

# PLANNING ADVISORY BOARD ZONING COMMISSION

**JULY 26, 2011**

*Case Number*

ABN2011-3

*Applicant*

Brad Talcott

*Owners*

Talcott Properties, LLC

*Property Location*

1st Ave NW between 3rd St NW and the BNSF railroad tracks.

*Requested Action*

**Vacate** a portion of right-of-way and provide an amended plat of Lot 3 and 4 Block 598, and a portion of 1st Ave NW, of the 5th Addition to Great Falls and Parcel No. 2.

*Neighborhood Council*

Neighborhood Council #2

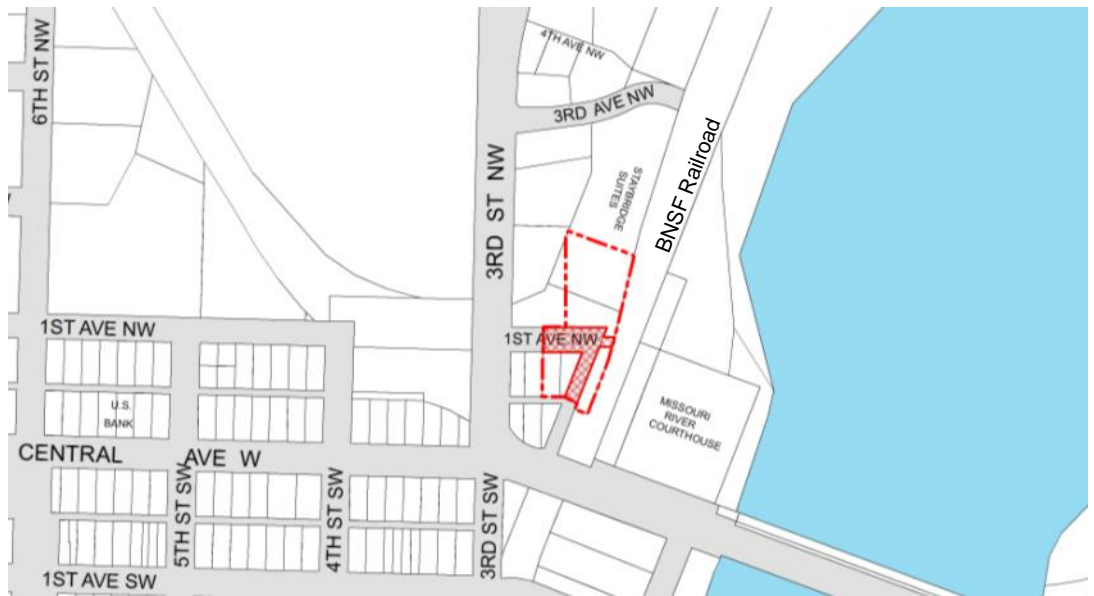
*Recommendation*

Approval of the request with Conditions.

*Project Planner*

Jana Cooper, RLA

## VACATE RIGHT-OF-WAY 1ST AVENUE NORTHWEST



### Location Map



Amended Plat Area



ROW Vacate



### Summary

#### Project Description

Talcott Properties, LLC, owners of the land surrounding 1st Avenue Northwest, has submitted an application to vacate a portion of 1st Avenue Northwest generally located between 3rd Street Northwest and the BNSF railroad tracks, hereinafter referred to as “subject property.”

In conjunction with the abandonment of right-of-way, the owner is required to provide an amended plat consolidating the adjacent properties with the subject property.

#### Background

- Legal Description: Proposed Amended Plat of Lots 3 and 4, Block 598, and a

portion of 1st Ave NW, of the 5th Addition to Great Falls, and Parcel No. 2, all located in Gov. Lot 7 of Section 2, the NW1/4, and Gov. Lot 2 of Section 11, Township 20 North, Range 3 East, M.P.M., Great Falls, Cascade County, Montana.

