

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 97-17201, entitled: **"A RESOLUTION RELATING TO W.O. 97-02, #1: THE 1997 DEVELOPER-RELATED CURB, GUTTER AND SIDEWALK PROGRAM; ORDERING THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND"** (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on **February 24, 1997** and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: Regnier, Farmer, Mayor Tooley, Stone and Larson

Michunovich, Ellison; voted against the same: Deisz, Creighton  
None;

None; or were absent: Davis, Ohnstad

WITNESS my hand officially this 24th day of February, 1997.

Marita Herold  
Marita Herold, CMC CITY CLERK

RESOLUTION NO. 97-17201

Amended by  
97-17206

A RESOLUTION RELATING TO W.O. 97-02, #1: THE 1997 DEVELOPER-RELATED CURB, GUTTER AND SIDEWALK PROGRAM; ORDERING THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

BE IT RESOLVED by the City Council of the City of Billings (the "City"), Montana, as follows:

**Section 1. Passage of Resolution of Intention.** This Council, on **January 27, 1997**, adopted Resolution No. **97-17191** (the "Resolution of Intention"), pursuant to which this Council declared its intention to order in certain sidewalks, curb and gutter improvements, designated as W.O. 95-15 (the "Project") of the City, under Montana Code Annotated, Title 7, Chapter 14, Part 41, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of sidewalk, curb and sidewalk, curb and gutter improvement bonds drawn on the Project (the "Bonds"), the creation and administration of the Project, and the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

**Section 2. Notice and Public Hearing.** Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with law, and on **February 24, 1997**, this Council conducted a public hearing on the ordering in of the Project and the making of the Improvements.

**Section 3. Order.** It is hereby ordered that the following improvements shall be constructed, reconstructed, repaired, or replaced:

See Exhibit "A" attached hereto.

**Section 4. Affected Properties.** All properties which will be required to pay any portion of the costs of the improvements identified herein are listed and the owners of those properties are identified in Exhibit "B" attached hereto.

**Section 5. Reimbursement Expenditures.**

5.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for

the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

5.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$322,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

5.05. Reimbursement Allocations. The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

**Section 6. Property Owner Option to Construct Improvements.**  
Notice of passage of this Resolution shall be mailed to all affected property owners and said owners shall have thirty (30) days from the date of said Notice in which to install the ordered improvements at their cost and expense. In the event the owners do not take said action within the said thirty (30) day period, the City will install the improvements and will assess the costs thereof, all costs of administration and engineering and all bond issuance costs against the real property.

RESOLUTION NO. 97- 17a01

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this **24th** day of **February**, 1997.



THE CITY OF BILLINGS:

BY Charles F. Tooley  
Charles F. Tooley  
MAYOR

ATTEST:

BY Marita Herold  
Marita Herold, CMC CITY CLERK

RE: W.O. 97-02, #1: The 1997 Developer-Related  
Curb, Gutter & Sidewalk Program

## **SITE DEVELOPMENT - COMMERCIAL**

2123 1st Avenue North

**Tax Code #A-573**

**Permit # - None issued**

**Permit Issued:** None

**Builder/Developer:** Hancock Properties

**Owner:** Hancock Properties

**Work Includes:** Remove and replace 175' x 6' boulevard walk, 141' standard curb and gutter, 30' x 9' drive approach, and street restoration

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** The property owner, in conjunction with the commercial site development for a new brewery, requested in a letter dated October 22, 1996 that these improvements be included and constructed under the 1997 Developer Related project. No permit was issued due to the property owner's request.

