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# CITY OF MILES CITY

## *PLANNING & COMMUNITY SERVICES*

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**Date:** April 23, 2026

**To:** City Council, Mayor

**From:** Joel Nelson, Contract Planner and Subdivision Administrator

**Re:** City View Subdivision matters for City Council consideration on April 28, 2026

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Introduction:

This memo is regarding the City View Subdivision agenda items for the April 28, 2026 City Council meeting. On April 28<sup>th</sup>, the City Council will consider multiple items pertaining to the City approvals of the City View Subdivision and associated Subdivision Improvements Agreement, and a public hearing on a variance request further described below.

The City View Subdivision is a subsequent minor subdivision of Lot 2 of Block 5 Amended, Southgate Meadows Subdivision, located in the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 2, T7N, R47E, PMM, City of Miles City, Custer County, Montana. The City View Subdivision is located along the south side of Horizon Parkway at the SE corner of its intersection with Park Hill Drive, approximately 0.3 mile east of Montana Highway 59. The City View Subdivision has been platted since February 2022, with an initial Subdivision Improvements Agreement (SIA) to secure the completion of various subdivision improvements that were incomplete at the time of final plat approval and recording of the final subdivision plat. The SIA has since been amended and extended by the subdividers and City Council three times; the Third Amended SIA expired on July 1, 2025, at which time the City enforced the terms of the SIA due to incomplete improvements and lack of certifications, and the City now holds the funds for improvements that have been completed by the subdivider and improvements that remain incomplete.

The City Council will hold a public hearing on a variance request from the Miles City Subdivision Regulations (MCSR), specifically the maximum street grade standard of 5% for "Arterial" streets found in Table 1 of Sec. 21-18(a)(8)(h) MCSR. Horizon Parkway, a City street, was improved by the subdivider, but the conditional approval required the street improvements to be built to applicable city standards, including street grade. The subdivider's engineer has provided as-built certification of the street improvements showing Horizon Parkway was improved to City standards with the exception of a  $\pm 200$ - to 275-foot segment with grades from 6% to 8%. Therefore, the subdivider, L & L Development LLC, represented by Matthew Lothspeich, has requested a variance to the street grade standard and an amendment to the conditional approval to allow for the increased street grade. The subdivision administrator has determined the amendment is non-material. The City Council will

also consider whether to accept the improvements to Horizon Parkway as complete, which would allow for an associated partial release of the funds the City is holding for completion of the street improvements to Horizon Parkway.

After the public hearing on the above variance request, the City Council will hold a public meeting to accept comments on the subdivider's requested amendment to the preliminary, conditional approval for the subdivision to allow for electrical utilities to not be installed to each lot as required by the approval and effective SIA, a non-material amendment. The extensions of electrical utilities for the subdivision have been completed, but the utilities end approximately 25 feet south of Lots 2B and 2C; therefore, the subdivider has requested an amendment to that requirement of the conditional approval, and is instead proposing to establish a utility easement to allow for future extensions of electrical utilities to Lots 2B and 2C. The amendment would allow for an associated partial release of the funds the City is holding for completion of the electrical utilities to each lot.

The City Council will also consider resolutions to accept completion and certifications of the improvements to Horizon Parkway and the turnaround for Park Hill Drive, installation of a 'no parking' sign along the turnaround for Park Hill Drive, and to approve a partial release of funds for those improvements and certifications as well as a Fourth Amended Subdivision Improvements Agreement to secure remaining improvements and certifications pertaining to installation of USPS-approved mail delivery facilities for the subdivision and provide for a new deadline of August 31, 2026 to do so as requested by the subdivider.

Background:

The preliminary plat of City View Subdivision was reviewed by the City in 2020 and 2021, with conditional, preliminary plat approval granted by the City Council on May 11, 2021. The preliminary approval letter was issued to subdivider L & L Developers, LLC on May 17, 2021. The preliminary approval was subject to 29 conditions of approval.

In late 2021, the final plat application was submitted to the City along with a proposed Subdivision Improvements Agreement (SIA). A typical SIA such as the subject SIA is an agreement between a subdivider and local governing body that defers completion of subdivision improvements to a later date, subject to a form of financial security, which allows a final plat of a subdivision to be recorded before completion of the improvements. This mechanism allows a developer to sell lots before a subdivision is fully built and completed.

On February 8, 2022, the City Council approved the final plat of City View Subdivision, amended Condition 23 to allow telecommunications utilities to not be installed, and approved the initial SIA. The SIA and associated letter of credit secured completion of remaining improvements. The letter of credit was established in the amount of \$1,142,596.98, which was based on 150% of the estimated total cost of construction and engineering certifications being \$761,731.32. The remaining improvements at that time included the following:

- Remaining erosion control, reseeding, and weed treatment.
- Electrical utilities to each lot.
- All water mains and fire hydrants.
- All sewer mains and related facilities.
- Horizon Parkway Extension: Including widening, construction, curb, gutter, sidewalk, and paving from end of current pavement to and including the approach to Lot 2D.

