

RESOLUTION 9628

A RESOLUTION TO FORMALIZE DEVELOPMENT  
PRINCIPLES & GUIDELINES FOR EAST END COMMERCIAL  
& RESIDENTIAL DEVELOPMENT

\* \* \* \* \*

WHEREAS, commercial and residential development have been proposed for the southeast Great Falls area in the vicinity of 10<sup>th</sup> Avenue South and 57<sup>th</sup> Street (East End Development); and,

WHEREAS, these proposals have spurred public discussion and debate because of the proximity of the proposed development to the flight approach area of the closed runway at Malmstrom Air Force Base; and,

WHEREAS, the public discussion and debate have centered around the interest to answer the questions, “Do we want to keep all of our options open for the potential reopening of the former runway at Malmstrom Air Force Base for future flying missions, or do we want to allow economic development to occur within the described Accident Potential Zones?”; and,

WHEREAS, there are two specific viewpoints or rationale driving these questions, including 1) The runway is an irreplaceable valuable asset and needs to be preserved to make certain we have a long term, viable military presence; and, 2) The chances of overcoming all the obstacles to reopening the runway are small and we need to “move on” as a community and allow development we know we can get; and,

WHEREAS, the City Planning Office and the City Manger’s Office prepared a discussion paper to help frame the issues with the intent to provide accurate and relevant information to 1) assist open public discussion, 2) assist in the development of position statements, and 3) assist in the development of a public strategy or strategies; and,

WHEREAS, copies of the discussion paper were provided to a number of community individuals and organizations for their information and use; and,

WHEREAS, Mr. Dan Rice, through the leadership and guidance of the Great Falls Area Chamber of Commerce, facilitated a process which identified several key issues and requirements that would need to be met in order to support and/or allow commercial and residential development in said area; and,

WHEREAS, in April 2006, the Chamber of Commerce reformatted the above referenced key issues and requirements into suggested development restrictions and recommended the City Commission “approve the development of the proposed commercial and residential projects in the area, subject to restrictions” and in October 2006, again reviewed the issues and reaffirmed its position; and,

WHEREAS, the City Planning Office and City Manager’s Office used the previously noted products and actions to prepare a set of development principles and guidelines to be applied by local

government during its land development review processes involving subdivision, annexation and zoning of properties in the vicinity of 10<sup>th</sup> Avenue South and 57<sup>th</sup> Street (East End Development); and,

WHEREAS, the documentation of said principles and guidelines is provided in a paper, titled, **“Development Principles & Guidelines For East End Commercial & Residential Development,”** dated, November, 2006 and is attached as EXHIBIT “A” to this Resolution.

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

That the five principles and guidelines presented in the attached EXHIBIT “A” be applied to all commercial and residential development proposed in the vicinity of 10<sup>th</sup> Avenue South and 57<sup>th</sup> Street (East End Development) during any land development review processes involving subdivision, annexation, zoning and conditional use permits conducted by the City of Great Falls.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on the 19<sup>th</sup> day of December, 2006.

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Dona R. Stebbins, Mayor

ATTEST:

\_\_\_\_\_  
Peggy J. Bourne, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Peggy J. Bourne, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution 9628 was placed on its final passage and passed by the Commission of the

City of Great Falls, Montana, at a meeting thereof held on the 19<sup>th</sup> day of December, 2006, and approved by the Mayor of said City on the 19<sup>th</sup> day of December, 2006.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City on this 19<sup>th</sup> day of December, 2006.

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Peggy J. Bourne, City Clerk

(SEAL OF CITY)

## **DEVELOPMENT PRINCIPLES & GUIDELINES FOR EAST END COMMERCIAL & RESIDENTIAL DEVELOPMENT**

The purpose of this paper is to outline development principles and guidelines for use in the land development review processes involving the subdivision, annexation and zoning of properties in the vicinity of the intersection of 10<sup>th</sup> Avenue South and 57<sup>th</sup> Street.

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### **PURPOSE:**

Lately, there has been public discussion and debate regarding plans to develop commercial and residential projects at the east end of 10<sup>th</sup> Avenue South and how that might affect long term interest to secure a flying mission or missions at Malmstrom Air Force Base. Fortunately, there has been a strong overall desire to foster and accommodate both.

There are numerous viewpoints and opinions which can best be summarized into two positions. Those who believe 1) The runway is an irreplaceable valuable asset and needs to be preserved to make certain we have a long term, viable military presence; and, 2) The chances of overcoming all the obstacles to reopening the runway are small and we need to “move on” as a community and allow development we know we can get.

Early in this debate, a “Discussion paper” was prepared to provide accurate and relevant information to 1) assist open public discussion, 2) assist in the development of position statements, and 3) assist in the development of a strategy or strategies to address public interests, issues and concerns. Some of the following is a summary of this “Discussion paper.” This summary is presented as a lead into the reasons and basis for the proposed development principles and guidelines presented at the end of this paper.

