



# COUNTY OF YELLOWSTONE ZONING COMMISSION

**AGENDA-Monday, May 18, 2015**

**Miller Building, 1<sup>st</sup> Floor Conference Room  
2825 3<sup>rd</sup> Avenue North, Billings, Montana**

## NOTICE TO THE PUBLIC

### Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

**Call the meeting to order.**

**Introduction of the Yellowstone County Zoning Commission Members and Planning Department Staff.**

**Public Comment**

**Approval of Minutes:** March 9, 2015

**Disclosure of any Conflict of Interest-Members of the Commission and Staff**

**Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff**

**a. The Exparté Communication Binder is available at the Sign-In and Agenda Station.**

**Regular Business:**

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.

C. Reading of notices of the public hearings on the following items:

**Public Hearings:**

- a. **Item #1: County Zone Change #659:** The applicant is requesting a zone change from Agriculture Open Space (A-1) to Agriculture Suburban (A-S) on Tract 7B of C/S 2085, a 9.2 acre parcel of land. The property is generally located at 1800 43<sup>d</sup> Street West. The applicant conducted a pre-application neighborhood meeting on March 15, 2015 at the subject property, Tax ID D04723G.
  
- b. **Item #2: Zone Change #660 – 6132 Grand Avenue –** A zone change from Agriculture-Open Space (A-1) to Agriculture Suburban (AS) on Tract C of C/S 1941, a 20.009 acre parcel of land. A pre-application neighborhood meeting was held on March 13, 2015 at the subject property. Tax ID: D00381.

**Other Business/Announcements**

**Adjournment**

Following the public hearing, the County Zoning Commission will make a recommendation to the Yellowstone County Commissioners. The **Board of County Commissioners** public hearing will be held on **Tuesday, May 26, 2015, at 9:45 a.m. in Room 403A, 4<sup>th</sup> Floor of the Yellowstone County Courthouse.** The Board of County Commissioners will hear all persons wishing to speak relative to the proposed zone change.

Information on the preceding item may be obtained at the Yellowstone County Planning Department, 2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor or phone 657-8246. Anyone wishing to be heard on this matter may appear at this hearing. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Tammy Deines, Planning Clerk, at 247-8610 or e-mail at [deinest@ci.billings.mt.us](mailto:deinest@ci.billings.mt.us)

**County Zoning Commission**

**Meeting Date:** 05/18/2015

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**Information**

**Subject**

**Approval of Minutes:** March 9, 2015

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**Attachments**

[YZC 2015 03 09 Minutes](#)

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## Yellowstone County Zoning Commission Minutes for the Meeting of Monday, March 9, 2015

**The County Zoning Commission met on Monday, March 9, 2015 in the Miller Building 1<sup>st</sup> floor conference room located at 2825 3<sup>rd</sup> Avenue North.**

At 4:05 p.m., Chairman Cook opened the meeting and introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Dave Green, Planner I, and Tammy Deines, Planning Clerk

Commissioners and Staff		01/12/2015	02/09/2015	03/09/2015	04/13/2015	05/11/2015	06/08/2015	07/13/2015	08/10/2015	09/14/2015	10/13/2015	11/09/2015	12/14/2015	
Dennis Cook	Chairman	1	-											
Al Littler	Vice Chairman	1	-											
Terri Welborn	Commissioner	1	-											
Ole Shafer	Commissioner	1	-											
Nicole Cromwell	Planner II/ Zoning Coordinator	1	-											
Wyeth Friday	Planner II	-	-											
Juliet Spalding	Planner II	-	-											
Lora Mattox	Planner II	-	-											
Tamara Deines	Planning Clerk	1	1											
Karen Husman	Planning Assistant	-	-											

**Attending:** Ron Neibauer; Lanney Lucara; Shri Endy; Quentin Eggart, EEC; Katie Zindler; Jim Johnson; Ceclia M. Kimble; Jason Hertz; Travis West, Engineering West; Rod Lorenz; Toby Liechti; Marshal Phil, Blueline Engineering; Steve Henry

**Announcements:**

- The next County Zoning Commission meeting on Monday, April 13, 2015 is cancelled due to lack of applications.

**Public Comment**

Chairman Cook asked if there was anyone wishing to speak during the public comment portion of the meeting. He stated any member of the public can be heard on any subject that is not on the agenda; the Yellowstone County Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting agenda for discussion.



## Yellowstone County Zoning Commission Minutes for the Meeting of Monday, March 9, 2015

### **Cecilia Kimball, 3077 Park Hill Drive, Billings, Montana**

Ms. Kimball asked about the possibility of installing a sewer line in the Garden Avenue neighborhood.

**Disclosure of Conflict of Interest:** There was no disclosures of conflict of interest.

**Disclosure of Outside Communication:** There was no one on the Commission wishing to disclose any outside communication.

**Approval of the January 12, 2015 Meeting Minutes:** Chairman Cook called for approval of the January 12, 2015 meeting minutes.

### **Motion**

**Ole Shafer made a motion and Teri Welborn seconded the motion to approve the January 12, 2015 meeting minutes. The motion carried with a unanimous voice vote.**

### **Public Hearings:**

Chairman Cook reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the Board of County Commissioners on Tuesday, March 24, 2015, in the Board of County Commissioners Board Room 403A in the Yellowstone County Courthouse.

**Item #1: : Zone Change #656**— This is a zone change from Residential 15,000 to Community Commercial on the west 470 feet of the south 230 feet of Lot 18, Clark Subdivision, a 2.84 acre parcel of land, generally located a 1102 Garden Avenue. A pre-application neighborhood meeting was held on January 26, 2015 at Jim & Tracy's Alignment at 2203 1st Ave South.

### **RECOMMENDATION**

the Planning staff is forwarding a recommendation of approval based on the 11 criteria for zone changes.

### **Discussion**

Chairman Cook called for discussion. There was none.

### **Public Hearing**

At 4:14 p.m., Chairman Cook opened the public hearing and asked if there was anyone wishing to speak in favor of County Zone Change #656.



## **Yellowstone County Zoning Commission Minutes for the Meeting of Monday, March 9, 2015**

### **Quentin Eggart, Eggart Engineering, 720 Lohwest Lane, Billings, Montana**

Mr. Eggart stated they are unable to service the property with services unless it is annexed and that is not the applicant's intent. The applicant would like to combine the zoning on these parcels so it is under one zoning code. The plan is to access the property from Garden Avenue. They may improve the Kimble Drive but they do not have the ability to vacate it.

### **Jim Johnson, 2203 1st Ave S, Billings, Montana**

Mr. Johnson stated his interest in this parcel is he owns Jim & Tracy's Alignment at 2203 1st Ave South and is looking to relocate their business.

### **Marvin Linde, (no address given)**

Mr. Linde is the current owner of this property. Mr. Linde said this business will be an asset to South Billings.

### **Opposition**

Chairman Cook asked if there was anyone wishing to speak in opposition of County Zone Change #656.

### **Ron Neibauer, 3038 Mac Tavish Circle, Billing, Montana**

Mr. Neibauer owns property at 107 Garden Circle. He stated he is concerned with this proposal and the type of business that may follow. He submitted photographs to the Commission members representing some of "the bad changes in the area" off of Interstate 90. He voiced concern with the potential for Garden Avenue to look like Sugar Avenue with the parcel by parcel development. Mr. Neibauer stated this is a gateway to the City; the properties should be aesthetically pleasing; and not an industrial commercial eyesore. As an owner of a residential property in this area, he feels this zone change will adversely affect his property. He would like this property to remain a greenbelt in for citizens to comfortably bicycle and enjoy the area. Mr. Neibauer stated he does not feel this plan meets the criterion and approval of the zone change the quality of life. He voiced concern with large vehicles accessing the business will burden Garden Avenue. He pointed out business that strive to maintain pleasing surroundings and stated there is no visual barrier from this property for nearby residents. Mr. Neibauer stated a precedent will be set with this decision.

### **Rebuttal**

### **Quentin Eggart, Eggart Engineering, 720 Lohwest Lane, Billings, Montana**

Mr. Eggart stressed to the applicant the plans are still in concept. He stated he does not see this as a detriment as a buffer between the existing commercial traffic and the interstate; and this business against a highway interchange will not create a negative impact to the community.



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### Discussion

Commissioner Littler asked if the landscaping requirements for Entryway Zoning would apply. Nicole Cromwell stated the requirements will follow the landscaping requirements for Community Commercial Zoning and explained the differences between the two zoning classifications. Commissioner Littler asked if the flood plain data has been updated. Quentin Eggart stated this property is not in the flood plain but is located in a flood fringe area; and there are numerous permits needed to build on this property. He explained the difference between the flood way and the flood fringe. There were no further questions.

