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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

JEFF BECK, individually; ROBERT
ODENWELLER, individually; TERRI
ODENWELLER, individually; AMY
WEINBERG, individually, ZAC WEINBERG,
individually, ALTA VIEWS, LLC;
RIVERVIEW COMPANY, LLC; and on
behalf of a class similarly situated persons or
entities,

Plaintiffs,

-VS-

CITY OF WHITEFISH, a Montana
municipality, and DOES 1-50.

Defendants.

Cause No. CV-22-44-M-DLC-
KLD

**DEFENDANT'S OPPOSITION
TO PLAINTIFFS' MOTION
FOR CLASS
CERTIFICATION**

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COMES NOW Defendant City of Whitefish and files this brief in opposition to Plaintiffs' Motion for Class Certification.

I. ARGUMENT

A. Legal Standard for Class Certification

The party seeking class certification bears the burden of establishing that each of the four prerequisites of Rule 23(a) and at least one requirement of Rule 23(b) are met. *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2548 (2011). The Rule 23(a) prerequisites are as follows:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) The representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

“A party seeking class certification must affirmatively demonstrate his compliance with the Rule – that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or facts, etc.” *Dukes*, 131 S. Ct. at 2551 (emphasis in original). A district court should only certify a class if, after “rigorous analysis,” it determines the party seeking certification has

met its burden. *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 158-61 (1982). The analysis must be rigorous because “the existence of a class fundamentally alters the rights of present and absent members.” *Chavez v. Plan Benefit Servs., Inc.*, 957 F.3d 542, 547 (5th Cir. 2020). Mere allegations are insufficient to satisfy this burden; rather, plaintiff must provide the Court with some evidentiary basis to satisfy each requirement of Rule 23. *See Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Plaintiffs have not satisfied this burden.

B. The Court Should Deny Class Certification because Plaintiffs Have Defined the Class to Include Members Who Lack Standing

“No class may be certified that contains members lacking Article III standing.” *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 594 (9th Cir. 2012); *Krueger v. Wyeth, Inc.*, 396 F. Supp. 3d 931, 944 (S.D. Cal. 2019) (“Defining the class in such a way as to ensure the standing of the class is necessary to avoid inconsistencies and inequities that would inevitably occur if plaintiffs were allowed to sue as class members, but not as individuals. ... Thus, the Court must ... examin[e] the class definition to ensure that anyone within it would have standing.”); *Sanders v. Apple, Inc.*, 672 F. Supp. 2d 978, 991 (N.D. Cal. 2009) (class cannot be defined as to include those who would necessarily fail to satisfy the requirements of Article III). “Standing requires that (1) the plaintiff suffered an injury in fact ... (2) the injury is fairly traceable to the challenged conduct, and (3)

the injury is likely to be redressed by a favorable decision.” *Id.* (citing *Bates v. United Parcel Svc., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007)). If Plaintiffs would not be entitled to any refund, even if one were owed, they do not meet the requirements for Article III standing. *See K.L.N. Constr. Co. v. Town of Pelham*, 107 A.3d 658, 664-665 (N.H. 2014); *Alpine Homes, Inc. v. City of W. Jordan*, 424 P.3d 95, 107 (Utah 2017) (analyzing whether developers had right to recoup impact fees, versus current owners, in establishing standing).

Plaintiffs’ request for class certification is fundamentally flawed. They seek impact fee refunds to be paid to a proposed class comprising those who *paid* the impact fees, whereas Montana law requires such refunds be paid to the *owner* of the property at the time the refunds are due. The proposed putative class is not defined to encompass those who would be entitled to a refund if one were due.

Plaintiffs argue the City did not raise this issue as an affirmative defense in the City’s Amended Answer. Dkt. 40, p. 19. That is true, because the City did not have to do so. Plaintiffs bear the burden of proving any refund, if due, is owed to them. In their Complaint, they alleged the City failed to refund impact fees in violation of § 7-6-1603, MCA. Dkt. 1, ¶ 63. The City was not required to plead as an affirmative defense that Plaintiffs are misinterpreting the statute.

The City was also not required to plead lack of standing as an affirmative defense. *See Fishman v. Tiger Natural Gas Inc.*, 2018 U.S. Dist. LEXIS 159425,

*15-16 (N.D. Cal. Sep. 18, 2018) (“Because a plaintiff must plead and ultimately prove standing, lack of standing is not an affirmative defense under federal law.”). Irrespective, “Federal courts are required sua sponte to examine jurisdictional issues such as standing.” *Bernhardt v. Cnty. of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2002).

The proffered class definition is “All persons or entities who paid impact fees” Dkt. 40, p. 7 (emphasis added). Incidentally, the list of proposed class members Plaintiffs provide does not identify the individuals or entities who paid the impact fees in question. Instead, they identify the owners of the subject properties when the impact fees were paid. In many instances, the impact fee was not paid by the owner, but rather was paid by designers, architects, general contractors, tenants, or other individuals or entities with an unknown connection to the Owner listed on the building permit, from which Plaintiffs’ class list was prepared. *Compare* Dkt. 40, Ex. 3, *with* Ex. A (List of Impact Fee Properties with Owner and Payment Information).¹ Thus, Plaintiffs have misidentified the payors of the impact fees in question and the members of the class they seek to certify.

For example, Plaintiffs’ proffered class includes Iron Horse Holdings LLC as a member based on being the owner of 101 Yarrow Lane when impact fees were paid for that property. Dkt. 40, Ex. 3, p. 11. Iron Horse Holdings, however, did not

¹ Filed herewith are the Foundational Affidavits of Thomas Hollo and Randi Johnson for all exhibits attached hereto.

pay those impact fees; rather, they were paid by the general contractor, Empire Builders. Ex. L (Building Permit Application Documents for 101 Yarrow Lane), Bates CITY 031278, 031287. Moreover, that property is now owned by Susan LaCosta, not Iron Horse Holdings. Ex. M (Termination of Joint Tenancy for 101 Yarrow Lane).

An even greater concern is that Montana law does not entitle the individuals who paid impact fees to any refunds that are due. Section 7-6-1603(1)(c), MCA, unequivocally states:

If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(emphasis added). Assuming, *arguendo*, any refunds are due², § 7-6-1603(1)(c), MCA, clearly dictates refunds must be paid to the current owners of the properties for which impact fees were charged.

Anyone who does not own such a property is not entitled to a refund, regardless of whether they originally paid the impact fee in question; therefore, Plaintiffs and many of the proposed class members lack standing. *See, e.g., K.L.N. Constr.*, 107 A.3d at 664-65. Of the properties on Plaintiffs' list of class members,

² Throughout this brief, the City references the theoretical refund of impact fees for purposes of analyzing class certification issues such refunds affect. However, the City affirmatively disputes it owes any refunds or that its impact fees were or are unlawful in any way, apart from the single-head standalone shower fixture issue discussed herein.

at least 267 of them are not currently owned by the individuals or entities on said list and, therefore, lack standing for any refund determined to be due. Ex. A. This includes multiple developers, like Beck and Alta Views, who paid impact fees for multiple properties they no longer own. Dkt. 40, Ex. 3, pp. 3, 24 (showing Beck and Alta Views paid impact fees for multiple properties); Ex. B (12/28/22 Email from Lindsay Mullineaux confirming Beck does not own any properties for which impact fee refunds are sought); Ex. C (11/9/22 Email from Lindsay Mullineaux confirming Alta Views now owns two of the properties for which it paid impact fees); Ex. D, p. 2 (Alta Views website stating they are in process of selling last of properties at issue).

In addition to the lack of standing, this class definition is problematic because it seeks refunds for class members at the expense of absent individuals to whom the refunds are allegedly due. Certification of Plaintiffs' proposed class would impair and prejudice the due process rights of the absent individuals to whom any refund would be due. This fundamental and significant flaw in Plaintiffs' case flows through to multiple class certification requirements, as discussed herein, but this standing issue alone necessitates denying class certification.

Plaintiffs acknowledge § 7-6-1603(1)(c), MCA says refunds are owed to the person who owns the properties when the refunds are due, but they argue that is

when the fees are collected. Dkt. 40, p. 19. They cite no legal authority in support of this argument, and there is none. This ignores the plain language of the statute and attempts to insert language that is not in the statute, which is improper. *See* § 1-2-101, MCA (“In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.”). If refunds were truly due when unlawful fees were collected, as Plaintiffs suggest, then the legislature would have simply written that refunds are due to the owner when the fees were collected.

Moreover, Plaintiffs’ argument is contrary to some of their own legal theories, which hinge on the contention that the City has subsequently abandoned or has not pursued a project that previously fed into the impact fee calculations. Dkt. 1, ¶¶ 38-34; Ex. F, p. 11. If impact fees are required to be refunded because the City subsequently decides not to go through with a project, it is axiomatic that refunds of such fees could not have been due when the fees were collected and the project was still being pursued. Section 7-6-1603(1)(c), MCA anticipates this, specifying that the refunds it speaks of may include impact fees that are not ultimately spent in accordance with the applicable ordinance or resolution.

Simply put, impact fee refunds are due to the property owner when the refund is due. Neither the Court nor any other adjudicative authority or process has

determined whether any refunds are due yet, apart from the shower fixture issue discussed herein. Multiple other jurisdictions that have addressed this issue under similar statutory language have determined refunds are owed to the property owner at the time the Court makes its determination and not the owners at the time impact fees were paid. *See, e.g., Town of Londonderry v. Mesiti Dev., Inc.*, 129 A.3d 1012, 1017 (N.H. 2015); *DeSoto Wildwood Dev., Inc. v. City of Lewisville*, 184 S.W.3d 814, 822 (Tex. App. 2006) (interpreting similar Texas statute to require refunds be made to present property owners); *Raintree Homes, Inc. v. Vill. of Long Grove*, 807 N.E.2d 439, 447-48 (Ill. 2004) (developers lacked standing to request refund of impact fees because cost of impact fees had been passed on to purchasers of developed land). Plaintiffs' attempt to effectively alter the language of § 7-6-1603(1)(c), MCA by claiming refunds are due immediately when fees are paid is without legal support, contrary to the above-referenced law, and should be rejected.

C. Plaintiffs Do Not Meet the Typicality Prerequisite

1. Typicality Standard

"The typicality requirement assures that the interests of the named representative aligns with the interests of the class." *Carlstrom v. DecisionOne Corp.*, 217 F.R.D. 514, 516 (D. Mont. 2003) (citing *Hanon v. Dataproducts*, 976 F.2d 497, 508 (9th Cir. 1992)). Along with the commonality requirement of Rule

23(a)(1), typicality serves as a guidepost for determining whether the named plaintiff's claim and the class claims are so interrelated that the interest of the class members will be fairly and adequately protected in their absence. *Falcon*, 457 U.S. at 158. The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon*, 976 F.2d at 508; *see also E. Tex. Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 403 (1977) (holding plaintiffs must actually be members of class they purport to represent).

The typicality requirement "provides that class members may sue as representative parties only if the claims or defenses of the representative parties are typical of the claims or defenses of the class." *B.K. by next friend Tinsley v. Snyder*, 922 F.3d 957, 969 (9th Cir. 2019). The availability of a defense unique to one member of the class can and will defeat the class. *Newberg on Class Actions*, 3rd ed., § 3.16 (1992); *see also Carlstrom*, 217 F.R.D. at 516 ("The typicality requirement is not met if the proposed class representative is subject to unique defenses."); *Hanon*, 976 F.2d at 508 (holding class certification should be denied for lack of typicality if there is danger class representative will be preoccupied with defenses unique to it). A class may be denied when a defense peculiar to the class representative is even arguably present. *Dubin v. Miller*, 132 F.R.D. 269, 275 (D.

Colo. 1990). The “inquiry is not whether a unique defense has merit, but whether a unique defense has to be litigated at all.” *Walker v. Wilderness Alt. Sch., Inc.*, 2019 U.S. Dist. LEXIS 59256, *7 (D. Mont. Apr. 5, 2019). This is directly contrary to Plaintiffs’ unsupported argument that typicality is not defeated by defenses unique to any specific Plaintiff. Dkt. 40, p. 18.

2. Plaintiffs Fail the Typicality Requirement because Their Refund Theory Will Preoccupy Them with a Defense Unique to Them and Contrary to Class Members’ Interests

Plaintiffs’ claims, and the defenses thereto, are not typical of the proffered class. Plaintiffs’ proposed class comprising those who paid impact fees is problematic for the reasons discussed in the preceding section. Further, the class includes some members who paid impact fees and remain current property owners, such that they would statutorily be entitled to receive any refund determined to be due. Plaintiffs’ claims are not typical of those class members’ claims, which is particularly problematic given that such class members are the only ones who would be entitled to any allegedly owed refund. Plaintiffs will be preoccupied with this issue that is not shared by such class members.

Beck seeks to be a representative Plaintiff, yet he no longer owns any property for which an impact fee was paid. Ex. B; Dkt. 40, Ex. 3, p. 3. Similarly, the Weinbergs do not own any property for which an impact fee at issue was paid; rather, the property where they live is owned by the Zac Weinberg and Amy

Weinberg Living Trust. Dkt. 40, Ex. 3, p. 22; Ex. E (Weinberg Trust Deed). For this reason, Beck and the Weinbergs lack standing for their claims. *See, e.g., K.L.N. Constr.*, 107 A.3d at 664-665 (holding petitioner lacked standing to pursue claims regarding impact fees because, although they had paid the fees, they no longer owned the properties in question and the applicable statute dictated the refund was due to the current property owner). Similarly, Alta Views currently owns only one or two of the 30 properties for which impact fees were paid. Ex. C; Dkt. 40, Ex. 3, p. 24; Ex. C; Ex. D.

All named Plaintiffs are advancing a theory contrary to Montana law, to seek refunds at the expense of those who may be statutorily entitled to them. Those individuals comprise a substantial portion of the putative class. The lack of standing for Beck and the Weinbergs to seek the refunds at issue makes them inherently lack standing to represent the purported class. *See Holmes v. Pension Plan of Bethlehem Steel Corp.*, 213 F.3d 124, 135 (3d Cir. 2000), *accord Parrish v. Gordon Lane Healthcare, LLC*, 2022 U.S. Dist. LEXIS 233356, *10 (C.D. Cal. Dec. 29, 2022); *Heaphy v. State Farm Mut. Auto. Ins. Co.*, 2006 U.S. Dist. LEXIS 107309, *7 (W.D. Wash. Feb. 8, 2006); *Rector v. City and Cnty. Of Denver*, 348 F.3d 935, 950 (10th Cir. 2003) (“By definition, class representatives who do not have Article III standing to pursue the class claims fail to meet the typicality requirements of Rule 23.”).

Moreover, even if some of the Plaintiffs currently have standing, they will all be pre-occupied with claims, theories, and defenses associated with attempting to get the impact fees paid to the original payor, which conflicts with the interest of proposed class members who currently own properties. For example, Plaintiffs will be preoccupied advancing the claims and addressing defenses related to Alta Views' request for refunds for the 28 or 29 properties they do not own, which issue and defense do not apply to class members who continue to own the properties for which impact fees were paid. *See Carlstrom*, 217 F.R.D. at 516 ("The typicality requirement is not met if the proposed class representative is subject to unique defenses."); *Hanon*, 976 F.2d at 508 (holding class certification should be denied for lack of typicality if there is danger class representative will be preoccupied with defenses unique to it).

Beyond being atypical and potentially harmful to class members, Plaintiffs' claims are harmful to the current property owners who would be statutorily entitled to any claimed refund, but are absent from the class because they did not originally pay the impact fees. The purpose of the class certification prerequisites is to ensure absent individuals whose rights may be affected by the class action lawsuit are protected. *See Chavez*, 957 F.3d at 547. Plaintiffs would do the opposite by pursuing a legal theory for their own personal benefit and at the expense of all current owners, whether or not part of the proffered class.

3. Plaintiffs' Claims Are Not Typical Regarding Fixture Counts

Plaintiffs' claims are not typical as to their claim that the City overcharged water impact fees by assigning a fixture unit count to single-head standalone showers that is inconsistent with the count prescribed by the Uniform Plumbing Code. Ex. F (Pls.' Responses to Def.'s First Discovery Requests), p. 15. The City was voluntarily addressing this issue prior to this lawsuit and continues to do so. Dkt. 20, p. 3. As an initial matter, this issue did not affect Riverview because it did not have a single-head standalone shower in its project. Ex. G (Riverview Building Permit Documents).

The City inspected Plaintiffs properties during this lawsuit to verify the number of water and wastewater fixtures installed. *See, e.g.*, Ex. B; Ex. C. This is important because impact fees are calculated and charged based on the number of fixtures on a property. Dkt. 40, Ex. 2 (Resolution No. 19-15) at Ex. A, p. 1. The inspection of the Weinberg property revealed an additional washing machine and bar sink in the main house, and an additional bathroom sink in the guest house, that were not disclosed on the plans originally submitted to the City for purposes of calculating their impact fees. Ex. H (Weinberg Inspection and Building Permit Documents), pp. 2-4. Consequently, instead of the City owing the Weinbergs a refund for the shower issue, the City undercharged the Weinbergs by \$1,123.41. *Id.*, p. 1. The Weinbergs' claims are not typical of the class.

A plaintiff does not meet the typicality requirement when it did not experience one of the more significant harms alleged. For example, in *Valentino v. Carter-Wallace, Inc.*, a case involving medication side-effects, the Court held plaintiffs did not meet the typicality or adequacy or representation requirements because none of them experienced one of the drug's more significant negative side effects. 97 F.3d 1227, 1234 (9th Cir. 1996). Here, the City did not overcharge the Weinbergs or Riverview based on the fixture count issue. Moreover, the defense by the City against the Weinbergs is specific to them. Both of these are contrary to the typicality requirement.

4. Plaintiffs Fail Typicality because Their Claims Are Barred by the Statute of Limitations

The statute of limitations for a claim “against a municipality arising from a decision of the municipality relating to land use, construction, or development project is 6 months from the date of the written decision.” § 27-2-209(5), MCA. Even if Plaintiffs’ claims would traditionally have longer statutes of limitations, the 6-month period of § 27-2-209, MCA, supersedes them. *Estate of Ostby v. Yellowstone Cnty.*, 2020 U.S. Dist. LEXIS 147116, *9 (D. Mont. Aug. 14, 2020). Therefore, the statute of limitations for all of Plaintiffs’ claims is six months.

The assessments of impact fees at issue here are land use decisions subject to the six-month statute of limitations. Plaintiffs’ claims are against the City of Whitefish, a municipality. The claims arise from the City’s determination of

impact fees imposed on construction and development projects. Dkt. 1, ¶ 8 (“Impact fees are one-time charges imposed upon new development, remodels, and renovations by a governmental entity as part of the development approval process ...;” ¶ 9 (“Since January 1, 2019, Defendant has been charging unreasonable, unlawful, and unconstitutional impact fees on new development, remodels, and renovations ...”). As recognized by the Ninth Circuit, “the imposition of impact fees ... is a land use decision.” *Sundquist Homes Inc. v. Snohomish Cnty.*, 166 Fed. Appx. 903, 906 (9th Cir. 2006) (quoting *James v. Kitsap Cnty.*, 115 P.3d 286 (Wash. 2005)). Accordingly, § 27-2-209(5), MCA applies.

Plaintiffs filed their Complaint February 24, 2022. Dkt. 1. All claims concerning impact fees paid prior to August 24, 2021 are barred by the statute of limitations. *See* § 27-2-209(5), MCA.

Alta Views paid all 30 impact fees at issue prior to August 24, 2021, Dkt. 40, Ex. 3, p. 24. Riverview paid its impact fees February 28, 2020. *Id.*, p. 23. The Weinbergs paid their impact fees July 28, 2020. *Id.*, p. 22. Beck paid both impact fees in 2019. *Id.*, p. 3. Thus, all Plaintiffs’ claims are barred by the statute of limitations. Some proposed class members’ claims are not affected by this issue. *See, e.g., id.*, p. 1 (identifying multiple claimants as having paid impact fees after August 24, 2021). Therefore, Plaintiffs’ claims are not typical of the class. *Draney v. Westco Chems., Inc.*, 2021 U.S. Dist. LEXIS 187250, *13 (C.D. Cal. Sep. 29,

2021) (holding statute of limitations defense that would apply to plaintiffs and some class members but not others created concerns with typicality and adequacy); *Lindblom v. Santander Consumer USA, Inc.*, 2018 U.S. Dist. LEXIS 13267, at *5 (E.D. Cal. Jan. 26, 2018) (“this Court and other courts in this Circuit routinely preclude potentially time-barred plaintiffs from serving as class representatives when they seek to represent members with timely claims”); *Arabian v. Sony Elecs., Inc.*, 2007 U.S. Dist. LEXIS 12715, at *5-6 (S.D. Cal. Feb. 22, 2007) (denying certification where class representative may be subject to statute of limitations defense).

Collectively, these issues demonstrate Plaintiffs’ claims and theories do not satisfy the typicality requirement and class certification is not appropriate.

D. Plaintiffs Do Not Meet the Representative Prerequisite

1. Standard for Representative Adequacy

The purpose of Rule 23(a)(4) is to ensure concerns of constitutional due process are satisfied by affording adequate representation to uninvolved class members before entry of a judgment which will bind them. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Analysis under Rule 23(a)(4) involves two questions: (1) whether plaintiffs and their counsel have any conflicts of interest with other class members, and (2) whether plaintiffs and their counsel will prosecute the action vigorously on behalf of the class. *Staton v. Boeing Co.*, 327

F.3d 938, 957 (9th Cir. 2003). Issue one is not met if Plaintiffs hold different priorities and litigation incentives as opposed to a typical class member. *Drimmer v. WD-40 Co.*, 343 F. App'x. 219, 221 (9th Cir. 2009).

Conflicts that are “fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the Rule 23(a)(4) adequacy requirement.” *Resnick v. Frank*, 779 F.3d 934, 942 (9th Cir. 2015). A conflict is fundamental when it goes to the specific issues in controversy. *Id.*

Plaintiffs are not adequate representatives where they are subject to defenses that are not typical of the class. Analysis of that inquiry often necessarily involves the merits of Plaintiffs’ claims. In *Z-Seven Fund, Inc. v. Motorcar Parts & Accessories*, the Ninth Circuit explained as follows:

Evaluation of many of the questions entering into determination of class action questions is intimately involved with the merits of the claims. The typicality of the representative's claims or defenses, the adequacy of the representative, and the presence of common questions of law or fact are obvious examples. The more complex determinations required in Rule 23(b)(3) class actions entail even greater entanglement with the merits ...

The same can be said of an order appointing a lead plaintiff. The determination of the adequacy of the lead plaintiff necessarily involves the consideration of facts and circumstances that relate directly to the merits of the action, such as the typicality of the claims and any defenses that might apply.

231 F.3d 1215, 1219 (9th Cir. 2000) (citing *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 n.12 (1978)) (additional citations omitted); *see also Randall v. Rolls-Royce Corp.*, 637 F.3d 818, 824 (7th Cir. 2011) (“[N]amed plaintiffs who are

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subject to a defense that would not defeat unnamed class members are not adequate class representatives.”) (citing *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625-27 (1997)).

2. Plaintiffs Are Fundamentally Inadequate Representatives because They Are Structuring the Class Contrary to Montana Law and Class Members’ Interests Concerning to Whom Refunds Are Due, to Benefit Themselves

As discussed, two of the named Plaintiffs are developers who paid impact fees on multiple properties but then sold all or most of those properties. Beck no longer owns any property and Alta Views sold all but one or two of its properties. Montana law dictates they should not receive any refunds, even if refunds are owed. *See* § 7-6-1603(1)(c), MCA. Nonetheless, Plaintiffs contend they are the ones entitled to such refunds, to the detriment of current property owners, because they stand to benefit personally.

It would be fundamentally contrary to due process and adequate representation to allow Plaintiffs to represent a class of individuals in a lawsuit concerning impact fee refunds, where multiple Plaintiffs are not who the legislature intended refunds to go to, and who seek for the rightful recipients of any such refunds to receive none at all. This is particularly true where such individuals comprise a substantial portion of the putative class. Regardless of whether Plaintiffs pursue this case vigorously, they will be pursuing it for their personal interests, comprised largely of developers and individuals who otherwise do not

own properties for which impact fees were paid, as opposed to the interests of those who the legislature intended. Therefore, Plaintiffs do not satisfy the representative requirement and class certification is not appropriate.

E. Plaintiffs Do Not Meet Rule 23(b)

1. Rule 23(b) Standard

Plaintiffs bear the burden of establishing at least one requirement of Rule 23(b) is met. *Dukes*, 131 S. Ct. at 2548. The only requirement of Rule 23(b) which Plaintiffs contend is met is subsection (3). That section requires:

the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

- (A) the class members' interests in individually controlling the prosecution or defense of separation actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). Predominance and superiority are distinct sub-requirements of Rule 23(b)(3), both of which must be met. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1123 (9th 2017) (indicating superiority must be satisfied “[i]n addition to establishing predominance of a common question”).

Rule 23(b)(3)’s predominance requirement is much more demanding than the permissive Rule 23(a)(2) commonality requirement. *Alexander v. JBC Legal Grp., P.C.*, 237 F.R.D. 628, 632 (D. Mont. 2006) (citing *Amchem Prod.*, 521 U.S. at 623; *see also Hanlon*, 150 F.3d at 1022 (“This analysis presumes that the existence of common issues of fact or law have been established pursuant to Rule 23(a)(2); thus, the presence of commonality alone is not sufficient to fulfill Rule 23(b)(3)”). “Implicit in the satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy.” *Valentino*, 97 F.3d at 1234. “[I]f the main issues in the case require separate adjudication of each class member’s individual claim or defense, a Rule 23(b)(3) action would be inappropriate Moreover, when individual rather than common issues predominate, the economy and efficiency of class action treatment are lost and the need for judicial supervision and the risk of confusion are magnified.” *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001); *see also Wang v. Chinese Daily News*, 737 F.3d 538, 545 (9th Cir. 2013) (“The predominance analysis under Rule 23(b)(3) focuses on ‘the relationship between the common and individual issues’ in the case and ‘tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’”). “If each class member has to litigate numerous and substantial separate issues to establish his or her right to recover individually, a class action is not ‘superior.’” *Zinser*, 253 F.3d at 1192.

“[T]o establish that common questions of law or fact predominate over individual questions, a party must show ‘that damages are capable of measurement on a classwide basis.’” *Comcast Corp.*, 133 S. Ct. at 1433. “Otherwise ‘questions of individual damage calculations will inevitably overwhelm questions common to the class.’” *Id.* “[T]he predominance inquiry asks whether the common, aggregation-enabling issues in the case are more prevalent or important than the non-common aggregation-defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016)

2. Individual Issues Predominate Common Ones

a. Plaintiffs’ Claims Are Inherently Individualized

Plaintiffs' negligent misrepresentation claim is individualized, and not suitable for class resolution. The elements of negligent misrepresentation are: (1) defendant made a representation as to a past or existing material fact; (2) the representation was untrue; (3) regardless of actual belief, defendant made the representation without any reasonable ground for believing it to be true; (4) the representation was made with the intent to induce plaintiff to rely on it; (5) plaintiff was unaware of the falsity of the representation and justified in relying upon the representation; (6) plaintiff, as a result of reliance, sustained damage. *Romo v. Shirley*, 522 P.3d 401, 409 (Mont. 2022).

As an initial matter, Plaintiffs have failed to identify which representations

the City allegedly made, to allow an analysis of whether this claim meets the requirements for class certification. Plaintiffs allege in their Complaint:

Defendant represented to Plaintiffs and the other Putative Class members that it had the authority to charge them water and wastewater impact fees at certain rates exceeding those which would reasonably compensate Defendant for the actual impacts Plaintiffs' new developments, remodels, and renovations have on water and wastewater services in the City.

Dkt. 1, ¶ 74. This does not specify which specific representation is at issue, including whether it was made to the public at large or specific to each Plaintiff or class member. *Id.* Plaintiffs' Motion for Class Certification does not provide any clarification. *See, generally*, Dkt. 40. On that basis alone, Plaintiffs have failed to meet their burden to demonstrate this claim is appropriate for class certification.

Moreover, assuming, *arguendo*, the City made a misrepresentation, whether the class members were unaware of the falsity of such misrepresentation, whether they relied on it, and whether they were justified in doing so are all individualized determinations. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 287 (2014) (holding reliance requirement not amenable to class treatment, as inherently individualized nature of reliance inquiry renders it impossible to prove common questions predominate over individual ones); *Poulos v. Caesars World, Inc.*, 379 F.3d 654, 665 (9th Cir. 2004) (denying class certification because proving reliance requires predominating individualized inquiry); *Leifer v. Safeco Ins. Co.*, 2010 U.S. Dist. LEXIS 157911, *23 (E.D. Wash. Aug. 9, 2010) (denying class

certification of negligent misrepresentation claim because reliance element requires individualized assessment).

