

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **February 26, 2007**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Boy Scout Troop #7, (1<sup>st</sup> Methodist Church, sponsor) led the Pledge of Allegiance. Councilmember Vince Ruegamer gave the Invocation.

**ROLL CALL** – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, and Clark. Councilmember Jones was excused.

**MINUTES – February 12, 2007**. Approved as printed.

**COURTESIES** - City Administrator Tina Volek announced that City Clerk Marita Herold would be leaving the Administration Department as City Clerk to accept the position of Aviation & Transit Department Business Manager. She noted that Ms. Herold has been the City Clerk since 1987 and has made numerous efficiency improvements to the office of City Clerk. Ms. Volek said Ms. Herold would be missed, but the new position is a promotion for Ms. Herold and she would not be leaving the organization. Mayor Tussing presented Ms. Herold with a plaque in appreciation of her service as City Clerk from July 20, 1987 to March 1, 2007.

### **PROCLAMATIONS**

- March 8: World Kidney Day
- March 2: Read Across Billings Day
- February 26: TRIO Day

### **ADMINISTRATOR REPORTS – Tina Volek**

- City Administrator Tina Volek said the Council Agenda Review meeting would be held tomorrow evening at 5:30 p.m. in the City Hall Conference Room.
- Ms. Volek noted that several of the Councilmembers received ex parte communication on Item 4. A copy of this correspondence is contained in a binder at the back of the Council Chambers this evening.
- She also noted that a protest had been received about a bid irregularity on Item B1. A copy of this correspondence from Heather Long of HL Construction is also contained in the ex parte binder at the back of the Council Chambers.

**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.)**

- HEATHER LONG, NO ADDRESS STATED, said she is the owner of HL Construction and noted that she filed the objection to the irregularity in the bid of Magnum Contractors. She said Magnum removed several bid pages from the specification book, when the instructions specifically said not to remove any pages when submitting a bid proposal. Ms. Long said she bids frequently on State projects and noted that if instructions are not explicitly followed on those bids, a contractor's bid is thrown out. She asked how many rules the Council is willing to bend in this bid process and added that if instructions are not meant to be followed, there is no point in putting instructions in the specifications.
- STAN NEWTON OF 835 AGATE asked the Council to switch the priority listing of two projects currently in the CIP by exchanging #3: Bench Boulevard Connection with #4: Inner Belt Loop. He said the Inner Belt Loop is an important project for the Heights.

**CONSENT AGENDA:**

1. A. **Mayor's appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Steve Zeier	Traffic Control Board	2/26/07	12/31/07

Unexpired term of Jill Krueger

B. **Bid Awards:**

(1) **Athletic Park Swimming Pool Demolition.** (Opened 2/13/07). Recommend Magnum Contractors LLC DBA Magnum Demolition, \$62,430.00.

(2) **SID #1372: Summerhill Subdivision.** (Opened 2/13/07). Recommend rejecting all bids.

(3) **W.O. 07-03, Contract #1: 2007 Street Maintenance.** (Opened 2/13/07). Recommend delaying to 3/12/07.

C. **Bus/Bench Advertising Concession Agreement** with Blair Unlimited, 40% annual gross sales or minimum annual guarantee of \$50,000.00 (whichever is greater), term: 5 years.

D. **Contract for Professional Services** with Great West Engineering, Inc., for the design and construction administration of Phase 3 landfill cell, \$155,000.00.

**E. Contract for Professional Services** with Engineering, Inc., for SID 1375 (water, sewer, storm drain, curb and gutter and street improvements to Claremont Rd. between Lake Hills Dr. and Gleneagles Blvd.), \$64,920.08

**F. Contract for Professional Services** with Engineering, Inc., for SID 1377 (water, sewer, storm drain, curb and gutter and street improvements to Greenbriar Rd. between Lake Hills Dr. and Hillcrest Dr.), \$26,522.61.

**G. W.O. 06-20: Downtown Billings Wayfinding Signage** Memorandum of Agreement with Montana Dept. of Transportation (MDT).

**H. STPHS 56(61): Various Intersections West of Billings**, City & County Construction Agreement with Montana Dept. of Transportation (MDT).

**I. W.O. 07-04: Garden Avenue Waterline**, contribution and Memorandum of Agreement with Yellowstone County, \$311,782.50.

**J. Reimbursement Agreement** for Private Contract #530 – the Estates at Briarwood Subdivision, First Filing.

**K. Easement with** QWest Corporation for telephone cabinet site for Copper Ridge Sub., 1<sup>st</sup> Filing, Block 1 – Park, \$2,000.00.

**L. Authorization** to submit application for Environmental Protection Agency (EPA) *Smart Growth Implementation Assistance Grant*.

**M. W.O 00-15: Grand Avenue, Right-of-Way purchase from McDonald's Real Estate Company:**

- (1) Approval of the subdivision plat
- (2) Accept Quit Claim Deed for Lots 1A, 2A and 3A, Amended Lots 1 – 3, C/S 269, located at 1046 Grand Ave.
- (3) Accept temporary construction easement Downtown Billings Association (DBA) Street Closures:

**N. Downtown Billings Association (DBA) Street Closures:**

- (1) *Alive After 5:* June 21, Host: Buchanan Capital, N. 28<sup>th</sup> from 2<sup>nd</sup> to 3<sup>rd</sup> Ave., 3 p.m. to 9 p.m.
- (2) *Alive After 5:* June 28, Host: MSU-B Downtown, N. 28<sup>th</sup> from 2<sup>nd</sup> to 3<sup>rd</sup> Ave., 3 p.m. to 9 p.m.
- (3) *Alive After 5:* July 5, Host: Special Gold Wing, N. 28<sup>th</sup> from 1wst and 2<sup>nd</sup> Ave. N from 29<sup>th</sup> to the alley west of N. 27<sup>th</sup>., 3 p.m. to 9 p.m.
- (4) *Alive After 5:* August 2, Host: Montana Brewing Company, N. 28<sup>th</sup>

from 1<sup>st</sup> to 2<sup>nd</sup> Ave., 3 p.m. to 9 p.m.

(5) *Alive After 5*: June 14, Host: The Carlin, N. 25<sup>th</sup> St. between Montana Ave. And 1<sup>st</sup> Ave. N (1 block), 3 p.m. to 9 p.m.

(6) *Alive After 5*: July 19, Host: Pug , N. 30<sup>th</sup> St. between 1st Ave. N. and 2<sup>nd</sup> Ave. N., 3 p.m. to 9 p.m.

(7) *Alive After 5*: July 26, Host: Tiny's Tavern, N. 24<sup>th</sup>. St. between 4<sup>th</sup> Ave. N and 3<sup>rd</sup> Ave. N. (1 block), 3 p.m. to 9 p.m.

