



# COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

435 RYMAN | MISSOULA, MT 59802-4297 | 406.552.6630 | FAX 406.552.6053

## REFERRAL AND STAFF REPORT

**Agenda Item:** Referral and Staff Report - Rezone of Tract 2 of Certificate of Survey 5850 in Section 20, Township 13 North, Range 18 West, P.M.M from R20 Residential to R40 Residential

**Report Date:** 2/22/2023

**Case Planner:** Lauren Stevens, Senior Planner

**Report Review & Approved by:** Dave DeGrandpre, Planning Supervisor

### **Public Meetings & Hearings:**

Planning Board (PB) Public Hearing: 03/07/2023

City Council (CC) Consent Agenda: 03/13/2023

City Council Public Hearing: 03/27/2023

Land Use & Planning (LUP): 03/29/2023

City Council Final Consideration: 04/03/2023

## I. GENERAL PROJECT INFORMATION

### **Applicant:**

Bertram Wustner  
Bees 4 Ever LLC  
9830 Miller Creek Road  
Missoula, MT 59803

### **Representative:**

Joseph Dehnert, IMEG Corp.  
1817 South Avenue West, Suite A  
Missoula, MT 59801

### **Owner:**

Bertram Wustner  
Bees 4 Ever LLC  
9830 Miller Creek Road  
Missoula, MT 59803

**Location of Request:** The subject property is located one parcel east of 984 Deer Creek Road in the Marshall Canyon Neighborhood Council and City Council Ward 1 (Exhibit A).

**Legal Description:** Tract 2 of C.O.S. 5850 in Section 20, Township 13 North, Range 18 West, P.M.M.

**Geocode:** 04-2201-20-1-01-13-0000

**Legal Notification:** The legal ad was published in the Missoulian on February 19<sup>th</sup>, 2023, and February 26<sup>th</sup>, 2023. The site was posted on February 3<sup>rd</sup>, 2023. Adjacent property owners were notified by first class mail on February 3<sup>rd</sup>, 2023.

## II. DECISION AND REGULATORY FRAMEWORK

**Applicable State Law:** [Montana Code Annotated 2021](#)

**Growth Policy:** The [Our Missoula 2035 City Growth Policy](#) is the applicable regional plan and recommends a land use designation of Residential Low Density – 1 to 2 dwelling units per acre, which recognizes existing development patterns and areas close to urban services but not strongly connected to transit systems and other city infrastructure (limited constraints to urban levels of development). Current relatable Title 20 zoning districts are R40 and R20.

**Local Zoning Law:** [Title 20, Missoula Municipal Code](#) amended May 2<sup>nd</sup>, 2022, with Conditional Use Interim Ordinance amendments approved on November 28<sup>th</sup>, 2022.

**Current and Proposed Zoning:** The parcel is zoned R20 Residential. If City Council approves the rezoning, the parcel would be zoned R40 Residential.

**Surrounding Land Uses:**

- North: I-90, Canyon River golf course and residential cluster development, Clark Fork River
- South: Railroad / State Lands / Shooting Range
- East: Vacant
- West: Residential Storage Warehouse

**Surrounding Zoning:**

- North: OP1 Rural Cluster Development Standard / unzoned
- South: County Zone RO: Resource and Open Lands
- East: R40 Residential
- West: County Zone RRS 1: Rural Residential, Small Agriculture 1

### **III. RECOMMENDED MOTIONS**

**Planning Board Public Hearing (03/07/2023)**

Recommend City Council **approve** the adoption of an ordinance to rezone the subject property located one parcel east of 984 Deer Creek Road, legally described as Tract 2 of C.O.S. 5850 in Section 20, Township 13 North, Range 18 West, P.M.M, from R20 Residential to R40 Residential, based on the findings of fact in the staff report.

**City Council Consent Agenda (03/13/2023)**

[First reading and preliminary adoption] **Set a public hearing** on March 27<sup>th</sup>, 2023 and **preliminarily adopt** an ordinance rezoning the subject property located one parcel east of 984 Deer Creek Road, legally described as Tract 2 of C.O.S. 5850 in Section 20, Township 13 North, Range 18 West, P.M.M, from R20 Residential to R40 Residential, and **refer this item** to the Land Use and Planning Committee for presentation on March 29<sup>th</sup>, 2023.

