

EXHIBIT 1
DATE 4-15-09
HS 37

17

**CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA**

Monday, SEPT. 22, 2008

SUBJECT: Approval of Development Agreement for Babcock Building

DEPARTMENT: City Administrator's Office/Legal

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City Council is being asked to enter into a Development Agreement with the Downtown Billings Partnership (DBP) and The Babcock, LLC, to use \$1.9 million of Tax Increment Financing District (TIFD)

PROCEDURAL HISTORY:

- Nov. 13, 2007: Council approves a resolution conditions under which the 1976 Downtown TIFD would sunset and approved a development agreement with the DBP that specified how the final allocation of TIFD funds are to be expended.
- Feb. 25, 2008: Council approves a resolution amending the 2007 development agreement that includes authorizing DBP to manage legacy projects under the Large Project Gap Funding Program.
- Aug. 29, 2008: DBP approves The Babcock, LLC, application for a \$1.9 million allocation of TIFD funds to purchase and renovate the Babcock Building, and forwards the item to the City Council for approval.

The Babcock, LLC, consists of Mike Mathew, Kay Foster and architects Kimberly A. and Donald J. Olsen (a third pair of partners has left the project). They have a buy-sell agreement to purchase the building that expires on Sept. 25, 2008.

Board of Directors - Downtown Billings Partnership

Don Olsen Vice President

Chair of Exec. Comm. Urban Design Committee
dono@o2architects.net • 259-7123

Kim Olsen

kimo@o2architects.net - 259-7123

Kay Foster

kayf@montana.net - 256-2333

Tina Volek

VolekC@ci.billings.mt.us - 657-8430

Board & Commission Reports-Downtown Billings Partnership

Greg Kruger, Executive Director of the DBP gave the 2nd quarter report for the partnership. The DBP jointly manages and invest the incremental taxes from the downtown district into additional downtown projects.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 24, 2008

TITLE: Public Hearing and Ordinance Adopting the Expanded N. 27th Street Urban Renewal Area - 2008

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Council will conduct a public hearing and consider adopting an Ordinance that adopts the Modified Plan and establishes the Expanded N. 27th Street Urban Renewal Area (District) - 2008. It is important that the district be expanded this calendar year in order to take advantage of the property improvements that have taken place in 2008 and the resulting higher taxable value. It is that increase in taxable value that produces the tax increment that is needed to complete the public improvement projects anticipated by the modified plan. The Council must act at this meeting because, in order to comply with new Department of Revenue (DOR) Rules, the expansion and all documentation must be reported and submitted to the DOR by February 1, 2009.

ALTERNATIVES ANALYZED: Expanding this district is discretionary. The City Council may:

- adopt the ordinance that approves the Modified Plan and expands the boundaries of the Extended N. 27th Street District
- modify the ordinance and proposed boundary
- not approve the ordinance and allow the Extended N. 27th Street District that was established in 2006 to remain in place.

FINANCIAL IMPACT: The financial impact is unknown. However, the taxable value is approximately \$3.5 million. All of the expansion area was in the 1976 Downtown Urban Renewal Area that expired in March, 2008 but the expansion area does not include all of the property that was in that earlier downtown district. The purpose of an urban renewal and tax increment district is for the city to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur and property values would stagnate or decline.

RECOMMENDATION

ATTACHMENT 3

**EXPANSION OF THE BILLINGS, MONTANA
NORTH 27TH STREET URBAN RENEWAL
AREA, WITH TAX INCREMENT, AND
AMENDMENT TO THE URBAN RENEWAL
PLAN**

