

ORDINANCES
MILES CITY, MONTANA

FAILED

ORDINANCE NO. 1310

AN ORDINANCE CHANGING THE ZONING OF TRACT No. 4 OF THE DYBA ADDITION TO THE CITY OF MILES CITY FROM GENERAL COMMERCIAL ZONE TO HIGHWAY COMMERCIAL ZONE, AND PROVIDING FOR A HEARING THEREON.

WHEREAS, John Hoofman, on behalf of JNJ Management LLC, and on behalf of property owners Joseph and Janine Yates, has made application for the property described as Tract No. 4 of the Dyba Addition to the City of Miles City, Montana, to be rezoned from mixed zones of General Commercial District (GC), to Highway Commercial District (HWC) zone;

AND WHEREAS, such property is situated within the city limits of the City of Miles City, Montana, and subject to the zoning jurisdiction of the City of Miles City;

AND WHEREAS, Section 24-96 of the Code of Ordinances of Miles City, Montana requires that such application be referred to the City Zoning Commission for public hearing and recommendation to the City Council prior to any action by the City Council upon such application;

AND WHEREAS, the Miles City Zoning Commission, on February 6, 2017, upon public hearing and deliberation, recommended to the City Council that such zoning change be approved.

BE IT ORDAINED, by the City Council of the City of Miles City, Montana, as follows:

Section 1. Zoning for the following described real property located within the City of Miles City, Custer County, Montana, is hereby rezoned from General Commercial District (GC), to Highway Commercial District (HWC) zone, to wit:

Tract No. 4 of the Dyba Addition to the City of Miles City, according to the official plat and survey thereof on file with the Clerk and Recorder in and for Custer County, Montana.

Section 2. The City of Miles City Staff Report prepared as part of the review of this application, and attached hereto as Exhibit "A," is hereby adopted as Findings of Fact to support the Council's decision.

Section 3. Prior to final passage, a public hearing shall be held upon this proposed zoning change before the City Council at 7:00 P.M. on the 28th day of March, 2017, at the Custer County District High School, 205 South Center, Miles City, Montana.

Section 4. The City Clerk shall give notice of the date, time and place of such hearing by publication in the Miles City Star at least 15 days prior to the date of such hearing, as well as notice by certified mail at least 15 calendar days prior to such hearing to the applicant, landowner, and all adjoining property owners and owners of land within 150 feet of the subject property, containing all information required by, and in accordance with, MCA

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Sections 76-2-303 and 305, as well as Section 24-97 of the Code of Ordinances of Miles City, Montana.

Section 5. This ordinance shall be in full force and effect thirty (30) days after its final passage and approval.

Said Ordinance read and put on its passage this 28th day of February, 2017.

ATTEST:

John Hollowell, Mayor

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this 28th day of March, 2017.

ATTEST:

John Hollowell, Mayor

Lorrie Pearce, City Clerk

CITY OF MILES CITY
Zoning Commission
Box 910
Miles City, MT 59301

February 7, 2017

Mayor Hollowell and City Council Members,

RE: Administrative changes to the adopted zoning map and text.

RE: Proposed re-zone for the property located at 2210 Valley Drive E Miles City, MT 59301 – at the intersection of Valley Drive E and N Strevell Avenue in the northeast portion of Miles City. The legal description of the property is, Lot 4 of the Dyba Addition, better known as the old Dairy Queen.

The Miles City Zoning Commission conducted two public hearings on February 6, 2017 to consider the requests listed above. After reviewing comments from the public hearings, the Zoning Commission recommends approval for the administrative changes to the adopted zoning map and text. Also, recommends approval for the zone change for the property described above, from general commercial to highway commercial.

Please schedule these for review by the City Council at your earliest convenience.

Respectfully,

LeRoy Meidinger, Chair
Zoning Commission





PETITION FOR ZONE CHANGE

Community Services & Planning

City of Miles City 17 S. 8th Street, P.O. Box 910 Miles City, MT 59301 406-234-3493

Date Received: _____

Note: If more than one property petitioner a list of signatures and legal descriptions may be attached to this application.

