

CITY/COUNTY PLANNING BOARD

"Serving Billings, Broadview and Yellowstone County"

AUGUST 14, 2018

Draft-To be approved by a motion on September 11, 2018

Call the Meeting to Order

President Tunncliff called the meeting to order at 6:00 p.m. on Tuesday, August 14, 2018, in the Miller Building 1st Floor Conference Room, 2825 3rd Avenue North, Billings, Montana.

Introduction of Planning Board Members and Planning Department Staff

President Tunncliff called for introductions of the members of the Planning Board and staff.

Attending Planning staff members: Monica Plecker, Planning Division Manager; Dave Green, Planner II; Lora Mattox, Transportation Planner; Tammy Deines, Planning Clerk; Dan Schwartz, Chief Deputy County Attorney; Yellowstone County Legal Department

Others in Attendance: Thom MacLean, Big Sky EDA; Beck Weekes; Paul Miron, Lockwood Farms

Approval of the August 14, 2018 Agenda

Motion:

Board member Goodrich made a motion and it was seconded by Board member Thompson to approve the August 14, 2018 meeting agenda as submitted. The motion was approved with a unanimous voice vote.

Approval of Minutes: July 24, 2018

Motion

Motion was made by Board member Cook and seconded by Board member Thompson to approve the June 26, 2018 meeting minutes as submitted Motion carried with a unanimous voice vote.

Public Comment: President Tunncliff asked if there was anyone wishing to speak during the public comment portion of the meeting. He stated any member of the public may be heard on any subject that is not on the agenda; the Planning Board 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 were no public comments.

Disclosure of Outside (Ex Parte) Communication– Board Members and Planning Staff. The Ex Parte Communication Binder is available at the Sign-In and Agenda station. Board member Woods announced recusal on Agenda Item 7a1. Lockwood Targeted Economic Development District, Zoning Jurisdiction Amendment as he is a member of the TEDD Advisory Committee.

7. OLD BUSINESS:

7a. (Continued from July 24, 2018) Motion/Recommendation. The Lockwood Targeted Economic Development District, (TEDD). Tom MacLean, Big Sky Economic Development

Director Wyeth Friday clarified and stated a presentation was given and a public hearing

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held during the July 24, 2018 meeting. The agenda item was continued as due to the lack of a quorum of Planning Board members.

Motion

Board member Goodrich made a motion to forward a recommendation to the Board of County Commissioners of denial of the Lockwood Targeted Economic Development District, (TEDD), Zoning Jurisdiction Amendment.

The motion died for lack of a second.

Motion

Board member Thompson made a motion and it was seconded by Board member Cook to forward a recommendation to the Board of County Commissioners of approval of the Lockwood Targeted Economic Development District, (TEDD), Zoning Jurisdiction Amendment.

Discussion

President Tunncliff called for discussion on the motion. Wyeth Friday explained this motion is for expansion of zoning district boundary which could facilitate expansion of the district. This recommendation will be considered by the BOCC for action and create a resolution of necessity for the Lockwood TEDD expansion. The district expansion will not be considered by the Planning Board. Board member Goodridge stated he is not in favor of bringing this parcel into the TEDD at this point as he feels it may affect the Lockwood school district.

President Tunncliff recognized Thom MacLean, Big Sky EDA.

Thom MacLean, Big Sky EDA, 222 N 32nd Street, #200, Billings, Montana

Mr. MacLean stated the owners who have proposed this expansion expressed interest in 2016 but the process had already started. Ten property owners have forwarded requests: Town and country Supply Association; Hertz, (Eta); Bressler/Green; Krause; Schmid; Watson; and LC Properties LLC. BSEDA has received three requests from zoned property owners for inclusion: Glen-Rocky Mountain; CMG, and JDW.

President Tunncliff called for a vote on the motion.

The motion carried, 4-1 with Board member Goodridge voting against the motion and Board member Woods recusing.

7b. Public Hearing. Billings MPO Public Participation Plan, (PPP), Lora Mattox, Transportation Planner, presenting.

Transportation Planner Lora Mattox opened this agenda item. A full presentation was given during the August 14, 2018 Planning Board meeting. MPOs are mandated by the Federal Highway Act, (1973), to provide cooperative, comprehensive, and a continuing

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transportation planning and decision-making process. Currently this falls under the “Fixing America’s Surface Transportation (FAST), Act. A public participation plan is needed for compliance.

