



CITY OF MILES CITY AGENDA

Regular Council Meeting *March 28, 2017*
Custer County High School Auditorium *7:00 p.m.*

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL

1. **APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**
 - A. Regular City Council Meeting 3/14/2017
 - B. Public Service Meeting 2/27/2017
 - C. Flood Control Meeting 3/02/2017
 - D. Amended Finance Committee Meeting 3/02/2017
 - E. Finance Committee Meeting 3/09/2017

2. **SCHEDULE MEETINGS**
3. **REQUEST OF CITIZENS & PUBLIC COMMENT**
4. **APPOINTMENTS**
Tracy Baker (MCAEDC) -Urban Renewal Agency Board of Commissioners

5. **PROCLAMATIONS**
6. **STAFF REPORTS**
7. **CITY COUNCIL COMMENTS**
8. **MAYOR COMMENTS**
9. **COMMITTEE RECOMMENDATIONS**
10. **BID OPENINGS**
11. **BID AWARDS**

12. **PUBLIC HEARINGS**
 - A. **ORDINANCE NO. 1309- An Ordinance of the City Council of the City of Miles City, Montana Enacting Section 23-1 of the Code of Ordinances of the City of Miles City, Montana, and Adopting a Utility Rule Requiring a Property Owner's Consent to Annexation as a Condition of Receiving Water and/or Sewer Service**

 - B. **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**

13. UNFINISHED BUSINESS

- A. **ORDINANCE NO. 1309-** *(Second Reading)* **An Ordinance of the City Council of the City of Miles City, Montana Enacting Section 23-1 of the Code of Ordinances of the City of Miles City, Montana, and Adopting a Utility Rule Requiring a Property Owner's Consent to Annexation as a Condition of Receiving Water and/or Sewer Service**

- B. **ORDINANCE NO. 1310-** *(Second Reading)* **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**

14. NEW BUSINESS

- A. **RESOLUTION NO. 4043-** **Resolution Authorizing Participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation act Bonds (Intercap Revolving Program), Approving the Form and Terms of the Loan Agreement and Authorizing the Execution and Delivery of Documents Related Thereto**

15. ADJOURNMENT

Public comment on any public matter that is not on the agenda of this meeting can be presented under Request of Citizens, provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings

Minutes

REGULAR COUNCIL MEETING March 14, 2017
7:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, March 14, 2017, in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana. Council President Susanne Galbraith called the meeting to order. Council Members present were Brant Kassner, Dwayne Andrews, Rick Huber, Jeff Erlenbusch, Kathy Wilcox and Susanne Galbraith. Mayor Hollowell and Councilperson John Uden, and Ken Gardner were excused.

Also present were City Attorney Dan Rice, Public Works Director Scott Gray, Public Utilities Director Allen Kelm, Police Chief Doug Colombik, Fire Chief Gary Warren, Grant Administrator /Historic Preservation Officer Connie Muggli, Planner II Dawn Colton, Flood Plain Administrator/Auto Cad/Assistant PWPV Samantha Malenovsky, and City Clerk/Minute Recorder Lorrie Pearce.

PLEDGE OF ALLEGIANCE

Council President Galbraith led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 2/28/2017

****** *Councilperson Andrews moved to approve the minutes of the Regular Council Meeting of February 28, 2017, and under staff reports RSVP amend the minutes to state Senior Corps/AmeriCorps instead of America Corps, and seconded by Councilperson Erlenbusch. The motion **passed** by unanimous consent, 6-0.*

Human Resource Minutes: 2/23/2017

****** *Councilperson Wilcox moved to approve the minutes of the Human Resource Meeting of February 23, 2017, and seconded by Councilperson Erlenbusch. The motion **passed** by unanimous consent, 6-0.*

Finance Committee Minutes: 3/02/2017

****** *Councilperson Andrews moved to approve the minutes of the Finance Committee Meeting of March 2, 2017, and seconded by Councilperson Huber. The motion **passed** by unanimous consent, 6-0.*

Ad Hoc Wage Survey Meeting: 3/07/2017

- ** *Councilperson Erlenbusch moved to approve the minutes of the Ad Hoc Wage Survey Meeting of March 7, 2017, and seconded by Councilperson Wilcox. The motion passed by unanimous consent, 6-0.*

SCHEDULE MEETINGS

The following meetings will be held in the City Hall Conference Room:

- Human Resource: Thursday, March 23st @ 5:15 p.m.

REQUEST OF CITIZENS & PUBLIC COMMENT

County Commissioner Jason Strouf addressed the Council to remove Ordinance 1309 from the March 28th agenda. Felt there were many issues on it and would like to see both the City and County sit down and discuss them. Also by doing the annexation through the Ordinance it was taking the people's right to speak away and if approved the people could not be allowed to protest the annexation. That is not the way that he would like to see a governing body govern, or a resident in the County be governed. Commissioners are on board to sit down with the City to discuss the issues.

Scott and Kristy Murphy, 200 Hubble, asked why it was taking the City so long to get Todd Schwab to clean up his property. They said they've been fighting the problem for five years and putting their lives in harm's way. Mr. Schwab had been fined and paid \$525, but did not clean the mess up within the 30 days that was given to him. Ms. Murphy had talked to Prosecutor Noble, Judge Homme, Director Gray and Mayor Hollowell and does not get any answers and felt she was being moved from one person to another with no answers. Attorney Rice and Director Gray said that it is in the Mayor's hands and thought he was working on it.

APPOINTMENTS

None

PROCLAMATIONS

None

STAFF REPORTS

Flood Plain Administrator/Auto Cad/Assistant PWPV Samantha Malenovsky:

Thought that the finance committee meeting minutes of 3/2/17 should be clarified:

- Bullet 2- should say study instead of levy
- Bullet 3- remove "then completed by the Community"
- Bullet 6- Clarified that the \$100,000 would be needed if the \$250,000 was spent in FY18
- Bullet 7-Change Zone A to Zone B

She added Senate Bill 313 is up to be heard for the second time. It is a bill that is trying to create an exemption from flood plain permitting restoration projects. Basically it means if a person did a stream restoration project that they would be exempt from getting a flood permit. It sounds great, but the problem is that would put the City in non-compliance with the NFIP. If the city is in non-compliance with NFIP, then residents could not get federally backed mortgages. She added if anyone on Council is interested to contact the State Senate Natural Resource Committee. If the bill would pass then the entire State would not be in compliance with NFIP. It would be really hard to get any assistance in an event of fire, flood, wind or a mortgage.

City Clerk Lorrie Pearce: Said that she received a preliminary letter from MMIA, and the insurance for employee will increase anywhere from 6% to 9%, at the highest percent it would raise \$62 per employee.

CITY COUNCIL COMMENTS

Susanne Galbraith: Commended Utility Billing Clerk Bissell for her work on lowering the rates charged to customers on Paygov. Previous rates were 3.0% for POS and 3.95% for online payments. New rates are 2.5% for POS and 2.5% for online payments.

Kathy Wilcox: Thanked the Wage Salary Survey Ad Hoc members for all their hard work on the project. She said the committee had completed the survey and it was being presented to the unions to decide if they would accept it as the survey that needed to be completed per agreement.

MAYOR COMMENTS

None

STANDING COMMITTEE RECOMMENDATIONS

None

BID OPENINGS

None

BID AWARDS

None

PUBLIC HEARINGS

- A. **ORDINANCE NO. 1311- An Ordinance Amending Sections 24-66(e) and 24-80, and Correcting the City of Miles City Zoning Map to Include City Property not Reflected and Removing Properties Lying Outside of the City Limits, and Providing for a Hearing Thereon**

Council President Galbraith called for comments from proponents three times, then opponents three times and, hearing none, the hearing was

closed.

UNFINISHED BUSINESS

- A. **ORDINANCE NO. 1311- *(Second Reading)* An Ordinance Amending Sections 24-66(e) and 24-80, and Correcting the City of Miles City Zoning Map to Include City Property not Reflected and Removing Properties Lying Outside of the City Limits, and Providing for a Hearing Thereon**

** *Councilperson Wilcox moved to approve the Ordinance, read by title only, seconded by Councilperson Kassner, and on roll call vote, passed by unanimously 6-0. Ordinance No. 1311 passed*

- B. **RESOLUTION NO. 4037- A Resolution Approving a Memorandum of Understanding With the Montana Association of Planners Board to Host Planning Conference**

** *Councilperson Andrews moved to adopt the Resolution, read by title only, seconded by Councilperson Wilcox.*

Planner Colton said that she teamed with MCEDC to host the Montana Association of Planners conference to Miles City. It will be in September or October and if the resolution is approved and the conference goes forward, the City would have to pay for all expenses, and then be reimbursed at a later date.

