



Planning Advisory Board/Zoning Commission
2 Park Drive South, Great Falls, MT
Gibson Room, Civic Center, Via Zoom
September 22, 2020
3:00 PM

UPDATES CONCERNING PROCESS OF MEETINGS

Due to the COVID-19 health concerns, the format of the Planning Advisory Board/Zoning Commission meeting will be held in a virtual video-conferencing environment. In order to honor the Right of Participation and the Right to Know (Article II, Sections 8 and 9 of the Montana Constitution), the City of Great Falls and Planning Advisory Board/Zoning Commission are making every effort to meet the requirements of open meeting laws:

- Planning Advisory Board/Zoning Commission members and City staff will attend the meeting via a remote location, using a virtual meeting method.
- The agenda packet material is available on the City's website: <https://greatfallsmt.net/meetings>. The Public may view and listen to the meeting on government access channel City-190, cable channel 190; or online at <https://greatfallsmt.net/livestream>.
- Public comment will be taken during the meeting as indicated on the agenda with an asterisk. Public participation is welcome in the following ways:
 - Attend in person. Refrain from attending in person if you are not feeling well. The City will require social distancing at the meeting, and may limit the number of persons in the Gibson Room according to applicable health guidelines.
 - Provide public comments via email. Comments may be sent via email before 12:00 PM on Tuesday, September 22, 2020, to: jnygard@greatfallsmt.net. Include the agenda item or agenda item number in the subject line, and include the name and address of the commenter. Written communication received by that time will be shared with the Planning Advisory Board/Zoning Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and, will be so noted in the official record of the meeting.
 - Call-in. The public may call in during specific public comment periods at 406-761-4786. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to customary time limits. This is a pilot service to test the feasibility of expanded public participation by phone. We ask for your patience in the event there are technical difficulties

OPENING MEETING

1. Call to Order - 3:00 PM
2. Roll Call - Board Introductions

Pete Fontana - Chair

Charles Pankratz - Vice Chair

Dave Bertelsen

Kelly Buschmeyer

Tory Mills

Samantha Shinaberger

Laura Vukasin

3. Recognition of Staff
4. Approval of Meeting Minutes - September 8, 2020

BOARD ACTIONS REQUIRING PUBLIC HEARING

5. Public Hearing – Annexation of Tract 1 and Remainder Tract 1-A of Certificate of Survey No. 4120, located in the SE ¼ of Section 14, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana and the adjoining right-of-way of Upper River Road from the south property line of Tract 1 to the existing City limits line to the north; and establishment of R-2 Single-family Medium Density.

BOARD ACTIONS NOT REQUIRING PUBLIC HEARING

COMMUNICATIONS

PUBLIC COMMENT

Public Comment on any matter and that is within the jurisdiction of the Planning Advisory Board/Zoning Commission. Please keep your remarks to a maximum of five (5) minutes. Speak into the microphone, and state your name and address for the record.

ADJOURNMENT

(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.)

Assistive listening devices are available for the hard of hearing, please arrive a few minutes early for set up, or contact the City Clerk's Office in advance at 455-8451. Wi-Fi is available during the meetings for viewing of the online meeting documents.

Planning Advisory Board/Zoning Commission meetings are televised on cable channel 190 and streamed live at <https://greatfallsmt.net>. Meetings are re-aired on cable channel 190 the following Thursday at 7 p.m.

**MINUTES OF THE MEETING
GREAT FALLS PLANNING ADVISORY BOARD/ZONING COMMISSION
SEPTEMBER 8, 2020**

CALL TO ORDER

The regular meeting of the Great Falls Planning Advisory Board/Zoning Commission was called to order by Chair Peter Fontana at 3:01 p.m. The meeting was held via Zoom in the Gibson Room.

ROLL CALL & ATTENDANCE

Due to the COVID-19 health concerns, the format of the Planning Advisory Board/Zoning Commission meeting is being conducted in a virtual video-conferencing environment. In order to honor the Right of Participation and the Right to Know (Article II, Sections 8 and 9 of the Montana Constitution), public participation is welcomed and encouraged as follows:

- Attend in person. Refrain from attending in person if you are not feeling well. The City will require social distancing at the meeting, and may limit the number of persons in the Gibson Room according to applicable health guidelines.
- Provide public comments via email. Comments may be sent via email before 12:00 PM on Tuesday, September 8, to: jnygard@greatfallsmt.net. Include the agenda item or agenda item number in the subject line, and include the name and address of the commenter. Written communication received by that time will be shared with the Planning Advisory Board/Zoning Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and will be so noted in the official record of the meeting.
- Call-in. The public may call in during specific public comment periods at 406-761-4786. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to customary time limits. We ask for your patience in the event there are technical difficulties.

Planning Board Members present electronically via Zoom:

Peter Fontana, Chair
Charles Pankratz, Vice Chair
Dave Bertelsen
Kelly Buschmeyer
Tory Mills
Samantha Shinaberger
Laura Vukasin

Planning Board Members absent:

None

Planning Staff Members present:

Craig Raymond, Director Planning and Community Development
Thomas Micuda, Deputy Director, Planning and Community Development
Brad Eatherly, Planner II
Shelley Francis, Permit Technician

Jamie Nygard, Sr. Admin Assistant

Other Staff present:

Joe Cik, Assistant City Attorney

Mr. Raymond affirmed a quorum of the Board was present.

MINUTES

Chair Peter Fontana asked if there were any comments or corrections to the minutes of the meeting held on August 25, 2020. Seeing none, Ms. Vukasin moved to approve the minutes. Ms. Shinaberger seconded, and all being in favor, the minutes were approved.

BOARD ACTIONS REQUIRING PUBLIC HEARING

Conditional Use Permit to allow a “two-family residence” land use upon the property addressed as 1115 18th Ave SW and legally described as Lot 10, Block 4, Montana Addition, Section 15, T20N, R3E, P.M.M., Cascade County, Montana

Mr. Brad Eatherly, Planner II, presented to the board. He stated that the applicant is requesting to obtain a Conditional Use Permit (CUP) in order to construct a two-family residence (duplex) on the subject property. The property is zoned R-2, Single-family medium density. The zoning district generally limits property usage to single-family homes, but the Land Development Code allows owners to seek Conditional Use Permits for two-family residences. This requires the applicant, through a public hearing review process, to justify that the proposed Conditional Use Permit can be accomplished without negative impacts. Mr. Eatherly stated that the lot is currently vacant and is approximately 9,115 square feet in area. The surrounding properties contain single-family homes and have comparable lot sizes. Mr. Eatherly presented an Aerial map, Zoning map, site plan and a rendering of what the proposed duplex will look like. Mr. Eatherly stated that even though this will be a duplex in the R-2 Zone, there are standards that will have to be adhered to. 35% lot coverage is allowed in the R-2 zone, and 34% is what is being proposed. The building height and setback will comply with district standards. There will be 4 parking spaces provided. Two for each unit. The sidewalk, boulevard area with trees and the driveway design will all meet code requirements. Mr. Eatherly did present an Overlay Image of what the proposed building would look like in the neighborhood. He also showed some site photos of what the lot looks like in its current state.

The basis of decision was presented by Mr. Eatherly. The conditional use is consistent with the City’s Growth Policy and applicable neighborhood plans. The conditional use will not be injurious to the use and enjoyment of other property. Parking is proposed to be contained within the garage and driveway. Adequate measures have been or will be taken to provide ingress and egress. The project will generate little daily traffic and will have no discernible impact upon the area road network. According to the Institute of Transportation Engineers, a duplex can be assumed to generate 20 trips per day.

PETITIONER’S PRESENTATION

John Mieyr, 2423 1st St. S, stated that his intent with the development is that it has been in his family for years. He is a builder and with the expense of building, it is more economical for him

to build a duplex. He designed the proposed duplex to be higher end to compliment the neighborhood.

BOARD QUESTION AND ANSWER SESSION

Ms. Vukasin asked the builder if one side of the duplex will be a four bedroom and the other side will be a 5 bedroom. Mr. Mieyr responded that the designs have not been finalized, but proposed are two bedrooms on the main floor and then two bedrooms in the basement with an office or a third bedroom. It depends on the final design and the egress requirements for the living space in the basement.

Mr. Mills asked if there were any existing covenants for the lot. Mr. Eatherly responded that an email was received the previous Friday that stated there was a covenant attached to the Montana Addition that would preclude duplexes being built in the area. Staff has not seen the covenants.

Mr. Fontana asked if the Planning Advisory Board/Zoning Commission does approve the Conditional Use Permit, will they be in a position where the citizens enforce the covenant in the private restriction in the neighborhood and cause a legal battle. Mr. Cik responded that the City doesn't enforce private covenants, so the proposed project needs to be looked at, like any other project. It needs to be based on the criteria that Mr. Eatherly laid out, and then a recommendation made. If the developer decides to move forward and there is a violation of the covenant, it is up to the residents to enforce. The City does not take a position.