**Engineer's Estimate:** \$12,579.47

119 North 33rd Street

**Tax Code #A-684**

**Permit #20023**

**Permit Issued:** June 2, 1995

**Builder/Developer:** Preferred Landscaping

**Owner:** St. Luke's Protestant Episcopal Church

**Work Includes:** 50' of standard curb and gutter

**Work Done:** The 50' of standard curb and gutter was installed incorrectly

**Work Uncompleted:** 50' standard curb and gutter

removal of the approaches included the

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**Tax Code #A-1111**

320 South 28th Street

**Permit #** - None - Building Permit issued without Engineering Permit - see Commentary

**Permit Issued:** None

**Builder/Developer:** Community Leadership Development (Dave Haagstrom)

**Owner:** Dutton, Ernest

**Work Includes:** Remove and replace 240' x 6' boulevard walk

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** The Building Permit was issued without the Engineering Permit by request of the developer. A letter dated September 5, 1996 from Mr. Dave Hagstrom requested that the improvements for this property be included in the 1997 Developer Related program for completion. This is a commercial tri-plex which is being moved onto the site.

**Engineer's Estimate:** \$7,773.61

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**Tax Code #A-15899**

3705 Montana Avenue & 108 Terry Avenue

**Permit #**None

**Permit Issued:** None

**Builder/Developer:** Darla Grenfell

**Owner:** Eastwood, Helen & Michael - Trustee

**Work Includes:** Remove drive approaches on Montana Avenue and Terry Avenue. Install 75' standard curb and gutter, 51' x 7' curbside, and relocate a 26' x 11' drive approach on Terry Avenue.

**Work Done:** None

**Work Uncompleted:** All of the above

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**Tax Code #A-20395**  
**Permit #20658**

2334 Central Avenue

**Permit Issued:** September 26, 1995  
**Builder/Developer:** Westmark Group  
**Owner:** Buttreys Food Drug Co.

**Work Includes:** 180' x 5' curbside, 180' standard curb and gutter, and 2 street approaches

**Work Done:** 180' x 5' curbside, 180' standard curb and gutter, and the street approach exiting off Central Avenue

**Work Uncompleted:** Street approach exiting off 24th Street West and handicap ramps

**Commentary:** The site development for the new Taco Bell and a new plat for commercial site include the installation of these improvements under current ordinances and policies. The Subdivision Improvements Agreement with the property owner also includes these improvements to be installed. The construction of the new street entrances is to help the traffic flow on and off 24th Street West with less delays for turning.

**Engineer's Estimate:** \$5,984.33

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**Tax Code #A-25505**  
**Permit #19879**

2052 Lampman Drive

**Permit Issued:** March 27, 1995  
**Builder/Developer:** Douglas Harvey  
**Owner:** Homestead House Inc.

**Work Includes:** 135' x 5' curbside

**Work Done:** 75' x 5' curbside

**Work Uncompleted:** 60' x 5' curbside

**Commentary:** The owner/developer constructed a commercial complex of storage sheds. The site development for commercial property included the construction of the above-mentioned improvements. However, at the present

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**Tax Code #**A-26002, A-26003, A-26004, 3170 Solar Boulevard, Units 1-8  
A-26005, A-26006, A-26007,  
A-26008 & A-26009  
**Permit #**19976

**Permit Issued:** May 10, 1995  
**Builder/Developer:** Stu Henkel Realty  
**Owners:** Terra West Townhouses LLC (6); Carlson, Timothy; Fachner, Jerome & Carol

**Work Includes:** 180' x 5' boulevard walk, 20' standard curb and gutter, handicap ramp, and street restoration

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** The site development for the commercial property 8-plex townhouses included the installation of the right-of-way improvements in keeping with the current commercial site development ordinances. The legal description includes a total of 22 units. However, units 9-17 were previously constructed and units 18-22 are yet to be constructed. Work and assessments only include the area of work associated with the new 8-plex. Letters have been sent to the current owners of the lots advising them of the developer/builder failure to complete the required improvements.