** *On roll call vote, passed unanimously, 6-0. Resolution No. 4037 was adopted.*

NEW BUSINESS

- A. **Transmit and discuss the results of the 2017 wage survey, and disband the Ad Hoc Committee Wage/Survey**

** *Councilperson Wilcox moved to table the discussion until next council meeting, seconded by Councilperson Erlenbusch and passed unanimously, 6-0.*

- B. **RESOLUTION NO. 4038- A Resolution Authorizing the City of Miles City to Enter Into an Agreement Entitled "State of Montana Agreement" With the State of Montana Historic Preservation Office For Partial Funding of the Historic Preservation Officer Position**

****** *Councilperson Erlenbusch moved to approve the Resolution, read by title only, and seconded by Councilperson Huber. On roll call vote, the motion passed by unanimous consent, 6-0. Resolution No. 4038 passed.*

C. RESOLUTION NO. 4039 – A Resolution Approving an Agreement Between the Department of the Army and Miles City, Montana for the Miles City, Montana Section 205 Feasibility Study

****** *Councilperson Andrews moved to approve the Resolution, read by title only and seconded by Councilperson Kassner. On roll call vote, the motion passed by unanimous consent, 6-0. Resolution No. 4039 passed*

D. RESOLUTION NO. 4040- A Resolution Approving an Extension Agreement Between the City of Miles City and the Custer County Water and Sewer District No.2

****** *Councilperson Andrews moved to approve the Resolution, read by title only, and seconded by Councilperson Kassner and on roll call vote, the motion passed by unanimous consent, 6-0. Resolution No. 4040 passed*

E. RESOLUTION NO. 4041- A Resolution Approving a Contract Amendment for Term and Budget Between the City of Miles City and the Montana Department of Commerce for Contract Related to the Development of a Transportation Plan for Miles City

****** *Councilperson Wilcox moved to approve the Resolution, read by title only, and seconded by Councilperson Kassner. On roll call vote, the motion passed by unanimous consent, 6-0. Resolution No. 4041 passed*

F. RESOLUTION NO. 4042- A Resolution Authorizing the City of Miles City to Enter Into an Amendment to Engineering Agreement With Kadrmas, Lee & Jackson, Inc

****** *Councilperson Kassner moved to approve the Resolution, read by title only, and seconded by Councilperson Huber.*

When the 20 inch pipe was installed under Tongue River, it was found that the pipe that was being tied into had a lot of corrosion and thinning. The City is going to replace the remaining 15-20 feet with 20 inch pipe, and will need additional engineering and DEQ approval.

****** *On roll call vote, the motion passed by unanimous consent, 6-0. Resolution No. 4042 passed*

G. Approval of February Claims

- ** *Councilperson Wilcox moved to approve the February claims, seconded by Councilperson Andrews and **passed** unanimously, 6-0.*

ADJOURNMENT

- ** *Councilperson Wilcox moved to adjourn the meeting, seconded by Councilperson Kassner and **passed** unanimously.*

The meeting was adjourned at 7:35 p.m.

Susanne Galbraith, Council President

Lorrie Pearce, City Clerk

Public Services Committee Meeting February 27, 2017

The Public Services Committee met Monday, February 27, 2017 at 6:00 pm in the Council Chambers in City Hall. 17 S. 8th Street, Miles City, Montana. Present were Committee Members Dwayne Andrews, John Uden, Ken Gardner and Kathy Wilcox.

Also present were Mayor John Hollowell, City Attorney Dan Rice, Public Works Director Scott Gray, Planner II Dawn Colton, Utility Director Allen Kelm, City Engineer Dennis Hirsch and Committee Recorder/Payroll and Claims Clerk, Ally Capps. Also present were, Police Officer Dustin Sloan.

Committee Chairperson Andrews said that the Chair proposes to take up the election of a chairperson as the first order of business.

1. Election of Committee Chairperson

***Committee Member Wilcox nominated Dwayne Andrews for Committee Chairperson, seconded by Committee Member Uden. On roll call vote the motion passed, 3-1. With Dwayne Andrews voting no.*

2. Ordinance No. 1309- An Ordinance of the City Council of the City of Miles City, Montana enacting Section 23-1 of the Code of Ordinances of the City of Miles City, Montana, and Adopting a Utility Rule Requiring a Property Owners' Consent to Annexation as a condition of Receiving Water and / or Sewer Services.

***Committee Chairperson Andrews moved to recommend and to refer this back to Council with a no recommendation. On roll call vote the motion passed unanimously, 4-0.*

3. Public Comment

Warren Schiller, 75 Sunset Drive, requested the names and addresses of each council person the committee.

John Uden, responded, 70 Neu Vu Avenue

Dwayne Andrews, responded, 1211 N. Custer

Kathy Wilcox, responded, 2217 Brisbin

Ken Gardner, responded, 406 Wells

Jerry Backlund, 603 Eichler, questioned, based on the Whitefish case and them not

having a water and sewer district and they did own the lines. How does the City of Miles City feel they can force an annexation? He approached the council and gave them the letter from attorney, Susan Swimley.

Keith Holmlund, 84 San Leo Road, spoke of a concern on tax estimates in the Michael's Addition a \$250,000.00 home tax would increase \$567.00 plus any SID or City Specials. He asked that the Committee not move forward with the annexation.

Chris Jensen Kukowski, 3420 Brisbin Avenue, asked about the vote they did last year regarding annexation, it clearly showed that they did not wish to be annexed.

George Luther, 508 N Haynes, questioned the Committee, as to why the City wants to annex? And why ten days before shut off, is this at the main shut off or for individual houses?

Public Utilities Director Kelm, responded, this question needs to be addressed to City Council.

City Attorney Rice responded to the shut off question. Explaining that, ten days is the Public Utility Rule. If the rule is put in place and the City decides to annex an area, and you decide to protest you would have to disconnect from public services. If you do not disconnect, then the owners protest would not be counted. That with this case law; the City has the right to annex any user. If a property owner purchased, ten lots or ten lots were purchased by one developer. The buyers are responsible for putting in the water and sewer lines. The City does not have a fund that pays to put in new infrastructure. The owner is required to pay this expense. The property owners pay for the improvements on existing infrastructures. You would pay a higher rate in perpetuity. If the City paid for the existing infrastructures there would be an SID, to pay for what the property owners just paid, it would just be circular.

Collette Butcher, 1280 US Hwy 12, questioned who would pay repairs and maintenance for the existing customers?

Citizen Keith Holmlund, commented when there is a new development put in, there is a contract signed with the new developer, and there was no contract signed by the Water and Sewer District. Using this Whitefish Utility Rule, would be the first step to annexation

Citizen Chris Kukowski, requested to the committee, just leave us in the County we do not want to be in the City.

Gary Ryder, 15 S. Strevell, commented the existing agreement with the Water and Sewer District. Twice the Water and Sewer District came to the City Council meeting and asked the City Council where they were with this? This took place in spring and fall. The contract has a very explicit revision. The Water and Sewer District gave Mayor Hollowell, a one year extension to try to discuss as it comes to an end June of 2017. Also asking if Aye substation needs to be replaced is the City willing to replace that substation.

Citizen Jerry Backlund, asked Mayor Hollowell, when he would inform the County when the Public Utility Rule was on the agenda. This needs a tremendous amount of discussion, before this goes to the Council for final vote. Nobody is going to make any money if this goes to litigation. This will cost the tax payers and the City a lot of money. We should just sit down at a table and discuss an amical agreement with the City.

City Attorney Rice responded the Utility Rule has been in the works for two years, even back to Mayor Grenz, when he wanted it done. It came up a handful of months ago and the Planning Staff and the Mayor met a couple of times. There is a revised proposal of the City contract, I have made my edit, and it has been sent back to the Mayor.

Mayor Hollowell responded the reason we did not ask for negotiations is because we did not have a plan. When we had a plan, we met with you.

Citizen George Luther, commented this is supposed to be a democracy if we bring this to a vote and we out vote the City, where is the democracy if they still want to annex?

City Attorney Rice responded that in order to protest and be counted you would have to disconnect from City services or you would be annexed.

Citizen Collette Butcher, asked if the Whitefish Utility Rule is a way of overriding the fifty percent or greater disapproval on the vote of annexation? Why are we not doing a regular annexation instead of using this Utility Rule? She would like this put on hold with more discussion. The County will stand to lose money which they cannot afford and the City will gain money. The County will then have to find a way to get more money.

City Attorney Rice said the Whitefish Utility Rule was brought up by Mayor Grenz. Mayor Hollowell then asked what the status was. He and the Planning Staff put a draft together and it is now before the Council, just like any ordinance. Adopting the action does not put the rule in place it just puts the rule in the City books. It does not issue annexation, but it must be in place in order for the City to initiate the Utility Rule.

Bob Parker, 3410 Leighton Boulevard, stated anytime a resident of the City leaves City limits, you're using roads that someone else paid for, did you consider that? The City residents wear out the road out to the landfill and they don't pay for the road. My understanding on the proposed ordinance is if we do not sign a paper agreeing to annexation, the City will disconnect our services. In my mind that is blackmail. I do not know why the City is driven to do this? Or any reason why they would want to? Unless, it's only motivation is to raise more money for the City.