(8) *Alive After 5*: August 9, Host: Monte Carlo Casino, N. 29<sup>th</sup> St. between Montana Ave. and 1<sup>st</sup> Ave. N., 3 p.m. to 9 p.m.

(9) *Alive After 5*: August 16, Host: Western Wheel Bar, Minnesota Ave. between 27<sup>th</sup> St. N and 28<sup>th</sup> St. N., 3 p.m. to 9 p.m.

(10) *Strawberry Festival*: June 9, N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave., and 2<sup>nd</sup> Ave. from the alley west of N. 27th to N. 29<sup>th</sup>, and N. 29th from 1<sup>st</sup> to 2<sup>nd</sup> Ave., 3 p.m. to 7 p.m.

(11) *Farmers' Market*: Saturdays: July 21 to October 6, N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave., and 2<sup>nd</sup> Ave. from the alley west of N. 27<sup>th</sup> to N. 29th and N. 29<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Ave., 6 a.m. to 1 p.m.

(12) *Farmers' Market*: Wednesday nights: August 1 – August 22, N. 28<sup>th</sup> from 1<sup>st</sup>. to 2<sup>nd</sup> Ave. and 2<sup>nd</sup> Ave. from N. 28<sup>th</sup>. to N. 29<sup>th</sup>, 3 p.m. to 9 p.m.

(13) *Harvestfest*: October 13, N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave. and 2<sup>nd</sup> Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>., 6 a.m. to 5 p.m.

(14) *Holiday Parade*: November 23, established Downtown Parade Route.

(15) *Christmas Stroll*: December 7, N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave. and 2<sup>nd</sup> Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>, 4 p.m. to 9:30 p.m.

**O. Resolution #07-18527** authorizing construction bids for SID 1375: Claremont Rd.

**P. Resolution #07-18528** authorizing construction bids for SID 1377: Greenbriar Rd.

**Q. Resolution of Intent #07-18529** to order in W.O. 05-02: 2005 Miscellaneous/Developer-Related Improvements and setting a public hearing for 3/26/07.

**R. Resolution of Intent #07-18530** to create Expanded Park Maintenance District (PMD) #4025: Rehberg Ranch Estates Sub., 1<sup>st</sup> & 2<sup>nd</sup> Filings, repealing Res 06-18454 and setting a public hearing for 3/26/07.

**S. Second/final reading ordinance #07-5401** expanding the boundaries of Ward I to include recently annexed property described as: Annex #07-01: an 11,160 square foot parcel of property described as Lot 3, Block 7, Kimble Subdivision, 2nd

Filing and located at 215 Garden Ave. and including all adjacent right-of-way of Garden Avenue.

**T.** Extension for Cenex Park Subdivision, Amended Lot 4, Block 4 until May 10, 2008.

**U.** **Preliminary Plat** of Amended Lot 7, Block 4, Meadowlark Subdivision, generally located between Phoebe Dr. and Woulde Dr. south of Sharron Ln.

**V. Bills and Payroll.**

- (1) January 26, 2007
- (2) January 1 - 31, 2007 (Court)

**(Action:** approval or disapproval of Consent Agenda.)

Councilmember Veis separated ITEM B1. Councilmember Stevens separated ITEMS A & Q.

Councilmember Clark moved for approval of the Consent Agenda except ITEMS A, B1 and Q, seconded by Councilmember Ruegamer. On a voice vote, the Consent Agenda EXCEPT ITEMS A, B1 and Q was unanimously approved.

Councilmember Clark moved for approval of ITEM A, seconded by Councilmember Boyer. Councilmember Stevens requested the Councilmembers be notified of Board and Commission vacancies so they could notify their constituents. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of ITEM B1, seconded by Councilmember Ruegamer. Councilmember Brewster stated the bid was approximately one-half the amount of the other bids. Parks, Recreation and Public Lands Director Mike Whitaker said that CTA Architects/Engineers investigated the bid and reported the contractor has the ability to complete the bid on time and had complete understanding of the project. Councilmember Ruegamer asked if Magnum Contractors had a local office. Mr. Whitaker replied, "Yes." Councilmember Veis asked City Attorney Brent Brooks to respond regarding the opinion he wrote on the irregularity. Mr. Brooks replied, "That the letter written by Ms. Long dated February 23, 2007, and received by the Council, outlines the rules for Montana. The item that Ms. Long mentioned is on the face/cover of the project manual. It is not included in the instructions to bidders, which is a formal document that is approximately four or five pages. The document was attached to correspondence to Councilmembers so they could see what the instructions are. In talking to Mr. Whitaker and Mark Jarvis (the City Park Planner) of the Parks Department, it appeared, the "low-bidder" physically removed the pages that he had to complete and did not physically re-insert them into the project manual. Other bidders chose not to remove those documents and included them in the project manual. Notations on the front cover of the project manual state, "Do not remove anything from the project manual" was for the convenience of the

architects/engineers who were overseeing the project so they would not lose track or misplace all the bidding documents. Page IB-3 of the Instruction to Bidders under the heading entitled *Acceptance and Rejection of Bids*, says the owner (City of Billings) reserves the right to waive any irregularities. Based on the case law and past experience, this is at best a minor irregularity that had nothing to do with the competitiveness or the fairness of the bidding process. In fact, Ms. Long's letter did not challenge the fairness or the competitiveness of the bidding process. The Montana Contractors Association likely would agree with the way the case law has been applied in this case. The protest from Long Construction is that the documents that were presented by Magnum Construction, the lowest bidder, were not physically re-inserted into the project manual and therefore that bid should have been rejected. That is contrary to the instructions for bidders and the council's right to waive irregularities. It is also contrary to the case law that provides the rules for bidding are not for the protection of the competitive bidding company, they are for the protection of the taxpayers, so that they receive the best project for the least amount of money. Councilmember Veis asked what kind of a timeframe the City would incur from a of a delay due to re-bidding because of the concerns about the low dollar amount of the bid, noting this bid is significantly lower than the other bids. Mr. Whitaker said Magnum Contractors' representative, Dale Hope, signed an Acknowledgement of Liquidated Damages wherein the contractor agreed to \$500.00 per day paid to the City for each day of non-completion after the specified date. He added that should the project have to be rebid there would be at least a two week delay. City Administrator Tina Volek stated that Magnum Contractors specializes in demolition work. On a voice vote, the motion was approved. Councilmember Veis voted "no".

