



Yellowstone County Zoning Commission Minutes for the Meeting of Monday, February 13, 2017

****The January 9, 2017 meeting was cancelled due to a lack of a quorum of members.**

The County Zoning Commission met on Monday, February 13, 2017 in the Miller Building 1st Floor Conference Room, 2825 3rd Avenue North at 4:00 p.m. 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, February 28, 2017, at 9:45 a.m. in Room 403A, 4th Floor of the Yellowstone County Courthouse.** The Board of County Commissioners will hear all persons wishing to speak relative to the proposed zone change.

At 4:00 p.m., Chairman Ryan Wittman opened the meeting and introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Tammy Deines, Planning Clerk. Chairman Wittman introduced Commissioner Tyler Bush and thanked him for his willingness to service in this capacity.

Commissioners and Staff		01-11-2016	02-08-2016	02-12-2016	03-14-2016	04-11-2016	05-09-2016	06-13-2016	09-12-2016	01-09-2016	02-13-2017	03-13-2017			
Jerry T. Ray	Commissioner	-	1	1	-	1	1	E	1	-	1	-			
Troy Boucher	Commissioner Vice Chairman	-	1	1	-	1	1	1	1	-	1	-			
Ryan Wittman	Commissioner Chairman		1	1	-	1	1	1	1	-	1	-			
Tyler Bush	Commissioner	-	-	-	-	-	-	-	-	-	1	-			
Vacancy										-		-			

Attending: Clayton Beeghly, Vince & Kathy Thomas, Mike Sykes, R. Benson, Scott Aspenlieder, PEC; Jeffery Winkler; Tyler Dugger, Tolliver Law Firm; Gary Blain, Rebecca Rhodes West, Ed Taylor; Bruce Lackman; AJ. Leavitt; Dave Kinnard

Public Comment

Chairman Wittman 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 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. There was none.

Disclosure of Conflict of Interest or exparte communication: Commissioner Ray recused himself from participation in the hearing for County Zone Change #678.



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Disclosure of Outside Communication. There was none.

Approval of Minutes: September 12, 2016

Motion

Commissioner Boucher made a motion and it was seconded by Commissioner Wittman to approve the September 12, 2016 meeting minutes as submitted. The motion carried with a unanimous voice vote.

Public Hearings:

Item #1: County Zone Change #678 – 743 Calhoun Lane – A zone change request from Residential 9,600 (R-96) to Entryway General Commercial (EGC) on Tracts A1 and A2 of C/S 775, Amended, a 1.353 acre parcel of land. A pre-application meeting was held at the Hampton Inn, 5110 Southgate Drive, on October 30, 2016. Tax IDs: D01588 & D01588A.

RECOMMENDATION

The Planning Division recommends approval and adoption of the findings of the 11 review criteria for Zone Change #678.

Discussion

Chairman Wittman called for questions and discussion from the Zoning Commission. Per Commissioner Bush's request, Nicole Cromwell explained buffering and how it applies to this application.

Public Hearing

At 4:14 p.m., Chairman Wittman opened the public hearing at and called for proponents or opponents of Yellowstone County Zone Change #678.

Proponents

Jeff Winkler, HGA Architects, 222 n 32nd Street, Suite 200, Billings, Montana

Mr. Winkler agreed with the staff recommendation for approval and noted there are additional requirements for Entryway General Commercial properties. In response to a citizen's question regarding the incoming business, Mr. Winkler explained the request for a zone change will allow the property to be developed.

Gary Blaine, 6309 Jellison Road, Billings, Montana

Mr. Blaine stated Mr. Siddell's intention is to enhance the usability of this parcel. He pointed out this area may act as a buffer zone to the adjacent parcel such as a parking area.



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Opponents:

Rebecca Rhodes West, 742 Calhoun, Billings, Montana

Ms. Rhodes West asked if the access points may cause issues for rent ability of their properties. A letter in opposition was received from LE Rider which was included in the staff report.

Rebuttal

Chairman Wittman called for rebuttal. Mr. Winkler said due to the zoning restrictions, there should not be anything that would restrict access to Ms. Rhode West's lot. Mr. Blaine concurred and said this zone change should enhance the usability of her property due to the requirement of two access points.

At 4:16 p.m., Chairman Wittman asked if there was anyone else wanting to speak in favor or against Yellowstone County Zone Change #678. There was none. Chairman Wittman closed the public hearing and called for a motion.

Motion

Commissioner Boucher made a motion and it was seconded by Commissioner Bush to forward a recommendation to the Board of County Commissioners of approval of County Zone Change #678 with adoption of the Findings of the 11 review criteria.

Chairman Wittman called for a vote on the motion.

Name	Favor	Against	Abstain	Absent
Chairman Wittman	X			
Commissioner Boucher	X			
Commissioner Ray			X	
Commissioner Bush	X			

The motion carries, 3-0, with Commissioner Ray recusing.

Item #2: County Zone Change #679 – 1926 Mullowney Lane – A zone change request from Residential Manufactured Home (RMH) to Residential Multi-Family-Restricted (RMF-R) Tract 1-AA of C/S 1156, a 9.39 acre parcel of land. A pre-application meeting was held at the offices of Performance Engineering at 7100 Commercial Avenue on November 22, 2016. Tax ID: D01926.

