Resolution of Intention 10385

Petitioners: Gary and Nancy Martin

124 24th St. SW Great Falls MT 59404

When we purchased our lot in 2003 from Mr. and Mrs. Bennyhoff we were informed that it had an easement-for access by utility and emergency vehicles only. This is also the description that is on our deed. Later Jay Parrot, the inspector from planning, who gave the setbacks during the construction of our home and shop also referred to it as an easement; as well as the zoning review that stamped our site plan. Last summer Greg Avent with the County Planning Mapping also labeled it as an easement and sent me by email a document and map from 1952. In 1954 Lot 1 Block 17 was annexed from the County into the City. Unfortunately, the alley was not abandoned when it was annexed. During the years following the annexation, lots were sold in their entirety and taxed on the full square footage of the properties -no deduction was or has ever been made for an alley. By my reading on the City of Great Falls web page a public right of way (alley) is not a taxable piece of property. In addition, the city has never utilized the alley for garbage collection nor performed any grading or maintenance. So this 20 foot parcel of land has been an alley in name only, but HAS functioned as a utility easement all of these years. Also if you were to drive down 24<sup>Th</sup> St SW you would notice that every home owner on our street has provided their own access to their backyards (from their front yard) so that they do not have to cross anyone's property to reach their own backyard. Because of the confusion of whether this strip of land was an alley or easement we are petitioning to have the alley abandoned. We acknowledge as an easement that it would still be accessed as needed by utility and emergency vehicles. I also have an email dated July 7, 2020 from Diane Mullaney at NorthWestern Energy stating that if the installation of a gate were to be placed on our property it would be fine as we would provide NorthWestern Energy with a key for their access.

We as property owners would like to be afforded the full, true ownership of our land. As it stands right now, my husband and I must allow public access to anyone who cares to cross our property. And as for any future resale hopes we may have- I highly doubt during the disclosure process we would find any buyers who would even consider purchasing a home, on a City lot, where they will have absolutely no control over public access of their property.... in which, not only will they have to pay taxes on it but will also incur very costly maintenance and repair bills due to the high traffic that occurs.

Gary and Nancy Martin Owners, 124 24th St. SW Order No.: GF23478 Parcel No.: 1687375

#### **WARRANTY DEED** (Joint Tenancy)

FOR VALUE RECEIVED.

David H. Bennyhoff and Lenaya J. Bennyhoff

hereinafter called Grantor(s), do(es) hereby grant, bargain, sell and convey unto

Gary F. Martin and Nancy J. Martin

whose address is: 171 Koko Malei Street, Honolulu, HI 96818

hereinafter called Grantees, as joint tenants (and not as tenants in common) and to the survivor of said named joint tenants, and to the heirs and assigns of such survivor, the following described premises, in Cascade County, Montana, to-wit:

Lot 1FE of the Amended Subdivision Plat of Lot 1F, Block 17, Sun River Park Addition to Great Falls, Montana, according to the official map or plat thereof and on file in the office of the Clerk and Recorder of said county.

SUBJECT TO Covenants, Conditions, Restrictions, Provisions, Easements and encumbrances apparent or of record.

TO HAVE AND TO HOLD, the said premises, with its appurtenances unto the said Grantees, as joint tenants with the right of survivorship (and not as tenants in common) and to the heirs and assigns of the survivor of said named tenants forever. And the said Grantor(s) do(es) hereby covenant to and with Grantees, he (she or they) is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances except for taxes and assessments for current and subsequent years and he (she or they) will warrant and defend same from all lawful claims whatsoever.

Dated: July 3, 2003

David H. Bennyhoff

Lenaya J. Bennyhoff

State of Montana County of Cascade

This instrument was acknowledged before me on this 300 day of July, 2003, by David H.

Bennyhoff and Lenaya J. Bennyhoff.

