

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## January 8, 2007

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Mayor Tussing led the Pledge of Allegiance. Councilmember Peggy Gaghen gave the Invocation.

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

**MINUTES** – **December 18, 2006.** Approved as printed.

**COURTESIES** – Mayor Tussing thanked the Councilmembers for their participation on the Strategic Planning Committee.

**ADMINISTRATOR REPORTS – Tina Volek**

- Ms. Volek informed the Council of the two Board/Commission appointment changes on Item A: Denis Pitman and Bill Lucas.
- She also noted that the Staff requested that ITEM 1D be indefinitely tabled.
- Ms. Volek said the two (2) ex-parte emails received were copied and placed on the Councilmembers' desks this evening and also available in the binder at the back of the Council Chambers.
- She also noted that the agreement for the health insurance consultant (ITEM L) had been amended to include an indemnification clause.

**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.)*

- There were no speakers.

**CONSENT AGENDA:**

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

	Name	Board/Commission	Term	
			Begins	Ends
1.	Jack Bayne	Aviation & Transit Board	01/01/07	12/31/10

MINUTES 1/8/07

2.	Sterling Starr	Aviation & Transit Board	01/01/07	12/31/10
3.	Dave Hawkins	Board of Appeals	01/01/07	12/31/10
4.	Rick Selensky	Board of Appeals	01/01/07	12/31/10
5.	Ronald Crocker	Board of Ethics	01/01/07	12/31/10
6.	Michael Young	Board of Health	01/01/07	12/31/09
7.	Duane Loken	Community Development Board (At Large)	01/01/07	12/31/10
8.	Kamber Kelly	Community Development Board (Low Mod)	01/01/07	12/31/10
9.	David Goodridge	Community Development Board (Low Mod)	01/01/07	12/31/10
10.	Uriah Edmunds	Community Development Board (Low Mod)	01/01/07	12/31/10
11.	Peter Light	EMS Commission	01/01/07	12/31/10
12.	Brad Frank	Exchange Golf Corp. Board	01/01/07	12/31/09
13.	Broc Criswell	Exchange Golf Corp. Board	01/01/07	12/31/09
14.	John Walsh	Housing Authority	01/01/07	12/31/11
15.		Housing Authority	01/01/07	12/31/11
16.	*	Housing Authority	01/01/07	12/31/07
17.	*Skip Godfrey	Human Relations Commission	12/31/09	12/31/09
18.	N. Gregory Kohn	Human Relations Commission	01/01/07	12/31/10
19.	Shosana Tom	Human Relations Commission	01/01/07	12/31/10
20.	Jean Smith	Human Relations Commission	01/01/07	12/31/10
21.	Shari Nault Pullar	Library Board	01/01/07	12/31/10
22.	Randy Hafer	Parking Advisory Board	01/01/07	12/31/10
23.	Gary Temple	Parking Advisory Board	01/01/07	12/31/10
24.	Bruce Simon	Parking Advisory Board	01/01/07	12/31/10
25.	Denis Pitman	Parks/Rec/Cemetery Board	01/01/07	12/31/10
26.	Horace Hudson	Police Commission	01/01/07	12/31/09
27.	Ken Kingman	Police Commission	01/01/07	12/31/09
28.	Angela Cimino	Traffic Control Board	01/01/07	12/31/10
29.	Keith Lange	Traffic Control Board	01/01/07	12/31/10

30.	Bill Iverson	Yellowstone County Board of Planning (Ward 1)	01/01/07	12/31/10
31.	Donna Forbes	Yellowstone County Board of Planning (Ward 3)	01/01/07	12/31/10
32.	Bill Lucas	Yellowstone County Board of Planning (Ward 4)	01/01/07	12/31/10
33.	Fred Rogers	Yellowstone County Board of Planning (Ward 5)	01/01/07	12/31/10
34.	Thomas Grimm	Zoning Commission	01/01/07	12/31/10
35.	*Michael Larson	Zoning Commission	01/01/07	12/31/07

16 Unexpired term of Erica Limberhand (Resident Family)

17 Unexpired term of Linda Parker

35 Unexpired term of James Boyett

**B. Bid Awards:**

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

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

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

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

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

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

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

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

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

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

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

**L. Resolution #07-18518** relating to financing of certain proposed projects; establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

**M. Second/final reading ordinance #07-5396** expanding the boundaries of Ward IV to include recently annexed properties in Annex #06-15, described as: Tract 1A, of Amended Tracts 1 and 2, C/S 3279 and generally located east of the intersection of Grand Avenue and 54<sup>th</sup> St. W adjacent to Bishop Fox Subdivision, Rod Wilson and Judith Deines, owners & petitioners.

