

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 22, 2007

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th 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 Jim Ronquillo gave the Invocation.

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

MINUTES – **January 8, 2007.** Approved as printed.

COURTESIES – Finance Division.

- Deputy City Administrator Bruce McCandless said the City has received the GFOA Certificate of Achievement for Excellence in Financial Reporting for the 22nd consecutive year and the Budget Excellence Award for the 15th consecutive year. He introduced Financial Services Manager Pat Weber. Mr. Weber presented plaques of recognition to Financial Services Accountants Vicki Harrison and Jim Hauck. He accepted the plaque for Accountant Alene Malloy in her absence.
- Chris Brink, Economic Development Coordinator for Beartooth Resource, Conservation and Development, Inc. informed the Council he would be submitting the annual Memorandum of Understanding (MOU) to the City. He reminded the Council the Beartooth RC&D serves a 5-county area and coordinates economic development initiatives.
- Councilmember Ruegamer noted his recent experiences on a ride-along on a City garbage truck and the committee to select a landfill consultant. He noted that the landfill recycles over 7,000 tons of waste each year and uses over 12,000 tons of “clean” dirt as cover. Councilmember Ruegamer stated that the landfill is a very efficient operation.
- Councilmember Gaghen noted that two of the City's administrative staff would soon be recognized by their respective alma maters as distinguished alumni: Police Chief Rich St. John by Rocky Mountain College and Fire Chief Marv Jochems by MSU-Billings.
- Mayor Tussing stated that he recently accepted two awards from the Montana Historical Society on behalf of the City. The two awards recognized the addition of two sites to the National Register of Historic Places. These sites were Black Otter Trail and the Montana Avenue Historic District.

ADMINISTRATOR REPORTS – Tina Volek

- Ms. Volek reminded the Council that they received in their Friday Packets, a

revised memo for Item A – the Event Committee appointments and a revised agenda with the event committee appointees.

- She noted that several ex parte communications to the Council had been received on Agenda Item L. Copies were available in the binder at the back of the Council Chambers this evening.
- Ms. Volek also reminded the Council of the joint meeting with Yellowstone County, School District #2, and the City of Laurel on Thursday, January 25 at 6:00 p.m. at the MSU-Billings Downtown campus

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.)

- TOM TOWE OF 2739 GREGORY DRIVE S. spoke on Item L. He said he was surprised at the number of questions and comments on this item at the January 8th meeting. He requested that the Council delay action on this item to February 12th, to allow time for him to explore several other options.

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

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.

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

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

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

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

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

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.

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

I. Confirmation of Police Officers:

- (1) Steve Hallam
- (2) Katherine Nash

J. Resolution of Intention 07-18520 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.

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.

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 26th Street aka Skyline Court Condominiums. Thomas Towe and Court E. Ball Partnership, owner; Susan Lovely, agent.

M. Second/Final Reading Ordinance 07-5398 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 52nd Street West. Rod Wilson and Judith Deines, owners; Engineering, Inc. agent.

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

O. Bills and Payroll.

- (1) December 22, 2006
- (2) December 1 - 31, 2006 (Municipal Court)
- (3) January 2, 2007

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated ITEMS 1K and 1L.

Councilmember Gaghen moved for approval of the Consent Agenda EXCEPT ITEMS 1K and 1L, seconded by Councilmember Stevens. On a voice vote, the Consent Agenda EXCEPT ITEMS 1K and 1L was unanimously approved.

Councilmember Gaghen moved for approval of ITEM 1K, seconded by Councilmember Veis. Councilmember Brewster stated that this item was improperly added to the agenda at the Agenda Meeting and therefore he will vote against it. Mayor Tussing stated that he was voting against this item for the same reason Councilmember Brewster is voting against the item, and because there was a possibility of accepting a donation which was removed at that meeting. He further stated he opposed this because of it happening outside of the opportunity for public discussion and possible debate and a problem with spending tax dollars when the City might not have to do so. He added that he was not sure if the donor still wishes to make the donation.