**Engineer's Estimate:** Total cost of all units is \$4,338.19 - Average cost per unit is \$548.58

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**Tax Code #**C-1461-1 400-402 Sharron Lane, & 2111-2113 Lake Elmo  
**Permit #**None Drive - New Home Construction

**Permit Issued:** None  
**Builder/Developer:** John M. Haman  
**Owner:** Haman, John & Vivian

**Work Includes:** 214' x 5' curbside, 3 drive approaches, 214' curb and gutter, and street reconstruction (90' x 7', 188' x 12', and 25' x 12')

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** The Building Permit for this property involved the addition of a duplex building to an existing



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**Tax Code #C-10941** 3211 Hesper Road  
**Permit #20159**

**Permit Issued:** None  
**Builder/Developer:** J.W. Gatewood  
**Owner:** Yellowstone County

**Work Includes:** Asphalt drive approach

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** Site development for this commercial property includes a new storage building. The permit was not issued due to the fact that the developer would not pick up the permit. The work was started in August of 1995. The permit was to install an asphalt access approach from Hesper Road to the developed property and included the installation of 2 CMP culverts across the existing ditches. At the present time, a gravel access exists and the CMP is completed, but the asphalt overlay has not been constructed.

**Engineer's Estimate:** \$2,864.77

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**Tax Code #D-5601** 223-239 Swords Lane  
**Permit #21408 & 21409**

**Permit Issued:** July 2, 1996  
**Builder/Developer:** Ernie Dutton  
**Owner:** Cebull, Linda - Trustee

**Work Includes:** 200' x 5' curbside, 200' standard curb and gutter, (2) 32' x 9' drive approaches, and 145' street section

**Work Done:** None

**Work Uncompleted:** All of the above

## SITE DEVELOPMENT - RESIDENTIAL

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**Tax Code #A-12266-1**  
**Permit #20769**

231 Emerald Drive

**Permit Issued:** December 18, 1995

**Builder/Developer:** Bruce Haagerson

**Owner:** Haagerson, Bruce

**Work Includes:** 20' x 5' drive approach

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** The builder was to install a 20' x 5' drive approach behind the rollover curb and gutter. At the present time, the house is lived in but the approach has not been installed.

**Engineer's Estimate:** \$545.10

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**Tax Code #A-27889, A-27890,**  
**A-27891, A-27892**

1630, 1640, 1650 & 1680 Primrose Drive

**Permit #20938, 19835, 20634 & 20631**

**Permit Issued:** April 11, 1996; March 15, 1995; September 19, 1995 & September 15, 1995

**Builder/Developer:** John Laird

**Owners:** Davis, Dale & Marjorie (2); May, Jason & Terah; Maher, John & Monica

**Work Includes:** (4) 20' x 7' drive approaches, 260' x 5' curbswalk & 50' standard curb and gutter

**Work Done:** (4) 20' x 7' drive approaches

**Work Uncompleted:** 260' x 5' curbswalk and repair of 50' standard curb and gutter

**Commentary:** The parcels originally existed as a Certificate of Survey and was replatted to Fouhy Subdivision. The parcel did have existing curb and gutter. The plotting of the parcel included a 5' curb and gutter.

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**Tax Code #**A-28252 & A-28253                      1788 & 1790 Golden Boulevard  
**Permit #**18873

**Permit Issued:** June 22, 1994  
**Builder/Developer:** Premier Homes (Dave & Barbara Hawkins)  
**Owner:** Paton, Margaret; Morrison, Roy & Alma

**Work Includes:** (2) 20' x 7' drive approaches, 230' x 5' curbwalk, and a handicap ramp

**Work Done:** (2) 20' x 7' drive approaches and 99' x 5' curbwalk

**Work Uncompleted:** 146' x 5' curbwalk and handicap ramp

**Commentary:** This parcel is a single lot with a duplex having been constructed. The right-of-way improvements are to be installed in accordance with the Subdivision Improvements Agreement. The property has been created as a condominium to townhouses, thus, we have 2 tax codes for a single legal description. The developer is aware that the work is yet to be completed. During the course of construction, all the forms were set to complete the subject work by the concrete subcontractor. However, he was directed by the owner not to complete the improvements. Letters have been sent to the current owners of the lots advising them of the developer/builder failure to complete the required improvements.

