

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

January 22, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing  
PLEDGE OF ALLEGIANCE – Mayor Tussing  
INVOCATION – Councilmember Jim Ronquillo  
ROLL CALL  
MINUTES – January 8, 2007  
COURTESIES – Finance Division  
PROCLAMATIONS  
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:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Nancy Boyer	Billings Event Ad-Hoc	01/22/07	04/22/07
2.	Vince Ruegamer	Billings Event Ad-Hoc	01/22/07	04/22/07
3.	Chris “Shoots” Veis	Billings Event Ad-Hoc	01/22/07	04/22/07
4.	Karen Sanford Gall	Billings Event Ad-Hoc	01/22/07	04/22/07
5.	Kathleen Gilluly	Billings Event Ad-Hoc	01/22/07	04/22/07
6.	Amber Sundsted	Billings Event Ad-Hoc	01/22/07	04/22/07

7.	Brad Coutant	Billings Event Ad-Hoc	01/22/07	04/22/07
8.	Mike Schmechel	Billings Event Ad-Hoc	01/22/07	04/22/07
9.	Lori Simon	Billings Event Ad-Hoc	01/22/07	04/22/07
10.	Renee Coppock	Billings Event Ad-Hoc	01/22/07	04/22/07

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

**B. Bid Awards:**

**(1) Laboratory – Gas Chromatograph for Public Works Dept., Water Production Division.** (Opened 1/09/07). Recommend Perkin Elmer LAS, Inc., \$41,342.20.

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

**(2) 95 Gallon Polyethylene Refuse and Yard Waste Containers.** (Opened 1/09/07). Recommend Toter Incorporated in the amount of \$53.47 each.

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

**C. Change Order #15, W.O. 04-13: Schedule I – Filter Building Expansion and Improvements, COP Construction, \$27,298.06.**

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

**D. Amendment #1, AIP 32 Engineering Services Contract, Morrison-Maierle, Inc., \$539,525.00.**

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

**E. Banking and Depository Services Contract** with US Bank, term: 2/1/07 – 2/28/2012.

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

**F. Acceptance of Donation** to Animal Shelter, Vanguard Group of Pennsylvania on behalf of Karen A. Berg, \$10,000.00.

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

**G. Acknowledge receipt of petition to vacate** portions of Marbara Lane, Silver Lane, Yucca St. and North Rim Rd. MSU-Billings, petitioner, and setting a public hearing for 2/12/07.

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

**H. Council liaison appointment** to Community Development Board: replace Peggie Gaghen with Jim Ronquillo.

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

**I. Confirmation of Police Officers:**

(1) Steve Hallam

(2) Katherine Nash

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

**J. Resolution of Intention to Create SID 1377:** public improvements consisting of water, sanitary sewer, curb and gutter and street improvements on

Greenbriar Rd. between Lake Hills Dr. and Hillcrest Dr. , and setting a public hearing for 2/12/07.

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

**K. Resolution** authorizing \$1,500.00 from Council Contingency to Mayor's Committee on Homelessness for the Pioneer Human Services Spring Conference, \$1,500.00.

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

**L. Second/Final 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: S/2 of 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.

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

**M. Second/Final Reading Ordinance for Zone Change 794:** a zone change from Agriculture Suburban to Residential Multi-family-Restricted (RMF-R), Residential-5,000 (R-50) and Residential-7,000 (R-70) 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.

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

**N. Amended Plat** of Lot 10, Block 5, O'Leary Sub., and approval of the Quit Claim Deed to Linde Properties, LC.

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

**O. Bills and Payroll.**

(1) December 22, 2006

[\(Corresponding Staff Memo O1\)](#)

(2) December 1 - 31, 2006 (Municipal Court)

[\(Corresponding Staff Memo O2\)](#)

(3) January 2, 2007

[\(Corresponding Staff Memo O3\)](#)

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

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION** approving and adopting second quarter budget amendments for FY 2006/2007. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 2\)](#)

3. **PUBLIC HEARING AND RESOLUTION** for Annex #07-01: annexing an 11,160 square foot parcel of property described as Lot 3, Block 7, Kimble Subdivision, Second Filing and located at 215 Garden Ave. and including all adjacent right-of-way of Garden Avenue. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING FIRST READING ORDINANCE** amending BMCC Section 23-1101; providing updates to regulations on requesting a variance from the subdivision regulations. Planning Board recommends approval. **(Action:** approval or disapproval of Planning Board recommendation.)  
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #795:** A zone change from Residential-7,000 to Neighborhood Commercial (NC) and Residential Multi-family-Restricted (RMF-R) on a 4.69 acre parcel of land described as: Tracts 1 – 5, Brittain Acres Subdivision and located at 803 Yellowstone River Rd., and 821 & 823 Bench Blvd. Big Sky Floral Supply, owner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #796:** A zone change from Residential-6,000 (R60) to Residential-5,000 (R50) on a 10,506 square foot parcel of land described as: Lot 15B, Mattson Acres Sub. Amended, excepting the north 152.75 feet and located at 723 Mattson Lane. William & Carla Pearson, owners; John Haman, agent. Zoning Commission recommends denial and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 6\)](#)
7. **PUBLIC HEARING AND SPECIAL REVIEW #833:** A special review to amend the master plan for Harvest Church to include an outdoor water park and community center building in a Residential-9,600 (R96) zone on the north west corner of Lot 1, Block 4 High Sierra Subdivision 1<sup>st</sup> Filing, located at 1235 West Wicks Lane. Harvest Church, owner; Alex Tommerup, AT Architecture, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 7\)](#)
8. **PUBLIC HEARING AND FIRST READING ORDINANCE** amending BMCC Section 2-214, providing that the public comment period on non-agenda items shall start no later than 9:30 p.m. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 8\)](#)

9. **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:**

1/22/2007	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	NOON	4 <sup>th</sup> Floor Library
	Development Process	1:00 p.m.	CH Conference Room
	Advisory Review Board (DPARB)		
1/25/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 <sup>th</sup> Street
	JOINT City/County/Laurel/School District #2	5:30 p.m.	MSU-B Downtown – Broadway II Seminar Rm – 214 N. Broadway
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




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, JANUARY 22, 2007**


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**TITLE:** Billings Event Ad-Hoc Committee

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** wynnnette Maddox, Administration

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**PROBLEM/ISSUE STATEMENT:** Confirmation of appointments for the Billings Event Ad Hoc Committee. Per the Council Resolution 06-18515 adopted on December 11, 2006 ten (10) members will be appointed to serve on this committee. The member will consist of three (3) council members and seven (7) citizens. There will be City Staff members from Parks and Recreation, Engineering and City Administration. Lisa Woods will serve as an exofficio member. The duration of the committee is 90 days.

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

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	<b>Name</b>	<b>Board/Commission</b>	<b>Term</b>	
			<b>Begins</b>	<b>Ends</b>
1.	Nancy Boyer	Billings Event Ad-Hoc	01/22/07	04/22/07
2.	Vince Ruegamer	Billings Event Ad-Hoc	01/22/07	04/22/07
3.	Chris "Shoots" Veis	Billings Event Ad-Hoc	01/22/07	04/22/07
4.	Karen Sanford Gall	Billings Event Ad-Hoc	01/22/07	04/22/07
5.	Kathleen Gilluly	Billings Event Ad-Hoc	01/22/07	04/22/07
6.	Amber Sundsted	Billings Event Ad-Hoc	01/22/07	04/22/07
7.	Brad Coutant	Billings Event Ad-Hoc	01/22/07	04/22/07
8.	Mike Schmechel	Billings Event Ad-Hoc	01/22/07	04/22/07
9.	Lori Simon	Billings Event Ad-Hoc	01/22/07	04/22/07
10.	Renee Coppock	Billings Event Ad-Hoc	01/22/07	04/22/07

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

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# B1

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Water Treatment Laboratory – Gas Chromatograph Purchase  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** David Mumford, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The Public Works Water Treatment Laboratory uses a gas chromatograph to monitor the City's water supply for specific types of organic contaminant materials. The existing instrument is outdated and prone to failure. The City's Technology Replacement Committee supported replacement of this unit in FY 2007.

**FINANCIAL IMPACT:** Adequate funding for this purchase is available in the Water Replacement / Depreciation Account. Bids were received on January 9, 2007. The bidding results are as follows:

<b>Supplier</b>	<b>Total Bid</b>
Agilent Technologies, Inc.	\$51,858.12
Shimadzu Scientific Instruments, Inc.	\$44,317.65
<b>Perkin Elmer LAS, Inc</b>	<b>\$41,342.20</b>

**RECOMMENDATION**

Staff recommends that Council approve purchase of gas chromatograph from Perkin Elmer LAS, Inc. for \$41,342.20.

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





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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, January 22, 2007

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**TITLE:** Approval of Award to Purchase Yard Waste Containers for the Solid Waste Division

**DEPARTMENT:** Public Works/Solid Waste Division

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

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**PROBLEM/ISSUE STATEMENT:** During 2005, the Solid Waste Division completed a pilot program for curb-side yard waste collection in 4 of the 32 residential collection areas. A total of 550 tons of yard waste was collected and recycled. This represented over 14% of the total waste collected in those areas. A decision was made to continue the curb-side yard waste collection in those same 4 areas in 2006 and begin planning to expand curb-side yard waste collection city wide. The program will be offered to 4 additional areas in May 2007, twelve additional areas in 2008, and the final 12 areas in 2009. A separate 95-gallon container will be provided for participants to put their separated yard waste in for collection. The FY2007 solid waste budget includes funds to begin purchasing containers for yard waste. This bid will allow us to purchase 2,940 containers for the eight areas that will be offered curb side yard waste collection beginning in May 2007.

**FINANCIAL IMPACT:** The Solid Waste Division budgeted additional funds to begin purchasing carts for the curb-side yard waste collection program. Bid packets were provided to ten vendors, and two bids were received for the 2:00pm bid opening on January 9, 2007. The bid submitted by Cascade Engineering did not meet the bid specifications in several areas and is considered non-responsive. Their container does not meet the required molding method, lift bar requirements, and cannot be nested for delivery and storage efficiencies.

#### Toter Incorporated

95-Gallon Yard Waste Cart  
Standard Color – Assembled      \$53.47 Each    (Truckload Quantity 588 Carts)

Granite Color Option – Assembled    \$54.47 Each    (Truckload Quantity 588 Carts)

#### RECOMMENDATION

Staff recommends that Council award the contract for purchase of yard waste carts to Toter Incorporated in the amount of \$53.47 each.

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

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C

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

**TITLE:** W.O. 04-13, Schedule I—Filter Building Expansion and Improvements,  
Change Order Number 16

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** HDR Engineering has submitted Change Order Number 16 (CO No. 16) to modify the construction contract with COP Construction on the Water Treatment Plant Filter Building. CO No. 16 involves labor and materials related to additional surface preparation to allow wall coating on Filters 5-8. 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. 16 represents an increase of \$27,298.06 to the contract amount. The approved project budget includes a contingency to pay for unforeseen circumstances characteristic with those depicted in CO No. 16. 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>	
	Amount	% of Contract	Total % of Contract
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 thru 15	\$ 79,080.68	0.48%	
Change Order No. 16	\$ 27,298.06	0.17%	
<b>TOTALs to date:</b>		\$466,597.39	2.85%

**RECOMMENDATION**

Staff recommends that Council approve Change Order Number 16 to the construction contract with COP Construction for W.O. 04-13, Schedule I—Filter Building Expansion and Improvements, adding \$27,298.06 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 16 to modify the construction contract with COP Construction. Change Order No. 16 involves labor and materials related to additional surface preparation to allow wall coating on Filters 5-8. No additional time has been requested, but a change in costs results from the recommended changes. Approval of Change Order No. 16 is critical to maintaining the project schedule and recommended to provide a quality finished product.