- Subject Property: 1st Ave NW: 17,424 sq. ft. = ±0.4 acres
- Amended Plat: Lot 3 & 4, Block 598: 78,408 sq. ft. = 1.8 acres

#### Agency Comment

Representatives from the City’s Public Works and Fire Department have been involved in the review process for this project. All comments by the above parties have been addressed by the applicant or in the conditions of this report.

Existing Conditions

The existing site information for the subject property includes:

**Existing Use:** Public right-of-way that is not developed to City standard and is not in public use. The street is blocked to through traffic due to Burlington Northern Santa Fe Railroad and the Missouri River to the east. The amended plat area is currently vacant undeveloped land.

**Existing Zoning:** M-2 Mixed-use transitional. According to the Land Development Code, this district is “intended to promote a transition over time to a predominately mixed-use land use pattern. Because of changing economic conditions and other factors, some current uses do not represent the highest and best use, given other more suitable areas.”

**Adjacent Land Use:** Adjacent properties on all sides of the subject property are also zoned M-2 Mixed-use transitional. There are a mix of uses in the area. North of the subject property is the existing Staybridge Hotel. East of the property is the BNSF Railroad tracks and Missouri River Court House. South of the subject property there are three vacant undeveloped parcels which are also zoned M-2. West of the subject property are existing M-2 zoned businesses including a variety store and a tax accountant’s office.



East down 1st Avenue Northwest



West down 1st Avenue Northwest toward 3rd Street Northwest

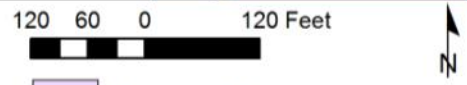
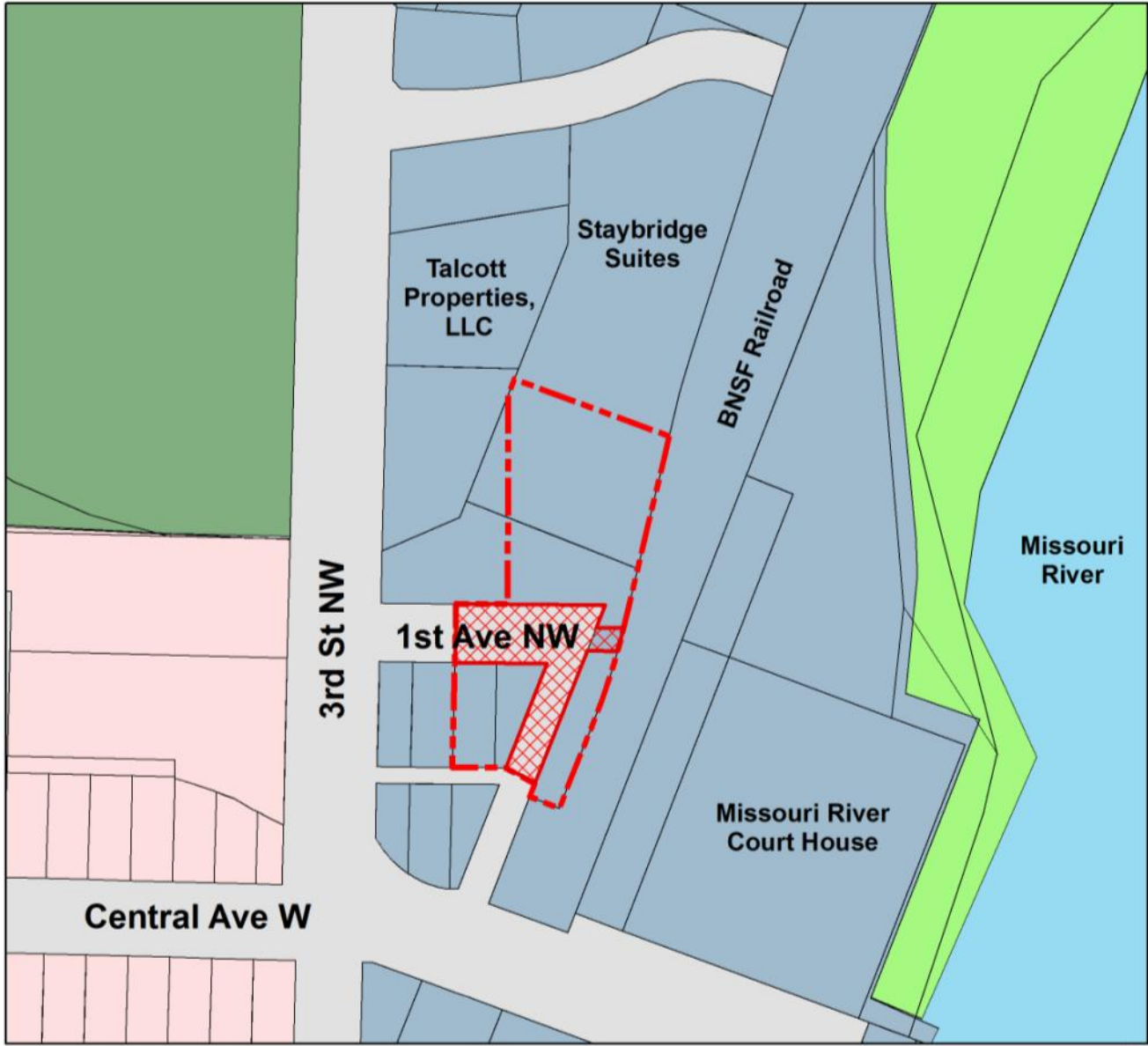


