

**MINUTES
CITY OF LAUREL
CITY COUNCIL WORKSHOP
TUESDAY, FEBRUARY 06, 2024**

A Council Workshop was held in Council Chambers and called to order by Mayor Dave Waggoner at 6:27 p.m. on February 6, 2024.

COUNCIL MEMBERS PRESENT:

<input checked="" type="checkbox"/> Tom Canape	<input checked="" type="checkbox"/> Heidi Sparks
<input checked="" type="checkbox"/> Michelle Mize	<input checked="" type="checkbox"/> Jessica Banks
<input checked="" type="checkbox"/> Casey Wheeler	<input checked="" type="checkbox"/> Irv Wilke
<input checked="" type="checkbox"/> Richard Klose	<input checked="" type="checkbox"/> Jodi Mackay

OTHERS PRESENT:

Michele Braukmann, Civil City Attorney
Brittney Harakal, Council Administrative Assistant
Kelly Strecker, Clerk/Treasurer
Kurt Markegard, Planning Director
Sherri Phillips, Court Clerk

Public Input:

There were none.

General Items

1. LURA Presentation

The Planning Director Markegard, gave a presentation on how the TIF District started and how it was extended. He spoke on the revenue the TIF District brings in. The TIF District was set to sunset in 2020. The City did the East Downtown Infrastructure Improvement Project (EDII) to extend the TIF District to 2045.

LURA Members Cami Storey and Cheryl Hill presented the attached project.

It was questioned if the TIF District had enough money to do this project and make its required payments. It was clarified that the payments for the EDII bond are 180k each year. This year, the revenue is 1.7 million. The TIF District currently has 4.6 million available to work on projects. The TIF District should be able to assist with the W. Railroad Projects, blocks 1 through 5 only, and still be able to do the project presented.

Council agreed that there needs to be a sidewalk along E. Railroad. It was questioned if there would be issues with the right-of-way. It was clarified that the right-of-way issues will need to be investigated. Right-of-way's are dedicated during the annexation process.

It was questioned what has been budgeted this fiscal year for the TIF District. It was clarified the TIF District was given budget authority of up to 2 million for this fiscal year.

It was questioned what the next steps are to move this project forward. It was clarified that there will be a resolution before the Council to approve any contracts that need to be awarded.

It was questioned if the project could not be entirely finished due to financial limits and what work would not be done. It was clarified that there are discussions about expanding the Lighting Districts to include the rental payment for the newly installed lights. While the TIF District can pay for this now, after the district sunsets in 2045, that rental fee will need to be paid for. The Lighting Districts are the most appropriate mechanism. The rental fee for the lights is 6k per month.

It was questioned what part of this project would be done first, the lighting or the sidewalks. It was clarified that the lighting would be done first and then the sidewalks after the lights were installed.

It was questioned if there would need to be coordination with the State on the lights located on Main Street. It was clarified that Northwestern Energy is working with the State on those issues.

It was questioned what the entire cost of the project would be. It was clarified that they know the lighting cost but will not know the concrete cost until they go out to bid.

Executive Review

2. Resolution - A Resolution Of The City Council Approving A Contract With Collection Bureau Services, Inc. For The Collection Of Laurel City Court Receivables.

Sheri Phillips, Court Clerk, read the attached statement to the Council.

Clerk/Treasurer Strecker stated that CBS is very versed in dealing with Court collections. They work with various courts across the State. They charge 20% for in-state collections and 50% for out-of-state collections. There is no cost to the City for this service. The fees are passed to the client. This company also works efficiently with our current court software.

It was questioned how long people have before they are turned over to a collections agency. It was clarified that after the first missed payment, they get a letter and an order to show cause to speak to the judge. Once they miss two payments, they get turned over to collections.

It was questioned if the large volume of non-payment that is currently in collections will go to CBS. It was clarified that this was correct. Right now, the Court has 510k in accounts receivable, and of that, 430k is in collections.

Council was grateful that this collection agency is more persistent in collecting on past due accounts.

3. Resolution - A Resolution Of The City Council Approving A Contract With Morrison-Maierle, Inc. For A Water And Wastewater Consultation.

When the auditors were here, they had a discussion with City Staff regarding the need to update the Water and Sewer rates. Sewer needs to adjust their rates. This rate study will give a detailed analysis of the health of both funds moving forward.

Jill Cook and Kurtis DeShaw with Morrison Maierle stated that they did a rate study for the City in 2007/2008. In 2010, they transitioned to a licensed municipal advisor role for rate studies. There are firms that conduct very detailed rate studies. This contract is to assist the City in engaging with a rate consultant. This is a partnership and on an on-call basis. They will work on creating an RFP to go out for a rate consultant. They also assist with the coordination of information back and forth between City Staff and the rate consultant. Some information needed is technical and does require engineer involvement. This contract is not to exceed 50k. They will only bill for actual work performed as requested by City Staff. In the event of a rate increase, they can assist with the public hearing.

It was questioned why the City was not using KLJ. It was clarified that KLJ declined to help with this project and did give written permission for the City to enter into a contract with another engineering firm.

It was clarified that this process is lengthy and will take approximately six to eight months to complete. Part of this process will be looking into a tiered structure like Billings uses.

It was questioned what funds would pay for this study. It was clarified that both the Water and Sewer funds will pay for this study.

4. Resolution - Resolution Of The City Council Authorizing The Mayor To Sign A Memorandum Of Understanding For Operation And Cost Sharing For Public Transportation Services With The Adult Resource Alliance Of Yellowstone County.

Clerk/Treasurer Strecker stated this MOU comes before Council every year. This agreement is with the Adult Resource Alliance of Yellowstone County. The City pays 54% of the cost. This is funded through the grant the City applies for each spring. This contract is the same as in previous years.

5. Resolution - A Resolution Of The City Council Approving A Transportation Coordination Plan For The City Of Laurel Transit.

Clerk/Treasurer Strecker stated this is a coordination plan for the City of Laurel Transit. It is done annually and is the same as in previous years.

Council Issues

A Council Member was approached by their employee who is a resident of their ward regarding a specific property. This property has a lot of damage; there is no electricity or running water. They are dumping human waste in the yard and trashcans. The neighborhood is concerned.

The Planning Director stated that he did look at the public right of way in the area and did not see any human waste dumped in the trashcans. He did reach out to Riverstone Health regarding the concerns with sanitation issues. In the past, a Council Member has spoken with Adult Resources, and the property owner has told them to get lost. The City does have rules that require anyone within the City to use City services; however, that rule pertains to wells and septic systems.

The Civil Attorney stated that she has been in discussions with the City Prosecutor, and there are abatement options present; however, this is a very slow legal process. She plans to sit down with the City Prosecutor, Code Enforcement, and Public Works to discuss next steps.

Park Board submitted items for the Council's consideration. Mayor Waggoner stated that he did receive that email; he just has not placed them on the agenda yet.

The Lions want to replace the front door and redo the windows in the bathrooms. They also wanted clarification on liquor use in parks. The Lions have not signed their lease yet and the Civil Attorney will follow up with the Lions president.

It was clarified that there is an alcohol permit that citizens need to fill out to have liquor in the parks.

The Fire Memorial would like to move the memorial for the family of the firemen over to Firemen's Park. It was clarified that the City does not own that property; it is a lease with the railroad with the requirement that the lease can continue if there is a railroad museum located on the property. It is not clear who would need to approve that request.

Park Board would like to use the revenue from the railroad derailment to install a sprinkler system at Kiwanis Park. Clerk/Treasurer Strecker stated if that project is not included in this year's budget, the Public Works Director will need to budget for it next Fiscal Year. She reminded the Council that those funds that came in were General Fund revenue. The Park budget is part of the General Fund.

Civil Attorney Braukmann spoke regarding the attached Motion for Summary Judgement.

Mayor Waggoner stated he received an email today from the DOJ that our license plate designs were approved and are in production. They should be available in the next couple of weeks.

Other Items

Attendance at Upcoming Council Meeting

Council Member Sparks will not be in attendance at next week's meeting.

Announcements

The council workshop adjourned at 8:15 p.m.

Respectfully submitted,


Brittney Harakal
Administrative Assistant

NOTE: This meeting is open to the public. This meeting is for information and discussion of the Council for the listed workshop agenda items.

Proposed LURA Projects

Street lighting, Sidewalk/Curb repair, and

Tree maintenance

Street Lighting Poles

We would like to install around 74 decorative street lights in the downtown and south side business areas. This will provide safety lighting for not only the businesses, customers and community. There are a lot of dark street/sidewalks around the businesses and adding lighting to these areas would be a benefit. These lights will also help beautify Laurel along with providing safety lighting. We would also propose extending the lighting district where the new lights will be placed. LURA proposes to cover project costs and monthly fees until proper lighting district is established.

We have been working with NorthWestern Energy for renting light poles from them. NorthWestern Energy would install the light poles and would take care of all the maintenance required to these poles. They would break this into 2 separate lighting projects; downtown and south side.

