



Item: Public Hearing – Resolution 10020, Ordinance 3108 to assign City zoning and Annexation Agreement all pertaining to Tract 1 and Tract 3, Certificate of Survey 4705, and Mark 14R all located in the N1/2 NE1/4, Section 36, T21N, R3E, P.M.M. Cascade County, MT (Skyline Heights Apartments)

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

Initiated By: Damon Carroll, Property Owner & Developer, & City of Great Falls

Presented By: Craig Raymond, Director of Planning & Community Development

Action Requested: City Commission adopt Resolution 10020, Ordinance 3108 and approve the Annexation Agreement all pertaining to Tracts 1 & 3 COS 4705 and Mark 14R

Public Hearing:

1. Mayor conducts public hearing, calling three times each for proponents and opponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motions: (Each motion to be separately considered)

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 10020 and (approve/disapprove) the Annexation Agreement all pertaining to Tracts 1 & 3 COS 4705 and Mark 14R.”

and;

“I move that the City Commission (adopt/deny) Ordinance 3108.”

2. Mayor calls for a second, discussion, and calls for the vote after each motion.
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Recommendation: At the conclusion of a public hearing held on May 14, 2013, the Planning Advisory Board recommended the City Commission approve the annexation of Skyline Heights Apartments and the City-owned water tower property legally described as Tract 1 and Tract 3, Certificate of Survey 4705, and Mark 14R all located in the N1/2 NE1/4, Section 36, T21N, R3E, P.M.M. Cascade County, MT, subject to fulfillment of the following conditions of

approval:

1. Final build-out of the project shall be in substantial compliance with the final approved site plan documents and drawings as approved by the City Commission.
2. The final engineering drawings and specifications for the required public improvements to serve Skyline Heights Apartments shall be submitted to the City Public Works Department for review and approval prior to any building permits being issued by the City.
3. A Grading Plan, State Stormwater Discharges Associated with Construction Activities Permit, and Stormwater Management Plan shall be developed to City standards and shall be submitted to the City Public Works Department for review and approval prior to issuance of building permits.
4. Applicant shall submit proposed project drawings including architectural, landscape, signage and lighting plans as required for review and approval by the Design Review Board prior to submittal of permit plans.
5. A geotechnical investigation and report prepared by a Professional Engineer with recommended building foundation design shall be submitted to the Planning and Community Development Department for review and approval prior to issuance of building permits.
6. An Annexation Agreement shall be prepared containing terms and conditions for development of the subject property including, but not limited to, agreement by application to:
 - A. Install within two years of the date of final City Commission approval the public improvements referenced in Paragraph Two above; and
 - B. Indemnify the City for any damages attributable to adverse soil or groundwater conditions.
 - C. Escrow money for future upgrades to 36th Avenue Northeast, including sidewalks, as determined by Public Works.
 - D. Install a 6-foot privacy fence along the southern property line adjacent to any single-family residential uses.

Background: The subject property is generally located east of 14th Street Northeast and south of 36th Avenue Northeast. The applicant, Damon Carroll, is requesting annexation of ± 1.1 acres from Cascade County into the City of Great Falls and establishing City zoning of R-5 Multi-family medium density zoning district. The subject property is currently vacant undeveloped land. The applicant is making the request in order to develop a 24-unit multi-family rental housing development adjacent to the southern and eastern property lines with the parking for the development adjacent to 36th Avenue Northeast (see attached Conceptual Site Plan for Skyline Heights Apartments).

In addition to the subject property, per MCA, the abutting portion of 14th Avenue Northeast (Tract 3), comprised of ± 0.2 acres, must also be annexed, zoned and dedicated as public right-of-way as a part of the request.

In conjunction, the City is proposing annexation and zoning of the City-owned water tower site located on the eastern adjacent lot and consisting of ± 0.52 acres. The City is proposing annexation in order to incorporate the City-owned property.

In total ±1.82 acres will be annexed into the City.

An application was originally submitted for a 36-unit multi-family housing development on the subject property with a proposed zoning of R-6 Multi-family high density. That application was heard by the Planning Advisory Board/Zoning Commission on February 12, 2013, with a recommendation of denial to the City Commission. The applicant withdrew that application and has since resubmitted with the new R-5 24-unit multi-family housing proposal.

Public Notice for the Planning Advisory Board/Zoning Commission Public Hearing was published in the *Great Falls Tribune* on April 28, 2013. There were 15 citizens that spoke at the public hearing: eight as proponents, five as opponents and two with general comments.

At the Public Hearing the Zoning Commission recommended the City Commission approve assigning a zoning classification of PUD – Planned Unit Development, with an R-5 multi-family residential medium density as an underlying zoning to the Skyline Heights Apartment property and PLI – Public Lands and Institutional to the City-owned property.

The City Commission tabled action on the proposed annexation and zoning due to legal concerns at a meeting held on June 4, 2013. Staff met with the Interim City Attorney and it was determined that the proposed PUD zoning with an R-5 underlay would not work in this case because it may not meet the legal requirements of PUD. After subsequent legal review, the Interim City Attorney recommended that staff proceed with R-5 zoning to the City Commission. The City Commission accepted Ordinance 3108 on first reading and set the public hearing on July 2, 2013.

The parcel of land, owned by the applicant, Damon Carroll, upon annexation shall be zoned R-5 Multi-family residential medium density zoning district. According to the Land Development Code, the R-5 zoning classification is:

Intended to accommodate multi-family units not exceeding two-stories. Given the higher densities, these districts are typically close to work and leisure.

The applicant is proposing a 24-unit apartment building be built on the subject property, which is permitted in the R-5 zoning district. If the applicant determines he would like to develop a three-story building he will be required to apply to the Board of Adjustment for a variance to the allowed number of stories.

Additionally the applicant owns the undeveloped property west of the subject property. He has committed to filing a restrictive covenant on this land that would not permit multi-family development in perpetuity on this property (see attached Applicant Letter). It should be noted the City does not enforce restrictive covenants.

The ±0.52 acre City-owned water tower property, upon annexation, shall be zoned PLI - Public Lands and Institutional. According to the Land Development Code, the PLI zoning classification is:

Intended to include areas of significant public lands including public schools and significant public and quasi-public institutional uses or facilities.

The City does not have plans to redevelop the property.

17.16.40.030 - Basis of decision.