## **BACKGROUND**

As part of the renovation of existing Filters 5-8, the filter walls will be covered with a protective coating and repainted. The coating must be applied to a relatively smooth, consistent surface to provide the best protection. After Filters 5-8 were drained and the media removed, it was discovered the condition of the walls was much worse than originally anticipated. Previously unidentified penetrations for piping, instrumentation, etc. and areas of extreme degradation require additional repair before the coating can be applied. The labor and materials required for the additional surface preparation result in extra costs of \$27,298.06.

In summary, Change Order Number 16 creates an increase of \$27,298.06 to the contract amount, but no change to the schedule for time of completion.

## **RECOMMENDATION**

Staff recommends that Council approve Change Order Number 16 to the construction contract with COP Construction for W.O. 04-13, Schedule I—Filter Building Expansion and Improvements, adding \$27,298.06 to the contract.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Approval of Amendment #1 with Morrison-Maierle, Inc. for Engineering Services for Airport Improvement Program (AIP) Project AIP 32

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide engineering services at the Airport. On November 13, 2006, the City approved a five-year contract with Morrison-Maierle, Inc. to provide design surveys; to develop project plans, specifications and bidding documents; and to provide contract administration, to include coordinating meetings, processing pay requests, etc. The contract also includes full time on-site inspection, construction surveys, and development and submittal of the final project closeout documents, as required for all Federal AIP projects. The base five-year contract is amended each time a new project is undertaken, and Amendment #1 for \$539,525 includes all of the services indicated above for next Summer's AIP 32 projects. The scope of work and associated engineering fees have been reviewed and negotiated by Airport staff and have also been approved by the FAA. The projects included in AIP 32 are the replacement of the asphalt pavement surface of our crosswind Runway 7/25, and the pavement rehabilitation and drainage improvements on Taxiway A. This Amendment will produce an estimated \$4,100,000 of construction projects.

**FINANCIAL IMPACT:** The total cost of engineering Amendment #1 with Morrison-Maierle, Inc. is \$539,525, and will be funded out of a 95% AIP entitlement grant. The FAA's portion will be \$512,548.75 and the City's match is \$26,976.25. These projects are included in the current budget.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment #1 in the amount of \$539,525 for the engineering services required for Airport Improvement Program Project AIP 32.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Approval of Five-Year Depository and Banking Services Contract with US Bank

**DEPARTMENT:** Administrative Services – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The Finance Division recently prepared a Request for Proposals (RFP) for Depository and Banking consultant services. The RFP was advertised in the *Billings Times* on November 30 and December 7, 2006. Seven banking institutions were also sent copies of the RFP via e-mail.

The selection committee consisted of Councilmember Ruegamer, Patrick Weber, Liz Kampa-Weatherwax, Teri Kiedrowski and Dwile Weagel. Proposals were received from Wells Fargo Bank and US Bank. The committee evaluated the proposals and unanimously selected the proposal from US Bank to be brought forward for approval. The following important information was considered: Proposal Compliance, Comprehensiveness of Services Provided, Related Experience, Firm Stability, Prior City Experience, Assigned Individuals, Account Analysis, Conversion Plan, Charges for Services, and Service Enhancements. Also, the three-year present value of the difference in Wells Fargo Bank versus US Bank was estimated to be \$6,300. Conversion costs for programming, transferring over 700 employees' direct deposits, moving all grant wire transfers, ordering new checks and deposit slips, staff time, etc. would well exceed the \$6,300 price difference.

The contract with US Bank will be for a five-year time frame beginning on February 1, 2007, and expiring on February 28, 2012. The amount required for the compensating CD that covers banking service charges will be reduced from \$2 million to \$1.1 million for the first three years of the contract. Years four and five compensating CD amount will be negotiated with US Bank. US Bank has stated in their proposal that fees will not be increased any more than the Consumer Price Index Urban at the time of negotiation.



**RECOMMENDATION**

The Committee recommends that the City Council approve, and the Mayor sign, the attached contract with US Bank.

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

**ATTACHMENT:**

A.        Services Contract with US Bank

**BANKING SERVICES AGREEMENT  
BY AND BETWEEN  
U.S. BANK AND THE CITY OF BILLINGS, MONTANA**

The City of Billings, Montana, CITY OF BILLINGS, MONTANA, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "City," and, U.S. Bank, whose address is 303 North Broadway, Billings MT 59101 (hereinafter) the "Financial Institution" agrees and contract as follows:

**1. SERVICES BY FINANCIAL INSTITUTION**

- The Financial Institution agrees to perform the services described in the Banking Services Proposal dated January 5, 2007.
- All services, and duties shall be conducted diligently and completely and in accordance with professional standards of conduct and performance.

**2. COMPENSATION**

- The Financial Institution shall be submitted in accordance with the matrix which was submitted with the Banking Services Proposal as Attachment "C"

**3. TERMINATION OF AGREEMENT**

- The City reserves the right to terminate or suspend this agreement at any time, with cause, by giving sixty (60) days notices to the financial institution in writing. Should the Financial Institution desire to terminate this agreement, written notice of sixty (60) days is required.

**4. CONTRACT PERIOD**

- The Banking Services Agreement is for a period of five years, beginning on February 28, 2007 and ending February 28, 2012. The City has an option to review the contract on a yearly basis.

**5. COMPLIANCE WITH LAWS**

- The Financial Institution agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. The Financial Institution shall at all times maintain a valid City business license. The Financial Institution agrees that all hiring of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

**6. GOVERNING LAW AND VENUE**

- This Agreement shall be construed 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.

7. SUCCESSORS AND ASSIGNS

- Neither the City nor the Consultant shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

8. EXTENT OF AGREEMENT/MODIFICATIONS

- This agreement, together with all attachments and addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all proper agreements, wither written or oral. This agreement may be amended, modified or added to only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2007.

FINANCIAL INSTITUTION:

U.S. BANK

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

Its: \_\_\_\_\_

STATE OF MONTANA)

: ss.

County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006 before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of U.S. BANK, and acknowledged to me that (s)he executed the foregoing instrument as the authorized representative of U.S. BANK.

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

\_\_\_\_\_ (Signature)

(NOTARIAL SEAL)

\_\_\_\_\_ (Printed Name)

Notary Public for the State of Montana

Residing in Billings, Montana

My Commission Expires: \_\_\_\_\_

CITY:

CITY OF BILLINGS, a Montana

Municipal Corporation

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

RON TUSSING, Mayor

ATTEST:

By: \_\_\_\_\_  
MARITA HEROLD, City Clerk

STATE OF MONTANA)

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006 before me, a Notary Public for the State of Montana, personally appeared RON TUSSING and MARITA HEROLD, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

(NOTARIAL SEAL)

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Printed Name)

Notary Public for the State of Montana

Residing in Billings, Montana

My Commission Expires: \_\_\_\_\_

APPROVED AS TO FORM:

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

FINANCIAL INSTITUTION:

CITY OF BILLINGS

By:

By:

Title:

Title:

Date:

Date:

ATTEST:

APPROVED AT TO FORM:

By:

By:

Date:

Date:

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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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

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**PROBLEM/ISSUE STATEMENT:** On December 21, 2006, the Billings Animal Shelter received a \$10,000 donation from Karen A. Berg. The donation has been placed in the Animal Shelter General Donation account. The check was received from the Vanguard Group of Pennsylvania who administered the donation at the request of Karen A. Berg. A letter has been sent to the Vanguard Group asking for further information on how Ms. Berg would like the donation used. We now come before City Council for authorization to accept and deposit this \$10,000 donation into the City of Billings, Animal Shelter General Donation Account. Funds will be transferred to the appropriate fund if further direction is received from Ms. Berg on how she would like the funds spent.

**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 \$10,000 donation to the Billings Animal Shelter General Donation Account.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Vacation of portions of Marbara Lane, Silver Lane, Yucca Street, and North Rim Road

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Montana State University-Billings (MSU-B) has petitioned to vacate Marbara and Silver Lanes, a portion of Yucca Street, and North Rim Road and has requested that the City deed Normal Avenue to them. MSU-B owns all of the property except for two properties abutting the right-of-way. Both property owners are aware of the vacation and deed requests, and MSU-B will be required to grant them access easements. MSU-B has no current plans to develop the right-of-way but would like to reconstruct and maintain it to their standards. The streets in this area are currently non-maintainable and do not have sufficient right-of-way to be constructed to City standards. Currently, there are water, sanitary sewer, and storm drain lines running through the proposed vacated area. MSU-B will enter into an easement agreement allowing full access to these lines and will be required to relocate or take over maintenance of the utilities if they ever propose to construct a structure over the lines.

