

# CITY OF BILLINGS

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

## AGENDA

## **COUNCIL CHAMBERS**

January 8, 2007

6:30 P.M.

## **CALL TO ORDER – Mayor Tussing**

## **PLEDGE OF ALLEGIANCE – Mayor Tussing**

## **INVOCATION – Councilmember Peggy Gaggen**

## ROLL CALL

## **MINUTES – December 18, 2006**

## MINUTES OF COURTESIES

## **PROCLAMATIONS**

#### • January 15: Martin Luther King, Jr. Day

## Administrator Reports – Tina Volek

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

## **CONSENT AGENDA:**

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

	<b>Name</b>	<b>Board/Commission</b>	<b>Term</b>	
			<b>Begins</b>	<b>Ends</b>
1.	Jack Bayne	Aviation & Transit Board	01/01/07	12/31/10
2.	Sterling Starr	Aviation & Transit Board	01/01/07	12/31/10
3.	Dave Hawkins	Board of Appeals	01/01/07	12/31/10
4.	Rick Selensky	Board of Appeals	01/01/07	12/31/10
5.	Ronald Crocker	Board of Ethics	01/01/07	12/31/10

6.	Michael Young	Board of Health	01/01/07	12/31/09
7.	Duane Loken	Community Development Board (At Large)	01/01/07	12/31/10
8.	Kamber Kelly	Community Development Board (Low Mod)	01/01/07	12/31/10
9.	David Goodridge	Community Development Board (Low Mod)	01/01/07	12/31/10
10.	Uriah Edmunds	Community Development Board (Low Mod)	01/01/07	12/31/10
11.	Peter Light	EMS Commission	01/01/07	12/31/10
12.	Brad Frank	Exchange Golf Corp. Board	01/01/07	12/31/09
13.	Broc Criswell	Exchange Golf Corp. Board	01/01/07	12/31/09
14.	John Walsh	Housing Authority	01/01/07	12/31/11
15.		Housing Authority	01/01/07	12/31/11
16.	*	Housing Authority	01/01/07	12/31/07
17.	*Skip Godfrey	Human Relations Commission	12/31/09	12/31/09
18.	N. Gregory Kohn	Human Relations Commission	01/01/07	12/31/10
19.	Shosana Tom	Human Relations Commission	01/01/07	12/31/10
20.	Jean Smith	Human Relations Commission	01/01/07	12/31/10
21.	Shari Nault Pullar	Library Board	01/01/07	12/31/10
22.	Randy Hafer	Parking Advisory Board	01/01/07	12/31/10
23.	Gary Temple	Parking Advisory Board	01/01/07	12/31/10
24.	Bruce Simon	Parking Advisory Board	01/01/07	12/31/10
25.	Denis Pitman	Parks/Rec/Cemetery Board	01/01/07	12/31/10
26.	Horace Hudson	Police Commission	01/01/07	12/31/09
27.	Ken Kingman	Police Commission	01/01/07	12/31/09
28.	Angela Cimino	Traffic Control Board	01/01/07	12/31/10
29.	Keith Lange	Traffic Control Board	01/01/07	12/31/10
30.	Bill Iverson	Yellowstone County Board of Planning (Ward 1)	01/01/07	12/31/10
31.	Donna Forbes	Yellowstone County Board of Planning (Ward 3)	01/01/07	12/31/10
32.	Bill Lucas	Yellowstone County Board of Planning (Ward 4)	01/01/07	12/31/10
33.	Fred Rogers	Yellowstone County Board of Planning (Ward 5)	01/01/07	12/31/10

34.	Thomas Grimm	Zoning Commission	01/01/07	12/31/10
35.	*Michael Larson	Zoning Commission	01/01/07	12/31/07

16 Unexpired term of Erica Limberhand (Resident Family)

17 Unexpired term of Linda Parker

35 Unexpired term of James Boyett

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

**B. Bid Awards:**

**(1) Sale of Used City Transit Buses, One Rebuilt Diesel Engine, and Parts.** (Opened 12/19/06). Recommend sale of one used bus to Don Wilkes, \$2,500.00.

[\(Corresponding Staff Memo B1\)](#)

**(2) Chemicals – Polyaluminum Hydroxychloride Blend for Water Treatment Division.** (Opened 12/19/06). Recommend Kemira Water Solutions, term: one year with an option to renew one year at a time for up to three years, \$0.369/lb.

[\(Corresponding Staff Memo B2\)](#)

**C. Change Order #15, W.O. 04-13: Schedule I – Filter Building Expansion and Improvements,** COP Construction, \$1,523.17.

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

**D. Park IV Lease** to United Properties, Inc., term: 10 years; 9/1/06 to 8/31/16.

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

**E. Vehicle Lease Agreement** with Laurel Ford for the High Intensity Drug Trafficking Area (HIDTA) Task Force, \$4,200.00, term: 1/1/07 – 12/31/07.

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

**F. Contract** for health benefit services, Gallagher Benefit Services, Inc., term: 3 years.

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

**G. Acceptance and approval** of 2007 High Intensity Drug Trafficking Area (HIDTA) award #I7PRMP606, \$154,915.00.

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

**H. Acceptance of Donation** to Animal Shelter, Cynthia A. Kennedy, \$1,000.00.

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

**I. Street Closure:** Black Heritage Foundation: Martin Luther King Day Pedestrian March, January 15, 2007, beginning at Courthouse lawn to Lincoln Center.

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

**J. Acknowledging receipt of petition to Annex #07-01:** Lot 3, Block 7, Kimble Subdivision, Second Filing, located at 215 Garden Ave., Herbert and Laura Alvin, owners, and setting a public hearing date for 1/22/07.

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

**K. Council appointment** to Big Sky Economic Development Authority Board (BSEDA).

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

**L. Resolution** relating to financing of certain proposed projects; establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

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

**M. Second/final reading ordinance** expanding the boundaries of Ward IV to include recently annexed properties in Annex #06-15, described as: Tract 1A, of Amended Tracts 1 and 2, C/S 3279 and generally located east of the intersection of Grand Avenue and 54<sup>th</sup> St. W adjacent to Bishop Fox Subdivision, Rod Wilson and Judith Deines, owners & petitioners.

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

**N. Second/final reading ordinance** amending Ordinance #02-5219, an ordinance providing that the BMCC be amended by revising Section 13-502: execution of contract; providing authority to and limitations on City Administrator approval of contract change orders.

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

**O. Preliminary Subsequent Minor Plat** of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> filing, generally located at the southeast corner of the intersection of Wicks Lane and Sierra Granda Blvd. in the Heights, recommend conditional approval of the plat and adoption of the findings of fact.

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

**P. Final plat** of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision.

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

**Q. Bills and Payroll.**

(1) December 1, 2006

[\(Corresponding Staff Memo Q1\)](#)

(2) December 8, 2006

[\(Corresponding Staff Memo Q2\)](#)

(3) December 15, 2006

[\(Corresponding Staff Memo Q3\)](#)

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

## **REGULAR AGENDA:**

2. **PUBLIC HEARING AND RESOLUTION** authorizing the sale, disposal or lease of City-owned property described as: Lot 1, Block 1 and Lots 1 and 2, Block 2, Arlene Subdivision. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING FIRST READING ORDINANCE FOR ZONE CHANGE 793:** a zone change from Residential Multi-family (RMF) to Neighborhood Commercial (NC) on 14,000 sf of an existing parcel of land described as: Lots 13 through 21, Block 59 Foster's Addition and located at: 632 North 26<sup>th</sup> Street aka Skyline Court Condominiums. Thomas Towe and Court E. Ball Partnership, owner; Susan Lovely, agent. Zoning Commission recommends approval of the zone change and adoption of the twelve criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING FIRST READING ORDINANCE FOR ZONE CHANGE 794:** a zone change from Agriculture Suburban to Residential Multi-family-Restricted (RMF-R), Residential-5,000 (R50) and Residential-7,000 (R70) on a 39.55-acre parcel of land described as: Tract 1A, C/S 3279 amended. And located North of Grand Avenue at 52<sup>nd</sup> Street West. Rod Wilson and Judith Deines, owners; Engineering, Inc. agent. Zoning Commission makes no recommendation, as a result of a tie vote. **(Action:** approval or disapproval of Zone Change.)  
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND SPECIAL REVIEW #831:** a special review to locate a drive-through service in a Community Commercial zone adjacent to a residential zone on Tract B, C/S 1011 (aka Lot 1, E.D. King Subdivision preliminary plat) and located at the Northeast corner of Grand Avenue and Zimmerman Trail. Rocky Mountain Community Church, owner; Hawkins Company - Jessica Aguilar, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND SPECIAL REVIEW #832:** a special review for an all-beverage liquor license with gaming for a proposed Montecito Pizzeria and Casino in an Entryway Light Industrial zone on a 1.9-acre parcel of land described as: Lot 15, Block 1 Montana Sapphire Subdivision and located at 4240 King Ave. West. Sharon Turbiville, owner; Michael Burke - HGFA Architects, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 6\)](#)

7. **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>**

## **CALENDAR (Council AND Boards & Commissions)**

### **JANUARY:**

1/08/2007	Parking Advisory Board REGULAR Council Meeting	4:00 p.m. 6:30 p.m.	CH Conference Room Council Chambers
1/09/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 <sup>th</sup> Floor Library
1/10/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 <sup>rd</sup> St.
1/11/2007	Library Board Committee on Homelessness	NOON 1:30 p.m.	3 <sup>rd</sup> Floor Library 3 <sup>rd</sup> Floor Library
1/15/2007	MARTIN LUTHER KING DAY – CITY OFFICES CLOSED		
1/16/2007	Yellowstone Historic Preservation Board Council WORK SESSION	8:00 a.m. 5:30 p.m.	4 <sup>th</sup> Floor Library Community Center 360 N. 23 <sup>rd</sup> St

1/22/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
1/23/2007	Planning Board	6:00 p.m.	4 <sup>th</sup> Floor Library
1/24/2007	Traffic Control Board Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	4 <sup>th</sup> Floor Library CH Conference Room
1/25/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 <sup>th</sup> Street
1/29/2007	Council WORK SESSION	5:30 p.m.	Community Center
1/30/2007	Council Agenda Setting Meeting	5:30 p.m.	CH Conference Room
1/31/2007	Housing Authority	NOON	2415 1 <sup>st</sup> Avenue North

**FEBRUARY:**

2/01/2007	EMS Commission Human Relations Commission	7:30 a.m. 12:15 p.m.	Main Fire Station CH Conference Room
2/05/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
2/06/2007	Community Development Board Zoning Commission Aviation & Transit Commission	3:00 p.m. 4:30 p.m. 5:30 p.m.	4 <sup>th</sup> Floor Library Council Chambers Airport Terminal
2/07/2007	Board of Adjustment	6:00 p.m.	Council Chambers
2/08/2007	Library Board	11:30 a.m.	Library
2/12/2007	Energy & Conservation Commission  Parking Advisory Board REGULAR Council Meeting	3:00 p.m.  4:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Rd. CH Conference Room Council Chambers
2/13/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 <sup>th</sup> Floor Library
2/14/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 <sup>rd</sup> St.
2/15/2007	Committee on Homelessness  Public Utilities Board	1:30 p.m.  6:30 p.m.	YCCHD Conf. Rm. 123 S. 27 <sup>th</sup> St. Public Works-Belknap 2251 Belknap Ave
2/19/2007	PRESIDENT'S DAY – CITY OFFICES CLOSED		

2/20/2007	Yellowstone Historic Preservation Board Council WORK SESSION	8:00 a.m. 5:30 p.m.	4 <sup>th</sup> Floor Library Community Center 360 N. 23 <sup>rd</sup> St
2/22/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 <sup>th</sup> Street
2/26/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
2/27/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 <sup>th</sup> Floor Library
2/28/2007	Housing Authority Development Process Advisory Review Board (DPARB) Traffic Control Board	NOON 1:00 p.m. NOON	2415 1 <sup>st</sup> Avenue North CH Conference Room 4 <sup>th</sup> Floor Library

A



---

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JANUARY 8, 2007**

---

**SUBJECT:** Boards & Commissions –Appointments and Reappointments

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** wynnette Maddox, Administration

---

**PROBLEM/ISSUE STATEMENT:** Confirmation of appointments for Boards and Commission positions that are either vacant or up for re-appointment. Term expiration dates on these vacancies are December 31, 2006 and the positions must be filled.

**FINANCIAL IMPACT:** No financial impact involved.

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Jack Bayne	Aviation & Transit Board	01/01/07	12/31/10
2.	Sterling Starr	Aviation & Transit Board	01/01/07	12/31/10
3.	Dave Hawkins	Board of Appeals	01/01/07	12/31/10
4.	Rick Selensky	Board of Appeals	01/01/07	12/31/10
5.	Ronald Crocker	Board of Ethics	01/01/07	12/31/10
6.	Michael Young	Board of Health	01/01/07	12/31/09
7.	Duane Loken	Community Development Board (At Large)	01/01/07	12/31/10
8.	Kamber Kelly	Community Development Board (Low Mod)	01/01/07	12/31/10
9.	David Goodridge	Community Development Board (Low Mod)	01/01/07	12/31/10
10.	Uriah Edmunds	Community Development Board (Low Mod)	01/01/07	12/31/10
11.	Peter Light	EMS Commission	01/01/07	12/31/10

12.	Brad Frank	Exchange Golf Corp. Board	01/01/07	12/31/09
13.	Broc Criswell	Exchange Golf Corp. Board	01/01/07	12/31/09
14.	John Walsh	Housing Authority	01/01/07	12/31/11
15.		Housing Authority	01/01/07	12/31/11
16.	*	Housing Authority	01/01/07	12/31/07
17.	*Skip Godfrey	Human Relations Commission	12/31/09	12/31/09
18.	N. Gregory Kohn	Human Relations Commission	01/01/07	12/31/10
19.	Shosana Tom	Human Relations Commission	01/01/07	12/31/10
20.	Jean Smith	Human Relations Commission	01/01/07	12/31/10
21.	Shari Nault Pullar	Library Board	01/01/07	12/31/10
22.	Randy Hafer	Parking Advisory Board	01/01/07	12/31/10
23.	Gary Temple	Parking Advisory Board	01/01/07	12/31/10
24.	Bruce Simon	Parking Advisory Board	01/01/07	12/31/10
25.	Denis Pitman	Parks/Rec/Cemetery Board	01/01/07	12/31/10
26.	Horace Hudson	Police Commission	01/01/07	12/31/09
27.	Ken Kingman	Police Commission	01/01/07	12/31/09
28.	Angela Cimino	Traffic Control Board	01/01/07	12/31/10
29.	Keith Lange	Traffic Control Board	01/01/07	12/31/10
30.	Bill Iverson	Yellowstone County Board of Planning (Ward 1)	01/01/07	12/31/10
31.	Donna Forbes	Yellowstone County Board of Planning (Ward 3)	01/01/07	12/31/10
32.	Bill Lucas	Yellowstone County Board of Planning (Ward 4)	01/01/07	12/31/10
33.	Fred Rogers	Yellowstone County Board of Planning (Ward 5)	01/01/07	12/31/10
34.	Thomas Grimm	Zoning Commission	01/01/07	12/31/10
35.	*Michael Larson	Zoning Commission	01/01/07	12/31/07

18 Unexpired term of Erica Limberhand (Resident Family)

19 Unexpired term of Linda Parker

35 Unexpired term of James Boyett

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

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

# B1

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 8, 2007

**TITLE:** Approval of Bid Award for Sale of Used MET Bus

**DEPARTMENT:** Aviation/Transit Department

**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation/Transit

**PROBLEM/ISSUE STATEMENT:** On October 23, 2006 MET Transit received Council's approval to sell five used 1991 transit buses, related bus parts, and one rebuilt bus engine. Bids were solicited by placing ads in the *Billings Gazette*, *Billings Times*, *Passenger Transport*, and mailing bid packets to four national vendors who purchase used buses. The MET also distributed an additional fourteen bid packets to interested individuals. Bids were opened on December 19, 2006, and the following response was received:

<u>Bus Number</u>	<u>Bid Response</u>	<u>Vendor</u>
Bus # 1854	\$2,500	Don Wilkes
Bus # 1853	No Response	
Bus # 1857	No Response	
Bus # 1858	No Response	
Bus # 1859	No Response	
Bus Parts	No Response	
Rebuilt Bus Engine	No Response	

Staff recommends that the Aviation and Transit Department proceed with the sale of Bus 1854 to Don Wilkes for \$2,500. The bid amount is in the range that staff anticipated, given the low demand for used buses throughout the country. Staff will place the remaining buses, bus parts, and rebuilt engine in the next Public City Auction.

**FINANCIAL IMPACT:** The City of Billings Aviation and Transit Department will receive \$2,500 from the sale of the one used bus.

## RECOMMENDATION

Staff recommends that Council approve the sale of one used bus to Don Wilkes who submitted the sole bid for one used MET bus.

**Approved By:**      **City Administrator**          **City Attorney**      

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

# B2

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 8, 2007

**TITLE:** Chemicals – Polyaluminum-Hydroxychloride (PACL) Bid Award

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** Our existing contract for PACL Blend, a water treatment coagulant, expires March 2007. The PACL blends we use in water treatment are proprietary products. Blends supplied by different vendors have slight differences in composition. These differences can affect product efficacy. Cost effectiveness can only be adequately evaluated with extensive plant-scale testing, which needs to be done before access is potentially lost to the existing supplier. PACL Blend is purchased on an as needed basis. The purpose of this bid is to fix the unit price-per-pound of this chemical for the term of the contract. The recommended contract is for a one (1) year period, with an option to renew the contract one (1) year at a time, for up to a total of three (3) years. The contract provides for termination of the agreement if the product supplied does not meet performance requirements.

**FINANCIAL IMPACT:** There are sufficient funds in the FY 07 Water Treatment Plant Chemicals account to cover purchases of this chemical. Bid award is based upon the railcar price which is the primary method of delivery. Four bids were received on December 19, 2006, as follows.

<b>Supplier</b>	<b>Product</b>	<b>Pricing by Delivery Quantity</b>		
		<b>Railcar</b>	<b>Truck</b>	<b>Tote (275 gal)</b>
Thatcher Company of Montana	T-Floc B135	No Bid	\$0.3995 /lb	\$0.4200 /lb
Pristine Water Solutions	PHI 2341	\$0.4025 /lb	\$0.4875 /lb	\$1700 /tote
<b>Kemira Water Solutions</b>	<b>PAX-XL39C</b>	<b>\$0.369/ lb</b>	<b>\$0.393 /lb</b>	<b>\$0.587 /lb</b>
Brenntag Pacific	WC-2099	\$0.3813 /lb	\$0.43	\$\$1707.75 /tote

## **RECOMMENDATION**

Staff recommends that Council award the contract to supply PACL Blend to Kemira Water Solutions for one year with an option to renew the contract, one year at a time, for up three years at a purchase price during the first year of \$0.369/lb when delivered by railcar.

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

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

# C

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 8, 2007

**TITLE:** W.O. 04-13, Schedule I—Filter Building Expansion and Improvements,  
Change Order Number 15

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** HDR Engineering has submitted Change Order Number 15 (CO No. 15) to modify the construction contract with COP Construction on the Water Treatment Plant Filter Building. CO No. 15 involves labor and materials related to modifying the fuel access opening in the generator room and repairing the existing effluent channel. No additional time has been requested, but a change in costs results from the recommended changes.

**FINANCIAL IMPACT:** This project is being funded by a State Revolving Fund (SRF) loan and supplemented by the City's Utilities Water Building and Operation Facilities Fund. CO No. 15 represents an increase of \$1,523.17 to the contract amount. The approved project budget includes a contingency to pay for unforeseen circumstances characteristic with those depicted in CO No. 15. There are adequate funds available to cover the additional costs. The table below summarizes the financial impact to the project.

<b>ORIGINAL CONSTRUCTION CONTRACT:</b>	<b>\$16,400,000.00</b>		
	<b>Amount</b>	<b>% of Contract</b>	<b>Total % of Contract</b>
Change Orders 1 thru 10	\$161,072.71	0.98%	
Change Orders 11 and 12	\$199,145.94	1.21%	
(Not-to-exceed addition of \$199,145.94, Less \$199,145.94 reimbursement from HDR)			
Change Orders 13 and 14	\$ 77,557.51	0.47%	
Change Order No. 15	\$ 1,523.17	0.01%	
<b>TOTALS to date:</b>	<b>\$439,299.33</b>		<b>2.68%</b>

**RECOMMENDATION**

Staff recommends that Council approve Change Order Number 15 to the construction contract with COP Construction for W.O. 04-13, Schedule I—Filter Building Expansion and Improvements, adding \$1,523.17 to the contract.

**Approved By:**      **City Administrator**           **City Attorney**

## **INTRODUCTION**

HDR Engineering, the designer and consultant for the expansion and improvements to the Water Treatment Plant (WTP) Filter Building (W.O. 04-13), has submitted Change Order Number 15 to modify the construction contract with COP Construction. Change Order No. 15 involves labor and materials related to modifying the fuel access opening in the generator room and repairing the existing effluent channel. No additional time has been requested, but a change in costs results from the recommended changes. Approval of Change Order No. 15 is recommended to allow progress to continue on the project and to provide a better finished product.

## **BACKGROUND**

The original plans called for a Bilco hatch to be installed in the Generator Room to enable fueling of the generator tank. After construction began, the Bilco hatch was deemed impractical by WTP personnel. The elimination of the Bilco hatch, and a corresponding cost deduction, was addressed and approved in a previous change order. However, it is still necessary to provide some sort of opening to allow fueling of the tank. To achieve this, it is proposed to cut a 24-inch square opening into the Generator Room wall, provide a stainless steel door and sleeve through the wall, and install a lockable box in the opening with the door opening to the outside. The labor and materials required to install this opening result in additional costs of \$1,160.31.