The Zoning Commission's/Planning Board's recommendation and the City Commission's decision shall at a minimum consider the following criteria:

1. The amendment is consistent with and furthers the intent of the City's growth policy;
 - The proposed application is consistent with the City's growth policy (see Growth Policy Conformance).
2. The amendment is consistent with and furthers adopted neighborhood plans, if any;
 - The City does not have any adopted neighborhood plans.
3. The amendment is consistent with other planning documents adopted by the City Commission, including the river corridor plan, transportation plan, and sub-area plans.
 - The proposed project is consistent with other planning documents adopted by the City Commission. The proposed project does not fall under the purview of the Missouri River Urban Corridor Plan. The City's Transportation Planner has completed a traffic analysis (see Traffic Analysis) and has determined that the proposed project will increase traffic in the area, but not to an extent that will exceed capacity of the adjacent roadways. There are no other sub-area plans in effect related to this project.
4. The code with the amendment is internally consistent;
 - The proposed project is internally consistent with the Official Code of the City of Great Falls, if they applicant receives City Commission approval his property will be annexed and zoned R-5 Multi-family medium density district. He will be permitted to develop a multi-family project consistent with the R-5 standards in the Land Development Code. If the applicant chooses he may request a variance from these standards through the Board of Adjustment.
5. The amendment is the least restrictive approach to address issues of public health, safety, and welfare;
 - Neighbor's in the vicinity of the project have expressed strong opposition to the project (see Neighborhood Council). Staff has received numerous calls and an opposition email (attached) to the project.

The purpose of the R-5 district is to accommodate medium density multi-family development. In this location, the R-5 district serves as a transition between the R-2 Single-family medium density district to the southwest and commercial/public mini-storage and water tower development to the north, south, and east. The size and location of the stormwater detention area and the parking lot provide the opportunity for the majority of the subject property adjacent to the single-family homes to remain visually open.

Additionally, there is steady demand for rentals by servicemen and women from Malmstrom Air Force Base, students at UGF and Great Falls College MSU, and young professionals employed at Benefis and elsewhere throughout Great Falls. With the completion of ADF, a steel fabrication facility, slated for late fall 2013, there will be a greater need in the vicinity of the subject property for all types of housing. The City's Growth Policy recommends that there should be diverse housing opportunities in all areas of the City.

Staff finds the amendment is the least restrictive approach to address issues of public

health, safety, and welfare.

6. The City has or will have the financial and staffing capability to administer and enforce the amendment.
 - The City has the financial and staffing capability to administer and enforce the amendment.

Improvements

The applicant will be required to escrow money to improve 36th Avenue Northeast across its frontage from 14th Street Northeast to its eastern property boundary. The City will also improve 36th Avenue Northeast across the frontage of the water tower property. The timing of the roadway improvements have not been determined. The roadway will be improved to City standards including paving, curb and gutter, and sidewalks. The owner and City will be reimbursed for the northern half of the roadway by the property owner to the north at such time as the property is annexed into the City. The City received escrow money as a part of Watertower Park Addition to improve 14th Street Northeast to City standard; this street will be completed in conjunction with this project.

The City water (8") and sewer main (8") shall be extended in 14th Street Northeast from their existing location to 36th Avenue Northeast. The City received escrow money as a part of Watertower Park Addition to make these extensions. The applicant may need to extend the storm drain from its existing location north as required by Public Works.

The proposed development will have impervious surfaces of more than 15,000 square feet; therefore, the developer is required to provide a stormwater management plan in compliance with the City of Great Falls Storm Design Manual and City standards. The plan will be reviewed and approved by the Public Works Department prior to the issuance of building permits for the development.

Traffic Analysis

36th Avenue Northeast is classified as a Collector roadway, while 14th Street Northeast is a Local roadway. The function of a Collector roadway is to serve shorter local trips and feed traffic from local properties to the larger, higher-capacity Arterial roadway network. The function of a Local roadway is to primarily provide access to adjoining properties. A Collector road is typically a low to moderate capacity two-lane roadway, with travel speeds generally less than 35 mph. A Local road is also two-lane with limited capacity and with speeds not exceeding 25 mph.

While 36th Avenue Northeast is currently designed as a rural roadway, it is expected to be upgraded to an urban roadway design as development occurs and funding becomes available. The extension of 14th Street Northeast has funding and will be constructed by the City of Great Falls as an urban local roadway with curb, gutter and sidewalks.

Using a trip generation rate from the ITE Trip Generation Manual, a development of this size and type would be expected to generate an average of 6.59 trips per occupied dwelling unit on a weekday, for a total estimated daily trips of 159 trips per day. The 2012 traffic volume on 36th Avenue Northeast just west of the intersection of Bootlegger Trail was measured at 3,501 average vehicles per day. This volume is average for a roadway that collects traffic from such a large area - comparing closely to such other major Collector roadways as Park Drive near Gibson

Park; 1st Avenue North at 37th Street; 8th Avenue North at 8th Street; 13th Street South of 24th Avenue South; and 32nd Street, south of 10th Avenue South.

Anecdotally, the intersection of 36th Avenue Northeast and Bootlegger Trail has been noted as the area intersection with long delays during the morning rush hour. Traffic generated by the development during “peak hour” – that is, the hour of the day generating the highest traffic – is expected to be generated at the rate of .46 vehicles per occupied dwelling unit for a one-hour period generally between 7 and 9 AM. This rate would equate to 11 vehicles during that hour. Assuming the vehicles are dispersed throughout the hour, there would be little observed impact upon congestion at the intersection of 36th Avenue Northeast and Bootlegger Trail.

The developer has two access points to the site: through a driveway on 36th Avenue Northeast and a driveway on 14th Street Northeast. The driveway on 36th Avenue North is properly located at the far eastern end of the lot, proving a safe distance from the intersection of 14th Street Northeast, thereby reducing the chance of conflicts between turning vehicles. The driveway is still more than 350 feet from the intersection with Bootlegger Trail, allowing for adequate stacking room at current volumes. Future growth in traffic may necessitate the construction of a dedicated east-bound left turn lane, or other intersection improvements to reduce congestion that may occur as the area north of 36th Avenue Northeast grows and expands.

The two driveways provide easy through-movements for larger vehicles such as sanitation and fire/emergency response vehicles, and also allow for more than one exit point in the case of an evacuation. Finally, the two driveways serve to better disperse traffic to lessen congestion at any particular access point.

Pedestrian access and circulation, both along the rights-of-way and on the site, will be required to provide safe and accessible access to and from the site, including from the parking lot and the sidewalk on 14th Street Northeast to the entrances to the buildings. The applicant shall escrow the cost for sidewalks along 36th Avenue Northeast and be constructed at the same time as the street. No specific bicycle improvements are necessary, although the developer is encouraged to consider placement of bike racks on-site.

Growth Policy Conformance

The redesign of this project from 36 to 24-units is consistent with the goals of the 2005 Great Falls Growth Policy – that is a desirable and prosperous city and community, with a diverse mix of land uses and housing types. With this design, the applicant has taken steps to respond to compatibility concerns.

The project will provide more diversity in terms of rental choices and housing stock, meeting an existing demand and need in the City. According to existing housing research, new construction of multi-family housing units has greatly fluctuated in the past.

Census data shows that the City has a disproportionate amount of aging housing stock. Given these conditions, the introduction of a new multi-family project meets a need in this community and will complement the introduction of more primary job opportunities in this vicinity.

