



Item: Ordinance 3119 - assigning City Zoning to 315 21st Avenue South, legally described as Lot 4, Grandview Tracts, Section 13, Township 20 North, Range 3 East, PMM, Cascade County, Montana

From: Galen Amy, Planner II, Planning and Community Development

Initiated By: Howard and Rosemary Cary, Property Owners

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

Action Requested: City Commission accept Ordinance 3119 on first reading and set a public hearing for June 17, 2014.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (accept/deny) Ordinance 3119 on first reading and set a public hearing for June 17, 2014.”

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

Recommendation: At the conclusion of a public hearing held April 8, 2014, the Planning Advisory Board conditionally recommended approval of annexation of 315 21st Avenue South, and the Zoning Commission recommended assigning a zoning classification of R-2 Single-family medium density district to the property upon annexation to the City, subject to fulfillment of the following Conditions of Approval:

1. **General Code Compliance.** The proposed project shall be developed consistent with the conditions in this report, and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. **Subsequent modifications and additions.** If the owner proposes to expand or modify the use, buildings, and/or structures, the Director of the Planning Department shall determine in writing if such proposed change would alter the finding for one or more review criteria. If such proposed changes would alter a finding, the proposal shall be submitted for review as a new development application. If such proposed change would not alter a finding, the owner shall obtain all other permits as may be required.
3. **Fees.** All applicable fees owed as a condition of the annexation approval shall be paid upon annexation of the subject property, including the Upper Lower River Road Water Sewer District service fee.
4. **Annexation Agreement.** An Annexation Agreement shall be prepared containing the terms and conditions for annexation of 315 21st Avenue South including, but not limited to,

agreement by applicant to:

- a) Pay for the extension of the public water main and private service line at such time that the existing well fails.
- b) At such time that said water main improvements are made, the final engineering drawings and specifications for public improvements for the subject property shall be submitted to the City Public Works Department for review and approval.
- c) Pay all applicable standard utility fees associated with an annexed property.
- d) Indemnify the City for any damages attributable to adverse soil or groundwater conditions.
- e) Realign the driveway so it is solely located on Lot 4.
- f) Construct the driveway in accordance with IFC 2012 Section 503.
- g) Take necessary measures to preclude erosion along the adjacent slope and sedimentation onto the City street.

Public Notice for the Planning Advisory Board/Zoning Commission Public Hearing was published in the *Great Falls Tribune* on March 23, 2014. No citizens spoke at the public hearing for or against the project.

Staff recommends approval of the proposed annexation and zoning of ± 1.26 acres of unincorporated land legally described above, herein referred to as subject property.

Background: The owner is requesting annexation of their property, which consists of ± 1.26 acres. The owner is making the request in order to connect the existing single-family home to the City sewer system, with eventual connection to the City water system. The subject property is located in the Upper Lower River Road (ULRR) Water and Sewer District (WSD). In 1996, the Cascade City-County Health Department and the Montana Department of Environmental Quality initiated an 18-month groundwater pollution study in the ULRR area, and it was determined that impacts to the area groundwater were being caused by individual sewage septic systems and two aging sewer lagoon systems.

In 2001, property owners voted to create the WSD with a 5 member board. The WSD entered into a Memorandum of understanding with the City in 2003 to connect properties in the WSD to the City's water and sewer system by annexation of smaller Service Districts within the larger WSD boundary. The applicant discussed the annexation request with the WSD board in September 2013. If the request is approved by the City, then the subject property will become part of Service District #3 and the applicant will be required to pay their proportionate share of the applicable Improvement Fee to Service District #3 in the amount of \$6,180.56.

As the subject property will become part of Service District #3, the Memorandum of Understanding (MOU) for said District will apply. Some key points, terms and conditions established in this MOU, which are especially pertinent to this annexation request include:

- The District and City have a mutual interest in improving water quality, resolving public health issues, removing sources of groundwater contamination, and improving the tax base of the community.
- The City's stated policy is to require annexation as a condition precedent to the provision of City Utilities.
- In an effort to encourage construction of the Project (water and sewer improvements) and make it more affordable, the City is willing to modify its annexation requirements and

make its City Utilities available to the residents of Service District #3 on terms the District deems favorable and as set forth in the [MOU].