Councilmember Clark moved for approval of ITEM Q, seconded by Councilmember Ruegamer. Councilmember Stevens asked Public Works Director David Mumford about the consequences if a developer does not complete the specified public improvement requirements. Was there some way to hold the developer responsible, i.e. for sidewalks not completed by developers? Mr. Mumford replied, the developer is not normally responsible because the sidewalks "go in" with the home. Because of this, if a lot is not built then there is a vacant spot. Also, there are segments that are very old and the department is trying to fill in the gaps prior to changing the rules. Mayor Tussing reported a public hearing is scheduled on March 26, 2007, on this item. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

- 2. PUBLIC HEARING AND RESOLUTION #07-18531 approving the FY08 – FY12 Capital Improvement (CIP), Equipment Replacement Plan (ERP), and Technology Replacement Plan (TRP). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Engineer Vern Heisler stated the Staff made a presentation to the Council at the Council Work Session on February 5, 2007. He asked the Council to review page fifteen (15) of the draft CIP for the following items:

- *ENG ST0801-Stormwater Master Plan* – complete comprehensive master plan
- *ENGST0901-Stormwater Master Plan Implementation* – implement recommendations from the master plan based on priority.
- *ENG ST0902-Stormwater MS4 Permit Implementation* – Storm drain.

and page fourteen - (14) *ENGD001-Lake Hills Subdivision Storm – Basin 2* of the Lake Hills Subdivision. Mr. Heisler stated the \$667,000 in the fiscal year 2011 should show under the *ENGST0901-Stormwater Master Plan Implementation* for fiscal year 11 and under the fiscal year 11 where \$200,000 was shown \$667,000 should be added. Mr. Heisler reported the Lake Hills Subdivision Storm project was also a very important project and had already appeared on the CIP report a couple of times and is a high priority. Mr. Heisler reported the following corrections:

- (1) ENG03: Aronson Avenue Extension - \$250,000 in storm drainage funding and \$90,000 in developer contributions were added to this project in FY2008 to match project cost estimates received since the draft CIP was distributed to the Council and the project totaled \$4,840,000.
- (2) ENGST0901: Storm Water Master Plan Implementation – an additional \$200,000 was added to FY2008 for this proposed annual project and the project totaled \$450,000.
- (3) ENGST08-02: Inner Belt Loop Property Acquisition – the project was added to the draft CIP for each of the Fiscal Years 2008 TO 2012. The funding was identified as “to be determined” and no estimated dollar amount is shown at this time.

The public hearing was opened. RON HILL, 2242 WEST SKOKIE said he wanted to thank the Staff and City Administrator for the hard work on the CIP. Mr. Hill stated the Master Plan in the CIP was an excellent idea. He further stated the Lake Hills Storm Drain Project was an important project. He asked the Council to consider making improvements on existing Heights property and future annexed property.

WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, Chairman of Central-Terry Task Force, asked the Council to include two (2) items in CIP: (1) Athletic Pool – removal of this pool leaves a void and there is a need for a pool in the downtown area. Mr. Birdwell requested “something” included in the next five (5) years. (2) Mr. Birdwell requested the Council to consider long-term planning for traffic issues along Lewis Avenue, a defacto thoroughfare. He stated there was a need for speed and traffic volume mitigation.

JILL STOUT, 751 LEWIS AVENUE, reported to the Council that there were four (4) accidents – three (3) of the accidents were serious – in the past four (4) months at

the intersection of 8<sup>th</sup> Avenue West and Lewis Avenue. She said that the intersection needs Council attention. Ms. Stout asked the Council to mitigate safety problems and property damages. City Administrator Tina Volek stated that the Staff has a future meeting scheduled for discussion of calming measures at a cost of less than \$25,000. Therefore, this would not be eligible for the CIP. Councilmember Gaghen asked Ms. Stout how long she had lived at 751 Lewis Avenue. Ms. Stout replied, for a year-and-a-half. Councilmember Gaghen stated that the area was also used by middle school children traveling to and from other areas to the middle school, etc. Ms. Gaghen stated she agreed with Ms. Stout and wanted to encourage the Council and the City to do whatever could be done to proceed forward.

TOM ZURBUCHEN, 1747 WICKS LANE, stated he was glad the Inner Belt Loop (IBL) was in the CIP and there was funding from the arterial street fees. He added that inflation was "built-in".

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of Staff Recommendation of FY 2008-2012 CIP/ERP/TRP, seconded by Councilmember Ruegamer. Councilmember Brewster asked if the motion included the changes in the memo in the Friday packet. Councilmember Boyer replied, "Yes." Councilmember Veis moved to amend the CIP to include the dollar amount for Lewis Avenue traffic calming in FY09, seconded by Councilmember Ruegamer. Councilmember Veis stated he appreciated that Public Works Department would be out this year helping with some striping and light changes for Lewis Avenue and hopefully this summer Grand Avenue would be under construction. He stated he would like to see a line item for Lewis Avenue with some traffic calming in FY09 after those items are completed.

Councilmember Ruegamer stated he agreed with Councilmember Veis. He further stated that he had discussed this issue with Public Works Director David Mumford who felt that it might slow down the CIP. Mr. Mumford stated that the Public Works Department had contracted with HDR Engineering to help with striping and looking at what measures could be done quickly for traffic calming on Lewis Avenue this year. He stated there are no plans at this point for a larger traffic analysis. Councilmember Ruegamer stated there was "no parking" on Lewis Avenue and asked if parking would work. Mr. Mumford said there was no plan for allowing parking on Lewis Avenue. However, Staff was looking at areas where parking might be added to help slow down traffic. Councilmember Ruegamer asked if it would be done this summer. Mr. Mumford replied, It would be done by department employees which is why it is not a 'CIP' project. City Administrator Tina Volek reminded the Council that there was an on-street biking section and when another project called for added parking there was a large public concern from the "bikers". Councilmember Veis stated that it was his impression that at the meeting with the City Traffic Engineer and City Engineer's office that work on striping

and traffic signaling would be a short term solution to the traffic problem on Lewis Avenue. However, a long term solution to the traffic problem was also discussed. Councilmember Veis further stated the Lewis Avenue residents expect a long term solution as discussed at the previous meetings and that totaled more than \$25,000. Mr. Mumford replied, the department needs to be looking at what can be done now for short term, how it would work and then do the traffic analysis if the total does not go over \$25,000. So that is not a CIP project. Once Public Works has an idea of what the cost would be then it would be coming forward with an amendment to CIP in the next couple of years of what can be done for more extensive traffic calming on the road. Councilmember Veis commented that when he talked with Mr. Mumford about the CIP for this year it was stated that the money was already allocated for this year's fund and that was why he did not want to include it in the FY08. However, if a traffic study was done in the future, Councilmember Veis did not want to come to FY09 and have it stated there was no money to allocate for Lewis Avenue in FY09 because it was already allocated. Putting money in now and having a place holder with some dollars with it, would be available mean money. Mr. Mumford said the project would have to be removed from the plan if this was to be done. This is the reason, the department would like to do the study first and find out what options are available.