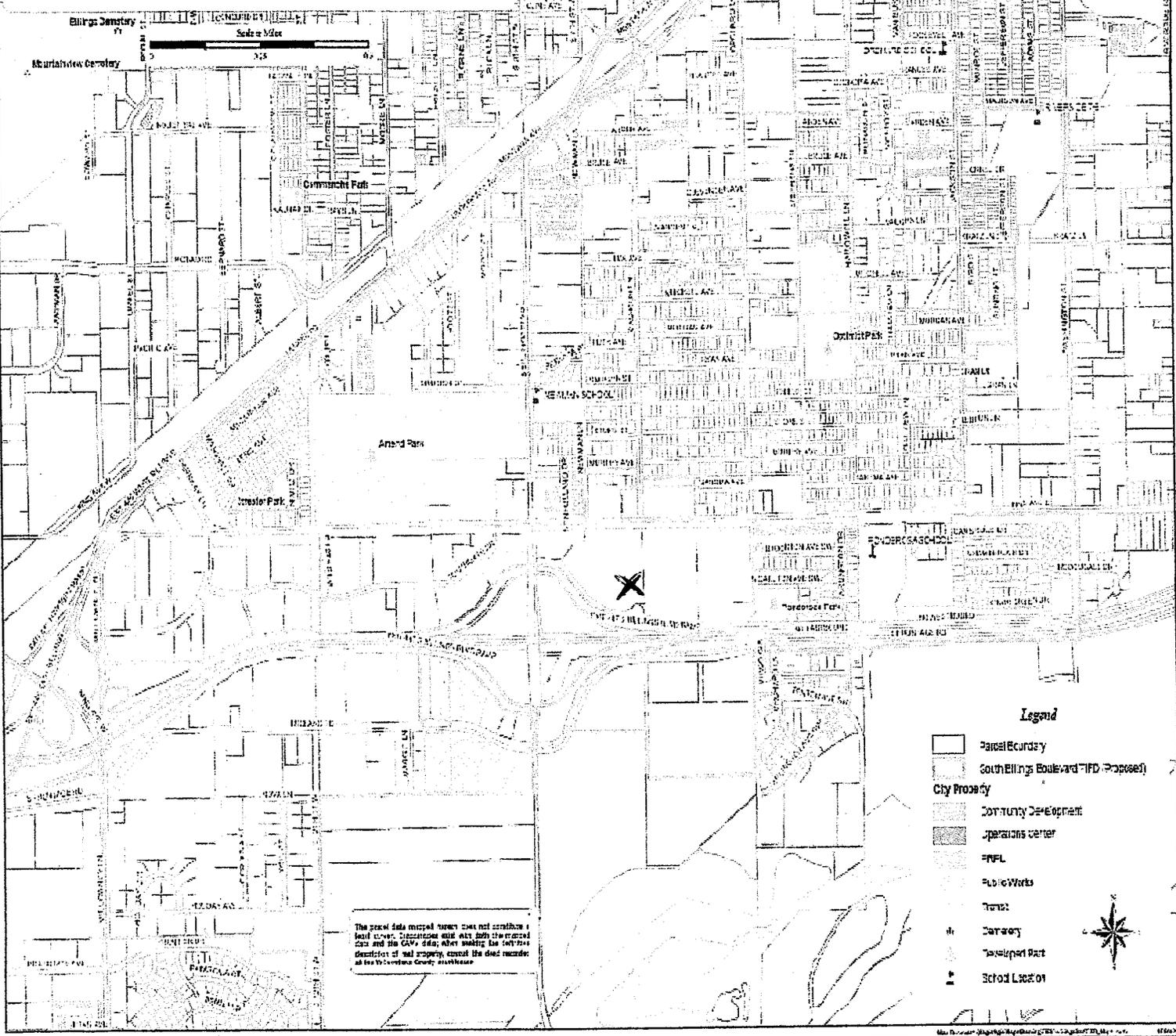
**FOR CITY OF BILLINGS AND PLANNING REVIEW
October 14, 2008**

Prepared by

Billings Downtown
Starts here.