- Parkhill Drive Extension: Paving of the turnaround.
- Traffic Signs (a “No Parking” sign was determined to be needed along the turnaround for Parkhill Drive)
- Mail Facilities (the USPS approved plans for installation of cluster mailboxes at two locations).
- Engineering Costs: Design, Inspection, Certified As-Builts, and Permitting.

The initial SIA gave the subdivider a deadline of February 9, 2023 (one year) to complete and provide certifications for the above improvements.

After final plat approval and the establishment of the initial SIA, the final plat was recorded and L & L Developers LLC conveyed the City View Subdivision lots to L & L Development LLC, with L & L Development LLC assuming the responsibilities of the subdivider to complete the subdivision improvements in accordance with the SIA.

On February 14, 2023, the City Council accepted the completed water and sewer infrastructure into the City’s municipal water and sewer systems (Resolution No. 4496). The Council also approved an Amended SIA (Resolution No. 4497), which included acceptance of the completion of erosion control, reseeded, and weed treatment, the water mains and fire hydrants, and sewer mains and related facilities, which had all been certified complete, and therefore allowed for a partial release of funds. The Amended SIA provided for a reduction in the financial security through an amended letter of credit with a new amount of \$605,865.48, which was based on 150% of the estimated cost of \$403,910.32 for the remaining improvements. The approval and Amended SIA also granted the subdivider an extension to complete the remaining improvements, giving a new deadline of December 31, 2023 for the subdivider to complete the improvements and submit the required certifications. The remaining improvements at that time included the following:

- Electrical utilities to each lot.
- Horizon Parkway Extension: Including widening, construction, curb, gutter, sidewalk, and paving from end of current pavement to and including the approach to Lot 2D.
- Parkhill Drive Extension: Paving of the turnaround.
- Traffic Signs (a “No Parking” sign was determined to be needed along the turnaround for Parkhill Drive)
- Mail Facilities (the USPS approved plans for installation of cluster mailboxes at two locations).
- Engineering Costs: Design, Inspection, Certified As-Builts, and Permitting.

On January 9, 2024, with Resolution No. 4547, the City Council approved the subdivider’s request for an extension to allow until November 1, 2024 to complete the remaining improvements, and a Second Amended SIA. The letter of credit was extended again by Stockman Bank to reflect the new deadline; the minimum financial security remained at \$605,865.48.

On December 30, 2024, with Resolution No. 4594, the City Council approved the subdivider’s request for an additional extension to allow until July 1, 2025 to complete the remaining improvements, and a Third Amended SIA. The letter of credit was extended again by Stockman Bank to reflect the new deadline; the minimum financial security remained at \$605,865.48. The Third Amended SIA was intended to be the final extension, and explicitly authorized the Subdivision Administrator and City Attorney to act without delay and draft the remaining funds from the letter of credit if the

improvements were not completed and certified in full compliance with this agreement by the deadline of July 1, 2025.

Leading up to and after the July 1, 2025 deadline, the subdivision administrator and City Attorney were continually in correspondence with the subdivider Matthew Lothspeich and Mitch Grove at Stockman Bank about the deadline and the remaining improvements and certifications that were required. Some improvements appeared complete, but no certifications were submitted before the deadline. The letter of credit was set to expire on September 5, 2025. Accordingly, on August 18, 2025, the subdivision administrator, City Attorney, and Mayor directed a letter to the subdivider and Stockman Bank enforcing the SIA and withdrawing the full amount of the letter of credit funds, being \$605,866 (the required minimum financial security of \$605,865.48, rounded up). On August 19, 2025, Stockman Bank issued a check to the City of Miles City in the amount of \$605,866.00.

The City Clerk's Office and Treasurer then held the check without cashing or depositing it while the subdivision administrator, Public Works Director, and City Attorney worked through the matter with the subdivider and the project engineers at Brosz Engineering.

As all of the above played out, the Public Works Director conducted site visits to monitor the status of the improvements. It had become apparent at the time of the deadline that the Horizon Parkway improvements were likely complete (but not certified, and built to unknown construction standards) and the electrical utilities had been installed per TRECO (but not certified, and not known to be extended 'to each lot' as required), but the other improvements were not done, including the paving of the Parkhill Drive turnaround, mailbox installations, and installation of the 'No Parking' sign. It was also determined that the project engineers had not been involved in the Horizon Parkway improvements and had not been present during construction, all at the direction of the subdivider. This appeared to be why no certifications were submitted.

The subdivision administrator continued to correspond with the subdivider and the project engineers about the required certifications and remaining improvements. At some point, the Parkhill Drive turnaround was paved (with asphalt millings like the rest of the road's surface, which was allowed) and the 'no parking' sign installed.

In October 2025, Brosz Engineering provided 'as-builts' for the Horizon Parkway improvements, indicating the project had been complete and certified, with as-built plans. The submittal also provided confirmation that the Parkhill Drive turnaround was completed and met the required dimensions (the engineer was not required to certify the construction standards of the turnaround, but it was required to be certified complete).

The October submittal of road certifications explained that Brosz Engineering was not onsite during the roadway construction, but the contractor submitted haul sheets that showed the amount of asphalt, base course, and subbase used during construction. Based on the quantities provided by the contractor it was determined (by Brosz) that the roadway was installed to the proposed typical section. The submittal also described how the east end of Horizon Parkway was raised in elevation due to a rock shelf that was discovered during construction which changed the proposed grade from 5% to grades varying from 6% - 8%.