Chairman Cook closed the public hearing and entertained a motion.

### Motion

**Commissioner Shafer made a motion and it Commissioner Littler seconded the motion to forward a recommendation of approval of Zone Change #656 as presented by staff.**

Chairman Cook called for discussion on the motion. There was none.

The motion carried with a unanimous voice vote, 4-0.

**Item #2: : Zone Change #657**– The applicant is requesting a zone change from Agriculture Open Space (A-1) to Residential 15,000 (R-150) on an un-platted portion of the S1/2NE/14 of Section 16, T1S, R25E, a 65.134 acre parcel of land. The property is generally located between South 48th Street West and South 52nd Street West on the north side of Austrian Pine Drive. The property is currently used as farm land. The applicant conducted a pre-application neighborhood meeting on January 26, 2015 at Elder Grove School located at 1532 South 64th Street West. Tax ID D00621.

### **RECOMMENDATION**

Planning staff is forwarding a recommendation of approval based on the 11 criteria for zone changes.

Planner Dave Green stated a pre-application neighborhood meeting was held for this parcel on January 26, 2015 at Elder Grove School. The property will be subdivided into .5 acre to 1 acre lots and provide separation distances as required by DEQ. The applicant is proposing to do this subdivision in phases and hope to get approval for the water rights needed for wells.

### Discussion

Chairman Cook called for discussion. Commissioner Littler asked for clarification on the posted topographic map. Dave Green stated this property is located between King Avenue and Hesper Road. Commissioner Littler commented on his recollection of the high water table on this



## **Yellowstone County Zoning Commission Minutes for the Meeting of Monday, March 9, 2015**

property. A citizen in the audience commented that at one time, Jeff Junkert had intended to develop this property as a subdivision but withdrew due to issues with high nitrates.

At 4:10 p.m., Chairman Cook opened the public hearing and asked if there was anyone wishing to speak in favor of County Zone Change #657

### **Marshall Phil, Blueline Engineering, 2110 Overland Avenue, Billings, Montana**

Mr. Phil said after the neighborhood meeting, the owner drafted Covenants and Restrictions and distributed them to the area homeowners in order to answer concerns voiced at the meeting. The proposal is for the park area to the north will handle some of the storm water for this project. The homes will be sized and look similar in nature to the adjacent properties. Mr. Phil stated the nitrates continue to be high but there is technology that will help deal with this issue. He commented they are not proposing to build in the northern end of the parcel due to high ground water.

### **Travis West, Engineering West, 33 11st. N, Columbus, Montana**

Mr. West is tasked with putting together the DEQ proposal for this parcel and commented on the updates to the DEQ regulations. They are proposing using SepticNET Advanced Wastewater Treatment, a modular septic treatment system, to mitigate the nitrates in the area from the agricultural uses and drain field runoff. Individual wells are proposed, and the DEQ applications will be submitted in two phases with the first phase containing thirteen exempt wells. Commissioner Littler asked about the nitrate contributions from agriculture and from Hogan's Slough. Mr. West said the nitrate levels are rising throughout West Billings as development takes place. He said the owner will apply for the water right for the overall usage, and no wells will be drilled until DEQ is comfortable with the applications.

### **Opposition**

Chairman Cook asked if there was anyone wishing to speak in opposition of County Zone Change #657.

### **Lanny Lucara, 1212 Bayberry Circle, Billings, Montana**

Mr. Lucara stated Austrian Pine is a narrow road and it barely achieves the requirements. He stated the trees are encroaching in the roadway. He stated the current asphalt does not lend itself to the right-of-way and consideration should be made to increase the road width. Mr. Lucara stated residents in Bridle Creek Subdivision are concerned with potential impacts on their septic systems due to the number of new systems. He asked who will maintain the SepticNET systems on an ongoing basis. Mr. Lucara stated this is a new system in Butte, Montana in 2011. He said he would like to see this subdivision divided into .75 acre to 1 acre lots. Mr. Lucara explained he is not against this proposal but he would like it "done right".



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### **Mike Hollanbeck, 4950 Austrian Pine Drive, Billings, Montana**

Mr. Hollanbeck said he is concerned with the high nitrate level and the saline seep area downgraded from Hogan's Slough. He said he questions whether 60+ wells up gradient to their subdivision will have not have an effect. He would like the developer to commit to the property owners across Austrian Pine and asked what the back side of the properties will look like from their point of view. Mr. Hollanbeck stated he doesn't like the congestion.

### **Sheri Ende, 1215 Bayberry, Billings, Montana**

Ms. Ende stated she works at a local laboratory and deals with nitrate exposure on a daily basis. She said she has tested several wells in the Bridle Creek Subdivision. Ms. Ende said this proposed subdivision is up gradient from their systems and the 61 homes in this subdivision will create a flow underneath their homes. She spoke to "Blue Baby Syndrome", and said it is critical to children drinking high nitrate water. Ms. Ende stated high nitrates is also an indicator parameter of potential herbicide contamination. She has considered the research on the SepticNET systems and does not know if this is the best technology for this parcel. Ms. Ende is very concerned with the health hazards for the residents of Bridle Creek Subdivision. She asked about lowered water pressure. She commented the water pressure dropped in Wells Garden Estates when the additional filings were added to the subdivision.

### **Rod Lorenz, 5060 Maple Ridge Circle, Billings, Montana**

Mr. Lorenz stated he is a resident of Oak Ridge Subdivision and has not had issues with water pressure.

Commissioner Littler reminded attendees these issues are not related to the zoning but will have to be addressed with the subdivision approval.

### **Roy Close, 4905 Blue Spruce, Billings, Montana**

Mr. Close has two wells on his property and the nearby Sanderson property has a cistern due to the nitrate issues. Mr. Close voiced concern as the draw down tests on the water will not duplicate what will happen in July. He stated a SepticNET System for a high alkaline clay based soil will create a need for a lot of maintenance; and treatment of the problem will complicate the problem. Mr. Close prefers either a central water system or a central sewer system. He is not convinced the SepticNET system will handle the high nitrate levels. He is concerned the proposed lot sizes will make it difficult to meet the setbacks for the wells and septic tanks. Mr. Close stressed the fact the economic development has be weighed against the impacts on the water. Rod Lorenz interjected and said he did not recall dealing with heavy soils in the soil analysis conducted by Rimrock Engineering. Mr. Close replied that as a general rule this is a heavy clay, dense, soil.



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### **Eve Hollanbeck, 4950 Austrian Pine Drive, Billings, Montana**

Ms. Hollenback stated they are unclear with the traffic flows and she voiced concern with the devaluation of their property and the effects on the water.

### **Rebuttal**

### **Travis West, Engineering West, 33 11st. N, Columbus, Montana**

Mr. West stated these concerns will be addressed by DEQ and DNRC who will control the density of this application. Currently they have over 30 test pits up to eight feet deep and have not found clay soils. Mr. West explained that annual inspections are required for SepticNET managed treatment systems and a contract will be in place between the homeowner and the septic provider. He said generally, the ground water flow direction runs more easterly and not to the south. They have not conducted the pump or aquifer testing to determine water dependability. He reiterated DNRC will be the governing agency. He said they model the wells from this parcel and the wells from the neighboring subdivisions for a one year period to determine the impacts.

At 5:25 p.m. Chairman Cook asked if there was anyone else wishing to speak in favor or against County Zone Change #657 closed the public hearing and entertained a motion.

### **Motion**

**Commissioner Shafer made a motion and it Commissioner Littler seconded the motion to forward a recommendation of approval of Zone Change #657 as presented by staff.**

### **Discussion**

Chairman Cook called for discussion on the motion. There was none.

**The motion carried with a unanimous voice vote, 4-0.**

### **REQUEST**

**Item #3 County Zone Change #658:** This is a City Council initiated amendment to the Unified Zoning Regulations Section 27-601(a) and 27-606 to allow the off-street parking and storage of Class A or Class D tow trucks in all residential zones. The City Council initiated this zone change on February 9, 2015 at the request of the Yellowstone Valley Tow Truck Association. There is a companion ordinance amendment to 24-406, a City Traffic Code, that regulates on-street parking of similar vehicles. This is not part of the Unified Zoning Regulations. The County Zoning Commission may take comment on this item but will only forward a recommendation on the proposed amendments to the Zoning Regulations 27-601(a) and 27-606.



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### **RECOMMENDATION**

The Planning Division is recommending denial of the amendments to allow tow trucks to park off-street in residential zones.

