

City of Billings Zoning Commission Meeting Minutes January 3, 2017

The City of Billings Zoning Commission met on Tuesday, January 3, 2017 in the Miller Building 1st Floor Conference Room, 2825 3rd Avenue North, Billings, Montana.

Chairman Wagner called the meeting to order at 4:30 p.m. The City Council has designated **Monday January 23, 2017** at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

| Commission and Staff | | 01/03/2017 | 02/07/2017 | 03/07/2017 | 04/04/2017 | 05/02/2017 | 06/06/2017 | 07/05/2017 | 08/01/2017 | 09/05/2017 | 10/03/2017 | 11/07/2017 | 12/05/2017 |
|----------------------|---|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Dan Wagner | Chairman | 1 | | | | | | | | | | | |
| Dennis Ulvestad | Commissioner | 1 | | | | | | | | | | | |
| Mike Boyett | Vice Chairman | 1 | | | | | | | | | | | |
| Michael Larson | Commissioner | 1 | | | | | | | | | | | |
| James Mariska | Commissioner | 1 | | | | | | | | | | | |
| Wyeth Friday | Director, Planning & Community Services | - | | | | | | | | | | | |
| Vacant | Division Planning Manager | - | | | | | | | | | | | |
| Nicole Cromwell | Planner Zoning Coordinator | 1 | | | | | | | | | | | |
| Tammy Deines | Planning Clerk | - | | | | | | | | | | | |
| Dave Green | Planner II | - | | | | | | | | | | | |
| Karen Husman | Planner I | - | | | | | | | | | | | |
| Robbin Bartley | Administrative Support | 1 | | | | | | | | | | | |

| Total Number of 2016 Applications | 01/03/2017 | 02/07/2017 | 03/07/2017 | 04/04/2017 | 05/02/2017 | 06/06/2017 | 07/05/2017 | 08/01/2017 | 09/05/2017 | 10/03/2017 | 11/07/2017 | 12/05/2017 | TOTAL |
|-----------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------|
| Zone Change | 2 | | | | | | | | | | | | 2 |
| Special Review | 1 | | | | | | | | | | | | 1 |

Chairman Wagner introduced the Planning Division Staff and Commission: Attending Staff were Nicole Cromwell, Zoning Coordinator; and Robbin Bartley, Administrative Support.

In Attendance: Robert Murry, Connie Nicely, Harley Damschen, Tom Roe, Randy Bjelkevig, Jenny McGahan, Gerald Klein, Kolten Knatterod, Charles Hamwey, Brian Gentry, Diane Svec, Erik Olson, Dayton Rush, Eric Nord

Public Comment

Chairman Wagner called for public comments. There were no public comments. Chairman Wagner closed the public comment portion of the meeting.

Approval of Minutes: December 6, 2016

Chairman Wagner called for approval of the December 6, 2016 meeting minutes.

Motion

Commissioner Boyett made a motion and Commissioner Larson seconded the motion to approve the December 6, 2016 meeting minutes.

| COMMISSIONER | Yes | No | ABSTAINED | ABSENT |
|-----------------|-----|----|-----------|--------|
| Dan Wagner | x | | | |
| Mike Boyett | x | | | |
| Dennis Ulvestad | x | | | |
| Mike Larson | x | | | |
| James Mariska | x | | | |

The motion for approval then carried with a unanimous voice vote 5-0.

Chairman Wagner called for disclosures of conflict of interest. There were none.

Disclosure of Conflict of Interest

| COMMISSIONER | Yes | No | ABSTAINED | ABSENT |
|-----------------|-----|----|-----------|--------|
| Dan Wagner | | x | | |
| Mike Boyett | | x | | |
| Dennis Ulvestad | | x | | |
| Mike Larson | | x | | |
| James Mariska | | x | | |

Disclosure of Outside Communication Staff advised an email was received from an adjacent home owner regarding Special Review 952. A copy of the email is in the Ex Parte notebook.

| COMMISSIONER | Yes | No | ABSTAINED | ABSENT |
|---------------------|------------|-----------|------------------|---------------|
| Dan Wagner | | x | | |
| Mike Boyett | | x | | |
| Dennis Ulvestad | | x | | |
| Mike Larson | | x | | |
| James Mariska | | x | | |

Public Hearings:

Chairman Wagner reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and advised the audience that this would be heard by the City Council on January 23, 2017. He then asked Nicole Cromwell to review the first agenda item.

Nicole Cromwell corrected the City Council meeting date found on the second page of the Agenda from January 9, 2017 to January 23, 2017.

