



CITY ZONING COMMISSION
AGENDA-Tuesday, June 6, 2023, 4:30 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

In the event a quorum of the Council is present, no City-related decisions will be made during this meeting or event.

Citizens are invited to:

- Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook: <https://tinyurl.com/yckr478k>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda. Comments may be sent to Board via email before 1:00 PM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101
 - Email: bartleyr@billingsmt.gov or cromwelln@billingsmt.gov
- Call in during the Public Comment periods as indicated on the agenda:
 - Citizens may call in during specific Public Comment periods at **406.237.6165**.
All callers will be placed 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 limited to 3 minutes of testimony as is customary.
Future delivery methods may be explored as best practice is learned.

Please direct questions to Administrative Secretary Robbin Bartley at bartleyr@billingsmt.gov or 406-247-8676

Call the meeting to order.

Introduction of City Zoning Commission Members and Planning Department Staff.

Public Comment

Approval of Minutes:

The minutes of the Board meeting of May 2, 2023.

Disclosure of any Conflict of Interest-Members of the Commission and Staff

Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff
a. The Exparte Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:

Public Hearings:

- a. **City Zone Change 1027 -- Viking Tvetene Planned Development amendment** -- A zone change request to amend and update an existing Planned Development agreement for Parcel 1A1 of C/S 832, Parcels 1 & 2A of C/S 3535, Parcel 2 thru 5 of C/S 234, an 89.704 Acre Parcel of land. The amendment would increase the area with underlying zoning of Highway Commercial and decrease the area with underlying zoning of Controlled Industrial. The language of the Planned Development agreement will be updated for current ownership and the governing body.

b. **Non-public hearing item:** Review and Discussion of pending Phase 2 -- Substantive Zoning Code Amendments including the following:

- Council action options for special reviews and zone changes
- Open Space provisions in NX and PND district assembly
- Allow rebuild of Residential Structures in Commercial and Mixed Use zones by right
- Step-backs of taller buildings between Neighborhood and Mixed Neighborhood zones

Other Business/Announcements

Adjournment

The City Council has designated June 26, at 5:30 p.m. as the date and time to receive the Zoning Commission recommendation for this **Zone Change** and hold a public hearing. If approved on first reading, a **second reading will occur on July 10, 2023 at 5:30 pm.**

Before taking any action on an application for a **Zone Change**, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a zone change other than the one advertised. The City Council shall take one of the following actions on the zone change requests: 1) approve the application; 2) deny the application; 3) allow withdrawal of the application; or 4) delay the application for a period not to exceed thirty (30) days.

As provided in Montana Code Annotated, Section 76-2-305(2), in the event of a protest petition against such **zone change** signed by the owners of twenty-five (25) percent or more of: (1) the area of the lots included in any proposed change; or (2) those lots or units, as defined in MCA 70-23-102, **one hundred fifty (150) feet from a lot included in a proposed change**, such proposed amendment shall not become effective except by the favorable vote of two-thirds (2/3) of the present and voting members of the city council. For purposes of this protest provision interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located. The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change or by the presiding officer of the association of unit owners. The protest petition must be received in the Planning Division office **by 5:00 p.m. on the Friday preceding the first reading of the ordinance by the City Council.**

Testimony regarding the above-mentioned item may also be submitted in writing to the Planning Division, 2825 3rd Avenue North, 4th Floor, Miller Building, Billings, MT 59101 (247-8676) or to the Mayor and City Council, P.O. Box 1178, Billings, MT 59103.

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to bartleyr@billingsmt.gov

City Zoning Commission
Meeting Date: 06/06/2023

Information

Subject

The minutes of the Board meeting of May 2, 2023.