**Engineer's Estimate:** \$1,524.21  
\$1,524.21

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**Tax Code #**A-28410, A-28411, A-28412,                      2532, 2606, 2605, 2525, 2519 North Shore Place  
A-28413 & A-28414  
**Permit #**None

**Permit Issued:** None  
**Builder/Developer:** Mike Homme/Hanmar Energy  
**Owner:** Brown, Cary & Julie; Fry, Daniel & Nancy; Henderson, Thomas & Darlene; Hanmar Homes (2)

**Work Includes:** Subdivision improvements under North Shore Estates Subdivision

**Commentary:** The developer was to complete necessary improvements required for the development of a new

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340 Stillwater Lane

**Tax Code #C-367-1**  
**Permit #20637**

**Permit Issued:**  
**Builder/Developer:** Wilmer Klundt  
**Owners:** Klundt, Wilmer & Joy

**Work Includes:** 115' standard curb and gutter, 115' x 5' curbside sidewalk, and street restoration 115' x 12'

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** The permit was issued in conjunction with a Building Permit at this address. This is a corner lot located at the intersection of Stillwater Lane and Lake Elmo Road. Curb and gutter currently exists along Stillwater Lane. The Site Development Ordinance and current Sidewalk Policy and Arterial Street Policy requires that curb, gutter and sidewalk be constructed along the Lake Elmo frontage of this site. The property owner has requested that this work be included in the 1996 Developer Related Program.

This property was deferred from the 1996 Developer Related program by the City Council last year. Staff was directed to pursue a more comprehensive program for this section of Lake Elmo Drive which was subsequently abandoned by the City Council in December, 1996. Since this property remains subject to the Site Development Ordinance and since the Council implied it be brought back following consideration of the more comprehensive project, it is once again included within the program.

**Engineer's Estimate:** \$8,196.34

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**Tax Code #C-9322**  
**Permit #19499**

**Permit Issued:** December 5, 1994  
**Builder/Developer:** Crown Construction (Nathan & Matt Metcalf)  
**Owner:** Metcalf, Nathan & Thelma

**Work Includes:** 22' x 5' standard drive approach and 268' x 5' curbside

**Work Done:** 22' x 5' standard drive approach and 54' x 5' curbside

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724 Jaque Lane.

**Tax Code #C-11769**  
**Permit #21261**

**Permit Issued:** May 8, 1996  
**Builder/Developer:** Dawson Builders  
**Owner:** Hopa Trust

**Work Includes:** 24' x 7' drive approach, 41' x 5' curbside and 65' standard curb and gutter

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** The developer has constructed a single-family home. The improvements were included to be installed with the site development. SID 1331 (Bender Subdivision) recently completed right-of-way improvements up to the adjacent property line last summer.

**Engineer's Estimate:** \$6,302.75

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## **SITE DEVELOPMENT (RESIDENTIAL) & STAFF RECOMMENDATION**

**Tax Code #**A-20495 - A-20506

Lots 2 & 10 (vacant), Linda Lane, 1503,  
1504, 1508, 1513, 1514, 1519, 1520, 1527,  
1528, 1535, 1536 & 1543 Linda Lane

**Builder/Developer:** Mike Littler

**Owners:** Mike Littler (6); Winniski, Alfin; Hayes, Donald & Joyce; May, Richard & June (2); Seidel, Leah - Trustee; Strecker, David & Kathleen; Yoder, Delmer & Ruth; Burs, Robert & Ruth

**Commentary:** The above-mentioned parcels are a combination of residential site development requirements for 6 parcels; 2 parcels which have a portion of the improvements already completed; and, the balance of the properties (6 total) are being recommended by staff. Although it would not be impossible to complete the improvements along only the frontages of the recently developed lots, the improvements within this cul-de-sac should include all properties rather than limiting the work to those most recently developed. The developer of the new sites submitted a letter dated March 13, 1996 regulating these improvements be installed in conjunction with a City program.

