

**A G E N D A   R E P O R T**

**DATE** November 6, 2007

**ITEM** Public Hearing - Resolution 9710 to Annex and Ordinance 2985 to Establish City Zoning for Lot 5, Block 1, International Malting Company, LLC Addition

**INITIATED BY** Montana Megawatts I LLC, (Montgomery Energy) Property Owner

**ACTION REQUESTED** Commission Adopt Resolution 9710 and Ordinance 2985 and Approve Annexation Agreement related to Lot 5, Block 1, International Malting Company, LLC Addition

**PREPARED BY** Bill Walters, Senior Planner

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

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**RECOMMENDATION:**

The City Planning Board has recommended the City Commission annex Lot 5, Block 1, International Malting Company, LLC Addition and the abutting segment of U.S. Highway 87, and the City Zoning Commission has recommended a zoning classification of I-2 Heavy industrial district be assigned to same.

**MOTIONS** (Each motion to be separately considered):

“I move the City Commission adopt Resolution 9710 and approve the Annexation Agreement related to Lot 5, Block 1, International Malting Company, LLC Addition.”

and

“I move the City Commission adopt Ordinance 2985.”

**SYNOPSIS:**

Resolution 9710 annexes Lot 5, Block 1, International Malting Company, LLC Addition and the abutting segment of U.S. Highway 87. Ordinance 2985 assigns a zoning classification of I-2 Heavy Industrial district to subject Lot 5 upon annexation to the City.

**BACKGROUND:**

Montana Megawatts I LLC, has submitted applications regarding the following:

- 1) Annexation to the City of Lot 5, Block 1, International Malting Company, LLC Addition, in Section 30, Township 21 North, Range 4 East, Cascade County, Montana.
- 2) Rezoning the above described Lot 5 from the current County “I-1” Industrial District to the City zoning classification of I-2 Heavy industrial district upon annexation to the City;

Subject Lot 5 totaling 54.86 acres is located between U.S. Highway 87 and the malt processing plant north of Black Eagle. The applicant intends to complete construction and activate a natural gas electric generator on the site. Also proposed to be annexed is the abutting right-of-way for U.S. Highway 87.

For additional information, please refer to the Vicinity/Zoning Map attached to Resolution 9710 as Exhibit “A”.

Lot 5 currently has access directly from U.S. Highway 87. There have been discussions with the applicant about providing access via an on-site driveway that would connect to the existing roadway paralleling the south boundary of Lot 5 and which also serves the malt processing plant. This existing access to U.S. Highway 87 was established with the intent to serve multiple proposed users in the area. The Montana

Department of Transportation is currently designing improvements to U.S. Highway 87, including turn lanes. Improvements are anticipated in 2009-10.

A main to provide potable water is proposed to be extended into the development site from the existing City main paralleling the south boundary of subject Lot 5. A sanitary sewer main will be extended westerly from the existing City sanitary sewer main near Black Eagle Road. Storm water retention areas are proposed within Lot 5. Operation of the energy power plant will require a significant amount of raw water that will be pumped and piped from the Missouri River.

#### Zoning Analysis:

Subject Lot 5 is presently zoned in the County as "I-1" Light Industrial District. It is proposed Lot 5 be zoned I-2 Heavy industrial district upon annexation to the City. Section 76-2-304 Montana Code Annotated lists criteria and guidelines which must be considered in conjunction with rezoning and establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Subject Lot 5 is essentially surrounded by dry land grain fields with the exception of U.S. Highway 87 bordering its west boundary and the barley malt plant located immediately to the southeast on a 40-acre tract which is presently within the City and zoned I-2 Heavy industrial district.

The overall area, in which subject Lot 5 is located, is being promoted as an extended industrial complex, with the existing malt plant being the first and most prevalent operation supported by the recent extension of City water and sewer services and a spur connection to the BNSF Railroad.

Goals of the Economic Element of the Great Falls Growth Policy include:

- Enhance, strengthen, and expand the existing economic base.
- Attract new businesses and support expansion of existing businesses that tend to raise the median income level.
- Encourage businesses and industries that will utilize existing infrastructure.

Annexation of subject property will enhance health, safety and welfare through application of City Codes and provision of municipal services.

The proposed industrial zoning classification is consistent with recent rezonings in the area including both incorporated and unincorporated properties. The proposed natural gas electric generating plant will have the capability to serve both existing and future industrial operations in the vicinity. Therefore, staff concludes the above-cited criteria are substantially met.