**ALTERNATIVES ANALYZED:**

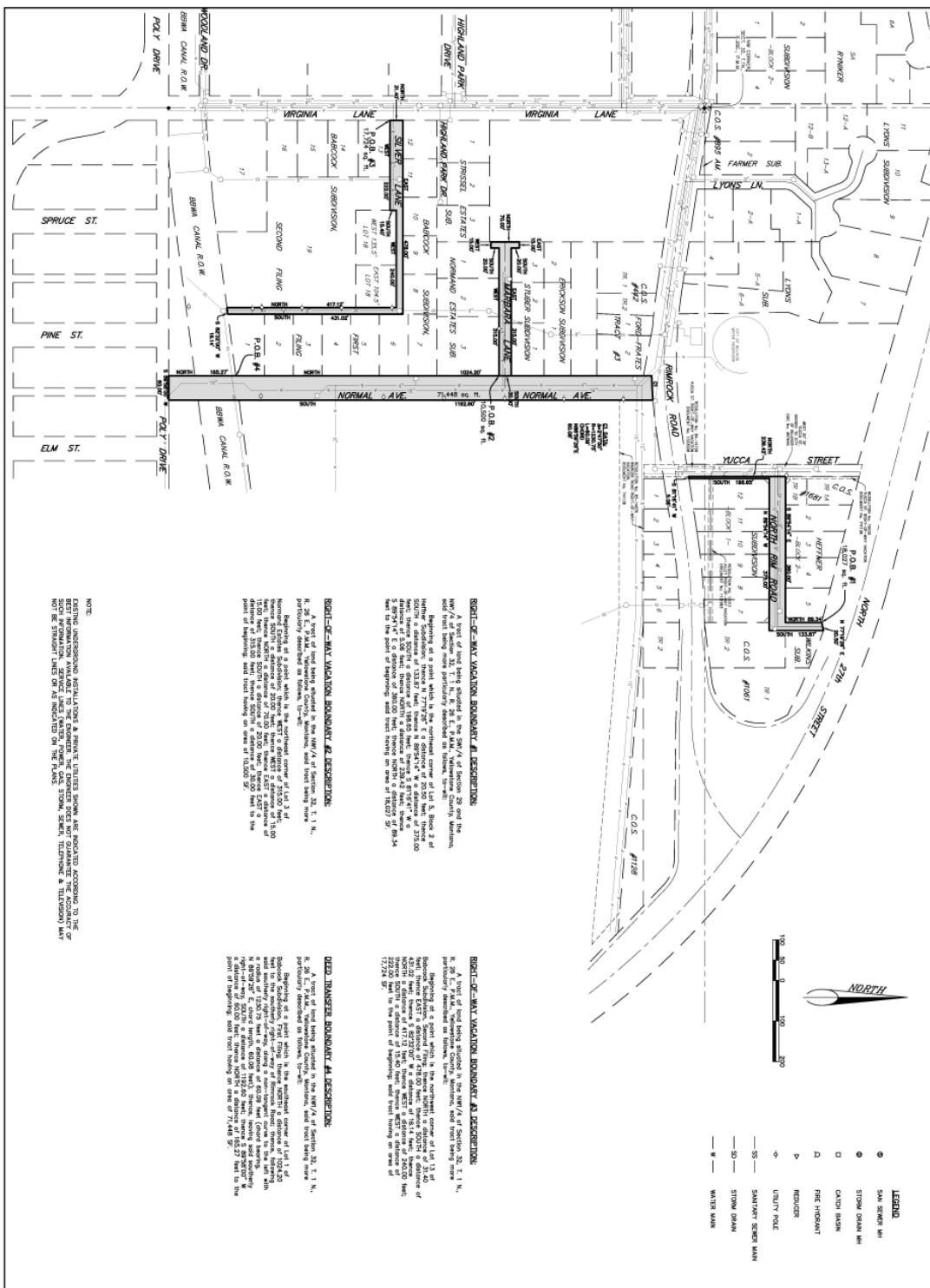
1. Acknowledge receipt of petition to vacate the above-mentioned right-of-way and set a public hearing date for February 12, 2007.
2. Do not acknowledge receipt of petition to vacate the above-mentioned right-of-way.

**FINANCIAL IMPACT:** MSU-B has offered the City \$2.49 per square foot. This price was provided by Charles Rutherford, a local appraiser. The right-of-way totals 46,251 square feet. The total property value is \$115,164.99, which will be deposited into the General Fund.

**RECOMMENDATION**

Staff recommends Council acknowledge the receipt of petition to vacate portions of Marbara and Silver Lanes, Yucca Street, and North Rim Road and set a public hearing for February 12, 2007.

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



EXISTING UNDERGROUND INSTALLATIONS & UTILITIES SHOWN ARE INDICATED ACCORDING TO THE BEST INFORMATION AVAILABLE TO THE ENGINEER. THE ENGINEER DOES NOT GUARANTEE THE ACCURACY OF SUCH INFORMATION. SERVICE LINES (WATER, POWER, GAS, STORAGE, SEWER, TELEPHONE & TELEVISION) MAY NOT BE STRAIGHT LINES OR AS INDICATED ON THE PLANS.

[illegible]

Beginning of a point which is the northeast corner of Lot 3 of Normal Estates Subdivision, thence WEST a distance of 315.00 feet to the intersection of the centerline of the road, thence SOUTH a distance of 210.00 feet, thence WEST a distance of 15.00 feet, thence NORTH a distance of 70.00 feet, thence EAST a distance of 15.00 feet, thence SOUTH a distance of 115.00 feet, thence WEST a distance of 20.00 feet to the point of beginning, and tract having an area of 10,500.97.

beginning of a point which is the northwest corner of lot 13 of Babcock Subdivision, Second Range, Tenth North, a distance of 31.40 feet, thence EAST a distance of 72.00 feet, thence SOUTH a distance of 45.00 feet, thence WEST a distance of 15.40 feet, thence EAST a distance of 17.12 feet, thence SOUTH a distance of 15.40 feet, thence WEST a distance of 22.00 feet to the point of beginning; said tract lying on or within lot 13.

[illegible]

VACATING PUBLIC RIGHTS-OF-WAY TO INCLUDE NORTH RIM ROAD,  
YUCCA STREET, HIGHLAND PARK DRIVE (EAST OF VIRGINIA LANE), SILVER LANE,  
NORMAL AVENUE, AND MARGARA LANE

OVERALL SITE PLAN



**ENGINEERING, INC.**  
Consulting Engineers and Land Surveyors

1300 North Tronstach Way  
Billings, Montana 59102  
Phone (406) 654-5255  
[www.aenlinc.com](http://www.aenlinc.com)

CALC. _____	MOSE _____
DATE: _____	9/12/06
REVISIONS: _____	
APPROVED BY: _____	
QUALITY ASSURANCE: _____	
SCALE: 1"=100'	
REF: 051506X.DWG	
PROJECT NO.: 05150	
SHEET 1 OF 1	





**Facilities Services**  
1500 North 30th Street  
Billings, Montana 59101-0298  
Office: (406) 657-2306  
Fax: (406) 657-1719

**Telephones (406)**  
Administration 657-2306  
Maintenance 657-2197  
Custodial 657-2256  
Grounds 657-1702  
Shop Fax 657-1759

*Access & Excellence*

November 20, 2006

City of Billings (Engineering Division)  
510 North Broadway  
Billings, MT 59101

Subj: Request to Vacate Public Right-of-Way

Mr. Chris Hertz;

As per our meeting with Mr. Charles Rutherford on April 13, 2006 and based on his Appraisal Consulting report of April 27, 2006, we believe \$2.49/sf to be a fair market value for the subject properties. The subject property descriptions are attached and include: Boundary #1 – Yucca Street & North Rim Road @ 18,027 sf; Boundary #2 – Marbara Lane @ 10,500 sf; Boundary #3 – Silver Lane @ 17,724 sf; and Boundary #4 - Normal Avenue (deed transfer).

Please feel free to give me a call should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "O.E. Barfield".

O.E. Barfield  
Director

**Attachments:**

- 1) MSU-B Right-of-Way Vacation
- 2) Descriptions
- 3) Exhibit "A"
- 4) Exhibit "B"
- 5) Exhibit "C"
- 6) Normal Avenue
- 7) Purchase Order #38898

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# H

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, Jan. 22, 2007

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TITLE: Council Liaison to Community Development Board  
DEPARTMENT: City Council/City Administrator's Office  
PRESENTED BY: Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** Councilmember Peggie Gaghen has served throughout her term as the Council's non-voting liaison to the Community Development Board, and has volunteered to allow another Councilmember to take her place. Councilmember Jim Ronquillo has offered to do so. The primary responsibilities of the board are to review existing and proposed City policies and to review City department activities to ensure the City policies are being implemented and carried out and to make recommendations to the City Council in the area of community development.

**ALTERNATIVES ANALYZED:** The City Council may:

- Appoint Councilmember Ronquillo;
- Retain Councilmember Gaghen; or
- Select another Councilmember to serve as the liaison.

**FINANCIAL IMPACT:** None anticipated.

### **RECOMMENDATION**

Staff recommends that Council appoint Councilmember Ronquillo as its liaison to the Community Development Board.

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

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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TITLE: Confirmation of Probationary Police Officers  
Steve Hallam and Katherine Nash

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** On January 3, 2006, Officers Steve Hallam and Katherine Nash were hired by the Billings Police Department as probationary Police Officers. According to MCA 7-32-4113, their probationary period is for one year from date of hire. At this time Officers Hallam and Nash have completed their one year probation, and according to state statute, their names are to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning Officer Hallam's and Officer Nash's performance are positive and indicate that they are doing a good job, and recommend confirmation.

**RECOMMENDATION**

City staff recommends Officers Hallam and Nash be confirmed as Billings Police Officers.

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

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J

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, January 22, 2007**

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**TITLE:** SID 1377 Greenbriar Road Resolution of Intent to Create District and Set a Public Hearing

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Ron Hill, owner of 5 of the 8 lots proposed in the SID district boundary, has the desire to construct public improvements on Greenbriar Road between Lake Hills Drive and Hillcrest Drive. These improvements generally consist of water, sanitary sewer, curb and gutter, and street improvements to Greenbriar Road as shown on the attached exhibit.

**ALTERNATIVES ANALYZED:**

1. Approve the Resolution of Intent to Create SID 1377 and set a public hearing for February 12, 2007, City Council Meeting; or
2. Do not approve the Resolution of Intent to Create SID 1377.

**FINANCIAL IMPACT:** The total estimated costs of the Improvements are \$158,449.80. The costs of the Improvements are to be paid from the following sources: (1) \$58,000.00 of Special Improvement District bonds hereinafter described; and (2) \$100,449.80 of cash contribution by Ron Hill, owner of 5 of the 8 lots in the District.

**RECOMMENDATION**

Staff recommends that Council approve the Resolution of Intent to Create SID 1377 and set a public hearing date for February 12, 2007.

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

## **ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1377 Greenbriar Road Resolution of Intent

## **INTRODUCTION**

Ron Hill, owner of 5 of the 8 lots within the proposed boundary of the SID, has a desire to develop lots on Greenbriar Road. In order to develop these lots, all the necessary street improvements need to be constructed on Greenbriar Road. These improvements generally consist of water, sanitary sewer, curb and gutter, and street improvements. To complete the project, it is necessary to create a Special Improvement District.

## **PROCEDURAL HISTORY**

- January 22, 2007 – Resolution of Intent to Create SID 1377.
- February 12, 2007 – Public Hearing and Resolution Creating SID 1377.
- Spring 2007 – Professional Services Contract Award, Resolution Authorizing for Construction Bids and Construction Contract Award. (Proposed Schedule)

## **BACKGROUND**

The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include water, sanitary sewer, curb and gutter, street improvements to Greenbriar Road. Ron Hill, owner of 5 of the 8 lots in the District will pay a cash contribution to the project. The total cash contribution is equal to \$100,449.80 and represents 63 percent of the construction and administrative costs of the Improvements. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision.

The public hearing will be held at the February 12, 2007, Council Meeting. If approved, it is anticipated that construction of SID 1377 will begin in the spring of 2007 and be completed by the summer of 2007.

## **RECOMMENDATION**

Staff recommends that Council approve the Resolution of Intent to Create SID 1377 and set a public hearing date for February 12, 2007.

## **ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1377 Claremont Road Resolution of Intent



**EXHIBIT B**

**LEGAL DESCRIPTION**

Beginning at a point which is the NW Corner of Lot 8, Block 11, Lake Hills  
Subdivision, Seven teenth Filing;  
Thence from said point of beginning S 59-00-28 W a distance of 94.63';  
Thence Parcel name: DST 17  
Thence S 31-01-16 W a distance of 139.75  
Thence S 00-11-15 W a distance of 360.00  
Thence S 89-48-45 E a distance of 169.98  
Thence S 00-11-15 W a distance of 210.81  
Thence S 89-48-45 E a distance of 18.85  
Thence S 89-02-07 E a distance of 9.93  
Thence along a curve to the 61.73 with a radius of 262.60 feet a distance of  
31.012, Thence a chord S 01-32-42 W chord length 61.59  
Thence N 14-20-44 E a distance of 123.65  
Thence N 00-10-43 E a distance of 139.01  
Thence N 28-03-02 E a distance of 158.35  
Thence N 30-58-00 W a distance of 118.62  
Thence N 54-45-34 W a distance of 108.85  
Thence N 02-51-40 E a distance of 78.88  
Thence N 30-58-00 W a distance of 124.86 to the point of beginning.  
Said described Boundary containing a net and gross area of 3.63 acres.