Councilmember Veis amended the motion to add dollars to the CIP FY09 for Lewis Avenue, seconded by Councilmember Ruegamer. On a roll call vote, the motion failed 3-7. Councilmembers Brewster, Veis, Ruegamer voted "yes". Councilmembers Ronquillo, Gaghen, Stevens, Ulledalen, Boyer, Clark and Mayor Tussing voted "no". On a voice vote on the original motion to approve the CIP/ ERP/TRP, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION 07-18532 to revise the 2006 Limits of Annexation Map. Annexation Committee recommends approval. (Action: approval or disapproval of Annexation Committee recommendation.)**

Planning Manager Wyeth Friday reported the City Council adopted the current Annexation Policy and Limits of Annexation Map on April 10, 2006. The Annexation Policy requires the City to update the associated map whenever the Capital Improvements Plan is revised. Mr. Friday said to provide guidance on these map amendments, an Annexation Committee, consisting of representatives from the Parks, Recreation and Public Lands, Police, Fire, Public Works, Transit, Administration and Planning Departments, and Billings School District #2, had been created. He reported the Committee met several times from October 2006 through January 2007 and provided input into the proposed map revisions based on the ability to serve the areas located within the Limits of Annexation area. To develop the proposed map revisions, the committee took into account the 2006 Water and Wastewater Facilities Master Plan, the Draft 2007-2012 Capital Improvements Plan, individual developers' requests, and

the effects of additional growth on the health and quality of life of City residents. Mr. Friday noted the Committee had presented the Council with its recommendations in the form of a resolution to revise the Limits of Annexation Map. He noted the Staff had considered the ability to serve areas outside the existing City limits based on existing resources, effects on City residents, and programmed improvements. The proposed revisions to the Limits of Annexation Map reflect these considerations and attempt not to favor one department's ability to provide service over another department's limitation.

Mr. Friday said the annexation of property to the City of Billings would increase the City's tax base. However, at the same time, the City would bear the cost of additional service requirements. The Annexation Policy and the Limits of Annexation Map are management tools to help balance this cost-benefit ratio.

He further noted that the Staff had received six requests from individual property owners to include their properties in the 2007-2012 Limits of Annexation (red). Three of these properties were recommended for inclusion in the 2007-2012 classification: (2) Mahan Property, Lot 122, Sunny Cove Fruit Farm; (4) Weber Property; and (5) Dover Ranch Property. The remaining three were not recommended for addition to the red area at this time: (1) Staley and Forbes Properties; (3) Lenhardt Home Place Property; and (6) Kanavos Property. The basis for the recommendation for each property is as follows:

1. **Staley and Forbes Properties:** This 116.2-acre property is located north of Rimrock Road, and north and west of 70<sup>th</sup> Street West. The property was currently classified in the yellow (Unknown). The Staff could not support reclassifying these properties as red. However, the possibility of providing water and sewer service to this property was not a strong enough justification alone to support annexation of the property in the short term.
2. **Mahan Property, Lot 122, Sunny Cove Fruit Farm:** This 9-acre property is located just west of the Foxtail Subdivision and north of Grand Avenue and is currently classified as yellow (Unknown). Based on the analysis below, staff is recommending it be reclassified as red (2007 – 2012).
3. **Lenhardt Home Place Property:** This 114-acre property is located north of King Avenue West between 48<sup>th</sup> Street West and Shiloh Road. This property is classified in orange (2013-2023) and staff is not recommending reclassifying this property to red at this time.
4. **Weber Property:** This 84-acre property is located at the southwest corner of the intersection of Mullowney Lane and Elysian Road. This property is across Mullowney Lane from the recently platted Josephine Crossing Subdivision. The

property is classified in the orange at this time. Staff recommends changing classification of the property to red.

5. **Dover Ranch Property:** This 402-acre property is located north of Skyview High School and west of Annandale Road. The property is currently classified in the orange. The Staff did support reclassifying this property to red because it was able to be served by water and sewer infrastructure and would provide some needed transportation connections and circulation in the north-central portion of the Heights.
6. **Kanavos Property:** This 640-acre property is located south of Rimrock Road and west of 70<sup>th</sup> Street West in northwest Billings. This property is classified partly in the yellow (unknown) and partly outside of the Limits of Annexation Map analysis area entirely. The property also is outside of the City and County Unified Zoning Jurisdiction. The Staff could not support reclassifying this property as red for many reasons

Mr. Friday said that written requests for including property within the 2007 – 2012 Limits of Annexation red area were received from the property owners. These requests were distributed to the City Annexation Committee for review and comment. Public comment on the Annexation Policy and Limits of Annexation Map also were taken at four CIP public meetings around the City in November and December. While there were no specific requests to amend the map or policy at these meetings, several residents commented that they preferred to see the City provide improvements and services to areas already within the City Limits instead of adding new areas to the City that would require additional services. These comments were considered as the Annexation Committee discussed amendments to the map.

The public hearing was opened. RON HILL, 2242 WEST SKOKIE, stated he is a neighbor to the south of Annandale and Gleneagle and wanted to assure the Council that he approved the Dover property being reclassified as red.

DON REED, of LOCKWOOD, NO ADDRESS GIVEN, stated he liked the fact that Lockwood would not be considered for annexation. He stated he would pursue incorporating Lockwood as its own municipality.

TIM KRAMER, 245 SUBURBAN DRIVE, LOCKWOOD, requested a letter from the Council confirming that the Council did not want to annex Lockwood, even after Lockwood invests in its infrastructure. Councilmember Brewster suggested that Lockwood contact the County Attorney about how to proceed with incorporation. Councilmember Veis asked the Council when a recommendation would come forward on the Lockwood annexation. City Administrator Tina Volek replied, "I was in contact

with the person who organized the meeting held in Lockwood and provided her with the contact person at MSU-Bozeman. My understanding was that at the conclusion of that meeting, there was going to be someway to gather commentary in a statistically valid manner from all of the property owners in that area, i.e. special election or survey. That information was provided to them and I assume they are going forward looking/talking to the property owners about incorporation." Councilmember Veis asked if the recommendation of the report was that the Council would not seek annexation and if it had been discussed about bringing the recommendation to the Council. Ms. Volek replied, "At this point we just made a presentation, we did not have direction from the Council if it was prepared for Staff to proceed with presenting a recommendation to the Council. If the Council would like to proceed, I would be happy to bring a presentation forward to the Council."