**N. Second/final reading ordinance #07-5397** amending Ordinance #02-5219, an ordinance providing that the BMCC be amended by revising Section 13-502: execution of contract; providing authority to and limitations on City Administrator approval of contract change orders.

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

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

**Q. Bills and Payroll.**

- (1) December 1, 2006
- (2) December 8, 2006
- (3) December 15, 2006

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

Councilmember Veis separated ITEM 1D.

Councilmember Stevens moved for approval of the Consent Agenda EXCEPT ITEM 1D, seconded by Councilmember Brewster. On a voice vote, the Consent Agenda EXCEPT ITEM 1D was unanimously approved.

Councilmember Stevens moved to table indefinitely ITEM 1D, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION #07-18519 authorizing the sale, disposal or lease of City-owned property described as: Lot 1, Block 1 and Lots 1 and 2, Block 2, Arlene Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. City Administrator Tina Volek advised that these properties are located along Zimmerman Trail between Poly Drive and Grand Avenue. The public hearing was opened. SHELLY DELANO of 3421 POLY DRIVE stated that her property is located at the northwest corner of Poly Drive and Zimmerman Trail. Her property is located directly across from the field that will be changed to City property. Ms. Delano requested zoning information for that property. Councilmember Veis advised that the zone change was for R-6000, which allows for single-family homes. Councilmember Boyer said that she and Councilmember Ulledalen are the Council representatives for the property location where she resides. Councilmember Boyer also requested that Ms. Delano contact her directly. There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

### **3. PUBLIC HEARING FIRST READING ORDINANCE FOR ZONE CHANGE 793: a zone change from Residential Multi-family (RMF) to Neighborhood Commercial (NC) on 14,000 square feet of an existing parcel of land described as: the 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. Zoning Commission recommends approval of the zone change and adoption of the twelve criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

City Planner Lora Mattox stated that the applicant is requesting a zone change from Residential Multi-family (RMF) to Neighborhood Commercial (NC) on the above referenced property. The applicant is proposing the zone change on approximately 14,000 square feet of the existing parcel. The area to be re-zoned to NC would be used as multi-family units with the ability to have a home occupation with employees. Ms. Mattox also noted the Building Department forwarded the following comment concerning this application: this zone change would result in an allowance to change the use from strictly residential to limited business use. She also noted that the use would permit regulation of employees by the building code as a service industry, along

with certain commercial regulations. Ms. Mattox said an analysis would need to be conducted by the owner or agent. It is believed that there is currently a business operating in one of the units located at this site. This business is operating as an advertising business with part-time employees. She said there are no outward appearances of a business operation, i.e. signage; however, a complaint was received concerning the possibility of business activities. She noted the operation of a business with employees in a residential zone is considered an illegal nonconforming use and would not be allowed to continue. Therefore, the applicant is requesting this zone change to remedy the illegal nonconforming use situation. If the zone change to Neighborhood Commercial is not granted, the business operation will be an illegal nonconforming use and be in violation of the zoning code. The proposed zone change must also comply with all applicable zoning requirements on the Neighborhood Commercial zoning district and applicable building codes. Ms. Mattox said the zone change was 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?*  
Yes, the new zoning will increase more housing and business choices within each neighborhood. The 2003 Growth Policy supports mixed-uses within neighborhoods. This is an appropriate development of an area with a mix of zoning districts including Residential Multi-family, Community Commercial, Residential Professional and Neighborhood Commercial.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The development currently provides two off-street parking spaces per unit and additional traffic should not impact the streets in this area.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on North 26<sup>th</sup> Street and is served by the City Fire and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.
5. *Will the new zoning provide adequate light and air?*  
This is an existing development with approved setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
This is an existing development with approval of lot coverage.