Project 1- Overhead fed lights (OH) - downtown area

LED Pendent mounted at 20ft on a black decorative pole

\$81/month per pole

\$35,000 project buy down

Project 2- Underground fed lights (UG) - SE 4th St & S 1st Ave

LED Pendent mounted at 20ft on a black decorative pole

\$81/month per pole

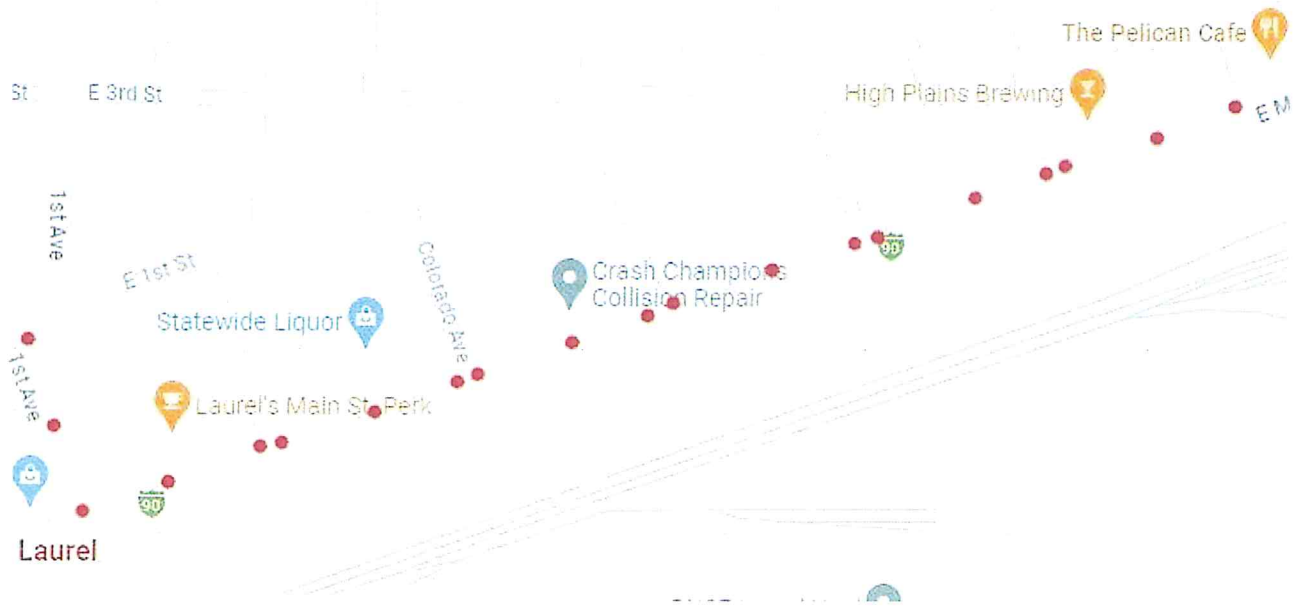
\$35,000 project buy down



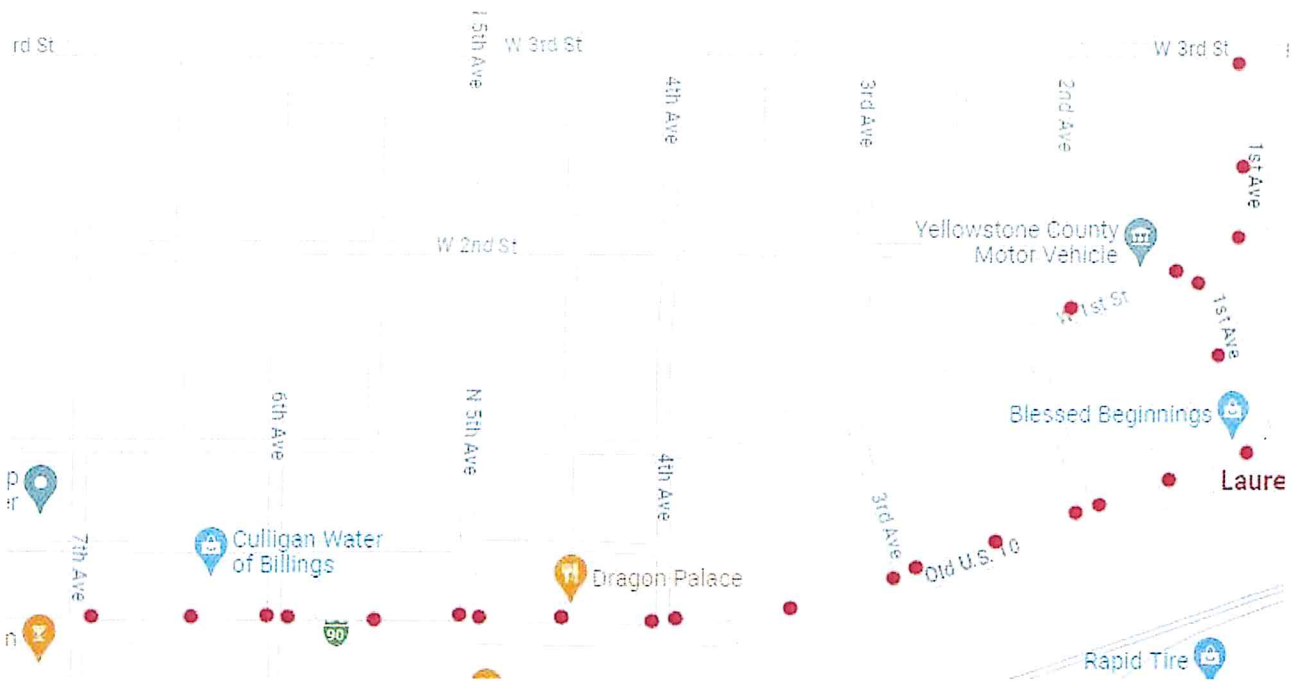
Areas we will be placing light posts— **maps of estimate for placing attached

- a. Main Street (Idaho to 7th Ave)
- b. 1st Ave (3rd St to SE 4th St)
- c. SE 4th St
- d. Bernhardt