City Attorney Rice said that with the Utility Rule says they can shut you off. The City will never shut you off. If you do not disconnect, you can be annexed. I am not saying that's a better alternative, but the City will never shut you off. You would have to shut yourself off, if you wanted to protest.

Carol Bean, 3402 Brisbin, asked how that could be done?

City Attorney Rice responded you could use a plumber or you could hire the City crew.

Rob Muri, 637 Eichler, commented he had a septic tank and a well and would not be able to disconnect because I have City services within 500 feet?

City Attorney Rice responded that that is a DEQ regulation and is not a City decision.

Citizen Jerry Backlund, commented in order to protest we have to disconnect from City services? In Whitefish there was no water and sewer district; those lines were already paid for by the City.

Wade Berry, 1265 Highway 12, questioned how far out in each direction is this annexation planning on going?

City Attorney Rice responded it is not scheduled to go anywhere. There are twelve to fourteen different annexation districts being looked over. Anyone that receives treatment from the water facilities and sewage treatment plant would be subject to annexation.

Citizen Collette Butcher, asked what is the area of consideration for annexation? Is anything that receives services from the Custer Water and/or Sewer District being looked at right now?

Mayor Hollowell responded this rule does not annex anything. It does give certain rights to annex those using City services. There are already those from before 1990 that have signed no protest to annexation. We could have done this a long time ago. When you hook up, you sign a no protest, which means we can annex you. Meaning you wave your right to

protest. We could annex everything we want to because we have those no protests on file. The only ones we could not call in are the ones that are residential and signed after 1990.

Citizen Collette Butcher commented but this is a first step to annexation? Why are you looking at doing the annexation this way?

Utilities Director Kelm, anybody that hooked up to water through the Custer County Water and Sewer District, was required to sign, a no protest to annexation, from the inception of the contract until 1990. These are filed at the court house. After 1990 the city government, the municipality at that time, removed that from the contract. The District said we will let you put in the contract, that all business will be required to sign a no protest of annexation in order to get city services through the Custer County Water and Sewer District. This is in effect even today and is the same as this Utility Bill. The only thing is today the District, would not agree to residential properties. The no protest of annexation has been going on for years and years.

City Attorney Rice, commented the contract also acknowledges that there are residential no protests, but the District will not assist the City in calling those in and annexing property. Most of the property owners here have signed or a previous owner has signed a no protest, when the property was originally hooked up to City water.

Utility Director Kelm, commented that Gary Ryder, will probably make mention, that he does not believe these are legal. But, these are legal documents and filed at the County Courthouse, filed agreements between the City of Miles City and property owner.

Citizen Gary Ryder commented that there was history of a court case back in the late 80's. The people in the district in order to expand the City water and sewer services, for both the rural and the City customers, they needed the Sewer Districts help, in order to do this, and the City needed the Districts customers. They were told and there were witness saying, there was a council person involved and gave a no protest agreement and people signed it, being told that the City never plans to annex. I am hearing that same argument today. The City has tried to annex and we stopped it based on the testimony of many of the land owners. We were told this was never going to happen. The City didn't fight it. Mr. Kelm, talks about what the agreement says, and I ask the City officials too independently and on their own read that agreement and look at the language in the agreement. Our members are customers in the District and they are City residents. The agreement is between the District and the City; it is not between the customers and the City. That is important legal difference and not being taken in to account by City staff. They spent a lot of money on a planner in addition to having a City Planner. They kept us in the dark until February 14th. I believe we are in a bad situation here. Our customers do not want to be annexed in. They voted 120 to 30 not to be annexed in and there are a lot of technical issues that have to be fixed in the District, we have funds to fix it, the City doesn't.

City Attorney Rice, The case you mention from the 80's, I found some court filing in the City files. Was that resolved short of a judgement? It did not go through full blown litigation. It did not even go to District Court. Did it have a final judgment from District Court? I could not find a final judgment for District Court.

Citizen Gary Ryder said it was not litigated; there was a writ to stop annexation. In those days we could solve things without going to Supreme Court. After papers were filed and provided the preliminary evidence, it was resolved.

Nolan Michaels, Michaels Addition, commented I have been here for 31 years. I have been paying services for nothing. I have \$108,000.00 dollars at \$29.99 per month, out of my pocket that is in this whole deal. The District and the City have gotten their share, of all that

money. Mr. Luther asked, why? I would like to ask the Council members to come up with a list specifically telling me, what my \$500.00 and some dollar raise that the Commissioner told us about, what is it going to give me above and beyond what I am getting now? So, please tell me what services I am going to get, I have a contract with the City for fire protection on my house. I was also being charged a commercial rate for five years and never received a refund, when I went to residential. So, for tomorrow night would you people get a specific answer to what I am going to get with my \$500.00 increase in taxes? And again, I could name about six or seven people, and I am the youngster as far as the \$108,000.00, which started out there with the \$29.99, and they have \$108,000.00 or more of their money paid for all that.

Citizen Carol Bean, asked if I was to protest and shut my water off, I would not be annexed, correct?

City Attorney Rice, responded, the protest would be counted. If you were one of ten properties that were being looked at for annexation and you were the only one that disconnected to protest, it would still pass and you would be annexed. If the property is one owner and they disconnected to protest, it would be counted.

Citizen Carol Bean responded Dwayne didn't even know taxes went up with this happening. I don't think anybody has all the information and both parties need to meet before this goes to City Council tomorrow night. I did not find out about this until three days ago. I request you table this until both sides can meet.

Citizen Jerry Backlund, asked what services are you going to give us over and above the \$500.00 that is not paid on a SID? County supplies road services, purchases the gravel, snow plowing, are we going to be forgotten in that area? I just wanted to get that clarified.

Utilities Director Kelm commented you say you are paying \$29.99 in assessment fees, all that that goes to the Custer County Water and Sewer District the City does not keep that money.

Warren Shiller, 75 Sunset Drive, commented not all of it goes to the Custer and Water and Sewer District. We are paying \$70.00 a month to the City for sewer. What I understand is it is for the maintenance of the treatment plant. I would like a financial statement; I would like someone to show me where my money goes.

Utilities Director Kelm commented the only thing you get billed for is the amount of water you use minus twenty percent. You may be classified as sewer only account, so you pay a fixed fee. The same as sewer only accounts in the City of Miles City less 20 percent. The County customers pay twenty percent less then City customers. The District adds their maintenance fees and debt repayment on top of that. That money is not coming to the City.

Don Bundy, 3113 Box Elder, responded it is not classified as debit repayment. It's an assessment fee for operation and maintenance. We have not raised our fees in thirty years and that's why the fees have not gone down.

Utility Director Kelm, responded do the people of the Custer County Water and Sewer District know that the debit has been paid?

Citizen Don Bundy, referred to a letter that he wrote to Mayor Chris Grenz, and Mayor elect Hollowell, December 8th 2015, to start negotiations, and had not heard anything until February 6th, 2017.

Mayor Hollowell, commented, had not received that letter until today. I would not enter into negotiations until I have something to negotiate with. We did not know what direction we were going to go with this.

Citizen Gary Ryder, commented on the debit repayment, Mayor Grenz told me, they

were not going to take over until Custer County paid the debt down. The debit is paid off and we want to adjust the rates, but we don't have a commitment from the City of Miles City to continue the water and sewer contract. Is there a written report from the planning staff on the pros and cons of annexation, and how much money the City is actually going to get?

City Attorney Rice, responded, this is just a copy of the Whitefish Ordinance. There cannot be action taken under this Ordinance, and there cannot be action taken until there is a plan of services and all the other annexation requirements are met. The public hearing is on the Ordinance not on annexation.

Citizen Jerry Backlund stated this Ordinance is just the first step to annexation. Because it states, you either sign this no protest or we shut your services off.

City Attorney Rice responded the City is just looking at putting the Utility Rule in place. The City has been looking at this for years and years. This ruling conforms to the State law handed down by the Supreme Court on the ruling on the Whitefish case.

Randy Anderson, 3405 Brisbin, asked if there is an existing contract and it ended in June, if this contract is between the City and Sewer District, how can they divvy that up to individuals until that one year negotiation period is over?

City Attorney Rice said they are not taking any action. The District is a separate issue. That does not mean the District will no longer exist or that the City cannot have a contract with the District for maintenance, service and water.

Citizen Randy Anderson, asked if we are still in the one year negation period and they are still negotiating the contract that identifies the sewer district as a whole and not individual's, how can the city ordinance break that up individually?

City Attorney Rice responded if the City passed the Ordinance and the City tried to annex you, before that contract expires, that is not what is happening.

Citizen George Luther stated the Whitefish case should have gone to Federal court, not State court, and then you can tie up these people in court for years.

