



Yellowstone County Zoning Commission Minutes for the Meeting of Monday, September 14, 2020

The County Zoning Commission met on Monday, September 14, 2020 at 4:00 p.m. Due to the COVID-19 health concerns, the format of the County Zoning Commission meeting will be held in a virtual videoconferencing environment. The normal hearing room on the 1st Floor at 2825 3rd Ave North (Miller Building) will be closed during the meeting and no one will be attending this hearing in person. Following the public hearing, 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, September 22, 2020 at 9:30 a.m.** The County Commissioners may, by majority vote, accept or reject the Zoning Commission’s recommendation. The Board of County Commissioners will hear all persons wishing to speak relative to the zone change.

Chairman Bush opened the meeting at 4:18 pm and introduced the County Zoning Commission members and Planning Division staff: Nicole Cromwell, Zoning Coordinator. Monica Plecker, Planning Division Manager, Tammy Deines, Planning Clerk

Commissioners and Staff		01/13/2020	02/10/2020	03/09/2020	04/13/2020	05/11/2020	06/08/2020	07/13/2020	08/10/2020	09/14/2020	10/12/2020	11/09/2020	12/14/2020
Jerry T. Ray	Commissioner	1	-	-	-	1	-	-	1	1			
Troy Boucher	Commissioner Chairman	1	-	-	-	1	-	-	1	1			
Ryan Wittman	Commissioner	1	-	-	-	E	-	-	A	A			
Tyler Bush	Commissioner Chairman	E	-	-	-	1	-	--	1	1			
Todd Hewett	Commissioner	1	-	-	-	1	-		A	A			

Other Participants: Marshal Phil, Blueline Engineering; Myles Egan, Jeff Engel, Jason Magenzie, Lindsey Magenzie, Marie Hall; Planning Board member Dennis Cook, Planning Board member Darrell Tunnicliff

Public Comment

Comments may be sent to Board via email before 1:00 PM on Monday, September 14, 2020. All emails received prior to this time will become part of the record for the public hearing. The Public may call in during specific Public Comment periods at (406) 237-6165. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to 3 minutes of testimony as is customary.



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Live coverage can be viewed on the Billings Planning and Community Services Facebook page here; <https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260/?ref=bookmarks>

Chairman Bush asked if there was anyone wishing to speak during the public comment portion of the meeting. The Public may call in during specific Public Comment periods at (406) 237-6196.

Disclosure of Ex Parte Communication: County Zone Change #703. The Commissioners reported no Ex Parte Communications.

Disclosure of Conflict of Interest: County Zone Change #703: There was none.

Letters of opposition or objection were received from:

- Jason McGimpsey, 1327 Bitterroot Dr (Sept 1 – City ZC 983)
- Aaron & Karen Higginbotham, 1315 Bitterroot Dr (Sept 1 – City ZC 983)
- Kasimilo & Rhonda Iaone, 1317 Bitterroot Dr (Aug 25, County ZC 703)
- The Heights Task Force (Sept 14, Jennifer Owen, Chair, County ZC 703)
- Tracy & Barry Marsh, 1808 Janie Street (Sept 1, City ZC 983)
- Edwin Hostettler, 1305 Nutter Blvd (Sept 1, City ZC 983)
- Bob & Becky Muller, 1225 Bitterroot Drive (Sept 14, County ZC 703)

Motion. Approval of Minutes: August 10, 2020

Motion

Commissioner Bush made a motion and Commissioner Ray seconded the motion to approve the August 10, 2020 meeting minutes as submitted.

The motion carried with a unanimous voice vote.

Item #1: County Zone Change #702

Zoning Coordinator Nicole Cromwell read the legal notice for County Zone Change #702 into the record.



