

## City of Billings Zoning Commission Meeting Minutes December 4, 2018

The City of Billings Zoning Commission met on Wednesday, December 4, 2018 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 January 14, 2019** at **5:30** p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

Commission and Staff		0	0	0	0	0	0	0	0	0	1	1	1
		1	2	3	4	5	6	7	8	9	0	1	2
		/	/	/	/	/	/	/	/	/	/	/	/
		0	0	0	0	0	0	1	0	0	0	0	0
		3	6	6	3	1	5	0	7	4	2	7	4
		/	/	/	/	/	/	/	/	/	/	/	/
		2	2	2	2	2	2	2	2	2	2	2	2
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		1	1	1	1	1	1	1	1	1	1	1	1
		8	8	8	8	8	8	8	8	8	8	8	8
Dan Wagner	Chairman	1	1	1	1	1	1	1	1	1	-	1	1
Dennis Ulvestad	Commissioner	1	1	E	1	1	1	A	1	1	-	1	1
Mike Boyett	Vice Chairman	1	1	1	1	1	E	1	1	1	-	1	1
Michael Larson	Commissioner	1	1	1	E	1	1	1	E	1	-	1	1
James Mariska	Commissioner	1	1	1	1	E	1	1	1	1	-	1	1
Wyeth Friday	Director, Planning & Community Services	-	-	-	-	-	-	-	-	-	-	-	-
Monica Plecker	Division Planning Manager	-	-	-	1	1	-	-	-	-	-	1	-
Nicole Cromwell	Planner Zoning Coordinator	1	1	1	1	1	1	1	1	1	-	1	1
Tammy Deines	Planning Clerk	-	-	1	1	-	-	-	-	-	-	-	1
Dave Green	Planner II	-	-	-	-	-	-	-	-	-	-	-	-
Karen Husman	Planner I	-	1	1	1	-	1	1	1	1	-	-	1
Robbin Bartley	Administrative Support	1	1	-	-	1	1	1	1	1	-	1	-

<b>Total Number of 2018 Applications</b>	0	0	0	0	0	0	0	0	0	1	1	1	<b>T O T A L</b>
	1	2	3	4	5	6	7	8	9	0	1	2	
	/	/	/	/	/	/	/	/	/	/	/	/	
	0	0	0	0	0	0	1	0	0	0	0	0	
	3	6	6	3	1	5	0	7	4	2	7	4	
	/	/	/	/	/	/	/	/	/	/	/	/	
	2	2	2	2	2	2	2	2	2	2	2	2	
	0	0	0	0	0	0	0	0	0	0	0	0	
1	1	1	1	1	1	1	1	1	1	1	1		
8	8	8	8	8	8	8	8	8	8	8	8		
<b>Zone Change</b>	2		1	2	0-R	2	2	0	1		1	1	12
<b>Special Review</b>	1	1	1	1	0	3	0	2	1			2	12

Chairman Wagner introduced the Planning Division Staff and Commission: Attending Staff were Nicole Cromwell, Zoning Coordinator, Monica Plecker, Planning Division Manager, and Tammy Deines, Planning Clerk

**In Attendance** : Kevin Howell ; Charles Leggate ; Boone Jones ; Bryan Alexander, Sanderson Stewart; Rob Morehead, Big Sky EDA ; Brock Cohms; Gene Culver.

**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 November 7, 2018**

Chairman Wagner called for approval of the November 7, 2018 meeting minutes.

**Motion**

Commissioner Larson made a motion and Commissioner Boyett seconded the motion to approve the November 7, 2018 meeting minutes.

<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 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**

<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		

**Disclosure of Outside Communication**

<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		

Nicole Cromwell advised the board and attendees of the 3-ring binder containing all of the Public Comments received prior to the staff report.

**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 14, 2019.

**Item #1**

Nicole Cromwell read aloud the legal notice for this application:

**Special Review #971** – 1801 Majestic Lane – Casino in vacant tenant space Big Horn Resort - A special review request to activate the gaming license attached to an all-beverage liquor license currently located in the Big Horn Resort on Lot 10A, Block 1 of Broso Valley Park Subdivision, an 11.179-acre parcel of land located in a Controlled Industrial (CI) zone and within the South Shiloh Corridor Overlay district, at 1801 Majestic Lane. No waiver of the 600-foot separation distance from a church, school or public park is required. The license will be located in a 1,369 square foot tenant space within the 76,868 square foot building. Tax ID: A30687

Karen Husman presenting:

### **REQUEST**

**Special Review # 971-1801 Majestic Lane** -This is a special review request to activate the gaming license attached to an existing all-beverage liquor license currently located in the Big Horn Resort on Lot 10A, Block 1 of Broso Valley Park Subdivision, an 11.179 acre parcel of land located in a Controlled Industrial (CI) zone and within the South Shiloh Corridor Overlay district, at 1801 Majestic Lane. No waiver of the 600-foot separation distance from a church, school or public park is required. The license will be located in a 1,369 square foot existing tenant space within the 76,868 square foot building. Presented by Karen Husman, Planner I

### **RECOMMENDATION**

The Planning Division recommends conditional approval and adoption of the findings of the 3 criteria for Special Review 971.

