments.
 4. Providing inspection of the existing tank, or additional construction inspection hours than those specified in the scope.
 5. Services resulting from significant changes in the scope, extent, or character of the project.
 6. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Basic Services.
 7. Services required as a result of Owner's providing incomplete or incorrect information to Engineer.
 8. Furnishing services of Consultants for other than Basic Services.
 9. Assistance in connection with bid protests, rebidding, or renegotiating contracts.
 10. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
 11. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
 12. Provide assistance in responding to the presence of any Constituent of Concern at any Site.

13. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- D. *Advance Written Authorization Not Required:* For following Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. The following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Attending meeting beyond those specified as Basic Services; Additional substantial completion, final completion of warranty walkthroughs than the number specified as Basic Services.
 2. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 3. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment; evaluation and determination of an excessive number of proposed "or equals" or substitutions.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
 6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
 7. Reviewing a Shop Drawing or other Contractor submittal more than twice, as a result of repeated inadequate submissions by Contractor.



2023 Rate Sheet



2023 KLJ Hourly Rates - Municipal

KLJ STAFF TYPE	STANDARD RATE	KLJ STAFF TYPE	STANDARD RATE
Archaeologist Technician	\$86	CAD Technician I	\$89
Archaeologist II	\$104	CAD Technician II	\$100
Archaeologist III	\$122	CAD Technician III	\$122
Archaeologist IV	\$160	GIS Technician	\$75
Environmental Technician	\$93	GIS Analyst I	\$97
Environmental Planner I	\$93	GIS Analyst II	\$110
Environmental Planner II	\$100	GIS Analyst III	\$128
Environmental Planner III	\$143	GIS Analyst IV	\$160
Environmental Planner IV	\$189	Engineering Technician I	\$79
Paleontologist	\$128	Engineering Technician II	\$97
Paleontologist Technician	\$86	Engineering Technician III	\$125
Engineer in Training I	\$110	Engineering Technician IV	\$161
Engineer in Training II	\$125	Associate ROW	\$92
Associate Engineer	\$135	ROW Agent	\$132
Engineer	\$172	ROW Professional	\$143
Senior Engineer	\$229	Senior ROW Professional	\$171
Principal Engineer	\$276	Survey Technician	\$86
Associate Planner	\$97	Crew Chief	\$104
Planner	\$140	Senior Crew Chief	\$125
Senior Planner	\$171	Land Surveyor in Training	\$82
Principal Planner	\$197	Professional Land Surveyor	\$153
Associate Designer	\$110	Principal Land Surveyor	\$207
Designer	\$128	1 Person Survey Crew	\$186
Senior Designer	\$179	2 Person Survey Crew	\$282
Associate Project Manager	\$186	Project Controls Specialist I	\$100
Project Manager	\$225	Project Controls Specialist II	\$189
Senior Project Manager	\$277	Project Assistant I	\$71
Government Relations Specialist I	\$125	Project Assistant II	\$97
Government Relations Specialist II	\$129		
Contract Administrator	\$112		

Time and Half for Overtime

Included in Hourly Rate

REIMBURSABLE EXPENSES (IF APPLICABLE)

ATV, UTV, Snowmobile	Included in Hourly	Special Equipment/Software	Per Project Basis
Survey Equipment	Included in Hourly	Subsistence (Per Diem) - Lodging	Actual Cost
CAD and GIS Work Station	Included in Hourly Rate	Subsistence (Per Diem) - Meals	\$45/Day per Employee
Postage and Routing Printing Cost	Included in Hourly	Misc. Project Related Expenses	Cost plus 15%
Mileage	Included in Hourly	Sub-Contracts	Cost plus 15%