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REQUEST

County Zone Change 703 – Cherry Creek Loop - R-96 to R-80 - A zone change request from Residential-9600 (R-96) to Residential-8000 (R-80), on an 8.62-acre portion of Lot 2, Block 1, Cherry Creek Estates Sub south of Cherry Creek Loop, a 20.196 acre parcel of land. A pre-application neighborhood meeting was held on July 27, 2020, at the subject property on Cherry Creek Loop. Tax ID: A31450

Concurrent Applications: City Zone Change 983 - for the southern 3.42 acres of Lot 2, Block 1, Cherry Creek Estates. The City Zoning Commission hearing was conducted on September 1, 2020 and the Zoning Commission is forwarding a recommendation of approval. The City Council hearing is scheduled for September 28, 2020.

RECOMMENDATION

Planning staff recommends approval of Zone Change #703 and adoption of the findings of the eleven criteria.

Zoning Coordinator Nicole Cromwell opened the staff presentation with an explanation of the applicable zoning history.

Zoning History of property

Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
County ZC 496	Feb 1998	A-1 to R-70 and RMH	Withdrawn	
City ZC 633	April 1998	A-1 to R-70	Withdrawn	Northern lot on Wicks Lane
County ZC 506	August 1998	A-1 to R-96	Approved	Riverview Estates east of Cherry Creek
County ZC 524	Dec 1999	A-1 to PD with RMH & Public zones	Denied	BOCC recommended annexation
County ZC 541	April 2001	A-1 to R-96 & Public	Approved	Subject Property
County ZC 543	May 2001	A-1 to RMH & Public	Approved	Litigated & BOCC Decision Affirmed
County ZC 551	March 2002	Clarifying Zone Boundaries R-96 & Public	Approved	
City ZC 696	April 2002	A-1 to RMH, RMH to Public & R-96 to Public	Withdrawn	Mistaken submittal by agent
City ZC 702	July 2002	RMH & Public to R-96	Denied	City Council initiated after annexation in June 2002
County ZC 562	July 2003	A-1 to R-96	Approved	Small area east of MHP
County ZC 673	March 2016	R-96 to RMH	Withdrawn	Subject Property

This is a zone change request for an 8.62 acre portion of Lot 2, Block 1, Cherry Creek Estates Subdivision, from Residential 9,600 (R-96) to Residential 8,000 (R-80). There is a concurrent City zone change for the portion of Lot 2 south of this property (3.42 acres). The proposed development plan will include a future annexation and subdivision of the property for the development of two-family townhomes. The townhomes would be sold to individual owners.

The current zoning is Residential 9,600 (R-96) in the county portion. The current zoning of Lot 2



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was approved by County Zoning Change 541 in May 2001. The Public zone portion was intended to accommodate an extension or connection to the bike & trail system along the Yellowstone River and for potential future park dedication to the city. All large subdivisions for residential purposes are required to either dedicate parkland or pay cash in lieu of dedication. The Public zoned portion of this lot was never offered as parkland dedication and is still owned by Cherry Island, LLC. The Cherry Creek Manufactured Home Park developed and maintains a neighborhood park within the court and Danube Court, the last phase of Cherry Creek, paid cash in lieu of parkland dedication.

The proposed zoning of R-80 will allow one and two-family dwellings on lots of 8,000 square feet for a one-family home and 10,000 square feet for a two-family dwelling. The developer intends to build primarily two-family dwellings and presented a concept site plan at the pre-application neighborhood meeting. The townhomes would be sold to individual owners. The concept plan shows an internal road connecting the northern and southern legs of Cherry Creek Loop with 33 two-family dwellings (66 dwelling units total). The total lot area in the proposed development is about 12 acres. The proposed 66 dwelling units would have about 7,900 square feet of lot area per unit or 5.5 dwelling units per acre. The Aspen Cove Townhomes to the north at the intersection of Wicks Lane and Bitterroot Drive are zoned Residential 7,000 (R-70). There are 34 townhomes on this 4.88-acre parcel and have a density of about 7 dwelling units per acre. The directly adjacent properties to the west are outside the city limits and developed at much lower densities of 1 to 1.5 dwellings per acre.