Plaintiffs' negligence and negligence per se claims are also individualized and unsuitable for class resolution. Dkt. 1, pp. 19-23. Negligence claims inherently involve individualized analysis of facts. *See Gartin v. S&M NuTec LLC*, 245 F.R.D. 429, 439 (C.D. Cal. 2007) ("Because the proximate causation analysis involves individualized factual issues, courts generally consider negligence claims ill-suited for class action litigation."); *Duncan v. Nw. Airlines, Inc.*, 203 F.R.D. 601, 612 (W.D. Wash. 2001) (recognizing negligence claim plaintiff was attempting to pursue through class action "requires individualized examination of causation") (citing *Abuan v. Gen. Elec. Co.*, 3 F.3d 329, 334 (9th Cir. 1993)); *see also First Interstate Bank of Ariz., N.A. v. Murphy, Weir & Butler*, 210 F.3d 983, 987 (9th Cir. 2000) (recognizing foreseeability questions bearing on breach of duty and causation elements of negligence claims are fact-specific). Therefore, these claims are inherently prone to individualized issues predominating common ones.

Plaintiffs' takings claim is also inherently individualized and unsuitable for class resolution. *Penn Central* uses the following factors to analyze whether a regulation is sufficiently significant to constitute a taking: "(1) the regulation's economic impact on the claimant; (2) the extent to which the regulation interferes with distinct investment-backed expectations; and (3) the character of the

government action.” *Colony Cove Props., LLC v. City of Carson*, 888 F.3d 445, 450 (9th Cir. 2018). The framework for analyzing whether a fee constitutes a taking under *Penn Central* is “fact-specific.” *Mead v. City of Cotati*, 389 F. App’x 637, 638-39 (9th Cir. 2010); *Beck v. City of Whitefish*, 2023 U.S. Dist. LEXIS 14458, *12 (D. Mont. Jan. 27, 2023) (citing *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978) (explaining that a regulatory taking includes a fact-specific determination)). Determining the economic impact on each claimant and the extent to which the fee interferes with their investment-backed expectations is an unavoidably individualized analysis. *See Colonial Chevrolet Co. v. United States*, 2016 U.S. Claims LEXIS 2403, *11 (Fed. Cl. Apr. 6, 2016) (observing proof of (1) government action’s economic impact on each plaintiff, and (2) what each plaintiff’s reasonable investment-backed expectations were will vary for each plaintiff and depend on individual circumstances).

Similarly, *Nollan/Dolan* involves a nexus test that requires analyzing whether the connection between a fee and a given development is “roughly proportional.” *Dolan v. City of Tigard*, 512 U.S. 374, 386, 391 (1994)). Determining whether the impact fees are roughly proportional to any particular class member’s development is inherently individualized. Individualized issues are destined to predominate under either takings approach.

Thus, Plaintiffs claims are inherently prone to having individualized issues

predominant common ones, thereby making class certification inappropriate.

b. Individualized Issues Predominate Plaintiffs' Claims

In addition to their claims being inherently prone to individualized issues, Plaintiffs do not satisfy Rule 23(b)(3) because the claims alleged raise a multitude of individualized issues which predominate over claimed common issues. Plaintiffs' attempt to portray the class as unified by the common issue of whether the City's impact fees were unconstitutional or illegal, *see, e.g.*, Dkt. 40, p. 16, grossly oversimplifies the case and glosses over the volume and complexity of individualized issues necessarily inherent in all of the claims for all class members.

Plaintiffs are attempting to have the Court certify the class by framing this case as a simple question of whether the City charged unlawful impact fees or not, but that completely ignores the multitude of issues that the Parties will unavoidably have to litigated because Plaintiffs are asserting them as parts of their claims. They cannot achieve class certification based on a 50,000-foot view of the case when the ensuing litigation will occur in the trenches. Plaintiffs have opted to pursue a shotgun approach with their legal theories, claiming there are fifteen separate issues with the way the City calculated its impact fees, divided into three separate categories. Ex. F, pp. 8-16. Plaintiffs' approach, in arguing fifteen separate issues, most of which inherently involve multiple sub-issues, creates a plethora of individualized issues on both liability and damages.

For example, in their Motion for Class Certification, Plaintiffs acknowledge their class is inherently divided into two groups that depend on when each class member paid impact fees. Dkt. 40, p. 16. Impact fees calculated from January 1, 2019 to August 31, 2019, were based on Resolution No. 18-44, and impact fees since September 1, 2019, were based on Resolution No. 19-15. *Id.* Plaintiffs' written discovery responses show the extent of individualized issues this division creates. Plaintiffs allege the City's wastewater fees include amounts for a Solar Array Project, but that the project was "scrapped" at some point around or after late 2019. Dkt. 1, p. 12; Ex. F, pp. 11-12. Plaintiffs also allege the City, through its Updated Addendums and CIPs issued after January 1, 2019, arbitrarily increased impact fees associated with certain projects. Ex. F, pp. 12, 14. Plaintiffs also allege fees charged based on the Update Addendum, i.e. after September 1, 2019, reflected increased costs for a wastewater treatment plant but did not adjust for additional service capacity which Plaintiffs believe would have come with it. *Id.*, p. 13. These aspects of Plaintiffs' claims will require individualized analysis of the timing of each class member's payment of impact fees, which projects and methodologies fed into the impact fee calculation at such times, and how those affected the fees charged to each class member.

Plaintiffs also allege the City's impact fees are based on projects that only serve specific areas of town and that the City should have subdivided the service

area to further correlate the impact fees being charged to the benefits being conveyed. Ex. F, p. 10. Analysis of this claim requires an individualized analysis for each claim member to determine where their respective properties are located and whether, and to what extent, they benefited from each of the projects for which impact fees were charged. That would be a massive, individualized undertaking.

Plaintiffs also assert theories that are contingent on which of the impact fees – water or wastewater – individual class members paid. The purported class includes members who paid only water impact fees, members who paid only wastewater impact fees, and members who paid both, such that it would require individualized analysis of which types of fees each member paid, and when they were paid, to determine whether any given theory applies to them.

For example, Plaintiffs contend the City unlawfully included the South Water Reservoir Project in calculating water impact fees because, they allege, its purpose was to correct existing water pressure deficiencies. Ex. F, p. 11. That theory would only apply to class members who paid water impact fees.

Plaintiffs also contend the City unlawfully included the Solar Array Project – a project intended to provide power to a wastewater facility – in calculating wastewater impact fees because, they allege, the City is not “on the hook” for the costs of the project anymore. *Id.* That theory would only apply to class members who paid wastewater impact fees. Moreover, it would require analyzing the status

of the project at the time each class member paid an impact fee to determine whether that project was still a valid basis for fees at that point and, if so, when it ceased being valid such that any refund was due. In addition to individually analyzing which fees each class member paid, Plaintiffs' theory would require analyzing when each project must be built by before it is deemed to require a refund.

Plaintiffs also allege the City overestimated the impacts a “New Single Family Residence (dwelling unit)’ with a 3/4 inch water meter” has on water and wastewater generation. *Id.*, p. 13. That requires an individualized analysis of the nature of each class member’s project, e.g. whether it involved a single family residence, as well as whether the associated water meter was a 3/4 inch size.

Plaintiffs also allege the City overcharged water impact fees associated with the aforementioned shower issue. Ex. F, p. 15. This would require an individualized analysis of whether, and to what extent, each class member utilized such fixtures in their respective projects. Moreover, as discussed in the typicality section related to fixtures, determining the extent to which a given class member is entitled to a refund, if any, would require individualized inspections of each property to determine whether fixtures were installed without being reported, and the extent to which that offsets and refund owed.

Plaintiffs also allege the City has “charged impact fees for projects not

involving increases in fixture units or having any meaningful impact on service demand on the City's water and wastewater facilities.” *Id.*, p. 16. This allegation is specific to a single project at 704 E 13th Street by Riverview. *Id.*, pp. 19-20. Plaintiffs have not identified any other class member to whom this applies. *See, generally, id.* This is a purely individualized allegation that does not contribute to any of the class prerequisites or merit class certification.

Plaintiffs' case is premised on their theory that they, as individuals who paid impact fees, are the proper parties to receive any refunds. Again, that is contrary to clear Montana law. *See* § 7-6-1603(1)(c), MCA. Regardless, this issue will require individualized analysis as to whether each class member was the person who paid the impact fees in question, whether they are the current property owner for any refund determined to be due in this case, and whether there are any other factors that would somehow justify refunding fees in a manner that contradicts Montana law.

Moreover, even if Plaintiffs' refund theory is valid, which it is not, it would require further individualized analysis as to who actually paid each impact fee and the extent to which said impact fee was passed along to others, such as subsequent purchasers of a property. *See, e.g., Raintree Homes*, 807 N.E.2d at 447 (holding plaintiffs lacked standing to recover impact fees where they passed along such fees to subsequent lot owners by increasing the purchase price). If the individuals who

originally paid the fees passed them along to subsequent purchasers, they have already been reimbursed and have no damages, such that any refund should be due to the subsequent purchaser even under Plaintiffs' theory.

The issues discussed above demonstrate that individualized issues will predominate this case. The economy and efficiency of class action treatment is outweighed by these issues under the circumstances of this case. Plaintiffs have not acknowledged any of these issues in their brief, much less met their burden of explaining how they would be managed if the class were certified. For these reasons, Plaintiffs do not satisfy Rule 23(b)(3) and class-action certification is not appropriate.

3. Other Means of Resolving This Controversy Are Superior to Class Action

a. Voluntary Resolution of Fixture Count Issue

Class action is not a superior means of resolving these claims compared to other available methods because the City was already voluntarily resolving the fixture count issue before the lawsuit started. The City learned of said issue prior to Plaintiffs filing this lawsuit and voluntarily undertook to inform the public, initiate an audit to determine the scope of property owners affected, and notify those property owners once identified. Dkt. 20, p. 3; Ex. I (September 22, 2021 Article Regarding Shower Fixture Issue). That process is ongoing, as the City is communicating with the affected property owners concerning the process

necessary to determine what the correct refund amount is, if any. Ex. J (Example of Letter re Potential Refund). Moreover, that was being undertaken at no cost to the claimants, without need for them to compensate attorneys or participate in the litigation process. Plaintiffs filed this lawsuit after that process was underway and the City had notified the public of that fact. Class members have an interest in resolving this issue in the method prescribed by statute, through which they will not have to split any refund with a team of attorneys. *See* Fed. R. Civ. P. 23(b)(3)(A).

Class certification would create a risk of adjudicating this refund issue inconsistent with the City's ongoing, self-imposed refund efforts in compliance with the refund process prescribed by applicable law. *See* § 7-6-1603(6)-(8), MCA; Whitefish City Code ("WCC") 10-2-8. By pursuing their proposed class and legal theory, Plaintiffs are attempting to subvert these prescribes processes and are interfering with the City's efforts to issue refunds for this fixture issue. Even though this issue does not squarely fit within the non-exhaustive factors listed in Rule 23(b)(3), it nonetheless clearly demonstrates an alternative means to resolving this aspect of Plaintiffs' claims that is superior to class action.

b. Availability of Administrative Appeal

Notably, individual purported class members have the ability to challenge impact fee amounts through administrative appeal. Indeed, that is what Montana

law and the City's relevant ordinance requires. *See* § 7-6-1603(8), MCA (requiring impact fee ordinance to provide mechanism for person charged impact fee to appeal it); WCC 10-2-6 (prescribing detailed process for appealing impact fee charge). Just like the preceding section, Plaintiffs are attempting to bypass Montana law's inherently individualized, prescribed process for resolving impact fee disputes, such that class action is not a superior method of resolution.

c. Plaintiffs' Arguments About Superiority Are Flawed

In claiming a class action is a superior means of resolving this controversy, Plaintiffs argue the number of individual actions it would take for all putative class members to resolve their claims would be unreasonably expensive and time-consuming. Dkt. 40, p. 22. However, the number of theoretical claims that would exist if all putative class members filed suit does not demonstrate superiority of class action where there is no evidence such claims would actually be pursued. *Gartin*, 245 F.R.D. at 441-442 (dismissing threat of hundreds or thousands of individual actions being filed where only two of such cases had been filed to that point) (citing *Zinser*, 253 F.3d at 1191 (denying class certification partly because although thousands of patients were implanted with the medical device at issue, only nine individual lawsuits were pending)). Plaintiffs acknowledge no other lawsuits have been filed over the impact fees in question, and they have provided no evidence that any class members even contested their impact fees, whether

through administrative appeal or otherwise. Dkt. 40, p. 23.

Plaintiffs also argue “there are no obvious difficulties in managing” the claims at issue on a class wide basis. They provide no explanation for this argument. Instead, they merely quote a holding reciting this factor as a means of attempting to meet the factor itself. That sort of circular, unsupported argument does not meet Plaintiffs’ burden to prove the appropriateness of class certification. To the contrary, the extensive issues discussed herein, including the extent to which individual issues predominate Plaintiffs’ claims, would create significant difficulties in managing the multitude of theories and claims at issue, including how they affect both liability and damages. Thus, the likely difficulties in managing a class action are substantial and weigh against the superiority of a class action as the means of resolving class members’ claims. *See* Fed. R. Civ. P. 23(b)(3)(D).

F. Plaintiffs Do Not Meet the Numerosity Prerequisite

1. Numerosity Standard

“There is no specific number of class members required” to satisfy Rule 23(a)(1)’s numerosity requirement. *Johnson v. City of Grants Pass*, 50 F.4th 787, 803 (9th Cir. 2022). It “requires examination of the specific facts of each case and imposes no absolute limitations.” *Gen. Tel. Co. of the Nw., Inc. v. Equal Emp’t Opportunity Comm’n*, 446 U.S. 318, 330 (1980). “This determination is largely

discretionary for the district court.” *Dow v. Safeco Ins. Co. of Am.*, 2021 U.S. Dist. LEXIS 101704, *1 (D. Mont. May 28, 2021).

Contrary to Plaintiffs’ argument, there is no hardline rule that a class with over 100 members satisfies Rule 23(a)(1). Although joinder of a large class will usually be impracticable, that is not always the case. *See Jordan v. Los Angeles Cnty.*, 669 F.2d 1311, 1319 (9th Cir. 1982) (“where a class is large in numbers, joinder will usually be impracticable”), *vacated on other grounds*, 459 U.S. 810 (1982). Under the right circumstances, courts have found potential classes of 330 or more members to be insufficient. *See Minersville Coal Co. v. Anthracite Export Asso.*, 55 F.R.D. 426, 428 (M.D. Pa. 1971) (holding class of 330 plaintiffs “not so numerous that joinder of all members is impracticable) (citing *Utah v. Am. Pipe & Constr. Co.*, 49 F.R.D. 17, 21 (C.D. Cal. 1969) (concluding joining 350 plaintiffs was “far simpler” than class action)); *see also Carr v. N.Y. Stock Exchange, Inc.*, 414 F. Supp. 1292, 1304 (N.D. Cal. 1976) (numerosity not established where proposed class alleged to have 100 members, where all but two lived in Northern District of California).

2. Plaintiffs Overstate the Size of the Class

The potential class in this case is not as large as Plaintiffs suggest for multiple reasons. First, the proposed class includes individuals who paid impact fees after January 1, 2019, but whose fees were calculated based on the ordinances

and methodologies in place prior to that date. Ex. K (January 2023 email chain with Caelan Brady). At last count, Plaintiffs' counsel identified at least eight class members subject to this issue. *Id.* In other words, the class includes individuals who did not pay impact fees that Plaintiffs claim are unlawful.

The proffered class also includes five properties owned by the City, which Plaintiffs have said should be excluded from the class. Dkt. 40, p. 7.

Second, many class members' claims are barred by the statute of limitations. As this Court previously recognized, the extent to which proffered class members' claims are barred by the statute of limitations affects the numerosity requirement by either reducing the size of the potential class or, if the extent of such reduction is not known, rendering the class size too speculative. *Walker*, 2019 U.S. Dist. LEXIS 59256, *6 (holding that, where statute of limitations applied to some members of class and plaintiffs did not determine how many, statements about class size were too speculative to establish numerosity); *Burton v. Mt. W. Farm Bureau Mut. Ins. Co.*, 214 F.R.D. 598, 609 (D. Mont. 2003) (holding consideration of whether potential member's claim is barred by statute of limitations is necessary to define boundaries of class); *see also Amgen, Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013) (holding questions involving merits of plaintiffs' claims may be considered to extent relevant to determining whether Rule 23 prerequisites are met); *Pierce v. Novastar Mortg., Inc.*, 2006 U.S. Dist. LEXIS

62875, *6 (W.D. Wash. Sep. 5, 2006) (denying motion for class certification because class was not properly defined narrowly enough to include only those claims not barred by statute of limitations).

Again, the statute of limitations for Plaintiffs' claims is six months, such that the statute of limitations for all impact fees paid prior to August 24, 2021, has run. *See* § 27-2-209(5), MCA. Of the 570 properties on Plaintiffs' proffered class list, only 125 of them had their respective impact fees paid after August 24, 2021. Dkt. 40, Ex. 3; Ex. A. Claims associated with all other properties are barred by the statute of limitations. Those 125 properties are collectively owned by only 87 individuals or entities. Ex. A.

Third, at least 267 of the properties on Plaintiffs' proffered class list are not currently owned by the individuals or entities listed thereon. Ex. A. As argued above, the current owners are the only class members with standing. Combining the statute of limitations and standing issues, approximately sixty of the putative class members would even survive to see the substantive merits of Plaintiffs' claims. The exact number is currently undetermined due to ongoing analysis of issues such as the manner in which condominium association ownership affects determination of potential class members.

Class action is not necessary or preferred to resolve that number of claims.

3. Joinder Is More Practical In This Case

Joinder is more practical when all class members are from the same geographic area. *Jordan*, 669 F.2d at 1319 (“geographical diversity of class members ... should be considered in determining impracticability of joinder”); *A. B. v. Haw. State Dep’t of Educ.*, 334 F.R.D. 600, 607 (D. Haw. 2019) (“Joinder is generally considered more practicable when all members of the class are from the same geographic area”). A single city is considered a small geographic area conducive to joinder. *See Marshall v. Bonded Adjustment Co.*, 2012 U.S. Dist. LEXIS 103829, *17-18 (E.D. Wash. July 25, 2012) (holding class consisting of individuals within commuting distance of Spokane “weighs heavily against a finding that joinder is impracticable”); *Foster v. City of Oakland*, 2007 U.S. Dist. LEXIS 8522, *15 (N.D. Cal. Jan. 29, 2007) (treating residents of Oakland as being in “same geographic area” and conducive to joinder).

Further, where class members are easily identifiable, joinder is more likely to be practicable. *A. B. v. Haw. State Dep’t of Educ.*, 30 F.4th 828, 836 (9th Cir. 2022); *Lagrou v. Monterey Fin. Servs., LLC*, 2020 U.S. Dist. LEXIS 191512, *10 (E.D. Wash Oct. 15, 2020) (deeming class members readily identifiable because addresses were known from defendant having sent them each debt collection letters), *distinguishing Jordan*, 669 F.2d at 1320 (regarding class composed of unnamed and unknown future black applicants as sufficient unidentifiable to

render joinder inherently impracticable).

The cases Plaintiffs cite present circumstances vastly different from those of the instance case, such that no 100-member threshold should apply. In *Burton*, the proposed class included all insureds of Mountain West Farm Bureau Insurance Co. before May 2, 1997, anywhere in Montana, who were injured in an automobile accident, insured under multiple medpay coverages, incurred medical expenses exceeding one of their coverages, and did not receive payments under other stackable medpay coverage. 214 F.R.D. at 607. Thus, that class involved a geographic area much larger than the City of Whitefish and involved a class more difficult to identify than the discreet list of property owners easily identifiable here.

Similar, in *Dow* the proposed class included all homeowners with a Safeco homeowner's insurance policy who suffered a particular type of loss over roughly a nine-year period, and where Safeco accepted liability and paid "general contractor overhead and profit" on some, but not all of, the loss. 2021 U.S. Dist. LEXIS 101704, at *1-2. In *Alexander*, the proposed class included all persons in Montana to whom certain debt collection letters were sent and returned as undeliverable. 237 F.R.D. at 630. *Burton*, *Dow* and *Alexander* all involved much larger geographic areas and much less readily identifiable classes.

Viewing the significantly smaller number of class members referenced above in light of the geographic and identification issues discussed here, joinder is

not impracticable. Therefore, Plaintiffs do not meet the numerosity prerequisite and class certification should be denied.

II. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court deny Plaintiffs motion for class certification.

Dated this 3rd day of March, 2023.

HAMMER, QUINN & SHAW PLLC

/s/ Thomas A. Hollo

Todd A. Hammer

Marcel A. Quinn

Thomas A. Hollo

Attorneys for Defendant City of Whitefish

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies this brief complies with LR 7.1(d)(2)(E). This brief contains 9,210 words, excluding the caption and the Certificate of Compliance and Table of Contents and Authorities. The word count function of the word-processing system used to prepare this brief was relied upon in this calculation.

HAMMER, QUINN & SHAW PLLC

/s/ Thomas A. Hollo

Todd A. Hammer

Marcel A. Quinn

Thomas A. Hollo

Property Address	Owner Named on Permit	Permit Date	Ownership Today	Payor of Impact Fee	Did Owner Pay
124 Obrien Ave.	124 Obrien Lot LLC	2/14/2020	N	Yukon Builders	N
139 E. 2nd St., Unit 103	139 East 2nd Street Lofts LLC	7/19/2021	N	Skinfood	N
15 Washington Ave.	18 Point LLC	8/12/2022	Y	18 Point LLC	Y
206 Lupfer Ave.	206 Lupfer LLC	2/28/2020		Malmquist	N
229 E. 2nd St.	206 Lupfer LLC	3/15/2022	N	Glacier Timbeline	Y
138 Mountain Brook Ln.	334 Central LLC	12/31/2020	N	354 Central	Y
334 Central Ave.	334 Central LLC	2/28/2020		334 Central LLC	Y
334 Central Ave.	334 Central LLC	4/26/2021		Tailwaggers	N
519 Skyles Pl.	519 Skyles Place LLC	5/18/2020	Y	519 Skyles LLC	Y
525 Skyles Pl.	519 Skyles Place LLC	5/18/2020	Y	519 Skyles Pl	Y
510 Wisconsin Ave.	519 Wisconsin LLC	10/4/2019	Y	510 Wisc.LLC	N
6588 Highway 93 S.	6588 Highway 93 LLC	3/29/2022		Hardy Const.	N
968 Colorado Ave.	968 Colorado LLC	4/11/2022	Y	968 Colorado	Y
139 Mountain Brook Ln.	A and Z Development LLC	10/12/2021	N	Unknown	
157 Prairiesmoke Cir.	A Tiny Speck LLC	12/14/2020	Y	A Tiny Speck	Y
1940 E. Lakeshore Dr.	A Tiny Speck LLC	4/29/2021	Y	Mindful Designs	N
135 Berry Ln.	Ajamil, Robyn and Luis	4/25/2019	Y	Unknown	
182 N. Prairiesmoke Cir.	Albritton, Eric M and Michelle L	11/4/2019	Y	Albritton	Y
2086 Houston Dr.	Allen, Chad J	4/8/2021	Y	Chad Allen	Y
21 Harlequin Ct.	Alpine Enterprises, LLC	10/19/2020	N	Alpine Ent. LLC	Y
10 Sagebrush Ct., Units A, B, C	Alta Views LLC	8/1/2019	N	Alta Views	Y
11 Sagebrush Ct., Units A, B	Alta Views LLC	8/1/2019	N	Alta Views	Y
122 Hawthorne Ct., Units A, B, C, D	Alta Views LLC	11/5/2020	N	Alta Views	Y
128 Hawthorne Ct., Units A, B, C, D	Alta Views LLC	11/5/2020	N	Alta Views	Y
141 Hawthorne Ct., Units A, B, C	Alta Views LLC	11/10/2020	N	Alta Views	Y
147 Hawthorne Ct., Units A, B, C	Alta Views LLC	11/10/2020	N	Alta Views	Y
15 Sagebrush Ct., Units A, B, C	Alta Views LLC	8/1/2019	N	Alta Views	Y
153 Hawthorne Ct., Units A, B	Alta Views LLC	4/30/2021	N	Unknown	
159 Hawthorne Ct., Units A, B, C	Alta Views LLC	4/30/2021	N	Unknown	
16 Sagebrush Ct., Units A, B	Alta Views LLC	8/1/2019	N	Alta Views	Y
165 Hickory Lp., Units A, B	Alta Views LLC	9/23/2019		Unknown	
172 Hawthorne Ct., Units A, B	Alta Views LLC	11/10/2020	N	Alta Views	Y
178 Hawthorne Ct., Units A, B, C	Alta Views LLC	4/30/2021		Unknown	
184 Hawthorne Ct., Units A, B	Alta Views LLC	4/30/2021	N	Unknown	
234 Elm Ct., Units A, B, C	Alta Views LLC	7/2/2021	N	Unknown	
240 Blackberry Lp., Units A, B	Alta Views LLC	2/16/2021	N	Alta Views	Y
240 Elm Ct., Units A, B	Alta Views LLC	7/2/2021	N	Alta Views	Y
245 Blackberry Lp., Units A, B, C	Alta Views LLC	1/19/2021	N	Alta Views	Y
246 Blackberry Lp., Units A, B, C	Alta Views LLC	12/9/2020	N	Alta Views	Y
247 Elm Ct., Units A, B	Alta Views LLC	7/2/2021	N	Unknown	
252 Blackberry Lp., Units A, B, C	Alta Views LLC	12/9/2020	N	Alta Views	Y
252 Elm Ct., Units A, B, C, D	Alta Views LLC	7/2/2021	N	Unknown	
258 Blackberry Lp., Units A, B, C	Alta Views LLC	12/10/2020	N	Alta Views	Y
263 Blackberry Lp., Units A, B, C	Alta Views LLC	12/10/2020	N	Alta Views	Y
264 Blackberry Lp., Units A, B, C, D	Alta Views LLC	12/10/2020	N	Alta Views	Y
269 Blackberry Lp., Units A, B	Alta Views LLC	2/16/2021	N	Alta Views	Y
270 Blackberry Lp., Units A, B, C	Alta Views LLC	2/16/2021	N	Alta Views	Y
275 Blackberry Lp., Units A, B, C, D	Alta Views LLC	2/16/2021	N	Alta Views	Y
281 Blackberry Lp., Units A, B, C	Alta Views LLC	2/16/2021	N	Alta Views	Y
287 Blackberry Lp., Units A, B, C	Alta Views LLC	2/16/2021	N	Alta Views	Y
1980 Ridge Crest Dr.	Archer, Kyle and Natalie Ann	5/13/2020	Y	Kyle Archer	Y
193 Mountain Brook Ln.	Archibald, Jim and Carrie	5/11/2022	Y	Seven Hills	N
252 Vista Dr.	Armstrong, Jacob W	8/1/2022	Y	J. Armstrong	Y
1042 Meadowlark Ln.	Arnold, Daniel John	9/6/2019	N	Dan J. Arnold	Y
127 Lupfer Ave.	Ashley-Brunk Investments LLC	4/28/2020	Y	Ashley-Brunk In	Y
110 Miles Ave.	Atchison, Laverne Anne	3/3/2020	N	Atchison	Y
725 W. 2nd St.	Austin, Kathleen	7/19/2021	Y	Austin	Y
1001 Creek View Dr.	Averill, Chase and Katherine	10/9/2019	N	Averill	Y
5069 Tumblehome Ave.	Awe, Hillary and Alyssa C	4/23/2019	N	H & A Awe	Y
2119 Houston Dr.	Babcock, Tanner	5/7/2021	Y	Tanner Babcock	Y
105 Wisconsin Ave.	Babiak, Timothy R and Linda J - Living Trust	8/27/2020	Y	Babiak Trust	Y
105 Wisconsin Ave.	Babiak, Timothy R and Linda J - Living Trust	11/4/2020	Y	Babiak Trust	Y
772 Denver St.	Babington, Brooke	8/10/2021	Y	PLAND LLC	N
129 Bay Point Dr.	Bailey, Michael L and Kathleen A	1/6/2020	Y	Unknown	
1005 Baker Ave.	Baker Square LLC	8/10/2020	Y	Baker Square LLC	Y
1455 Barkley Ln.	Baldrige, Julie M. - Revocable Living Trust	8/13/2019	Y	Baldrige	Y
3031 River Lakes Dr.	Balogna, Sabina	7/30/2021	Y	Sabina Bologna	Y
1410 Wisconsin Ave.	Barille Family Trust	5/5/2020	Y	Barrille Trust	Y
334 Bonita Cir.	Barone, Lisa	8/10/2021	Y	Denman Const	N
411 W. 8th St.	Bartleson, Rodlyn W	8/24/2020	Y	Rodlyn Bartleson	Y
748 Cottonwood Ct.	Beck, Jeffrey	7/23/2019	N	Jeff Beck	Y
754 Cottonwood Ct.	Beck, Jeffrey	2/25/2019	N	Unknown	N
20 Woodland Pl.	Behr, Colton and Cheryl	7/26/2021	Y	General One	N
716 Icehouse Rd.	Bell, John E	12/4/2020	N	John Bell	Y
733 Denver St.	Belski, Andrew P	9/28/2020	Y	Andrew Belski	Y
560 Grouse Ridge Dr.	Bennett, Steven I and Claudia C	6/26/2020	Y	S & C Bennett	Y