Signature of Notarial Officer

Notary Public for the State of Montana

Residing in Great Falls

Commission Expires March 7, 2006

RETURN TO:

Gary F. Martin and Nancy J. Martin

171 Koko Malei Street Honolulu, HI 96818



0 EASMENT BARY + NANCY MARTIN Cannot build over easements BVd=121/2" STILL SELLING See additional landers -BIVA trus tax requirements attached See additional landscape ) D.P.W. approvals Sidewalk required 784-187-204 ZONED: K-1 ZONING REVIEW O'THER REQUIREMENTS SETBACKS-BLVD(S): FLOOD ZONE CANDOCAPIO 20' WIDE DARH WHAT TOTAL SET BALL S FROM PLOPMENT LINE & S PLUP. Using "A" area setbacker CHARGE TOOK Curbent ly BLVD TREES SIDE FRONT D1-1/C TREES ON SITE SET BALL FROM -BICA=121/21 30,0 Sidewalk required per

ķ

## RE: Easement for 124 24th St. SW Great Falls

Avent, Greg <gavent@cascadecountymt.gov>

Mon 7/13/2020 11:26 AM

To: gary martin <gfmartin37@hotmail.com>

Cc: Yonker, Charity N. <cnyonker@cascadecountymt.gov>; Gough, Destiny N. <dgough@cascadecountymt.gov>

1 attachments (3 MB)

Sun River park Block 17.tiff;

Hello, Mrs. Martin-

I have attached a map of the lots on your block.

The shaded area represents a 20' easement along the West edge of your property.

**Greg Avent** 

From: gary martin <gfmartin37@hotmail.com>

Sent: Monday, July 13, 2020 2:20 PM

To: Avent, Greg <gavent@cascadecountymt.gov>
Subject: Easement for 124 24th St. SW Great Falls

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Greg,

My name is Nancy Martin and I am contacting you in an effort to find maps or documents regarding whether the property at

124 24th St. SW., Great Falls -which my husband Gary and I own and live at- has an easement or an alley on it. I have spoken to Lonnie in Planning and also Michelle at the Clerk and Recorders without any luck finding concrete documentation, as well as with Bruce at Sanitation.

I would be happy to visit with you (phone#: 781-4496) regarding the specifics of why we are wanting this clarified.

Thank you so much for your time, Nancy

## RE: Easement for 124 24th St. SW Great Falls

Avent, Greg <gavent@cascadecountymt.gov>

Tue 7/14/2020 4:39 AM

To: gary martin <gfmartin37@hotmail.com>

1 attachments (254 KB) reel 213 doc 605.pdf;

Mrs. Martin-

I am working from home, and unfortunately don't have a work phone, just the counties email.

The attached document should be of use, though.

The first entry on the document is the filed record the drawing I sent was based on, and it created the easement. It was filed on May 7, 1952.

**Greg Avent** 

July 13, 2020 8:14 PM

To: Avent, Greg <gavent@cascadecountymt.gov>
Subject: Re: Easement for 124 24th St. SW Great Falls

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greg,

Thank you so much for the prompt response. The map was exactly what we were looking for. Is there any way we could find out what date your map was drawn up? Again, I would be happy to speak with you on the phone.

Thanks again,

Nancy

From: Avent, Greg <gavent@cascadecountymt.gov>

Sent: Monday, July 13, 2020 11:26 AM
To: gary martin <gfmartin37@hotmail.com>

Cc: Yonker, Charity N. <cnyonker@cascadecountymt.gov>; Gough, Destiny N. <dgough@cascadecountymt.gov>

Subject: RE: Easement for 124 24th St. SW Great Falls

Hello, Mrs. Martin-

I have attached a map of the lots on your block.

The shaded area represents a 20' easement along the West edge of your property.