Further, the project is consistent with Land Use Goals and Policies to:

- Support and encourage a compatible mix of land uses in newly developing areas.

- Encourage mixed land uses in new and redeveloping areas to achieve a high degree of self-containment, reduce auto dependence (or the amount of auto travel), and foster a strong live-work-play pattern of activity within neighborhoods.

Finally, the project is consistent with Housing Goals and Policies to:

- To provide a diverse supply of safe and affordable housing for residents of all ages, needs, and income levels.
- Housing variety should be available in (differing) housing areas to provide all residents with location and price/rent choices.
- The City should strive to allow diverse housing opportunities to meet the needs of current and future population. Variety in dwelling types, sizes and prices in new developments should be promoted.

Neighborhood Council

The applicant gave a presentation to Neighborhood Council #3 on March 7, 2013. The Neighborhood Council had the following concerns:

- Increased traffic in the area and more vehicles parked on the side streets and safety concerns due to increased traffic
- Decreasing in property values
- Lack of parking in the area and that parking might be lost in the subject property if 36th Avenue Northeast is widened
- That the neighborhood was mostly single-family homes and R-5 zoning would be spot zoning
- Future multi-family development on vacant properties to the west

The Council suggested other locations for a multi-family development, but none worked for the applicant. There was further discussion on putting a deed restriction on the properties to the west. There was no vote at the meeting about the project. Staff received multiple phone calls and an email from a neighbor which was provided to staff by the Neighborhood Council (attached Neighbor Email).

Staff has determined the following regarding the concerns of the neighbors:

- There will be an increase in traffic due to this development, however it will not be significant enough to impact the capacity of the roadways in this area.
- Staff contacted various local appraisers in Great Falls to gain insight on whether property values would be affected or not. The appraisers generally stated that there is no definitive way to determine if property values would be negatively affected. It was stated in this specific location the property values may also be affected by the nearby commercial uses and further that the multi-family development would serve as a transition between the existing commercial and single family homes.
- Per the Land Development Code multi-family projects are required to provide 1.5 spaces per dwelling unit. In this case 36 spaces are required; the applicant is providing 56 spaces which is more than 2 per dwelling unit. Staff concludes the applicant is providing sufficient parking for this development.
- The Interim City Attorney determined that the project would not be considered spot zoning due to the fact that the property is located in a commercial/residential fringe and there is potential for future similar zoning in the area.

- The property to the west of the subject property is located in the County, out of the City's jurisdiction. The applicant owns the property and has provided a letter stating he would not develop this property with apartments in the future. The City does not have immediate control over how these properties are developed. The City will process applications as they are received and make recommendations based on the laws in effect at that time.

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: Providing services is expected to be an additional cost to the City. Increased costs may be covered by increased tax revenues from improved properties.

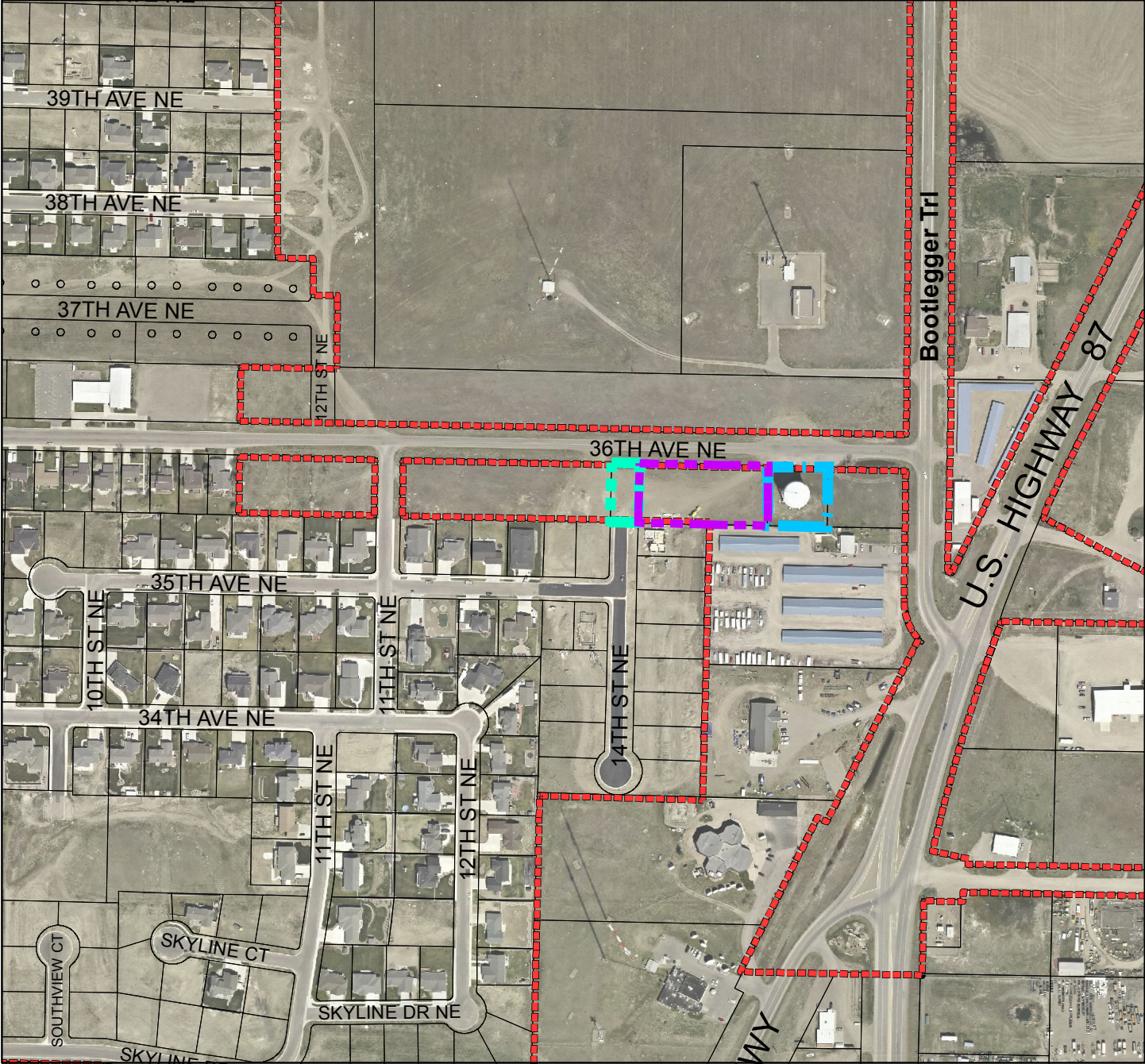
Alternatives: If there are justifiable reasons to do so, the City Commission could deny the requested action to the extent allowed in City Code and State Statute. If the City Commission denies the request they should provide findings related to the denial of the application.

