



Item: Resolution 9992 for Conditional Use Permit for a Contractor yard, type 1 at the property addressed as 424 8th Avenue Southwest

From: Jana Cooper, RLA, Planner II, Planning and Community Development

Initiated By: Dan Anderson, Property Owner

Presented By: Mike Haynes, AICP, Director of Planning and Community Development

Action Requested: City Commission accept Resolution 9992 on first reading and set public hearing for October 2, 2012.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission set a public hearing for October 2, 2012 to consider adoption of Resolution 9992”

2. Mayor calls for a second, discussion, inquires from the public, and calls the vote.

Recommendation: At the conclusion of a public hearing held August 14, 2012, the Zoning Commission passed a motion recommending to the City Commission that a conditional use permit be **granted** to allow a Contractor yard, type 1, on the property addressed as 424 8th Avenue Southwest and legally described as Marks 4, 4F and 4G, North Garden Tracts, Section 11, Township 20 North, Range 3 East, Cascade County, Montana and subject to the conditions stated within this agenda.

Staff recommended the Zoning Commission approve the requested Conditional Use Permit. Three citizens spoke as opponents to the project and no citizens spoke as proponents at the public hearing.

Background:

The subject property is comprised of three parcels that are not adjacent to a public right-of-way. Generally, the subject property is south of Huffman Avenue and west of 3rd Street Southwest. The applicant is requesting a Conditional Use Permit for Mark 4, 4F & 4G, North Garden Tracts, herein referred to as subject property, to allow a Contractor yard, type 1 on the property in order to maintain an existing business which is operating on the subject property

The subject property is zoned R-1 Single-family suburban district. This district is intended to

accommodate comparatively low-density, single-family residential development on larger lots. A Contractor yard, type 1 is permitted, but only with Conditional Use approval in the R-1 Zoning District.

The owner of the subject property is requesting a Conditional Use Permit to allow a Contractor yard, type 1. The owner owns a business, "Concrete Doctor, Inc." which is licensed as a Home Occupation at 816 10th Ave SW. The owner has been using the subject property as the contractor yard for the business for storage of equipment and materials since 2007. A zoning determination was completed by the Planning and Community Development Department in 2010. The determination was to verify if there was a legal nonconforming commercial use on the property. The property file indicates that in 1977 the subject property was used for a commercial business, "Big Sky Hydroturfing". There is additional information provided by the applicant that suggests that the shop for "Big Sky Hydroturfing" was in operation until November of 2002. The zoning determination concluded that there was not a legal nonconforming use on the subject property and it would not be permitted to be licensed as commercial use. The owner was given the option to apply for a Conditional Use Permit to legally establish the business. (See attached 2010 Zoning Determination)

In May 2012, the Planning Department received a complaint that the "Concrete Doctor, Inc." business was being run on the subject property. Staff met with the owner to discuss the issues and it was determined that the Code allows a Contractor yard, type 1 in the R-1 zoning district, but only with Conditional Use approval. Staff requested the owner make application for a Conditional Use Permit or cease operation of the business on the subject property.

Zoning Analysis

A Contractor yard, type 1 is conditionally allowed in the R-1 zoning district. In addition, there are special standards that accompany this land use, including:

17.20.6.270 - Contractor yard, type 1.

- **Generally.** These standards do not apply to contractor yards in Industrial zoning districts.
- **Lot size requirements.** The minimum lot size shall be one (1) acre.
- **Limitations on equipment.** No more than two (2) pieces of heavy equipment exceeding three (3) tons may be stored on the premises.
- **Storage of material.** Exterior storage of construction materials, wastes, or any other material related to the operation of the contractor yard is prohibited.
- **Buildings.** A building(s) not exceeding a cumulative total of three thousand (3,000) square feet shall be constructed on the premises to accommodate the contractor's operations.

The subject property is comprised of three lots that are a total of ±1.4 acres. As a condition of approval, the owner shall be required to complete an amended plat of the subject property within six months of approval of the Conditional Use Permit to consolidate the three lots into one lot in order to meet the minimum lot size requirements. The owner has stated that he does not store more than two (2) pieces of equipment exceeding three tons on the property and the existing building does not exceed three thousand (3,000) square feet.