Attachments

BZC_2023_0502



**City of Billings Zoning Commission
Meeting Minutes May 2, 2023**

The City of Billings Zoning Commission met on Tuesday, May 2, 2023 at 4:30 p.m., 210 North 27th, City Council chambers, 2nd floor. The public may attend in person or watch the meeting live on Facebook (see below). Comments may be sent to **Board via email before 1:00 PM on Tuesday, May 2, 2023**. All e-mails received prior to this time will become part of the record for the public hearing. Live coverage can be viewed on the City of Billings Facebook page here; <https://tinyurl.com/yckr478k>

For Zone Changes 1023, 1024, 1025 and 1029, the City Council has designated May 22, at 5:30 p.m. as the date and time to receive the Zoning Commission recommendation for these **Zone Changes** and hold a public hearing. If approved on first reading, a **second reading will occur on June 12, 2023 at 5:30 pm.**

For Zone Changes 1026 and 1028, the City Council has designated June 12, at 5:30 p.m. as the date and time to receive the Zoning Commission recommendation for these **Zone Changes** and hold a public hearing. If approved on first reading, a **second reading will occur on June 26, 2023 at 5:30 pm.**

Commission and Staff		01/03/2023	02/07/2023	03/07/2023	04/04/2023	05/02/2023	06/06/2023	07/05/2023	08/01/2023	09/05/2023	10/03/2023	11/07/2023	12/05/2023
Mike Larson	Chairman	1	-	1	1	E							
Daniel J. Brooks	Commissioner	E	-	1	1	E							
Greg McCall	Vice Chairman	E	-	1	1	1							
Trina White	Commissioner	1		1	1	1							
David Goss	Commissioner	1	-	1	1	1							
Wyeth Friday	Director, PCSD	-	-	-	-	-	-	-	-	-	-	-	
Monica Plecker	Division Planning Manager	-	-	-	-	1	-	-	-	-	-	-	
Nicole Cromwell	Zoning Coordinator	1	-	1	1	1							
Tammy Deines	Planning Clerk	-	-	-	-	-							
Dave Green	Planner II	-	-	-	-	-							
Karen Husman	Planner I	-	-	-	-	1							
Robbin Bartley	Administrative Support	1	-	1	1	1							

Total Number of 2023 Applications	01/03/2023	02/07/2023	03/07/2023	04/04/2023	05/02/2023	06/06/2023	07/05/2023	08/01/2023	09/05/2023	10/03/2023	11/07/2023	12/05/2023	TOTAL
Zone Change	1	-	1		6								8
Special Review	1	-	-	1	-								2

Vice Chair McCall introduced the Planning Division Staff and Commission: Attending Staff were Nicole Cromwell, Zoning Coordinator, Monica Plecker, Planning Division Manager and Robbin Bartley, Administrative Assistant.

*RETURNING AGENDA ITEM.

Attending:



sign in sheets.pdf

Vice Chair McCall called the meeting to order at 4:30 pm and asked to amend the Agenda order, hearing City Zone Change 1028 first.

Public Comment

Vice Chair McCall called for public comments. There were no public comments. Vice Chair McCall closed the public comment portion of the meeting.

Approval of Minutes:

Motion by Commissioner Goss and seconded by Commissioner White to approve the April 4, 2023 meeting minutes.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson				X
Daniel J. Brooks				X
David Goss	X			
Greg McCall	X			
Trina White	X			

Disclosure of Conflict of Interest

COMMISSIONER	DISCLOSED	NONE	ABSTAINED	ABSENT
Mike Larson				X
Daniel J. Brooks				X
David Goss	1028			
Greg McCall		x		
Trina White		x		

Commissioner Goss disclosed his sister lives close to this location.

Disclosure of Outside Communication

COMMISSIONER	DISCLOSED	NONE	ABSTAINED	ABSENT
Mike Larson				X
Daniel J. Brooks				X
David Goss		x		
Greg McCall		x		
Trina White		x		

Commissioner McCall visited 1024 and 1028, Commissioner White visited 1024, 1025 and 1028, Commissioner Goss visited all but 1023 locations.