Attachments/Exhibits:

- Aerial Photo
- Ordinance 3108 with Attachment A
- Resolution 10020 with Attachment A
- Annexation Agreement
- Conceptual Site Plan for Skyline Heights Apartments
- Applicant Letter
- Neighbor Email

Cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
Patty Cadwell, Neighborhood Council Coordinator
Damon Carroll, Owner, pheasantrunbuilders@gmail.com

Aerial Photo



- - - - - City Limits
- Tracts of Land
- 14th St NE (Tract 3 COS 4705)
- City Water Tower (Mark 14 R)
- Skyline Heights Apartments (Tract 1 COS 4705)



Skyline Heights Apartments

ORDINANCE 3108

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF R-5 MULTI-FAMILY RESIDENTIAL MEDIUM DENSITY DISTRICT TO TRACT 1 AND TRACT 3, CERTIFICATE OF SURVEY 4705 AND PLI – PUBLIC LAND AND INSTITUTIONAL DISTRICT TO MARK 14R ALL LOCATED IN THE N1/2 NE1/4, SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST, P.M.M. CASCADE COUNTY, MONTANA

* * * * *

WHEREAS, Damon Carroll has petitioned the City of Great Falls to annex Tract 1 and Tract 3, Certificate of Survey 4705 consisting of ±1.3 acres, located in the N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M. Cascade County, Montana; and,

WHEREAS, the City of Great Falls has requested to annex Mark 14R, consisting of ±0.52 located in the N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M. Cascade County, Montana; and,

WHEREAS, Damon Carroll has petitioned Tract 1 and Tract 3, Certificate of Survey 4705, be assigned a zoning classification of R-5 Multi-family residential medium density district, upon annexation to the City; and,

WHEREAS, the City of Great Falls has requested Mark 14R be assigned a zoning classification of PLI – Public lands and institutional district, upon annexation to the City; and,

WHEREAS, notice of assigning said zoning classifications to Tract 1 and 3, Certificate of Survey 4705 and Mark 14R was published in the *Great Falls Tribune* advising that a public hearing on this zoning designation would be held on the 6th day of August, 2013, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and decided that the said zoning designation be made,

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

Section 1. It is determined that the herein requested zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning classification of Tract 1 and 3, Certificate of Survey 4705 be designated as R-5 Multi-family residential medium density district, and Mark 14R be designated as PLI – Public lands and institutional, as attached hereto as Attachment “A” and by this reference made a part hereof.

Section 3. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Tract 1 and 3, Certificate of Survey 4705 and Mark 14R all located in the N1/2

NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M. Cascade County, Montana into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

APPROVED by the City Commission on first reading July 2, 2013.

PASSED, APPROVED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on second reading August 6, 2013.

Michael J. Winters, Mayor

ATTEST:

Lisa Kunz, City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

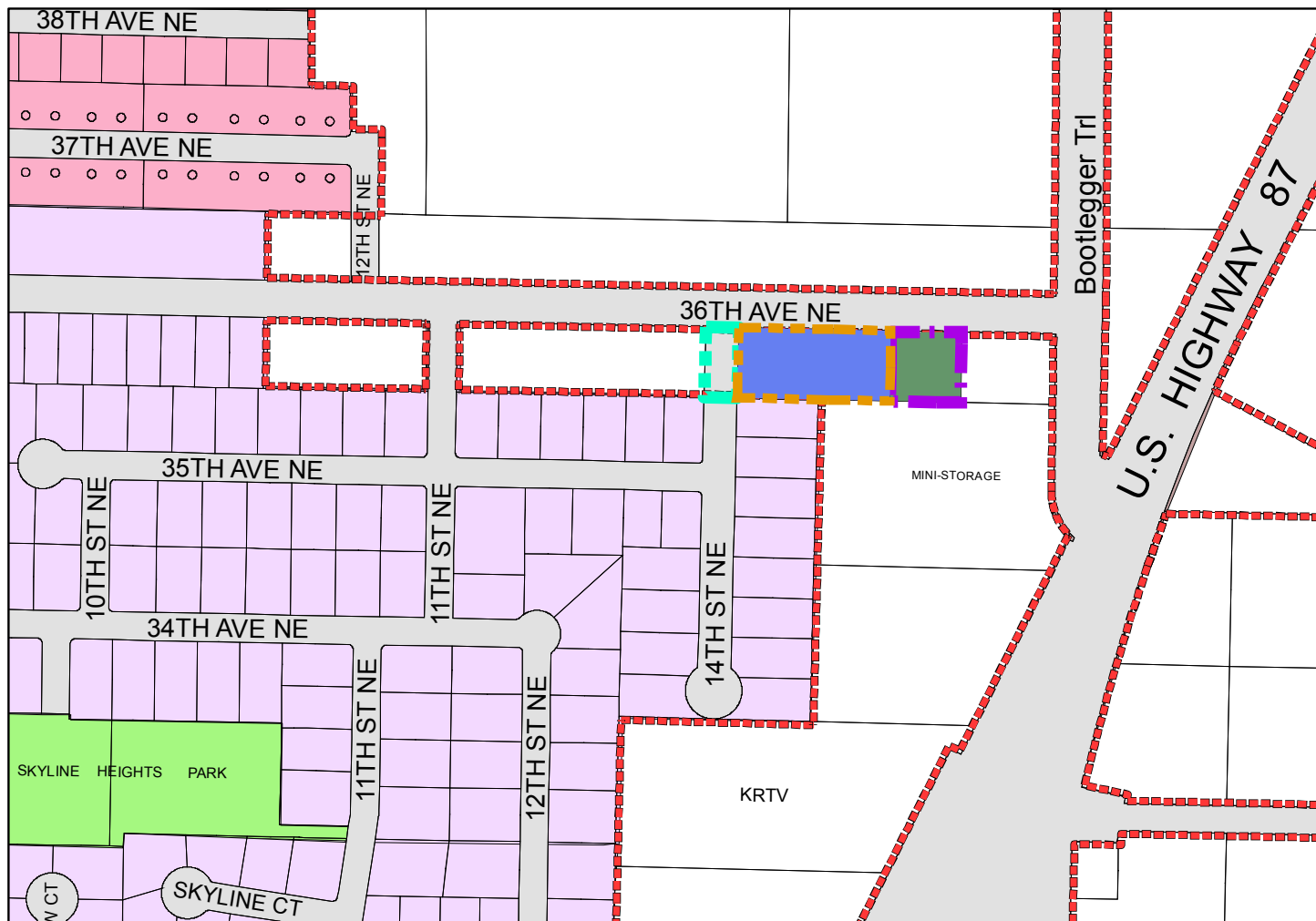
I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do certify that I did post as required by law and as prescribed and directed by the Commission, Ordinance 3108 in three conspicuous places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;
On the Bulletin Board, first floor, Cascade County Court House;
On the Bulletin Board, Great Falls Public Library