Planning Staff recommends denial

- Not a predictable land use decision for residential zones
- Tend to increase neighborhood conflicts
- Residential streets and driveways not constructed for heavy weight truck use on a regular basis
- Subject adjacent residents to noise and fumes from starting and idling wreckers
- Enforcement of proposed amendment problematic

### **Discussion**

Chairman Cook called for discussion. Commissioner Littler commented that although only 3-4 businesses currently take trucks home approval of this ordinance may increase these numbers. He said he agrees with Staff that this ordinance may be unenforceable in the County. In response to a question by Commissioner Cook, Nicole Cromwell stated there were 75 complaints of oversized vehicles parked on residential driveways in the last five years, and there were 3,900 off street complaints primarily comprised of recreational vehicles. Commissioner Cook stated he sees the companies' point of view but from a residents perspective the noise may be onerous. He said he concurs with the Staff recommendation of denial. Commissioner Welborn stated this will be a safety issue and will vote in favor of the staff recommendation. Ole Shafer voiced concern with the potential increase in parked vehicles with approval of the ordinance.

### **Public Hearing**

At 4:10 p.m., Chairman Cook opened the public hearing and asked if there was anyone wishing to speak in favor of County Zone Change #658. There was none.

### **Opposition**

Chairman Cook asked if there was anyone wishing to speak in opposition of County Zone Change #658. There was none. Chairman Cook closed the public hearing and entertained a motion.

### **Motion**

**Commissioner Littler made a motion and it Commissioner Shafer seconded the motion to forward a recommendation of denial of Zone Change #658 as presented by staff.**



## **Yellowstone County Zoning Commission Minutes for the Meeting of Monday, March 9, 2015**

### **Discussion**

Chairman Cook called for discussion on the motion. There was none.

**The motion carried with a unanimous voice vote, 4-0.**

**7. OTHER BUSINESS-** There was no other business.

**Adjournment:** The meeting adjourned at 5:46 p.m.

**ATTEST: DRAFT.** To be approved by a motion on Monday, May 5, 2015

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**Dennis Cook, Chairman, Yellowstone County Zoning Commission**

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**Tamara L. Deines, Planning Clerk**



## County Zoning Commission

**Meeting Date:** 05/18/2015

**SUBJECT:** Zone Change #659 - 1800 43rd Street West

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** David Green

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### Information

#### REQUEST

**Item #1: County Zone Change #659:** The applicant is requesting a zone change from Agriculture Open Space (A-1) to Agriculture Suburban (A-S) on Tract 7B of C/S 2085, a 9.2 acre parcel of land. The property is generally located at 1800 43<sup>rd</sup> Street West. The applicant conducted a pre-application neighborhood meeting on March 15, 2015 at the subject property, Tax ID D04723G.

#### RECOMMENDATION

The Planning staff is forwarding a recommendation of approval based on the 11 criteria for zone changes.

#### APPLICATION DATA

OWNER: Thomas and Cheryl Morgan

AGENT: None

LEGAL DESCRIPTION: C/S 2085, Parcel 7B

ADDRESS: 1800 43rd Street West

CURRENT ZONING: A-1

EXISTING LAND USE: Residential / Agricultural

PROPOSED USE: Same

SIZE OF PARCEL: 9.2 acres

#### CONCURRENT APPLICATIONS

None

#### APPLICABLE ZONING HISTORY

**Subject Property:**

None

**Surrounding Properties:**

**Zone Change #433** – A zone change from Agriculture-Open Space (A-1) to Agriculture Suburban (A-S) on Tract 2, C/S 2084, was approved on October 20, 1992.

**Zone Change #434** – A zone change from Agriculture-Open Space (A-1) to Agriculture Suburban (A-S) on Tract 5, C/S 2084, was approved on October 20, 1992.

**Zone Change #462** – A zone change from Agriculture-Open Space (A-1) to Agriculture Suburban (A-S) on Tract 6, C/S 2084, was approved on October 5, 1995.

**Zone Change #615** – A zone change from Agriculture Suburban (A-S) to Residential Professional (RP) on a one acre parcel of land the south ½ of Lot 3, Block 1 of Carl’s Subdivision, generally located at 4239 Grand Avenue was approved in March 2008.

On January 6, 1999 Carl’s Subdivision was created from Tract 6 of Certificate of Survey 2085. On December 12, 2003 Cornerstone Subdivision was created from Tract 1 of Certificate of Survey 2085. It was also annexed on December 12, 2003 with zoning changed to Residential 9600. This is the current location of Cornerstone Community Church and private school.

**SURROUNDING LAND USE & ZONING**

- NORTH: Zoning: A-1  
Land Use: Residential / Agriculture
- SOUTH: Zoning: A-S and A-1  
Land Use: Residential / Agriculture
- EAST: Zoning: Residential 9600 (R-96) / Inside Billings City Limits  
Land Use: Residential
- WEST: Zoning: A-1 / A-S  
Land Use: Residential / Agricultural

**BACKGROUND**

The applicant is requesting a zone change from Agriculture Open Space (A-1) to Agriculture Suburban (A-S) on Tract 7B of C/S 2085, a 9.2 acre parcel of land. The property is generally located at 1800 43rd Street West. The applicant conducted a pre-application neighborhood meeting on March 15, 2015 at the subject property. The property currently has an existing house with out buildings and some agricultural uses occur on the property.

Certificate of Survey 2085 was recorded on June 17, 1981, creating 8 tracts. At that time, all of the tracts were just over 10 acres with a zoning of Agriculture Open (A-1) which

requires a 10 acre minimum lot size. All of the tracts complied with the zoning at the time. On July 14, 1983, Tract 7 was split into two parcels creating 7A of 1.028 acres, and 7B of 9.1970 acres with zoning of A-1. Tract 7B is the subject property now requesting the variance. There have been a series of plats since the 1980s that have divided surrounding properties into various sizes.

Variations granted by the County Board of Adjustment between 1988 and 2005 allowed the splitting of Tracts 3, 7, and 8 into lots that do not meet the zoning requirement of a 10 acre minimum lot size. In April 2015 the owners of Tract 3A and 3B went through the Variance process requesting to increase Tract 3A to 8.365 acres and to reduce Tract 3B to 3.29 acres in A-1 zoning. The variance was granted. Zone Changes from A-1 to A-S granted by the County Commissioners allowed Tracts 2, 5, and 6 to rezone and then they were divided into parcels smaller than 10 acres.

As evidenced in this memo, this C/S has a long history of zoning applications both for rezoning and variances from required zoning. The proposed zoning of Agricultural Suburban is the same as the zoning on properties to the south and to the west of the subject property. This property is also right next to the city limits to the east where the zoning is Residential 9600 and Residential 7000. The city limits are also just to the north of this parcel of land. The proposed zoning requires appropriate setbacks, limits building heights and lot coverage. The property is adjacent to existing residential uses and farm land. The zoning regulations for the county requires that any proposed building obtain a zoning compliance permit before construction on the lots.

The applicant conducted a pre-application meeting on March 15, 2015, four people attended the meeting. Concern was expressed by some about future plans for the land should the zone change be approved. The proposed zoning would allow for 1 acre lots where current zoning only allows for 10 acre lots. It was pointed out that the Covenants, Codes and Restrictions (CCR's) require 5 acre minimum lot size. Others attending the meeting did not appear to object to the proposed zone change.

Should the application for the zone change be granted and the applicants moves forward with a plan to subdivide the property further they would have to address the CCR's if they intend to create lots smaller than required by the CCR's.

Planning staff has reviewed this application and is forwarding a recommendation of approval for the proposed zone change based on the 11 criteria for zone changes. The proposed A-S zoning district is adjacent to other A-S zoning to the south and west, with A-1 zoning to the north and a mix of zoning to the east with land to the east being inside the City of Billings. This property now adjoins the city limits on the east, Goodman Subdivision, and farther north across the Big Ditch, Rimrock West Estates Subdivision. At some point in the future, property owners may request to be annexed and the lot size allowed by A-S zoning will be closer in size to lot sizes within the city limits.

**RECOMMENDATION**

Staff recommends approval of Zone Change #659 and adoption of the 11 criteria for this zone change.

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**Attachments**

Determinations

Attachments

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## PROPOSED ZONING COMMISSION DETERMINATIONS

The Yellowstone County Zoning Commission, prior to any recommendation, shall consider the following:

1. *Is the new zoning designed in accordance with the Yellowstone County and City of Billings 2008 Growth Policy?*

The proposed zoning does comply with the following goals of the Yellowstone County and City of Billings 2008 Growth Policy and area plans:

- Predictable land use decision that are consistent with neighborhood character and preferred land use patterns identified in the growth policy. (Land Use Element, page 6).