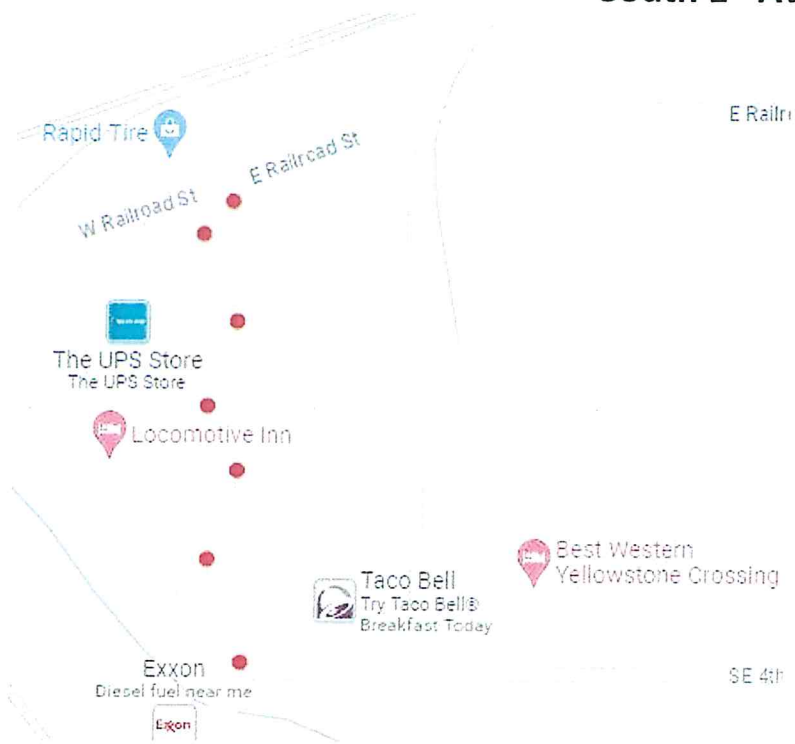
West Main Street/ 1st Ave



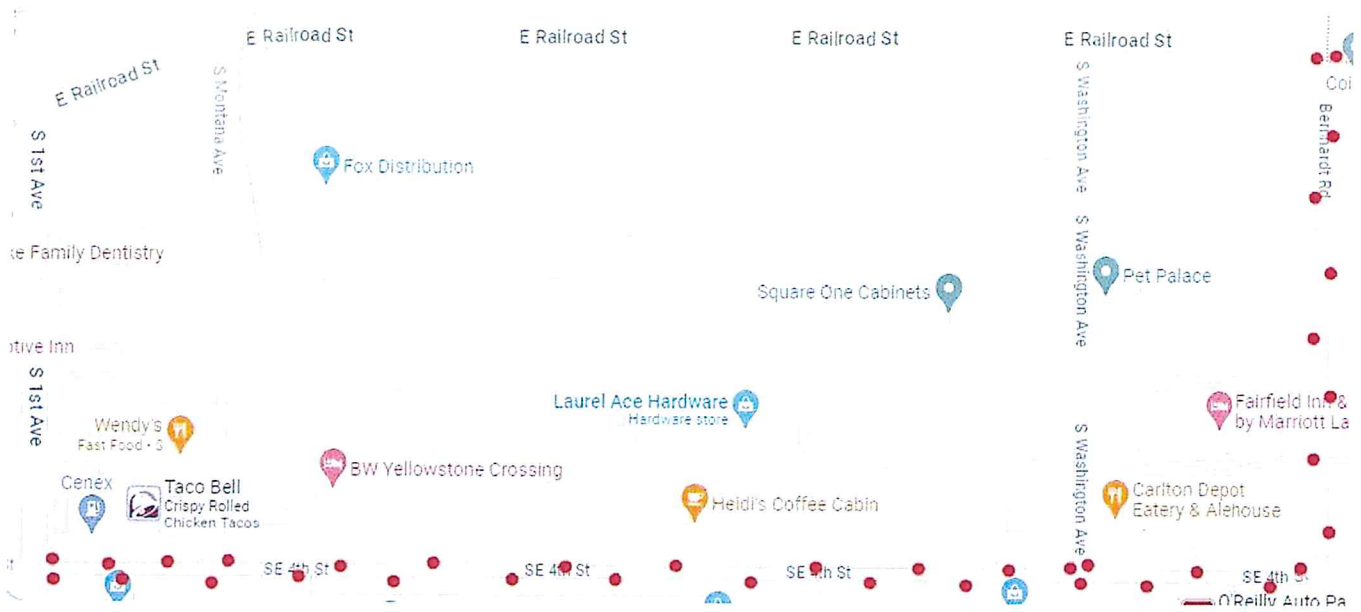
East Main Street/ 1st Ave



South 1st Ave



SE 4th St/ Bernhardt

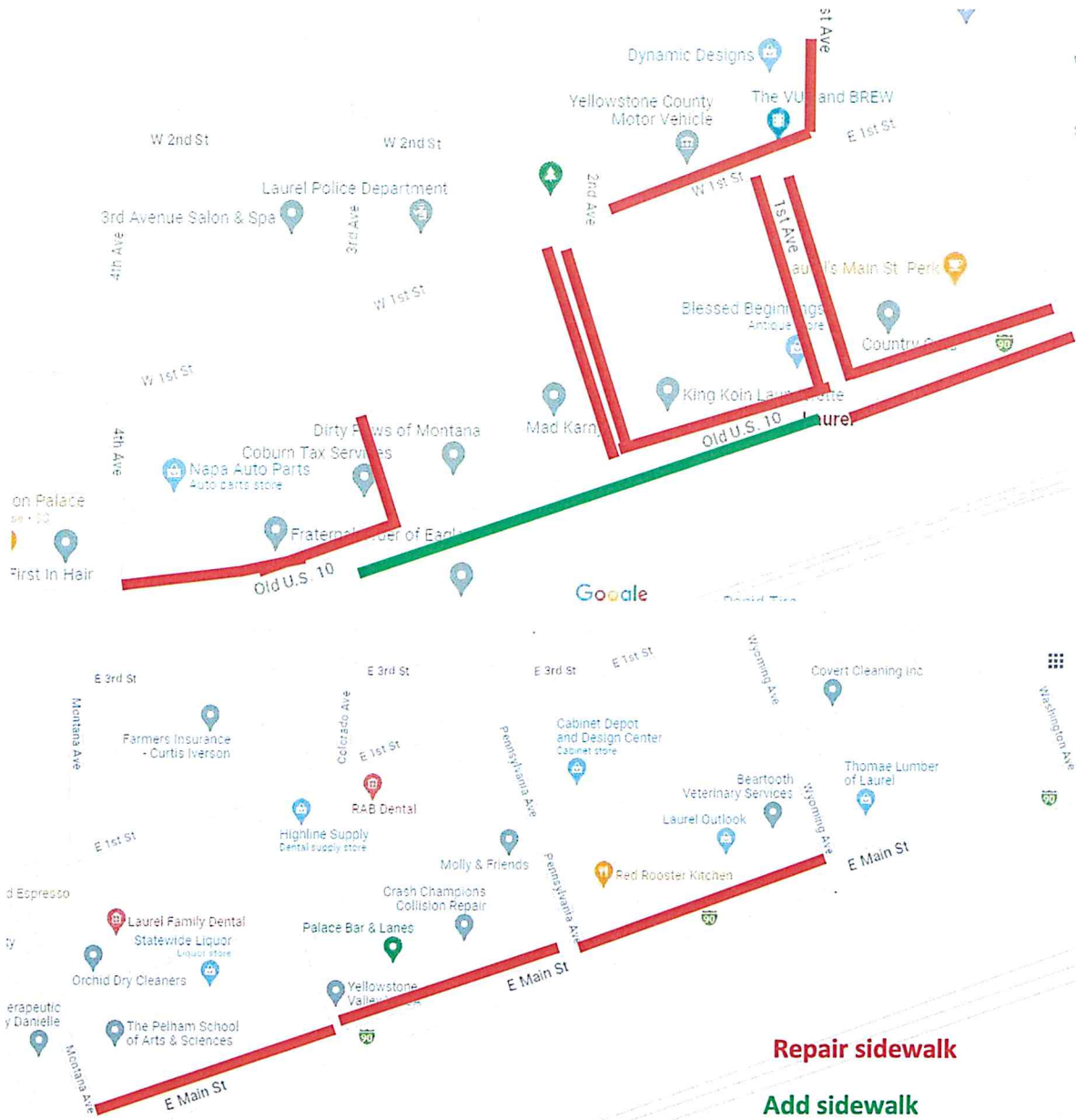


Downtown Sidewalks

Sidewalks in the downtown business area in bad shape and are not only an eye sore but a tripping hazard as well. We would like to replace/ update the sidewalks, curb and gutters in the areas of need in downtown. This will help clean up the look of the downtown area and make it safer for the community to walk downtown. Attached are images of the some of the damaged/cracked sidewalks around this area. There are also some areas missing sidewalks that we think would be an adding benefit if we install them.

We would like to replace/ update the sidewalks, curb and gutters in the areas of need downtown.

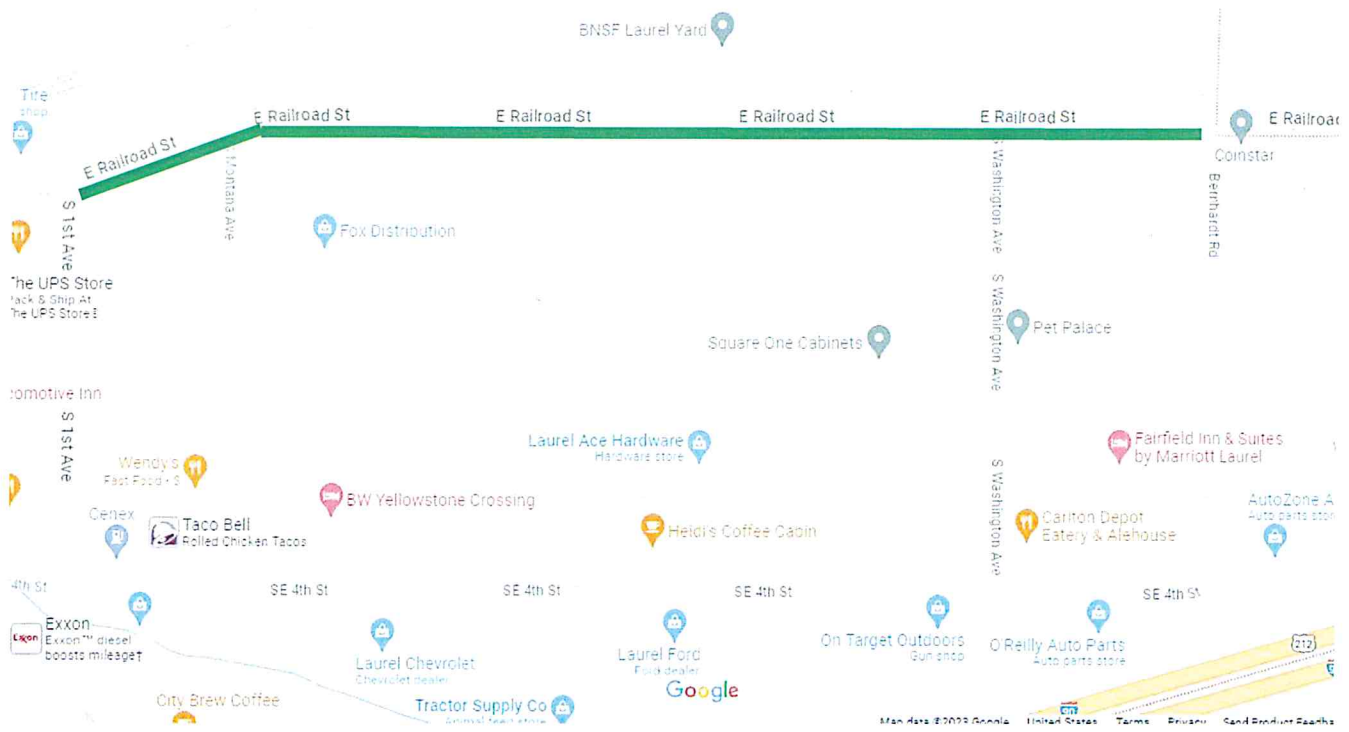
- Replace/update sidewalks, curbs and gutters – see attached maps
- New sidewalk - West Main Street- railroad side (1st Ave to 3rd Ave)



Sidewalk East Railroad/ Bernhardt

East Railroad to Bernhardt has become a heavily foot traffic path with community members walking to the businesses. They currently walk on the side of the road which creates a hazard for them and for the drivers.