Lisa Kunz, City Clerk

(CITY SEAL)

Ordinance 3108 Attachment A



280 140 0 280 Feet



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| <ul style="list-style-type: none"> City Limits 14th St NE Skyline Heights Apartment R-5 Zoning City Water Tower PLI Zoning Tracts of Land ZONING AI Airport Industrial C-1 Neighborhood commercial C-2 General commercial | <ul style="list-style-type: none"> C-3 Highway commercial C-4 Central business core C-5 Central business periphery I-1 Light industrial I-2 Heavy industrial M-1 Mixed-use district M-2 Mixed-use transitional PLI Public lands institutional POS Park Open Space | <ul style="list-style-type: none"> PUD Planned unit development R-1 Single-family suburban R-2 Single-family medium density R-3 Single-family high density R-5 Multi-family medium density R-6 Multi-family high density R-9 Mixed residential R-10 Mobile home park Unincorporated Right of Way <p style="text-align: center;">Skyline Heights Apartments</p> |
|---|---|--|

RESOLUTION 10020

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, TO EXTEND THE BOUNDARIES OF SAID CITY TO INCLUDE TRACT 1 AND TRACT 3, CERTIFICATE OF SURVEY 4705 AND MARK 14R ALL LOCATED IN THE N1/2 NE1/4, SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST, P.M.M. CASCADE COUNTY, MONTANA, IN ACCORDANCE WITH THE PROVISION OF SECTION 7-2-4601, MONTANA CODE ANNOTATED; ALL AS SHOWN ON THE MAP ATTACHED HERETO MARKED ATTACHMENT "A" AND BY THIS REFERENCE MADE A PART HEREOF.

* * * * *

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, and described as follows:

Tract 1 and Tract 3, Certificate of Survey 4705 and Mark 14 R all located in the N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M. Cascade County, Montana, and containing ± 1.82 acres,

all as shown on the map attached hereto marked Attachment "A" and by this reference made a part hereof; and,

WHEREAS, Section 7-2-4601, Montana Code Annotated, provides that whenever the owners of real property contiguous to any incorporated city of the first class petition to have said property made a part of the municipal corporation, such lands may be

embraced within the corporate limits thereof and the boundaries of such city of the first class extended so as to include the same; and,

WHEREAS, the owner of Tract 1 and Tract 3, Certificate of Survey 4705 has submitted a petition to have said tracts annexed into the City of Great Falls; and,

WHEREAS, Section 7-2-4401, Montana Code Annotated, provides that whenever any land contiguous to a municipality is owned by an agency, such land may be incorporated and included in the municipality to which it is contiguous and may be annexed thereto and made a par thereof; and,

WHEREAS, the City of Great Falls, owner of said Mark 14R, which is contiguous to said municipality, is requesting said Mark14 be annexed into the City of Great Falls.

NOW, THEREFORE, the City Commission finds that it is to the best interest of the City of Great Falls and its inhabitants to proceed with the incorporation of said territory into the City of Great Falls; and,

WHEREAS, all of the proceedings herein have been conducted in strict compliance with and in conformity to the law and constitution of the State of Montana, and all conditions, acts, and things required to be done precedent to and in the passage and adoption of this resolution have been properly and legally done, and performed;

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

That the boundaries of the City of Great Falls, Montana, be and the same are hereby extended so as to embrace and include within the corporate limits of said city all of the land hereinabove described, included as: "TRACT 1 AND TRACT 3, CERTIFICATE OF SURVEY 4705 AND MARK 14R ALL LOCATED IN THE N1/2 NE1/4, SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST, P.M.M. CASCADE COUNTY, MONTANA."

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

That the Cascade County Clerk and Recorder is hereby authorized and directed to change the appropriate district boundaries of the City of Great Falls, Montana, to include said tract of land; and,

That this Resolution shall become effective from and after the date of the filing of said document in the office of the Cascade County Clerk and Recorder.

PASSED AND ADOPTED by the City Commission of the City of Great Falls,
Montana, on this 6th day of August, 2013.

Michael J. Winters, Mayor

ATTEST:

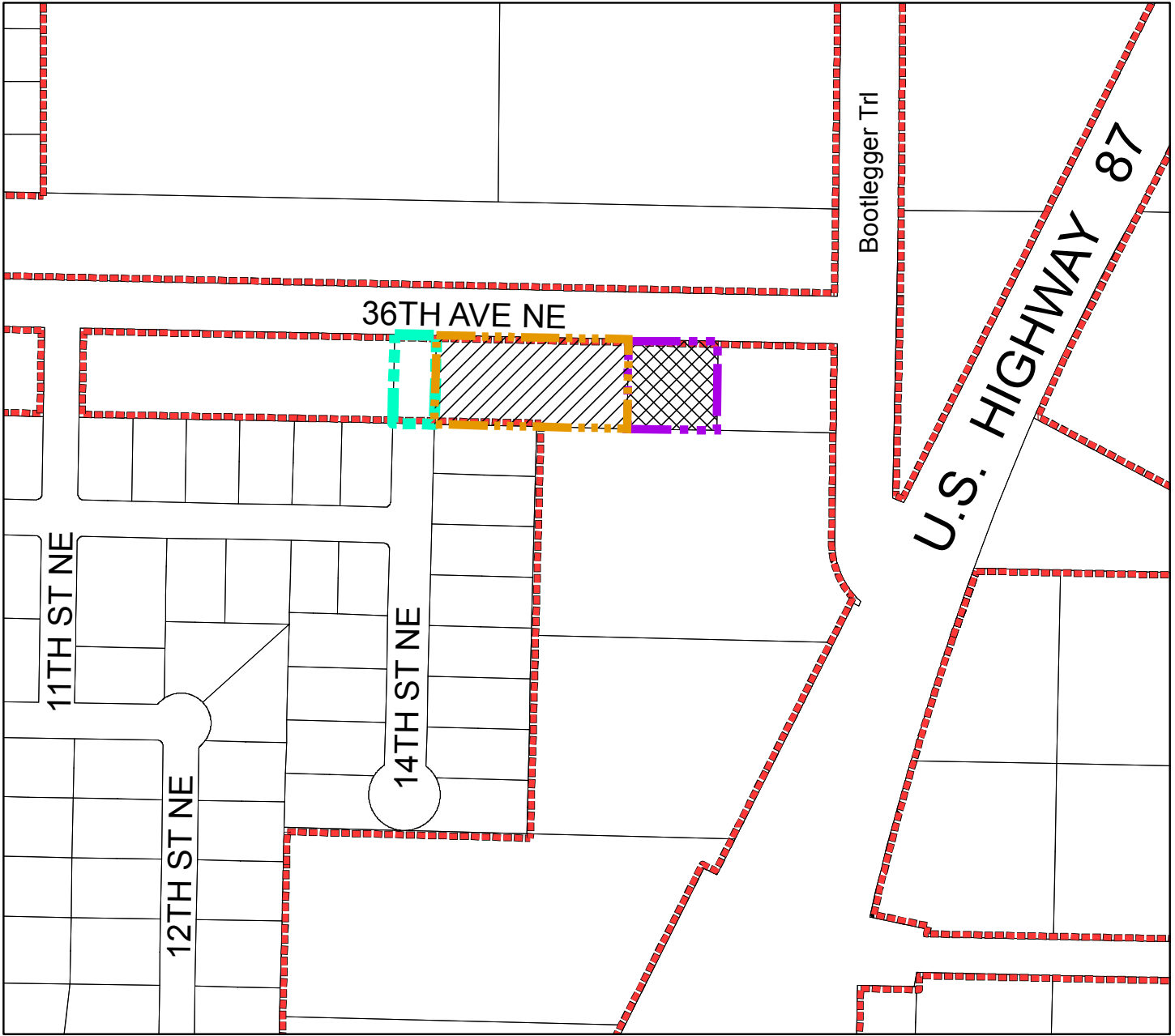
Lisa Kunz, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