Mr. Fontana wanted to know if from a practical standpoint, is this something that the board should be considering. Mr. Cik responded that it certainly can be considered but if you are going to weigh that in terms of the recommendation that the board is going to make, there would need to be a new Basis of Decision. He recommended that the board not consider basing its decision on the covenant issue. It is not one of the criterion that the Planning Advisory Board/Zoning Commission Board uses to make a recommendation. Mr. Fontana stated that he would agree with Mr. Cik if the project was by right in the zoning district and there was a covenant overlay, but since it is a Conditional Use Permit, and it is not by right, the two-family residence in an R-2 property zone concerns him. From a practical standpoint, the covenant should be considered because it is not by right in the zoning code for the property. Mr. Cik responded that the criteria that are used in order to determine if Conditional Use Permits are allowed, don't take into consideration a private covenant.

Ms. Vukasin asked if she wanted to build a single-family home on the lot, if she would not have to come ask permission for anything. Mr. Eatherly replied that that is correct. She asked if the public Conditional Use process can override private covenants. Mr. Cik responded that the Conditional Use process does not override the private covenant. If the Conditional Use Permit presented today is granted, the residents would still have their own private cause of action in order to keep the project from being built. Because the particular property is zoned R-2, in order for the applicant to build the multi-family residence, a Conditional Use Permit is required in addition to addressing all of the private covenants required. Ms. Vukasin wanted to know if the board approves the CUP, would the home owners only be able to terminate the CUP through their own personal means? Mr. Cik replied that the residents would not be terminating the CUP. They would probably be filing an injunction based on the covenants for the property. There would be no action to overturn the CUP. Ms. Vukasin wanted to know if that would be the only choice. Mr. Cik responded that there would be a number of different options. Residents will also have an opportunity at City Commission to voice their concerns. Mr. Cik stated that the board is not

circumventing the covenants with these proceedings. Staff is asking the Planning Advisory Board/Zoning Commission to make a recommendation on a Conditional Use Permit that has to deal with City zoning regulations. Covenants are entirely separate and will need to be addressed separately from these proceedings.

Mr. Pankratz asked what the daily trips for a typical residence are. Mr. Eatherly stated that he did not have the information in front of him, but believed the data was about half of what the duplex was. Mr. Micuda also added that generally when you look at the traffic associated with a two unit dwelling versus a single-family home, a one unit dwelling generates 10 household traffic trips a day, and a two unit dwelling generates 20.

Mr. Pankratz also asked how long Mr. Mieyr has owned the property. Mr. Mieyr responded that it has been in his family for quite a few years. He purchased it from his mother approximately two years ago. He has been working on it for a couple years. Last year he did go visit with all of the neighbors within the 150' radius and only one couple had reservations.

Mr. Bertelsen asked if Mr. Mieyr was aware of the existing covenant. Mr. Mieyr responded that he was not aware of that until right before the meeting. Mr. Bertelsen also asked how soon the information would be available to find out if it is a valid covenant for the property. Mr. Eatherly responded that covenant should be at the Clerk and Records office at the County, so it shouldn't take too long.

Mr. Fontana asked that since the area is designed for residential homes and the covenants limit development to single family homes, how does staff conclude that the CUP does not impede the normal development of the neighborhood? Mr. Eatherly responded that when the agenda report was produced, City staff was not aware of the covenants. The staff's analysis is that it would not be injurious to the neighborhood.

PUBLIC QUESTIONS

Mr. Eatherly read questions that were given to him by a citizen in attendance at the meeting. Her name is Lila Beck, Great Falls. She asked whether there have been changes to the covenants since 1972, because when they bought their property, they were specifically told that it would be single-family residents only. Mr. Eatherly responded that he could not respond about the covenants because he has not seen them, however he did not think that they have been changed. She also asked about the lot on 18th Ave SW being in the Montana Addition. If the CUP is granted, will it affect all of the other lots in the Addition? Mr. Eatherly responded that the R-2 Zone, regardless of where it is within the City, is permitted for Single-family residences, but other duplexes could be requested. The owner of the property would have to go through the CUP process still. Ms. Beck also wrote when did the CUP become a permitting option and do other people know about it? Mr. Eatherly responded that it was included in a code change in 2005 and went through the public hearing process at that time. She also wanted to know how long the CUP remained in effect – if it was granted for this project? Mr. Eatherly responded that it will remain as long as the building is there, but there is a provision that if there is no work that occurs on the property for a year, then the CUP becomes void and the process would have to start over again. Ms. Beck also asked if the CUP was permitted in other residential areas? Mr. Eatherly responded that the R-2 and R-3 Zones allow CUP's. She did also ask if the CUP will affect current market value? Mr. Eatherly responded that he could not speak to that as he stated the Department of Revenue would have to answer that. Her last question is if new home buyers in the area will be

made aware of the exception? Mr. Eatherly responded that the City does not actively advertise what options property owners can pursue on vacant lots.

Mr. Mieyr stated that he spoke to the Department of Revenue and they stated that one duplex will not change the taxes for his property. Mr. Fontana clarified that Mrs. Beck's question about taxes was whether the proposed duplex would negatively impact surrounding property values. Mr. Mieyr said he could not speak to that question.

PROPONENTS

None

OPPONENETS

Mr. Eatherly read three emails that were received prior to the meeting. The first one was from Martin Cunningham which stated that he lives on the 18th Ave SW block and has for the past 11 years. He has enjoyed living there mainly for the quiet, the family friendly environment, and the traffic flow. He wants to voice his disapproval for a potential duplex being built on the open lot on the block. He does not believe that this location will be well suited for another duplex as there is already an apartment complex a couple hundred yards to the east. The traffic flow has already gotten busier in the last couple of years, and by adding a duplex it will easily double the traffic flow and create congestion for parking. He asks that the board please consider denial of the request.

The second correspondence that was received was from Daniel B. Levine. He stated that he resides at 1133 21st Ave SW, in the Montana Addition. He stated that he is a co-owner of a single family residence in the Montana Addition. As such he is well aware (and if he was not, he would be legally charged with constructive notice) of the fact that property within the Montana Addition is subject to a Declaration of Covenants, running with the land, enforceable by each and every lot owner, providing "that no building whatsoever except a single-family private residence and a garage for automobiles of the occupants of such residence shall be constructed, placed, or permitted" thereon. The covenants are recorded in the Office of the Clerk and Recorder of Cascade County, Montana. As stated in the document, recorded on October 13, 1959, in Book 10, Pages 591-592, they run with the land and they are enforceable by any lot owner. He is not aware of any law or legal theory that would allow the City of Great Falls to ostensibly set aside these covenants for the benefits of any lot owner. As a tax-paying citizen of the City of Great Falls, he is concerned about potential City liability for any claim of detrimental reliance that could arise from a property owner acting under the potentially mistaken belief that the City had approved, as a matter of right, the violation of an enforceable restrictive covenant. It is therefore his final comment that it seems to him that the City should fully consider the effects of the restrictive covenants for the Montana Addition before proceedings, to make any decision on the matter.

Lastly, Mr. Eatherly read an email from Mark and Kara Haakenson that stated that their family lives on 18th Avenue SW, just down the street from the vacant lot. They purchased their home there, due to the quiet and family orientated neighborhood surrounding their home. They have lived there for 10 years and are thankful for a community that is committed to each other as neighbors. The proposed usage of the empty lot for a duplex does not support their vision as a neighborhood. The duplex proposal would add extra traffic. They are already faced with the

challenge of being the thoroughfare for the apartments, the hotels and the daycare over to Marketplace and the children being at risk with vehicles traveling much too fast down the street. They do not want extra cars parking on the street and folks coming and going who are not personally vested in their home in the neighborhood. They request that the board deny the request to allow the duplex.

Randy Dempsey, 1109 18th Ave SW, has resided there for 12 years, and is opposed to the project. He is concerned about parking, traffic and property values. He stated that over the past 12 years that he has lived there, there has been an age shift to people with young children. There has been a lot of renovations to reinvigorate the neighborhood. He would not oppose a single-family residence being built. He feels the sole beneficiary of the project, would just be the owner of the property.

Shaun Hammett, 1132 18th Ave SW, stated that the Fox Hollow apartments were built as an upscale apartment complex, and have clearly lost their way. He fears that the property proposed for the duplex would deteriorate in a few years, because nobody would have a vested interest in it. He moved to the area, with the expectation that there would only be single-family residences. There are other vacant lots in the area, and he is concerned that if this project goes through, then it will set a precedence for other people to build more duplexes.