Other partial certifications and other materials were submitted to the subdivision administrator by Brosz Engineering on October 28, 2025. An inquiry regarding use of PO boxes instead of the onsite

mail delivery facilities approved by the Postmaster and required by the subdivision regulations, subdivision approvals, and SIA approvals was also submitted.

As the November 17 deadline approached for the City to deposit the check before the check became voided after 90 days, and in response to the partial certifications and mailbox inquiry, the subdivision administrator emailed the subdivider and engineer with a comprehensive response on November 12, 2025, outlining what needed to be addressed and accomplished, and potential amendments and variances that may be needed based on the ongoing correspondences. The email informed them the check would be deposited and the funds held in a specific account for the City to utilize to complete the remaining improvements and certifications, if necessary.

The November 12 email to the subdivider and project engineer also explained that in dealing with all of the past extension requests, the drawn-out partial certifications and failure to complete improvements, the SIA enforcement, potential amendments/variances, etc., the City was losing money every step of the way. The email informed them that the City may begin implementing the following provision from the attached fee schedule by keeping those amounts from the check to cover some of the administration costs:

**N. In addition to the fees set forth in Subsections A through L above, there shall be charged the actual fees and expenses charged by consultants, including, but not limited to attorneys, examining land surveyors, planners, engineers, sanitarians, and other specialists and professionals involved in such review.**

The subdivision administrator advised the subdivider and project engineer that whether that provision for assessing third party review fees and the start date were yet to be determined. The potential third party review fees will be further discussed later in this memo.

Also on November 12, the check from the letter of credit was deposited by City administration, and remains in an account, which provides for completion of the remaining improvements and certifications by the City, unless the subdivider is able to follow through on his responsibilities per the effective SIA.

Then on November 21, 2025, Brosz Engineering submitted certification of the sign installation, along with two variance requests pertaining to the Miles City Subdivision Regulations' design and improvement standards – for the grade of Horizon Parkway and to allow the development to use post office boxes instead of onsite mail delivery facilities as required by the subdivision regulations. The email also advised the subdivision administrator that they were drafting an easement for the electrical utilities for Lots 2B and 2C, which had been determined to be installed  $\pm 28$  feet short of the lots. The draft easement document was later submitted and then revised on December 19, 2025, and is included in the attached material.

The subdivision administrator then reviewed the above submittals, and responded with a letter dated December 19, 2025. The letter outlined the additional information that would be necessary for City Council review of amendments, variances, and partial release(s) of funds for completed/certified improvements. As had been discussed previously by the subdivision administrator, the letter requested the engineer provide additional information regarding certifying Horizon Parkway without the engineer observing the construction and whether this is a standard engineering practice.

Then on January 26, 2026, Brosz Engineering submitted amendment requests pertaining to the conditions of preliminary plat approval. These included (1) a request pertaining to the condition requiring the improvements to be completed and certified to City standards, specifically the grade of Horizon Parkway, which they had already submitted a variance request for, and (2) a request to amend the condition requiring the electrical utilities to be installed 'to each lot', accompanied by a draft easement dated 12/19/2025 (previously reviewed and commented on by the subdivision administrator, with the comments addressed in the new draft). The submittal also included a withdrawal of the previously-submitted variance request for the mail facilities, stating L & L Developers "instead would like the City to take the cost for installing the mail facilities from the bond". Finally, the submittal also included a revised certificate of completion of improvements signed by L & L Developers (later replaced).

On January 26, 2026, the subdivision administrator again pointed out to Brosz Engineering that the submittal still did not address the questions regarding Brosz not being present through construction of the Horizon Parkway improvements but still providing engineer certification. Brosz Engineering responded on January 27, 2026 with an explanation of the calculations of materials hauled to the site during construction of both Horizon Parkway and the private City View Drive that accesses the condominium development on Lot 2D (not a required subdivision improvement and not involved with the SIA). The engineer and subdivision administrator later met to discuss the information and to resolve what appeared to the subdivision administrator to be discrepancies, but the apparent discrepancies were substantially resolved.

Brosz Engineering has never comprehensively addressed whether certifying Horizon Parkway without the engineer observing the construction is a standard engineering practice. The engineer has verbally indicated that it is not standard practice, which the subdivision administrator understands to be the case. The engineer has chosen not to further explain that, and has not proposed to take boring samples to determine the construction specifications for Horizon Parkway. The subdivision administrator has told the project engineer that the acceptance of the engineer certification will be subject to approval by the City Council, and advised him that the question may continue to be raised at the Council level.

The subdivision administrator then began working through the matter of the subdivider wanting to leave the mailbox facilities installations to the City by providing for the City withholding sufficient funds to do so. This would have involved purchasing CBU mailboxes and contracting with an engineer and a construction contractor as well as administering the project. This process would slow the process for City Council review of the potential release of funds for the other improvements. After additional meetings and discussions, on February 16, 2026, the engineer informed the subdivision administrator that L&L Developers, LLC intends to install the mailboxes, and the anticipated completion date for the installation is August 31, 2026.