Resolution 10020
Attachment A



- City Limits
- Tract 3 COS 4705 (14th St NE)
- Tract 1 COS 4705 (Skyline Heights Apts)
- Mark 14 R (City Water Tower)
- Tracts of Land
- Right of Way



Skyline Heights Apartments

**ANNEXATION AGREEMENT FOR
TRACT 1 AND TRACT 3,
CERTIFICATE OF SURVEY 4705,
N1/2 NE1/4, SECTION 36,
TOWNSHIP 21 NORTH, RANGE 3 EAST, P.M.M.,
CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this _____ day of _____, 2013, between DAMON CARROLL, hereinafter referred to as "Owner," and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as "City," regarding the requirements for annexation to the corporate limits of City, of Tract 1 and Tract 3, Certificate of Survey 4705, in the N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M., Cascade County, Montana, hereinafter referred to as "Subject Property."

2. SUPPORTING DOCUMENTS

- A. Certificate of Survey 4705 filed of record in the Clerk and Recorder's Office of Cascade County, Montana.
- B. Final engineering drawings, specifications and cost estimates prepared by NCI Engineering, consisting of documents for storm drainage improvements, paving, and conduit for wiring for potential future public roadway lighting facilities. Said drawings and specifications are on file in the City Engineer's office.
- C. Annexation Agreement for Water Tower Park Addition, In NE1/4NE1/4, Section 36, Township 21 North, Range 3 East, Cascade County, Montana, filed of record in the Clerk and Recorder's Office of Cascade County, Montana (RO189248 GFA). This document details requirements for improvements to 14th Street Northeast.
- D. Memorandum of Understanding for Certificate of Survey of Marks 14E1 and 14X, dated October 19, 2010, filed of record in the City Clerks Office of the City of Great Falls.

3. AMENDMENTS

Minor changes to engineering documents and such revisions to the engineering drawings as are deemed appropriate and necessary by City's Engineer and City's Public Works

Department and which do not materially affect the hereinabove mentioned Certificate of Survey, can be made as follows:

- A. The proposed revision will be submitted to City's Public Works Department for review and, if approved, the City Engineer or Public Works Director will sign and adequately annotate the change.
- B. The annotated revision becomes a part of this Agreement upon City's Public Works Department approval.
- C. Changes during construction shall be made by change order approved by City's Public Works Department.
- D. "As Built" reproducible drawings shall be supplied to City's Engineer upon completion of the construction.
- E. All amendments to this Agreement, except as allowable above in this section, shall be in writing and approved by City and Owner.

4. UNFORESEEN POTENTIALITIES

It is mutually recognized, understood and agreed by City and Owner that subsequent to the time this agreement was entered into, events may occur and actions may be taken which were unforeseen by either party or both parties hereto. In this perspective, it is, therefore, agreed that the parties may by mutual subsequent written agreement modify the terms, conditions and covenants of this Agreement.

5. FEES AND CHARGES

A. Prior to annexation of the Subject Property, Owner shall pay, the following fees as provided by City policy and resolution;

a. Storm Sewer Fee (\$250/acre x 1.1 acres)	\$ 275.00
b. Park Fee in Lieu of Land Dedication (24 dwelling units x 0.03 acres per dwelling unit = 0.72 acres (31,363.2 sq. ft.) x 11% x \$0.35 per s.f.)	\$ 1,207.48
c. Proportionate share of cost for: Previously installed offsite storm water facility (\$2,934.50/acre x 1.1 acres)	\$ 3,227.95
d. Recording fees for Agreement and <u>Resolution (\$11 per page x 11 pages)</u>	\$ 121.00
Total fees made payable to City of Great Falls	\$ 4,831.43

These fees are in addition to the \$700 fee for establishing City zoning, \$100.00 fee for Annexation Application, \$200.00 fee for Annexation Agreement, and \$100.00 fee for Resolution, which have been paid.

- B. Owner or its successors or assigns shall reimburse City for its expenses incurred for inspection, testing and acceptance of public utilities and streets to serve Subject Property at the rates charged by City for said work at the time performed.
- C. Water service tapping and water and sewer service connection fees will be assessed at the time of installation.

D. The absence of any fee from this agreement which is lawfully charged by the City in connection with construction activity associated with Subject Property shall not constitute a waiver by the City.

6. PUBLIC IMPROVEMENTS

A. 36th AVENUE NORTHEAST PUBLIC IMPROVEMENTS

Owner hereby agrees to pay for the cost of a standard City roadway section (paving, curb & gutter and sidewalk, etc.) in 36th Avenue Northeast adjacent to Tract 1 and Tract 3, Certificate of Survey 4705, in the N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M., Cascade County, Montana (estimated at \$33,073.92 for the street improvements). A financial surety (i.e. certificate of deposit) shall be established in the names of the owner and City to cover the estimated costs. At such time should the actual cost of the above referenced roadway improvements are definitely determined, amounts equal to said costs shall be transferred from the above referenced certificates of deposit to City. Upon said transfer(s), any remaining balance in the above referenced certificates of deposit shall be released to Owner.

B. 14TH STREET NORTHEAST PUBLIC IMPROVEMENTS

The cost of a standard City roadway section and 8-inch water main from the existing terminus of 14th Avenue Northwest northerly to 36th Avenue Northeast in the amount of \$32,000.00 has been escrowed with the City per a previous agreement with the developers of Water Tower Park Addition for the development of said improvements.

The installation of said public improvements shall occur at no cost to Owner per a Memorandum of Understanding for Certificate of Survey for Marks 14E1 and 14X dated October 19, 2010 and filed in the City Clerk's Office.

Within two (2) years of the date of this Agreement, Owner agrees to complete the installation of the sidewalk and conduit for public roadway lighting to serve the Subject Property in 14th Street Northeast, in accordance with the drawings and specifications referenced in Paragraph 2.B above and filed in the City Engineer's office.