- Once water or sewer service is available, neither replacement drain fields nor other drinking water systems will be allowed within the District.
- The City will assume ownership of the Improvements in Service District #3 upon substantial completion of the system improvements and acceptance by the City. The District shall require that the improvements be subject to a two-year warranty from the contractor. The City will be responsible for the operation and maintenance of the Improvements, at citywide standard rates per user. The City will bill each user directly for the costs of operations and maintenance. District users will receive notice from the City of any proposed rate increase.
- All lots in all Service Districts will be assessed monthly storm drain fees per “Land Use Classification Group E”, regardless of land use or number of dwelling units on the parcel, under the City Storm Drain Ordinance for developed property that does not discharge to an underground storm drainage system.

The City has a long standing policy that upon annexation properties are required to connect to both the City water and City sewer system (OCCGF 17.16.7.050.9). The MOU for Service District #3 allows for the annexation of the subject property to have phased hookup to the City water system, at such time that the current well fails, which allows the City and property owner to address the more immediate groundwater concern related to preventing additional sewage septic systems in the Upper Lower River Road area.

This phasing serves to allow the property owner to make immediate utility improvements more affordable by just requiring the extension and connection to City sewer while at the same time acknowledging that they will eventually need to connect to City water, so the property owner has time to prepare for that forthcoming expense. The full MOU referenced is attached.

Rezone Request

The subject property, upon annexation, shall be zoned R-2 Single-family medium-density district. According to the Land Development Code, the R-2 zoning classification is intended to accommodate medium-density, single-family residential development on moderate sized lots. The subject property is on the edge of an already established R-2 zoned neighborhood to the south which consists of single-family residences. Higher density development in the area, similar to the R-5 condominiums to the north of the subject property, is highly unlikely given vacant parcel availability and size.

Section 17.16.40.030 of the Official Code of the City of Great Falls lists criteria and guidelines as the Basis of Decision which must be considered in conjunction with establishing municipal zoning on land and include:

1. The amendment is consistent with and furthers the intent of the City's growth policy;
2. The amendment is consistent with and furthers adopted neighborhood plans, if any;
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;
4. The code with the amendment is internally consistent;
5. 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.

Staff concludes that the abovementioned criteria are substantially met as demonstrated in the following sections, and that zoning of the subject property will enhance health, safety and welfare through application of City Codes and provision of municipal services.

2013 City of Great Falls Growth Policy Update

The proposed rezoning is consistent with the overall intent and purpose of the 2013 City Growth Policy Update. This project supports the Social, Environmental, and Physical portions of the Growth Policy, specifically the goals and principles to: 1) maintain a clean, healthy, vibrant, connected and safe City now and into the future; and, 2) implement the City's land use codes to protect the health, safety and welfare of its residents.

Additional supportive Policies that this project is consistent with include:

Social - Neighborhoods

Soc1.6.3 Work with the Neighborhood Councils, residents, property owners and businesses on individual neighborhood plans as a way of addressing needs, and preserving and improving neighborhoods.

Environmental - Environmentally-friendly

Env2.4.5 Educate the public on Best Management Practices referred to as BMPs or non-structural solutions to improve water quality.

Env2.4.10 Continue to test, monitor, and address groundwater issues in the Upper and Lower River Road vicinity, as well as other areas of concern.

Physical - Growth Policy

Phy4.7.5 Require all annexation to demonstrate a commitment to meet the City's development standards, including connecting to the City water and wastewater service. This commitment may be demonstrated through the implementation of the conditions stated in the applicable annexation agreement and/or developer's agreement.

The Growth Policy identifies that Great Falls embodies balanced, compatible growth, while at the same time acknowledging the need to address the groundwater quality problems that exist in the Upper Lower River Road Water Sewer District stating that as a result of the immediate need for water and wastewater services to be extended to residents that infrastructure improvements will be phased, and gradually brought up to City standards over time, in the District.

The subject property is located in Neighborhood Council #6. Patty Cadwell, Neighborhood Council Coordinator, provided the project information to the Council on December 4, 2013. There were general questions regarding the project and concern expressed about the lack of infrastructure in the area.

Improvements

Utilities

The applicant has already paid to extend the 8-inch City sewer main in 21st Avenue South, and connected a private service line. As a condition of annexation, the owner will eventually be required to extend the 8-inch City water main that is also located in 21st Avenue South, at such time that their existing well fails. Any future utility extension and connection is subject to review by the Public Works Department for all applicable regulations.

Traffic Analysis

The request includes annexing a single-family residential driveway off of a short, looped street; therefore, it is reasonable to assume that there would be minimal increased traffic demands. As a condition of annexation, the current driveway will be realigned in order to follow the eastern property line. Additionally, the driveway will be improved to acceptable standards reviewed and approved by the City Fire Department (see attached letter).