1. The special review approval is limited to Big Horn Resort on Lot 10A, Block 1 of Broso Valley Park Subdivision. The special review approval is for activation of the gaming license already attached to an all-beverage liquor license currently at this location. The approval is limited to the 1,396 square foot tenant space requested. No other use is intended or implied by this approval.
2. Any re-modeling of the tenant space shall require compliance with all Building Division and Engineering Division regulations and codes that apply. This includes requirements for off-street parking lots and solid waste storage. Compliance with other commercial site development standards such as landscaping, storm water management, and building codes will be reviewed at the time of building permit submittal.
3. There will be no construction activity before 7am or after 8pm daily.
4. The site will be developed in conformance with all applicable zoning and site development regulations.
5. No fascia of the building may have internal illumination.

6. The proposed development shall comply with all other limitations of Section 27-613 of the Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

**Discussion**

Chairman Wagner called for questions and discussion from the Board. Commissioner Mariska asked regarding the noise restrictions, and Ms. Husman stated the applicant will have to be granted a waiver from the noise restriction hours.

**Public Hearing**

Chairman Wagner opened the public hearing and asked for anyone wishing to speak in favor or against City Special Review #971.

**Boone Jones 3760 Marathon Drive, Billings, Montana 59102**

Mr. Jones stated the applicant is looking to add a gaming license to the hotel as an amenity to the existing facility for their customer base. Currently the bar has an all beverage license.

Chairman Wagner asked if there is anyone else wishing to speak in favor or against City Special Review #971. There was none. Chairman Wagner asked for a motion.

**Motion**

**Commissioner Boyett made a motion and Commissioner Larson seconded the motion to forward a recommendation to City Council to conditionally approve with the conditions recommended by staff and adopt the findings of the three criterion for City Special Review #971.**

<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 5-0 vote.**

**Item #2**

Nicole Cromwell read aloud the legal notice for this application:

**City Special Review 972 – 2420 13<sup>th</sup> St W, Presbyterian Church – Request to install a camouflage wireless facility (a faux tree)** - A special review request to allow the installation of a 50-foot tall faux tree as a camouflage wireless facility on C/S 846, a 1.304-acre parcel of land located in a Residential 9,600 (R-96) zone at 2420 13<sup>th</sup> St West. Tax ID: D04830

Karen Husman presenting:

**REQUEST**

**Special Review #972 - 2420 13th St West - Verizon Wireless** - A special review request to allow the installation of a 50-foot tall faux tree as a camouflaged wireless facility on C/S 846, a 1.304-acre parcel of land located in a Residential 9,600 (R-96) zone at 2420 13th St West. Presented by Karen Husman, Planner I.

**RECOMMENDATION**

The Planning Division recommends conditional approval and adoption of the findings of the 3 criteria per BMCC 27-1503 for Special Review #972.

Special Review applications are reviewed using City Code criteria referenced in the Background section of this memo. Special Reviews do not require an ordinance for approval, are not zone changes on property; rather, are tied to specific uses that are allowed in a given zoning district but are subject to a review by the City prior to the use being allowed. Special Reviews, unlike zone changes, may be conditioned to mitigate possible impacts from the use on the subject property or surrounding properties.

**PROPOSED CONDITIONS**

1. A special review request to allow a 50-ft camouflage wireless facility – a faux tree – next to a detached structure in a Residential-9600 zone on C/S 846. No other use is intended or implied.
2. Any generator on site will use "whisper quiet" technology so adjacent land uses are not disturbed.
3. The ground equipment cabinet and shelter must be buffered with screening or enclosure so that it cannot be seen from the neighboring properties.
4. The location of the new facility shall be as shown on the submitted site plan.
5. There shall be no construction before 7 am or after 8 pm daily.
6. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

### **Discussion**

Chairman Wagner called for questions and discussion from the Board. In response to question by Commissioner Ulvestad, Ms. Husman explained a faux tree is proposed to camouflage the cell tower. She noted a similar request for a “cellular tree” was granted this year.