The Cherry Creek Estates development started in 1998 when the first of 11 zone change applications was filed with the Planning Division. Four of the zone changes were withdrawn, two were denied and five were approved. The County zone change that approved the Residential Manufactured Home (County ZC 543) zoning was litigated in district court. The suit did not overturn the County Commissioners' decision to approve the zone change. The property including this Public zoned portion of Lot 2 was subsequently annexed to the city in 2002. The City Council agreed to annex the property with the intent to initiate a zone change after the annexation. The Council initiated the zone change in July 2002 to change the RMH and Public zoning to Residential 9,600 (R-96). The owners protested the zone change triggering the requirement for a super-majority vote to approve the zone change. The Council failed to achieve a super majority vote in favor of the zone change so the RMH and Public zoning stayed in place.

The subject property has remained un-developed for the last 22 years while the Cherry Creek Manufactured Home Park and Danube Court were developed. An early zone change application for a Planned Development (County Zone Change 524) proposed an underlying zoning of RMH for the Manufactured Home Park and Public for all of Lot 2. In this proposal, Lot 2 would remain vacant and be developed as a natural area park with landscaping and trails. The Zoning Commission recommended denial. The County Commissioners denied the Planned Development zone change in early 2000. The next approved zone change for the property was in May 2001 and the zoning has remained the same since that time.



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The Planning staff has reviewed the application and is recommending approval of the zone change to R-80. The 2006 Billings Heights Neighborhood Plan and the 2008 County Growth Policy encourage the development of infill property where city services already exist and new neighborhoods can be served efficiently. The Heights Neighborhood Plan adopted a general statement encouraging new neighborhoods and developments that are similar in nature to existing neighborhoods. Both plans encourage a mix of housing choices in neighborhoods. The proposed development of townhomes expands the housing options in this area of Billings Heights, and should be a good fit between the manufactured home park and the low density county residences to the west. Water and sewer are readily available to the property. Public safety services are fiscally constrained, but the adjacent neighborhoods are already served and this new development can be served as well.

Board Discussion:

Chairman Boucher called for questions and discussion. Commissioner Bush asked for further clarification on the Planned Development for this parcel. Nicole Cromwell said there are many zone changes of record on this property. In 1999, YC Zone Change #524 included language in the Development Agreement for preservation of an R-9600 buffer and the golf course that the public has latched onto as though this as something agreed to. Zone Change #524 was denied. Commissioner Ray asked why there is opposition to the request. Nicole Cromwell said there is opposition to the proposal for the number of new dwelling units and some objections to the former property owner. Roy Clause is the previous owner. The property is currently owned by Cherry Island, LLC. Chairman Boucher noted mentions of a buffer in the letters of opposition. Nicole Cromwell stated there is no binding Development Agreement in place to keep this an R-9600 buffer.

Public Hearing: Chairman Bush opened the public hearing and asked if there is anyone wishing to speak in favor or against County Zone Change #703.

Marshal Phil, Blueline Engineering, 724 1st Ave N, Billings, MT

Mr. Phil represents the applicant, Cherry Island, LLC. Mr. Phil stated the Clause family no longer owns the trailer court. The new owner is working on improvements on the site and is actively trying to clean up the previous owners' reputation. This zoning allows the townhome project to be built which will be a nice transition from the RMH zoning. Regarding the concerns with rental properties, he stated the proposal is for every house to have individual water and sewer connections. A Home Owners' Association has been proposed. The Heights Water District will maintain utility connections. The HOA is written to control irrigation, lawn maintenance, snow removal, and maintenance. The majority of the properties will be resold with the owner keeping a few units for rentals. They have proposed a "no build zone" on the western edge of the property with one tree planting per unit in the zone. The development is underneath the available capacity in the SD2 Schools. The traffic study has been reviewed and the traffic increase from this development will be negligible. The R-8000 zoning requested is proposed to be compatible with the neighbors.



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Jeff Engel, Jeff Engel Construction, Inc. 622 ½ Bench Blvd. Billings, MT

Mr. Engel is the builder for this project. He stated the proposal is for 33 duplex townhomes of stick built construction valued at \$240,000-\$250,000 per home. They will be one-level, have an attached garage, with maintenance free siding. Landscaping will include trees, shrubs, and irrigation. Water will be supplied by municipal water if wells are not possible. There will be an exterior perimeter fence. The HOA will cover the exterior maintenance.