During demolition of Areas B and C, a substantial leak was detected on the north end of the existing effluent channel. The leak was unknown previously due to the water being contained within the closed system of effluent piping. The leak must be repaired to allow complete renovation of the existing filters. The labor and materials needed to repair the leak result in additional costs of \$362.86.

In summary, Change Order Number 15 creates an increase of \$1,523.17 to the contract amount, but no change to the schedule for time of completion.

## **RECOMMENDATION**

Staff recommends that Council approve Change Order Number 15 to the construction contract with COP Construction for W.O. 04-13, Schedule I—Filter Building Expansion and Improvements, adding \$1,523.17 to the contract.

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

D

AGENDA ITEM:



---

**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, January 8, 2007**

---

**TITLE:** Park IV Lease to United Properties, Inc.

**DEPARTMENT:** Administration – Parking Division

**PRESENTED BY:** Chris Mallow, Parking Supervisor

---

**PROBLEM/ISSUE STATEMENT:** United Properties, Inc. (UPI) manages the TransWestern office complex that is near the Park IV parking garage. The company has leased parking spaces from the City for many years and the last contract expired in 2005. The Council is being asked to authorize a new lease with UPI.

**ALTERNATIVES ANALYZED:** The Council may:

- Approve the proposed lease
- Disapprove the proposed lease
- Modify the lease and return it to UPI for its consideration

Staff recommends approving the lease in order to provide the City with guaranteed income and assure the company that it will have long term access to parking spaces.

**FINANCIAL IMPACT:** The estimated annual revenue for the present number of spaces is \$300,000. Future rates will increase at the same time and pace as in the other parking structures.

**RECOMMENDATION**

Staff recommends that Council approve the parking lease with United Properties, Inc.

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

## **INTRODUCTION**

United Properties, Inc. (UPI) manages the TransWestern office complex that is near the Park IV parking garage. The company has leased parking spaces from the City for many years and the last contract expired in 2005. The Council is being asked to authorize a new lease with UPI.

## **BACKGROUND**

UPI owns and manages the TransWestern office complex on N. 31<sup>st</sup> Street. The City has leased parking spaces to the company for many years. The previous lease was executed on September 1, 1995 for a ten (10) year term. The Parking Division and UPI created a new lease that is similar to the previous one. The new lease reflects the new parking rates for the Park IV garage and more clearly identifies each party's obligations. The new lease term is for ten (10) years with one 10 year renewal option. UPI rents approximately five hundred seventy-five (575) spaces at the Park IV garage and the revenue is projected to generate about \$300,000/year based on the new parking rates. This is approximately a twenty-six percent (26%) increase in annual revenue from the previous lease. The lease guarantees that UPI will continue to have access to parking spaces for its tenants and the City receives a guaranteed income from at least 350 spaces for at least 10 years. The company performs a lot of the day-to-day administration such as control card management, fee collection; upkeep around the Park IV garage, and payments and parking space management and the lease allows the City to compensate the company for those services.

## **RECOMMENDATION**

Staff recommends that Council approve the parking lease with United Properties, Inc.

## **ATTACHMENTS**

A:      Lease

THIS Lease Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY OF BILLINGS, MONTANA**, hereinafter referred to as "Landlord" and **United Properties, Inc.**, 404 North 31<sup>st</sup> Street, City of Billings, County of Yellowstone, Montana, hereinafter referred to as "Tenant."

That in consideration of the covenants hereinafter contained on the part of the Landlord and Tenant to be observed and performed, the parties hereby agree:

**1. LEASE**

Tenant and landlord that Tenant shall have exclusive use of a minimum of three-hundred fifty (350) parking spaces in the Park IV parking garage, as requested by the Tenant and are available, for the use and benefit of tenant.

**2. TERM, POSSESSION, AND RENEWAL**

The term of this lease shall be ten (10) years, from September 1, 2006, through August 31, 2016. Landlord grants to Tenant the option to renew this lease for an additional term of ten (10) years commencing on September 1, 2016, and ending August 31, 2026, both inclusive, subject to the provisions of this lease. However, written notice exercising this option shall be given by Tenant to Landlord at least ninety (90) days before expiration of the original term of this lease and provided further, that this option may be exercised by Tenant only in event all rents have been fully paid and that all provisions of this lease on the part of the Tenant to be observed have been fully and faithfully observed.

**3. SITUS OF PARKING SPACES**

Said parking spaces shall be situated within the confines of the Park IV parking structure. The exact site of the stalls shall be dependent upon availability and the operational needs of the Landlord.

**4. RATES**

Landlord shall make a count of current monthly spaces rentals and bill tenant the appropriate amount for said monthly spaces. The rental rate per parking space, per month, shall be the current rates charged at the Park IV parking garage including any group discount available to renters per the current rate resolution. Tenant shall be required to collect all rents and remit them to the Landlord by the tenth (10<sup>th</sup>) of each month.

**5. FUTURE RATE ADJUSTMENTS**

The rates for monthly parking for the Tenant will be adjusted at any point that the Landlord's parking rates for any or all other parking structures are adjusted.

## **6. OPERATION AND MAINTENANCE**

The Landlord shall operate, manage and maintain the parking facility. The costs of maintenance, janitorial, utilities, security, staffing and insurance services for the parking facility shall be borne by the Landlord. The tunnel connecting the Park IV garage to the First Interstate Bank complex shall be the responsibility of the owner of said complex.

The Landlord agrees to provide initial control cards at no-charge to the Tenant but charge the Tenant for replacing lost control cards. The Tenant shall continue to provide administrative duties for the United Properties parking customers, such as control card administration, payment collections, and parking space management. Tenant can be compensated for these services by the Landlord at a rate that is mutually acceptable to both parties.

## **7. INSURANCE AND INDEMNIFICATION OF LANDLORD BY TENANT**

Tenant hereby agrees to indemnify, defend and hold the Landlord harmless at all times from and against all liabilities, actions, claims, demands, judgments and all costs, expenses and fees, including litigation costs and attorney's fees, incurred by the Landlord, arising from the use, occupancy or non-use of the premises by the Tenant, or arising from the failure to comply with any section of this lease. Such indemnification shall include but not be limited to carelessness, negligence, improper conduct or breach of this lease by Tenant or its agents, employees, customers, suppliers or licensees.

During the term of this lease Tenant shall procure and maintain in effect a commercial general liability insurance policy providing coverage for bodily/personal injury, death and property damage, in the minimum amount of \$750,000 per claim and \$1,500,000 per occurrence. This insurance policy shall provide: that the Landlord is a primary insured, that any insurance maintained by the Landlord will be excess and non-contributory. At the time of execution of the lease, Tenant shall furnish a Certificate of Insurance showing that the required insurance is in effect. The issuer(s) of the policy or policies shall provide thirty (30) days advance written notification to Landlord of any reductions in policy coverage, any cancellation or other adverse amendments to the policy or policies impacting the covered risks. Insurance shall be maintained with insurance underwriters authorized to do business in the State of Montana and that are satisfactory to the landlord.

If the landlord determines that the minimum amounts of insurance have become inadequate during the term of this lease, Tenant agrees that it will increase the minimum limits by reasonable amounts upon the request of Landlord.

## **8. ASSIGNING AND SUBLETTING**

Tenant shall not assign this agreement or sublet the premises in whole or in part without first obtaining written approval from Landlord.

## **9. TENANT TO HAVE PEACEABLE POSSESSION**

Landlord covenants that Tenant shall peaceably hold and enjoy the premises so long as Tenant remains in faithful compliance with the terms and covenants herein, subject to Landlord's periodic maintenance or remediation of Park II garage that may temporarily interfere with Tenant's use.

## **10. ATTORNEY FEES AND COSTS ON VIOLATION OF LEASE**

In the event that either party shall be required to commence any action, retain an attorney, or use in-house counsel to enforce the covenants or agreements of this lease, the party whose failure to perform occasioned such action shall pay and discharge all reasonable costs, expenses, and attorney fees, including fees of in-house counsel, which shall be made or incurred by the other party.

## **11. DISPUTE RESOLUTION**

Any disputes between the Tenant and the Landlord concerning the terms of this contract shall be referred for determination to the City Administrator before commencing any legal action to resolve the same.

## **12. DEFAULT AND RE-ENTRY**

If the Tenant shall neglect or fail to perform or observe any of the covenants contained herein on their part to be observed and performed for thirty (30) days after notice by the Landlord of such breach, or if tenant shall be adjudicated bankrupt or insolvent, or shall make an assignment for the benefit of creditors, which Tenant does not in good faith defend against, then and in any of said cases this Lease shall terminate and wholly expire.

## **13. NOTICES**

All notices to be given hereunder by either party hereto shall be in writing and given by personal service or by first class mailing by registered or certified mail, return receipt requested. Said method of notice is deemed sufficient service thereof, and shall be deemed given as to the date when served or deposited in any post office. Either party may change address by written notice by certified or registered mail to the other. The initial address for receipt of notices is as follows:

United Properties, Inc.  
ATTN: Dick Cozmicki  
404 N. 31<sup>st</sup> Street  
Billings, MT 59101

Parking Division Director  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

#### **14. COMPLIANCE WITH ALL EXISTING CITY ORDINANCES AND POLICE, FIRE, AND SANITARY MEASURES**

Tenant agrees to use and occupy the above described premises in accordance with all lawful police, fire and sanitary regulations imposed by municipal, state or federal authority, or made by fire insurance underwriters as the basis for insurance for Landlord's interest in the premises, and will observe and obey the laws, City ordinances and other requirements governing the conduct of Tenant's business with respect to the use of the premises.

#### **15. WAIVER**

A waiver of any breach or default by either Landlord or Tenant shall not be a waiver of any other past or subsequent breach or default. Landlord or Tenant approval of any act by the other requiring consent or approval shall not be deemed to waive or render unnecessary Landlord or Tenant consent to or approval of any other subsequent similar act by Landlord or Tenant.

#### **16. PREVENTION OR DELAY**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restriction, governmental regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of either party obligated to perform, shall excuse the performance by such part of its obligation hereunder for a period equal to any such prevention, delay or stoppage, provided that Tenant shall be excused from performance only if the premises are rendered untenable or the Tenant is unable to operate their business because of the delay or stoppage.

#### **17. BINDING EFFECTS**

The Covenants and agreements herein contained shall be binding upon the parties hereto, their successors and assigns.

This Lease Agreement and all terms and conditions established herein supersedes and revokes all previous agreements between the parties. Therefore, all previous agreements between the parties are declared null and void and inapplicable.

IN WITNESS WHEREOF, the parties have executed this Lease on this 1st day of September 2006.

CITY OF BILLINGS (LANDLORD)

BY: \_\_\_\_\_  
IT'S (MAYOR)

ATTEST:

---

CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY

UNITED PROPERTIES, INC.  
(TENANT)

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

ITS \_\_\_\_\_

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

E

**AGENDA ITEM:**



---

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 8, 2007**

---

**TITLE:** Vehicle Lease Agreement with Laurel Ford for HIDTA Task Force.

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Chief of Police

---

**PROBLEM/ISSUE STATEMENT:** Each year the City of Billings renews its lease agreement with Laurel Ford to provide an undercover vehicle for the HIDTA Task Force. The current agreement expired December 31, 2006. Attached is the new lease agreement for the period of January 1 through December 31, 2007.

**FINANCIAL IMPACT:** The cost of leasing one vehicle is \$350 per month, or \$4,200 per year. This amount is budgeted in the 2007 HIDTA Award.

**RECOMMENDATION**

Staff recommends Council approval of the attached 12 month automobile lease agreement with Laurel Ford.

**Approved By:**      **City Administrator**             **City Attorney**       

**ATTACHMENT**

A - Lease Agreement with Laurel Ford

# **AUTOMOBILE LEASE AGREEMENT**

This AGREEMENT made \_\_\_\_\_ 2007 by and between **LAUREL FORD** with its principal place of business at 500 4 S E Laurel, Montana (the LESSOR), and **THE BILLINGS MONTANA POLICE DEPARTMENT/HIDTA TASK FORCE**, P. O. Box 1554, Billings, MT 59103 (the LESSEE), for the lease of one (1) vehicle..

The terms of this agreement is for a period of 12 months from January 1, 2007 to December 31, 2007, subject to the terms and conditions set forth below:

1) **RENTAL:** The LESSEE shall pay to the LESSOR a monthly rental of THREE HUNDRED FIFTY DOLLARS (\$350.00) for the one vehicle, for a total of FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200.00), paid in one lump sum payment.

2) **MAINTENANCE:** The LESSEE will bear all expense of maintaining the leased vehicle in good operating condition. The LESSEE shall provide and pay for all gasoline, oil, maintenance, washing, tire and battery replacements, and all necessary repairs other than those covered by the standard manufacturer's limited warranty, where applicable. LESSEE also agrees to pay the deductible in connection with any collision losses.

3) **LICENSING:** The LESSEE agrees to pay at its own cost and expense, State License Fees imposed against said vehicle. Each lease vehicle shall bear a license plate, and title shall be registered in the name of the LESSOR.

4) **INSURANCE:**

A) The LESSEE agrees to furnish and keep in force and effect an acceptable public liability and property damage insurance policy covering all leased vehicles, naming therein or by endorsement thereto, the LESSOR as an additional insured. The minimum limits of liability coverage shall be in the amount of \$500,000 combined single limit for all person(s) killed or injured in any one accident, for property damage or loss of use of property of third persons as a result of any one accident. Prior to delivery of possession of said vehicle hereunder, the LESSEE agrees to furnish the LESSOR with a valid certificate of an acceptable insurance company, licensed in Montana, certifying that such insurance is in force and agreeing that the same shall not be cancelled except upon ten days' prior written notice to the LESSOR.

B) LESSEE agrees that it will, and will cause its agents and employees and their families, to cooperate fully with LESSOR and all insurance carriers required by this lease in the investigation, prosecution, and defense of all claims arising from all hazards insured hereunder.

5) **EXCESS MILEAGE:** LESSEE agrees to pay for excess mileage at the rate of \$.10 per mile in excess of 15,000 miles per year. The payment for excess mileage shall be due at the end of the term of the lease.

6) **PERMISSION TO MOVE:** LESSEE agrees to notify and gain written permission from LESSOR should LESSEE decide to move the leased property as described above from the address stated above to another state on a permanent basis or for an extended period of time (longer than six (6) months).

7) **NOTICE:** LESSEE agrees to inform the LESSOR immediately regarding any accident, collision or other damage to the said vehicle. All other notices required to be given under the terms of this lease shall be in writing and shall be sent by United State Registered Mail or Certified Mail addressed to the party to be notified at its address as above stated.

8) **SECURITY AGREEMENT:** LESSOR shall have the right to finance any vehicle(s) now or hereafter covered by this lease by arranging for a Security Agreement thereon or by assigning LESSOR's interest under this lease or both, and LESSEE agrees that such Security Agreement placed by LESSOR shall be superior to this lease.

9) **REASONABLE CARE:** LESSEE agrees to use reasonable care in the operation of said vehicle(s) and, in good faith, to require reasonable care from users authorized by LESSEE hereunder, including the obligation to maintain the vehicle. In any event, LESSEE shall be held personally liable to LESSOR pursuant to the terms of this lease, regardless of permissive use by third parties.

10) **REPLACEMENT VEHICLES:** At any time during the initial or any renewal term of the within lease, the LESSOR may replace the above-described vehicle with a vehicle of the same make and year, such replacement vehicle being in equal or better operating condition; in such event, all the terms and conditions of the within lease shall apply to any and all such replacement vehicle for the term of this agreement or any renewal thereof.

11) **AGENTS:** LESSEE agrees to permit said vehicle to be used only by LESSEE, (its) (his) agents or employees or the members of the immediate family thereof, and by no others. No operator or driver of said vehicle, including LESSEE shall have authority to act on behalf of the LESSOR under any circumstances.

12) **NON-LIABILITY:** LESSOR shall not be liable for any loss from the interruption of, or damage to the LESSEE'S business, and shall not be liable to any of the authorized uses hereunder, in connection with any operating failure of said vehicle (or substitute vehicles provided to LESSEE during repair of the leased vehicle or its replacement), or in connection with any delay in making repairs thereon or furnishing replacement(s) therefor.

13) **INDEMNITY:** LESSOR assumes no liability for any acts or omissions of the LESSEE or the LESSEE'S agents. The LESSEE hereby released and agrees to indemnify the LESSOR and hold the LESSOR harmless from any and all claims against the LESSOR of any

kind or nature whatsoever, arising out of or resulting from the use and/or operation of the leased vehicles by the LESSEE, including any expenses and attorneys' fees which the LESSOR may incur in defending any such claims, except such claims or portions thereof as are covered by applicable insurance as otherwise herein provided.

**14) OWNERSHIP:** It is expressly understood and agreed that this Agreement is a contract for leasing only, and that the LESSEE acquires no ownership, title, or property right or interest in, of, or to the said motor vehicle and equipment, but acquires only the right to use the vehicle in accordance with the provision of this lease. Any accessories installed on said vehicle by the LESSEE may be removed upon expiration of this lease. If such removal shall, in the opinion of the LESSOR, cause damage to said vehicle, the LESSEE agrees to pay the Lessor for such damage.

**15) RETURN:** Upon the termination of this lease, the leased vehicle, at the expense of the LESSEE, shall be returned to the place of business of the LESSOR in as good condition as when received, ordinary wear and tear excepted. This return provision shall apply to all substitute vehicles which may be the subject of this contract.

**16) EARLY TERMINATION:** Early termination of this Lease may result in an early termination charge to LESSEE.

**17) ASSIGNMENT, PLEDGE, LIENS, AND ENCUMBRANCES:** This lease may not be assigned, except by the LESSOR as provided herein. The LESSEE shall not have the right to pledge or otherwise encumber this lease or any interest therein nor shall the LESSEE have the right to encumber or otherwise suffer any lien to be placed against the leased vehicle, or abandon or conceal the leased vehicle. The LESSEE shall not sublet the leased vehicle or any replacement vehicle without the written consent of the LESSOR.

**18) WAIVER:** The failure of either party in any one or more instances to insist upon the performance of any of the terms, covenants or conditions of this lease, or to exercise any right or privilege in this lease conferred, or the waiver of any breach of any of the terms, covenants, or conditions of this lease, shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect, as if no such forbearance or waiver had occurred.

**19) DEFAULT:** If the LESSEE shall default in the payment in any of the installments of rent as herein provided, or breach any of the terms, conditions or provisions herein contained, or, during the term of this lease, shall file a voluntary petition in bankruptcy, shall make an assignment for the benefit of creditors or shall be adjudicated bankrupt; if a receiver shall be appointed for LESSEE'S business; or if LESSOR deems itself insecure, LESSOR may at its election terminate this Agreement without notice to LESSEE and shall thereupon be entitled to the immediate possession of any and all vehicles in LESSEE'S possession hereunder. In the event this Agreement shall be so terminated, LESSEE shall not be released from any liability to LESSOR for LESSEE'S failure to make any of the payments required by this Agreement or for

LESSEE'S failure or inability to perform the conditions of this Agreement, and LESSEE hereby waives all claims for injury suffered through or loss caused by such repossession.

Upon default, the balance of the installments of rent, to the end of this lease or any existing extension of it, shall, without notice or demand by the LESSEE, at once become due and payable; and in addition thereto, the LESSEE hereby authorizes and empowers the LESSOR to enter its premises or any other place where the leased vehicle may be found, forcibly if necessary, to take possession and carry away and remove such vehicle, with or without legal process and thereby terminate the LESSEE'S right to retention and use of such vehicle. In the event any legal proceedings shall be instituted by LESSOR against LESSEE to recover any sums due or to become due hereunder and/or for the repossession of the vehicle leased hereunder, LESSEE shall pay to LESSOR reasonable attorneys' fees and costs of repossession.

**20) BINDING EFFECT:** This lease shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and assigns.

**21) ENTIRE AGREEMENT:** This lease together with the Vehicle Lease Disclosure Statement represents the entire Agreement between the parties. All prior negotiations have been merged into this lease, and there are no understandings, representations, or agreements, oral nor written, express or implied, other than those set forth herein. This lease shall not be modified or amended except by an agreement in writing signed by the parties.

**22) CONSTRUCTION:** This lease shall in all respects be governed by and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed the day and year first above written.

LESSEE:

CITY OF BILLINGS

BY \_\_\_\_\_  
RON TUSSING, MAYOR

LESSOR:

LAUREL FORD

BY \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST BY:

\_\_\_\_\_  
MARITA HEROLD, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
BRENT BROOKS, CITY ATTORNEY

087.AUTOMOBILE LEASE AGREEMENT/LAUREL FORD

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, January 8, 2007**

**TITLE:** Approval of 3-Year Health Insurance Consultant Services Contract with Gallagher Benefit Services, Inc.

**DEPARTMENT:** City Health Insurance Committee

**PRESENTED BY:** David Mumford, Health Insurance Committee Chair

**PROBLEM/ISSUE STATEMENT:** The Health Insurance Committee recently prepared a Request for Proposals (RFP) for health insurance consultant services. The RFP was advertised in the *Billings Times* on October 19 and October 26, 2006. Seven firms were also sent copies of the RFP via e-mail.