### **Public Hearing**

Chairman Wagner opened the public hearing and asked for anyone wishing to speak in favor or against City Special Review #972.

### **Keven Howell, Digital Skylines, 11340 N 105<sup>th</sup> Place, Scottsdale AZ**

Mr. Howell is the representative for applicant, Digital Skylines. He stated Verizon Wireless is short capacity all over Billings. If granted, this application will help this area of town and the vicinity of Rocky Mountain College. He commented on the extensive need due to the student base’s usage of digital wireless communications. Mr. Howell said the church property was not the first choice but the alternative location was not considered as it was on top of a historical building. This location will not alter future planning of the church property. He pointed out there is a stand of trees blocking the view of the proposed location.

### **Discussion**

Chairman Wagner asked about the tower materials. Mr. Howell stated the pole is steel wrapped in fake bark and fiberglass branches and needles; and the tower could be co-locatable for another cell carrier. Board member Mariska asked if the steeple was considered. Mr. Howell replied that unfortunately the steeple did not offer much opportunity due to a chimney. This tower will serve a one-mile radius. He commented that within 5-10 years, the use will increase and demand additional bandwidth and additional towers. In response to question by Commissioner Ulvestad, Mr. Howell said the tower is located on the southwest corner of the property and will not be predominate in the sight line due to the existing tree plantings.

### **Public Hearing**

Chairman Wagner opened the public hearing and asked if there is anyone wishing to speak in favor or against City Special Review #972.

### **Jerry Wolf, 38 Heatherwood Lane, Billings, Montana**

Mr. Wolf is opposed to this application and voiced concern with the proposed tower creating an electromagnetic field and emitting radiation which will be a health hazard. His backyard is aligned with trees but they are only 30-40 feet tall and will not block the view of the tower. He feels the church is in favor due to the funds they will receive from the lease agreement. Mr. Wolf is a retired

radiologist. He stated this is not the place for this tower. He pointed out the photos were not taken from east to west. He reiterated this proposal is aesthetically unpleasant, a health hazard and it will only benefit the church for revenue purposes. Mr. Wolf said he was not asked about this proposal and no one would want a tower located 60-feet from their home.

**Rebuttal:**

**Kevin Howell, 11340 N 105th Place, Scottsdale, Arizona**

Mr. Howell stated he can share the information provided by their engineers. The Federal Telecommunications Act precludes local governments from considering health impacts in their decisions for zoning. A Commissioner asked about the potential for the tower falling or toppling. Mr. Howell stated he has not heard of a Verizon Tower falling over. Preliminary drilling took place for soil studies. He said whatever structure is above ground is also 50% below ground in a cement casing.

Chairman Wagner closed the public hearing called for a motion.

**Motion**

**Commissioner Larson made a motion and Commissioner Ulvestad seconded the motion to forward a recommendation to City Council to conditionally approve and adopt the findings of the 3 criteria per BMCC 27-1503 for Special Review # 972.**

**Discussion**

Commissioner Larson reminded the public this is the first step in the review of this application, and he encouraged Mr. Wolf to attend the City Council hearing for this application and bring up his concerns.

<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 5-0 vote.**

**Item# 3**

Nicole Cromwell read aloud the legal notice for this application:

**City Zone Change #972 – S 44<sup>th</sup> St West - Western Sky Subdivision – RMF-R, Public & R-70 to RMF-R, RMH & Public** – A zone change request from Residential Multi-family-Restricted (RMF-R), Residential

7,000 (R-70) and Public (P) to Residential Multi-family-Restricted (RMF-R), Residential Manufactured Home (RMH) and Public (P) on Lot 2A-1, Block 1 of Western Sky Subdivision (tbka 44 West Subdivision) a 29.97-acre parcel of land generally located west of S 44<sup>th</sup> St West and south of King Avenue West. Tax ID: C15619

Nicole Cromwell presenting:

**REQUEST**

**City Zone Change 972 – S 44<sup>th</sup> St West - Western Sky Subdivision – RMF-R, Public & R-70 to RMF-R, RMH & Public** – A zone change request from Residential Multi-family-Restricted (RMF-R), Residential 7,000 (R-70) and Public (P) to Residential Multi-family-Restricted (RMF-R), Residential Manufactured Home (RMH) and Public (P) on Lot 2A-1, Block 1 of Western Sky Subdivision (tbka 44 West Subdivision) a 29.97-acre parcel of land generally located west of S 44<sup>th</sup> St West and south of King Avenue West. Presented by Nicole Cromwell, Zoning Coordinator

**RECOMMENDATION**

Planning staff recommends approval and adoption of the findings of the 10 criteria for Zone Change 972.