7. SOIL AND/OR GROUNDWATER CONDITIONS

The owner of the Subject Property shall indemnify, hold harmless and defend the City of Great Falls, its officers, agents, servants and employees and assigns from and against all claims, debts, liabilities, fines, penalties, obligations and costs including reasonable attorney fees, that arise from, result from or relate to adverse soil or groundwater conditions on the Subject Property. This indemnity obligation runs with the land. Upon the transfer of ownership of the Subject Property, the prior owner's (whether the Owner that made this annexation agreement or a subsequent owner) indemnity obligation for adverse soil or adverse groundwater conditions for the transferred property is released as to that owner and the indemnity obligation runs to the new owner of the property. Only the owner of the parcel of property with the adverse conditions at the time the City incurs the claim, debt, liability, fine, penalty, obligation or cost is obligated to indemnify and no owner of property is obligated to indemnify for adverse conditions on property owned by someone else.

This indemnification by the owner of the Subject Property shall apply unless such damage or injury results from the negligence, gross negligence or willful misconduct of the City.

8. RESTRICTIONS ON BUILDING PERMITS AND OCCUPANCY

Building permits for Subject Property shall not be issued until the contracts for installation of the public improvements have been executed. Owner acknowledges that City will not permit the occupancy of any residential structure on Subject Property until street improvements and water and sanitary sewer mains related to Subject Property have been installed, tested and accepted by City, which acceptance will not be unreasonably withheld by City.

9. MAINTENANCE DISTRICTS

Owner hereby agrees to waive its right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant and street maintenance and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied the Subject Property.

10. FUTURE STORM DRAINAGE FACILITIES

Owner hereby agrees to waive its right to protest any future area wide special improvement district for storm drainage facilities and further agrees to pay for his proportionate share of any future storm drainage improvements that service the Subject Property that may be installed with or without an area wide special improvement district. The term "area wide" as used herein, means any area larger than that covered by Subject Property, which is a contributor to the drainage sub-basin of which Subject Property is a part.

11. PUBLIC ROADWAY LIGHTING

Owner hereby agrees to waive its right to protest any future special lighting district for public roadway lighting facilities that service the Subject Property, and further agrees to pay for his proportionate share of the costs associated with roadway lighting which services the Subject Property that may be installed with or without a special lighting district.

12. SIDEWALKS

Within two (2) years of the date of this Agreement or the installation of curb and gutter for the adjacent public streets (whichever occurs first), Owner agrees to complete the installation of standard sidewalk in the public right-of-way in accordance with the drawings and specifications referenced in Paragraph 2.B above and filed in the City Engineer's office.

13. WAIVER OF PROTEST OF ANNEXATION

Owner hereby agrees to waive any and all statutory procedure notice on right of protest to annexation of Subject Property, as provided for by State law.

14. WARRANTY, OWNERSHIP AND INSPECTION OF UTILITY AND STREET IMPROVEMENTS

A. After the public utilities, drainage and street improvements described in Paragraph 2.B. hereof have been installed and accepted by City, the same shall be in all respects treated,

owned and maintained as though the same had been constructed and installed by City. Owner or its contractor shall guarantee said improvements referenced above against defective work and materials for a period of two (2) years from date of acceptance of the completed improvements by City.

B. Installation of the public utilities and street improvements described in Paragraph 2.B hereof, shall be subject to City's infrastructure inspection policy in place at the time of installation.

15. ANNEXATION PREREQUISITES

Subject Property is contiguous to City; is not included within the boundary of any other incorporated municipality; and is not a part of any fire district existing or organized under any of the provisions of Chapter 33, Title 7, of the Montana Code Annotated. Subject Property, upon annexation to City, will be provided fire protection services by City comparable to that provided incorporated properties.

16. CITY ACCEPTANCE AND ZONING

In consideration of the foregoing, City hereby accepts and approves Tract 1 and Tract 3, Certificate of Survey 4705, in the N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M., Cascade County, Montana for incorporation by annexation into the corporate limits of the City of Great Falls, Montana, with an assigned zoning classification of R-5 Multi-family medium density district. It is hereby understood that this does not preclude City from reclassifying Subject Property if an area wide reclassification is undertaken, in which event City agrees to reclassify said Subject Property as a conforming use.

17. ADHERENCE TO SITE PLAN

Owner hereby agrees that development upon Subject Property shall be substantially in accordance with the Site Plan attached to the zoning Ordinance approved in conjunction with said Subject Property and applicable City Codes, and the terms and conditions contained in this Agreement. Owner further agrees, per the approved conditions of approval by City Commission, to install a 6 foot privacy fence along the Subject Property's southern boundary prior to issuance of a Certificate of Occupancy by the Building Department.

18. DESIGN REVIEW BOARD

Owner hereby agrees to submit and obtain Design Review Board approval of the site plans and structures proposed to be constructed and/or modified on parcels within the Subject Property, including landscaping, signage, yard lighting and sight-obscuring fence or other such improvements, as required by the Design Review Board.

19. BINDING EFFECT

The provisions, covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns; and any and all parties claiming by, through, or under them, shall be taken to agree and covenant with each of the parties to the Agreement, their devisees, heirs, successors and assigns, to conform to the provisions, covenants and terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day, month and year first hereinabove written.

THE CITY OF GREAT FALLS, MONTANA
A Municipal Corporation of the State of Montana

Gregory T. Doyon, City Manager

ATTEST:

Lisa Kunz, City Clerk

(Seal of City)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

OWNER

Damon Carroll
Damon Carroll, Property Owner

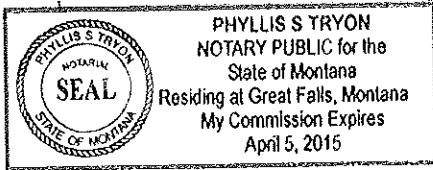
State of Montana)

:ss.

County of Cascade)

On this 25th day of July, in the year Two Thousand and Thirteen, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Damon Carroll, known to me to be the persons whose names are subscribed to the instrument within and acknowledged to me that they executed the same.