Exparte on ZC 1023, a copy is located at the sign in sheet location.

Public Hearings:

City Zone Change 1028 – Hawk Creek Planned Development amendment – A zone change request to amend and update an existing Planned Development agreement for Lots 1-3, Block 1 of the MK Subdivision, a 3.6 acre parcel of land. The amendment would allow for one (1) full-beverage liquor license without gaming on the property. The current PD agreement allows one (1) cabaret beer & wine license for the Diamond X Brewery and restaurant at 5417 Hawk Creek Ave. The change would eliminate the cabaret license and substitute a full-beverage license. A pre-application neighborhood meeting was held on March 22, 2023, at the Grace Montessori School at 4809 Grand Ave.

Staff Recommendation:

Planning staff recommends approval of the amendment to the Hawk Creek Planned Development zoning agreement on Lots 1-3 of Block 1 in the MK Subdivision to allow one full beverage liquor license for the property instead of one cabaret beer and wine license. The PD agreement prohibits the location of any gambling on the property as well as restricting other uses in the underlying zone district of Neighborhood Commercial, an archived zone district.

Discussion. Questions for staff:

Applicant: Scott Aspenlieder, Performance Engineering

There is nothing new, this is a verbage swap for a full liquor license. This property is not connected to the DEN. The hours of operation are mandated by State law, the owners are good neighbors.

Ty Schmeckel is the owner. He states this is a walkable and friendly area.

Questions for applicant: None

Public Hearing: 4:57PM

Vice Chair McCall opened the public hearing and called for anyone wishing to speak in favor or against City Zone Change 1028.

In Favor:

Opposed:

Kaitlin Taylor, 5408 Round Stone Ave

Jill Saitta, 5422 Round Stone Ave

Molly Dutson, 5418 Round Stone Ave

Travis Branington, 5426 Round Stone

The above listed persons expressed concerns regarding extended hours of operation, public urinating, intoxicated persons, upredictable behaviors, property values, safety issues, suspicious activities, trash and insects, loud music and traffic concerns all in their “backyards”

Rebuttal

Scott Aspenlieder stated he takes their concerns seriously. They are committed to an 11pm closing. The owners are not changing the business model. There is willing participation wih the neighborhood.

Public Hearing closed at 4:58 PM

Motion

Commissioner Goss made a motion and Commissioner White seconded the motion to approve City Zone Change 1028 with staff findings, recommendation and conditions, limiting operating hours to the current hours and to explore a better buffer yard.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson				X
Daniel J. Brooks				X
David Goss	x			
Greg McCall	x			
Trina White	x			

The Motion **passed** to approve City Zone Change 1028 with a 3-0 vote.

City Zone Change 1023 – Wicks Lane and Bitterroot Dr – A zone change request from Mid-Century Neighborhood (N2) to Mixed Residential 1 (NX1) on C/S 515, Parcel 14A1, a 1.11 acre parcel of land. A pre-application neighborhood meeting was held on February 28, 2023, at the East Wesleyan Church at 625 Mattson Lane.

Staff Recommendation:

Planning staff recommends approval and adoption of the findings of the 10 review criteria for Zone Change 1023.

Discussion. Questions for staff: Commissioner McCall asked if any opposition was received. Staff replied 1 call in opposition was received.

Applicant: None

Questions for applicant: None

Public Hearing: 5:13 PM

Vice Chair McCall opened the public hearing and called for anyone wishing to speak in favor or against City Zone Change 1023.

In Favor: Doug Wilde, 4720 Audubon

This development would be regulated to make necessary improvements and is an asset to the area.

Opposed:

Stuart Wheeler, 1536 Wicks Lane

He purchased his place in 2021, 1.43 acres. This is a single family area. There would be traffic increases with the addition of 3 triplexes. What about trash enclosures?

Boese, 806 Mossman

There is high volume traffic at Wicks and Bitterroot. 9 units on 1 acre is too dense.