It was then determined through internal discussions that the request for a Fourth Amended SIA to allow a partial release of funds for the completed and certified improvements, and to give a new deadline for the mailbox installations would be carried forward to City Council for consideration. The subdivision then continued reviewing the material submitted for the requests, and scheduling and noticing a Council meeting.

Attachments:

Attached, please find the following:

1. Draft Resolution No. 4682, a Resolution approving amendments to the conditions of approval for the City View Subdivision, granting a variance to the Miles City Subdivision Regulations, and providing for a public hearing on the variance request;
2. Draft Resolution No. 4683, a Resolution approving a Fourth Amended Subdivision Improvements Agreement for City View Subdivision, acceptance of certain subdivision improvements, and a partial release of funds;
3. Draft Fourth Amended Subdivision Improvements Agreement;
4. Third Amended Subdivision Improvements Agreement;
5. Certificate of Completion of Improvements dated 2/23/26, signed by Matthew J. Lothspeich, Subdivider;
6. City View Subdivision Roadway As-Builts dated October 8, 2025 by Brosz Engineering, Inc.
7. January 27, 2026 email from Rylan Limesand, PE with Brosz Engineering, explaining the rationale of how the engineering certifications of road improvements were based on materials hauled to the subdivision and a paving bill, along with the paving bill and information from Diamond J Companies;
8. Variance request for the grade of Horizon Parkway;
9. Amendment request for the grade of Horizon Parkway;
10. Amendment request for the electrical utilities not being installed to each lot, along with proposed utility easement; and
11. Signed statement from Rylan Limesand, PE with Brosz Engineering, that the NO PARKING ANY TIME sign at Parkhill Drive has been installed.

Summary of Requests to be Acted on by City Council:

The following is a list of requests to be acted on by City Council and what should be accomplished at the April 28 meeting:

1. Variance request and public hearing: The City Council will hold a public hearing on the variance request to allow Horizon Parkway to have a ±200- to 270-foot segment with grades from 6% to 8%. The attached Resolution No. 4682 has been drafted to provide an approval of the requested variance.
2. Amendment request for Horizon Parkway not being improved to City standards: The City Council will consider an amendment to Condition 18 of the conditional approval to allow for the increased street grade; this amendment is contingent upon the granting of the above variance. The subdivision administrator has determined the amendment is non-material; however, per Sec. 21-14(b)(8)(a)(3), MCSR, if the governing body (City Council) determines the changes are material at the public meeting or before the changes are approved, it may direct the subdivision administrator to require the changes to be reviewed starting at any point contemplated by subsection (8)a. (this contemplates the ability to start at any point as far back as the very beginning of the subdivision process with a pre-application meeting.) The attached Resolution No. 4682 has been drafted to provide approvals of the amendments.
3. Acceptance of Horizon Parkway improvements: The City Council will also consider whether to accept the improvements to Horizon Parkway as complete, which would allow for an associated partial release of the funds the City is holding for completion of the street improvements to Horizon Parkway. The attached Resolution No. 4683 has been drafted to provide acceptance of the Horizon Parkway improvements.
4. Acceptance of Parkhill Drive turnaround improvements: The City Council will also consider

whether to accept the paving of the Parkhill Drive turnaround as complete, which would allow for an associated partial release of the funds the City is holding for paving of the turnaround. The attached Resolution No. 4683 has been drafted to provide acceptance of the Parkhill Drive turnaround improvements.

5. Acceptance of 'no parking' sign installation: The City Council will also consider whether to accept the sign installation as complete, which would allow for an associated partial release of the funds the City is holding for the sign and installation. The attached Resolution No. 4683 has been drafted to provide acceptance of the 'no parking' sign installation.
6. Amendment request for electrical utilities not being installed 'to each lot': The City Council will also consider an amendment to Condition 23 of the conditional approval to allow the electrical utilities to not be installed 'to each lot'. This amendment is also subject to acceptance of the proposed Utility Easement. The attached Resolution No. 4682 has been drafted to provide approvals of the amendment.
7. Acceptance of electrical utilities installation: The City Council will also consider whether to accept the electrical utilities as complete, which would allow for an associated partial release of the funds the City is holding for the installation. The attached Resolution No. 4683 has been drafted to provide acceptance of the 'no parking' sign installation.
8. Acceptance of certifications for the completed improvements: The City Council will also consider whether to accept the subdivider's certifications, as well as the engineering certifications as complete, which would allow for an associated partial release of the funds the City is holding for the engineering certifications. The attached Resolution No. 4683 has been drafted to provide acceptance of the certifications.
9. Extension request for installation of mailbox facilities: The City Council will also consider whether to provide until August 31, 2026 for the subdivider to install the required mailbox facilities and cause the installations to be certified complete by the subdivider and project engineer. The attached Resolution No. 4683 and Fourth Amended SIA have been drafted to provide until August 31, 2026 for the subdivider to install the required mailbox facilities and cause the installations to be certified complete by the subdivider and project engineer.
10. Fourth Amended Subdivision Improvements Agreement: The City Council will also consider whether to approve a Fourth Amended Subdivision Improvements Agreement, which would accept the above improvements as complete, with the exception of the mailbox facilities, provide the subdivider a new deadline of August 31, 2026 to complete and provide certifications of the mailbox facilities, and allow a partial release of funds. The attached Resolution No. 4683 and Fourth Amended SIA have been drafted to accomplish the above.