A letter has been sent to the 8 owners of the lots which were not recently developed. This letter explains to them the reason for their inclusion in the program.

Work would include the construction of curb, gutter, sidewalk, drive approach and asphalt street section.

**Engineer's Estimate:** Range from a low of \$3,668.05 to a high of \$11,154.88, and a total cost of \$99,255.37. Average cost of \$7,089.67

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## STAFF RECOMMENDATION

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**Tax Code #A-14593, A-14594**  
**Permit #19930 & 19931**

26 Monroe Street, 22 Monroe Street

**Permit Issued:** Both on April 21, 1996  
**Builder/Developer:** Rita Peterson, Diane Torres  
**Owners:** Peterson, Rita & Cynthia; Dimich, Daniel

**Work Includes:** 26 Monroe Street - New 50' x 6' boulevard walk and service walks of 2' x 6' and 3' x 3'; 22 Monroe Street - New 51' x 6' boulevard walk

**Work Done:** None

**Work Uncompleted:** All of the above

**Commentary:** The property owners took the existing walk out to remove some trees and, at that time, decided to replace the sidewalk. The work was done without any permits and was about the same time as the State Avenue project. Shortly thereafter, the owners picked up permits to complete the work. However, since that time, no further work has been completed and the sidewalk is still removed and is hazardous to the public.

**Engineer's Estimate:** \$\$1,357.58 & \$1,269.14

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**Tax Code #A-21923**  
**Permit #19463**

2340 Constellation Trail

**Permit Issued:** November 3, 1994  
**Builder/Developer:** Yellowstone County Residential Support Services (Sandy Sanderson)  
**Owner:** Yellowstone County Residential Support Services

**Commentary:** Residential Services applied for a permit to install curb, gutter, sidewalk and a storm drain inlet in November, 1994. The purpose was to prevent the existing concrete drive approach from washing out and any further damage. However, the contractor that was hired failed to perform the work in a timely manner, during which time several rain storms washed out under the approach and the neighbor's curb and gutter. The approach became settled and had to be replaced. The neighbor's curb and gutter was replaced and the approach was washed out under the approach and the neighbor's curb and gutter.

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**Tax Code #**C-373  
**Permit #**None

251 Wicks Lane

**Owner:** Badgley, Lula & Glenn

**Commentary:** This work includes installation of curb, gutter sidewalk, drive approach, street construction and some driveway. The work will complete the street project and improvements along Wicks Lane west of Lake Elmo, following acquisition of the necessary right-of-way late last year.

**Engineer's Estimate:** No cost to property, City contribution from Gas Tax (\$22,000)

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**Tax Code #**C-1758, C-7680, D-314,  
D-332\*\* & D-334

4 32nd Street West, 3140 Broadwater Avenue  
3214 Broadwater Avenue, 550 32nd Street West &  
Centennial Park

**Owners:** Schwehr, Leo C.; Billings Gospel Tabernacle Assemblies of God; Apostles Evangelical Lutheran Church; Centennial Park; Montana Conference Association of 7th Day Adventist Church

**Commentary:** This work represents assessment of a portion of the costs for the proposed widening and improvement of 32nd Street West from Broadwater Avenue to Central Avenue. The proposed parcels are adjacent to 32nd Street West and include 4 commercial properties and Centennial Park. The proposed assessments are in accordance with past City Council policy for arterial street improvements. Specifically, the cost of curb, gutter and sidewalk improvements is assessed to commercial property and new subdivisions while these costs for existing residential properties are paid from the Gas Tax budget. It should be noted a contribution of \$46,748 was made from Aspen Grove Subdivision, 4th Filing, under the terms of its Subdivision Improvements Agreement, representing its proportionate share of these costs.

**Engineer's Estimate:** C-1758 - \$5,494.61; C-7680 - \$14,748.15; D-314 - \$26,697.81;  
D-334 - \$11,870.38; & D-332\*\* - City contribution for Centennial  
Park (\$48,000)

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**Tax Code #**D-5600

59 Swords Lane