We propose adding a paved path for the pedestrians to walk safely on East Railroad. We also thinking continue the same street lighting on this street would be an additional safety precaution. Attached is the area we are proposing adding a paved path for pedestrians and street lighting.



East Main- Chamber



East Main- Outlook



East Main ST- Beartooth Vet



1st St - Vue & Brew



2nd Ave - Creamery



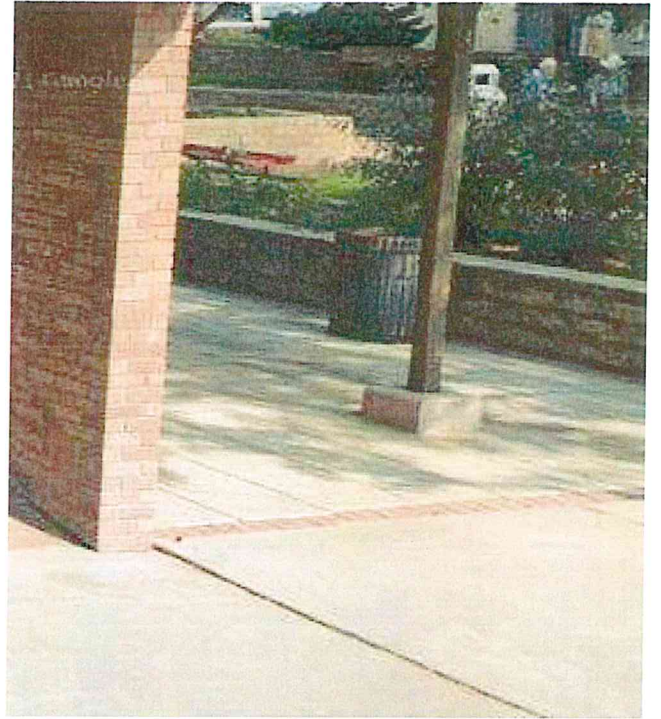
East Main St and 4th Ave- FOE & NAPA



East Main St - Palace

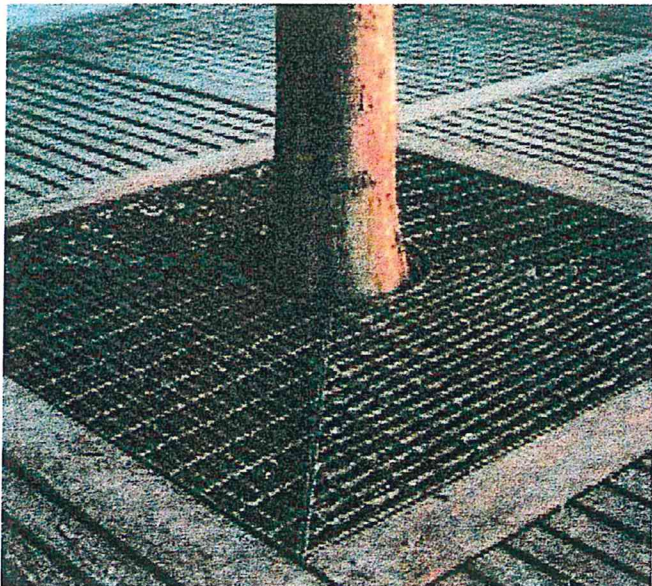


1st Ave



Downtown Tree maintenance

We have trees in the downtown area that need some maintenance to help them continue to grow properly. Their roots have cracked the sidewalks and we would propose grating around the trees to prevent this. Please see attached tree report from Larned Tree Service on his recommendations.



Larned Tree Service

Enhancing Urban Greenery with Tree Grates: A Sustainable Solution

Introduction: The Downtown trees are mature maintenance free trees that never need to be watered (they should be watered though) and will be replaced with small trees that need lots of maintenance, lots of watering and pruning for the next 25 years. If the trees there now have not been taken care of why would the new trees be taken care of? The answer is they won't be taken care of.

Look how bad main street trees look after the city cut down about 10 other beautiful mature honey locust trees and replaced them with small fragile that have been an eyesore downtown for over 10 years now. The new trees they put in have failed especially on the bowling alley side clear down past the Laurel Outlook. The new trees in front of Thomae Lumber are more Canadian Red trees that are again high maintenance low hanging bushy trees. Not what you want on main street sidewalks etc. Again the mature honey locust trees we have now are done growing fast, have taken root and never need to be watered. They never get pruned or anything they are low maintenance trees. Do not replace them with small high maintenance trees that will not do well. Here is more information about installing tree grates instead.

Trees play a vital role in urban environments by providing numerous benefits, including air quality, reduced heat island effect, and enhanced aesthetics.

Rather than cutting down trees, we propose the installation of tree grates as a sustainable alternative to protect and preserve urban trees while ensuring the safety and accessibility to pedestrians.

Benefits of Trees Grates: and ADA Compliance and Pedestrian Safety:

Tree grates are designed to be ADA complaint, allowing canes, crutches, and wheelchairs to move safely over them.

Smaller grate openings (1/4 to 3/8 inches) in high traffic areas ensure pedestrian safety and prevent litter accumulation.

Protection for Tripping Hazards:

Modern tree grates prevent overgrown tree roots from becoming tripping hazards in urban environments. Durable cast iron construction ensures both toughness and aesthetic appeal.

Preservation of Healthy Root Development:

Tree grates guard the soil and root systems, preventing soil compaction caused by pedestrian and vehicle traffic.

Grate slots allow sunlight, water, and air to reach the tree roots, promoting healthy growth.

Moisture Retention:

Tree grates help retain moisture in the soil, ensuring adequate hydration for tree roots.

Visual Appeal:

Tree grates come in various designs, complementing the aesthetics of urban landscapes.

Grate holes prevent litter and debris accumulation, promoting cleaner surroundings.

Enhanced Safety:

Tree grates contain root systems, eliminating tripping hazards and providing space for other structures like sidewalks, playgrounds and seating areas.

Options for Tree Guards:

Tree grates can be paired with tree guards to protect the wildlife and environmental damage

Choosing the Right Tree Grates and Material:

Consider weather resistant materials such as steel, cast iron, or recycled plastic.

Coatings like powder coating or Plastisol add durability and aesthetic appeal.

Appearance:

Tree grates come in various colors, shapes and designs to match urban surroundings.

Square and round options are available, with no functional difference. Or maybe a local business could be interested in making some.

Size:

Measure the tree's diameter and choose a grate with extra space around the trunk.

Common sizes range from 36 to 72 inches, with some grates being adjustable or available in two sections for easy installation and removal.

Conclusion:

Installing tree grates is a sustainable and practical solution to protect urban trees, ensuring their longevity and benefits for the community.

These grates offer ADA compliance, safety, aesthetics, and preservation of healthy root systems, making them a valuable addition to any city's green infrastructure.

Instead of cutting down trees, let's invest in their protection through tree grates, enhancing our urban environments for generations to come.

Good Evening

I am Sheri Phillips, Court Clerk III with Laurel City Court

The Laurel City Court is fully on board with the change of collection agencies from SABHRS (State of Montana) to Credit Bureau. We have participated fully in the evaluation of various agencies and in the selection of Credit Bureau. We believe that this agency and their representative will work hard with Court staff to collect outstanding Court debts. The initial data entry into the CBS portal will be a very large undertaking. We will get this done as efficiently as possible.

I would like Council to be aware that historically, the Court staff has worked our Accounts Receivable accounts very actively. We have been with SABHRS collections since July of 2016 when we were approached by Budget and Finance due to the Auditor's findings. The Court made the plan to use the State of Montana (SABHRS) and this was approved by Budget & Finance. The issue came up again in 2019 and according to meeting minutes, the subject was taken off the agenda since it was determined that the auditors were satisfied with the Court collection policy. We have had no further communication regarding this issue since then. Please be aware that we have made every effort to collect outstanding debts. The Court sends out warning letters, Orders to Show Cause and we update our SABHRS collections every month, sending in new accounts. We will follow the same procedure with Credit Bureau with due diligence.

Up until Mr. Klose commented on the Court's receivables at the Council Workshop on September 5, 2023 during the discussion of the Court move, we had been under the impression that the City was satisfied with our collection policy. The Court has not refused to update their policy, it simply has not been brought up again to staff since 2019. This has obviously been a topic of discussion by City Staff. I would like to request that in the future, if there is any issue regarding the Court staff and collection practices that we be notified and invited to attend any meeting where the Court issues are discussed so that we can be aware of the problem and be a part of the solution before it becomes a bigger issue. Effective teamwork begins and ends with communication.

