

# CITY OF BILLINGS

***CITY OF BILLINGS MISSION STATEMENT:  
TO DELIVER COST EFFECTIVE PUBLIC SERVICES  
THAT ENHANCE OUR COMMUNITY'S QUALITY OF LIFE***

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## AGENDA

**COUNCIL CHAMBERS**

**June 26, 2006**

**6:30 P.M.**

**CALL TO ORDER – Mayor Tussing**

**ROLL CALL**

**MINUTES – June 12, 2006.**

**COURTESIES**

**PROCLAMATIONS**

**ADMINISTRATOR REPORTS – Tina Volek**

### **REGULAR AGENDA:**

1. **PUBLIC HEARING AND VARIANCE #CC06-02:** variances from Site Development Section 6-1208(h)(5) re: driveways and Section 6-1208(j)(2) re: curb cuts in Kingston Place Subdivision, Jeff Junkert, developer. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 1\)](#)
2. **PUBLIC HEARING AND RESOLUTION** vacating a 193.67-foot portion of Kyhl Lane right-of-way across the north portion of Brewington Park and the north 30 feet of Lot 1, Block 3, Bellville Sub. Steve Kerns, petitioner. Staff recommends approval of the vacation at no cost. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING AND RESOLUTION** transferring \$11,000.00 of Council Contingency Funds to the Public Safety Fund (Police) for overtime when enforcing the fireworks ordinance on July 1-4, 2006. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 3\)](#)

4. **PUBLIC HEARING AND RESOLUTION** using \$25,850.00 of Council Contingency Funds for sound system improvements in the Council Chambers. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND RESOLUTION** establishing fees for various applications and services provided by the City/County Planning Dept. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 5\)](#)
6. **ROCKY MOUNTAIN COMMUNITY CHURCH:**
  - A. **PUBLIC HEARING AND RESOLUTION** annexing 5.651 acres in petition Annex #06-06: C/S 1011, Tr. B Amended, and adjoining rights-of-way in Grand Ave. and Zimmerman Trail, located east of 34<sup>th</sup> St. W and north of Grand Ave., Rocky Mountain Community Church, petitioner. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 6A\)](#)
  - B. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #782:** A zone change from Agriculture Open-Space to Community Commercial on a 3.96-acre parcel described as: Tract B of C/S 1011 Amended, and located on the northeast corner of the intersection of Zimmerman Trail and Grand Ave. Rocky Mountain Community Church, applicant; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 6B\)](#)
7. **PUBLIC HEARING AND RESOLUTION** annexing 2.66 acres in petition #06-08: two portions of C/S 1834, Tract 3-C-1, located north of Rimrock Rd. at 50<sup>th</sup> St. W, Aviara, Inc., petitioner. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 7\)](#)
8. **PUBLIC HEARING AND SPECIAL REVIEW #815:** A special review to locate a microbrewery with a sample room in a Central Business District zone on a 14,000-square foot parcel of land described as Lots 1-4, Block 89, O.T. and located at 2405 1<sup>st</sup> Ave. N. Donald Lee, owner; Tim Mohr, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 8\)](#)
9. **PUBLIC HEARING AND SPECIAL REVIEW #816:** A special review to allow a 4-plex apartment in a Residential-6,000 zone on an 11,000-square foot parcel of

land described as: Lot 24A & 25, Block 13, Broadwater Subdivision and located at 1151 Howard Avenue. Robert & Kari Pearson owners; Michael Stock, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 9\)](#)

- 10. PUBLIC HEARING AND SPECIAL REVIEW #819:** A special review to expand an existing church in a Residential-9,600 zone and a Community Commercial zone on a 16.76-acre parcel of land described as: Tracts 1 & 2, C/S 3106, Tract 1, C/S 3230 and located at 517 Shiloh Road. International Church of the Foursquare Gospel (Faith Chapel), owner; Engineering, Inc., agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 10\)](#)

- 11. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #779:** A zone change from Residential Professional to Neighborhood Commercial on a 1.26-acre parcel described as: Lots 2B and 2C, Block 1 of Hancock Grand Subdivision, and located at: 3737 Grand Avenue. Darrell Kreitzberg, applicant. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 11\)](#)

- 12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #780:** A zone change from Residential-9,600 to Residential Multi-family on a 16,800-square foot parcel described as: Lot 21, Block 16 of Lake Hills Sub., 16<sup>th</sup> filing, and located at: the intersection of Green Briar Rd. and Clubhouse Way. Jerry Wolf, owner and applicant. Zoning Commission recommends denial of the zone change. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 12\)](#)

- 13. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #781:** A zone change from Community Commercial to Public on a 6.14-acre parcel described as: Tract 1-B-2 of C/S 2277, and located at: 3803 Central Avenue. Board of Regents of Higher Education, owner; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 13\)](#)

- 14. PUBLIC HEARING CONTINUED AND FIRST READING ORDINANCE FOR ZONE CHANGE #773:** text amendments to Section 27-611 of the Unified Zoning Regulations regarding sexually-oriented businesses. (Delayed from 2/13/06).

Zoning Commission recommends approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 14\)](#)

- 15. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
*(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)*

## **COUNCIL INITIATIVES**

## **ADJOURN**

*(NOTE: Additional information on any of these items is available in the City Clerk's Office)*

**Visit our Web site at:  
<http://ci.billings.mt.us>**

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 26, 2006**

**TITLE:** Public Hearing & Site Development Ordinance Variance(s) #CC06-02  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** Dave Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** The Developer, Jeff Junkert, is wishing to construct two condominium developments within Kingston Place Subdivision. The developments would include six condominiums in three units on Lot 1, Block 1, Kingston Place Subdivision and fourteen condominiums in seven units on Lot 1, Block 6, Kingston Place Subdivision. The Developer is requesting variances from the Site Development Ordinance, Section 6-1208(h)(5), and Section 6-1208(j)(2).

**ALTERNATIVES ANALYZED:**

1. a. Approve the variance allowing more than two drive approaches per lot.  
b. Do not approve the variance allowing more than two drive approaches per lot.
2. a. Approve the variance allowing curb cuts serving the same property to be separated by less than 25 feet of full height curb.  
b. Do not approve the variance allowing curb cuts serving the same property to be separated by less than 25 feet of full height curb.

**FINANCIAL IMPACT:** There is no financial impact associated with these variances.

**RECOMMENDATION**

Staff recommends that Council approve both of the variances.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

- A. Site Plan (1 page)
- B. Letter of Acknowledgement from Developer (1 page)

## **INTRODUCTION**

The Developer is requesting variances from the Site Development Ordinance, Section 6-1208(h)(5), and Section 6-1208(j)(2). Section 6-1208(h)(5) pertains to the maximum number of drive approaches allowed per property, and Section 6-1208(j)(2) pertains to the distance separating drive approaches serving the same property. The City of Billings had approved the site plan with the stipulation that if City Council does not approve both the variances, the Developer will be required to complete the necessary steps to bring the site into compliance.

## **BACKGROUND**

The first variance the Developer is seeking concerns the number of drive approaches one property may have. The Site Development Ordinance reads as follows:

*Section 6-1208(h)(5)*

Frontages of sixty (60) feet or less shall be limited to one (1) driveway. Not more than two (2) driveways shall be provided to any single property tract or business establishment, except where the property frontage exceeds six-hundred (600) feet, there may be one (1) additional driveway for each additional three-hundred feet of frontage.

The second variance the Developer is seeking concerns the distance that separates drive approaches from each other. The Site Development Ordinance is as follows:

*Section 1208(j)(2)*

Two (2) or more curb cuts serving the same property must be separated by islands with full height curb not less than twenty-five (25) feet long.

## **ALTERNATIVES ANALYSIS**

1. a. Approve the variance allowing more than two drive approaches per lot. Approval of this variance will allow for five drive approaches on Lot 1, Block 1, and nine drive approaches on Lot 1, Block 6, both of which are more drive approaches per lot than what the City Ordinance allows.
- b. Do not approve the variance allowing more than two drive approaches per lot. Denying this variance will require the Developer to either amend the original plat and break up Lot 1, Block 1 and Lot 1, Block 6 into smaller lots, or build fewer condominiums on each lot.
2. a. Approve the variance allowing curb cuts serving the same property to be separated by less than 25 feet of full height curb. Approval of this variance will allow the drive approaches to be closer together than what the City Ordinance allows.
- b. Do not approve the variance allowing curb cuts serving the same property to be separated by less than 25 feet of full height curb. Denying this variance will require

the Developer to either amend the original plat and break up Lot 1, Block 1 and Lot 1, Block 6 into smaller lots, or build fewer condominiums on each lot.

### **RECOMMENDATION**

Staff recommends that Council approve both of the variances.

### **ATTACHMENTS**

- A. Proposed Site Plan (1 page)
- B. Letter of Acknowledgement from Developer (1 page)

ATTACHMENT B (page 1 of 1)

May 9, 2006

Tyler Westrope  
City of Billings – Engineer Division  
510 N. Broadway – 4<sup>th</sup> Floor  
Billings, MT 59101

Reference: Kingston Place Condominiums  
E.I. No. 98098.13

Dear Mr. Westrope:

An application for variance from Site Development Ordinance, Section 6-1208 has been submitted to the City of Billings – Engineering Division for Kingston Place Condominiums, Kingston Place Subdivision to allow for multiple driveways into the condominium lots.

I understand the variance request may not be approved prior to issuance of the building permits. I agree to redesign the site layout for Kingston Place Condominiums to obtain the finalized building permit if the variance request is denied.

Please feel free to contact me if you have any questions.

Sincerely,



Jeff Junkert

Jeff Junkert Construction  
2650 Overland Avenue  
Billings, MT 59102  
(406) 208-9340

P:98098.13

[\(Back to Regular Agenda\)](#)



## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 26, 2006**

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**TITLE:** Public Hearing and Resolution - Vacation of Right-of-Way for a Portion of Kyhl Lane

**DEPARTMENT:** Public Works Department – Engineering Division

**PRESENTED BY:** David D. Mumford, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The preliminary plat for Bellville Subdivision was approved at the January 9, 2006, City Council meeting. Originally Kyhl Lane was platted to extend from Bench Boulevard to Hawthorne Lane. With the creation of Bellville Subdivision, a portion of Kyhl Lane will no longer be needed. The developer, Steve Kerns, has submitted a petition to vacate a portion of Kyhl Lane right-of-way, as indicated on attached Exhibit A. The right-of-way to be vacated is approximately 193.67 feet long by 30 feet wide and is located on the north 30 feet of Brewington Park and the north 30 feet of Lot 1, Block 3, Bellville Subdivision. The portion of street being vacated is 5,810 square feet, of which 3,408 square feet will be added to Brewington Park and the remaining area will be added to Lot 1, Block 3.

**ALTERNATIVES ANALYZED:**

- After holding a public hearing, approve the vacation of a portion of Kyhl Lane.
- After holding a public hearing, do not approve the vacation of a portion of Kyhl Lane.

**FINANCIAL IMPACT:** The portion of Kyhl Lane, which is to be vacated to the property owner, is valued at \$0.46 per square foot. With an area of 2,401.50 sq. ft., the cost to vacate the right-of-way to the property owner is \$1,104.69. The portion of Kyhl Lane, which is to be vacated and returned to parkland, is also valued at \$0.46 per square foot. With an area of 3,409 sq. ft, the cost to vacate the right-of-way and return it to parkland is \$1,576.69. To be consistent with Administrative Order #56, staff recommends that the property owner, Steve Kerns, purchase the right-of-way, which is to be vacated to himself, at the appraised price of \$1,104.69, and the portion of right-of-way, which is to be returned to parkland, be vacated at no cost.

**RECOMMENDATION**

Staff recommends that Council approve the vacation of Kyhl Lane located within Bellville Subdivision, Billings, Montana.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENTS**

- A.     Site Map (one page)
- B.     Appraisal Report (six pages)

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, DISCONTINUING AND VACATING a portion of Kyhl Lane which is 193.67 feet long by 30 feet wide and is located on the north 30 feet of Brewington Park and the north 30 feet of Lot 1, Block 3, Bellville Subdivision.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of a portion of Kyhl Lane which is 193.67 feet long by 30 feet wide and is located on the north 30 feet of Brewington Park and the north 30 feet of Lot 1, Block 3, Bellville Subdivision as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., a portion of Kyhl Lane which is 193.67 feet long by 30 feet wide and is located on the north 30 feet of Brewington Park and the north 30 feet of Lot 1, Block 3, Bellville Subdivision and more particularly described as Beginning at a point 82.5 feet N 89°56'51"E from the NW corner of the SE ¼, SW ¼, Section 14, T1N, R26E, P.M.M.; thence N 89°56'51"E a distance of 193.67 feet, thence S 00°16'58"W a distance of 30 feet; thence S 89°56'51"W a distance of 193.67 feet; thence N 00°16'58"E a distance of 30 feet to the point of beginning; said described tract having a area of 5810.10 square feet. All of which is situated in the SE ¼, SW ¼ of Section 14, T1N., R26E., P.M.M, in the City of Billings, Yellowstone County, Montana, is/are hereby discontinued, abandoned and vacated.
2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described portion of Kyhl Lane which is 193.67 feet long by 30 feet wide and is located on the north 30 feet of Brewington Park and the north 30 feet of Lot 1,

**Block 3, Bellville Subdivision** is in the best interest of the public and can be done without any public detriment. Ownership of the vacated area will revert to the adjacent owner of Lot 1, Block 3, Bellville Subdivision, Steve Kerns, and the City of Billings, owner of Brewington Park.

PASSED by the City Council and APPROVED this 26th day of June, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AE CITY CLERK

## LAND APPRAISAL REPORT

File No. 0000882

Borrower <u>None</u>		Census Tract <u>0880-7.02</u> Map Reference <u>None</u>	
Property Address <u>C/S 485, Tract A</u>			
City <u>Billings</u>	County <u>Yellowstone</u>	State <u>MT</u>	Zip Code <u>59105</u>
Legal Description <u>C/S 385, Tract A less 11,926 square feet of the northeast corner of said description.</u>			
Sale Price \$ <u>N/A</u>	Date of Sale <u>N/A</u>	Loan Term <u>N/A</u> yrs.	Property Rights Appraised <input checked="" type="checkbox"/> Fee <input type="checkbox"/> Leasehold <input type="checkbox"/> De Minimis PUD
Actual Real Estate Taxes \$ <u>Unknown</u> (yr)	Loan charges to be paid by seller \$ <u>N/A</u>	Other sales concessions <u>None</u>	
Lender/Client <u>Steve Kerns</u>	Address <u>1052 Kyhl Lane</u>		
Occupant <u>Vacant</u>	Appraiser <u>Rob Swenson</u>	Instructions to Appraiser <u>Appraise 6.87 acres within C/S 485, Tract A.</u>	

Location	<input checked="" type="checkbox"/> Urban	<input checked="" type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Employment Stability Convenience to Employment Convenience to Shopping Convenience to Schools Adequacy of Public Transportation Recreational Facilities Adequacy of Utilities Property Compatibility Protection from Detrimental Conditions Police and Fire Protection General Appearance of Properties Appeal to Market
Built Up	<input checked="" type="checkbox"/> Over 75%	<input checked="" type="checkbox"/> 25% to 75%	<input type="checkbox"/> Under 25%	
Growth Rate	<input type="checkbox"/> Fully Dev.	<input checked="" type="checkbox"/> Rapid	<input type="checkbox"/> Slow	
Property Values	<input checked="" type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining	
Demand/Supply	<input checked="" type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Oversupply	
Marketing Time	<input checked="" type="checkbox"/> Under 3 Mos.	<input checked="" type="checkbox"/> 4-6 Mos.	<input type="checkbox"/> Over 6 Mos.	
Present Land Use	<input checked="" type="checkbox"/> 85% 1 Family	<input type="checkbox"/> 5% 2-4 Family	<input type="checkbox"/> % Apts. <input type="checkbox"/> 3% Condo <input type="checkbox"/> 1% Commercial	
Change in Present Land Use	<input type="checkbox"/> Industrial	<input type="checkbox"/> % Vacant	<input type="checkbox"/> %	
	<input type="checkbox"/> Not Likely	<input type="checkbox"/> Likely (*)	<input checked="" type="checkbox"/> Taking Place (*)	
	(*) From <u>Vacant</u>	To <u>Residential Built Up</u>		
Predominant Occupancy	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<input type="checkbox"/> 5 % Vacant	
Single Family Price Range	\$ <u>120,000</u> to \$ <u>375,000</u>		Predominant Value \$ <u>145,000</u>	
Single Family Age	New yrs. to <u>90</u> yrs.		Predominant Age <u>18</u> yrs.	

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): The subject neighborhood is a mixed single family neighborhood with some infill vacant acreage. Highest and best use is for residential development. The demand is strong for small residential developments, is acreage of less than 20 acres that is close to public services.

Dimensions <u>Irregular</u>	=	<u>6.7</u> Sq. Ft. or Acres	<input type="checkbox"/> Corner Lot
Zoning classification <u>Residential 7000</u>	Present Improvements <input checked="" type="checkbox"/> do <input type="checkbox"/> do not conform to zoning regulations		
Highest and best use	<input type="checkbox"/> Present use <input checked="" type="checkbox"/> Other (specify) <u>Subdivide to residential lots.</u>		
Public	<input type="checkbox"/> Available <input type="checkbox"/> Other (Describe) <u>OFF SITE IMPROVEMENTS</u>		
Electric	<input type="checkbox"/> Available	Street Access <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private	Topo Level <u>Size 6.7 Acres</u>
Gas	<input type="checkbox"/> Available	Surface <u>Not Established</u>	Shape <u>Irregular</u>
Water	<input type="checkbox"/> Available	Maintenance <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private	View <u>Residential</u>
San. Sewer	<input type="checkbox"/> Available	<input type="checkbox"/> Storm Sewer <input type="checkbox"/> Curb/Gutter	Drainage <u>N/A</u>
	<input type="checkbox"/> Underground Elect. & Tel.	<input type="checkbox"/> Sidewalk <input type="checkbox"/> Street Lights	
Comments (favorable or unfavorable) including any apparent adverse easements, encroachments, or other adverse conditions: <u>The subject property has great residential development potential for 2 unit properties or single family development. No apparent adverse or unfavorable easements or encroachments noted.</u>			

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; If a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	C/S 485, Tract A, Kyhl Lane	0 Highway 87	1506 Mary Street	2065 Mary Street
Billings	Billings, MT	Billings, MT	Billings, MT	Billings, MT
Proximity to Subject		2.42 miles N	0.88 miles NE	1.27 miles NE
Sales Price	\$ <u>N/A</u>	\$ <u>159,250</u>	\$ <u>89,900</u>	\$ <u>102,000</u>
Price	\$	\$ <u>17,500</u>	\$ <u>11,845</u>	\$ <u>8,979</u>
Data Source	Inspection	MLS Sold Data DOM:42	MLS Sold Data DOM:2	MLS Sold Data DOM:14
Date of Sale and Time Adjustment		DESCRIPTION	DESCRIPTION	DESCRIPTION
	N/A	08/03/05	09/03/03	10/24/03
		+22,500	+12,000	+25,600
Location	Heights/Average	Heights/Average	Heights/Average	Heights/Average
Site/View	Open/Residential	Open/Residential	Open/Residential	Open/Residential
Site Size	6.7 Acres	9.10 Acres	7.59 Acres	11.36 Acres
		-14,400	-5,300	-28,000
		Comm. Potential		
		-9,000		
Sales or Financing Concessions	None	None	None	None
Net Adj. (Total)		\$ <u>23,400</u>	\$ <u>29,200</u>	\$ <u>9,500</u>
Indicated Value of Subject		\$ <u>135,850</u>	\$ <u>119,100</u>	\$ <u>111,500</u>
		Net 14.7 %	Net 22.5 %	Net 23.3 %

Comments on Market Data: The market for acreage tracts that have development potential has slowed in the past 12 months, probably due to the lack of property that has access to public utilities. Two of the sales used are dated sales but were the best available as of the date of this report.

Comments and Conditions of Appraisal: Subject to free simple title and is for the surface rights only.