EXHIBIT

A

Property Address	Owner Named on Permit	Permit Date	Ownership Today	Payor of Impact Fee	Did Owner Pay
508 W. 3rd St.	Benson, Ronald E	6/20/2019	Y	Ronald Benson	Y
764 Denver St.	Betzner, Jennifer R and Gerald J	5/4/2022	Y	PLAND	N
2094 Houston Dr.	BHB Family Trust	4/19/2022	N	Innovative Build	N
122 Stumptown Lp.	BID Inc.	7/11/2019	N	Unknown	
140 Brimstone Dr.	BID Inc.	2/10/2021	N	BID Inc.	Y
158 Granite Dr.	BID Inc.	5/17/2021	N	Unknown	
164 Vista Dr.	BID Inc.	12/1/2020	N	BID Inc.	Y
180 Brimstone Dr.	BID Inc.	10/13/2020	N	BID Inc.	Y
553 Park Ave	Bierens, Mireille	9/10/2020	Y	Mireille Bierens	
9 Baker Ave.	Big Mtn. Market Partners LLC	1/12/2021	Y	Unknown	
128 Central Ave.	Big Wig Inc.	6/2/2021	Y	Big Wig Inc.	Y
2 Central Ave.	Blackstar Partners LLC	7/20/2021	Y	Tricon Commer	N
2104 Iron Horse Dr.	Blair, William Shelton	3/3/2020	N	William Blair	Y
21 Marina Crest Ln.	Blatt, Johnathan Matthew and Marian J	4/28/2021	Y	Jon & M Blatt	Y
617 Colorado Ave.	Bleyhl, Christine	7/15/2021	Y	Christin Bleyhl	Y
901 Park Ave.	Block, Mike	8/24/2020	Y	Mike Block	Y
242 S. Beargrass Cir.	Bosa, Vince and Kelly	4/19/2021	Y	V & I K Sosa	Y
112 Huckleberry Ln.	Bosak, Lonnie Michael	7/7/2021	N	Bosak	Y
117 S. Shooting Star Cir.	Brandt Capital LLC	12/8/2020	Y	Unknown	
19 Minnesota Ave.	Bray, Stuart C	8/7/2019	Y	Stuart Bray	Y
19 Minnesota Ave.	Bray, Stuart C	5/18/2020	Y	Stuart Bray	Y
235 W. 4th St.	Brenden, James D and Deena M	9/14/2020	Y	J & D Brenden	Y
212 N. Beargrass Cir.	Britt, Jason and April	2/15/2022	Y	C & April Britt	Y
2006 Hospital Way	Budhae LLC	2/20/2019	N	Budae LLC	Y
1494 Barkley Ln.	Budin, Karen K - Revocable Trust	11/1/2021	Y	Unknown	
170 Huckleberry Ln.	Burke Family Revocable Trust	8/19/2021	Y	Burke Family	Y
914 E. 2nd St.	Burris, Todd W and Lindsey	4/28/2022	Y	Bessette Const	N
9 Merganser Ct.	Burton, Paul H - Revocable Living Trust	10/2/2020	Y	Paul Burton Trust	Y
310 Sugarbowl Cir.	Carson, Thomas R and Barbara	6/12/2020	Y	T & B Carson	Y
187 N. Prairiesmoke Cir.	Carter, Carol Helow and Dennis Michael	6/10/2021	Y	Carter Helow	Y
82 Ponderosa Ct.	Carter, William	8/28/2019	N	William Carter	Y
235 Glenwood Rd.	Casa Marco Montana LLC	11/4/2021	Y	Casa Marco	Y
342 Armory Rd.	Casey, Maureen	5/27/2021	Y	Maureen	Y
845 Denver St. (Maureen Casey Berk Trust)	Casey, Maureen	8/5/2021	Y	Mareen Berk Trust	Y
145 Lookout Ln.	Cassidy, William	3/18/2020	Y	Lori Hansen	N
301 Sugarbowl Cir.	Caviglia Family Trust	11/20/2020	Y	Caviglia Trust	Y
245 Glenwood Rd.	CCR FLP Holdings LP	10/14/2021	N	General One	N
222 Central Ave.	Central Ave LLC	8/23/2022	N	Central Ave LLC	Y
317 Central Ave., Ste. 203	Central Ave. Holdings LLC	5/28/2020	Y	Compass Const	N
309 Central Ave., Ste. 201	Central Ave. WF LLC	2/8/2019	N	Unknown	
325 Central Ave.	Central Ave. WF LLC	2/8/2019	N	325 Central Ave	N
325 Central Ave.	Central Ave. WF LLC	10/24/2019	N	Central Ave LLC	Y
325 Central Ave.	Central Ave. WF LLC	12/4/2020	N	Central Ave LLC	Y
325 Central Ave.	Central Ave. WF LLC	3/22/2021	N	Central Ave LLC	Y
227 Trestle View Ct.	Cerra, Jessica	7/26/2021	Y	Haskill MW	N
2110 Houston Dr.	Chapman, Gregory John	8/23/2021	Y	Greg Chapman	Y
941 Preserve Pkwy.	Chauner, Linda T	3/20/2019	Y	Linda Chauner	Y
1500 W. Lakeshore Dr.	Chelf, Brad and Dana - Family Trust	11/1/2021	N	B & D Chelf	Y
1030 Columbia Ave.	Chelmo, Courtland	4/3/2020	Y	Chelmo, Courtland	Y
1123 E. 7th St.	Church of Nazarene	1/14/2020	Y	Unknown	
1200 Highway 93 W.	City of Whitefish	9/26/2022	Y	Unknown	
350 Monegan Rd.	City of Whitefish	3/31/2020	Y	Unknown	
520 Edgewood Pl.	City of Whitefish	9/3/2019	N	City of Whitefish	Y
536 Edgewood Pl.	City of Whitefish	9/3/2019	N	City of Whitefish	Y
River Ranch Rd.	City of Whitefish	7/14/2021		Unknown	
175 N. Prairiesmoke Cir.	Clarkson, Ryan Wayne and Jaimy Jeanne	2/4/2022	Y	Ryan Wayne	Y
813 Park Ave.	Closson, Nathan and Bryna	8/19/2021	Y	Closson	Y
434 Texas Ave.	Cole, Jamee	9/24/2021	Y	Cole	Y
34 Lupfer Ave.	Continental Divide Ventures LLC	5/14/2020	Y	Continental DV	Y
396 Sawtooth Dr.	Cooley Company LLC	1/11/2021	N	Cooley Co.	Y
109 Huckleberry Ln.	Cruciani, Gary	6/14/2021	Y	Gary Cruciani	Y
367 Sawtooth Dr.	Crystal Slopeside LLC	4/4/2019	N	Crystal Slopeside	Y
37 Waverly Pl.	Culver, Timothy J and Pamela G	6/29/2021	Y	T & P Culver	Y
280 Texas Ave.	Curd, Stephanie	7/29/2022	Y	Stephanie Curd	Y
142 Stumptown Lp.	Dailey, Michael E and Robin T	2/28/2019	Y	Unknown	
913 Columbia Ave.	Davis, Donald P	1/13/2022	Y	NV Const.	N
4969 Flatwater Dr.	Dell, William Ronald and Lori G Van	8/12/2019	Y	Van Dell	Y
1 Merganser Ct.	Delorme, Mark	8/21/2020	Y	Mark Delorme	Y
643 Denver St.	Densin LLC	10/3/2019	N	Denisin LLC	Y
577 Baker Ave.	DGC/JMC Hilltop Ranch LLC	10/20/2020	Y	Unknown	
108 Wild Rose Ln.	Diehl, David William	7/28/2021	Y	David Diehl	Y
680 Nature Tr.	DM Miller Properties LLC	10/24/2019	Y	Miller Properties	Y
1632 W. Lakeshore Dr.	DMH 37th GP LLC	1/21/2021	Y	DMH 37th GP	Y
711 W. 2nd St.	Doyle, Mark T	9/8/2020	N	Mark Doyle	Y
713 W. 2nd St.	Doyle, Mark T	9/8/2020	N	Mark Doyle	Y

Property Address	Owner Named on Permit	Permit Date	Ownership Today	Payor of Impact Fee	Did Owner Pay
715 W. 2nd St.	Doyle, Mark T	9/8/2020	N	Mark Doyle	Y
94 Ponderosa Ct.	Doyle, Mark T	3/1/2022	Y	Mark Doyle	Y
188 Woodlandstar Cir.	Drysdale, Douglas B	9/5/2019	Y	Doug Drysdale	Y
316 Haugen Hts.	Duchardt, Scott A and Charisse E	1/25/2021	Y	S & C Duchardt	Y
1955 Ridge Crest Dr.	Dudley, Timothy	3/15/2019	Y	Tim Dudley	Y
1055 Park Ave.	Duffey, Marcus E and Audrey A	8/3/2021	Y	Marcus Duffey	Y
800 W. 7th St.	Dusing, James	4/5/2021	N	Dusing	Y
6219 Highway 93 S.	Eagle Enterprises LLC	5/13/2022	Y	Don K	N
1010 E. 7th St.	Edge LLC	10/27/2020	Y	Edge LLC	Y
42 Merganser Ct.	EDM Development Co. LLC	9/24/2019	N	EDM Development	Y
1648 W. Lakeshore Dr.	EEJ Real Estate LLC	4/8/2022	Y	Mindful Designs	N
102 Washington Ave.	Eichhorn, Kevin	8/21/2020	Y	Eichhorn	Y
751 Cottonwood Ct.	Eight Street LLC	9/26/2019	N	Eighth Street LLC	Y
1110 Birch Point Dr.	Elliott, Mark W and Shelly A	6/12/2020	Y	M & S Elliott	Y
28 Park Ave.	Elm, Stephanie	7/20/2020	Y	Stephanie Elm	Y
303 Cascade Ct.	Enterprises M Kay	3/27/2020	N	Ent. M Kay	Y
305 Cascade Ct.	Enterprises M Kay	3/27/2020	N	Enterprises M Kay	Y
306 Cascade Ct.	Enterprises M Kay	5/6/2020	N	Enterprises M Kay	Y
307 Cascade Ct.	Enterprises M Kay	3/27/2020	N	Enterprises M Kay	Y
309 Cascade Ct.	Enterprises M Kay	3/27/2020	Y	Enterprises M Kay	Y
311 Akers Ln.	Enterprises M Kay	10/20/2021	Y	Enterprises M Kay	Y
311 Cascade Ct.	Enterprises M Kay	3/27/2020	Y	Enterprises M Kay	Y
312 Cascade Ct.	Enterprises M Kay	5/6/2020	N	Enterprises M Kay	Y
315 Cascade Ct.	Enterprises M Kay	3/27/2020	N	M Kay Ent.	Y
317 Cascade Ct.	Enterprises M Kay	3/27/2020	N	Enterprises M Kay	Y
319 Cascade Ct.	Enterprises M Kay	3/27/2020	N	M Kay Ent.	Y
321 Cascade Ct.	Enterprises M Kay	3/27/2020	N	Enterprises M Kay	Y
323 Cascade Ct.	Enterprises M Kay	3/27/2020	N	Enterprises M Kay	Y
328 Bonita Cir.	Enterprises M Kay	4/5/2019	N	M Kay Ent.	Y
339 Bonita Cir.	Enterprises M Kay	6/18/2019	N	M Kay Ent.	Y
340 Bonita Cir.	Enterprises M Kay	4/5/2019	N	M Kay Ent.	Y
345 Bonita Cir.	Enterprises M Kay	6/18/2019	N	Enterprises M Kay	Y
358 Bonita Cir.	Enterprises M Kay	3/11/2020	N	M Kay Ent.	Y
200 N. Beargrass Cir.	Entrust Group Inc.	8/13/2019	N	Entrust Group	Y
411 Somers Ave.	Evans, Jason C and Tawni L	10/30/2020	N	Evans	Y
105 Yampah Ln.	Evergreen Enterprises Inc.	8/9/2019	N	Evergreen Ent.	Y
5068 Tumblehome Ave.	Evergreen Enterprises Inc.	7/23/2019	N	Evergreen Ent.	Y
1656 W. Lakeshore Dr.	Feeny Family 1990 Trust A	4/15/2021	Y	Unknown	
723 Clearwater Dr.	Feffer, David and Judith P	5/20/2019	N	D & J Fetter	Y
1460 Barkley Ln.	Fennessy, Mark J	4/14/2020	Y	Mark Fennessy	Y
109 Bitterroot Ct.	Fish Sticks LLC	10/19/2021	Y	Fish Sticks LLC	Y
1071 Creekwood Dr.	Fitzgerald, Laurie L and Patrick John	1/15/2021	Y	L & P Fitzgerald	Y
1995 Ridgcrest Dr.	Fletcher, Gregory S	4/8/2021	N	Greg Fletcher	Y
245 Somers Ave.	Fletcher, Susan	10/28/2019	Y	Susan Fletcher	Y
1008 Meadowlark Ln.	Flynn, Matthew T and Laura A	3/19/2021	Y	M & L Flynn	Y
526 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
528 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
532 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
534 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
536 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
540 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
542 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
544 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
548 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
550 Colorado Ave.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
647 Denver St.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
649 Denver St.	FNB Investments LLC	7/31/2020	N	FNB Investments	Y
1152 Meadowlark Ln.	Foley, Dennis	5/18/2020	Y	Dennis Foley	Y
11 Marina Crest Ln.	Forman, Rob and Robyn	8/17/2021	Y	R & R Forman	Y
217 N. Beargrass Cir.	Foster Trust	7/29/2021	Y	Foster Trust	Y
217 N. Beargrass Cir.	Foster Trust	1/7/2022	Y	Foster Trust	Y
900 Pack Rat Ln.	Gardner, Robin Cross and Tyler Bryce	3/24/2020	Y	Unknown	
2081 Houston Dr.	Geiger, Whitney	7/2/2019	Y	Whitney Geiger	Y
123 Wisconsin Ave., Unit A	Gersh Properties LLC	2/25/2021	Y	Gersh Prop.	Y
123 Wisconsin Ave., Unit B	Gersh, Judah M and Tanya	2/25/2021	Y	J and T Gersh	Y
231 Vista Dr.	Giles, Andrew S and Jennifer L	12/30/2021	Y	A & J Giles	Y
92 Brimstone Dr.	Glacier Home Buyers LLC	5/30/2019	N	Unknown	
94 Brimstone Dr.	Glacier Home Buyers LLC	5/30/2019	N	Unknown	
5058 Portage Way	Glacier Timberline Construction Inc.	4/1/2021	N	Glacier Timberl	Y
1331 Nelson Ln.	GMJ LLC	9/26/2019	Y	GMJ LLC	Y
1331 Nelson Ln.	GMJ LLC	9/26/2019	Y	GMJ LLC	Y
1331 Nelson Ln.	GMJ LLC	9/26/2019	Y	GMJ LLC	Y
1331 Nelson Ln., Unit H	GMJ LLC	9/30/2021	Y	GMJ LLC	Y
1331 Nelson Ln., Unit I	GMJ LLC	9/30/2021	Y	GMJ LLC	Y
1331 Nelson Ln., Unit J	GMJ LLC	9/30/2021	Y	GMJ LLC	Y
1331 Nelson Ln., Unit K	GMJ LLC	9/30/2021	Y	GMJ LLC	Y

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314 W. 7th St.	Gohn, Patricia M	4/16/2019	N	Unknown	
230 Dakota Ave.	Good, Timothy C.	1/15/2019	N	Good	Y
6185 Highway 93 S.	Goosebay Capital LLC	10/13/2020	Y	Goosebay LLC	Y
6191 Highway 93 S.	Goosebay Capital LLC	10/13/2020	Y	Goosebay LLC	Y
284 Flathead Ave.	GRG Development LLC	8/16/2019	Y	GRG Dev LLC	Y
224 W. 8th St.	Griffiths, Ian S	5/20/2021	Y	Unknown	
14 Marina Crest Ln.	Groenenboom, Robert and Linda	6/23/2020	Y	R & L Groenenboom	Y
2006 Mountain Park Lp.	Hagen, Mark William and Beverly Ann	6/4/2019	Y	Unknown	
560 Park Ave.	Hahne, Natalie and Michael S	4/3/2020	N	N & M Hahne	Y
1001 Creek View Dr.	Haigh, Melissa M and Benjamin A	8/19/2022	Y	Unknown	
265 Glenwood Rd.	Hanlon Trust	7/21/2021	N	Hanlon Trust	Y
4961 Flatwater Dr.	Hanson, Alia and Charles E	5/23/2019	Y	Lachance Const.	N
4982 Flatwater Dr.	Hanson, June R	1/7/2019	N	4892 Flatwater	N
331 Haugen Hts.	Happel, Charles and Anne	6/1/2021	Y	Happel	Y
174 N. Prairiesmoke Cir.	Harrod, Gary W and Marguerite	3/9/2020	N	Harrod	Y
1326 Wisconsin Ave., Unit A	Hartman, Sandra J - Revocable Trust	12/2/2020	Y	Hartman Trust	Y
273 S. Shooting Star Cir.	Hatcher Living Trust	11/4/2021	Y	Hatcher	Y
58 Merganser Ct.	Haugen Heights LLC	3/19/2020	N	Haugen Heights	Y
4073 Red Eagle Dr.	Hawley, Donald P and Elizabeth Q - 1998 Revoc	10/7/2020	N	Hawley Trust	Y
996 Colorado Ave.	HC 179 LLC	7/18/2019	N	HC 179 LLC	Y
265 Texas Ave.	Hertlein, Josh and Peggy	5/18/2021	Y	Hertlein	Y
949 Preserve Pkwy.	Hidden Meadows Preserve LLC	4/4/2019	N	Unknown	N
953 Preserve Pkwy.	Hidden Meadows Preserve LLC	5/30/2019	N	Unknown	N
958 Preserve Pkwy.	Hidden Meadows Preserve LLC	1/22/2019	N	Gunderson	N
6360 Highway 93 S.	High Plains Pizza Inc.	11/26/2019	N	Unknown	
224 Arrowhead Dr.	Horn, Jerry D - Revocable Trust	4/1/2021	Y	Unknown	
304 Stumptown Lp.	Hunter, Michael Paul and Lanessa Reed	7/16/2020	Y	Hunter	Y
101 Lookout Ln.	IAG LLC	9/20/2019	Y	IAG LLC	Y
164 Brimstone Dr.	Iron Gate Montana, LLC	6/26/2020	N	R Pero Trust	N
274 Vista Dr.	Iron Gate Montana, LLC	7/14/2021	N	Iron Gate MT	Y
313 Sawtooth Dr.	Iron Gate Montana, LLC	7/13/2022	N	Iron Gate MT	Y
5028 Tumblehome Ave.	Iron Gate Montana, LLC	12/29/2020	N	Iron Gate MT	Y
5030 Flatwater Dr.	Iron Gate Montana, LLC	3/30/2022	Y	Iron Gate MT	Y
2300 Larkspur Ln.	Iron Horse Golf Club Inc.	2/22/2022	Y	Frontier Builders	N
101 Yarrow Ln.	Iron Horse Holdings LLC	4/8/2021	N	Empire Builders	N
3056 River Lakes Dr.	J and F Construction General Contractors Inc.	9/15/2020	N	J&F Const Gen	Y
909 Kalispell Ave.	Jacobs, Anne Thompson	9/17/2021	Y	Unknown	
1660 W. Lakeshore Dr.	Jacobsen, Heidi Anne - Trust	10/4/2019	Y	HAI Trust	Y
92 Woodlandstar Cir.	James, Greg	4/29/2022	Y	General One	N
247 Woodlandstar Cir.	Jansen, Allan	6/7/2019	N	Jansen, Allan	Y
3012 River Lakes Dr.	Jeremiassen 2013 Revocable Trust	3/29/2022	Y	Big Mtn Build	N
230 N. Prairiesmoke Cir.	JKK Holdings LLC	10/21/2019	N	JKK Holdings	Y
1940 Suncrest Dr.	JP3 LLC	10/12/2021	Y	Pickering	N
5082 Portage Way	K. Bell Enterprises Inc.	7/18/2022	N	James Lee	N
3028 River Lakes Dr.	Kaltschmidt, Kevin and Catlin	2/4/2022	Y	Kaltschmidt	Y
620 W. 5th St.	Kasberg, Jane Ann	10/26/2021	N	PLAND LLC	N
307 Haugen Hts.	Keleher, Michael and Kimberly	7/19/2022	Y	Keleher	Y
732 Denver St.	Kemp, Michele	9/2/2022	Y	Unknown	
215 E. 1st St.	Keuylian, Armen	3/25/2021	N	Armen Keuylian	Y
748 Denver St.	Kiesel, Julia Galbus and Kyle Benjamin	7/12/2021	Y	Julia & Kyle	Y
227 Wild Rose Ln.	Kirksey, Meghan	3/31/2021	N	Meghan Kirksey	Y
88 Ponderosa Ct.	Kirksey, Richard T	4/3/2019	Y	Richard Kirksey	Y
5018 Portage Way	Kohler, Gary T and Edith L	12/5/2019	N	G & E Kohler	Y
537 Somers Ave.	Kohnstamm, Daniel F and Betsy B	8/27/2019		Unknown	
1019 State Park Rd.	Kristl, Claire and Roman	4/19/2022	Y	Kristl Family Trust	Y
1027 State Park Rd.	Kristl, Claire and Roman	2/22/2022	Y	Kristl, Roman	Y
1309 E. 2nd St.	Kumar, Haley	10/11/2019	Y	Haley Kumar	Y
525 Railway St.	Kuo, C T	3/10/2020		CT Kuo	Y
4048 Red Eagle Dr.	Landi, Luke	7/25/2019		Luke Landi	Y
19 Washington Ave., Unit B	Lanning, Judy Ross and Matthew Jay	1/14/2021	Y	Lanning	Y
77 Ponderosa Ct.	Lasure, Barrie R and Jackie L - Trust	10/19/2020	Y	Lasure Trust	Y
503 W. 4th St.	Lawrance, Matthew J and Jillian L	1/20/2021	Y	Lawrance	Y
172 Brimstone Dr.	Layton, Jan M	6/3/2020	Y	Robert Pero Trust	N
206 Wild Rose Ln.	Levengood, Zane	8/11/2020	N	Zane Levengood	Y
1022 E. 3rd St.	Levin, Michael	3/23/2022	Y	Artisan Const	N
4056 Red Eagle Dr.	Lewis, Donald R	2/20/2020		Donald Lewis	Y
845 Park Ave.	Lihou, Dean	4/29/2019	Y	Unknown	N
743 Somers Ave.	Little, Daniel G and Judith M	2/14/2022		Swanson	N
364 Bonita Cir.	Lockwood, John and Daniela	6/3/2020	Y	J & D Lockwood	Y
100 Mount Lorni Rd.	Lookout Ridge LLC	4/24/2019	Y	Unknown	N
123 Gooseneck Rd.	Lookout Ridge LLC	2/4/2021	Y	Lookout Ridge	Y
412 E. Marina Crest Ln.	Loose Reins Ranch LLC	11/17/2020	N	Looser Reins	Y
459 La Brie Dr.	Loose Reins Ranch LLC	10/29/2020	N	Unknown	
453 Armory Rd.	Lost Trails LLC	12/31/2019	N	Lost Trails LLC	Y
158 Mountain Brook Ln.	Lubert, Charlotte	1/13/2022	N	Denman Const	N
457 Armory Rd.	Ludden, Bradford R	9/13/2019	Y	Bradrdord Ludden	Y

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1011 Creek View Dr.	Lunzman, Thomas and Stephany	8/23/2021	Y	Seven Hills	N
3023 River Lakes Dr.	MacCarter, Daryl and Karen	11/2/2020	Y	D & K MacCarter	Y
710 Aspen Grove St.	MacDonald, Paige Kampa - Family Trust	9/15/2020	N	Paige Kampa Mc	Y
950 Edgewood Pl.	MacDonald, Paige Kampa - Family Trust	2/7/2022	Y	Highland Design	N
950 Edgewood Pl.	MacDonald, Paige Kampa - Family Trust	5/4/2022	Y	Unknown	
214 E. 2nd St., Ste. 101	Maddux Landholdings LLC	6/10/2019	Y	Unknown	
730 Icehouse Rd.	Marble, Richard and Sheralyn	11/13/2019	Y	Marble	Y
1923 Racquet Ct.	Marshall, Peter J and Lisa M	1/12/2021	Y	P & M Marshall	Y
314 Lupfer Ave.	Martin, Tod and Donna	6/8/2021	N	Martin	Y
318 Lupfer Ave.	Martin, Tod and Donna	6/8/2021	N	Martin	Y
3062 River Lakes Dr.	Marzo, Mitchell	8/25/2020	Y	Mitchell Marzo	Y
340 Fairway Dr.	Mayo Family Living Trust	6/23/2021		Mayo	Y
340 Fairway Dr.	Mayo Family Living Trust	12/10/2021	Y	Skyline Builders	N
3027 Iron Horse Dr.	McColly, Kevin and Jennifer	4/6/2021	N	K & J McColly	Y
4095 Red Eagle Dr.	McCracken, Malcom B	4/22/2021	Y	McCracken	Y
505 E. 2nd St.	McCrea, Thomas S and Carlene D	4/3/2019	Y	Unknown	
233 Woodland Pl.	McGuire, Ashley E	7/9/2019	Y	Ashley McGuire	Y
4080 Red Eagle Dr.	McMahon, Michael T and Monica I	6/1/2021	Y	**	
220 Peregrine Ln.	McPherson, Aaron	5/28/2019	Y	D.Rhoades & M	N
5043 Portage Way	Meislik, Jerry - Family Trust	3/12/2021	N	Meislik Trust	Y
242 N. Shooting Star Cir.	Mercer, Marci and William	9/8/2021	Y	M and W Mercer	Y
219 Huckleberry Ln.	Mercord, Leslie	7/8/2019	Y	Unknown	
113 Bitterroot Ct.	Mersberger, Joshua and Michelle E	1/19/2022	N	General One	N
217 Central Ave.	Minnows, LP 4R	2/4/2021	Y	Cross	N
718 Edgewood Pl.	Modus Americas Corp.	10/22/2019	Y	Modus	Y
716 Denver St.	Montana B A Property	7/15/2021	Y	MT BA Prop	Y
5098 Portage Way	Montana Barnwood LLC	3/12/2021	N	MT Barnwood	Y
711 Patton Ln.	Montana Build	7/12/2019	N	Susanne Moore	N
719 Patton Ln.	Montana Build	7/12/2019	N	Susanne Moore	N
721 Patton Ln.	Montana Build	7/12/2019	N	Susanne Moore	N
20 Spokane Ave.	Montana Holdings 2018 LLC	7/18/2019	Y	Montana Holdings	Y
1684 W. Lakeshore Dr.	Montana Holdings LLC	4/6/2020	Y	MT Holdings	Y
140 Wild Rose Ln.	Montana Mountain Properties LLC	8/13/2019	N	Kim Lindstrom	N
708 Cottonwood Ct.	Montana Summit LLC	7/8/2022	N	MT Summit	Y
718 Cottonwood Ct.	Montana Summit LLC	3/31/2021	N	Montana Summit	Y
724 Cottonwood Ct.	Montana Summit LLC	10/13/2020	N	Montana Summit	Y
738 Icehouse Rd.	Moon, Jay C and Mary Ann Jeter	9/7/2021	Y	Moon	Y
709 Patton Ln.	Moore, Susanne K	7/12/2019	N	Susanne Moore	Y
230 Vista Dr.	Morrison, Bobby G and Nancy A	12/18/2019	N	Allyson Bush	N
301 Fraser Ave.	Morse Enterprises LLC	12/30/2019	N	Morse Ent.LLC	Y
309 Fraser Ave.	Morse Enterprises LLC	12/30/2019	N	Morse Ent.LLC	Y
502 Ramsey Ave.	Morse Enterprises LLC	11/25/2019	N	Morse	Y
502 Ramsey Ave.	Morse Enterprises LLC	11/25/2019	N	Unknown	
222 N. Prairiesmoke Cir.	Moshier, Eudora C - Family Trust	4/12/2021	Y	Moshier Trust	Y
840 Baker Ave.	Moss, Christine M	7/5/2022	Y	Christine Moss	Y
209 Wild Rose Ln.	Murcon Development LLC	4/3/2019	N	Murcon Devel	Y
717 Clearwater Dr.	Nakamura, Bruce	10/15/2019	Y	Bruce Nakamura	Y
137 S. Prairiesmoke Cir.	Nanke, Candace Marie and Kory Scott	4/30/2021	N	General One	N
145 S. Shooting Star Cir.	Nash, Boble and Jennifer	4/5/2021	Y	Nash	Y
224 Central Ave.	Nelson Hardware Inc.	4/23/2020	Y	Nelson Hardware	Y
3032 River Lakes Dr.	Newman, Dale and Whitney Crosby	4/29/2021	Y	Crosby-Newman	Y
6400 Highway 93 S.	NG and MG Investments LLC	4/25/2022		Denman Const	N
6400 Highway 93 S.	NG and MG Investments LLC	1/19/2022		Unknown	
721 Iowa Ave.	Nissen, Edward W and Sherri D	1/15/2021	N	Nissen	Y
25 Oregon Ave.	No Regrats LLC	3/12/2021	Y	No Regrats	Y
701 Spokane Ave.	Nordahl, LeAnne M	7/10/2019		LeAnne Nordahl	Y
251 Flathead Ave.	North Valley Food Bank Inc.	3/12/2021	Y	NV Food Bank	Y
1600 Hospital Way	North Valley Hospital	4/27/2021	Y	Logan Health	Y
4356 Voyager Dr.	Oaks, Michael J and Melisa Nicole	7/19/2019	Y	Oaks	Y
3065 River Lakes Dr.	O'Connell, Jennifer L	7/31/2020	Y	Jen O'Connell	Y
24 Merganser Ct.	Odenweller, Robert and Terri	6/23/2021	Y	Odenweller	Y
235 Woodlandstar Cir.	Olive In The Woods LLC	3/31/2022	N	Olive in Woods	Y
5005 Tumphone Ave.	Oman, James Craig and Brenda Anne	9/29/2020	N	Summit Devel	N
6354 Highway 93 S.	Ozlo Industries USA LLC	6/18/2020	Y	Ozlo Indust	Y
13 Marina Crest Ln.	Pagano, Lisa Marie F	10/22/2019	N	Lisa Pagano	Y
250 S. Beargrass Cir.	Painter Living Trust	10/7/2021	Y	Painter Trust	Y
1057 Creek View Ct.	Paone, William C and Robin I - Joint Revocable I	3/26/2019	Y	Paone Trust	Y
17 Merganser Ct.	Pass, Hulon H and Diane R	1/15/2021	Y	H & D Pass	Y
3039 River Lakes Dr.	Patterson, James Sterling	3/31/2021	Y	Unknown	
815 E. 2nd St.	Peppmeier, Douglas and Kelly	5/19/2022	Y	Peppermeier	Y
329 Baker Ave.	PER Investment Trust	3/6/2020	N	Dubar	N
331 Baker Ave.	PER Investment Trust	3/6/2020	N	Dubar	N
965 Preserve Pkway.	Peschel, J and L - Living Trust	5/15/2020	Y	Peschel Trust	Y
1412 W. Lakeshore Dr.	Peschel, Regan E - Revocable Trust	7/24/2020	Y	Peschel Trust	Y
1412 W. Lakeshore Dr.	Peschel, Regan E - Revocable Trust	6/30/2022	Y	Regan Peschel	Y
717 Icehouse Rd.	Peterson, Chad	10/3/2019	N	Chad Peterson	Y