Nicole Cromwell presented:

City Zone Change 952 – 1236 & 1240 Avenue D – A zone change request from Residential 7,000 (R-70) to Residential 6,000 (R-60) on Lot 10A, Block 5 of Curtis Subdivision 3rd Filing, a 23,800 square foot parcel of land. A pre-application neighborhood meeting was held at Territorial Landworks, 3333 2nd Ave North on November 11, 2016. Tax ID: A05929

RECOMMENDATION

Planning Staff recommends approval and adoption of the proposed findings of the 10 criteria for Zone Change 952.

Questions for Staff:

NONE

Chairman Wagner asked for the applicant of **City Zone Change 952**.

Kolton Knatterod, Territorial Landworks, agent

Mr. Knatterod stated the owner has no plans to add density, he is only wishing to improve the property and get financing. This concern was expressed at the neighborhood meeting.

Commissioner Larson asked if there were any other concerns at the neighborhood meeting. He replied the other concern is the alley condition. It is currently in poor condition and the owner was asked if he intended to improve it. The owners informed the attendees of his intent to pave the now

gravel parking area. The parking situation should improve. The parking garages are currently being used for storage. Under the new ownership they will be used for parking.

Commissioner Ulvestad asked what is the time frame for improvements? He is not sure but assumes as soon as possible.

Opposed

NONE

Chairman Wagner asked for a motion.

Commissioner Larson made a motion and Commissioner Ulvestad seconded the motion to approve **City Zone Change 952.**

| Commissioner | YES | NO | ABSTAINED | ABSENT |
|---------------------|------------|-----------|------------------|---------------|
| Dan Wagner | x | | | |
| Mike Boyett | x | | | |
| Dennis Ulvestad | x | | | |
| Mike Larson | x | | | |
| James Mariska | x | | | |

The motion carried with a unanimous verbal vote of 5-0.

Nicole Cromwell presenting:

City Zone Change 953 – 940 and 950 Yellowstone River Road – A zone change request from Residential 7,000 (R-70) to Community Commercial (CC) on Tract 14, C/S 4 (Brittain Acres), a 2.12 acre parcel of land. A pre-application neighborhood meeting was held at Country Inn and Suites, 231 Main Street on November 14, 2016. Tax ID: C00175

RECOMMENDATION

The Planning staff recommends denial and adoption of the findings of the 10 criteria.

Questions for Staff:

None

Chairman Wagner asked for the applicant of **City Zone Change 953.**

Eric Nord, Agent, Crist, Krogh & Nord

Mr. Klein, the owner, is present. He believes this information has been misrepresented. The storage facility is owned by an LLC. The mobile court has been sold and is not owned by the LLC. It was never intended that the storage facility would only be used by the manufactured home residents. It has always been used by third parties. He then addressed the 10 criteria. The Kiwanis Bike Trail is crossed over to access this facility. There are three public roads that cross this same

trail with much higher trail volume. The impact of the storage facility is nil. The planning staff is looking at this as a hypothetical future situation.

There is no evidence that the usage of this facility has effected the neighborhood negatively. The Neighborhood Task Force has not expressed an objection. We respectfully ask that the Commission grant this.

Commissioner Larson asked that the issue of future usage be addressed. The Community Commercial zoning could be used for many things and his concern is it would be changed. The owner is willing to put a deed restriction on this property that runs with the land to maintain its usage in the future as a storage facility.

Commissioner Ulvestad asked staff about a conditional approval for a zone change. Conditional approval is not an option.

Commissioner Boyett asked if there is any other type of zoning that would work for the applicant. Staff replied that the 2000 Block of Broadwater a Planned Unit Development was used in that case. A deed restriction runs with the land. The city's only participation would be is if they were a party to that covenant.

Chairman Wagner asked if the restriction could be removed under certain circumstances. If the original owner who placed the restriction agreed, that may be possible.

Commissioner Mariska addressed the LLC as the original owner. Mr. Nord answered the LLC legalities.

Commissioner Larson addressed the spot zoning that was mentioned. What is your response to that issue. Mr. Nord does not believe it meets the criteria for spot zoning. His understanding is that applies to new construction.

Randy Bjelkevig, 1294 Yellowstone #3

Mr. Bjelkevig is concerned about the property usage if the zone change is not granted.

Tom Roe, Downtown Realty, 929 Ave C

Mr. Roe believes because the storage facility exists and has been operational without issue for many years, the zone change should be approved.

Gerald Klein, owner

The mobile court traffic that crosses the Kiwanis trail is heavier by far than any usage by the storage facility. This facility is mainly for RV's and boats and it accommodates the mobile home court.

He is dealing with the unfinished business of his deceased father. He wants to retire, and needs the zone change. He is willing to implement any kind of covenant to insure the future property use is only a storage facility.