Myles Egan, 2690 Southridge Drive, Billings, MT

Mr. Egan said they anticipate that this type of product's occupants will be 90% without children. The rent would be in the range of \$1600-\$1800 per month. Market value per unit will be \$225,000-\$250,000.

Public Comment: Chairman Bush opened the Public Comment period and announced the public comment contact phone number. He called for anyone wishing to speak in favor or against YC Zone Change # 703.

Lindsey Magenzie, 1327 Bitterroot, Billings, MT

Ms. Magenzie stated the property owner is doing this for their own gain and the Board will not take advice. The Heights Task Force is in opposition to this proposal, and their recommendation should hold weight. The new Cherry Creek owner is in the process of cleaning up what the Clauses created. Ms. Magenzie stated she has lived in her home for fifteen years and has been involved in the barrage of zone change proposal. She said the previous property owners created a mess behind their property and it has had significant impacts to the Heights. She feels this proposal will negatively affect the schools and be a burden to taxpayer resources. She voiced concern with negative impacts to the traffic flows. Ms. Magenzie said this family's legacy has degraded the Heights.

Jason Magenzie, 1327 Bitterroot, Billings, MT

Mr. Magenzie said he has experienced partial truths with the Clause family, and he believes that they maintain 28% ownership of the trailer park. The Environmental Impact Study carries through and references the buffer area and other items that have not been followed. Mr. Magenzie feels that R-9600 zoning would be a better transition. He voiced concern with the Clause family's involvement with this proposal as they have lost two class action suites in the last eight years. He feels that Jeff Engel and Myles Egan have conflicting interests and should not be speaking as representatives for this project as they would profit from this development.

Marie Hall, (no address given)

Ms. Hall asked if the new developments will affect rent increases for people in the surrounding area.



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Jason Magenzie, 1327 Bitterroot, Billings, MT

Mr. Magenzie stated the R-9600 buffer would be a solution and he feels single residential homes would be the best they could ask for.

Chad Morrison, 30 Lapin, Billings, MT

Mr. Morrison asked the Zoning Commission to deny this request. He reported he lived in Cherry Creek for eleven years and worked as an employee for the Claus Family. He said the hydrants were shut down on Lapin and his house burned down due to a lack of a water source. He stated Jock and Kathy Clause did not make it right with him, and they are responsible for his losses. He urged the Zoning Commission to turn this request down.

Chairman Boucher asked if there were any other public wishing to speak in favor or against County Zone Change #703. There was none. Chairman Boucher closed the public hearing and called for a rebuttal.

Rebuttal

Myles Egan, 2690 Southridge Drive, Billings, MT

Mr. Egan related his experiences in marketing townhomes in the Heights including King James Townhomes, Bench Townhomes, and Cottonwood Townhomes. He stated the building of townhomes adjacent is a common practice and has no negative impacts.

Discussion

Chairman Boucher called for discussion from the Commissioners. Commissioner Bush stated he is in opposition to the proposed zone change. He said the biggest issue is Criterion #4, promotion of public health and safety. He said it is difficult to weigh what is existing and if the new development will be better. Chairman Boucher said this is a sensible proposition with higher end dwelling units dictating higher rents if there are renters. He stated he is in favor of recommending approval of the zone change. Commissioner Ray stated he is in favor of this request.

Motion

Commissioner Ray made a motion and it was seconded by Commissioner Boucher to forward a recommendation recommends approval of Zone Change #703 and adoption of the findings of the eleven criteria.



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Name	Favor	Against	Abstain	Absent
Chairman Boucher	1			
Commissioner Wittman				1
Commissioner Ray	1			
Commissioner Bush		1		
Commissioner Hewett				1

The motion carries, 2-1, with Commissioner Bush voting against the motion. The YC Zoning Commission will forward a recommendation to the Board of County Commissioners of approval of County Zone Change #703.