*This zone change would allow for residential development in an area of the county that is directly adjacent to the City of Billings. Smaller lots would be more consistent with the size of lots to the east and north and with several lots inside this C/S. The existing zoning of A-1 only allows 10 acre parcels for a single home and would not develop under this zoning. The proposed A-S zoning is the same zoning as some of the tracts developed to the south and west. This zoning will allow a more compact development of this parcel.*

Goal: New developments that sensitive to and compatible with the character of adjacent development. (Land Use Element Goal, page 6).

*This property is directly north to properties zoned A-S and developed as county residential development. Thoughtful design will be required by any future development to minimize any incompatibility between them and existing uses.*

2. *Is the new zoning designed to secure from fire and other danger?*

The subject property is currently served by the Billings Urban Fire Service. The nearest fire station is located on 54<sup>th</sup> Street West, Station number 7, about 1.63 miles to the west. If the applicant in the future, should the zone change is granted, decide to subdivide the property they would have to meet requirements of the fire department regarding fire suppression apparatus which may include a 10,000 gallon dry hydrant tank. The existing and proposed zoning requires building separations, setbacks and height limits that should provide security from fire or other public safety emergencies.

3. *Will the new zoning facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements?*

*Transportation:* The new zoning could minimally increase traffic on 43<sup>rd</sup> Street West should any more lots be created after this zone change. Additional development may require upgrades to the existing access road but that would be determined by County Public Works at the time development takes place.

*Water and Sewerage:* The subject property is served by an individual water well and septic system, no public services for water or sewer are provided in this county subdivision. Should future development take place the Montana Department of

Environmental Quality (MDEQ) would require permits for wells and septic systems at the time development is proposed.

*Schools and Parks:* The proposed zoning may impact the student population should the property be developed with additional homes. Arrowhead, Will James and West have the capacity to accommodate the possibility of additional student from possible development.

*Fire and Police:* The subject property is serviced by BUFSA and the Yellowstone County Sheriff's Department. Fire protection will be accommodated with any requirements that may result from any future development. Increased number of homes may require additional firefighting apparatus be installed.

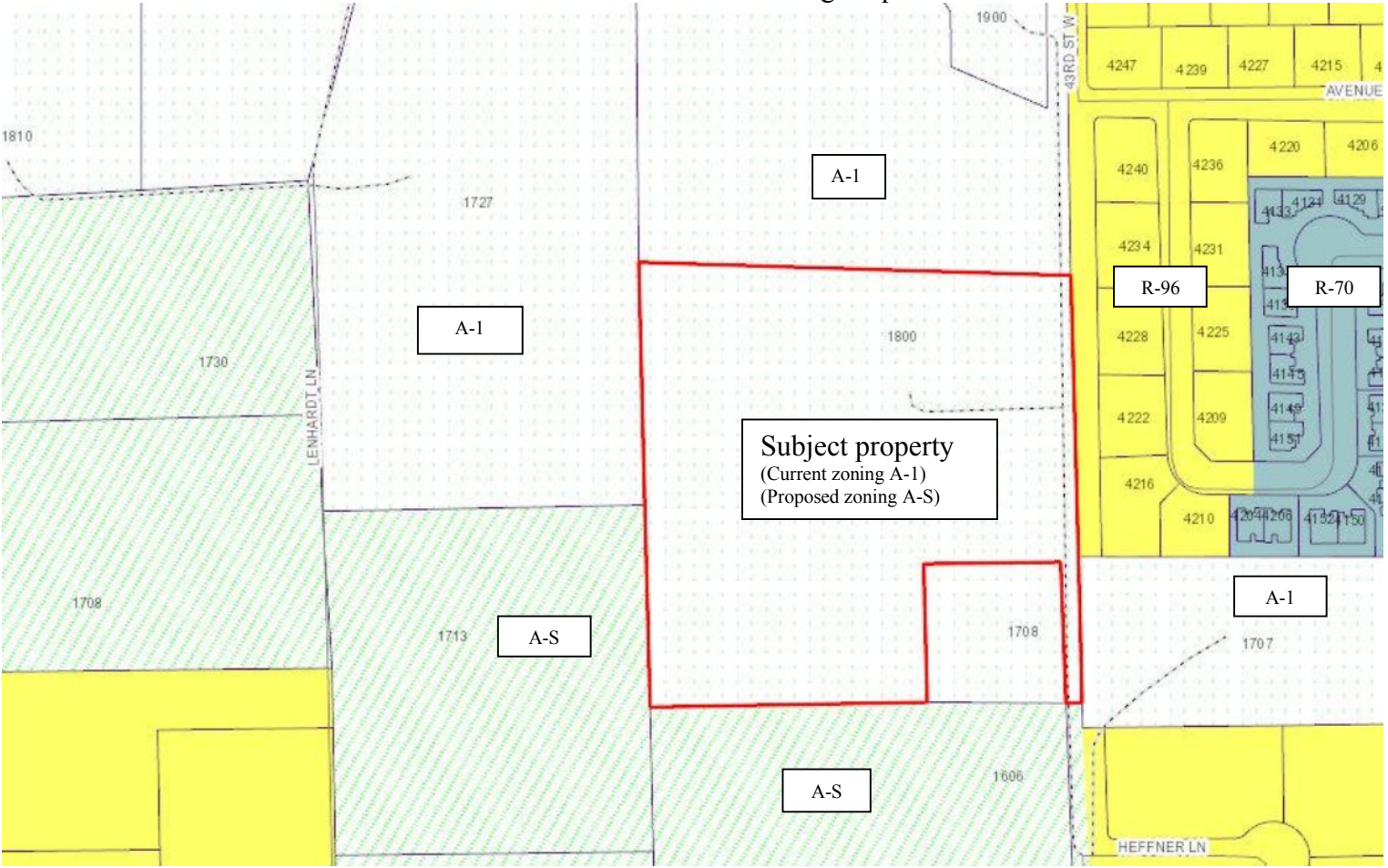
4. *Will the new zoning promote health and general welfare?*  
The new zoning will allow development of property that is adjacent to existing residential uses to the south, east and north. Housing to the east is inside the City of Billings and is a mix of single family and duplexes.
5. *Will the new zoning provide adequate light and air?*  
The proposed zoning would require minimum setbacks, maximum building heights and maximum lot coverage. These requirements should allow adequate light and air to reach the subject property and adjacent properties.
6. *Will the new zoning effect motorized and non-motorized transportation?*  
The proposed zoning itself will not generate more traffic on any of the adjacent streets. Pedestrian traffic in the area is limited due to the lack of sidewalks and trails. More dense residential development is generally located east of the property. Should the property develop in the future 43<sup>rd</sup> Street West provides the primary route to schools and other services in the area. 43<sup>rd</sup> Street West is an unpaved one track road that provides access to Grand Avenue for Tracts 7A, 7B, 8-A-1 and 8-A-2. Careful planning by a developer as well as participation in a street improvement project will be necessary to accommodate new uses.
7. *Will the new zoning be compatible with urban growth in the vicinity?*  
The proposed zoning is compatible with the adjacent zoning and developments. As the proposed zoning is a residential zoning and the subject property is surrounded on all sides by residential zoning.
8. *Does the new zoning consider the character of the district and the suitability of the property for particular uses?*  
The subject property is in an area that is a mix of farming and residential uses. The property is suitable for A-S uses and any future site development will be in character with the adjacent uses.
9. *Will the new zoning conserve the value of buildings?*

The new zoning will allow the development of lots that are 1 acre minimum, if the CCR's allow. The proposed zoning allows 1 acre lots similar to some 1 acre lots that already exist in this C/S. This would be consistent with other parcels in the C/S and would preserve the large lots with single family homes on them and conserve existing values.

10. Will the new zoning encourage the most appropriate use of land in Yellowstone County?  
The property is suitable for the uses allowed in the A-S zoning district. It is next to existing residential and will not introduce conflicting zoning with other uses in the area.
11. Will the new zoning be as compatible as possible with adjacent zoning in the City of Billings?  
The proposed zoning is next to the City of Billings and is surrounded by other residentially zoned property. The request to rezone from A-1 to A-S will be compatible with its surrounding zoning and uses. This zoning would allow for smaller lots than what is currently allowed by zoning. One acre lots would be closer to Residential 9600 zoning lot sizes than A-1 zoning of 10 acre lots.