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303 Obrien Ave.	Pico LLC	12/18/2019	Y	PICO LLC	Y
321 Bonita Cir.	Pierce, Brett and Janice	4/12/2021	Y	B & J Pierce	Y
214 E. 2nd St.	Plath, David W - Living Trust	4/27/2021	N	Plath Trust	Y
3051 River Lakes Dr.	Poplin, James P	6/17/2019	Y	Poplin	Y
2103 Houston Dr.	Prado, Marcela	10/22/2020	Y	Marcela Prado	Y
323 Karrow Ave.	Prizeman, Genevieve Davida	4/14/2020	Y	Prizeman	Y
207 Vista Dr.	Puckett, Jim and Kim	3/26/2019	N	Unknown	
760 Cottonwood Ct.	Purvis, Susan L	3/16/2022	N	HMW/Purvis	Y
169 S. Prairiesmoke Cir.	Rands, Russell Alan and Ellen Kuykendall	10/14/2020	N	Kuykendall	Y
239 Woodlandstar Cir.	Rands, Russell Alan and Ellen Kuykendall	7/23/2021	Y	Russ & Ell Rands	Y
512 Dakota Ave.	Reaser Investment Trust	7/22/2019	N	Reaser Inv Trust	Y
516 Dakota Ave.	Reaser Investment Trust	7/22/2019	N	Unknown	
520 Dakota Ave.	Reaser Investment Trust	7/22/2019	N	Reaser Inv Trust	Y
524 Dakota Ave.	Reaser Investment Trust	7/22/2019	N	Reaser Inv Trust	Y
340 Sugarbowl Cir.	Reger, Joseph	9/14/2021	Y	Joseph Reger	Y
1013 E. 7th St.	Reisch Family Partnership	4/23/2020	N	Reisch Fam Par	Y
1022 E. 8th St.	Reisch Family Partnership	5/18/2020	N	Reisch Fam Par	Y
19 Baker Ave.	Reisch Family Partnership	1/11/2019	N	Reisch	Y
309 Akers Ln.	Reisch Family Partnership	10/20/2021	N	Reisch Fam Par	Y
313 Akers Ln., Unit A	Reisch Family Partnership	2/7/2022	N	Compass Const	
315 Akers Ln.	Reisch Family Partnership	2/7/2022	N	Compass Const	N
317 Akers Ln.	Reisch Family Partnership	2/7/2022	N	Compass Const	N
70 Ponderosa Ct.	Richards, Donald D and Valerie A	7/1/2020	N	Don & Val Richards	Y
6405 Highway 93 S.	Ridgestone LLC	6/10/2020		Ridgestone	Y
704 E. 13th St., Unit B	Riverview Company LLC	2/28/2020	N	Unknown	
6201 Shiloh Ave.	Riverwalk of Whitefish LLC	9/3/2021		Riverwalk of WF	Y
81 Armory Rd.	Rizzolo, Stanley and Matthew	4/23/2019	Y	Rizzolo	Y
26 Marina Crest Ln.	RJ Slocum LLC	8/19/2020	N	RJ Slocum LLC	Y
540 Grouse Ridge Dr.	Rogers, Laurene	1/25/2021	N	Laurene Rogers	Y
444 E. Marina Crest Ln.	Ross, Corrine P and Jason C	10/15/2021	Y	Ross	Y
742 Cottonwood Ct.	Rouse, Charles	11/16/2020	N	Charles Rouse	Y
12 Marina Crest Dr.	Sanders Family Investments LLC	5/4/2021	Y	Sanders Family	Y
16 Mill Ave.	Schaaf, James Vander	8/12/2020	N	James Vander Schaff	Y
123 Wild Rose Ln.	Scheel, Sam and Hayley	6/14/2019	Y	Unknown	
121 Bitterroot Ct.	Scherl, Wendy G - Revocable Trust	7/23/2021	N	D & W Scherl	Y
443 Armory Rd.	Schneider, Matthew James	5/4/2020	Y	Matt Schmieder	Y
155 Ramsey Ave.	Schooley, Burton C	12/29/2020	N	Burton Schooley	Y
57 Crestwood Dr.	Scott, James E - Revocable Trust	9/12/2022	N	James Scott	Y
461 Armory Rd.	Seemann, Corey and Robert M	6/11/2019	Y	Seeman	Y
423 W. 4th St.	Shafer, Min Koo D	3/31/2020	N	Unknown	
425 W. 4th St.	Shafer, Min Koo D	3/31/2020	N	Min Shafer	Y
14 Lupfer Ave.	Sheeps Keep LLC	7/2/2019	Y	Unknown	
725 Somers Ave.	Shigo, John W	10/29/2020	Y	Shigo	Y
505 Parkway Dr.	Short Family Trust	2/7/2022	Y	Short Trust	Y
42 Ponderosa Ct.	Simmonds, Gina and Paul	11/8/2019	Y	G & P Simmonds	Y
327 Fairway Dr.	Simpson, Floyd R and Laura M	7/20/2021	N	Ibex Builders	N
109 Yarrow Ln.	Sims, William H and Lisa H	4/28/2021	Y	Will & Lisa Sims	Y
1033 Creek View Dr. (with Austine K)	Siomos, Vassilis J	5/9/2019	Y	Siomos Vassillis	Y
217 Granite Dr. (with Effie E)	Siomos, Vassilis J	8/24/2022	Y	Vassili, Siomos	Y
25 Merganser Ct.	Skinner, Stephanie	6/4/2019	Y	Steph Skinner	Y
203 W. 3rd St.	Sletten, Daryl W	7/1/2022	Y	Van Alstine	N
731 Grouse Ridge Ct.	Smith, Dennis L and Janet E	3/19/2019	Y	Unknown	
5010 Portage Way	Smith, Judith	4/23/2020	N	Judith Smith	Y
422 W. 5th St.	Smith, Virginia A	4/15/2021	Y	Virginia Smith	Y
304 Columbia Ave.	Smyley, Linda B	8/24/2022	Y	Linda Smyley	Y
304 Columbia Ave.	Smyley, Linda B	12/13/2021	Y	Smyley	Y
333 Bonita Cir.	Someday Adventures LLC	6/20/2019	N	Denman Const	N
305 Shady River Ln.	Sonnenberg, Avery R	5/13/2022	Y	Finnmark	N
5038 Flatwater Dr.	Spier, Carl Edward and Kandy Gayle	9/6/2019	Y	C & K Spear	Y
300 Haugen Hts.	Spivey, Ferrin	5/17/2021	Y	Spivey	Y
234 W. 4th St.	Stevenson, Holly	6/30/2021	Y	Holly Stevenson	Y
744 Spruce Ct.	Stevenson, Holly	7/8/2019	Y	Unknown	
746 Spruce Ct.	Stevenson, Holly	7/8/2019	Y	Unknown	
130 Lookout Ln.	Stimac, Blaine	11/3/2021	N	Blaine Stinac	Y
524 Edgewood Pl.	Stinson Family Revocable Living Trust	9/3/2019	N	Stinson Trust	Y
364 Sawtooth Dr.	Stone, Michelle M	3/25/2021	N	Michelle Stone	Y
20 Mountainside Dr.	Stubblefield, Richard D	5/21/2021	Y	Stubblefield	Y
271 Mountainside Dr.	Suhre, Todd and Tracy	1/15/2019	Y	Unknown	
346 Stumptown Lp.	Summit Development LLC	4/29/2022	N	Summit Devel	Y
5052 Tumblehome Ave.	Summit Development LLC	4/13/2021	N	Summit Devel	Y
1 Glacier View Ct.	Swager, William Ryan	2/4/2022	Y	Will Ryan Swager	Y
3 Glacier View Ct.	Swager, William Ryan	4/12/2021	Y	Unknown	
102 Perry Ln.	Swift Creek Cabins LLC	7/9/2019	Y	Swift Creek Ca	Y
340 Grouse Ridge Dr.	Szady, David W and Margaret M	5/5/2020	Y	D & M Szady	Y
109 Jasper Lp.	The Quarry Joint Venture LLC	2/11/2019	N	Unknown	N

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203 Granite Ave.	The Quarry Joint Venture LLC	7/24/2020		The Quarry JV	Y
222 Copper Way	The Quarry Joint Venture LLC	6/12/2020	N	The Quarry JV	Y
233 Agate Dr.	The Quarry Joint Venture LLC	9/1/2020	N	The Quarry JV	Y
234 Copper Way	The Quarry Joint Venture LLC	6/12/2020	N	The Quarry JV	Y
238 Boulders Rd.	The Quarry Joint Venture LLC	9/1/2020	N	The Quarry JV	Y
252 Opal Dr.	The Quarry Joint Venture LLC	9/30/2021	N	Compass Const	N
272 Boulders Rd.	The Quarry Joint Venture LLC	9/30/2021	N	Compass Const	N
291 Boulders Rd.	The Quarry Joint Venture LLC	9/30/2021	N	Compass Const	N
722 Obrien Ave.	The Whitefish Club LLC	10/28/2020	Y	The WF Club	Y
739 Cottonwood Ct.	THG FHP LLC	10/31/2019	Y	THG FHP LLC	
745 Cottonwood Ct.	THG FHP LLC	10/31/2019	Y	THG FHP LLC	Y
718 W. 3rd St.	Thiessen, Ross Michael	1/7/2019	Y	Theissen	Y
30 Merganser Ct.	Timms, Nigel J	1/22/2021	Y	Nigel Timms	Y
715 Cottonwood Ct.	Titled Property Management LLC	4/28/2020	Y	Mark Besette	N
721 Cottonwood Ct.	Titled Property Management LLC	8/8/2019	Y	Titled Prop Man	Y
727 Cottonwood Ct.	Titled Property Management LLC	8/14/2019	N	Titled Prop Man	Y
752 Spruce Ct.	Torgerson, Sara	3/14/2019	Y	Torgerson	Y
4845 Highway 40	Town Pump	10/26/2020	N	Unknown	
402 Trailview Way	Trail View LLC	6/28/2022	Y	Highpoint Cont.	N
403 Trailview Way	Trail View LLC	6/28/2022	Y	Highpoint Cont.	N
404 Trailview Way	Trail View LLC	6/28/2022	Y	Highpoint Cont.	N
405 Trailview Way	Trail View LLC	6/28/2022	Y	Highpoint Cont.	N
406 Trailview Way	Trail View LLC	7/7/2022	Y	Trail View LLC	Y
407 Trailview Way	Trail View LLC	7/7/2022	Y	Trail View LLC	Y
408 Trailview Way	Trail View LLC	7/27/2022	Y	Trail View LLC	Y
409 Trailview Way	Trail View LLC	7/27/2022	Y	Trail View LLC	Y
410 Trailview Way	Trail View LLC	7/27/2022	Y	Trail View LLC	Y
411 Trailview Way	Trail View LLC	7/27/2022	Y	Trail View LLC	Y
504 Trailview Way	Trail View LLC	12/10/2021	N	Trail View	Y
504 Trailview Way	Trail View LLC	12/10/2021	N	Unknown	
505 Trailview Way	Trail View LLC	12/10/2021	N	Trail View	Y
506 Trailview Way	Trail View LLC	12/10/2021	Y	Trail View	Y
507 Trailview Way	Trail View LLC	12/10/2021	Y	Trail View	Y
508 Trailview Way	Trail View LLC	5/6/2022	Y	Trail View	Y
509 Trailview Way	Trail View LLC	5/6/2022	N	Trail View	Y
510 Trailview Way	Trail View LLC	7/27/2022	Y	Trail View LLC	Y
511 Trailview Way	Trail View LLC	7/27/2022	Y	Trail View LLC	Y
512 Trailview Way	Trail View LLC	7/27/2022	Y	Trail View LLC	Y
513 Trailview Way	Trail View LLC	7/27/2022	Y	Trail View LLC	Y
606 Trailview Way	Trail View LLC	3/15/2021	N	Unknown	
607 Trailview Way	Trail View LLC	3/15/2021	N	Highpoint Cont.	N
608 Trailview Way	Trail View LLC	3/15/2021	N	Highpoint Cont.	N
609 Trailview Way	Trail View LLC	3/15/2021	N	Highpoint Cont.	N
610 Trailview Way	Trail View LLC	3/15/2021	N	Unknown	
611 Trailview Way	Trail View LLC	3/15/2021	N	Highpoint Cont.	N
612 Trailview Way	Trail View LLC	12/10/2021	N	Trail View	Y
613 Trailview Way	Trail View LLC	12/10/2021	N	Trail View	Y
614 Trailview Way	Trail View LLC	12/10/2021	N	Unknown	
615 Trailview Way	Trail View LLC	12/10/2021	N	Trail View	Y
708 Trailview Way	Trail View LLC	8/12/2020	N	Trail View LLC	Y
709 Trailview Way	Trail View LLC	8/12/2020	N	Trail View LLC	Y
710 Trailview Way	Trail View LLC	8/12/2020	N	Unknown	
711 Trailview Way	Trail View LLC	8/12/2020	N	Trail View LLC	Y
712 Trailview Way	Trail View LLC	8/12/2020	N	Trail View LLC	Y
713 Trailview Way	Trail View LLC	8/12/2020	N	Trail View LLC	Y
714 Trailview Way	Trail View LLC	12/10/2021	N	Trail View	Y
715 Trailview Way	Trail View LLC	3/15/2021	N	Trail View	Y
716 Trailview Way	Trail View LLC	12/10/2021	N	Trail View	Y
717 Trailview Way	Trail View LLC	3/15/2021	N	Unknown	
810 Trailview Way	Trail View LLC	11/4/2019	N	Trail View	Y
811 Trailview Way	Trail View LLC	11/4/2019	N	Trail View	Y
812 Trailview Way	Trail View LLC	11/4/2019	N	Trail View	Y
813 Trailview Way	Trail View LLC	11/4/2019	N	Trail View	Y
814 Trailview Way	Trail View LLC	11/4/2019	N	Trail View	Y
815 Trailview Way	Trail View LLC	11/4/2019	N	Trail View	Y
816 Trailview Way	Trail View LLC	12/21/2020	N	Trail View	Y
817 Trailview Way	Trail View LLC	12/4/2020	N	Trail View	Y
818 Trailview Way	Trail View LLC	12/21/2020	N	Unknown	
819 Trailview Way	Trail View LLC	12/4/2020	N	Trail View LLC	Y
76 Armory Rd.	Tucker, Jessica	5/26/2021	Y	Jessica Tucker	Y
102 S. Prairiesmoke Cir.	Unknown - contractor: Brandt Const. LLC	1/24/2019	N	Brandt, David	Y
317 Central Ave.	Unknown - contractor: Compass Constr.	8/1/2019	N	Compass Const	N
780 Denver St.	Unknown - contractor: FLS Constr. Inc.	10/25/2019	N	"Data unavailable"	N
1635 E. 2nd St., Unit B	Unknown - contractor: Owner	7/27/2022	N	Stephen Hill	N
820 E. 6th St.	Unknown - contractor: Right Angle Builders	9/9/2022	N	Right Angle Builders	Y
118 Central Ave.	Unknown - contractor: Skyline Builders	10/29/2021	N	Jessica Cooney	N

Property Address	Owner Named on Permit	Permit Date	Ownership Today	Payor of Impact Fee	Did Owner Pay
802 B Columbia Ave.	Utterback, Cory	2/4/2019	Y	Cory Utterback	Y
1007 E. 8th St.	Viewpoint Whitefish LLC	6/4/2021	N	Viewpoint WF	Y
220 Woodlandstar Cir.	Viewpoint Whitefish LLC	10/20/2021	Y	Viewpoint Wtf	Y
4 Merganser Ct.	Wachholz, Chance L	3/29/2021	Y	Chance Wachholz	Y
408 Icehouse Tr.	Walker, Christine Elaine	5/11/2022	Y	Seven Hills	N
54 Harlequin Ct.	Watts, Ian	10/29/2019	Y	Ian Watts	Y
405 Central Ave.	Wayman, Samuel E - Living Trust	11/8/2021		Wayman Trust	Y
1522 W. Lakeshore Dr.	Weinberg, Daniel C - Revocable Trust	4/11/2022	Y	Daniel Weinberg	Y
1508 W. Lakeshore Dr.	Weinberg, Zac and Amy - Living Trust	7/28/2020	Y	Weinberg	Y
3024 Iron Horse Dr.	Wellner, George H and Mary K	5/18/2021	N	G & M Wellner	Y
124 W. 2nd St.	West 2nd St. Residents LLC	8/23/2021	Y	124 W 2nd St	N
126 W. 2nd St.	West 2nd St. Residents LLC	8/23/2021	Y	126 W 2nd St	N
132 W. 2nd St.	West 2nd St. Residents LLC	8/23/2021	Y	132 W 2nd St	N
134 W. 2nd St.	West 2nd St. Residents LLC	8/23/2021	Y	134 W 2nd St	N
6231 Shiloh Ave.	West Ridge Homes LLC	9/25/2019	N	West Ridge Homes	Y
6235 Shiloh Ave.	West Ridge Homes LLC	9/25/2019	N	West Ridge Homes	Y
6239 Shiloh Ave.	West Ridge Homes LLC	9/25/2019	N	West Ridge Homes	Y
6243 Shiloh Ave.	West Ridge Homes LLC	9/25/2019	N	West Ridge Homes	Y
6247 Shiloh Ave.	West Ridge Homes LLC	9/25/2019	N	West Ridge Homes	Y
6251 Shiloh Ave.	West Ridge Homes LLC	9/25/2019	N	West Ridge Homes	Y
6255 Shiloh Ave.	West Ridge Homes LLC	9/25/2019	N	West Ridge Homes	Y
6259 Shiloh Ave.	West Ridge Homes LLC	9/25/2019	N	West Ridge Homes	Y
206 Lupfer Ave., Ste. 101	Wetherell, Kevin - 2018 Legacy Trust	1/13/2022	Y	KW 2018 Leg Trust	Y
6550 Highway 93 S.	WF Properties LLC	7/9/2021		Glacier Hospitality	N
6550 Highway 93 S.	WF Properties LLC	5/3/2022		Unknown	
28 Lupfer Ave.	Whitefish Hostel LLC	2/19/2019	N	Unknown	
244 Kalispell Ave.	Whitefish Hotel Group LLC	9/27/2019		Whitefish Hotel G	Y
28 Miles Ave.	Whitefish Miles Investment LLC	9/12/2022	Y	Inspiration Dr. P	N
189 S. Shooting Star Cir.	Wiley, David D	1/2/2019	N	David Wiley	Y
176 S. Shooting Star Cir.	Wiley, David W	8/23/2022	N	David Wiley	Y
185 S. Shooting Star Cir.	Wiley, David W	10/21/2019	N	Wiley	Y
215 Arrowhead Dr.	Wiley, David W	10/29/2020	N	David Wiley	Y
219 Arrowhead Dr.	Wiley, David W	8/28/2020	N	David Wiley	Y
269 S. Shooting Star Cir.	Wiley, David W	11/2/2021	Y	David Wiley	Y
4966 Flatwater Dr.	Wiley, David W	4/2/2020	Y	David Wiley	Y
428 Iowa Dr.	Williams, James Scott and Melora Ann	7/27/2020	Y	J & M Ann	Y
58 Crestwood Dr.	Witek, Walter Joseph Junior - Revocable Trust	9/12/2022	N	Witek, Walter	Y
4072 Red Eagle Dr.	Withers, Pamela D Armstrong	3/23/2020	Y	Armstrong-Withers	Y
1072 Meadowlark Ln.	Zakos, Tom and Susan	4/18/2022	Y	T & S Zakos	Y
306 Park Ave.	Zampieri, Ray P	4/1/2019	N	Ray Zamperi	Y

Tom Hollo

From: Lindsay Mullineaux <lmullineaux@lairdcowley.com>
Sent: Wednesday, December 28, 2022 10:35 AM
To: Tom Hollo
Cc: mark@justicemt.com; Cory Laird; Dawn Hanninen; Stephenie Dunwell; caelan@justicemt.com; Riley Wavra; dawnell@justicemt.com; Marcel Quinn; Todd Hammer
Subject: RE: Items Discussed on 9/1/22 Call

Good Morning Tom,

As we have not yet received a draft Rule 34 Notice for the requested inspections, I'm assuming your request extends to 754 Cottonwood Ct. and 748 Cottonwood Ct. We've been able to confirm with Jeff Beck, and he is not the current owner of either of these properties, making the request outside the scope of Rule 34.

Thank you,



Lindsay Mullineaux
Attorney

Phone 406-541-7400 **Facsimile** 406-541-7414

Web www.lairdcowley.com **Email** lmullineaux@lairdcowley.com
2315 McDonald Avenue, Suite 220, Missoula, MT 59801
P.O. Box 4066, Missoula, MT 59806

This email may contain privileged or confidential information. If you received this email in error, notify the sender and delete it immediately. No waiver of privilege or confidentiality is intended.

From: Tom Hollo <tomhollo@attorneysmontana.com>
Sent: Thursday, December 22, 2022 4:36 PM
To: Lindsay Mullineaux <lmullineaux@lairdcowley.com>
Cc: mark@justicemt.com; Cory Laird <claird@lairdcowley.com>; Dawn Hanninen <dhanninen@lairdcowley.com>; Stephenie Dunwell <sdunwell@lairdcowley.com>; caelan@justicemt.com; Riley Wavra <rwavra@lairdcowley.com>; dawnell@justicemt.com; Marcel Quinn <marcelquinn@attorneysmontana.com>; Todd Hammer <toddhammer@attorneysmontana.com>
Subject: RE: Items Discussed on 9/1/22 Call

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Lindsey, following up on this, please let us know where we are on potential Beck inspection dates.

Thanks,

Tom Hollo

Hammer, Quinn & Shaw PLLC
100 Financial Dr Ste 100

Tom Hollo

From: Lindsay Mullineaux <lmullineaux@lairdcowley.com>
Sent: Wednesday, November 9, 2022 10:12 AM
To: Tom Hollo
Cc: mark@justicemt.com; Cory Laird; Dawn Hanninen; Stephenie Dunwell; caelan@justicemt.com; Riley Wavra; dawnell@justicemt.com; Marcel Quinn; Todd Hammer
Subject: RE: Items Discussed on 9/1/22 Call

Good Morning Tom,

Unfortunately, Zac Weinberg needs to reschedule the 11/14 inspection. I've listed available dates for rescheduling below. Please let me know if any of these dates will work on your end. We are still on for the two Alta Views properties. The client is confirming times but it looks like it will either be 9:00 we held for the Weinberg inspection or that 10:30 timeframe we discussed previously, starting with 247B Elm Court. Riley will attend those inspections and will communicate any further details.

11/18 8:30 - 10:00 am
11/28 8:30 - 11:00 am
12/2 8:30 - 10:00 am



Lindsay Mullineaux
Attorney

Phone 406-541-7400 **Facsimile** 406-541-7414
Web www.lairdcowley.com **Email** lmullineaux@lairdcowley.com
2315 McDonald Avenue, Suite 220, Missoula, MT 59801
P.O. Box 4066, Missoula, MT 59806

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From: Lindsay Mullineaux
Sent: Thursday, November 3, 2022 10:14 AM
To: 'Tom Hollo' <tomhollo@attorneysmontana.com>
Cc: 'mark@justicemt.com' <mark@justicemt.com>; Cory Laird <claird@lairdcowley.com>; Dawn Hanninen <dhanninen@lairdcowley.com>; Stephenie Dunwell <sdunwell@lairdcowley.com>; 'caelan@justicemt.com' <caelan@justicemt.com>; Riley Wavra <rwavra@lairdcowley.com>; 'dawnell@justicemt.com' <dawnell@justicemt.com>; 'Marcel Quinn' <marcelquinn@attorneysmontana.com>; 'Todd Hammer' <toddhammer@attorneysmontana.com>
Subject: RE: Items Discussed on 9/1/22 Call

Good Morning Tom,

The Alta Views properties discussed below are available for inspection November 14, 2022. I'm working on nailing down times, but would it work for your people to schedule them after the Weinberg inspection (likely around a 10:30-12:00 timeframe)?



