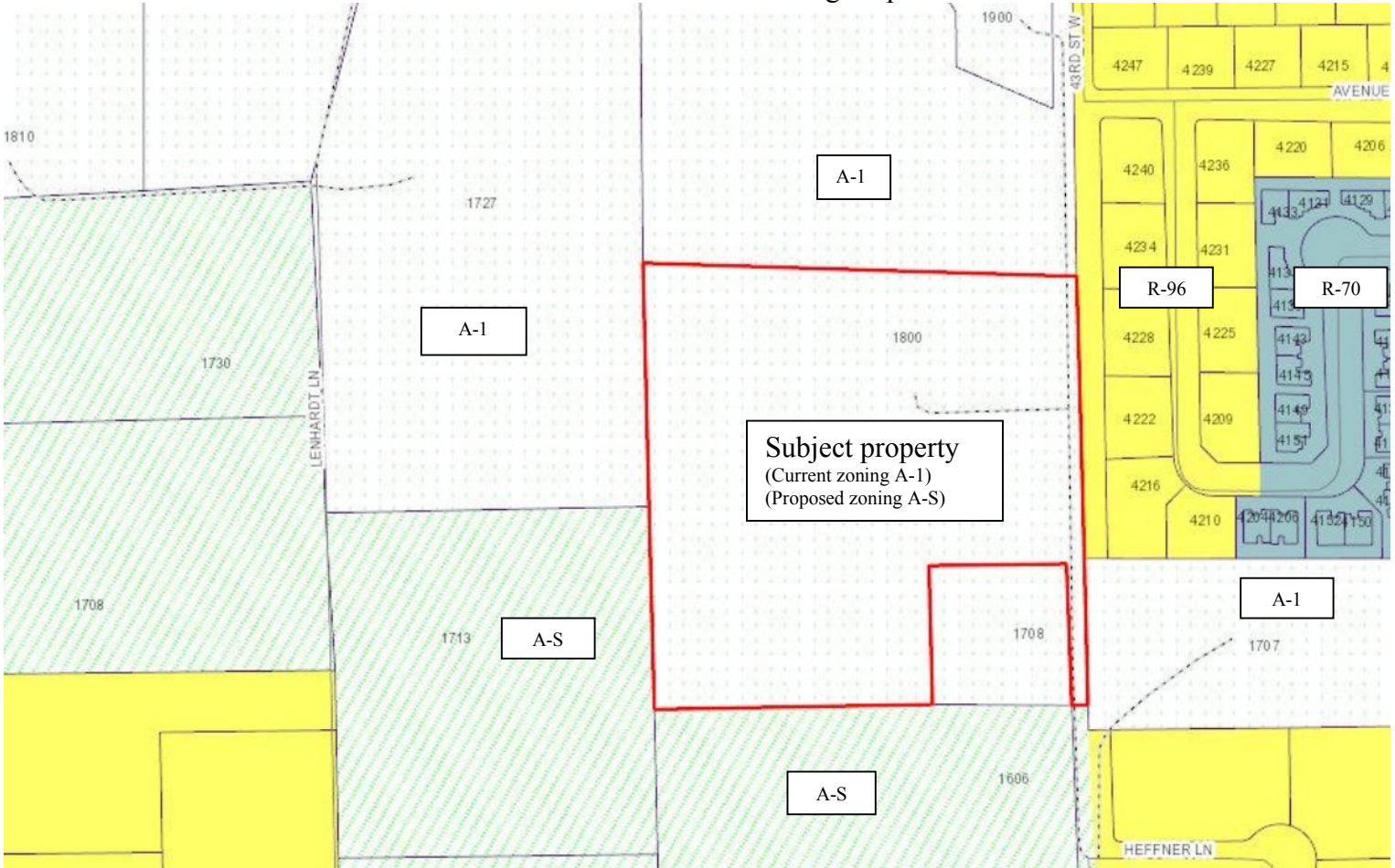


Attachment A
Zoning Map

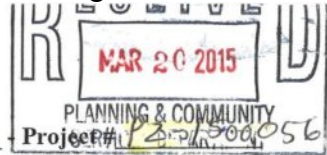


Attachment B

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 43rd St. West.

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

As your property is located within 300 feet from 1800 43rd 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 43rd 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 3rd Ave North, 4th Floor

Billings, Mt 59101

RE: Zone change for 1800 43rd 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 43rd 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 43rd 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 43rd 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 43rd 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 43rd Street West



View South looking toward Grand Avenue



View north along 43rd Street West



View east to existing development in the city



Aerial View



Attachment D:
Additional Communication



Cole Law Firm
PLLC

March 24, 2015

Nicole M. Cromwell
Zoning Coordinator
2825 Third Avenue North, 4th 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 43rd 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 43rd 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
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 3rd 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."

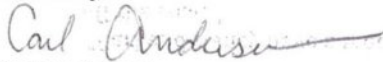
This is not correct. We have no metal pole building on Tract 7A. I do have a metal sided pole building on Tract 6. Tract 6 was never included in the subject Declaration of Restrictions and Conditions

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 43rd Street West
Billings, MT 59106