The selection committee consisted of Council Member Clark, David Mumford, Karla Stanton, Pat Weber, John Ruddock, Dan Bryan and Scott Conrad. Two proposals were received:

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Consultant Travel Expenses</b>	<b>Actuarial Services Included?</b>	<b>Comments</b>
Wohlman & Toschi	\$26,400	\$27,300	\$28,800	Included for four (4) meetings per year	No	The City would be required to contract separately with another vendor for actuarial services at a cost of \$6,000 to \$8,000 annually.
Gallagher Benefit Services	\$37,500	\$39,500	\$41,500	Included for four (4) meetings per year	Yes	The contract includes an hourly rate fee schedule for various staff levels for services determined to be out-of-scope and therefore subject to additional compensation.

The committee evaluated the proposals and unanimously selected the proposal from Gallagher Benefit Services, Inc. to be brought forward for approval. The following important information was considered:

- Contract Term: Three years with an option to extend the contract for another three years.

- The contract does not include competitive bidding, which means the City will do its own RFP's for services such as EBMS. A mutually agreed upon fee would be determined prior to the onset of special projects.
- The City relies on annual actuarial services to calculate the required revenue to meet the estimated expenses in the Health Insurance Fund.

**RECOMMENDATION**

The Committee recommends that the City Council approve, and the Mayor sign, the attached contract with Gallagher Benefit Services, Inc.

**Approved By:**      **City Administrator**             **City Attorney**       

**ATTACHMENT**

## CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this "Agreement") is by and between Gallagher Benefit Services, Inc., a Delaware corporation ("GBS"), and the City of Billings, Montana (the "Company").

### **WITNESSETH:**

**WHEREAS**, the Company desires to enter into a consulting relationship with GBS upon the terms and conditions set forth in this Agreement, and GBS wishes to accept such a consulting relationship.

**NOW, THEREFORE**, in consideration of and in reliance upon the foregoing and the covenants, obligations and agreements contained herein, the Company and GBS hereby agree as follows:

#### ***1. Engagement***

The Company hereby engages GBS as a consultant to the Company as provided herein, and GBS hereby accepts such engagement. During the time that GBS is performing services for the Company pursuant to this Agreement, and for all purposes hereunder, GBS' status shall be that of an independent contractor of the Company.

#### ***2. Term***

The term of GBS' engagement under this Agreement (the "Consulting Period") shall commence as of January 1, 2007 (the "Effective Date") and shall remain in full force and effect for a three-year period (the "Initial Term"). The Consulting Period may be extended for an additional three-year period upon City Council and GBS approval.

#### ***3. Services***

GBS shall provide benefits management consulting services to the Company and consult with its employees, representatives, agents and contractors as to such matters as more fully described in Exhibit A attached hereto, and shall perform such other services as the Company and GBS may reasonably agree in writing. GBS certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by GBS. GBS further certifies that all of its employees assigned to serve the Company have such knowledge and experience as required to perform the duties assigned to them. Any employee of GBS who, in the opinion of the Company, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

#### ***4. Compensation***

Compensation for the Consulting Services, and the manner and form in which such compensation may be provided, shall be as described in Exhibit B attached hereto.

Arthur J. Gallagher and Co. and its subsidiaries, including Gallagher Benefit Services, Inc., do not accept any contingent commissions, or bonuses or any compensation from insurance companies other than commissions we have been authorized to accept by our clients as payment for our consulting services. The proposed compensation outlined above will be the total compensation received by GBS for services rendered to City of Billings.

12/2006

Page 1 of 13

## 5. *Business Expenses*

During the Consulting Period, GBS will incur out-of-pocket travel expenses in connection with the performance of its duties under this Agreement. With the exception of the four quarterly trips which are included in the annual price in Exhibit B, the Company shall reimburse GBS in full for all such expenses, based on actual costs, or on a pro-rata basis, if services are conducted concurrently for multiple Billings clients.

## 6. *Performance and Scope*

(a) Reliance. In the performance of its duties hereunder, GBS may rely upon, and shall have no obligation to independently verify the accuracy, completeness, or authenticity of, any written instructions or information provided to GBS by the Company or its designated representatives and reasonably believed by GBS to be genuine and authorized by the Company.

(b) No Practice of Law. Notwithstanding any provision of this Agreement to the contrary, GBS shall not be obligated to perform, and the Company shall not request performance of, any services which may constitute unauthorized practice of law. The Company shall be solely responsible for obtaining any legal advice, review or opinion as may be necessary to ensure that its own conduct and operations, including the engagement of GBS under the scope and terms as provided herein, conform in all respects with applicable State and Federal laws and regulations (including ERISA, the Internal Revenue Code, State and securities laws and implementing regulations) and, to the extent that the Company has foreign operations, any applicable foreign laws and regulations.

(c) Subcontractors. GBS may cause another person or entity, as a subcontractor of GBS, to provide some or all of the services required to be performed by GBS hereunder.

(d) No Conflict of Interest. GBS covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. GBS warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the Company as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to GBS in connection with any work contemplated or performed relative to this Contract. GBS also warrants that it has no family member within the employ of the City of Billings wherein the execution of this agreement would trigger a conflict of interest or a violation of local, state or federal conflict of interest laws.

## 7. *Termination of Engagement*

(a) Termination Rights. The engagement of GBS under this Agreement may be terminated during the Consulting Period by either party, subject to the conditions and consequences of such termination as set forth in this Section 7.

(b) Termination by Company for Cause. In the event the Company terminates GBS' engagement hereunder for "Cause," GBS shall be entitled to receive, within thirty (30) days of the date of such termination, payment of any accrued but unpaid consulting fees payable by the Company to GBS pursuant to Section 4 hereof, through the effective date of such termination. For purposes of this Agreement, the term "Cause" shall mean GBS' willful fraud or material dishonesty in connection with GBS' performance of its assigned duties to the Company, or the deliberate or intentional failure by GBS to substantially perform its duties to the Company that results in material harm to the Company. It shall be a condition precedent to the Company's right to terminate GBS' engagement pursuant to this Section 7(b) that (i) the Company shall first have given GBS written notice stating with specificity the

reason which gives rise to the Company's right to terminate GBS (the "Breach"), and (ii) a period of thirty (30) days from and after the giving of such notice shall have elapsed without GBS having effectively cured or remedied the Breach during such 30-day period.

(c) Termination by Company other than for Cause. In the event the Company terminates GBS' engagement hereunder for any reason other than for "Cause" (as defined above), GBS shall be entitled to receive, within ten (10) days of such termination, a lump sum payment equal to the lesser of the sum of all payments payable by the Company to GBS pursuant to Section 4 hereof through the immediately following anniversary of the Effective Date, or the sum total of the three monthly payments made by the Company to GBS prior to the date of termination. It shall be a condition precedent to the Company's right to terminate GBS' engagement pursuant to this Section 7(c) that the Company shall first have given GBS a written notice of termination at least thirty (30) days in advance of the effective date of termination.

(d) Termination by GBS. GBS may terminate its engagement with the Company under this Agreement at any time for any reason; provided, however, that GBS shall first have given the Company a written notice of termination at least thirty (30) days in advance of the effective date of termination. In the event GBS terminates its engagement hereunder, GBS shall be entitled to receive, within thirty (30) days of the date of such termination, payment of any accrued but unpaid consulting fees payable by the Company to GBS pursuant to Section 4 hereof, through the effective date of such termination.

#### 8. *Confidentiality*

(a) Company Information. GBS recognizes that certain confidential information may be furnished by the Company to GBS in connection with its services pursuant to this Agreement ("Confidential Information"). GBS agrees that it will disclose Confidential Information only to those who, in GBS' reasonable determination, have a need to know such information. Confidential Information shall not include information that (i) is in the possession of GBS prior to its receipt of such information from the Company, (ii) is or becomes publicly available other than as a result of a breach of this Agreement by GBS, or (iii) is or can be independently acquired or developed by GBS without violating any of its obligations under this Agreement. Notwithstanding the foregoing, disclosure by GBS of any Confidential Information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee shall not constitute a violation of this Agreement. GBS shall transmit any and all such subpoenas to the Company via facsimile or other electronic means within 48 hours of the service of the same upon it so that the Company has a meaningful opportunity to respond to each subpoena at a meaningful time.

(b) GBS Proprietary Material. The Company agrees that GBS is the sole owner of the following material and that the Company shall not use or disclose such material following termination of this Agreement except to the extent (i) specific written consent to such use or disclosure is obtained from GBS or (ii) required pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee:

- (1) Proprietary computer programs;
- (2) Proprietary procedures and methods of administration; and
- (3) Underwriting and client files and/or reports developed by GBS.

(c) **HIPAA Privacy.** Notwithstanding Sections 8(a) and 8(b) above, GBS and the Company shall each comply with any prohibitions, restrictions, limitations, conditions, or other requirements to the extent they apply to it directly or indirectly pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulation concerning privacy of individually identifiable health information as set forth in 45 CFR Parts 160-164, as amended from time to time.

#### **9. Non-Solicitation**

As a consideration for the Consulting Services, the Company covenants and agrees that, during the Consulting Period and for the 12-month period following the expiration or termination of the Consulting Period, it will not, nor will it permit any of its affiliates, third party recruiters, or other similar persons or entities representing or advising the Company to, directly or indirectly solicit or encourage any employee of GBS or any of its affiliates to leave the employment of GBS or any of its affiliates.

#### **10. Indemnification**

(a) **Indemnification by GBS.** GBS hereby agrees to defend, indemnify and hold harmless the Company and its directors, officers, stockholders, agents and employees (collectively, "Indemnified Company Persons") from and against all claims, liabilities, losses, damages, and expenses as incurred (including reasonable legal fees and disbursements of counsel), joint or several (including actions or proceedings in respect thereof) (collectively "Company Losses"), to the extent relating to or arising out of GBS' negligent acts or omissions while performing its professional consulting duties under this Agreement. GBS shall not, however, be liable under the foregoing indemnity agreement to the extent any such Company Losses (i) resulted from the negligence, gross negligence, willful misconduct or bad faith of any Indemnified Company Person, (ii) are attributable to inaccuracy, incompleteness or inauthenticity of instructions or information upon which GBS reasonably relied pursuant to Section 6(b) hereof, or (iii) constitute an obligation by the Company to indemnify GBS pursuant to Section 10(b) hereof. GBS shall provide the Company with proof of commercial general liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$1.5 million per occurrence. GBS shall also provide proof of professional liability insurance in a minimum amount of \$1.5 million per occurrence. Except for professional liability insurance, general liability insurance from GBS shall endorse the Company as a primary, non-contributory additional insured. The insurance must be in a form suitable to and approved by the Company and shall specifically provide that it cannot be cancelled or revoked except upon 30 days written notice to the Company. Nothing contained herein shall prevent the Company from retaining, at its own expense, legal counsel of its choice.

(b) **Indemnification by Company.** The Company hereby agrees to defend, indemnify and hold harmless GBS and its directors, officers, stockholders, agents and employees (collectively, "Indemnified GBS Persons") from and against all claims, liabilities, losses, damages, and expenses as incurred (including reasonable legal fees and disbursements of counsel and the costs of GBS professional time), joint or several (including actions or proceedings in respect thereof) (collectively "GBS Losses"), to the extent relating to or arising out of the negligent operation of the Program (as defined in Exhibit A hereto) or any action or inaction by the Company with respect to the Program or this Agreement. The Company shall not, however, be liable under the foregoing indemnity agreement to the extent any such GBS Losses (i) resulted from the negligence, gross negligence, willful misconduct or bad faith of any Indemnified GBS Person, or (ii) constitute an obligation by GBS to indemnify the Company pursuant to Section 10(a) hereof. Nothing contained herein shall prevent GBS from retaining, at its own expense, legal counsel of its choice.

**11. *Independent Contractor***

Nothing in this Contract shall be deemed to represent that GBS, or any of its employees or agents, are the agents, representatives, or employees of the Company. GBS will be deemed an independent Contractor over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the Company the right to direct GBS as to the details of the performance of the Services under this Contract or to exercise a measure of control over GBS is solely for purposes of compliance with local, state and federal regulations and means that GBS will follow the desires of the Company only as to the intended results of the scope of this Contract. Without limiting the foregoing, all income taxes arising from or in connection with any compensation paid by the Company to GBS for the services provided under this Agreement shall be borne by GBS. It is further expressly agreed and understood by GBS that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the Company; that GBS has been retained by the Company to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the Company by GBS for the Services performed shall be on GBS's letterhead.

## 12. *Non-Discrimination*

GBS hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of GBS on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Montana State Constitutional or statutory law. GBS shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

### 13. Notices

Any notices, requests and other communications pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, if delivered in person or by courier, telegraphed, or by facsimile transmission (provided that the sender received electronic confirmation of receipt by recipient) or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to the Company: City of Billings  
P. O. Box 1178  
Billings, MT 59103  
Attention: Karla Stanton  
(Fax: 406-657-8390)

If to GBS: Gallagher Benefit Services, Inc.  
6399 S. Fiddler's Green Circle, Suite 200  
Greenwood Village, CO 80111  
Attention: Don R. Heilman  
(Fax: 303-889-2669)

Either party may, by written notice to the other, change the address to which notices to such party are to be delivered or mailed.

#### **14. Miscellaneous**

(a) **Survival and Succession.** Obligations pursuant to Sections 4, 5, 8, 9, 10, the post-termination obligations of Section 7, and the requirements of Sections 12 and 13 hereof shall survive the termination of this Agreement. This Agreement, in its entirety, shall inure to the benefit of and be binding on the successors and assigns of the Company and GBS.

(b) **Assignment.** Neither of the parties hereto shall assign or transfer its interest in this Agreement or any portion thereof without the prior written consent of the other party. Notwithstanding the foregoing, (i) the Company may assign or transfer its rights and obligations under this Agreement to a subsidiary or entity controlling, controlled by or under common control with the Company or to any entity that acquires all or substantially all of the assets of the Company or more than 50% of the current outstanding voting stock of the Company, and (ii) GBS shall be entitled to assign the right to receive any compensation or rights hereunder to a third party without the prior written consent of the Company, subject to restrictions of applicable law.

(c) **Severability.** The various provisions and subprovisions of this Agreement are severable and if any provision or subprovision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability shall not affect the validity or enforceability of the remaining provisions or subprovisions or parts thereof in this Agreement.

(d) **Waiver of Nonperformance.** No waiver of any default in performance on the part of GBS or like waiver by the Company, or any breach or a series of breaches of any of the terms, covenants or conditions of this Agreement shall constitute a waiver of a subsequent breach or a waiver of said terms, covenants or conditions.

(e) **Remedies Not Exclusive.** No remedy conferred hereunder is intended to be exclusive of any other remedy. Each and every remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing, whether at law or in equity.

(f) **Entire Agreement; Amendment.** This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties regarding the subject matter hereof. This Agreement may be modified or amended only by a written instrument executed by both parties.

(g) **Compliance with Laws; Governing Law; Rule of Construction; Venue.**

i. GBS certifies that it is qualified or will take steps necessary to qualify to do business in the State of Montana and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.

ii. GBS is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair

Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

iii. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

(h) Headings. Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

[The remainder of this page intentionally left blank.]

(j) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Consulting Agreement to be duly executed on the date first written above.

**THE CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GALLAGHER BENEFIT SERVICES, INC.**

By: Ed Wood  
Name: EDWARD H. WOOD, JR.  
Title: VP/ED. PRESIDENT

## EXHIBIT A

### SCOPE OF SERVICES

Subject to any changes and additions as may be mutually agreed by the parties, GBS shall:

1. **Reporting**

We will prepare quarterly reports analyzing claims experience, benefits paid, contributions, administrative expenses, gross and net cost of insured benefits, net cost of self-funded coverages and other relevant items that pertain to the Plan.

2. **Consultation**

We will be available on a limited basis for consultation on the Plan's operation including claims, reserves, and insurance company performance, as well as the Plan's overall progress and development.

We are available to consult with the City's legal counsel and the plan administrator regarding changes to be made in the plan of benefits and eligibility for such benefits.

3. **Self-Funded Benefits**

We will calculate the appropriate reserve and claims trend factors to be taken into account from a sound planning and policy point of view with respect to the self-funded benefits.

4. **COBRA**

We will update the COBRA premiums for core coverage and for total health coverage charged to former participants and family members who elect to continue the plan's health coverage, and will modify and update the COBRA forms and procedures, subject to legal counsel's review, from time to time as needed. (Special COBRA experience studies and administration manuals are not within the scope of this retainer.) We will also update retiree premiums, utilizing the current methodology.

5. **Organization of Issues**

We will be available for consultation and will assist in preparing meeting agendas to aid the City in reaching decisions on issues that arise in the course of Plan operations, or that flow from our reports, plan design or administration questions, national and industry trends, or public policy.

If development of specific background materials and/or analysis of specific issues involves additional services beyond the scope of this retainer, we will perform such services based on our regular time charge rates.

6. **Trends in Legislation, new Benefits, Plan Design**

By means of our publications and special advisory reports, we shall keep you apprised of new developments in the employee benefits field that may bear upon your planning and policy decisions. However, specific technical advice in connection with compliance with new legislation or regulations that occur after the effective date of the retainer will generally be treated as a supplementary service, at an additional fee, based on our regular time charge rates. Of course, questions on the interpretation and application of laws, regulations, rulings and court decisions are a legal matter, subject to legal counsel's advice.

7. **Meetings**

We will attend meetings with the Staff and any designated committees or work groups, as well as conferences with your other professional advisors as appropriate, plus preparations and follow-up work. We understand these meetings requiring our attendance will be held no more than four times annually, and will be scheduled to coincide with the quarterly reports referenced above.

8. **Carrier/Vendor Support**

Coordination with carrier on contractual, administrative and claims considerations. Assist in negotiations so as to obtain satisfactory renewals.

**Other Supplementary Services**

The preceding list of services describe the matters that regularly arise in the course of the Plan's annual operations that call for general consulting services. However, it is difficult to predict in advance whether your Plan will be involved in complicated, time consuming special problems, and, if so, to what extent.

If our assistance involves services which are beyond, but incidental to our regular services, then, of course, we would render such services within the scope of this retainer. If, on the other hand, the occasion requires the expenditure of time not anticipated within this retainer, we would proceed only after consultation with the City. Our compensation for such agreed-upon supplementary services will be based on our regular time-charge rates.

In addition to those items referred to earlier, some further examples follow of supplementary consulting and actuarial services that may be required by the Plan:

1. Analysis of and compliance with new legislation of new regulations adopted after the effective date of this retainer, which affects your Plan.
2. Litigation, law suits, or arbitration.
3. Competitive bidding for the solicitation of bids from insurance companies to underwrite all or a portion of the Plan's benefits (including stop-loss, ASO arrangements, minimum premiums, etc.) or from other vendors to provide other services to the Plan.
4. Drafting of completely revised Summary Plan Descriptions or plan documents, subject to legal counsel's and the City's approval.
5. Redesign of basic administrative and/or recordkeeping methods and computer systems.
6. New procedures, calculations and determinations required due to changes in accounting/auditing standards, usually through guidelines issued by the Governmental Accounting Standards Board, through state or federal legislation.
7. Services involving special claims audits.
8. Assisting legal counsel in the preparation of materials in support of special IRS ruling applications, reviews or appeals, including conversations or meeting with IRS staff to the extent requested by legal counsel and the City.
9. Special studies on retiree health coverage costs and financing.

10. Assistance in the evaluation and selection of alternative delivery systems such as new HMO's PPO's, EPO's or in the development of such systems.
11. Consultation on the development, implementation and monitoring of Employee Assistance Programs (EAPs).
12. Services involving deferred compensation (457) and other retirement programs.
13. Auditing the basic data maintained by the plans for their recordkeeping purposes or made available to us for calculation purposes.
14. Any services not specifically set forth in this retainer.



Gallagher Benefit Services, Inc.

A Subsidiary of Arthur J. Gallagher & Co.

**EXHIBIT B**  
**GALLAGHER BENEFIT SERVICES, INC.**  
**COMPENSATION DISCLOSURE STATEMENT**

One of the core values highlighted in *The Gallagher Way* states, "We are an Open Society," and our open society extends to the compensation Gallagher receives. As our industry moves toward complete disclosure of all forms of compensation, we embrace this effort and are committed to leading the way. To achieve this purpose, we have disclosed in the attached disclosure schedule the commission or fee we will earn on each and every coverage we will place on your behalf.

In general, Gallagher may be compensated as follows:

1. Gallagher companies are primarily compensated from commissions or fees received from the brokerage and servicing of policies handled for a client's account. As permitted by law, Gallagher companies may receive both commissions and fees.
2. Gallagher companies may access other facilities, including wholesalers, reinsurance intermediaries, underwriting managers and others that act as intermediaries for both Gallagher and other brokers in the insurance marketplace. If such a facility was utilized in the placement of a client's account, it may have earned and retained brokerage commission or fees for its work.

It should also be noted that:

- **GBS** is not an affiliate of the insurer whose Contract is recommended. This means the insurer whose contract is recommended does not directly or indirectly have the power to exercise a controlling influence over the management or policies of **GBS**.
- **GBS**' ability to recommend other insurance contracts is not limited by an agreement with the Insurance Carrier.
- **GBS** is effecting the transaction for the Plan(s) in the ordinary course of **GBS business**.
- The transaction set forth is at least as favorable to the Plan(s) as an arm's length transaction with an unrelated party.
- **GBS** is not a trustee of the Plan(s).
- **GBS** is neither the Plan Administrator of the Plan(s), a fiduciary of the Plan(s), nor an employer which has employees in the Plan(s).

For more information on Gallagher's compensation arrangements, please visit [www.ajg.com/compensation](http://www.ajg.com/compensation).