Final Reconciliation: None of the 3 sales was felt to be superior as an indicator of value and the overall adjusted range was considered in the final value estimate. The sales bracket the indicated value. All of the adjustments are market derived, ie paired sales analysis or regression analysis. The subject is compatible with the neighborhood and the best available as well as the most current sales were used in this report.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF 3/9/2006 to be \$ 135,000

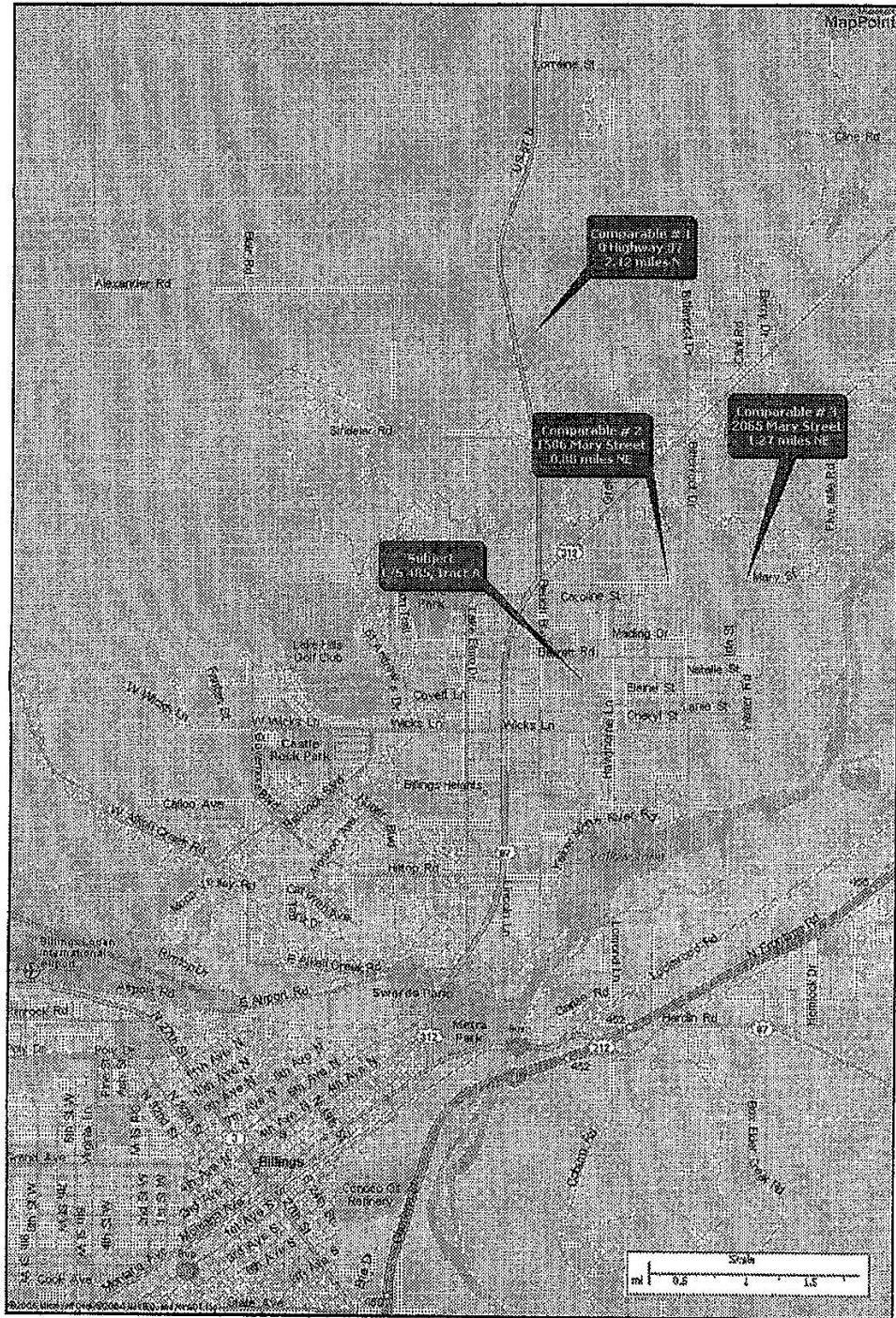
Rob Swenson *Rob Swenson* 3-9-06  
Appraiser(s) Review Appraiser (if applicable) ☐ Did ☐ Did Not Physically Inspect Property

# Exhibit B (page 2 of 6)

Page #8

## Location Map

Owner/Client	None			
Property Address	C/S 485, Tract A			
City	Billings	County	Yellowstone	State MT Zip Code 59105
Lender	Steve Kerns			



**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

**SUPERVISORY APPRAISER'S CERTIFICATION:** If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

**ADDRESS OF PROPERTY APPRAISED:** C/S 485, Tract A, Billings, MT 59105

**APPRAISER:**

Signature: [Signature]  
 Name: Rob Swenson  
 Date Signed: 3-9-06  
 State Certification #: Residential #144  
 or State License #: \_\_\_\_\_  
 State: MT  
 Expiration Date of Certification or License: 3/31/2007

**SUPERVISORY APPRAISER (only if required):**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_  
 State Certification #: \_\_\_\_\_  
 or State License #: \_\_\_\_\_  
 State: \_\_\_\_\_  
 Expiration Date of Certification or License: \_\_\_\_\_

☐ Old ☐ Did Not Inspect Property



**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\* Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgement.

### STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

**CONTINGENT AND LIMITING CONDITIONS:** The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower, the mortgagee or its successors and assigns, the mortgage insurer, consultants, professional appraisal organizations, any state or federally approved financial institution, or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.



Exhibit B (page 5 of 6)

Page #4

File No. 0000882

R.W. Swenson  
Associated Appraisers  
3021 6th Avenue North  
Suite 108  
Billings, MT 59101

Tax ID No. 517-60-7819

**Purpose Of Appraisal:**

This is a Restricted Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Practice for a Restricted Appraisal Report. As such, it does not present discussions of the data, reasoning, and analysis that were used in the appraisal process to develop the opinion of value. The depth of discussion contained in this report is specific to the needs of the client. The Appraiser is not responsible for unauthorized use of this report.

**Environmental Conditions:**

The value estimate is based on the assumption the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The Appraiser is not an expert in the identification of hazardous or detrimental environmental conditions. The Appraisers inspection of the subject is for value purposes only, however no obvious environmental conditions were observed unless otherwise noted in this report.

**Property Rights:**

This appraisal is fee simple, SURFACE RIGHTS ONLY, as if unencumbered by liens. No mineral rights title search has been made. No consideration of either mineral or water rights has been used in the final determination of value unless specifically addressed within this report.

Exhibit B (page 6 of 6)

## BELLVILLE Subdivision

6.7 ACRES = 291,852.00 sq. ft.

APPRAISAL for PARK LAND 135.000<sup>00</sup>

ABANDON 30' Right Away Lot 1 Block 3

$$135.000 \div 291,852.00 = .46 \text{ sq. ft.}$$

$$\begin{array}{r} \text{Right Away } 30' \times 80.05' = 2401.50 \text{ sq. ft.} \\ \times .46 \\ \hline 1,104.69 \end{array}$$

[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 26, 2006**

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**SUBJECT:** Public Hearing and Approval of Resolution Transferring Council Contingency to the Public Safety Fund (Police)

**DEPARTMENT:** Administration-Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** The Billings City Council has directed the Police Department to enforce the fire works ordinance on the 4<sup>th</sup> of July. The Billings Police Department will incur overtime when enforcing this ordinance by adding 8 - 12 officers to fireworks complain response July 1<sup>st</sup> through July 4<sup>th</sup>.

**FINANCIAL IMPACT**

The Police Department overtime is estimated at \$11,000 for enforcement on July 1<sup>st</sup> through July 4<sup>th</sup>.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the transfer of \$11,000 from Council Contingency to Police Department overtime.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

A-Resolution authorizing transfer

*Attachment A*

RESOLUTION 06-

A RESOLUTION TO MAKE **FISCAL YEAR 2006** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon additional costs involved with enforcing the fire works ordinance, it is necessary to alter and change said appropriations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Transfer of \$11,000 from the General Fund (Council Contingency) to the Public Safety Fund (Police).

PASSED AND APPROVED by the City Council, this 26th day of June, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMCCITY CLERK

[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 26, 2006**

---

**SUBJECT:** Public Hearing and Approval of Resolution using Council Contingency for Sound System Improvements

**DEPARTMENT:** Administration-Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

---

**PROBLEM/ISSUE STATEMENT:** The Billings City Council wants to improve the sound system in the council chambers. This will improve the ability of the public to hear what is said during council meetings.

**FINANCIAL IMPACT**

Council Contingency has a remaining balance of \$46,000 after the transfer to the Public Safety Fund (Police) of \$11,000. The improvements to the sound system will cost \$25,850.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the use of Council Contingency funds for work done by Professional Audio & Lighting for improvement to the sound system.

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_

**ATTACHMENT**

A-Resolution authorizing use of Council Contingency funds

*Attachment A*

RESOLUTION 06-

A RESOLUTION TO MAKE **FISCAL YEAR 2006** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon additional costs involved with enforcing the fire works ordinance, it is necessary to alter and change said appropriations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Use \$25,850 of General Fund (Council Contingency) for improving the sound system in council chambers.

PASSED AND APPROVED by the City Council, this 26th day of June, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE CITY CLERK

[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 26, 2006**

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**TITLE:** Public Hearing and Resolution for Fees Associated with Various Applications and Services Provided by the Planning and Community Services

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Candi Beaudry, Interim Planning Director

---

**PROBLEM/ISSUE STATEMENT:** The Planning & Community Services Department is presenting an updated fee schedule to the City Council for approval. The adoption of revised subdivision regulations earlier this year necessitated updates to the Planning Department fee schedule. Specifically, new fees need to be established for the new processes established in the regulations (i.e. subsequent minor plats, expedited plats, corrections to plats). In addition, staff is proposing resubmittal and amendment charges for zoning applications, and an increase to the annexation fees, and sign permit fees. The last fee increases were effective on November 6, 2003.

**FINANCIAL IMPACT:** Should the City Council approve the new fee schedule, services rendered on these applications can be more accurately compensated, resulting in additional revenues for the Planning Division.

**RECOMMENDATION**

Staff recommends that the City Council approve the resolution for fees associated with various applications and services provided by the Planning and Community Services Department.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

- A. Fee Table
- B. Resolution

The following table indicates which fees have not changed, which new applications now have new fees attached, and which fees have been increased for existing applications.

Planned Unit Development	<5 acres	\$750.00	<b>NO CHANGE</b>
	>5 acres	\$1200.00	<b>NO CHANGE</b>
Medical Corridor Review		\$600.00	<b>NO CHANGE</b>
Annexation		\$800.00	
<b>INCREASED FROM \$200 FOR RESIDENTIAL AND \$600 FOR COMMERCIAL</b>			
Urban Boundary Change		\$500.00	<b>NO CHANGE</b>
Preliminary Major Plat	6 to 40 lots	\$1500.00	<b>NO CHANGE</b>
	41 to 200 lots	\$3,500.00	<b>NO CHANGE</b>
	Over 200 lots	\$4,500.00	<b>NO CHANGE</b>
Preliminary Minor Plat		\$550.00	<b>NO CHANGE</b>
Preliminary Subsequent Minor Plat		\$550.00	<b>NEW FEE</b>
Final Major Plat	6 to 40 lots	\$400.00	<b>NO CHANGE</b>
	41 to 200 lots	\$600.00	<b>NO CHANGE</b>
	Over 200 lots	\$900.00	<b>NO CHANGE</b>
Final Minor Plat		\$250.00	<b>NO CHANGE</b>
Final Subsequent Minor Plat		\$250.00	<b>NEW FEE</b>
Expedited Plat		\$400.00	<b>NEW FEE</b>
Exempt Plat		\$200.00	<b>NO CHANGE</b>
Corrections or Vacations of Recorded Final subdivision plats or supporting documents		\$200.00	<b>NEW FEE</b>
Corrections or Adjustments to Plats, Conditions, and supporting documents after preliminary plat approval			
	Minor Adjustments	\$200.00	<b>NEW FEE</b>
	Major Adjustments	as below	
	Major subdivisions affecting:		
	6 to 40 lots	\$1,000.00	<b>NEW FEE</b>
	41 to 200 lots	\$3,000.00	<b>NEW FEE</b>
	Over 200 lots	\$4,000.00	<b>NEW FEE</b>
	Minor subdivisions	\$400.00	<b>NEW FEE</b>



Temporary Use Permit	Initial review	\$150.00	<b>NO CHANGE</b>
	Annual review	\$100.00	<b>NO CHANGE</b>

Zoning Clarification	Written	\$25.00	<b>NO CHANGE</b>
	On-site visit	\$50.00	<b>NO CHANGE</b>

Signs		\$3.00/square foot	
	<b>INCREASED \$1.00/SQ. FT.</b>		

Resubmittal and Amendment Charges for zoning applications:

For all Zone Change applications resubmitted within 1 year of a withdrawal request made after the legal advertising	\$500.00	<b>NEW FEE</b>
For all Special Review applications resubmitted within 1 year of a withdrawal request made after the legal advertising	\$500.00	<b>NEW FEE</b>
For all Variance applications resubmitted within 1 year of a withdrawal request made after the legal advertising	\$500.00	<b>NEW FEE</b>
Deposit for zoning application posting signs (to be refunded after sign is returned)	\$45.00	<b>NEW FEE</b>

RESOLUTION NO. 06-\_\_\_\_\_

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA PURSUANT TO ORDINANCE NO. 4314, AMENDED BY ORDINANCE NO. 4494 FOR FEES ASSOCIATED WITH VARIOUS APPLICATIONS AND SERVICES PROVIDED BY THE CITY/COUNTY PLANNING DEPARTMENT.

WHEREAS, Ordinance No. 4314, amended by Ordinance No. 4494 provides that applications fees shall be established by Resolution;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. FEES. The following fees are hereby established and are payable upon application:

Planned Unit Development	<5 acres	\$750.00
	>5 acres	\$1200.00
Medical Corridor Review		\$600.00
Annexation		\$800.00
Urban Boundary Change		\$500.00
Preliminary Major Plat	6 to 40 lots	\$1500.00
	41 to 200 lots	\$3,500.00
	Over 200 lots	\$4,500.00
Preliminary Minor Plat		\$550.00
Preliminary Subsequent Minor Plat		\$550.00
Final Major Plat	6 to 40 lots	\$400.00
	41 to 200 lots	\$600.00
	Over 200 lots	\$900.00
Final Minor Plat		\$250.00
Final Subsequent Minor Plat		\$250.00
Expedited Plat		\$400.00
Exempt Plat		\$200.00

Corrections or Vacations of Recorded Final subdivision plats or supporting documents	\$200.00
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Corrections or Adjustments to Plats, Conditions, and supporting documents after preliminary plat approval

Minor Adjustments	\$200.00
Major Adjustments	as below
Major subdivisions affecting:	
6 to 40 lots	\$1,000.00
41 to 200 lots	\$3,000.00
Over 200 lots	\$4,000.00
Minor subdivisions	\$400.00

Temporary Use Permit	Initial review	\$150.00
	Annual review	\$100.00

Zoning Clarification	Written	\$25.00
	On-site visit	\$50.00

Signs	\$3.00/square foot
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Re-submittal and Amendment Charges for zoning applications:

For all Zone Change applications resubmitted within 1 year of a withdrawal request made after the legal advertising	\$500.00
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For all Special Review applications resubmitted within 1 year of a withdrawal request made after the legal advertising	\$500.00
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For all Variance applications resubmitted within 1 year of a withdrawal request made after the legal advertising	\$500.00
--	----------

Deposit for zoning application posting signs (to be refunded after sign is returned)	\$45.00
--	---------

2. EFFECTIVE DATE. The fees established herein shall become effective upon passage of this resolution and remain in effect thereafter until changed by resolution.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006

THE CITY OF BILLINGS

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

\_\_\_\_\_  
Marita Herold, CMC/AAE CITY CLERK

[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 26, 2006**

---

**TITLE:** Public Hearing and Resolution to Annex – Annexation #06-06  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Candi Beaudry, AICP, Interim Director

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**PROBLEM/ISSUE STATEMENT:** Rocky Mountain Community Church, owner of the property located at the northeast corner of Grand Avenue and Zimmerman Trail, has petitioned to annex to the City of Billings. The owner is requesting annexation in order to obtain city water and sewer. The property is described as Tract B, Certificate of Survey 1011 and contains 4.264 acres. The adjoining rights-of-way in Grand Avenue and Zimmerman Trail will also be annexed at the same time, adding 1.0 acres for a total of 5.651 acres. The City Council passed a resolution of intent to annex this property on June 12, 2006, and set a public hearing date for June 26, 2006. The owners are also requesting a zone change for the property from Agricultural Open Space to Community Commercial. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 3-1 to recommend approval to the City Council.

**ALTERNATIVES ANALYZED:** The City Council may approve or disapprove a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

**FINANCIAL IMPACT:** The City can provide service to this property. The zoning of the property will automatically convert from Agricultural-Open Space to Residential 9,600 upon annexation, but the owners intend to request a zone change to Community Commercial. The commercial use of this property will increase the City's tax base and is expected to generate more tax revenue than it requires in service costs.

**RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

1. Prior to filing the resolution of annexation, the owner shall execute the Certificate of Survey dedicating a portion of Tract B, Certificate of Survey 1011 to the City for right-of-way.
2. Prior to development of the site the following shall occur:
  - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

**Approved By:**            **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENT**

A. Resolution

## **INTRODUCTION**

On May 3, 2006, the owner submitted a petition for annexation for properties totaling approximately 4.2 acres located at the northeast corner of Grand Avenue and Zimmerman Trail. The owner has also requested a concurrent zone change for the property. The property is currently zoned Agricultural-Open Space and the new zoning request is for Community Commercial. The City Zoning Commission held a public hearing on the zone change request on June 6, 2006. The Zoning Commission is forwarding a recommendation of approval to Council for its action on June 26, 2006.

## **PROCEDURAL HISTORY**

- June 12, 2006 – City Council acknowledged receipt of annexation petition and set a public hearing date for June 26, 2006.
- June 26, 2006 – City Council holds the public hearing and acts of the Resolution to annex.
- July 10, 2006 – Upon approval of the annexation, the City Council acts on the 1<sup>st</sup> Reading of the Ordinance to change the Ward Boundaries.
- July 24, 2006 – Upon approval of the 1<sup>st</sup> Reading, the City Council acts on the 2<sup>nd</sup> Reading of the Ordinance to change the Ward Boundaries.

## **BACKGROUND**

The owner of the property, Rocky Mountain Community Church is requesting annexation in order to obtain city sewer and water. The owner is intending to sell the property for commercial development. The potential buyers met with the adjoining residents on two separate occasions to discuss the potential development. As a result of these meetings, the prospective buyer has agreed to apply restrictive covenants on the property and to furnish landscaping and screening of a certain style and type. The City Council will act on a request to change the zoning from Agricultural Open Space to Community Commercial at the same meeting it acts on the annexation request.

## **ALTERNATIVES ANALYSIS**

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements meet City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
5. The property is contiguous to existing City limits.

The proposed annexation is also consistent with the Growth Policy and the West Billings Plan.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

**Departmental Response:** City departments and Yellowstone County were given the opportunity to comment on this annexation. All City departments responded favorably. No comments were received from Yellowstone County.

**City Facilities:** The following improvements and facilities are necessary to provide adequate services to the subject property.

**Water:** Water service will be extended from Grand Avenue from an existing water main.

**Sewer:** Existing sewer mains are located in both Grand Avenue and Zimmerman Trail.

**Stormwater:** Future development may connect to the existing stormwater facilities located in Grand Avenue.

**Transportation:** The property is located at the intersection of Grand Avenue and Zimmerman Trail. Both of these streets are classified as principal arterials.

In 2005, the City negotiated a right-of-way agreement with Rocky Mountain Community Church. The Church received compensation for the right-of-way but has not yet signed the amended Certificate of Survey in order to complete this transaction. Staff is recommending that the Council include, as a condition of annexation, a requirement that the owner sign the survey prior to filing the resolution of annexation. This condition is included in the Resolution.

**Fire Station:** The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Fire protection will be provided to this property after annexation from Fire Station No. 3 at Parkhill and 17<sup>th</sup> Street West and Fire Station No. 5 at 24<sup>th</sup> Street and Rosebud.