Pete Pace, 1112 18th Ave SW, thinks that this is too much building for the lot. Meadowlark School is overtaxed in terms of enrollment and adding a duplex would increase that. There is a lot of traffic with the Heritage Inn, the thoroughfare to Marketplace and the Fox Hollow Apartments. The covenants should take precedence. There are no alleys in the neighborhood and if you have a duplex, you should have access in the front and the back.

Charity Yonker, 1113 18th Ave SW, noted that she is the Cascade County Planning Director and a lawyer, but is here today as a neighbor. She stated that the requested duplex would increase the intensity of the use by 100 percent over what is permitted for the lot. If there was a fire, the damage would double – two units, not just one. She reiterated that the parking and traffic are already a problem, and adding a duplex will double what would normally be allowed. The proposed project is not in character with the neighborhood. This is not a vacant lot in a buffer area near other zoning districts. This is in the middle of a single-family zone. The proposed driveway will be much larger than other driveways. The duplex is also unlike the surrounding houses in terms of design. The other homes have split-level designs. She stated that there is also an adverse effect on adjacent properties in terms of storm water drainage. Because a greater portion of the lot is needed for the duplex and driveway, there is no place for storm water to be absorbed. She did not think that when she purchased her property last year that she would have to worry about a duplex being built next door. The covenants that are filed with the Clerk and Records office should be reliable. The properties adjacent to the proposed project will be harder to sell. She stated that transitory residents bring an increase in crime. If this project is allowed than the precedence is set for more to come. She recommends that the board deny the project.

Michael Worthington, 1113 18th Ave SW, stated that he bought his property a year ago and what he looked for was the neighborhood. He is opposed to the duplex and the transient residences moving in and out.

BOARD DISCUSSION AND ACTION

MOTION: That the Zoning Commission recommend the City Commission deny the Conditional Use Permit to allow a two-family residence land use located at 1115 18th Ave SW, subject to the Conditions of Approval being fulfilled by the applicant.

Made by: Ms. Vukasin
Second: Ms. Buschmeyer

Chair Fontana asked Mr. Cik if there would need to be Alternative Findings of Fact presented if the motion is approved. Mr. Raymond responded that the board would need to establish Findings of Fact in conclusion to support the recommended motion. Mr. Cik also responded that there would need to be a submission of Findings of Facts based on the decision that the board makes. Mr. Fontana stated that the Findings of Facts that he sees are that private restrictions do not disallow the body from considering the Conditional Use Permit, but from a practical standpoint, in some of the testimony that has been presented, he thinks that there is sufficient evidence that the private restriction exists to preserve the single-family character of the neighborhood and that is what the covenants were set up for.

Mr. Bertelsen agreed with Mr. Fontana. He stated that the information about the covenants was just received by the City staff, so it is a new fact that to consider. Mr. Pankratz asked if any other Conditional Use Permits have been approved within the Montana Addition and if there are any other duplexes within the Montana Addition. Mr. Micuda responded that within the last 4 years that he has been with the City, there have not been any Conditional Use Permits issued in the Montana Addition. He did also research through the GIS and did only see single-family residences on the nearby lots. Mr. Micuda addressed the board members and let them know that when new information comes to fruition based on public testimony, and the board does think about changing the recommendation to the City Commission, he advises to keep the new Findings of Fact simple. He stated that in this particular case, that any change in one of the criteria would be sufficient for the board to justify its denial recommendation. Criterion #3 is the most applicable, based on the fact that there were a number of residents who testified to potentially adverse effects.

Mr. Mills stated that based on what was presented and not knowing what all of the covenants are that it would be hard to approve. Ms. Buschmeyer stated that there is more negative than positive. Ms. Shinaberger stated that she agreed with all of the other board members and knows that traffic is a major issue in the area.

Mr. Fontana stated that at the recommendation of the legal counsel and the Deputy Planning Director, that the CUP is not consistent with Criteria #3 and #4. It would diminish and impair the nature of the neighborhood and impede the normal and orderly development of the neighborhood. These would be the Findings of Facts for denial.

VOTE: All in favor, the motion carried

Chair Fontana asked what the next step will be and Mr. Micuda responded that the staff will discuss with the applicant what the denial outcome means. He will still have the option to take it to the City Commission, with the denial recommendation, to seek a different outcome or he could potentially decide to not move forward with the request. There will still need to be some kind of

action at the City Commission if he decides not to move forward. It is the applicant's decision to move forward or not.

COMMUNICATIONS

Mr. Micuda did let the board know that there will be an agenda item for the September 22, 2020 meeting. It is for Phase 5 of the Upper and Lower River Road Sewer and Water district for annexation of lots.

PUBLIC COMMENT

None.

ADJOURNMENT

There being no further business, Chair Fontana adjourned the meeting at 4:25 p.m.

CHAIRMAN

SECRETARY



Meeting Date: 09/22/2020

**CITY OF GREAT FALLS
PLANNING ADVISORY BOARD / ZONING COMMISSION AGENDA REPORT**

- Item:** Public Hearing – Annexation of Tract 1 and Remainder Tract 1-A of Certificate of Survey No. 4120, located in the SE ¼ of Section 14, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana and the adjoining right-of-way of Upper River Road from the south property line of Tract 1 to the existing City limits line to the north; and establishment of R-2 Single-family Medium Density.
- Initiated By:** Mike and Sheila Staigmiller, and Mark and Mary Staigmiller
- Presented By:** Lonnie Hill, Planner I, Planning and Community Development
- Action Requested:** Recommendation to the City Commission.

Public Hearing:

1. Chairman of the Board conducts public hearing, pursuant to OCCGF 1.2.050 and Title 17, Chapter 16, Article 6.
2. Chairman of the Board closes public hearing and asks the will of the Board.

Suggested Motion:

Board Member moves:

- I. “I move that the Planning Advisory Board recommend the City Commission (approve/deny) the Annexation of Tract 1 and Remainder Tract 1-A of Certificate of Survey No. 4120 and the adjoining right-of-way of Upper River Road from the south property line of Tract 1 to the existing City limits line to the north as legally described in the Staff Report, and the accompanying Findings of Fact, subject to the Conditions of Approval being fulfilled by the applicants.”

Chairman calls for a second, board discussion, and calls for the vote.

And;

- II. “I move that the Planning Advisory Board recommend the City Commission (approve/deny) the establishment of R-2 Single-family Medium Density zoning for Tract 1 and Remainder Tract 1-A of Certificate of Survey No. 4120 as legally described in the Staff Report, and the accompanying Findings of Fact, subject to the Conditions of Approval being fulfilled by the applicants.”

Chairman calls for a second, board discussion, and calls for the vote.

Summary:

The owners of the properties legally described above and addressed as 2001, 2003, and 2005 Upper River Road submitted an application on July 24th to annex their properties into the City for the purpose of connecting to City water and sewer utilities. There is one existing residence addressed 2001 Upper River Road on Remainder Tract 1-A, and two existing residences on Tract 1 addressed 2003 and 2005 Upper River Road. The applicants have requested R-2 Single-family Medium Density for both properties.

These properties are part of the Upper/Lower River Road Water and Sewer District (ULRRWSD) 5. The Service Districts were created to improve water quality, resolve public health issues, remove sources of groundwater contamination in the area, and improve the tax base of the community. Previously, Service Districts 1, 2, most of 3, and 4 were annexed into the City. District 5 is next in line to be annexed at an undetermined date. The City has not received enough petitions to move forward with a district annexation. Instead, individual properties have petitioned for annexation on an individual basis.

Public Notice for the Planning Advisory Board/Zoning Commission Public Hearing was published in the *Great Falls Tribune* on September 6th, 2020, and a notice was sent in the mail to neighbors within 150 feet of the subject property.

Background:**Annexation Request:**

The annexation request is for two properties; Tract 1, which consists of approximately 0.77 acres and Remainder Tract 1-A, which consist of approximately 0.46 acres. Both are contiguous to the existing City limits on the west side via the western half of Upper River Road right-of-way. The adjacent eastern half of Upper River Road right-of-way will be annexed as part of the request, including a small portion of right-of-way just north of the subject properties extending north to the current City limit boundary.

Water and sewer mains were extended to the subject properties as part of the ULRRWSD projects with the intention of each property connecting to these services as they annex. Water and sewer stub outs were constructed to the property line of the subject properties at the time of the construction of the mains. The applicants will connect to these stub outs for water and sewer service for each residence.

The basis for decision for an annexation by petition request is listed in OCCGF § 17.16.7.050. The recommendation of the Planning Advisory Board and the decision of the City Commission shall at a minimum consider the criteria which are attached as *Findings of Fact/Basis of Decision – Annexation by Petition*.