Mayor Hollowell responded it is simple economics, we grow or we die. The City cannot grow without the annexation. There are multiple laws in the State that recognize that fact.

Citizen George Luther, questioned the Mayor, why is the City dissatisfied and want to grow?

Mayor Hollowell, responded, let's say this Ordinance passes tomorrow night, what gets annexed? This Ordinance gives us the ability to request annexation.

Utilities Director Kelm commented there are other areas outside the city limits that are not Custer County Water and Sewer customers that this will also affect. The Custer County Water and Sewer District has the lines locked up, so that the City cannot grow.

Citizen Gary Ryder requested a change in the wording in the Ordinance to modify the District.

Citizen Keith Holmlund commented it just boils down to the dollar. They want to increase their revenue by annexation. You are broke and you are looking for money.

Utilities Director Kelm commented each and every city has to grow.

Citizen Jerry Backlund, commented you cannot just grow by taxing people?

Mayor Hollowell responded the city is the center on commerce. If the City grows everything around it grows.

Citizen Keith Holmlund, commented to the committee, think about what you heard tonight this is just a small sample of what you are going to hear tomorrow night.

Mayor Hollowell responded if the City wanted to call in the no protest of annexation, it could do that right now. If you did not sign a no protest, the previous property owner probably did.

Citizen Collette Butcher, explained her role on the Planning Board and her job as the County Representative, It is an interesting committee to be on, if you do not understand how growth policy works or how annexation works. Stop at the office and review the growth policy. There is an annexation plan, but it has not been approved. There are areas outside the city limits that have been assigned a number. Like with any type of politics, you need to get yourself educated on the subject, before you jump to conclusions and make uninformed decisions.

She requested to the committee to hold off on making this decision, until you get everyone that wants to come to a meeting at a designated place. To get their feelings and maybe have the people who know more about the growth policy and annexation plan. Because every single time we have a meeting, regardless of the subject, if the word annexation is used, it's immediately annexation. People need to be more informed and you folks who did not get to read whatever you were supposed to read. As members of the committee it is your job to read these things and know what is going before you vote on it. You need to get more informed on how things work and have a better idea, and then maybe you can argue it. And do not hide anything, because it appears that is what is happening.

Citizen Backlund reiterated to have this tabled. We need more discussion on this in committee. I believe this is going to go to litigation.

City Planner Colton explained the tax questions; just because you are annexed does not mean your property values are going to go up. That is all decided by the Department of Revenue. If you get charged extra for City Specials, it is an SID. If you want streets, curbs, gutters and pavement, then you pay the SID.

Utility Director Kelm explained that the SID and City Specials using the Richland Addition as an example, it would be its own maintenance district, depending on level of services, then the people of that subdivision would have their own rates to pay.

Citizen Holmlund, asked, if this is also for people beyond the sewer district and their services come within 500 feet, are they are going to have to tie into those services? Those people need to come and have their voices heard.

Utility Director Kelm, responded what's the difference if the City owns those lines or if they are owned by Custer County Water and Sewer District?

Citizen Holmlund responded that if an existing septic system is in place, they can keep it. If the system fails and needs maintenance then they would have to hook up to City or County owned lines.

Citizen Robert Parker, asked the Mayor, what is going to make Miles City grow?

Citizen Collette Butcher commented a new dike would help.

Citizen Robert Parker responded a new dike would help in construction jobs, but when it's done, that will not create growth in Miles City. What is there here for people to do, for people who live here in town?

***Committee Chairperson Andrews asked for a motion. Being there was none.*

No recommendation from the committee to take to Council.

Committee Chairperson Andrews moved to adjourn the meeting, seconded by Committee Member Wilcox and passed unanimously, 4-0.

ADJOURNMENT

Having no further business, the meeting was adjourned at 7:50 p.m.

Respectfully Submitted:

Dwayne Andrews, Chairperson

Ally Capps, Recorder

Flood Control Committee

March 2, 2017

The **Flood Control Committee** met Thursday, March 2 2017, at 5:15 p.m. in the City Hall Conference Room. Present were Committee Members; Ken Gardner, Rick Huber and Brant Kassner. Committee Member Jeff Erlenbusch was absent. Also present were Floodplain Administrator Sam Malenovsky, Public Works Director Scott Gray, County Commissioner Jason Strouf, City Attorney Dan Rice, Karl Jackson for KLJ and Recorder Payroll/Claims Clerk Ally Capps.

Election of Chairperson

*** Committee Member Brant Kassner nominated Jeff Erlenbusch for Chairperson of the Flood Control Committee. The motion was seconded by Committee Member Gardner.*

After hearing no further nominations:

*** Motion then passed unanimously 3-0*

1. Recommendation on USACE Section 205 Documents.

Floodplain Administrator Malenovsky said the first document is the feasibility cost share agreement (FCSA) between the Department of the Army Corps of Engineers and the City of Miles City. It discusses the contract, how in-kind is taken care of, how much time you have to finish the project and the total cost of the project. City Attorney Rice reviewed the agreement and approved the agreement.

The second document is the (PMP) Project Management Plan. This discusses the overall scope of the project, funding, scheduling, Risk Analysis, Safety Plan, Communication Strategy, etc.

The last two documents are the Scope of work (SOW) and cost estimates. This is a detailed breakdown of the project and what each discipline is doing; it will cover the cost associated with it. It will cover: Program Management, Hydrology, Hydraulics, Economics, Real Estate, and Internal Drainage, to name a few.

Commissioner Strouf questioned the reasoning as to why the steering committee members are not considered key members on this project. Floodplain Administrator Malenovsky stated that this is an agreement between the City and USACE; the City is the sponsor on this project, so they would refer to the City as points on contact instead of an entire committee.

Chairperson Gardner asked if the Conditional Letter of Map Revision (CLOMR) is completed and will the Yellowstone River be shown at that time?

Floodplain Administrator Malenovsky responded that our current floodplain map is off of the Tongue River. We will not know what the Yellowstone will look like until we get the new map. Both rivers are being looked at in this study. This study is a stepping stone to the Yellowstone being taken care of. A CLOMR will depict the proposed area that is to be removed from the floodplain. No area will be removed completely until construction is done and the letter of Map Amendment (LOMR) is received by FEMA. Section 205 study is a stepping stone for other projects. After the 205 study is complete, we will know if another 205 could be done on the Yellowstone, what potential properties could be removed from the floodplain, what properties need to be purchased for the levee construction, the levee footprint and how far the levee would go. This will then allow us to start working on purchasing property and construction of the levee. Once the levee is complete USACE will submit documentation to FEMA and FEMA will issue a Letter of Map Revision which will remove properties from the floodplain. This same process would take place on the Yellowstone.

Committee Member Huber asked how this is being funded? Floodplain Administrator Malenovsky responded that Grant Writer Muggli and Planner Colton have been looking into grants and you cannot find grants for this kind of project.

Chairperson Gardner wanted to know if they are looking at forming a flood control district. Floodplain Administrator Malenovsky responded that they are in the beginning stages of that now.

Commissioner Strouf asked if this was going to be presented at legislation, including an infrastructure. I know our representatives were going to try to take this and go with it and try to get some sort of funding or recognition. The County sponsored a Grant request to the DNRC called and RRDL. The Grant request was for \$120,000.00. When the DNRC put out their ranking for these, this project was listed at number 64. The Governor drew a line on the funding for these projects at number 24. Floodplain Administrator Malenovsky responded that the committee has applied for an Intercap loan.

Commissioner Strouf said the Flood District has met twice. One meeting was on how to generate revenue to complete this project. The second meeting was to see if we could use that funding for ongoing maintenance on the project. What area is going to be encompassed in that district? The broader support you get the less impact it will be on each property owner. Making it more palatable for support and making it more affordable for the property owners. Making the area large enough to support to get the funding needed and that will get more voter support.

*** Committee Member Kassner recommend to approve to Council the Recommendations on USACE 205. The motion was seconded by Committee Member Huber and on roll call vote, the motion carried unanimously. 3-0*

2. Request of Citizens/Public Comment:

-None.

3. Committee Members Comments:

-None.

4. Adjournment

** *Committee Member Huber moved to adjourn the meeting, seconded by Committee Member Kassner and passed unanimously, 3-0.*

There being no further business, the Committee adjourned at 6:00 p.m.

Respectfully Submitted,

Flood Control Committee Chairperson

Ally Capps Recorder

Jeff Erlenbusch acting Chairperson

Amended

Finance Committee Meeting

March 2, 2017

The Finance Committee met Thursday, March 2, 2017 at 6:00 p.m. in the City Hall Conference room. Present were Committee Chairperson Susanne Galbraith and Committee Members Kathy Wilcox, Rick Huber and Dwayne Andrews.

Also present were: Planner I Dawn Colton, Historic Preservation Officer/Grant Writer Connie Muggli, Floodplain Administer/Auto Cad/Assistant PWPV Samantha Malenovsky, Attorney Rice, Mayor Hollowell and City Clerk/Recorder Lorrie Pearce.