CARL PETERS, CHAIRMAN OF THE LOCKWOOD WATER & SEWER DISTRICT asked the Council if annexation of Lockwood was refused would the Council revisit the wastewater management contract with Lockwood.

JAKE PRENTISS, DISTRICT MANAGER OF LOCKWOOD, WATER & SEWER DISTRICT stated he wanted to know for "certain" that annexation of Lockwood would not happen in order for the incorporation process to start for the area. Mayor Tussing asked City Attorney Brent Brooks about Council action on Lockwood annexation. Mr. Brooks replied, "Yes, your Honor, formally you would have to handle that like any other annexation. There would have to be a petition of a chosen method or if the Council wanted to initiate the annexation and certainly including that in the Council chosen boundaries for annexation – a separate issue from determining whether or not you should annex Lockwood some or all at some point in the future. It is perhaps related or a separate issue. Certainly it would not be incumbent upon the Council to make any decisions concerning Lockwood tonight as a part of the resolution you have before you tonight."

RICK LEUTHOLD of ENGINEERING, INC., said he represented all six (6) of the parties requesting annexation. He stated that the three parties not recommended may want to request annexation mid-year. Mr. Leuthold asked the Council to be "open" to their requests at that time as conditions change.

GARY OAKLAND of OAKLAND COMPANIES, STE. 9, WELLS FARGO BUILDING, said they were the developer of Dover Ranch. He asked the Council for approval of the Staff recommendation.

There were no other speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation to move Harmony Meadows

(Weber Property), Dover Ranch and Sunny Cove Fruit Farm to the red zone, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Mayor Tussing called a brief recess at 8:25 p.m.

The meeting was called back to order at 8:40 p.m.

**4. AMENDED LOT 65 A-4, SUNNY COVE FRUIT FARMS SUBDIVISION:**

**(A) PUBLIC HEARING AND RESOLUTION 07-18533 for Annexation #07-02, annexing approximately 13.01 acres, described as Lot 65 A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms, located on the northwest corner of the intersection of Grand Avenue and 54<sup>th</sup> St. W south of Cottonwood Grove Sub., Mary Kramer, owner and petitioner. Staff recommends conditional approval of the resolution. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. The public hearing was open. CHARLIE GAMBLE, 1819 CRYSTAL DRIVE, asked the Council for approval of the annexation. Mr. Gamble stated that all services for streets and development were already available. There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**(B) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #798: A zone change from Agricultural Open (AO) to Neighborhood Commercial (NC) and Community Commercial (CC) on an 11.6-acre parcel of land, described as Amended Lot 65A-4, Sunny Cove Fruit Farms Subdivision. Mary Kramer, owner; Charlie Gamble, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Dave Green presented the Staff presentation to the Council as follows: The applicant is requesting to rezone Amended Lot 65A-4 Sunny Cove Fruit Farms Subdivision, an 11.59 acre parcel, from Agricultural Open (AO) to Community Commercial (CC) and Neighborhood Commercial (NC). The proposed zoning would allow for Community Commercial uses directly on the northwest corner of Grand Avenue and 54<sup>th</sup> Street West and Neighborhood Commercial uses on the remaining area of the property. It is the property owner's stated intent to create a neighborhood shopping node to serve the residents in the surrounding subdivisions. The uses proposed for this property are a gas station with convenience store, a bank, two (2) fast food restaurants, both with a drive through, and three additional buildings with multiple tenants in each building.

The Zoning Commission conducted a public hearing on February 6, 2007, and is forwarding a recommendation for approval with a vote of 5-0.

The public hearing was opened. CHARLIE GAMBLE of 1819 CRYSTAL DRIVE, stated this zoning was more restrictive and trying to buffer the residential located "above" the subject property. The zoning in the area has the commercial nodes at the intersections. Mayor Tussing stated he had a concern about the density of the traffic traveling on 54<sup>th</sup> Street at the present speed of 60 miles per hour.

RICK LEUTHOLD of ENGINEERING, INC. stated the improvements would occur with the development of Grand Peaks Subdivision and Vintage Estates. He noted that along with annexation comes the development and improvement of the roadways in and around the area. Mr. Leuthold agreed that this was a high traffic area. He reported that a "turn lane" was planned to help alleviate some of the traffic problems.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION 07-18534 approving and adopting a budget amendment for FY 2006/2007. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. The public hearing was open. There were no speakers. The public hearing was closed. Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND SPECIAL REVIEW #834: A special review to amend the master plan for a Senior Housing Community, new layout for the site and the buildings on the site in a Residential-9,600 (R96) zone on Tract 1, of Corrected Amendment of Tracts 1 and 3 and Remainder Tract 2 to be Amendment of Tracts 1, 2, and 3, C/S 1648, generally located at the northwest corner of Bell Avenue and Shiloh Road. Robert D. and Bonnie E. Bell Trustees, owners; Carl Sanders, Mountain West Senior Housing LLC, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Lora Mattox stated the subject property was granted conditional approval for a special review to develop a community housing facility for seniors on September 25, 2006. The property is within the Shiloh Corridor Overlay District. Community housing facilities for seniors are allowed in an R-9,600 zone by special review only. Ms. Mattox noted that the developer had worked with the Staff to ensure the proposed development meets the requirements for R-9,600 as well as the Shiloh Corridor Overlay District.

She noted that the Mountain West Senior Housing, LLC, was requesting to amend the previously approved master plan to develop a community campus that would provide a variety of housing options to senior residents. She stated the proposed project would consist of 66 units of assisted living, 36 memory care beds, 72 units of congregate care and 32 Senior cottage units. The on-site amenities would include beauty and barber salon, exercise area, activity rooms, hospitality room, computer room and outdoor areas. The services to be provided include weekly housekeeping, 24-hour on-site staff, social, educational and recreational programs, scheduled transportation, emergency call system and meal plans.

Ms. Mattox further reported, with the exception of the cottages, all units would be housed in a multi-story building. The memory care facility would be a single-story wing with its own outdoor area. The remainder of the building would be three-stories. The north wing would provide independent or congregate care units for more active seniors. This wing was separated from the assisted living wing by a common dining and kitchen area, which also serves as the main entryway. The assisted living units are designed specifically for seniors who have a need for assistance with certain daily activities that can be delivered in a non-institutional environment. There were also 16 separate duplex structures with 32 units that provide a greater degree of independent living. All the structures were situated in a campus-like setting that was abundantly landscaped and provides sidewalk connections throughout the complex.