Jill Bogas, 1536 Wicks Lane

The dumpster is right next to my property, what about a bufferyard?

Public Hearing closed at 5:18PM

Motion

Commissioner White made a motion and Commissioner Goss seconded the motion to approve City Zone Change 1023 with staff findings, recommendation and conditions.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson				X
Daniel J. Brooks				X
David Goss	x			
Greg McCall	x			
Trina White	x			

The Motion passed to approve City Zone Change 1023 with a 3-0 vote.

City Zone Change 1024 – 3100 Block of Central Avenue – A zone change request from Suburban Neighborhood (N3) to Mixed Residential 1 (NX1) on Central Acres 5th Filing, Block 9, Lot 1, a 13,072 square foot parcel of land. A pre-application neighborhood meeting was held on March 3, 2023, at the Faith Evangelical Church at 3145 Sweet Water Drive.

Exparte received include a petition. 10 signatures were not valid, they did not meet the 150 foot requirement.

Staff Recommendation:

Planning staff recommends approval and adoption of the findings of the 10 review criteria for Zone Change 1024.

Discussion. Questions for staff:

Commissioner McCall asked if this was to buld a duplex.

Applicant: Leona Lee, 4115 Kaitlin Court

This will not change the character of the neighborhood. A duplex is an affordable option in this location.

Questions for applicant: None

Public Hearing: 5:25PM

Vice Chair McCall opened the public hearing and called for anyone wishing to speak in favor or against City Zone Change 1024.

In Favor: None

Opposed:

Jason Tittle, 22 31st St W

He did not sign the petition but stands in solidarity with his neighbors. There is no access to Central or 31st Street West. He wishes the board to reject this Zone Change.

Tony Donahue, 24 31st Street W

He is opposed to the Zone Change.

Gerry Vote, 3128 Lynn

He submitted a letter of opposition. Drivers cut through Lynn and the alley. More renters makes more traffic. The alley should be paved now with this development. We understand single family residence is not viable but the owner tried to buy this lot. The Zone Change should not be approved. 6-10 acres is already zoned for Multi-family.

Rebuttal

NONE

Public Hearing closed at 5:31PM

Commissioner McCall stated although N3 zoning may be a concern, with this housing crisis, SB 323 will allow duplexes on any SR only zone.

Motion

Commissioner white made a motion and Commissioner Goss seconded the motion to approve City Zone Change 1024 with staff findings, recommendation and conditions.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson				X
Daniel J. Brooks				X

David Goss	x			
Greg McCall	x			
Trina White	x			

The Motion **passed** to approve City Zone Change 1024 with a 3-0 vote.

City Zone Change 1025 – 54th St W and Rimrock Rd – A zone change request from Suburban Neighborhood (N3) to Mid-Century Neighborhood (N2), Suburban Neighborhood (N3) and Public 1 (P1) through a Planned Neighborhood Development (PND) process on C/S 1834, Tract 2B, a 30.6 acre parcel of land. A pre-application neighborhood meeting was held on March 20, 2023, at the subject property. There is a concurrent petition for annexation.

Staff Recommendation:

Planning Staff recommends approval and adoption of the findings of the ten review criteria for Zone Change 1025, a Neighborhood PND zone change type from Suburban Neighborhood (N3) to Mid-Century Neighborhood (N2), Suburban Neighborhood (N3) and Public 1 (P1) through a Planned Neighborhood Development (PND). A concurrent annexation and subdivision are in progress.

Discussion. Questions for staff:

Applicant: Steve Graybill, KLJ, 2829 S. Tanager Lane, Agent
He is here to answer any questions from the board.

Questions for applicant:

Commissioner McCall asked if the P1 zoning as a strip is a buffer to the trail and some park.
Commissioner Goss asked if there is access to the P1 land from the neighborhood.