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K

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, Jan. 22, 2007**

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**TITLE:** Allocation to Homelessness Seminar from Council Contingency Funds  
**DEPARTMENT:** City Council/City Administrator's Office  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City Council has offered to allocate \$1,500 from Council contingency funds to help pay for a proposed seminar by the Mayor's Commission on Homelessness on the activities of Pioneer Human Services of Seattle. Such an allocation requires approval of a Council resolution.

**ALTERNATIVES ANALYZED:** The City Council may:

- Make the allocation;
- Delay the allocation; or
- Decide not participate.

**FINANCIAL IMPACT:** Cost of the seminar is approximately \$10,000, of which the state is paying half. Additional donations are anticipated.

**RECOMMENDATION**

Staff recommends that Council approve the resolution allocating \$1,500 to the seminar.

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

**ATTACHMENTS:**  
A – Resolution

**RESOLUTION NO. 07-\_\_\_\_\_**

**A RESOLUTION OF THE BILLINGS CITY COUNCIL  
AUTHORIZING USE OF \$1,500 OF COUNCIL CONTINGENCY FUNDS  
FOR A SEMINAR ON HOMELESSNESS**

**WHEREAS**, the Mayor's Commission on Homelessness has decided to offer a seminar featuring the work of Pioneer Human Services of Seattle in dealing with homelessness; and

**WHEREAS**, the cost of the seminar is an estimated \$10,000, of which half is being paid by the State of Montana, with the rest of the funds to be raised locally; and

**WHEREAS**, the Billings City Council has decided to use \$1,500 of Council Contingency funds to assist in making the local match.

**NOW, THEREFORE, BE IT RESOLVED BY THE BILLINGS CITY COUNCIL** that \$1,500 from Council Contingency be transferred to the Community Development Department for the purpose of supporting the Pioneer Human Services event.

APPROVED this 22<sup>nd</sup> day of January, 2007.

THE CITY OF BILLINGS, MONTANA

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

ATTEST:

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

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L

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

**TITLE:** Zone Change #793, 2<sup>nd</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Lora Mattox, AICP, Planner II, Neighborhood Planner

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential Multi-family to Neighborhood Commercial 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 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. The City Council held a public hearing and approved the first reading of this zone change on January 8, 2007.

**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 on a 4-0 vote recommends that the City Council approve Zone Change #793 on 2<sup>nd</sup> reading and adopt the determinations of the 12 criteria.

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

**ATTACHMENTS:**

A: Ordinance

ATTACHMENT A

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, MMC City Clerk

ZC#793

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Zone Change #794, 2<sup>nd</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 City Council held a public hearing and approved the first reading of this zone change on January 8, 2007.

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

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

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

**RECOMMENDATION**

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

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

**ATTACHMENTS:**

A: Ordinance

**ATTACHMENT A**

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 City Clerk

ZC#794

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Approval of the Amended Plat of Lot 10, Block 5 of O'Leary Subdivision and the Quit Claim Deed to Linde Properties, LC

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The amended plat and quit claim deed will accomplish a property exchange between the City of Billings and Linde Properties, LC (Dr. Brian Linde of Heights Eyecare). Because an exchange of this nature is considered a "disposal" of City property, the process in city code section 22-900 was followed. Council authorized the Notice of Intent to Dispose of this property on October 23, 2006, notified property owners within a 300-foot radius of the property, advertised the notice of intent to dispose of the property, held the required public hearing and authorized the disposal after the public hearing on November 27, 2006. The City of Billings will exchange a portion of this Lot 10 (approximately 2,636 square feet) with Linde Properties, LC for a needed right-of-way dedication from Linde Properties, LC along Lake Elmo Road (approximately 3,222 square feet). The amended plat relocates the common boundary and dedicates the right-of-way to the City, and the quit claim deed transfers a portion of the Lot 10 planting strip from the City to Linde Properties, LC. In 1996, an agreement was signed to affect this exchange, but no legal documents were prepared and filed at that time.

**FINANCIAL IMPACT:** Approving the amended plat and the quit claim deed would have no cost because the City and Linde Properties, LC are exchanging property.

**RECOMMENDATION**

Staff recommends that Council approve the Amended Plat of Lot 10, Block 5 of O'Leary Subdivision, authorize the Mayor to sign the plat, and authorize the Mayor to execute the Quit Claim Deed to Linde Properties, LC.

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

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 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 \$1,633,601.68 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 22, 2006, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Payment of Claims  
**DEPARTMENT:** Municipal Court  
**PRESENTED BY:** Nikki R. Schaubel, Municipal Court Administrator

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$180,494.02 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 1, 2006 to December 31, 2006 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 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 \$274,274.21 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 02, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JANUARY 22, 2007**

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**TITLE:** Public Hearing and Approval of Resolution Approving and Adopting  
 Second Quarter Budget Amendments for Fiscal Year 2006/2007

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Budget adjustments are requested for Fiscal Year 2006/2007. The adjustments involve the Street and Traffic Fund, the General Fund and the Gas Tax Fund.

Street and Traffic is requesting budget authority for increased labor costs that will be funded by additional charges for services. The Street and Traffic fund agreed to provide Community Development and Code Enforcement funds mowing services, which will result in over-time labor costs in excess of budgeted amounts. The General Fund is requesting that budget authority be moved from non-departmental to the city administrator's budget to provide funding for a federal lobbyist position. The General Fund is also requesting budget authority for the transfer of right-of-way sales proceeds to the Gas Tax Fund.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2006/2007 per attached.

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

**ATTACHMENT**

A-Resolution to Make Fiscal Year 2006/2007 Adjustment Appropriations (with Exhibit A)

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

A RESOLUTION TO MAKE **FISCAL YEAR 2007**  
ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-  
6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND  
REVISIONS WITHIN THE GENERAL CLASS OF SALARIES  
AND WAGES, MAINTENANCE AND SUPPORT AND  
CAPITAL OUTLAY.

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

WHEREAS, based upon a Quarterly Budget Review (FY 2006/2007), it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT)

PASSED AND APPROVED by the City Council, this 22nd day of January, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

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

## EXHIBIT A

### BUDGET ADJUSTMENTS

	<u>Revenue</u>	<u>Expenditure</u>
010-1411-414 39-49		\$(40,000) Reduce non-departmental other services
010-1313-413 11-60		\$ 40,000 Salaries and wages - temporary
To move non-departmental budget to city administrators budget to provide funding for a federal lobbyist.		
211-3131-344 2615	\$10,000	Charges for Services – Weed Control
211-3134-433 1240		\$10,000 Over-time wages
To increase the budget for over-time labor costs related to added mowing services for Community Development and Code Enforcement funds.		
010-1511-382 6740	\$584,250	Sale of right of way
010-1412-414 8260		\$584,250 Transfer right-of-way proceeds to Gas Tax Fund
205-3131-383 7515	\$584,250	Transfer in of right-of-way proceeds from the General Fund.

To increase the budget for the right-of-way sale to the Billings Clinic, as approved by Council action on October 23, 2006. The action stated that the proceeds be deposited to the General Fund. However, the proceeds should rightfully be used for Gas Tax Fund projects. Therefore, the proceeds are being transferred to the Gas Tax Fund.

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Public Hearing and Resolution for Annexation #07-01  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Wyeth Friday, AICP, Planner II

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**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. This public service report describes the City's capacity to serve the proposed development.

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

**FINANCIAL IMPACT:** The City can provide services to this property. While the annexation will increase the City's tax base, in general, the costs of providing service to residential properties exceed the revenues generated from property tax.

**RECOMMENDATION**

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

1. A Waiver of Right to Protest the Creation of SIDs shall be signed by the property owners.

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



**ATTACHMENTS:**

- A. Resolution and Exhibit A
- B. Waiver of Right to Protest (Signed)

## **INTRODUCTION**

The owners on November 20, 2006, submitted a petition for annexation of an approximately 11,160-square-foot property located at 215 Garden Avenue. The property is currently zoned R-15000. The property will automatically be zoned R-9600 if it is annexed into the City. This property is in an area that has been specified in the City's Annexation Policy for annexation in the short term. The property is bordered by the City Limits on the west side along Garden Avenue and is eligible for annexation.

## **PROCEDURAL HISTORY**

- November 20, 2006 – The Planning and Community Services Department receives signed petition to annex the subject property into the City of Billings.
- January 8, 2007 – The City Council acknowledges the petition to annex and sets a public hearing date for the City Council meeting on January 22, 2007.
- January 22, 2007 – City Council holds public hearing and acts on the petition to annex the subject property.

## **ALTERNATIVES ANALYSIS**

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

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services, except for sewer service at this time.
3. Any proposed improvements would meet City standards.
4. The property owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
5. Given the size of the property and the zoning, residential densities will be approximately 4 dwelling units per acre.
6. The proposed annexation meets several goals of the City-County Growth Policy.

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

**Departmental Response:** City departments, Yellowstone County Departments and the Board of County Commissioners were given the opportunity to comment on this annexation. School District #2 also was notified of this annexation. All City departments responded favorably. No comments were received from School District #2 or Yellowstone County.

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

**Water:** Water service will be provided by a water line in Garden Avenue. The property already is served by the water line in Garden Avenue. A replacement project for this water line is currently in process through a City-County cost-share arrangement. This property, if annexed, will enjoy the same benefits that existing annexed properties on the west side of Garden Avenue enjoy now – no additional cost from the water line replacement beyond current utility billing procedures. The subject property is being included in a County Rural Special Improvement District to fund the County’s cost of the water line replacement. If this property is annexed into the City, the City will pay off the RSID assessment for this property. That assessment totals about \$9,300.

**Sewer:** There is no municipal sewer service to this property at this time, or in the Garden Avenue right-of-way. The closest sewer line is about 1,200 feet to the west in Nall Avenue across the Interstate 90 corridor. Connection of this property to City sewer service is not expected in the near future. However, the property owners are signing a Waiver of Right to Protest creation of future special improvement districts that allows the City to create an improvement district for sewer installation in the future.

**Stormwater:** There are no City stormwater facilities directly adjacent to the property. Future stormwater system development in this area by the City may require this property to participate in construction costs of stormwater infrastructure in the area of this property. The property owners are signing a Waiver of Right to Protest creation of future special improvement districts that allows the City to create an improvement district for stormwater infrastructure installation in the future.

**Transportation:** The subject property is adjacent to Garden Avenue, classified as a collector road. The property under the R-9600 zoning would allow only one residence on the property. There is one residence on the property at this time. Garden Avenue and the connecting street system have sufficient capacity for the traffic from this property.