Storm Water Management

Due to the size and topography of the subject property, it is subject to review by the Public Works Department for applicable storm water regulations. The property owner will also be required to make improvements to the driveway, per review and approval by the Fire Department and the Public Works Department, and take necessary measures to preclude erosion along the adjacent slope and sedimentation onto the City street.

It is anticipated the City Commission, at the public hearing on June 17, 2014, will consider the Resolution to Annex and the Annexation Agreement for the subject property in conjunction with Ordinance 3119.

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: The annexation will marginally expand the fire and police service area, which will have a minimal fiscal impact on the City. The City should see a slight increase in tax revenues from taxes assessed on the property.

Alternatives: The City Commission could deny acceptance of Ordinance 3119 on first reading and not set the public hearing. However, such action would deny the applicant due process and consideration of a public hearing, as provided for in City Code and State Statute.

Attachments: Aerial Map
Fire Department Letter
Ordinance 3119 with Attachment A
Annexation Agreement
Memorandum of Understanding ULRR WSD Service District No. 3

Cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
Patty Cadwell, Neighborhood Council Coordinator
Howard & Rosemary Cary, Owners, h.caryconstruction@gmail.com
Judy Burg, City Taxes & Assessments, jburg@greatfallsmt.net
Susan Conell, Cascade County Planning Director, sconell@cascadecountymt.gov



GREAT FALLS FIRE RESCUE

105 9th Street South
Great Falls, MT 59401
Phone: 406-727-8070

FIRE PREVENTION BUREAU

Galen Amy, *Planner II*
City of Great Falls
Planning & Community Dev. Dept.
2 Park Drive South, Room 112
PO Box 5021
Great Falls, MT 59403

RE: Howard Cary Annexation

Galen,
As to your request of a letter for the proposed annexation of Howard Cary's property located at 315 21st Ave. South the IFC 2012 as adopted by the City of Great Falls states:

SECTION 503 FIRE APPARATUS ACCESS ROADS

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3.

503.1.1 Buildings and facilities. *Approved* fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an *approved* route around the exterior of the building or facility.

Exception: The *fire code official* is authorized to increase the dimension of 150 feet (45 720 mm) where:

1. The building is equipped throughout with an *approved automatic sprinkler system* installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.
2. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an *approved* alternative means of fire protection is provided.
3. There are not more than two Group R-3 or Group U occupancies.

503.1.2 Additional access. The *fire code official* is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

**If the driveway is less than 150 no turnaround is required for fire apparatus, I do believe the driveway to the Cary residence is over the 150 foot length so the following codes apply. See 503.2.5 Dead Ends and appendix D*

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), exclusive of shoulders, except for *approved* security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

503.2.3 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all weather driving capabilities.

503.2.4 Turning radius. The required turning radius of a fire apparatus access road shall be determined by the *fire code official*.

503.2.5 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an *approved* area for turning around fire apparatus.

APPENDIX D

FIRE APPARATUS ACCESS ROADS

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

SECTION D102 REQUIRED ACCESS

D102.1 Access and loading. Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an *approved* fire apparatus access road with an asphalt, concrete or other *approved* driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34 050 kg).

D103.2 Grade. Fire apparatus access roads shall not exceed 10 percent in grade.

Exception: Grades steeper than 10 percent as *approved* by the fire chief.

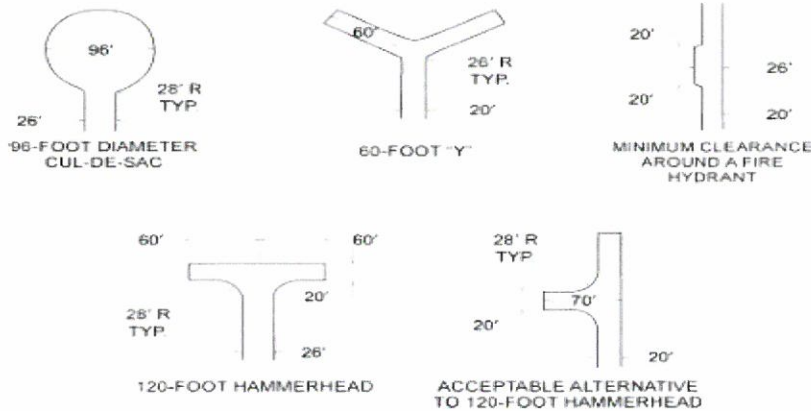
D103.3 Turning radius. The minimum turning radius shall be determined by the *fire code official*.

D103.4 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) shall be provided with width and turnaround provisions in accordance with Table D103.4.