I, JNJ Management LLC is/are petitioning the City of Miles City to rezone the following property:

LEGAL DESCRIPTION OF PROPERTY:

Street Address or General Location 2210 VALLEY DRIVE EAST
 Tract/s _____ in Section _____ Township _____ Range _____

OR

Lot/Tracts 4 of Dyba Addition in Section 27 Township 08N Range 47E
 Assessor Number/s or Geocode 14-1740-27-4-23-20-0000

PRIMARY CONTACT:

Applicant Name: John Hoofman If a business: Contact Name John Hoofman
 Address: P.O. box 1231
Helena MT 59624
 Phone: 406-459-2618 Cell Phone: same Email: jhoofman@gmail.com

DESCRIPTIVE DATA:

Total area in acres: 7.4 acres
 Existing Zoning: General Commercial Proposed Zoning: Highway commercial district
 Existing Use: vacant parking area
 Yes No Purpose of the zone change is for pending development/sale. If so please explain the nature of the proposal or state any other reason for requested change: The zoning was changed while I was in the middle of the purchase and I could not get any clear answers about the zoning prior to the adoption of the new zoning.

Note: All information must be filled in for the application to be complete. Submission of an application is not a guarantee that a zone change will be approved.

DYBA ADDITION AND ACERAGE TRACTS MILES CITY, MONTANA.

STATE OF MONTANA
COUNTY OF DEWEE
I, the undersigned, Clerk of the County of Dewee, do hereby certify that the following is a true and correct copy of the original record as the same appears in the office of the Clerk of the County of Dewee, Montana.

STATE OF MONTANA
COUNTY OF DEWEE
I, the undersigned, Clerk of the County of Dewee, do hereby certify that the following is a true and correct copy of the original record as the same appears in the office of the Clerk of the County of Dewee, Montana.

Robert H. Hill

STATE OF MONTANA
COUNTY OF DEWEE
I, the undersigned, Clerk of the County of Dewee, do hereby certify that the following is a true and correct copy of the original record as the same appears in the office of the Clerk of the County of Dewee, Montana.