- Attachment A: Zoning Map
- Attachment B: Applicant Letter & Pre-application neighborhood meeting minutes
- Attachment C: Site Photographs
- Attachment D: Additional Communication

**Attachment A**  
**Zoning Map**

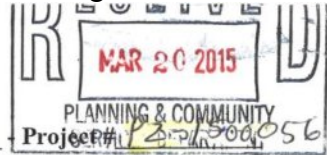


**Attachment B**

**Applicant Letter & Pre-application neighborhood meeting minutes**

**APPLICATION FORM**

COUNTY ZONE CHANGE County Zone Change # 659



The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings-Yellowstone County Unified Zoning Regulations.

Present Zoning: Ag Open

Proposed Zoning: Ag Suburban

Tax ID # D047236 COUNTY COMMISSIONER DISTRICT # 3

Legal Description of Property: See attached C/S 2085 Tract 7B

Address or General Location (If unknown, contact County Public Works):

1800 43rd St W, 59106

Size of Parcel (Area & Dimensions): 9 1/2 acres

Present Land-Use: Vacant and Single Family Residence

Proposed Land-Use: Residential Housing (3A lots) additional

Covenants or Deed Restrictions on Property: Yes  No

If yes, please attach to application

\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Thomas Yen & Cheryl Morgan  
(Recorded Owner)

(Address) 1800 43rd St W 59106

(Phone Number) 406-697-3153 (email) (Cheryl)

Agent(s):

(Name)

(Address)

(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: Cheryl Morgan Date: 3-23-15  
(Recorded Owner)

03/04/2015

To the neighbors of the 1800 Block of 43<sup>rd</sup> St. West.

As legal owners, Jon and Cheryl Morgan are requesting a zone change from Ag Open to Ag Suburban for 1800 43<sup>rd</sup> St. West Billings, MT 59106.

As your property is located within 300 feet from 1800 43<sup>rd</sup> Street West, you are welcome to attend the "Pre-application neighborhood meeting" in case you have any questions or concerns.

The meeting will be held on 03-15-2015 at 1800 43<sup>rd</sup> St. West at 2:00 PM.

The legal description and map of the requested change is enclosed.

Thank you and should you have any questions, please do not hesitate to contact me.

3-26-15

Nicole Cromwell

City-County Planning Division

2825 3<sup>rd</sup> Ave North, 4<sup>th</sup> Floor

Billings, Mt 59101

RE: Zone change for 1800 43<sup>rd</sup> St West Meeting held on 3-15-15 at 2:00 PM at same address. This would allow family members and/or friends to be able to build close to us without having purchase 5 acres or would allow us to sell our home and build a home for ourselves and our mom. New homes on less than 5 acres would provide housing for families. The vacant land would be divided into 3 sections.

In attendance was Carl & Nancy Anderson and Ruth & Keith Michel. No one else called or stopped by.

After Ruth & Keith Michel heard what the intention of the subdivision would be, they appeared to be OK with the subdivision proposal. Also, I spoke after the meeting with the McCann's, Steve Fischer and family and also Katherine Harmon, all of which do not have any problem with the request. In addition I have spoken to Mr Swain and I will be meeting with him and Mark Lenhardt (over the 300' radius) next week.

Carl Anderson prefers not to have the land subdivided and made it known at the meeting, but his reasons were related not only to subdivision, but mostly to covenants, which is difficult as there are already several covenants that have been broken. The following are a few of the broken covenants in the area.

1. Carl & Nancy's home is sitting on a 1 acre broken covenant in which a portion of the present Morgan property was broken off which made the Morgan property under 10 acres.
2. Carl & Nancy have a metal pole building next to the road and not within the required footage to be off the road.
3. Swains have multiple horses, not restricted to the 4 which the covenants require.
4. Swains and others in the subdivision have metal pole barns.
5. Carl also has a wall hedge closer than 30' to street right of way.
6. There are horse arenas being built larger and larger in the area which appear to be possibly used for business.  
(please be aware we do not care about any of these breakage of covenants, but it does mean that several covenants have already been broken throughout the area)

After the neighborhood meeting, Carl sent a letter to certain people (most of whom are outside the 300' radius) attempting to cause neighbors to be upset. I have attached a copy of that letter. Also, I am attaching a copy of a letter from our attorney.

I am also attaching a copy of a request from a prior request a resident in the subdivision which was very helpful in some of our decision. We respectfully request to provide us with the subdivision change.

Jon & Cheryl Morgan, 1800 43<sup>rd</sup> St West, Billings, MT 59106

406-697-3153

March 15, 2015

Neighbors,

My wife and I went to the "Pre-Zoning Application Neighborhood Meeting" today at Jon and Cheryl Morgan's house on Tract 7B. Cheryl Morgan stated she and her husband want to subdivide the south half of their property adding three additional lots.

When asked why she thought she would be able to subdivide since there are restrictions against that on this property, Cheryl stated her attorney had advised her that the restrictions are not enforceable.

I believe the Declarations of Restrictions and Conditions that are attached to our property deeds are enforceable. However they are only enforceable by us. If anyone is going to challenge this Subdivision it will be us.

The stakes are high in that if the Morgans are not challenged and are allowed to subdivide, the restrictions against subdivision will become unenforceable in the future.

If you believe as I do, that it is in our best interest to enforce the current restrictions, I would welcome a joining of forces.

Please let me know if you are interested in joining me in this enforcement effort. I realize this may eventually require hiring a lawyer, however there are potentially nine landowners that could share this cost.

Please advise your questions, comments or thoughts.

Thank You,



Carl Anderson  
1708 43<sup>rd</sup> St West  
Billings, MT 59106

406-655-0935  
carltanderson@outlook.com

CC:

David and Ardyce Swain  
Garth and Katherine Harmon  
Steven R. Fisher  
Caroline R. Lenhardt  
Mark and Lisa Lenhardt  
Bobby Williams  
Gordon and Rachel McCann  
Mark and Katherine Vuletich

HANSON LAW OFFICE

Steven A. Hanson, P.C.

GW BUILDING, SUITE 325  
2722 THIRD AVENUE NORTH  
BILLINGS, MONTANA 59101

Licensed in:  
Montana and Wyoming

TELEPHONE: 406-248-3900  
FAX: 406-252-4713  
hansonlawoffice@bresnan.net

September 18, 2014

Jon and Cheryl Morgan  
1800 43<sup>rd</sup> St. W.  
Billings, MT 59106

**Re: Access Easement**

Dear Jon and Cheryl:

At your request I have reviewed documentation related to your ownership of, and access to, Tract 7B of Amended Tract 7 of COS No. 2085, Yellowstone County. You have indicated that the County Planning Commission wants you to confirm your rights of access to the property before the Commission will give consideration to your proposal to split Tract 7B into two tracts.

When we discussed this matter in my office, you thought that your access road was, as you described it, a "private road." My question was, at that time, who owns the road and who granted you access rights (or easement rights), if in fact 43<sup>rd</sup> Street West is a private road?

Tiff was able to obtain a copy of your Warranty Deed from Cottonwood Colt Company, LLC (enclosed) and of Certificates of Survey No. 2085 and 2085 Amended Tract 7 (enclosed). These documents were available online through the Clerk and Recorder's office. I have also reviewed the Private Road Maintenance Agreement, Declaration of Restrictions and Conditions, and Amendment to Declaration of Restrictions and Conditions, all of which documents were sent to me at your request by Jenee Skorupa of First American Title.

My review of these documents reveals the following:

- (1) COS No. 2085 was prepared and filed in June, 1981. There is a 30' wide access easement which lies across and over the East 30' of Tracts 6 and 7. Since this access easement can be entered onto from Grand Avenue, in my opinion you need permission from no one to use the East 30' of Tract 6 (and now Tract 7A) in order to get to your Tract 7B.
- (2) Amended Tract 7 of COS No. 2085 was prepared and recorded in June and July, 1983. Note that again the 30' wide access easement is referenced on the Certificate of Survey. It is my view that the recording of these two Certificates of Survey puts the public, including the owners of Tract 6 and Tract 7A, on notice of your right to the use of the East 30' of their respective tracts for access to your tract.

- (3) If you were to order a report of record ownership from First American Title, in all likelihood you may find that when First Trust Company of Montana deeded out to the first owner of Tract 7 the description on the deed probably contained language such as this: "Together with an access easement over and across the East 30' of Tract 6, COS No. 2085." Similarly, the first owners of Tract 6 and Tract 7B most likely got deeds which contained language indicating that their property ownerships were "subject to a right of access, over and across the East 30' of said Tract 6 (or 7A) in favor of Tract 7 (or 7B)." Since I have not had an opportunity to review such reports of the history of ownership of these tracts, I cannot say with certainty that the deeds, or any of them, contained the language about which I am speculating; but again, the recorded Certificates of Survey put the public on notice of your rights of access along the east 30' of Tracts 6 and 7A.
- (4) Your 2011 deed from Cottonwood Colt Company, LLC, should have contained language as I suggested above: "together with the right of access..." One option for correcting this oversight might be to ask Mr. Galarneau to give you a "correction warranty deed."
- (5) Another option, if the Planning Commission determines more documentation is needed, would be to create an easement deed from McNeese (Tract 6) and Andersons (Tract 7A) to you as the owner of Tract 7B, the dominant estate, and thereby eliminate any question whatsoever as to whether you have legal access to your property.

