



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

**The County Zoning Commission met on Monday, November 9, 2015 in the Miller Building 1<sup>st</sup> floor conference room located at 2825 3<sup>rd</sup> Avenue North. The Board of County Commissioners public hearing will be held on Tuesday, October 27, 2015, at 9:45 a.m. in Room 403A, 4<sup>th</sup> Floor of the Yellowstone County Courthouse.**

At 4:00 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 II, and Tammy Deines, Planning Clerk

Commissioners and Staff		01/12/2015	02/09/2015	03/09/2015	04/13/2015	05/18/2015		06/10/2015	07/13/2015	08/10/2015	09/14/2015	10/13/2015	11/09/2015	12/14/2015	
Dennis Cook	Chairman	1	-	1	-	1		1	-	1	1	-			
Al Littler	Vice Chairman	1	-	1	-	1		1	-	1	1	-			
Jerry T. Ray	Commissioner	-	-	-	-	-	-	-	-	1	1	-			
Troy Boucher	Commissioner	-	-	-	-	-	-	-	-	-	-	-	-		

**Attending:** Jerry Hanson, Matt Robertson, James Ouren, Ed Melcher, Scott Aspenlieder, Performance Engineering; Blaine Poppler, CBC Montana; Matt and Rebeca Beddes; Dax Simek, Carey Chapman, REMAX, Teri Stephens, Dan Henry, Jerry Morrell

### **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.

**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 September 14, 2015 Meeting Minutes (The October 13, 2015 meeting was canceled).** Chairman Cook called for approval of the September 14, 2015 meeting minutes.

### **Motion**

**Al Littler made a motion and Jerry Ray seconded the motion to approve the October 13, 2015 meeting minutes. The motion carried with a unanimous voice vote.**



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**Item #1. Motion. County Zone Change #668 – East of Highway 87 N and West of Plateau Road, Dave Green, Planner I–** A zone change request from Agriculture-Open Space (A-1) and Residential 15,000 (R-150) to Residential 9,600 (R-96) on Tracts 1A, 2A, 3A, 4A, 5A1, 6A, 7A, 8A, 9, 10A, 10B, 11 and 12B and an unplatted portions of land described as the SW1/4NW1/4 and the NW1/4SW1/4 of Section 2, Township 1 North, Range 26 East, a 222.83 acre parcel of land generally located east of Highway 87 North and west of Plateau Road. The applications conducted a pre-application neighborhood meeting on August 31, 2015, at 1412 Sagebrush Road. Tax IDs: D04919, D04920, D04921, D04922, D04923, D04924, D0425, D04926, D04927, D04928, D04928A, D04929, D04930A & D04943.

Dave Green opened this agenda item and gave the staff report.

### **REQUEST**

The applicant is requesting a zone change request from Agriculture-Open Space (A-1) and Residential 15,000 (R-150) to Residential 9,600 (R-96) on Tracts 1A, 2A, 3A, 4A, 5A1, 6A, 7A, 8A, 9, 10A, 10B, 11 and 12B and unplatted portions of land described as the SW1/4NW1/4 and the NW1/4SW1/4 of Section 2, Township 1 North, Range 26 East, a 222.83 acre parcel of land generally located east of Highway 87 North and west of Plateau Road.

A neighborhood meeting was conducted by the applicant on August 31, 2015, at 1412 Sagebrush Road, which is one of the subject properties of this proposed zone change. Five surrounding property owners attended the meeting. The meeting notes indicate concerns with water and where the water lines would be placed. Another concern was access to the subdivision

### **RECOMMENDATION**

Approval of Zone Change #668 and adoption of the 11 criteria for this zone change. 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 property is adjacent to low density residential uses and agricultural uses. It is in line with the existing growth in this area and would be compatible with what is already there. The proposed zoning would bring predictable land use with it so the surrounding neighbors will know that it can only be used for residential uses.

### **Discussion**

Chairman Cook called for discussion. He asked if the water will be brought to this parcel from the Heights Water District. Dave Green responded and said the applicant has stated they will purchase water for the proposed development. Staff pointed out on an aerial picture where an existing water tank is located in relation to the proposed development.