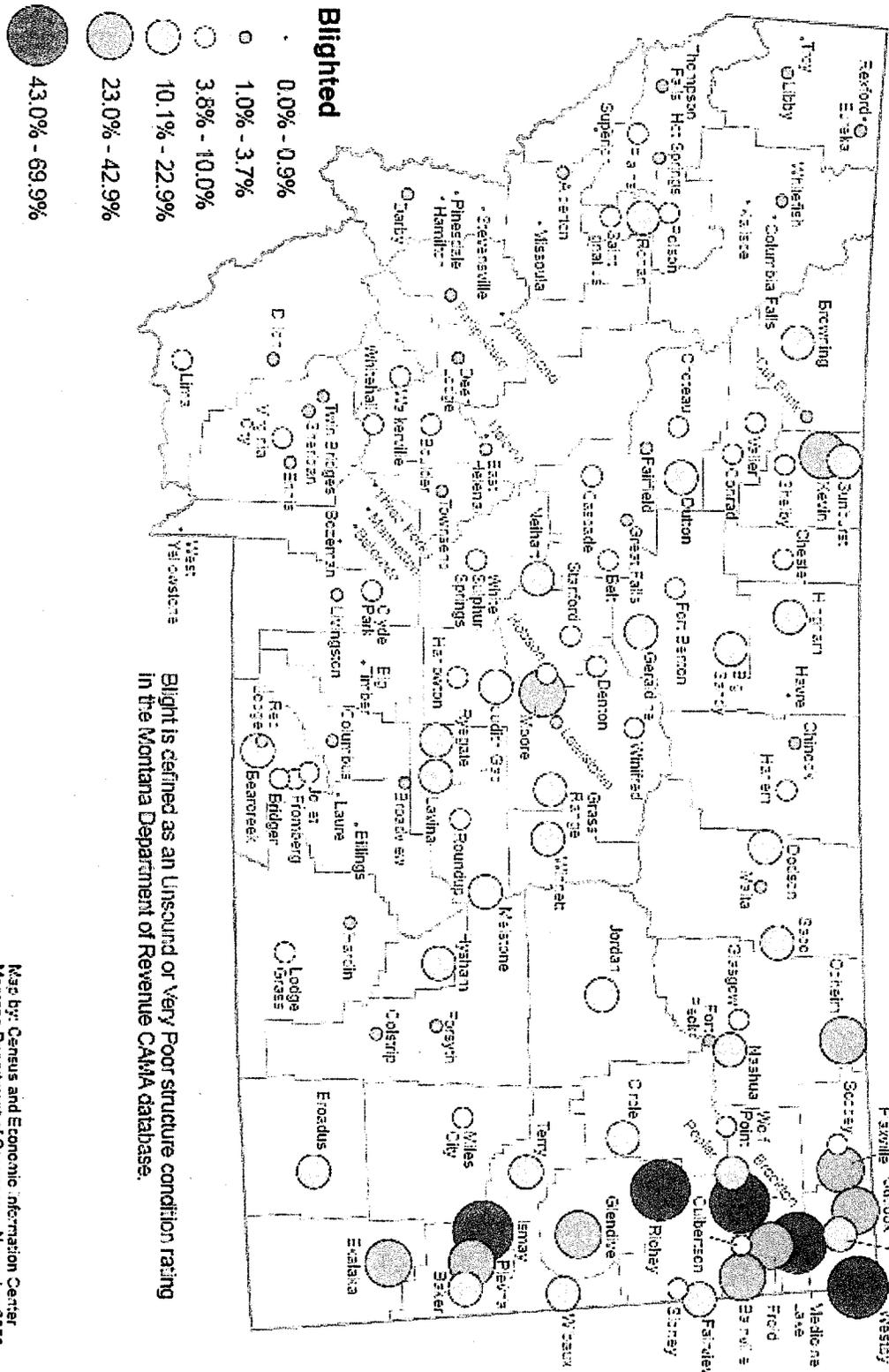
Downtown Billings Partnership, Inc
2815 2nd Ave. North – Billings, MT 59101 – gregk@downtownbillings.com

South Billings Blvd Proposed TIFD



The parcel data depicted herein does not constitute a legal survey. Transactions with any data on this map and the GVS data may require the services of a professional surveyor, and the user assumes all liability for any errors or omissions on this map.