### **BACKGROUND:**

In 1995, the Base Realignment and Closure (BRAC) Commission recommended the runway at Malmstrom Air Force Base be closed and the KC-135 refueling tankers be moved to MacDill Air Force Base in Florida. The runway was declared “excess” (a legal status stemming from the BRAC statute) in 1999, which means that it can be used for other commercial purposes with the consent of the U.S. Department of Defense. However, the use of the runway for other commercial purposes is problematic because of its close proximity to a nuclear weapons storage area.

### **AICUZ STUDY:**

During the operation of the refueling tankers, a 1978 Air Installation Compatible Use Zone (AICUZ) Study for the Base was updated in 1994 by DOD. The study evaluated aircraft noise and accident potential for Base flying operations. Its application was intended to help protect the public health, safety and general welfare, as well as to preserve the operational capabilities of and public investment at the Base.

In the study, DOD established three accident potential zones described as:

**Clear Zone.** This is the area closest to the runway end and is the most hazardous. The overall risk is so high that DOD generally acquires the land through purchase or

easement to prevent development. The zone is 3000 feet wide by 3000 feet long. Development in this zone is limited to utility lines, roadways and agricultural uses.

**Accident Potential Zone I.** This zone is less critical than the clear zone, but still possesses a significant risk factor. The zone is 3000 feet wide by 5000 feet long. The zone allows reasonable economic use of the land, such as industrial/manufacturing, transportation, communication/utilities, wholesale trade, open space, recreation and agriculture. However, uses that concentrate people in small areas are not acceptable.

**Accident Potential Zone II.** This zone is an area beyond APZ I and is less critical than APZ I, but still possesses potential for accidents. The zone is 3000 feet wide by 7000 feet long. The acceptable uses include those of APZ I, as well as low density single family residential (one dwelling per acre) and those personal and business services and commercial/retail trade uses of low intensity or scale of operation. High density functions such as multi-story buildings, places of assembly (theaters, churches, schools, restaurants, etc.), and high density office uses are not considered appropriate.

Regarding official recognition and implementation of the 1994 AICUZ study, there were various options available to local government at the time. The most significant option, as recommended in the study, was to amend zoning and subdivision regulations and to formulate fair disclosure ordinances, building codes and capital improvement programs to incorporate land use controls presented in the study. However, since there were limited City staff resources and time to pursue this option and it was felt that such actions may polarize various parties having an interest in the matter, the City and County Commissions chose instead to adopt resolutions that stated the study would be “referenced and utilized as a guide in making land use decisions in the vicinity of MAFB.” As such, it appears the 1994 AICUZ study was never established as a document to control land uses in the various zones, but was intended to serve as a reference and guide in making land use decisions.

There still appears to be at least two viewpoints regarding the current status and relevancy of the three zones and list of land uses in the study. The question of relevancy is raised in that the runway is officially closed. Some believe the zones and list of land uses are no longer applicable and therefore should not be used regarding development in the area. Conversely, some believe the zones, especially the Clear Zone, and list of land uses should continue to be used to guide the location and type of future development.

However, MAFB officials have indicated the full Accident Potential Zones for the Base’s previous flying mission are no longer in effect because of the closed runway.

**RESTRICTIVE EASEMENTS:**

In 1958, the United States government acquired restrictive easements at the ends of the then operating runway. The southern easement encompassed a majority of the above described Clear Zone, but not all. The easement placed a filed and recorded restriction on the construction of buildings, etc. on the property. The west boundary of the easement is best described as being 1100 feet from and running parallel to the centerline of the runway. For discussion, the west boundary of the former Clear Zone was 1500 feet from and ran parallel to the centerline of the runway.

**EXISTING/PROPOSED DEVELOPMENT:**

There are two existing commercial sites and one future commercial site and one future residential site proposed for development in the vicinity of 10<sup>th</sup> Avenue South and 57<sup>th</sup> Street (East End Development).

One of the commercial sites (Site #1) was for a proposed Wal-Mart Supercenter. The project has since been withdrawn. Although no specific tenants are identified for the two other commercial sites, one is located immediately east of the former Wal-Mart site (Site #2) and the other (Site #3) is located northeast of and across U.S. Highway 87/89 from the former Wal-Mart site. Regardless of the decision by Wal-Mart, the property owners proceeded with the subdivision, annexation and zoning processes for commercial sites #1 and #2. Future steps may be taken by the property owners to annex commercial site #3. The attached **Exhibit A** illustrates the location of the three commercial sites, as well as the general area proposed for high-end residential development.

Regarding the residential development, the developers propose to master plan the entire area of interest and to subdivide, annex, and zone the parcel in phases. The developers plan to begin phased development on that portion not located within the former Accident Potential Zone I.