South toward Central Avenue West



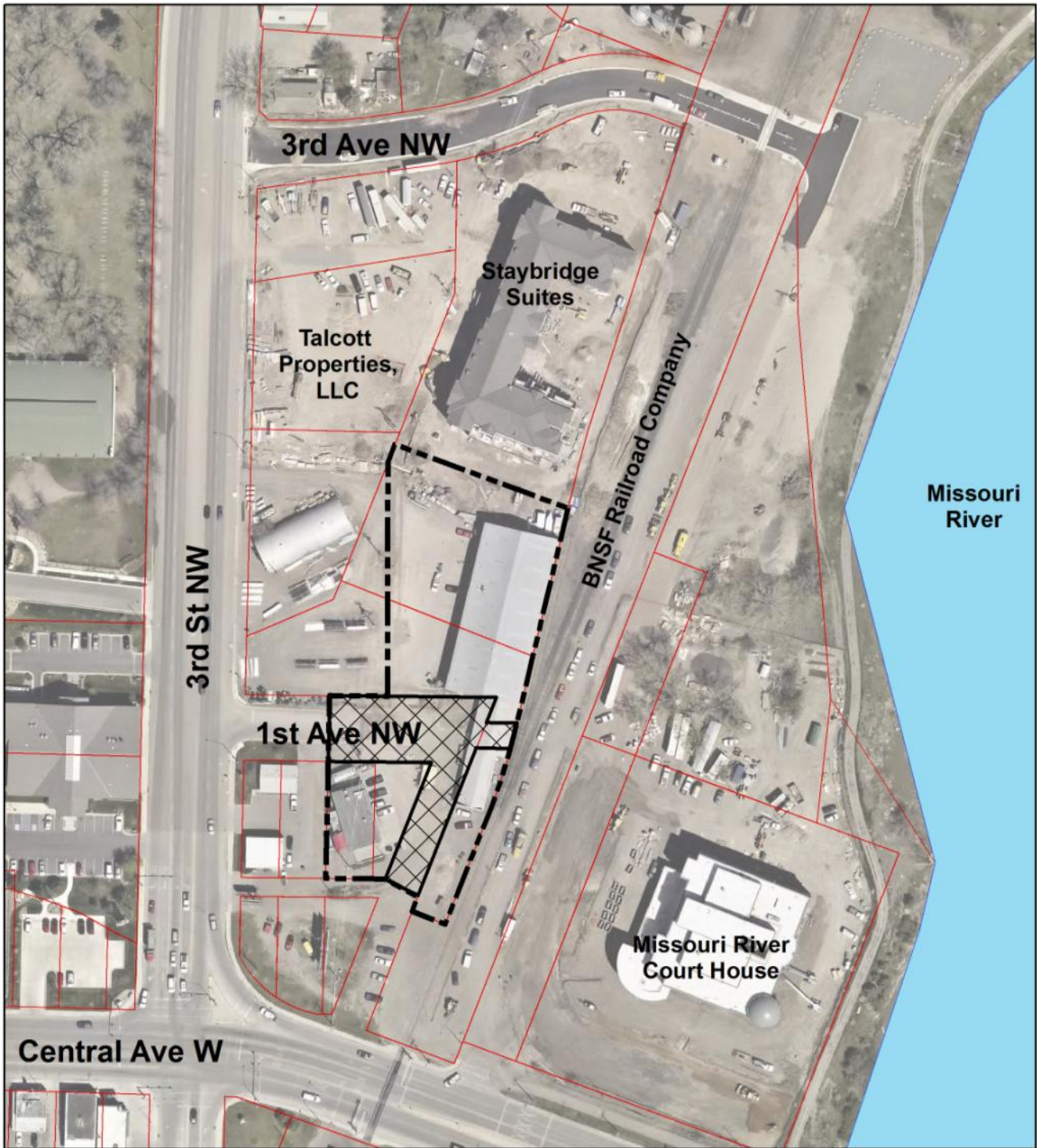
North from Central Avenue West

# Exhibit A: Vicinity/Zoning Map






- |                                |                                |                                  |
|--------------------------------|--------------------------------|----------------------------------|
| Amended Plat Area              | I-1 Light industrial           | R-2 Single-family medium density |
| Vacate ROW Area                | I-2 Heavy industrial           | R-3 Single-family high density   |
| <b>ZONING</b>                  | M-1 Mixed-use district         | R-5 Multi-family medium density  |
| AI Airport Industrial          | M-2 Mixed-use transitional     | R-6 Multi-family high density    |
| C-1 Neighborhood commercial    | PLI Public lands institutional | R-9 Mixed residential            |
| C-2 General commercial         | POS Park Open Space            | R-10 Mobile home park            |
| C-3 Highway commercial         | PUD Planned unit development   | Unincorporated Enclave           |
| C-4 Central business core      | R-1 Single-family suburban     |                                  |
| C-5 Central business periphery |                                |                                  |

# Exhibit B: Aerial Photo



Aerial Photo: May, 2009

-  Amended Plat Area
-  ROW Abandonment Area
-  Tracts of Land



## Project Overview

The applicant has submitted a request to vacate a segment of 1st Avenue Northwest generally located 112 feet east of 3rd Street Northwest extending approximately 181 feet east and then south approximately 204 feet, ending at 1st Alley Northwest. The entire vacated area is approximately 0.4 acres. Please refer to Exhibit C, the amended plat of the subject property, for more information.

The portion of 1st Avenue Northwest being vacated is public right-of-way and is undeveloped. The City's Public Works Department does not have a need to retain the subject property to maintain adequate public traffic flows. The City does need to retain the subject property for use as public utility easement for existing water, sewer and storm drain services located in 1st Avenue Northwest.

Talcott Properties, LLC, the surrounding property owner of the street proposed to be vacated, will maintain access off of 3rd Street Northwest from 1st Avenue Northwest. The applicant is proposing to use the vacated portion of 1st Avenue Northwest for addition parking for future development in the area.