**TABLE D103.4
REQUIREMENTS FOR DEAD-END
FIRE APPARATUS ACCESS ROADS**

LENGTH (feet)	WIDTH (feet)	TURNAROUNDS REQUIRED
0-150	20	None required
151-500	20	120-foot Hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac in accordance with Figure D103.1
501-750	26	120-foot Hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac in accordance with Figure D103.1
Over 750		Special approval required

For SI: 1 foot = 304.8 mm



For SI: 1 foot = 304.8 mm

**FIGURE D103.1
DEAD-END FIRE APPARATUS ACCESS ROAD TURNAROUND**

Sincerely,

Dirk M. Johnson
Fire Marshal
Great Falls Fire Rescue

ORDINANCE 3119

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF R-2 SINGLE-FAMILY MEIUM DENISTY DISTRICT TO LOT 4, GRANDVIEW TRACTS, SECTION 13, TOWNSHIP 20 NORTH, RANGE 3 EAST, PMM, CASCADE COUNTY, MONTANA

* * * * *

WHEREAS, Howard and Rosemary Cary have petitioned the City of Great Falls to annex Lot 4, Grandview Tracts, Section 13, Township 20 North, Range 3 East, PMM, Cascade County, Montana, herein referred to as Subject Property, and;

WHEREAS, Howard and Rosemary Cary have petitioned the Subject Property be assigned a zoning classification of R-2 Single-family medium density district upon annexation to the City; and,

WHEREAS, notice of assigning said zoning classifications to Subject Property was published in the *Great Falls Tribune* advising that a public hearing on this zoning designation would be held on the 17th day of June, 2014, 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 of Lot 4, Grandview Tracts, Section 13, Township 20 North, Range 3 East, PMM, Cascade County, Montana, consisting of ±1.26 acres, shall be designated R-2 Single-family medium density district consistent with adjacent property upon annexation 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 Lot 4, Grandview Tracts, Section 13, Township 20 North, Range 3 East, PMM, Cascade County, Montana, consisting of ± 1.26 acres, whichever event shall occur later.

APPROVED by the City Commission on first reading May 20, 2014.

Michael J. Winters, Mayor

ATTEST:

Lucy Hallett, Deputy City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

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

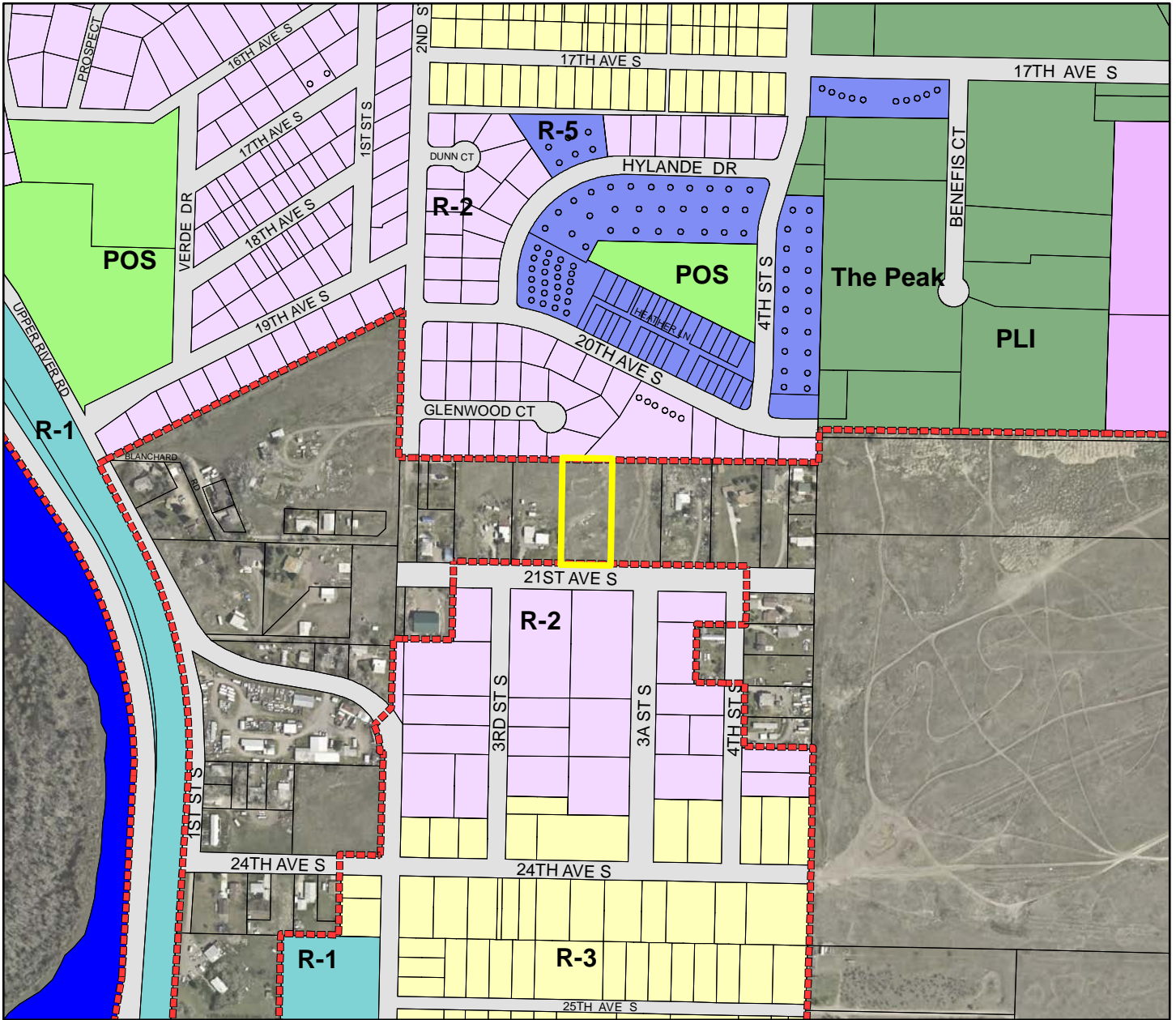
I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do certify that I did post as required by law and as prescribed and directed by the Commission, Ordinance 3119 in three conspicuous places within the limits of said City to-wit:

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

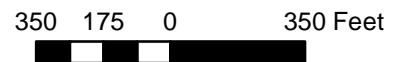
Lisa Kunz, City Clerk

(CITY SEAL)

Attachment A Ordinance 3119



- | | | |
|-----------------------------|--------------------------------|----------------------------------|
| 315 21st Ave S | C-3 Highway commercial | PUD Planned unit development |
| Tracts of Land | C-4 Central business core | R-1 Single-family suburban |
| City Limits | C-5 Central business periphery | R-2 Single-family medium density |
| Missouri River | I-1 Light industrial | R-3 Single-family high density |
| Right-of-Way | 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 |



**ANNEXATION AGREEMENT FOR
LOT 4, GRANDVIEW TRACTS, SECTION
13, TOWNSHIP 20 NORTH, RANGE 3 EAST,
P.M., CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this _____ day of _____, 2014, between HOWARD & ROSEMARY CARY, hereinafter referred to as “Owners,” and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as “City,” regarding the requirements for filing the Amended Plat and the annexation to the corporate limits of City, Lot 4, Grandview Tracts, Section 13, Township 20 North, Range 3 East, PMM, Cascade County, Montana, hereinafter referred to as “Subject Property.”

2. PREVIOUS AGREEMENTS/RESTRICTIONS

A. Memorandum of Understanding Utility Connection Condition Between Upper/Lower River Road Water and Sewer District And City of Great Falls, Montana filed with the Cascade County Clerk and Records Office.

B. Memorandum of Understanding Utility Connection Condition Between Upper/Lower River Road Water and Sewer District Service District No. 3 And City of Great Falls, Montana filed with the Cascade County Clerk and Records Office.

3. UNFORESEEN POTENTIALITIES

It is mutually recognized, understood and agreed by City and Owners 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 agreement modify the terms, conditions and covenants of this Agreement.

4. FEES AND CHARGES

A. Prior to annexation of Subject Property, Owners shall, in addition to the \$100.00 fee for Annexation Application, \$200.00 fee for Annexation Agreement, and \$100.00 fee for Resolution, \$700.00 for Establishing City Zoning, which have been paid, pay the following fees as provided by City policy and resolution;

a. Storm Sewer Fee (\$250/acre x 1.26 acres)	\$	315.00
b. Improvement Fee to Upper Lower River Road Water Sewer District, Service District #3	\$	6,180.56
c. Recording fees for Agreement and Resolution (\$11 per page x 8 pages)	\$	88.00
Total fees made payable to City of Great Falls		\$ 6,583.56

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

5. DRIVEWAY

Owners agrees to realign the existing driveway so it follows the eastern property line of Lot 4. Said driveway will be constructed to acceptable standards reviewed and approved by the City Fire Department.

6. FUTURE WATER MAIN EXTENSION

Owners agree to extend the City water main and a service line if the exiting well fails. Redrilling or replacement of the well will not be allowed for domestic potable water.