Establishment of Zoning Request:

Both Tract 1 and Remainder Tract 1-A are being proposed for R-2 Single-family Medium Density zoning. The R-2 zoning district aligns with the existing use of a single-family residence for Remainder Tract 1-A. Tract 1 currently has two separate single-family homes, which is classified as a two-family residence in the zoning code and is permitted as a conditional use in the proposed R-2 zoning district. Existing non-conforming uses within the ULRRWSD's have been allowed to continue when annexed into the City. Moving forward, the subject properties shall be consistent with OCCGF Title 17, Chapter 64, *Nonconformities*.

The basis for decision on zoning map amendments is listed in Official Code of the City of Great Falls (OCCGF) § 17.16.40.030 of the Land Development Code. The recommendation of the Zoning

Commission and the decision of City Commission shall at a minimum consider the criteria which are attached as Findings of Fact/Basis of Decision – Zoning Map Amendment.

Neighborhood Council Input:

The subject properties are located adjacent to Neighborhood Council #6. Due to timing of scheduled meetings, the applicant will present the project to the Council on October 7th after the Public Hearing at the Planning Advisory Board/Zoning Commission, but before the Public Hearing at the City Commission. Project information was provided to the Council Members via email.

Concurrences:

Representatives from the City’s Public Works and Legal Department, have been involved throughout the review and approval process for this project, and will continue to participate throughout the permit approval process. Both Engineering and Environmental Divisions of Public Works and the Legal Department have collaborated on the submitted Annexation Agreement.

Fiscal Impact:

Water and Sewer service will be provided by the City, and the cost of the connection improvements will be borne by the applicant per the agreed upon terms of the attached Annexation Agreement. The annexation will add 2 lots within the city which will increase the City’s tax base and increase revenue.

Staff Recommendation:

Staff recommends approval of the annexation of Tract 1 and Remainder Tract 1-A of Certificate of Survey No. 4120 and adjoining right-of-way of Upper River Road from the south property line of Tract 1 to the existing City limits line to the north, and assignment of R-2 zoning with conditions.

Conditions of Approval for Annexation and Establishment of Zoning:

1. **General Code Compliance.** Any future development of the properties shall be 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. **Annexation Agreement.** The applicants shall abide by the terms and conditions as well as pay all fees specified in the attached Annexation Agreement for the Subject Properties. The Annexation Agreement must be signed by the applicant and recorded at the Cascade County Clerk and Recorder.
3. **Land Use & Zoning.** Development of the properties shall be consistent with the allowed uses and specific development standards of the R-2 Single-family Medium Density zoning district.

Alternatives:

The Planning Advisory Board/Zoning Commission could recommend denial of the annexation and zoning map amendment request. For these actions, the Planning Advisory Board/Zoning Commission must provide separate Findings of Fact/Basis of Decision for denial of the annexation and establishment of zoning.

Attachments/Exhibits:

- Aerial Map
- Zoning Map
- Proposed Zoning Map
- Project Narrative
- Findings Of Fact/Basis of Decision – Annexation
- Findings Of Fact/Basis of Decision – Zoning Map Amendment
- Allowable Uses by District for R-2
- Lot Area and Dimensional Standards for R-2
- Draft Annexation Agreement for Tract 1
- Draft Annexation Agreement for Remainder Tract 1-A

Aerial Map



Subject Properties

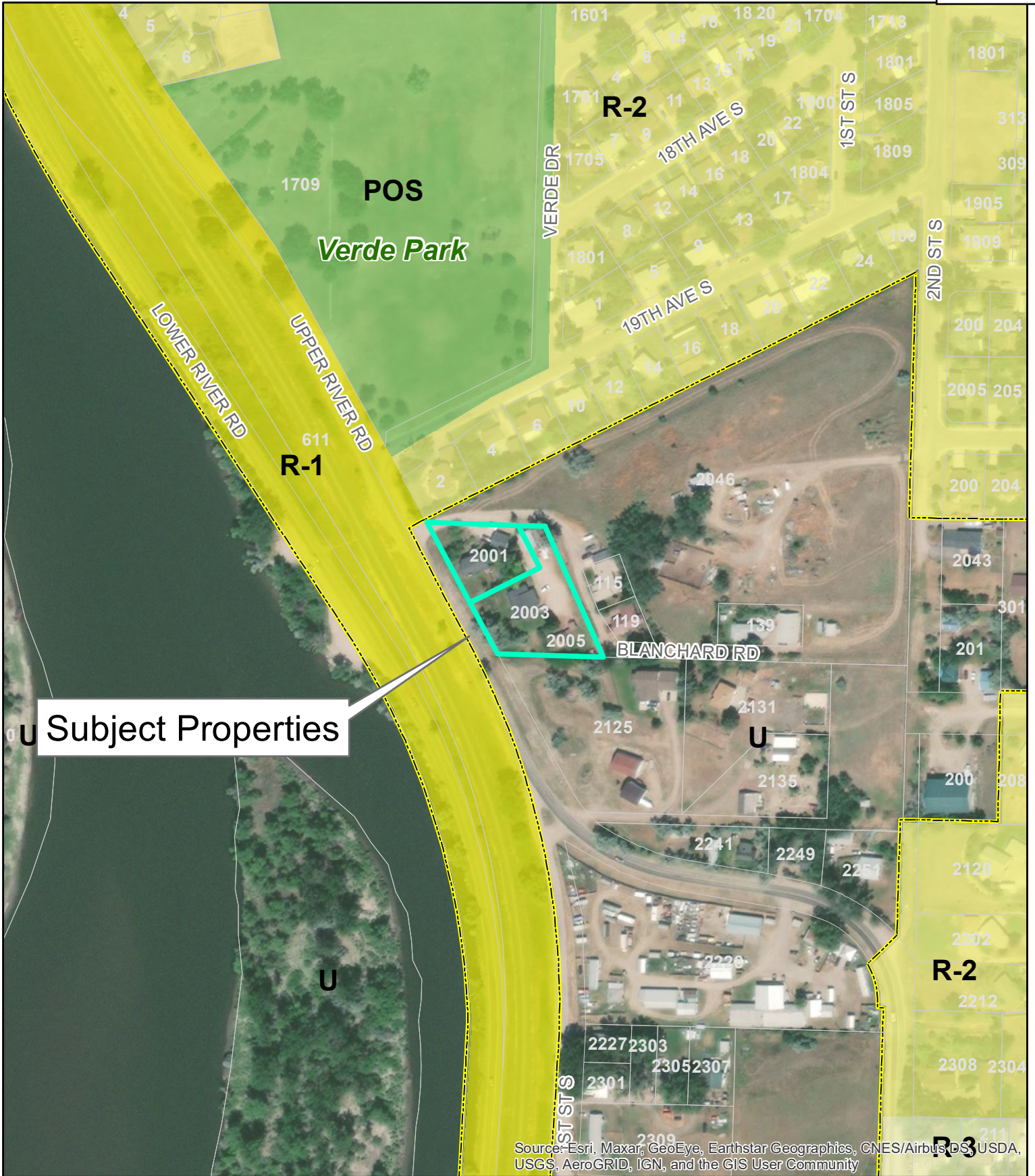
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

- Parcels
- City Limits

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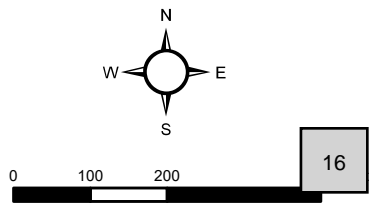
Zoning Map