She said the original Master Plan for Mountain West Senior Housing, LLC, included 80 assisted living units, 40 memory care beds, 144 units of congregate care and 26 senior cottages. In addition, the building size proposed in the previously approved special review approximately totaled 250,000 square feet with a footprint of 103,700 square feet. The new request proposes 66 assisted living units, 36 memory care beds, 72 congregate care and 32 senior cottages. She commented the request also proposes a decrease in square footage to approximately 160,000 square feet with a footprint of 85,700 square feet. The applicant is requesting to review the master plan to incorporate the new number of units provided and building size and layout.

Community facilities are allowed in Residential 9,600 zoning districts by special review only. The adjoining zoning is primarily residential with the exception of Neighborhood Commercial at the intersection of Central and Shiloh. The property also lies within the Shiloh Corridor Overlay District and must comply with the requirements of that district. The Overlay District requires a fence and a 15-foot buffer yard between residential and commercial uses. Outside lighting must be shielded and freestanding signs are restricted to 20 square feet. These standards would help ensure that the development is compatible with the surrounding residential area. There would be three accesses to the complex; one from Central Avenue and two from Bell Avenue. Bell Avenue intersects with Shiloh Road. Both Central and Shiloh are principal arterial that

are designed to handle the increase in traffic volumes. She noted that the proposed number of parking spaces meets the City site development standards.

Ms. Mattox said that Section 27-1503(D) specifies that all Special reviews should comply with the following three (3) criteria:

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

*This application does comply with the requirements 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 2003 Growth Policy and the West Billings Neighborhood Plan.*

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 compatible with the adjoining land uses and conditions of approval are recommended to ensure compatibility.*

Further, the City Council should 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 forwarded a recommendation of conditional approval of the special review request.

Ms. Mattox stated the conditions of approval were as follows:

1. The special review approval shall be limited to Tract 1, of corrected amendment of Tracts 1 and 3, and remainder Tract 2 to be amendment of Tracts 1, 2, and 3, Certificate of Survey 1648 as shown on the site plan dated December 28, 2006.
2. The special review approval is for Senior Housing and no other use or expansion of this use is approved or implied with this authorization.
3. Development of the site shall be in substantial conformance with the site plan dated December 28, 2006. Deviations from the approved site plan that change

the location of buildings, parking lot access or parking areas would require additional special review approval.

4. All exterior lighting shall have full cut-off shields per Section 27-1400, Shiloh Road Corridor Overlay District of the Unified Zoning Regulations.
5. Signs on the property shall be limited to restrictions stated in Section 27-1400, Shiloh Road Corridor Overlay District of the Unified Zoning Regulations.
6. Landscaping shall be provided as shown on the site plan dated December 29, 2006 and as required by Section 27-1400, Shiloh Road Corridor Overlay District of the Unified Zoning Regulations.
7. Any expansion of the gross floor area of the buildings or number of parking stalls greater than 10 percent would require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
8. Dedicate additional 30-feet of right-of-way on Central Avenue adjacent to proposed project.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City regulations that apply.

The public hearing was opened. CARL SANDERS, 322 STATE STREET, SALEM, OR, with Mountain West Senior Housing, LLC requested approval from the Council. Mr. Sanders reported the assisted living numbers had been downsized as follows:

- 80 to 66 – assisted living
- 40 to 36 – memory care
- 144 to 72 – congregate care
- 26 to 32 – senior cottage units

DAVE BOVEE, 424 LEWIS AVE, stated he wanted to make a general comment on the zoning and the use of special reviews in general. Mr. Bovee commented that he has seen over approximately 100 special reviews and a builder, developer or owner requests a special review after the fact and after a deliberate disregard for zoning and wants to legitimize the use.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND SPECIAL REVIEW #835: A special review to replace an existing beer and wine license with gaming with an all-beverage license in a Community Commercial (CC) zone on Lots 43 through 50, Block 4, Broadwater Subdivision, and located at 1106 and 1110 Broadwater Avenue. Suds Hut of Billings Inc., owner; Bob Pulley, agent. Zoning Commission recommends**

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

Planner Aura Lindstrand said the request is to replace a beer and wine license with gaming with an all beverage license with gaming in a Community Commercial zoning district within the existing Suds Hut and Royal Diamond Casino (1106 and 1110 Broadwater Avenue). Ms. Lindstrand stated the special review request would allow for full beverage service for onsite consumption only within the restaurant and casino. There was no proposal for expansion of the businesses. The Planning Department had not received any comments from city departments. There were no schools, churches or public parks with playground equipment within 600 feet of the proposed location. She noted that Section 27-612.A. Supplemental Commercial Development Standards specifies that a special review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. Staff finds that this application satisfies the requirements set forth for the special review. The restaurant and casino already exist at this site and the all beverage license with gaming would be restricted to these units within the building, as there is also a barber shop located at the west end of this building. Based on the special review criteria, the Zoning Commission is recommending conditional approval. The conditions of approval are:

1. The special review approval shall be limited to the area currently occupied by the Suds Hut and Royal Diamond casino located at 1106 and 1110 Broadwater Avenue.
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.

The public hearing was open. BOB PULLEY, 323 GLEE PLACE, stated the reason for the all-beverage license was not to expand to a nightclub, but to expand food services. Mr. Pulley asked the Council for approval. There were no other speakers. The public hearing was closed. Councilmember Stevens moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND SPECIAL REVIEW #836: A special review for a beer and wine license with gaming in a Controlled Industrial (CI) zone on Lots 11A and 12A, Block 1, CBH Industrial Subdivision, and located at 1911 King Avenue West. KRP, LLC, owner; Dan Pendergrass and Bob Pulley, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell reported that one of the tenant spaces in the proposed new building would be the location of the 1,980 square foot Silver City Casino.

Most of the property surrounding the site had been developed for services such as the Holiday gas station to the west, the Springhill Suites hotel, the Texas Roadhouse restaurant, the Hu Hot Mongolian Grill as well as several car dealerships and other service oriented commercial establishments. The City Council had proposed to develop a casino overlay zoning district that would provide further regulation of casinos and gaming establishments. The Silver City Casino had been proposed in other locations within the City limits including South 24<sup>th</sup> Street West, and Grand Avenue. The Silver City Casino at the proposed location would be located in a 1,980 square foot space within a new multi-tenant building. There was no proposed outdoor patio lounge.

Ms. Cromwell noted there were three (3) liquor licenses within the immediate area that were approved at existing or proposed restaurant locations – the Texas Roadhouse, the Hu Hot Mongolian Grill and a new restaurant and casino east of the location. There were no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.

The Zoning Commission was forwarded a recommendation of conditional approval.