OTHER BUSINESS

Discussion. YC Zoning Commission and Planning Staff. City/County Planning Board request for discussion regarding the potential need to expand the existing County Zoning Jurisdictional Boundary. Planning Division Manager Monica Plecker

Ms. Plecker opened with the following introduction of the agenda item.

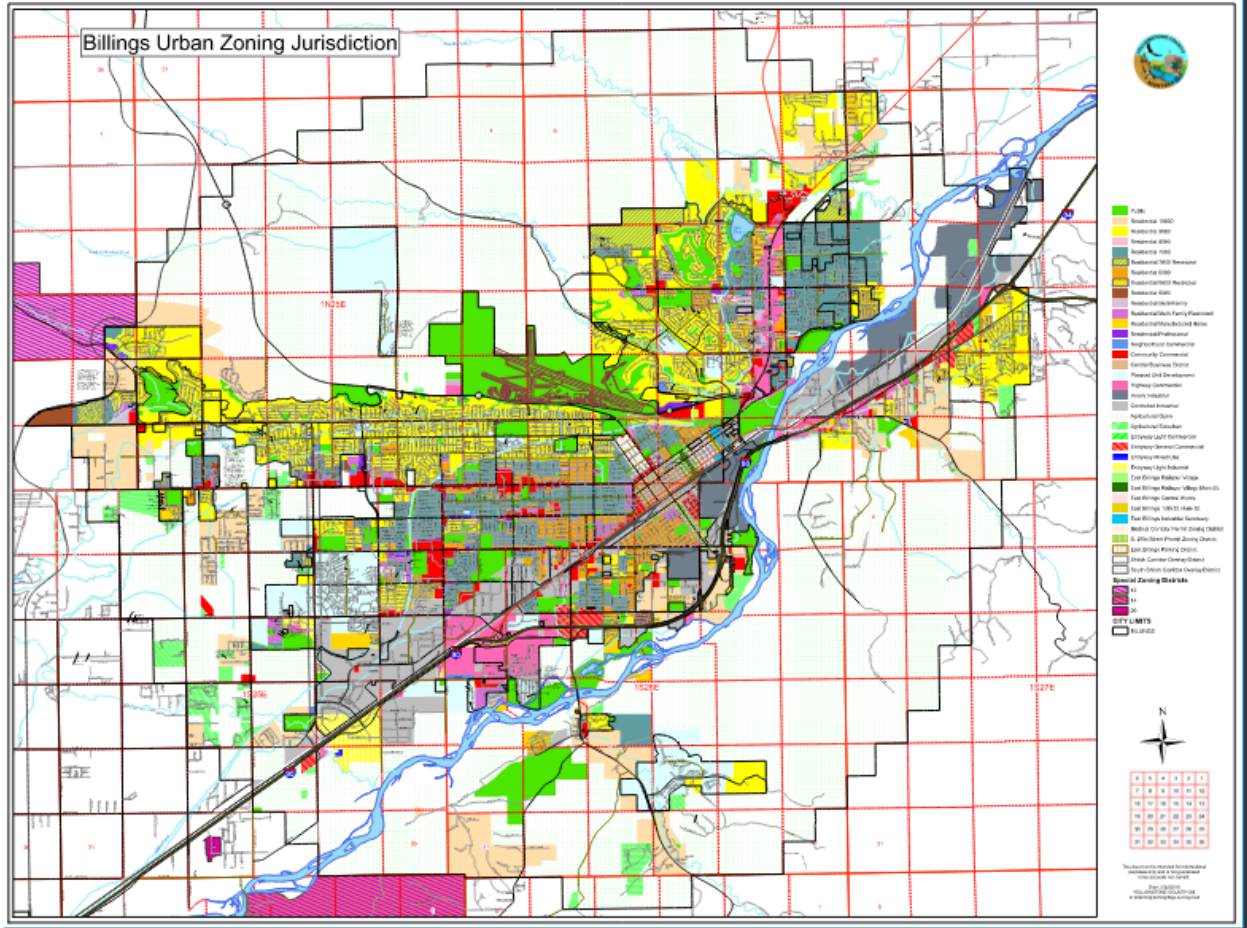
Introduction

The current boundary has not expanded in the 47 years since it was first established except for a minor expansion in Lockwood (2016) to include more zoned property for the County's Targeted Economic Development District (TEDD). There are areas where the County's Zoning Jurisdiction Boundary is coterminous with the city limits and some areas where the city limits have expanded beyond the County's Zoning Boundary (Copper Ridge Subdivision, 70th Street W and Rimrock Road). In 1973, the County's zoning jurisdiction extended at least 4 1/2 miles beyond the city limits. In many areas of West Billings and Billings Heights, the County zoning boundary is much less than 4 1/2 miles from the city limits. The City has expanded significantly since 1973. The County Part 2 zoning jurisdiction has not expanded and in some cases, City zoned land is directly adjacent to un-zoned County land.

Representatives from the City/County Planning Board would like this opportunity to have a discussion about the County zoning boundary. The Planning Board recently helped planning staff in the development of the Land Use element for the County Growth Policy. The Planning Board believes its findings coupled with recent developments occurring on the west end, in particular, creates a critical time to bring awareness of these issues to other boards like the Zoning Commission and Board of County Commissioners.



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Ms. Plecker stated the YC Board of Planning is comprised of City and County residents. Board members have expressed interest in Project ReCode and have participated in working groups. A lot of attention has been given to the zoning boundary that extended 4.5 miles beyond the City limits. The zoned area is shrinking as the City grows. There is a lot of development pressure and a lack of predictability as to how these areas may be developed. The Planning Board is in favor of the Board of County Commissioners initiating the process to expand the zoning district. They composed a letter to the Commissioners, to the need to put some attention to this matter and wished to keep this Commission engaged.