12/2006

Page 12 of 13

What follows is the disclosure of our actual fees related to The City of Billings' Group Health Plan(s) and any relationships, or agreements Gallagher Benefit Services, Inc. ("GBS") has with the insurance company involved in this transaction.

**GBS**, as agent of record, will receive the following initial and renewal sale commissions expressed as percentage of gross premium payments, or fees as agreed upon by the City:

Line of Coverage	Insurance Company	Effective Date	Sales Commission / Additional Commission	Fee for Services <sup>1</sup>	Wholesaler, MGU, or Intermediary	Owned by AJG/GBS Yes (Y) No (N)
Medical, Dental, Life, Disability	NA	1/1/07	NA	\$37,500	NA	NA
Medical, Dental, Life, Disability	NA	1/1/08	NA	\$39,500	NA	NA
Medical, Dental, Life, Disability	NA	1/1/09	NA	\$41,500	NA	NA
GASB 45 Valuation	NA	1/1/08	NA	\$11,000	NA	NA

Services not included in our Scope of Services, unless otherwise mutually agreed upon, will be subject to the following hourly rates for 2007:

**2007 HOURLY  
RATE**

Officer/Actuary	\$370
Senior Consultant	\$275
Account Manager	\$185
Underwriter	\$235
Administrative Assistant	\$75

Thank you for your business and continued confidence in the services GBS provides to you and your employees. If you have any questions regarding this information or would like more detail, please feel free to contact me.

**Gallagher Benefit Services, Inc.**

By: SEAN WOOD Date Signed: 1/5/07  
Title: ARET PRESIDENT

If clients have specific questions about the compensation received by Gallagher and its affiliates in relation to their insurance placements, please contact your Gallagher representative for more details.

In the event a client wishes to register a formal complaint regarding compensation Gallagher receives, please send an email to [Compensation\\_Complaints@ajg.com](mailto:Compensation_Complaints@ajg.com) or send a letter to:

AVC Compliance Officer  
c/o Internal Audit Department  
Arthur J. Gallagher & Co.  
Two Pierce Place  
Itasca, IL 60143

<sup>1</sup> Direct Consulting Fees include compensation to GBS paid for directly by the plan sponsor.

12/2006

Page 13 of 13

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

# G

## AGENDA ITEM:



---

### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 8, 2007

---

**TITLE:** Acceptance and Approval of the 2007 High Intensity Drug Trafficking Area (HIDTA) Award #I7PRMP606 in the amount of \$154,915

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Chief of Police

---

**PROBLEM/ISSUE STATEMENT:** Montana has been designated as a High Intensity Drug Traffic Area (HIDTA), and the Office of National Drug Control Policy (ONDCP) has awarded the Eastern Montana Drug Task Force \$154,915 for the calendar year 2007. This is the sixth year the City of Billings is the recipient agency of this award. The 2007 HIDTA Award will be used to pay for an Administrative Assistant position for the HIDTA task force, task force overtime, administrative and investigative travel, an automobile lease agreement, cell phones, copier maintenance agreement, investigative/office supplies, equipment and informant costs. HIDTA does pay for all costs associated with the Task Force, except for the Task Force Officers' salary and benefits. When the award documents are received, staff asks that the Mayor be authorized to sign.

**FINANCIAL IMPACT:** The \$154,915 award will require no city match. The award has been budgeted in Fund 255 for the balance of FY 06/07.

#### **RECOMMENDATION**

Staff recommends that Council approve and accept the 2007 HIDTA award from the Executive Office of the President, Office of National Drug Control Policy in the amount of \$154,915 and authorize the Mayor to sign the necessary documents, when they are received.

**Approved By:**      **City Administrator**             **City Attorney**

## **INTRODUCTION**

Since 1999, Senator Max Baucus tried to have Montana designated as a High Intensity Drug Trafficking Area (HIDTA) in order to receive federal resources to battle the methamphetamine epidemic in Montana communities. Senator Baucus succeeded in his cause and Montana was designated as a HIDTA in 2002. This memo is to ask Council for acceptance and approval of the 2007 Award in the amount of \$154,915.

## **BACKGROUND**

For several years, Senator Baucus tried, and in 2002 finally succeeded, in designating Montana as a High Intensity Drug Trafficking Area because of the amount of methamphetamine in the State. This designation provides federal money to help address the problem of use and abuse of methamphetamine-related crimes. Since Montana has been given the HIDTA designation, Eastern Montana Drug Task Force at the Rocky Mountain High Intensity Drug Trafficking Area was created in 2002. This task force consists of personnel from the following agencies: Alcohol, Tobacco and Firearms; Border Patrol; Billings Police Department; Drug Enforcement Administration; FBI; Probation and Parole; and the Yellowstone County Sheriff's Office. The Task Force is managed by a Sergeant from the Billings Police Department and is currently housed in the U. S. Marshal's Building across from Yellowstone County Courthouse. Tonight, Council is being asked to approve and accept the 2007 HIDTA Award.

## **RECOMMENDATION**

Staff recommends Council approve and accept the 2007 HIDTA Award from the Executive Office of the President, Office of National Drug Control Policy in the amount of \$154,915 and authorize the Mayor to sign the necessary documents when they are received.

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

## AGENDA ITEM:



---

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, January 8, 2007**

---

**TITLE:** Acceptance and Recognition of Donation to the Billings Animal Shelter**DEPARTMENT:** Police Department, Animal Shelter Division**PRESENTED BY:** Rich St. John, Chief of Police

**PROBLEM/ISSUE STATEMENT:** On December 7, 2006 the Billings Animal Shelter received a \$1,000 donation from Cynthia A. Kennedy of Billings. In talking with Ms. Kennedy, she stated that she would like the donation to be placed in the Animal Shelter General Donation account for such things as supplies and medical needs. We now come before City Council for authorization to accept and deposit this generous donation into the City of Billings, Animal Shelter General Donation Account.

**ALTERNATIVES ANALYZED:**

- Approval and acceptance of the donation.
- Denial and return of the donation.

**FINANCIAL IMPACT:** This donation to the General Donation Account will be used where ever it may be needed to benefit our community's animals.

**RECOMMENDATION**

Staff recommends City Council's approval and acceptance of this generous donation to the Billings Animal Shelter General Donation Account.

Approved By: City Administrator        City Attorney       

**Attachment**

A – Copy of check received/copy of CR deposit slip  
151. Animal Shelter donation

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

AGENDA ITEM:

---



---

## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 8, 2007

---

**TITLE:** Martin Luther King Day Pedestrian March Street Closure Request

**DEPARTMENT:** Parks, Recreation and Public Lands

**PRESENTED BY:** Mike Whitaker, Parks, Recreation and Public Lands Director

---

**PROBLEM/ISSUE STATEMENT:** Paul Reeder of the Black Heritage Foundation requests temporary street closures along the following route for the annual pedestrian march in observance of the Martin Luther King Day on Monday January 15, 2007. Marchers assemble on the Court House lawn at 6:00 p.m., walk on the sidewalk to the corner of N.27<sup>th</sup> and 3<sup>rd</sup> Ave. N, cross N.27<sup>th</sup>, march in the street to N. 29<sup>th</sup>, then north on N. 29<sup>th</sup>, disbanding at the Lincoln Center at approximately 6:50pm.

Recommended conditions of approval include Black Heritage Foundation:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event
3. Coordinate with Police Department to ensure proper assistance is provided
4. Clean the area to be used following the event and provide and empty waste cans
5. Notify all emergency facilities, bus lines and media as soon as possible
4. Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured
5. Provide and install adequate traffic barricades and signs directing motorists around closure

**ALTERNATIVES ANALYZED:**

1. Approve request to close streets for the event (recommended)
2. Deny the street closure

**FINANCIAL IMPACT:** There are no costs to the City of Billings other than administrative time to process permit. Traffic control and litter removal are to be paid for by the event coordinators.

## **RECOMMENDATION**

Staff recommends that Council approve the closures named above for the annual Martin Luther King Day march

**Approved By:**      **City Administrator**             **City Attorney**       

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

**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, January 8, 2007**

**TITLE:** Annexation Petition #07-01 Acknowledge Receipt of Petition and Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planner II

**PROBLEM/ISSUE STATEMENT:** Herbert and Laura Alvin, property owners, submitted a petition to annex land to the City of Billings under 7-2-4600 MCA. The 11,160-square-foot property is located at 215 Garden Avenue between the Interstate 90 Corridor and the Yellowstone River. The property has one residence on it that is occupied by the petitioners. The property owners are requesting annexation in order to obtain city water service and be included under the City of Billings process for replacing the water line in Garden Avenue. The property would be subject to a County-instituted Rural Special Improvement District for the water line replacement if the property remained in the County. The City Council's policy is to consider annexations at two separate meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** MCA, Section 7-2-4600 allows owners of more than 50% of the property to petition the city for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date.

**FINANCIAL IMPACT:** A fiscal impact analysis and staff recommendation will be prepared and presented at the public hearing.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for January 22, 2007, to consider annexing this property.

**Approved by:**

**City Administrator**        **City Attorney**       

**ATTACHMENTS**

- A. Property data
- B. Annexation petition
- C. Map

## **ATTACHMENT A**

### **Annexation #07-01 Property Data**

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Herbert and Laura Alvin
Purpose of annexation:	Obtain City services, specifically water
Property included:	Lot 3, Block 7, Kimble Subdivision, Second Filing
Location:	215 Garden Avenue
Total area:	0.342 acres
Current zoning:	Residential-15,000
Current land use:	Single-family residential
Future land use:	Single-family residential

**ATTACHMENT B**  
**Annexation Petition 06-16 (Annexation 07-01)**

06-968

**PETITION  
FOR ANNEXATION  
TO THE CITY OF BILLINGS**



**NOTICE TO PETITIONER**

This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

**INSTRUCTIONS**

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.  
The map must show:
  - a. The present and proposed boundaries of the municipality;
  - b. The present streets, major trunk water mains and sewer mains;
  - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4<sup>th</sup> Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, Parks and Recreation Department, and the Finance Department. If the departments find no problems with the Petition, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

**RESIDENT FREEHOLDER ELECTORS**

Date	Print Name	Name Signature	Address
Nov 17, 2006	Herb Alvin	Herb Alvin	215 Garden Ave.
Nov 17, 2006	Laura G. Alvin	Laura G. Alvin	215 Garden Ave

(continued on separate page)



Should be completed prior to obtaining signatures of resident freeholder electors)

**DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS**

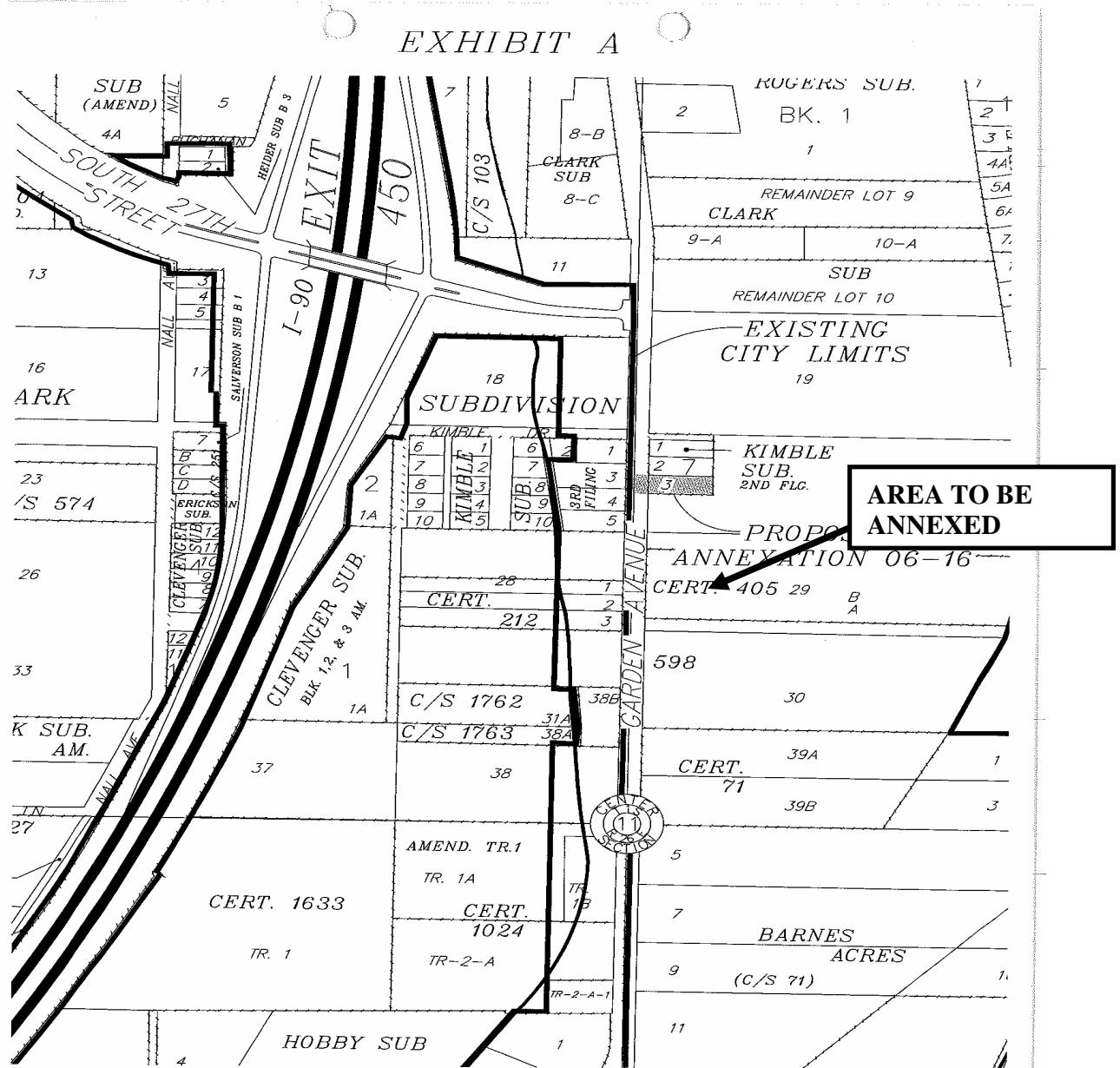
ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 11/20/05  
Fee Paid: \$80.00

Received By: Wright & Bogue Lit. Atty Petition Number: 06-16 Proj. # 06-168

Revised 10/03

**ATTACHMENT C**  
Annexation Map – Annexation #07-01



K

AGENDA ITEM:



---

**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday January 8, 2007**

---

**TITLE:** BSEDA Board Appointment

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** Tina Volek, City Administrator

---

**PROBLEM/ISSUE STATEMENT:** Big Sky Economic Development Authority (BSEDA) has asked the City Council to appoint one of its members to serve as an ex-officio member on the BSEDA Board for a 1-year term. Councilmember Ulledalen has volunteered for the position.

**ALTERNATIVES ANALYZED:**

- Approve the appointment.
- Do not approve the appointment.

**FINANCIAL IMPACT:** None anticipated.

**RECOMMENDATION**

Approve the appointment of Councilmember Ulledalen.

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

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



**AGENDA ITEM:**



---

**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, January 8, 2007**

---

**TITLE:** Resolution Relating to Financing of Certain Proposed Projects; Establishing Compliance with Reimbursement Bond Regulations under the Internal Revenue Code

**DEPARTMENT:** Administration – Finance Division

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

---

**PROBLEM/ISSUE STATEMENT:** The City does not anticipate selling bonds for the construction of a new baseball field and stadium until April. However, the City needs to expend monies related to the project before funds are available from the bond sale proceeds. The following resolution allows the City to reimburse expenses from the bond sale proceeds.

**RECOMMENDATION**

Staff recommends City Council approve the attached resolution.

**Approved By:**      **City Administrator**            **City Attorney**      

**ATTACHMENT**

A – Resolution prepared by Dorsey & Whitney

**CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE**

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a resolution entitled: "RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on January 8, 2007, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_  
\_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_  
\_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of January, 2007.

---

City Clerk

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION RELATING TO FINANCING OF CERTAIN  
PROPOSED PROJECTS; ESTABLISHING COMPLIANCE  
WITH REIMBURSEMENT BOND REGULATIONS UNDER  
THE INTERNAL REVENUE CODE**

BE IT RESOLVED by the City Council of the City of Billings, Montana (the "City"), as follows:

**Recitals.**

The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

**Official Intent Declaration.**

The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the "Projects").

Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of up to \$12,500,000 (the "Bonds") after the date of payment of all or a portion of the costs of the Projects. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the

Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Projects, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

Reimbursement Allocations. The Financial Services Manager shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

Adopted this 8th day of January, 2007.

---

Mayor

Attest:

---

City Clerk

## **EXHIBIT A**

<u>Description of Projects</u>	<u>Estimated Cost</u>
Design, construction and equipping of a new baseball stadium and related improvements in Athletic Park, and paying associated costs of issuance.	\$12,500,000

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

# M

## AGENDA ITEM:

---



## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, January 8, 2007

---

**TITLE:** Second Reading of an Ordinance Expanding Ward IV  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Aura Lindstrand, Planner II

---

**PROBLEM/ISSUE STATEMENT:** On December 11, 2006, the City Council approved the annexation of an approximate 39.65 acre parcel legally described Tract 1-A of Amended Tracts 1 and 2 of Certificate of Survey 3279. The request for annexation was submitted by Judith Deines and Rod Wilson, the owners of property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV was conducted on December 18, 2006. The second reading of the ordinance will be conducted on January 8, 2007.

**FINANCIAL IMPACT:** There are no direct financial impacts if this ordinance is approved.

### **RECOMMENDATION**

Staff recommends that the City Council hold the public hearing and approve the second reading of this ordinance that adds property to City Ward IV.

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

### **ATTACHMENT**

**A. Ward Ordinance and Exhibit A**

**ATTACHMENT A**

**ORDINANCE NO. 07-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD IV PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. **AMENDMENT.** Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:

Tract 1-A of Amended Tracts 1 & 2 of Certificate of Survey 3279, Recorded November 22, 2006, Under Document No. 3401372, Records of Yellowstone County, Montana; including all adjacent right-of-way of Grand Avenue.

Containing 39.649 gross and 39.546 net acres.  
(# 06-15 Exhibit "A" Attached)

2. **CERTIFICATION.** Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. **REPEALER.** All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 18th day of December, 2006.

PASSED by the City Council on the second reading this 8th day of January, 2007.

THE CITY OF BILLINGS:

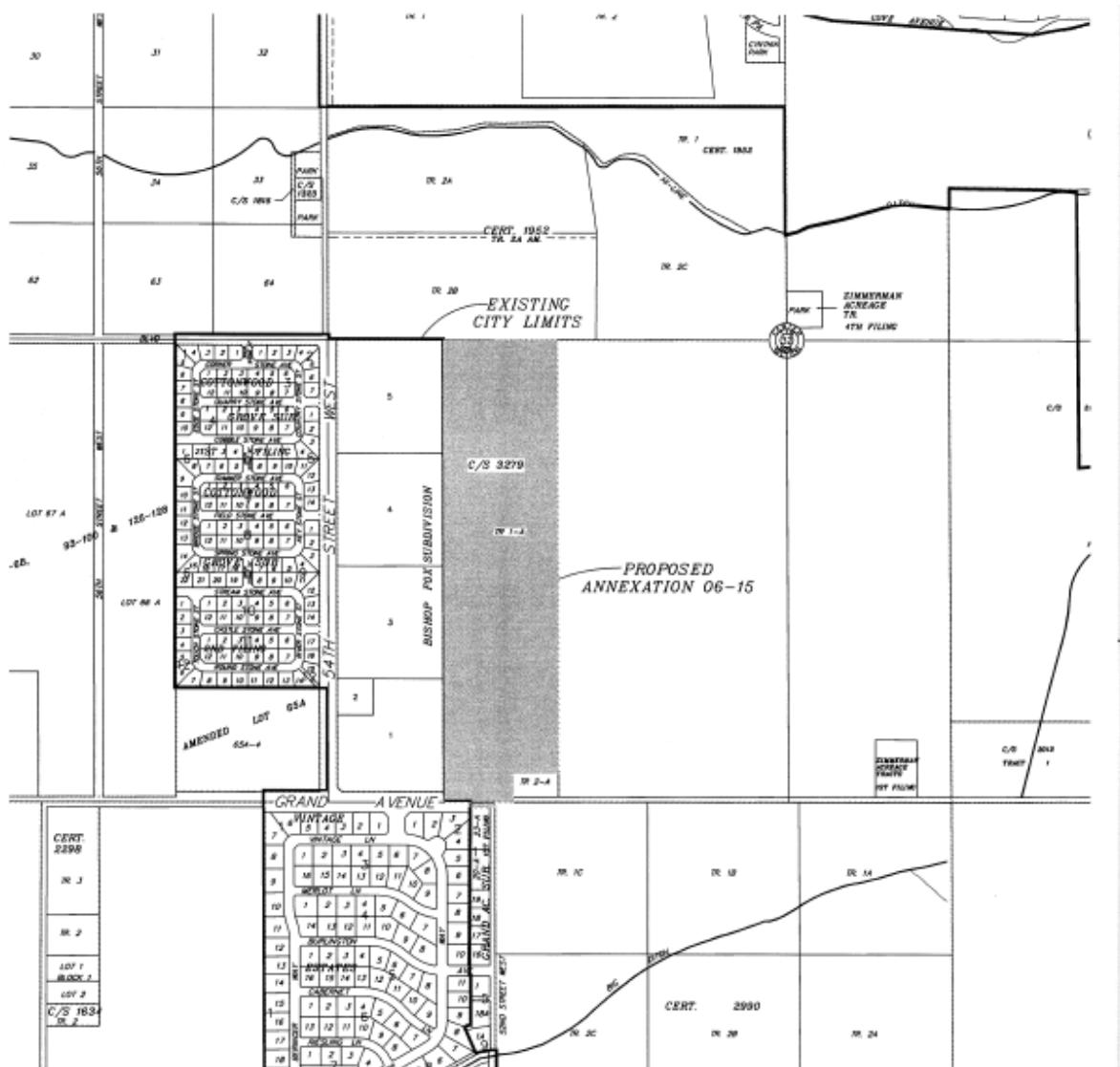
---

Ron Tussing, MAYOR

ATTEST:

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

## EXHIBIT A



(Back to Consent Agenda)

N

AGENDA ITEM:



---

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 8, 2007**

---

<b>TITLE:</b>	Proposed Amendment to City Code 13-502 Concerning Limited Delegation of Contract Signing and Authority to City Administrator – Second Reading with Proposed Amendments by Councilmember Veis
<b>DEPARTMENT:</b>	City Administrator and City Attorney's Office
<b>PRESENTED BY:</b>	Tina Volek, City Administrator, Brent Brooks, City Attorney, Bonnie Sutherland, Assistant City Attorney

---

**PROBLEM/ISSUE STATEMENT:** Recent large construction projects involving the water treatment facility filter building and the Park II Expansion have required numerous change orders which have exceeded the City Administrator's authority to execute. These change orders therefore require mayor and City council approval on a Regular Agenda. As part of investigating a solution to frequent, large amount change orders on substantial City projects, the City Administrator and City Attorney's Office have proposed an amendment to City ordinance Section 13-502 which will give the Mayor and City Council greater flexibility in approving change orders. The proposed amendments allow the Mayor and Council to delegate contract execution to the City Administrator by Resolution, especially for specific projects. This new language is found in Section 13-502(b)(3) as indicated in underlines.