The conditions of approval were:

1. The special review approval shall be limited to Lots 11A and 12A of Block 1 of CBH Industrial Park Subdivision as shown on the site plan as revised February 2, 2007.
2. Development of the site shall be in substantial conformance with the site plan as revised February 2, 2007. The location of the proposed casino would be in "Unit B" as shown on the site plan. Deviations from the approved site plan that change the location of proposed casino, landscaping, parking lot access or parking areas would require additional special review approval.
3. There shall be no outdoor patio lounge developed for this casino.
4. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
5. Landscaping shall be provided as shown on the site plan as revised February 2, 2007 and as required by Section 27-1101 (Landscaping) of the Unified Zoning Regulations.
6. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, MT regulations and ordinances that apply.

The public hearing was opened. DAN PENDERGRASS, 327 NORTH RIM ROAD, owner of the Silver City Casino, stated he intended to relocate to the area. He said the average daily traffic on this portion of King Avenue West was over 40,000 vehicles per day. Mr. Pendergrass explained he had been looking for a new location for 18 months and this site seemed to be the best location so far. He stated the Silver City Casino would be about 2,000 square feet total and would be a good neighbor to the other tenants in the new building.

BOB PULLEY, 321 GLEE PLACE, stated that there would be a Mexican restaurant on one side and the Staggering Ox (of Missoula) restaurant on the other side. There were no other speakers. The public hearing was closed.

Councilmember Stevens moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND SPECIAL REVIEW #837: A special review to allow a change from an existing nonconforming use (vehicle repair) to another nonconforming use, Scott's Lawn Service in a Residential-6000 (R-60) zone on Lot 1, Block 4 Central Avenue Addition and all of Block 1, Central Avenue Addition, 2<sup>nd</sup> Filing, located at 640 St. Johns Avenue. Michael W. and Colleen Mannion, owners; Dick Zier, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Manager Wyeth Friday stated the applicants are requesting a Special review to convert one non-conforming use, an automobile repair and storage business, to a new non-conforming use, Scott's Lawn Service. The property is in the R-60 zoning district, where lawn service businesses are not allowed. Property assessment information indicates the commercial building located on the property had been there since 1946 and the property had a variety of legally-nonconforming uses on it over the years. Mr. Friday reported the property is located at 640 St. Johns Avenue and was the subject of special reviews in January 1996 and November 2005 to change from one non-conforming use to another. A special review was approved to switch the use from a paint shop to a muffler shop in 1996 and a special review was approved to switch the use from a muffler shop to an auto repair and cleaning shop in 2005.

Mr. Friday stated the new proposed use of a lawn service business appears to be a similar use of the property compared to what it had been used for previously. The lawn service business would use the property for vehicle parking, material storage and office space. Scott's Lawn Service is currently operated out of the owner's home in the Heights. The owner is Allen Green and his business currently operates a total of five vans and trucks, and two small trailers. There are three employees. Mr. Friday said that use of the property at 640 St. Johns Avenue would enable Mr. Green to have all of his equipment and office in one location. The business operates from approximately 7 a.m. to 5 p.m., Monday through Friday from March through October.

Mr. Friday reported the subject property sits on the edge of a residential neighborhood near a commercial area along Central Avenue. The new Albertson's grocery store is one block east of the subject property at 6<sup>th</sup> Street West and St. Johns Avenue. There are single family and multi-family dwellings on the north, east and west of the property, and some residential and office development to the south of the property along Central Avenue. Some potential impacts to the surrounding properties are proposed to be mitigated through conditions, including potential light and noise pollution. Several of the conditions also may help to make the property fit in better with the surrounding neighborhood, including a sight-obscuring fence and limited signage.

The Zoning Commission recommended conditional approval. The Conditions of approval are as follows:

1. The special review approval shall be limited to Lot 1, Block 4, Central Avenue Addition and all of Block 1 of Central Avenue Addition, 2<sup>nd</sup> Filing.
2. The special review is for a lawn service business only. No other use is allowed or intended by this special review approval.
3. The following conditions must be met prior to the operation of a lawn service business out of the property:
4. The roof sign on the building shall be removed and the total allowed signage for the property shall follow the sign requirements in 27-705 (b) of the Unified Zoning Regulations for the Residential Professional zoning district. Signs shall not be illuminated. A sign permit is required for any signage for the property.
5. Privacy slats shall be installed on the existing chain link fence that is on three sides of the property.
6. All repair of lawn service equipment shall take place inside the building.
7. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
8. There shall be no public address system designed to broadcast outside the building.
9. All vehicles parked on the site shall be operable and shall be parked inside the fenced enclosure on the property at all times.
10. There shall be no outside storage of lawn or garden waste on the property.
11. The only access to the property shall be the existing curb cut on St. Johns Avenue.
12. A change to any other use shall be in conformance with the uses and restrictions for the R-60 zone.

The public hearing was opened. DICK ZIER, 5150 GRANITE RIDGE CIRCLE stated this property was vacant for quite sometime and only commercial inquiries were received on the property. Mr. Zier commented limited life from the tenant's proposed use. There were no other speakers. The public hearing was closed. Councilmember

Ronquillo moved for approval of the Zoning Commission recommendation, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

10. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#797: A zone change from Residential-6,000 (R-60) to Community Commercial (CC) on a 14,383-square foot parcel of land, described as: Lots 26 and 27, Block 5, Central Heights Subdivision, 4<sup>th</sup> Filing, located at 2156 Central Avenue.**  
**Michael D. Stock, owner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell reported the subject properties are located just east of the intersection of Central Avenue and South Santa Fe Drive. The property had been used for commercial purposes since 1964. The original zoning of the property in 1972 was Residential-6,000 (R-60). She stated in late 1980 and early 1981, a zone change was proposed for these two lots in order to allow a gas service station. Protest petitions were filed and the City Council subsequently denied the applications. The Planning Department and the City Zoning Commission both recommended approval on the application in 1980 and 1981.