7. *Will the new zoning avoid undue concentration of population?*  
The new zoning does not require a minimum amount of square footage per structure; therefore, there could be some concentration of population. The primary use of this site is multi-family housing with the allowance of a home occupation with employees.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*  
*Transportation:* The development currently provides two off street parking spaces per unit and additional traffic should not impact the streets in this area.  
*Water and Sewerage:* The City will provide water and sewer service to the property and has adequate facilities to serve this property.  
*Schools and Parks:* There should be no effect on parks or schools from this rezoning.  
*Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.
9. *Does the new zoning give reasonable consideration to the character of the district?*  
There are several varying zoning districts in this area including Community Commercial, Neighborhood Commercial, Residential Professional, and Residential Multi-family. The existing neighborhood consists of a mix of single-family, multi-family and commercial development. The proposed Neighborhood Commercial zone should blend in with the neighborhood. The new zoning should not impact the character of the neighborhood.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The subject property is located in a mixed zoning area and is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
The new zoning is not expected to appreciably alter the value of buildings in the area.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

Yes, the new zoning will encourage the most appropriate use of this land in an area of transition between more intense commercial uses and the residential neighborhood.

Councilmember Clark asked if there were any casino or bar businesses located in the units. Ms. Mattox stated there were none. Councilmember Ronquillo asked if there were any parking restrictions. Ms. Mattox replied there were no restrictions for either zone. Councilmember Boyer stated concerns that if the Council approved this change for the one unit, then the “door would be open” carte blanche for future unit changes. Councilmembers Stevens and Clark voiced a concern about the condominium covenants. Councilmember Clark noted that the condominium covenants are governed by the condominium landowners.

The public hearing was opened. THOMAS TOWE of 2739 GREGORY DRIVE SOUTH stated that there was only one tier with eleven individual units that are included in the request. The area proposed for the zone change is located in an area with multiple zoning districts and is an area of transition between the North 27<sup>th</sup> Street and 6<sup>th</sup> Avenue North commercial zones and the North Park residential neighborhood. He also reported that the property is adjacent to Community Commercial zoning to the west (Albertsons) and north (proposed credit union); to the east is multi-family zoning and Residential Professional zoning to the south with a law office. He said the current Residential Multi-family zoning allows for home occupations; however, home occupations are regulated to control traffic and hours of operation. These regulations are in place to limit the impact to the surrounding residences, and do not allow outside employees to work within the residence. The owner of this property applied for a variance from the home occupation regulation in May 2006 to allow outside employees, and was denied by the City Board of Adjustment. Mr. Towe stated that the North Park Neighborhood Task Force held its regular meeting on November 2, 2006, and voted 17-2 to support the request for the zone change. Councilmember Veis asked Mr. Towe, “why not go back to the City Board of Adjustment for a variance.” Mr. Towe explained the regulations required a one-year waiting period before the issue could be addressed again.

JOHN WILCOX of 632 NORTH 26<sup>th</sup> STREET DBA WILCOX ADVERTISING AGENCY explained to the Council that he attended the Council meeting to “put a face” to the person who owns the subject unit. He said the reason for his request for the Council to reconsider the zone change was that he has been a resident of Billings for over 30 years and he was trying to “gracefully” retire. Mr. Wilcox stated that he has been active in the community and has operated his Internet-based business from the unit for 22+ years. Councilmember Gaghen stated she spoke for the Council and asked Mr. Wilson not to “take this personally”. He thanked the Council for its consideration.

JOE WHITE of 926 N. 30<sup>th</sup> ST. stated that he opposed the zone change.

RANDY HAFER of 2910 MORLEDGE STREET stated he was the originator of this project and the original concept was to provide a high quality “home occupation” multi-family residential unit complex located in the downtown area. He said that all he requested



of the Council was consideration for what had already been allowed with the zone change of having employees present.

DAVE BOVEE of 424 LEWIS STREET voiced his concern about the property values for surrounding properties and that the Council seemed to continually make "exceptions to rules" with no regard for conformity or compliance. There were no other speakers. The public hearing was closed.

Councilmember Ronquillo moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brewster. On a roll call vote, the motion was approved 6-5. Councilmembers Gaghen, Brewster, Veis, Ruegamer, Ulledalen and Mayor Tussing voted "yes" and Councilmembers Ronquillo, Stevens, Boyer, Jones and Clark voted "no".

Mayor Tussing called a brief recess at 7:55 p.m.

The meeting was called back to order at 8:10 p.m.