Robert H. Hill

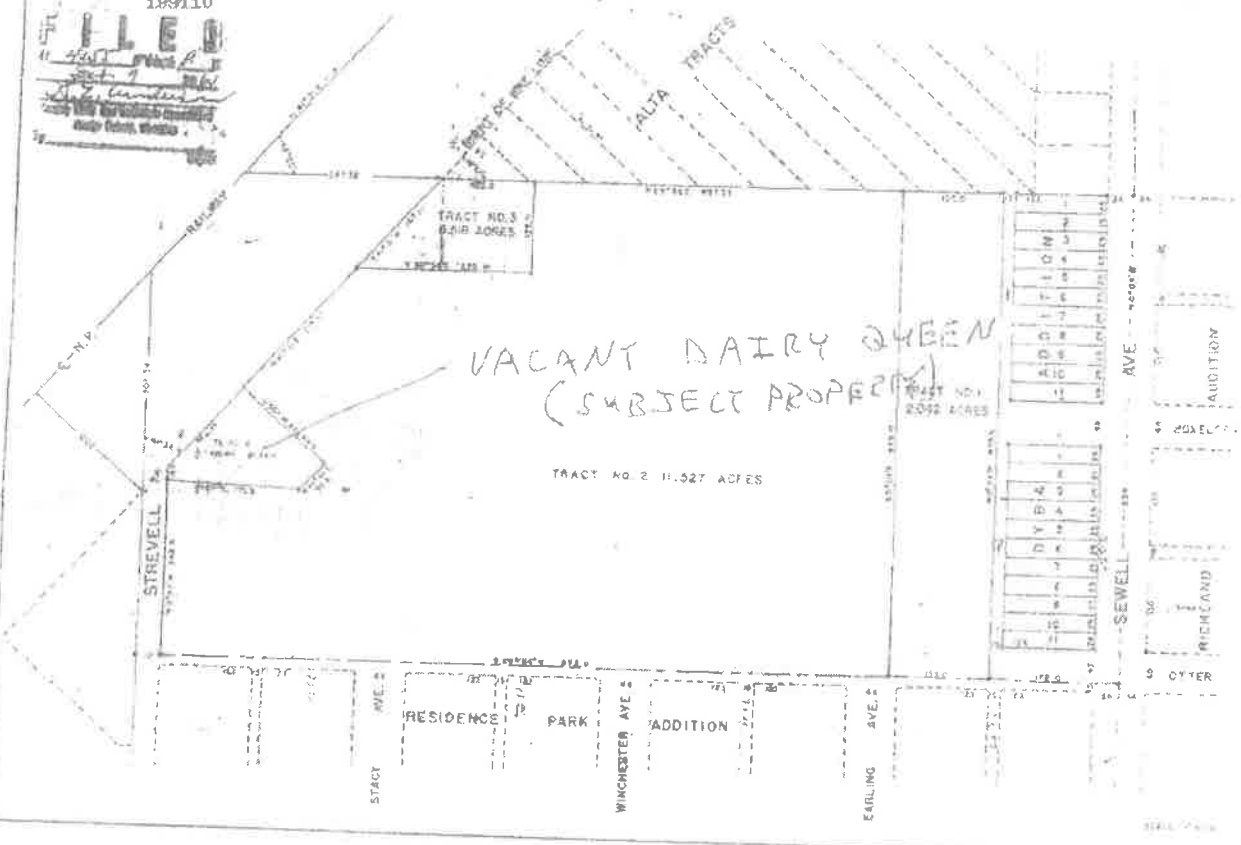
Opal M. Hill

CLERK OF COUNTY OF DEWEE
MILES CITY, MONTANA

APPROVED
FEB 9 1961

Wm. Lockhart

189110
FILED
FEB 9 1961
DEWEE COUNTY, MONTANA





S W 5 E C T
PROPERTY

Section no of 12-20-2010



Miles City City Council
Zone Change Request From General Commercial to Highway Commercial
Staff Report

John Hoofman, JNJ Management, LLC

The Miles City City Council met on March 28, 2017 and held a public hearing to consider a request from JNJ Management LLC for a zone change from General Commercial to Highway Commercial on property located at the intersection of Valley Drive East and North Strevell Avenue and recommendation to approve the zone change request from the Miles City Zoning Commission.

At the public hearing three people spoke in opposition to the requested zone change while no one spoke in support. After the close of the public hearing, the City Council discussed the requested zone change, went over each individual evaluation criteria, amended the findings of fact, unanimously adopted the amended findings of fact, and denied the requested zone change from General Commercial to Highway Commercial on a 5-3 vote.

Background Information

John Hoofman, on behalf of JNJ Management LLC, has requested a zoning designation change from General Commercial to Highway Commercial on property located at the intersection of Valley Drive East and North Strevell Avenue (the old Dairy Queen). The applicant is in the process of purchasing the property, with said purchase contingent upon the zoning designation being changed to Highway Commercial. The proposed zone change would make it possible for the applicant to apply for a conditional use permit to operate a medical marijuana dispensary.

A. Applicant

John Hoofman, JNJ Management, LLC
P.O. Box 1231
Helena, MT 59624

B. Owner

Joseph and Janine Yates
766 W 1550 S
Payson, UT 84651

C. Location and Legal Description of Property

The property is located on Valley Drive East at the intersection with North Strevell Avenue – see vicinity map below. The legal description of the property is Tract No. 4 of the Dyba Addition located in Section 27, Township 8 North, Range 47 East, P.M.M., Custer County, Montana.



D. Existing Land Use(s) and Zoning

The property is currently occupied by a vacant building which used to house a Dairy Queen. The existing zoning is General Commercial. The General Commercial zone is intended to provide for commercial districts in close proximity to and serving the ordinary shopping needs of residents and visitors, and which do not attract large volumes of traffic.

E. Proposed Land Use(s) and Zoning

The proposed land use is a medical marijuana dispensary and the proposed zoning is Highway Commercial. The Highway Commercial zone is intended to provide for commercial oriented uses around highways and arterials that rely on convenient automobile access. In the Highway Commercial district, medical marijuana dispensaries are a conditional use and thus the applicant will need to obtain a conditional use permit in the event the proposed zone change is approved.