Councilmember Ruegamer stated that he did not know what this is and asked for an explanation. Mayor Tussing explained that the Mayor's Committee on Homelessness wants to bring a group from Seattle (Planning Human Services) to conduct a conference in Billings because they have one of the nationally recognized best practices in dealing with the homeless. The cost is approximately \$10,000. The State of Montana has agreed to pay half of the travel and per diem expenses for the two conference presenters. The Rimrock Foundation offer to donate \$1,500 towards the total expenses was the original item on the draft Council agenda. This item was removed from the agenda at the January 9th Council Agenda Setting Meeting and replaced with ITEM 1K. Councilmember Ruegamer stated that when someone offers to

donate money the Council should accept. On a voice vote, the motion was not approved. Councilmembers Gaghen, Boyer and Clark voted “yes”.

Councilmember Gaghen moved to approve ITEM L, seconded by Councilmember Veis. Councilmember Clark made a substitute motion to postpone action to February 12th, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 07-18521 approving and adopting second quarter budget amendments for FY 2006/2007. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ronquillo moved to approve the Staff recommendation, seconded by Councilmember Brewster.

Councilmember Stevens asked the Staff why the right-of-way sales proceeds would be credited to the Gas Tax Fund. City Administrator Tina Volek explained that the original funding for the acquisition was the Gas Tax Fund. Financial Services Manager Pat Weber added that historically the right-of-way sales have been given to the Gas Tax Fund. Mayor Tussing stated he does not agree with creating an additional federal lobbyist position. On a voice vote, the motion was approved. Councilmembers Jones and Veis voted “no”.

3. PUBLIC HEARING AND RESOLUTION 07-18522 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.) There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Clark moved to approve the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Stevens asked why the City would pay for the County water assessment totals of \$9,300. City Administrator Tina Volek replied that this is a property that is located in the county and the owners have requested annexation to the City because they are “seeking” water from the City. She noted that when this type of annexation is requested and accepted, the City of Billings pays the water assessment totals. However, because a new water main is being “laid” down there, that is the reason for the annexation.

Wyeth Friday from the Planning Department further explained that this is a “co-op” project between the City and the County for the new water main pipe line. The County has created an RSID to pay for its portion of the improvements of the water line.

The City properties that are in the City now will pay when the water line is completed and will not pay any more than the water bill they are now paying. This property and several of the County properties already have City water access and have been paying for this service for several years. The monies from that service would be credited to pay off the \$9,300 of the RSID. Councilmember Clark asked if this water main was being replaced somewhere else in the City, the residents on that replacement location would not be required to pay. Mr. Friday replied, "Yes, that is correct." City Attorney Brent Brooks stated that he briefly worked with Mr. Mumford and Mr. Friday on this project and he noted that this particular property has been paying for City water services just as the adjacent property owners that are already included on the City water service. He further explained that part of the water rates that those properties pay include replacement cost. Therefore, this particular property has been paying all along for replacement cost just like the adjacent properties with the exception that the property was not located in the City. He further explained that this homeowner has already been paying for City water and in some ways the City would be "double dipping" if these homeowners were charged the \$9,300 fee.

Councilmember Ronquillo stated he met with some of the homeowners and they voiced a concern with reference to the eight-inch or twelve-inch line and which size the County was willing to pay for. Ms. Volek explained that she and Public Works Director Dave Mumford met last week with the County Commissioners and their Staff and were informed that the twelve-inch line had been chosen. They are in the process of taking bids to have this work done and once the bids are received and they have a dollar amount, the RSID will be created. Ms. Volek stated additional discussion will be held with the County. The City will pay its portion of the amount. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND 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.) Planner Aura Lindstrand noted that in February of 2006, the City Council approved Ordinance #06-5359 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.

Ms. Lindstrand said that 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.

She said 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.

Ms. Lindstrand said 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 seemed 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. She noted that 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 both Planning Board and City Council consideration. Ms. Lindstrand said 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 for this variance. City Administrator Tina Volek noted the provided ordinance language is a little different perhaps to "over-editing". She clarified that it should say, "A forfeiture fee of \$325 shall be required".