**4. PUBLIC HEARING FIRST READING ORDINANCE FOR ZONE CHANGE 794: a zone change from Agriculture Suburban to Residential Multi-family-Restricted (RMF-R), Residential-5,000 (R50) and Residential-7,000 (R70) on a 39.55-acre parcel of land described as: Tract 1A, C/S 3279 amended. And located North of Grand Avenue at 52<sup>nd</sup> Street West. Rod Wilson and Judith Deines, owners; Engineering, Inc. agent. Zoning Commission makes no recommendation, as a result of a tie vote. (Action: approval or disapproval of Zone Change.)**

City Planner Aura Lindstrand reported that the two protests were no longer valid; therefore a two-thirds majority vote of the Council was not needed. She noted that the applicant requested to rezone Tract 1A of C/S 3279 Amended from Agricultural Suburban (AS) to Residential Multi-family Restricted (RMF-R), Residential 5000 (R-50), and Residential 7000 (R-70). 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 currently vacant agricultural land.

Ms. Lindstrand said the proposed zoning will allow for multi-family residential uses on the western portion of the property and duplexes and single-family residences on the eastern portion of the property. She added that the property owner's intent is to create large lots within the subdivision for condominium units. In addition to this tract, the applicant owns one 10-acre lot within Bishop Fox Subdivision to the west that is proposed with the major subdivision. This lot is proposed for single-family condominium units on two approximate 4-acre lots zoned R-96. She said with the proposed zoning, Staff has calculated the following densities based on the net acreages and lot coverage requirement for each zoning district. (Ms. Lindstrand also noted that these are maximum densities based on the applicant's proposal of 6-plexes, duplexes, and single-family residential uses and does not account for setbacks and internal private streets.)

<b>Zoning District</b>	<b>Maximum Lot Coverage</b>	<b><u>Net Acreage</u> Square Footage</b>	<b>Approximate Total Units Permitted</b>
R-96 (single-family only)	30%	<u>5.47 acres</u> 238,273.2 square feet	24 single-family residences
R-70 (single-family and duplexes only)	30%	<u>4.82 acres</u> 209,959.2 square feet	21 duplexes (42 units)
R-50 (single-family and duplexes only)	40%	<u>10.07 acres</u> 438,649.2 square feet	54 duplexes (108 units)
RMF-R (6-plexes proposed)	40%	<u>6.61 acres</u> 287,931.6 square feet	22 6-plexes (132 units)
		<b>TOTAL APPROXIMATE UNITS</b>	<b>306 units</b>

Ms. Lindstrand stated that the proposed zone change will have to comply with all applicable zoning requirements on the Neighborhood Commercial zoning district and applicable building codes. The zone change was 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?*  
Yes, the new zoning will increase more housing and business choices within each neighborhood. The 2003 Growth Policy supports mixed-uses within neighborhoods. This is an appropriate development of an area with a mix of zoning districts including Residential Multi-family, Community Commercial, Residential Professional and Neighborhood Commercial.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The development currently provides two off-street parking spaces per unit and additional traffic should not impact the streets in this area.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on North 26<sup>th</sup> Street and is served by the City Fire and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.

5. *Will the new zoning provide adequate light and air?*  
This is an existing development with approved setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
This is an existing development with approval of lot coverage.
7. *Will the new zoning avoid undue concentration of population?*  
The new zoning does not require a minimum amount of square footage per structure; therefore, there could be some concentration of population. The primary use of this site is multi-family housing with the allowance of a home occupation with employees.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*  
*Transportation:* The development currently provides two off street parking spaces per unit and additional traffic should not impact the streets in this area.  
*Water and Sewerage:* The City will provide water and sewer service to the property and has adequate facilities to serve this property.  
*Schools and Parks:* There should be no effect on parks or schools from this rezoning.  
*Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.
9. *Does the new zoning give reasonable consideration to the character of the district?*  
There are several varying zoning districts in this area including Community Commercial, Neighborhood Commercial, Residential Professional, and Residential Multi-family. The existing neighborhood consists of a mix of single-family, multi-family and commercial development. The proposed Neighborhood Commercial zone should blend in with the neighborhood. The new zoning should not impact the character of the neighborhood.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The subject property is located in a mixed zoning area and is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
The new zoning is not expected to appreciably alter the value of buildings in the area.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*  
Yes, the new zoning will encourage the most appropriate use of this land in an area of transition between more intense commercial uses and the residential neighborhood.

The public hearing was opened. JOE WHITE of 926 N. 30<sup>th</sup> ST. stated he is opposed to the zone change.

JEFF KANNING of 1943 MARIPOSA LANE explained to the Council that he also attended the Council meeting to “urge” the Council to approve this zone change.