COMPARED

COMPARED

# CASCADE COUNTY, MONTANA

ROBERT A. STEGLING, ET UX No. 1.1.6 9 LB EASEMENT OF RIGHT OF WAY FILED FOR RECORD MAY 7 '52 at 1,15 PM D. McDOWAID, COUNTY CLERK & RECORDER BY HERNICE BALCH, DEPUTY TO . CASCADE COUNTY THIS AUREMENT made and entered into this 6th day of May one thousand nine hundred and fifty-one by and between Robert A. and Kathryn Siegling first party and Cascade County, a corporate body politic, second party. WITNESSETH, That the first party for and in consideration of the sum of One Dollar (\$1.00) to them in hand paid by second party, the receipt whereof is hereby acknowledged, does by these presents hereby grant and convey unto said second party the full and free right of way for a Highway upon and through the following lands and premises situated in the County of Cascade and State of Montana, to-wit: A 20 foot strip of land to be used for an alley, described as follows: The West 20fest of the South 840 feet and the North 20 feet of the South 860 feet of Lot 1, Block 17 Sun River Park-Addition to Great Falls, Montana, containing 0.48 acres. It is mutually understood and agreed that if the above described premises are at any time abandoned for highway purposes by official action as provided by statute, that the same shall immediately revert to first IN WITNESS WHEREOF, the said first party have hereunto set their hands and seals the day and year first hereinbefore written. ROBERT A. SIEGLING KATHRYN SIEGLING Signed, Sealed and Delivered in STATE OF MONTANA County of Cascade ) as On this 6th day of May in the year nineteen hundred and fifty-two, before me, T. R. Cascaden, a Notary Public for the State of Montana, personally appeared Robert A. and Kathryn Siegling known to me (or proved to me on oath of \_) to be the persons whose names are subscribed to the within instrument and cknowledged to me that they executed the same. IN WITNESS WHEREOF, I have hersunto set my hand and affixed my Notarial Seal, the day and year first sbove written. T. R. CASCADEN Notary Public for the State of Montana PLAT IN BOX (HOTARIAL SEAL) My Commission Expires July 19, 1953 KARGERY C. WULF No.416 950 AFFIDAVIT. FILED FOR RECORD MAY 8 152 at 9:15 AM D. McDONAID, COUNTY CLERK & RECORDER BY BERNICE BALCH, DEPUTY THE PUBLIC FEE . 75¢ STATE OF MONTANA County of Castade ) as MARGERY C. WULF, being first duly sworn on her oath, deposes and says. That the correct spelling of her Shristian name is Wargary but that the said name is sometimes written as Marjorie. That on Entry No. 60 in the Abstract of Title to the East Half of Lot numbered Five (5) and All of Lot mbered Six (6) in Block numbered Thirty-one (31) Black Eagle Falls Addition to the City of Great Falls,

SUBSCRIBED AND SWORN to before me, a Notary Public, this 6th day of May, 1952.

That the said Margary C. Dair, and Marjorie C. Wulf, are one and the same person.

ascade County, Montana, her name is incorrectly spelled War Jorie, but the same is spelled correctly

J. J. WUERTHNER Notary Public for State of Montana Residing at Great Falls, Montana My Commission expires March 16, 1953

MARGERY'C. WULF

(NOTARIAL SEAL)

t Entries No. 63 and No. 74 of said Abstract.

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## RESOLUTION NO. 4696

A RESOLUTION EXPRESSING THAT IN THE JUDGMENT OF THE CITY COUNCIL OF THE CITY OF GREAT FALLS, MONTANA, IT WILL BE FOR THE BEST INTEREST OF SAID CITY AND THE INHABITANTS THEREOF, AND OF THE INHABITANTS OF CERTAIN PLATTED TERMICRY CONTIGUOUS TO SAID CITY, KNOWN AS BLOCKS SEVENTEEN (17), AND EIGHTEEN (18), AND LOTS ONE (1), TWO (2), THREE (3), AND FOUR (4), INCLUSIVE, OF BLOCK NINTEEN (19), SUN RIVER PARK ADDITION TO THE CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA, THAT THE BOUNDARIES OF SAID CITY BE EXTENDED SO AS TO INCLUDE SAID TERRITORY WITHIN THE CORPORATE LIMITS SPECIFYING THE AREA AND USE DISTRICTS UNDER CHAPTER XVII, REVISED ORDINANCES OF THE CITY OF GREAT FALLS, 1952, AS TO WHICH SAID TERRITORY WOULD BE INCLUDED WITHIN THE CORPORATE LIMITS, AND, DIRECTING NOTICE TO BE GIVEN BY THE CITY CLERK, AND THE LAYING BY THE CITY CLERK BEFORE THE CITY COUNCIL THE COMMUNICATIONS BY HIM RECEIVED FOR ITS CONSIDERATION.