Monica Plecker stated there is a 30 foot wide access and landscape to buffer the backyard fences.
Stormwater fencing of the ditch for safety. P1 will have stormwater so it cannot be dedicated to the public.

Public Hearing: 5:47PM

Vice Chair McCall opened the public hearing and called for anyone wishing to speak in favor or against City Zone Change 1025.

In Favor:

Doug Wild, 4712 Audubon

This is a good PND, he is in favor of the use. There are concerns for access.

Dustin Bretz, 5407 Rimrock

He supports the zone change, this is the right choice for the intersection. There are concerns about the traffic.

Opposed:

Pat Curry, 5412 Gene Sarazon Drive

He expressed great concern for the traffic safety. Adding 100 plus cars onto 54th St W. He believes there should be access directly onto Rimrock Rd. Yellowstone Family Park was paid for by the neighborhood. New residents will use our park. P1 I undeveloped. Prairie dog village will move in.

Christy Oassar, 5358 Amherst Drive

SFR is acceptable but not duplexes. She disagrees with the neighborhood meeting synopsis. Traffic, access are still issues. She signed the protest petition.

Gary Pogue, 5028 Rimrock Rd

Traffic is too dense on Rimrock Rd. 50 homes times 2 plus duplex is too much. He is patient with road improvements. The prairie dogs need to be eradicated.

Rebuttal: NONE

Public Hearing closed at 6:03PM

Motion

Commissioner Goss made a motion and Commissioner White seconded the motion to approve City Zone Change 1025 with staff findings, recommendation and conditions.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson				X
Daniel J. Brooks				X
David Goss	x			
Greg McCall	x			
Trina White	x			

The Motion **passed** to approve City Zone Change 1025 with a 3-0 vote.

City Zone Change 1026 – 3648 AJ Way – A zone change request from Agriculture (A), a county zone district, to Public 3- Civic Campus (P3- Civic) on C/S 1889, Tracts 2 and 3, a 40.001 acre parcel(s) of land. A pre-application neighborhood meeting was held on March 27, 2023, at 3465 AJ Way, Unit 111. There is a concurrent petition for annexation.

Staff Recommendation:

Planning staff is recommending approval and adoption of the findings of the 10 review criteria for Zone Change 1026.

Discussion. Questions for staff:

Commissioner Goss asked if connection to the airport would require further review.

Applicant:

LTC Geehring, Montana National Guard

They have had an aviation presence in Billings since January 2023. Have visited with neighbors south of Highway 3. The Department of Army has authorized permanent location Billings. In 12 months they have rescued 92 people including flooding. Their new location optimizes quicker responses. Transparency is important. We can't get a head of ourselves. The 98 acres added to the west may happen. Perhaps another ZC in late summer. The public may visit our location at 2121 Hangar Drive this Saturday from 11am -4pm.

Lee Elder, SMA Architects

He provided conceptual designs. The zone change is because of the annexation. It will have a P3 campus feel. One building now and more in the future. There is no planned connection but could happen in the future. Stormwater will go north. The Floor Plan centers around the hangar floor.

Questions for applicant:

Commissioner Goss asked about weekend trainings. Will there be additional personnel and extra equipment.

The Black Hawks are mostly on site. Training is for Montana folks, it is not a regional or a training flight school.

Public Hearing: 6:32PM

Vice Chair McCall opened the public hearing and called for anyone wishing to speak in favor or against City Zone Change 1026.

In Favor: None

Opposed: None

Public Hearing closed at 6:32PM

Motion

Commissioner Godd made a motion and Commissioner White seconded the motion to approve City Zone Change 1026 with staff findings, recommendation and conditions.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson				X
Daniel J. Brooks				X
David Goss				
Greg McCall				
Trina White				

The Motion **passed** to approve City Zone Change 1026 with a 3-0 vote.