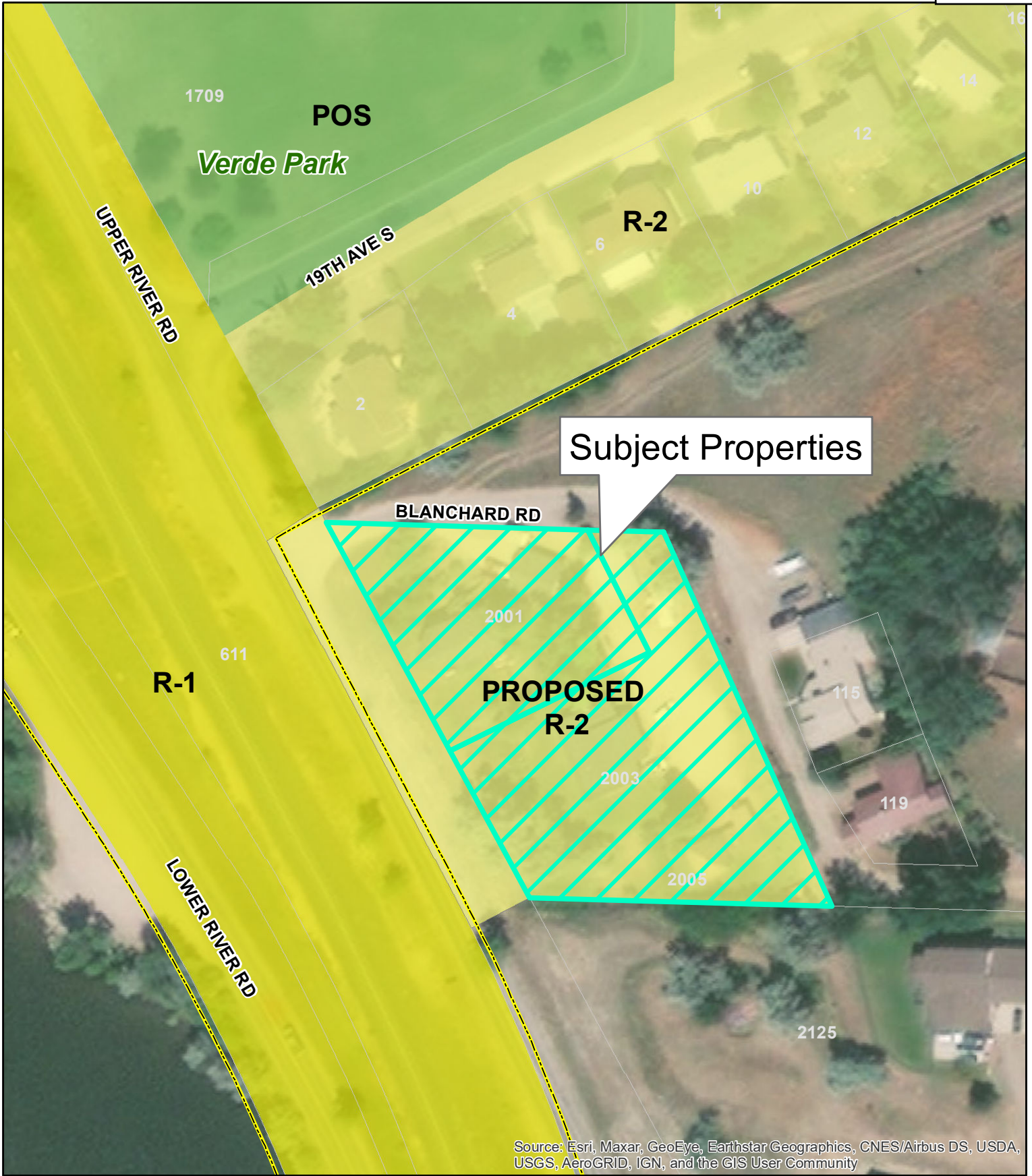
Subject Properties

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community


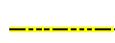
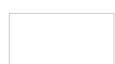



- R-1 Single-family Suburban
- R-2 Single-family Medium Density
- R-3 Single-family High Density
- POS Parks and Open Space
- Parcels
- City Limits

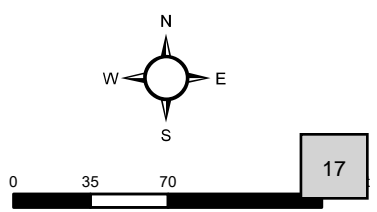


Proposed Zoning Map



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

-  Subject Properties
-  City Limits
-  Parcels
-  R-1 Single-family Suburban
-  R-2 Single-family Medium Density
-  POS Parks and Open Space



A north arrow is located in the bottom right corner, pointing North (N), South (S), East (E), and West (W). Below it is a scale bar with markings at 0, 35, and 70 units.

To: City of Great Falls Planning and Community Development

From: Mark and Mary Staigmiller

2003 & 2005 Upper River Road

Great Falls, MT 59405

(406) 788-9703 Mark (406) 788-5872 Mary Staigmiller Email: marksmaryr@msn.com

Mike and Sheila Staigmiller

2001 Upper River Road

Great Falls, MT 59405

(406) 868-7475 Mike (406) 231-3727 Sheila

RE: Request to Annex to the City of Great Falls (R2 Zoning) for physical addresses:

2001 Upper River Road

2003 Upper River Road

2005 Upper River Road

To City Planners:

We are requesting annexation of the above listed properties to the city of Great Falls. We would like to annex so that we may connect to city water and sewer. We would like our zoning to be "R2" if we were allowed to annex.

Thank you for your time and consideration in this matter. We look forward to hearing from you and moving forward with this project.

Sincerely,



Mark and Mary Staigmiller

Mike and Sheila Staigmiller

FINDINGS OF FACT/BASIS OF DECISION – ANNEXATION

Tract 1 and Remainder Tract 1-A of Certificate of Survey No. 4120, located in the SE ¼ of Section 14, T20N, R3E, PMM, Cascade County, Montana and the adjoining right-of-way of Upper River Road from the south property line of Tract 1 to the existing City limits line to the north.

PRIMARY REVIEW CRITERIA:

The basis for decision on annexation is listed in the Official Code of the City of Great Falls § 17.16.7.050 of the Land Development Code. The recommendation of the Planning Advisory Board and the decision of the City Commission shall at a minimum consider the following criteria:

1. The subject property is contiguous to the existing City limits.

The subject properties are contiguous to the existing City limits, with Upper River Road to the west.

2. The proposed annexation is consistent with the City's growth policy.

The proposed annexation is consistent with the overall intent and purpose of the 2013 City Growth Policy Update. This project is supported by the following Social and Physical portions of the Growth Policy:

- Social Policy 1.4.12 – When annexing land for residential development, consider the timing, phasing and connectivity of housing and infrastructure development.
- Physical Policy 4.2.5 – Promote orderly development and the rational extension of infrastructure and City services.
- Physical Policy 4.3.11 – Consider the following annexation incentives for water and sewer hook-ups so as to lessen the cost of improvements - Assistance through grant monies.

3. The proposed annexation is consistent with applicable neighborhood plans, if any.

The subject properties are located adjacent to Neighborhood Council #6. There is no adopted neighborhood plan for Neighborhood Council #6, or any other Council within the City. Neighborhood Council #6 will not meet until Wednesday, October 7th. The application materials have been provided to Council Members via email. The applicant intends to present to the Council at the October meeting.

4. The proposed annexation is consistent with other planning documents adopted by the City Commission, including a river corridor plan, transportation plan, and sub-area plans.

The subject properties are not located within any adopted plan or sub-area planning areas. The proposed annexation consists of existing residential homes and will not generate any additional traffic. As noted in the staff report, the subject properties are located within Upper/Lower River Road Water and Sewer District (ULRRWSD) 5. Previously, Service Districts 1, 2, most of 3, and 4 were annexed into the City. District 5 is next in line to be annexed at an undetermined date. The ULRRWSD's were created to improve water quality, resolve public health issues, remove sources of groundwater contamination, and improve the tax base of the community.

5. The City has, or will have, the capacity to provide public services to the subject property.

Water and sewer mains were extended to the subject properties as part of the ULRRWSD project with the intention of providing these public services to properties within each Service District. Although the

streets in this area of the community are substandard, the impact of two residential lots on City services is minimal.

6. The subject property has been or will be improved to City standards.

Any future improvements to the subject properties will comply with current City code requirements. As noted above, the applicant will not be required to bring the portion of the right-of-way, including the street and boulevard, up to city standards as part of the annexation.

7. The owner(s) of the subject property will bear all of the cost of improving the property to City standards and or/ the owner(s) has signed an agreement waiving the right of protest to the creation of a special improvement district created to pay, in whole or in part, any necessary improvement.

An Annexation Agreement for the subject properties has been drafted and attached to the Agenda Report. This agreement outlines the responsibilities and costs for various improvements, and addresses the creation of any special improvement districts.

8. The subject property has been or will be surveyed and officially recorded with the County Clerk and Recorder.

Tract 1 and Remainder Tract 1-A were created with a family conveyance as part of Certificate of Survey No. 4120. The original parcel, Tract A, was created as part of Blanchard Tracts subdivision, which was filed in 1954.

9. The City will provide both water and sewer service to each of the uses in the subject property that may require potable water and waste water treatment and disposal.

Water and sewer mains were extended to the subject properties as part of the ULRRWSD project. The subject properties will connect to these mains for City water and sewer service.

10. The subject property is not located in an area the City Commission has designated as unsuitable for annexation.

The subject properties are not located in an area the City Commission has designated as unsuitable for annexation.

11. The subject property is not located in another city or town. (See: 7-2-4608 (1), MCA)

The subject properties are not located in another city or town.

12. The subject property is not used in whole or in part for agriculture, mining, smelting, refining, transportation, or any other industrial or manufacturing purpose or any purpose incidental thereto. (See: 7-2-4608 (2), MCA)

The subject properties are not used for the uses listed above. The properties surrounding the subject properties are existing residences.