There are five other lots in the vicinity of 1st Avenue Northwest. These lots and property owners are not a part of this application, but have been notified of the request to vacate. The existing access from 3rd Street Northwest to 1st Avenue Northwest and to 1st Alley Northwest would remain unchanged and be maintained as they exist today. Therefore the adjacent property owners would not be adversely affected by the proposed abandonment.

Upon abandonment, all of 1st Avenue Northwest that is part of this application would revert to and become a part of the abutting proposed Lot 4A, Block 598, currently owned by Talcott Properties, LLC. All of 1st Avenue Northwest would be retained as a utility easement, and access to underground utilities by the City would need to be maintained in this portion of the street.

Approval of the abandonment is subject to the applicant providing an amended plat showing the consolidation of lots and provision for appropriate easements for utilities. (Exhibit C)

## City's Right to Sell Right-of-Way

In a memorandum dated January 31, 1991, Planning Director, at the time, John Mooney, responded to inquiries regarding changes in State law which allows governing bodies to sell right-of-way when vacated. He stated:

*"The basic issue which should be clarified at the outset is the ownership of the right of way. Ownership or title relates to the manner and form in which the right of way was originally provided. In most cases, including right of way dedication on a subdivision plat, right of way is not owned by the governing body, but is owned by the abutting land owner."*

From the research provided by Mr. Mooney, typically, the City is not the owner of the land in the right-of-way, but only holds the right of public use. Mr. Mooney concluded that the City cannot sell what it does not own. Basically, the vacation process is a revocation of the right of the general public to use the land covered by the dedication. This letter is on file at the Planning and Community Development office for viewing. The Planning and Community Development Department is also revisiting this issue with current administration, City Attorney and others to determine if there should be an update to this interpretation.

## Improvements

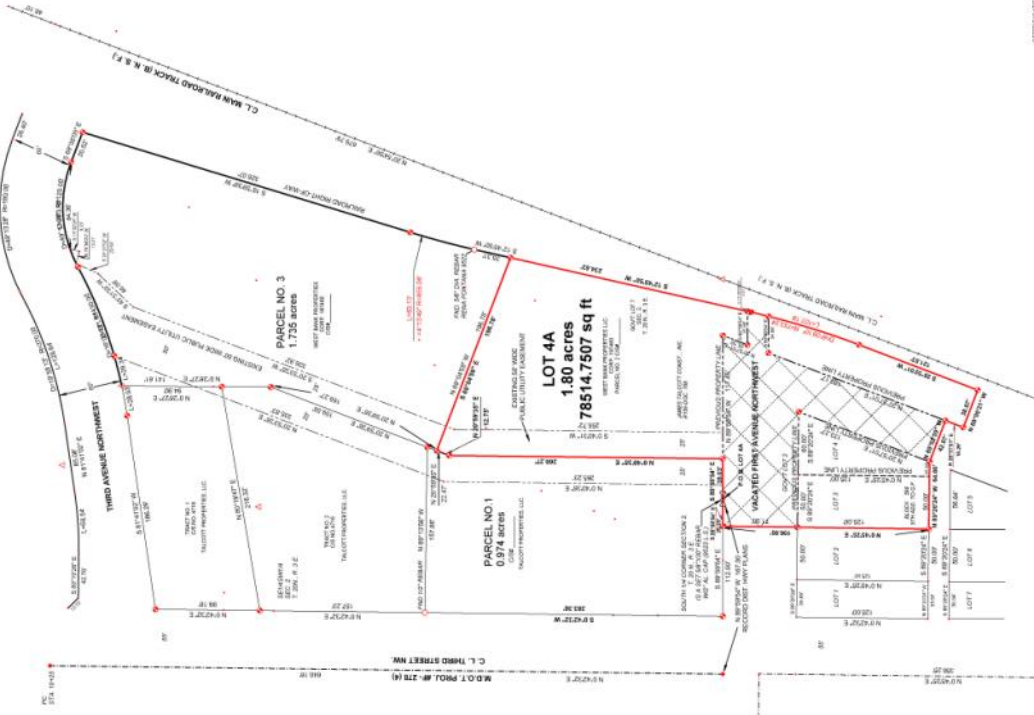
City water mains (12-inch), sewer mains (20-inch) and storm drains (12-inch) are located in 1st Avenue Northwest; the owner will be required to dedicate 1st Avenue Northwest as a utility easement as directed by the Public Works Department. The amended plat is subject to review and approval by the Public Works Department prior to final approval by the City Commission.