F. Adjacent Zoning and Land Uses

North/Northwest: Heavy Commercial/Light Industrial, Railroad

East/Southeast: General Commercial, The Plaza Shopping Center and Parking Lot

South: General Commercial, Developmental Educational Assistance Program

West/Southwest: Highway Commercial, Sandhills Sewing and Vacuum Center



G. Size

The property is approximately 16,780 square feet

H. General Land Use Characteristics

The general land use characteristics of the area can be described as auto-oriented commercial and industrial.

Evaluation of Zone Change Criteria

The following is an evaluation of the zone change request under the criteria outlined in 76-2-304, M.C.A. and in section 24-96(c) of Miles City's Zoning Regulations.

1. Is the proposed zone change in accordance with the Miles City Growth Policy?

The future land use map in Miles City's Growth Policy identifies future land uses for properties outside of Miles City limits only. As the property in question is within Miles City limits it does not have a designation on the future land use map. The closest designation on the future land use map is 0.1 miles northeast of the subject property, which is designated commercial. The commercial designation is a composite or general term that does not differentiate between General Commercial zoning and Highway Commercial zoning.

Miles City's Growth Policy states, "Miles City also intends to ensure that new development is compatible with existing development by adopting zoning that generally extends the existing pattern of development (i.e., more residential near existing residential areas and more commercial near existing commercial areas)." The property is surrounded by Highway Commercial to the southwest and general commercial to south and east. The pattern of development along Valley Drive East between Leighton Blvd. and the Baker Highway (US 12) is primarily auto-oriented commercial and industrial and is compatible with the Highway Commercial district regulations. A change from General Commercial to Highway Commercial will not result in incompatible development patterns because the zone change would result in a logical extension of Highway Commercial to the northeast.

The Growth Policy contains several goals and objectives. Two appear to apply to the proposal.

Economy objective 2.1: Encourage infill development on vacant lots and in vacant buildings. Changing the zoning would facilitate the use of an existing building within the city limits.

Land use objective 3.1: Protect private property rights and respect property owners' wishes to enjoy and gain economic return from their properties and investments while ensuring that other public and private interests are not unreasonably compromised or impacted by land uses and development projects. The proposed zone change does not comply with Miles City's Growth Policy Land Use Objective 3.1, because a zone change to Highway Commercial on the property in question does not protect the private property rights as it would unreasonably compromise or impact nearby public and private interests.

Based on this information, the proposed zone change does not comply with Miles City's Growth Policy.

2. Is the proposed zone change designed to secure safety from fire and other dangers?

The property is served by Miles City Fire and Rescue and Miles City Police Department. The property is accessible by Valley Drive East to the northwest and Plaza Blvd to the south, both of which could provide emergency vehicle access. Furthermore, a fire hydrant is located approximately 120 feet to the northeast along Valley Drive East. Based on this information the proposed zone change is generally designed to secure safety from fire and other dangers.

3. Is the proposed zone change designed to promote public health, public safety, and the general welfare?

Changing the zoning designation of the property in question to Highway Commercial has the potential to increase truck traffic in the area. Currently, young children regularly use this area to access a school bus stop and the nearby roller rink. Increased truck traffic in the area could potentially create a public safety problem for children walking in the area, and crossing the street, as they would be exposed to increased traffic, resulting in potential conflicts with vehicles. Also, increased truck traffic will result in increased noise levels, which will negatively impact the surrounding neighborhood. In addition, in the Highway Commercial district medical marijuana is a conditional use. The use of marijuana, which is prohibited by federal law, could

negatively impact public health and the general welfare of Miles City residents. Based on this information the proposed zone change will not promote public health, safety, and general welfare.

4. Is the proposed zone change designed to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements?

Transportation – Adequate access to the property is provided from Valley Drive East to the northwest and Plaza Blvd to the south.

Water and Sewer – The property is served by Miles City water and sewer.

Schools – School facilities and bus services are available to the property if necessary. However, it is unlikely that the zone change would impact Miles City schools as residential uses are not permitted in the Highway Commercial district.

Parks – No parks are immediately adjacent to the property. Assuming a medical marijuana dispensary or other highway commercial business is developed on the property, the proposed zone change is not likely to place additional demand on Miles City's parks.