There is currently exterior storage of construction materials on site. The owner has provided signatures from most of the abutting property owners who are in support of this request. City

Commission, as part of the approval process, has the right to modify regulations through the Conditional Use Permit process. In this case, Staff is in favor of allowing the owner to continue using the property for exterior storage of construction materials subject to the owner providing a 6-foot privacy fence around the subject property within one year of approval of the Conditional Use Permit. The fence shall have a minimum of 90% opacity and meet the rest of the standards in the Official Code of the City of Great Falls 17.20.7.040.

There is ongoing litigation between the property owner and the owner of the property to the north related to access to the subject property. The subject property has a legal access from the corner of Huffman Avenue and 3rd Street Southwest, but the owner has been accessing the property from Huffman Ave through the private property to the north via what the applicant contends is a prescriptive easement. This is a private matter between the two property owners. The approval of this Conditional Use Permit in no way allows or affects access to the subject property through the property to the north.

Primary Review Criteria

City Code Section 17.16.36.040, Basis of Decision, requires that the Zoning Commission's recommendation and the City Commission's decision shall be based on whether the following criteria are satisfied in their review of Conditional Use Permit applications:

The conditional use is consistent with City's Growth Policy and applicable neighborhood plans, if any.

As stated in the staff report, goals in the economic element of the Growth Policy are to:

- Enhance, strengthen, and expand the existing economic base.
- Attract new business and support expansion of existing businesses that tend to raise the median income level.
- Encourage businesses and industries that will utilize existing infrastructure.

Staff concludes that the request for a Conditional Use Permit for a Contractor yard, type 1 is consistent with the City's Growth Policy due to the fact that the existing neighborhood consists of a mix of land uses including industrial to the north of the subject property. Allowing the business to use the property for a contractor yard will support an existing business and could expand the existing economic base. In addition, the subject property is located in close proximity to existing infrastructure that could be utilized should future need arise.

That the establishment, maintenance or operation of the conditional use will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare.

Establishment, maintenance or operation of the Contractor yard, type 1 will not be detrimental to, or endanger the health, safety, moral comfort or general welfare because the use of the subject property is compatible with the industrial uses to the north of the property.

The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.

It appears the subject property has been used by the current owners and previous owners for commercial businesses for a number of years. The condition of the property is existing and the owner has received support signatures from most of the adjacent property owners. The character of the neighborhood will be maintained and the conditional use should not be injurious to the use and enjoyment of other property in the immediate vicinity.

The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Allowing a Contractor yard, type 1 will not impact the normal and orderly development or improvement of the surrounding property. The surrounding neighborhood is established and built out, and there are no plans for new development of the site.

Adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.

As stated in this report, there is ongoing litigation between the property owner and the abutting property to the north related to access to the subject property. If the court finds the property is not permitted to access the subject property through the property to the north, there is an existing legal access from the corner of 3rd Street Southwest and Huffman Avenue that the owner could utilize to access the subject property. All utilities are located within proximity to the subject property and any future development of the subject property would need to comply with City of Great Falls Storm Design Manual and City standards.

Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Again, there is litigation related to the subject property access, but there is an existing legal access that could be utilized by the owner that would provide adequate measures to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the City Commission.

Approving a Contractor yard, type 1 on the subject property will bring an existing business into conformance with City Code. The existing business will meet the requirements of the Land Development Code related to a Contractor yard in the R-1 zoning district and there is no new development proposed on the subject property. There is currently exterior storage of construction materials on site and the owner has provided signatures from most of the abutting property owners who are in support of this request. In this case, Staff is in favor of allowing the owner to continue using the property for exterior storage of construction materials for the following reasons:

- All structures on the property are existing, so there would not be any new structural impact to the neighborhood.
- The exterior storage exists therefore; the character of the neighborhood will not be changed.
- There will be no increase in traffic to the property.

Staff concludes no significant negative aspects, associated with the seven above mentioned criteria, should result from the approval of the conditional use permit, provided the applicant is otherwise conducting business in compliance with City Code. The approval of the conditional use permit will result in an additional business within the community.