The actions above could be accomplished by City Council reviews and approvals of Resolution No. 4682 and Resolution No. 4683

Public comments on the variance request should be accepted during the public hearing. Public comments on other items should also be provided for prior to actions being taken by City Council.

Each of the above items under consideration are discussed further in the following sections.

Variance Request and Amendment Request for Street Grade of Horizon Parkway:

Table 1 of Sec. 21-18(a)(8)(h) of the Miles City Subdivision Regulations (MCSR) outlines the Street Design Standards for streets in Miles City. For Arterial streets, which Horizon Parkway was determined to be during preliminary plat review in 2020/2021, the maximum street grade is 5%. The engineered improvement plans submitted for the preliminary plat application that the City approval

was based upon indicated Horizon Parkway would be improved to City standards with a maximum street grade of 5%. During administration of the Third Amended SIA, when final certifications were submitted for the improvements to Horizon Parkway, the reviewer noted the as-built plans showed a segment of 200+ feet of Horizon Parkway with a grade of 6% to 8%, and the engineer's letter stated, "*The east end of Horizon Parkway was raised in elevation due to a rock shelf that was discovered during construction. This changed the proposed grade from 5% to grades varying from 6%-8%...*". For this reason, the Subdivider's engineer submitted a variance request using the City's Variance Request Form.

If the requested variance for street grade is approved by the City Council, an amendment to Condition 18 of the preliminary plat approval could also be approved by Council to allow for the modified standard. Condition 18 is as follows:

*"18. All street, water, sewer, and stormwater improvement plans shall be reviewed and approved by the Miles City Public Works Department and be built to applicable city standards. All applicable specifications and requirements of the approved plans shall be met and certified by a professional engineer. [Planning Board Report III.A & B; Sec. 21-18(a)(5), Sec. 21-18(a)(8), Sec. 21-18(a)(9) – (12), MCSR; and 76-3-608(3)(a), MCA, impacts on public health and safety]"*

The written amendment request dated January 26, 2026 adds that it wasn't feasible to excavate the rock shelf. The request clarifies that the increased grade is a segment of approximately 275 feet.

If Condition 18 is amended to allow the noncompliant street grade, the City Council could in turn accept the improvements to Horizon Parkway as complete, which would allow for an associated partial release of the funds the City is holding for completion of the street improvements to Horizon Parkway.

The segment of Horizon Parkway with excessive grades is between Lot 2C's and Lot 2D's approaches to Horizon Parkway. This is east of Ponderosa Drive, which serves Southgate Meadows to the north. The segment serves primarily the condominium development on Lot 2D and minimally developed properties to the east.

The need for the street grade variance stems in part from the lack of engineer oversight during construction. While the subdivision approval and SIAs explicitly required the improvements to Horizon Parkway be certified by the subdividers' engineer, the City learned late during administration of the SIAs that Brosz Engineering was not onsite during the roadway construction. Had the engineers been present during construction or otherwise involved, the "rock shelf" that was encountered during construction and the resulting need for modified grade would have likely come to light much earlier; by the time the City staff and subdivision administrator became aware of the situation was well after the Horizon Parkway improvements were completed. At this time, there's little that can be economically and practically done to physically correct the street grade.

The reviewer has investigated the soil types in this location to provide verification that bedrock could be encountered during excavations. Using the online [Web Soil Survey](#) of USDA's Natural Resources Conservation Service (NRCS), the reviewer found that the predominant soil type in this location of Horizon Parkway is Map Unit 386F, "Cabbart-Rock outcrop-Delpoint complex, 15 to 50 percent slopes---Custer County Area, Montana". Per the USDA map unit description, these soils types include shallow paralithic bedrock at depths ranging from 10 to 60 inches. This information supports the

statement that a rock shelf was encountered during construction. The reviewer notes that USDA soils information describes paralithic bedrock as a partially weathered, consolidated material that is soft enough to be dug with hand tools but still retains rock structure and cannot be considered soil, as opposed to lithic bedrock that is hard, unweathered rock that generally requires blasting or hammering. The reviewer cannot speculate as to the level of effort or methods that could have been applied to overcome the rock shelf; but the existence of the rock shelf appears to be the basis of the variance request for grade.

The requested variance must be reviewed according to Sec. 21-22(a) MCSR, "Variances". Procedurally, the section requires the subdivider to include with the submission of the preliminary plat<sup>1</sup> a written statement describing and justifying the requested variance. The subdivision administrator and/or planning board<sup>2</sup>, as applicable, will consider the requested variance and recommend its approval or denial to the governing body. The governing body may grant the variance(s) if it meets the specific variance criteria, as discussed below. In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations, and when a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

Sec. 21-22(a)(1), MCSR, "Variances authorized": The governing body may grant variances from section 21-18, design and improvement standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations. The governing body will not approve a variance unless it finds that (note: all four criteria must be met):

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

The variance review criteria are listed and underlined below, followed by *the Subdivision Administrator's analysis and recommended findings in italics*.