**Parks:** The Park, Recreation and Public Lands Department will not be affected because this will be developed as commercial property.

**Bicycle and pedestrian facilities:** The property is adjoining Zimmerman Trail which includes a 10-foot wide multi-purpose path within the right-of-way.

**General City Services:** These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded, including Fire, Police, MET Transit, Finance, Legal and Planning, did not object to the annexation of this property.

## **STAKEHOLDERS**

The annexation by petition method does not require notification of adjoining landowners but



does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Times. The Planning Division has received no comments on this proposed annexation.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

The property is also within the area covered by the 2003 Growth Policy and the West Billings Plan. The proposed development is consistent with the applicable land use goals of these Plans in the following manner:

#### Growth Policy

Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The property adjoins existing City limits.*

#### West Billings Plan

1. Establish Development Patterns that Use Land More Efficiently. *The future development will utilize available infrastructure that can service the proposed commercial development*
2. Plan for the Orderly and Efficient Urbanization of Agricultural Lands. *The property is currently zoned Agricultural Open-Space. If the zone change to Community Commercial is approved, the property will be consistent with the intent of this Plan. Future development is also consistent with the Plan which recommends commercial development at the intersection of arterial streets.*

### **RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

1. Prior to filing the resolution of annexation, the owner shall execute the Certificate of Survey dedicating a portion of Tract B, Certificate of Survey 1011 to the City for right-of-way.
2. Prior to development of the site the following shall occur:
  - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

### **ATTACHMENT**

#### A. Resolution

**K. RESOLUTION NO. 06-**

**A RESOLUTION OF THE CITY OF BILLINGS  
APPROVING PETITIONS FOR ANNEXATION  
AND ANNEXING TERRITORY TO THE CITY.**

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

A tract of land situated in the S1/2 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract B of Amended Plat of Certificate of Survey 1011, recorded November 10, 1970, under Document No. 871097 Records of Yellowstone County, Montana. Including all adjacent Right-Of-Way of Zimmerman Trail and Grand Avenue. Containing 5.651 gross and 4.264 net acres.

(# 06-06) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved subject to the following conditions:
  1. Prior to filing the resolution of annexation, the owner shall execute the Certificate of Survey dedicating a portion of Tract B, Certificate of Survey 1011 to the City for right-of-way.

2. Prior to development of the site the following shall occur:

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- c. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 26th day of June, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE CITY CLERK

(AN 06-06)

[illegible]

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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, June 26, 2006

**TITLE:** Zone Change #782 Public Hearing and 1<sup>st</sup> Reading of Ordinance

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Nicole Cromwell, AICP, Zoning Coordinator, Planner II

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Agriculture-Open Space (County) to Community Commercial on Tract B of Certificate of Survey 1011 located on the north east corner of the intersection of Zimmerman Trail and Grand Avenue. The applicant is Rocky Mountain Community Church, the agent is Engineering, Inc. and the prospective buyer is Skip King. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 3-1 to recommend approval to the City Council.

**ALTERNATIVES ANALYZED:** State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** The proposed zone change will increase the City's tax base when the property is annexed and developed.

**RECOMMENDATION**

The Zoning Commission recommends by a 3-1 vote that the City Council approve Zone Change #782 and adopt the determinations of the 12 criteria, as discussed within this report.

**Approved by:** \_\_\_\_\_ City Administrator \_\_\_\_\_ City Attorney

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Letter of Protest – Robert and Cynthia Cover
- D: Ordinance

## **INTRODUCTION**

This is a zone change request from Agriculture-Open Space to Community Commercial on Tract B of Certificate of Survey 1011. The subject property is located on the north east corner of the new intersection of Zimmerman Trail and Grand Avenue. The 3.96 acre parcel is in the process of annexation and the City Council will acknowledge the petition of annexation on June 12, 2006. The prospective owner of the parcel is Skip King who plans to develop a King's Ace Hardware on the northern half of the parcel. Additional development will occur on the southern half of the parcel. The applicant is seeking the zone change to accommodate retail uses with building areas greater than 3,000 square feet, the maximum size allowed in a Neighborhood Commercial zone.

## **PROCEDURAL HISTORY**

- On May 1, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on June 6, 2006, and recommended approval to the City Council by a 3-1 vote.
- The City Council will conduct a public hearing and first reading on June 26, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on July 10, 2006.

## **BACKGROUND**

The prospective owner of the parcel is Skip King who plans to develop a King's Ace Hardware on the northern half of the parcel. The applicant, agents and prospective buyer have met with the surrounding neighborhood twice in the past six months to review the zone change proposal and the development of the parcel. The prospective buyer has agreed to apply restrictive covenants on the property and to furnish landscaping and screening of a certain style and type. These private agreements cannot be enforced by the city.

The City of Billings and Yellowstone County have adopted a Growth Policy that supports focusing commercial zoning at the intersections of arterial streets and does not support continuous commercial zoning along arterial streets. Zimmerman Trail and Grand Avenue are principal arterial streets. Zimmerman Trail and Shiloh Road will serve as the two primary north/south connections from Rimrock Road to Interstate 90. The challenge in this area will be to focus the commercial zoning at the intersections of arterial streets and not allow continuous commercial zoning along each arterial.

The lots to the south and west are still within the County and are zoned Agriculture-Open Space. The lots to the east are zoned Residential Professional, Residential-8,000 and Residential Multi-family. The neighborhood to the east is fully developed and has several active neighborhood associations. The property to the north is zoned Residential-6,000–Restricted and is owned by Robert & Cynthia Cover. That parcel has received special review approval to develop an assisted living facility. The property has not been developed at this time. The Cover property and this property will share a full traffic access on to Zimmerman Trail.

The Planning Department reviewed the application and recommended approval to the Zoning Commission based on the attached twelve (12) criteria for zone changes. The property is at the intersection of two arterial streets and the applicant has worked with the adjacent neighborhood to establish agreement on the proposal. Any new development will have to comply with all applicable zoning requirements and site development standards.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The new zoning will not increase urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers. The Community Commercial zone will allow this intersection of two arterial streets to provide local and community retail opportunity.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning will increase traffic in the area. The City Of Billings is completing the connection of Zimmerman Trail to the south across the Peter Yegen Golf Course. This new four-way intersection will be governed by a traffic light. Access to from the property will be controlled by the City Engineering Division.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on Grand Avenue and Zimmerman Trail. The property will be served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.
5. *Will the new zoning provide adequate light and air?*  
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Community Commercial zone allows 50% lot coverage. This limitation should prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*  
The new zoning of Community Commercial allows single family, two-family and multi-family attached dwellings in accordance with the Residential Multi-family- Restricted

- requirements. The intended use of the property is not for residential purposes. The new zoning should not create an undue concentration of population.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
- Transportation:* The new zoning will have an effect on the adjacent streets or traffic patterns. City Engineering will control how traffic will access and leave the property.
- Water and Sewerage:* The City will provide water and sewer service to the property and has adequate facilities to serve this property.
- Schools and Parks:* There should be no effect on parks or schools from this rezoning.
- Fire and Police:* The property will be served by existing services and there should be no effect on these services from the new zoning.
9. *Does the new zoning give reasonable consideration to the character of the district?*
- The primary zoning in this area is Residential with Residential Professional and Community Commercial to the east. The character of the property that has Grand Avenue frontage is mixed in this area. From Zimmerman Trail to Shiloh Road many properties are still outside the city limits and are used for agriculture and recreation. As property is annexed and developed it is the intent of the City Of Billings to concentrate commercial zones at arterial intersections and allow higher density residential zoning districts, such as Residential Multi-family, along the arterial streets between intersections. The residential neighborhoods to the east are fully developed and the subject property will be under construction. The proposed new zoning is not out of character for the existing neighborhood.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
- The subject property is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
- The new zoning is not expected to appreciably alter the value of buildings in the area.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
- Yes, the new zoning will encourage the most appropriate use of this land in the area.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on June 6, 2006, and forwarded a positive recommendation to the City Council by a 3-1 vote. City Engineer Vern Heisler explained the shared access between this property and the Cover property to the north. The southern half of the access will be developed prior to the northern half and the construction and design of this access



will be reviewed at the time a site plan is submitted for a building permit. Access and use of this entry will be shared with the Cover property and nothing in this application will change that requirement. Rick Leuthold, P.E. of Engineering, Inc. spoke as the agent for the applicant. He explained the site plan is conceptual and is meant to illustrate what the prospective buyer intends to build. The location is conducive to this type of development and they have met several times with the neighborhood to address their concerns. Blaine Poppler of Coldwell Banker represented the owner in the sale of the property to Skip King. Mr. Poppler explained the church purchased the property about 15 years ago with the intent to relocate. Since that time the church re-thought their development plans and decided the site was not large enough for their needs and decided to sell. Mr. Poppler arranged the neighborhood meetings to discuss the proposal. The church is requiring deed restrictions of the property to not allow liquor sales or gambling on the property. Mr. Poppler stated that even without these restriction any effort to place such a use on the property would likely fail due to the strong neighborhood objection.

Dave and Barbara Hawkins, who own the Britannia Plaza to the east and developed many of the homes in Britannia Subdivision, testified against the proposal. Mr. Hawkins stated he was surprised any access on to Grand Avenue was being considered since they were not allowed access to Grand Avenue as well as many other businesses along Grand Avenue from Golden Boulevard to Shiloh Road. Mr. Hawkins testified that previous City Engineers told them that no new commercial zoning would be allowed along Grand Avenue in order to control traffic congestion. Mr. Hawkins stated that when Zimmerman Trail was designed it was designed as a two-lane residential collector street and should not be considered an arterial street. Mr. Hawkins stated he believes the development will cause a traffic bottleneck at the new intersection. Mr. Hawkins stated the church opposed their proposed zone change from Residential Professional to Neighborhood Commercial for Britannia Plaza in 2002 and Mr. Hawkins thought this was duplicitous of the church to now seek support for a commercial zone change on their property. Mrs. Hawkins stated she thought the zone change would de-value the existing homes to the east and could affect other property values as well. Mrs. Hawkins stated that many buyers in the Britannia Subdivision asked and were concerned about the development of Zimmerman Trail (34<sup>th</sup> Street West). Zimmerman Trail was not meant to be an arterial and many people bought their homes with this consideration. Robert and Cynthia Cover submitted a letter objecting to the zone change (Attachment C).

Mr. Leuthold provided rebuttal to the testimony of Mr. & Mrs. Hawkins and Mr. & Mrs. Cover. Mr. Leuthold explained that zone change should not have any effect on the existing shared access and that the developer will design the site to accommodate any future arrangement of the access. The developer will stub in the city water line into the access and provide a separate water line to the Cover property boundary. The Covers will not need to bring in a new water line through Zimmerman Trail when their property is developed. Mr. Leuthold explained they worked diligently with all the neighbors and have tried to appease any concerns. Mr. Leuthold stated that when promises were made on zoning and development potential in the 1990s they were based on existing conditions at that time. Conditions that exist today are not the same and so development patterns should adjust.

**RECOMMENDATION**

The Zoning Commission recommends by a 3-1 vote that the City Council approve Zone Change #782 and adopt the determinations of the 12 criteria, as discussed within this report.

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Letter of Protest – Robert & Cynthia Cover
- D: Ordinance

**Attachment A**

**Zone Change #782 – Zimmerman Trail and Grand Avenue**

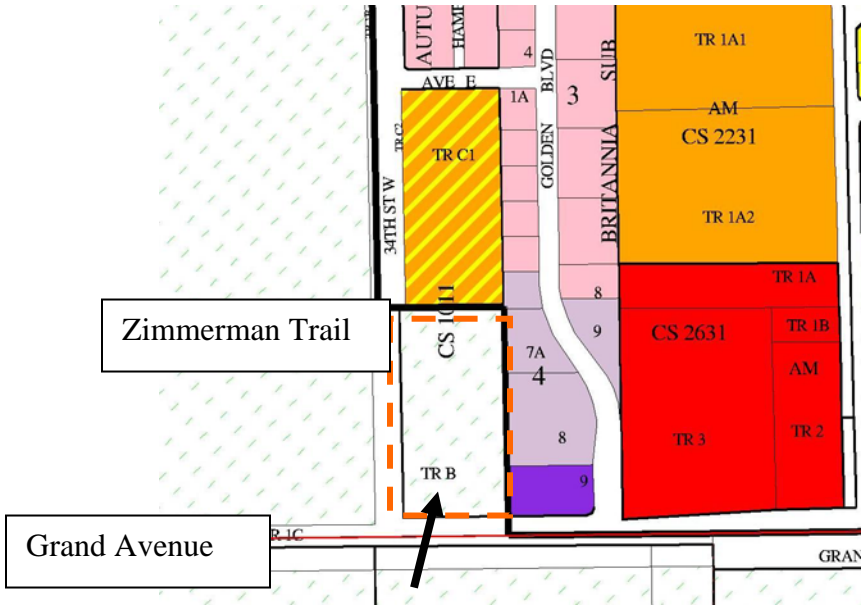


Subject property view north from Grand Avenue



View east along Grand Avenue

**ATTACHMENT B**  
**Surrounding Zoning – Zone Change #782**



Subject Property

### **ATTACHMENT C**

#### **Zone Change #782 – Letter of Protest Robert & Cynthia Cover**

June 6, 2006

To: Zoning Board Members

Dear members,

This evening you will be introduced to agenda item #4 City Zone Change #781 A zone change request from Agriculture Open-Space to Community Commercial on Tract B of C/S 1011 Amended, a 3.96 acre parcel. Rocky Mountain Community Church, owner and Engineering, Inc. agent Rick Leuthold.

We are addressing the board as owners of the adjoining property Tract C, Bob & Cindy Cover. We live in Bozeman and will do everything possible to attend this evenings meeting, in case we cannot get there in time we would like to send an email relaying our thoughts on this request for zone change from the church.

To give a brief history on both properties it is as follows: The church property is represented by Rev. Rex Clark, their attorney and church member is Kelly Sironi. The church has a buyer for their property since the beginning of this year. His name is Skip King, owner of Ace Hardware, his engineer is Rick Leuthold. The property is listed at \$12 sq. ft. approx. 2 million dollars. You will probably be shown a plat of a proposed 19,000 sq. ft. building to be positioned into the northeast corner of the church's property. Upon approval from the city Skip King's plan will be to subdivide Tract B into 3 lots. A hardware store to be proposed on the north half and two unknown businesses to be built along Grand Ave. As community commercial this allows for buildings to be 45' high allowing a very high density. To date, the church has not signed their plat even after being urged by Kelly Addy to do so weeks ago, nor has the church responded to an access agreement draft that they have had from us since March.

Our Property: Tract C is 4.1 acres, zoned R6000R, and approved by the city under special review for a 72 unit assisted living facility proposed for the south half, 7 senior independent single family homes proposed for the north half that includes a crash gate to be erected across our north full turn access demanded by surrounding neighbors. We are currently marketing our property offering two designs. The assisted care design and the R6000R design that has 22 lots, includes a city wide street straight down the center north to south. Our accesses in accordance with our right of way agreement and recorded plat, is shown to have a full turn access on Ave. E (the surrounding neighbors continue to object to). We also have two right in right out accesses on Zimmerman providing access to both of the existing houses located on the north half of the property.

The issues we want you to be aware of is the full turn access we share with the church. On page 1 item 4, in our right of way agreement states that this access is equally shared with Tract B. The city has also positioned a sewer stub to our side of the access and a water stub on the church's side. The city's intention was to exchange utility stubs when both tracts sign an access easement agreement. It is also stated in our right of way agreement page 1 last sentence of item #2 Landscaping, sidewalk or bike path, and **utility stubs to property line.** If an agreement cannot be met then the city will take the expense and stub the utility stub (water) to our property line? Because as it stands now the water is not to our property line.

Here is the problem: Upon signing our right of way agreement Mar 1, 2004, the city gave us a simple 1 page perpetual access easement agreement to fill out, return to the city so it can be given to the church to sign and return to the city. This agreement allowed both Tracts to have an easement from the east perimeter to the west access allowing for a city width street. We completed our part, signed, returned to the city, it was given to the church and not accepted. Time passed without discussion of any agreement. The church had a buyer in the spring of 2005, a drive through bank that wanted to share the property with a proposed drug store. Neighborhood meetings were held without our knowledge or invitation, we did not see what was planned for Tract B but heard of it from neighbors. Kelly Sironi sent us a 5 page access agreement telling us that they needed an agreement immediately. We had our Bozeman attorney, Susan Swimely, review with us. We agreed with everything with the exception of two items. #1. The church stated that the Covers shall cause to be created a homeowners association and cause that new homeowners association to accept the provisions of this executed agreement. Our 22 lot design is based on city covenants for affordable housing. We objected to the expense to create a homeowners association for a subdivision that may not even materialize but remains a consideration to a buyer. #2 The church stated that within 180 days of receiving the written notice of completed construction, the non-constructing party (Cover's) shall reimburse the constructing party for half of the costs necessary to complete the construction based upon the mutually utilized lineal footage. (Cost est. \$5,000) We objected to repaying within 180 days of their construction. We agreed to pay, however we felt that we should not be held financially responsible just because Tract B is deciding to build immediately. We called the church representative Rex Clark and negotiated terms to state that full payment will be given by us within a given amount of days of completed construction when we develop. Rex believed this to be fair and reasonable. The agreement would apply to either party developing first. It was stated in our draft and sent back for their review and approval. By the summer of 2005 the church's deal fell through because of surrounding neighborhood opposition, the church then withdrew their request for zone change. The access agreement was on hold and not returned to our attorney. Before Christmas 2005 the church had two buyers for their property. Again we were contacted by the church's attorney to sign an agreement. By this time our property was approved for an assisted care design and we were obligated to consider the impact of any proposed commercial design would have on our property through our shared access with the church. We asked to be included in the neighborhood meetings and we were invited to the first meeting in March. By this time, without our knowledge, the city was being told that the Cover's were not cooperating with the church to sign an agreement. We have to date given to us by our attorney 25 emails between Sironi, Swimley, Kelly Addy, Cover, and Interstate engineering. We also have financial statements dating from April 1, 2005 to May 9, 2006 not to mention numerous trips to Billings to meet with the church and city only to be canceled after our arrival, numerous trips to our engineer, Chuck Strum from Interstate Engineering, that we paid for to get this agreement accomplished. WE had revised Kelly Sironi's original agreement, negotiated terms with the church, and sent it back to her in Feb of 2006. In March we were shown for the first time one of three site plat designs by Rick. Rick was told that we needed more time to review the impact of his traffic flow entering both of our site. We were concerned about Skip's traffic using our property as a shortcut. Unknown to us Rick set up meetings with the city telling officials we were being uncooperative in order to get an additional width of 8 feet to be given to the church's

side of access. This included removing curbs, gutters, walkways. The new buyer also indicated through Rick in an email that the pay back term we agreed with Rex Clark is no longer acceptable. It took us awhile, but then came to realize that Rick Leuthold was in charge not the church. After visiting with Vern we believe that Rick has misguided Vern Heisler by telling him that we have not been cooperative and as a result Vern Heisler has granted Rick an additional 8' width. We know that Rick was aware of our negotiating with the church, Rick also is aware that his client is proposing a high density corner with semi trucks unloading into a dock several feet away from our shared access. It is in the best interest of Rick Leuthold to assure his client that the wider the access the easier it is for traffic flow and when the lots on Grand become available for sale a wider access is more attractive. We were not aware that the city has the power to negate right of way agreements they make with landowners. We were not aware that the city steps in front of a landowner that follows the rules only to accommodate another landowner's private business venture. We spoke to Vern Heisler and showed him our emails and explained to him that we've been cooperating each time we have been contacted and we have the bills to prove it. Mr. Heisler has decided to use his position stand behind what he stated to Rick and to grant Rick Leuthold the larger access his client needs for a higher density. A higher density allows the property to increase its value. Is this what is best for the city or for Skip King's business developments. As a result we were told by Rick in April that a access agreement is no longer needed from us. (Will the city of Billings stand behind what they agreed to in writing with us for an equal shared access) We were not aware that city officials can use their authority to accommodate a private business in the closing of a real estate deal at the expense of another landowner. Our agreement was with the church, it was within a week of closure and then both the church and we were given the new plan. We still do not have any written agreement to the water utility stub on the church's side. How much will that cost us now. Rick Leuthold has indicated to us that he does not need the sewer utility stub located on our side. This is what happens when you have a buyer with leverage from the city who hires an established engineer who knows how to work the system. This is what happens when you have the highest commercial zoning sitting next to a residential parcel resulting in an incompatible shared access. Our parcel, Tract C, can only be used for what the surrounding neighbors decide it should be. We are positive you have had the pleasure of knowing them. We have been told what they allow and what they won't allow.