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

**Transit:** MET Transit does not currently serve this area. The closest bus route is about 15 blocks north of the property across the Interstate 90 corridor. MET Transit did not comment on this annexation petition.

**Fire:** The property is within the Billings Urban Fire Service Area and is currently served by the Billings Fire Department. Fire protection will be provided to this property after annexation most directly from Fire Station No. 2 at 501 South 28<sup>th</sup> Street. The Fire Department had no problems with this petition to annex.

**Police:** The Police Department staff expressed concerns that as more land is annexed into the city it overextends the department and adversely affects its ability to appropriately deliver services. However, there already is City property on the west side of Garden Avenue in this area so the ability to deliver services to this property may not be significantly different from current service practices.

**Ambulance Service:** The City does not provide ambulance service but dictates the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes. This annexation is within the area of acceptable response time.

**Legal and Finance:** General Fund services such as Legal and Finance have indicated that they will not be negatively impacted. However, the Finance Department indicated that it would be preferable to annex larger portions of land in this area at the same time since this property is small and is unlikely to individually support the City services required to serve it on its own.

**Other Departments:** City/County services such as Library, Planning, and Environmental Health are only slightly affected by the annexation since they will serve new development if it is in the City or if it remains in the County.

### **STAKEHOLDERS**

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Times more than 15 days prior to the Council hearing as required. The Planning Division has received no comments on this proposed annexation.

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

This annexation petition meets the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- Contiguous development focused in and around existing population centers (Land Use Element Goal, Pg. 6). *This property is in an area that is in close proximity to urban services and is a logical area to include within the City of Billings service area*
- Protect public health and reduce the cost of groundwater remediation (Natural Resources Goal, Pg. 8). *The property is going to be served by municipal water service. While the property will continue to use a septic system for the present, having the property annexed into the City increases the likelihood and ability for the property to be served by municipal sewer service in the future.*
- Addresses Annexation Policy goals to help plan for expansion and provision of municipal services (Pg. 147) *Annexing this property adjacent to existing City property and in an area that is expected to be served by the City in the future helps direct the future infrastructure needs for City property in this area.*

**RECOMMENDATION**

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

1. A Waiver of Right to Protest the Creation of SIDs shall be signed by the property owners.

**ATTACHMENTS:**

- A. Resolution and Exhibit A
- B. Waiver of Right to Protest (Signed)

**RESOLUTION NO. 07-\_\_\_\_\_**

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

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

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

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

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

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

Portions of land situated in the NE1/4 and the NW1/4 of Section 11, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as: Lot 3, Block 7 of Kimble Subdivision, Second Filing, Recorded March 1, 1956, Under Document No. 558883, Records of Yellowstone County, Montana; including all adjacent right-of-way of Garden Avenue. Containing 0.342 gross and 0.256 net acres.  
(AN #07-01) (Petition #06-16) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved contingent upon the following condition:

1. A Waiver of Right to Protest the Creation of SIDs shall be signed by the property owners.

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

PASSED by the City Council and APPROVED this 22nd day of January, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

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

## Waiver of Right to Protest

FOR VALUABLE CONSIDERATION, the undersigned, being the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

*Lot 3, Block 7, Kimble Subdivision, Second Filing*

Signed and dated this 3 day of January, 2007.

By: Owners  
Herbert R. Alvin  
By: Laura G. Alvin

STATE OF MONTANA     )  
                                      : ss  
County of Yellowstone    )

On this 3 day of January, 2007, before me, a Notary Public in and for the State of Montana, personally appeared Herbert R. & Laura G. Alvin, known to me to be Herbert R. and Laura G. Alvin, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

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



Karen Denheim  
Notary Public in and for the State of Montana  
Printed name: Karen Denheim  
Residing in Billings, Montana  
My commission expires: 5-1-2007

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Public Hearing and First Reading of an Ordinance for Amended Section 23-1101 of the City Subdivision Regulations

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** In February of 2006, the City Council approved an ordinance amending the City Subdivision Regulations in their entirety. Since that time, the new regulations have been successfully implemented. It has become apparent, however, that a couple of items in the regulations are in need of change and clarification.

Section 23-1101 provides procedures for requesting a variance from the subdivision regulations. The suggested amendments would ensure the Planning Board has authority to review and make recommendations to the governing body regarding all variance requests. They would also assign a fee to the variance application, since variance requests are to be considered separate applications, which may be reviewed prior to or concurrently with the preliminary plat review.

The City-County Planning Board held a public hearing and reviewed the proposed amendments to Sections 23-1101 of the City Subdivision Regulations on January 9, 2006. The City Council must hold a public hearing on the proposed amendments and decide whether to adopt them.

**FINANCIAL IMPACT:** There are no foreseen financial impacts to the City for adopting the Amendments to Section 23-1101 of the City Subdivision Regulations.

**RECOMMENDATION**

The Planning Board recommends, on a 10-0 vote, that the City Council approve the proposed amendments to Section 23-1101 of the City Subdivision Regulations.

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

**ATTACHMENT:**  
A: Ordinance

## **INTRODUCTION**

On February 15, 2006, the City Council approved Ordinance 06-5359, amending the City Subdivision Regulations in their entirety. Section 23-1101 provides procedures for requesting a variance from the subdivision regulations. These new procedures require the subdivider to address specific findings of hardship in order provide the necessary information for the governing body's evaluation of the variance request. The suggested amendment would ensure the Planning Board has authority to review and make recommendations to the governing body regarding all variance requests. It would also assign a fee to the variance application, since variance requests are to be considered separate applications, which may be reviewed prior to or concurrently with the preliminary plat review.

## **BACKGROUND**

Section 23-1101 provides procedures for requesting a variance from the subdivision regulations. As they are currently written, the procedures require the subdivider to address specific findings in order provide the necessary information for the governing body's evaluation of the variance request.

The Planning Board's review and recommendation of variances is not explicitly required by the current regulations, though they currently review variances submitted as part of the preliminary major plat application. Recent requests to process variance requests prior to the preliminary plat submittal have raised questions on the Board's reviewing authority. Since the Planning Board reviews subdivisions in detail, and holds the public hearings for major subdivisions, it seems appropriate that the Board should also review and make recommendations to the Council regarding requested variances from the subdivision regulations, regardless of whether they are processed concurrently or prior to a preliminary plat review. As indicated in Attachment A, the suggested amendment would provide the Planning Board the authority to review and make recommendations to the governing body regarding all variance requests.

The other suggested amendment to this Section would assign a fee to the variance application, since variance requests are considered separate applications. As a separate application, the variance request may be reviewed prior to or concurrently with the preliminary plat review, and requires staff review time and research and Planning Board and City Council consideration. Staff has recommended a fee of \$325 for this application. This is the same fee charged for the processing of a residential zoning variance in the City, which is a similar process in terms of time, research, and meetings. Therefore, staff and the Planning Board felt it was an appropriate fee.

## **PROCEDURAL HISTORY**

- February 15, 2006—the City Council approved, on second reading, Ordinance 06-5359 amending the City Subdivision Regulations in their entirety.
- January 9, 2007: Planning Board held a Public Hearing on the proposed amendments to Section 23-1101 of the City Subdivision Regulations.
- January 22, 2007: City Council will hold a Public Hearing and may act on the 1<sup>st</sup> Reading of Ordinance.
- February 12, 2007: City Council may act on the 2<sup>nd</sup> Reading of Ordinance.

**STAKEHOLDERS**

There were no public comments received at the Planning Board's Public Hearing held on January 9, 2007.

**RECOMMENDATION**

The Planning Board recommends, on a 10-0 vote, that the City Council approve the proposed amendments to Section 23-1101 of the City Subdivision Regulations.

**ATTACHMENT:**

A: Ordinance

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

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 23-1101; PROVIDING UPDATES TO REGULATIONS ON REQUESTING A VARIANCE FROM THE SUBDIVISION REGULATIONS.

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

**Section 1.** That Section 23-1101 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-1101. Variances.**

The City Council may grant reasonable variances from the design and improvement standards of these Regulations when strict compliance would result in undue hardship and the result would not negatively affect public health and safety. The granting of a variance shall not have the effect of nullifying the intent and purpose of these Regulations or justifying submission of an incomplete application. The City Council may not approve a variance that would permit structures within the 100-year floodplain, as defined in 76-5-101, MCA.

A. **Requesting a Variance.** The subdivider shall include with the submission of the ~~preliminary plat variance request~~, a written statement describing the facts of hardship upon which the request for the variance is based. Each requested variance shall be deemed a separate application, for which a fee of \$325 shall be required, ~~to be processed concurrently with the preliminary plat~~. Information addressing each of the following findings shall accompany the application, ~~to be approved by the City Council~~. The Planning Board shall review the submitted findings and make a recommendation to the City Council. The City Council shall not approve variances unless the subdivider has demonstrated that the request satisfies the following findings:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;
3. The variance will not result in an increase in taxpayer burden;
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and

5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.
- B. In granting variances, the City Council may require conditions of approval that will, in their judgment, secure the objectives of these Regulations.
- C. When any such variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.
- D. An application for a variance is not necessary where Planned Neighborhood Developments are proposed, as modifications to the standards and requirements of these Regulations may be approved by the City Council.

(Ord. No. 06-5359, § 2, 2-13-06)

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 22<sup>nd</sup> day of January, 2007.

PASSED, ADOPTED and APPROVED on second reading this 12<sup>th</sup> day of February, 2007.

CITY OF BILLINGS

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

ATTEST:

By \_\_\_\_\_  
Marita Herold, MMC City Clerk

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, January 22, 2007**


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TITLE: Zone Change #795 Public Hearing and 1<sup>st</sup> Reading of Ordinance  
 DEPARTMENT: Planning and Community Services  
 PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Residential-7,000 to Neighborhood Commercial and Residential Multi-family-Restricted on Tracts 1-5 of Brittain Acres located at 803 Yellowstone River Road and 821 and 823 Bench Boulevard. The property is owned by Big Sky Floral Supply, LLC and the representative is Todd Gainan. The Zoning Commission conducted a public hearing on January 2, 2007, and voted 3-0 to recommend approval to the City Council.

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

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

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

**RECOMMENDATION**

The Zoning Commission recommends by a 3-0 vote that the City Council approve Zone Change #795 and adopt the determinations of the 12 criteria, as discussed within this report.

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

**ATTACHMENTS:**

- A: Email from Lori Blaylock
- B: Site Photographs
- C: Surrounding Zoning
- D: Ordinance

## **INTRODUCTION**

This is a zone change request from Residential-7,000 to Neighborhood Commercial and Residential Multi-family-Restricted on a 4.69 acre parcel of land owned by Big Sky Floral Supply also known as Gainan's. The applicant is preparing to re-develop the property that is now developed with four older single family homes and a large commercial greenhouse. The City Council approved Special Review #452 on December 9, 1991, to allow the construction of this commercial greenhouse.

## **PROCEDURAL HISTORY**

- A zone change request was received on December 4, 2006, for the subject properties.
- The Zoning Commission conducted a public hearing on January 2, 2007, and recommended approval to the City Council by a 3-0 vote.
- The City Council will conduct a public hearing and first reading on January 22, 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 February 12, 2007.