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

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<sup>1</sup> Variance requests are typically submitted with preliminary plat applications, and although the subdivision regulations indicate the subdivider must include the written variance request with the submission of the preliminary plat application, it is not unusual for a variance request to be submitted later in the process, such as with a situation like this.

<sup>2</sup> The subdivision administrator found the variance request and required amendment to Condition 18 to be a non-material amendment and found that Planning Board review would be an unnecessary burden for both the subdivider and City. The street grade is a matter of acceptance by the City Council upon a public hearing, consideration of public comments, and adoption of findings of fact in support of the variance decision.

Subdivision Administrator Analysis: In response to this criterion, the Subdivider's engineer states, "The road grade installed does not create any hazards, and still meets AASHTO design requirements.". The submittal does not provide supporting material or specific citations of AASHTO standards, but based on the reviewer's research, it appears the typical maximum grade for arterials based on AASHTO-derived sources is  $\pm 5$  to 8%, and up to 10% for collectors. The 5% maximum grade standard has been in place in the MCSR since at least 2008. The reviewer was the primary drafter of the 2014 updates, which was the year of the last revisions to the street design standards. The reviewer recalls that during the update process, the reviewer considered recommending updates to the various grade standards due to the restrictive standards that existed at the time, but given the relatively flat topography of the vast majority of the City, it did not appear necessary to revise the grade standards. Road/street grade standards are often more flexible in western Montana and other locations where topography is more challenging to provide for grades as low as 5%.

The reviewer concurs that AASHTO standards could provide for the 6 to 8% grades for a small  $\pm 275'$  segment of Horizon Parkway. Further, given the relatively short segment of increased grade, as well as typical low vehicle traffic speeds in this location, the grade is unlikely to create hazards. Public health will not be impacted by a street grade. Public safety is unlikely to be impacted as indicated by the Subdivider's engineer. The general welfare of the public is unlikely to be impacted by a relatively short segment of street with 8% or less grade. There is no evidence that the street grade would be injurious to other adjoining properties, and the reviewer cannot imagine what aspect of the slightly increased street grade could be injurious to other properties.

In summary, the granting of the variance to allow for a  $\pm 270$  foot segment of Horizon Parkway to contain grades of 6% to 8% would not be detrimental to the public health, safety, or general welfare, and would not be injurious to other adjoining properties.

- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;

Subdivision Administrator Analysis: In response to this criterion, the Subdivider's engineer states, "The road grade needed to be altered due to a rock shelf discovered during construction, making it not feasible to grade the road to 5% or less."

The increased street grade appears to be the result of the topographical conditions of Horizon Parkway and geological conditions. Horizon Parkway exists within a dedicated City street right-of-way, and improvements to the street were limited by its platted and constructed location. The reviewer is concerned that the subdivider apparently instructed the project engineer to not be involved in or oversee the construction of the improvements. This creates a hardship that was self-imposed by the subdivider. However, at this point, the street would need to be entirely reconstructed to meet the maximum grade of 5%, which would be not only financially unfeasible, but also likely unwarranted given the relatively gentle grades of 6 to 8% for a distance of  $\pm 275$  feet. While the hardship could be overcome with reconstruction, indicating a financial hardship, reconstruction of Horizon Parkway to reduce the grade to 5% or less overall would require reconstruction of substantially more than 275 feet of road.

*Horizon Parkway is at the maximum 5% grade for at least 400 feet west of the start of the 6 – 8% grade segment. The result is that without rebuilding the portions of Horizon Parkway that were paved prior to this project, the reduction in grade to bring Horizon Parkway to 5% grade or less would need to be accomplished by excavating the grade down toward the east until the 5% grade is reached. That would likely require regrading of Horizon Parkway beyond City View Drive (where the Horizon Parkway improvements terminated), and perhaps beyond the publicly-dedicated portion of Horizon Drive. Had the variance been requested during the preliminary plat review, the reviewer likely would have supported it due to the required extent of excavation required to reach 5% grade and the minimal deviation that results from a 6 to 8% grade. With the additional factor of reaching bedrock, and the potential need for hammering and/or blasting to reach grade requirements, the noise from the activities could be contrary to the public welfare and injurious to other adjoining properties.*

*Given these factors, the hardship of strict compliance with the maximum 5% grade standard is due to the physical conditions of the site, primarily topography and geology. The subdivider did not impose the topography or bedrock conditions on the project; rather, bedrock was encountered during construction, which was overcome with the increased grade for a relatively short segment. The hardship of strict compliance with the grade standard is therefore undue, and the variance is appropriate.*

- c. The variance will not cause a substantial increase in public costs; and

*Subdivision Administrator Analysis: The variance, if approved, would not cause a substantial increase in public costs because a grade of up to 8% as opposed to the standard 5% does not measurably impact the costs of maintenance of the street, as stated by the project engineer.*

- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

*Subdivision Administrator Analysis: The street grade standard has no impact on or relationship with the zoning regulations, thus approval of the variance will not place the subdivision in nonconformance with any adopted zoning regulations.*

*Summary and Recommendation on Variance Request: In light of the above analyses and recommended findings on the variance request, the Subdivision Administrator recommends approval of the variance request.*

Condition 18 Amendment:

If the City Council approves of the variance request for maximum street grade, it would be reasonable to amend Condition 18 as follows (underlined language are additions):

18. All street, water, sewer, and stormwater improvement plans shall be reviewed and approved by the Miles City Public Works Department and be built to applicable city standards, with the exception of the street grade of Horizon Parkway, which a variance has been granted for, to allow maximum street grades of 6 to 8% for a segment of approximately 275 feet as represented by the roadway as-builts dated 10/8/2025 by Brosz Engineering, Inc. All applicable specifications and requirements of the approved plans shall be met and certified by a professional engineer.