Home

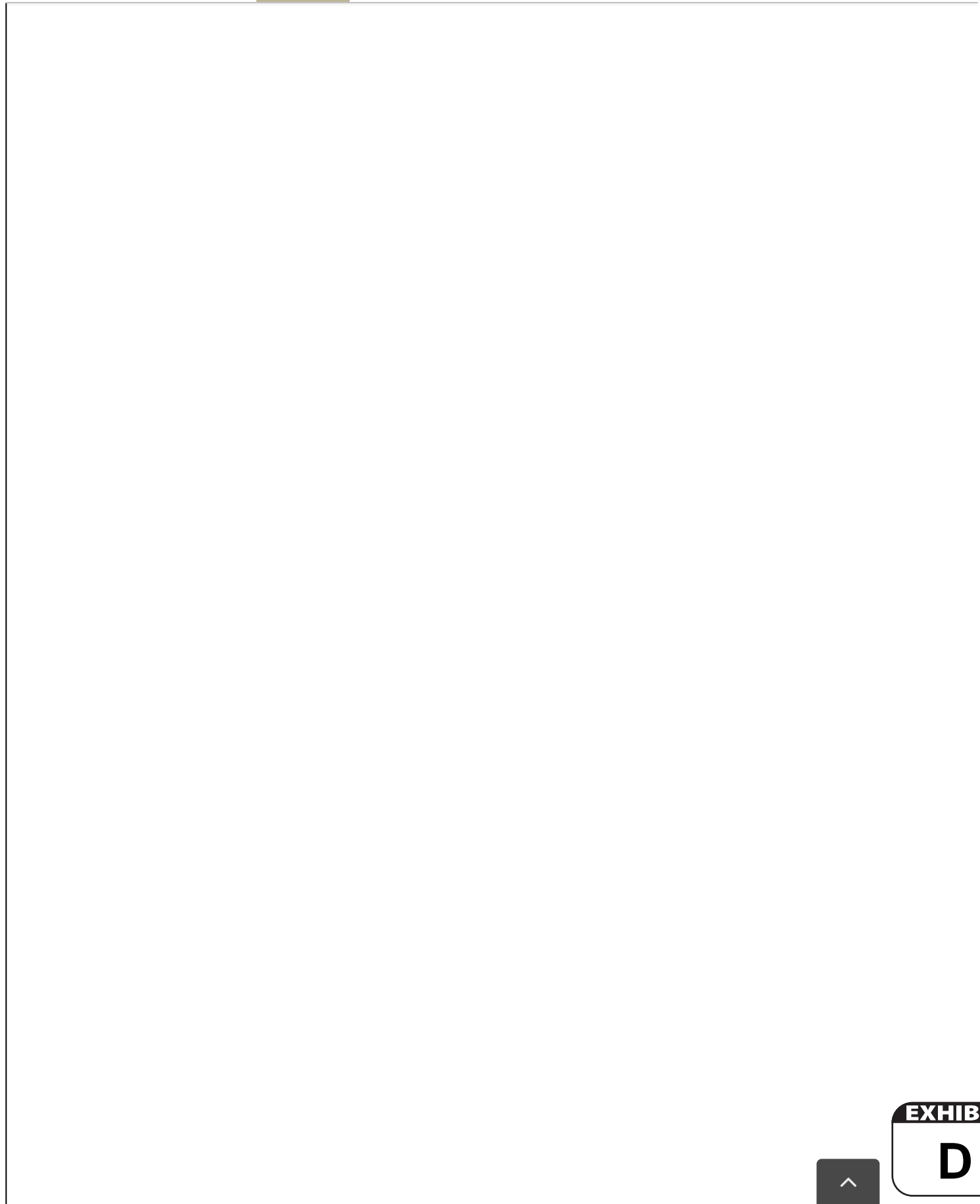
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ALTA VIEWS WHITEFISH MONTANA HOMES!

WE SAVED THE BEST FOR LAST!

ONLY 1 UNIT LEFT. OFFERING BIG MOUNTAIN VIEWS WITH A SMALL TOWN FEEL. SKIING, HIKING, BIKING AND BOATING ALL IN YOUR BACKYARD. LOCATED OFF OF JP ROAD, JUST MINUTES TO DOWNTOWN WHITEFISH AND STEPS TO THE WHITEFISH RIVER AND WALKING, BIKING PATHS.



THE PERFECT LOCATION

Whitefish is a small Rocky Mountain town in the Flathead Valley of northwest Montana. It is home to Big Mountain, one of the largest ski resorts in the US and Canada, with over 3000 skiable acres and just 20 minutes away. Whitefish is easily accessible via the Glacier International Airport located just 15 minutes away. If you are an outdoor enthusiast, Whitefish Montana is the place to live. Grizzly Bears, Mountain Lions, Moose, Wolverines, Bighorn Sheep, Porcupines, and Wolves are just a few of the animals that call the area home. The sandy beaches in Whitefish Lake are a great way to spend a summer afternoon along with trout fishing in the many lakes and rivers. The downtown shops and restaurants of Whitefish are a fun way to spend an afternoon with friends and family. So, come see why our Whitefish Montana Homes are the place you need to live.



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TWO BEDROOMS, TWO BATHROOMS, AND A LOFT

THE REMAINING 2 UNITS BOTH FEATURE 2 BEDROOMS, TWO BATHS AND A THIRD STORY LOFT WHICH ALL TOTALS 1,367 SQUARE FEET OF INTERIOR SPACE. PLUS, THERE IS ALSO AN INSULATED, HEATED TWO CAR GARAGE. ALL UNITS HAVE USE OF THE CLUB HOUSE, FITNESS CENTER, AND OTHER AMENITIES.



WHAT PEOPLE ARE SAYING ABOUT ALTA VIEWS AT WHITEFISH:

Upon discovering Alta Views, Dodd showed me the newest Townhomes with the Spiral stairs to the loft and I was able to custom pick my unit for ultimate views from my deck.

Alta Views Owner - 16A





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201900026701

Page: 1 of 2

Date: 10/18/2019

Time: 9:33 AM

0308501

Approved 10/18/2019 cw

This Document Prepared By:

Fidelity National Title Company of Flathead Valley, LLC
284 Flathead Avenue Ste 101
Whitefish, MT 59937

After Recording Return To:

Zac Weinberg and Amy Weinberg Living Trust
PO Box 5419
Whitefish, MT 59937

Order No.: FT1585-192641-SH

Recorded by Fidelity National Title

FNT 1585-192641

WARRANTY DEED

For Value Received Jeffrey J. Brus and Kellie A. Brus, as joint tenants, the grantor(s), do(es) hereby grant, bargain, sell and convey unto Zachary Daniel Weinberg and Amy Marie Weinberg, Trustees of the Zac Weinberg and Amy Weinberg Living Trust dated October 27, 2014, of PO Box 5419, Whitefish, MT 59937, the grantee(s), the following described premises, in Flathead County, Montana, to wit:

A tract of land situated lying and being Lot 2, N1/2 Lot 1 Block 6 and Lots 2, 3 Block 5, of Lake Park Addition to Whitefish, Montana and located in the Southeast Quarter Northwest Quarter (SE1/4NW1/4) of Section 26, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana and more particularly described as follows:

Commencing at the West corner of Block 7 of Lake Park Addition to Whitefish, Montana, a plat or map of which is on file in the Clerk and Recorders Office of Flathead County, Montana, which is a found 1/2" pipe; thence North 50°55'00" East 69.60 feet perpendicular to the centerline of the main line of Burlington Northern Railroad to a point; thence North 39°05'00" West 100.00 feet to the True Point of Beginning and the tract herein described; thence North 50°55'00" East 366.54 feet to a set iron pin on the high water mark of Whitefish Lake; thence North 8°57'44" East 74.79 to a set iron pin; thence North 4°38'27" West 60.63 feet to a set iron pin on the high water mark of Whitefish Lake; thence South 50°55'00" West, 456.45 feet to a set iron pin; thence South 39°05'00" East, 50.00 feet to a set iron pin; thence South 39°05'00" East 50.00 feet to the Point of Beginning.

Retracement Certificate of Survey No. 3118.

TO HAVE AND TO HOLD unto the Grantee and to the heirs and assigns forever, subject, however, to:

- A. All reservations and exceptions of record and in patents from the United States or the State of Montana;
- B. All existing easements and rights of way of record, building, use zoning, sanitary and environmental restrictions;
- C. Taxes and assessments for the year 2019 and subsequent years;
- D. All prior conveyances, leases or transfers of any interest in minerals, including oil, gas and other hydrocarbons;

Except with reference to items referred to in paragraphs above, this Deed is given with the usual covenants expressed in §30-11-110, Montana Code Annotated.


This conveyance is made and accepted upon the express agreement that the consideration heretofore paid constitutes an adequate and full consideration in money or money's worth.


EXHIBIT**E**

WARRANTY DEED

(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.



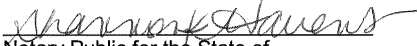
Jeffrey J. Brus

Kellie A. Brus

State of Montana

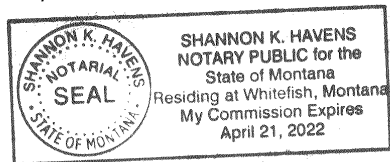
County of Flathead

This instrument was acknowledged before me on October 4, 2019 by Jeffrey J. Brus and Kellie A. Brus.



Notary Public for the State of _____
Residing at _____
My Commission Expires: _____

(SEAL)



Mark M. Kovacich
Ben A. Snipes
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Cory R. Laird
Tyler C. Smith
Lindsay A. Mullineaux
Riley M. Wavra
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tsmith@lairdcowley.com
lmullineaux@lairdcowley.com
rwavra@lairdcowley.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JEFF BECK, individually; et al.,)	CAUSE NO. CV-22-44-DLC-KLD
)	
Plaintiffs,)	
)	
vs.)	PLAINTIFFS' RESPONSES TO
)	DEFENDANT'S FIRST
CITY OF WHITEFISH, a Montana)	DISCOVERY REQUESTS
municipality; and DOES 1-50,)	
)	
Defendants.)	

EXHIBIT

F

Plaintiffs respond to Defendant's first discovery requests dated August 23, 2022, as follows:

INTERROGATORY NO. 1: Identify any person who has knowledge of any matter relevant to this lawsuit and provide a summary of what each person knows.

ANSWER: Plaintiffs believe the following individuals may have knowledge of the matters relevant to this lawsuit:

NAME	ADDRESS & NUMBER	INFORMATION
Jeff Beck	See addresses and numbers of counsel	Amount of water and wastewater impact fees paid to the City; personal dealings with the City government; specifics on building developments/remodels including: the number of buildings; the required water meter size(s) for each building; and the number and type of water fixtures added with each building
Amy & Zac Weinberg	See addresses and numbers of counsel	Amount of water and wastewater impact fees paid to the City; personal dealings with the City government; specifics on building developments/remodels including: the number of buildings; the required water meter size(s) for each building; and the number and type of water fixtures added with each building

Mark Panissidi Managing Member Alta Views, LLC	See addresses and numbers of counsel	Amount of water and wastewater impact fees paid to the City; personal dealings with the City government; specifics on building developments/remodels including: the number of buildings; the required water meter size(s) for each building; and the number and type of water fixtures added with each building
William Halama Manager Riverview Company LLC	See addresses and numbers of counsel	Amount of water and wastewater impact fees paid to the City; personal dealings with the City government; specifics on building developments/remodels including: the number of buildings; the required water meter size(s) for each building; and the number and type of water fixtures added with each building
As yet unidentified building permit applicants in the City who were charged impact fees for water and wastewater services by Defendant since January 1, 2019		Amount of water and wastewater impact fees paid to the City; personal dealings with the City government; specifics on building developments/remodels including: the number of buildings; the required water meter size(s) for each building; and the number and type of water fixtures added with each building
Dana Smith City Manager City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees

John Muhlfeld Mayor City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees
Whitefish City Council Members from 2018-present, including, but not limited to, Andy Feury, Ryan Hennen, Ben Davis, Frank Sweeney, Steve Qunell, and Rebecca Norton.	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees
Angela Jacobs City Attorney City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	The City's conduct relating to allegations in the Complaint
Adam Hammatt Former City Manager City of Whitefish	Unknown	How the City calculated, collected and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; efforts by the City to refund improperly calculated and collected impact fees

Benjamin Dahlman Former Finance Director City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees
Craig Workman Director of Public Works City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees
Karin Hilding Senior Project Engineer City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated
Rose Elliot Utility Services Supervisor City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees

Dabney Langellier Employee Planning & Building Dept. City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees
Michelle Howke City Clerk City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	The City's conduct relating to allegations in the Complaint
Dave Taylor Planning Director City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	How the City calculated, collected, and spent water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees
Jenny Emmenegger Former Office Manager Public Works Dept. City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	Efforts by the City to refund improperly calculated and collected impact fees
Hilary Lindh Long Range Planner City of Whitefish	c/o Hammer, Quinn & Shaw PLLC, 100 Financial Dr. Ste. 100 Kalispell, MT 59901 406-755-2225	Planned projects in the City; facts surrounding projected growth in the City

As yet unidentified staff of the City of Whitefish from 2018-present		How the City calculated water and wastewater impact fees; efforts by the City to determine how impact fees should be calculated; amounts charged to each building permit applicant for impact fees; efforts by the City to refund improperly calculated and collected impact fees
As yet unidentified employees of HDR from 2005-2007		Methods used in creating the 2007 HDR Report
Todd Chase Principal FCS Group	5335 Meadows Rd. Ste. 330 Lake Oswego, OR 97035	Facts underlying the impact fees the City has charged since January 1, 2019; methods used in creating the 2018 FCS Group Report
John Ghilarducci Principal FCS Group	5335 Meadows Rd. Ste. 330 Lake Oswego, OR 97035	Facts underlying the impact fees the City has charged since January 1, 2019; methods used in creating the 2018 FCS Group Report
David Gordon Business Analyst FCS Group (as of 2018)	Unknown	
Luke Slaughterbeck Financial Analyst FCS Group (as of 2018)	Unknown	
As yet unidentified employees of FCS Group from 2016-Present		Facts underlying the impact fees the City has charged since January 1, 2019; methods used in creating the 2018 FCS Group Report
Alan Wendt Professional Engineer AE2S (as of 2019)	Unknown	Facts underlying the City's efforts to increase water storage capacity; facts surrounding the City's water use data

Trevor Datwyler Professional Engineer AE2S (as of 2019)	Unknown	Facts underlying the City's efforts to increase water storage capacity; facts surrounding the City's water use data
As yet unidentified employees of AE2S from 2016-Present		Facts underlying the "South Water Reservoir" project; facts surrounding the City's water use data
As yet unidentified employees of Anderson-Montgomery from 2014-2016		Facts surrounding the City's wastewater generation data
Paul Gillman*	1050 Creekview Court Whitefish, MT 59937 406-862-0350	The City's noncompliance with laws and regulations on setting impact fee rates; attempts on behalf of City residents to inform the City of impact fee overcharges

*Mr. Gillman has been employed by Plaintiffs' counsel as a consulting expert for trial preparation purposes. Mr. Gillman has knowledge of matters relevant to this lawsuit apart from his expert consultation work, but his communications with Plaintiffs and their counsel in connection with his consultation are not discoverable per Rule 26(b)(4)(D), F.R.Civ.P.

Plaintiffs will supplement this answer in accordance with Rule 26(e), F.R.Civ.P., if Plaintiffs learn additional information that is not otherwise known by Defendant.

INTERROGATORY NO. 2: Identify with particularity every way in which you contend the City has been charging unreasonable, unlawful or unconstitutional impact fees, and the time frame you contend the action occurred.

ANSWER: As discovery has just begun in this matter, the true scope, extent and timing of Defendant's unreasonable, unlawful, and unconstitutional impact fee scheme is not fully known. The subject matter covered by this broad contention Interrogatory will also be the subject of expert testimony which will be disclosed in accordance with the Court's Scheduling Order.

The City has been charging unreasonable, unlawful, and unconstitutional water and wastewater impact fee rates since at least January 1, 2019. These impact fee rates were set in the City pursuant to two Resolutions of the Whitefish City Council: Resolution No. 18-44, effective January 1, 2019, to August 31, 2019; and Resolution No. 19-15, effective September 1, 2019, to the present (collectively, "Resolutions"). Both Resolutions purport to have established impact fee rates "supported by the [FCS Group] 'Impact Fee Update' dated August 2018" and "further amendments that [City staff] recommended would be in the best interests of the City to adopt." Res. No. 18-44, p. 1; Res. No. 19-15, p. 1.

There are three categories of problems with the manner in which the City has been charging impact fees, which render such fees unreasonable, unlawful, and unconstitutional: (1) problems with the supporting documents relied on by the City in determining water and wastewater impact fee rates; (2) problems with the substance of the Resolutions; and (3) problems in the implementation and administration of water and wastewater impact fee charges by the City. These

problems are elaborated on below. As discovery has just begun in this matter, the following lists are not exhaustive and may be subject to change as Plaintiffs obtain more information through discovery, the purpose of which is to identify the facts relevant to the parties' allegations.

Problems with Supporting Documents

Plaintiffs have identified at least eight (8) circumstances in which the City improperly relied on faulty supporting documents in determining water and wastewater impact fee rates in the city, which have caused unreasonable, unlawful, and unconstitutional impact fee charges since January 1, 2019:

1. The 2018 FCS Group Impact Fee Update (“Impact Fee Update”) and the City staff’s November 6, 2018, Addendum to the Impact Fee Update (“Update Addendum”) consider certain projects only serving specific areas of town in determining impact fee rates for building permit applicants citywide. If the City considers projects only serving a certain area of town in calculating impact fee rates, more than one service area is necessary to establish a correlation between impact fees and benefits to properties developed in the City.
2. The Impact Fee Update and Update Addendum consider projects that correct existing deficiencies in public facilities and are not attributable to growth caused by development in the City in determining impact fee rates for building

permit applicants. For example, in a meeting with Whitefish officials on August 30, 2021, the City Manager stated that the "South Water Reservoir" project, a project considered in calculating water impact fee rates in the City, was "redefined" as a water storage facility within city limits to increase water pressure for the southern portion of Whitefish. The Impact Fee Update estimated the City retained nearly 80% water storage capacity as of August, 2018. If the purpose of the proposed South Water Reservoir was to correct existing water pressure deficiencies in south Whitefish, it is not necessary to serve growth in the City and cannot lawfully be considered in establishing impact fee rates.

3. The Impact Fee Update considers projects unrelated to any costs incurred by the City as a result of new development, such as the "Solar Array Project," in determining impact fee rates for building permit applicants. For example, the City's Public Works Director has stated that "[t]he [C]ity is not on the hook for the capital costs of the [Solar Array] project," yet the City continues to charge impact fees reflecting a cost of \$1.08 million for the Solar Array Project it has "allocated" to growth in the City.
4. The Impact Fee Update and the Update Addendum unreasonably estimated the costs to be incurred by the City for public facility expansion or improvements as a result of new development. These documents projected capital costs for

a planned added service capacity for the City's water and wastewater facilities through fiscal year 2022 and included projects such as the South Water Reservoir that still has no proposed location or defined specifications (including cost). New water and wastewater facilities have now been constructed in the City and the projected capital cost per unit service capacity gained for both water and wastewater facilities in the Impact Fee Update and the Addendum was significantly greater than the actual costs incurred by the City per unit service capacity gained through fiscal year 2022.

5. Arbitrarily, Update Addendum only considered projects from a November 5, 2018, "updated Capital Improvements Program (CIP)" with increased cost projections while omitting projects with decreased projected costs in the updated CIP. For example, the "WWTP [Wastewater Treatment Plant] Improvements" in the updated CIP are projected \$450,000 less than in the Impact Fee Update, yet the Update Addendum did not utilize this reduced projection. Further, the projected \$4,000,000 Solar Array Project from the Impact Fee Update was not in the CIP at all. Yet, wastewater impact fee rates were not correspondingly decreased with the Update Addendum in the same way water impact fees were increased for projected increases in costs of the South Water Reservoir and Water Treatment Plant.

6. The Update Addendum improperly recalculated "maximum defensible charges for Water Impact Fees" based upon an increased \$5,000,000 cost for Water Treatment Plant improvements (from \$5,000,000 in the 2018 FCS Group Impact Fee Update to \$10 million in the November 5, 2018, updated CIP) without accounting for the additional service capacity another \$5,000,000 in upgrades would provide. In other words, the recalculation in the Update Addendum used the same "Growth in ERUs [Equivalent Residential Units]" number as in the Impact Fee Update but based the recalculation on the increased \$5,000,000 project cost, even though the \$5,000,000 was supposed to increase the number of ERUs the Water Treatment Plant could serve.
7. The Impact Fee Update vastly overestimates the impacts a "New Single Family Residence (dwelling unit)" with a 3/4 inch water meter, interchangeably referred to as an "ERU" in the report, has on water use and wastewater generation in the City. The Update Addendum is similarly improperly premised on these same estimates. Correspondingly, these errors have resulted in impact fees greatly exceeding a proportionate share of the costs actually incurred or to be incurred by the City in accommodating each development since the City's tiered impact fee collection charts set forth in the City's Resolutions are grounded upon an ERU's purported impacts on water and wastewater facilities.

8. The Impact Fee Update and the Update Addendum do not include a consideration of future debt service payments to be made by developers after tying into the water and wastewater systems in the City. The City acquired debt to fund the water and wastewater facility upgrades but the debt service payments the impact fee payers will have to pay as water and wastewater ratepayers were not credited to them.

Substantive Problems with the City's Resolutions

Plaintiffs have identified at least two (2) problems with the substance of Resolutions No. 18-44 and No. 19-15, resulting in unlawful water and wastewater impact fee rates since January 1, 2019:

1. Per Montana law, "[t]he ordinance or resolution adopting the impact fee must include a time schedule for periodically updating" the service area report(s) relied on in determining impact fee rates. § 7-6-1602(6), MCA. Neither Resolution includes this requisite time schedule. Notably, the City selectively updated the Impact Fee Update with the Update Addendum to arbitrarily raise water impact fee rates based on the November 5, 2018, updated CIP but failed to update the service area reports and correspondingly adjust impact fee rates with subsequent CIPs.
2. The Resolutions' collection charts facilitate water and wastewater impact fee charges above the maximum defensible values outlined in the Impact Fee

Update and Update Addendum, as flawed as those reports are in the first place. Since the charts use a maximum defensible value for a single-family residence with a 3/4 inch water meter as a baseline fee and not a maximum for developments with 3/4 inch water meters, these charts run contrary to the evidence the City was provided for the maximum allowable impact fee rates it could charge to reasonably compensate for the impacts of new development. Impact fee rates for developments with larger water meters are weighted based upon the fee rates for a 3/4 inch meter so this issue persists throughout the entirety of the Resolutions' collections charts.

Problems in Impact Fee Implementation/Administration

Plaintiffs have identified at least two (2) problems with the City's implementation and administration of water and wastewater impact fee charges, resulting in unreasonable, unlawful, and unconstitutional water and wastewater impact fee rates since at least January 1, 2019:

1. The City failed to conform to the Uniform Plumbing Code ("UPC") in assigning a fixture unit count to standalone showers when calculating impact fees to be charged pursuant to the tiered collection system outlined in the Resolutions' collection charts. The City assigned a fixture unit weight to standalone showers that far exceeds the water and wastewater impact of actually adding a standalone shower in any given development. This resulted

in costs to impact fee payers exceeding the proportionate share of the costs incurred or to be incurred by the City in actually accommodating such developments. Indeed, the City Manager acknowledged that the City's method for counting water fixture units with showers is/was erroneous and the City has admitted to the same in this litigation. Plaintiffs are unaware if/when this practice was eliminated by the City or if any refunds have been issued to some overcharged impact fee payers. Plaintiffs certainly have not been refunded.

2. The City has charged impact fees for projects not involving increases in fixture units or having any meaningful impact on service demand on the City's water and wastewater facilities.

Plaintiffs will supplement this answer in accordance with Rule 26(e), F.R.Civ.P., if Plaintiffs learn additional information that has not otherwise known by Defendant.

INTERROGATORY NO. 3: Identify all claimed damages for each way in which you contend the City has been charging unreasonable, unlawful or unconstitutional impact fees.

ANSWER: As discovery has just begun in this matter, the extent of Plaintiffs' and the other Putative Class members' damages are not yet known. As set forth in Plaintiffs' Complaint, Plaintiffs seek, among other relief including attorneys and expert fees, refunds paid to them and the other Putative Class members for the

unlawful, unconstitutional, and improper impact fees the City required them and the other Putative Class members to pay. Such damages are capable of precise computation and may be quantified through expert analysis. The refunds would be the difference between the amounts charged each Plaintiff and each Putative Class member and the amount each should have been charged under lawful rates. Plaintiffs do not possess precise damage calculations at this time. Plaintiffs will supplement this answer in accordance with Rule 26(e), F.R.Civ.P., when Plaintiffs' claimed damages have been calculated.

INTERROGATORY NO. 4: Describe all instances in which you contend “the City stated that it had no plan to proceed with the Solar Array Project” as alleged in Paragraph 32 of your Complaint, and state whether the statement is in any way memorialized in writing.

ANSWER: On June 22, 2021, in a phone call with Whitefish resident Paul Gillman, an employee of the City's Planning Department stated that a feasibility study was conducted on the Solar Array Project in late 2019 which did not produce promising results. The employee said that after the feasibility study was published and presented to the Whitefish City Council on December 2, 2019, the City decided not to proceed with the project. This statement is not memorialized in writing although there are emails between Mr. Gillman and the Planning Department employee indicating this conversation took place.

On July 21, 2022, in an email communication with Mr. Gillman, the City Manager stated that the Solar Array Project had been removed "from the City's adopted capital improvement plan." This statement is memorialized in writing.

More recently, in July, 2022, the City's Public Works Director stated that the City is planning on dedicating one acre of City-owned land to a solar array project, but that the Flathead Electric Cooperative will be funding all of the upfront capital costs and maintenance of the project. The Public Works Director is directly quoted as saying, "[t]he [C]ity is not on the hook for the capital costs of the project." This statement is memorialized in a Whitefish Pilot article from July 27, 2022.

INTERROGATORY NO. 5: Identify with particularity every way in which you contend the City does not conform to the UPC in assessing impact fees.

ANSWER: The City has assigned standalone showers a fixture unit weight of "4" when the UPC differentiates between bathtub/shower combinations and standalone showers and assigns standalone showers a fixture unit weight of "2." Additionally, the City has required development to install larger water meter sizes than called for in the UPC.

As discovery has just begun in this matter, this answer is not exhaustive and may be subject to change as Plaintiffs obtain more information through discovery, the purpose of which is to identify the facts relevant to the parties' allegations. Plaintiffs will supplement this answer in accordance with Rule 26(e), F.R.Civ.P., if Plaintiffs

learn additional information that has not otherwise been made known to Defendant. The subject matter addressed by this Interrogatory will likely be the subject of expert testimony which will be disclosed in accordance with the Court's Scheduling Order.

INTERROGATORY NO. 6: Identify with particularity every way in which you contend the Defendant improperly counted water fixture units.

ANSWER: The City has assigned standalone showers a fixture unit weight of "4" when the UPC differentiates between bathtub/shower combinations and standalone showers and assigns standalone showers a fixture unit weight of "2."

As discovery has just begun in this matter, this answer is not exhaustive and may be subject to change as Plaintiffs obtain more information through discovery, the purpose of which is to identify the facts relevant to the parties' allegations. Plaintiffs will supplement this answer in accordance with Rule 26(e), F.R.Civ.P., if Plaintiffs learn additional information that has not otherwise known by Defendant. The subject matter addressed by this Interrogatory will likely be the subject of expert testimony which will be disclosed in accordance with the Court's Scheduling Order.

INTERROGATORY NO. 7: Identify all developments you contend Defendant charged impact fees that did not involve any increase in fixture units or any other aspect of development that would impact the service demand on water and wastewater facilities, as alleged in Paragraph 35 of your Complaint.

ANSWER: Defendant charged impact fees not involving any increase in fixture units or any other aspect of development that would impact the service demand on water and wastewater facilities on Riverview Company, LLC's installation of a non-structural demising wall and second water meter at 704 E. 13th Street. No additional water or wastewater fixtures were installed in the building. This charge occurred on February 28, 2020.

There may be other Putative Class members who have experienced similar charges. As discovery has just begun in this matter, this answer is not exhaustive and may be subject to change as Plaintiffs obtain more information through discovery, the purpose of which is to identify the facts relevant to the parties' allegations. Plaintiffs will supplement this answer in accordance with Rule 26(e), F.R.Civ.P., if Plaintiffs learn additional information that has not otherwise known by Defendant. The subject matter addressed by this Interrogatory will likely be the subject of expert testimony which will be disclosed in accordance with the Court's Scheduling Order.

INTERROGATORY NO. 8: Identify every witness you intend to call at the trial in this matter.

ANSWER: As discovery has just begun, Plaintiffs have not yet identified any witnesses they intend to call at the trial in this matter. Plaintiffs anticipate they may call any of the people listed in Plaintiffs' answer to Interrogatory No. 1, anyone with expertise relevant to this matter, or any other person who could provide relevant

testimony. Plaintiffs' witnesses, including any expert witnesses, will be identified at a later date, consistent with the Court's Scheduling Order, the parties' Joint Discovery Plan, and the Federal Rules of Civil Procedure.

INTERROGATORY NO. 9: Identify by name, address and telephone number, each expert witness you may call as a witness at time of trial and, for each, please provide the following:

1. The subject matter on which the expert is expected to testify;
2. A detailed description of every fact or opinion to which the expert may testify;
3. A summary of the grounds for each opinion;
4. A list of all materials the expert has reviewed or relied upon;
5. A list of all cases, by name, court, and case number, in which this expert has been retained or consulted by any attorney in your attorney's law firm; and
6. A list of all cases, by name, court, and case number, in which this witness has given testimony, either at trial, deposition, or otherwise, in the last ten years;

ANSWER: Plaintiffs have not yet identified who may testify as an expert witness, or otherwise offer opinions in evidence at trial in this matter. Plaintiffs' expert witnesses will be identified at a later date, consistent with the Court's Scheduling

Order, the parties' Joint Discovery Plan, and the Federal Rules of Civil Procedure.