Residential Blight by Municipality: Montana



Blight is defined as an Unsound or Very Poor structure condition rating in the Montana Department of Revenue CAMA database.

Source: Montana Department of Revenue, 2005 CAMA Data

Map by: Census and Economic Information Center
 Montana Department of Commerce - November 2005

MT Department of Commerce

42.19.1403 NEW URBAN RENEWAL TAX INCREMENT FINANCING DISTRICTS –
INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE

(1) The department will certify the base taxable value of a newly created urban renewal TIFD if the department determines that the following information exists and has been provided to the department:

(a) a copy of the statement of blight required under 7-15-4202, MCA, including any documentation upon which the statement of blight is based;

(b) a copy of the resolution of necessity required by 7-15-4210, MCA, adopting the statement of blight. The resolution must have an effective date prior to the date on which the TIFD is created;

(c) a map representing the TIFD's boundary including a legal description of the TIFD;

(d) a copy of the local government's growth policy;

(e) a copy of the local government's urban renewal plan pursuant to 7-15-4212 and 7-15-4284, MCA, containing the tax increment provision;

(f) a copy of the local government's planning board's finding that the urban renewal plan conforms with the local government's growth policy;

(g) a copy of the notice of public hearing required under 7-15-4215, MCA;

(h) a certified copy of the ordinance approving the urban renewal plan containing the tax increment provision under 7-15-4216, MCA;

(i) a certified copy of the ordinance creating the urban renewal district including the tax increment provision;

(j) the name of the TIFD; and

(k) a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the TIFD at the time of its creation.

(2) The local government that has created the TIFD will provide the information described in (1) to the department when it notifies the department that the TIFD has been created.

History: 15-1-201, MCA; IMP, 7-15-4202, 7-15-4210, 7-15-4215, 7-15-4216, 7-15-4282, 7-15-4284, MCA; NEW, 2008 MAR p. 1490, Eff. 7/18/08.

FOR SALE

Controlled Industrial Zoning

All City Services Included

Lots Starting at \$4.25+ Per Sq. Ft.