Thank you

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

<p>THIEL ROAD COALITION, NORTHERN PLAINS RESOURCE COUNCIL, and MONTANA ENVIRONMENTAL INFORMATION CENTER,</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>CITY OF LAUREL, YELLOWSTONE COUNTY, and NORTHWESTERN ENERGY, INC.,</p> <p style="text-align: right;">Defendants.</p>	<p>Cause No. DV-2022-1087</p> <p>Honorable Judge Jessica T. Fehr</p> <p style="text-align: center;">ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT</p>
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INTRODUCTION

This matter comes pursuant to Plaintiffs Thiel Road Coalition, Northern Plains Resource Council, and Montana Environmental Information Center (collectively hereinafter "Plaintiffs") Motion for Summary Judgment filed on February 16, 2023. Defendant Yellowstone County filed their Brief in Response to Motion for Summary Judgment on March 23, 2023. Defendant City of Laurel filed a Statement of Facts Opposing Plaintiffs' Motion for Summary Judgment on March 23, 2023. The City of Laurel also filed their Response Opposing Plaintiffs' Motion for Summary Judgment on March 23, 2023. Defendant Northwestern Energy, Inc., filed their Response to Plaintiffs' Motion for Summary Judgment on March 27, 2023. Plaintiff's filed their Reply Brief on April 10, 2023.

Plaintiffs seek summary judgment from this Court, asking for a legal determination that “the City of Laurel has zoning jurisdiction in the 1-mile extraterritorial area surrounding the City where NorthWestern Energy is building a power plant.” *Plaintiffs’ Motion for Summary Judgment*, at pg. 2. In their *Brief*, Plaintiffs discuss the confusion and conflicting actions regarding which party has jurisdiction. Plaintiffs state that NorthWestern initially acknowledged the City’s zoning authority of the property for the intended gas plant. *Plaintiffs’ Brief in Support of Motion for Summary Judgment*, at pg. 11. Additionally, Plaintiffs claim that at one point, “Yellowstone County’s City-County planner continued to represent that the County had no zoning jurisdiction on zoning matters outside of Laurel city limits, extending 4.5 miles into the County.” *Plaintiffs’ Brief in Support of Motion for Summary Judgment*, at pg. 12.

The City denies that it has zoning jurisdiction in the one (1) mile extraterritorial area surrounding the City where NW Energy is building a power plant (which is County property). *City of Laurel’s Response Opposing Plaintiffs’ Motion for Summary Judgment*, at pg. 2. The proposed construction site consists of two parcels: Parcel 2, COS 1677, S15, T02S, R24E; and Parcel 1 COS 1239, S15, T25, R24E. *Plaintiffs’ Brief in Support of Motion for Summary Judgment*, Galvan Decl., Ex. 7 at 66. Rather, the City respectfully submits that Yellowstone County has indicated an intent, pursuant to its Growth Policy, zoning regulations, and subdivision regulations to exercise jurisdictional control over County parcels and properties. *City of Laurel’s Response Opposing Plaintiffs’ Motion for Summary Judgment*, at pg. 2. Specifically, the County has enacted Subdivision Regulations for the unincorporated portions of the Laurel Planning Jurisdiction, and administration is performed via the City-County Interlocal Agreement, with a clear separation of power and authority between the City and the County. *Id.* To date, the County has not ceded its jurisdictional authority regarding zoning to the City, pursuant to an Interlocal Agreement. *Id.*

Moreover, Montana law contemplates a clear differentiation between a City-County planning jurisdiction, subdivision administration, and the lawful application of zoning regulations. *Id.* The fact that the City and County utilize a City-County Planning Board to analyze both City and County land use issues does not affect jurisdiction, nor does it remove the County's legal right to exercise control and authority over its County residents and properties. *Id.*

This Court rules in favor of the Defendants in this matter, denying Plaintiffs' Motion for Summary Judgment, and entering Judgment in favor of the Defendants. Specifically, this Court finds as follows:

1. Yellowstone County has stated its intent to exercise jurisdictional control over County parcels and properties, including the property at issue in this matter.
2. The City of Laurel has no jurisdictional authority over the property at issue in this matter.
3. Any disputes regarding land use issues for the property at issue in this matter are properly resolved within Yellowstone County and its jurisdictional authority, unless and until such time as Yellowstone County formally cedes its jurisdictional authority to the City of Laurel, through properly-noticed means and appropriate legal mechanisms.

LEGAL AUTHORITY

I. General Legal Framework Applicable to Justiciable Controversies

The judicial power of Montana's courts is limited to justiciable controversies. *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 6, 355 Mont. 142, 226 P.3d 567. "A justiciable controversy is one upon which a court's judgment will effectively operate, as distinguished from a dispute invoking a purely political, administrative, philosophical or academic

conclusion.” *Id.*, ¶ 8. Courts “have an independent obligation to determine whether jurisdiction exists and, thus, whether constitutional justiciability requirements . . . have been met.” *Id.*, ¶ 11.

The justiciable controversy test has three elements:

First, a justiciable controversy requires that parties have existing and genuine, as distinguished from theoretical, rights or interest. Second, the controversy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument invoking a purely political, administrative, philosophical or academic conclusion. Third, [it] must be a controversy the judicial determination of which will have the effect of a final judgment in law or decree in equity upon the rights, status or legal relationships of one or more of the real parties in interest, or lacking these qualities be of such overriding public moment as to constitute the legal equivalent of all of them.

Miller v. State Farm Mut. Auto. Ins. Co., 2007 MT 85, ¶ 8, 337 Mont. 67, 155 P.3d 1278; *Lee v. State*, 195 Mont 1, 6, 635 P.2d 1282 (1981); *see also Northfield*, ¶ 12; *Brisendine v. State, Dep’t of Commerce, Bd. of Dentistry*, 253 Mont. 361, 364-65, 833 P.2d 1019, 1020-21 (1992).

Montana courts “apply the justiciable controversy test to actions for declaratory judgment to prevent courts from determining purely speculative or academic matters, entering anticipatory judgments, providing for contingencies which may arise later, declaring social status, dealing with theoretical problems, answering moot questions, or giving abstract or advisory opinions.” *Northfield*, ¶ 12; *see also Broad Reach Power*, ¶ 10. “In contrast to a purely political, administrative, philosophical or academic issue, an issue is justiciable if within the constitutional power of a court to decide, an issue in which the asserting party has an actual, non-theoretical interest, and an issue upon which a judgment can effectively operate and provide meaningful relief.” *City of Missoula v. Fox*, 2019 MT 250, ¶ 11, 397 Mont. 288, 450 P.3d 898 (internal quotation marks and citation omitted).

II. General Legal Framework Applicable to Municipal Powers, Including Powers Exercised by a City that are Related to Land Use Issues.

In Montana, the extent of a municipality's authority to adopt land use regulations depends on whether it has adopted a self-governing charter or is a general government power. Self-governing powers may exercise any power, provide any services, or perform any functions not expressly prohibited by the constitution, law, or charter. Mont. Const., Art. XI, Section 6 and 7-1-101, MCA.

Municipalities also have self-governing powers. Where statutes provide the framework for specific actions, self-governing powers must strictly follow those requirements; where discretion is required, self-governing powers must substantially comply with the statute (*Gregg v. Whitefish City Council*, 2004 MT 262, ¶ 20 (Mont. 2004)). General governing powers have only those powers provided or implied by law (Mont. Const., Art. XI, Section 4(1); *D & F Sanitation Serv. v. Billings*, 219 Mont. 437, 444-445 (Mont. 1986)). Unless the state legislature specifically provides local governments with general government authority to take a particular action, provide a particular service, perform a particular function, *etc.*, a general government municipality has no authority to act and should not act. *Id.*

Montana law specifically provides municipalities with the authority to adopt a specific statutory framework for a variety of land use and planning regulations, but these are specifically limited by statute. These include: Growth policies (76-1-601, *et seq.*, MCA); Zoning ordinances for municipal zoning (Title 76-2-Part 3); and Subdivision regulations (Title 76, chapter 3) (in relevant part).

In 2003, Montana law was modified to make growth policies optional, non-regulatory documents. *See* Mont. Code Ann. § 76-1-605(2). Under this language, local jurisdictions are not required to have a growth policy. *Id.* If a jurisdiction does adopt a growth policy, that document

does not confer any authority on a local jurisdiction to regulate “that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.” *Id.* In particular, Montana law prohibits a governing body, like the City of Laurel, from imposing conditions on a land use approval based solely on the fact that the development proposal does not comply with the growth policy. *Id.* It also prohibits a governing body, like the City of Laurel, from regulating any land use issues that are not otherwise permitted by law. *Id.* It is a clear, from the statutory framework related to land use issues (and specifically, zoning matters), that a City may only act within the authority specifically granted it by law.

76-1-605. Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

- (a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;
- (b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and
- (c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

Mont. Code Ann. § 76-1-605(1)-(2).