In the final analysis, it is my opinion that the Certificates of Survey provide you with legal access by virtue of the recording of these documents. I do not think that you need any additional documentation or grant of easement.

Sincerely,



Steven A. Hanson

SAH:tl  
Encs.

**Attachment C**  
**Site Photographs**



Subject property – view from 43<sup>rd</sup> Street West



View South looking toward Grand Avenue



View north along 43<sup>rd</sup> Street West



View east to existing development in the city



**Attachment D:**  
Additional Communication



**Cole Law Firm**  
PLLC

March 24, 2015

Nicole M. Cromwell  
Zoning Coordinator  
2825 Third Avenue North, 4<sup>th</sup> Floor  
Billings, MT 59101

Re: Tract 7A of COS 2085  
Lot 1, Block 1 of Carls' Subdivision

Dear Nicole:

As I mentioned during our telephone conversation yesterday, I represent Carl T. and Nancy G. Anderson, owners of Tract 7A of COS 2085 and Lot 1, Block 1 of Carls' Subdivision. The Andersons' home is on Tract 7A, 1708 43<sup>rd</sup> Street West. Jon and Cheryl Morgan own a 9-acre tract located to the north and west of my clients' property. The street address of the Morgan property is 1800 43<sup>rd</sup> Street West. The enclosed map shows generally the location of the Anderson and Morgan properties.

It is my clients' understanding that the Morgans are in the process of applying for a zone change application that would change the classification of their property from Agricultural-Open to Agricultural-Suburban. Carl reports that at the pre-application meeting the Morgans mentioned that if they get the zone change it is their intention to do a minor subdivision to create three additional lots from the southern portion of their property that abuts the Anderson parcel on two sides.

Enclosed is the Declaration of Restrictions and Conditions dated April 19, 1983 (filed on April 27, 1983, at Book 1246, Page 4445, under Document 1262913) that govern the subject properties. When the original CCRs were filed all of the tracts subject to the CCRs were a bit more than 10 acres in size.

**William A. Cole**

Tel (406) 294-5700 • Fax (406) 294-5702 • [bcole@cofirm.com](mailto:bcole@cofirm.com)  
3860 AVE B • STE C WEST • BILLINGS, MT 59102-7550

Enclosed also is a December 16, 1987 Amendment to Declaration of Restrictions and Conditions that was recorded March 8, 1998, in Book 1318, Page 3733, under Document 1475854. The amendment added the following language to the CCRs:

No structure shall be erected or maintained on any tract, except one (1) tract may be divided one time into two (2) 5-acre tracts and one (1) private dwelling house designed for occupancy by one (1) family only may be built on each 5-acre tract, and such outbuildings and accessory structures as are customarily appurtenant thereto. No garage or storage building on any tract as divided pursuant hereto, shall be used as a dwelling or living quarters.

(Emphasis added.) My client strenuously opposes any subdivision (or zone change) that would result in a violation of the covenants that are binding on the Morgan property, in particular, the explicit prohibition that the subject tracts may not be divided except one time into two 5-acre tracts. If a zone change or subdivision application is filed my client should be kept apprised of the status of all such proceedings in accordance with state law and local regulations.

If you have any questions please do not hesitate to contact Carl or me. Thank you for your assistance in this matter.

Very truly yours,



William A. Cole

WAC:bt  
enclosures

cc: Juliet Spalding, Subdivision Coordinator  
Carl Anderson

April 21, 2015

Nicole Cromwell  
City-County Planning Department  
2825 3<sup>rd</sup> Ave North, Fourth Floor  
Billings, MT 59101

RE: County Zone Change #659  
Project Number:15-00056

Dear Nicole Cromwell,

Thank you for sending me the informational letter, dated April 10, 2015, regarding the above referenced zone change request. Attached to your letter was a letter from Jon and Cheryl Morgan dated March 26, 2015.

In Morgan's letter, they allege that they should not have to be bound by The Declaration of Restrictions and Conditions that are attached to their property deed, because "several covenants have already been broken throughout the area". Three of the alleged infractions were directed at me and I would like to address them:

1. "Carl and Nancy's home is sitting on a 1 acre broken covenant in which a portion of the present Morgan property was broken off which made the Morgan Property under 10 acres."

It should be noted that Tract 7A came into existence in the 1980s when a mortgage company had to foreclose on a mortgage that was in default. This 1 acre lot was not created willfully by the landowner at that time.

2. "Carl and Nancy have a metal pole building next to the road and not within the required footage to be off the road."

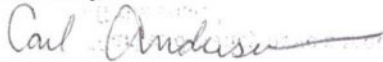
This is not correct. We have no metal pole building on Tract 7A. I do have a metal sided pole building on Tract 6. Tract 6 was never included in the subject Declaration of Restrictions and Conditions

3. "Carl also has a wall hedge closer than 30' to street right of way"

We do have a row of lilac bushes closer than the 30' allowed.

What Morgan's do not address in their letter is the clause in the Declaration of Restrictions and Conditions that reads, "Invalidation of any one or more of the restrictions or covenants herein contained shall in no way affect the others, which shall remain in full force and effect." I interpret this to mean that if every landowner bound by the restrictions planted a row of lilac bushes too close to the right of way, this would not give any landowner the right to break the subdivision restrictions.

Sincerely,



Carl Anderson  
1708 43<sup>rd</sup> Street West  
Billings, MT 59106





## **County Zoning Commission**

**Meeting Date:** 05/18/2015

**SUBJECT:** County Zone Change 660 - 6132 Grand Ave - A-1 to A-S

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Nicole Cromwell

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### **Information**

#### **REQUEST**

**Item #2: Zone Change #660 – 6132 Grand Avenue** – A zone change from Agriculture-Open Space (A-1) to Agriculture Suburban (AS) on Tract C of C/S 1941, a 20.009 acre parcel of land. A pre-application neighborhood meeting was held on March 13, 2015 at the subject property. Tax ID: D00381.

#### **RECOMMENDATION**

The Planning Division recommends approval and adoption of the findings of the 11 criteria for Zone Change 660.

#### **APPLICATION DATA**

**OWNER:** Eugene and Dolores Jurovich

**AGENT:** None

**LEGAL DESCRIPTION:** C/S 1941, Tract C

**ADDRESS:** 6132 Grand Avenue

**CURRENT ZONING:** A-1

**EXISTING LAND USE:** Single family home and agricultural land

**PROPOSED USE:** Same with possible future subdivision

**SIZE OF PARCEL:** ~ 20 acres

#### **CONCURRENT APPLICATIONS**

None.

#### **APPLICABLE ZONING HISTORY**

This parcel of land is surrounded by A-S zoning for the other tracts in this certificate of survey that were re-surveyed to create C/S 2735. The zoning was changed in 2009 for these parcels from A-1 to A-S. The County has recently approved a zone change from A-1 to A-S for property on the west side of 64th Street West (south and west of the subject property). This property may also subdivide in the future to provide low density rural dwelling units. The subject property is 1,000 feet west of the City Limits, but is not within the Limits of Annexation Area for Billings.

## **SURROUNDING LAND USE & ZONING**

NORTH:       Zoning: A-1 and R-150  
                  Land Use: Agricultural and single family homes

SOUTH:       Zoning: A-S  
                  Land Use: Agricultural

EAST:         Zoning: A-S  
                  Land Use: Agricultural

WEST:         Zoning: A-S  
                  Land Use: Agricultural

## **BACKGROUND**

This is a zone change request to change the zoning from A-1, requiring a 10 acre minimum lot area, to A-S, requiring a 1 acre minimum lot area. The owners are planning for the future estate and would like to make provisions for each of the children to own a piece of this 20 acre tract. The proposed zoning allows parcels to a minimum of 1 acre but it is likely that future subdivision of the property may include lots greater than 1 acre to meet state and local requirements for the provision of on-site water and waste water disposal. The property is currently in agricultural production with a single family residence at 6132 Grand Avenue.