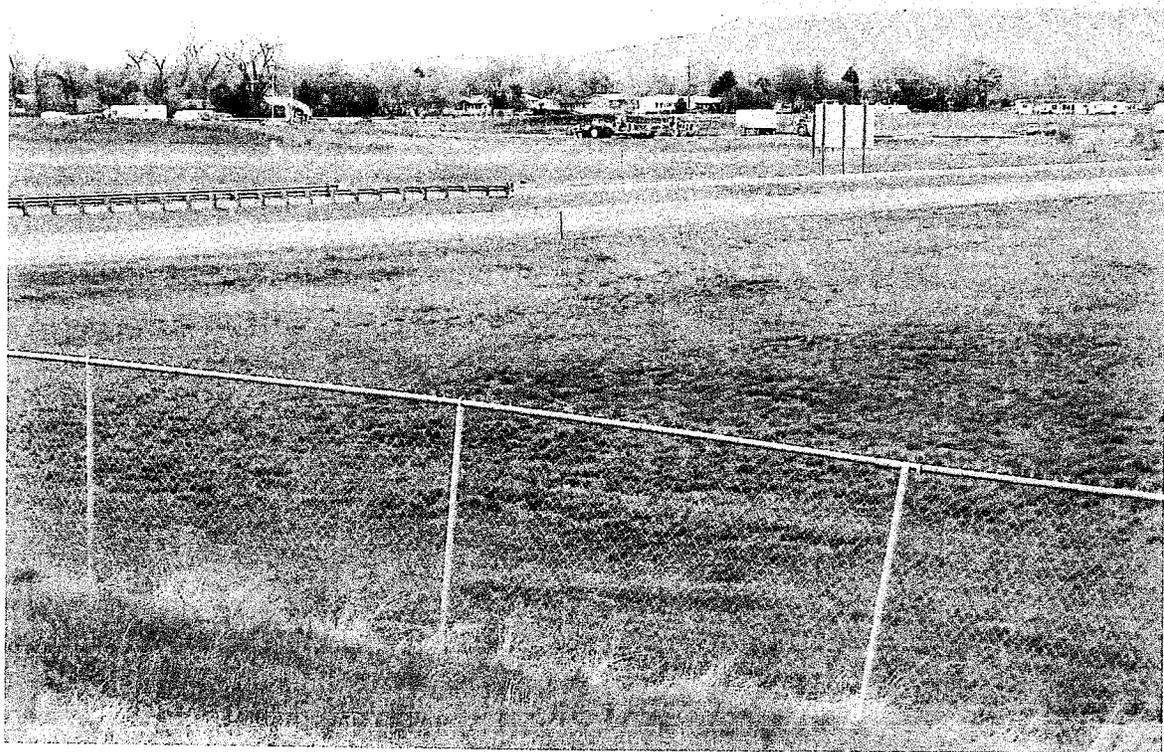
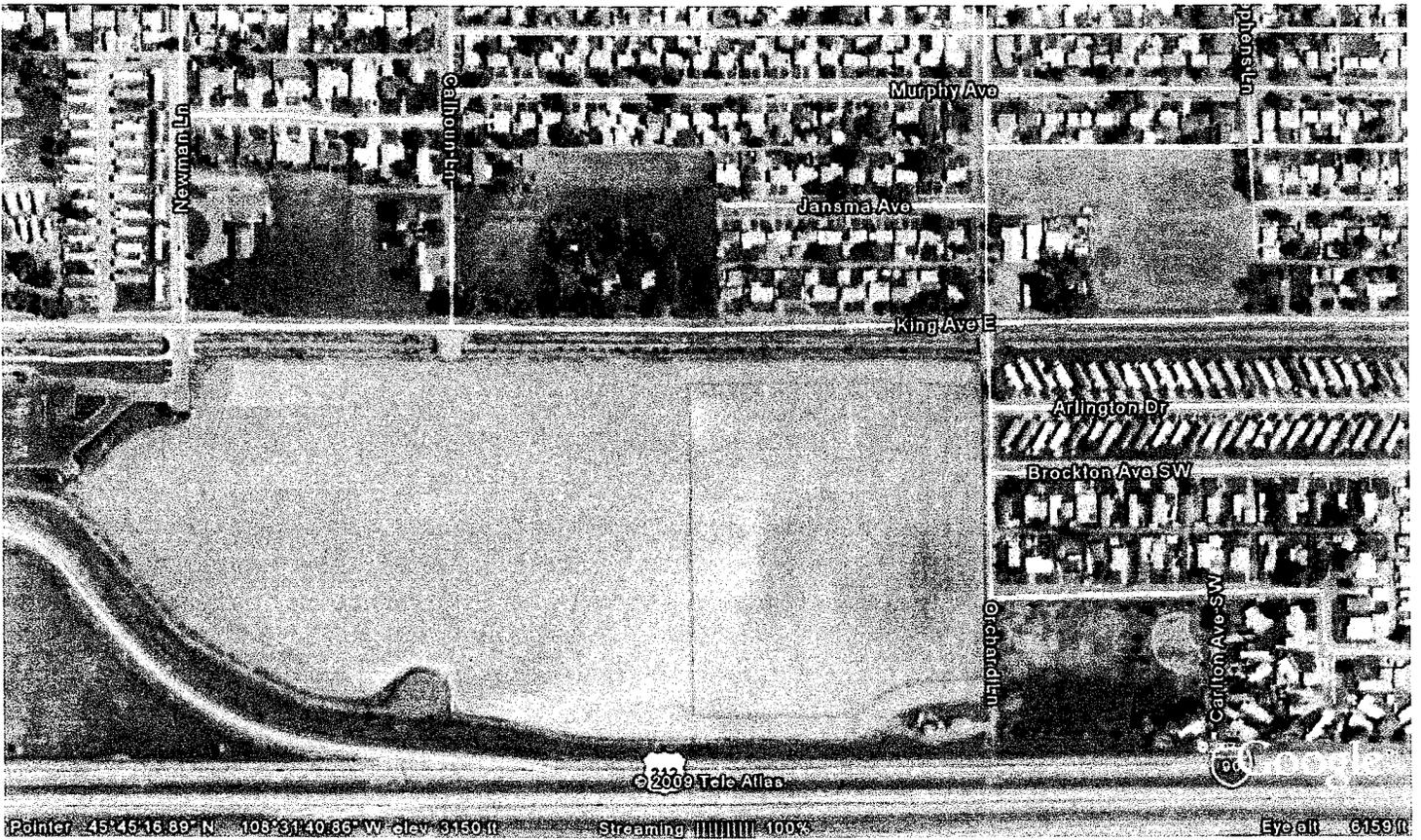
Broker-Owners