Alternatives to Grade Variance and Condition 18 Amendment:

Should the variance not be granted and if Condition 18 is not amended, the City Council should provide direction as to what actions should be taken to achieve compliance with the 5% street grade standard, such as:

1. Directing the staff to seek an engineer for the City to contract with to utilize the funds to have Horizon Parkway engineered to comply with City standards, and a contractor to rebuild Horizon Parkway with said funds (Note: It is very possible there would be insufficient funds to contract with an engineer and road builder to bring the street in compliance with the 5% maximum road grade standard); OR,
2. Granting the subdivider an extension to complete the improvements per the engineer's design that complied with the 5% maximum grade standard, subject to keeping the street improvements part of the Fourth Amended SIA, requiring new bids for the completion of the improvements and associated certifications; and providing additional security, if required; this would require additional review by the City Council at a later date.

Acceptance of Horizon Parkway improvements:

The attached Resolution No. 4683 has been drafted to provide City Council acceptance of the Horizon Parkway improvements. For the City Council to accept the improvements at this time, the above variance would need to be granted and the amendment to Condition 18 would need to be approved. Based on the reviewer's and Public Works Director's reviews of the as-built plans, the improvements substantially comply with City standards with the exception of the street grade.

Upon approval of the variance and amendment requests, the reviewer recommends the Council accept the Horizon Parkway improvements as complete, and release the portion of the funds being withheld for those portions of the improvements to the subdivider.

The estimated costs of the Horizon Parkway improvements remaining at the time of approval of the Third Amended SIA was \$284,772.75. That amount multiplied by 150% per the MCSR is \$427,159.125, which is the amount of the funds that could be released to the subdivider if the improvements are accepted as complete. Resolution No. 4683 has been drafted to provide a release of that amount.

Acceptance of Parkhill Drive turnaround improvements: The City Council will also consider whether to accept the paving of the Parkhill Drive turnaround as complete, which would allow for an associated partial release of the funds the City is holding for paving of the turnaround. The attached Resolution No. 4683 has been drafted to provide acceptance of the Parkhill Drive turnaround improvements.

The estimated costs of the Parkhill Drive turnaround improvements remaining at the time of approval of the Third Amended SIA was \$27,650. That amount multiplied by 150% is \$41,475, which is the amount of the funds that could be released to the subdivider if the improvements are accepted as complete. Resolution No. 4683 has been drafted to provide a release of that amount.

Acceptance of 'no parking' sign installation: The City Council will also consider whether to accept the sign installation as complete, which would allow for an associated partial release of the funds the City is holding for the sign and installation. The attached Resolution No. 4683 has been drafted to provide acceptance of the 'no parking' sign installation.

The estimated costs of the 'no parking' sign improvement remaining at the time of approval of the Third Amended SIA was \$150. That amount multiplied by 150% is \$225, which is the amount of the funds that could be released to the subdivider if the improvements are accepted as complete. Resolution No. 4683 has been drafted to provide a release of that amount.

Amendment request for electrical utilities not being installed 'to each lot': The City Council will also consider an amendment to Condition 23 of the conditional approval to allow the electrical utilities to not be installed 'to each lot'. This amendment is also subject to acceptance of the proposed Utility Easement. The attached Resolution No. 4682 has been drafted to provide approvals of the amendment.

Acceptance of electrical utilities installation: The City Council will also consider whether to accept the electrical utilities as complete, which would allow for an associated partial release of the funds the City is holding for the installation. The attached Resolution No. 4683 has been drafted to provide acceptance of the 'no parking' sign installation.

The estimated costs of the electrical utilities installation remaining at the time of approval of the Third Amended SIA was \$43,637.57. That amount multiplied by 150% is \$65,456.355, which is the amount of the funds that could be released to the subdivider if the improvements are accepted as complete. Resolution No. 4683 has been drafted to provide a release of that amount.

Acceptance of certifications for the completed improvements: The City Council will also consider whether to accept the subdivider's certifications, as well as the engineering certifications as complete, which would allow for an associated partial release of the funds the City is holding for the engineering certifications. The attached Resolution No. 4683 has been drafted to provide acceptance of the certifications.

The estimated costs of the engineering certifications remaining at the time of approval of the Third Amended SIA was \$35,000. That amount multiplied by 150% is \$52,500; however, because the mailbox facilities remain incomplete and uncertified, the subdivision administrator has inquired with the engineer about the cost of the remaining engineering/certification and that was estimated to be approximately \$5,000, that amount multiplied by 150% is \$7,500; therefore that amount should be withheld in association with the mailbox facilities. Resolution No. 4683 has been drafted to adjust for that amount to be withheld for the mailbox installations and certifications. Please see further discussion below.

