

## City of Billings Zoning Commission Meeting Minutes April 4, 2017

The City of Billings Zoning Commission met on Tuesday, April 4, 2017 in the Miller Building 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana.

Chairman Wagner called the meeting to order at 4:30 p.m. The City Council has designated **Monday April 24, 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          | -          | -          | 1          |            |            |            |            |            |            |            |            |
| Dennis Ulvestad      | Commissioner                                  | 1          | -          | -          | 1          |            |            |            |            |            |            |            |            |
| Mike Boyett          | Vice Chairman                                 | 1          | -          | -          | 1          |            |            |            |            |            |            |            |            |
| Michael Larson       | Commissioner                                  | 1          | -          | -          | 1          |            |            |            |            |            |            |            |            |
| James Mariska        | Commissioner                                  | 1          | -          | -          | 1          |            |            |            |            |            |            |            |            |
| Wyeth Friday         | Director,<br>Planning & Community<br>Services | -          | -          | -          | 1          |            |            |            |            |            |            |            |            |
| Vacant               | Division Planning<br>Manager                  | -          | -          | -          | -          |            |            |            |            |            |            |            |            |
| Nicole Cromwell      | Planner<br>Zoning Coordinator                 | 1          | -          | -          | E          |            |            |            |            |            |            |            |            |
| Tammy Deines         | Planning Clerk                                | -          | -          | -          | -          |            |            |            |            |            |            |            |            |
| Dave Green           | Planner II                                    | -          | -          | -          | 1          |            |            |            |            |            |            |            |            |
| Karen Husman         | Planner I                                     | -          | -          | -          | -          |            |            |            |            |            |            |            |            |
| Robbin Bartley       | Administrative Support                        | 1          | -          | -          | 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          |            |            |            |            |            |            |            |            | 4     |
| Special Review                    | 1          |            |            | 3          |            |            |            |            |            |            |            |            | 4     |

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

**In Attendance**

Bruce Buss, George Deal, Eugene Baker, Amber Field, Clara Baker, Debra & Mike Tonkovich, Kevin Howell, Bill Mankin, bob Pulley, Carrie McNeese, Bryan Alexander, John Atkinson, Georgia Heffner, Thresa Goodman, Mike Heffner, Carl Anderson, David Marts, John Jones, Craig Favero, Zach Phelps, Tom Mutchler, Mike Matern, Mary Matern, John Wells, Jason Lillie, Stephon Mentzer, Oscar Heinrich

**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: January 3, 2017**

Chairman Wagner called for approval of the January 3, 2017 meeting minutes.

**Motion**

Commissioner Ulvestad made a motion and Commissioner Larson seconded the motion to approve the January 3, 2017 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.

**Disclosure of any Conflict of Interest, Ex Parte Communications and Site Visits**

A new form has been implemented for any disclosures. If any Board member circled yes to a Conflict of Interest or Ex Parte Communication, it will be explained here.

**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 April 24, 2017. He then asked Dave Green to review the first agenda item.

Dave Green presented:

**Return Item - City Special Review 953 – 4135 Grand Avenue – Wireless**

**Communication Facility** – A special review request (27-620(d)1.) to allow an 80-foot monopole and wireless communication facility in a Residential 9,600 zone on a church property legally described as C/S 1876, Tract 3A1, a 1.844 acre parcel of land generally located at 4135 Grand Avenue. Tax ID: D04742

**RECOMMENDATION**

Planning staff recommends conditional approval an adoption of the findings of the 3 criteria for special review.

**Questions for Staff:**

**Chairman Wagner**-If approved, what capacity and lifelong years will it provide. Deferred to applicant.

**Commissioner Mariska**-What is considered whisper quiet regarding generators. By the manufacturer to a certain decibel.

**Commissioner Ulvestad**-Who decides on 6 foot minimum on fence height. Residential zoning.

Chairman Wagner asked for the applicant of **City Special Review 953**.

KEVIN HOWELL, 11340 N 105<sup>TH</sup> PL, SCOTTSDALE, AZ

This is a supply and demand issue, more houses require more usage. More data is necessary. Verizon is looking at 8 more sites for towers in Billings. Area growth requires more towers. This tower is higher to reach further west. It is 80 feet to avoid interference. This area is already impacted by 70 foot NWE poles. 50 percent of homeowners nationwide do not have land lines.