First Reading and public hearing on the proposed ordinance amendments was held on December 11, 2006. An amendment proposed by Councilmember Jones was approved by the Mayor and City Council eliminating the phrase "his/her designee" from Section 13-502(b). This deletion is reflected in the revised draft of the ordinance.

Additionally, Councilmember Veis has recently submitted additional proposed changes to the ordinance under Section 13-502(b)(3) and 13-502(c). Councilmember Veis' additional proposed amendments to the ordinance are also reflected in the draft accompanying this staff memo.

**FINANCIAL IMPACT:** None.

**ALTERNATIVES ANALYZED:**

- Mayor and Council may approve the amendments to the ordinance upon second reading which incorporate the additional change proposed by Councilmember Jones and adopted by the Mayor and City Council during first reading.
- Mayor and Council may choose to further amend the ordinance by motion and adopt the additional changes to the ordinance proposed by Councilmember Veis as reflected in the revised version of the ordinance accompanying this memo.

**RECOMMENDATION**

Staff recommends that the City Council approve and adopt the proposed amendments upon second reading which include the previously approved amendment by Councilmember Jones and the new proposed amendments by Councilmember Veis thereby allowing greater flexibility to the Mayor and City Council in addressing significant and time sensitive change orders.

**Approved By:**      **City Administrator**           **City Attorney**       

**ATTACHMENT:**

A. Ordinance revising Section 13-502 of the Billings City Code

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 13-502; DELEGATING TO THE CITY ADMINISTRATOR THE AUTHORITY TO EXECUTE CERTAIN CONTRACT AMENDMENTS OR CHANGE ORDERS.

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

*Section 1.* That Section 13-502 of the Billings, Montana City Code be amended so that such section shall read as follows:

“Sec. 13-502. Execution of contract.

- (a) Within ten (10) working days after the acceptance of a bid, the bidder and the city shall make, execute and deliver to each other in duplicate a contract in accordance with the bid; provided, that the parties to the contract may extend the period for execution.
- (b) The city administrator, or his/her designee is authorized to execute amendments or change orders to all contracts, executed by the Mayor if the changes are:
  - (1) Within the scope of the project or purchase, provided ~~however~~ that increases in the scope of street improvement projects to add improvements requested and paid for by adjacent property owners are permissible; and
  - (2) Executed in writing; and
  - (3) Any increase in contract amount does not exceed: (a) ten (10) percent of the contract price, or (b) ~~one hundred thousand dollars (\$100,000.00)~~ \$500,000, or (c) the original budgeted contingency, whichever is less; ~~or (b) the amount set by Council resolution for a specific project.~~
- (c) The total amount of all change orders or amendments on any given project will be cumulatively combined and when any single amendment or change order exceeds the limit under subsection (b) of this section the proposed change must be presented to the city council for approval. However, where the size of the contract makes it probable that administrative change order authority will be quickly exhausted, the city council may, upon recommendation of the city administrator, extend the aggregate limits of subsection ~~(1)(b) of this section upon initial award and approval of the particular contract.~~ in an amount set by Council resolution for a specific project.

*Section 2. EFFECTIVE DATE.* This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

*Section 3. REPEALER.* All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

*Section 4. 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.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF BILLINGS

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk

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



AGENDA ITEM:



---

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 8, 2006**

---

**TITLE:** Preliminary Subsequent Minor Plat of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing

**DEPARTMENT:** Planning and Community Services

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

---

**PROBLEM/ISSUE STATEMENT:** On December 1, 2006, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing. The proposed subdivision contains 5 lots on approximately 21 acres and is located at the southeast corner of Wicks Lane and Sierra Granda Blvd. in the Heights. The subject property is zoned Residential-9600 (R-9600) and previously received special review approval for a church and a senior retirement complex. The owner and subdivider is Atonement Lutheran Church and the representing agents are Engineering, Inc., and David Trost.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this minor plat; the 35 working day review period for the proposed plat ends on January 22, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

**FINANCIAL IMPACT:** Should the City Council approve the preliminary plat, the subject property may further develop under private ownership, resulting in additional tax revenues.

**RECOMMENDATION**

Staff recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

**ATTACHMENTS**

- A. Preliminary Plat
- B. Site Photographs
- C. Findings of Fact
- D. Mayor's Approval Letter

## **INTRODUCTION**

On December 1, 2006, the subdividers applied for preliminary subsequent minor plat approval of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing. The proposed subdivision contains 5 lots on approximately 21 acres and is located at the south east corner of Wicks Lane and Sierra Granda Blvd. in the Heights.

## **PROCEDURAL HISTORY**

- The preliminary plat application for this subdivision was submitted to the Planning Department on December 1, 2006.
- The City Council will consider the preliminary plat on January 8, 2007.

## **BACKGROUND**

General location:	Southeast corner of the intersection of Wicks Lane and Sierra Granda Blvd. in the Heights
Legal Description:	Amended Lot 1, Block 3, High Sierra Subdivision, 2 <sup>nd</sup> Filing in Section 17, T1N, R26E
Subdivider/Owner:	Atonement Lutheran Church
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	R-9600
Existing land use:	site of little Box Elder church
Proposed land use:	Atonement Lutheran Church and senior retirement complex
Gross area:	21.137 acres
Net area:	21.137 acres
Proposed number of lots:	5
Lot size:	Max: 7.783 acres Min.: 1.718 acres
Parkland requirements:	A parkland dedication is not required as this is a minor subdivision.

## **ALTERNATIVES ANALYSIS**

One of the purposes of the City's subdivision review process is to identify potential negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. The Planning Board develops and recommends conditions of approval that are based on departmental comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

## **RECOMMENDED CONDITIONS OF APPROVAL**

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact:

1. To minimize the effects on local services, the Subdivision Improvements Agreement shall be amended as follows:
  - Section III.A.2. on pg. 3, delete sentence starting with "If adjacent property owner to the south...."
  - Section VI. on pg. 5, second paragraph, delete sentence starting with "That said portion is 30 percent of the gross area..." and replace the sentence with "The local waste water fee shall be assessed to that portion of Block 3 that was not in SID 1245."
2. In order to provide easements for the location and installation of utilities, utility easements shall be shown on the final plat as requested by MDU and City Engineering.
3. To minimize the effects on local services, central mail delivery accommodations shall be provided as requested by the USPS. A letter of compliance shall be submitted with the final plat documents.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

## **VARIANCES REQUESTED**

None

## **STAKEHOLDERS**

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. The Planning Department has received no public comments or questions regarding the proposed subdivision.

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

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

**RECOMMENDATION**

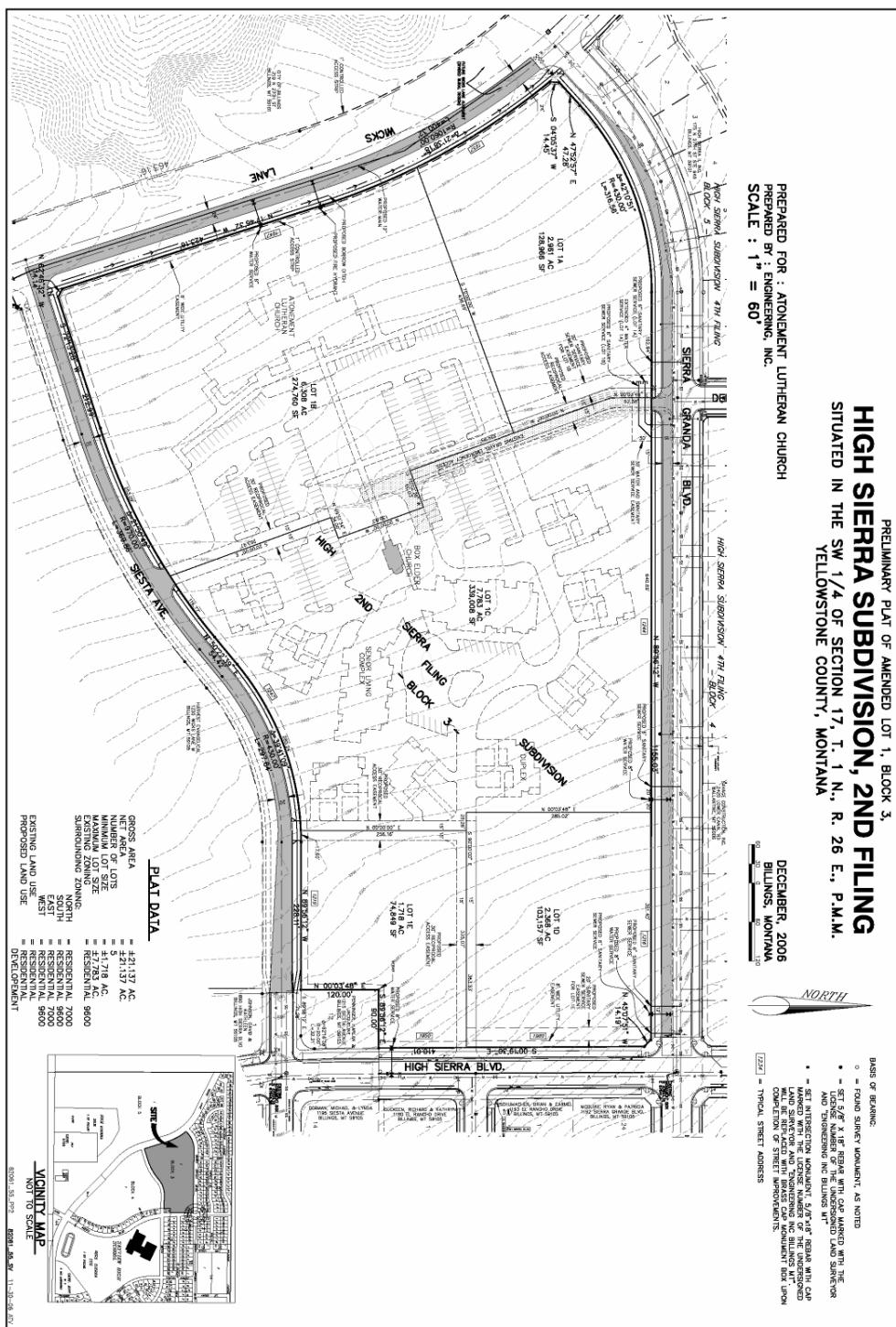
Staff recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing and adoption of the Findings of Fact as presented in the staff report to the City Council.

**ATTACHMENTS**

- A. Preliminary Plat
- B. Site Photographs
- C. Findings of Fact
- D. Mayor's Approval Letter

**ATTACHMENT A**

Preliminary Plat of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing



**ATTACHMENT B**  
Site Photographs



Figure 1: From High Sierra Blvd. looking southeast at subject property and “Box Elder church”.



Figure 2: General view of subject property.

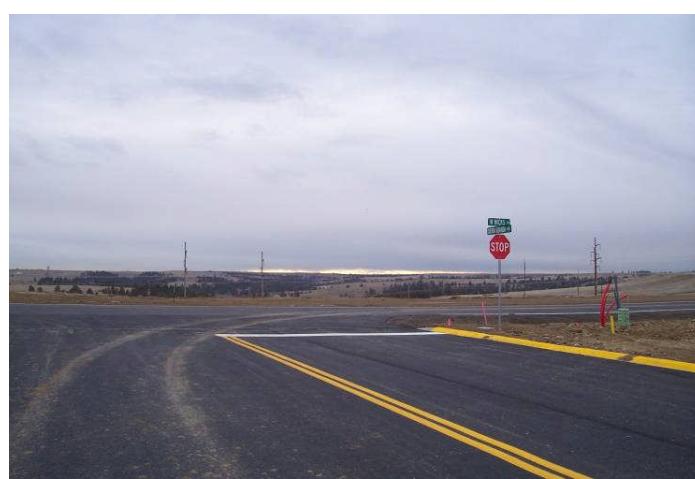


Figure 3: View looking west from Wicks/Sierra Granda intersection.

## **ATTACHMENT C**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

#### **A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? (76-3-608 (3)(a), MCA) (23-303(H)(2), BMCC)**

##### **1. Effect on agriculture and agricultural water user facilities**

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property.

##### **2. Effect on local services**

- a. **Utilities** – The proposed lots would be served by existing water mains located in Sierra Granda Boulevard and High Sierra Boulevard or by a new 12-inch water main to be located in Wicks Lane. Lot owners of Lots 1A and 1B will construct the 12-inch water main along Wicks at the time of lot development. Lots would be served by the existing sanitary sewer main in Sierra Granda Boulevard. Although Lots 1B and 1E do not front Sierra Granda, they will be served through easements provided in Lots 1A and 1D. Power, gas and phone facilities will be accommodated in 10-foot wide utility easements around the perimeter of the original parcel, as requested by MDU and recommended as a condition of approval (See Condition #2).
- b. **Stormwater** – As specified in the submitted SIA, storm drainage shall be provided by a combination of surface flow to curbs and gutters discharging to the existing detention pond located in the Wicks Lane right-of-way, northwest of Wicks and Sierra Granda. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the proposed lots will be via shared 30-foot wide reciprocal accesses from High Sierra Blvd., Sierra Granda Blvd. and Siesta Ave. The Engineering Department has reviewed these accesses and finds them acceptable.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601

St. Andrews Drive (Station #6). Police Chief Rich St. John has indicated that continued development will require additional assets to maintain adequate coverage and acceptable response times.

- f. **Schools** - The subdivision will have little effect on schools, as it is proposed for church and retirement uses.
- g. **Parks and Recreation** - There is no parkland dedication requirement, as this is a subsequent minor plat for commercial purposes.

### **3. Effect on the natural environment**

A geotechnical study was submitted with this application and has been reviewed by the Building Official. Any necessary mitigation measures will be implemented at the time of building permit review.

### **4. Effect on wildlife and wildlife habitat**

There are no known endangered or threatened species on the property; however the property is located near open lands, where the likelihood of wildlife interaction is high. There is a note in the SIA under general conditions that run with the land that future property owners should be aware that the proposed subdivision is located within prime deer and antelope habitat. Any damage caused by wildlife is the responsibility of the owner.

### **5. Effect on the public health, safety and welfare**

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

## **B. Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)**

An Environmental Assessment is not required, as this is a subsequent minor plat.

## **C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)**

### **1. Yellowstone County-City of Billings 2003 Growth Policy**

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. 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 compatible with the surrounding residential and church uses.*

- b. More housing and business choices within each neighborhood. (Land Use Element Goal, Page 6)

*The proposed subdivision will likely offer a mix of housing choices for traditional single family homes and senior housing, as well as church uses.*

- c. Increased circulation connections for improved traffic flow.

*The subdivision process will help spur the improvements to Wicks lane as it connects to Sierra Granda Blvd. This should help traffic flow to and from Skyview High School.*

## **2. Urban Area 2005 Transportation Plan Update**

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

## **3. Heritage Trail Plan**

A Heritage Trail corridor is not identified within this subdivision.

## **D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? (76-3-608 (3)(b), MCA) (23-301, BMCC)**

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

## **E. Does the subdivision conform to sanitary requirements? (23-408, BMCC)**

The property is served by the City of Billings water, sewer, storm drain and solid waste services.

## **F. Does the proposed subdivision conform to all requirements of the zoning in effect? (23-402, BMCC)**

The subject property is located within the Residential-9600 (R-9600) zoning district and shall comply with the standards set forth in Section 27-308, BMCC.

## **G. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-410(A)(1), BMCC)**

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

**H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-406, BMCC)**

The lots will share accesses from Sierra Granda Blvd., High Sierra Blvd., and Siesta Ave. through reciprocal access easements.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, January 8, 2007.

---

Ron Tussing, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

January 9, 2007

Atonement Lutheran Church  
407 Wicks Lane  
Billings, MT 59105

Dear Applicant:

On January 8, 2007, the Billings City Council conditionally approved the preliminary plat of Amended Lot 1, Block 3, High Sierra Subdivision, 2<sup>nd</sup> Filing, subject to the following conditions of approval:

1. To minimize the effects on local services, the Subdivision Improvements Agreement shall be amended as follows:
  - Section III.A.2. on pg. 3, delete sentence starting with “If adjacent property owner to the south....”
  - Section VI. on pg. 5, second paragraph, delete sentence starting with “That said portion is 30 percent of the gross area...” and replace the sentence with “The local waste water fee shall be assessed to that portion of Block 3 that was not in SID 1245.”
2. In order to provide easements for the location and installation of utilities, utility easements shall be shown on the final plat as requested by MDU and City Engineering.
3. To minimize the effects on local services, central mail delivery accommodations shall be provided as requested by the USPS. A letter of compliance shall be submitted with the final plat documents.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding with the Planning Division at 247-8684 or by email at [spaldingj@ci.billings.mt.us](mailto:spaldingj@ci.billings.mt.us).

Sincerely,

---

Ron Tussing, Mayor

Pc: Engineering, Inc.  
David Trost

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

## AGENDA ITEM:



---

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 8, 2007**

---

**TITLE:** Final Plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

---

**PROBLEM/ISSUE STATEMENT:** The final plat for Amended Lot 3, Block 1, Yellowstone Ridge Subdivision is being presented to Council for approval. On August 14, 2006, the City Council conditionally approved the 2-lot minor subdivision. The subject property is zoned Residential 9600 (R-9600) and is generally located north of Rimrock Road at the intersection of 54<sup>th</sup> Street West and Rocky Mountain Boulevard. The property owners and representing agents are Stephen and Chris Hovis. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

**FINANCIAL IMPACT:** Should the City Council approve the final plat, the subject property may further develop, resulting in additional tax revenues for the City.

**RECOMMENDATION**

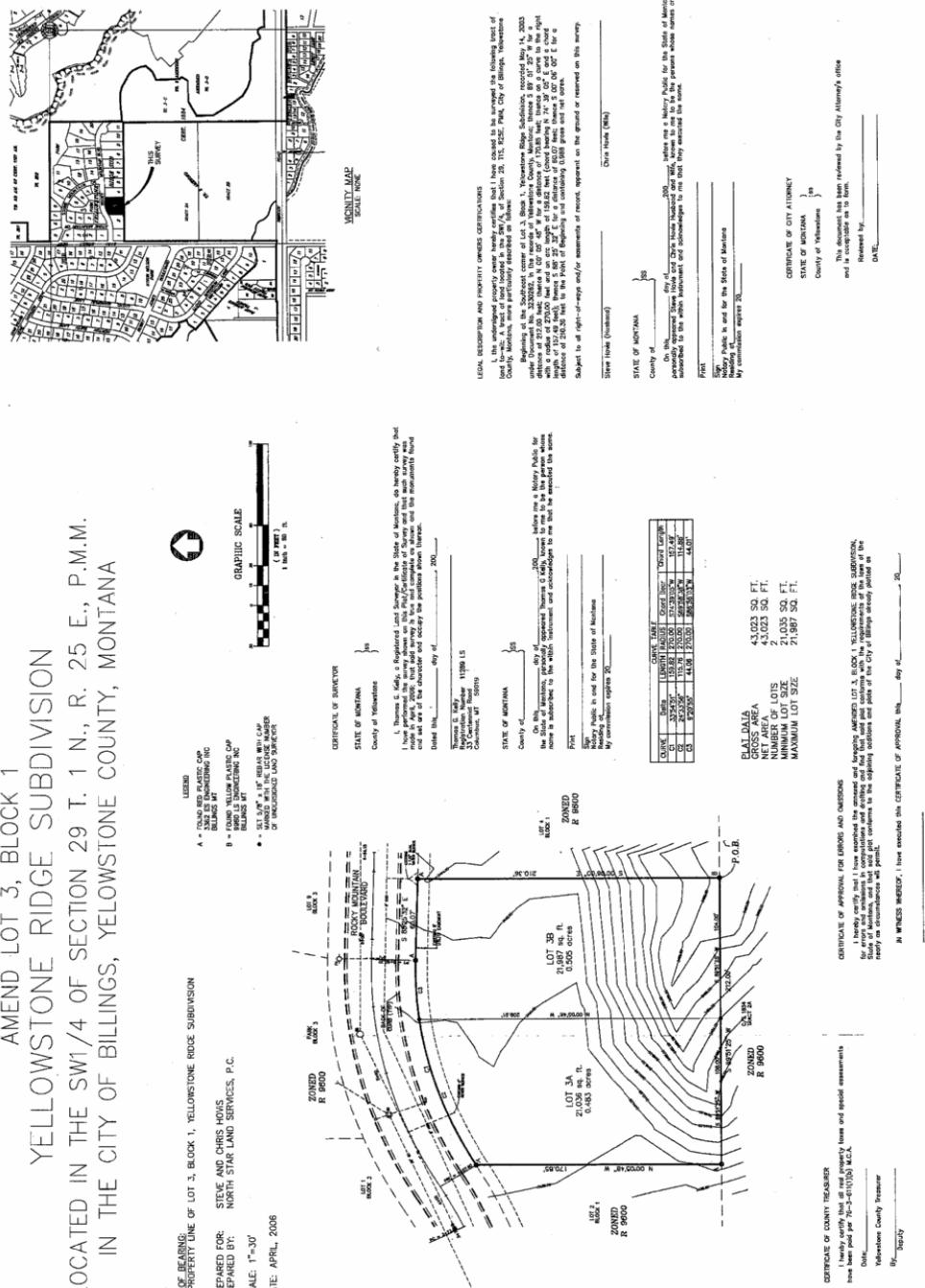
Staff recommends that the City Council approve the final plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision.