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved to approve the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

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.) Zoning Coordinator Nicole Cromwell reported 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. She noted that the City Council approved Special Review #452 on December 9, 1991, to allow the construction of this commercial greenhouse. The 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.

Ms. Cromwell said 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.

She further explained 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. Southeast 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 principal 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.

She said 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 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 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.

Councilmember Brewster expressed concern with Bench Boulevard not being an "arterial" and up-to-standard. Councilmember Brewster asked why is the City not requiring Bench Boulevard improvement to be part of this development. City Administrator Tina Volek stated the arterial fee was developed to make up the difference between a residential and commercial development. Therefore, the City would be contributing to the development of Bench Boulevard by way of the arterial fee to make up the difference to bring it out to the commercial width. Ms. Volek also reported that there is \$12 million set aside for improvements to Bench Boulevard in 2009.

The public hearing was opened. CHUCK GAINAN, NO ADDRESS GIVEN, and representing Big Sky Floral Supply stated the first part of the development is the proposed multi-family four plexes. Mr. Gainan also stated that he wanted to assure the Council that he is aware of the “density” issue. There were no other speakers. The public hearing was closed.

Councilmember Boyer moved to approve the Zoning Commission recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

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.) Planner Lora Mattox reported this is a zone change request from Residential 6000 to Residential 5000. She explained 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 in size 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.

Ms. Mattox said the Planning Department has reviewed this application and is recommending denial based on the twelve (12) criteria for zone changes. The Planning Department considers the request for Residential 5000 would constitute “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 “spot” zoning has occurred. In this particular request, the Planning Department has made the following determinations:

- Test 1: The requested use is significantly different that 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.

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 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.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ulledalen moved to approve the Zoning Commission recommendation for denial and to adopt the determinations of the 12 criteria, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

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 1st 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.)

Planner Aura Lindstrand reported this is a special review to amend the previously-approved master plan for Harvest Church to include a recreation center and outdoor aquatic center (waterpark) located at 1235 West Wicks Lane. The subject property is generally located on the east side of Wicks Lane, between High Sierra Boulevard and Siesta Avenue. She noted that several other special reviews occurred on this property as follows:

- 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.

Ms. Lindstrand stated 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.

Ms. Lindstrand explained 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. She added that 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, the improvements 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 ball fields. A timeline for completion of improvements along this street shall be included with this Development Agreement.

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.

The recommended conditions are:

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.

The public hearing was opened. ALEX TOMMERUP, 170 ERICKSON COURT, of AT Architecture, explained that originally the indoor facility plan was not financially feasible, so they “switched” to an outdoor facility with a community center. City Administrator Tina Volek asked Mr. Tommerup if he knew the scheduled completion date. Mr. Tommerup stated that he did not know, however Mr. Gifford might possibly be able to answer that question. Councilmember Gaghen voiced a concern about the public announcement system being too loud and noisy. Mr. Tommerup explained that due to the elevation changes the public announcement system should not be a problem. Councilmember Boyer asked about the lights being left on until 10:00 p.m. at night. Mr. Tommerup replied, “That is the City’s limitations on its pools.”

BRIAN GIFFORD, 1336 MIRROR LAKE LANE, stated he is the Executive Pastor of Harvest Church. Pastor Gifford stated that the Harvest Community Foundation was created for raising funds. He also stated that they should “break ground” on the Community Center sometime this year. The operations are being “mirrored” to the City pools and fees that are available to the public. Pastor Gifford explained the collected fees would be used for the operation and maintenance of the pool.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved to approve the Zoning Commission recommendation with the noted conditions that apply to only the pool area, seconded by Councilmember Stevens.

Councilmember Ruegamer stated that Harvest Church came to the City Council with reference to the Go-Kart track it had installed. He said he personally visited the track and watched the Go-Kart races; the noise was not very loud. He also commented that when Harvest Church says it will do something, it does.