There are nearby city subdivisions including Trail's West at 59th St West and Grand Ave, and Foxtail Village on the north side of Grand Avenue. School District #2 will soon develop a middle school at property located on the south west corner of 56th St West and Grand Avenue. This is a quickly growing area of West Billings. The Planning Division will be conducting a West End Traffic Study in 2015 that should help to identify areas of traffic concern and model future street and traffic design needs including traffic speed, connections, and necessary improvements. Grand Avenue at this location carries about 3,500 vehicles per day and the posted speed limit is 50 mph.

The West Billings Neighborhood Plan was adopted by the City and County in 2001. This plan acknowledge expansion of the city limits and the areas likely to remain within the County jurisdiction. This area was identified as an area likely to remain outside the city limits in what is termed the Rural Transition Area. Areas north of Grand Avenue were mapped for Urban Expansion. The Rural Transition Areas could have more density as long as careful planning of rural subdivisions is completed to allow future re-subdivision if the

property desired annexation in the future.

The Planning Division has reviewed the requested zone change and the 11 criteria and is recommending approval based on the findings for the criteria. The area is within an area close to the city limits and all the surrounding properties are currently zoned for higher density than this property. Agricultural uses will be preserved since both the A-1 and A-S are zones designed primarily for agricultural uses with low density single family homes. Any future subdivision of the property is not likely to have negative effects on traffic, schools, county or city services and is compatible with the surrounding zoning and uses. The suitability of the property for additional water and waste water disposal will be determined at the time of future subdivision. Riverstone Health will provide this oversight for the County and the Montana DEQ rules and regulations will have to be met for any future dwellings. This is a predictable land use decision for this area since all of the surrounding property has similar zoning.

### **RECOMMENDATION**

The Planning Division recommends approval and adoption of the findings of the 11 criteria for Zone Change 660.

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### **Attachments**

Zoning and Annexation Map

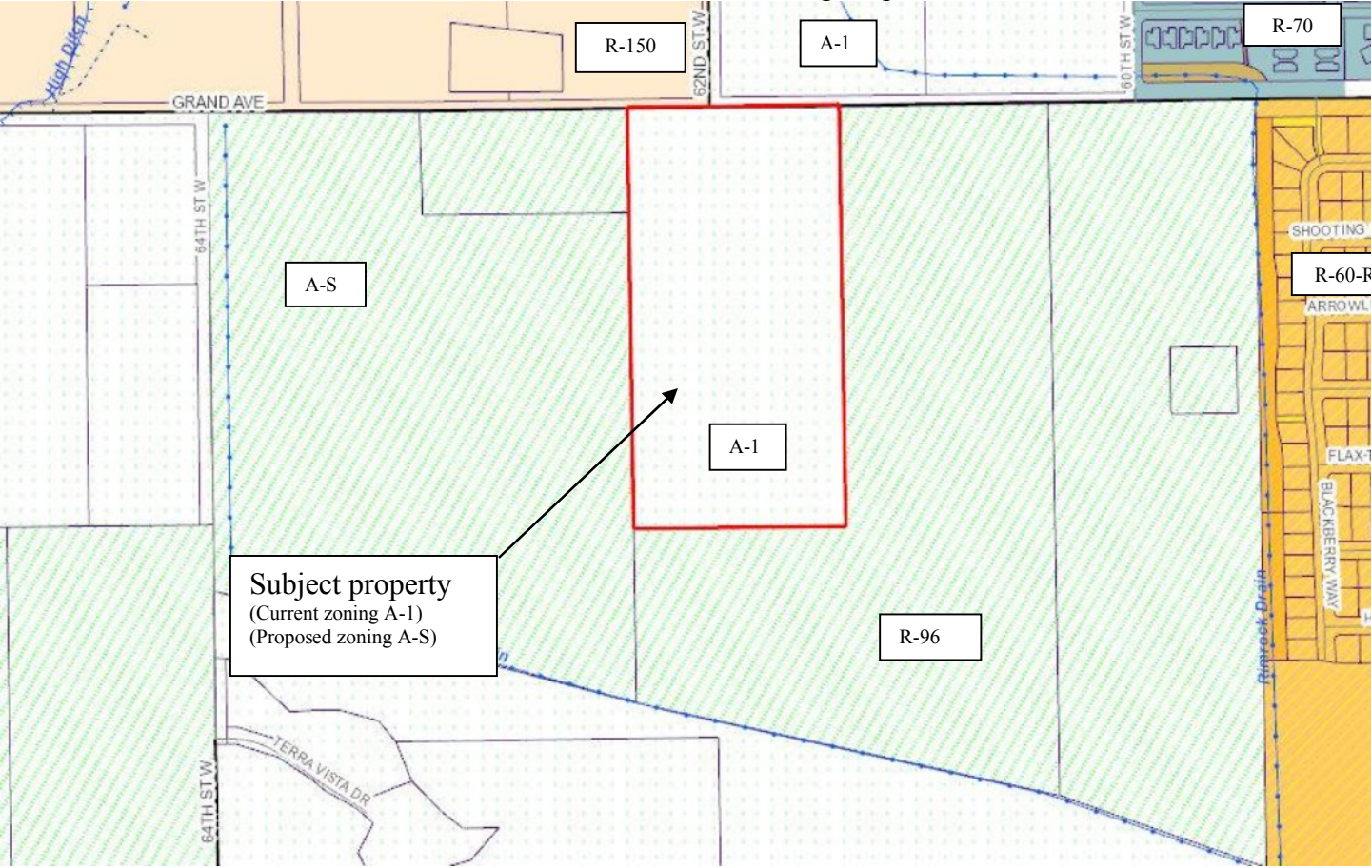
Findings of the 11 criteria

Site photos

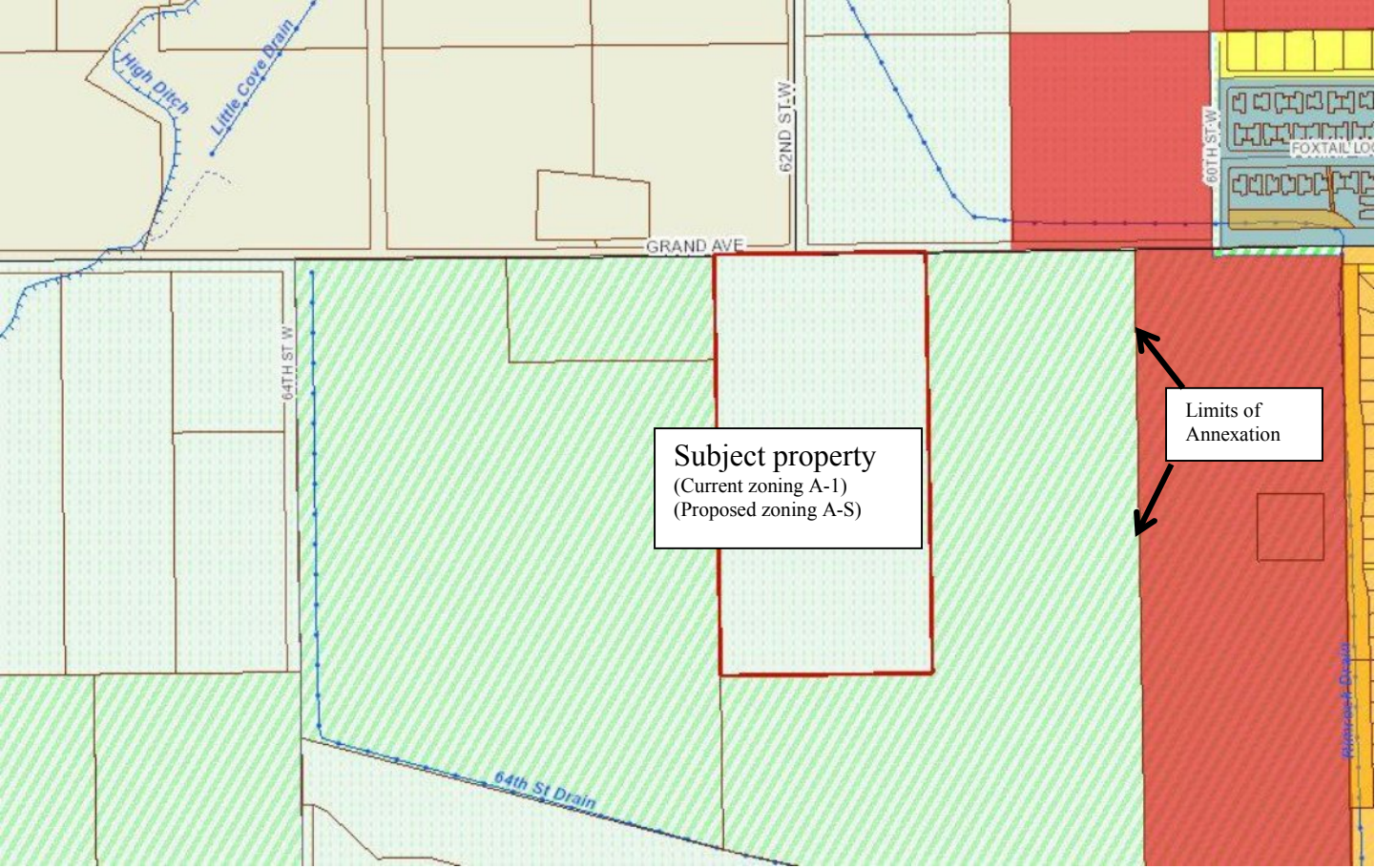
Applicant letter and meeting notes

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**Zone Change #660**  
**Zoning Map**