7. SOIL AND/OR GROUNDWATER CONDITIONS

The Owners of 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, obligations and costs including reasonable attorney fees, that arise from, result from or relate to adverse soil or groundwater conditions on the Owners' Subject Property. This indemnity obligation runs with the land. Upon the transfer of Ownership of the Subject Property, the prior owners' (whether the Owners that made this annexation agreement or a subsequent owner) indemnity obligation for adverse soil or adverse groundwater conditions for the transferred property is released and the indemnity obligation runs to the new owner of the Subject Property. Only the Owners of the parcel of property with the adverse conditions at the time the City incurs the claim, debt, liability, obligation or cost is obligated to indemnify and no owner of the Subject Property is obligated to indemnify for adverse conditions on property owned by someone else.

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

8. EXISTING IMPROVEMENTS TO THE PROPERTY

The City gives no warrant or guarantee for the exiting improvements to the property. The Owners of Subject Property shall indemnify, hold harmless and defend the City of Great Falls, its officers, agents, servants and employees and assigns from and for the existing structure as it pertains to building, electrical, plumbing, and mechanical components existing at the time of annexation.

Any proposed future improvements to the existing structure or on the subject property shall be developed consistent with the conditions in this Agreement, and all codes and

ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.

9. WAIVER OF PROTEST OF ANNEXATION

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

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

After the public utilities improvements described in Paragraph 3.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. However, to the extent installed by Owners, Owners or its contractor shall guarantee said improvements against defective work and materials for a period of two (2) years from date of acceptance of the completed improvements by City.

Installation of the public utilities and street improvements described in Paragraph 3.B hereof, shall be subject to City's infrastructure inspection policy in place at the time of installation.

11. 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.

12. CITY ACCEPTANCE AND ZONING

In consideration of the foregoing, City hereby accepts and approves Lot 4, Grandview Tracts, Section 13, Township 20 North, Range 3 East, PMM, Cascade County, Montana, and will approve the property contained within the boundaries of said lot for incorporation by annexation into the corporate limits of the City of Great Falls, Montana with an assigned zoning classification of R-2 Single-family medium density district. It is hereby understood that the preceding language regarding zoning of lots in the Subject Property does not preclude City from reclassifying lots if an area wide reclassification is undertaken, in which event City agrees to reclassify said lots as a conforming use.

13. 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.

CITY OF GREAT FALLS

Gregory T. Doyon, City Manager

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

OWNER

OWNER

Howard Cary

Rosemary Cary

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

On this _____ day of _____, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Howard & Rosemary Cary, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

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

(NOTARIAL SEAL)

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My commission Expires: _____, 20_____

MEMORANDUM OF UNDERSTANDING

UTILITY CONNECTION CONDITIONS

Between

UPPER/LOWER RIVER ROAD WATER AND SEWER DISTRICT

Service District No. 3

And

CITY OF GREAT FALLS, MONTANA

This agreement is made and entered into this 5th day of November, 2009, by and among the City of Great Falls, Montana, a municipal corporation organized under the laws of the State, hereinafter referred to as the City, and the Upper/Lower River Road Water and Sewer District, Montana, a duly organized and incorporated county water and sewer district, hereinafter referred to as the District (collectively, the "Parties").

WHEREAS, the City currently owns and operates a municipal water system and a municipal sewer system (the "City Utilities"); and

WHEREAS, District and City have a mutual interest in improving water quality, resolving public health issues, removing sources of groundwater contamination, and improving the tax base of the community; and

WHEREAS, the District has determined that the most feasible way to provide water and sewer service is to divide the District into Service Districts, and pursuant thereto the District has provided water and sewer service to Service District No. 1 and to Service District No. 2 which have both been annexed to the City of Great Falls, and is now preparing to provide water and sewer service to the residents of Service District No. 3; and

WHEREAS, neither public water nor sewer service is available to the residents of Service District No. 3; and

WHEREAS, District and City have worked together in an attempt to provide affordable water and sewer service to District residents; and

WHEREAS, the District and the City have determined that the most cost effective manner of providing water and sewer services to serve Service District No. 3 is for the District to finance and install water and sewer lines and related necessary improvements to connect to the City's water and sewer systems (the Water Improvements and the Sewer Improvements, collectively, the "Project"); and

WHEREAS, the City's stated policy is to require annexation as a condition precedent to the provision of City Utilities; and

WHEREAS, the Parties have developed a preliminary plan to assist in financing water and sewer improvements with Grant and Low Interest Loan funds; and

WHEREAS, in an effort to encourage the construction of the Project and make it more affordable, the City is willing to modify its annexation requirements and make its City Utilities available to the residents of Service District No. 3 on terms the District deems favorable and as set forth in this agreement; and

WHEREAS, the District Board has held public meetings and accepted input from District residents, and has taken this input into consideration.