The applicant will also be required to maintain a fire access for emergency vehicles and fire apparatus as required by the Fire Department. The owners shall submit any plans for fencing or gating the property to the City's Public Works and Fire Departments for review for access requirements.

**AMENDED PLAT**

LOTS 3 AND 4 BLOCK 988, A PORTION OF 1ST AVE. NW,  
OF THE 5TH ADDITION TO GREAT FALLS,  
AND PARCEL NO. 2 CERTIFICATE OF SURVEY NO. 0019,  
SECTION 11, TOWNSHIP 20 NORTH, RANGE 3 EAST, M.P.M.,  
TOWNSHIP 20 NORTH, RANGE 3 EAST, M.P.M.,  
GREAT FALLS, CASCADE COUNTY, MONTANA.

THE SURVEY OF THIS SURVEY IS TO SUBDIVIDE LOTS 3 AND 4 INTO  
SUBDIVISIONS AS SHOWN ON THIS PLAT.



**CERTIFICATE OF OWNERS**  
We, the undersigned property owners, do hereby certify that our subject has been subdivided as hereinafter and substantially sets out, as shown by the plat hereon attached the following description of said land:

**PROPERTY**

RESIDENTIAL COMMERCIAL DEVELOPMENT LOTS  
This amended plat is subject to the following conditions:  
1. The amended plat is subject to the following conditions:  
2. The amended plat is subject to the following conditions:  
3. The amended plat is subject to the following conditions:

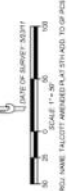
**DESCRIPTION**

**LOT 4A.**  
A tract of land located in the 2nd and 4th blocks of the 5th Addition to Great Falls, and Parcel No. 2 of Certificate of Survey No. 0019, Section 11, Township 20 North, Range 3 East, M.P.M., Cascade County, Montana, containing 1.80 acres, 78514.7507 square feet, more or less, as shown by the plat hereon attached.

Property Owner: West Bank Properties LLC, Inc. Date: \_\_\_\_\_  
State of (Montana) \_\_\_\_\_  
County of Cascade \_\_\_\_\_  
City of \_\_\_\_\_  
Certificate of Owners: \_\_\_\_\_  
Subdivision Name: \_\_\_\_\_  
Map Commission Expires: \_\_\_\_\_  
Map Commission Expires: \_\_\_\_\_

**CERTIFICATE OF THE CASCADE COUNTY TREASURER**

I, James H. Hester, Treasurer of Cascade County, Montana, do hereby certify that I have examined the above described plat and find that it is correct and conforms to the laws of the State of Montana.



**LEGEND**  
 - BOUNDARY CORNER, AS SET  
 - CORNER CALCULATED BY ADJACENT LOT  
 - 1/4 SECTION CORNER  
 - 1/4 SECTION CORNER  
 - 1/4 SECTION CORNER  
 - 1/4 SECTION CORNER

**HENEN**  
LAND SURVEYING  
1000 1/2 1st Avenue NW  
Great Falls, MT 59401  
406.761.1111  
www.henenlandsurveying.com

**CERTIFICATE OF REGISTERED LAND SURVEYOR**  
I, Michael J. Hester, Registered Professional Land Surveyor, License No. 80231-LS, do hereby certify that on April 11, 2011, I prepared the above described plat and find that it is correct and conforms to the laws of the State of Montana.