Chairman Cook called for presentation by the applicant.



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### **Scott Aspenlieder, Performance Engineering, 2101 Overland Ave., Billings, MT**

Mr. Aspenlieder stated the proposal is for a phased residential development. The agent for the applicant spoke in favor of the proposed zone change. He stated that the proposed Residential 9,600 zoning was consistent with a large amount of the surrounding property and would bring predictability to the area that is developed mostly as residential. He stated the applicant plans to bring Heights Water to the site which will open a water source possibility up to the existing surrounding properties.

In response to a question by Commissioner Ray, Mr. Aspenlieder said this development will comply with the size requirements for a community septic development.

### **Public Hearing**

Chairman Cook opened the public hearing and asked for anyone wishing to speak in favor of Zone Change #668.

### **Favor**

#### **Ed Melcher, 1218 Longhorn Way, Billings, Montana**

Mr. Melcher is an adjacent property owner and supports this project as the neighborhood will benefit from the improved water source from Heights Water District. He stated having water in the area would be a great asset to that part of the county. He also stated the required fire hydrants for the subdivision it would make the area safer for those already living in the area. He said this development would allow for RSID's to be put in place on Bitterroot to maintain the roads better than they are currently being maintained. Mr. Melcher asked about snow plowing. He noted a site distance issue at Longhorn and Bitterroot and said additionally the traffic from developments has created more traffic issues. Mr. Melcher would like to see a traffic study conducted out to Highway 87 as there is a school district on Independent Lane. He asked if there is an alternate route for this area to get traffic to the main arterial road and said he wants to ensure these details are taken care of.

#### **Carey Chapman, 1745 Mary Street, Billings, Montana**

Ms. Chapman said she is in favor of this development as it will bring opportunities to Heights' residents.

#### **Matt and Rebecca Beddes, 4110 Bennett Ave, Billings, Montana**

Mr. Beddes stated he is against this zone change. His primary concern is drainage as storm water from this area tends to drain into their property. He said that although he made attempts, he has had difficulty reaching him. He voiced concern with potentially having a residential development next to a motor sports park as he plans to use their parcel for this use due to the Board of County Commissioners' denial of a recent zone change request. He reported Billings Heights Water was unable to shed light on the cost of the water connection and has only met with the applicant one time. He said he was unsure if Heights Water would extend services to



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his property due to costs. Commissioner Ray asked if Heights Water has approved this extension and Mr. Beddes said it is unknown. Commissioner Ray pointed out that storm water regulations will not allow the applicant to run off storm water on neighboring properties. Mr. and Mrs. Beddes do not feel this request should be approved as they didn't get the zone change they applied for on the property to the west along Highway 87.

### **Rebuttal**

#### **Scott Aspenlieder, Performance Engineering, 2101 Overland Ave., Billings, MT**

Mr. Aspenlieder stated the zone change would provide predicable land use in a residential area. He also explained that the development is required to retain water on site as approved by the Department of Environmental Quality, so it is likely water drainage will decrease onto the neighboring property. The agent said the development will be phased, beginning on the southern end of the proposed development working north and east. The agent also stated he had spoken with the Heights Water District manager several times and they are currently working on the calculations to determine what size of piping would be required and the type of pumping system would be required.

At 4:37 p.m., Chairman Cook closed the public hearing and asked if anyone else would like to speak in favor or against Yellowstone County Zone Change #668. There was none. Chairman Cook called for discussion.

### **Discussion**

Commissioner Littler directed a question to Mr. Beddes. Mr. Beddes said they went through the process two times to obtain a zone change but the County Commissioners denied it. They will have to revert to A-1 land uses which allows a motorcycle park. Commissioner Littler commented there a lot of questions with the subdivision development during the review. He said he is curious how a motorcycle set up is a better recommendation than the previous zone change request.

### **Motion**

**Commissioner Littler made a motion and it was seconded by Commissioner Ray to forward a recommendation to the Board of County Commissioners of approval of Zone Change #668 as presented by staff and adopt the eleven criterion. .**

### **Discussion**

Chairman Cook recognized Citizen Jerry Morrell.