Other Public Requirements – Mail delivery and utilities are available to the property.

Based on the above information, the proposed zone change will facilitate the adequate provision of transportation, water, sewage, schools, parks, and other facilities.

5. Does the proposed zone change provide reasonable provision of adequate light and air?

The property is bordered by a large parking lot to the east/northeast, railroad tracks and right of way to west/northwest, and one-story buildings to the south. Given this information there is currently adequate light and air on the property. Furthermore, Miles City's zoning regulations and building codes are intended to provide for adequate light and air, which will apply to any future development on the property. Based on this information the proposed zone change provides reasonable provision of adequate light and air.

6. How would the proposed zone change effect motorized and non-motorized transportation systems?

The proposed zone change is not likely to have a significant impact on motorized. As the current building on the property is vacant, there will likely be an increased number of vehicles going to and from the site, though it is unlikely that the level of increased traffic will have a detrimental impact on traffic flows on Valley Drive East. Additionally, as there are multiple access points to the property off Valley Drive East, and ample sight distances of over 300 feet in both directions, the increased traffic is not likely to have a significant impact on motor-vehicle traffic safety. In terms of non-motorized transportation however, Valley Drive East is used by both bicyclists and pedestrians, especially school aged children accessing the school bus stop and the nearby roller rink. School aged children also walk along Valley Drive East on their way to Sacred Heart and Lincoln Elementary Schools. Also, the Developmental Educational Assistance Program building is located next to the property and parents drop their kids off in the area for educational

services. In addition, there are nearby residents, some whom are low-income without access to a vehicle, who walk on Valley Drive East to access the Reynolds Market grocery store. As a result of current pedestrian and bicycle use, and the potential for increased traffic with a Highway Commercial Zoning designation, the proposed zone change would negatively impact non-motorized transportation.

7. Does the proposed zone change promote compatible urban growth?

The proposed zone change would result in an extension of Highway Commercial to the northeast. Development patterns along Valley Drive East between Leighton Blvd and the Baker Highway (US 12) are predominantly auto-oriented commercial and industrial uses, which are in-line with the Highway Commercial district. The proposed zone change will promote compatible urban growth by further encouraging development patterns which currently exist along Valley Drive East.

8. Does the proposed zone change consider the character of the district, and its peculiar suitability for particular uses?

The Highway Commercial zoning designation is intended to provide for commercial oriented uses around highways and arterials that rely on convenient automobile access. Valley Drive East between Leighton Blvd and the Baker Highway (US 12) is classified as a principal arterial and primarily serves auto-oriented commercial and industrial uses. While this portion of Valley Drive East contains both Highway Commercial and General Commercial zoning designations, overall the development pattern along Valley Drive East between Leighton Blvd and the Baker Highway is compatible with the character of the Highway Commercial district and is generally suitable for allowed uses in the district.

9. Would the proposed zone change conserve the value of buildings and encourage the most appropriate use of the land?

The proposed zone change would modify what land uses are considered permitted and conditional on the property. Residential uses would no longer be allowed, although a wider array of commercial uses would be permitted. As the property fronts a principal arterial and is surrounded by auto-oriented commercial and industrial, it is better suited for commercial uses than residential ones. However, the proposed zone change would allow the applicant to apply for a conditional use permit for a medical marijuana dispensary. If the conditional use permit were approved by the Miles City Board of Adjustment, the siting of a medical marijuana dispensary could have a negative impact on neighboring properties by lowering property and building values. Based on this information the proposed zone change would not conserve the value of buildings and may discourage the most appropriate use of the land.

10. Would the proposed zone change be considered illegal spot zoning?

The following is an evaluation of the Little Factors for Spot Zoning based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions. In the Little case, the Court noted that for a zone change to be considered illegal spot zoning usually all three of the below factors are present.

1. *Is the proposed land use significantly different from the prevailing use in the area?*

The property is surrounded by auto-oriented commercial and industrial uses. Furthermore, the property borders an existing Highway Commercial designation to the southwest. Because the area is predominately highway oriented commercial, the proposed land use would not be significantly different from the prevailing uses in the area.