As such, growth policies are non-regulatory, and they cannot be interpreted to require specific action by a municipality. *Id.*

III. Applicable Statutory Provisions of the Montana Code Annotated Related to Zoning Issues for Cities and Counties.

A. Statutory Provisions Specifically Related to Zoning Requirements for Cities:

Title 76, Chapter 2, Part 3 of the Montana Code addresses the requirements applicable to municipal zoning issues. Specifically, Mont. Code Ann. § 76-2-310 specifies as follows:

76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) Except as provided in 76-2-312 and except in locations where a county has adopted zoning or subdivision regulations, a city or town council or other legislative body that has adopted a growth policy pursuant to chapter 1 for the area to be affected by the regulations may extend the application of its zoning or subdivision regulations beyond its limits in any direction subject to the following limits:

(a) up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111;

(b) up to 2 miles beyond the limits of a city of the second class; and

(c) up to 1 mile beyond the limits of a city or town of the third class.

(2) When two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by 76-2-302, 76-2-311, and this section, then the extension of zoning or subdivision regulations, or both, by these cities must terminate at a boundary line agreed upon by the cities.

Mont. Code Ann. § 76-2-310(1) (emphasis added). Under Section 76-2-310(1), it is abundantly clear that any extension of zoning or subdivision regulations, into an extra-territorial area, is patently illegal, if “a county has adopted zoning or subdivision regulations ...”. *Id.*

B. Statutory Provisions Specifically Related to Zoning Requirements for Counties:

Title 76, Chapter 2, Part 2 of the Montana Code Annotated addresses planning and zoning within County boundaries. Specifically, Mont. Code Ann. § 76-2-201 specifies as follows:

76-2-201. County zoning authorized. (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning

regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.

Mont. Code Ann. § 76-2-201(1)-(2).

Pursuant to Section 76-2-201(1)-(2), a County is not required to adopt zoning regulations. A County “may” adopt zoning regulations, and those zoning regulations “may” be for “all or parts” of County properties. *Id.* (emphasis added).

Mont. Code Ann. § 76-2-311 continues:

76-2-311. Administration of regulations in extended area. (1) A city or town council or other legislative body may enforce regulations adopted pursuant to 76-2-310, as if the property were situated within its corporate limits, until the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area that is to be affected. These representatives must be appointed by the board of county commissioners. Representation must cease when the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

Mont. Code Ann. § 76-2-311(1)-(2) (emphasis added).

Again, the provisions of Section 76-2-311 are clear. First, the exercise of extra-territorial jurisdiction, by a City into County properties, is not mandatory. The statute specifically states that a City “may” – “may” being permissive, not mandatory (versus “must”). Second, where a County has adopted a growth policy and has adopted either zoning or subdivision regulations to include a proposed extra-territorial area, a City may no longer enforce regulations “as if the property were situated within its corporate limits ...”. *Id.*

IV. Applicable Legal Authority Within the City of Laurel, Related to Zoning and Subdivision Regulations.

A. **Applicable City of Laurel Ordinances:**

Ordinance No. 508 of the City of Laurel was passed in May 1957 to address zoning within the City of Laurel. *See* Ex. 1 to Braukmann Dec. Ordinance No. 613, passed on September 2, 1975, thereafter resolved, on the City's behalf, as follows: "... the City of Laurel does hereby extend the jurisdiction of the zoning authority of the City to include all contiguous land within one (1) mile in any direction of the present city limits." *Ordinance No. 613* at § 1 (1975). *Id.* at Ex. 2. The Ordinance, however, was only in effect for "a period of six months ...". *Id.* at § 3.

The City of Laurel thereafter again adopted an applicable Ordinance, specifically Ordinance No. 617, defining the municipal jurisdictional area of the City. *Id.* at Ex. 3. Ordinance No. 617 specifies that "[z]oning and subdivision ordinances and regulations may be enforced within the corporate limits of the municipality and within one (1) mile beyond its corporate limits." *City of Laurel Ordinance No. 617*, § 6. Ordinance No. 617 continues: "The enforcement in the area beyond the corporate limits may be to the same extent as if such property were situated within the corporate limit, until Yellowstone County adopts a master plan pursuant to Title XI, Chapter 38, R.C.M., Amended, and accompanying zoning or subdivision resolutions or both which include the area beyond the corporate limits." *Id.* (emphasis added).

In 1976, the City of Laurel also passed Ordinance 619, which created the Laurel-Yellowstone City-County Planning Board. *Id.* at Ex. 4. Ordinance 619 provides: "... the City of Laurel shall join with Yellowstone County, Montana, in the creation of a joint planning board." *City of Laurel Ordinance No. 619*, § 2. The City-County Planning Board was afforded jurisdictional authority "within the corporate limits of the City of Laurel and extend[ing] four and one-half miles (4 ½) beyond the limits of the City of Laurel." *Id.* at § 4. The City-County Planning

Board was also designated to “function as the zoning commission ...”. *Id.* at § 5. Importantly, pursuant to Ordinance 619, the City of Laurel was not given jurisdictional authority over the extra-territorial 4 ½ mile radius surrounding the City, and including County properties. The Laurel-Yellowstone City-County Planning Board was given jurisdictional authority, as a combined City and County Planning Board, to hear, consider, and make recommendations on land use issues for the extra-territorial area – to their respective regulatory bodies – either the City or the County.

B. Applicable City of Laurel Resolutions and Related Interlocal Planning Agreement:

On November 4, 2014, the City of Laurel resolved to approve the execution of an Updated Interlocal Planning Agreement between the City and Yellowstone County. *See Resolution No. R14-80. Id.* at Ex. 6. The Interlocal Agreement entered into in 2014 has specific terms related to land use issues both within the City of Laurel and outside City limits. In relevant part, the City and the County agreed, pursuant to the terms of the Interlocal Agreement:

The County Planning Board has jurisdiction over all of Yellowstone County except the City of Laurel and an area around the City of Laurel that the Joint City/County Planning Board has jurisdiction over.

...

The jurisdictional area of the Board is the City of Laurel and the 4.5 mile area around the City.

Id.

The 2014 Interlocal Agreement does not specifically address zoning. It is expressly related to planning and “planning recommendations.” *Id.* In addition, the 2014 Interlocal Agreement does not confer zoning jurisdiction upon the City of Laurel. It contemplates that the Joint City/County Planning Board hear matters regarding land use issues, including properties within an area of 4.5 miles around the City of Laurel. It does not grant authority for the City, versus the County, to

exercise decision-making authority over County residents and their properties. It simply grants to the Joint City/County Planning Board the ability to hear and make recommendations to the proper regulatory body.

C. Applicable City of Laurel Municipal Code:

The Laurel Municipal Code (“LMC”), at Section 1.20.010(f) provides as follows:

Zoning and subdivision ordinances and regulations may be enforced within the corporate limits of the city and within one mile beyond its corporate limits. The enforcement in the area beyond the corporate limits may be to the same extent as if such property were situated within the corporate limit, until Yellowstone County adopts a master plan pursuant to Title 76, Chapters 1 and 3, MCA., 1978, amended, and accompanying zoning or subdivision resolutions or both which include the area beyond the corporate limits.

LMC § 1.20.010(f) (emphasis added).

Consistent with Montana law, the LMC only contemplates the exercise of extra-territorial jurisdiction, over County properties and residents, if the County has not adopted a Master Plan and has not effected *either* zoning or subdivision resolutions.” *Id.* (emphasis added).

D. Applicable City of Laurel Subdivision Regulations:

The City of Laurel, in conjunction with Yellowstone County, has also approved and adopted specific Subdivision Regulations that govern the “public health, safety and general welfare of the citizens of Laurel and its Planning Jurisdictional Area by regulating the subdivision of land ...”. (Ex. 7 to Braukmann Decl.) (*The Subdivision Regulations of the Laurel-Yellowstone County City-County Planning Board*, § 16.03.) These Subdivision Regulations were enacted in 2017, and they were approved by Yellowstone County on March 21, 2017. Yellowstone County has relied upon its Subdivision Regulations in approving multiple different Subdivisions surrounding the City of Laurel. All of these Subdivisions were approved by the Yellowstone County Commissioners, not the City of Laurel City Council. *See* Braukmann Decl. ¶¶ 17-19. The County has retained its jurisdictional control over subdivision approvals and regulation.

V. **Applicable Legal Authority Within Yellowstone County, Related to Zoning and Subdivision Regulations.**

A. **Yellowstone County Growth Policy:**

In 2003, Yellowstone County passed a Growth Policy that, in part, addresses the jurisdiction of the Yellowstone County Planning Board. *See* Ex. 2 to Galvan Decl.) (*Yellowstone County Growth Policy*, § 5.4 (Interjurisdictional Coordination and Cooperation)). In 2008, Yellowstone County and the City of Billings updated their Growth Policy Plan by way of the Yellowstone County and City of Billings 2008 Growth Policy Update. *See* Ex. 3 to Galvin Decl.

B. **Applicable Yellowstone County Subdivision Regulations:**

As already noted above, Yellowstone County adopted specific Subdivision Regulations that govern the “public health, safety and general welfare of the citizens of Laurel and its Planning Jurisdictional Area by regulating the subdivision of land ...”. *See* Ex. 7 to Braukmann Decl. (*The Subdivision Regulations of the Laurel-Yellowstone County City-County Planning Board*, § 16.03). These Subdivision Regulations were enacted in 2017, and they were approved by Yellowstone County on March 21, 2017. They provide as follows:

These regulations will be known and may be cited as “The Subdivision Regulations of the Laurel-Yellowstone County City-County Planning Board ...