**DISCUSSION/DEBATE PROCESS:**

Early in the discussion and debate phase of this issue, there was noted interest to conduct wide-based public discussion and to provide a forum to involve all the major community players and stakeholders, including Base supporters, property owners, the City, the County and the general public. Both City and County officials have stated their interest in such a discussion. Specifically, in February 2006, the City Commission passed Resolution No. 9550 stating its support for a broad based public discussion to help develop consensus and an action plan. Also, the Great Falls Area Chamber of Commerce, Public & Government Affairs Committee met on several occasions to discuss and learn more about the issue. They too indicated interest in having broad community discussion and establishing a position. An underlying premise and overall objective has been to develop consensus and results that fairly and equitably address and satisfy the interests of all involved parties.

Preceding the current steps to organize and sponsor a broad based community forum, a small group, representing affected property owners; the Committee of 80's; Military Affairs Committee of the Chamber; Public & Government Affairs Committee of the Chamber; and a volunteer facilitator, met to develop a better understanding of each other's viewpoints and to build consensus on how to fairly and equitably address and satisfy each of their specific interests and concerns. The group was successful in identifying several key issues and requirements that would need to be met in order to support and/or allow commercial and residential development in the area. In April 2006, the Board of Directors of the Chamber of Commerce reformatted the issues and requirements into suggested development restrictions and recommended the City Commission "approve the development of the proposed commercial and residential projects, subject to the following restrictions." In October 2006, the Chamber Board once again reviewed the issue and reaffirmed its April 2006 position.

- The commercial projects to be built in a manner that uses the east end of the site to the maximum practical extent for purposes that are consistent with those

allowed in an air operations “Clear Zone”. These uses include landscaping and storm water retention.

- The residential development to be permitted on a staged basis that allows Phase I to proceed during 2006, Phase II to begin no sooner than 2007 and Phase III to begin no sooner than 2008.
- Residential developer specifically discloses in writing to all purchasers of real property within the subject development, that aircraft operations and noise may occur near the property.
- In the event a new flying mission that requires an expanded Clear Zone or creation of an Accident Potential Zone is based at MAFB, the developers agree to end the development at the completion of the phase allowed at that time.
- City of Great Falls refrains from permitting development inconsistent with uses that are normally permitted within the theoretical “Clear Zone and Accident Potential Zones.” Some of these uses are agricultural in APZ I and low density housing in APZ II.

Additionally, the recently adopted Cascade County 2006 Growth Policy includes the County Commission’s position regarding rural development within the former Accident Potential Zones.

**PRINCIPLES AND GUIDELINES:**

The previously noted findings, understandings, and restrictions were used as the basis for preparing the principles and guidelines presented in this section. It is intended these principles and guidelines be applied by local government during its land development review processes involving the subdivision, annexation and zoning of properties in the vicinity of 10<sup>th</sup> Avenue South and 57<sup>th</sup> Street (East End Development).

To assure these principles and guidelines are readily applied during governmental review and decision-making processes, it is proposed they be “institutionalized” by adopting them via a City resolution. Ultimately, the principles and guidelines would be incorporated into land development agreements for future proposed projects in the area.

It is proposed the following narrative be incorporated into a City resolution for consideration by the City Commission following a public hearing.

***The following principles and guidelines should be applied to all commercial and residential development proposed in the vicinity of 10<sup>th</sup> Avenue South and 57<sup>th</sup> Street (East End Development). Application of the principles and guidelines would occur during any land development review processes involving subdivision, annexation, zoning and conditional use permits. The principles and guidelines are as follow:***

- 1. Only those land uses consistent with the former “Clear Zone” (as listed in the 1994 Air Installation Compatible Use Zone Study) will be permitted for those***

*properties or portions of properties located within said Zone, such as landscaping, storm water retention/detention facilities, agriculture, etc.*

**2. Phased residential development will be permitted in accordance with the following timeframe:**

- Phase 1 construction can begin no sooner than June 1, 2007.**
- Phase 2 construction can begin no sooner than June 1, 2009.**
- Phase 3 construction can begin no sooner than June 1, 2010.**

**The attached Exhibit B illustrates the general area of each proposed phase. The purpose of this section is to allow residential development to occur in the noted area while efforts are made to acquire a flying mission at MAFB. If a mission is not secured by June 1, 2011, the residential development project is relieved of any further timeframe or area limitations.**

**3. All subdivision plats for development in the area shall include the following statement:**

**“NOTICE OF PROXIMITY TO A MILITARY AIR FORCE BASE, Take notice all prospective purchasers of land in this subdivision that this subdivision is in the vicinity of a military air force facility and, while subject property does not lie within any presently designated accident potential or noise zone, it may from time be subjected to noise and vibrations from aircraft operations associated with said facility.”**