Planning Board member Darrel Tunncliff stated the Planning Board is a community voice. The Board is aware of the time needed to consider and redraw the zoning boundaries. He feels people moving into a neighborhood should have a reasonable expectation of the potential development around them. The Board would like to educate the public and work with the landowners to expand the jurisdiction where appropriate and start the process.



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Discussion

Commissioner Bush stated he understands the intent and asked Ms. Plecker to explain the process. Ms. Plecker explained that the technical steps are not difficult and said it was recently done with the Lockwood TEDD. The process starts with the BOCC's initiation. Time is needed for evaluation and public outreach. It is a significant undertaking and the BOCC cannot be expected to initiate without landowner support. Zoning Coordinator Nicole Cromwell said it would involve a lot of property owner contact and discussions of uses. She said there are properties in the west end of Billings to consider, as they will be adjacent to unzone properties. Ms. Plecker said the Planning Board recognized the need to uniformly expand the district, specifically, the western boundary to the interstate and the Lockwood areas. The southern boundary is not under discussion. The Board realizes the undertaking and sensitivity and would like to start with critical areas. Board member Tunncliff said the Planning Board wished to inform the Zoning Commission of the Planning Board's intent. They are aware of the current staff workload and that it will not happen overnight. Commissioner Ray stated he is not in favor of this proposal and does not want the City to come and collect more fees. Commissioner Bush said this relates to designated unzoned areas and they are not trying to have the Building Department go outside the City Limits. They are trying to protect property owners and let them know what can and cannot be built. Board member Tunncliff agreed and said they are not expanding the City Limits. Commissioner Ray voiced concern with zoning owners' properties in a certain way. Ms. Plecker said this would address areas of concern. A letter from the Planning Board will be forwarded to the BOCC for consideration, and there will be landowner outreach. Commissioner Ray said this has to stop somewhere and that there is a better use of staff time. Planning Board member Tunncliff thanked the Commissioners for their time.

Announcement: The Project ReCode Yellowstone County Zoning Commission meeting is scheduled for Thursday, September 24, 4:30 PM at the Community Center Billings Parks and Recreation Center.

Adjournment

Approved by a motion October 12, 2020