...

Authorization for these Regulations is contained in the Montana Subdivision and Platting Act (MSPA) (Title 76, Chapter 3, Mont. Code Ann.).

...

These Regulations govern the subdivision of land within the jurisdictional area of the Laurel-Yellowstone City-County Planning Board as shown on the map filed with the Yellowstone County Clerk and Recorder’s Office. The area is described as the lands lying within the City of Laurel and those lands extending four and one half miles beyond the City limits.

Id. at §§ 16.01-02, 16.04.

C. Applicable Yellowstone County Zoning Regulations:

In November 2020, Yellowstone County adopted the “Yellowstone County Unified Zoning Regulations” (hereinafter “the Zoning Code”). Section 27-102 of the Zoning Code states: “This Zoning Code has been established in accordance with the 2008 Yellowstone County Growth Policy and any updates thereto including the 2016 Lockwood Growth Policy and any County adopted plans and policies related to growth and development of County services ...”. The Zoning Code “applies to all lands within the Yellowstone County zoning jurisdiction boundary”. *Yellowstone County Unified Zoning Regulations*, § 27-103(A). The contemplated area with the County’s “zoning jurisdiction boundary” encompasses a “4 ½ mile jurisdictional area ...”. *Id.* at § 27-201(B). “The boundaries of the zone districts are shown on the Official Zoning Map ...”, referred to as “the Official Zoning Map of Yellowstone County, Montana 4½ Mile Jurisdictional Area.” *Id.* at § 27-202(A).

D. Applicable County Actions, as it Relates to Both Subdivision and Zoning Issues:

Not only has the County indicated an intent to enforce zoning and subdivision regulations in the extra-territorial area outside the City outskirts of Laurel, but it *actually has* done so. There are numerous examples, in the past, of how the County has exercised this control. For example, in 2009, the Figgins Subdivision, which is located within the County, but within the extra-territorial area of the City of Laurel, sought variances from the City-County Planning Board. (Ex. 9 to Braukmann Decl., Figgins Subdivision Approval). The City-County Planning Board heard the variance requests, and then, as reflected in the Minutes, referred the matter to the County for decision. *Id.* By way of further example, in 2016, the County considered a Zone Change application for the Allwin parcel, property also located within the extra-territorial area of the City of Laurel. (Ex. 10 to Braukmann Decl., Allwin Zoning Change Approval).

Yellowstone County has also specifically enacted Zoning Regulations for County properties in the extra-territorial area of the City of Laurel. By way of Resolution No. 97-36 (passed on May 15, 1997), the County created a special zoning district known as the Special Zoning District #18 for Thiel Road, Laurel, Montana, which external boundaries were thereafter amended by way of Resolution No. 97-56, passed by the County Commissioners. (Ex. 11 to Braukmann Decl., Resolution No. 97-36 (1997)). The County's Zoning District for Special Zoning District #18 is contained within the 4 ½ mile planning jurisdiction of the City of Laurel. *Id.* Importantly, this zoning, by the County, actually encompasses some of the particular Plaintiffs' properties, as County residents.

These are all clear examples of the County's intent to enact and enforce subdivision and zoning regulations for its County residents, even within the "donut area" of the City of Laurel.

VI. Applicable Montana Case Law Addressing Extra-Territorial Zoning.

The issues before this Court have been considered by the Montana Supreme Court. The two primary Montana Supreme Court cases that impact this Court's analysis are from 2014 and 2008 -- *City of Whitefish v. Board of County Commissioners of Flathead County*, 2008 MT 436 and *Phillips et al v. City of Whitefish and Board of Commissioners of Flathead County et al*, 2014 MT 186.

In *City of Whitefish v. Board of County Commissioners of Flathead County*, 2008 MT 436, the Montana Supreme Court was asked to consider various injunctive relief issues related to an extraterritorial zoning challenge, specifically involving the existence of an Interlocal Agreement. The City of Whitefish (hereinafter "Whitefish") and the Board of Commissioners for Flathead County (hereinafter "Flathead County") entered into an Interlocal Agreement in February 2005. *Id.* at ¶ 1. The Interlocal Agreement memorialized many cooperative planning practices in which

the parties had engaged for several decades. *Id.* In 2008, Flathead County issued a resolution that rescinded the County's consent to the Interlocal Agreement in violation of the express terms of the Agreement. *Id.* Whitefish filed a complaint against Flathead County seeking various forms of relief, including a preliminary injunction. *Id.* The Eleventh Judicial District Court denied the injunction and ruled that the Interlocal Agreement was invalid. *Id.* Whitefish appealed from the District Court's decision denying the injunction and ruling that the Interlocal Agreement was invalid. *Id.*

The specific facts and procedural background underlying *Whitefish v. Flathead County* are as follows:

In 1967, the City and County jointly created the Whitefish City-County Planning Board (Board). The Board enjoyed a planning jurisdictional area of four and one-half miles around the City. Additionally, from 1967 to 2005, the City of Whitefish, in accordance with applicable law and with the consent of Flathead County, zoned the perimeter of land circling the City and extending one mile outside of the City limits. This area was called the City's extra-territorial zoning jurisdiction.

...

In February 2005, after two years of negotiation, the City and County entered into a formal interlocal agreement. Among other things, the Agreement reduced the jurisdiction of the Board to two miles outside of the Whitefish city limits. The Agreement also provided that within these two miles, the City would have sole zoning authority and sole authority to establish and enforce subdivision, floodplain and lakeshore protection regulations, as well as complete authority to adopt and amend a growth policy.

Whitefish at ¶¶ 3-4.

In suing Flathead County, Whitefish argued that the County had breached the Agreement, and asserted that only the City of Whitefish had jurisdiction to enforce zoning within the two-mile area outside of the City limits. *Id.* The District Court ruled in favor of the County and determined that the Interlocal Agreement was invalid. *Id.* at ¶ 6. Whitefish then appealed the District Court's

determination, asking the Montana Supreme Court to find that the Interlocal Agreement was valid and enjoining the County from enforcing zoning in the two-mile extra-territorial area. *Id.*

The Montana Supreme Court found in favor of the City of Whitefish, although the holding of the Montana Supreme Court was related only to its determination that there were procedural errors by the District Court in not granting the preliminary injunction, and not as to the legal issues involved in extra-territorial zoning. *Id.* at ¶ 27. The Court stated:

... we conclude that in order to justify the entry of a preliminary injunction, the City of Whitefish was required at a minimum to make a prima facie showing of the existence of a duly executed contract between itself and the County, and a violation of its rights under that contract by virtue of the County's unilateral decision to breach the Agreement by withdrawing from it. This, the City has done. ... [Therefore] ... we vacate the District Court's order denying the City's application for preliminary injunction and remand this matter to the District Court for entry of a preliminary injunction preserving the status quo pending a trial on the merits."

Id. at ¶¶ 26-27.

The Court's opinion contains the relevant analysis utilized by the District Court, as it relates to extra-territorial zoning issues.

The District Court started its analysis by exploring the legal authority for interlocal agreements. The District Court observed that substantial constitutional and statutory authority existed allowing cities and counties to enter into interlocal agreements and share or delegate authority—specifically, Article XI, Section 7 of the Constitution, §§ 7-11-104, 76-1-112, 76-1-504, and 76-2-310, MCA. The court noted, however, that while § 7-11-104, MCA, expressly authorizes creation of interlocal agreements, §§ 76-2-310 and -311, MCA, provide that extending zoning and subdivision regulation jurisdiction to a city is authorized “except in locations where a county has adopted zoning or subdivision regulations” and “until the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.”

Therefore, the District Court determined, an agreement may facilitate a city's exercise of extra-territorial jurisdiction for only so long as the county has not adopted a growth policy and zoning or subdivision regulations for the area.

Id. at ¶ 9.

This relevant analysis was not disputed or overturned by the Montana Supreme Court.