Councilmember Stevens moved to amend condition of Approval #2 to remove the verbiage “un-amplified” from the listed conditions, seconded by Councilmember Clark. On a voice vote, the motion was approved. Councilmembers Gaghen, Jones and Brewster voted “no”.

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.)

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Stevens moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Mayor Tussing asked if the Council is hearing an item and it is 9:22 p.m. and it is known the next item is going to go well past the 9:30 p.m. deadline, would it be okay for the public comment to be held at 9:22 p.m. so as not to interrupt the next agenda item. City Attorney Brent Brooks replied, “Yes”. Councilmember Veis

asked Mr. Brooks what would happen if the Council is in the middle of a public hearing and did not make the 9:30 p.m. deadline. Mr. Brooks commented the best option would be to proceed with the public comment on non-agenda items and then resume the public hearing. Councilmember Jones said he has some concern about this item. "If we are setting the time at 9:30, we have a big crowd and we have a long agenda that has been going on forever, and if all of a sudden someone comes in with a large group of people, we are actually going to penalize the people that are here, whose items are on the agenda, and that have something to say. They are going to get 'stuck out' even further," he said. Councilmember Jones said there are all kinds of opportunities for people to talk to the councilmembers – they can call them, attend work sessions, etc. "Putting people off that are on the agenda and making them actually wait ... is the wrong message to send," he stated. Councilmember Ulledalen said he can appreciate what Councilmember Stevens is trying to accomplish, however the Council just needs to find another way to go about it. Councilmember Stevens noted that on some of the agenda items, the Council is aware there will not be any public comment even though it is a public hearing. She suggested some "agenda prepping" with any controversial items. She added this way, the people could speak at the beginning without having to wait to the end of the meeting. Councilmember Ruegamer said he really believes that the 9:30 p.m. stopping time has more "upside" than "downside". He also noted that the Council would have to be very diligent about this issue.

Councilmember Ulledalen stated that the Council already has latitude toward the agenda items. Mr. Brooks said that there is a separate ordinance that sets forth the Council's order of business and suggested a "look" at the ordinance to make sure there are no conflicts between the established ordinance and the proposed one. Mayor Tussing added if a large group of people arrived and each wanted to testify for three minutes, then you are "looking" at a ninety-minute time lapse before you can proceed to the next agenda item. Councilmember Veis commented that it is up to the public to be aware of the items on the agenda and have an understanding of the procedure.

Councilmember Stevens suggested the verbiage read "at 9:30 p.m. or at the end of the current agenda item". Councilmember Brewster added that if it was decided to not approve this change now, the Council still has the discretion at any time to adjust the agenda items. Councilmember Stevens asked for clarification on "order of business" with reference to amending it "on the sly" during the meeting. Mr. Brooks replied, "Yes, as per *Robert's Rules of Order*, this would be allowable." He added that there is another ordinance that indicates unless specifically stated, *Robert's Rules of Order* would apply to the parliamentary rule. However, he further commented, there is firm responsibility on the public to know the agenda and to appear at the appropriate time. Mr. Brooks further explained that the main concern was to be consistent with the agenda items. Councilmember Stevens withdrew her motion, the second concurred. Councilmember Veis moved to table this item indefinitely, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

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.)

There were no speakers.

Council Initiatives

- **MAYOR TUSSING:** MOVED to direct Staff to re-contact Rimrock Foundation to determine whether it is still willing to donate \$1,500 to the Mayor's Committee on Homelessness for the Pioneer Human Services Spring Conference, seconded by Councilmember Jones. On a roll call vote, the motion was approved 6-5. Councilmembers Stevens, Brewster, Veis, Ruegamer, Jones and Mayor Tussing voted "yes". Councilmembers Ronquillo, Gaghen, Ulledalen, Boyer and Clark voted "no".

ADJOURN – With all business complete, the meeting was adjourned at 8:07 p.m.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Marita Herold, MMC City Clerk