FINDINGS OF FACT – ZONING MAP AMENDMENT

Tract 1 and Remainder Tract 1-A of Certificate of Survey No. 4120, located in the SE ¼ of Section 14, T20N, R3E, PMM, Cascade County, Montana and the adjoining right-of-way of Upper River Road from the south property line of Tract 1 to the existing City limits line to the north.

PRIMARY REVIEW CRITERIA:

The basis for decision on zoning map amendments is listed in Official Code of the City of Great Falls (OCCGF) § 17.16.40.030 of the Land Development Code. The recommendation of the Zoning Commission and the decision of City Commission 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 proposal to annex and establish R-2 Single-family medium density zoning is consistent with the overall intent and purpose of the 2013 City Growth Policy Update. The proposed zoning map amendment specifically supports the following goals and policies:

- Social Policy 1.4.2 – Expand the supply of residential opportunities including single family homes, apartments, manufactured homes, and assisted living facilities.
- Physical Policy 4.2.5 – Promote orderly development and the rational extension of infrastructure and City services.

2. The amendment is consistent with and furthers adopted neighborhood plans, if any.

The subject properties are located adjacent to Neighborhood Council #6. There is no adopted neighborhood plan for Neighborhood Council #6, or any other Council within the City. Neighborhood Council #6 will not meet until Wednesday, October 7th. The application materials have been provided to Council Members via email. The applicant intends to present to the Council at the October meeting.

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 subject properties are not located within any adopted plan or sub-area planning areas. The proposed lots to be zoned R-2 consist of existing residential homes and will not generate any additional traffic. As noted in the staff report, the subject properties are located within Upper and Lower River Road Water and Sewer District (ULRRWSD) 5. Previously, Service Districts 1, 2, most of 3, and 4 were annexed into the City. District 5 is the next in line to be annexed at an undetermined date. The ULRRWSD's were created to improve water quality, resolve public health issues, remove sources of groundwater contamination, and improve the tax base of the community.

4. The code with the amendment is internally consistent.

The proposed establishment of R-2 zoning is not in conflict with any portion of the existing City Code and will be consistent with the adjacent existing zoning of Prospect Heights 2nd Addition to the north. The existing single-family home of Tract 1-A will fit the context of the surrounding area based on the surrounding single family homes adjacent to the property. Tract 1 currently has two separate single-family homes, which is classified as a two-family residence in the zoning code and is permitted as a conditional use in the proposed R-2 zoning district. This and other existing non-conforming uses within the ULRRWSD's have been allowed to continue when annexed into the City. Moving forward, the subject properties shall be consistent with OCCGF Title 17 Chapter 64, *Nonconformities*. The proposal will not be injurious to the use and enjoyment of other property in the immediate vicinity.

5. The amendment is the least restrictive approach to address issues of public health, safety, and welfare.

There are no existing public health, safety, or welfare issues that have been identified for these properties. The zoning assignment will have no impact on these issues.

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 if it is approved.

Exhibit 20-1. Principal Uses by District

Use	R-2	Special Standards
Agriculture, horticulture, nursery	-	17.20.6.005
Mobile home/park	-	17.20.6.010
Residence, single-family detached	P	
Residence, zero lot line	-	17.20.6.020
Residence, two-family	C	
Residence, multi-family	-	17.20.6.040
Residence, townhouse	C	17.20.6.050
Residence, manufactured/factory-built	P	17.20.6.060
Retirement home	C	
Community residential facility, type I	P	
Community residential facility, type II	C	
Day care center	C	
Emergency shelter	-	
Family day care home	P	
Group day care home	P	
Nursing home	-	
Campground	-	17.20.6.070
Hotel/motel	-	
Micro-brewery	-	
Restaurant	-	

Tavern	-	17.20.6.080
Agriculture sales	-	
Auction sales	-	
Construction materials sales	-	
Convenience sales	-	
General sales	-	
Manufactured housing sales	-	
Off-site liquor sales	-	
Secondhand sales	-	
Shopping center	-	
Administrative services	-	
Commercial kennel	-	17.20.6.090
Financial services	-	
Funeral home	-	
General services	-	
Professional services	-	
Sexually-oriented business	-	17.20.6.100
Veterinary clinic, large animal	-	
Veterinary clinic, small animal	-	17.20.6.110
Large equipment rental	-	
Small equipment rental	-	
General repair	-	
Vehicle fuel sales	-	

Vehicle repair	-	17.20.6.120
Vehicle sales and rental	-	
Vehicle services	-	
Agricultural commodity storage facility	-	
Climate controlled indoor storage	-	
Fuel tank farm	-	
Mini-storage facility	-	17.20.6.130
Freight terminal	-	
Warehouse	-	
Casino, type I	-	17.20.6.140
Casino, type II	-	17.20.6.150
Indoor entertainment	-	
Indoor sports and recreation	-	
Golf course/driving range	C	
Miniature golf	-	
Outdoor entertainment	-	
Park	P	
Recreational trail	P	
Administrative governmental center	-	
Animal shelter	-	17.20.6.160
Cemetery	C	17.20.6.170
Civic use facility	C	
Community center	C	

Community cultural facility	C	
Community garden	P	17.20.6.175
Public safety facility	C	
Worship facility	C	17.20.6.180
Health care clinic	-	
Health care facility	-	
Health care sales and services	-	
Commercial education facility	-	
Educational facility (K–12)	C	17.20.6.200
Educational facility (higher education)	-	
Instructional facility	-	
Composting facility	-	17.20.6.210
Recycling center	-	17.20.6.220
Solid waste transfer station	-	17.20.6.230
Amateur radio station	P	17.20.6.240
Telecommunication facility		17.20.6.250
Concealed facility	C	
Unconcealed facility	-	
Co-located facility	-	
Utility installation	C	
Airport	-	
Bus transit terminal	-	
Heli-pad	-	17.20.6.260

Parking lot, principal use	-	
Parking structure	-	
Railroad yard	-	
Taxi cab dispatch terminal	-	
Contractor yard, type I	-	17.20.6.270
Contractor yard, type II	-	17.20.6.280
Artisan shop	-	
Industrial, heavy	-	
Industrial, light	-	
Industrial park	-	
Junkyard	-	17.20.6.290
Light manufacturing and assembly	-	17.20.6.300
Motor vehicle graveyard	-	17.20.6.310
Motor vehicle wrecking facility	-	17.20.6.320

- The use is not permitted in the district

C The use is allowed through the conditional use process

P The use is permitted in the district by right, consistent with the development standards contained in Article 6 of this chapter, as appropriate

(Ord. No. 3056, § 1, 8-17-2010; Ord. No. 3068, § 2, 4-5-2011; Ord. No. 3087, § 1(Exh. A), 6-19-2012, eff. 7-19-2012; Ord. 3166, 2017)

Exhibit 20-2. Accessory uses by district

Use	R-2	Special Standards
Accessory living space	P	17.20.7.010
Agriculture, livestock	-	17.20.7.080
ATM, exterior	-	17.20.7.020
Bed and breakfast	C	17.20.7.030
Fences	P	17.20.7.040
Gaming, accessory	-	17.20.7.050
Garage, private	P	17.20.7.060
Home occupation	P	17.20.7.070
Private stable/barn	-	17.20.7.080
Residence, accessory	-	17.20.7.085
Roadside farmer's market	-	17.20.7.090
Storage containers	-	17.20.7.100
Wind-powered electricity systems	P	17.20.7.110

- The use is not permitted in the district

C The use is allowed in the district through the conditional use process

P The use is permitted in the district by right, consistent with the development standards contained in Article 7 of this chapter, as appropriate

(Ord. No. 3034, § 1, 7-21-2009; Ord. No. 3056, § 1, 8-17-2010; Ord. No. 3087, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)

Exhibit 20-3. Temporary uses by district (see 17.20.8.010 for Special Standards)

Use	R-2	Special Standards
Garage sales	P	17.20.8.015
Itinerant outdoor sales	-	17.20.8.020
On-site construction office	P	17.20.8.030
On-site real estate sales office	P	17.20.8.040
Outdoor entertainment, temporary	-	
Sidewalk café	-	17.20.8.050
Sidewalk food vendor	-	17.20.8.060

- The use is not permitted in the district

C The use is allowed in the district through the conditional use process

P The use is permitted in the district by right, consistent with the development standards contained in Article 8 of this chapter, as appropriate

**Exhibit 20-4. Development standards for residential zoning districts
(see footnotes [4], [5] & [7] for general standards)**