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### Jerry Morrell, [jmorrell@productpmconsult16.com](mailto:jmorrell@productpmconsult16.com)

Mr. Morrell said that the Heights Water District's future plan includes the north end of the property as a part of the service area. He pointed out the location of proposed tanks on the posted site plan.

**The motion carried with a unanimous voice vote, 3-0.**

### 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, September 29, 2015, in the Board of County Commissioners Board Room 403A in the Yellowstone County Courthouse.

**Item #2 - County Zone Change #667– County Zone Change #667 – 62<sup>nd</sup> St W & Rimrock Road** – A zone change request from Residential 9,600 (R-96) to Community Commercial (CC) on Lot 8 of Sunny Cove Fruit Farms Subdivision, a 9.3 acre parcel of land generally located at the intersection of 62<sup>nd</sup> St West and Rimrock Road. The applicants conducted a pre-application neighborhood meeting on August 6, 2015 at the Yellowstone Country Club, 3200 Paul Allen Way. Tax ID D04654

### **REQUEST**

**The applicant is requesting a zone change from Residential 9,600 (R-96) to Community Commercial (CC) on Lot 8 of Sunny Cove Fruit Farms Subdivision, a 9.3 acre parcel of land generally located at the intersection of 62<sup>nd</sup> St West and Rimrock Road.**

### **RECOMMENDATION**

The Planning staff is forwarding a recommendation of denial based on the 11 criteria for zone changes. Part of the property may be appropriate for CC zoning, or the proposed use on the northern half may be appropriate but there is no proposed buffer zoning between commercial uses and low density housing zoning. There is also no guarantee that the development will proceed as planned with this developer. The property could be rezoned with this proposal and then sold to a different developer with a different idea for use. The property is in the county and would need to provide septic and water for the proposed uses. This development would also require them to provide an area for an alternate septic should the first one fail limiting usable space on the lot. Also when a parcel of land is near city services MDEQ may not approve a septic system but require them to hook up to the city water and sewer. This would require annexation of the land and building to city standards. A 4 to 5 lot subdivision in the County would also require them to provide fire suppression which would require the installation of a



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10,000 gallon dry hydrant system. There is CC zoning on the parcel to the North West that is vacant and ready to be developed that already meets all the needs of a commercial development. The proposed zoning is incompatible with the existing adjacent uses to the south east and west. The CC zone could allow the construction of other uses that may also have a detrimental effect on traffic and the adjacent residential uses.

The Planning Division forwarded a recommendation of denial to the Zoning Commission based on its proposed findings of the 11 criteria for zone changes. The Zoning Commission did not concur with this recommendation. The Zoning Commission found the site made sense as a commercial node at an intersection. The Zoning Commission determined the proposed zone change and the uses proposed by the developer would be compatible with the surrounding residential zoning and residential and agricultural uses. The Zoning Commission found the proposed zoning and use is in conformance with the 2008 Growth Policy that encourages commercial nodes as well as coordinated economic development that targets a diverse range of business ventures and services. The Zoning Commission found the proposed development will spur commercial development in this area of the County and provide neighborhood conveniences. The proposed use of the property will not generate additional or unusual types of traffic in the area on adjacent streets, according to the Zoning Commission findings.

### **Discussion**

Chairman Cook asked if the roundabout will have an impact on this parcel. Staff explained the right-of-way would be obtained and the proposal for a roundabout is not within the City's five year plan. Commissioner Ray asked if there is an issue with annexation and staff noted that this parcel is in the annexation area. Commissioner Ray commented he feels this parcel should be zoned the same as the parcel across the street, Community Commercial, (CC)

### **Applicant**

#### **Matt Robertson, 3312 4th Ave North, Billings, Montana**

Mr. Robertson represents the clients that are currently under contract for this parcel. They are considering a mid-size grocery store and providing storage. He explained the proposal is for a high end condo project with each unit individually owned to provide a place for high end motor coach storage. The applicant has offered an automatic buffering zone to adjacent property owners. With the project pending, they are working through the zoning and annexation process in order to be a community partner for the area. Their goal is to create a mix of uses to service the growing population and growth in this area which has outpaced the market. They feel that activity located on the corner will create traffic calming and perpetuate development on the opposite corner. His clients have made a commitment to the community to provide a buffer between the community commercial development and the residential uses. The project will be aesthetically pleasing and fit well within a high end residential community. This property was



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re-zoned in 2005 with no development and it has been marketed last five years. They are looking at something smaller to service the community in the next few years.