Committee Chairperson Galbraith called the meeting to order.

1. Request of Citizens:

None

2. Ordinance No. 1311: An Ordinance Amending Sections 24-66(e) and 24-80, and Correcting the City of Miles City Zoning Map to Include City Property Not Reflected and Removing Properties Lying Outside of the City Limits, and Providing For a Hearing Thereon

****** *Committee Member Andrews moved to recommend to Council to approve the Ordinance, seconded by Committee Member Wilcox*

Committee Member Wilcox asked if anyone could explain the exceptions in section two talking about the permitting and section four referring to the Dyba addition tracts. Attorney Rice said that nothing was changed in that area, and said the only change was to the building code and map, what she was looking at already existed. The changing from General Commercial to Highway Commercial is not part of Ordinance 1311. He said the staff report was reporting on two different items, half of it was rezoning and the other half was Ordinance 1311. The marijuana shop being talked about should have nothing to do with the decision of the Ordinance being discussed.

Councilperson Galbraith said the change of the Ordinance was a line change because part of it was City and part of it was County.

****** *The motion passed 4-0*

3. Report from Grant Writers on Grants Applied for and Grants Received

Planner Colton and Officer Muggli updated the Committee on grants that have been applied for and grants received. Chairperson Galbraith updated the Committee on the grants that Battalion Chief Stevens had applied for.

4. **Review and Recommendation on Section 205 Miles City, Federal Cost Share Agreement, Project Management Plan, Scope of Work, Cost Estimate and Approval Sheet**

Administrator Malenovsky explained what the Section 205 agreement will cover:

- **Formal agreement between the City and Army Corps**
 - **A three year time frame from the Corps is July, 2022; for the study to be completed. The one thing that could extend this date is purchasing land**
 - **50% of the in kind will be paid by the City, less what the Army Corps pays- will be a benefit for the City Increased from \$83,000 to \$320,000**
 - **Need to compare the cost of performing task, the Army Corps versus Community which means comparing apples to apples**
 - **This is the first step and when section 205 is approximately ¾ completed the City will need to decide if it wants the 205 on the Yellowstone River. This would save the City money**
 - **When the Study is signed by the Government, the City will need the \$250,000, another \$100,000 may be needed in FY18**
 - **Looking into what would be better for the City, the 100 year plan or the 500 year plan. With the 100 year plan it would hopefully categorize the City of Miles City as zone B, but if the levy makes the City a bowl to hold water, that would not be good. Felt the decision would come from the Community**
- ** Committee Member Wilcox moved to recommend to Council to approve the Section 205 Miles City, Federal Cost Share Agreement, Project Management Plan, Scope of Work, Cost Estimate and Approval Sheet, seconded by Committee Member Huber. On roll call vote, it passed 4-0*

5. **Adjournment**

- ** Committee Member Wilcox moved to adjourn the meeting, seconded by Committee Member Andrews and passed unanimously, 4-0.*

The meeting was adjourned at 6:50 p.m.

Susanne Galbraith, Chairperson

Lorrie Pearce Recorder/City Clerk

Finance Committee Meeting

March 9, 2017

The Finance Committee met Thursday, March 9, 2017 at 6:00 p.m. in the City Hall Conference room. Present were Committee Chairperson Susanne Galbraith and Committee Members Kathy Wilcox, Rick Huber and Dwayne Andrews.

Also present were: Planner II Dawn Colton, Historic Preservation Officer/Grant Writer Connie Muggli, Floodplain Administer/Auto Cad/Assistant PWPV Samantha Malenovsky, Attorney Rice, Mayor John Hollowell and City Clerk/Recorder Lorrie Pearce.

Committee Chairperson Galbraith called the meeting to order.

1. Request of Citizens:

Planner Colton and Attorney Rice said there were several problems at the Industrial Park sites and wanted to get a conversation started on them:

- There are some leases due July 1, 2017 that does not offer an extension. This would cause all leasers to rebid on the lease of the land. Several of them have their own buildings on the land, so if they were not the highest bidder, they would either have to remove the buildings or leave them there for the City to use as they see fit. After a long discussion, the consensus was to update the City's lease policy to allow an extension to the present leases (at current rate) and possibly look at the City's selling policy.
- The City is obligated to give Tire Rama and United Parts the option to buy the land they are leasing effective July 1, 2017. The City is not ready for several reasons.
 - Before subdivision is approved, there has to be water and sewer installed, which would cost the city approximately \$500,000, and would need DEQ approval
 - Tire Rama is hooked up to a septic tank and United Parts is hooked up to water and sewer, which means the city has an obligation to sell the land to United Parts if the price is agreed on. At this point the City cannot sell to Tire Rama because the City is not ready for subdivision. Felt an extension of the leases are needed until problems are solved
 - The city has to divide the land into three lot divisions to meet our contractual agreements, which will take several years to complete because of water and sewer issues
 - Appraisal needs to be completed. This is being done, but not sure when the analysis will be given to the City
 - Felt if the water and sewer is installed, it would promote a lot of business in that area

- If annexed, the city would receive more revenue from taxes than from the lease amount charged
- Looking at grants, but the City does not fit most criteria's

Officer Muggli introduced County Attorney Assistant Carl Johnson and explained the MBCC VOVA Grant:

- An amendment to the constitution, (Marsy's Law) which requires all victims to be fully involved in the criminal process. It is mandatory that the position be filled, and carries severe penalties if not. Constitutionally it is the County's and City's responsibility to have someone in this position
- Sharing the position with the County would save both the City and County money (County hire)
- County Attorney's assistant is writing the grant
- Has to have the position filled July 1, 2017 and the grant covers From July 1, 2017 to June 30, 2019. After that the position would probably be added to the Interlocal agreement
- The match for County and City is 20%, which would cost each \$10,258.50 for two years. The funding will be in place June 8, 2017 and would be paid out of the attorney's budget. Attorney Rice thought he had enough money in his budget for fiscal year 2017 to pay the cost, and then it would be added to the fiscal year 2018 budget. In the future the city could look into a software to comply with the regulation
- Will not know if money will be funded for the grant until June 8, 2017

2. Ordinance No. 1310: An Ordinance Changing the Zoning or Track 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

*** Committee Member Andrews moved to recommend to Council to approve the Ordinance, seconded by Committee Member Huber. The motion passed 4-0*

3. Approval of Purchasing used tandem dump truck

Director Gray said the bid was for a used Tandem axle dump truck which would include a snow plow, sander, replace driver's seat and replace four new tires for an amount of \$30,630. He said he had \$60,000 budgeted, so it would save the City money if he purchased this truck, and could possibly sell the sander. One bid was received because it is a Sole Source item.

*** Committee Member Wilcox moved to approve the bid received from I State to purchase the tandem dump truck, seconded by Committee Member Huber. On roll call vote, it passed 4-0*

4. Review and Recommendation Amendment to the Engineering Agreement for Tongue River Crossing

Chairperson Galbraith said the amendment was because there was a delay in permitting and additional consulting on the 20-inch water main. The pipe that needed to be connected to was smaller than anticipated. The additional expense is \$3,500 for a total of \$86,022.75

*** Committee Member Wilcox moved to recommend to Council to approve the amended agreement, seconded by Committee Member Andrews. On roll call vote, it passed 4-0*

5. Adjournment

*** Committee Member Huber moved to adjourn the meeting, seconded by Committee Member Wilcox and **passed** unanimously, 4-0.*

The meeting was adjourned at 7:10 p.m.

Susanne Galbraith, Chairperson

Lorrie Pearce Recorder/City Clerk

**PUBLIC HEARINGS
&
UNFINISHED BUSINESS**

ORDINANCE NO. 1309

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA
ENACTING SECTION 23-1 OF THE CODE OF ORDINANCES OF THE CITY OF MILES
CITY, MONTANA, AND ADOPTING A UTILITY RULE REQUIRING A PROPERTY
OWNER'S CONSENT TO ANNEXATION AS A CONDITION OF RECEIVING WATER
AND/OR SEWER SERVICE**

WHEREAS, the City operates a municipal water and sewer utility, providing water from its municipal water supply system to various properties and receiving wastewater to its municipal treatment system from various properties located outside of the City limits; and

WHEREAS, Montana Code Annotated Section 69-7-201 requires each municipal utility to adopt, with concurrence of the municipal governing body, rules for the operation of its utility which outline the procedure for discontinuance of service and the reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries; and

WHEREAS, in 46 Op. Atty. Gen. No. 12 (1995), the Montana Attorney General ruled that a city or town may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service; and

WHEREAS, Montana Code Annotated Section 7-13-4314 states that any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The Montana Supreme Court in *Gregg v. Whitefish City Council* and the AG Opinion cited above state that consent to annexation may be required for receipt of continued utility service, in addition to initiation of service, and

WHEREAS, the City adopted RESOLUTION NO. 3872, *An Annexation and Extension of Services Plan*, which states: Properties outside of the City municipal boundary will not be connected to or receive service from the City's water and/or sewer systems without either annexation nor the property owner submitting a waiver of the right to protest annexation as a requirement for receiving service; and, for those properties currently receiving water and/or sewer service that are not within the City limits, the City may require the property owner(s) to consent to annexation or waive the right to protest annexation as a condition of continued water and/or sewer service; and

WHEREAS, from time to time the City Council determines that it is in the best interests of the City to annex property owned by those persons, firms or corporations receiving water and/or sewer service, and to bring the properties within the corporate limits of the City; and

WHEREAS, the City desires to adopt a rule requiring a property owner's consent to annexation as a condition of initiating or receiving continued water and/or sewer service;

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

Section 1: That there is hereby enacted a Section 23-1, entitled Annexation Required, as follows:

Sec. 23-1. – Annexation Required.