WHEREAS, the City of Great Falls is a city incorporated under the laws of the State of Montana, and, having a population of more than Ten Thousand (10,000), is a city of the first class; and

WHEREAS, there is contiguous to said City, but without the boundaries thereof, certain tracts or parcels of land, situated in the County of Cascade, State of Montana, which have been platted into lots, blocks, streets, and alleys, known as Blocks Seventeen (17), and Eighteen (18), and Lots One (1), Two (2), Three (3), and Four (4), of Block Ninteen (19), of the Sun River Park Addition to the City of Great Falls, Cascade County, Montana; all according to the map or plat of said Addition filed in the Office of the County Clerk & Recorder of Cascade County, Montana, on the 30th day of December, 1915.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

That in its judgment it will be to the best interest of said City of Great Falls and the inhabitants thereof, and of the inhabitants of said contiguous platted tracts or parcels of land, as aforesaid, that the boundaries of said City of Great Falls shall be extended so as to include the same within the corporate limits thereof, and that said territory, when incorporated, be designated for zoning purposes under Chapter XVII, Revised Ordinarces of the City of Great Falls, 1952, as follows:

Blocks Seventeen (17), Eighteen (18), and Lots One (1), Two (2), Three (3), and Four (4), of Block Ninteen (19), Sun River Park Addition to the City of Great Falls, Cascade County, Montana, as an "A" Area, "A" Use District.

BE IT FURTHER RESOLVED BY SAID CITY COUNCIL that the City Clerk of said City be, and he is hereby authorized and directed to forthwith cause to be published in the Great fulls Leader, being the newspaper published nearest said platted tracts or parcels of land, at least once a week for two (2) successive weeks, a notice which shall be to the effect that the foregoing Resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of said

natice said City Clerk will receive expressions of approval or disapproval in writing, of the proposed extension of the boundaries of said City from resident freeholders of the territory proposed to be embraced therein; and

BE IT FURTHER RESOLVED BY SAID CITY COUNCIL: that the City Clerk of said City shall, at the next regular meeting of said City Council after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration.

Duly and regularly passed and adopted by the City Council of the City of Great Falls, Montana, on the 20 day of June, 1954, and approved by the Mayor of said City on the 20 day of June,

ATTEST:

(SEAL OF CITY)

STATE OF MONTANA, )
County of Cascade, : ss.
City of Great Falls. )

I, FRED L. HILL, Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution No. 4696 was regularly placed on its final passage and passed by the Council of said City at a meeting thereof held on the Aday of June, 1954, and the same was approved by the Mayor of said City on the Aday of June, 1954.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this day of June, 1954.

(SEAL OF CITY)

CORDED NOV 1 9 1999

TIME 10.50 A

RITA HUDAK
Clerk and Recorder
Caspade County, Montane

-Page 2-

10 1

# Public Right-of-Way

Please be aware that you cannot fence public right-of-way.

The property owner is responsible for maintenance but is not taxed on this area. Call Engineering at (406) 771-1258 before placing fence posts. Street sizes vary throughout Great Falls and so does the public right-of-way.