After remand, Whitefish and Flathead County requested an extension of time from the District Court to allow opportunity for settlement discussions. *Phillips* at ¶¶ 11. The parties then created a joint committee of elected officials and City and County residents, forming a resolution committee, to attempt to resolve the issues by negotiation. *Id.* Over eight months, the resolution committee held several public meetings and proposed amendments to the Interlocal Agreement to provide County oversight of the City's exercise of zoning jurisdiction in the area. *Id.* The proposed amendments, "would allow either party to terminate the Agreement after giving one year's notice and participating in alternative dispute resolution, and set a five-year duration term subject to renewal by the parties." *Id.* The proposed changes were further discussed at public meetings of the City Council and County Commissioners because both the City and County had to agree. *Id.*

On November 15, 2010, the City Council passed a resolution authorizing the Whitefish City Manager to sign a 2010 Interlocal Agreement on behalf of the City. *Id.* During that meeting, the City Council passed a second resolution authorizing the City to seek dismissal of the 2008 lawsuit. *Id.* Then, on November 30, 2010, the County Commissioners adopted a resolution identical to the City's resolution authorizing the County to enter the 2010 Interlocal Agreement. *Id.* The City and County filed a joint motion to dismiss the 2008 lawsuit, stating to the District Court that the litigation was moot because the 2010 IA was fully in effect and specifically replaced the 2005 IA. *Id.* There, intervenors in that case opposed dismissal. *Id.* The District Court dismissed the action on July 11, 2011, finding that the 2010 IA had rendered the 2005 IA void and resolved the issues between the parties. *Id.* In that case, both the City and the County participated in approving resolutions specifically identifying who was responsible for exercise of extra-territorial jurisdictional rights. *Id.* The proceedings involved public hearing and approval of a specific IA that clearly delineated jurisdictional rights. *Id.* By doing so, the City and the County were able to

jointly provide City and County residents the opportunity for appropriate public hearing, as well as ensure that the jurisdictional rights and obligations were clearly articulated in the Interlocal Agreement between the two governmental bodies. *Id.*

The Montana Supreme Court was later asked, in 2014, to again address extra-territorial zoning issues, in *Phillips et al v. City of Whitefish and Board of Commissioners of Flathead County et al*, 2014 MT 186 (Mont. 2014). *Phillips* assisted in clearing up some of the legal issues stemming from the *Whitefish* litigation. In its analysis in *Phillips*, the Montana Supreme Court stated:

A city may adopt a growth policy and implement zoning and subdivision regulation in an area beyond the city limits only if the county has not “adopted zoning or subdivision regulations” in that area. Section 76-2-310(1), MCA. Likewise, a city may enforce its zoning and subdivision regulations in the extended area only “until the county board adopts a growth policy . . . and accompanying zoning or subdivision resolutions that include the area.” Section 76-2-311(1), MCA. Thus, by statute, a city’s authority to zone and regulate outside its boundaries is limited to instances where the county has not exercised its authority, and only until the county does so.

State law also provides geographical limits for a city’s exercise of zoning and subdivision authority outside its boundaries. As a city designated by statute of the second class, according to its population, § 7-1-4111(2), MCA, Whitefish could extend its regulations for up to two miles beyond the city limits, § 76-2-310(1)(b), MCA. State law also allows local governments to create joint planning boards, § 76-1-112(1), MCA, and to enter into interlocal agreements concerning joint provision and maintenance of various services, § 7-11-104, MCA.

Phillips at ¶¶ 6-7 (emphasis added). In deciding the issues before it in *Phillips*, the Court further stated:

Although we are not deciding in this case whether zoning authority was the proper subject of an interlocal agreement, nonetheless the action here was simply an amendment to an interlocal agreement that had provided, at most, consensual authority from the County for the City to act. Not only did the IA amendments not actually zone, but they also did not alter the contractual designation of which local government had current authority to zone in the donut. Land-use authority in the donut under the 2010 IA remained with the City, while an unspecified power of oversight in the County was added.

...

Even without the IA in place, the City had the power under § 76-2-311, MCA, to zone in the donut up until the County determined to adopt its own regulations.

Id. at ¶ 42-43 (in relevant part).

What is clear from the *Phillips* decision is that 1) a City and County may certainly contract for designation of “powers,” as it relates to zoning issues and 2) if a County has taken specific steps to adopt its own regulations, a City is precluded from acting in relationship to extra-territorial zoning.

ANALYSIS

The Montana Supreme Court’s clear direction regarding extra-territorial zoning, contained in its statements interpreting Mont. Code Ann. § 76-2-310, is evaluated by this Court, in its analysis. “A city may adopt a growth policy and implement zoning and subdivision regulation in an area beyond the city limits only if the county has not “adopted zoning or subdivision regulations” in that area. *See* Mont. Code Ann. § 76-2-310(1). Likewise, a City may enforce its zoning and subdivision regulations in the extended area only “until the county board adopts a growth policy . . . and accompanying zoning or subdivision resolutions that include the area.” Mont. Code Ann. § 76-2-311(1). Thus, by statute, a City’s authority to zone and regulate outside its boundaries is limited to instances where the County has not exercised its authority, and only until the county does so. *Phillips* at ¶¶ 6-7.

I. The County has Exercised its Authority to Enact a Growth Policy, Pursuant to Mont. Code Ann. § 76-2-310.

Yellowstone County has a specific Growth Policy, which was first adopted in 2003. While the Growth Policy itself indicates that the City of Laurel is “outside the Yellowstone County Planning Board’s jurisdiction” and that the City is not specifically subject to the County’s Growth

Policy, the Policy is also silent on the issue of how extraterritorial zoning issues should be addressed. The County's Growth Policy does not specifically speak to how zoning is actually enforced and, when enforced, by whom (the City or the County). It also does not address the procedural components of how these issues are meant to be handled, between the City and the County. There are no express provisions explaining whether a zoning application should, in fact, be presented to the Laurel City-County Planning Board, and then that Board in turn cedes the determination to either 1) the City of Laurel, or 2) Yellowstone County. What is clear is that – by not ceding jurisdiction to the City of Laurel – and by simply promulgating a Joint City/County Planning Board, the County has not effectively “given up its rights” over its residents. Had the County wished to do so, of course, it could have – and the appropriate mechanism would be an Interlocal Agreement between the City and the County, which clearly delineates that the County does not wish to exercise jurisdictional control over its residents. Therefore, on its face, the first “prong” of the statutory requirements is not met by the Plaintiffs in this case. A Growth Policy does exist. That Growth Policy does not cede zoning jurisdiction to the City of Laurel. It merely gives the City-County Planning Board the ability to hear and make “planning recommendations” to the appropriate governing body – in this case, for a County parcel and properties – to the County.

II. The County has Exercised its Authority to Enact Subdivision Regulations, Pursuant to Mont. Code Ann. § 76-2-311(1).

The other “prong” of analysis, applicable to this issue, is whether the County has adopted specific zoning or subdivision resolutions applicable to the extraterritorial area. Yellowstone County specifically adopted subdivision regulations within the County, first in 2006 and again in 2017. As explained above, these subdivision regulations clearly apply to the City of Laurel's contiguous areas, including a four and a half (4 ½) mile radius of the City of Laurel city limits.

Immediately, the enactment of these subdivision regulations took the City outside the jurisdictional authority that it might have previously had to enact and enforce extra-territorial zoning.

In addition, practically speaking, the County has and continues to enforce zoning and subdivision regulations for its County residents. *See supra*. It has done that by regulating over forty different subdivisions, all within the extra-territorial purported “control” of the City of Laurel. It has done that by enacting zoning and other regulations for County residents, that are in the same purview as the NW Energy property. It has done that by, in fact, zoning the exact parcels of County property owned by some of the Plaintiffs in this litigation. It has done that by its clear intention to this Court to exercise control, moving forward. This is a clear exercise of the County’s control over these County properties, and a clear removal of any control that the City of Laurel may have over these properties.

III. The County has Not Ceded its Authority Over County Residents and Properties Pursuant to an Interlocal Agreement with the City of Laurel.

Considering the City and County’s Interlocal Agreement, it is likewise clear that the County did not intend, under the IA, to grant the City jurisdictional authority to enforce extra-territorial zoning. The City of Laurel’s Interlocal Agreement with the County is limited in scope. The Agreement very specifically only contemplates the creation and utilization of a joint City-County Planning Board. The City is tasked, under the Agreement, with administering funding and addressing planning matters, through the Board. The Agreement does not specify that the City has any jurisdictional authority outside the City of Laurel City limits. The Agreement also does not specify that the City has extra-territorial authority to address zoning or subdivision issues, outside of consideration of these issues by the Planning Board, and then appropriate referral to the governing body.

The City recognized and acknowledged, in its Briefing, that this authority could be ceded to it, if the County chose (or chooses) to do so. However, that has not happened. The County has not asked the City to enforce zoning and subdivision regulations beyond City limits. In fact, the County's actions have indicated that it has full exercise and control over its own residents, contrary to the Plaintiffs' arguments. That is evidenced by its actions, consistently throughout, in relationship to subdivisions in the extra-territorial area, as well as other zoning matters. If the City of Laurel is going to undertake control over these properties, that work has to be done by way of an Interlocal Agreement that clearly specifies how and to what extent this work will be done. It has to involve giving County residents the right to appear and protest at public hearings, the right to be heard, and the right to speak about whether they want the City to exercise this control. That right has never been given to County residents. To cede that right from County residents, where they have never been given an opportunity to participate and protest, would be a direct contravention of Montana law and the rights and obligations that these landowners hold, as County property owners.

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CONCLUSION

Here, Yellowstone County has asserted subdivision jurisdiction and advises the Court that it intends to acquire zoning jurisdiction. Yellowstone County's resolution demonstrates this case will be rendered moot. Based upon the foregoing, this Court denies Plaintiffs' Motion for Summary Judgment.

IT IS ORDERED that Plaintiffs' Motion for Summary Judgment is hereby DENIED.

Dated this 5th day of February, 2024.

/s/ Hon. Jessica T. Fehr

HON. JESSICA T. FEHR
DISTRICT COURT JUDGE

cc: Amanda Galvan, Esq., Marcy Chochenour, Esq., Emily Qiu, Esq.
Michelle Braukmann, Esq.
Melissa Williams, Esq.
Harlan Krogh, Esq., Ben Alke, Esq.