Standard	R-1	R-2	R-3	R-5	R-6	R-9	R-10
Residential density	-	-	-	1,875 sq. feet of lot area per dwelling unit	500 sq. feet of lot area per dwelling unit	1,200 sq. feet of lot area per dwelling unit	10 dwelling units per acre
Minimum lot size for newly created lots	15,000 sq. feet	11,000 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	n/a
Minimum lot width for newly created lots	90 feet	80 feet	60 feet	50 feet	50 feet	50 feet	n/a
Lot proportion for newly created lots (maximum depth to width)	3:1	3:1	2.5:1	2.5:1	2.5:1	2.5:1	n/a
Maximum building height of principal building	35 feet	35 feet	35 feet	45 feet	65 feet	35 feet, single-family 50 feet, multi-family	12 feet to exterior wall
Maximum building height of detached private garage [1]	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	16 feet

Maximum building height of other accessory buildings	12 feet	12 feet	12 feet	12 feet	12 feet	12 feet	12 feet
Minimum front yard setback [2]	30 feet	20 feet	20 feet	10 feet	15 feet	10 feet	n/a
Minimum side yard setback [3]	Principal building: 15 feet each side; accessory building: 2 feet each side provided the front of the building is at least 50 feet from the front lot line	Principal building: 8 feet each side; accessory building: 2 feet each side provided the front of the building is at least 40 feet from the front lot line	Principal building: 6 feet each side; accessory building: 2 feet provided the front of the building is at least 40 feet from the front lot line	4 feet; 8 feet if adjoining a R-1, R-2, R-3 district	5 feet; 10 feet if adjoining a R-1, R-2, R-3 district	Principal building: 6 feet each side; accessory building: 2 feet each side provided the front of the building is at least 40 feet from the front lot line	n/a
Minimum rear yard setback [7]	20 feet for lots less than 150 feet in depth; 25 feet for lots 150 feet in depth and over	15 feet for lots less than 150 feet in depth; 20 feet for lots 150 feet in depth and over	10 feet for lots less than 150 feet in depth; 15 feet for lots 150 feet in depth and over	10 feet for lots less than 150 feet in depth; 15 feet for lots 150 feet in depth and over	15 feet	10 feet for lots less than 150 feet in depth; 15 feet for lots 150 feet in depth and over	n/a
Maximum lot coverage of principal and accessory buildings	Corner lot: 40% Other types: 30%	Corner lot: 45% Other types: 35%	Corner lot: 55% Other types: 50%	Corner lot: 60% Other types: 50%	Corner lot: 70% Other types: 60%	Corner lot: 70% Other types: 60%	none

[1] Attached private garages are considered a part of the principal building for application of height and setback development standards.

[2] An unenclosed front porch on a single family residence may extend into the front yard setback up to nine (9) feet, provided the porch does not occupy more than sixty (60) percent of the length of the main part of the house.

(Ord. 2950, 2007)

[3] See Section 17.20.6.020 for side yard requirements for zero lot-line projects and Section 17.20.7.010 for accessory buildings with accessory living spaces.

[4] Smaller lots and reduced setbacks and frontages may be accomplished through a Planned Unit Development (PUD).

[5] An existing structure that does not meet the setback requirements stated above can be rebuilt on its original foundation or the original foundation location.

[6] For townhouses, see Section 17.20.6.050 for additional and superseding requirements.

(Ord. 2950, 2007)

[7] Permitted accessory structures and buildings shall have a minimum rear setback of 2 feet in all residential zoning districts.

(Ord. 2950, 2007)

ANNEXATION AGREEMENT

TRACT OF LAND LEGALLY DESCRIBED AS REMAINDER TRACT 1-A OF COS 4120, LOCATED IN SECTION 14, TOWNSHIP 20 NORTH, RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA.

The following is a binding Agreement dated this _____ day of _____, 2020, between Michael J and Sheila A Staigmilller, 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 annexation of a tract of land into the corporate limits of the City legally described as Remainder Tract 1-A of COS 4120 located in Section 14, Township 20 North, Range 3 East, P.M.M., City of Great Falls, Cascade County, Montana, hereinafter referred to as "Subject Property". Owners of the aforementioned Subject Property agree to, and are bound by, the provisions of this Agreement, and by signing this Agreement, therefore agree to terms applicable to the Subject Property. The City is authorized to enter into this Agreement by §17.68.010-040 of the Official Code of the City of Great Falls (OCCGF).

1. Purpose. The purpose of this Agreement is to ensure that certain improvements are made and certain conditions are fulfilled by the Owners, as required by the City's approval of the supporting documents. Generally, this Agreement:

1.1 Declares that the Owners are aware of and has properly accounted for any natural conditions that may adversely affect the Subject Property;

1.2 Insulates the Owners of the Subject Property from the impact of changes in the City's zoning regulations, provided that no substantial changes are proposed;

1.3 Requires the Owners to guarantee that the promised on-site improvements are made in a timely manner by as required by the Official Code of the City of Great Falls (OCCGF);

1.4 Waives protest by the Owners and their successors against the creation of special improvement districts that would provide and maintain necessary infrastructure;

1.5 Indemnifies the City from challenges to its approval of the Subject Property and holds it harmless from errors and omissions in the approval and oversight of the project.

2. Supporting Documents. Each of the following supporting documents are to be submitted for review and approval by the City.

2.1 Legal Documentation. Legal documents, including but not limited to any easements, covenants, and restrictions establishing the authority and responsibilities of Owners, which may be recorded in the Clerk and Recorder's Office of Cascade County, Montana.

3. Changes. The Owners understand that failure to install required improvements in accord with the final construction plans is a breach of, and may void, this Agreement. The Owner also understands that such failure is a violation of the OCCGF, subject to the penalties provided for such violations. The City recognizes, however, that minor changes are often necessary as construction proceeds and the Administrator (the Administrator is the person or persons charged by the City Manager with the

administration of this improvement agreement) is hereby authorized to allow minor changes to approved improvements, as provided below:

3.1 Minor Changes. Minor changes to the improvements that are deemed appropriate and necessary by the Administrator and which do not materially affect the hereinabove mentioned Subject Property, can be made as follows:

3.1.1 Before making changes, the Owners must submit revisions to the Administrator for review. Failure to do this before the proposed change is made may be considered by the City to be a breach of this Agreement and a violation of the OCCGF. The Administrator shall respond to all proposed changes within fourteen (14) days of receipt of the revised plans.

3.1.2 Based on a review of the revisions, the Administrator may permit minor dimensional changes provided they do not result in a violation of the conditions of approval for the annexation Subject Properties or the OCCGF.

3.1.3 Minor changes in the location and specifications of the required improvements may be permitted by the Administrator. Owners must submit revised plans showing such changes to the Administrator. Revised plans are not accepted until approved by the Administrator.

3.2 Substantial Changes. Substantial changes are not permitted by this Agreement. A review and permitting process will be required for such changes. "Substantial Change" versus "Minor Change" is described as follows in order to further clarify what may be permitted as a "Minor Change":

3.2.1 A substantial change adds one or more lots; changes the permitted use; changes the location or extent of the area proposed to be cleared, graded, or otherwise disturbed by more than 4,000 square feet (a smaller change in the area that will be cleared, graded, or otherwise disturbed may be treated as a minor dimensional change); changes the location, extent, or design of any required public improvement, except where a minor change is approved by the Administrator; changes the approved number of buildings, structures or units; or the size of any building or structure by more than 10%. A smaller change in the size of a lot, building, or structure may be treated as a minor dimensional change.

4. Fees. The Owners understand that it is required to pay the following fees as they come due. The absence of any fee from this Agreement which is lawfully charged by the City in connection with construction activity associated with Subject Properties shall not constitute a waiver by the City.

4.1 Recording Fees. The Owners will pay all recording fees at the rate charged by Cascade County at the time a document or plat is submitted for recording.

4.2 Connection and Construction Fees. Water service tapping and water and sewer service connection fees have been previously paid as part of joining the Service District.

4.3 Storm Drain Fee. The Owners will pay a storm drain fee in the amount of \$250 per acre for annexation of the Subject Property. This equates to **\$116.03** for the total 0.4641 acres of the Subject

Property. The total storm drain fee shall be paid to the City no later than 30 days after City Commission action to annex the Subject Property into the City.

4.4 Payment of Application Fees Acknowledged. The following fees have been paid by the Owners: \$2,000.00 application fee for the establishment of zoning, and a \$500.00 application fee for annexation.

5. Site Conditions. The Owners warrant that they have conducted site investigations sufficient to be aware of all natural conditions, including, but not limited to, flooding, slopes, and soils characteristics, that may affect the installation of improvements of the Subject Property. The Owners further warrant that all plans submitted pursuant to this Agreement and all applications for building permits within the Subject Property will properly account for all such conditions. The Owners hold the City harmless for natural conditions and for any faults in their own assessment of those conditions.

6. On-Site Improvements. The on-site improvements shall include everything required to provide water, sanitary sewer, access, and other requirements as may be required by OCCGF. If required, access for purposes of emergency vehicles shall be installed to the specifications of the Public Works Department. If necessary, the Owners shall provide public utility easements for all required public utilities.