**Commissioner Mariska** - What determines the amount of capacity this will provide?

**Reply** - This tower is not expandable. The FCC only gives so much bandwidth for use.

Aesthetically, more towers are a problem, but the public demands the service.

**Commissioner Boyett**- Why can't we put everything on the rims?

**Reply** – If only one tower were placed on the rims it would be overwhelmed.

## **Opposed**

### OSCAR HEINRICH, 5148 Granite Peak Lane

Offered these questions. Can this be a co-location? Why was a tower in this area denied in the past? Can something be done about the appearance?

### MIKE HEFFNER, 420 Heffner Lane

Mr. Heffner owns adjacent property and fears the cell towers will bring down property values. His home is a passive solar and does not want blockage of an 80 foot tower. The proposed 6 foot fence at 25x50, is not high enough to hide the equipment which is 10 feet tall and once the easement is there they can do anything they want.

### BILL MANIKAN, 4309 Grand Ave

Mr. Manikan is opposed to the look of the base of the tower, not the tower itself. Verizon needs a spot between Grand and Rimrock, another location should be considered.

### TERESA GOODMAN, 1643 41<sup>st</sup> St. West

In 1979 Montana Power proposed eminent domain to put a substation in on their property at this location. She and her husband decided where it would go on their ranch. They were able to stop a previous cell tower erection. She feels they have done their part, put it somewhere else.

### CARL ANDERSON, 1708 43<sup>rd</sup> St. W

Mr. Anderson is opposed to the tower, there are plenty of other ugly towers in the area. It will effect property values in a residential area.

### CARRIE MCNEESE, 4309 Grand Ave

Ms. McNeese feels that it should be erected in commercial zoning and not in a residential area.

## **REBUTTAL**

Regarding co-location, definitely, whether another company would choose to mount antenna below or above would be up to them. Verizon is open to a different location. The houses are what is driving the demand. Industrial/commercial areas don't need the service.

**Commissioner Larson** - Please address the base facility exceeding the height of the fence.

The old type building had dimensions of 12x26x11. Verizon is now using 3 outdoor cabinets measuring 3x3x6 foot tall. They are held about 1 foot off the ground for moisture and a snow roof is constructed and is about 8 feet tall.

Mr. Howell also requests help for aesthetics to be in compliance to the conditions.

**Commissioner Boyett**- Is it a requirement that the fence is a 6 foot maximum. Staff advised the need of a variance should the fence be over 6 feet.

**Chairman Wagner asked for a motion.**

Commissioner Boyett made a motion and Commissioner Larson seconded the motion to approve **City Special Review 953.**

**DISCUSSION**

Commissioner Ulvestad agrees with placing it in CC verses R zoning

Commissioner Larson – the demand for this service is compelling and the impact on the neighborhood is compelling, it is troublesome that there is no representation here by the property owner

Commissioner Mariska- his main concern is this is a utility for services as well as entertainment, and agrees it is not the best place but the area growth makes it eminent.

| <b>Commissioner</b> | <b>YES</b> | <b>NO</b> | <b>ABSTAINED</b> | <b>ABSENT</b> |
|---------------------|------------|-----------|------------------|---------------|
| Dan Wagner          |            |           | X                |               |
| Mike Boyett         | X          |           |                  |               |
| Dennis Ulvestad     |            | X         |                  |               |
| Mike Larson         | X          |           |                  |               |
| James Mariska       |            | X         |                  |               |

**The motion IS DENIED with a verbal vote of 2-2-1.**

Dave Green presenting:

**Return Item - City Special Review 954 – 3042 King Avenue West – All Beverage License gaming restricted** – A special review request to locate an all-beverage liquor license (gaming restricted) in an existing 6,509 square foot building – Johnny Carino’s – on Lot 3A-1 of Studer Acreage Tracts Subdivision, in a Controlled Industrial (CI) zone, on a 1.17 acre parcel of land generally located at 3042 King Avenue West. Tax ID: C14763

**RECOMMENDATION**

Planning staff recommends conditional approval an adoption of the findings of the 3 criteria.

**Questions for Staff:**

Chairman Wagner – is this a new license or existing

Reply – this is an existing license, it is called a floater license and no gaming is allowed

Commissioner Boyett - Johnny Carino’s did have a wine and beer licence

Reply – correct, that license went with the owner of Johnny Carino’s

Commissioner Ulvestad – asked who retained the all beverage license

Chairman Wagner asked for the applicant of **City Special Review 954**.