RECOMMENDATION

The Planning staff recommends approval and adoption of the findings of the 11 criteria.

Discussion

Chairman Wittman called for questions and discussion from the Zoning Commission.



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Per Commissioner Bush's request, Nicole Cromwell explained buffering and how it applies to this application.

Public Hearing

At 4:14 p.m., Chairman Wittman opened the public hearing at and called for proponents or opponents of Yellowstone County Zone Change #679. Commissioner Ray asked how many manufactured home are involved in this proposal. Nicole Cromwell stated there are 53 units that use private wells and septic systems. The natural slope of the property is from the west to the east.

Public Hearing

Chairman Wittman opened the public hearing at and called for proponents or opponents of Yellowstone County Zone Change #679.

Proponents

Applicant: Scott Aspenlieder, Performance Engineering, 7100 Commercial Ave, Ste 4, Billings, Montana Mr. Aspenlieder stated the purpose of the zone change is to prepare the property for a future re-development. He stated the current owner has no intention of seeking annexation and re-development in the near future. He stated the Harmony Meadows development to the north and west will need to build its own infrastructure and get those utility lines down Mallowney Lane and come in from the west of the owner's property before any re-development is possible on this property. He stated there would be no intention of acting on the new zoning until it was annexed and had city services. He stated he understood the need to plan for the Yellowstone River channel migration for any future development. He stated most of the property is covered by this estimated area of migration but emphasized this is not a regulated area by the state or federal agencies. He stated he understood the adjacent owners concerns about becoming surrounded by annexed property. Mr. Aspenlieder stated he is not concerned with the CI zoning to the north and the re-development plan for this property does not intend to create a traffic connection to this subdivision.

Opposition

Mike Sykes, 5875 Sterns Circle, Billings, Montana

Mr. Sykes asked about the river's migration zone. Mr. Aspenlieder said this is not a flood zone but the migration zone points to changes in the river

Ed Taylor, 5819 Kennison Place, Billings, Montana

Mr. Taylor asked if the Commercial Industrial zoning will force annexation. Nicole Cromwell



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responded this isn't allowed by state law, and she pointed out where the services will be located on a posted map. Mr. Taylor testified against the zone change. He stated he is the owner of Taylor Electric and is concerned about all this residential development surrounding their business property. He stated the City and County have made all of this residential development possible through zone changes they objected to at previous hearings. He stated the morning and evening traffic on Mallowney Lane and Elysian Road is impossible. He stated he started having his employees show up earlier to try and beat the congestion, but that is no longer effective. He stated he is concerned about the lack of 2 access points for this development. He stated when Harmony Meadows recently subdivided to start development, the Board told them the developer could access their subdivision to gain a second access out of the development. He stated all of the businesses on Stearns Circle and Kennison Place are industrial type businesses and are not interested in annexation and certainly not interested in having thousands of residents using their County road to access Harmony Meadows. He stated his biggest concern is the incompatibility between their businesses and residential multi-family zoning. He stated his workers show up early and can make a lot of noise loading trucks and doing normal business activity. He stated he has had no complaints so far about this activity but future residents would likely be bothered by this normal activity.

Vince Thomas, 5657 Stearns Circle, Billings, Montana

Mr. Thomas testified against the zone change. He stated all of the uses in the subdivision are industrial businesses and residential uses adjacent to their businesses are inappropriate and will lead to conflicts. He stated there are a lot of contractors that work early and some that work later in the evening. He stated the traffic at Mallowney Lane and Elysian Road is backed up by 7 am every weekday. He stated there is business traffic all day long on Mallowney Lane to their shops. He stated if the developer puts in 3-story apartments on this property, traffic will become a nightmare. He stated everyone realizes the manufactured home park is not a good neighbor now but if a new development needs a second access will they be forced to use Stearns Circle? He stated he understands the need for a second access to insure public safety, but putting this traffic through their business development is not the right way. He stated the businesses pay into BUFSA now for fire protection, but the closest fire station is at 24th St West. He stated most businesses have their own water supply but there is no firefighting water source other than what comes in on the fire trucks. The County should have plans for at least a water line in Stearns Circle for firefighting. He stated Cal Kunkel, the developer in Harmony Meadows, is making millions with his new development so they should not have to shoulder any financial burden for his development.