The City may, at any time, require a property owner's consent to annexation as a condition of new or continued sewer and/or water service. Sewer and/or water service is defined as the receipt of water or transmission of wastewater from or to the City, regardless of the ownership of the delivery infrastructure which services the property. When the City determines to require such consent from a particular property owner, the City may notify the property owner, in writing, that the City seeks such consent, and that if such consent is not given, the City will require that the property owner discontinue receiving sewer and/or water service. The property owner may notify the City in writing of his or her consent to annexation. If within 10 days of the property owner's receipt of such notice, the property owner contacts the City and makes firm arrangements, in writing, to discontinue sewer and/or water service, then the City shall not further pursue obtaining the property owner's consent. If, however, the property owner has not, within 10 days, made firm written arrangements to discontinue sewer and/or water service, then the City shall be entitled to treat the property owner as having consented to annexation of his or her property upon the expiration of such 10-day period. The failure by the property owner to respond in writing within 10 days shall entitle the City to treat the property owner as having consented upon the expiration of such 10-day period.

If the property owner consents to annexation under any of the methods described above, the property owner may not thereafter withdraw his or her consent to any proposed annexation of his or her property. If the property owner consents to annexation under any of the methods described above, then the City shall be entitled to disregard any protest that such property owner makes to a proposed annexation of his or her property. Nothing herein shall prevent the City from seeking consent even if the City has previously obtained a waiver of protest from such property owner or from his or her predecessor in interest.

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 14th day of February, 2017.

John Hollowell, Mayor

ATTEST: _____
Lorrie Pearce, City Clerk

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

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

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 Distrist 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 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.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

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

John Hollowell, Mayor

ATTEST:

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

A handwritten signature in cursive script that reads "LeRoy Meidinger".



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: 406-459-2018 Cell Phone: same Email: jhoofman@gmail.com

DESCRIPTIVE DATA:

Total area in acres: 2.4 acres
 Existing Zoning: General Commercial Proposed Zoning: Highway commercial district
 Existing Use: Vacant Baby Queen
 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.

TO ALL WHOM THESE PRESENTS SHALL COME, I, the undersigned, do hereby certify that the within and foregoing plat of the DYBA ADDITION AND ACERAGE TRACTS, MILES CITY, MONTANA, is a true and correct copy of the original plat as the same appears on file in the office of the County Clerk of said County.

WITNESSED my hand and the seal of said County at Miles City, Montana, this 9th day of February, 1961.