**City Council Public Hearing (03/27/2023)**

No motion – public hearing, presentation, and City Council discussion. No motion until final consideration.

**Land Use and Planning Committee (03/29/2023)**

No motion – City Council discussion and informational meeting only.

**City Council Final Consideration (04/03/2023)**

[Second and final reading] **(Adopt/Deny)** an ordinance rezoning the subject property located one parcel east of 984 Deer Creek Road, legally described as Tract 2 of C.O.S. 5850 in Section 20, Township 13 North, Range 18 West, P.M.M, from R20 Residential to R40 Residential based on the findings of fact in the staff report.

## **IV. INTRODUCTION**

Development Services has received a request from Joseph Dehnert of IMEG Corp. representing Bertram Wustner to rezone the subject property located one parcel east of 984 Deer Creek Road and legally described as Tract 2 of C.O.S. 5850, located in Section 20, Township 13 North, Range 18 West, P.M.M. from R20 Residential to R40 Residential. This rezoning will result in a standard zoning district under Title 20 that applies equally to other areas in the City with the same zoning designation and can't be conditioned.

Staff has reviewed the applicant's rezoning submittal packet and bases the recommendation of approval on the following findings of fact:

## **V. GENERAL FINDINGS OF FACT**

1. The subject property has frontage on Deer Creek Road, which lies partially within the City with the remainder in the County.
2. The subject property is approximately 1,183,089 square feet (27.16 acres) and is currently used for the applicant's bee pollination business. The proposed R40 zoning allows Animal Agriculture while the current R20 zoning does not. The applicant would like to build a support building for his pollination business.
3. The subject property is inside the Urban Growth Area, the Utility Services Area, and the Air Stagnation Zone.
4. The property is part of City Council Ward 1, and the Marshall Canyon Neighborhood Council.
5. The subject property is located within an established service area for Missoula hospitals and the City Fire and Police Departments.
6. The property is not currently served by City utilities.
7. The property is encumbered by a Yellowstone Pipe Line Company high-pressure petroleum pipeline and a Bonneville Power Administration transmission line within established easements.
8. The subject property is within the Missoula Urban Transportation District. Route 4 is the closest bus route, which travels on MT Highway 200 across the Clark Fork River.
9. The subject property was annexed into the City of Missoula on September 28<sup>th</sup>, 2009 with the preliminary plat approval of the Clark Fork Terrace No. 1 subdivision. The final plat of the subdivision was never filed, and the preliminary plat approval expired in 2017.
10. The parcel adjacent to the subject property within city limits is zoned R40 Residential.

## **VI. GROWTH POLICY FINDINGS OF FACT**

11. The applicable regional plan is the *Our Missoula: City Growth Policy 2035*, which recommends a land use designation of Residential Low Density – 1 to 2 dwelling units per acre. This land use designation is intended to recognize existing development patterns and areas close to urban services but not strongly connected to transit systems and other City infrastructure. These areas may have limited constraints to urban levels of development.
12. Areas designated Residential Low Density allow a residential density between 1 and 2 dwelling units per acre. The City Growth Policy indicates that the current relatable Title 20 zoning districts for the Residential Low Density land use designation are R20 and R40.

13. The applicant is requesting to rezone the subject property from R20 Residential to R40 Residential, which is consistent with the Growth Policy land use recommendation.
14. The City Growth Policy calls for a focus inward approach to encourage infill development in the urban core where infrastructure already exists and promotes mixed-use, increased density, and enhanced connectivity while limiting sprawl and promoting efficient use of existing infrastructure.
15. The *Safety and Wellness* section of the City Growth Policy discourages development in areas that do not have the existing infrastructure to support it.
16. The *Economic Health* section of the City Growth Policy calls for supporting local food production and value-added agriculture.
17. The *Environmental Quality* section of the City Growth Policy encourages prioritizing agricultural land preservation over urban sprawl.
18. The *Community Design* section of the City Growth Policy encourages agricultural land use preservation.