Bob Pulley, 321 Glee Place, Agent

Daisy Dukes liquor license is being used at this location. The current license from Cactus Creek is restricted. The Mexican Cuisine will want Margaritas.

Casey Keith, 3040 King Ave East, Agent for Lexington Inn and Suites

This type of business is definitely an asset to them. They are in favor of this being approved.

**Opposed**

NONE

Commissioner Larson made a motion for approval of **City Special Review 954**. Commissioner Boyett seconded the motion to approve **City Special Review 954**.

**Discussion**

Commissioner Ulvestad thinks this is a good location.

| <b>Commissioner</b> | <b>YES</b> | <b>NO</b> | <b>ABSTAINED</b> | <b>ABSENT</b> |
|---------------------|------------|-----------|------------------|---------------|
| 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.**

Dave Green Presenting:

**City Zone Change 955 – 301 - 317 Covert Lane and 1739 – 1747 Cody Dr** – A zone change request from Residential 7,000 (R-70) to Residential 6,000 (R-60) on Lots 5, 6, 7 & 8, Block 7, Happy Hollow Subdivision, a 1.36 acre parcel of land. A pre-application neighborhood meeting was held on February 23, 2017 at Oasis Water Park. A concurrent special review has been submitted. Tax IDs: C00404A, C00404B, & C00404C.

**RECOMMENDATION**

Planning staff recommends approval and adoption of the findings of the 10 criteria for a zone change.

**Questions for Staff:**

Commissioner Boyett asked what is allowed in R7000 and staff replied 6 Duplexes. In R6000 3-10 plex units. This is a legal non-conforming, therefore no financing is available to improve or rebuild the current structures.

Any time there are more than 3 structures, Public Works considers it a commercial area and requires Storm Water Retention on site.

[Commissioner Larson](#) –There are 2 separate requests here? The Zone Change is what our focus is right now and not the proposed plan.

Chairman Wagner asked for the applicant of **City Zone Change 955**.

BRIAN ALEXANDER, AGENT, SANDERSON STEWART

The proposed zone change would provide more flexibility.  
This was originally county property with septic systems.

[Chairman Wagner](#) – how wide is the alley along the north perimeter, 20 foot wide

JOHN JONES, AGENT, 27 N 27 STREET, BILLINGS, MT

The zone change would help with insurance and financing.

TOM ZERBUCHEN, 1747 WICKS LANE

Here tonight representing his elderly mother who lives at 1776 Broadview Drive. This zone change is a no brainer. The current buildings are severely blighted and cannot be replaced at today's costs and pencil out. He is in favor of the zone change in fear that the taxpayers will end up paying for the removal of these buildings.

### **Opposed**

ZACK PHELPS, Representing 316, 318 AND 320 COVERT

Contents that Rainbow Property does not maintain this or any of its properties effectively.

[Commissioner Larson](#) confirms opposition to the project or the zone change.

Mr. Phelps agrees that improvement is needed but that a zone change is not necessary to do that.

STEPHON MENTZER, 330 LAURIE LANE

The proposed zone change will impact the quality of the neighborhood. It is currently very quiet. He is adamantly opposed to the zone change as it will drastically increase the density.

DEBORAH TONKAVICH, 1819 CODY DRIVE

There is a lot of wildlife from the wetlands. More people will decrease the presence of wildlife.

Parking is an issue now and will be more so with the zone change.

Traffic will be an issue, the roads are poor now.

The owners do not maintain the property and never have.

No room for children to play is a huge safety concern.

BRUCE BUSS, 1738 BROADVIEW DRIVE

The proposal of increased density of 100 persons in this small area is not agreeable to any of the current residents. The traffic will not be manageable.

MIKE MATERN, 119 COVERT LANE

We do not need more persons, do not change zoning and allow more persons. I am not opposed to an upgrade just the increased density.

KIM LATTERAL, 1630 CODY DRIVE

The road is already a race strip for high school students. 6 duplexes to 18-30 units with the zone change. It is a poor impact to the neighborhood. He is opposed to the number of units.

AMBER FIELD, 325 LAURIE LANE

There is a fix without a zone change, build 6 duplexes.

There are no sidewalks in the neighborhood and the road is narrow with insufficient parking.