WITNESSETH:

IN CONSIDERATION OF THE PERFORMANCE OF THE TERMS AND CONDITIONS, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

Section 1. Purpose. The purpose of this agreement is to set forth general conditions for water and sewer connections to Service District No. 3 of the Upper and Lower River Road Water and Sewer District to the City Utilities and the subsequent annexation of properties in the District to the City. It is mutually agreed that more specific and detailed conditions will be set forth in an Interlocal Agreement between the Parties.

Section 2. The Improvements. The District has determined that the most affordable and feasible method for bringing water and sewer service to the District is to create a number of "Service Districts" within the District and to bring water and sewer service to the Service Districts in phases. The Board has determined that portions of the District shown on Exhibits A-1 and A-2 shall be Water and Sewer Service District No. 3 (herein Service District No. 3). The District has been awarded grants for sewer and water improvements, which can be used for Service District No. 3 and on November 3, 2009, voters in Service District No. 3 approved the issuance of bonds to provide the remaining funds required for construction of the Project. Construction will be completed in 2010. This Memorandum of Understanding shall apply to Service District No. 3 but the Board intends to create additional water and sewer Service District(s) and obtain funding for water and sewer construction in such additional Service Districts. Thus, it is contemplated that this Memorandum of Understanding shall apply to water and sewer projects for such additional Service Districts, with such changes as are necessary to fit each particular Service District.

Section 3. Petition for annexation. The owner of each parcel of land in Service District No. 3 which is to receive a water or sewer connection shall sign, as a condition to receiving City water or sewer service, a petition requesting annexation and waiving the right of protest of annexation. The District will provide the City with a legal description and exhibit of the Service

District No. 3 boundaries for annexation purposes prior to awarding the contract for construction of improvements for Service District No. 3.

Section 4. City Water and Sewer Contracts. Once water or sewer service is available in Service District No.3, neither replacement drain fields nor other drinking water systems will be allowed within Service District No. 3. Individual irrigation wells are allowable, if no cross connection occurs between irrigation and public water mains. No service lines will be connected to the City's sewer or water system until the City has received executed water and sewer service agreements from the owners of the properties to be served and all applicable utility service line tapping, connection and inspection fees have been paid. Property owners in Service District No. 3 not signing an appropriate water or sewer service agreement will still be assessed or charged for the Service District No. 3 Improvements.

Section 5. Zoning; Legal Non-Conforming Use. Once the property in Service District No. 3 is annexed to the City, the City will zone the property consistent with the existing suburban residential and other mixed land uses in the area. All existing commercial, multifamily, and light industrial uses, which were legally established under zoning in effect at the time of annexation, will be allowed to continue.

Section 6. Ownership, Operation and Maintenance. The City will assume ownership of the Improvements in Service District No. 3 upon substantial completion of the Improvements and acceptance by the City. The District shall require that the Improvements be subject to a two-year warranty from the contractor. The City will be responsible for the operation and maintenance of the Improvements, at citywide standard rates per user. The City will bill each user directly for the costs of operations and maintenance. The City will give legal notice of any proposed rate increase. The capital costs of the Project will be payable separately by the users or property owners in Service District No. 3 in accordance with the method of financing used to construct the Improvements. The City will provide administrative services to Service District No. 3 at no additional cost, for accounts management, billing, and debt service collection as appropriate.

Section 7. Reimbursements.

7.1. The District agrees to reimburse the City for Harold Mora for \$36,522 and for Roy Volk for \$92,320, per their annexation agreements, and to the City for the cost of an eight (8) inch equivalent water main (\$170,456) not to exceed \$299,298 total. The District has to date reimbursed the City \$132,000, due to Mora and Volk, of this amount as part of the construction costs of the water and sewer improvements constructed in Service District No. 1 and has reimbursed the City an additional \$83,300 of this amount as part of the costs of the water and sewer improvements constructed in Service District No. 2. The remaining reimbursement shall be prorated among the Service Districts within the District based on Equivalent Dwelling Units (EDU's). The pro rata share for Service District No. 3 is determined to be \$23,495.