## **VII. ZONING FINDINGS OF FACT**

19. The current zoning of R20 Residential requires a minimum lot size of 20,000 square feet, and the proposed zoning of R40 Residential requires a minimum lot size of 40,000 square feet.
20. The allowed densities for the R20 and R40 zoning districts are 1 dwelling unit per 20,000 square feet of parcel area and 1 dwelling unit per 40,000 square feet of parcel area, respectively. Given the approximate 1,183,089 square foot size of the subject property, the requested R40 zoning would allow up to 29 dwelling units, and the current zoning would allow up to 59 dwelling units. Both the R20 and R40 districts permit detached house and lot line house residential building types.
21. The required minimum setbacks for both the current and proposed zoning districts are 25 feet in the front and rear and 15 feet for an interior side. The maximum height permitted for both districts is 30 or 35 feet, depending on the roof pitch.
22. The only difference in permitted uses between the two zoning districts is that Animal Agriculture is permitted in the R40 zoning district and prohibited in the R20 zoning district.
23. Any new development on the subject property will be required to meet all applicable portions of Title 12 & Title 20, as required by the Missoula Municipal Code.

## **VIII. TRANSPORTATION FINDINGS OF FACT**

24. The subject property has frontage on Deer Creek Road, which is partially within City limits and partially in the County.
25. Mountain Line's Route 4 is the closest bus route, which runs on MT Highway 200 across the Clark Fork River. There are no convenient bus stops near the subject property.
26. There are no existing sidewalks or bicycle lanes on Deer Creek Road. Interstate 90 borders the subject property to the north, but there is not an entrance or exit onto the Interstate in this area.
27. New development on the subject property will be required to meet all applicable portions of Title 12 & Title 20, as required by the Missoula Municipal Code, including any required transportation infrastructure.

## **IX. CONCLUSIONS OF LAW**

### ***1a. Whether the zoning is made in accordance with a growth policy;***

1. The rezoning from R20 to R40 complies with the Growth Policy because the R40 district is a current relatable district of the Residential Low Density land use designation. The parcel and building standards are the same for both the current R20 zoning and the proposed R40 zoning, except that the current zoning has a higher permitted density than the proposed zoning district.
2. The rezoning from the current R20 zoning to the proposed R40 zoning complies with many of the agricultural land preservation goals and objectives of the Growth Policy. Decreased allowable density on the fringe also supports the focus inward approach of the Growth Policy.

### ***2a. Whether the zoning is designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; 2b. Whether the zoning considers the effect on motorized and non-motorized transportation systems;***

1. The subject property is within the Urban Growth area and the Utility Services Area. No existing City utilities are located close enough to this site to require connections at this time. Deer Creek Road is an existing 25-foot wide paved road that appears to be adequate to serve the types of low impact, low density development supported by the R40 zoning district. Transportation infrastructure improvements are not required with this rezone.
2. This rezoning recognizes the current lack of public services in this area, including urban transportation, water, sewerage, schools, parks, and other public requirements, and will result in a reduced potential density in a location that does not have the adequate provision of services.
3. The subject property is within the Missoula Urban Transportation District, and therefore could be served by public transit in the future. Existing Mountain Line routes do not provide adequate transit access to the subject property.
4. The rezoning gives reasonable consideration to the effect on motorized and non-motorized transportation systems because the proposed R40 zoning district has a lower density than the current R20 zoning district. If built out to maximum density, the R40 zoning will generate less traffic than the current zoning.

### ***3. Whether the zoning considers the promotion of compatible urban growth;***

1. The rezoning reflects compatible urban growth because it permits low density residential and agricultural development in an area that includes industrial/commercial uses and high-intensity transportation infrastructure.
2. The rezoning supports reduced density in an area that is located on the urban fringe and is less desirable for growth because it does not have existing utility and transportation infrastructure to support significant development.
3. The rezoning will promote compatible urban growth by changing the zoning district to match the adjacent property within city limits.