- If you have a corner property there is a CVT (clear vision triangle) which is a 45 degree triangle measurement that will determine where your fence can be placed. In alleys this measurement is 10' and in driveways the measurement is 15'.
- For any vegetation CVT (clear vision triangle) issues such as a tree or a bush please contact the Park & Recreation City Forester at 771-1265.
- Residential fence height: 4' tall in the front yard (from the end of the public right-ofway to the front of the house), and 6' tall (from the front of the house through the backyard). Contact Code Enforcement at Planning & Community Development (406) 455-8574.
- Any new fences being installed or old fences being repaired and/or replaced are required to comply with the City Code revised in 2007.
- Fire Hydrants are placed in the public right-of-way. There needs to be clearance of at least 5' to allow for proper hose connection and use. In case of an emergency and the hydrant access is blocked by fencing or shrubs they may need to be cut. The property owner would be responsible for any replacement costs.

# How is the public right-of-way figured?

Get the measurement of the street or avenue from Engineering, next measure from the back of curb on one side of the street to the other back of curb across the street.

**Example:** 80' public right-of-way minus 35' street back of curb measurement = 45' remaining right-of-way, divided by 2 = 22.5'. Therefore each property owner on each side of the street would have a 22.5' public right-of-way. The fence would be placed 22.5' from the back of curb.

# Official City Codes:

- Fences 17.20.7.040
- Boulevards 12.1.010 12.3.020 (includes CVT Clear Vision Triangle)

7/20/2020 Alley Grading

Published on City of Great Falls Montana (https://greatfallsmt.net)

# **Alley Grading**



111

There are 80 miles of alleys in the City of Great Falls. They are graded twice a year by schedule — once in the spring and again in the fall. Requests for additional maintenance are accepted year—round. Call the PAR-TNER line at 406-727-8637, the Public Works Operations Office at 406-771-1401, or fill out the <u>Street Maintenance Notification Form Payonline</u>.

Source URL: https://greatfallsmt.net/publicworks/alley-grading

#### Links

[1] https://greatfallsmt.net/sites/default/files/styles/gallery500/public/imageattachments/publicworks/page/28431/4.jpg?itok=tm5Vte5x

[2] https://greatfallsmt.net/publicworks/street-maintenance-notification-form





Till Delete



nk Block

### Derete G Jank Block

#### **Easement**

Mullaney, Diane <diane.mullaney@northwestern.c

om>

To: You

Good afternoon Gary ~

Tue 7/7/2020 8:25 AM



Per our telephone conversation, I said I would look to see if we had an easement for the area you are questioning. We do not have an easement in our system that I could find. It might have been at the time that we needed to put in a line and the City/County just let us go down the alley. As I stated, we could not tell Roxanne that she could not cross the easement, but if you own the property, I would show her your deed and put up a gate to deter her from using it as a driveway. I would definitely get something from the County as to what the set back from the road might be prior to putting it up and we would need to have a key to the gate or be able to access the line in the event of an emergency.

If I can assist you in any other way, please let me know.

Thank you,

#### Diane Mullaney

Real Estate Analyst

11 E. Park St. I Butte, MT 59701

Office: (406) 497-3240 | Fax: (406) 497- 3158

Diane.mullaney@northwestern.com



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Reply

**Forward** 

From: <u>Lisa C. Kunz</u>

To: Bob Kelly; Mary Sheehy Moe; Owen Robinson; Rick Tryon; Tracy Houck
Cc: Greg Doyon; Charles Anderson; Krista Artis; Craig Raymond; Sara Sexe
Subject: FW: February 5th, 2021 February 16th, 2021 at 7:00 pm room 212 Civic Center

**Date:** Friday, February 12, 2021 11:02:52 AM

See comments from Steve and Shelly Schoeneman, re: Resolution of Intention 10385 – Agenda Item 15 on the February 16, 2021 Commission Meeting Agenda.