The Planning Board/Zoning Commission conducted a public hearing on the applications on August 14, 2007. Mr. Taylor Cheek of Montgomery Energy, Mr. Brett Doney, president of the Great Falls Development Authority, and Mr. Lyle Meeks of NCI Engineering all spoke in support of the project and annexation. The applications have not generated any opposition to date. At the conclusion of the public hearing, the Planning Board passed a motion recommending the City Commission approve the annexation of Lot 5, Block 1,

International Malting Company, LLC Addition, and the abutting portion of U.S. Highway 87 subject to the following conditions being fulfilled by the applicant:

- 1) An annexation agreement shall be prepared containing terms and conditions for annexation/rezoning of subject lot including agreement by the applicant:
  - a) to design and install, within two years of the date of annexation of subject Lot 5, the public water and sanitary sewer mains necessary to serve the development on the property;
  - b) to relocate, when deemed necessary by City, the primary access for Lot 5 from U.S. Highway 87 to the existing roadway paralleling the south boundary of the lot; and
  - c) to adhere to a parking and landscaping plan to be submitted for approval either in advance of or through the building permit application process; and
- 2) All applicable fees owed as a condition of annexation approval shall be paid prior to consideration of the annexation by the City Commission, including:
  - a) resolution of annexation fee \$100.00
  - b) storm sewer fee (\$250/acre x 54.86 acres) \$13,715.00
  - c) recording fees for annexation documents (\$11 per page x 10 pages) \$110.00

The Zoning Commission, at the conclusion of the public hearing, unanimously passed a motion recommending the City Commission assign a zoning classification of I-2 Heavy industrial district to Lot 5, Block 1, International Malting Company, LLC Addition, being annexed to the City.

Attach: Resolution 9710 with Vicinity/Zoning Map  
Ordinance 2985  
Annexation Agreement

Cc: Taylor Cheek, Montgomery Energy Partners LP, 1250 Capital of Texas Hwy. South Bldg. 3, Ste. 400, Austin TX 78746

**ANNEXATION AGREEMENT  
FOR  
LOT 5, BLOCK 1,  
INTERNATIONAL MALTING COMPANY,  
LLC ADDITION,  
IN SECTION 30,  
TOWNSHIP 21 NORTH, RANGE 4 EAST,  
CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007, between the MONTANA MEGAWATTS I LLC, a Delaware limited liability company, hereinafter referred to as "Owner," and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as "City," regarding the requirements for annexation to the corporate limits of City of Lot 5, Block 1, International Malting Company, LLC Addition, in Section 30, Township 21 North, Range 4 East, Cascade County, Montana, with said Lot 5 hereinafter referred to as "Lot 5."

2. SUPPORTING DOCUMENTS

A. The Minor Subdivision Plat of International Malting Company, LLC Addition, prepared by Babb Land Surveying, Inc., and filed under P-2005-0000058 in the office of the Clerk and Recorder of Cascade County, Montana, on the 17th day of November, 2005.

B. Water Service Agreement dated \_\_\_\_\_, 2007, between Owner and the City of Great Falls, Montana.

C. Sewer Service Agreement dated \_\_\_\_\_, 2007, between Owner and the City of Great Falls, Montana.

3. FEES AND CHARGES

A. Prior to annexation of Lot 5, Owner shall, in addition to the Annexation Application Fee of \$100.00, Zoning Application Fee of \$400.00 and Annexation Agreement Fee of \$200.00, which City hereby acknowledges have been paid in full by Owner, pay the following required fees:

a) Resolution of Annexation Fee	\$100.00
b) Storm sewer fee (\$250/acre x 54.86 acres)	\$13,715.00
c) Recording fees for Agreement and Resolution (\$11 per page x 10 pages)	<u>110.00</u>
Total fees made payable to City of Great Falls	\$13,925.00

B. The absence of any fee from this Agreement that otherwise may be lawfully charged by the City in connection with construction activity associated with Lot 5, shall not constitute a waiver by the City.

4. WATER AND SANITARY SEWER IMPROVEMENTS

Owner hereby agrees to complete within two (2) years of the date of this Agreement, the installation of water mains and sanitary sewer mains to serve Lot 5, according to engineering drawings and specifications caused to be prepared by Owner and approved by and filed in the City Engineer's Office.

5. FUTURE STORM DRAINAGE FACILITIES

Owner hereby agrees to waive right to protest any future area wide special improvement district for storm drainage facilities and further agrees to pay a proportionate share of any future storm drainage improvements which service Lot 5 that may be installed with or without an area wide special improvement district. The term "area wide" as used herein, means any area larger than that covered by Lot 5 which is a contributor to the drainage sub-basin of which Lot 5 is a part.