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

**ATTACHMENT**

A: Plat

**ATTACHMENT A**



(Back to Consent Agenda)

# Q1

AGENDA ITEM:



---

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 8, 2007**

---

**TITLE:** Payment of Claims  
**DEPARTMENT:** Administration – Finance Division  
**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

---

**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,562,260.22 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 1, 2006, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:**      **City Administrator**            **City Attorney**      

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

# Q2

AGENDA ITEM:



---

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 8, 2007**

---

**TITLE:** Payment of Claims  
**DEPARTMENT:** Administration – Finance Division  
**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

---

**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$822,088.40 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 8, 2006, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:**      **City Administrator**            **City Attorney**      

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

# Q3

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 8, 2007

TITLE: Payment of Claims  
DEPARTMENT: Administration – Finance Division  
PRESENTED BY: Patrick M. Weber, Financial Services Manager

**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,405,972.78 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 15, 2006, is on file in the Finance Department.

#### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 8, 2007**

**TITLE:** Public Hearing for Resolution Authorizing Disposal of Lot 1, Block 1 and Lots 1 & 2, Block 2 of Arlene Subdivision

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** The City of Billings owns Lot 1, Block 1 and Lots 1 & 2, Block 2 of Arlene Subdivision. These properties are located along Zimmerman Trail between Poly Drive and Grand Avenue as shown on the attached plat map. Now that the Zimmerman Trail street projects are completed, these properties are not needed for city use. The Public Works Department would like to sell these lots in order for them to be developed. The Council approved the zoning change to R-6000R on Lot 1, Block 1 and Lot 1, Block 2 on August 28, 2006. Council authorized the Resolution of Intent to dispose of this territory on November 27, 2006, and the public hearing notice was advertised on December 7th and 14th, 2006.

**ALTERNATIVES ANALYZED:**

1. Approve the Resolution Authorizing Disposal of Lot 1, Block 1 and Lots 1 & 2, Block 2 of Arlene Subdivision.
2. Do not approve the Resolution Authorizing Disposal of Lot 1, Block 1 and Lots 1 & 2, Block 2 of Arlene Subdivision.

**FINANCIAL IMPACT:** Approving the Resolution Authorizing Disposal would have no cost. The sale of these lots is expected to generate approximately \$400,000, if the disposal is approved.

**RECOMMENDATION**

Staff recommends that Council approve the Resolution Authorizing Disposal of Lot 1, Block 1, and Lots 1 & 2, Block 2 of Arlene Subdivision.

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

**ATTACHMENTS**

- A. Arlene Subdivision Plat (1 page)
- B. Resolution Authorizing Disposal of Lot 1, Block 1, and Lots 1 & 2, Block 2 of Arlene Subdivision

PLAT OF  
ARLENE SUBDIVISION

BEING THE REMAINDER OF THE SOUTH 1/2 OF TRACT 4, MONSMA ACRES, C/S 914 TRACT C/S 1461 TRACT 1, AND AN UNPLATTED PORTION OF LAND, ALL LOCATED IN THE N 1/2 OF SECTION 34, T. 1 N., R 25 E., P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: THE CITY OF BILLINGS  
PREPARED BY: THE CITY OF BILLINGS  
JAMES L FLETCHER (SURVEYOR)  
SCALE: 1"=60'  
DATE: SEPTEMBER, 2005

BASIS OF BEARING: MID SECTION LINE T.I.N., R.25E.,  
SECTION 34 FROM SCOTT SUBDIVISION

34

## **RESOLUTION 07-**\_\_\_\_\_

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE,  
ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY,  
DESCRIBING THE PROPERTY TO BE DISPOSED, DECLARING THE  
INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND  
AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located on Zimmerman Trail and described as Lot 1, Block 1, and Lots 1 & 2, Block 2 of Arlene Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file under Document #3387467, recorded on August 2, 2006, in the office of the Yellowstone County Clerk and Recorder's office.

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 8<sup>th</sup> day of January, 2007;

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

That the City staff is authorized to proceed with the disposal of Lot 1, Block 1, and Lots 1 & 2, Block 2 of Arlene Subdivision, under the requirements of Section 22-902 of the Billings, Montana City Code.

APPROVED AND PASSED by the City Council of the City of Billings this 27th day of November, 2006.

## THE CITY OF BILLINGS:

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

ATTEST:

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

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

# 3

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 8, 2007

**TITLE:** Zone Change #793 Public Hearing and 1<sup>st</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Lora Mattox, AICP, Neighborhood Planner, Planner II

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential Multi-family to Neighborhood Commercial (NC) on the Southwest half of Lots 13 – 21, Block 59, Foster’s Addition. The subject property is located at 632 North 26<sup>th</sup> Street. The applicant is proposing the zone change on approximately 14,000 square feet of the existing parcel. The owners are Thomas Towe and Court E. Ball Partnership and the agent is Susan Lovely. The Zoning Commission conducted a public hearing on December 5, 2006, and voted 4-0 to recommend approval 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 should have little impact on the City’s tax base.

#### **RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council **approve** Zone Change #793 and adopt the determinations of the 12 criteria, as discussed within this report.

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

**ATTACHMENTS:**

- A: Surrounding Zoning
- B: Site Photographs
- C: Draft Amendment to Declaration of Unit Ownership
- D: North Park Neighborhood Task Force Support Letter
- E: Ordinance

## **INTRODUCTION**

The applicant is requesting a zone change from Residential Multi-family to Neighborhood Commercial (NC) on the Southwest half of Lots 13 – 21, Block 59, Foster’s Addition. The subject property is located at 632 North 26<sup>th</sup> Street. The applicant is proposing the zone change on approximately 14,000 square feet of the existing parcel. The owners are Thomas Towe and Court E. Ball Partnership and the agent is Susan Lovely. The Zoning Commission conducted a public hearing on December 5, 2006, and voted 4-0 to recommend approval to the City Council. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

## **PROCEDURAL HISTORY**

- On November 6, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on December 5, 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 January 8, 2007, 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 January 22, 2007.

## **BACKGROUND**

This is a zone change request from Residential Multi-family to Neighborhood Commercial on a 28,000 square foot parcel described at Lots 13 – 21, Block 59, Foster’s Addition. The subject property is located at 632 North 26<sup>th</sup> Street and is the location of Skyline Court Condominiums. The area to be re-zoned to Neighborhood Commercial will be used as Multi-family units with the ability to have a home occupation with employees.

The owner of this property is Thomas Towe and Court E. Ball Partnership. The agent is Susan Lovely. This area proposed for the zone change is located in an area with multiple zoning districts and is an area of transition between the North 27<sup>th</sup> Street and 6<sup>th</sup> Avenue North commercial zones and the North Park residential neighborhood. It is adjacent to Community Commercial zoning to the west (Albertsons) and north (proposed credit union), to the east is Multi-family zoning and Residential Professional zoning to the south with a law office.

The current Residential-multi family zoning allows for home occupations, however, home occupations are regulated to control traffic and hours of operation. These regulations are in place to limit the impact to the surrounding residences. These regulations do not allow outside employees to work within the residence. The owner of this property applied for a variance from the home occupation regulation to allow outside employees in May 2006, and was denied by the City Board of Adjustment.

The North Park Neighborhood Task Force held its regular meeting on November 2, 2006, and voted 17-2 to support the request for the zone change.

The Building Department forwarded a comment concerning this application. The comment stated that this zone change request would result in an allowance to change the use from strictly residential to limited business use. A use that would permit employees would be regulated by the building code as a service industry, and certain commercial regulations would come into effect. An analysis would need to be conducted by the owner or agent, but would likely include changes to the structure for accessibility, as well as other possible modifications.

It is believed that there is currently a business operating in one of the units located at this site. This business is operating as an advertising business with part-time employees. There are no outward appearances of a business operation, i.e. signage; however, a complaint was received concerning the possibility of business activities. The operation of a business with employees in a residential zone is considered an illegal nonconforming use and would not be allowed to continue, therefore, the applicant is requesting this zone change to remedy the illegal nonconforming use situation. If the zone change to Neighborhood Commercial is not granted the business operation will be an illegal nonconforming use and be in violation of the zoning code.

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 Community Commercial, Residential Professional and Residential Multi-family. The proposed zone change will have to comply with all applicable zoning requirements on the Neighborhood Commercial zoning district and applicable building codes.

### **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:

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?*  
Yes, the new zoning will increase more housing and business choices within each neighborhood. The 2003 Growth Policy supports mixed-uses within neighborhoods. This is an appropriate development of an area with a mix of zoning districts including Residential Multi-family, Community Commercial, Residential Professional and Neighborhood Commercial.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The development currently provides two off-street parking spaces per unit and additional traffic should not impact the streets in this area.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on North 26<sup>th</sup> Street and is served by the City Fire 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?*  
This is an existing development with approved setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
This is an existing development with approval of lot coverage.
7. *Will the new zoning avoid undue concentration of population?*  
The new zoning does not require a minimum amount of square footage per structure; therefore, there could be some concentration of population. The primary use of this site is multi-family housing with the allowance of a home occupation with employees.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*  
*Transportation:* The development currently provides two off street parking spaces per unit and additional traffic should not impact the streets in this area.  
*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 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?*  
There are several varying zoning districts in this area including Community Commercial, Neighborhood Commercial, Residential Professional, and Residential Multi-family. The existing neighborhood consists of a mix of single-family, multi-family and commercial development. The proposed Neighborhood Commercial zone should blend in with the neighborhood. The new zoning should not impact the character of the neighborhood.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The subject property is located in a mixed zoning area and 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 an area of transition between more intense commercial uses and the residential neighborhood.

### **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 December 5, 2006, and forwarded a recommendation of approval to the City Council by a 4-0 vote. Agent Susan Lovely was present and gave an overview of the project. Ms. Lovely discussed the quality of the units and how they could enhance the area. Community Commercial, Residential Professional, Neighborhood Commercial is located in this area and is a transitional area to the residential neighborhood. Ms. Lovely also stated that these units will not have customer or client contact coming to this location, employees only.

There were three surrounding property owners present at the public hearing who raised concerns regarding the proposed zone change. The first spoke of concerns regarding a precedent being set of allowing Neighborhood Commercial zoning and the effect on the uses on the surrounding lots. He currently owns four lots on 7<sup>th</sup> Avenue North and North 27<sup>th</sup> Street and pays taxes based on the Community Commercial zoning. The second opponent spoke of abandoned vehicles being present in this area since April. The third opponent raised concerns over only zoning the southwest half of the parcel, that the entire block should be zoned to medical professional.

### **RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council **approve** Zone Change #793.

### **ATTACHMENTS:**

- A: Surrounding Zoning
- B: Site Photographs
- C: Draft Amendment to Declaration of Unit Ownership
- D: North Park Neighborhood Task Force Support Letter
- E: Ordinance

**Attachment A**  
Surrounding Zoning



**Attachment B**  
Site Photos – Zone Change #793



Subject site at 623 North 26<sup>th</sup> Street



View west at Albertsons Grocery Store

**ATTACHMENT B**  
Site Photo – Zone Change #793 Continued



View north along 26<sup>th</sup> Street North



View south along 26<sup>th</sup> Street North

**ATTACHMENT C**

Draft Amendment to Declaration of Unit Ownership

**AMENDMENT TO DECLARATION OF UNIT OWNERSHIP  
FOR SKYLINE COURT**

THIS AMENDMENT is made to the Declaration of Unit Ownership for Skyline Court dated July 15, 2004 and recorded on November 30, 2004 at 3:38 p.m. as Document No. 3313668, Yellowstone County, Montana pursuant to the provision for amendment contained therein. This amendment shall constitute a covenant running with the land and shall be binding on all parties claiming ownership or title to any of the property included within the area affected by the amendment, and their heirs and assigns as provided by law. See §70-17-201, et seq. M.C.A.

**Area Affected:** The southwest half of Lots 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Block 269, of the First Addition to the City of Billings (also referred to as Block 59, Foster's Addition to the City of Billings), in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County. This area shall specifically include the Skyline Court Townhouses whose addresses are 627 North 26<sup>th</sup>, 631 North 26<sup>th</sup>, 635 North 26<sup>th</sup>, 639 North 26<sup>th</sup>, and 643 North 26<sup>th</sup>. Further, it will include all units in any new townhouse construction within the above area whose addresses will include all numbers from 601 North 26<sup>th</sup> to 625 North 26<sup>th</sup>.

**Restrictive Covenants:** The following restrictive covenants running with the land shall apply within the above-described area: All of the current restrictions contained in the present zoning ordinances entitled Residential Multi-Family "RMF" of the Billings City Municipal Code (Sec. 27-301) plus any changes and additions or deletions properly adopted thereto shall apply to the affected area **with the exception** of that portion of the home occupation exception (Section 27-606) that prohibits a

**Attachment C**

Draft Amendment to Declaration of Unit Ownership Continued

qualifying home occupation from employing persons other than the residents of the dwelling and restricts the amount of floor space devoted to the business. It is the specific intent of these restrictive covenants that all zoning restrictions currently in existence for properties zoned Residential Multi-Family "RMF" by the City of Billings will apply to the affected area with the exception of the prohibition contained in Section 27-606 (Home Occupations) that restricts a home occupation to occupations which do not employ persons other than the residents of the dwelling or restricts the home occupation to a certain number of square feet or percentage of space available. This restrictive covenant will not prohibit any home occupation from employing persons other than a resident of the dwelling or from using a certain amount of space for the business activity and such employment or use of space will not prevent a home occupation from full compliance. In addition, the Home Owners Association may approve a waiver of other restrictions contained in the home occupation exception of Section 27-606 of the Billings City Municipal Code. All other restrictions contained in Residential Multi-Family "RMF" zoning ordinance of the City of Billings, as amended and changed in the future, shall apply.

DATED this 3rd day of November, 2006.



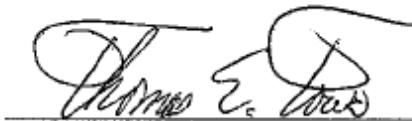
THOMAS E. TOWE  
Representative of the Developer  
Partner, Billings Townhouses, Inc.

STATE OF MONTANA      )  
                                  ss:  
County of Yellowstone    )

**Attachment C**

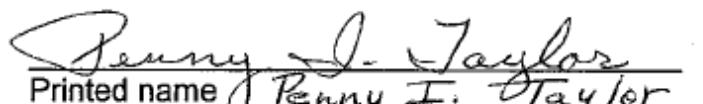
Draft Amendment to Declaration of Unit Ownership Continued

Thomas E. Towe, being first duly affirmed, deposes and states that I am the representative of the developer, Billings Townhouses, LLC, and a partner thereof, and that there are no other persons currently holding title to any of the land covered by this restrictive covenant and that this amendment fully complies with the provisions of the Declaration of Unit Ownership for Skyline Court on file with the Clerk and Recorder of Yellowstone County.



Thomas E. Towe

Acknowledged, signed and affirmed before me this 3<sup>rd</sup> day of  
November, 2006.



Penny I. Taylor  
Printed name Penny I. Taylor  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My Commission Expires 01/30/2008

(Notary Seal)

## **Attachment D**

## North Park Neighborhood Task Force Support Letter

11-06-206 2:08PM FROM KEN CRANSTON CO. 406 245 4671  
FROM : FAX NO. : 4062553332 NOV. 06 2006 10:00AM P2

P. 1

John Armstrong, Chairman  
North Park Neighborhood Task Force, Inc.  
903 North 18<sup>th</sup> Street  
Billings, MT 59101  
406-245-0932

November 6, 2006

**City of Billings  
Planning & Community Development Dept.  
510 North Broadway  
Billings, MT 59101**

**Dear Members:**

At our November 2<sup>nd</sup> task force meeting, Tom Towe asked for our members' support to approve his request for a zone change for one tier of the Skyline Court townhouses located on North 28<sup>th</sup> Street behind Albertsons.

Our members voted in favor (17-2) of approving Mr. Towe's request to change the zoning from multi-family residential to neighborhood commercial with the same restrictions as the existing zoning except that employees would be allowed to work on the premises.

We feel that the zoning change would allow for a transition area between the Albertsons store and residentially zoned properties.

Sincerely,

~~John Armstrong  
Chairman~~

**ATTACHMENT E**  
Zone Change #793

**ORDINANCE NO. 07-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR the Southwest ½ of Lots 13 – 21, Block 59, Foster’s Addition,  
containing approximately 14,000 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 the Southwest ½ of Lots 13 – 21, Block 59, Foster’s Addition, containing approximately 14,000 square feet and is presently zoned Residential Multi-family 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 Multi-family** 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 January 8, 2007.

PASSED, ADOPTED AND APPROVED on second reading January 22, 2007.

CITY OF BILLINGS:

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

ATTEST:

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

ZC#793

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 8, 2007**

---

**TITLE:** Zone Change #794 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 to rezone Tract 1A of Certificate of Survey 3279 Amended from Agricultural Suburban (AS) to Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-5000), and Residential 7000 (R-7000). The subject property is generally located east of the intersection of Grand Avenue and 54<sup>th</sup> Street West adjacent to Bishop Fox Subdivision and is vacant agricultural land. Rod Wilson and Judith Deines are the owners and Engineering, Inc is the representing agent. The subject property was annexed on December 11, 2006; a major subdivision has also been submitted concurrently with this zone change request. The Zoning Commission conducted a public hearing on December 5, 2006, which resulted in a 2-2 tie vote. 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:** Upon development, the proposed zone change should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission forwards no recommendation to the City Council for Zone Change #794, as the result was a 2-2 tie vote.

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

**ATTACHMENTS:**

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

## **INTRODUCTION**

The applicant is requesting to rezone Tract 1A of Certificate of Survey 3279 Amended from Agricultural Suburban (AS) to Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-5000), and Residential 7000 (R-7000). The subject property is generally located east of the intersection of Grand Avenue and 54<sup>th</sup> Street West adjacent to Bishop Fox Subdivision and is vacant agricultural land. The Zoning Commission conducted a public hearing on December 5, 2006, which resulted in a 2-2 tie vote. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

## **PROCEDURAL HISTORY**

- On September 26, 2006, a pre-application meeting was conducted for proposed major plat.
- On October 25, 2006, the Annexation Petition was submitted to the Planning Department.
- On November 1, 2006, the preliminary major plat application was submitted to the planning department.
- On November 6, 2006, the rezone application was submitted to the Planning Department.
- On November 16, 2006, the departmental review meeting for the preliminary plat was conducted.
- On November 27, 2006, the City Council acknowledged the annexation petition and set a public hearing date for December 11, 2006. The preliminary plat was also resubmitted with revisions based on the departmental review meeting.
- On December 5, 2006, the City Zoning Commission conducted a public hearing for several zone changes on the subject property including Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-5000), and Residential 7000 (R-7000). There is no recommendation from the Zoning Commission, as the public hearing resulted in a tie vote.
- On December 11, 2006, the City Council conducted the public hearing and adopted a resolution annexing the subject property.
- On December 18, 2006, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted.
- On January 8, 2006, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion and the Council will conduct a public hearing on the proposed zone change.
- On January 9, 2006, the Planning Board will conduct a public hearing on the proposed major subdivision.
- On January 22, 2006, if the zone change is approved, the City Council will approve the 2<sup>nd</sup> reading of the zone change. The preliminary plat will be approved, conditionally approved, or denied by the City Council at this meeting.

## **BACKGROUND**

The applicant is requesting to rezone Tract 1A of Certificate of Survey 3279 Amended from Agricultural Suburban (AS) to Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-5000), and Residential 7000 (R-7000). The proposed zoning will allow for multi-family residential uses on the western portion of the property and duplexes and single-family residences

on the eastern portion of the property. It is the property owner's intent to create large lots within the subdivision for condominium units. In addition to this tract, the applicant does own one 10-acre lot within Bishop Fox Subdivision to the west that is proposed with the major subdivision; this lot is proposed for single-family condominium units on two approximately 4-acre lots zoned R-9600. With the proposed zoning, staff has calculated the following densities based on the net acreages and lot coverage requirement for each zoning district. Please note that these are maximum densities based on the applicant's proposal of 6-plexes, duplexes, and single family residential uses and does not account for setbacks and internal private streets.