2. *Is the area rather small from the perspective of the number of separate landowners benefited from the proposed change?*

A zone change requested by one landowner is small from the perspective of the number of separate landowners benefited from the proposed change.

3. *Would the change be special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public?*

The proposed zone change could be viewed as special legislation designed to benefit one landowner. However, as the property borders an existing Highway Commercial district and is in-line with the intent of the Highway Commercial district, the proposed zone change can also be viewed as making the property's zoning designation compatible with prevailing land uses. Also, while certain members of the public might see harm from a medical marijuana dispensary on this property, other segments of the public may benefit from having another option for obtaining medical marijuana, in addition to the two dispensaries located nearby.

Because only two of the three Little factors for spot zoning are present, the proposed zone change is not considered illegal spot zoning.

11. Does the proposed zone change correct an inconsistency in the zoning?

The zone change does not correct an inconsistency in the zoning.

12. Does the proposed zone change address changing conditions or further a specific public challenge?

The proposed zone change does address a changing condition prevalent throughout Montana. In November, Montana voters pass Initiative 182, which explicitly allow licensed providers of medical marijuana to operate dispensaries. As a result, medical marijuana providers in Montana are seeking to open dispensaries to provide medication to patients seeking relief from a variety of ailments. However, a medical marijuana dispensary may increase criminal activities in the area and further stretch the capacity of the Miles City Police Department. Additionally, a medical marijuana dispensary as a conditional use would further challenges with addressing drug abuse and related crimes in Miles City.

Decision

Adopt this staff report with the amended findings of fact and deny the proposed zone change from General Commercial to Highway Commercial for the property in question.

PROPERTY OWNERS

Re-zone

for

JNJ Management, LLC

OMNI Corporation
PO Box 879
Miles City, MT 59301

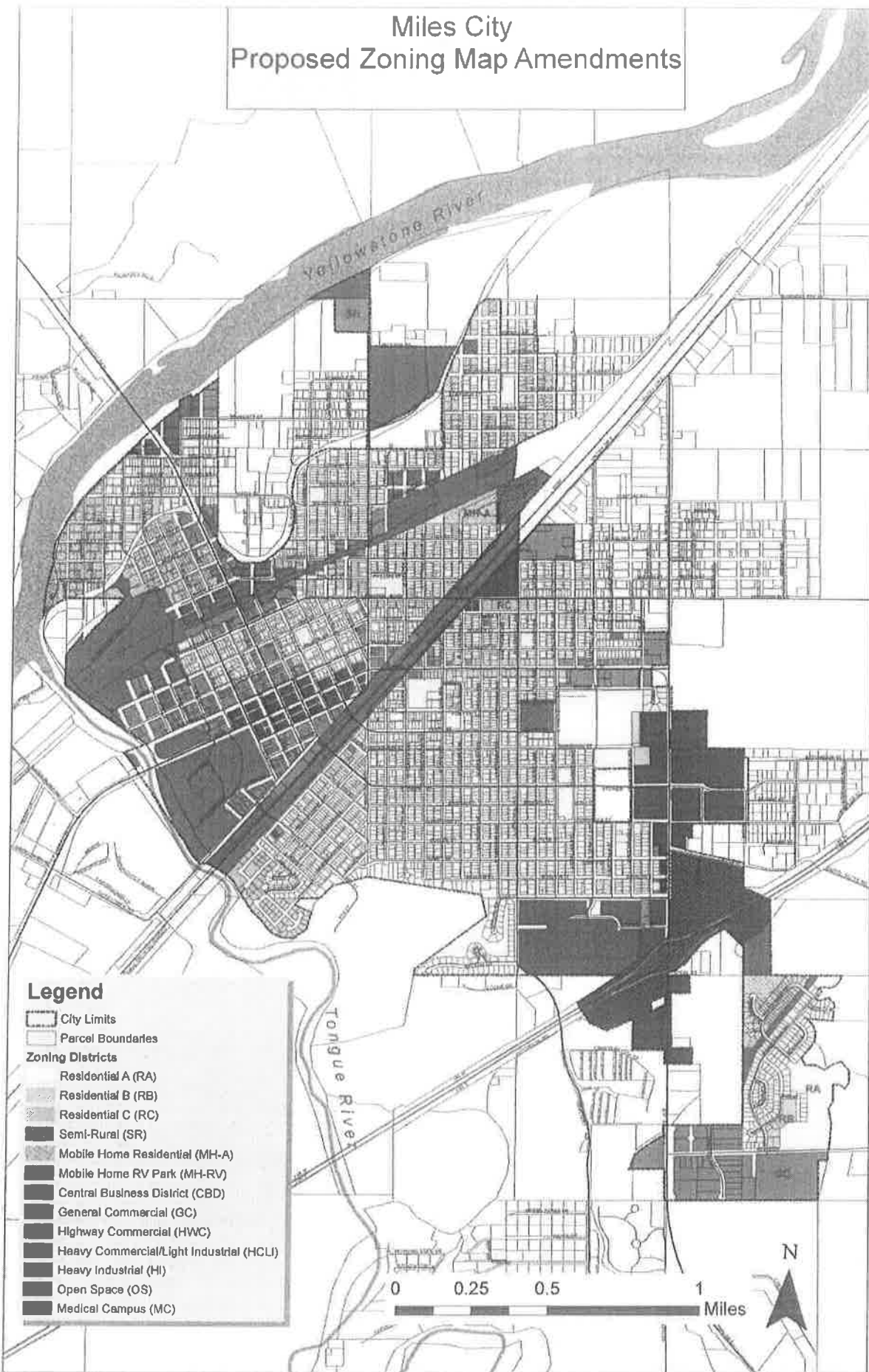
Joseph & Janine Yates
766 W 1550
Payson, UT 84651