## **BACKGROUND**

The subject properties are located on the northeast corner of the intersection of Bench Boulevard and Hilltop Road. A concept site plan submitted with the application shows a commercial building on the Bench Boulevard frontage and several four-plex dwelling units on the eastern half of the property. Gainan's maintains a separate retail greenhouse on the northwest corner of Bench Boulevard and Hilltop Road, directly west of the subject properties.

The lots to the north and east are zoned Residential-7,000 and are developed as single family homes. The property west across Bench Boulevard is zoned Residential-6,000 and is developed as Gainan's Heights Greenhouse. Property to the south is zoned Neighborhood Commercial and Residential Multi-family and is currently vacant. South east of the subject property there are two apartment buildings. Southwest of the subject property is Residential-7,000 zoning and the lots are developed as single family homes. Bench Boulevard and Hilltop Road are both principle arterial streets and currently handle a large volume of traffic – approximately 36,000 vehicle trips per day. Bench Boulevard will be developed in the near future to handle a greater volume of traffic. The Billings Heights Neighborhood Plan indicates the intersection should be used for a mixture of commercial and residential dwellings. The proposed Neighborhood Commercial zone does not allow any liquor licenses and restricts the size of certain retail uses. This zone should be compatible with the existing residential uses in the neighborhood. The proposed multi-family zone would mirror the zoning south of the property and allow a greater variety of housing choices in the neighborhood. Any development of the property would require adequate off-street parking, screening and landscaping to buffer the adjacent residential uses.

The Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The new zoning will not increase urban sprawl by utilizing existing city services. Any new development will have to comply with all applicable zoning requirements including screening and buffering from adjacent residential land uses. The



proposed zoning will provide more housing choices in this area and allow neighborhood services to be developed at the intersection of two arterial streets. The area is primarily residential with commercial uses and zoning within 500 feet of the intersection. The new zoning gives reasonable consideration to the character of the district. The Zoning Commission conducted a public hearing on January 2, 2007, and recommended approval of the zone change on a 3-0 vote.

### **ALTERNATIVES ANALYSIS**

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

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The new zoning will not increase urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers. The proposed zone conforms to the land use plan adopted in the Billings Heights Neighborhood Plan. The proposed zoning will provide more housing choices in this area and allow neighborhood services to be developed at the intersection of two arterial streets.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning will not increase street congestion. The existing traffic of 36,000 vehicle trips per day will not be substantially increased. The planned upgrade to Bench Boulevard will decrease traffic congestion at this intersection.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on Bench Boulevard and Yellowstone River Road. The property is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks, landscaping and screening requirements for any new developments.
5. *Will the new zoning provide adequate light and air?*  
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Neighborhood Commercial zone allows 50% lot coverage and Residential Multi-family-Restricted zone allows 55% lot coverage. This limitation should prevent overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*  
The new zoning of Neighborhood Commercial and Residential Multi-family-Restricted both allow the development of residential dwelling units. If the entire parcel were developed at the maximum density, there could be 133 dwellings in a single structure or up to 28 dwelling units per acre. Restrictions on lot coverage (50%), building height (40 feet), setbacks (80 feet from centerline of Bench and Yellowstone River Road) and required off-street parking (1.5 spaces per 2 bedroom dwelling unit) would restrain the development of this number of dwelling units. The new zoning will avoid undue concentration of population.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*  
*Transportation:* The new zoning should have no effect on the adjacent streets or traffic patterns.  
*Water and Sewerage:* The City provides water and sewer service to the property and has adequate facilities to serve this property.  
*Schools and Parks:* There should be no immediate effect on parks or schools from this rezoning.  
*Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.
9. *Does the new zoning give reasonable consideration to the character of the district?*  
The zoning in this area is a mixture of commercial and residential districts with various densities. The area is primarily residential with commercial uses and zoning within 500 feet of the intersection. The new zoning gives reasonable consideration to the character of the district.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The subject property is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
The new zoning is not expected to appreciably alter the value of buildings on the property or within the area.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*  
Yes, the new zoning will encourage the most appropriate use of this land in the area.

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

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

**STAKEHOLDERS**

The Zoning Commission conducted a public hearing on January 2, 2007, and forwarded a positive recommendation to the City Council by a 3-0 vote. Mr. Todd Gainan and Lance Egan attended the public hearing and explained the proposed zone change to the Zoning Commission. Mr. Egan explained the residential multifamily section of the property would be developed first and the commercial frontage at some time in the future.

The Planning Department received an email letter objecting to the re-zoning after the public hearing on January 2, 2007. Ms. Lori Blaylock of 901 Bench Boulevard submitted this email and it is attached to this staff memo. The applicant has been notified of the letter of objection.

**RECOMMENDATION**

The Zoning Commission recommends by a 3-0 vote that the City Council approve Zone Change #795 and adopt the determinations of the 12 criteria, as discussed within this report.

**ATTACHMENTS:**

- A: Email from Lori Blaylock
- B: Site Photographs
- C: Surrounding Zoning
- D: Ordinance

**ATTACHMENT A**

**Email from Lori Blaylock, 901 Bench Boulevard RE: Zone Change #795**

**From:** LORI BLAYLOCK [LBLAYLOCK@FIB.COM]

**Sent:** Tuesday, January 02, 2007 4:25 PM

**To:** Allen, Liz

**Subject:** Zoning request at Bench Blvd/Hilltop Rd.

Dear Ms. Allen,

I am hoping to come to the city council meeting this afternoon regarding the zoning request for the Bench Blvd-Hilltop Rd. development. I appreciate the chance to let you, my council representative, know how I feel about this proposed project.

I live at 901 Bench Blvd, just a few homes down from the request site. I am writing to let you know that I am STRONGLY opposed to the development at this site. In particular, the additional homes.

Over the past 3 years, the traffic on my street alone has tripled because of other housing developments in the area. Most weekday mornings I cannot even get out of my driveway between 7:15-8:30 am because there is so much traffic. Bench Blvd. has become the new Main Street and it is becoming unacceptable for the people who live there.

Not only is the traffic terribly congested, it is also quite dangerous. Over the past 2 years, accidents and cats & dogs being hit by cars have increased as well. Few drivers obey the reduced speed limit at Clevenger Park and it's only a matter of time before a pedestrian is involved in an accident.

The four-way stop has done little to cut down on the accidents at the corner of Hilltop and Bench and with another subdivision, this can only get worse.

In addition, there is virtually no police patrolling to catch reckless drivers and again, more congestion will not make that situation better.

I realize that progress typically means growth, but it should not mean growth for growth's sake.

We must consider infrastructure before we okay plans like this and in my opinion, we do not have the adequate infrastructure in this particular area to handle yet another subdivision.

Please consider this opinion when you vote this evening.

Sincerely,

Lori Blaylock

901 Bench Blvd.

406-860-8105

Development

Respectfully,

Lori Blaylock

Knowledge Specialist

Employee Performance and Development

**ATTACHMENT B**  
**Site photographs – Zone Change #795**

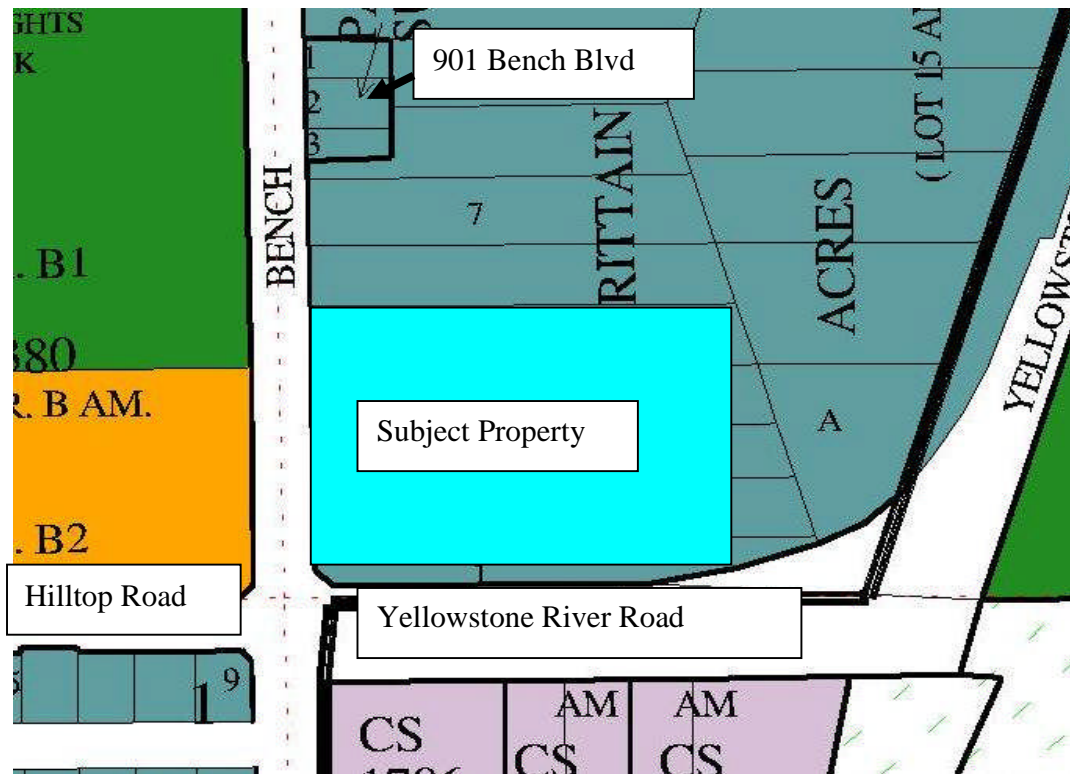


View south east from Bench Boulevard



View west across Bench Boulevard part of existing Gainan's Billings Heights Greenhouse

**ATTACHMENT C**  
**Surrounding Zoning – Zone Change #795**



## ATTACHMENT D

Zone Change #795

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

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Tracts 1, 2, 3, 4 and 5 of Brittain Acres Subdivision,  
containing approximately 4.69 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 Tracts 1, 2, 3, 4 and 5 of Brittain Acres Subdivision, containing approximately 4.69 acres of land and is presently zoned Residential-7,000 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 west 225 feet of Tracts 1, 2, 3, 4, and 5 of Britain Acres Subdivision** is hereby changed from **Residential-7,000** to **Neighborhood Commercial** and **the remaining eastern portion of Tracts 1, 2, 3, 4, and 5 of Brittain Acres Subdivision** is hereby changed from **Residential-7,000** to **Residential Multi-family-Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Commercial** and **Residential Multi-family-Restricted** 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 22, 2007.

PASSED, ADOPTED AND APPROVED on second reading February 12, 2007.