Subsequently created Service Districts shall bear their respective pro rata shares until the City is reimbursed the total sum of \$299,298 for all phases. Reimbursement for each phase will be determined by the percentage of EDU's in that phase in comparison to the total number of EDU's in the District. Reimbursement to the City for previous construction of South Interceptor sewer main, Schedule IV, Section One (1) through the District will not be required.

Section 8. Parkland and Storm Drain Fee.

8.1. The City will waive the Parkland dedication requirement as well as payment in lieu of Parkland dedication associated with the annexation of the District property to the City.

8.2. Upon annexation of Service Districts to the City, the District will pay the standard storm drain fee (\$250 per acre). The storm drain fee for Service District No. 3 is calculated to be \$8,240 based on 32.96 acres. The City agrees to the extent possible to use such storm sewer fees to construct and install storm drainage facilities in the Service Districts.

Section 9. No Waiver of Right to Protest Other Special Improvement Districts. The City will not require residents of Service District No. 3 to waive their right of protest for future special improvement districts for roadway, street lighting, and storm drain improvements. It is mutually agreed and understood that the District will not be involved in formation of roadway, storm drain, lighting, or other Special Improvement Districts. Nothing herein obligates the City to upgrade or improve roadways within the District.

Section 10. Life Safety Code Inspection, Expense.

10.1. The City will utilize no interest "deferred payment" CDBG housing rehab funds to assist income eligible residents in meeting life safety codes and / or constructing utility service lines.

Section 11. City Contributions.

11.1. The City will bear the cost of over-sizing of all water and sewer pipelines in the District that are required for future growth to the south, east and west of the District as determined by the City.

11.2. The City will endorse and support all District efforts for funding of the Project.

Section 12. Permits and Connections

12.1 The District will obtain a water service permit and a sewer permit from the City as specified by current City ordinance for each property to be served. These permits may not

include the cost of the corporation, curb stop and curb box as those materials may be part of the project.

12.2 A licensed plumbing contractor will be required for all water service line installations. Each individual property owner will employ a licensed plumbing contractor to obtain necessary permits from the City to extend the service from the curb box to the house. The City retains the right of inspection and approval of water service lines.

12.3 Each individual sewer connector to the District's sewer main, while it is under the jurisdiction of the District, will obtain a City sewer permit for extension of the service line from the property line to the building. The City will then inspect the sewer service line from the property line to the house connection.

12.4 The District will inspect main line and service piping within the public easements and rights of way consistent with City inspection policy.

Section 13. City Water and Sewer Ordinances Applicable

Section 13.1 The District will enact an ordinance specifying that users of water and sewer service within the District shall be subject to applicable city water and sewer ordinances.

Section 14. Debt for District Improvements.

14.1. The District shall be responsible for paying the costs of the Improvements, except as provided in Section 11.

14.2. The District Board has determined that bonded indebtedness shall be repaid from special assessments based on an equal method of assessment (the equivalent dwelling unit method). The District will enact ordinances and resolutions as may be required for the repayment of District debt, including ordinances that will require that new subdivisions or users who obtain new or additional water and/or sewer service after original construction and who have not contributed to the capital costs of the Improvements shall pay a pro-rata share of the costs of the Improvements.

Section 15. Individual Annexation. The annexation conditions and concessions of this Memorandum will not apply to individual properties within the District wishing to annex prior to or separate from overall District annexation. The City will administer such annexations in accordance with standard City policies and procedures.

Section 16. Reimbursements to District residents. Future users who connect to District financed water and sewer main extensions will pay a connection fee equal to the pro-rated cost of

the project improvements, even after annexation. Connection fee revenues shall be utilized in the best interest of overall water and sewer district residents, as determined by the District Board.

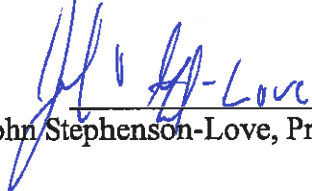
Section 17. Monthly Storm Drain Fees. All lots in all Service Districts will be assessed monthly storm drain fees per "Land Use Classification Group E", regardless of land use or number of dwelling units on the parcel, under the City Storm Drain Ordinance for developed property that does not discharge to an underground storm drainage system. Changes can be made to the Land Use Classifications for a property or group of properties if underground storm drainage improvements are made or if the land use code for a property changes. It is mutually understood that if or when formal storm drain capital improvements are installed by the City, the user classifications may change.

By the City of Great Falls:



Greg Deyon, City Manager

By the District:



John Stephenson-Love, President


Attest:



Lisa Kunz, City Clerk


(Seal of the City)

Attest:



Sheryl Plavin

Approved for Legal Content



Chad Parker, Acting City Attorney