City Zone Change 1029 – Text Amendment – Neighborhood and Mixed Residential districts, Fence Materials and Signs – An amendment to the text of BMCC Sections 27-304, 27,305, 27-307 and 27-308 related to Building and Siting standards in Neighborhood and Mixed Residential districts; Section 27-1209 related to allowable fence materials in residential and commercial areas and how alternate materials may be proposed; and Sections 27-1403, 27-1407 and 27-1409 related to nonconforming signs, calculations for allowable sign area and off-premise sign separation to residential districts.

The Zoning Commission recommends approval on a 3-0 vote, including the findings of the 10 review criteria amendments to the following:

Neighborhood and Mixed Residential zone district garage location and building and siting requirements; and

Fence materials in commercial and residential zone districts

The Zoning Commission recommends approval on a 2-1 vote including the findings of the 10 review criteria amendments to the following:

Sign Code including a recommended amendment to the proposed 700-foot separation distance from a residence district for a new billboard in a CMU2 zone district, be reduced to 500 feet

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

In February 2021, the City Council adopted a new zoning code and zoning map for the entire city.

The Council directed staff to continually monitor the new code to ensure the text of the regulations was working as intended and any corrections or housekeeping changes could be made. The Council also directed staff to monitor the implementation to consider any substantive changes to adjust the code, so it continues to provide support to the development goals of the adopted Growth Policy and general policies of Billings.

Planning staff brought forward a bundle of code corrections and amendments last year (June 2022). Those amendments were approved by the Council. Planning staff has been working on more substantive amendments to the code based on staff experience implementing the new code, information from professionals who use the code, and from the Council in its reviews of zoning applications. These substantive amendments include adjustments to the Neighborhood building and siting standards, the sign code, the Planned Neighborhood Development (PND) process, open space

requirements for PNDs and multifamily developments, zoning at annexation as well as the right to rebuild residential structures in mixed-use and commercial zone districts. These adjustments are not indicators of a "broken" set of regulations. Just as a new car or truck has a break-in period, so do new codes and regulations. As a completely new code, the need to monitor for glitches or "pain points" is important. These adjustments are just part of breaking in a new code. Planning staff believes this set of amendments should be the last significant adjustments needed for a few years. Planning staff and the City Council should re-visit the zoning and other land development codes regularly and when a new Growth Policy is adopted.

The City Council took action to initiate these amendments for review, public hearings and adoption at its meeting on April 24. The City Council's action was to begin the process of public review and adoptions. The City Council will act on the specific amendments once the Zoning Commission provides a recommendation and once the Council holds a public hearing. The number of amendments requires these to be brought forward in phases. This first phase will include changes to the Neighborhood Districts building and siting standards, the code section on fence materials and the sign code. Planning staff has worked with several stakeholders over the last several months to craft the draft amendments. This report will describe each amendment and will include just one set of findings for the review criteria for all four ordinances. Each ordinance by city regulation may only address a single comprehensive subject, must have a public hearing and recommendation from the Zoning Commission and then must be voted on by the City Council at two separate meetings through a first and second reading.

Neighborhood Districts - Building and Siting Standards - Section 27-300 and 27-1802

The intent of the new districts for residential areas of the city was to ensure new development was maintaining similar development patterns that were successful in Billings and to allow more housing choices in every new neighborhood.

There are seven residential zone districts, and five of those districts have building and siting standards that are "form" oriented requirements such as roof pitch, percent of windows and doors on a front facade, build-to zones (not setbacks) as well as location of parking and attached garages. As staff, builders and developers have implemented the new code there were several areas identified that were unclear, or were too rigid to accommodate building styles and good development patterns. For example, in the five districts where build-to zones are required, the code is silent on what percentage of the front facade is required to be within the build-to zone. Staff has interpreted the code requirement to mean 100% of the front facade. This allows little facade variation that results in less visual appeal on the street frontage. Staff is proposing to specify what percentage of the facade and what facade elements must be in the build-to zone. The range of the build-to zone is also relatively small - between 8 and 20 feet generally. Setting a certain percentage for the front facade in the build-to zone and expanding the build-to zone will allow more variation in building design without allowing buildings to be set too far back from the street.