Strategies and Tools include media; digital and print materials; online and social media, an in-person meetings. The plan encourages creativity in outreach such as “Tag on Meetings” held during other events, Exhibits at events; Steering Committees, Focus Groups and Stakeholders; and tours.

<u>Review Schedule</u>	
Transportation Advisory Committee, (TAC)	7/19/18
Planning Board #1	7/24/18
Planning Board #2	8/14/18
City Council Work Session	8/20/18
City Council	8/27/18
Commissioners Discussion	8/20/18
Board of County Commissioners	8/28/18
Policy Coordinating Committee, (PCC)	9/11/18

Discussion

President Tunncliff called for questions and discussion. There was none.

Public Hearing

At 6:11 p.m., President Tunncliff opened the public hearing and asked if there is anyone wishing to speak in favor or against the Billings MPO Public Participation Plan, (PPP). There was none. President Tunncliff closed the public hearing and called for a motion.

Motion

Board member Goodridge made a motion and it was seconded by Board member Woods for forward a recommendation to PCC of approval of the Billings MPO Public Participation Plan as presented by staff. The motion carried with a unanimous voice vote.

7c. Presentation/Discussion. 2019 Billings Urban Area Unified Planning Work Program, (UPWP), Lora Mattox, Transportation Planner, presenting.

This document outlines the staff goals and the funding. It is an annual task related to management of local and PL funds. The Work program for the MPO is required to be revised reviewed by the governing bodies and adopted annually by PCC. Scott Walker, Transportation Planner gave a full presentation during the July 24, 2018 Planning Board meeting.

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Discussion

President Tunncliff called for questions and discussion. There was none.

Public Hearing

President Tunncliff opened the public hearing and asked if there is anyone wishing to speak in favor or against the 2019 Billings Urban Area Unified Planning Work Program. There was none. President Tunncliff closed the public hearing and called for a motion.

Motion

Board member Goodridge made a motion and it was seconded by Board member Woods for forward a recommendation to PCC of approval of the 2019 Billings Urban Area Unified Planning Work Program, (UPWP), as presented by staff. The motion carried with a unanimous voice vote.

8. NEW BUSINESS

8a. Subdivision Training-Dan Schwarz, Chief Civil Deputy County Attorney, and Monica Plecker, Planning Division Manager, presenting

Ms. Plecker opened the agenda item and introduced Dan Schwarz, Chief Civil Deputy County Attorney. She asked the Board to participate with questions and discussion as they move through the presentation.

Section 3.1 Compliance with Local Regulations and State Law-Ensure recommendations are in compliance with Subdivision and Platting Act and locally adopted subdivision regulations.

A. Recommendation of Plat. Three Options:

1). Conditional Approval (vast majority will be this) Conditions must be met by the developer prior to final plat approval.

Conditions (based on Yellowstone County Subdivision Regulations) Example: To protect public health and safety and provide efficient traffic movement prior to final plat approval the applicant will submit a TIS to County Public Works for review and approval.

2). Approval

3). Deny

B. Variances-related to a design criterion. The only way to deviate from the subdivision regulations is through submittal and approval of a request for a variance. **Variance Requirements-Section 11.11 (76-3-506, MCA).**

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Discussion:

Board member Goodridge asked if approval of a variance sets a precedence from subdivision to subdivision. Attorney Schwartz said economic disadvantage is not a ground for approval of a variance. Instead, consideration should be given to the uniqueness of the property. President Tunnicliff commented that Staff does due diligence prior to presentation to the Board. Ms. Plecker stated every subdivision pre-application meeting is attended by the owner/subdivisor, agent, and a variety of reviewing departments and agencies. Staff’s recommendation is comprised of all comments received and the Planning Board should strongly consider the staff recommendation.

Finding Supported by Fact and Not Opinion Attorney Schwartz noted State law requires a public hearing and allows Planning Board or BOCC to hold the hearing. Currently, the BOCC allows public comment prior to action. Planning Board recommendations and the recorded minutes are an important factor. Monica Plecker commented on the importance of a discussion following a motion and Attorney Schwartz said it is good to include reasoning for the vote in the discussion section in order to build a good record. Monica Plecker noted the Findings of Fact provided, including the Natural Environment, typically defers to Condition #1 DEQ approval.