7. Permits. This Agreement must be approved by the City Commission and signed by the City Manager and the Owners before permits for any work will be approved, including, but not limited to trenching for the installation of utilities.

8. Vested Rights. This Agreement and approval by the City creates a vested right that protects the Owners from changes in the City zoning requirements within Title 17 of the OCCGF until this Agreement expires. This vested right does not exempt the Owners from compliance with other provisions of the OCCGF, including specifically those intended to prevent and remediate public nuisances, nor does it protect the Owners from changes in the City's building codes and fees, development fees, and inspection fees. This vested right does not exempt the Owners from compliance with changes to state and federal requirements. This vested right may be voided, in whole or in part, if the Owners propose substantial changes in the approved improvements of the Subject Property.

9. Maintenance Districts. Owners hereby agree to waive their right to protest and appeal the lawful creation by the City of maintenance districts for any proper purpose and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to the Subject Property.

10. City Acceptance and Zoning. In consideration of the terms of this Agreement, the City hereby accepts the Subject Property incorporation by annexation into the corporate limits of the City of Great Falls, Montana, with an assigned City zoning classification of R-2 Single-family Medium Density.

11. Limitation of Liability. The City will conduct a limited review of plans and perform inspections for compliance with requirements set forth in this agreement and/or in applicable law. The scope of such review and inspections will vary based upon development type, location and site characteristics. The Owners are exclusively responsible for ensuring that the design, construction drawings, completed construction, and record drawings comply with acceptable engineering practices, State requirements, and other applicable standards. The City's limited plans review and inspections are not substantive reviews of

the plans and engineering. The City’s approval of any plans or completed inspections is not an endorsement of the plan or approval or verification of the engineering data and plans. Neither the Owners, nor any third party may rely upon the City’s limited review or approval.

The Owners 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 obligations relating to that Owners’ Subject Property described herein. Upon the transfer of ownership of the property, the prior owner’s (whether it is the Owners that signed this agreement or a subsequent owner) indemnity obligation herein 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 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 Owners of the property shall apply unless such damage or injury results from the gross negligence or willful misconduct of the City.

12. 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*:

ANNEXATION AGREEMENT
TRACT OF LAND LEGALLY DESCRIBED AS TRACT 1 OF COS 4120, LOCATED IN SECTION 14,
TOWNSHIP 20 NORTH, RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA.

The following is a binding Agreement dated this _____ day of _____, 2020, between Mark A and Mary J Staigmiller, 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 annexation of a tract of land into the corporate limits of the City legally described as Tract 1 of COS 4120 located in Section 14, Township 20 North, Range 3 East, P.M.M., City of Great Falls, Cascade County, Montana, hereinafter referred to as “Subject Property”. Owners of the aforementioned Subject Property agree to, and are bound by, the provisions of this Agreement, and by signing this Agreement, therefore agree to terms applicable to the Subject Property. The City is authorized to enter into this Agreement by §17.68.010-040 of the Official Code of the City of Great Falls (OCCGF).

1. Purpose. The purpose of this Agreement is to ensure that certain improvements are made and certain conditions are fulfilled by the Owners, as required by the City's approval of the supporting documents. Generally, this Agreement:

- 1.1** Declares that the Owners are aware of and has properly accounted for any natural conditions that may adversely affect the Subject Property;
- 1.2** Insulates the Owners of the Subject Property from the impact of changes in the City's zoning regulations, provided that no substantial changes are proposed;
- 1.3** Requires the Owners to guarantee that the promised on-site improvements are made in a timely manner by as required by the Official Code of the City of Great Falls (OCCGF);
- 1.4** Waives protest by the Owners and their successors against the creation of special improvement districts that would provide and maintain necessary infrastructure;
- 1.5** Indemnifies the City from challenges to its approval of the Subject Property and holds it harmless from errors and omissions in the approval and oversight of the project.

2. Supporting Documents. Each of the following supporting documents are to be submitted for review and approval by the City.

- 2.1 Legal Documentation.** Legal documents, including but not limited to any easements, covenants, and restrictions establishing the authority and responsibilities of Owners, which may be recorded in the Clerk and Recorder’s Office of Cascade County, Montana.

3. Changes. The Owners understand that failure to install required improvements in accord with the final construction plans is a breach of, and may void, this Agreement. The Owner also understands that such failure is a violation of the OCCGF, subject to the penalties provided for such violations. The City recognizes, however, that minor changes are often necessary as construction proceeds and the Administrator (the Administrator is the person or persons charged by the City Manager with the

administration of this improvement agreement) is hereby authorized to allow minor changes to approved improvements, as provided below:

3.1 Minor Changes. Minor changes to the improvements that are deemed appropriate and necessary by the Administrator and which do not materially affect the hereinabove mentioned Subject Property, can be made as follows:

3.1.1 Before making changes, the Owners must submit revisions to the Administrator for review. Failure to do this before the proposed change is made may be considered by the City to be a breach of this Agreement and a violation of the OCCGF. The Administrator shall respond to all proposed changes within fourteen (14) days of receipt of the revised plans.

3.1.2 Based on a review of the revisions, the Administrator may permit minor dimensional changes provided they do not result in a violation of the conditions of approval for the annexation Subject Properties or the OCCGF.

3.1.3 Minor changes in the location and specifications of the required improvements may be permitted by the Administrator. Owners must submit revised plans showing such changes to the Administrator. Revised plans are not accepted until approved by the Administrator.

3.2 Substantial Changes. Substantial changes are not permitted by this Agreement. A review and permitting process will be required for such changes. "Substantial Change" versus "Minor Change" is described as follows in order to further clarify what may be permitted as a "Minor Change":

3.2.1 A substantial change adds one or more lots; changes the permitted use; changes the location or extent of the area proposed to be cleared, graded, or otherwise disturbed by more than 4,000 square feet (a smaller change in the area that will be cleared, graded, or otherwise disturbed may be treated as a minor dimensional change); changes the location, extent, or design of any required public improvement, except where a minor change is approved by the Administrator; changes the approved number of buildings, structures or units; or the size of any building or structure by more than 10%. A smaller change in the size of a lot, building, or structure may be treated as a minor dimensional change.

4. Fees. The Owners understand that it is required to pay the following fees as they come due. The absence of any fee from this Agreement which is lawfully charged by the City in connection with construction activity associated with Subject Properties shall not constitute a waiver by the City.

4.1 Recording Fees. The Owners will pay all recording fees at the rate charged by Cascade County at the time a document or plat is submitted for recording.

4.2 Connection and Construction Fees. Water service tapping and water and sewer service connection fees have been previously paid as part of joining the Service District.

4.3 Storm Drain Fee. The Owners will pay a storm drain fee in the amount of \$250 per acre for annexation of the Subject Property. This equates to **\$192.83** for the total 0.7713 acres of the Subject

Property. The total storm drain fee shall be paid to the City no later than 30 days after City Commission action to annex the Subject Property into the City.

4.4 Payment of Application Fees Acknowledged. The following fees have been paid by the Owners: \$2,000.00 application fee for the establishment of zoning, and a \$500.00 application fee for annexation.

5. Site Conditions. The Owners warrant that they have conducted site investigations sufficient to be aware of all natural conditions, including, but not limited to, flooding, slopes, and soils characteristics, that may affect the installation of improvements of the Subject Property. The Owners further warrant that all plans submitted pursuant to this Agreement and all applications for building permits within the Subject Property will properly account for all such conditions. The Owners hold the City harmless for natural conditions and for any faults in their own assessment of those conditions.

6. On-Site Improvements. The on-site improvements shall include everything required to provide water, sanitary sewer, access, and other requirements as may be required by OCCGF. If required, access for purposes of emergency vehicles shall be installed to the specifications of the Public Works Department. If necessary, the Owners shall provide public utility easements for all required public utilities.

7. Permits. This Agreement must be approved by the City Commission and signed by the City Manager and the Owners before permits for any work will be approved, including, but not limited to trenching for the installation of utilities.

8. Vested Rights. This Agreement and approval by the City creates a vested right that protects the Owners from changes in the City zoning requirements within Title 17 of the OCCGF until this Agreement expires. This vested right does not exempt the Owners from compliance with other provisions of the OCCGF, including specifically those intended to prevent and remediate public nuisances, nor does it protect the Owners from changes in the City's building codes and fees, development fees, and inspection fees. This vested right does not exempt the Owners from compliance with changes to state and federal requirements. This vested right may be voided, in whole or in part, if the Owners propose substantial changes in the approved improvements of the Subject Property.

9. Maintenance Districts. Owners hereby agree to waive their right to protest and appeal the lawful creation by the City of maintenance districts for any proper purpose and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to the Subject Property.

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