CITY OF BILLINGS:

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

ATTEST:

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

ZC#795 – Brittain Acres, Tracts 1 - 5

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



## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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**TITLE:** Zone Change #796 Public Hearing and 1<sup>st</sup> Reading of Ordinance

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Lora Mattox, AICP, Neighborhood Planner, Planner II

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**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential 6000 to Residential 5000 on a parcel legally described as Lot 15B, Mattson Acres Subdivision Amended, excepting the north 152.75 feet. The subject property is located at 723 Mattson Lane and is approximately 10,506 square feet. The owners are William and Carla Pearson and the agent is John Haman. The Zoning Commission conducted a public hearing on January 2, 2007, and voted 3-0 to recommend denial to the City Council. Staff recommended denial 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 recommends by a 3-0 vote that the City Council **deny** Zone Change #796 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: Proposed Site Development
- D: Ordinance

## **INTRODUCTION**

The applicant is requesting a zone change from Residential 6000 to Residential 5000 on a parcel legally described as Lot 15B, Mattson Acres Subdivision Amended, excepting the north 152.75 feet. The subject property is located at 723 Mattson Lane and is approximately 10,506 square feet. The owners are William and Carla Pearson and the agent is John Haman. The Zoning Commission conducted a public hearing on January 2, 2007, and voted 3-0 to recommend denial to the City Council. Staff recommended denial of the proposed zone change and those determinations have been provided within this report.

## **PROCEDURAL HISTORY**

- On December 4, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on January 2, 2007, and recommended denial to the City Council by a 3-0 vote.
- The City Council will conduct a public hearing and first reading on January 22, 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 February 12, 2007.

## **BACKGROUND**

This is a zone change request from Residential 6000 to Residential 5000 on a parcel legally described as Lot 15B, Mattson Acres Subdivision Amended, excepting the north 152.75 feet. The subject property is located at 723 Mattson Lane and is 10,506 square feet.

The owners of this property are William and Carla Pearson. The agent is John Haman. The area proposed for the zone change is located within a Residential 6000 zoning district and directly north of the Walmart development. The Residential 6000 zoning allows for single-family and duplex development outright and multi-family development through special review. This lot is 10,506 square feet and under Residential 6000 could be built as 1 single-family, 1 duplex or 1 multi-family unit (4-unit). Under the Residential-5000 zoning, the applicant may subdivide the parcel into 2 separate lots of 5,253 square feet each. In addition to the subdivision, the applicant will be required to submit for special review for the proposed townhome development. The applicant states that the construction of a duplex rental could be built with the existing zoning but feel that it would not have a positive impact for this neighborhood.

The Planning Department has reviewed this application and is recommending denial based on the attached twelve (12) criteria for zone changes. The Planning Department considers the request for Residential 5000 would constitute a spot zoning. Spot zoning is defined as a 3-prong test with each prong evaluated separately but weighed as a whole. A “yes” answer to each of the three tests is usually required before determining that a spot zoning has occurred. In this particular request, the Planning Department has made the following determinations:

Test 1: The requested use is significantly different than the prevailing use in the area. Yes, the surrounding properties are currently developed on lots larger than 5,000 square feet.

Test 2: The area in which the requested use is rather small. Yes, the area requested for the re-zone is 10,506 square feet with Residential 6000 to the north, east and west.

Test 3: The zoning is designed to benefit only on landowner at the expense of the surrounding property owners or the general public. Yes, the requested zone change benefits only to property owner. Rather than changing the zoning of the property and then a minor subdivision, the property owner could develop and sell this parcel as a condominium development with the ability to create 2-units with common area managed by the individual owners through a homeowners association.

### **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?*  
The proposed zoning does not comply with the plan in the following area:  
New developments that are sensitive to and compatible with the character of existing neighborhoods. The applicant plans to subdivide this parcel into 2 separate lots with square footage of 5,253 each. The surrounding properties are developed with lot sizes greater than 5,000 square feet. This is not an appropriate zone change with the location of the lot in the middle of the block surrounded on the north, east and west by Residential 6000.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The proposed zone change should not impact traffic patterns within the area.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on Mattson Lane 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 new zoning provides provisions for setbacks, height and lot coverage to allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*  
The Residential 5000 zoning requires 5,000 square foot lots per single-family structure with 40% lot coverage.
7. *Will the new zoning avoid undue concentration of population?*  
The new zoning has provisions for setbacks, height and lot coverage restrictions. The Residential 5000 allows 1 single-family structure on 5,000 square feet and 1 duplex on 8,000 square feet. Multi-family dwellings are not allowed in the Residential 5000 zone.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*  

*Transportation:* The development should not impact transportation and traffic patterns 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?*  
This area is primarily zoned Residential 6000 with the Walmart Planned Unit Development directly south. The area requested for the Residential-5000 is located mid-block with Residential 6000 to the north, east and west. The existing residential development is located on larger lots. The appearance of 2 Residential 5000 lots could be detrimental to the character of the existing neighborhood.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The property is 10,506 square feet and under the current zoning 1-single-family structure, 1-duplex structure or 1-4 unit multi-family structure could be constructed. The applicant states that the request for the Residential 5000 zoning is to allow the applicant to subdivide the lot into 2 lots for resale. Through the condominium process, the same could be accomplished without changing the zoning of the lot.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
The new zoning could alter value of buildings in the area due to the small lot development.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*  
No, the new zoning could be classified as a spot zoning by definition and is not appropriate to the existing zoning and land use.

### **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 January 2, 2007, and forwarded a recommendation of denial to the City Council by a 3-0 vote. Neither the applicant nor the agent were present at the Zoning Commission meeting and there were no residents present to comment on the request.

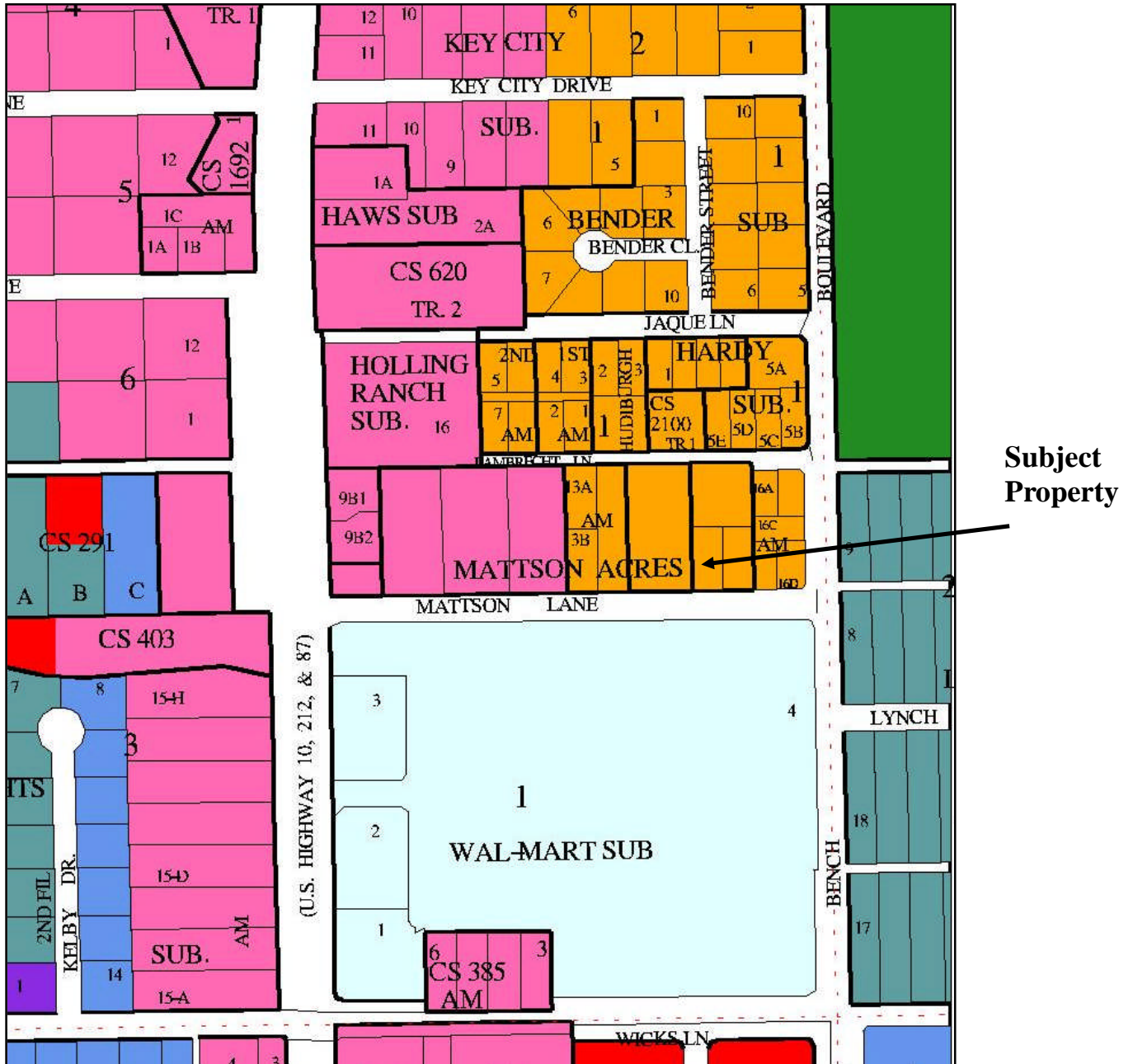
### **RECOMMENDATION**

The Zoning Commission recommends by a 3-0 vote that the City Council **deny** Zone Change #796.

### **ATTACHMENTS:**

- A: Surrounding Zoning
- B: Site Photographs
- C: Proposed Site Development
- D: Ordinance