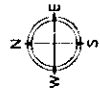
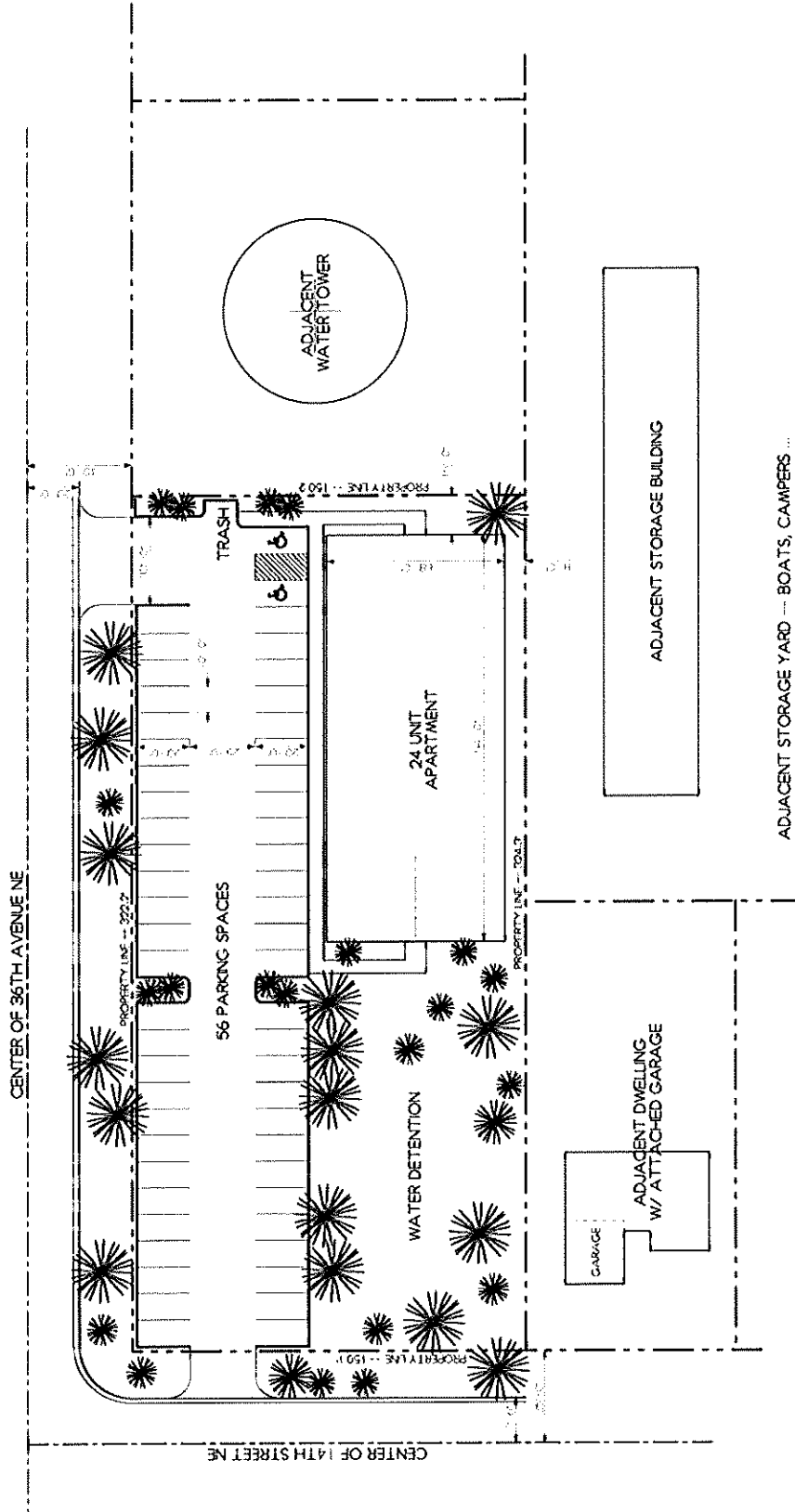
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



(NOTARIAL SEAL)

Phyllis S Tryon
Notary Public for the State of Montana

Notary Public for the State of Montana (Printed)
Residing at _____
My commission Expires _____, 20____



SITE PLAN W/ ADJACENT PROPERTIES

SCALE: 1" = 30'

May 7, 2013

Great Falls Planning Advisory Board/Zoning Commission

**RE: Pheasant Run Builders (Damon Carroll)
Annexation of ±1.3 acres (Tract 1 and Tract 3)
Certificate of Survey 4705
N½ NE¼, Section 36, T21N, R3E, P.M.M.,
Cascade County, Montana**

To All Interested Parties:

In regards to the above referenced land and annexation, I offer the following proposal.

Contingent upon approval from the City of Great Falls and the GF Planning Board of the annexation of lots and construction of the 24-Plex in question (Tract 1 - rental housing project), I will put a restrictive deed on the opposing lot that no high-rise, multi-family dwelling will be constructed. What could be constructed would be a single-family dwelling, duplex, 4-plex, or townhouse.

I respectfully request consideration of this 24-plex construction by all parties.

Sincerely,



**Damon Carroll
Pheasant Run Builders**

From: Gessaman [<mailto:1kfalcon@gmail.com>]
Sent: Tuesday, June 04, 2013 8:49 AM
To: Lori Fay; Kathy Gessaman; Johnathon Kenneway
Cc: Patricia Cadwell
Subject: More Opposition to Water Tower Apartments

FYI.

Begin forwarded message:

Date: June 3, 2013 5:12:48 PM MDT
To: "1kfalcon@gmail.com" <1kfalcon@gmail.com>
Subject: City Commisioner Meeting

Dear Kathy,

Because you & Ron are both on our Neighborhood #3 Council, I am sending this e-mail to you as our representatives, please forward this to the other council members also.

I am requesting on behalf of the 15 signatures so far (more coming) on a petition opposing the annexation zoning change and future development of Water Tower Apartment -name per minutes of last council meeting- NOW referred to as Skyline Heights Apartment proposal that the Neighborhood Council #3 is to back us up in STRONGLY OPPOSING this project.

I spoke with you on the phone a couple days ago discussing property values decreasing, safety issues regarding increased traffic (especially 14 St NE being opened up and how the apartment complex will use 35th Ave NE as a raceway thru street to go west to Wal-mart & the use of 6th St NW from 36th to get to Sam's Club and other westside business') as well as, spot zoning etc.

After speaking with some neighbors, I am amazed that many are unaware of this project, generally most agree they would love to see single home residences built and oppose any size of multi-family complex rentals being constructed "in our backyards." As I stated in our phone conversation, multi-family projects typically are built near "spec or starter" homes, NOT in or next to a established custom upper end housing development!

Following the May meeting with the neighborhood council, Mr Carroll re-submitted his proposal from a 36 unit to a 24 unit to meet R-5 zoning. However, there is a variance to the R-5 in place now according to his Exhibit D site plan in the agenda report from city; this apartment will still be a 3 story box.

Concerning the restrictive deed language: per meeting notes and what was said to GF Planning Advisory Board/Zoning Commission, this deed restriction would prevent another multi-family unit from being built. See Exhibit E letter to zoning commission-final paragraph says what could be constructed would include duplex, as well as a 4 plex. I do not doubt his intended plans are to build 4-plex's on this site, thus really not giving up anything from 36 to 24 unit, which I think there is room to build three 4-plex's on said opposing west lot.

Our concerns are many, some of which you made known to the developer but we feel those concerns are very valid and that as taxpayers we are not being heard and being hung out to dry by the city pushing this project for one person and ignoring the wishes of an entire development of approximately 75 home owners.

Sincerely,