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Mr. Clayton Beeghly, 5726 Stearns Circle, Billings, Montana

Mr. Beeghly stated he was opposed to the zone change for numerous reasons. He stated the subdivision to the north has caused a lot of consternation in their subdivision. He stated the County all but abandoned the right of way of Story Road that separates his subdivision from the subject property at least 40 years ago. He stated there is a creek and a ditch that runs exactly in the middle of this abandoned right of way for Story Road. He stated he has concerns about the traffic impact to Mullowney Lane from a re-development. He stated this is a 2-lane dead end street that the County does not maintain at all. He stated he was concerned about the Yellowstone River migration channel and what impact this could have on any future development. He stated with the amount of traffic for this development and now the Harmony Meadows development, Mullowney Lane should be a 4-lane street. He stated Mullowney Lane is backed up to the intersection with Elysian Road almost every morning. He stated it is a bottleneck that no one is taking responsibility for now. He stated there is need right now for another traffic signal at Elysian Road and Mullowney Lane. He stated right now the Yellowstone River channel is moving south but in the future could change migration patterns. He stated Stearns Circle is a County road but no one from the County maintains it or controls who has access. He stated all of the surrounding developers are trying to make the handful of people who live on Stearns Circle pay for any improvements needed for their developments. He stated this is not right or fair to owners in his subdivision. He stated if there is a pool of money developers have paid into for street improvement due to their development impacts, why hasn't the money been spent and the improvement done so far.

Kathy Thomas, 5657 Sterns Circle, Billings, Montana

Kathy Thomas testified against the zone change. She stated although she is a partner owner of the property, only the out-of-state owner was notified of the application. Staff checked the surrounding owner records and discovered in fact only one notice was sent and apologized for the oversight. She stated the proposed zoning is inappropriate at this location directly adjacent to their industrial subdivision. She stated she was concerned about changing the zoning now when the owner has no near future plans to annex and re-develop.

Mr. Clayton Beeghly, 5726 Stearns Circle, Billings, Montana

Mr. Beeghly testified again against the zone change. He stated this area is popular with wildlife including at least 10 deer and 25 pheasants, and voiced concern that this new development will decimate this wildlife population.



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Rebuttal

Mr. Aspenlieder provided rebuttal testimony. He stated the owner will have to consider all of these issues when and if a re-development of the property moves forward. He stated the City will require the owner to study the traffic impacts and pay to mitigate those impacts, the fire department will study any new development and require the owner to provide access, and the owner will have to pay for all of the infrastructure improvement necessary to make his development possible. He stated the owner is only asking for a zone change, not approval of a future re-development plan. He stated the surrounding subdivisions have conducted traffic studies and all have paid into a City fund to mitigate the traffic impacts. These studies have identified needed improvements to Muldowney Lane, Elysian Road and the traffic signal at Midland and Muldowney. He stated the City is already working on engineering plans for those improvements. He stated his client is only asking for a fair consideration of the proposed zoning.

At 5:20 p.m., Chairman Wittman closed the public hearing and called for a motion.

Motion

Commissioner Ray made a motion and it was seconded by Commissioner Boucher to recommend approval of County Zone Change #679 and adoption of the findings of the 11 criteria. The motion was seconded by Troy Boucher.

Name	Favor	Against	Abstain	Absent
Chairman Wittman	X			
Commissioner Boucher	X			
Commissioner Ray	X			
Commissioner Bush	X			

The motion was approved on a 4-0 vote.

Item #3: County Zone Change 680 – Highway 3 – A zone change request from Controlled Industrial (CI) to Highway Commercial (HC) on a portion of Tracts 13 & 14 of C/S 2037 more particularly described as the south 247 feet of the current CI zone as shown on the zoning map. The land area will be 7.61 acres (247 feet by 1343 feet). A pre-application meeting was held at the offices of Tolliver Law Firm at 1004 Division Street on December 1, 2016. Tax IDs: D04575L & D04575M.

RECOMMENDATION

The Planning Division recommends approval and adoption of the findings of the 11 review criteria for Zone Change #678.



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Discussion

Chairman Wittman called for questions and discussion from the Zoning Commission. Ms. Cromwell explained this application is part of the litigation settlement. Per the regulations, the applicant had to wait for one year prior to submitting this zone change request for Highway Commercial zoning. The applicant will be required to meet the FAA regulations for height limits.

Tyler Dugger, Tolliver Law Firm, PO Box 1913, Billings, Montana, 59103

Mr. Dugger represents Aviation Properties. He stated the law suit was dismissed with prejudice in October, 2016. Mr. Dugger stated the reason for the delay in finalizing the zoning on this parcel. The zoning regulations only allow 1 application on the same property every 12 months so this final zone change had to wait until mid-December 2016 for an application. Mr. Dugger stated he appreciated the Zoning Commission's patience with the resolution of the law suit between the parties.

Dave Kinnard, 106 Sky Ranch Drive, Billings, Montana

Mr. Dave Kinnard stated he was in attendance to represent the other parties to the lawsuit including Mr. Scott who owns property south of Highway 3. He stated they are in agreement with the proposed zone change.

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

Motion

Commissioner Ray made a motion and it was seconded by Chairman Wittman seconded the motion to recommend approval and adoption of County Zone Change #680 with the findings of the 11 criteria.

Name	Favor	Against	Abstain	Absent
Chairman Wittman	X			
Commissioner Boucher	X			
Commissioner Ray	X			
Commissioner Bush	X			

The motion was approved on a 4-0 vote.

Other Business/Announcements

- A. The March 13, 2017 County Zoning Commission meeting is cancelled due to a lack of applications. The next meeting will be held as legally advertised and announced.

Adjournment: The meeting adjourned at 4:25 p.m.
DRAFT-TO BE APPROVED BY A MOTION