At such time, anything relating to Plaintiffs' expert witnesses required to be disclosed under Rule 26(a)(2), F.R.Civ.P., will be disclosed.

REQUEST FOR PRODUCTION NO. 1: Produce any and all documents related to the City of Whitefish's impact fees from 2018 to the Present.

RESPONSE: Plaintiffs object to this request as overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, please see documents produced herewith and labeled PLAINTIFFS-000001-000335.

REQUEST FOR PRODUCTION NO. 2: Produce all written communications, including emails, between or among the City, Plaintiffs, any punitive class member, and any third party related to impact fees from January 1, 2019 to the present.

RESPONSE: Plaintiffs object to this request as overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, please see documents produced herewith and labeled PLAINTIFFS-000336-000490.

REQUEST FOR PRODUCTION NO. 3: Produce all documents and communications related to Resolution No. 18-44, including any objections or comments made by any named Plaintiff or potential punitive class member.

RESPONSE: Plaintiffs object to this request as overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, any documents and communications related to Resolution 18-44 that Plaintiffs could

reasonably gather have been produced in responses to Request for Production Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 4: Produce all documents and communications related to Resolution No. 19-15, including any objections or comments made by any named Plaintiff or potential punitive class member.

RESPONSE: Plaintiffs object to this request as overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, any documents and communications related to Resolution 19-15 that Plaintiffs could reasonably gather have been produced in response to Request for Production Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 5: Produce all documents related to the City's South Water Reservoir Project, including any communications to or from any named Plaintiff or potential punitive class member.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. Plaintiffs also object to this request as overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, any documents and communications related to the City's South

Water Reservoir Project that Plaintiffs could reasonably gather have been produced in response to Request for Production Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 6: Produce all documents related to the City's Solar Array Project, including any communications to or from any named Plaintiff or potential punitive class member.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. Plaintiffs also object to this request as overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, any documents and communications related to the City's Solar Array Project that Plaintiffs could reasonably gather have been produced in response to Request for Production Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 7: Produce all documents related to the City's Plant Upgrade Project, including any communications to or from any named Plaintiff or potential punitive class member.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. Plaintiffs also object to this request as overly

broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, any documents and communications related to the City's Plant Upgrade Project that Plaintiffs could reasonably gather have been produced in responses to Request for Production Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 8: Produce all documents related to the City's Wastewater Treatment Plant expansion project including any communications to or from any named Plaintiff or potential punitive class member.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. Plaintiffs also object to this request as overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, any documents and communications related to the City's Wastewater Treatment Plant Expansion Project that Plaintiffs could reasonably gather have been produced in response to Request for Production Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 9: Produce any statements or records taken from any witness or person who claims to have knowledge of any facts or matters pertaining to this action.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged

communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. Subject to and without waiving this objection, any statements or records taken from any witness or person with knowledge of facts or matters pertaining to this action within the permissible scope of discovery have been produced in response to Request for Production Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 10: Produce any written reports, records, documents and writings pertaining to any investigation into the matters which form the basis for this claim.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. Subject to and without waiving this objection, any written reports, records, documents, and writings pertaining to investigations into the matters forming the basis of Plaintiffs' claims within the permissible scope of discovery have been produced in response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 11: Produce all documents, records and writings supporting your claim or claims for damages.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. Subject to and without waiving this objection, any documents, records, and writings supporting Plaintiffs' claims for damages within the permissible scope of discovery have been produced in response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 12: Produce all exhibits you or your attorneys have presently in your possession, including those you intend to use at trial.

RESPONSE: Plaintiffs object to this request as vague and ambiguous as it does not provide guidance on what constitutes an “exhibit.” Plaintiffs interpret this term to refer to any document they might introduce at a trial, hearing, or deposition in this matter. As discovery has just begun in this matter, Plaintiffs have not yet determined which documents they will offer as exhibits or intend to use at trial or in depositions. Subject to and without waiving their objection, Plaintiffs may use any of the documents produced by either party in discovery.

REQUEST FOR PRODUCTION NO. 13: Produce all files, documents, writings and tangible evidence which you maintain or have gathered regarding any matters concerning the City of Whitefish's assessment of impact fees, your damages or any other issue which is the subject of your Complaint.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. The request is also impossibly broad and vague. Subject to and without waiving these objections, any files, documents, records, and writings supporting Plaintiffs' claims for damages within the permissible scope of discovery have been produced in response to Request for Production No. 1. The only tangible evidence other than documents that Plaintiffs maintain are any buildings they own that were the subject of water and/or wastewater impact fees. These buildings have been and will continue to be reasonably made available to Defendant for inspection during discovery.

REQUEST FOR PRODUCTION NO. 14: For any expert you intend to call to testify at trial produce a complete copy of the expert's file, including:

1. All documents or data provided to the expert for review;
2. All literature, journals, publications, texts or studies relied upon by the expert;
3. A copy of the expert's current resume and curriculum vitae, if any;
4. All reports (including draft reports) prepared by the expert or by your attorney for the expert or on the expert's behalf

5. All correspondences of any kind between the expert and anyone else related to this case;
6. All billing by the expert related to this case; and
7. Any other items or materials which exist in the experts file related to this case.

RESPONSE: Plaintiffs object to this request to the extent that it calls for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of discovery under Rule 26(b), F.R.Civ.P. Subject to and without waiving this objection, Plaintiffs have not yet identified who may testify as an expert witness, or otherwise offer opinions in evidence at trial in this matter. Plaintiffs' expert witnesses will be identified at a later date, consistent with the Court's Scheduling Order, the parties' Joint Discovery Plan, and the Federal Rules of Civil Procedure. At such time, anything relating to Plaintiffs' expert witnesses required to be disclosed under Rule 26(a)(2), F.R.Civ.P., will be disclosed.

REQUEST FOR PRODUCTION NO. 15: Produce all documents related to your assertion the City has been charging unreasonable, unlawful or unconstitutional impact fees, including any communications such as letters, emails and text messages.

RESPONSE: Plaintiffs object to this request as overly broad, unduly burdensome, vague, and ambiguous. Plaintiffs also object to this request to the extent that it calls

for production of materials reflecting counsel's legal theories or mental impressions, privileged communications and/or work product, or any other materials outside the scope of expert discovery under Rule 26(b), F.R.Civ.P. Subject to and without waiving these objections, any documents and communications related to Plaintiffs assertions that the City has been charging unreasonable, unlawful, and unconstitutional impact fees that Plaintiffs could reasonably gather have been produced in response to Request for Production Nos. 1 and 2.

DATED this 24th day of October, 2022.

KOVACICH SNIPES JOHNSON, P.C.
and
LAIRD COWLEY, PLLC

BY: /s/ Mark M. Kovacich
Mark M. Kovacich
P.O. Box 2325
Great Falls, MT 59403
Attorneys for Plaintiffs and
Putative Class

VERIFICATION

STATE OF MONTANA)

:ss

County of _____)

Jeff Beck, being first duly sworn, upon oath, deposes and states that he has read the foregoing **Plaintiffs' Responses to Defendant's First Discovery Requests** and knows the contents thereof and the matters and things stated therein are true to the best of his knowledge, information, and belief.

Jeff Beck

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2022.

Notary Public State of Montana

Printed Name: _____

Residing at: _____

My Commission Expires: _____

VERIFICATION

STATE OF MONTANA)

:SS

County of _____)

Amy and Zac Weinberg, being first duly sworn, upon oath, depose and state that they have read the foregoing **Plaintiffs' Responses to Defendant's First Discovery Requests** and know the contents thereof and the matters and things stated therein are true to the best of their knowledge, information, and belief.

Amy Weinberg

Zac Weinberg

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2022.

Notary Public State of Montana

Printed Name: _____

Residing at: _____

My Commission Expires: _____

VERIFICATION

STATE OF MONTANA)

:SS

County of _____)

Mark Panissidi, Managing Member of Alta Views, LLC, being first duly sworn, upon oath, deposes and states that he has read the foregoing **Plaintiffs' Responses to Defendant's First Discovery Requests** and knows the contents thereof and the matters and things stated therein are true to the best of his knowledge, information, and belief.

ALTA VIEWS, LLC

BY: _____

Mark Panissidi, Managing Member

SUBSCRIBED AND SWORN to before me this _____ day of _____,
2022.

Notary Public State of Montana

Printed Name: _____

Residing at: _____

My Commission Expires: _____

VERIFICATION

STATE OF MONTANA)

:SS

County of _____)

William Halama, Manager of Riverview Company, LLC, being first duly sworn, upon oath, deposes and states that he has read the foregoing **Plaintiffs' Responses to Defendant's First Discovery Requests** and knows the contents thereof and the matters and things stated therein are true to the best of his knowledge, information, and belief.

RIVERVIEW COMPANY, LLC

BY: _____
William Halama, Manager

SUBSCRIBED AND SWORN to before me this _____ day of _____,
2022.

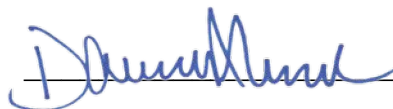
Notary Public State of Montana
Printed Name: _____
Residing at: _____
My Commission Expires: _____

CERTIFICATE OF SERVICE

I hereby certify that, on the 24th day of October, 2022, I served by **EMAIL**
ONLY a true and legible copy of the foregoing **Plaintiffs' Responses to Defendant's**
First Discovery Requests upon the following:

Todd A. Hammer
Marcel A. Quinn
Thomas A. Hollo
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rwavra@lairdcowley.com
(Co-Attorneys for Plaintiff)





Commercial Building Permit Application

City of Whitefish, Planning & Building Department

PO Box 158, Whitefish, MT 59937

Phone: (406) 863-2410 / Fax: (406) 863-2409

The following information MUST be submitted with this application:

- ☒ Two (2) sets of plans with a licensed architect's stamp
(detailed construction drawings at 1/4" scale – see back for more details)
- ☐ One (1) 11x17 site plan indicating: setbacks from property line & lot size
- ☐ Engineering may also be required by the Building Official
- ☐ PDF of architectural and engineering plans (email to buildingdept@cityofwhitefish.org)
- ☒ \$500 plan review fee (deducted from building permit fee)

(Please print clearly. All information MUST be completed.)

PROJECT INFORMATION	Project Address: <u>709 A 13th street East</u>	
	Project Description: <u>Denizing wall install between 2 tenant spaces</u>	
PROPERTY OWNER	Class of Work: <input type="checkbox"/> New <input type="checkbox"/> Addition <input checked="" type="checkbox"/> Remodel <input type="checkbox"/> Repair	Project Valuation: <u>\$6,000.00</u>
	Land Information	
	Zoning District: _____	
	New Building Footprint (sq ft): _____	
	Existing Building Footprint (sq ft): _____	
GENERAL CONTRACTOR	Building Information	
	Finished sq ft (excluding basement): _____	
	Basement sq ft: _____	
	Garage sq ft: _____ Carport sq ft: _____	
	Covered Porches/Decks sq ft: _____	
DESIGNER / ENGINEER	Open Porches/Decks sq ft: _____	
	Name: <u>Rivernew Company LLC</u>	
	Address: <u>233 Good Medicine</u>	
	City, State, Zip: <u>WF MT 59937</u> Phone #: _____	
	Email: _____	
GENERAL CONTRACTOR	Name: <u>Malmquist Construction</u>	
	Address: <u>100 Baker Ave. WF MT 59937</u>	
	City, State, Zip: <u>Whitefish MT 59937</u>	
	Phone #: <u>862-7846</u> City Business Lic #: _____	
	Email: <u>tylerf@malmquist.com</u>	
DESIGNER / ENGINEER	Name: <u>Solas Architecture</u>	
	Address: _____	
	City, State, Zip: <u>Kalispell MT 59901</u> Phone #: <u>890-9342</u>	
	Email: <u>kha@c.solas-mt.com</u>	

NOTICE: § 11-2-3B(14) "No terrain disturbance for development purposes may be undertaken until such time as a site plan pursuant to a building permit is approved by the City Planning Dept. § 8-1-34 "Prohibits the provision of permanent water and/or sewer service to any newly constructed or remodeled structure until such structure has complied fully with all city codes."

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has or will commence prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in the City of Whitefish.

APPLICANT AFFIDAVIT: I certify that all the foregoing information is accurate. Signature below indicates acceptance of financial responsibility for plan check fees and postage expenses associated with plan review. **Plans will not be reviewed without signature.**

APPLICANT SIGNATURE: (circle one)

Owner

General Contractor

Designer/Engineer

Signature

Date

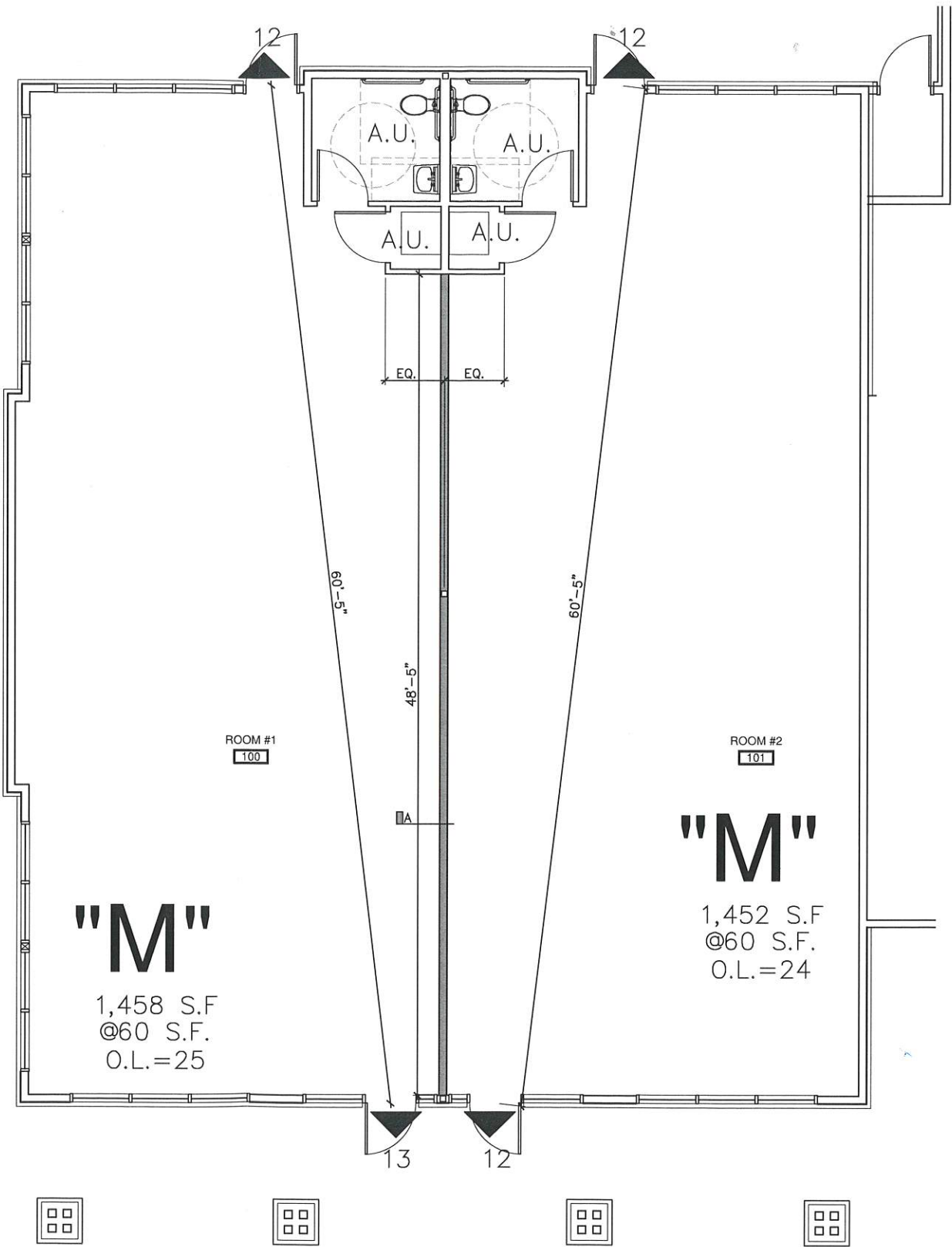
EXHIBIT

G

FOR DEPOSIT ONLY
GLACIER BANK OF WHITEFISH, CIT
Y OF WHITEFISH
12/17/2019 04:23 PM

CODE STUDY

CODE	CODE REQUIREMENT	DESIGN
CODE IN EFFECT	INTERNATIONAL BUILDING CODE: 2012	INTERNATIONAL BUILDING CODE: 2012
PROJECT SCOPE	*	REMODEL
BUILDING AREA	*	3,033 S. F.
OCCUPANCY		
OCCUPANCY 1	GROUP "M" SECT 309.1	MERCANTILE
TYPE OF CONSTRUCTION	TABLE 503	ACTUAL PER FLOOR
OCCUPANCY 1	TYPE 5-B 9,000 SF	TOTAL 3,033 S.F.
ALLOWABLE AREA INCREASE		NONE REQUIRED
BUILDING STORIES ALLOWED		
OCCUPANCY 1	[1] STORY	[1] STORY ABOVE GRADE
LOCATION ON PROPERTY		
NORTH PROPERTY LINE	*	[20]-FEET
SOUTH PROPERTY LINE	*	[21]-FEET
EAST PROPERTY LINE	*	[345]-FEET
WEST PROPERTY LINE	*	[20]-FEET
EXTERIOR WALL PROTECTION	[TABLE 602]	
SEPARATION 10 < X < 30 FEET	[0] HOUR	[0]-HOUR
GROUP "M"		
FIRE RESISTANCE	[TABLE 601]	
STRUCTURAL FRAME	NO REQUIREMENT	[0]-HOUR
EXTERIOR BEARING WALLS	NO REQUIREMENT	[0]-HOUR
INTERIOR BEARING WALLS	NO REQUIREMENT	[0]-HOUR
EXTERIOR NON-BEARING WALLS	NO REQUIREMENT	[0]-HOUR
INTERIOR NON-BEARING WALLS	NO REQUIREMENT	[0]-HOUR
FLOOR CONSTRUCTION	NO REQUIREMENT	[0]-HOUR
ROOF CONSTRUCTION	NO REQUIREMENT	[0]-HOUR
[TABLE 1004.1.1]	LOBBY	
OCCUPANCY CALCULATION	1572 S.F. @200 S.F. O.L.=8	
AREA OCCUPANT LOAD	O.L.=21 / 2 = 11	
ACCESSORY USE: A.U.	A.U.	
EXIT OCCUPANT LOAD	O.L.=21 / 2 = 11	



1 FLOOR PLAN
SCALE 1/4" = 1'-0"

WALL TYPES LEGEND

- SOUND INSULATION, IF REQUIRED
WALL ASSEMBLY - SEE A0.2
WALL HEIGHT (IF NOT FULL)
A SHEETROCK
2x4 STAGGERED STUDS ON 2x6
PLATE @ 16" O.C.
SHEETROCK

GENERAL NOTES

1. DIMENSIONS ARE TO FACE OF STUD OR FACE OF FOUNDATION U.N.O.
2. NEW WALL TO EXTEND FROM SLAB TO UNDERSIDE OF SHEATHING OR STRUCTURAL MEMBER

LEGEND

NEW WALL

DEC 17 2019



Solus Architecture

KENNETH C. HUFF
PH#: 406-890-9342
Email: Khuff@solus-mt.com
1032 Kandyke Loop Somers, MT 59832

REVISION:	DATE:

RIVER VIEW PLAZA
Pad A - Remodel
WHITEFISH, MT

JOB NO:
19-021

DATE:
12-13-19

FLOOR
PLAN

SCALE
1/4" = 1'-0"

A1.0

Remodel

WATER SFU: Impact Fee: \$0.00 Water Meter Upg. \$632.03
 Insp. / Inst. Fees \$50.00
SEWER DFU: Impact Fee: \$420.36
 Utility Fees \$1,102.39
 Impact Fee Administration 5% \$21.02

Accounting use only:		TOTAL FEES	
Water:		\$1,123.41	
	Impact Fee 7: PIF	\$0.00	
	Impact Fee 8: Admin	\$0.00	
	Water 6: Latecomer		
	Water 3: Meter/Inst.	\$657.03	
	Inside 1 1/2"	\$657.03	
Wastewater:		SC-2	
	Impact Fee 9: PIF	\$420.36	
	Impact Fee 10: Admin	\$21.02	
	Wastewater 5: Latecomer		
	Wastewater 1: Inspection	\$25.00	
			\$466.38

RE

Findings – customer had an extra bath sink in the apartment garage and an extra clothes washer and 1 bar sink in the main house.

Customer owes \$1,123.41 and he needs to upgrade the water meter to an 1-1/2-inch meter.



City of Whitefish Utilities**Water Meter and Service Sizing****Service Address:****1508 & 1508-1/2 W. Lakeshore****Date:** **1/25/2023**

Final inspection owed

*Combined owed***Fixture Unit Calculation Table***(Derived from Service Sizer Computer Program)*

See Blue Prince Program

NOTES:

Appliance / Fixture:	Use		Water Fixture Units
	Private (See Note 3)	Public (See Note 4)	
Bath / Tub-Shower			
Shower and/or Extra Heads			
Clothes Washer **	1		4
Dishwasher			
Drinking Fountain			
Hose Bib - 1st onle only			
Hose Bib / Irr. Sys. *2			
Lavatory (Bath Sink)	1		1
Sinks:			
Bar	1		1
Kitchen			
Laundry Tub			
Service/Mop			
Bidet			
Urinal (Tank)			
(Flushometer)			
Water Closet (Toilet)**			
(Flushometer)			
Other: *2			
Hot Tub			
3/8" Supply			
1/2" Supply			
3/4" Supply			
1" Supply			
1-1/2" Supply			
2" Supply			

Total Water (WSFU)

6

— Customer owes difference

Total Sewer

6

Existing Fixture Count

60.5

Calculated Minimum Water Service Line Size

1-1/2

Inch

Domestic Water Meter Size

1-1/2

Inch

original 2020 units 34.5
 original 2000 units 26

= 60.5
 Existing units

City of Whitefish Utilities

Water Meter and Service Sizing

Service Address:

1508 W. Lakeshore

Date: 9/19/2022

Inspection of main house

Difference

Fixture Unit Calculation Table

(Derived from Service Sizer Computer Program)

Appliance / Fixture:	Use		Water Fixture Units
	Private (See Note 3)	Public (See Note 4)	
Bath / Tub-Shower			
Shower and/or Extra Heads			
Clothes Washer **	1		4
Dishwasher			
Drinking Fountain			
Hose Bib - 1st only			
Hose Bib / Irr. Sys. *2			
Lavatory (Bath Sink)			
Sinks:			
Bar	1		1
Kitchen			
Laundry Tub			
Service/Mop			
Bidet			
Urinal (Tank)			
(Flushometer)			
Water Closet (Toilet)**			
(Flushometer)			
Other: *2			
Hot Tub			
3/8" Supply			
1/2" Supply			
3/4" Supply			
1" Supply			
1-1/2" Supply			
2" Supply			

See Blue Prince Program

NOTES:

the difference owed

Not on original plans

Not on original plans

Total Water (WSFU) 5

Total Sewer 5

Existing Fixture Count

Calculated Minimum Water Service Line Size 1 Inch

Domestic Water Meter Size 3/4 Inch

City of Whitefish Utilities

Water Meter and Service Sizing

Service Address:

1508-1/2 W. Lakeshore

Date: 11/18/2022

Inspection of guest house

Difference

Fixture Unit Calculation Table

(Derived from Service Sizer Computer Program)

Appliance / Fixture:	Use		Water Fixture Units
	Private (See Note 3)	Public (See Note 4)	
Bath / Tub-Shower	1		4
Shower and/or Extra Heads	1		2
Clothes Washer **	1		4
Dishwasher	1		1.5
Drinking Fountain			
Hose Bib - 1st onle only	1		2.5
Hose Bib / Irr. Sys. * ²			
Lavatory (Bath Sink)	5	1	5
Sinks:			
Bar			
Kitchen	1		1.5
Laundry Tub	1		1.5
Service/Mop			
Bidet			
Urinal (Tank)			
(Flushometer)			
Water Closet (Toilet) **	3		7.5
(Flushometer)			
Other: * ²			
Hot Tub			
3/8" Supply			
1/2" Supply			
3/4" Supply			
1" Supply			
1-1/2" Supply			
2" Supply			

See Blue Prince Program

NOTES:

1-Bath Sink was
added without city
knowledge

Total Water (WSFU) 29.5

Total Sewer 27

Existing Fixture Count

Calculated Minimum Water Service Line Size 1 Inch

Domestic Water Meter Size 3/4 Inch

→ original was charged 26

SERVICE ORDER - CITY OF WHITEFISH

044634

06283

10/26/22

Case 9:22-cv-00044-KLD Document 75-10 Filed 03/03/23 Page 5 of 16

1508 & 1508 1/2 W LAKESHORE DRIVE
FIXTURE COUNT (RESIDENTIAL)

Page 1

SERVICE ORDER # 044634

STATUS: ACTIVE

Created	10/26/22 12:09:18 PM	Originated By	ROSE	Assigned To	MARK THORSTEINSON
Required By	11/01/22 11:00 AM	Modified By	ROSE	Approved By	NONE
Completed	11 : : AM	Fee Status	NONE	Amount	0.00

REQUESTER INFORMATION:

REQUESTER TYPE: OFFICE USE

GIS / GPS:

Name: ROSE

Address:

City-ST-Zip:

Lat: 0

Long: 0

UTILITY BILLING CUSTOMER INFORMATION:

Account: 06283-00
Rt-Meter: 13-03220
Service Address: 1508 & 1508 1/2 W LAKESHORE DRIVE
City-ST-Zip:
Name: WEINBERG, AMY & ZAC
Address: PO BOX 5419
Subdivision: W. LAKESHORE DRIVE
Block: Lot:
Phone: (510) 333-6712

METER INFORMATION:

Id: 1569731514 Z
Brand: RADIO-READ
Size: 1"
Reading: 10093
Rd Date: 11/16/22
MXU id: 1569731514 Z
Serial: 11542529
Comp Svc Line: UNKNOWN
Cust Svc Line: UNKNOWN
Comment: RR 1569731514 MECH ROOM

SERVICE ORDER TYPE: FIXTURE COUNT (RESIDENTIAL)

THIS IS FOR THE APARTMENT ABOVE THE GARAGE.