We agree with Skip King's plans to build a hardware store, but not bordering on two residential neighborhoods. We would like to see the store with neighborhood commercial on Grand Ave with residential professional zone on their north half as a buffer reducing the access traffic flow. This is what is best for the neighborhood not community commercial in a 3.89 parcel. We ask that you stand by the original right of way agreement we have with the city, postpone any voting, ask Vern to withdraw the additional unnecessary 8' access width and set a date to have a written access agreement completed as originally planned by the city. We are eager to have this issue resolved and need your help.

Thank you for your patience, and time  
Bob and Cindy Cover  
P.O. Box 10217  
Bozeman, MT 59719

**ATTACHMENT D**

Zone Change #782

**ORDINANCE NO. 06-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Certificate of Survey Tract B, containing approximately 3.96  
acres

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1.     RECITALS.     *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2.     DESCRIPTION.     A tract of land known as Tract B of Certificate of Survey 1011, containing approximately 3.96 acres and is presently zoned Agriculture-Open Space and is shown on the official zoning maps within this zone.

3.     ZONE AMENDMENT.     The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Agriculture-Open Space** to **Community Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial** as set out in the Billings, Montana City Code.

4.     REPEALER.     All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5.     EFFECTIVE DATE.     This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 26, 2006.

PASSED, ADOPTED AND APPROVED on second reading July 10, 2006.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor



ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#782

[\(Back to Regular Agenda\)](#)

**AGENDA ITEM:**


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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 26, 2006**

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**TITLE:** Public Hearing and Resolution to Annex – Annexation #06-08  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Candi Beaudry, AICP, Interim Director

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**PROBLEM/ISSUE STATEMENT:** Aviara, Inc., owner of the property located north of Rimrock Road near the intersection of Clear View Drive, has petitioned to annex to the City of Billings. The owner is requesting annexation in order to obtain city water and sewer. There are two separate properties subject to this petition. The properties are described as portions of Tract 3-C-1, Certificate of Survey 1834 and total 2.66 acres. One of the properties do not adjoin any public right-of-way. The other adjoins Clear View Drive which is within the city limits. Both properties are portions of a certificate of survey that was recently amended to include these portions. The remainder of the certificate of survey was previously annexed in 2001. Both properties are currently vacant. The City Council passed a resolution of intent to annex this property on June 12, 2006, and set a public hearing date for June 26, 2006.

**ALTERNATIVES ANALYZED:** The City Council may approve or disapprove a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

**FINANCIAL IMPACT:** The City can provide service to these properties. The properties are currently zoned Residential 9600 and the owner has not submitted a request for a zone change. While the annexation will increase the City's tax base, in general, the costs of providing service to residential properties exceed the revenues generated from property tax.

**RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Annexation with the following condition:

1. Prior to development of the site the following shall occur:

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_

**ATTACHMENT**

A. Resolution

## **INTRODUCTION**

The owner submitted a petition for annexation for two properties on May 3, 2006. The two properties total approximately 2.66 acres and are located north of Rimrock Road near the intersection of Clear View Drive. These properties are part of an amended certificate of survey that was previously annexed in 2001. The remainder of the certificate of survey was previously annexed in 2001.

## **PROCEDURAL HISTORY**

- July 23, 2001 – City Council approved a petition to annex Tract 3C, Certificate of Survey 1834.
- June 12, 2006 – City Council acknowledged receipt of the current annexation petition and set a public hearing date for June 26, 2006.
- June 26, 2006 – City Council holds the public hearing and acts of the Resolution to annex.
- July 10, 2006 – Upon approval of the annexation, the City Council acts on the 1<sup>st</sup> Reading of the Ordinance to change the Ward Boundaries.
- July 24, 2006 – Upon approval of the 1<sup>st</sup> Reading, the City Council acts on the 2<sup>nd</sup> Reading of the Ordinance to change the Ward Boundaries.

## **BACKGROUND**

The owner of the property, Dennis Buscher, is requesting annexation in order to obtain city sewer and water. The owner has not disclosed what type of development is planned for these properties. The subject properties are currently zoned Residential 9600 and no request for a zone change or special review has been submitted.

## **ALTERNATIVES ANALYSIS**

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements meet City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
5. The residential property owners will be required to create or join an existing park maintenance district;
6. The residential densities allowed by the existing zoning equal four dwelling units per acre;
7. The property is contiguous to existing City limits.

The proposed annexation is also consistent with the Growth Policy and the West Billings Plan.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

**Departmental Response:** City departments and Yellowstone County were given the opportunity to comment on this annexation. All City departments responded favorably. No comments were received from Yellowstone County.

**City Facilities:** The following improvements and facilities are necessary to provide adequate services to the subject properties.

**Water:** Water service may be extended from Rimrock Road and Clear View Drive from existing water mains.

**Sewer:** Existing sewer mains are located in Clear View Drive.

**Stormwater:** Future development will be required to develop a stormwater management plan. The plan must ensure the stormwater discharge from the development does not exceed the same amount than what was generated by the undeveloped parcel during a 10-year storm event.

**Transportation:** One of the properties does not have access to a public street but connect to properties through which a public street may be extended to provide access. The other property may be accessed by Clear View Drive, a developed residential street.

**Fire Station:** The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Fire protection will be provided to these properties after annexation from Fire Station No. 3 at Parkhill and 17<sup>th</sup> Street West and Fire Station No. 5 at 24<sup>th</sup> Street and Rosebud.

**Parks:** Upon development, the properties must be included in a Park Maintenance District to ensure future maintenance of parkland serving these properties.

**Bicycle and pedestrian facilities:** The property is not within an area designated for trails according to the Heritage Trail Plan.

**General City Services:** These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded, including Fire, Police, MET Transit, Finance, Legal and Planning, did not object to the annexation of this property.

## **STAKEHOLDERS**

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Times. The Planning Division has received no

comments on this proposed annexation.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

The property is also within the area covered by the 2003 Growth Policy and the West Billings Plan. The proposed development is consistent with the applicable land use goals of these Plans in the following manner:

#### Growth Policy

Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The properties adjoin existing City limits.*

#### West Billings Plan

1. Establish Development Patterns that Use Land More Efficiently. *The future development will utilize available infrastructure that can service the proposed commercial development*
2. The properties subject to annexation are located in an area designated for urban residential densities of at least 4 dwelling units per acre.

### **RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

1. Prior to development of the site the following shall occur:
  - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

### **ATTACHMENT**

1. Resolution

**L. RESOLUTION NO. 06-**

**A RESOLUTION OF THE CITY OF BILLINGS  
APPROVING PETITIONS FOR ANNEXATION  
AND ANNEXING TERRITORY TO THE CITY.**

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

A tract of land situated in the S1/2 of Section 29, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: That portion of Tract 3-C-1 of Amended Tracts 3-C and 3-D, Certificate of Survey 1834 Second Amended, recorded April 25 2006, under Document No. 3375001, Records of Yellowstone County, Montana, less that portion of Tract 3-C previously annexed as Tract 1 and Tract 3C of Amended Tract 3A, C/S 1834, recorded July 26, 2001, Under Document No. 3138828, records of Yellowstone County, Montana, annexed by City of Billings Resolution No. 01-17723 passed and approved by City Council July 23, 2001. Containing 2.660 gross and net acres.

(# 06-08) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved subject to the following conditions:

3. Prior to development of the site the following shall occur:

- b. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- c. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 26th day of June, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

ATTEST:

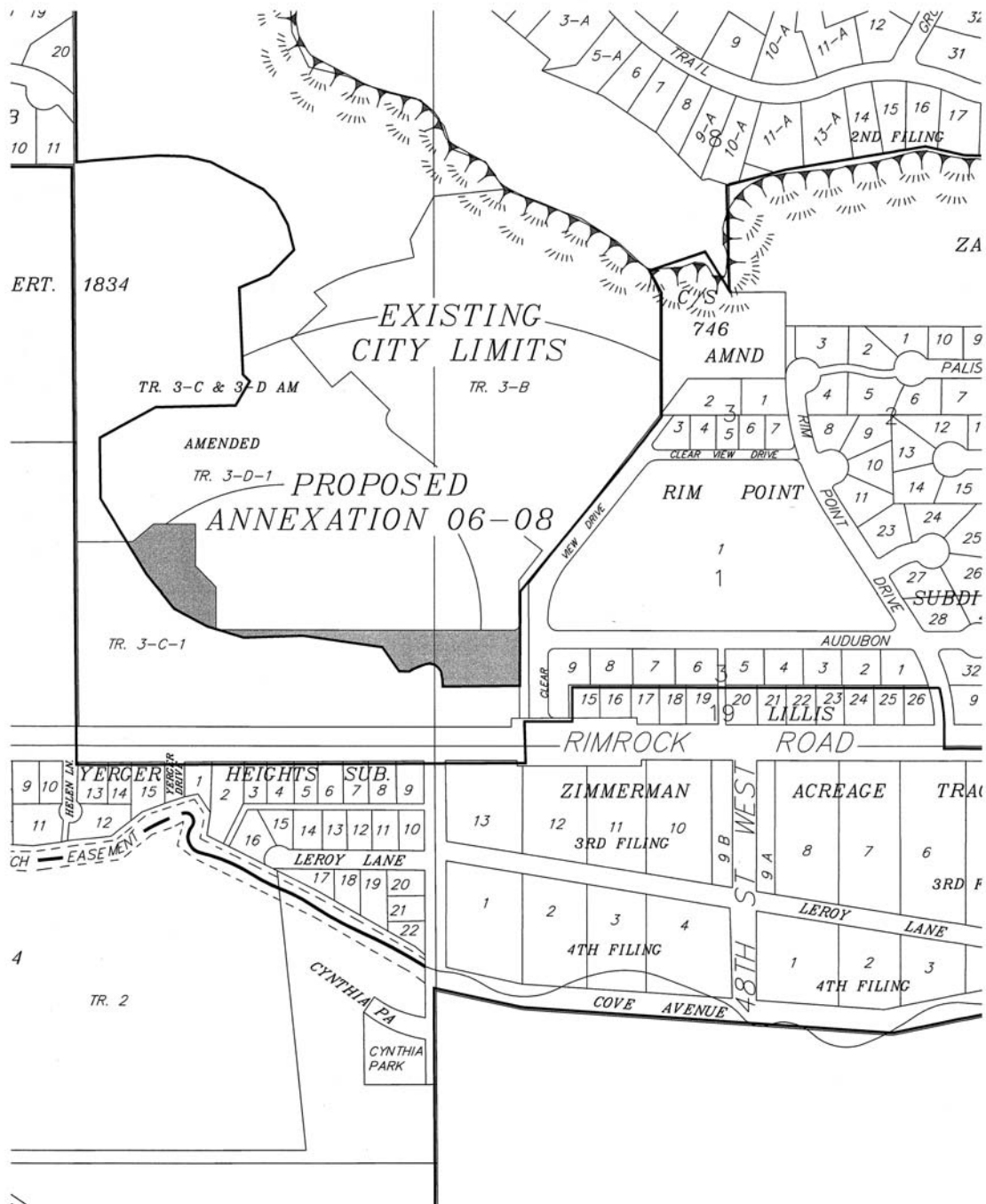
BY: \_\_\_\_\_

Marita Herold, CMC/AAE CITY CLERK

(AN 06-08)



# EXHIBIT A



[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, JUNE 26, 2006**


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TITLE: Public Hearing for Special Review #815  
 DEPARTMENT: Planning & Community Services Department  
 PRESENTED BY: Juliet Spalding, Planner II

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**PROBLEM/ISSUE STATEMENT:** The applicant, Tim Mohr, is requesting a Special Review to permit a micro-brewery with a small sample room on a property legally described as Lots 1-4, Block 89, Billings Original Town, at 2405 1<sup>st</sup> Avenue North. The subject property is zoned Central Business District and contains 14,000 square feet. The owner is Donald Lee. The Zoning Commission conducted a public hearing on June 6, 2006, and is forwarding a recommendation of conditional approval to the City Council by a 4-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, would allow development of the vacant lot, which would increase the City's tax revenue on the property.

**RECOMMENDATION**

The City Zoning Commission recommends on a 4-0 vote that the City Council conditionally approve Special Review #815.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan
- D. State Statute on sampling rooms

## **INTRODUCTION**

The applicant, Tim Mohr, is requesting a Special Review to permit a micro-brewery with a small sampling room within the Central Business District at 2405 1<sup>st</sup> Avenue North. The existing building, which was most recently an automotive garage, will be remodeled to accommodate a micro-brewery producing less than 1500 barrels of beer a year (a use allowed in the CBD). The location of an on-site sampling room is allowed by State Law, following certain restrictions (see Attachment D), but necessitates special review approval from the City Council.

## **PROCEDURAL HISTORY**

- On May 1, 2006, the special review application was received.
- On June 6, 2006, the City Zoning Commission unanimously voted to recommend conditional approval to the City Council for the special review.
- On June 26, 2006, the City Council will conduct a public hearing on the special review.

## **BACKGROUND**

Section 27-612.A. Supplemental Commercial Development Standards of the BMCC specifies that a special review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. The proposed establishment will not have any gaming and the applicant indicates it will be a non-smoking sampling room open between the hours of 4–8PM. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location. The nearest park is North Park, over six blocks away from the subject property.

Staff finds that this application satisfies the requirements set forth for the special review and finds that the proposed location is suitable for this establishment. Based on the special review criteria, staff is recommending conditional approval.

The Zoning Commission conducted a public hearing on June 6, 2006, and is forwarding a recommendation of conditional approval to the City Council by a 4-0 vote.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).

*This application complies with the requirements of Chapter 1500 of the zoning regulations.*

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27 (the zoning regulations) and with the Growth Policy.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

*The proposed use is on 1<sup>st</sup> Avenue North, 3 blocks from the heart of downtown. It should be compatible with the adjacent land uses in the area.*

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending approval with the following conditions:

1. The special review approval shall be limited to Lots 1-4, Block 89, Billings Original Town, located at 2405 1<sup>st</sup> Avenue North.
2. No outdoor seating, outdoor music or outdoor public announcement systems shall be permitted.
3. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

### **STAKEHOLDERS**

A public hearing was conducted by the Zoning Commission on June 6, 2006; the applicant and was present to answer questions. There was no other public comment received.

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, in the following ways:

- Adaptive reuse of vacant structures
- An economically and culturally vibrant downtown Billings

- Contiguous development focused in and around an existing population center

### **RECOMMENDATION**

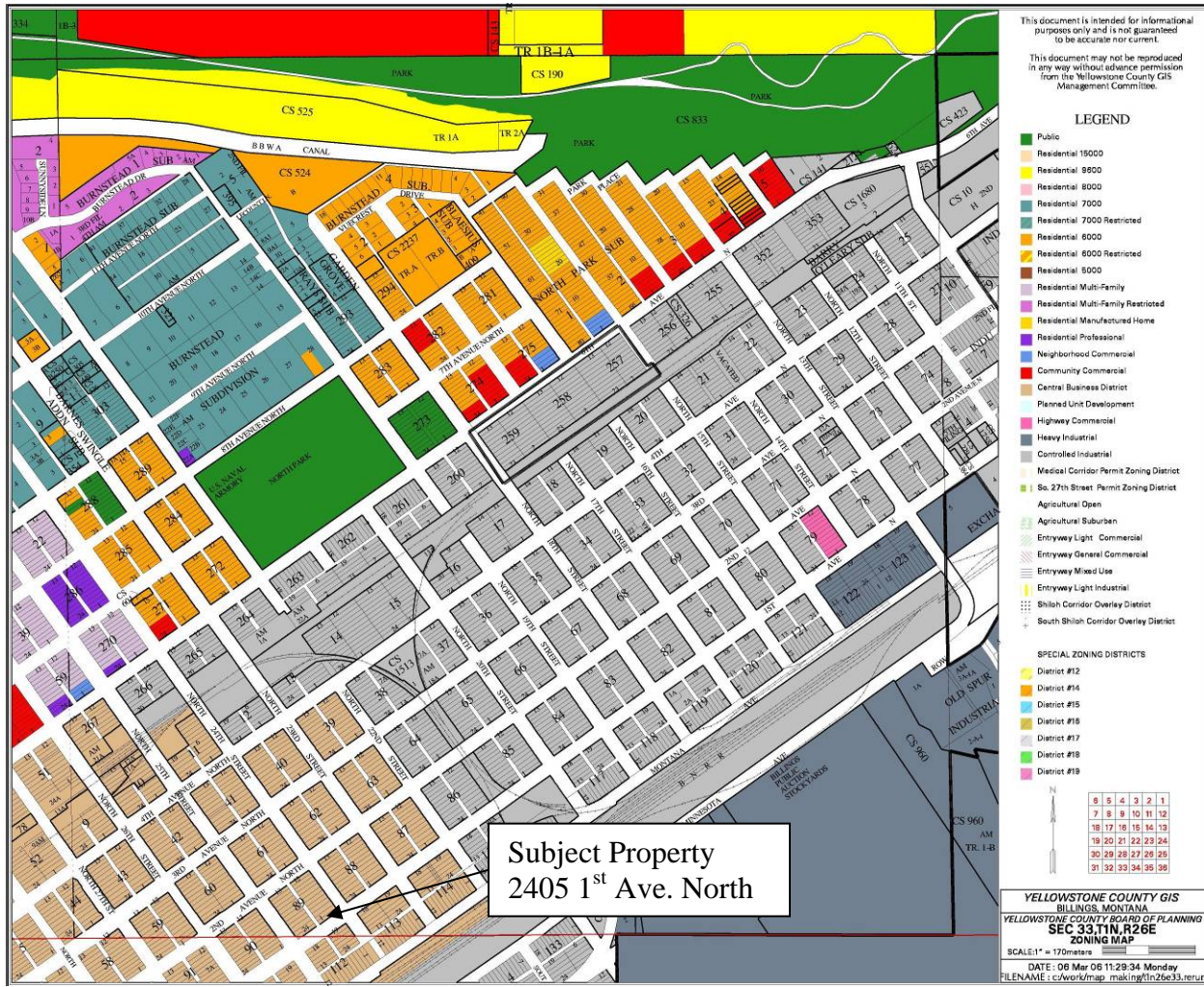
The City Zoning Commission recommends on a 4-0 vote that the City Council conditionally approve special review #815.

### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan
- D. State Statute on sampling rooms

# ATTACHMENT A

## Zoning Map





## ATTACHMENT B



Photo 1: View of the subject property to be remodeled into a micro-brewery.



Photo 2: View east up 1<sup>st</sup> Avenue South.