Staff has found some of the requirements for build-to zones and roof pitch are not clearly the norm in many neighborhoods. For example, neighborhoods south of Grand Avenue close to downtown have every type of roof style including flat and parapet roofs. Staff is proposing to relax the roof pitch standards to allow more flexibility. Staff has found the code is also too stringent for infill projects by requiring an owner to match the existing setbacks of adjacent homes (build-to zone averaging). Many of these first and second neighborhoods in Billings have large front setbacks,

or only a second home at the back of the lot where the "front" house was destroyed. This provision has a good intent but as applied has unintentionally pushed new residences or additions further back from the street frontage than necessary or intended. Developed neighborhoods also have more utility lines - gas, power, water and sewer – that cross through backyards than newer developments. Sometimes the only way to add on to an existing home in these areas is on the front. Staff is proposing to change this from a mandatory requirement to a choice by the owner to expand the maximum build-to zone. The default will be the build-to zone as listed in the district table.

Staff has also encountered difficulty with the requirement to place any accessory building in a rear yard. Many corner lots are developed with no "rear" yard - the space behind the residence between the property line and the home. Most only have a side adjacent to street yard to place an accessory building. The City Board of Adjustment has already heard two variances requesting an accessory building in the street side yard. Staff is proposing to adjust this requirement to allow a street side yard for accessory structures and a side yard with Administrative Relief approval.

One of the goals of the new code was also to provide predictability along with the right amount of flexibility to encourage innovation in building style and architecture. Staff has developed amendments that will address these issues within the neighborhood zone districts. Staff has also drafted an amendment to allow some front facing garage doors in mixed residential districts. This part of code only allows rear or side street access to an attached garage in any of the mixed residential districts. There are some examples of homes and multifamily buildings built in the last 30 years that have no "occupied" building space on the ground-floor visible from the street - the facade is all garage doors. In order to counter this development style, the code was written to limit the width of garage entries that face the street in neighborhood zones (by percentage) and prohibits them in mixed residential zones. There are some builders that have always built multifamily dwellings with detached or rear entry garages, but many others are serving a market that demands a front entry garage - or at least a side entry attached garage. There are a couple of examples where this has been done so the garage is not the dominate feature of the front facade. This proposed ordinance is based on these good examples, and would amend the code to allow some front facing garage doors in the NX1 and NX2 zone district with guidelines in place.

Fence Materials - Section 27-1209 The city last amended the allowable fence materials in 2004. At the time, the city allowed architectural metal panels only in the industrial zone districts. These are typically used in conjunction with a shop building with the same metal siding and do not appear to be out of place in the industrial area development pattern. The code did not specify any design requirements for the use of the material, but the city believed at the time it was not an acceptable material in any zone district except for industrial zones.

In the last 5 to 10 years, the use of corrugated metal panel material has been used in the Billings area and marketed as the most durable fence type where hail is a common occurrence every spring and summer. Any fence permit presented with this material has been denied by Planning staff. This however has not stopped homeowners and contractors from installing this fence material without a permit. In most cases, the use of the material has been done in good fashion and few complaints have been received about these fences. Staff recently held an administrative hearing with the Board of Adjustment on a corrugated metal fence in a neighborhood district that was installed at least 6 years ago. A complaint was received last fall and the fence was made from material normally used for grain bins or other agricultural buildings (see photo attachments). During research for the hearing, staff found there are quite a few (more than a dozen) locations where similar fences do fit

in within neighborhoods and commercial areas. These fences have a wide range of colors and finishes and are generally framed with materials other than metal. This diminishes the "industrial" look of the material.