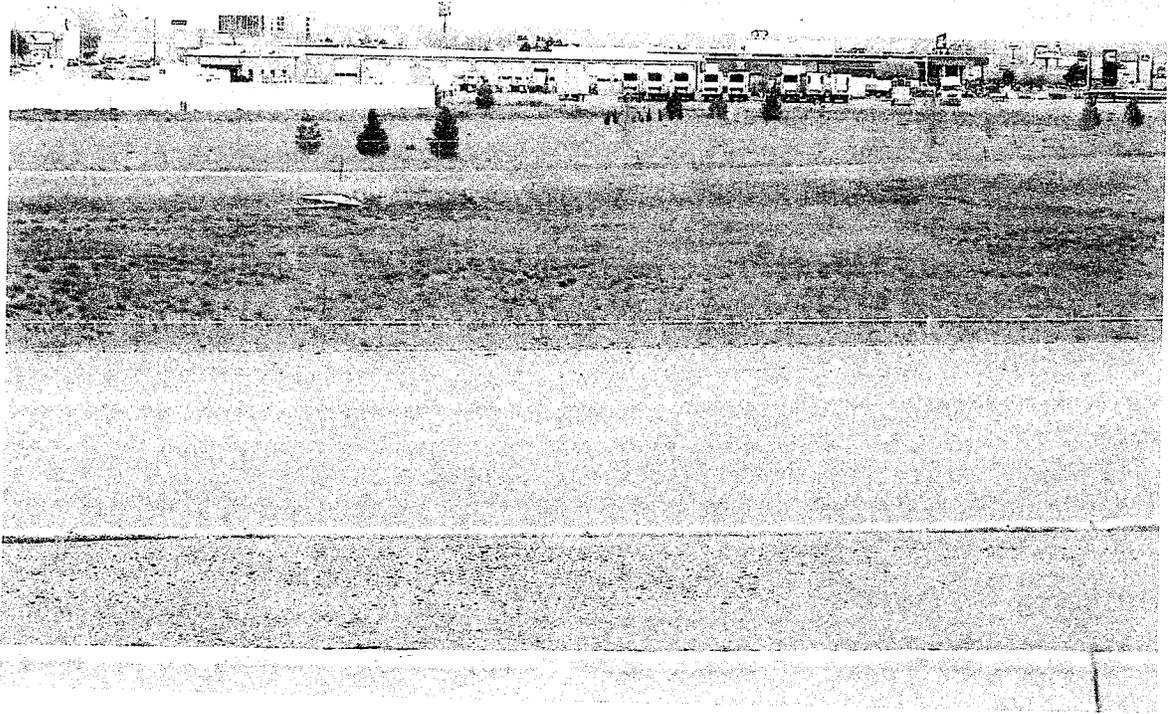
Rick Dorn 861-1002

Sam Rankin 855-3013

Hannah Elletson 670-0739









Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

October 27, 2008

Kevin Nelson
PO Box 23107
Billings, MT 59104

Dear Mr. Nelson:

The Department of Revenue has received your letter of September 29, 2008. Your request for due process participation in the Department's consideration of whether a Tax Increment Finance District (TIFD) will receive a determination of original, actual and incremental taxable values pursuant to MCA Section 7-15-4285 is denied.

There is no statutory provision for a public hearing on the Department's determination. In general, a taxpayer has no standing to challenge and no due process right to participate in the functions of the executive branch over issues which affect the taxpayer in a manner indistinguishable from all other taxpayers. See *Hein v. Freedom from Religion* 551 U.S. ___ (2007); *Flast v. Cohen*, 392 U.S. 83 (1968)); and *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441 (1915).

The reason for not holding a public hearing is that the Department's discretion in TIFD administration is to verify that the local government has met the legal "checklist" for creating the TIFD so that the Department may certify the base value of the TIFD. Beyond that, the Department has not been given the legal authority to evaluate the policy judgments of the local government in this matter.

The substantive policy decisions for a TIFD are solely at the discretion of the local government, in this case the City of Billings, so that if a citizen is not satisfied with that decision then your alternative is to participate in the local government processes that lead to the creation of the TIFD and/or to sue to block the TIFD in your local district court if there are procedural or substantive failings in the local government process.

Sincerely,

Dan Bucks
Director
PO Box 5805
Helena, MT 59604-5805

CC: Christina Volek, Billings City Administrator

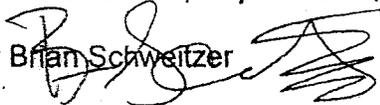
OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

TO: Executive Branch Officers
Department Directors
Chairs and other Presiding Officers of All Executive Branch Boards,
Bureaus, Commissions, Departments, Authorities, and Agencies

FROM: Governor Brian Schweitzer 

DATE: October 28, 2008

RE: Public participation in agency decisions pursuant to MCA § 2-3-103

Montana's public participation laws require me, as Governor, "to ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state" adopts rules, setting forth policies and procedures to facilitate public participation in agency programs and decisions. MCA § 2-3-103(2). I wrote you in 2005, 2006, and 2007 to remind you of these statutory obligations for your agency, and I again take this opportunity to remind you of these requirements.

Montanans have a constitutional right to participate in the activities of their government. The "Right of Participation" is found at Article II, section 8 of the Montana Constitution, which provides:

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

This important constitutional right is implemented by Montana statutes, which require every agency, as defined in MCA § 2-3-102(1), to "develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public." MCA § 2-3-103(1); see also MCA Title 2, chapter 3, part 1 in its entirety. The statutes require agencies to provide adequate notice to the public and assist public participation. Meeting agendas must include an item allowing public comment on any public matter not on the agenda but within the agency's jurisdiction. The agency may not act on any matter that was not included on the agenda and for which public comment on the matter was not allowed. Public comments must be incorporated into the official minutes of the meeting. The district courts may set aside agency decisions not in

Executive Branch Officers
October 28, 2008
Page 2

conformity with the public participation laws where a person's rights have been prejudiced. Model rules to implement these laws are found at ARM §§ 1.3.101 and 1.3.102.

As you know, this Administration takes very seriously the public's right to participate in the decisions of government, and I applaud your efforts to ensure this public right. If you or your agency needs assistance in crafting appropriate guidelines and rules to conform to Montana's public participation laws, feel free to contact my legal counsel, Ann Brodsky, for assistance (direct line, 444-3558).

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 12. Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.