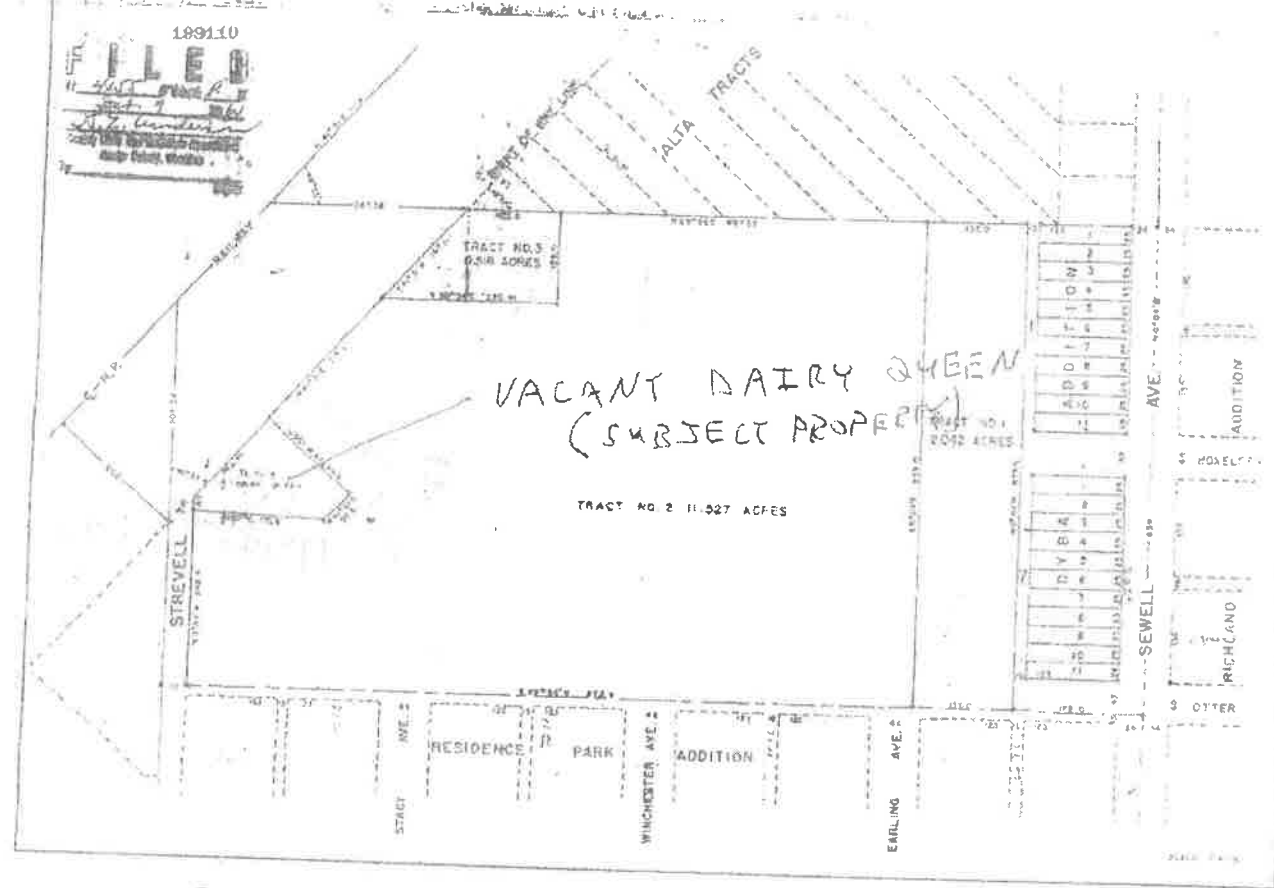
CLERK OF COUNTY

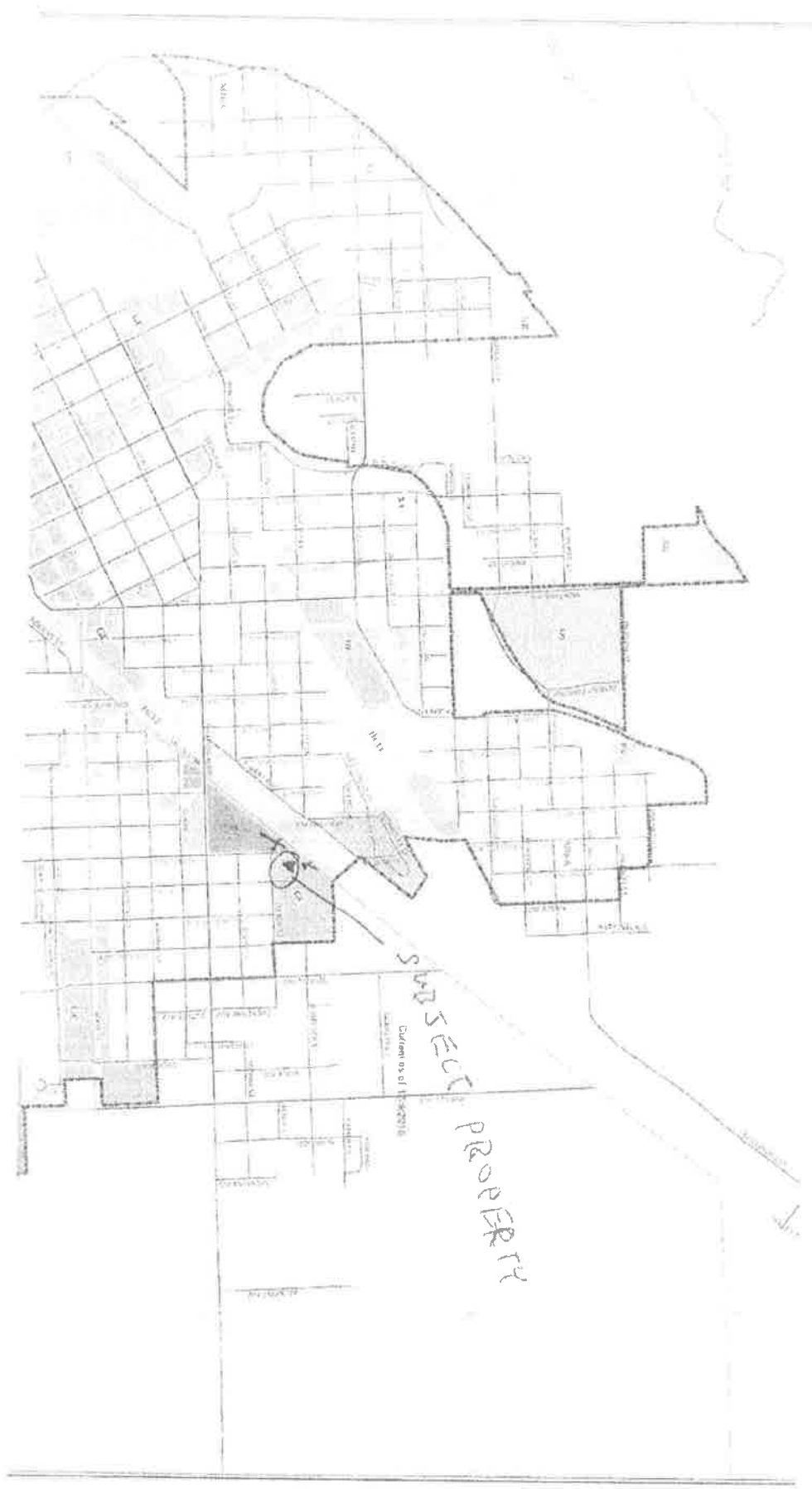
STATE OF MONTANA
COUNTY OF DEWEE
I, the undersigned, County Clerk of said County, do hereby certify that the within and foregoing plat of the DYBA ADDITION AND ACERAGE TRACTS, MILES CITY, MONTANA, is a true and correct copy of the original plat as the same appears on file in the office of the County Clerk of said County.

STATE OF MONTANA
COUNTY OF DEWEE
I, the undersigned, County Clerk of said County, do hereby certify that the within and foregoing plat of the DYBA ADDITION AND ACERAGE TRACTS, MILES CITY, MONTANA, is a true and correct copy of the original plat as the same appears on file in the office of the County Clerk of said County.

APPROVED
FEB 9 1961
Wm. A. Decker

FILED
1961 FEB 9
MILES CITY, MONTANA





S 1st St
PROPERTY

Children of St. Ignace

EXHIBIT A

Miles City City Council

Zone Change Request From General Commercial to Highway Commercial

Staff Report

John Hoofman, JNJ Management, LLC

The Miles City Zoning Commission met on February 6, 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. Matthew Rohrbach, contract planner with Land Solutions, presented the staff report below (MCZC-2017-01), recommending that the Zoning Commission adopt the staff report as findings of fact and make a recommendation to the Miles City City Council to approve the zone change from General Commercial to Highway Commercial.

At the public hearing a neighboring property owner asked for clarification as to what the zone change would mean in terms of what would be allowed on the property and he was provided a handout outlining regulations in the General Commercial and Highway Commercial districts. Otherwise, no one spoke in support of or opposition to the requested zone change. After the close of the public hearing, the Zoning Commission discussed the requested zone change and unanimously adopted the findings of fact presented and recommended that the Miles City City Council approve the zone change from General Commercial to Highway Commercial.

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 zoning amendment would allow the property owners to gain economic return from their investments. If the amendment is approved, subsequent zoning permit processes (potentially including a conditional use permit public review and development requirements for landscaping, lighting, etc.) would help to ensure that other public and private interests are not unreasonably compromised or impacted by future land uses.

Based on this information, the proposed zone change generally complies 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?

The health, safety, and general welfare of the public will be upheld through general Miles City regulations and specifically through the Highway Commercial zoning district regulations, which specify permitted and conditional uses as well as regulations for setbacks, building height, and lot coverage. Based on this information public health, safety, and general welfare will be promoted in the event of the proposed zone change is approved.

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 or non-motorized transportation. 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 traffic safety. In terms of non-motorized transportation, Valley Drive East is not heavily traveled by pedestrians or bicycles as there are currently no sidewalks or bike lanes and adjacent land uses are auto-oriented. The proposed zone change will have little, if any, impact on 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. Additionally, 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 is approved by the Miles City Board of Adjustment, the applicant would refurbish and occupy (conserve) a currently vacant building. Based on this information the proposed zone change would potentially conserve the value of the building and encourage 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.

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

The property is surround 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 will likely benefit from being able to obtain medical marijuana where few other options (if any) exist within Miles City. In the end, the benefits of the proposed zone change to the landowner and patients seeking medical marijuana are not at the overall expense of the general public.

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

The zone change does not necessarily correct an inconsistency in the zoning, but rather changes the zoning to better reflect prevailing land uses in the area.

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.

Recommendation

Adopt this staff report as findings of fact and approve 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

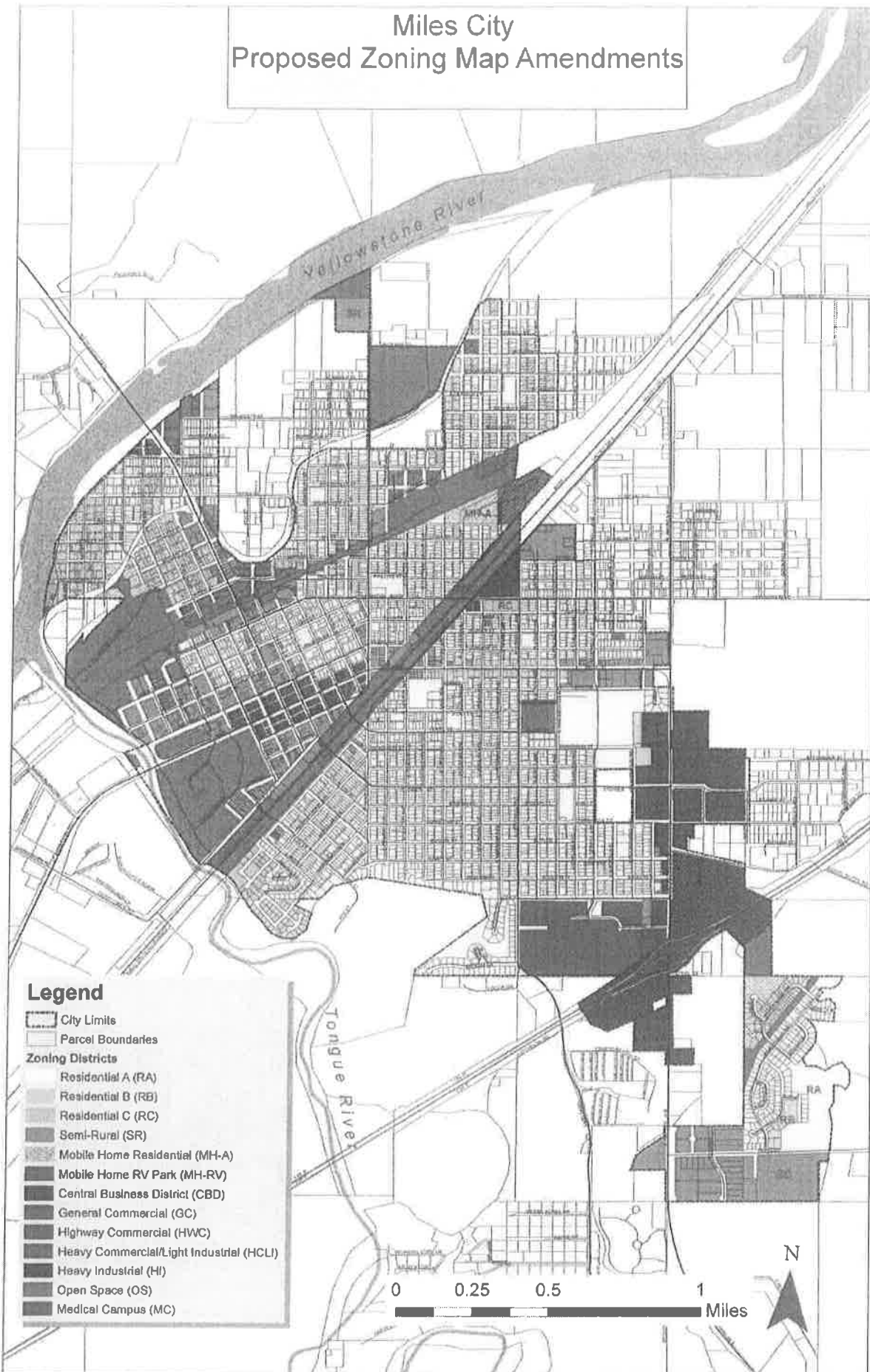
Joseph & Janine Yates
766 W 1550
Payson, UT 84651

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



New Business

RESOLUTION NO. 4043

RESOLUTION AUTHORIZING PARTICIPATION IN THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT BONDS (INTERCAP REVOLVING PROGRAM), APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO

BE IT RESOLVED BY THE City Council (the Governing Body) OF THE CITY OF MILES CITY (the Borrower) AS FOLLOWS:

ARTICLE I

DETERMINATIONS AND DEFINITIONS

Section 1.01. Definitions. The following terms will have the meanings indicated below for all purposes of this Resolution unless the context clearly requires otherwise. Capitalized terms used in this Resolution and not defined herein shall have the meanings set forth in the Loan Agreement.