<input checked="" type="checkbox"/> TUB/SHOWER (combo)	<input checked="" type="checkbox"/> KITCHEN SINK	<input checked="" type="checkbox"/> CLOTHES WASHER
<input checked="" type="checkbox"/> STAND ALONE SHOWER	<input checked="" type="checkbox"/> DISHWASHER	<input checked="" type="checkbox"/> LAUNDRY TUB
<input type="checkbox"/> TUB ONLY	<input type="checkbox"/> SERVICE SINKS	<input checked="" type="checkbox"/> HOSE BIB
<input checked="" type="checkbox"/> TOILETS	<input type="checkbox"/> BAR SINK	<input type="checkbox"/> FLOOR DRAIN
<input type="checkbox"/> TANKLESS TOILET	<input type="checkbox"/> COFFEE MAKER	<input type="checkbox"/> HOT TUB
<input checked="" type="checkbox"/> BATHROOM SINKS	<input type="checkbox"/> ICE MACHINE	<input type="checkbox"/> OTHER/MISC
<input type="checkbox"/> URINAL		
<input type="checkbox"/> BIDET		

CURRENT METER SIZE: _____ BACKFLOW: YES OR NO METER SEAL#: _____

NOTES: _____

_____ORDER WORKED BY: Mark DATE: 11-18-22 TIME: 8:30

Utility Billing Service Order Notes

7-19-21 METER SEAL #: 27111

Additional Instructions: _____

SERVICE ORDER - CITY OF WHITEFISH

044520

06283

09/17/22

Case 9:22-cv-00044-KLD Document 75-10 Filed 03/03/23 Page 6 of 16

1508 & 1508 1/2 W LAKESHORE DRIVE
FIXTURE COUNT (RESIDENTIAL)

Page 1

SERVICE ORDER # 044520

STATUS: ACTIVE

Created 09/17/22 09:52:00 AM Originated By ROSE
Required By 09/19/22 10:30 AM Modified By ROSE
Completed Fee Status NONE

Assigned To MARK THORSTEINSON
Approved By NONE
Amount 0.00

Requester: OFFICE USE ONLY

Name: ROSE

Address:

City-ST-Zip:

GIS / GPS:

Lat: 0

Long: 0

UTILITY BILLING CUSTOMER INFORMATION:

Account: 06283-00
Rt-Meter: 13-03220
Service Address: 1508 & 1508 1/2 W LAKESHORE DRIVE
City-ST-Zip:
Name: WEINBERG, AMY & ZAC
Address: PO BOX 5419
Subdivision: W. LAKESHORE DRIVE
Block: Lot:
Phone: (510) 333-6712

METER INFORMATION:

Id: 1569731514 Z
Brand: RADIO-READ
Size: 1"
Reading: 8665
Rd Date: 09/15/22
MXU Id: 1569731514 Z
Serial: 11542529
Comp Svc Line: UNKNOWN
Cust Svc Line: UNKNOWN
Comment: RR 1569731514 MECH ROOM

SERVICE ORDER TYPE: FIXTURE COUNT(RESIDENTIAL)

MAIN HOUSE

<input checked="" type="checkbox"/> TUB/SHOWER (combo)	<input type="checkbox"/> KITCHEN SINK	<input checked="" type="checkbox"/> CLOTHES WASHER
<input checked="" type="checkbox"/> STAND ALONE SHOWER	<input type="checkbox"/> DISHWASHER	<input type="checkbox"/> LAUNDRY TUB
<input type="checkbox"/> TUB ONLY	<input checked="" type="checkbox"/> BATH SINKS	<input checked="" type="checkbox"/> SERVICE SINKS
<input checked="" type="checkbox"/> TOILETS	<input type="checkbox"/> BAR SINK	<input checked="" type="checkbox"/> HOSE BIB
<input type="checkbox"/> TANKLESS TOILET	<input type="checkbox"/> COFFEE MAKER	<input type="checkbox"/> FLOOR DRAIN
<input type="checkbox"/> URINAL	<input type="checkbox"/> ICE MACHINE	<input type="checkbox"/> BIDET
<input type="checkbox"/> HOT TUB	<input checked="" type="checkbox"/> OTHER/MISC	

CURRENT METER SIZE: BACKFLOW:: YES OR NO METER SEAL#:

NOTES:

ORDER WORKED BY: Mark DATE: 9-19-22 TIME: 10:30

Utility Billing Service Order Notes

7-19-21 METER SEAL #: 27111

Additional Instructions:



Residential Building Permit Application

City of Whitefish, Planning & Building Department

PO Box 158, Whitefish, MT 59937

Phone: (406) 863-2410 / Fax: (406) 863-2409

06283-00

The following information MUST be submitted with this application:

- | | |
|---|--|
| <input checked="" type="checkbox"/> One (1) set of plans (detailed construction drawings at 1/2" scale - see back for more details) | <input checked="" type="checkbox"/> ARC Review approval letter (duplex, townhome, multifamily) |
| <input checked="" type="checkbox"/> One (1) 11x17 site plan indicating setbacks from property line & lot size | <input checked="" type="checkbox"/> \$100 erosion control fee (non-deductible fee) |
| <input checked="" type="checkbox"/> One (1) 11x17 erosion control plan | <input checked="" type="checkbox"/> \$200 plan review fee (deducted from building permit fee) |

(Please print clearly. All information MUST be completed.)

PROJECT INFORMATION	Project Address: <u>1508 WEST LAKE SHORE DR.</u>	
	Project Description: <u>NEW SINGLE FAMILY HOME (REPLACE EXISTING)</u>	
PROPERTY OWNER	Class of Work <input checked="" type="checkbox"/> New <input type="checkbox"/> Addition <input type="checkbox"/> Remodel <input type="checkbox"/> Repair	Project Valuation: <u>\$950,000</u>
	Land Information	
GENERAL CONTRACTOR	Zoning District: <u>WR-1</u>	Building Information
	Finished sq ft (excluding basement): <u>2080</u>	
DESIGNER / ENGINEER	New Building Footprint (sq ft): <u>2864</u>	Basement sq ft: <u>1115</u>
	Existing Building Footprint (sq ft): <u>3051</u>	Garage sq ft: <u>784</u> Carport sq ft: <u></u>
	Lot Size (sq ft): <u>44532</u>	Covered Porches/Decks sq ft: <u>733</u>
	% of Lot Coverage: <u>13.2%</u>	Open Porches/Decks sq ft: <u></u>
PROPERTY OWNER	Name: <u>ZAC AND AMY WEINBERG</u>	
	Address: <u>1508 WEST LAKE SHORE DR. / P.O. BOX 5419</u>	
GENERAL CONTRACTOR	City, State, Zip: <u>WHITEFISH, MT 59937</u>	Phone #: <u>531-417-6164</u>
	Email: <u>ZAC.WEINBERG@gmail.com</u>	
DESIGNER / ENGINEER	Name: <u>MALMQUIST CONSTRUCTION</u>	
	Address: <u>100 BAKER AVE.</u>	
	City, State, Zip: <u>WHITEFISH, MT 59937</u>	
	Phone #: <u>406-862-7846</u>	City Business Lic #: <u></u>
	Email: <u>dear@malmquist.com</u>	
DESIGNER / ENGINEER	Name: <u>RIGHT GRAVES - ALTIUS DESIGN GROUP</u>	
	Address: <u>236 WISCONSIN AVE.</u>	
	City, State, Zip: <u>WHITEFISH, MT 59937</u>	Phone #: <u>406-546-6464</u>
	Email: <u>rgraves.adg@gmail.com</u>	

NOTICE: § 11-2-38(14) "No terrain disturbance for development purposes may be undertaken until such time as a site plan pursuant to a building permit is approved by the City Planning Dept. § 8-1-34 "Prohibits the provision of permanent water and/or sewer service to any newly constructed or remodeled structure until such structure has complied fully with all city codes."

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has or will commence prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in the City of Whitefish.

APPLICANT AFFIDAVIT: I certify that all the foregoing information is accurate. Signature below indicates acceptance of financial responsibility for plan check fees and postage expenses associated with plan review. Plans will not be reviewed without signature.

APPLICANT SIGNATURE: (circle one)

Owner

General Contractor

Designer/Engineer

Right Graves ALTIUS DESIGN GROUP
Signature

5-1-20
Date

New
SFR

SC-2

1508 W. Lakeshore Dr

00283-00

5-1-20
Sewer
only

Zac Weinberg@gmail.Com & bear@malmquist.Com

3-Tub/shower

3-Toilets

5-Lavs

1-R Sink

1-DW

1-washer

2-LTub

4-Hose bibs

Existing
Credit

Sewer
only

(20)

6-18-2020

1508 W. Lakeshore Dr

1" METER

Rebuilding House

WATER	SFU: 0	Impact Fee:	Meter Fee	\$500.32
			Inst. Fee	\$20.00
SEWER	DFU: 34.5	Impact Fee:	\$4,834.00	

Utility Fees	\$5,354.32
Impact Fee Administration 5%	\$80.55
Existing Sewer Service Credit	(\$3,223.00)

TOTAL FEES	\$2,211.87
-------------------	-------------------

Accounting use only:	Water:	Wastewater:		
	Impact Fee 7: PIF	\$0.00	Impact Fee 9: PIF	\$1,611.00
	Impact Fee 8: Admin	\$0.00	Impact Fee 10: Admin	\$80.55
	Water 6: Latecomer		Wastewater 5: Latecomer	
	Water 3: Meter/Inst.	\$510.32	Wastewater 1: Inspection	\$10.00
	None	\$510.32	SC-2	\$1,701.55

*** Note: Needs to provide plumbing for water meter on domestic supply only.
(Do not meter irrigation water)**

REQUIREMENTS: 1" Water Meter in the house at point of entry. Do not meter irrigation supply

City of Whitefish Utilities

Water Meter and Service Sizing

Service Address:

1508 W. Lakeshore Drive (# 06283-00)

Date: 6/18/2020

New SFR (rebuild)

See Blue Prince Program

Fixture Unit Calculation Table

(Derived from Service Sizer Computer Program)

Appliance / Fixture:	Use		Water Fixture Units	NOTES:
	Private (See Note 3)	Public (See Note 4)		
Bath / Tub-Shower	3		12	
Bidet				
Clothes Washer **	1		4	
Dishwasher	1		1.5	
Drinking Fountain				
Hose Bib - 1st onle only	1		2.5	
Hose Bib / Irr. Sys. * ²	3		3	
Lavatory (Bath Sink)	5		5	
Sinks:				
Bar				
Kitchen	1		1.5	
Laundry Tub	2		3	
Service/Mop				
Xtra Shower Heads Only				
Urinal (Tank)				
(Flushometer)				
Water Closet (Toilet) **	3		7.5	
(Flushometer)				
Other: * ²				
Hot Tub				
3/8" Supply				
1/2" Supply				
3/4" Supply				
1" Supply				
1-1/2" Supply				
2" Supply				

Total Water (WSFU) 40

Total Sewer 34.5

Existing Fixture Count

Calculated Minimum Water Service Line Size 1 Inch

Domestic Water Meter Size 1 Inch

Property Address: **1508 W. Lakeshore Drive**

Whitefish, Montana

SINGLE-FAMILY RESIDENTIAL CONSTRUCTION:
NEW/ADDITIONS

OTHER RESIDENTIAL AND NON-RESIDENTIAL CONSTRUCTION:
NEWADDITION

A. How many **NEW** dwelling units are included in the building application?

3. Is there now, or has there been a (non-residential) building on this lot in the last 12 months?

no (if not, proceed to G)

no (if not, proceed to G)

Q. Is there now, or has there been a dwelling unit on the lot in the last 12 months?

Enter the total gross (other residential or non-residential) square footage of existing building

no (if not, proceed to FEE CALCULATION*)

C. ADDITIONS
If this is an addition to an existing house, is a new dwelling unit being created?

yes _____ How many additional dwelling units are there?

no _____

IMPACT FEE CALCULATIONS

Number of Single-Family Detached Dwelling Units...

Gross New Square Footage of Other Residential and Non-Residential Area..

* PAVED TRAILS.....	\$683	x	0	\$	FEE'S DUE
* PARK MAINTENANCE BUILDING.....	\$128	x	0	\$	
* EMERGENCY SERVICES BUILDING.....	\$446	x	0	\$	
* CITY HALL FEE.....	\$47	x	0	\$	

Enter # of lodging rooms for hotels and motels.....	0	FEES'S DUE
* PAVED TRAILS..... Rate assessed at \$0.06 per SF or \$214 per lodging room	0	\$ -
* PARK MAINTENANCE BUILDING..... Rate assessed at \$0.01 per SF or \$47 per lodging room	0	\$ -
* EMERGENCY SERVICES BUILDING.	x	\$0.22
* CITY HALL FEE.....	x	\$0.02

FEE CALCULATIONS FROM PUBLIC WORKS DEPARTMENT

*** WATER (Impact Fee)	\$ -	Latecomers WATER	\$ -	WATER Meter
*** SEWER (Impact Fee)	\$ 1,611.00	Latecomers SEWER	\$ -	INSPECTION
* STORMWATER (Impact Fee)	\$ -	OTHER		OTHER

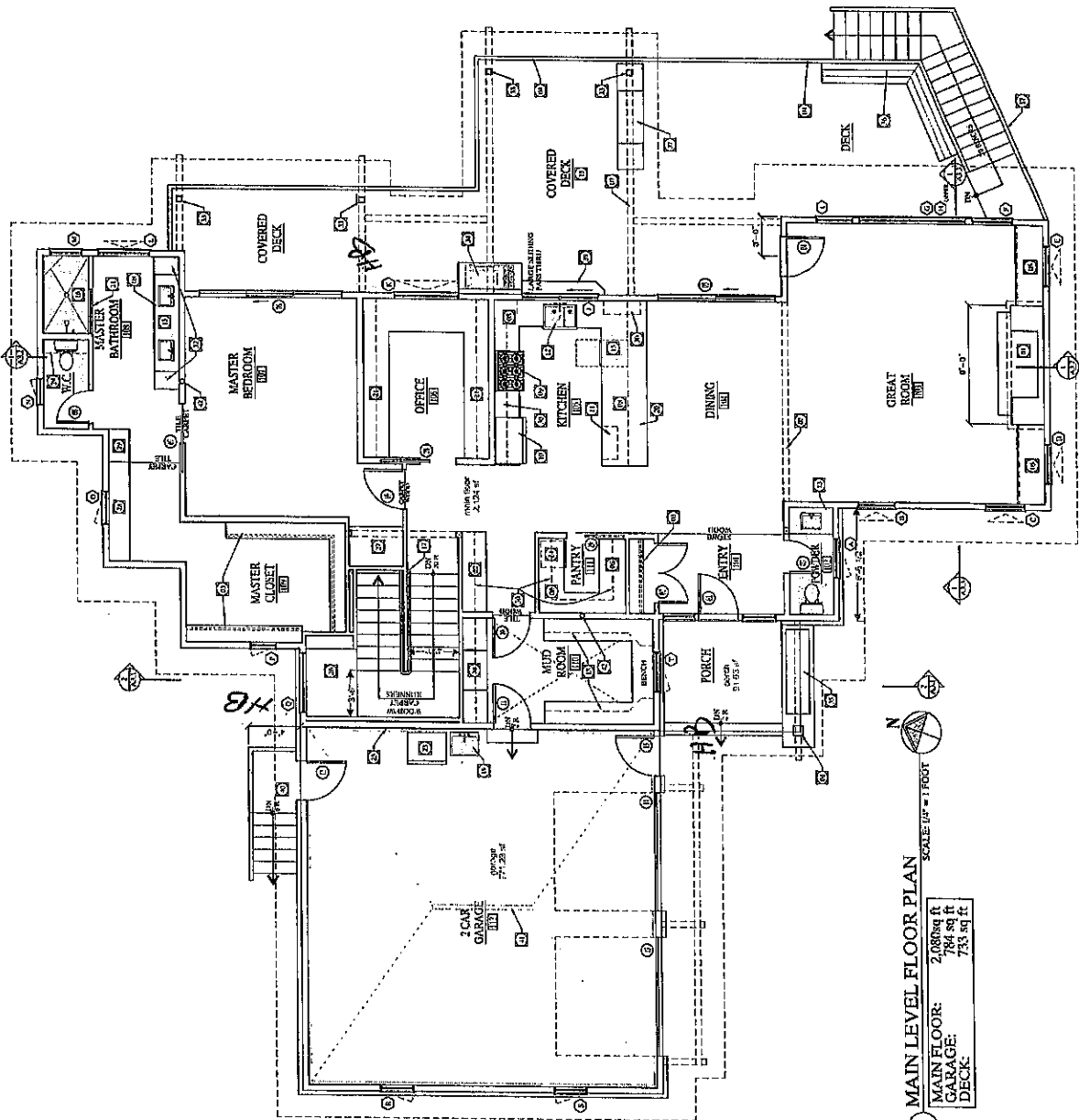
ADDITIONAL NOTES BELOW:

They had an existing home on this lot and are building within the time frame to be charged other impact fees.
Sewer only

FINAL TOTALS

OTHER IMPACT FEE'S	\$	0.00
IMPACT FEE'S	\$	2,131.32
ADMINISTRATION FEE'S	\$	80.55

GRAND TOTAL	\$	2,211.87
-------------	----	----------



FLOOR PLAN NOTES

1. GARAGE GATE WITH TV ABOVE
2. BUILT-IN BELLING
3. REFR. & FREEZER
4. 3" TALLING
5. 3" TALLING
6. 3" TALLING
7. 3" TALLING
8. 3" TALLING
9. 3" TALLING
10. 3" TALLING
11. 3" TALLING
12. 3" TALLING
13. 3" TALLING
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62. 3" TALLING
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64. 3" TALLING
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66. 3" TALLING
67. 3" TALLING
68. 3" TALLING
69. 3" TALLING
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99. 3" TALLING
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FLOOR PLAN NOTES	
1	CHAMFER GLAZERS
2	UPPER AND LOWER CABINETS
3	RIFLE AND SHOT GUN RACK
4	IRON SHED
5	IRON SHED
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CITY OF WHITEFISH
CASH RECEIPT

Printed 11:24:38 - 07/28/20

Batch:16714
Transaction:12

Reference Number: SF-20-00772

Name: WEINBERG LIVING TRUST

Address: 1500 W LAKESHORE DRIVE

Item(s) Description.

BUILDING PERMIT FEE	5235.00
PLAN REVIEW FEE	1880.00
ZONING FEES	1611.00
FIRE PREVENTION PROGRAM FEE	1598.00
PLAN REVIEW FEE	200.00
WASTEWATER IMPACT FEE	1611.00
WATER INSTALLATION CHARGES	500.87
SEWER INSPECTION FEE	20.00
WASTEWATER 5% ADJUST FEE	80.50

Check # 1062 10283.87

Cash Paid

Credit Paid

Less Change Given

TOTAL: 10283.87



1005C Baker Ave Whitefish, MT 59937 Phone: (406) 863-2410 Fax: (406) 863-2409

Plan Submittal Form / Request For Permit



JOB ADDRESS:

1508 West Lakeshore Dr., W.F.

Legal Description (4 lots)

Lot 2-B1K6, N2/2 Lot 1 B1K6, Lot 3 B1K5

Owner

Jeff & Kelli
Brus

Mailing Address

1508 West Lakeshore Dr.
W.F., MT. 59937

Phone: 862-5240

Cell:

Fax:

Contractor

Phil Mitchell

Mailing Address

1508 West Lakeshore Dr.

Phone: 862-5315

Cell:

Fax:

Design/Engineer

Kevin Trace

Mailing Address

Phone: 752-7587

Cell:

Fax:

Class of Work:

NEW

ADDITION

REMODEL

REPAIR

OTHER

Project Description:

Barn w/ Living Qtrs. upstairs
(Guest House)

Project Value:

LAND INFORMATION

Zoning District? WR-1

Building Use Garage/Living Qtrs

Building Size Sq. Ft.
(footprint of all bldgs etc) 2560

Lot Size Sq. Ft. 956 Acres

% of Lot Coverage 6%

BUILDING INFORMATION

Finished Sq. Ft.
(exclude basement) 2400

Unfinished Sq. Ft.
(exclude basement)

Garage Sq. Ft. 2560

Covered Porches Sq. Ft. 0

Other Structures: 0

Basement

Finished Sq. Ft.

Basement

Unfinished Sq. Ft.

Carport Sq. Ft. 0

Decks/Open Porches Sq. Ft. 0

Roof Snow Load =

Wind Load 90 / Seismic Design D-1

SETBACKS

(must be shown on site plan) FRONT 25' ft. SIDE 10' ft. REAR 26' ft.

Additional Information:

all contacts to Phil Mitchell! 842. 26'

A detailed set of construction drawings (1/4" scale) must be submitted with this application. A set of plans (see back) must include: Foundation plan, floor plan for each level, exterior elevations, complete structural drawings including wall section, floor framing, stair sections and roof/truss detail. Three copies (small scale, 8 x 10" paper size preferred) of site plan indicating all setbacks and lot size. Additional drawings or schedules may be requested as needed for a complete plan review. Commercial & large scale projects require two sets of plans with an architect's or engineer's wet seal. Once plan reviews are completed, applicable fees will be assessed and permits issued upon payment. **A PLAN REVIEW DEPOSIT (\$200) WILL BE REQUIRED AT TIME OF SUBMITTAL.**

Notice to Applicants / Signature Is Required For Submittal

City Ordinance Number 03-23 "Prohibits the provision of permanent water and/or sewer service to any newly constructed or remodeled structure until such structure has complied fully with all city codes."

Permanent water and/or sewer service will be granted only after all code requirements are confirmed to be complete. Codes include, but are not limited to, such items as: paving, landscaping, required permits & inspections and payment of applicable fees. A financial guarantee in the form of a bond or letter of credit with a specified completion date may be required for any work that cannot be immediately completed.

Signature of Owner (or Authorized Agent)

Phil Mitchell

Date 6-20-06

Combined guest house & main house to 1 meter

-SIZING CALCULATION-

Printed On: 7/20/2006

Supply Location: Lake Park Addition

SEWER ONLY

psi, supply pressure available during demand

Demand Location: 1508 West Lakeshore Drive

18.9 gpm demand flowing at 35.0 psi pressure

--Head Loss Data--

Elevation Difference: ft (minus if demand location lower than supply)

Pipe Length: ft Other Loss In Equivalent Pipe Length: ft

Number of Valves & Fittings:

1:Corp Stop	1:Curb Stop	2:Gate Valve	:Globe Valv	:Angle Valv
:Bfly Valve	:Swing Chk	:Side Tee	:Straight T	:Std Elbow
:Long Elbow	:45 Elbow	:	:	:

Backflow Prev: 2.0 psi Water Meter: 2.0 psi PRV: psi Other: psi

--Design Calculation--

Permitted Velocity: 10.5 fps Pipe Type: CUK Calculated Pipe Size: NONE in

Actual Velocity: fps Head Loss: psi Pres at Demand: psi

--DEMAND CALCULATION--

Predominantly Flushometers: N

Public Use: N

--Number of Fixtures--

2:Tub/Shower	3:WC/Tank Type	4:Lavatory	1:Kitchen Sink
1:Dishwasher	:Bar Sink	1:Clothes Wash	1:Laundry Tub
:HB/Irrigation	:Drink Fount.	:Service Sink	:Drain Sink
:Mop/Wash Sink	:Urinal Tank	:Urinal Wall	:Bidet
:Hot Tub	:WC Flushometr	:3/8" Supply	:1/2" Supply
:3/4" Supply	:1" Supply	:1-1/2" Supply	:2" Supply

Additional: fixture units

Total: 26.0 fixture units

Continuous Demand: gpm

Fixture Demand: 18.9 gpm

Total Demand: 18.9 gpm

Whitefish admits overcharging water fees, rejects other allegations



Construction crews work on a new development in Whitefish in this April 14, 2021, file photo. (Matt Baldwin/Daily Inter Lake)

By
CHAD SOKOL

Daily Inter Lake
|
September 22, 2021 12:00 AM

Whitefish's city manager and City Council members have responded to allegations that the city has "systematically overcharged" developers and homeowners on water and sewer impact fees, which help cover the cost of extending pipes and expanding treatment facilities to serve new buildings.

During a council meeting Monday evening, City Manager Dana Smith acknowledged city staff made an error that likely resulted in small overcharges for the installation of showerheads in new developments. Smith said staff will conduct an internal review of water impact fees charged between January 2019 and July of this year, when the error was corrected, and the city will issue refunds to any developers who were overcharged.

"We did find an error in our program calculator, which is an Excel spreadsheet, in which we account for the number of fixtures per building," Smith told the council. "We're aware of that issue. It hasn't been in effect this whole time, so it's a very limited window that we're going to have to look at, which is about two years. And we'll go back and we will look at how that impacts the buildings that had applied during that period, and if any refunds were required."

Smith emphasized she found no indication of "malicious or fraudulent intent" behind the error, which assigned too many "fixture units" to showerheads on the matrix used to calculate water impact fees. A city employee will review past building permits and determine how many refunds are warranted as time allows, she said.

"It's going to take a significant amount of staff time," Smith told the Daily Inter Lake. "My hope is that we can get something done within the next three months, but with other city projects ongoing, it's going to simply take some time to do that."

THE ERROR



came to light after Whitefish residents Paul Gillman and Bill Burg raised a litany of concerns about the city's impact fees and the formulas used to calculate them.

Burg is an accountant and a former member of the Flathead City-County Health Board. Gillman has a background in computer science and began digging into the impact fees after applying to build a home addition last summer. Gillman said the showerhead error could have cost him several hundred dollars if he hadn't caught it, and he wants to see the problem rectified for everyone else who might have been affected.

Gillman and Burg also contend the showerhead error is the tip of an iceberg, alleging the city has overcharged builders hundreds of thousands or even millions of dollars in recent years. The pair have collected reams of city documents and performed their own calculations, which Gillman has compiled in a report spanning more than 20 pages.

"Impact fees are governed by Montana statute 7-6-16 that puts strict limits on what types of projects can be included, how fees are calculated and the max fees that can be collected," Gillman wrote in a letter to the council. "The City of Whitefish appears to violate all of these restrictions."

But city officials say Gillman and Burg's analysis is flawed, and they have rebuffed the pair's demand for an independent audit of the impact fee program.

"There are numbers thrown out in [Gillman's] report that I cannot confirm if they're accurate or not," Smith told the council Monday.

"I know that Mr Gillman and Mr. Burg both would like an independent audit of our impact fees," she said. "I am not opposed to that. But I also question the use of taxpayer dollars to audit something that has gone through a significant public process."

After fixing the showerhead error and speaking with FCS Group, the consulting firm that helped revise the city's impact fees in 2018, she said, "I do believe that we are assessing impact fees correctly."

She also noted Whitefish is subject to annual audits by the state.

IMPACT FEES

are a standard part of the permitting process for new developments, and many cities use them to keep up with demand for services. Whitefish has seven categories of impact fees, with the largest being charged for water and sewer services.

"When a new home or a new commercial building attaches to the water system, there is additional demand from the flow, and so we have to be able to produce more water to meet those demands," Smith said.

While some cities charge water and sewer impact fees at flat rates, Whitefish uses a complex formula that begins with base fees and then adds costs for various types of plumbing fixtures. Toilets, sink faucets, showerheads and hose spigots are each assigned a specific number of "fixture units," which are then added up to determine the final amount of the fees.

Smith said that's a more equitable approach that ensures small and large developments are charged commensurate fees. In the case of the showerheads, she said, there appeared to be a mix-up between standalone showers and bathtubs that also have showerheads.

State law requires cities to revise their impact fees every five years to align with development trends and the cities' own financial needs. Whitefish significantly raised its water and sewer fees in 2018 to pay for upgrades at its water and wastewater treatment plants.

But Gillman and Burg allege the city relied on an outdated table as the basis for its calculations, failed to distinguish between different sizes of water meters and inappropriately factored in certain capital-improvement projects, including a solar array that was proposed several years ago at the wastewater treatment plant but never built.

SMITH, WHO

has met with Gillman and Burg, said none of those allegations are accurate.

It's true that the city has more than tripled its collections of water and sewer impact fees, from about \$488,000 in fiscal 2018 to nearly \$1.6 million in fiscal 2020. That's partially because of the higher fees, but also because the number of building permits issued by the city has risen dramatically.

Smith said the city issued 200 permits for residential, commercial and remodeling work in 2018. Last year, that number was 354.

On Monday, two council members voiced confidence in Smith's leadership on the matter.

"I just want to reassure the public, when we have people accuse us of something, we do research it, of course. But she does know what she's talking about, too," council member Rebecca Norton said of Smith.

Council member Andy Feury added that he's "comfortable with not having an outside audit."

"I think Dana caught the imperfections in our spreadsheets, and I'm perfectly fine with that," Feury said, before criticizing Gillman's report. "Quite frankly, the way this letter is written, I can find a lot of flaws in it, too."

Gillman said Tuesday that he and Burg have retained an attorney to look into the impact fees, and submitted a complaint to the Montana Department of Labor and Industry, which oversees plumbing codes.

Assistant editor Chad Sokol may be reached at 406-758-4439 or csokol@dailyinterlake.com.

Recent Headlines



November 2, 2022

William C and Robin L Paone
 Joint Revocable Living Trust
 1057 Creek View Court
 Whitefish, MT 59937

Re: Water and Wastewater Impact Fee Audit and Potential Refund

The City of Whitefish notified the public in September 2021 that an error occurred in the calculation of water and wastewater impact fees from January 1, 2019, to July 31, 2021, involving fixture counts assigned to single-head, standalone showers. The City has completed its internal audit of all building permits issued during that timeframe. The audit determined this error may have affected the impact fees calculated for your building at 1057 Creek View Court. Preliminary calculations show a potential refund of \$426.87 may be available, depending on the number of fixtures ultimately installed at your property. To complete the analysis and determine the extent of any refund owed, an inspection of your property is necessary to count existing fixtures.

Please communicate to the City whether (1) you would like to proceed with the inspection to determine the extent of any refund owed; or (2) you would prefer to forego any potential refund based on the single-head, standalone shower issue. Please indicate your decision by completing the box below and returning the bottom portion of this letter to the City of Whitefish in the enclosed self-addressed envelope or by dropping it off at City Hall.

Please Note: After the City notified the public of the fixture count issue and began its audit, a lawsuit was filed. The case is *Beck, et al. v. City of Whitefish, et al.*, Cause No. CV 22-44-M-DLC-KLD, pending in the United States District Court for the District of Montana. Plaintiffs allege, and the City disputes, that the City overcharged property owners for impact fees in ways that include this fixture count issue. If you waive an inspection and your right to a refund for the fixture count issue referenced above, you may not be eligible for compensation for that issue in the lawsuit, even if a class is certified and you become a class member. The Plaintiffs' attorneys are Cory Laird of Laird Cowley, PLLC, and Mark Kovacich of Godegaard Kovacich Snipes, PC.

If you have any questions, please contact Rose Elliott, City Utility Billing Supervisor at 406-863-2456, Option 2.

My name is _____.

I am the current owner of the property at 1057 Creek View Court.