One garbage receptacle is not adequate.

This is a wetland and this zone change will impact the wildlife.

The traffic on this road is horrible and many are not residents.

DAVE MARTZ, 337 LAURIE LANE

The population density proposed is ridiculous. There are wetland issues, garbage is a problem.

Currently the property is not adequately maintained.

He is in favor of 6 duplexes, and opposed to the zone change.

CRAIG FAVERO, 309 STILLWATER LANE

He bought in this area because it is primarily Single Family dwellings 12-20,000 square foot lots.

The small garages proposed will be glorified storage and are not big enough for a truck.

Safety is a huge concern as well as crime with that many persons.

Six duplexes are a much better solution.

EDDY BAKER, 312 LAURIE LANE

His concerns are the density proposed, retaining the water with an 8 foot water table.

A zone change opens up too many potential problems.

CLARA BAKER, 312 LAURIE LANE

This is a quiet neighborhood with seniors. Currently there is no place for children to play, more density is absurd.

MARY MATERN, 119 COVERT LANE

She agrees with all the opposition. She has lived there 2 years and enjoys the large property with wetlands and wildlife. She does not want zone change, no more people.

GEORGE DEAL, 1732 BROADVIEW DRIVE

The traffic on Cody has grown with the new development to the north.

He is against the zone change.

JOHN WELLS, 303 MEADOWLARK LANE

He has lived there since 1991. It is obvious to him that this is an income game. The property is not maintained. The ground water table is very high and there is no place for storm water retention. Six duplexes brings compliance and enables financing and insurance.

MIKE TONKAVICH, 1819 CODY DRIVE

How many units are going in on Sioux lane?  
It is 3 times the area that is being proposed here and 30 units.  
He enjoys the quiet.

**Rebuttal**

Commissioner Larson interjected a point of order, indicating that only the zone change be addressed for the purposes of a recommendation to City Council.

BRIAN ALEXANDER, SANDERSON STEWART

The proposed zone change is just one step up in density from the current zoning. Granting the zone change does not change the density hugely without the special review. The zone change is the issue here. Approval is needed to obtain financing and at least a rebuild letter.

Commissioner Boyett made a motion to approve **City Zone Change 955** and Commissioner Larson seconded.

**Discussion**

Commissioner Larson confirmed with staff that the only other R-6000 in this area is undeveloped. The city owns an area kitty corner that is R-6000 and therefore spot zoning is not a concern.

Commissioner Boyett-confirmed 12 units in R-6000 zoning without a special review

| 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 verbal vote of 3-2.**

Dave Green Presenting:

**City Zone Change 954 – 5400 Laurel Rd** – A zone change request from Residential 7,000 (R-70) to Community Commercial (CC) on portion of Lot1A and all of Lot 2, Block 3 Streeter Brothers Subdivision, a 15,000 square foot parcel of land. A pre-application neighborhood meeting was held on February 27, 2017 at GM Petroleum at 275 Daniel Street. Tax IDs: A14949 & D01379.

**RECOMMENDATION**

The Planning staff recommends approval and adoption of the proposed findings of the 10 criteria for **City Zone Change 954**.

**Questions for Staff: NONE**

BRYAN ALEXANDER, SANDERSON STEWART  
CONOCO CONVENIENCE STORE

**Opposed NONE**

**Discussion**

Commissioner Boyett made a motion and Commissioner Ulvestad seconded the motion to approve **City Zone Change 954**.

| <b>Commissioner</b> | <b>YES</b> | <b>NO</b> | <b>ABSTAINED</b> | <b>ABSENT</b> |
|---------------------|------------|-----------|------------------|---------------|
| 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.**

Dave Green Presenting:

**City Special Review 955 – 301 - 317 Covert Lane and 1739 – 1747 Cody Dr – Three 10-unit apartment buildings** – A special review request to demolish three 4-plex apartments and construct three 10-unit apartment buildings in a proposed R-60 zone, on Lots 5, 6, 7 & 8, Block 7, Happy Hollow Subdivision, a 1.36 acre parcel of land. Tax IDs: C00404A, C00404B, & C00404C.

**RECOMMENDATION**

Planning staff recommends condition approval of 3, 6-unit buildings and adoption of the findings of the 3 criteria for **Special Review 955**.