<b>Zoning District</b>	<b>Maximum Lot Coverage</b>	<b>Net Acreage Square Footage</b>	<b>Approximate Total Units Permitted</b>
R-9600 (single-family only)	30%	5.47 acres 238,273.2 square feet	24 single-family residences
R-7000 (single-family and duplexes only)	30%	4.82 acres 209,959.2 square feet	21 duplexes (42 units)
R-5000 (single-family and duplexes only)	40%	10.07 acres 438,649.2 square feet	54 duplexes (108 units)
RMF-R (6-plexes proposed)	40%	6.61 acres 287,931.6 square feet	22 6-plexes (132 units)
		<b>TOTAL APPROXIMATE UNITS</b>	<b>306 units</b>

Planning staff is forwarding a recommendation of approval for this application. Staff has based this recommendation on the 12 criteria for zone changes discussed below.

### **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:

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

The proposed annexation 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)*

This property is in an area of West Billings that is experiencing rapid residential growth. The addition of this parcel will focus new growth in an existing and expanding population center.

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

With the extension of the City limits and as surrounding properties develop with similar densities along this portion of Grand Avenue, the proposed rezone is compatible with the character of the neighborhood. However, there are still agricultural lands and low density housing located to the south, east, and north of this property.

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

The proposed zoning will permit single-family and multi-family residential uses and duplexes within this neighborhood.

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

The new zoning is expected to generate more traffic than current agricultural uses. A Traffic Accessibility Study (TAS) was submitted with the subdivision application and states that the proposed subdivision will create approximately 3,559 trips per day. The applicant will be required to provide a monetary contribution for the future improvements to the intersection of Grand Avenue and 54<sup>th</sup> Street West and potentially the intersection of Rimrock Road and 54<sup>th</sup> Street West.

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

There are two accesses to the subdivision, one to 54<sup>th</sup> Street West and one to Grand Avenue, which have been determined sufficient by the Fire Department for emergency vehicle access.

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

The proposed zoning will permit single-family and multi-family residential uses and duplexes. The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements, as well as height restrictions 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. This requirement will help prevent overcrowding of land.

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

The proposed density for the subject property is approximately 300 residential units, which should not cause 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 Traffic Accessibility Study submitted with the subdivision has and is being reviewed by the Engineering Division. Required improvements will be reviewed with the subdivision.

*Water and Sewer:* The property is in the process of being annexed and the City will provide water and sewer to the property through existing lines from Grand Avenue.

*Schools and Parks:* The proposed zoning could result in an overcrowding of West High School which is currently over capacity. The middle and elementary schools that serve this property have capacity for additional students.

*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 reviewed with the subdivision application.

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

The proposed zoning will be alike in character with the adjacent commercial to the west and the adjacent single-family residences to the south and west.

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 applicant has proposed the Residential Multi-Family zoning only on the western portion of the property to provide a buffer from the commercial zoning within Bishop Fox Subdivision. The lower density duplexes and single-family residences are to be located on the interior lots and along the northern portion of the property adjacent to Residential 9600 and Agricultural Open Space zoning.

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 what currently exists in the area. However, the higher density development will be located along Grand Avenue and adjacent to commercial uses.

### **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 December 5, 2006, and forwarded no recommendation to the City Council based on a 2-2 tie vote. Rod Wilson, owner and Rick Leuthold, Engineering, Inc. were present to discuss the proposed zone change.

The property owner to the north of the subject property was present at the public hearing and raised concerns regarding the potential density and types of housing proposed for the property. The adjacent owner felt that the proposed multi-family adjacent to agricultural land is too dense for developments this far to the west. He further stated that while the property is adjacent to the east of Community Commercial, there are single-family residential uses adjacent to the west across 54<sup>th</sup> Street West and to the south in Vintage Estates; and agricultural land and low density residential to the north, east, and south. These are not compatible with the proposed high density within the development. He would like to see a R-9600 along the northern portion of the property to provide a buffer between his property and the proposed multi-family and duplexes.

Zoning Commission discussion focused on consistency with the surrounding zoning, as the property is surrounded on three sides by agricultural property within the county. Two (2) members of the Commission, Angela Cimmino and Thomas Grimm, found that the proposed rezone would create too much density located out this far on the west end and that perhaps infill should occur first. Commissioner Ed Workman found that the concept of RMF-R on the western portion of the site would create a buffer for the commercial property located to the west, while the R-5000 would provide a buffer for properties to the east upon development. Based on the discussion, the vote was a 2-2 tie with no recommendation forwarded to the City Council.

### **RECOMMENDATION**

The Zoning Commission forwards no recommendation to the City Council for Zone Change #794, as the result was a 2-2 tie vote.

### **ATTACHMENTS:**

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

**Attachment A**  
Site Photos – Zone Change #794



Figure 1: View east along Grand Avenue from the property, which is located to the left in the photograph.



Figure 2: View northwest from Grand across the subject property. Cottonwood Grove Subdivision is in the far west portion of the photo, north of the planning van.

**ATTACHMENT B**  
Zoning Exhibit

## **GRAND PEAKS SUBDIVISION**

BEING LOT 5 BLOCK 1 OF BISHOP FOX SUBDIVISION AND  
TRACT 1A OF CERTIFICATE OF SURVEY NO. 3279 AMENDED  
SITUATED IN THE SW<sup>1/4</sup> OF SECTION 32, T. 1 N., R. 25 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: GRAND PEAKS, LLC  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 120'

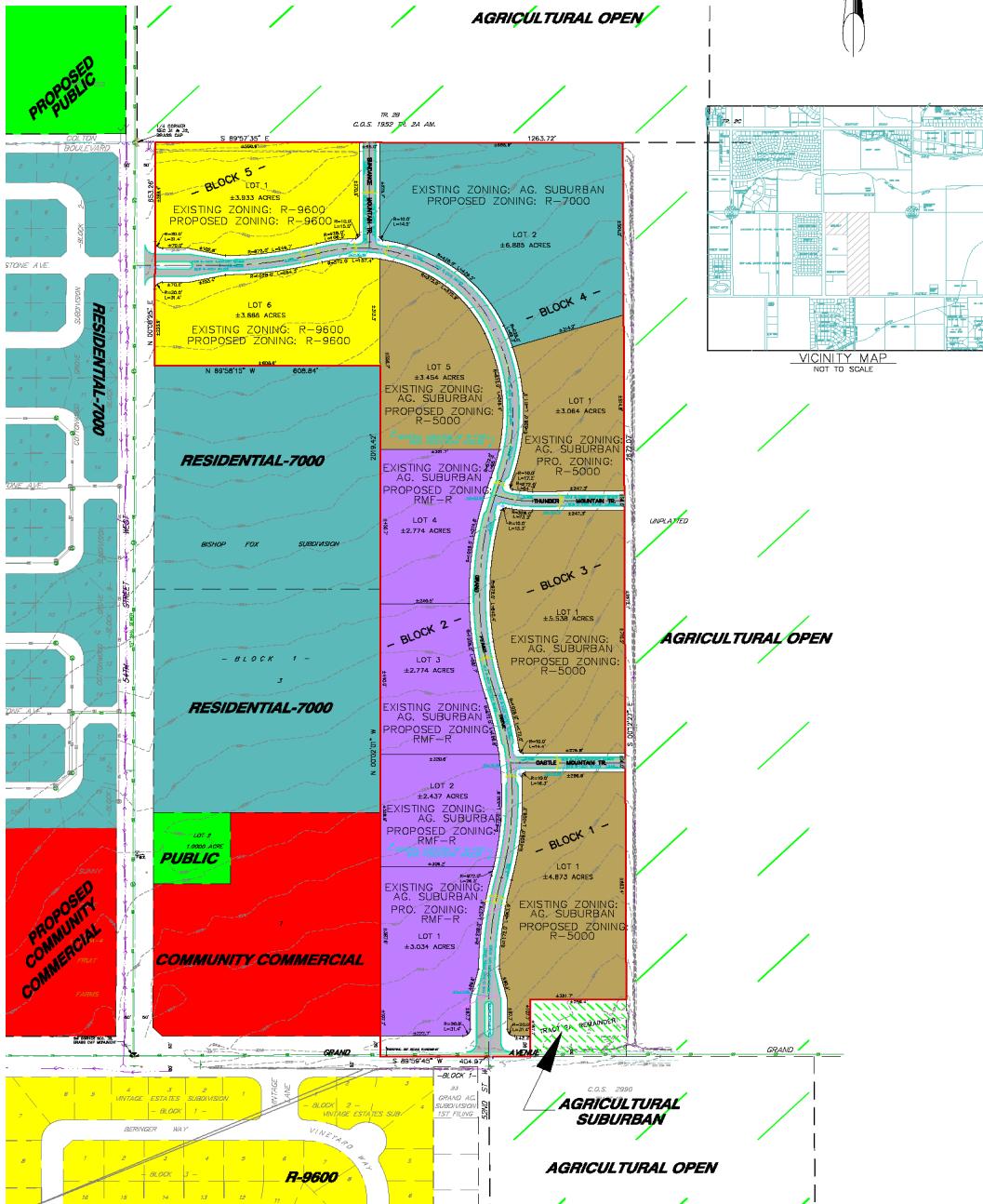
SCALE : 1" = 120'

SCALE : 1 - 120

SCALE : 1 = 120

DECEMBER, 2006  
BILLINGS, MONTANA

NORTH



**ATTACHMENT C**  
Zone Change #794

**ORDINANCE NO. 07-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Tract 1A of Certificate of Survey 3279 Amended, containing  
approximately 39.65 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 1A of Certificate of Survey 3279 Amended, containing approximately 39.65 acres and is presently zoned Agricultural Suburban 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 **Agricultural Suburban to Residential Multi-Family Restricted, Residential 5000, and Residential 7000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Multi-Family Restricted, Residential 5000, and Residential 7000** 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 January 8, 2007.

PASSED, ADOPTED AND APPROVED on second reading January 22, 2007.

CITY OF BILLINGS:

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

ATTEST:

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

ZC#794

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JANUARY 8, 2007**

---

TITLE: Public Hearing for Special Review #831  
 DEPARTMENT: Planning & Community Services Department  
 PRESENTED BY: David Green, Planner I

---

**PROBLEM/ISSUE STATEMENT:** Hawkins Companies, representing Walgreens, is requesting a special review for a dual lane drive through adjacent to residential zoning for a new Walgreens store at the northeast corner of Grand Avenue and Zimmerman Trail, Lot 3, Block 1, E. D. King subdivision. The subject property is zoned Community Commercial (CC) and contains approximately 1.5 acres. Engineering Incorporated is representing agent for the property owner Latigo Development LLC. The Zoning Commission conducted a public hearing on December 5, 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 #831.

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

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan
- D. Letter from LAIS Properties LLC, Britannia Plaza Owners

## **INTRODUCTION**

This is a Special Review to permit construction of a dual lane drive up for a proposed Walgreens on a parcel of land zoned Community Commercial (CC) and described as Lot 3, Block 1, E. D. King Subdivision. The subject property is generally located on the north east corner of Grand Avenue and Zimmerman Trail. The proposed Walgreens is surrounded by Residential Professional, R-8000, Community Commercial and Ag Open zoning. The proposed use is consistent with current surrounding uses.

The Zoning Commission conducted a public hearing on December 5, 2006, and is forwarding a recommendation of conditional approval to the City Council by a 4-0 vote.

## **PROCEDURAL HISTORY**

- On November 6, 2006, the special review application was received.
- On December 5, 2006, the City Zoning Commission unanimously voted to recommend conditional approval to the City Council for the special review.
- On January 8, 2007, the City Council will conduct a public hearing on the special review.

## **BACKGROUND**

Walgreens provides pharmacy services as well as a source of other medical items not found in grocery stores. Walgreens locates its stores at major intersection in order to take advantage of existing traffic patterns. Because the stores are neighborhood oriented, they typically only draw customers from a 1 or 2 mile radius and don't add a significant amount of traffic to the area. They will employ as many as twenty four (24) people in the store. Access to the site will be from the south east corner off of Grand Avenue and off of Zimmerman Trail.

The Planning Department has reviewed this application and recommended conditional approval. Staff found the proposed Walgreens facility is compatible with the surrounding uses in the surrounding subdivisions.

## **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 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 with the recommended conditions of approval.*

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 surrounding uses, will be screened from existing residential properties and fits in with the local neighborhood.

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 the 1.5 acres on the northeast corner of Grand Avenue and Zimmerman Trail Lot 3, Block 1, E. D. King Subdivision as shown on the site plan submitted (Attachment D).
2. Any expansion of the proposed building greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
3. The development of the property shall be in accordance with all provisions of Section 27-309 building height and setbacks, 27-602 arterial setbacks, and 27-1100 landscaping.
4. All lighting except signage shall have full cut-off shields to direct light to the ground.
5. The driving lane and parking lot area, depicted on drawing L1.0 dated December 1, 2006 provided by Hawkins Company, shall be constructed as shown.
6. The developer shall provide a five (5) foot wide boulevard type sidewalk along the frontage of Grand Avenue as stated in the SIA agreement for the E. D. King Subdivision.

**\*\*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 December 5, 2006. Hawkins Company, representing Walgreens, was present to answer questions. They asked that two of the conditions be either modified or removed. Original condition number four (4) required a fence,

as proposed by Walgreens, between Walgreens and the West Billings Physical Therapy, zoned Residential Professional. Walgreens representative spoke with the owners of Britannia Plaza, LAIS Properties LLC, about the fence and were asked that the fence not be installed, see Attachment D. LAIS Properties LLC believes they will have clients in common with Walgreens and the fence would make access between businesses more difficult. With this information the Zoning Commission removed original condition number four (4). As a condition of subdivision approval the E. D. King Subdivision will be providing a CMU (Concrete Masonry Unit) wall from the northeast corner of the subdivision to the northeast corner of the Britannia Plaza property. This wall will screen the residential property from the business property. There is currently a vinyl fence that runs along the back property line of the Britannia Plaza. Original condition six (6), (now five (5)), recommended that the parking lot be reorganized to eliminate an eighty (80) foot long cross walk from the front door of Walgreens to the sidewalk at the intersection of Grand Avenue and Zimmerman Trail. Walgreens has provided a parking layout that reduced the cross walk to forty two (42) feet from their front door to an access to the sidewalk at the intersection of Grand Avenue and Zimmerman Trail. The Zoning Commission reworded the condition requiring the layout of the driving lane and parking lot to be installed as illustrated by drawing L1.0 dated December 1, 2006 (Attachment C).

Mr. John Oliver spoke in favor of the proposed Walgreens stating that the right-in right-out accesses into the facility would help decrease the likelihood of someone cutting through the parking lot to avoid the light at the intersection of Grand Avenue and Zimmerman Trail.

Mr. Myron Reese spoke in opposition to the proposed eight (8) foot cedar fence that was shown on the drawing pointing out the surrounding fences were vinyl. But since Walgreens and their commercial neighbor had decided they did not want a fence between them Mr. Reese had no other objection.

The commission members discussed how they wanted to word the conditions then voted 4-0 to recommend conditional approval of the application.

### **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, and West Billings Neighborhood Plan (2001) specifically:

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- Predictable land use decisions that are consistent with neighborhood character and land use patterns.
- Commercial use centered at the intersection of arterial streets.

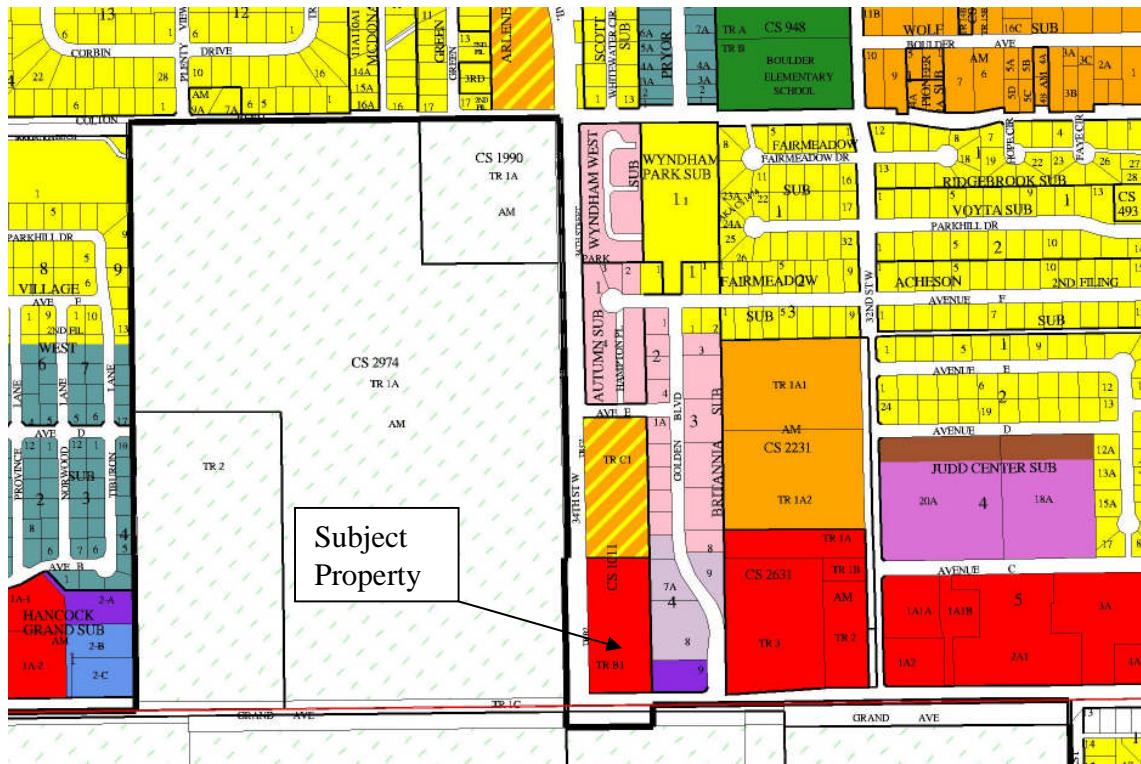
### **RECOMMENDATION**

The City Zoning Commission recommends on a 4-0 vote that the City Council conditionally approve special review #831.

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan
- D. Letter from LAIS Properties LLC, Britannia Plaza Owners

**ATTACHMENT A**



**ATTACHMENT B**  
Site Photos



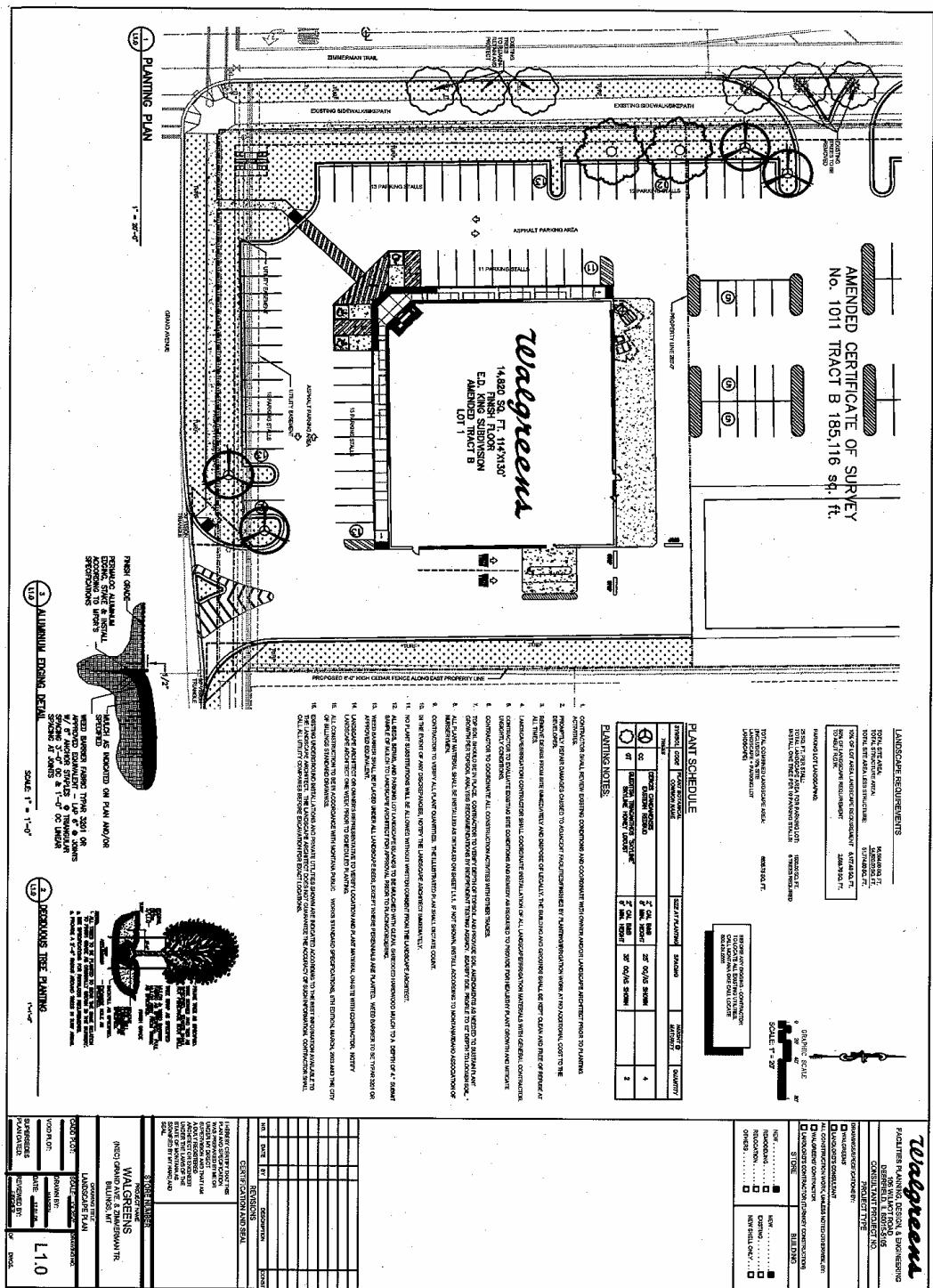
Photo 1: Looking north at subject property from Grand Avenue



Photo 2: Looking northeast at subject property and adjacent property.