Opposed
NONE

Commissioner Larson made a motion for approval of **Zone Change 953**. These should be presented in a positive light. He agrees with the spot zoning argument. He would like the City Council to consider a Deed Restriction or the like in a positive light. There are no current issues with use and staff is concerned with the future usage. Commissioner Boyett seconded the motion to approve **City Zone Change 953**.

Discussion

Commissioner Boyett agrees that it should be what it has been.
Commissioner Mariska wishes it had not changed ownership to an LLC.
Commissioner Ulvestad agrees to move forward based on Commissioner Larson’s recommendation.

| Commissioner | YES | NO | ABSTAINED | ABSENT |
|---------------------|------------|-----------|------------------|---------------|
| Dan Wagner | x | | | |
| Mike Boyett | x | | | |
| Dennis Ulvestad | x | | | |
| Mike Larson | x | | | |
| James Mariska | x | | | |

The motion carried with a unanimous verbal vote of 5-0.

Nicole Cromwell Presenting:

City Special Review 952 – 54th St West & Grand Avenue – A special review request to locate a drive through service for a pharmacy adjacent to a residential zone in a proposed 57,000 square foot building, in a Community Commercial (CC) zone, on Lot 1, Block 1, Bishop Fox Subdivision, an 8.197 acre parcel of land. Tax ID: A33007.

RECOMMENDATION

Planning staff recommends conditional approval and adoption of the findings of the 3 criteria for **Special Review 952**.

Questions for Staff:

Commissioner Larson confirmed there is no vehicular access to the adjacent neighborhoods from this retail parking lot and no short cuts. Staff agreed and explained the special review is only for the drive thru.

Commissioner Boyett asked why is there a pedestrian path, is this something new. Yes, it is new and the path is meant to connect to the neighborhood for pedestrian access.

Commissioner Boyett asked what is the footage from the 6 foot fence to the building. It is 80 feet at minimum.

Commissioner Mariska confirmed the Commission is reviewing this only because of the drive up? What is the objection. The code has a provision that states any drive thru service except a fueling station, that is adjacent or across an alley from a residential area must go thru the Special Review process.

Commissioner Larson talked about the shortcut issue at the Rehberg and Grand Albertsons. Commissioner Mariska stated the city facility/Fire Department is a City Police Department as well, what is the impact. The access off of Grand has no traffic control. Staff explained the possible development plan for Grand Ave in this area. Commissioner Mariska asked about bicycle staples, is it a recommendation or a requirement. Staff explained the condition requirement is because it is a Special Review.

Staff addressed neighborhood questions regarding lights and an SID.

Chairman Wagner asked for the applicant of **City Special Review 952**.

Dayton Rush, CTA, agent

Commissioner Larson confirmed this is a drive up for a pharmacy? No traffic counts have been done yet.

Charlie Hemway, Agent for Bishop Fox

He is very confident in the design and the City Engineering department, making this a workable project.

Opposed

Connie Nicely, 1526 Silver Run Trail, Billings, MT

She is concerned with security issues, her front door looks right into the area. The fence and walkway will allow people to be hidden from view. Why does the drive up have to be on the residential side? A gas station will be built next.

Commissioner Larson stated this has been zoned Community Commercial for a long time. He asked if she was aware of the zoning when you bought your home? She adamantly does not want the walk path fearing that unsavory citizens will have access to her home.

Jenny McGahan, 1548 Silver Run Trail, Billings, MT

She shares the same concern with the walking path. She would feel more comfortable with a protective barrier rather than a fence that could be crossed. She has safety concerns. Is there more information on the fence. She would like to see the drive up moved to the other side of the store. Traffic and noise is a concern, she lives very close.

Rebuttal

Dayton Rush described the intended fence and material. The landscaping meets all Code requirements.

Chairman Wagner asked if there will there be grass that is irrigated in the buffer zone.

Chairman Wagner asked for a motion.

Commissioner Ulvestad made a motion and Commissioner Larson seconded the motion to approve **City Special Review 952.**

Discussion

Commissioner Larson comments on the walkway and the access to the retail area. He feels this is a positive feature. Chairman Wagner is impressed with the landscaping and width of the buffer.

| Commissioner | YES | NO | ABSTAINED | ABSENT |
|---------------------|------------|-----------|------------------|---------------|
| Dan Wagner | x | | | |
| Mike Boyett | x | | | |
| Dennis Ulvestad | x | | | |
| Mike Larson | x | | | |
| James Mariska | x | | | |

The motion carried with a unanimous verbal vote of 5-0.

Other Business:

The February 7, 2017 has been cancelled due to lack of applications.

Adjournment: The meeting adjourned at **6:05 p.m.**

DRAFT: To be approved by a motion: **March 7, 2017.**

ATTEST:

Robbin Bartley, Administrative Assistant I