**Questions for Staff:**

**Commissioner Boyett** – why not deny it all? Staff replied that this Special Review meets Growth Policy Guidelines and is good infill.

**Commissioner Larson**- what obligations would the developer have to mitigate the concerns voiced by the neighbors today? Staff advised that water retention requirements have to be met as well as curb and gutter. Garbage needs to be addressed with Solid Waste.

BRYAN ALEXANDER, SANDERSON STEWART

The applicant is requesting 3, 10 plexes, which maximizes the property use. The site plan was modified, off street parking was increased, swapping green space for parking. 10 plexes are necessary to offset the expenses incurred in demolition and storm water infrastructure, sidewalks, etc. Traffic studies are only required with 500 trips per day. This development does not meet this requirement.

Commissioner Boyett - If we approve the staff recommendation-can your client accept that condition?

Commissioner Ulvestad - Are the septic tanks still there. They are abandoned.

JOHN ATKINSON, 848 MAIN STREET, SUITE 7, ARCHITECT

These are high quality units in hopes of attracting better tenants.

Commissioner Ulvestad is concerned about traffic and children's safety

JOHN JONES, 27 N 27, BILLINGS, MT

This needs to pencil out, duplexes don't work at this level.

This is risky business, clearly one option is for the owners to do nothing.

TOM MUTCHLER, 1417 13<sup>TH</sup> STREET WEST, RAINBOW PROPERTY

In the last 5 years we have spent \$200,000.00 fixing these units, it is no longer feasible to continue spending money on these units.

JANE ?, 1739 GRAND, WORKS FOR THE MCDONALD FAMILY

Property is maintained to a higher standard since Mr. McDonald's death.

**Opposed**

BRUCE BUSS

Why are the city properties zoned R6000?

STEPHON MENTZER, 330 LAURIE LANE

This is a business discussion, bare the cost or don't do it. If it is not penciling out it is not the neighbors problem. The neighbor's quality of life is their concern. It is a matter of impact to the area.

EDDY BAKER, 312 LAURIE LANE

The diagram shows 31 residences in a large surrounding area, you are proposing 30 units in a small area. He is very concerned about the high water table in the area and being able to deal with roof run off.

MIKE MATERN, 119 COVERT

This is obviously all about money, why does the density have to change?

KIM LATTERAL, 1630 CODY DRIVE

He again talked about safety. Phantom costs, saying things don't pencil out, there are 100's of variables.

Where will the children play?

ZACH PHELPS, 320 COVERT LANE

Why do all the surrounding property owners have to suffer for one property owner?

TOM ZERBUCHEN

R6000 Lots

Vehemently opposes this special review.

DEBORAH TOMKOVICH, 1819 CODY DRIVE

This year there was no snow removal, if you triple the traffic it will be horrible with persons getting stuck.

CRAIG FAVERO, 309 STILLWATER LANE

He claims the rezone is preferential treatment.

DAVID MARS, 337 LAURIE LANE

The abatement and other maintenance should have been done along the way.

This is spot zoning, it benefits only the McDonalds.

CLARA BAKER, 312 LAURIE

This development will impact their living circumstances, 30 units is too many.

AMBER FIELD, 320 LAURIE LANE

There is no safety infrastructure in place.

Commissioner Ulvestad made a motion to deny and Commissioner Boyett seconded the motion to deny **City Special Review 955**.

### **Discussion**

[Commissioner Larson](#) -addresses spot zoning, disagrees with proposing a different scenario and recommends withdrawal

[Commissioner Mariska](#)- admires spirit of the community

[Chairman Wagner](#) - agrees

[Commissioner Ulvestad](#) – advised audience to show up at City Council

| <b>Commissioner</b> | <b>YES</b> | <b>NO</b> | <b>ABSTAINED</b> | <b>ABSENT</b> |
|---------------------|------------|-----------|------------------|---------------|
| Dan Wagner          | X          |           |                  |               |
| Mike Boyett         | X          |           |                  |               |
| Dennis Ulvestad     | X          |           |                  |               |
| Mike Larson         | X          |           |                  |               |
| James Mariska       | X          |           |                  |               |

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

**Other Business:**

**The next meeting will be May 2, 2017.**

**Adjournment:** The meeting adjourned at **7:48 p.m.**

**DRAFT:** To be approved by a motion: **May 2, 2017.**

**ATTEST:**

**Robbin Bartley, Administrative Assistant I**