**4. In the event a new flying mission (military, civilian, or combined) is based at MAFB, actions may be needed to satisfy the requirements for such a mission or missions, such as the reestablishment and/or expansion of the “Clear Zone” and/or “Accident Potential Zone.” In such case, further development within said zones will be limited to the land uses permitted in said zones, as may be determined through preparation of an Air Installation Compatible Use Zone (AICUZ) study for the new operating mission(s).**

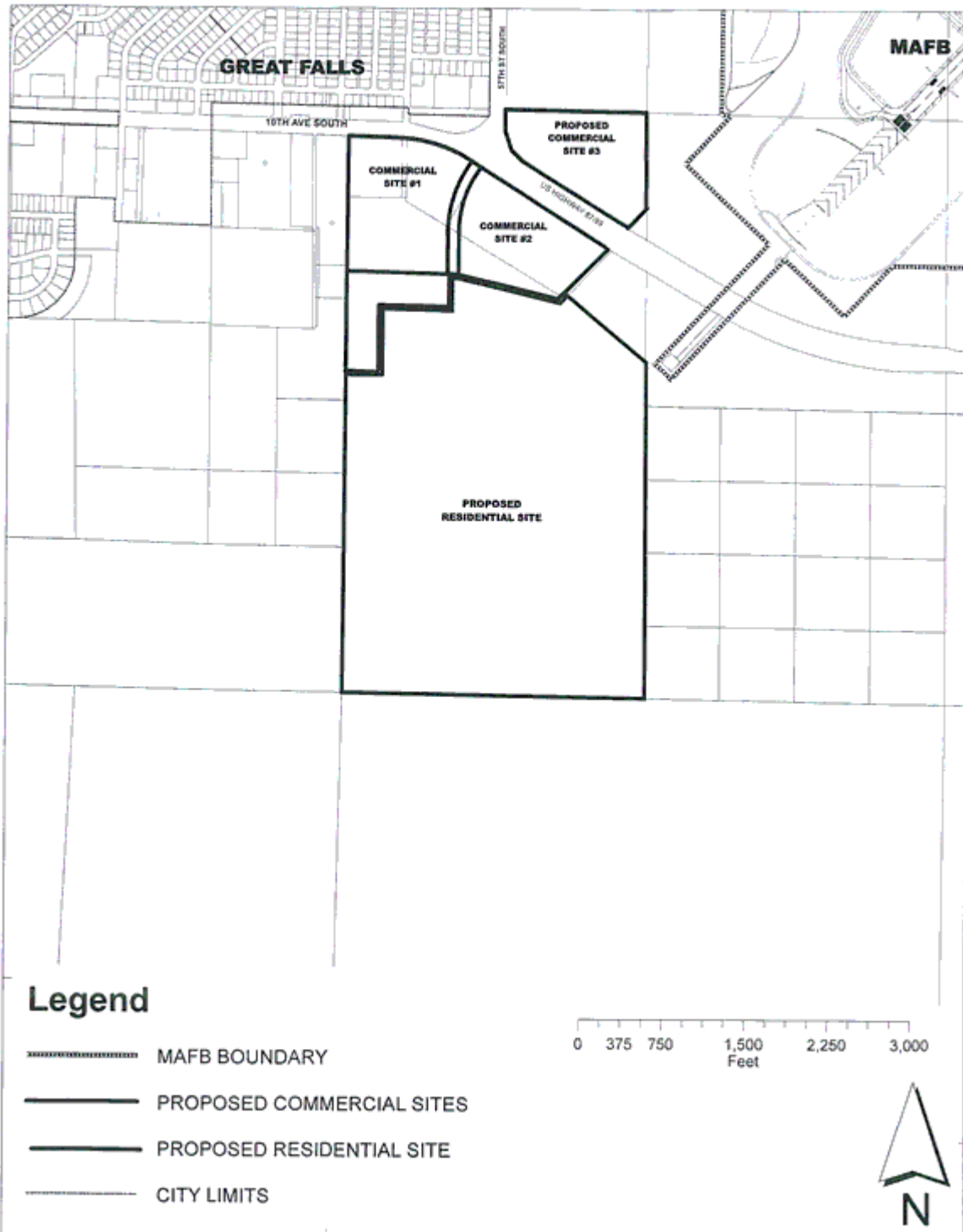
**Additionally, the provisions for phased development outlined and authorized in Item 2, above, will terminate. However, the development phase or phases approved up to that time will be allowed to be completed.**

**Lastly, the community will use its best efforts to assure affected property owners are reasonably compensated for any investments made for the approved phases that can no longer be recouped due to the inability to further develop subsequent phases.**

**5. Other than development provided for in Items 1,2 & 4, above, the City of Great Falls will refrain from permitting development which is inconsistent with the land uses allowed in the former “Clear Zone” and “Accident Potential Zones I & II.”**



# EXHIBIT A



# EXHIBIT B