RICK LEUTHOLD of 4310 BRANDYWOOD DRIVE and Engineering, Inc. stated that the project fits the plan for the intersection of 54<sup>th</sup> and 56<sup>th</sup> Streets and Grand Avenue. The area is already zoned with residential development with higher density. He stated there would be approximately a 6.8% traffic increase and a tax contribution. Engineering, Inc. would provide a turn lane for this project. Mr. Leuthold noted that this is an “area of transition”. Councilmember Gaghen asked if meetings would be held with the landowners. Mr. Leuthold replied meetings would be held. He also “urged” the Council to approve this zone change.

JEFF JUNKERT of 1466 SHADE TREE CIRCLE and Grand Peaks Architects explained to the Council that he attended the Council meeting to “urge” the Council to approve this zone change. He stated that this project would provide “affordable” units. Councilmember Gaghen asked what he meant by “affordable” units. Mr. Junkert replied approximately \$150,000 for approximately 1100-1400 square feet of living space. Councilmember Veis asked about future phases -- whether they would be similar to the R-50 zone. Mr. Junkert stated he really did not know at this time.

ROD WILSON of 422 SHAMROCK LANE stated he is the co-developer and co-owner of the subject property. He further explained that each lot would have a “master” association that would comprise 11 associations and approximately 90 units. He continued by noting that this is an “area of transition”. Councilmember Gaghen asked for explanation as to why a sudden withdrawal of two (2) protestors. Mr. Wilson reported that he and Mr. Junkert held a meeting with the three (3) protestors, whereby their misconceptions and all questions were satisfactorily answered and explained. He stated there would be future meetings held. He also “urged” the Council to approve this zone change.

MYLES EAGAN of 2690 SOUTHRIDGE reported that he attended the Council meeting this evening to verify that he had the conversation with Bill Deines (who owns the eighty acres to the east of this project) and also with Jack and Jan Kramer (who own a

farm to the south). He stated that the main objection they had to this project was the wording and the misunderstanding that the project was for a large apartment complex. He reported that they now understand that the maximum height would be two (2) stories and the maximum number of units would be six (6). He also "urged" the Council to approve this zone change. There were no other speakers. The public hearing was closed.

Mayor Tussing asked what the zoning was in Cottonwood Subdivision. Ms. Lindstrand replied that it was Residential 7000. Ms. Volek reminded the Council that there must be eight (8) votes in favor to approve this zone change. Councilmember Clark moved for approval of the zone change, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND SPECIAL REVIEW #831: a special review to locate a drive-through service in a Community Commercial zone adjacent to a residential zone on Tract B, C/S 1011 (aka Lot 1, E.D. King Subdivision preliminary plat) and located at the Northeast corner of Grand Avenue and Zimmerman Trail. Rocky Mountain Community Church, owner; Hawkins Company - Jessica Aguilar, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

City Planner David Green reported that the special review was to permit construction of a dual lane drive-up for a proposed Walgreens on a parcel of land zoned Community Commercial (CC) and described as Lot 3, Block 1, E. D. King Subdivision. He also stated the subject property is located on the northeast corner of Grand Avenue and Zimmerman Trail. He referenced Section 27-1503(D) which specifies that all special reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).  
*This application complies with the requirements of the zoning regulations.*
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.  
*This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.*
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.  
*The proposed use is compatible with the surrounding uses, will be screened from existing residential properties and fits in with the local neighborhood.*

Mr. Green said the proposed Walgreens is surrounded by Residential Professional, Residential-8000, Community Commercial and Agricultural Open Space zoning. He further explained that Walgreens provides pharmacy services as well as a source of other medical items not found in grocery stores. He said that Walgreens locates its stores at major intersections in order to take advantage of existing traffic patterns. Because the stores are

neighborhood-oriented, they typically only draw customers from a 1 or 2-mile radius and do not add a significant amount of traffic to the area. He noted they will employ as many as twenty-four (24) people in the store. He also noted that access to the site will be from the southeast corner off of Grand Avenue and off of Zimmerman Trail. Councilmember Gaghen asked if this Walgreens would be comparable to the Heights Walgreen. Mr. Green replied he believed it would be comparable. Councilmember Ronquillo asked about the parking. Mr. Green reported there would be three (3) parking lots.