Limits of Annexation



## REVIEW CRITERIA – ZC 660 – 6132 Grand Avenue

The Yellowstone County Zoning Commission, prior to any recommendation, shall consider the following:

1. *Is the new zoning designed in accordance with the Yellowstone County and City of Billings 2008 Growth Policy?*

The proposed zoning does comply with the following goals of the Yellowstone County and City of Billings 2008 Growth Policy and area plans:

- Predictable land use decision that are consistent with neighborhood character and preferred land use patterns identified in the growth policy. (Land Use Element, page 6).  
*This zone change would allow the property owner to subdivide the 20 acre parcel into more than 2 lots. The applicant intends to provide lots to their children for estate planning purposes. The current zoning only allows the property to subdivide into 2 10-acre lots. The surrounding property is zoned A-S or R-150 and used for agricultural production as well as low density residential dwellings. The property will retain the ability to use land for agricultural production and will be consistent with the goals and policies of the 2008 Growth Policy and the 2001 West Billings Neighborhood Plan.*
- Goal: New developments that sensitive to and compatible with the character of adjacent development. (Land Use Element Goal, page 6).  
*This property is directly adjacent to A-S zoning to the east, west and south. There is R-150 zoning to the north. The proposed zoning is sensitive to and compatible with the adjacent development.*

2. *Is the new zoning designed to secure from fire and other danger?*

The subject property is currently served by the Billings Urban Fire Service and will be continue to be served by BUFSA. The nearest fire station is located on 54<sup>th</sup> Street West about 1 mile to the east. BUFSA will be involved in the review of any future subdivision and may require special construction or site protection measures. The existing and proposed zoning requires building separations, setbacks and height limits that should provide security from fire or other public safety emergencies.

3. *Will the new zoning facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements?*

*Transportation:* The new zoning and the existing zoning may increase traffic slightly on Grand Avenue. The County will require any new development that adds 500 new vehicle trips per day to analyze the impact of the additional traffic. Any traffic impacts will be assessed at the time of future subdivision.

*Water and Sewerage:* The property will not be served by public water and sewer systems unless it is annexed to the city. The property is not yet within the limits of annexation for Billings. If it is developed in the county, no public services for water or sewer will be provided.

*Schools and Parks:* The proposed zoning should not any significant impact on the student population. The property is within School District #2 boundaries.

*Fire and Police:* The subject property is serviced by BUFSA and the Yellowstone County Sheriff's Department. Fire protection will be evaluated at the time of a development plan. If the property is annexed city, public safety services will be provided by the City Police Department.

4. *Will the new zoning promote health and general welfare?*  
The new zoning will allow development of property that is adjacent to existing A-S zoning east, west and south of the subject property. Any new subdivision will need to meet or exceed requirements for safe access, water and waste water disposal and other development standards. This will help promote the health and general welfare of the area.
5. *Will the new zoning provide adequate light and air?*  
The proposed zoning would require minimum setbacks, maximum building heights and maximum lot coverage. These requirements should allow adequate light and air to reach the subject property and adjacent properties.
6. *Will the new zoning effect motorized and non-motorized transportation?*  
The proposed zoning itself will not generate more traffic on any of the adjacent streets. Pedestrian traffic in the area is limited due to the lack of sidewalks and trails. Grand Avenue is designated as an arterial bike route but is not proposed for a dedicated bike lane. Higher density residential development within the city is located north and east of the property. A new transportation planning study is scheduled for the next fiscal year that will study traffic patterns throughout West Billings and make recommendations for improvements.
7. *Will the new zoning be compatible with urban growth in the vicinity?*  
The proposed zoning is compatible with the adjacent zoning and developments. The urban growth is primarily to the north and east of this location. The proposed A-S zoning is compatible with the existing and potential urban growth in the area.
8. *Does the new zoning consider the character of the district and the suitability of the property for particular uses?*  
The subject property is in an area that is still an active agricultural production but has low density residential development as well. The property is suitable for A-S uses and the site development will be in character with the adjacent uses.
9. *Will the new zoning conserve the value of buildings?*  
The new zoning will allow the property owner to provide future building sites for their children for estate planning purposes. The existing buildings on the site will be conforming to the new zoning.
10. *Will the new zoning encourage the most appropriate use of land in Yellowstone County?*  
The property is suitable for the uses allowed in the A-S zoning district.

11. *Will the new zoning be as compatible as possible with adjacent zoning in the City of Billings?*

The proposed zoning is on land not directly adjacent to Billings. The proposed zoning of A-S however is compatible with the closest city zoning districts – residential zones R-70 and R-60-R. The property is not within the limits of annexation for Billings at this time.

**Zone Change #660**  
Site Photographs



Subject property – view from Grand Avenue



View east along Grand Avenue

**Zone Change #660, continued**  
**Site Photographs**



View west along Grand Avenue



View north across Grand Avenue

**Zone Change #660, continued**

**Site Photographs**



View south east from Grand Avenue



View south west from Grand Avenue

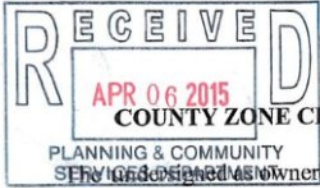
**Zone Change #660, continued**  
Site Photographs



Aerial

**Zone Change #660**

Applicant Letter & Pre-application neighborhood meeting minutes



**APPLICATION FORM**

COUNTY ZONE CHANGE County Zone Change # 660 - Project # P2-15-00061

The undersigned owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings-Yellowstone County Unified Zoning Regulations.

Present Zoning: Agricultural Open

Proposed Zoning: Residential One Acre Agriculture Suburban

Tax ID # 000381 COUNTY COMMISSIONER DISTRICT # 3

Legal Description of Property: 505, 701 1/2, R25 1/2, C.O.S. 1941, Parcel C

Address or General Location (If unknown, contact County Public Works): 6132 Grand Avenue  
Billings, MT 59106

Size of Parcel (Area & Dimensions): 20.009 acres 1352.62 feet x 657.53 feet

Present Land-Use: Agricultural with one acre residential

Proposed Land-Use: Residential

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Eugene and Dolores Jurovich

(Recorded Owner) 6132 Grand Avenue, Billings, MT 59106

(Address) 406 656 2034 doloresjurovich@gmail.com

(Phone Number) (email)

Agent(s): Same

(Name)

(Address)

(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: Dolores Jurovich Date: 4-5-15  
Eugene Jurovich 4-5-15

(Recorded Owner)

April 6, 2015

**Parcel**  
**S05,T01S, R25 E, C.O.S. 1941, Parcel C**

**Introduction**

The attached Zone Change Application is being submitted by Eugene and Dolores Jurovich for a proposed zone change from Agricultural Open to Residential 15,000 for the above referenced parcel. An exhibit identifying the subject parcel is attached to this application for reference.

The following information is provided to satisfy the supplemental information requirements for the Zone Change Application.

*In what way is the proposal consistent with the goals and policies of the adopted growth policy?*

The proposed zone change request is consistent with some of the land use element goals and objectives as it is consistent with the zoning and uses of the adjacent properties.

*Explain the need for the intended zone change and why the property cannot be used under the existing zoning. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.*

The need for the zone change is to allow the property owners to divide the acreage up amongst their children for estate planning. Once it is divided the children intend to build another residence.

Zone change meeting

Location: 6132 Grand Avenue, Billings, MT 59106

Friday March 13th, 2015 6:00 PM

Attending:

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Dolores Jurovich  
Gene Jurovich  
Derek Jurovich  
No one else attended

Minutes:

We held the meeting on time at 6:00 PM.

waited 1 hour

We closed the meeting at 7:00 PM

Meeting adjourned