#### Lisa

City Clerk/Records Manager 406.455.8451

From: Lisa C. Kunz

**Sent:** Friday, February 12, 2021 11:00 AM **To:** 'Steve C' <ishkeez@gmail.com>

Subject: RE: February 5th, 2021 February 16th, 2021 at 7:00 pm room 212 Civic Center

Good Morning – your comments will be shared with the City Commission for consideration of Agenda Item 15 (Resolution of Intention 10385) at the February 16<sup>th</sup> meeting. If adopted, the Resolution of Intent provides notice and sets the public hearing for March 16<sup>th</sup> for consideration of a Resolution to Vacate.

# Lisa Kunz

City Clerk/Records Manager City of Great Falls P.O. Box 5021 Great Falls, MT 59403 406.455.8451

From: Steve C < ishkeez@gmail.com > Sent: Friday, February 12, 2021 10:31 AM

**To:** commission < commission@greatfallsmt.net >

Subject: February 5th, 2021 February 16th, 2021 at 7:00 pm room 212 Civic Center

Name: Steve Schoeneman, Shelly Schoeneman

Address: 121 25th Street SW, Great Falls, Montana

### Property OWNER

I am writing to respond to a second letter I received dated February 5, 2021. Resolution of Intention 10385 should NOT be considered. Now this is getting out of control, to send two letters containing different days and different party's of attendance, to hear contents about the same matter, the attempt to close, and restrict the access of use, of the ALLEY which has been used over the last 18 plus years.

OUR STANDING REMAINS THE SAME, WE REJECT ALL MATTERS REGARDING THE REMOVAL AND/OR ANY SUCH USE, OR ACCESS TO, THRU, OR ON, SUCH PROPOERTY WHILE WE OWN OUR PROPERTY.

Steve & Shelly Schoeneman

From: <u>Lisa C. Kunz</u>

To: Bob Kelly; Mary Sheehy Moe; Owen Robinson; Rick Tryon; Tracy Houck
Cc: Craig Raymond; Joseph Cik; Charles Anderson; Krista Artis; Greg Doyon

**Subject:** FW: alley vacancy request

**Date:** Tuesday, February 16, 2021 6:30:15 PM

See Ms. Settera's comments pertaining to this evening's Agenda Item 15.

#### Lisa

City Clerk/Records Manager 406.455.8451

From: roxannsettera@outlook.com <roxannsettera@outlook.com>

Sent: Tuesday, February 16, 2021 3:49 PM

**To:** commission <commission@greatfallsmt.net>; William Levine <wlevine@marralawfirm.com>

**Subject:** alley vacancy request

I am sending my objection: I oppose the Martins request to vacate the alley/access. I will be watching but can not speak as no microphone on this computer. My attorney, William Levine, has scheduled this meeting.

Bernice and Alan Graf
28 24th ST. SW.
Lot 1G of Sun River Park Addition
Great Falls Mt.
59404

021621-15 INVOICE

City Of Great Falls Operations 1025 25th AVE. NE. Great Falls MT. 59404

Invoice #

0000001

Invoice Date

06/01/1991

**Due Date** 

12/30/2021

Item	Description	<b>Unit Price</b>	Quantity	Amount
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1991 To Sep.1991	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1992 To Sep.1992	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1993 To Sep.1993	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1994 To Sep.1994	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1995 To Sep.1995	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1996 To Sep.1996	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1997 To Sep.1997	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1998 To Sep.1998	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 1999 To Sep.1999	200.00	8.00	1,600.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT.  @ 8 times a year for 10 years 2000 to 2009	200.00	80.00	16,000.00

Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT.  @ 8 times a year for 10 years 2010 to 2019	200.00	80.00	16,000.00
Service	Mowing and weed control of city lot 1G Sun River Park Addition Great Fall MT. June 2020 To Sep.2020	200.00	8.00	1,600.00
NOTES: TI	his is the cities rate : \$200.00 HP / one HP Min. \			
	his is the cities rate : \$200.00 HR ( one HR Min. ) bie Kimball (406)455-8158			
		Subtotal		48,000.00
		Subtotal Total		48,000.00