Fossil Development Co, LLC
2200 Box Elder Street
Miles City, MT 59301

Jerrold Dusatko
56 Cornhusker Rd
Miles City, MT 59301

JNJ Management, LLC
John Hoofman
PO Box 1231
Helena, MT 59624

Miles City Proposed Zoning Map Amendments



Affidavit of Publication

STATE OF MONTANA }
County of Custer } ss.

Mary Rose Bovee, being duly sworn on her oath, says that she has been the principal clerk of the printer of the MILES CITY STAR, a daily newspaper of general circulation, printed and published at Miles City, in said County and State. **City of Miles City, Legal Notice.**

Amendment of Ordinance 1310. A printed and true copy which, cut from the columns of said newspaper, is hereto attached, and made a part hereof, was printed and published in said newspaper, in the regular and entire issue of every number of the paper during the period and time of publication, on the following dates,

March 8, 2017.

Signed Mary Rose Bovee

Subscribed and sworn to before me this 8th

day of March, 2017

Tabatha Hallman

Tabatha Hallman, Notary Public for the state of Montana, residing at Rosebud. My Commission Expires June 1, 2019.

LEGAL NOTICE

The Miles City City Council will hold a public hearing to accept public comment on a proposed zoning map amendment (Ordinance 1310). The hearing will be held Tuesday March 28th, 2017 at 7:00 p.m. in the auditorium at the Custer County High School, Miles City, Montana, 59301. The application and staff report are available for review at the Miles City Planning Department at City Hall-17 South 8th Street, Miles City, Montana, 59301

Applicant: John Hoofman, JNJ Management, LLC
Owner: Joseph and Janine Yates

Location and Legal Description of Property: The property is located at 2210 Valley Drive E Miles City, MT 59301 - at the intersection of Valley Drive E and N Strevell Avenue in the northeast portion of Miles City. The legal description of the property is, Lot 4 of the Dyba Addition located in Section 27, Township 8 North, Range 47 East, P.M.M., Custer County, Montana.

Existing Land Use(s) and Zoning: The property is currently occupied by a vacant building, which used to house a Dairy Queen, and the existing zoning is General Commercial.

Proposed Land Use(s) and Zoning: The proposed land use is a medical marijuana dispensary and the proposed zoning is Highway Commercial.

(Published March 8, 2017)

MNAXLP



TABATHA HALLMAN
NOTARY PUBLIC for the
State of Montana
Residing at Rosebud, Montana
My Commission Expires
June 01, 2019