Extension request for installation of mailbox facilities: The City Council will also consider whether to provide until August 31, 2026 for the subdivider to install the required mailbox facilities and cause the installations to be certified complete by the subdivider and project engineer. The attached Resolution No. 4683 and Fourth Amended SIA have been drafted to provide until August 31, 2026 for the subdivider to install the required mailbox facilities and cause the installations to be certified complete by the subdivider and project engineer.

Fourth Amended Subdivision Improvements Agreement: The City Council will also consider whether to approve a Fourth Amended Subdivision Improvements Agreement, which would accept the above improvements as complete, with the exception of the mailbox facilities, provide the subdivider a new deadline of August 31, 2026 to complete and provide certifications of the mailbox facilities, and allow a partial release of funds. The attached Resolution No. 4683 and Fourth Amended SIA have been

drafted to accomplish the above.

The following table outlines the estimated costs of each of the improvements that appear to be completed and certified, with the 150% adjustment for financial security per the MSCR, for calculating the potential partial release of funds and amount to withhold for the mailbox facilities.

<b>Completed Improvement</b>	<b>Estimated Cost, \$</b>	<b>Estimate \$ x 150%</b>	
<b>Horizon Parkway improvements</b>	284,772.75	427,159.125	
<b>Parkhill Drive turnaround</b>	27,650	41,475	
<b>No parking sign</b>	150.00	225.00	
<b>Electrical utilities</b>	43,637.57	65,456.355	
<b>Brosz Engineering final certification</b>	35,000	52,500	
<b>Totals</b>	<b>391,210.32</b>	<b>586,815.48*</b>	*amount to release for acceptance of above improvements*

\*The amount currently being held by the City is \$605,866.00. Based on acceptance of the above improvements, the amount that could be released is \$586,815.48, and the amount to withhold for mailboxes would be \$19,050.52; however, per Rylan Limesand via an email dated 2/23/26, *“The engineering cost for the mailboxes is approximately \$5,000. The total cost for the mail facilities would be \$17,700. Based on the 150% of the estimated costs, the withhold amount would be \$26,550.”*

With the estimated costs of \$8,700 for the mailboxes, \$4,000 for the concrete and installation, and \$5,000 for the engineering/certification, the total cost for the mail facilities would be \$17,700. The reviewer concurs with the engineer that based on the 150% of the estimated costs, the withhold amount would be \$26,550. Therefore, the recommended release amount contemplated by Resolution No. 4683 and the Fourth Amended SIA is \$579,316.

Potential third party review fees:

As mentioned previously, the November 12 email from the subdivision administrator to the subdivider and project engineer explained that in dealing with all of the past extension requests, the drawn-out partial certifications and failure to complete improvements, the SIA enforcement, potential amendments/variances, etc., the City was losing money. By having to pay the contract planner (subdivision administrator) to review every change and deviation from the original agreement, the subdivider could be deemed responsible for the costs of administration of the ever-changing agreements. The subdivision administrator informed the subdivider that the City may begin implementing the following provision from the fee schedule adopted by Resolution No. 4022 by keeping those amounts from the check to cover some of the administration costs:

N. In addition to the fees set forth in Subsections A through L above, there shall be charged the actual fees and expenses charged by consultants, including, but not limited to attorneys, examining land surveyors, planners, engineers, sanitarians, and other specialists involved in such review.

The subdivision administrator advised the subdivider and project engineer that whether that provision for assessing third party review fees and the start date were yet to be determined. Those determinations should be made by Council, as they have not been applied to subdivision reviews over the past 10+ years if ever.

**The attached resolutions do not include the City applying the above provision or withholding funds for third party review.** The Council would likely need to table Resolution No. 4683 and the Fourth Amended SIA to accomplish this, or provide a basis for what will be withheld for third party review.

The subdivision administrator has reviewed past invoicing from Geoplant LLC for contract planning services associated with administration of the City View SIAs since the start of 2023, when Geoplant was assigned the planning services contract and at the approximate time when the subdivider began requesting extensions and other changes to the SIAs:

- 2023: 33.75 hours in 2023 x \$96/hour = \$3,240
- 2024: 20.5 hours x \$96/hour = \$1,968
- 2025: 40.5 hours x \$96/hour = \$3,888, of which 5.5 hours followed the day the subdivider was advised of the potential 3<sup>rd</sup> party review fees on November 12; 5.5 hours \$96 = \$528
- Jan/Feb 2026: 8 hours x \$96/hour = \$768
- March/April 2026 to date, as of April 22, 2026 which has yet to be invoiced, and does not include full completion of the April 28 Council packet: 21.25 hours x \$96/hour = \$2,040

Since November 13, 2025, the costs for planning services for administration of this review are at \$3,336, but not including 4/23 through anything else required to close out the SIA.

These figures also do not contemplate other unrecoverable costs of administration of the SIA, such as City Attorney and Public Works Department involvement, the Clerk's Office time, printing, Council time, publishing legal notices and mailing notices, etc. For example, the cost of the newspaper notice alone for this Council review was \$556.99.