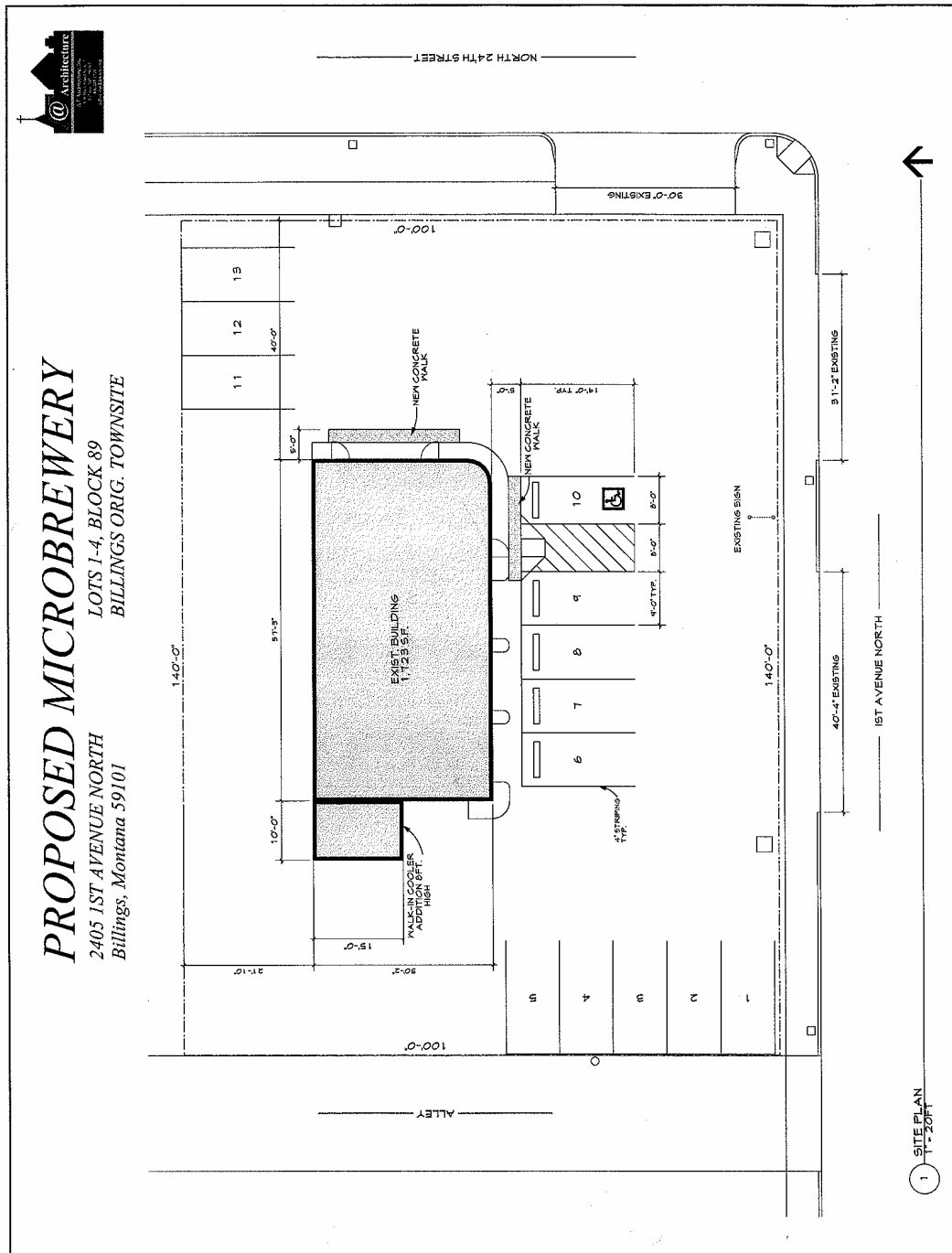


Photo 3: View north at office and apartment building (Sage Tower).



# ATTACHMENT C

## Site Plan



## **ATTACHMENT D**

### State Statute on sampling rooms

**MCA, 16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.**

(1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

(2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels.

(b) A small brewery may, at one location for each brewery license, provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day.

**History:** En. Sec. 11, Ch. 106, L. 1933; re-en. Sec. 2815.20, R.C.M. 1935; Sec. 4-315, R.C.M. 1947; reded. by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, ; amd. Sec. 7, Ch. 19, L. 1985; amd. Sec. 1, Ch. 149, L. 1985; amd. Sec. 1, Ch. 116, L. 1999.

**MCA, 16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by [16-4-501](#) and upon presenting satisfactory evidence to the department as required by [16-4-101](#), must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

- (a) sell and deliver beer from its storage depot or brewery located in Montana to:
  - (i) a wholesaler; or
  - (ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or
  - (iii) the public; or
- (b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in [16-3-213](#); or
- (c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) A brewery may not use a common carrier for delivery of the brewery's product to the public.

(3) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

(4) This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of [16-3-230](#).

**History:** En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.22, R.C.M. 1935; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971; Sec. 4-317, R.C.M. 1947; amd. and reded. by Sec. 53, Ch. 387, L. 1975; R.C.M. 1947, ; amd. Sec. 2, Ch. 149, L. 1985; amd. Sec. 1, Ch. 721, L. 1991; amd. Sec. 1, Ch. 122, L. 1993; amd. Sec. 2, Ch. 116, L. 1999; amd. Sec. 4, Ch. 543, L. 2001.

[\(Back to Regular Agenda\)](#)




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**AGENDA ITEM:**


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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 26, 2006**

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**TITLE:** Public Hearing for Special Review #816  
**DEPARTMENT:** Planning & Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** The applicants, Robert and Kari Pearson, are requesting a special review to permit a 4-plex within a Residential 6000 zoning district. The subject property is legally described as Lot 24A and 25, Block 13, Broadwater Subdivision Amended and is addressed as 1151 Howard Avenue. The Zoning Commission conducted a public hearing on June 6, 2006, and is forwarding a recommendation of conditional approval to the City Council by a 4-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, should have little financial impact to the City.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council conditionally approve Special Review #816.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

## **INTRODUCTION**

The applicants, Robert and Kari Pearson, are requesting a special review to permit a 4-plex within a Residential 6000 zoning district. The subject property is legally described as Lot 24A and 25, Block 13, Broadwater Subdivision Amended and is addressed as 1151 Howard Avenue.

## **PROCEDURAL HISTORY**

- On May 1, 2006, the special review application was received by the Planning Department.
- On June 6, 2006, the City Zoning Commission voted 4-0 to recommend conditional approval to the City Council for the special review.
- On June 26, 2006, the City Council will conduct a public hearing on the special review.

## **BACKGROUND**

This is a special review to allow a 4-plex on a property located at 1151 Howard Avenue, zoned Residential 6000. The subject property is located at the northeast corner of the intersection of 12<sup>th</sup> Street West and Howard Avenue. It currently contains a substandard single-family residence constructed in 1940, which will be removed for redevelopment of the property.

Pursuant to Section 27-308 of the Billings City Code, the R-6000 zoning district permits single-family residences and duplexes with the required square footage and permits residential structures containing 3-10 units with a special review. The minimum square footage required for a 4-plex is 10,000 square feet; the subject property contains approximately 11,000 square feet. Parking for the proposal is being provided along the front of the property with entrances onto both Howard Avenue and 12<sup>th</sup> Street West. Section 6-1203 of the Billings City Code specifies that 1.5 parking spaces are required for multi-family residential units containing one (1) or more bedrooms. The applicants are required to provide six (6) parking spaces as part of this application, which will be reviewed and approved by the Engineering Department with the required building permit

The Planning Department has reviewed this application and is recommending conditional approval. The proposed 4-plex is compatible with the surrounding neighborhood, as it is bordered on the east by multi-family residential units and by duplexes on the south.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

- Complies with all requirements of this Article (27-1500).
- *This application complies with the requirements of the zoning regulations.*
- Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
- This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

- Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

*The proposed use is compatible with the surrounding multi-family and single-family residential uses.*

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

- Street and road capacity;
- Ingress and egress to adjoining streets;
- Off-street parking;
- Fencing, screening and landscaping;
- Building bulk and location;
- Usable open space;
- Signs and lighting; and/or
- Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending approval with the following conditions:

1. The Special Review approval shall be limited to Lot 24A and Lot 25, Block 13, Broadwater Subdivision Amended.
2. The 4-plex shall be constructed in accordance with the submitted site plan and shall comply with standards set forth by the Unified Zoning Regulations. A building permit shall be obtained for all structures on the property.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

## **STAKEHOLDERS**

A public hearing was conducted by the Zoning Commission on June 6, 2006; the owner was present to discuss the proposed 4-plex and answer any questions. There was no discussion by the Zoning Commission. There was a neighboring property owner present (Linda Mueller, 1203 Howard Avenue), who lives to the east of the subject property. She stated that there is a potential for increased traffic at the corner of 12<sup>th</sup> Street West and Howard Avenue, which is an uncontrolled intersection and could create traffic conflicts. In addition, she stated that the

proposed 4-plex could be a massive structure that is incompatible with the surrounding properties and that there are already enough apartment complexes within this neighborhood.

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- The proposal provides contiguous development focused in and around an existing population center.

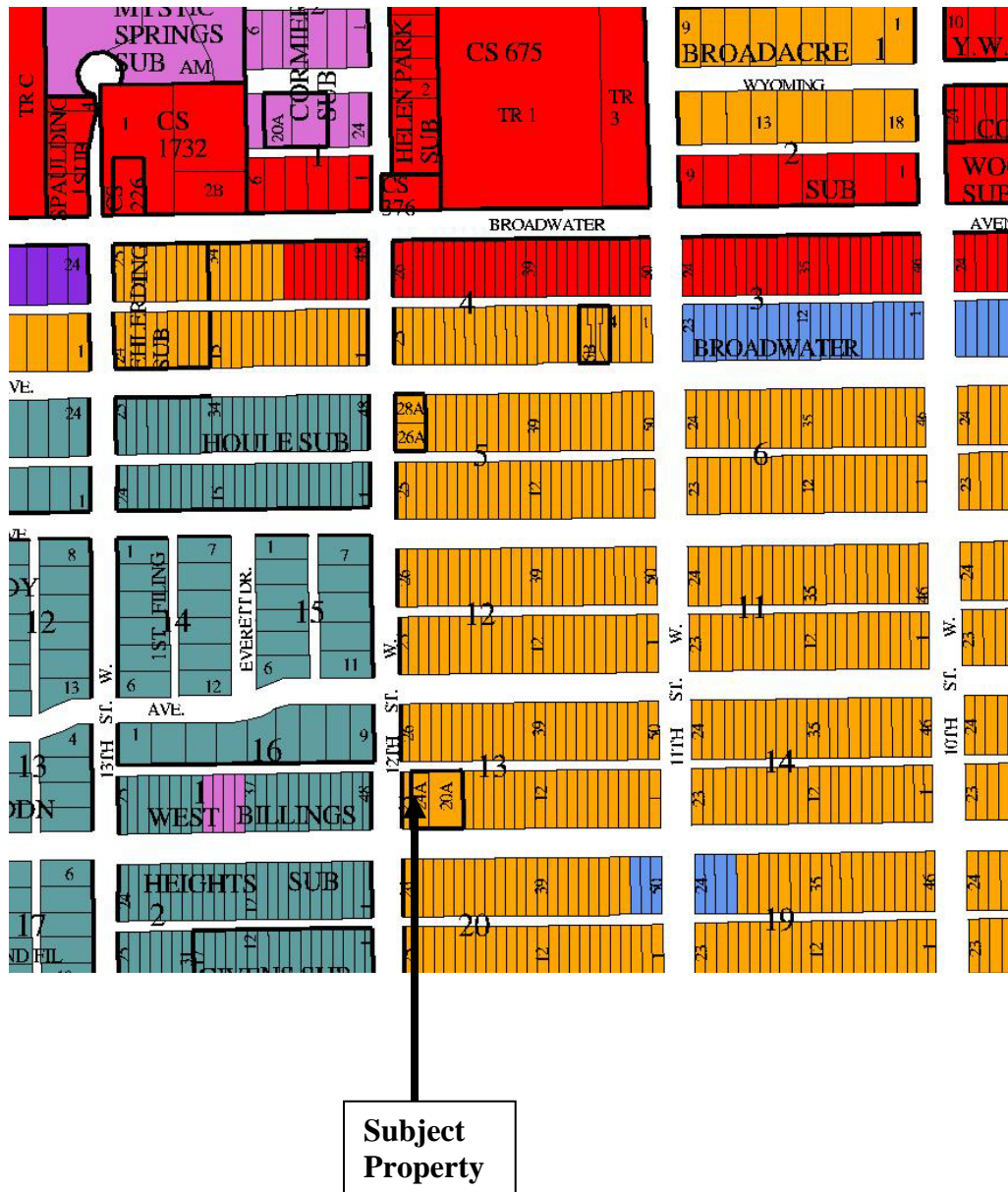
### **RECOMMENDATION**

The Zoning Commission is recommending that the City Council conditionally approve special review #816.

### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

**ATTACHMENT A**  
 Surrounding Zoning – Special Review #816





**ATTACHMENT B**  
Site Photographs - Special Review #816



Photo 1: View east toward the existing multi-family residential use adjacent to the subject property.



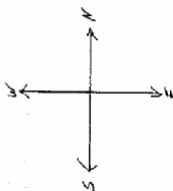
Photo 2: View South toward a duplex across Howard Avenue from the subject property.





Photo 3: View north from Howard Avenue toward the existing single-family residence to be removed prior to construction.

Price 2s 6d



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Existing Structure  
to Be Demolished!

$$\frac{3}{2} = 1\frac{1}{2}$$

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## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JUNE 26, 2006

TITLE: Public Hearing for Special Review #819  
 DEPARTMENT: Planning & Community Services  
 PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

**PROBLEM/ISSUE STATEMENT:** This is a Special Review to allow the expansion of an existing church in a Residential-9,600 zone and Community Commercial zone on Tracts 1 & 2 of C/S 3106 and Tract 1 of C/S 3230. The property is addressed as 517 Shiloh Road. The owner is International Church of the Foursquare Gospel (Faith Chapel) and the agent is Engineering, Inc. The Zoning Commission conducted a public hearing on June 6, 2006, and is forwarding a recommendation of conditional approval on a 4-0 vote to the City Council.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, should have little financial impact to the City.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval on a 4-0 vote to the City Council on Special Review #819.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

## **INTRODUCTION**

This is a request for a special review to allow the expansion of the existing Faith Chapel property south of the intersection of Broadwater and Shiloh Road. In 2001 Faith Chapel planned and developed a major expansion of the existing church. The 2001 project added 400 new parking spaces and about 6,400 square feet in building foot print. This proposed expansion will be in conjunction with the MSU-Billings College of Technology building project. The two facilities plan to share space and parking facilities and intend to create an internal road connection to support this agreement. The Faith Chapel project will consist of four phases: 1) a new 87,000 square foot sanctuary addition; 2) and 3) remodeling of existing sanctuary area; and 4) a new 20,000 square foot multi-purpose area on the existing sanctuary building. The new parking areas will be developed as part of the overall project. Shiloh Road is a principal arterial street and is under review for expansion and re-construction in the next five years.

## **PROCEDURAL HISTORY**

- A special review application to operate a private correctional facility was received on April 3, 2006.
- The City Zoning Commission held a public hearing on May 2, 2006, and voted 4-0 to forward a recommendation of approval for this the special review request.
- The City Council will conduct a public hearing and consider this application on May 22, 2006.

## **BACKGROUND**

In 2004, the City Council adopted a Shiloh Corridor Overlay District to regulate new and expanding development within 500 feet of the centerline of Shiloh Road. The corridor extends from Rimrock Road to I-90 but only applies to property within the city limits. The master plan proposed by Faith Chapel in 2001 was granted specific relief from the existing Landscaping regulations (BMCC 27-1100) in exchange for additional right of way dedication on Broadwater Avenue. The proposed master plan for this special review shows landscaping and site development that does conform in its entirety to the new Shiloh Corridor Overlay requirements. The new street frontage landscaping meets the overlay district Absolute Criteria but some of the new parking areas will not fully meet the required landscaping standard of 20 square feet of landscaped area per space and 2 trees and 5 shrubs for every 8 parking spaces. The maximum unbroken length of parking spaces is 100 feet only along Shiloh Road frontage. The Shiloh Corridor Overlay District will be under review this summer with likely recommendations to reduce certain landscape requirements and allow massing of trees and shrubs.

The Planning Department reviewed the application and recommended conditional approval. This is an existing development and is suitable considering the location of the property, the type of facility proposed, the character of the surrounding properties, and the existing uses in the area. Planning staff is recommending conditions for this special review based on the approval criteria for special review uses. The Zoning Commission conducted the public hearing and voted 4-0 to recommend conditional approval.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

- Complies with all requirements of this Article (27-1500).
  - *This application does comply with the requirements of the zoning regulations.*
- Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
- This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy.
- Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
- *The proposed use is compatible with the adjoining land uses and no conditions are necessary to ensure compatibility.*

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

- Street and road capacity;
- Ingress and egress to adjoining streets;
- Off-street parking;
- Fencing, screening and landscaping;
- Building bulk and location;
- Usable open space;
- Signs and lighting; and/or
- Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval on the special review request.

## **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Tracts 1 & 2 of C/S 3106 and Tract 1 of C/S 3230 as shown on the site plans submitted with this application.
2. Any expansion of the buildings or parking area greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
3. Any new lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. Landscaping shall be provided as shown on the site plan submitted and dated April 30, 2006.
5. The site shall be developed as shown on the submitted site plan including the general location of the new structures and the layout of the parking lots.
6. A Traffic Accessibility Study shall be submitted to the City Engineering Department for review at the time that Building Permits are submitted for the site. Recommendations

provided in the TAS shall be implemented by the applicant at the discretion of the City Engineering Division.

7. There shall be no outdoor public address system or outside announcement system of any kind.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

### **STAKEHOLDERS**

The public hearing was held on June 6, 2006, before the City Zoning Commission. The applicant's agent, Danielle Reagor, P.E. of Engineering, Inc., explained the project to the Zoning Commission. Ms. Reagor stated the church's intention to share improvements and access with the College of Technology expansion to the east. She explained the design was developed to try and match the existing developed area and meet the intent of the Shiloh Corridor Overlay district regulations. Ms. Reagor explained the existing sanctuary building will remain along with the parking areas on the northern portion of the property. The Shiloh Corridor Overlay requires commercial building projects to upgrade the entire site development if the proposed expansion is greater than 25% of the existing floor area. This is not proposed for the Faith Chapel project. The project meets all of the other absolute criteria for development in the Shiloh Corridor with the exception of the site development upgrade for the existing building and parking lot. The proposed project meets the required number of relative criteria.

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.

### **RECOMMENDATION**

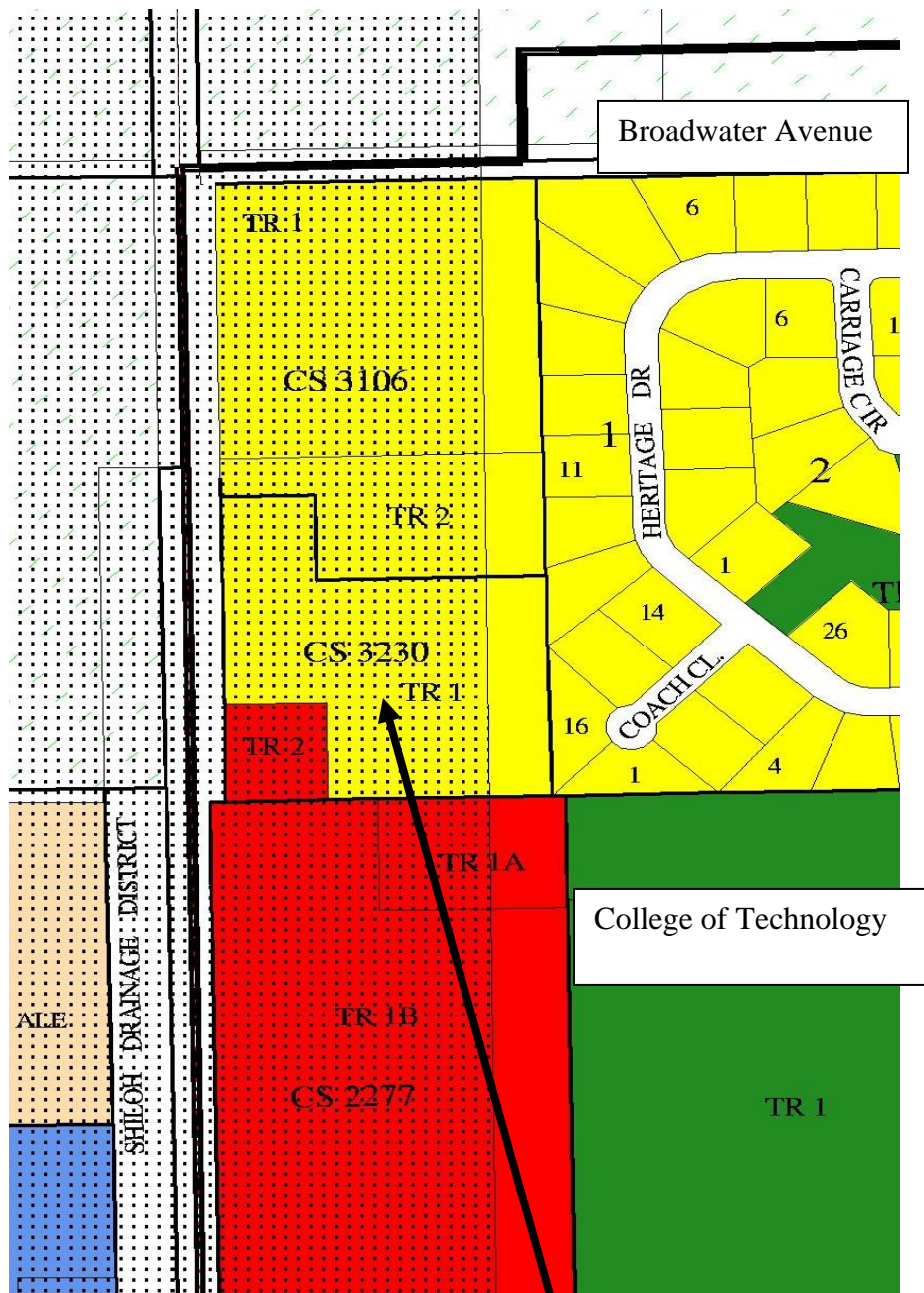
The Zoning Commission is forwarding a recommendation of conditional approval on a 4-0 vote to the City Council on Special Review #819.

### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan



**ATTACHMENT A**  
**Zoning Map – Special Review #819**



517 Shiloh Road – Subject Property

**ATTACHMENT B**  
**Site photos –Special Review 819**



Subject Property at 517 Shiloh Road

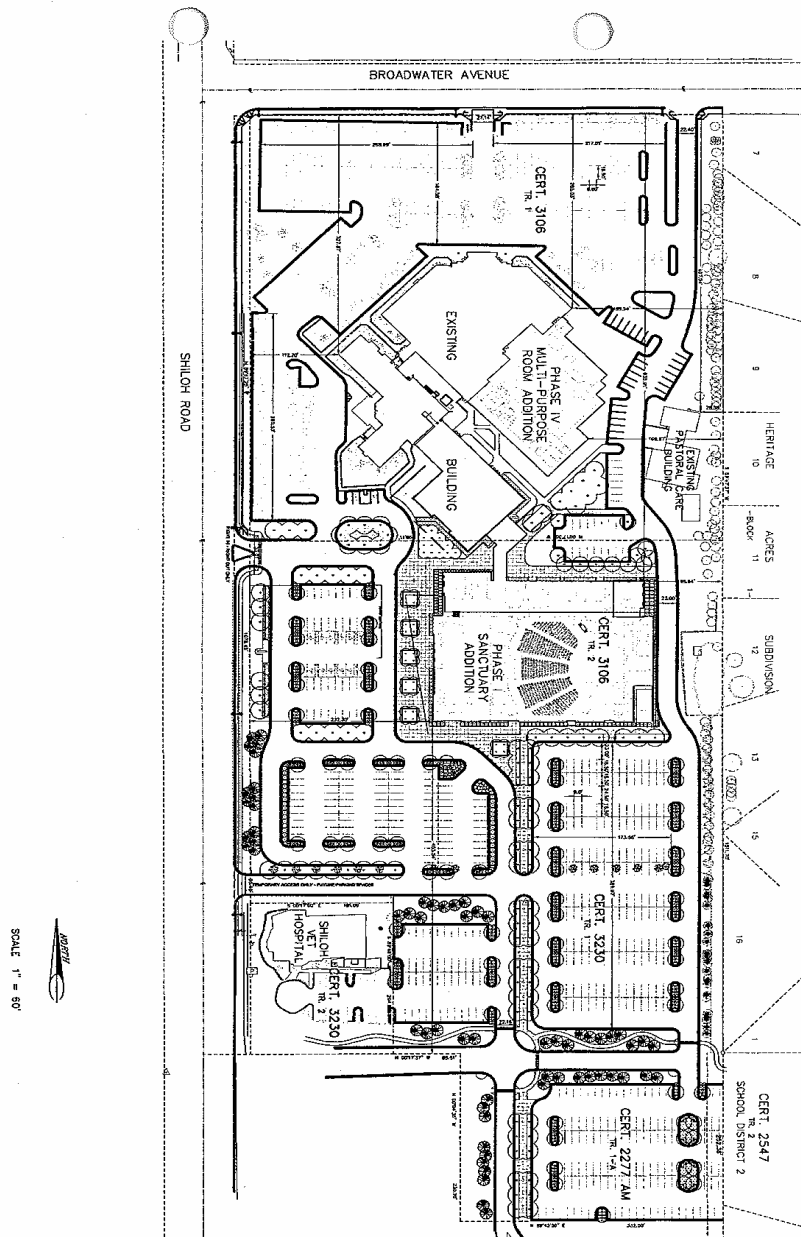


Subject site view south to intersection of Shiloh Road and Central Avenue



# ATTACHMENT C

## Site Plan Special Review #819



DATE: 10/1/07  
 DRAWN: J. J. JENSEN  
 CHECKED: J. J. JENSEN  
 APPROVED: J. J. JENSEN

FAITH CHAPEL  
 SITE IMPROVEMENTS  
 BILLINGS, MONTANA

SPECIAL REVIEW EXHIBIT



**ENGINEERING, INC.**  
 Consulting Engineers and Land Surveyors  
 BILLINGS • BOZEMAN

[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 26, 2006**

**TITLE:** Zone Change #779 Public Hearing and 1<sup>st</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Nicole Cromwell, AICP, Zoning Coordinator, Planner II

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential Professional to Neighborhood Commercial on Lots 2B and 2C, Block 1 of Hancock Grand Subdivision. The property is located at 3737 Grand Avenue and the applicant is Darrell Kreitzberg. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 4-0 to recommend approval to the City Council.

**ALTERNATIVES ANALYZED:** State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** The proposed zone change will not have an effect on the City's tax base.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #779 and adopt the determinations of the 12 criteria, as discussed within this report.

**Approved by:** \_\_\_\_\_ City Administrator \_\_\_\_\_ City Attorney

**ATTACHMENTS:**

- A: Site Photographs  
 B: Surrounding Zoning  
 C: Ordinance

## **INTRODUCTION**

This is a zone change request from Residential Professional to Neighborhood Commercial on Lots 2B and 2C of Block 1 Hancock Grand Subdivision. The subject property is located at 3737 Grand Avenue directly south of a new assisted living facility, Autumn Springs, and west of Yellowstone Valley Memorial Park. In 1998, the City Council approved a zone change for Hancock Grand Subdivision that included Residential Professional, Community Commercial, Residential-7,000 and Residential-9,600 zoning districts. Planning staff supported the zone change and stated “that staff will not support a future zone change to commercial on the proposed Residential Professional tract.” Since 1998, the City Of Billings and Yellowstone County have adopted a Growth Policy that supports focusing commercial zoning at the intersections of arterial streets and does not support continuous commercial zoning along arterial streets. The re-zoning in 1998 to Residential Professional established the commercial use of this property. The proposed re-zoning should not affect the intended use and is in keeping with the 2003 Growth Policy.

## **PROCEDURAL HISTORY**

- On May 1, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on June 6, 2006, and recommended approval to the City Council by a 4-0 vote.
- The City Council will conduct a public hearing and first reading on June 26, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on July 10, 2006.

## **BACKGROUND**

The developer, Darrell Kreitzberg, is building two multi-tenant office buildings for primarily medical professions. The reason for the requested zone change is not to increase the uses allowed on the property but to increase the allowable sign area. In the Residential Professional zone signage is allowed up to a maximum of 32 square feet for all signs and free-standing signs may not exceed 8 feet in height. In the Neighborhood Commercial zone, a property may have up to three square feet of sign area on a free-standing sign for each lineal foot of street frontage and up to three square feet of wall sign area for each lineal foot of building. The applicant had the option of applying for a variance from the sign code but in this case has applied for a zone change.

The lots to the south and east are still within the County and are zoned Agriculture-Open Space. The lots to the west are zoned Community Commercial and to the north the property is zoned Residential Professional and has been developed for assisted living. In 2002, a similar property at the intersection of Golden Boulevard and Grand Avenue was denied a zone change for the same intended purpose. This location is slightly different. The residential neighborhood to the north is under construction and this land is separated by other development, the assisted living facility. The Planning Department is concerned that commercial zoning should not be allowed to extend along the length of Grand Avenue from Zimmerman Trail to 68<sup>th</sup> Street West. The re-zoning in 1998 established the commercial use of this property and this current re-zoning should not affect

the intended use but will allow the tenants and owners the opportunity to have a reasonable amount of identification of services along Grand Avenue.

The Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The property is adjacent to Community Commercial zoning to the west and Residential Professional zoning to the north. Any new development will have to comply with all applicable zoning requirements including sign regulations.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The new zoning will not increase urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers. The Neighborhood Commercial zone will adjust these two lots that have frontage on Grand Avenue to allow for appropriate sign sizes.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning will not increase street congestion. The existing development will generate traffic based on the existing uses and the proposed uses for the multi-tenant buildings under construction.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on Grand Avenue and has a secondary access from Avenue B. The property is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.
5. *Will the new zoning provide adequate light and air?*  
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Residential Professional zone and the Neighborhood Commercial zone both allow 50% lot coverage. This limitation should prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*

The new zoning of Neighborhood Commercial allows single family, two-family and multi-family attached dwellings in accordance with the Residential Multi-family-Restricted requirements. This is the same as the Residential Professional zoning district. The intended use of the property is not for residential purposes. The new zoning should not create an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

*Transportation:* The new zoning should have a minimal effect on the adjacent streets or traffic patterns.

*Water and Sewerage:* The City provides water and sewer service to the property and has adequate facilities to serve this property.

*Schools and Parks:* There should be no effect on parks or schools from this rezoning.

*Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The primary zoning in this area is Community Commercial and Residential Professional. The character of the property that has Grand Avenue frontage is mixed in this area. From Zimmerman Trail to Shiloh Road many properties are still outside the city limits and are used for agriculture and recreation. As property is annexed and developed it is the intent of the City of Billings to concentrate commercial zones at arterial intersections and allow higher density residential zoning districts, such as Residential Multi-family, along the arterial streets between intersections. The current zoning, Residential Professional, was adopted in 1998 with the idea that some higher density residential uses could be accommodated and allow a smoother transition from the Community Commercial zone for Lot 1. The residential neighborhoods to the north and west are under development and the subject property is under construction. The proposed new zoning is not out of character for the existing neighborhood.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The new zoning is not expected to appreciably alter the value of buildings in the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

Yes, the new zoning will encourage the most appropriate use of this land in the area.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on June 6, 2006, and forwarded a positive recommendation to the City Council by a 4-0 vote. Darrell Kreitzberg attended the hearing and explained the proposed zone change and development. There were no surrounding property owners who attended the hearing. No letters in opposition were received by the Department.

### **RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #779 and adopt the determinations of the 12 criteria, as discussed within this report.

### **ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

**Attachment A**  
Zone Change #779 – 3737 Grand Avenue



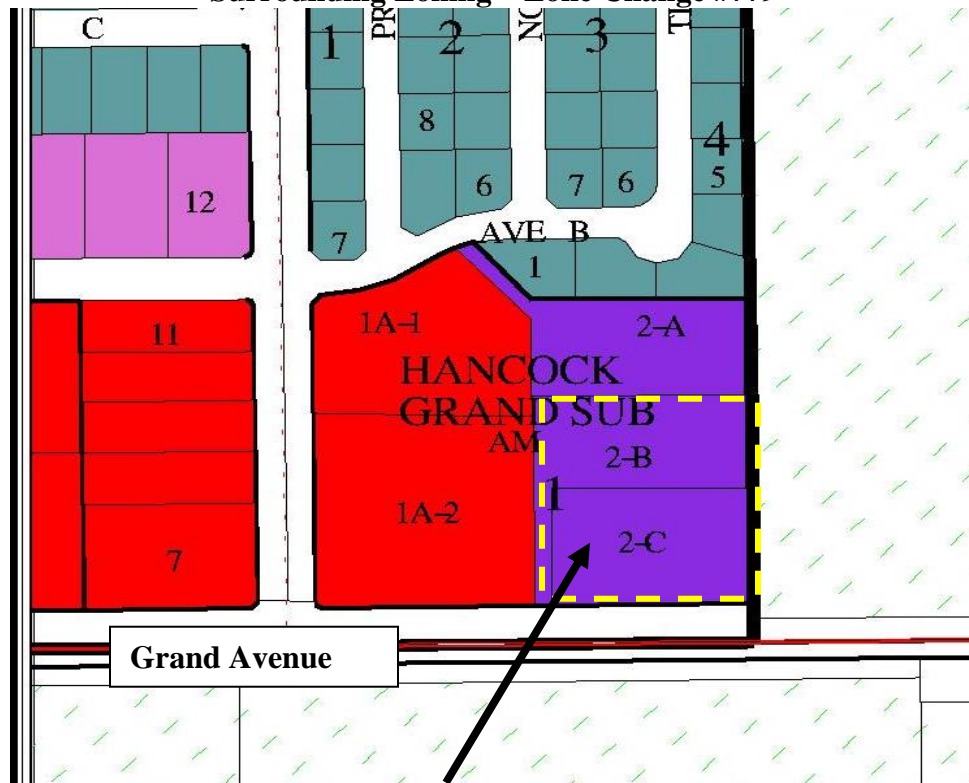
View west to intersection of Grand Avenue and Shiloh Road



View north to subject property and completed building

**ATTACHMENT B**

**Surrounding Zoning – Zone Change #779**



Subject Property



**ATTACHMENT C**

Zone Change #779

**ORDINANCE NO. 06-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Lots 2B & 2C, Block 1, Hancock Grand Subdivision,  
containing approximately 1.26 acres

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. DESCRIPTION. A tract of land known as Lots 2B & 2C, Block 1, Hancock Grand Subdivision, containing approximately 1.26 acres and is presently zoned Residential Professional and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential Professional** to **Neighborhood Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Commercial** as set out in the Billings, Montana City Code.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 26, 2006.

PASSED, ADOPTED AND APPROVED on second reading July 10, 2006.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

\_\_\_\_/\_\_\_\_

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#779

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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, June 26, 2006

TITLE: Zone Change #780 Public Hearing and 1<sup>st</sup> Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential 9600 (R-9600) to Residential Multi-Family (RMF) on Lot 21, Block 16, Lake Hills Subdivision, 16<sup>th</sup> Filing. The subject property is located on the northeast corner of the intersection of Green Briar Road and Clubhouse Way. The owner and applicant is Jerry Wolf. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 4-0 to recommend denial to the City Council. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

**ALTERNATIVES ANALYZED:** State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** The proposed zone change will not have an effect on the City's tax base.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council **deny** Zone Change #780.

Approved by: \_\_\_\_\_ City Administrator \_\_\_\_\_ City Attorney

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning

\_\_\_/\_\_\_

C: Ordinance  
D: Letters of Opposition

## **INTRODUCTION**

The applicant is requesting a zone change from Residential 9600 (R-9600) to Residential Multi-Family (RMF) on Lot 21, Block 16, Lake Hills Subdivision, 16<sup>th</sup> Filing. The subject property is located on the northeast corner of the intersection of Green Briar Road and Clubhouse Way. The owner and applicant is Jerry Wolf. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 4-0 to recommend denial to the City Council. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

## **PROCEDURAL HISTORY**

- On May 1, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on June 6, 2006, and recommended denial to the City Council by a 4-0 vote.
- The City Council will conduct a public hearing and first reading on June 26, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on July 10, 2006.

## **BACKGROUND**

The applicant is requesting to rezone Lot 21, Block 16, Lake Hills Subdivision, 16<sup>th</sup> Filing from Residential 9600 (R-9600) to Residential Multi-Family (RMF). The proposed multi-family zoning will allow for an 11-unit multi-family complex based on the square footage of the lot, which is 16,800 square feet. The applicant is proposing to construct a 4-plex on the property.

Planning staff reviewed the application and recommended approval to the Zoning Commission based on the attached 12 criteria for zone changes. The subject property is adjacent to RMF zoning to the south and R-6000 to the east. Any development of the property will have to comply with the requirements set forth for the RMF zoning district in the Unified Zoning Regulations.

## **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. Since the Zoning Commission is recommending denial of the proposed zone change, the Zoning Commission's determinations, as completed by staff, are outlined below:

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change is generally consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit residential uses comparable to the densities located to the south and east of the subject property.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The subject property is within an urbanized portion of the city and will utilize existing services. The proposed multi-family residential use will be compatible with the surrounding land uses.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The proposed zoning will permit additional multi-family residential uses in this area of the city.

2. *Is the new zoning designed to lessen congestion in the streets?*

The additional traffic produced by a 4-plex on this property will not significantly increase traffic in this area.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

The subject property is located within a previously platted subdivision and has existing city streets for access.

4. *Will the new zoning promote health and general welfare?*

The proposed zoning will permit up to 11 attached multi-family units on the subject property. The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements for the proposed zoning district.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The RMF zoning district permits a maximum lot coverage of 55%; this requirement will help prevent overcrowding of land.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning will allow a multi-family residential use similar to those to the east and south of the subject property.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

*Transportation:* The proposed zoning should not significantly impact adjacent streets or traffic patterns.

*Water and Sewer:* The City will provide water and sewer to the property through existing lines within the subdivision.

*Schools and Parks:* Skyview High School, Castle Rock Middle School, and Sandstone Elementary School will provide education to students within the development. Lake Hills Golf Course is the nearest public recreational facility to the subject property.

*Fire and Police:* The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service have been provided.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will permit multi-family uses, which are alike in character to the multi-family residential uses to the south and east. Single-family residences are adjacent to the north and west of the property.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The proposed zoning is not expected to appreciably alter the value of structures within the area, as other multi-family residential uses are located to the east and south of the property.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will permit more dense development than the current zoning district on this particular property; however, the surrounding neighborhood does contain multi-family residential units. The Heights Neighborhood Plan depicts this area of the city as a mixture of single-family residential, multi-family residential and commercial.

**CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

**STAKEHOLDERS**

The Zoning Commission conducted a public hearing on June 6, 2006, and forwarded a recommendation of denial to the City Council by a 4-0 vote. Terra Wolf, representing Jerry Wolf (owner), was present at the public hearing to discuss the proposed 4-plex on the property and answer questions from the Zoning Commission.

There were six (6) surrounding property owners present at the public hearing who raised concerns regarding the potential buildout of the property, compatibility with the single-family residences to the north and west, and setting a precedence for zoning within this neighborhood. Based on the existing lot size, there is a potential for 11 attached residential units under the RMF zoning. Surrounding property owners had concerns if a large apartment complex were to be constructed in this neighborhood, as properties to the north and west are predominately single-family residential. They stated that even though the owner is proposing a 4-plex at this time, they may change their plans or sell to another owner who might maximize the number of units permitted on the lot. The owners also find that Green Briar Road and Clubhouse Way are buffers between the multi-family uses to the south and east. Any proposed “leapfrogging” over the streets or increased density on this property would not be compatible with the existing and proposed single-family homes to the north and west and could potentially decrease property values in the area. An additional concern was that a precedence might be set with this zone change for any other multi-family zoning that might be proposed within this neighborhood. They felt that this application, if approved, could trigger additional zone changes throughout this area.

The Zoning Commission stated that the proposed Residential Multi-Family zoning would allow for more density than necessary for the proposed 4-plex and questioned why the applicant did not apply for a lesser residential zoning district, such as Residential 6000. The Commission also stated that it is logical that the highest and best use of the property would be 11 units, which is the maximum permitted under the proposed zoning; there would be nothing to prevent a large apartment complex from being constructed on the property. They found that the argument regarding “leapfrogging” across the streets had validity, as multi-family uses are not compatible with the single-family residential uses to the north and west



There were 28 letters of opposition submitted for this zone change by neighboring property owners, which has been included as Attachment D. Please note that many properties within this area of Lake Hills are owned by the same person or entity, therefore, multiple letters may have been submitted by one (1) property owner.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council **deny** Zone Change #780.