### **Favor**

Chairman Cook asked if there is anyone wanting to speak in favor of Yellowstone County Zone Change #667.

### **James Ouren, 590 Garden Avenue, Billings, Montana**

Mr. Ouren asked why the City would prohibit him from selling his land. The proposal is not to bring more people in but to service the existing community. He said they are in consensus that this is the area for community commercial development. He purchased the land as investment.

### **Against**

Chairman Cook asked if there is anyone wanting to speak in against of Yellowstone County Zone Change #667.

### **Ron Henry, 4215 Sapphire Drive, Billings, Montana**

Mr. Henry commended Mr. Robertson on his presentation. He has a contract to purchase the property to the northwest of the subject property and spoke against the zone change because he believed that the market for service businesses in the area was too small to have more land zoned for commercial purposes and such an action would just stop commercial development from happening.

### **Blaine Poppler, 5403 King Ave West, Billings, Montana**

Mr. Poppler stated there isn't enough interest in the area for more commercial property and he also felt there was no separation of uses between the proposal and the adjacent residential and agricultural uses. He stated that there should be zoning buffers between commercial uses and low density residential zoning that surrounds the property. Mr. Poppler is the listing agent on the northwest parcel. He agrees with the staff recommendation and said the evidence presented today is not reason enough to override the staff recommendation.

### **Rebuttal**

### **Matt Robertson, 3312 4th Ave North, Billings, Montana**

Mr. Robertson said his clients have done due diligence and are ready to move forward. The development and infrastructure will be completed before they sell lots. He restated that there are Covenants and Restrictions in place to provide for higher end development. He presented the Commission with a copy of the Protective Covenants for Sunny Cove Properties, a partnership between Thomas E. Romina and Herb W. Caraway. He also stated that he had talked with the neighbors and explained to them their plans and they were not opposed. He commented development usually spurs development so if they build commercial uses on this property then



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most likely the property on the northwest corner will develop. He stressed his clients are not looking for a “giant development” but wish to service this community.

Chairman cook closed the public hearing and called for a motion.

### **Discussion**

Al Littler said he has difficulty recommending denial but once the zone change is approved there is no guarantee the development will be created as proposed. He asked for clarification on the City, County, and MDT jurisdictions and it was given by Dave Green who pointed out this is not part of the criterion for approval. Commissioner Littler commented on the Growth Plan and the West End plan recommendations for commercial nodes and noted there are commercial nodes at the intersection of 54th Street West and Grand.

### **Motion**

**Commissioner Littler made a motion and it was seconded by Commissioner Ray to recommend to BOCC approval and adoption of the findings of the 11 criteria for Zone Change #667.**

### **Discussion**

Commissioner Littler spoke on compliance with the Growth Policy and west end commercial nodes. Commissioner Ray said he is in favor with developing more stores in the area, and the competition across the street will help the property owners. Commissioner Ray feels that all three corner properties should be zoned for commercial uses as this area is growing.

## **7. OTHER BUSINESS-**

### **a. Application for membership on the Yellowstone County Zoning Commission.**

Nicole Cromwell noted the application submitted by Mr. Troy Boucher.

### **Motion**

**Commissioner Ray made a motion and it was seconded by Commissioner Littler to recommend Mr. Troy Boucher for the Yellowstone County Zoning Commission.**

**The motion carried with a unanimous voice vote.**



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**b. Announcement:** Zoning Coordinator Nicole Cromwell announced the next Yellowstone County Zoning Commission meeting will be held on Tuesday, January 11, 2016 as there are no applications to review for December.

**Adjournment:** The meeting adjourned at 5:45 p.m.

**ATTEST: DRAFT to be approved by a motion on Tuesday, January 11, 2016**