The Notice of Public Hearing was mailed to the neighboring property owners on July 25, 2012 and was published in the *Great Falls Tribune* on July 29, 2012. A sign was placed on the property on July 31, 2012. Planning Staff received multiple general inquiries related to the

project. Staff also received a concern from Gilbert Spindler, 312 8th Avenue Southwest, who shares the legal access to the subject property. His concern was related to maintenance of this access and that large trucks could cause degradation to the access road. This is a private matter between the two property owners; however by approving the Conditional Use Permit, the truck traffic could increase on this access road. In addition, the applicant has provided a list of signatures from his immediate neighbors in support of the application. (See attached Support Signatures)

At the conclusion of the public hearing held August 14, 2012, the Zoning Commission passed a motion recommending the City Commission grant a conditional use permit to allow a Contractor yard, type 1, on subject property addressed as 424 8th Avenue Southwest subject to the following conditions:

1. Owner shall provide an amended plat of the subject property to combine the three lots into one lot within six months of approval of the Conditional Use Permit.
2. Owner shall provide a 6-foot privacy fence around the subject property within one year of approval of the Conditional Use Permit. The fence shall have a minimum of 90% opacity and meet the rest of the standards in the Official Code of the City of Great Falls 17.20.7.040.
3. The Conditional Use Permit shall run with the life of the existing Concrete Doctor, Inc. business owned by the property owner. The subject property cannot be sold as a commercial property and new business may not be established on the property without processing a separate application.

Concurrences: Representatives from the City's Public Works, Park and Recreation and Fire Departments have been involved throughout the review and approval process for this project.

Fiscal Impact: Approving the conditional use permit will not require the City to provide additional service and will bring a nonconforming business into conformance with City Code.

Alternatives: If there are justifiable reasons to do so, the City Commission could deny the requested action to the extent allowed in City Code and State Statute.

Attachments/Exhibits:

Resolution 9992
Zoning Map
Aerial Photo
Support Signatures and Associated Map
2010 Zoning Determination

Cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
Patty Cadwell, Neighborhood & Youth Council Coordinator
Dan Anderson, 816 10th Ave SW, Great Falls, MT 59401

RESOLUTION 9992

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT AT THE PROPERTY ADDRESSED AS 424 8TH AVENUE SOUTHWEST AND LEGALLY DESCRIBED AS MARKS 4, 4F & 4G, NORTH GARDEN TRACTS, SECTION 11, TOWNSHIP 20 NORTH, RANGE 3 EAST, CASCADE COUNTY, MONTANA, TO ALLOW A CONTRACTOR YARD, TYPE 1 ON THE PROPERTY.

* * * * *

WHEREAS, Dan Anderson owns Marks 4, 4F and 4G, North Garden Tracts, Section 11, Township 20 North, Range 3 East, Cascade County, Montana; and,

WHEREAS, said Marks 4, 4F & 4G are presently zoned as R-1 Single-family suburban residential district wherein a Contractor yard, type 1 is permitted upon processing and approval of a Conditional Use Permit; and,

WHEREAS, the owner has applied for a Conditional Use Permit to allow a Contractor yard be established on said property, subject to the following conditions:

1. Owner shall provide an amended plat of the subject property to combine the three lots into one lot within six months of approval of the Conditional Use Permit.
2. Owner shall provide a 6-foot privacy fence around the subject property within one year of approval of the Conditional Use Permit. The fence shall have a minimum of 90% opacity and meet the rest of the standards in the Official Code of the City of Great Falls 17.20.7.040.
3. The Conditional Use Permit shall run with the life of the existing Concrete Doctor, Inc. business owned by the property owner. The subject property cannot be sold as a commercial property and new business may not be established on the property without processing a separate application.

and,

WHEREAS, the proposed Conditional Use Permit for a Contractor yard, type 1 on said property meets the Basis of Decision requirements in the Official Code of the City of Great Falls Section 17.16.36.040; and,

WHEREAS, the Great Falls Zoning Commission conducted a public hearing on August 14, 2012, to consider said Conditional Use Permit application, and at the conclusion of said hearing passed a motion recommending a Conditional Use Permit be granted to allow the property addressed as 424 8th Avenue Southwest and legally described as Marks 4, 4F and 4G, North Garden Tracts, Section 11, Township 20 North, Range 3 East, Cascade County, Montana, to allow a Contractor yard, type 1.