Adjusted Interest Rate means the rate of interest on the Bonds determined in accordance with the provisions of Section 3.03 of the Indenture.

Authorized Representative shall mean the officers of the Borrower designated and duly empowered by the Governing Body and set forth in the application.

Board shall mean the Board of Investments of the State of Montana, a public body corporate organized and existing under the laws of the State and its successors and assigns.

Board Act shall mean Section 2-15-1808, Title 17, Chapter 5, Part 16, MCA, as amended.

Bonds shall mean the Bonds issued by the Board pursuant to the Indenture to finance the Program.

Borrower shall mean the Borrower above named.

Indenture shall mean that certain Indenture of Trust dated March 1, 1991 by and between the Board and the Trustee pursuant to which the Bonds are to be issued and all supplemental indentures thereto.

Loan means the loan of money by the Board to the Borrower under the terms of the Loan Agreement pursuant to the Act and the Borrower Act and evidenced by the Note.

Loan Agreement means the Loan Agreement between the Borrower and the Board, including any amendment thereof or supplement thereto entered into in accordance with the provisions thereof and hereof.

Loan Agreement Resolution means this Resolution or such other form of resolution that the Board may approve and all amendments and supplements thereto.

Loan Date means the date of closing a Loan.

Loan Rate means the rate of interest on the Loan which is initially 2.50% per annum through February 15, 2018 and thereafter a rate equal to the Adjusted Interest Rate on the Bonds and up to 1.50% per annum as necessary to pay Program Expenses.

Note means the promissory note to be executed by the Borrower pursuant to the Loan Agreement, in accordance with the provisions hereof and thereof, in substantially the form set forth in the Promissory Note, or in such form that may be approved by the Board.

Program shall mean the INTERCAP Program of the Board pursuant to which the Board will issue and sell Bonds and use the proceeds to make loans to participating Eligible Government Units.

Project shall mean those items of equipment, personal or real property improvements to be acquired, installed, financed or refinanced under the Program as set forth in the Description of the Project/Summary of Draws.

Trustee shall mean U.S. Bank National Association (formerly known as First Trust Company of Montana National Association) and its successors.

Section 1.02. Authority. The Borrower is authorized to undertake the Project and is further authorized by the Borrower Act to enter into the Loan Agreement for the purpose of obtaining a loan to finance or refinance the acquisition and installation costs of the Project.

Section 1.03. Execution of Agreement and Delivery of Note. Pursuant to the Indenture and the Board Act, the Board has issued and sold the Bonds and deposited a part of proceeds thereof in the Loan Fund held by the Trustee. The Board has, pursuant to the Term Sheet, agreed to make a Loan to the Borrower in the principal amount of \$600,000.00 and upon the further terms and conditions set forth herein, and as set forth in the Term Sheet and the Loan Agreement.

ARTICLE II

THE LOAN AGREEMENT

Section 2.01. Terms. (a) The Loan Agreement shall be dated as of the Loan Date, in the principal amount of \$600,000.00 and shall constitute a valid and legally binding obligation of the Borrower. The obligation to repay the Loan shall be evidenced by a Promissory Note. The Loan shall bear interest at the initial rate of 2.50% per annum through February 15, 2018 and thereafter at the Adjusted Interest Rate, plus up to 1.50% per annum as necessary to pay the cost of administering the Program (the Program Expenses). All payments may be made by check or wire transfer to the Trustee at its principal corporate trust office.

(b) The Loan Repayment Dates shall be February 15 and August 15 of each year.

(c) The principal amount of the Loan may be prepaid in whole or in part provided that the Borrower has given written notice of its intention to prepay the Loan in whole or in part to the Board no later than 30 days prior to the designated prepayment date.

(d) The Prepayment Amount shall be equal to the principal amount of the Loan outstanding, plus accrued interest thereon to the date of prepayment.

(e) Within fifteen days following an Adjustment Date, the Trustee shall calculate the respective amounts of principal and interest payable by each Borrower on and with respect to its Loan Agreement and Note for the subsequent August 15 and February 15 payments, and prepare and mail by first class mail a statement therefor to the Borrower.

Section 2.02. Use and Disbursement of the Proceeds. The proceeds of the Loan will be expended solely for the purposes set forth in the Description of the Project/Summary of Draws. The proceeds from the sale of the Note to the Board shall remain in the Borrower's Account pending disbursement at the request of the Borrower to pay the budgeted expenditures in anticipation of which the Note was issued. Requests for disbursement of the Loan shall be made to the Board. Prior to the closing of the Loan and the first disbursement, the Borrower shall have delivered to the Trustee a certified copy of this Resolution, the executed Loan Agreement and Note in a form satisfactory to the Borrower's Counsel and the Board's Bond Counsel and such other certificates, documents and opinions as set forth in the Loan Agreement or as the Board or Trustee may require. The Borrower will pay the loan proceeds to a third party within five business days after the date they are advanced (except for proceeds to reimburse the Borrower for previously paid expenditures, which are deemed allocated on the date advanced).

Section 2.03. Payment and Security for the Note. In consideration of the making of the Loan to the Borrower by the Board, the provisions of this Resolution shall be a part of the Agreement of the Borrower with the Board. The provisions, covenants and Agreements herein set forth to be performed by or on behalf of the Borrower shall be for the benefit of the Board. The Loan Agreement and Note shall constitute a valid and legally binding obligation of the Borrower and the principal of and interest on the Loan shall be payable from the general fund of the Borrower, and any other money and funds of the Borrower otherwise legally available therefor. The Borrower shall enforce its rights to receive and collect all such taxes and revenues to insure the prompt payment of the Borrower obligations hereunder.

Section 2.04. Representation Regarding the Property Tax Limitation Act. The Borrower recognizes and acknowledges that the amount of taxes it may levy is limited by the state pursuant to Section 15-10-402, et. seq. (the Property Tax Limitation Act). The Borrower is familiar with the Property Tax Limitation Act and acknowledges that the obligation to repay the Loan under the Agreement and Note are not exceptions to the provisions of the Property Tax Limitation Act. The Borrower represents and covenants that the payment of principal of and interest on the Loan can and will be made from revenues available to the Borrower in the years as they become due, notwithstanding the provisions of the Property Tax Limitation Act.

Section 2.05. Levy and Appropriate Funds to Repay Loan. The Borrower agrees that in order to meet its obligation to repay the Loan and all other payments hereunder that it will budget, levy taxes for and appropriate in each fiscal year during the term of the Loan an amount sufficient to pay the principal of and interest hereon within the limitations of the Property Tax Limitation Act, as may be amended, and will reduce other expenditures if necessary to make the payments hereunder when due.

ARTICLE III

CERTIFICATIONS, EXECUTION AND DELIVERY

Section 3.01. Authentication of Transcript. The Authorized Representatives are authorized and directed to prepare and furnish to the Board and to attorneys approving the validity of the Bonds, certified copies of this Resolution and all other resolutions and actions of the Borrower and of said officers relating to the Loan Agreement, the Note, and certificates as to all other proceedings and records of the Borrower which are reasonably required to evidence the validity and marketability of the Note. All such certified copies and certificates shall be deemed the representations and recitals of the Borrower as to the correctness of the statements contained therein.

Section 3.02. Legal Opinion. The attorney to the Borrower is hereby authorized and directed to deliver to the Board at the time of Closing of the Loan his or her opinion regarding the Loan, the Loan Agreement, the Note and this Resolution in substantially the form of the opinion set forth in the Attorney's Opinion.

Section 3.03. Execution. The Loan Agreement, Note, and any other document required to close the Loan shall be executed in the name of the Borrower and shall be executed on behalf of the Borrower by the signatures of the Authorized Representatives of the Borrower.

PASSED AND APPROVED by the City Council this 28th day of March, 2017.

By _____
Its _____

Attest:

By _____
Its _____