**Attachment A**  
Surrounding Zoning





**Attachment B**  
Site Photos – Zone Change #796



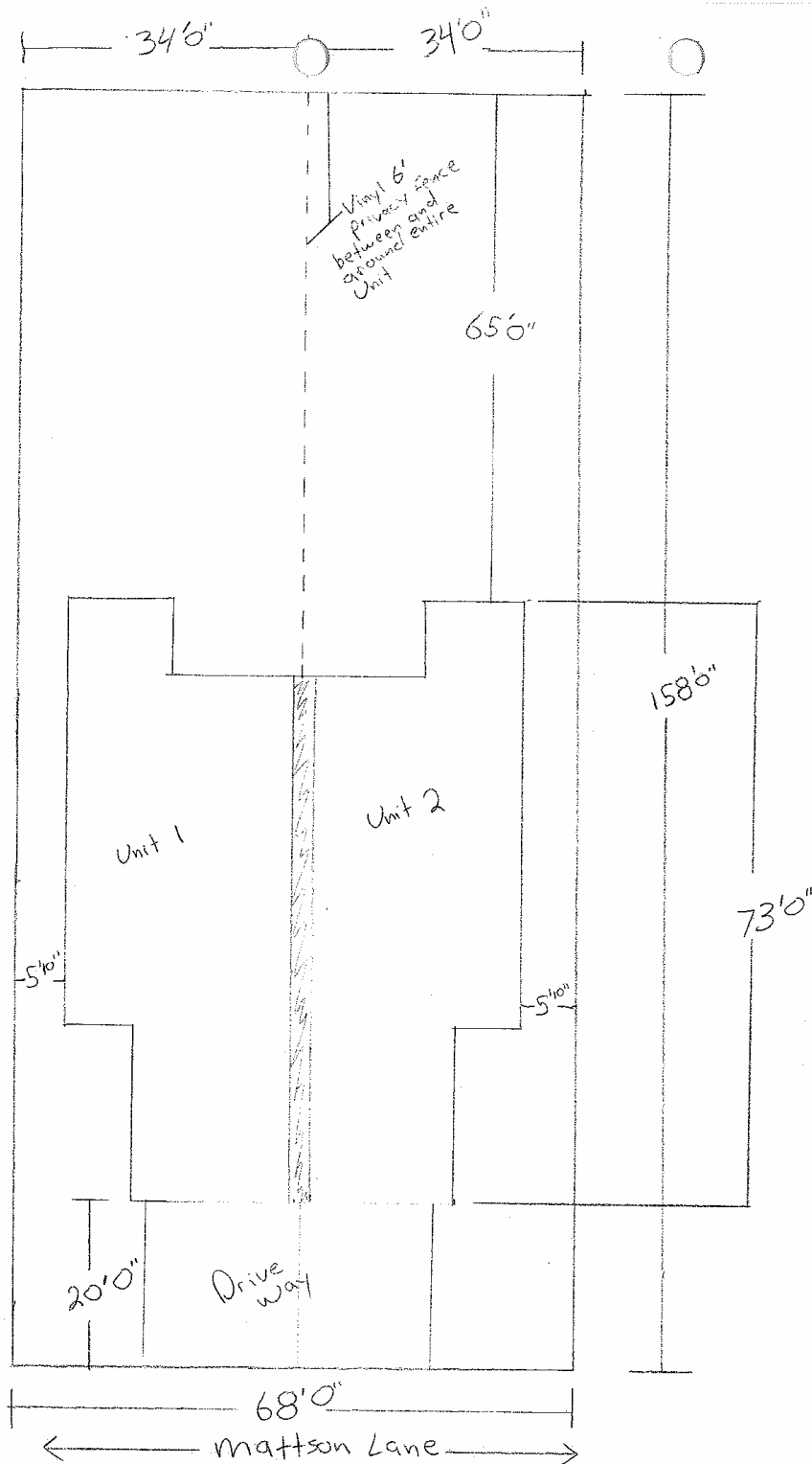
Subject site at 723 Mattson Lane



View west along Mattson Lane  
80 of 95



**ATTACHMENT C**  
Proposed Site Development



**ATTACHMENT D**

Zone Change #796

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

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR the Lot 15B, Mattson Acres Subdivision Amended,  
excepting the north 152.75 feet, containing approximately  
10,506 square feet

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

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

2.     DESCRIPTION.   A tract of land known as Lot 15B, Mattson Acres Subdivision, Amended, excepting the north 152.75 feet, containing approximately 10,506 square feet and is presently zoned Residential 6000 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 6000** to **Residential 5000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 5000** 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 22, 2007.

PASSED, ADOPTED AND APPROVED on second reading February 12, 2007.

CITY OF BILLINGS:

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

ATTEST:

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

ZC#796

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

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TITLE: Public Hearing for Special Review #833  
 DEPARTMENT: Planning & Community Services  
 PRESENTED BY: Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a Special Review to amend the previously approved master plan for Harvest Church to include a recreation center and outdoor aquatic center (water park) located at 1235 West Wicks Lane. The subject property is described as Lot 1, Block 4 of High Sierra Subdivision, Second Filing and is generally located on the east side of Wicks Lane, between High Sierra Boulevard and Siesta Avenue. The owner and applicant is Harvest Church and the representing agent is Alex Tommerup, AT Architecture. The Zoning Commission conducted a public hearing on January 2, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 3-0 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 #833 on a 3-0 vote.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

This is a Special Review to amend the previously approved master plan for Harvest Church to include a recreation center and outdoor aquatic center (water park) located at 1235 West Wicks Lane. The subject property is described as Lot 1, Block 4 of High Sierra Subdivision, Second Filing and is generally located on the east side of Wicks Lane, between High Sierra Boulevard and Siesta Avenue.

## **PROCEDURAL HISTORY**

- Special Review #734 - On January 27, 2003, a special review to permit a church, preschool, private elementary, junior high, and/or high school, as well as commercial recreation uses, was granted by City Council for the subject property.
- Special Review #782 - On June 13, 2005, the City Council approved a special review to permit a temporary go-kart track on the subject property.

## **BACKGROUND**

The original Master Plan for Harvest Church included the church, a preschool, private elementary, junior high, and/or high school, a baseball field, a soccer field, and a recreation center with an indoor water park. The applicant is now requesting to revise the northwest portion of the property to include an outdoor water park with a community center. As stated within their submittal, the community center will be open to the public throughout the year and the water park open during the summer months.

The Planning Department has reviewed this application and is recommending conditional approval. Conditions one through five are standard conditions for this type of recreational use within a residential zoning district. Condition #6 requires the developer to initiate a Development Agreement with the city for the completion of improvements along Wicks Lane and the timing of improvements on Siesta Avenue. In 2002, when the subdivision was initiated by the city, Harvest Church completed a Development Agreement for the first phase of property (the construction of the church), which included improvements along Wicks Lane fronting the church; however, they still need to be completed for the remainder of Wicks Lane. There are also portions of Siesta Avenue to the northwest that front the proposed water park and ballfields. A timeline for completion of improvements along this street shall be included with the Development Agreement.

## **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 does comply with the requirements of the zoning regulations.*

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.  
*This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. This application, with the imposed conditions, will be compatible with the surrounding neighborhood and will provide recreational amenities to the Heights, as well as the entire city. In addition the Heights Plan does specify that there is a need for a family aquatic center, which this will fulfill.*
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 applicant has proposed landscaping and berms around the aquatic center to create a buffer from the adjacent residential 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.

#### **CONDITIONS OF APPROVAL**

1. Development of the site shall be in substantial conformance with the submitted site plan. Deviations from the approved site plan that change the location of buildings, parking lot access or parking areas will require additional special review approval.
2. The outdoor public announcement system shall be used for announcements or safety only; there shall be no background music or un-amplified live outdoor entertainment permitted.
3. The applicant shall comply with all pool enclosure requirements set forth by Section 18-401, BMCC.
4. The outdoor aquatic center (water park) shall not be operated any later than 10:00 p.m. and the lighting standard locations and direction shall be approved by the Planning Department prior to installation.
5. No additional signage shall be permitted for the property, as the church is permitted one freestanding sign, which is located at the southeast entrance of the church.
6. Prior to any additional building permits being issued for the site, a Development Agreement for the improvements along Wicks Lane and the timing of improvements along Siesta Avenue shall be reviewed and approved by the Engineering Department.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special

Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

### **STAKEHOLDERS**

The City Zoning Commission conducted a public hearing on January 2, 2007. Brian Gifford, the Executive Pastor for Harvest Church and Alex Tommerup, the representing agent, were present at the hearing to answer any questions from 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.

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

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

- Recreation facilities that serve the diverse recreational needs of Billings and Yellowstone County.

### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #833 on a 3-0 vote.

### **ATTACHMENTS**

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



**ATTACHMENT A**  
**Zoning Map – Special Review #833**



**ATTACHMENT B**  
**Site photographs –Special Review #833**



**Figure 1: View east toward existing single family residences.**



**Figure 2: View north across the subject property toward the adjacent range uses.**

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 22, 2007**

**TITLE:** Amendment to Ordinance Section 2-214 Pursuant to Council Initiative by Council Member Stevens, Public Comment Period on Non-agenda Items to Occur no Later than 9:30 p.m.

**DEPARTMENT:** City Attorney's Office

**PRESENTED BY:** Brent Brooks, City Attorney; Bonnie Sutherland, Assistant City Attorney; and Tina Volek, City Administrator

**PROBLEM/ISSUE STATEMENT:** Pursuant to the previous council initiative of Councilmember Stevens as approved by the Mayor and City Council, the City Attorney's Office has made a very brief and simple amendment to City Ordinance Section 2-214(13) which requires that public comment on all non-agenda items during a regular City Council meeting shall begin on or before 9:30 p.m. This initiative and subsequent resulting ordinance amendment was designed to allow public comment on non-agenda items to be heard earlier in the evening particularly where a lengthy council agenda was possible. This reduces the potential for those waiting to make non-agenda public comment wait until after all current City Council business has concluded.

**FINANCIAL IMPACT:** None.

**ALTERNATIVES:** Approve the ordinance as amended pursuant to Council Initiative.

- Disapprove the proposed ordinance amendment and maintain the current practice of non-agenda public comment at the conclusion of the Mayor and City Council's regular agenda.

**RECOMMENDATION**

Staff recommends that the City Council approve the proposed amendment to Ordinance 2-214(13) upon first reading as drafted pursuant to previous City Council Initiative.

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

**ATTACHMENT:**

A. Draft of Ordinance

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

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 2-214; PROVIDING THAT THE PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS SHALL START NO LATER THAN 9:30 P.M.

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

*Section 1.* That Section 2-214 of the Billings, Montana City Code be amended so that such section shall read as follows:

“Sec. 2-214. Order of business.

At all regular meetings of the city council the order of business shall be as follows:

- (1) Call to Order;
- (2) Pledge of Allegiance;
- (3) Invocation;
- (4) Roll call;
- (5) Correcting, if necessary, and approving minutes of the last meeting or meetings;
- (6) Courtesies;
- (7) Proclamations;
- (8) Board, commission, and council reports;
- (9) Administrator reports;
- (10) Public comment on "non-public hearing" items on the published agenda.  
This section of the agenda is used for public comment on any item on the agenda that is not listed for an individual public hearing. Speakers are requested to indicate their desire to speak and which item or items on which they wish to offer comment by filling in their name, address and agenda item number or subject on a prepared "sign in" sheet. The length of time a speaker may speak is limited and is set by the mayor or presiding officer of the meeting.
- (11) Consent agenda. This section of the agenda is used for items of a routine or non-controversial nature that do not statutorily require a public hearing, yet still require action by the city council. The collective list of items on the consent agenda is considered by the city council in one motion. Individual consent agenda items may be separated by request of a councilmember for individual consideration by the city council and subsequently voted upon individually.
- (12) Regular agenda. This section of the agenda constitutes an individually numbered listing of business items either:

- a. Requiring a public hearing prior to council action,
  - b. Giving a special informational presentation, or
  - c. Any item that may be either controversial in nature or requires separate time by the council to fully discuss the matter prior to rendering a final and binding decision.
- (13) Public comment on "non-agenda" items, which shall start no later than 9:30 p.m. This section of the agenda is used for public comment on any matter or subject that is not included on the published agenda for that meeting. Speakers are requested to indicate their desire to speak and what item or topic on which they wish to offer comment by filling in their name, address and subject on a prepared "sign in" sheet. The length of time a speaker may speak is limited and is set by the mayor or presiding officer of the meeting. The city council does not take any formal action on these items, but may direct the city administrator to assign staff for follow up on an item.
- (14) Council initiatives. This section of the agenda is reserved for individual councilmember requests for future legislative or staff action. These shall be limited to giving direction to staff to assist in formulating policies, work plans, etc. for future consideration of the city council. An initiative moves forward by majority vote of the city council.
- (15) Adjourn.

The order of business may be altered for any meeting by a majority vote of the councilmembers present. The order of business for any special meeting shall be specified in the notice calling for the special meeting.”

*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 \_\_\_\_\_, 2007.

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

CITY OF BILLINGS

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

ATTEST:

By \_\_\_\_\_  
Marita Herold, MMC City Clerk

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