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

That a Conditional Use Permit be granted at the property addressed as 424 8th Avenue Southwest, to allow a Contractor yard, type 1, conditioned upon the owner complying with the said conditions; and,

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that this Resolution shall become effective immediately upon its passage and approval.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on October 2, 2012.

Michael J. Winters, Mayor

ATTEST:

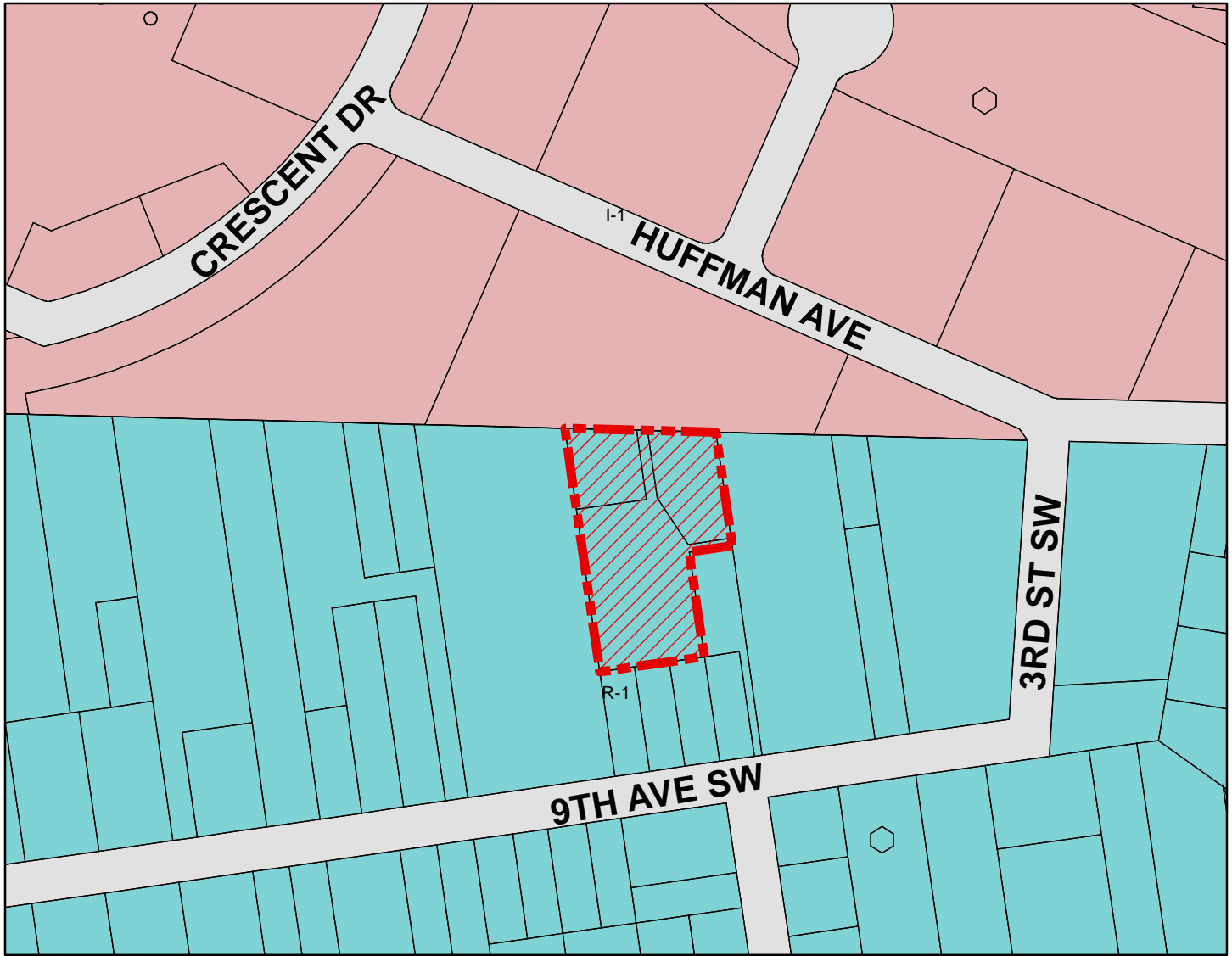
Lisa Kunz, City Clerk

(SEAL OF CITY)