Discussion

Regarding issues of Public Safety, Attorney Schwartz cautioned the Board to guard against arbitrary capriciousness. The Board may request further mitigation from the developer or defer to a professional opinion, DEQ, an Environmental Assessment, or a Traffic Impact Study. Wyeth Friday commented the Board should feel comfortable relaying unanswered questions back to the developer. The Board may request continuance of a public hearing to a date certain for the purpose of gaining pertinent information. President Tunnicliff commented on the need for Board members to be prepared prior to the public hearing. Question followed by the Board as to whether a lack of sidewalks in a subdivision can be used with reasoning it is detrimental to public health and safety. Staff explained the Board may craft a condition stating the Traffic Impact Study must evaluate pedestrian activity or the discussion may be held, the public hearing continued, and the decision delayed, (depending on the statutory limitations for review period). Board member Goodridge asked if it possible to hold the public comment session during the plat review and follow with the decision at the second meeting of the month. He said issues often arise during the public comment period and he would rather have sufficient time to get more information if needed. Currently, plat review is held during the 1st meeting of the month and followed with the public hearing during the 2nd meeting

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of the month. Director Friday said this may be considered. There is some concern with the double meeting situation for Board action. The 30-day delay is used to address issues that arise during the public comment period.

Quality of Testimony-use supported opinions, Synthesize quality of testimony

- Rely on DEQ, Fish Wildlife and Parks, etc.
- Needs Scientific fact based opinion from an Agency
- Burden Shifts

Findings of Fact-Adoption of the Findings of Fact listed in the Staff report is always included as a part of the motion. Staff emphasized the importance of a record and recommended Board members to "Know what you know", and to come to the meetings prepared.

Deferring to a Regulatory Agency-relieves the burden off of the Board.

Compelling testimony: needs to be verified that it's true to determine adverse impacts that can or cannot be mitigated.

Proper Evidence

Proper Testimony

Proper Regulatory Agency

MCA 76-3-608. Critical for Local Government Review

How to Handle Concerns from Testimony

- Articulate Findings of Fact to Properly Support Recommendation
- Remember Your Job-provide sufficient reasoning
- Rely on State Agencies
- Have to follow the law as public servants

Procedures for public hearing: Need for Public Decorum

- Proponents, Opponents, Rebuttal

Proper Recommendation to Deny

A Board recommendation to deny an application must be supported by scientific fact opinion a subdivision will have an adverse impact and should include additional scientific fact based opinion that the adverse impact cannot be mitigated.

Violations MCA 76-3-625. The governing body's decision based on the record as a whole must be sustained unless the decision being challenged is arbitrary, capricious

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or unlawful. Attorney Schwartz commented that often times what is right and what is legal can be two different things.

Conflict of interest MCA 2-2-105(2) public office may not acquire an interest.

Attorney Schwartz stressed the importance of Board members avoiding the appearance of impropriety. He gave a historical example of the "Insider Rule" with Alexander Hamilton and the Continental Congress' decision to honor bonds for the Revolutionary War.

Exparte Communication: Applicants are to have no communication with a governing body or committee prior to a hearing as the information has to be examined in public. Board meetings are published in advance and the public is invited to attend the hearing. Boardmembers are advised to defer questions and conversations by asking they attend the meeting and speak during the public hearing or provide written communication to staff prior to the hearing to be forwarded to the Board. President Tunnicliff commented on the honor system for Board members to determine and report conflicts of interest and reiterated the importance of having a quorum at members for meetings.

Attorney Schwartz closed the presentation and stated he and the Board of County Commissioners appreciate the Planning Board and the members' volunteer service to the community.

9. OTHER BUSINESS/ANNOUNCEMENTS

9b. Standing Item. Long Range Strategic Issues and an overview of future City and County issues and projects.

--The August 28, 2018 Planning Board meeting will be canceled due to a lack of agenda items. The next meeting will be held as legally notice and advertised on Tuesday, September 11, 2018, 6:00 p.m.

ADJOURNMENT: 8:15 p.m.

DRAFT-To be approved by a motion on September 11, 2018