6. INFRASTRUCTURE EASEMENTS

Owner hereby agrees to provide to City, prior to Owner receiving service from said water and sanitary sewer systems, reasonable appropriate easements to accommodate said water and sanitary sewer systems to serve Lot 5. Owner further agrees to provide, when reasonably deemed necessary by City, any additional easements within the Minor Plat of International Malting Company, LLC Addition, to accommodate future infrastructure, including, but not limited to, the water systems, sanitary sewer systems, roadways, utilities, etc., referenced in Paragraph 8 herein below, with the location of said easements to be determined mutually between Owner and City.

7. PERMIT COMPLIANCE

Owner hereby agrees to adhere to all parking, landscaping, signage, fire hydrant installation, and exterior lighting provisions stipulated by the City Community Development Department and City Fire Department in conjunction with permit issuance for development and construction on Lot 5.

8. MASTER PLAN AND RESULTANT INFRASTRUCTURE  
Owner hereby agrees to cooperate and participate with development of an overall conceptual plan for the contemplated value added agricultural commodities park comprising in part the Minor Plat of International Malting Company, LLC Addition. Owner further agrees, if and when deemed necessary by City, to dedicate Lot 4 of the Minor Plat of International Malting Company, LLC Addition, as public road and utility right-of-way and to pay for proportionate share of the costs of paving said roadway to a standard determined by City.
9. VEHICULAR ACCESS  
Lot 5 is presently accessible from U.S. Highway 87, a paved roadway maintained by the Montana Department of Transportation. Upon the natural gas electric generator on Lot 5 becoming operational, Owner hereby agrees to direct vehicular traffic to and from Lot 5, via the existing approach on U.S. Highway 87 located at the southwest corner of Lot 5. The sole exception to this provision shall be delivery of large equipment/long loads associated with construction activities on Lot 5 which shall be permitted to utilize (with the consent of the Montana Department of Transportation) the existing approach to U.S. Highway 87 along the west boundary of Lot 5.
10. WAIVER OF PROTEST OF ANNEXATION  
Owner does hereby waive any and all statutory procedure notice on right of protest to annexation of Lot 5, as provided for by State law.
11. ANNEXATION PREREQUISITES  
Lot 5 is contiguous to City; is not included within the boundary of any other incorporated municipality; and is not a part of any fire district existing or organized under any of the provisions of Chapter 33, Title 7, of the Montana Code Annotated. Lot 5, upon annexation to City and completion of the contemplated public water system to serve Lot 5, will be provided fire protection services by City comparable to that provided other incorporated properties.
12. MAINTENANCE DISTRICTS  
In connection with the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant and street maintenance, Owner shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to Lot 5.
13. PUBLIC ROADWAY LIGHTING  
In connection with the lawful implementation of any future special lighting district for public roadway lighting facilities that service Lot 5, Owner agrees to pay a proportionate share of the costs associated with roadway lighting which service Lot 5 that may be installed with or without a special lighting district.
14. CITY ACCEPTANCE AND ZONING  
In consideration of the foregoing, City hereby accepts and approves Lot 5 for incorporation by annexation into the corporate limits of the City of Great Falls, Montana, under an I-2 Heavy industrial district zoning classification. It is hereby understood that the preceding language regarding zoning of Lot 5 does not

preclude City from reclassifying Lot 5 if an area wide reclassification is undertaken, in which event City agrees to reclassify Lot 5 as a conforming use.

15. BINDING EFFECT

The provisions, covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns; and any and all parties claiming by, through, or under them, shall be taken to agree and covenant with each of the parties to the Agreement, their devisees, heirs, successors and assigns, to conform to the provisions, covenants and terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day, month and year first hereinabove written.

THE CITY OF GREAT FALLS, MONTANA  
A Municipal Corporation of the State of Montana

\_\_\_\_\_  
John W. Lawton, City Manager

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

State of Montana )  
                                  :ss.  
County of Cascade)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year A. D. Two thousand and seven, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John W. Lawton known to me to be the City Manager of the City of Great Falls, Montana, is the person whose name is subscribed to the instrument within and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
Notary Public (Printed or Typed)  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_, 20\_\_\_\_

(NOTARIAL SEAL)

MONTANA MEGAWATTS I LLC

By: \_\_\_\_\_

State of \_\_\_\_\_ )  
  :ss.  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year A. D. Two thousand and seven, before me, the undersigned, a Notary Public for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ whose name is subscribed to the instrument within and acknowledged to me that (s)he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

\_\_\_\_\_  
Notary Public (Printed or Typed)

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_, 20\_\_\_\_

(NOTARIAL SEAL)