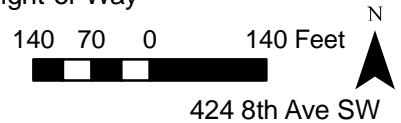
APPROVED FOR LEGAL CONTENT:

James W. Santoro, City Attorney

Zoning Map



- | | | |
|-----------------------------|--------------------------------|----------------------------------|
| City Limits | C-5 Central business periphery | R-2 Single-family medium density |
| 424 8th Ave S | I-1 Light industrial | R-3 Single-family high density |
| Tracts of Land | I-2 Heavy industrial | R-5 Multi-family medium density |
| ZONING | M-1 Mixed-use district | R-6 Multi-family high density |
| AI Airport Industrial | M-2 Mixed-use transitional | R-9 Mixed residential |
| C-1 Neighborhood commercial | PLI Public lands institutional | R-10 Mobile home park |
| C-2 General commercial | POS Park Open Space | Unincorporated Enclave |
| C-3 Highway commercial | PUD Planned unit development | Right-of-Way |
| C-4 Central business core | R-1 Single-family suburban | |



Aerial Photo

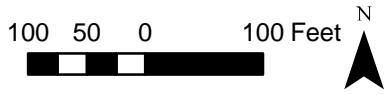
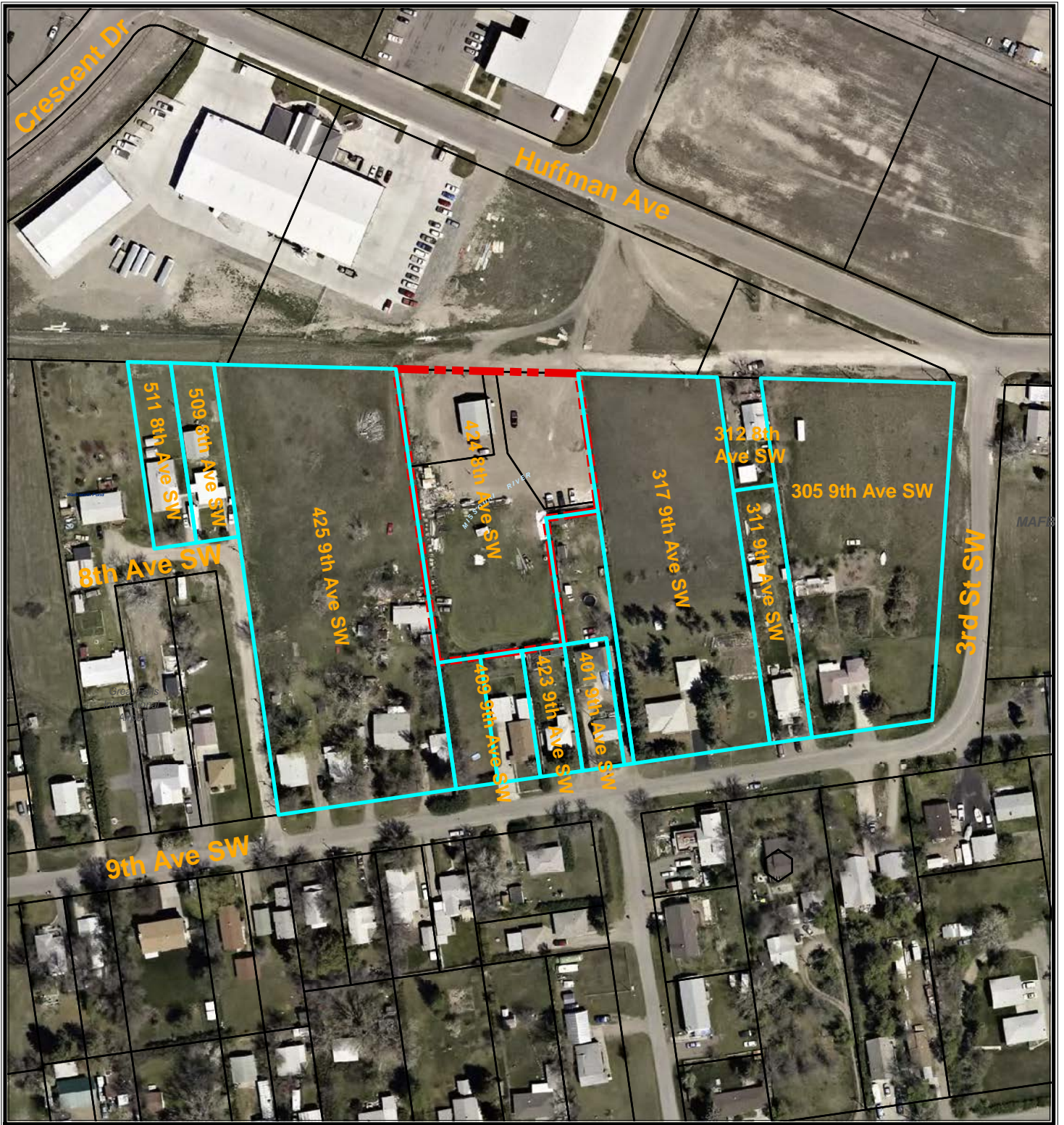