**Discussion**

Chairman Wagner called for questions and discussion from the Board. Per Commissioner Mariska’s request, staff referred to a posted map and clarified the City and County properties. Commissioner Mariska commented he has noticed junk vehicles parked just off of the pavement on the unfinished portion of S 44<sup>th</sup> Street West. Commissioner Boyett asked about the elimination of parkland to build housing. Staff stated the land will be exchanged for cash-in-lieu of the parkland, and there will be public lands within this parcel. Nicole Cromwell pointed out the proposed trail in the photos within the staff report. She stated the City requires dedication of parkland but not development. Cash-in-lieu funds are used as approved by the City Council. This request will have a reduction in public zoning and create a trail connection for the conservation area.

**Public Hearing**

Chairman Wagner opened the public hearing and asked if there is anyone wishing to speak in favor or against City Zone Change #972.

**Applicant**

**Bryan Alexander, Sanderson Stewart, 1300 North Transtech Way, Billings, Montana**

Mr. Alexander is the applicant’s agent. He stated there will be plenty of open space within the planned development, and this applicant feels the cash-in-lieu for the public lands is a better use.

**Rob Morehead, 1014 N 32nd Street, Billings, Montana**

Mr. Morehead is the developer. He said the type of community envisioned for this project is a highbred between a pocket community and townhomes. Homes will be built in the \$200,000 range, with a small footprint and character. The parcel will include walking paths tied into the conservatory. The design is for a unique community similar to McCall’s developments. The mobile home park will have a similar feel with yards and landscaping to soften the lines of the lineage of mobile homes. In response to question by Commissioner Wagner, Mr. Morehead said the mobile homes will have requirements for square footage, and the plan is to have Covenants and Restrictions similar to Shiloh Village. His focus is on safety, affordability, and keeping property values up. He spoke to “raising the bar” in aesthetics, and holding quarterly inspections for

mobiles. He continued and said singlewide mobile homes will have front porches. His desire is for the development to look and feel completely different than a typical mobile home court. As for restrictions on offsite storage, Mr. Morehead stated there are going to be restrictions on parking, yard care maintenance, pets, and pet waste.

**Gene Culver, 3208 Rugby Drive, Billings, Montana**

Mr. Kunkel owns the parcel north of the substation. Per his inquiry, Mr. Morehead stated an age restriction on the mobilehomes will be considered in the CCRS. Mr. Kunkel asked about the proposed density for the development. Mr. Morehead said the Bungalow Village density will be approximately 120-150 homes; and there are 90 units proposed for the mobile home community. Mr. Kunkel stated there is a problem with the traffic flow and the 2-lanes will not handle the additional traffic. He said no one has approached him about the area the vehicles are parking on. It is his understanding the roadway was going to be paved. Mr. Culver stated he is willing to work to address this situation.

**Rebuttal**

**Bryan Alexander, Sanderson Stewart, 1300 North Transtech Way, Billings, Montana**

Bryan Alexander stated there is a concurrent minor subdivision going through the review process. A traffic study was completed. He said in reality the zone change will reduce the impacts. City Engineering is working on the SIA. The traffic study does not address the half-width street. Currently the plan is for a gated secondary fire emergency access. There are Transportation Master Plans in place to promote connectivity. Commissioner Mariska voiced concern with Billings' westward growth and the inability to travel from Rimrock Road to King Ave West between 5th and 32nd Street West.

Chairman Wager asked if there is anyone else wishing to speak in favor or against City Zone Change #972. There was none. Chairman Wagner closed the public hearing at 5:54 p.m. and called for a motion.

**Motion**

**Commissioner Larson, made a motion and it was seconded by Commissioner Ulvestad to forward a recommendation to City Council of approval and adoption of the findings of the 10 criteria for City Zone Change #972.**

**Discussion**

Commissioner Boyett commented on the need to address the overall traffic needs as development takes place. Commissioner Ulvestad spoke to infilling infrastructure prior to expanding west or east. He said he believes this location offers amenities for this development and Sanderson Stewart has met the criterion. Commissioner Larson commented without development there is no improvements due to funding needs. Commissioner Mariska reiterated his concern with the current inability to travel north and south in Billings.

<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 carries with a unanimous voice vote. 5-0.**

**Other Business**

**--Nicole Cromwell announced the January 2, 2019 meeting will be canceled due to a lack of applications.**

**--Mike Boyett stated he will be unavailable for the February 5, 2019 meeting.**

**Adjournment: The meeting adjourned at 5:40 p.m.**

**DRAFT: To be approved by a motion February 5, 2019.**

**ATTEST: *Tammy Deines, Planning Clerk***