Ms. Cromwell said the subject properties are located near the southeast corner of the intersection of Santa Fe Drive and Central Avenue. She stated the property owner plans to redevelop the property at some time in the future and the current zoning prevents redevelopment on these two lots. The lots to the north and east are zoned Residential-6,000 (R-60). The lots east of the subject property on the south side of Central Avenue have been developed as two-family homes and are not owner occupied. The property on the north side of Central is also zoned R-60 and was developed as a skilled nursing facility in 1964. Two lots at 2032 Central Avenue were re-zoned from R-60 to Residential Professional in 1978 and the Unitarian Universalist Church is located here. Lots south of the subject property are zoned Residential-7,000 and have been developed for single family homes. The lot to the west, Lot 25 also owned by Michael Stock, is zoned Community Commercial and is the location of the Budget Framer. Central Avenue is an arterial street and currently handles a large volume of traffic – approximately 15,300 vehicle trips per day. The 2003 Growth Policy encourages land use decisions that are compatible with the existing neighborhoods and uses within the immediate area. From South Santa Fe Drive west to 24<sup>th</sup> Street West, Central Avenue has developed as a mixture of commercial uses from hardware stores to fast food restaurants. East of South Santa Fe Drive to 15th Street West, Central Avenue has a mixture of commercial, multi-family residential, public uses, and smaller multi-tenant commercial properties. The proposed Community Commercial zone appears to be compatible with the surrounding neighborhood and land uses. The proposed zoning would allow this property as developed to be in conformance with the zoning regulations. The new zoning will not increase urban sprawl by utilizing existing city services. Any redevelopment will have to comply with all applicable zoning requirements

including screening and buffering from adjacent residential land uses. The new zoning gives reasonable consideration to the character of the district. The Zoning Commission conducted a public hearing on February 6, 2007, and recommended approval of the zone change based on the 12 criteria for zone changes.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Clark moved for approval of the Zoning Commission recommendation and adoption of the 12 criteria, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND RESOLUTION OF INTENT 07-18535 to adopt the Highland Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy. Planning Board recommends approval. (Continued from 2/12/07). (Action: approval or disapproval of Planning Board recommendation.)**

Planner Lora Mattox said the 2003 Growth Policy states as a land use issue that the existing neighborhood plans lack sufficient detail to address neighborhood character and preferred land use patterns. She stated in order to address the need, the City Council instructed the Planning and Community Services Department to initiate the neighborhood planning process for neighborhoods located within the city.

Ms. Mattox reported the neighborhood planning process involved local residents to identify issues impacting the area and works towards goals, objectives and actions to address these issues. Also, as part of the Highland Neighborhood Plan, residents identified preferred land use patterns and created a map to help guide this future land use. The goals and objectives, which describe desired future conditions, are implemented through policies and future capital improvement planning. The policies are commitments to the residents that the elected officials shall acknowledge and attempt to achieve those goals and objectives.

She stated that in 2003, the Yellowstone County/City of Billings Growth Policy was adopted by the Billings City Council. As part of the Growth Policy, the governing body may include one or more neighborhood plans (76-1-601(2)(4)(a), MCA). A neighborhood plan must be consistent with the Growth Policy. She said the Highland Neighborhood Plan contains the following elements:

1. Neighborhood goals, objectives and actions
2. Information describing an inventory of the existing characteristics and features of the neighborhood, including land uses, population, housing needs, economic conditions, local services, public facilities, natural resources, other characteristics and features proposed by the neighborhood residents, planning board and adopted by the governing bodies
3. Projected trends for the life of the growth policy for each of the following elements: land use; population; housing needs; economic conditions; local

services; natural resources; and other elements proposed by the neighborhood residents, planning board and adopted by the governing bodies

4. A description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives above
5. A strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges
6. An implementation strategy that includes:
  - a) a timetable for implementing the neighborhood plan;
  - b) a timetable for reviewing the neighborhood plan at least once every 5 years and revising the policy if necessary

Ms. Mattox stated the Planning Department also worked with the Highland Neighborhood Steering Committee to develop a timeline of neighborhood meetings dedicated to the Highland Neighborhood Planning effort. A letter outlining the meeting dates, times and locations with identified neighborhood issues and focus areas was mailed to every household within the neighborhood. The six focus areas of discussion included were:

- Transportation
- Institutional Facilities
- Land Use
- Housing
- Parks & Recreation
- Schools & Education

Ms. Mattox further reported the Neighborhood wide meetings were held on November 1, 2006, and November 4, 2006, to review the draft neighborhood plan with residents. The Planning Board also held a formal public hearing on the Neighborhood Plan on January 9, 2007. Taking into consideration the comments received at the public hearing, the Planning Board was forwarding a recommendation of approval to both the Yellowstone County Commissioners and the City Council of Billings.

The public hearing was opened. MARK RUSTAD, 2204 SPRUCE STREET, Chairman of Highland Neighborhood Task Force asked the Council for approval. There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Planning Board recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**12. 2005 TRANSPORTATION PLAN AMENDMENT. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Director Candi Beaudry reported that federal transportation law requires that transportation plans meet financial constraints. The 2005 Transportation Plan Amendment reflects assumptions about changes in some funding sources based on actual funding availability between FFY 2005 and FFY 2007. The revenue projections

used for developing the financial plan are based on historical trends and some basic assumptions about future funding remaining consistent with historical trends and current funding levels. Expenditure projections were determined on the basis of actual costs for completed projects and updated estimates for future project costs.

She said the total projected funding opportunities of \$331,736,686 over the 20-year planning horizon are adequate to fund projects contained in the fiscally constrained long-range (\$274,034,000) and short-range (\$16,517,800) project lists with a balance remaining for operational and maintenance activities. Therefore, the amended plan is fiscally constrained and the air quality conformity determination from the 2005 Transportation Plan is still valid since the planning horizon, travel demand forecasting, project mix, and project scopes have not changed. She commented the air quality conformity consultation for this amendment is being conducted in accordance with the State of Montana Air Quality Rules on Conformity.

Ms. Beaudry reported that the Technical Advisory Committee recommended approval of this document. The Mayor would forward the Council's recommendation to the Policy Coordinating Committee (PCC) for final action. The Staff would also present this Amendment to the Yellowstone County Board of Planning and Yellowstone County Commissioners for their review and approval prior to the PCC's action.

She said the development of the 2005 Transportation Plan Amendment was a joint effort between the local jurisdictions within the Urban Planning Area and the Montana Department of Transportation. Each entity has a responsibility to review the information within the amendment and confirm that the information meets with the goals and objectives in the Plan. She stated if the Council prefers to modify the amendment, its recommendations would be considered by the PCC along with the other interest of the other entities.

Ms. Beaudry noted the long term and short term projects were ranked according to priority. The ranking was based on four characteristics of the project: Level of Service, Accident Rating, Average Daily Traffic volume, and System Warrant. The most current data available was used for ranking. Where no score for the category was listed, the project did not rate high enough in that category to rank and was assigned no value.

Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**13. 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.)  
There were no speakers.

## **Council Initiatives**

There were no initiatives.

## MINUTES 2/26/07

ADJOURN – The meeting was adjourned at 10:05 p.m.

## THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Ron Tussing, Mayor

**ATTEST:**

BY: \_\_\_\_\_  
Marita Herold, MMC      City Clerk