- City Limits
- ▭ 424 8th Ave S
- ▭ Tracts of Land



424 8th Ave SW

Neighbor Support Signature Map



424 8th Ave SW



P. O. Box 5021, 59403-5021

Planning & Community
Development Department

September 16, 2010

Zoning Determination Number: BP 10-02825

Legal Description of Properties: Marks 4F and 4G, Section 11, Township 20 North, Range 3 East, Cascade County, North Garden Home Tracts, Addressed as 424 8th Avenue Southwest

ZONING DETERMINATION

This zoning determination pertains to the property addressed as 424 8th Avenue Southwest. The property is zoned R-1 Single-family suburban district. This district is intended to accommodate comparatively low-density, single-family residential development on larger lots.

The subject property has no business or commercial licenses issued at this time or in the recent 24 months. Your business "Concrete Doctor, Inc." is licensed as a "Home Occupation" at 816 10th Avenue Southwest. The previous property owner of 424 8th Ave SW was Richard Dross. His business, "Big Sky Hydroturfing" was addressed as 1408 Central Avenue West. It was licensed in 1996. In 1977 Big Sky Hydroturfing Inc. did hold a business license at 424 8th Avenue Southwest for grass seed storage. The City has no record of how long the license was held only that the business license moved. As such the business operation moved. The canceled checks you provided with your application state the shop was at 424 8th Avenue Southwest in November 2002. By all City accounts this property has been used for private party storage and not commercial use. No citizen complaints or Code violations were found concerning 424 8th Avenue Southwest. City water or sanitary sewer does not serve the property.

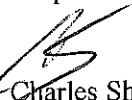
Using this information, it is determined that the property would not be allowed to be licensed for a commercial use. It is further noted that this determination does not imply that existing structures upon the property comply with applicable building codes.

A remedy exists in the Land Development Code Chapter Title 17, Chapter 64, Section 020 (A)(1)(b), wherein you may apply for a conditional use permit to establish a commercial use upon this property. This office would be able to review the requirements and processing steps in order for you to request a conditional use permit. If approved and all the conditions of the conditional use permit are met, you would then be allowed to establish a commercial use upon the property addressed as 424 8th Avenue Southwest and be in compliance.

The complete Land Development Code is available to you at the following web sites:
www.greatfallsmt.net/city_codes/landsign/index.htm and www.greatfallsmt.net/city_codes/landsign/zonemap.htm.

Feel free to contact the office if you have any additional questions, 406-455-8431.

Respectfully Submitted,


Charles Sheets
Planner I