### ***4a. Whether the zoning is designed to promote public health, public safety, and the general welfare; 4b. Whether the zoning is designed to secure safety from fire and other dangers; 4c. Whether the zoning considers the reasonable provision of adequate light and air; 4d.***

***Whether the zoning conserves the value of buildings and encourages the most appropriate use of land throughout the jurisdictional area;***

1. The rezoning will promote public health, public safety, and the general welfare by reducing the potential residential density in an area without access to sewer, public water, emergency services, streets, bicycle lanes, schools, and other urban services.
2. This rezoning will decrease allowable residential density in an area that contains sensitive infrastructure including the high-pressure petroleum pipeline and power lines.
3. Emergency services are available to the site. Law enforcement personnel and facilities are available to address potential problems of noise, property damage, or personal injury. Fire protection is also available to the site.
4. This rezoning should not adversely impact the provision of adequate light and air as the proposed R40 zoning district has the same building height maximums as the current R20 zoning district, and requires larger minimum lot sizes.
5. Any future development will be required to meet all applicable portions of the Missoula Municipal Code, and will be reviewed for compliance at the time of permit submittal.
6. This rezoning encourages an appropriate use of the land because it would allow low density residential and agricultural development in character with the relatively rural surroundings.

***5. Whether the zoning considers the character of the district and its peculiar suitability for particular uses;***

1. The rezoning to the R40 Residential zoning district is suitable for the subject property and provides reasonable consideration of the character of the district. The adjacent parcel is also zoned R40 Residential, and the specific land uses in the area make it less appropriate for higher density.
2. The subject property is peculiarly suitable for agricultural uses, and there is a lack of existing agricultural land within City limits.
3. The proposed zoning district permits the same building types that are currently allowed with the existing R20 zoning. These building types are compatible with the nearby Canyon River community, which is characterized by detached houses and 2+ unit townhouses.
4. The rezoning considers the location and character of the property, which is located on the urban fringe adjacent to commercial/industrial uses, public open space areas, and major transportation infrastructure.

***6a. Whether the proposed zoning amendment corrects an error or inconsistency in the zoning ordinance or meets the challenge of a changing condition; 6b. Whether the proposed zoning amendment is in the best interests of the city as a whole.***

1. The rezoning from R20 to R40 does not correct an error or inconsistency in the zoning ordinance. The current R20 zoning district was applied to the subject property in anticipation of a specific development plan that has since been abandoned. Due to changed conditions, the current use of the property is agricultural and is more suited to an R40 zoning district.

2. The rezoning is in the best interest of the City as a whole because the rezoning implements several objectives of the 2035 Our Missoula City Growth Policy for the preservation of agricultural land and concentration of growth in the City core rather than the urban fringe.
3. The rezoning is in the best interest of the City because it reduces potential future density in a location that is not served by public infrastructure and services, including motorized and non-motorized transportation, water, sewer, schools, parks, and public utilities and services.

## **X. AGENCY COMMENT**

**Missoula Valley Water Quality District:** Agency comment has not been received.

**City – County Health Department:** “The Air Program at the Missoula City-County Health Department has no concerns with the Deer Creek rezone request.” – Ben Schmidt

**County Office of Emergency Management:** Agency comment has not been received.

**Missoula Urban Transportation District:** “Missoula Urban Transportation District has no comment on the proposed Deer Creek rezone request.” – Dan Stone

**City Parks and Recreation Department:** “I have no concerns with this application.” – Lucy Rummler

**City Attorney:** Agency comment has not been received.

**City Police:** Agency comment has not been received.

**City Fire:** Agency comment has not been received.

**City Public Works and Mobility:** “No concerns.” – Andy Schultz, Utilities

“We do not have any concerns with this re-zoning to allow a lower density. There will be no additional impacts to the provision of transportation, sewerage, or water and it does not have a negative effect on motorized and non-motorized facilities in the area.” – Steve Reichert, Development Review

“No concerns but the developer may want to be aware that the northeastern corner of this parcel is in the Erosion Hazard Area per the Channel Migration Zone Study.” – Tracy Campbell, Stormwater

**Missoula Redevelopment Agency:** Agency comment has not been received.

**Montana Department of Fish, Wildlife and Parks:** Agency comment has not been received.

**Montana Department of Transportation:** Agency comment has not been received.

**Phillips 66 (Yellowstone) Pipeline Company:** “As for this rezoning request, Yellowstone Pipe Line Company has a high-pressure petroleum pipeline located throughout this property and we will require that any proposed development adhere to our Encroachment Guidelines regardless of how this property is currently zoned or will be zoned in the future.” – Derek Lilleberg

**Marshall Canyon Neighborhood Council:** Agency comment has not been received.

# EXHIBIT A: LEGAL MAP OF FULL SUBJECT PROPERTY