## 2005 City of Great Falls Growth Policy:

The transportation element of the City of Great Falls Growth Policy establishes strategies and actions to implement sound traffic and roadway management. The City of Great Falls Public Works Department has established the only need for this right-of-way is for utilities purposes; the right-of-way is not needed for future street development or transportation use. In addition, the project is consistent with the Land Use section of the Growth Policy because all of the affected properties have conforming land uses per the zoning code.

## Neighborhood Council Input

Patty Cadwell, Neighborhood and Youth Council Coordinator, provided the information regarding the request to vacate the right-of-way to Neighborhood Council #2 on July 6, 2011. At the time the staff report was written, staff had received one letter from Mountain West Bank, a neighboring property, that was very supportive of the proposal.

## Recommendation

It is recommended that the Planning Advisory Board recommend the City Commission approve the request to vacate the right-of-way and approve the associated proposed Amended Plat of Lots 3 and 4, Block 598, and a portion of 1st Ave NW, of the 5th Addition to Great Falls, and Parcel No. 2, all located in Gov. Lot 7 of Section 2, NW1/4, and Gov., Lot 2 of Section 11, Township 20 North, Range 3 East, M.P.M., Great Falls, Cascade County, Montana, subject to the conditions below:

## Conditions of Approval

1. The amended plat of Lots 3 and 4, Block 598, and a portion of 1st Ave NW, of the 5th Addition to Great Falls, shall incorporate correction of any errors or omissions noted by staff.
2. The amended plat for subject property shall be submitted to the City Public Works Department for review and approval prior to approval by the City Commission. The amended plat shall include the following:
  - The amended plat shall dedicate 1st Avenue Northwest as a utility easement for future utility expansion.
  - The amended plat shall provide any access for fire and emergency vehicles as specified by the Fire Department.
3. A Development Agreement shall be prepared containing terms and conditions for the abandonment of the right-of-way.

## Review/Approval Process

### **Next Steps**

1. The Planning Advisory Board recommendation will be presented to the City Commission.
2. City Commission will approve or deny the abandonment.
3. If approved, the applicant will submit any required documents for review and then file the required documents with the Cascade County Clerk and Recorder's Office.

Cc: Jim Rearden, Public Works Director  
Dave Dobbs, City Engineer  
Patty Cadwell, Neighborhood and Youth Council Coordinator  
Talcott Properties, LLC., PO Box 2493, Great Falls, MT 59401  
Mike Henen, Henen Land Surveying, 2822 1st Ave S, Great Falls, MT 59401

# EXHIBIT D - APPLICATION



P. O. Box 5021, 59403-5021

Planning Department

## DEVELOPMENT REVIEW APPLICATION

Name of Project/Development: West Bank Development

Owner(s): Talcott Properties, LLC

Mailing Address: PO BOX 2493

Phone: (406) 761-0018 FAX: (406) 761-0415

E-mail: jim@jtc-mt.com

Agent(s): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

E-mail: \_\_\_\_\_

Legal Description: Vacation of abandoned First Ave NW

Section: 2 Township: 20 Range: 3 East

Street Address: First Ave NW

Zoning: Current: M2 Proposed: M2

Land Use: Current: Vacated ROW Proposed: Development

Covenants or Deed Restriction on Property: Yes  No   
(If yes, please attach to application)

**Application Type (please check all that apply):**

- Subdivision Preliminary Plat-\$800
- Annexation-\$400
- Subdivision Minor Plat-\$600
- Zoning Map Amendment-\$700
- Conditional Use Permit-\$700
- Subdivision Final Plat-\$300
- Establishment of Zoning with Annexation-\$700
- VACATE ROW - \$200

I (We) the undersigned understand that the filing fee accompanying this application is not refundable. I (We) further understand that the fee pays for the cost of processing, and the fee does not constitute a payment for approval of the application.

I (We) also attest that the above information is true and correct to the best of my (our) knowledge.

Property Owner's Signature: [Signature] Date: 6/23/11

Property Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_