The public hearing was opened. JESSICA AGUILAR of 8645 WEST FRANKLIN ROAD, BOISE, ID explained she is the agent for Hawkins Company, the owner of the subject lot. She stated she wanted to clarify the amount of the square footage of the Heights store as compared to the proposed subject store. She stated the proposed subject store would be much larger than the Heights store. She also responded to the other question with regard to circulation to the shopping center by stating this is part of the E. D. King Subdivision and there are three lots. Councilmember Stevens asked why the two drive-up lanes. Ms. Aguilar explained it was for convenience when dropping off and picking up prescriptions. She thanked the Council for its consideration. There were no other speakers. The public hearing was closed.

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

**6. PUBLIC HEARING AND SPECIAL REVIEW #832: a special review for an all-beverage liquor license with gaming for a proposed Montecito Pizzeria and Casino in an Entryway Light Industrial zone on a 1.9-acre parcel of land described as: Lot 15, Block 1 Montana Sapphire Subdivision and located at 4240 King Ave. West. Sharon Turbiville, owner; Michael Burke - HGFA Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell stated this is a special review for an all-beverage liquor license with gaming for a new restaurant, Montecito Pizza, at 4241 Kari Lane, on Lot 15, Block 1, Montana Sapphire Subdivision in an Entryway Light Industrial zoning district. She explained that the Montecito Casino and Pizzeria is proposed to be a total of 7,500 square feet with a 2,500 square foot outdoor patio lounge on the north side of the structure. The lot is approximately 1.9 acres and can accommodate the required building setbacks, parking, landscaping and access. She noted that at 32<sup>nd</sup> Street West and King Avenue West, one mile east of this location, there are four locations with on-premise alcohol beverage licenses that also offer gaming. Ms. Cromwell advised that at this site there is one location approved to offer on-premise alcoholic beverages with gaming, which is the Hollywood Casino that is under construction. This development will primarily be a restaurant with an attached gaming area. There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location. She noted the

development of a restaurant and casino in this location will fit in with the intention to provide a limited number of commercial facilities in this zoning district. Ms Cromwell said the proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging new developments that are sensitive to and compatible with the character of the adjacent land use patterns. The Entryway Light Industrial district and the Planned Development district north of this area are intended for the concentration of medical, commercial and light manufacturing uses. She said the site plan submitted shows the intent to develop a well-landscaped and designed restaurant location. The Planning Department recommended eight conditions of approval to the Zoning Commission. The Zoning Commission conducted the public hearing and voted 4-0 to recommend conditional approval to the City Council. Ms. Cromwell referenced Section 27-1503(D) which 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. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.*
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.  
*The proposed location of the all beverage liquor license at this location is appropriate and conditions of approval are recommended.*

She also noted the Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

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

Councilmember Clark asked if this project was part of the Shiloh project. Ms. Cromwell replied “no.” The public hearing was opened. MICHAEL BURKE of 2101 WILCOX reported that he was the agent for this project. He asked the Council to approve this special review.

SHARON TURBIVILLE, NO ADDRESS GIVEN, explained to the Council that she has moved back to Billings, has been in the restaurant/casino business for many years and has been very successful. She further explained that this would mainly be a restaurant environment. Councilmember Clark asked if this was a franchise. Ms. Turbiville replied “no”. There were no other speakers. The public hearing was closed.

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

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

- DAVE GELLNER OF 418 E. ALKALI CREEK RD. said he wants to “hook-up” to the City sewer system. He stated the fee for this service would be \$25,000. At this time, he requested an “extended payment plan” from the Council.
- JOE WHITE OF 926 N. 30<sup>th</sup> ST. stated he opposes the increase in assignment of police patrol cars.
- RON HILL OF 2242 WEST SKOKIE explained to the Council that he attended the Council meeting to “put a face” to the person who sent the email to the Council with reference to the CIP Committee meeting. He further explained his request for the Council to reconsider the Lake Hill Storm Drain Project.

**Council Initiatives**

- COUNCILMEMBER BREWSTER: Moved to have the Heights Wal-Mart checked for its compliance with the subdivision landscape specifications. He also reported that he attended a meeting with the surrounding homeowners and they would not be opposed to a fence.

**ADJOURN** – The meeting was adjourned at 9:30 p.m.

THE CITY OF BILLINGS:

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



MINUTES 1/8/07

Ron Tussing, Mayor

ATTEST:

BY: \_\_\_\_\_  
Cam Trudeau Deputy City Clerk