**ATTACHMENT C**

Site Plan



**ATTACHMENT D**  
Letter from LAIS Properties LLC

Dave,

We have met with the representatives of Hawkins Companies regarding the Walgreens site plan proposal. We understand this plan was presented to the zoning commission on Tuesday December 5, 2006. The commission agreed to remove the cedar fence requirement on the property line adjoining our lot with this lot. We agree with this decision and prefer not to have the fence along our property line. Thank you for your consideration on this matter.

Cordially,

Barbara Hawkins  
**LAIS Properties LLC**  
3307 Grand Ave. Suite 103A  
Billings, MT 59102  
(406) 655-1155 Office  
(406) 672-6151 Cell  
(406) 655-4404 Fax  
Email: [bkhawk@transedge.com](mailto:bkhawk@transedge.com)

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JANUARY 8, 2007**

**TITLE:** Public Hearing for Special Review #832

**DEPARTMENT:** Planning & Community Services

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

**PROBLEM/ISSUE STATEMENT:** This is a Special Review an all beverage liquor license with gaming for a new restaurant, Montecito Pizza, at 4241 Kari Lane, Lot 15, Block 1 Montana Sapphire Subdivision in an Entryway Light Industrial zoning district. The owner is Sharon Turbiville and Michael Burke of HGFA Architects is the agent. The Zoning Commission conducted a public hearing on December 5, 2006, and is forwarding a recommendation of conditional approval to the City Council on 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 increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #832 on a 4-0 vote.

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

**ATTACHMENTS**

- E. Zoning Map
- F. Site Photographs
- G. Site Plan

## **INTRODUCTION**

This is a request for a special review to locate an all beverage liquor license with gaming for a proposed new restaurant and casino, Montecito Pizzeria and Casino, on Lot 15, Block 1 of Montana Sapphire Subdivision located at 4241 Kari Lane. The property is zoned Entryway Light Industrial and on-premise consumption of alcoholic beverages and gaming can be allowed only by special review approval. The Village Subdivision to the north and most of the remaining lots in the Montana Sapphire Subdivision are vacant. The new Beartooth Bank and the Hollywood Casino, under construction are east of this proposed restaurant and casino.

## **PROCEDURAL HISTORY**

- A special review application to locate an all beverage liquor license for a new restaurant and casino was received on November 6, 2006.
- The City Zoning Commission held a public hearing on December 5, 2006, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.
- The City Council will conduct a public hearing and consider this application on January 8, 2007.

## **BACKGROUND**

The Montecito Casino and Pizzeria is proposed to be a total of 7,500 square feet with a 2,500 square foot outdoor patio lounge on the north side of the structure. The lot is approximately 1.9 acres and can accommodate the required building setbacks, parking, landscaping and access. At 32<sup>nd</sup> Street West and King Avenue West, one mile east of this location, there are four locations with on premise alcohol beverage licenses that also offer gaming. At this location, there is one location approved to offer on premise alcoholic beverages with gaming, the Hollywood Casino under construction. This development will be primarily a restaurant with an attached gaming area. There are no schools, churches, or play grounds with equipment within 600 feet of the proposed location.

The Planning Department reviewed this application and recommended conditional approval to the Zoning Commission. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within an Entryway zoning district where on premise consumption of alcoholic beverages and gaming may be allowed by special review approval. The form of the application is correct and the proposed development of the property for the restaurant appears to conform to site development standards. More detailed landscaping and parking plans are normally reviewed at the time of building permit submittal.

The application does conform to the second and third criteria. The zoning regulations adopted by the City Council have designated several zoning districts where on premise consumption of alcoholic beverages and gaming may be allowed. The proposed Hollywood Casino at 4121 Kari Lane is the only other location proposed within the immediate area for on premise alcoholic beverage service. Four other locations are at King Avenue West and 32<sup>nd</sup> Street West approximately

one mile east of this location. There are no proposed residential developments in the immediate area and the Entryway Light Industrial zone is intended “*to provide large lots located directly accessible to arterial and other transportation systems for warehousing and light manufacturing and allow for limited commercial facilities for the adjacent community and interstate travelers.*” The development of a restaurant and casino in this location will fit in with the intention to provide a limited number of commercial facilities in this zoning district. The proposal is consistent with goals of the 2003 Growth Policy specifically the goal of encouraging new developments that are sensitive to and compatible with the character of the adjacent land use patterns. The Entryway Light Industrial district and the Planned Development district north of this area are intended for the concentration of medical, commercial and light manufacturing uses. The site plan submitted shows the intent to develop a well-landscaped and designed restaurant location. The Planning Department recommended eight conditions of approval to the Zoning Commission. The Zoning Commission conducted the public hearing and voted 4-0 to recommend conditional approval to the City Council.

### **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 consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.
- 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 location of the all beverage liquor license at this location is appropriate and conditions of approval are recommended.*

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 of Special Review #832 on a 4-0 vote.

## **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Lot 15 of Block 1 of Montana Sapphire Subdivision as shown on the site plan dated November 6, 2006.
2. Development of the site shall be in substantial conformance with the site plan dated November 6, 2006. Deviations from the approved site plan that change the location of buildings, building elevations, landscaping, parking lot access or parking areas will require additional special review approval.
3. The owner shall provide a fence of at least 4 feet in height around the outdoor patio lounge. The fence shall have at least one exit-only gate to provide an emergency exit. Access to the outdoor patio lounge area shall be through the main indoor area of the business.
4. The owner is allowed to have background music on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge.
5. 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.
6. Landscaping shall be provided as shown on the site plan dated November 6, 2006 and as required by Section 27-1006 (Entryway districts) of the Unified Zoning Regulations.
7. 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.
8. 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.

**\*\*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 or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

## **STAKEHOLDERS**

The public hearing was held on December 5, 2006, before the City Zoning Commission. Michael Burke agent and Sharon Turbiville, owner, were present at the hearing and explained the proposal to the Zoning Commission. There were no surrounding property owners present and no letters in favor or opposed to the application were received by the Planning Department.

Mr. Burke explained the proposal to the Zoning Commission. Mr. Burke explained the intent was to create a family-oriented restaurant on a well landscaped lot. The proposed outdoor patio would be fenced and buffered from the street. Ms. Sharon Turbiville explained the restaurant would employ about 20 persons. She stated she has been in the restaurant business for many years and currently operates the River's Edge Steakhouse in Laurel, MT. The restaurant will be family oriented but the liquor license and income from the gaming is necessary to make the business competitive.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission moved to recommend conditional approval of the special review request and voted 4-0 to forward this recommendation to the City Council.

### **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.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

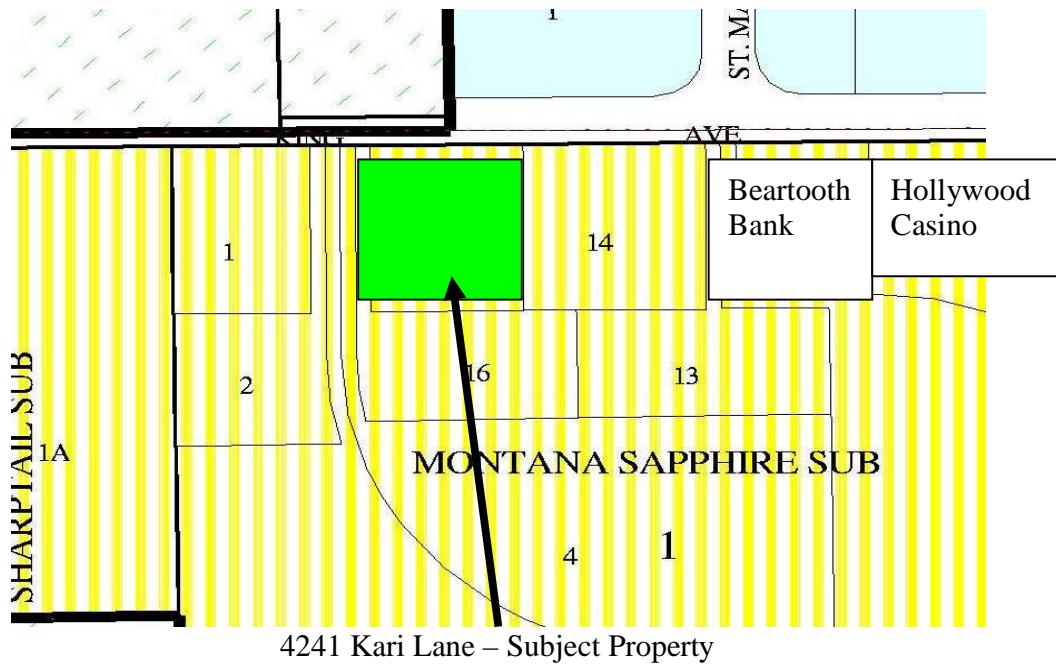
### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #832 on a 4-0 vote.

### **ATTACHMENTS**

- E. Zoning Map
- F. Site Photographs
- G. Site Plan

**ATTACHMENT A**  
**Zoning Map – Special Review #832**



**ATTACHMENT B**  
**Site photographs –Special Review #832**



Subject property at 4241 Kari Lane

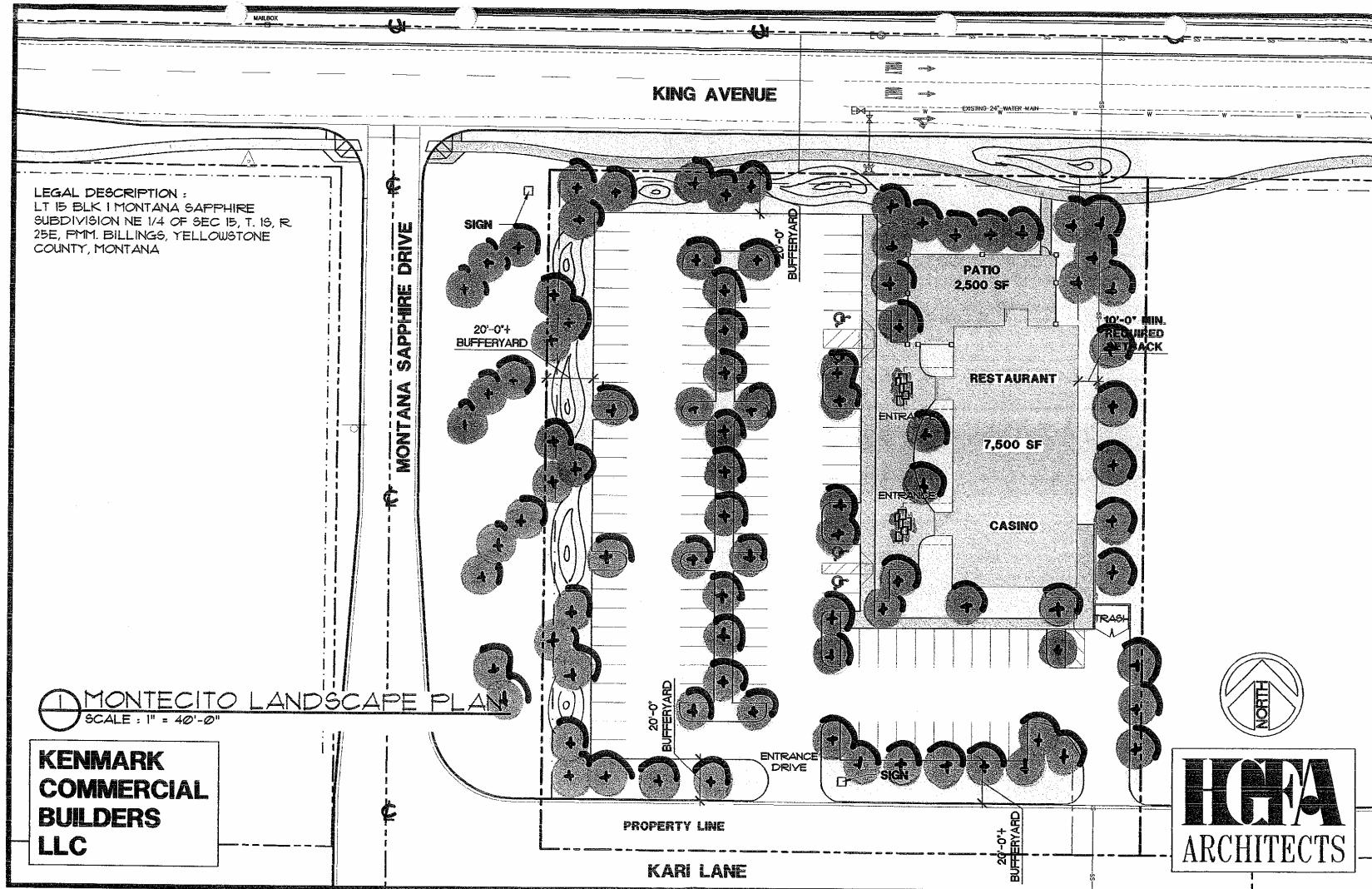


View east from subject property – Beartooth Bank

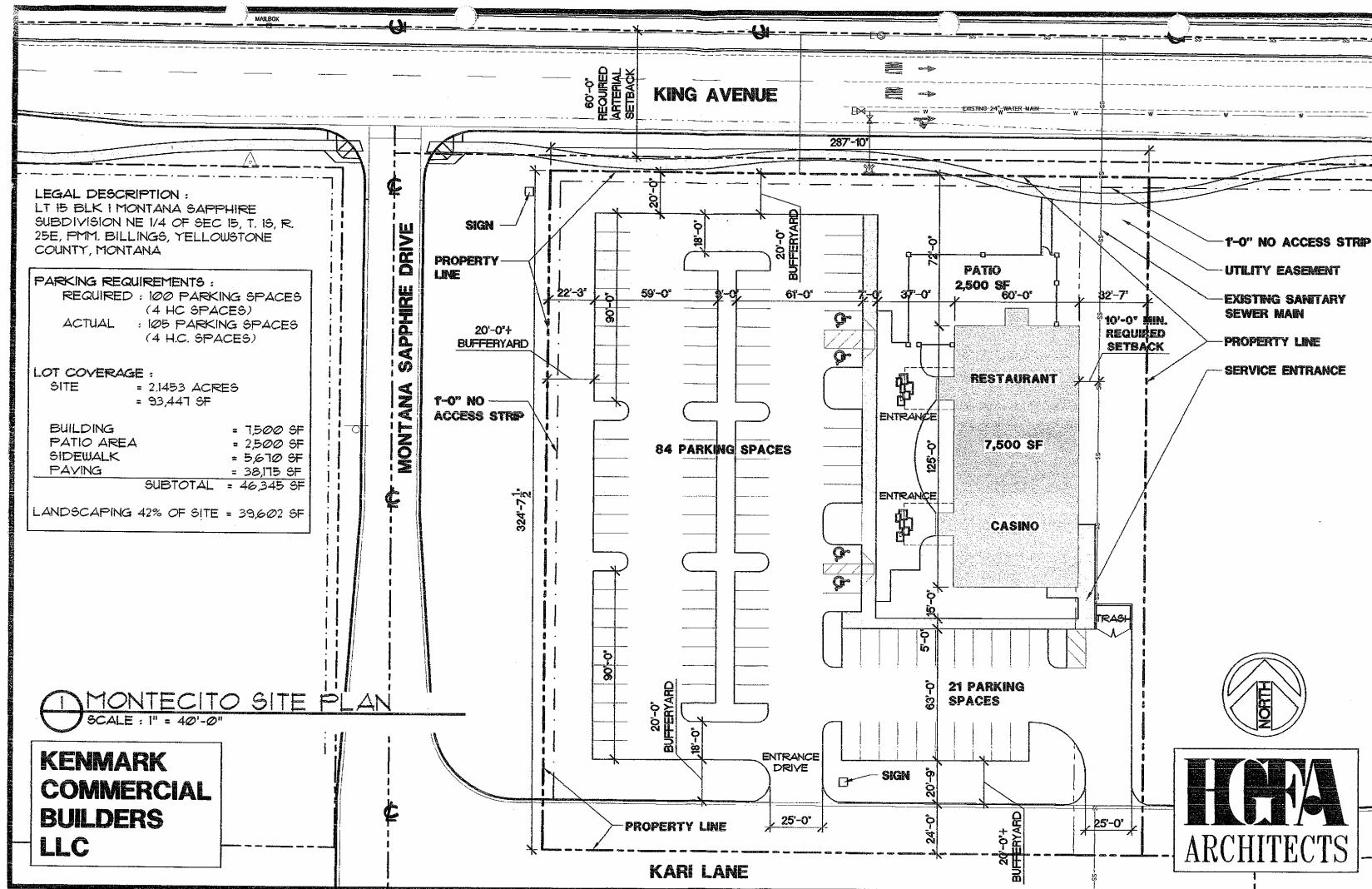
**Attachment C**  
**Site Plan –Special Review #832**



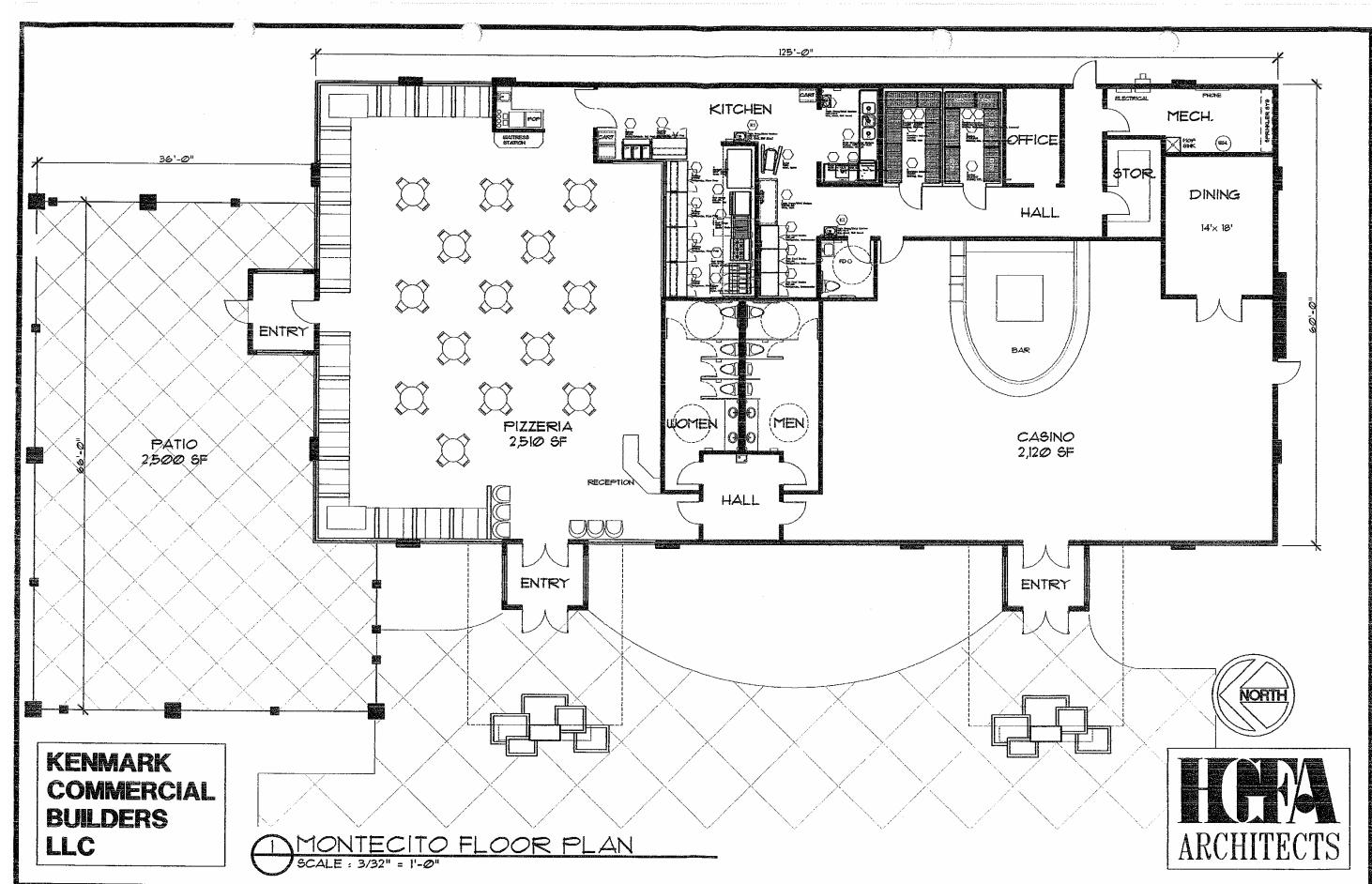
**Attachment C, continued**  
**Site Plan –Special Review #832**



**Attachment C, continued**  
**Site Plan –Special Review #832**



**Attachment C, continued**  
**Site Plan –Special Review**  
**#832**



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