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance
- D: Letters of Opposition

**Attachment A**  
Site Photos – Zone Change #780



Photo 1: View east from the subject property toward the existing 4-plex across Clubhouse Way.



Photo 2: View southeast toward an RMF zoned lot that is currently vacant. Beyond the lot is the Lake Hills Golf Course.

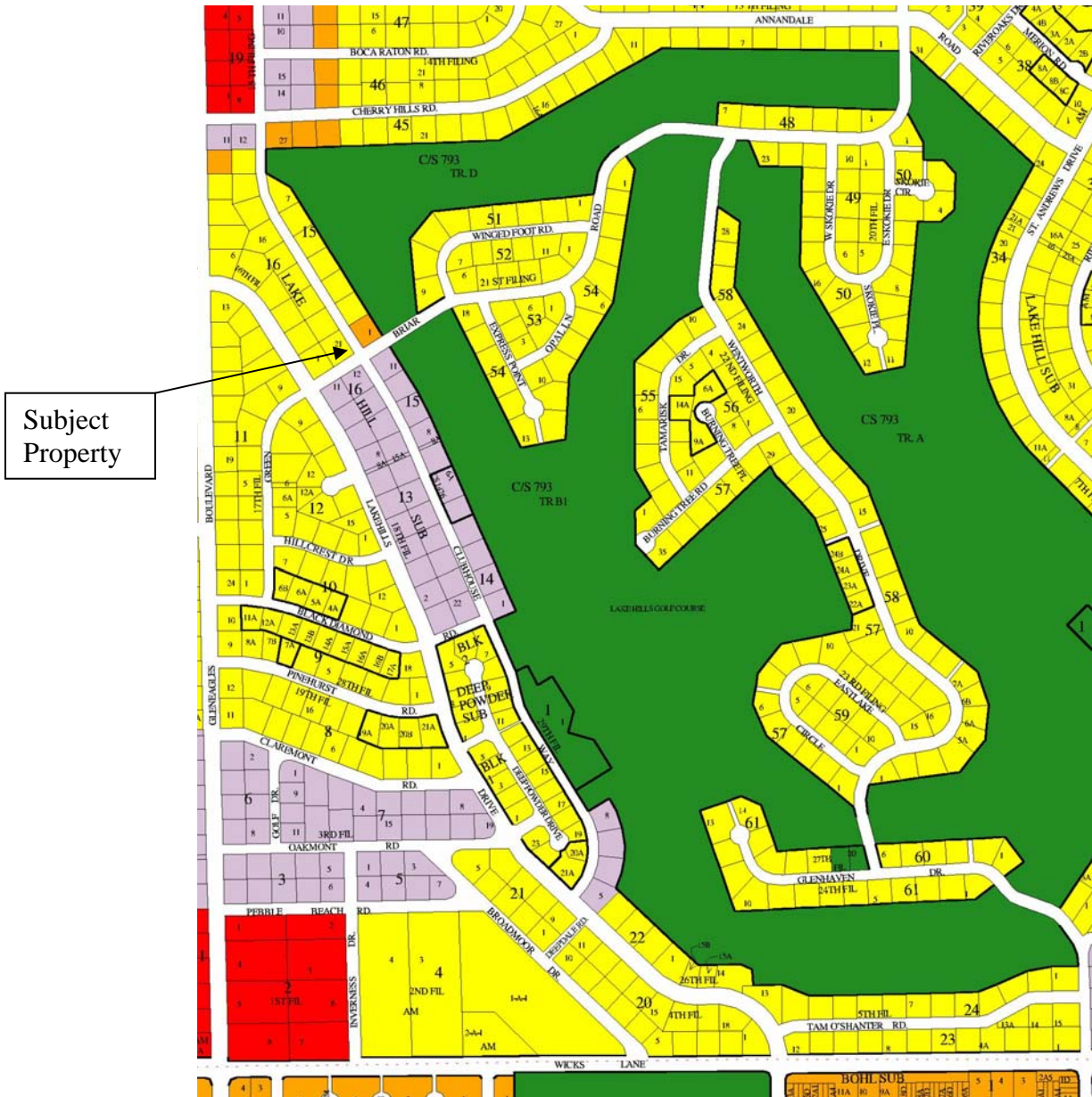


Photo 3: View west along Green Briar Road toward the subject property.



Photo 4: View south along Clubhouse Way toward existing multi-family residential uses across Green Briar Road.

**ATTACHMENT B**  
Surrounding Zoning – Zone Change #780





**ATTACHMENT C**  
Zone Change #780

**ORDINANCE NO. 06-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Lot 21, Block 16, Lake Hills Subdivision, 16<sup>th</sup> Filing,  
containing approximately 16,800 square feet

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. DESCRIPTION. A tract of land known as Lot 21, Block 16, Lake Hills Subdivision, 16<sup>th</sup> Filing, containing approximately 16,800 square feet and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600** to **Residential Multi-Family** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Multi-Family** as set out in the Billings, Montana City Code.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 26, 2006.

PASSED, ADOPTED AND APPROVED on second reading July 10, 2006.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#780

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, June 26, 2006**


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**TITLE:** Zone Change #781 Public Hearing and 1<sup>st</sup> Reading of Ordinance

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Juliet Spalding, Planner II

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**PROBLEM/ISSUE STATEMENT:** The applicant is requesting to change the zoning on Tract 1-B-2, Certificate of Survey 2277, Amended, from Community Commercial to Public. The subject property is located at the northeast corner of Central Avenue and Shiloh Road and is currently vacant. The owner is the Board of Regents of Higher Education of the State of Montana and the representing agent is Engineering, Inc. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 4-0 to recommend approval to the City Council.

**ALTERNATIVES ANALYZED:** State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** The proposed zone change could potentially increase the City's tax base upon development of the property.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #781 and adopt the determinations of the 12 criteria, as discussed within this report.

**Approved by:** \_\_\_\_\_ **City Administrator** \_\_\_\_\_ **City Attorney**

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Site Plan
- D: Ordinance

## **INTRODUCTION**

The owner is requesting to change the zoning on Tract 1-B-2, Certificate of Survey 2277, Amended from Community Commercial (CC) to Public (P). The 6.14 acre parcel is generally located at the northeast corner of Shiloh Road and Central Avenue and is currently vacant. The parcel will be used to expand the MSU-B College of Technology's campus.

## **PROCEDURAL HISTORY**

- On May 1, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing for this item on June 6, 2006, and recommended approval to the City Council by a unanimous 4-0 vote.
- The City Council will conduct a public hearing and first reading on June 26, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on July 10, 2006.

## **APPLICABLE ZONING HISTORY**

Zone Change #691: Zone change from R-9600 to Community Commercial on Tract 1, C/S 2277 (subject property), approved 4/8/02.

Certificate of Survey #1315 (underlying survey of adjacent property): Annexed in 1981 and zoned Public

## **BACKGROUND**

This is a zone change request from Community Commercial to Public on Tract 1-B-2 of Certificate of Survey 2277, Amended. The subject property is located directly adjacent to the MSU-Billings College of Technology (COT) at 3803 Central Avenue, just east of the Central Ave./Shiloh Rd. intersection.

The COT has recently acquired this 6.14-acre tract in order to expand their campus facilities (see Attachment C for site plan). In order to remain consistent in their zoning, the COT has requested that this property be zoned Public, as the rest of the campus is currently. The public zone is intended to reserve land exclusively for public or semi-public uses in order to preserve and provide adequate land for a variety of community facilities which serve the public health, safety and general welfare (Section 27-301, BMCC). Changing the zoning in this case would seem appropriate, in order to facilitate expansion of the COT.

The Zoning Commission reviewed this application and held a public hearing on it on June 6, 2006, the Commission voted 4-0 to forward a recommendation of approval based on the attached twelve (12) criteria for zone changes. The property is adjacent to Public zoning to the east, and Community Commercial zoning to the north, south and west. Any new development will have to comply with all applicable zoning requirements of the public zone.



## **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The new zoning will allow the College of Technology to expand its services to the community in an orderly manner, according to their campus master plan. The 2003 Growth Policy supports economic development efforts to help businesses expand, and supports contiguous development in and around existing population centers. The Public zone will allow the college to have consistent zoning across all of their campus property.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning will not increase street congestion. According to their application materials, the College of Technology (COT) is working with Faith Chapel, which is located just to the north of the subject property, to potentially have shared parking and access agreements. The COT is also working with the property owners immediately south and west of the subject property to plan for a loop road that would provide access to both properties. These efforts may help lessen traffic burden on both Shiloh Rd. and Central Ave. as all of the adjacent properties develop.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
The COT will undergo site plan review once any structures are proposed to be built. The public zoning district allows up to 50% lot coverage, and the fire department and other City departments will review any new development to ensure that the property is developed to meet all safety regulations. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning will allow the COT to expand their campus, which will include recreation and green space for the School District #2 properties which abut the campus.
5. *Will the new zoning provide adequate light and air?*  
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Community Commercial zone and the Public zone both allow 50% lot coverage. This limitation should prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*

The new zoning will allow the COT to expand their campus, including recreational and green space areas. The new zoning should not create an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

*Transportation:* The new zoning should have a minimal effect on the adjacent streets or traffic patterns. With or without the zone change, the COT development will undergo a traffic analysis in order to assure that potential traffic issues are mitigated.

*Water and Sewerage:* The City provides water and sewer service to the property and has adequate facilities to serve this property.

*Schools and Parks:* There should be no effect on parks or schools from this rezoning.

*Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The adjacent College of Technology campus is zoned Public. In order to maintain consistency in zoning, the college is requesting that this newly acquired property also be zoned public. Section 27-301 of the Unified Zoning Code defines the public zone as “intended to reserve land exclusively for public or semi-public uses in order to preserve and provide adequate land for a variety of community facilities which serve the public health, safety and general welfare.”

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The new zoning is not expected to appreciably alter the value of buildings in the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

Yes, the new zoning will encourage the most appropriate use of this land in the area.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on June 6, 2006. MSU-B's Director of Facilities and the college's Engineer spoke on the proposal and answered questions of the Commission. There was no other public testimony given.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #781 and adopt the determinations of the 12 criteria, as discussed within this report.

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Site Plan
- D: Ordinance

## **ATTACHMENT A**

### **Site photographs**

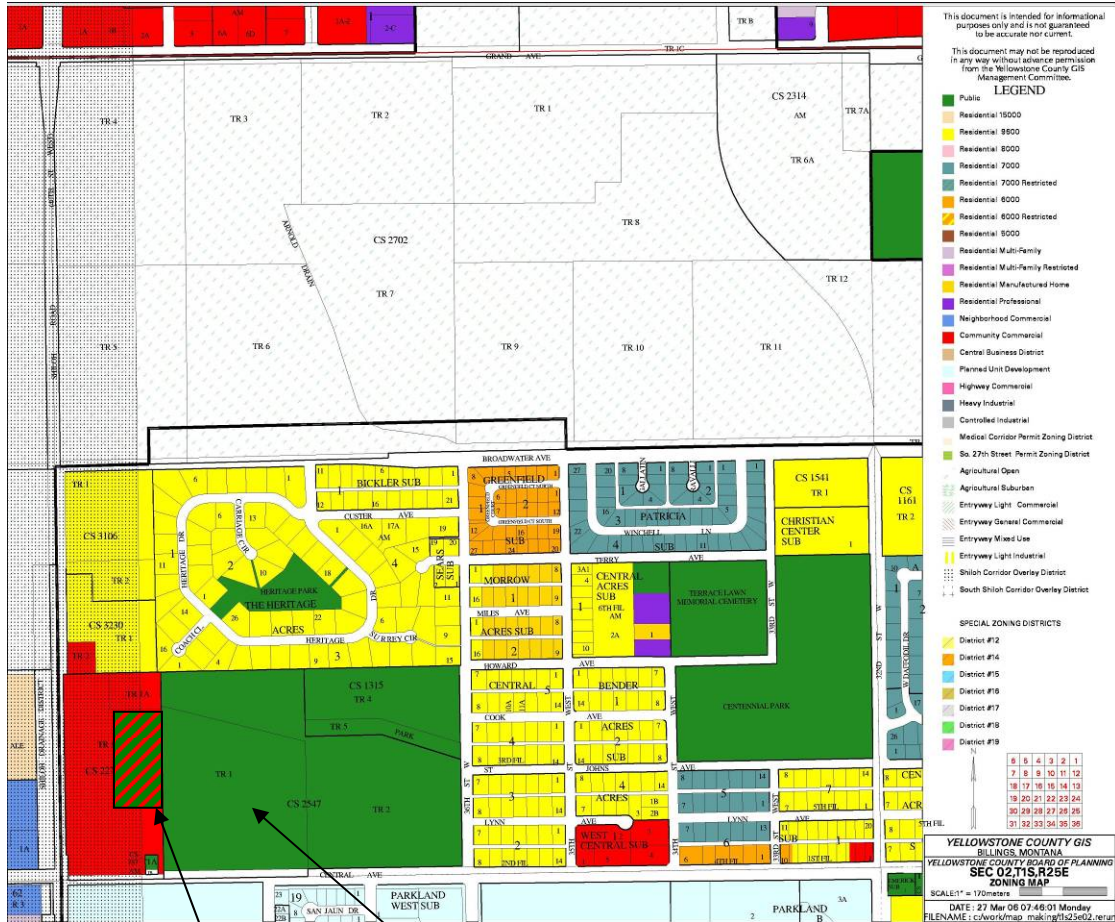


Looking east down Central Ave. from intersection with Shiloh Rd. Subject property on left.



Looking north east at existing College of Technology campus.

## ATTACHMENT B Surrounding Zoning

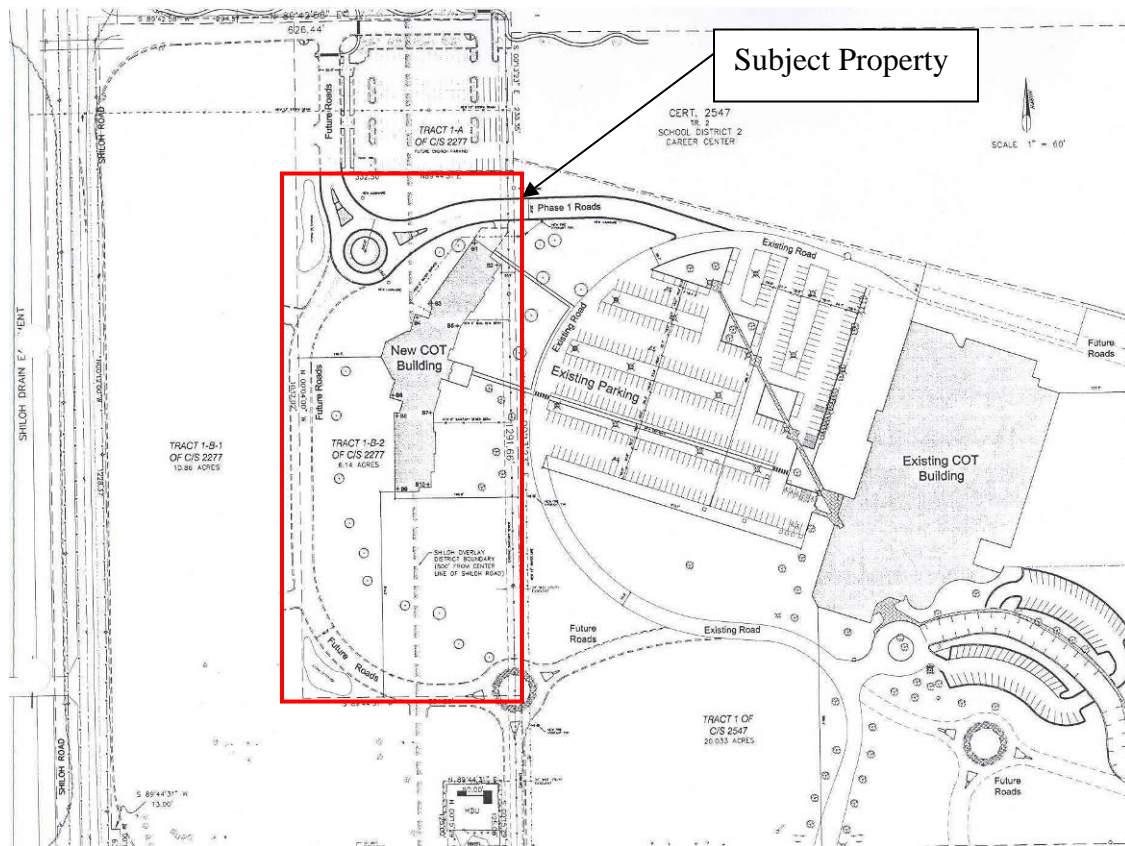


**Subject Property**

**Existing COT Campus**

## ATTACHMENT C

## Site Plan





**ATTACHMENT D**

**ORDINANCE NO. 06-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Tract 1-B-2, C/S 2277, Amended containing approximately  
6.14 acres.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC*, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. DESCRIPTION. A tract of land known as Tract 1-B-2, Certificate of Survey 2277, Amended containing approximately 6.14 acres and is presently zoned Community Commercial and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Community Commercial** to **Public** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Public** zones as set out in the Billings, Montana City Code.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 26, 2006.

PASSED, ADOPTED AND APPROVED on second reading July 10, 2006.

CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, Mayor

ATTEST:

BY: \_\_\_\_\_

Marita Herold, CMC/AAE, City Clerk  
ZC#781

[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, June 26, 2006**


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**TITLE:** Zone Change #773 – Continued Public Hearing and 1<sup>st</sup> Reading of Ordinance –Text Amendment to Section 27-611 of the Unified Zoning Regulations, Sexually Oriented Businesses

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Nicole Cromwell, AICP, Planner II, Zoning Coordinator

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**PROBLEM/ISSUE STATEMENT:** The Board of County Commissioners of Yellowstone County has initiated this text amendment to Section 27-611 of the Unified Zoning Regulations at the request of a group of concerned citizens including representatives from Montana Help Our Moral Environment (Montana H.O.M.E.), Mr. Dallas Erickson, and Citizen's Against Sexual Exploitation (C.A.S.E.), Reverend Ron Palmer. The proposal includes significant additions to the existing code adopted into the zoning regulations by the City and County in 1992. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on January 17, 2006, and voted 3-2 to recommend approval to the City Council. On February 13, 2006, the City Council voted to continue the public hearing until June 26, 2006.

**ALTERNATIVES ANALYZED:** The City Zoning Commission held a public hearing on the proposed text amendment on January 17, 2006. The Commission heard testimony before recommending approval of these changes. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose, after closing the public hearing, to approve, deny, or delay action for thirty (30) days.

**FINANCIAL IMPACT:** There should be a direct financial impact to the City, specifically the Code Enforcement Division, as a result of the new zoning regulation. The Code Enforcement Division will likely have to reduce levels of service for other areas of enforcement in order to document existing sexually oriented businesses to establish legal nonconformity under the proposed new regulation. Legal challenges to the proposed regulation are unknown and may result in a significant financial burden to the City.

**RECOMMENDATION**

The Zoning Commission recommends that the City Council approve Zone Change #773.



**Approved by:**        \_\_\_\_\_ **City Administrator**    \_\_\_\_\_ **City Attorney**

**ATTACHMENTS:**

- A:     Comparison of Existing Regulation to Proposed Regulation
- B:     Ordinance

## **INTRODUCTION**

In December 2001, Planet Lockwood at 1127 North Frontage Road in Lockwood, began offering live nude dancing at the bar and casino. Planet Lockwood is located outside the city limits but within the 4 ½ mile jurisdictional zoning area for Yellowstone County. The Unified Zoning Regulations Section 27-611 does not classify live nude dancing as a “sexually oriented business”. The existing zoning code regulates several classes of sexually oriented businesses that are clearly defined including adult arcades, adult book stores, adult movie theaters and adult motels. BMCC Section 3-304 allows the City to prohibit nude dancing where any alcohol is served or sold. The current zoning regulation allows sexually oriented businesses in certain districts if they can meet the required separation distances to other sexually oriented businesses, residential zoning districts, public libraries, playgrounds, parks, public or private schools, day care facilities, churches and other places of worship. Sexually oriented businesses are restricted to four (4) zoning districts – Central Business District, Highway Commercial, Controlled Industrial and Heavy Industrial provided they meet separation requirements.