[Mark selection below]

_____ Please contact me at _____ [phone number]
 to schedule an inspection of the property to count all water fixtures.

_____ I do not wish to participate in any inspection and waive any right or claim to a refund based
 on a fixture count error related to single head, standalone showers.

Sign here: _____ Date: _____

If owner/contact information is incorrect, please indicate changes.

EXHIBIT

J

Tom Hollo

From: Caelan Brady <Caelan@justicemt.com>
Sent: Wednesday, January 4, 2023 2:37 PM
To: Marcel Quinn; Lindsay Mullineaux; Tom Hollo
Cc: Mark Kovacich; Cory Laird; Dawn Hanninen; Stephenie Dunwell; Riley Wavra; Dawnell Komac; Todd Hammer
Subject: RE: Items Discussed on 9/1/22 Call

Marcel,

No worries about my name. As far as the second and third emails with files, I have finished going through them and updated the lists from my last email to include all of the properties you sent files for.

- Properties with fees likely calculated under pre-2019 system:
 - 189 S. Shooting Star Cir.
 - 230 Dakota Ave.
 - 25 Merganser Ct.
 - 102 S. Prairiesmoke Cir.
 - 718 W. 3rd St.
 - 752 Spruce Ct.
 - 325 Central Ave. (Phase III)
 - 802 Columbia Ave.
- Properties with multiple impact fee charges needing more information:
 - 105 Wisconsin Ave. (we still need the one paid on 11/4/2020)
 - 304 Columbia Ave. (paid on 8/24/2022)
 - 364 Sawtooth Dr. (paid on 3/25/2021)
 - 6550 Hwy. 93 S. (paid on 5/3/2022)
 - 325 Central Ave. (paid on 3/22/2021)
- Unaudited, but we now have the information for:
 - 101 Yarrow Ln.

Again, if the first category of properties were not calculated under the system implemented on January 1, 2019, we can cross all of those off. Also, unless you advise otherwise, we will assume 53 wastewater fixture units for 101 Yarrow Ln. and we can cross that one off too. We still need information for the properties in the second category, specifically for the impact fee charge dates indicated.

Thanks,

**kovacich snipes
johnson** TRIAL LAWYERS
justicemt.com

Caelan Brady
Attorney

Phone: 406-500-5000
Fax: 406-761-5805
Email: caelan@justicemt.com

Mail: P.O. Box 2325
Great Falls, MT 59403
Office: 21 3rd St. N., # 301
Great Falls, MT 59401

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From: Marcel Quinn <marcelquinn@attorneysmontana.com>
Sent: Wednesday, January 4, 2023 9:46 AM
To: Caelan Brady <Caelan@justicemt.com>; Lindsay Mullineaux <lmullineaux@lairdcowley.com>; Tom Hollo <tomhollo@attorneysmontana.com>
Cc: Mark Kovacich <mark@justicemt.com>; Cory Laird <claird@lairdcowley.com>; Dawn Hanninen <dhanninen@lairdcowley.com>; Stephenie Dunwell <sdunwell@lairdcowley.com>; Riley Wavra <rwavra@lairdcowley.com>; Dawnell Komac <Dawnell@justicemt.com>; Todd Hammer <toddhammer@attorneysmontana.com>
Subject: RE: Items Discussed on 9/1/22 Call

Caelan,

Sorry for using the wrong name in the last two emails this morning. Thanks for the open line of communication. We will get you responses to your inquiries below.

Marcel A. Quinn
Hammer, Quinn & Shaw PLLC

From: Caelan Brady <Caelan@justicemt.com>
Sent: Tuesday, January 3, 2023 6:03 PM
To: Marcel Quinn <marcelquinn@attorneysmontana.com>; Lindsay Mullineaux <lmullineaux@lairdcowley.com>; Tom Hollo <tomhollo@attorneysmontana.com>
Cc: Mark Kovacich <mark@justicemt.com>; Cory Laird <claird@lairdcowley.com>; Dawn Hanninen <dhanninen@lairdcowley.com>; Stephenie Dunwell <sdunwell@lairdcowley.com>; Riley Wavra <rwavra@lairdcowley.com>; Dawnell Komac <Dawnell@justicemt.com>; Todd Hammer <toddhammer@attorneysmontana.com>
Subject: RE: Items Discussed on 9/1/22 Call

Hi Marcel,

A couple of things about the files you sent:

- It appears that the impact fees for the following properties were calculated in late 2018 but were not paid until 2019:
 - 189 S. Shooting Star Cir.
 - 230 Dakota Ave.
 - 25 Merganser Ct.
 - 102 S. Prairiesmoke Cir.

If you could check with the City and advise whether these impact fees were calculated using a system predating City Council Resolution No. 18-44 that would be helpful. If they were calculated pursuant to 18-44 then they would be part of the proposed class. However, if they were not calculated under 18-44 or 19-15, they do not come under the claims outlined in the complaint and the payees would not be members of the putative class as we have proposed it---our concerns about these properties would be resolved.

- It appears that the following properties have been assessed impact fees on multiple occasions:
 - 105 Wisconsin Ave.
 - 304 Columbia Ave.

We already have the files that you just sent for these properties, however the building permits provided indicate another round of impact fees were paid for these properties within the applicable time period. Essentially, impact fees were paid twice for each property, and we only have the audit files from the first time impact fees were paid for each. We assume there was a subsequent remodel at each of these properties, and we cannot verify how many fixture units were added that would make up each's impact fee basis. The Bates References in our supplementation chart should help in identifying which impact fees we do not have information for.

- Finally, it appears from the file you sent that there was no audit performed on 101 Yarrow Ln.

I looked at the file you just sent for this property and it appears that the City charged for 5 showers/tubs at a total of 20 Fixture Units. Looking at the plans submitted, it appears there were 4 standalone showers to be constructed and only 1 tub (total should have been 12 Fixture Units). Based on this, Plaintiffs will assume the plans submitted for this property indicated 8 water fixtures less (53 wastewater FUs) than what the owner was charged by the City for (61 wastewater FUs). Unless you advise otherwise, our concerns about lack of information for this property are resolved.

We can certainly provide a word version of the supplementation chart. I will await your other email with more audit files and your response to this email and then provide an updated list.

Thanks,



Caelan Brady
Attorney

Phone: 406-500-5000
Fax: 406-761-5805
Email: caelan@justicemt.com

Mail: P.O. Box 2325
Great Falls, MT 59403
Office: 21 3rd St. N., # 301
Great Falls, MT 59401

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From: Marcel Quinn <marcelquinn@attorneymontana.com>
Sent: Tuesday, January 3, 2023 4:35 PM
To: Lindsay Mullineaux <lmullineaux@lairdcowley.com>; Tom Hollo <tomhollo@attorneymontana.com>
Cc: Mark Kovacich <mark@justicemt.com>; Cory Laird <claird@lairdcowley.com>; Dawn Hanninen <dhanninen@lairdcowley.com>; Stephenie Dunwell <sdunwell@lairdcowley.com>; Caelan Brady <Caelan@justicemt.com>; Riley Wavra <rwavra@lairdcowley.com>; Dawnell Komac <Dawnell@justicemt.com>; Todd Hammer <toddhammer@attorneymontana.com>
Subject: RE: Items Discussed on 9/1/22 Call

Caelan,

I am going to send you two emails, with 17 of audit files previously produced in discovery. I do not have the corresponding bate stamp at this time but they come from the materials produced in CITY 01182-21256. I am hopeful these take 17 of the properties off the supplementation list.

Date Submitted (for office use only):



Residential Building Permit Application

City of Whitefish, Planning & Building Department

P.O. Box 158, Whitefish, MT 59937

Phone: (406) 863-2410 / Fax: (406) 863-2409

The following information MUST be submitted with this application:

- | | |
|--|---|
| <input type="checkbox"/> One (1) set of plans (detailed construction drawings at 1/4" scale - see back for more details) | <input type="checkbox"/> ARC Review approval letter (duplex, townhome, multifamily) |
| <input type="checkbox"/> One (1) 11x17 site plan indicating setbacks from property line & lot size | <input checked="" type="checkbox"/> \$100 erosion control fee (non-deductible fee) |
| <input type="checkbox"/> One (1) 11x17 erosion control plan | <input checked="" type="checkbox"/> \$200 plan review fee (deducted from building permit fee) |

(Please print clearly. All information MUST be completed.)

PROJECT INFORMATION	Project Address: <u>101 YARBOW AVE LANE WHITEFISH MT 59937</u>	
	Project Description: <u>NEW CUSTOM RESIDENTIAL</u>	
	Class of Work <input checked="" type="checkbox"/> New <input type="checkbox"/> Addition <input type="checkbox"/> Remode <input type="checkbox"/> Repair Project Valuation: <u>900,000</u>	
	Land Information	Building Information
	Zoning District: <u>1-LSR-WPOD</u>	Finished sq ft (excluding basement): <u>3198</u>
	New Building Footprint (sq ft): <u>4203</u>	Basement sq ft: <u>1283</u>
	Existing Building Footprint (sq ft): <u>-</u>	Garage sq ft: <u>974</u> Carport sq ft: <u>-</u>
	Lot Size (sq ft): <u>28,378</u>	Covered Porches/Decks sq ft: <u>320</u>
	% of Lot Coverage: <u>13%</u>	Open Porches/Decks sq ft: <u>305</u>
PROPERTY OWNER	Name: <u>WILLIAM HURMAN & SUZAN LACOSTA</u>	
	Address: <u>P.O. BOX 835</u>	
	City, State, Zip: <u>WHITEFISH MT 59937</u> Phone #: <u>406-250-2529</u>	
	Email: <u>KILLERWHITEFISHLAW.COM</u>	
GENERAL CONTRACTOR	Name: <u>EMPIRE BUILDERS - MICHAEL MANNING</u>	
	Address: <u>110 AVICCH AVE.</u>	
	City, State, Zip: <u>KALISPIEL MT 59901</u>	
	Phone #: <u>406-885-3433</u> City Business Lic #: <u>-</u>	
DESIGNER / ENGINEER	Name: <u>AUTUS DESIGN GROUP</u>	
	Address: <u>236 WADSWORTH AVE</u>	
	City, State, Zip: <u>WHITEFISH MT 59937</u> Phone #: <u>406-546-6464</u>	
	Email: <u>rgroves.84@gmail.com</u>	

NOTICE: § 11-2-38(14) "No terrain disturbance for development purposes may be undertaken until such time as a site plan pursuant to a building permit is approved by the City Planning Dept. § 8-1-34 "Prohibits the provision of permanent water and/or sewer service to any newly constructed or remodeled structure until such structure has complied fully with all city codes."

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has or will commence prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in the City of Whitefish.

APPLICANT AFFIDAVIT: I certify that all the foregoing information is accurate. Signature below indicates acceptance of financial responsibility for plan check fees and postage expenses associated with plan review. Plans will not be reviewed without signature.

APPLICANT SIGNATURE: (circle one)

Owner

General Contractor

Designer/Engineer

Signature

Date:

EXHIBIT

L

CITY 031278

New
SFR

SC-2

Iron Horse

5-Tub/Shower

6-Toilets

10-Lavs

1- Kitchen Sink

1- DWasher

2- Bar Sink

2- C washer

2- L Tub

2- Hose bibs

31

WATER PIF

SFU:

Impact Fee:

\$0.00

Meter Fee

\$468.56

SEWER PIF

DFU:

61

Impact Fee:

\$7,628.22

Inst./Insp. Fee

\$50.00

Utility Fees \$8,146.78**Impact Fee Administration 5% \$428.08****PIF Surcharge - Viking Liftstation Improvements \$933.35****TOTAL FEES DUE \$9,508.21**

Accounting use only:	Water:		Wastewater:	
	Impact Fee 7 PIF	\$0.00	Impact Fee 9 PIF	\$8,561.57
	Impact Fee 8 Admin	\$0.00	Impact Fee 10 Admin	\$428.08
	Water 6 Latecomer		Wastewater 5 Latecomer	
	Water 3 Meter/Inst	\$493.56	Wastewater 1 Inspection	\$25.00
	None	\$493.56	SC-2	\$9,014.65

DO NOT METER IRRIGATION SUPPLY!**Requirements: 1" Service Line, 1" Meter Pit and a 1" Meter**

City of Whitefish Utilities**Water Meter and Service Sizing****Service Address:****101 Yarrow Lane****Date:****3/31/2021**

New SFR

See Blue Prince Program

Fixture Unit Calculation Table

(Derived from Service Sizer Computer Program)

Appliance / Fixture:	Use		Water Fixture Units
	Private	Public	
	(See Note 3)	(See Note 4)	
Bath / Tub-Shower	5		20
Bidet			
Clothes Washer **	2		8
Dishwasher	1		1.5
Drinking Fountain			
Hose Bib - 1st onle only	1		2.5
Hose Bib / Irr. Sys. * ²	1		1
Lavatory (Bath Sink)	10		10
Sinks:			
Bar	2		2
Kitchen	1		1.5
Laundry Tub	2		3
Service/Mop			
Xtra Shower Heads Only			
Urinal (Tank)			
(Flushometer)			
Water Closet (Toilet)**	6		15
(Flushometer)			
Other: * ²			
Hot Tub			
3/8" Supply			
1/2" Supply			
3/4" Supply			
1" Supply			
1-1/2" Supply			
2" Supply			

NOTES:

Total Water (WSFU) 64.5

Total Sewer 61

Existing Fixture Count

Calculated Minimum Water Service Line Size 1 Inch

Domestic Water Meter Size 1 Inch

IMPACT FEE CALCULATIONS**SINGLE-FAMILY RESIDENTIAL CONSTRUCTION:
NEW/ADDITIONS**A. How many **NEW** dwelling units are included in the building application?1

B. Is there now, or has there been a dwelling unit on the lot in the last 12 months?

yes ☒ no ☐

(If not, proceed to FEE CALCULATION*)

C. **ADDITIONS**
If this is an addition to an existing house, is a new dwelling unit being created?yes ☐ no ☒How many **additional** dwelling units are there?no ☒

Property Address:

101 Yarrow Lane

Whitefish, Montana

**OTHER RESIDENTIAL AND NON-RESIDENTIAL CONSTRUCTION:
NEW/ADDITION**

E. Is there now, or has there been a (non-residential) building on this lot in the last 12 months?

yes ☒ no ☐ (if not, proceed to G)

F. Enter the total gross (other residential or non-residential) square footage of existing building square feet

G. Enter the total gross (other residential or non-residential) square footage including new or addition square feet

H.

IMPACT FEE CALCULATIONS

Number of Single-Family Detached Dwelling Units.....

1

				FEE's DUE
* PAVED TRAILS.....	\$583	x	1	\$ 583.00
* PARK MAINTENANCE BUILDING.....	\$128	x	1	\$ 128.00
* EMERGENCY SERVICES BUILDING.....	\$446	x	1	\$ 446.00
* CITY HALL FEE.....	\$47	x	1	\$ 47.00

IMPACT FEE CALCULATIONS

Gross New Square Footage of Other Residential and Non-Residential Area.....

0

* PAVED TRAILS.....

Rate assessed at \$0.06 per SF or \$214 per lodging room

* PARK MAINTENANCE BUILDING.....

Rate assessed at \$0.01 per SF or \$47 per lodging room

* EMERGENCY SERVICES BUILDING.....

\$0.22 x 0 = \$ -

* CITY HALL FEE.....

\$0.02 x 0 = \$ -

FEE's DUE

0 \$ -

0 \$ -

0 \$ -

0 \$ -

0 \$ -

0 \$ -

FEE CALCULATIONS FROM PUBLIC WORKS DEPARTMENT

*** WATER (Impact Fee) \$ - Latecomers WATER \$ - WATER Meter \$ 468.56

** SEWER (Impact Fee) \$ 8,561.57 Latecomers SEWER \$ - INSPECTION \$ 50.00

* STORMWATER (Impact Fee) \$ 172.00 OTHER \$ - OTHER \$ -

FEE CALCULATIONS/ ADMINISTRATION OF IMPACT FEES

*** 5% of Impact Fees for PW/water \$ -

** 5% of Impact Fees for PW/sewer \$ 428.08

* 5% of Impact Fees (other) \$ 68.80

ADDITIONAL NOTES BELOW:**FINAL TOTALS**

OTHER IMPACT FEE's \$ 1,204.00

IMPACT FEE's \$ 9,252.13

ADMINISTRATION FEE's \$ 496.88

GRAND TOTAL \$ 10,953.01

From: Rose Elliott
ent: Wednesday, March 31, 2021 1:23 PM
To: 'will@whitefishlaw.com'; 'manningempire@gmail.com'
Cc: Randy Reynolds; Mark Thorsteinson; Neil DeZort
Subject: 101 Yarrow Lane

The Water and Sewer Department has reviewed your building application for 101 Yarrow Lane

Comments and requirements below are from the Public Works Department only.

The Building Department will contact you once the permit is ready to be issued. This is not authorization to begin work.

Requirements: 1" Water line – 1" Meter Pit and a 1" Meter.

Please consider a separate meter for your underground sprinkling system and/or hose bibs.

Sump Pumps are not allowed to be plumbed into the city sewer system

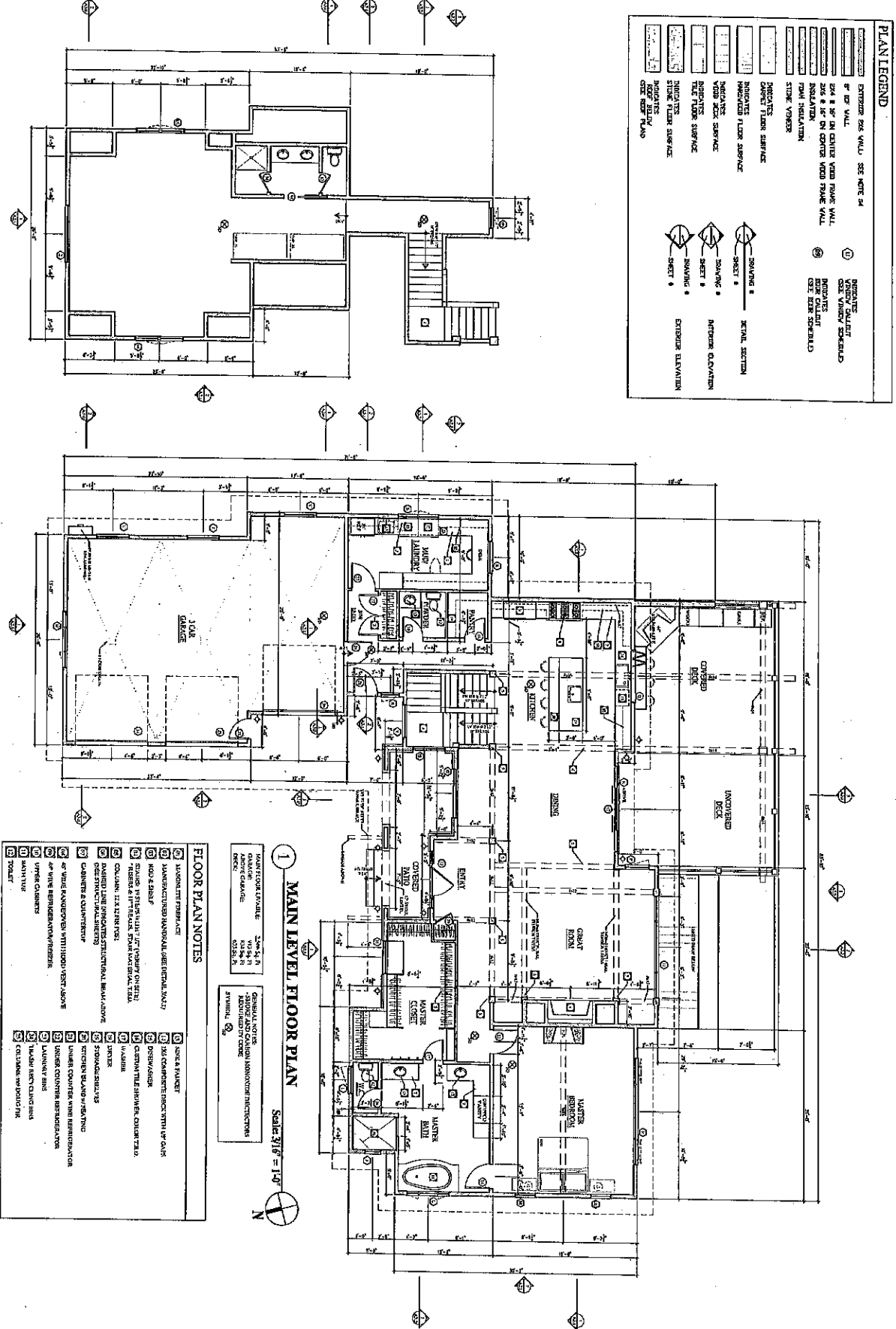
Taps require scheduling and 48-hour notice.

Any questions regarding your project, please contact:

Randy Reynolds Project Manager/Construction Inspector	253-8602 rreynolds@cityofwhitefish.org
Neil DeZort (tap question and schedule) Construction & Maintenance Supervisor	253-4849 ndezort@cityofwhitefish.org
Mark Thorsteinson Meter Technician	253-0858 mthorsteinson@cityofwhitefish.org
Utility Customer Service Clerk Billing Application & Information	863-2457 utilities@cityofwhitefish.org

Thanks,

Rose Elliott
Utility Service Supervisor
P.O. Box 158
418 E. 2nd Street
Whitefish, MT 59937



ALTUS DESIGN GROUP
CITY 03

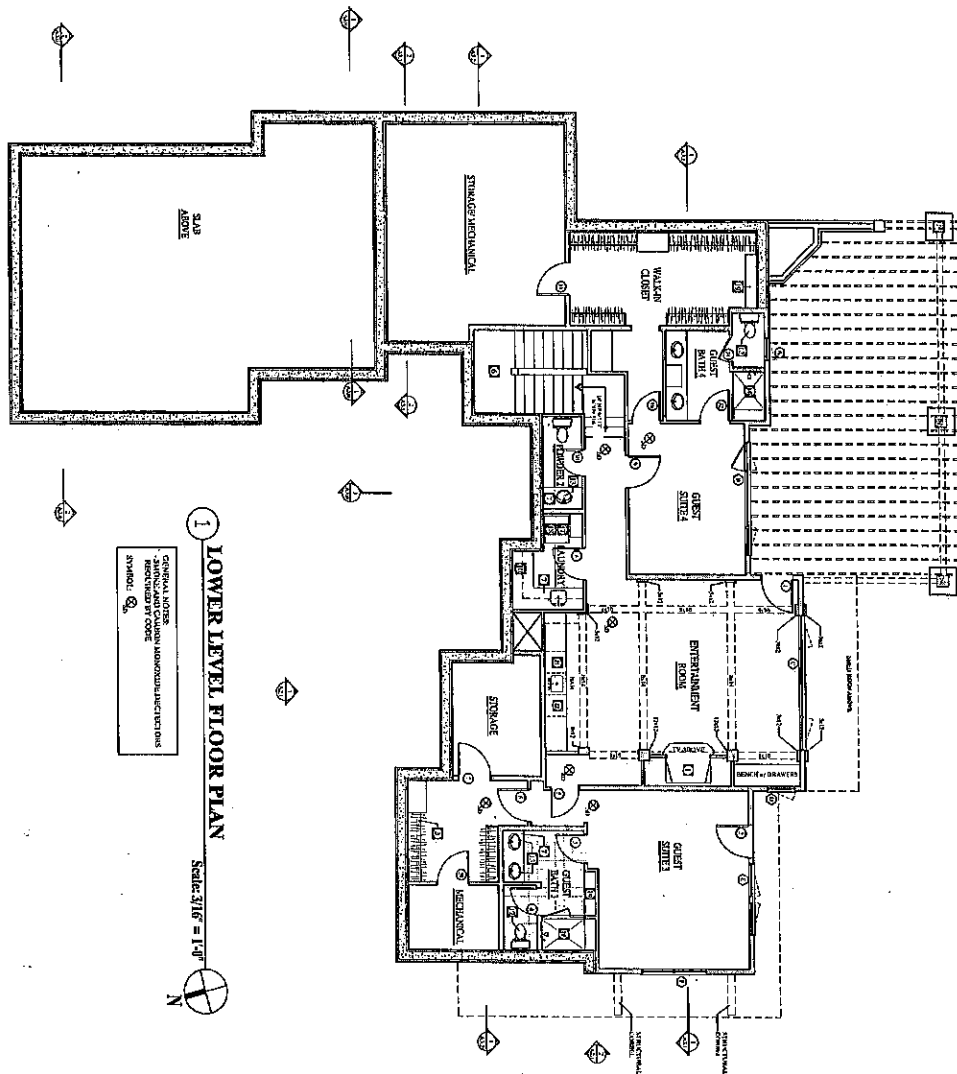
BULEMAN LACOSTA RESIDENCE
101 YARROW IRON HORSE WHITEFISH, MONTANA

214 N. Broadway, Suite 100
Billings, Montana 59101
Phone: 406.243.1234
Fax: 406.243.1235
Email: info@altusdesign.com

A1.1

101 Yarrow Iron Horse
Billings, Montana 59101

DATE: 03/03/23
DRAWN BY: JACOB
CHECKED BY: JACOB



1 LOWER LEVEL FLOOR PLAN
Scale: 3/16\"/>

GENERAL NOTES:
- DIMENSIONS GIVEN INDICATE FINISHED
- REFER TO CODE SYMBOLS

LOWER FLOOR FINISHES: 1/4\"/>

FLOOR PLAN NOTES

- | | |
|---|---|
| <ul style="list-style-type: none"> 1. HOLLOW METAL FRAMING 2. HOLLOW METAL FRAMING, SEE DETAIL 301.1 3. 1/2\"/> | <ul style="list-style-type: none"> 1. 1/2\"/> |
|---|---|

PLAN LEGEND

<ul style="list-style-type: none"> 1. 1/2\"/> 	<ul style="list-style-type: none"> 1. 1/2\"/>
---	---



AFTER CONSTRUCTION: Seed, Sod, or Mulch bare soil as soon as possible. Erosion control measures are to remain in place until final stabilization is established.

CITY OF WHITEFISH
CASH RECEIPT

Printed 11:48:39 - 04/08/21

Batch:17006
Transaction:33

Reference Number: SF-21-00444

Name: EMPIRE BUILDERS

Address: 101 YARROW LANE

Item(s) Description:

BUILDING PERMIT FEE	3080.00
PLAN REVIEW FEE	1797.00
ZONING FEES	1540.00
FIRE PREVENTION PROGRAM FEE	1489.00
PLAN REVIEW FEE	200.00
PAVED TRAILS IMPACT FEE	583.00
PARK MAINTENANCE IMPACT FEE	128.00
POLICE & FIRE BUILDING IMPACT FEE	448.00
CITY HALL IMPACT FEE	47.00
WASTEWATER IMPACT FEE	8581.57
STORMWATER IMPACT FEE	172.00
WATER INSTALLATION CHARGES	468.56
SEWER INSPECTION FEE	50.00
WASTEWATER 5 % ADMIN FEE	428.08
GENERAL FUND 5% ADMIN FEE	68.86

Check # 1982377 18659.01

Cash Paid

Credit Paid

Less Change Given ()

TOTAL: 18659.01



Debbie Pierson, Flathead County MT by JW

202200020737

Page: 1 of 2

Fees: \$16.00

8/8/2022 2:58 PM

Return recorded document to:
Susan Lacosta
Ramlow & Rudbach, PLLP
542 Central Avenue
Whitefish, MT 59937

0002507

Approved 08/08/2022 sc

TERMINATION OF JOINTLY OWNED PROPERTY -
ACKNOWLEDGED STATEMENT
(72-16-503, M.C.A.)


Susan M. Lacosta is the surviving spouse and joint tenant of decedent, William E. Hileman, Jr., who died October 18, 2021 in the County of Flathead, State of Montana, and as such is the sole owner of the following described real property situated in Flathead County, Montana:

Lot 52 of Iron Horse Phase 2 according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana

Together with and subject to easements, covenants, conditions, and restrictions of record.

No inheritance or estate tax is due with respect to this property as a consequence of the decedent's death.

DATED this 8th day of August, 2022.



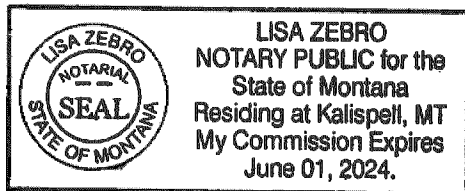
Susan M. Lacosta
PO Box 835
Whitefish, MT 59937



202200020737
Page: 2 of 2
Fees: \$16.00
8/8/2022 2:58 PM

STATE OF MONTANA
County of Flathead

This instrument was signed before me on the 8th day of August,
2022 by Susan M. Lacosta.



Lisa Zebro

Signature of Notary

(Affix Notarial Seal/Stamp Above)