## **PROCEDURAL HISTORY**

- On November 7, 2003, District Court Judge Russell Fagg determined that two proposed ordinances – one addressing Obscenity and one to make changes to Section 27-611, Sexually Oriented Businesses (Unified Zoning Regulations) - were valid and constitutional and could be placed on a ballot for a public election on June 8, 2004.
- On February 5, 2004, the proponents of the ordinances failed to gain the required signatures within ninety (90) days of Judge Fagg’s ruling in order to place the ordinances on the June 8, 2004, primary ballot.
- On October 13, 2005, Dan Schwarz, Chief Deputy County Attorney, forwarded to the Planning and Community Services Department the proposed text amendment to Section 27-611 of the Unified Zoning Regulations. The Board of County Commissioners initiated this amendment. The proposed amendment is identical to the one presented to Judge Russell Fagg for a ruling in 2003.
- On January 1, and January 8, 2006, the legal ad for a special joint public hearing of the City and County Zoning Commissions was published in the Billings Gazette.
- On Tuesday January 17, 2006, the City and County Zoning Commissions conducted the public hearing on the proposed amendments to Section 27-611 of the Unified Zoning Regulations. The City Zoning Commission voted 3-2 to forward a recommendation of approval to the City Council. The County Zoning Commission voted 3-1 to recommend denial to the Board of County Commissioners.
- The City Council held a public hearing and 1<sup>st</sup> reading of the ordinance on February 13, 2006, and make a decision on the proposed text amendment. The City Council continued the public hearing until June 26, 2006.
- The Board of County Commissioners held a public hearing on Friday, February 17, 2006, to consider the proposed text amendment and adopted a resolution of intent to adopt the new regulations pending a referendum vote.
- The referendum vote was held on Tuesday, June 6, 2006, and a majority of voters approved the proposed regulations. The Board of County Commissioners will meet on Tuesday June 20, 2006 to consider a final resolution to amend the Unified Zoning

Regulations. If adopted, the new zoning regulations will apply outside the city limits within the County Zoning jurisdictional area.

### **ALTERNATIVES ANALYSIS**

The City Council may choose, after closing the public hearing, to approve, deny, or delay action for thirty (30) days. The Planning Department recommended to the City and County Zoning Commissions denial of the proposed changes. The proposed changes present several difficulties including terms that are not defined, regulation of the interior design of buildings, references to case law and studies that have not been presented to the City Council for consideration, and proposes to regulate the day-to-day operations of sexually oriented businesses. An overall concern of the Planning Department with the proposed ordinance was whether it exceeds the authority granted to enact zoning regulations as stated within Montana Code and within the Unified Zoning Regulations. Many proposed sections of the code the Planning staff believes exceed this authority. Another primary concern of the Planning Department was the enforceability of some of these provisions particularly the interior building restrictions. For example, if all adult arcade viewing rooms must be limited to 150 square feet, not have closing doors and have an obstructed view from the booth to a manager's station, Code Enforcement Officers would need to check each of these specifications on an almost daily basis to determine compliance. Doors, furniture and space arrangements are easily changed even from hour to hour. Compliance will be difficult to determine and enforce for these provisions.

The City Zoning Commission determined after conducting the public hearing and considering all testimony, and the Planning Department's recommendation, the proposed amendment was suitable for adoption on a 3-2 vote. The County Zoning Commission received the same testimony but conversely determined the proposed amendment was not suitable for adoption on a 3-1 vote. The Board of County Commissioners will conduct a public hearing on the proposed amendment on Friday, February 17, 2006. The Board of County Commissioners expressed an interest in placing this measure on the ballot for a public vote on the June 6, 2006 primary election. This is not the usual method for adoption of amendments to zoning regulations either in the City or in the County. The referendum was placed on the ballot and the election held on June 6, 2006. A majority of the voters approved the proposed changes to the zoning regulations. The changes are now in effect for the County zoning jurisdiction outside the city limits.

If the changes are not adopted, the city still retains its existing authority to regulate sexually oriented businesses and its authority to regulate businesses under BMCC Section 3-304, which prohibits nude dancing where any alcoholic beverages are served or sold. If the changes are not adopted massage parlors will not be regulated as sexually oriented businesses and venues that offer nude dancing but not alcoholic beverages would not be regulated as sexually oriented businesses. If the changes are not adopted, the City will avoid significant financial burdens to enforce the new ordinance and defend likely legal challenges to the adopted text amendment. If the City Council chooses to not adopt the proposed changes it will need to articulate specific reasons for denial.

**STAKEHOLDERS**

The City and County Zoning Commissions held a public hearing on January 17, 2006 on the proposed changes to Section 27-611 Sexually Oriented Businesses. Eighteen (18) persons testified in favor of the proposed changes, five (5) persons testified against the proposed changes and four (4) persons submitted written testimony in favor of the proposed changes. Those in favor testified the proposed regulation would counteract the negative secondary effects of the sexually oriented businesses including sexually transmitted disease, blight and the break down of families. Those in favor testified that sexually oriented business contribute to addictive behavior and an increase in sexual assaults. Those opposed to the ordinance testified that the proposed change exceeds the zoning authority of the City and County, would invite litigation and is an invasion of citizen's right to privacy and free speech. Those opposed also testified that existing sexually oriented businesses are well run and have not created blight where they are located.

**RECOMMENDATION**

The Zoning Commission recommends that the City Council approve Zone Change #773.

**ATTACHMENTS:**

- A: Comparison of Existing Regulation to Proposed Regulation
- B: Ordinance

## ATTACHMENT A

### Comparison of Existing Regulation to Proposed Regulation Section 27-611 Sexually Oriented Businesses (SOB)

#### **Existing SOB Regulation**

##### **Restricts and defines:**

- Adult Arcades
- Adult Book Stores
- Adult Video Stores
- Adult Motels
- Adult Movie Theaters

##### **Allowed Only in 4 Zoning Districts**

- Central Business District
- Highway Commercial
- Controlled Industrial
- Heavy Industrial

##### **Minimum separation from another SOB**

- 600 feet

##### **Minimum separation to residential zoning, libraries, playgrounds, parks, public & private schools, day cares, churches and other places of worship**

- 1,000 feet

##### **Legal Nonconformity lapse period**

- 1 year

##### **Restriction on size of viewing booth/room**

- None

#### **Proposed SOB Regulation**

##### **Restricts and defines:**

- Adult Arcades
- Adult Book Stores
- Adult Video Stores
- Adult Motels
- Adult Movie Theaters
- Viewing Rooms/Booths
- Nudity in Sexually Oriented Businesses

##### **Restricts but does not define:**

- Adult Massage Parlor
- Adult Sauna
- Adult Entertainment Center
- Adult Cabaret
- Adult Health/Sport Club
- Adult Steam Room/Bathhouse Facility
- Nude Dancing Establishment

##### **Allowed Only in 4 Zoning Districts**

- Central Business District
- Highway Commercial
- Controlled Industrial
- Heavy Industrial

##### **Minimum separation from another SOB**

- 600 feet

##### **Minimum separation to residential zoning, libraries, playgrounds, parks, public & private schools, day cares, churches and other places of worship**

- 1,000 feet

##### **Legal Nonconformity lapse period**

- 1 month (30 days)

##### **Restriction on size of viewing booth/room**

- 150 square feet
- No doors allowed
- Viewable from manager's station

### **Existing SOB Regulation**

#### **Sign Limitations**

- Prohibits obscene, pornographic or immoral words or pictures (City Sign Code)
- No prohibition in County Sign Code
- Size and number limited by City & County Sign Code applicable to zoning district

#### **Operating Standards**

- Prohibits nude dancing where alcohol is served (City only)

### **Proposed SOB Regulation**

#### **Sign Limitations**

- Prohibits pictures, silhouettes or drawings of any kind – just business name
- Requires uniformity on lettering and background of sign
- Limits each SOB to 2 signs maximum – 3 display sides total
- Must be a rectangle, not exceed 75 square feet, cannot exceed 10 feet in height or ten feet in length
- No flashing lights allowed
- Must post sign on each door stating “Adults Only” or “No Minors Allowed”

#### **Operating Standards**

- Prohibits nudity and specific sexual activity in any SOB except for Adult Motels
- Prohibits SOB in any building where alcohol is served except for Adult Motel (City & County)
- Prohibits employees from soliciting for business outside the SOB
- Requires live performances in SOB to be on a stage and at least 9 feet from audience
- May not be open between midnight and 9 am
- No minors allowed in SOB
- In Adult Video Arcades lighting must be at least 5 foot candles at floor level
- In Adult Video Arcades must have easily cleaned walls and flooring in viewing booths, rugs and carpeting are prohibited
- No merchandise or activities can be displayed from building exterior
- No flashing lights, drawings, pictures or silhouettes on the building exterior
- Single color required on building exterior unless part of a multi-tenant building

## ATTACHMENT B

### ORDINANCE NO. 06-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-611(a), 27-611(b), 27-611(c), AND ADDING NEW SECTIONS 27-611(g), 27-611(h), 27-611(i), 27-611(j) and 27-611(k); SEXUALLY ORIENTED BUSINESSES PURPOSE AND FINDINGS, DEFINITIONS, SIGN LIMITATIONS, OPERATING STANDARDS AND BUILDING EXTERIOR REQUIREMENTS AND ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The Board of County Commissioners initiated the amendment to the Unified Zoning Regulations for the City of Billings and Yellowstone County and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.*

**Section 2. DESCRIPTION.** The proposed zoning regulation shall apply to all land within the City Of Billings.

**Section 3.** That the Billings, Montana City Code be amended by revising Sections 27-611(a), 27-611(b), 27-611(c) to read as follows:  
SEC. 27-611. SEXUALLY ORIENTED BUSINESSES.

- (a) Purpose and Intent. It is the purpose of this section to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and the general welfare of the citizens of the City of Billings and Yellowstone County, and to establish reasonable uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the City and County jurisdictions. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly it is not the intent or effect of these regulations to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, nor to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene materials.

- (b) ~~Findings and Determinations.~~ The Billings City Council and Yellowstone County Commission hereby finds and determines that:

Based upon evidence concerning the adverse secondary effects of sexually oriented businesses on the community presented in hearings and reports made available to the City Council and Board of County Commissioners, and upon findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.* 475 U.S.41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.* 478 U.S. 697 (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, Ky*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS Inc. v. City of Chattanooga*, 107 F 3<sup>rd</sup> 403(6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F. 2<sup>nd</sup> 1053 (9<sup>th</sup> Cir 1986); *Hang On Inc. v. City of Arlington*, 65 F. 3<sup>rd</sup> 1248 (5<sup>th</sup> Cir. 1995); *South Florida Free Beaches Inc. v. City of Miami*, 7344 F 2n 608 (11<sup>th</sup> Cir 1984); and *N.W. Enterprises v. City of Houston*, 27 F. Supp. 2d 754 (S.D. Tex. 1998), as well as studies conducted in other cities including but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the City of Billings and Yellowstone Commission find that:

- ~~(1) — The establishment of adult uses in business districts which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.~~
  - ~~(2) — The establishment of more than two (2) adult uses within six hundred (600) feet of each other has a deleterious effect on surrounding residential and business areas and the fostering of such businesses within a close proximity tends to create a "skid row" atmosphere.~~
  - ~~(3) — The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients, a circumstance which adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere.~~
  - ~~(4) — Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.~~
- (1) Sexually oriented business lend themselves to ancillary unlawful and unhealthy activities that are currently uncontrolled by the operators of the establishments. Further, there is currently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.



- (2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g. Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.
- (3) Sexual acts, including masturbation, sadomasochistic abuse, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos or live sex shows. See, e.g. *California v LaRue*, 409 U.S. 109, 111 (1972); See also Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (4) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g. Final Report of Attorney Generals' Commission on Pornography (1986) at 367-77.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. See e.g. *Arcara v. Cloud Books Inc.* 478 U.S. 697, 698 (1986), see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- (6) At least 50 (fifty) communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV- AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections, See, e.g. Study of Fort Meyers, Florida.
- (7) As of December 31, 1996, the total number of reported cases of AIDS in the United States caused by the human immunodeficiency virus (HIV) was 581, 429. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (8) As of December 31, 1999, there have been 92 (ninety-two) reported cases of AIDS in the State of Montana for the years 1997 through 1999.
- (9) The total number of cases of genital Chlamydia trachomatis infection in the United States reported in 1997 was 526,653, an 8% increase over the year 1996. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (10) The total number of cases of early (less than one year) syphilis in the United States reported during the twelve year period 1985-1997 was 387,233. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,901,365 cases reported during the period 1993-1997. See e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

- (12) The Surgeon General of the United States, in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.
  - (13) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g. Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
  - (14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted therein are unhealthy, and, in part, because of the unregulated nature of the activities and the failures of the owners and operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g. Final Report of the Attorney General's Commission on Pornography (1986) at 377, and testimony to the Montana Senate Judiciary Committee February 9, 2001, in reference to SB399.
  - (15) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.
  - (16) Studies show nude dancing in adult establishments increases prostitution, increases sexual assaults, and attracts other criminal activity. See, e.g., Barnes v. Glen Theatre, 501 U.S. 560, 583 (1991).
  - (17) Nude dancing in adult establishments increases the likelihood of drug dealing and drug use. See, e.g., Kev, Inc. v. Kitsap County, 793 F .2d 1053, 1056 (9<sup>th</sup> Cir. 1986).
  - (18) The findings noted in paragraphs numbered (1) through (17) raise substantial governmental concerns.
  - (19) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
  - (20) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing illegal and unsanitary sexual activity occurring in adult establishments.
  - (21) The general welfare, health, morals and safety of citizens in the City of Billings and Yellowstone County will be promoted by enactment of this regulation.
- (c) Definitions.
- (1) Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the

images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(2) Adult Book Store or Adult Video Store means a commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

(3) Adult Motel means a hotel, motel, or similar commercial establishment which:

- a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(4) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(5) Church or Other Place of Worship means a building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.

(6) City means the City of Billings, Montana.

(7) County means Yellowstone County, Montana.

(8) Establishment means and includes any of the following:

- a. The opening or commencement of any sexually oriented business as a new business;
- b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- c. The additions of any sexually oriented business to any other existing sexually oriented business; or
- d. The relocation of any sexually oriented business.

(9) Nudity or State of Nudity means a male appearing without clothing to conceal his genitals or anal cleft or a female appearing without clothing to conceal her breasts, genitals or anal cleft. A male or female's genitals or anal cleft are concealed when they

are not visible. A female's breasts are concealed when her areolas and nipples are not visible.

- (10) Sexually Oriented Business means an adult bookstore, adult theater, adult motel, adult massage parlor, adult sauna, adult entertainment center, adult cabaret, adult health/sport club, adult steam room/bathhouse facility and/or nude dancing establishment.
- ~~(10) Sexually Oriented Business means an "adult" arcade, "adult" book store, "adult" video store, "adult" motel, or "adult" motion picture theater.~~
- (11) Specified Anatomical Area means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.
- (12) Specified Sexual Activities means and includes any of the following:
  - a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
  - b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
  - c. Masturbation, actual or simulated; or
  - d. Excretory functions as part of or in connection with any of the activities set forth in above (a) through (c).
- (13) Transfer of Ownership or Control of sexually oriented business means and includes any of the following:
  - a. The sale, lease, or sublease of the business;
  - b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
  - c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- (14) Viewing Room/Booth/Adult Arcade means a room or booth of less than one hundred fifty (150) square feet of floor space to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

Section 4. That the Billings, Montana City Code be amended by adding new sections 27-611(g), 27-611(h), 27-611(i), 27-611(j) and 27-611(k) to read as follows:  
(g) Applicability. The provision of this section shall apply to all existing and future sexually oriented businesses. Pursuant to MCA 76-2-208 and Section 27-401 of these regulations, any such existing business that does not meet the zoning district restrictions or the distance limitations, may continue its existence as a nonconforming use; but such

nonconforming use will be subject to curtailment by current state law and these regulations. If a sexually oriented business is nonconforming to these regulations and such use is discontinued or abandoned for a period of thirty (30) consecutive days the nonconforming status shall lapse and any subsequent use of the property shall conform to the regulations specified by this resolution/ordinance for the district in which such land is located.

(h) Sign Limitations. Notwithstanding any other city ordinance or county resolution, code or regulations to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(1) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

- (a) not contain any flashing lights;
- (b) be a flat plane, rectangular in shape;
- (c) not exceed seventy-five (75) square feet in area or the maximum size allowed under any other relevant city ordinance or county resolution, whichever is less; and
- (d) not exceed ten (10) feet in height or ten (10) feet in length or the maximum size allowed under any other relevant city ordinance or county resolution, whichever is less.

(2) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any type and may contain only the name of the business.

(3) Each letter forming a word on a primary sign shall be of solid color, and each letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be uniform and solid color.

(4) Secondary signs shall have only one (1) display surface. Such display surface shall:

- (a) be a flat plane, rectangular in shape;
- (b) not exceed twenty (20) square feet in area or the maximum size allowed under any other relevant city or county regulations, whichever is less;
- (c) not exceed five (5) feet in height and four (4) feet in width or the maximum size allowed under any other relevant city or county regulations, whichever is less; and
- (d) be affixed or attached to any wall or door of the business.

(5) Each sexually oriented business operation must post a sign on each door stating with "Adults only" or "No Minors Allowed".

(i) Operating Standards. All sexually oriented businesses shall operate in accordance with the following:

(1) No employee shall solicit business outside the building in which the business is located;

(2) All live entertainment in sexually oriented businesses shall be performed on a platform or other exclusive area provided for such purpose, and no entertainer or performer shall be permitted to leave such platform or area while entertaining or performing. This platform or other exclusive area shall be constructed in such a manner as to keep the

performers at least nine (9) feet away from patrons;

(3) Nudity and specified sexual activities while on the premises of a sexually oriented business, other than adult motel, shall be prohibited. Nothing in these regulations shall be construed to prohibit a person from appearing in a state of nudity while using a restroom. Restrooms may not contain video reproduction equipment or be used in any way to circumvent this zoning regulation;

(4) No sexually oriented business shall operate between the hours of 12:01 am and 9:00 am;

(5) No sexually oriented business, other than an adult motel, shall be located in any building where alcoholic beverages are dispensed or consumed; and

(6) No minors shall be allowed in sexually oriented businesses.

(j) Operating Standards that Pertain to Establishments that Exhibit Sexually Explicit Films, Videos or any other Images. A sexually oriented business which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other video reproduction that specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding restrooms. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations, excluding restrooms. The view required in this subsection must be direct line of sight from the manager's station;

(2) No opening or holes of any kind shall exist between viewing booths/rooms or adult arcades;

(3) No doors shall be allowed on viewing booths/rooms or adult arcades;

(4) The premises shall be equipped with and have in continuous operation, while patrons are present, overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level; and

(5) All floor coverings and walls in viewing booths/rooms and adult arcades are to be constructed of nonporous, easily cleanable surfaces, with no rugs or carpeting.

(k) Building Exterior Appearance.

(1) It shall be unlawful for an owner or operator of sexually oriented business to allow merchandise or activities of the establishment to be visible from outside the establishment.

(2) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, words, lettering, photographs, silhouettes, drawings, or pictorial representations of any type except to the extent permitted by the provisions of this section.

(3) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single monochromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

\_\_\_\_\_ (a) The establishment is part of a commercial multi-unit center;  
\_\_\_\_\_ and;  
\_\_\_\_\_ (b) The exterior portions of each individual unit in the commercial  
\_\_\_\_\_ multi-unit center, including the exterior portions of the business,  
\_\_\_\_\_ are painted the same color as one another or are painted in such a  
\_\_\_\_\_ way so as to be a component of the overall architectural style or  
\_\_\_\_\_ pattern of the commercial multi-unit center.  
\_\_\_\_\_ (4) Nothing in this section shall be construed to require painting of an otherwise  
\_\_\_\_\_ unpainted exterior portion of a sexually oriented business.

**Section 5.** REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 6.** SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 7.** EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 26, 2006.

PASSED, ADOPTED AND APPROVED on second reading July 10, 2006.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

ZC#773 – Amending Section 27-611 – Sexually Oriented Businesses

[\(Back to Regular Agenda\)](#)