Staff is proposing to amend the code to add this material to the list of approved materials in residential and commercial zones. The amendment includes some design standards for the use of the material including framing the panels and to use material with a non-reflective coating. In addition, the code amendment would allow owners to propose other fence materials through the Administrative Relief process rather than a special review with the City Council.

Sign Code - Section 27-1400

The new sign code took 7 different sign codes and melded them into one new code that applies across all zone districts. In addition, the new code reduced most attached wall signs to a third of the previous code allowance and placed a maximum area for all wall signs on any length of a street facade. The code is matched to the new building and siting standards for the mixed use and commercial zone districts. When a building is close to the street frontage, overly large attached wall signs are unnecessary and out of place. The new code also made the building owner responsible for dividing the amount of wall signage between tenants. In order to encourage conformity with the new code, alterations to existing nonconforming signs is strictly limited.

Staff has found the literal application of the new sign code requirements especially for existing signs on buildings that are not located close to the street frontage, to be difficult especially since most landowners make tenants responsible for their own signage. The Board of Adjustment has processed three sign variances in the last 6 months related to this issue of wall signs. In the 2 decades preceding the new sign code, only a dozen sign code variances were processed. Some of this may have been due to the previous code's generous amount of sign area.

A recent application to construct a new digital billboard sign revealed to staff the weakness of the sign code for separating these signs from residential areas. This makes areas in West Billings and some areas of Billings Heights acceptable even though the impact from such locations is clearly not in line with the stated sign code policy or the Growth Policy for the city. Staff is proposing to increase this separation requirement and to include county zones that allow residential uses in the separation requirement.

Staff met with sign companies and landowners on their concerns. Staff is proposing to amend the section on how nonconforming signs might be altered without violating the code, assign wall sign area based on leased tenant space on the street frontage and remove the responsibility for landowners to distribute signage across multiple tenants.

STAKEHOLDERS

Planning staff worked with several groups of stakeholders over the last two years while implementing the new zoning code including the Home Builders Association, Billings Area Realtors, architects, engineers, planners and property owners. The amendments were produced through this collaborative effort of testing and applying the code requirements. These amendments and future code changes in phases 2 and 3, were created using their input and ideas. Planning staff shared the draft amendments with the stakeholders through direct email, placed a legal ad and posted the drafts on the Planning division's webpage. After the posting of the legal ad and prior to this Zoning Commission hearing, staff has not received any comments on the draft changes. Individual landowner notifications are not required for these text amendments.

The Zoning Commission conducted a public hearing on May 2, 2023, and received the staff recommendation and testimony from Doug Wild from the Home Builders Association (HBA), Kelly Strobel and Allie Carley of Lamar Montana, an outdoor advertising company. In addition, the Zoning Commission received three letters of comment on the proposed text amendments including emails from Lamar Montana regarding the sign code changes, Danny Wrywas of Absolute Fence regarding the fence material changes, and Lilly Corning of Corning Companies regarding sign code changes. The letters of comment are attached.

Staff presented the text amendments one at a time to allow public comment on each change. The first amendment concerns the allowance for front-load garages in the mixed residential zone districts. The ordinance would allow some front-load garages in the NX1 and NX2 zone districts with some siting requirements. Staff explained some conflicts may occur with the city code regarding curb cuts (Section 6-1208). Planning has started discussion with the Engineering Division about how to resolve this conflict. Doug Wild from the HBA stated he was in favor of the amendment and found it to be a good compromise solution.

The next ordinance addresses the building and siting requirements for neighborhood districts and mixed residential districts. The current code requires 100% of the front facade for new buildings in N1, N2, NX1-3 districts to be within the build-to range at the front of a lot. The build-to range for some districts is narrow and does not allow flexibility for facade variations. The amendment would specify the elements and percent of the front facade required to be in the build-to range including front doors, 60% of the ground-floor window area and 60% of the width of the new structure. In addition, roof types and roof pitches in the N1 and N2 districts do not contribute to the character of these districts.

Staff has found these regulations to be more than required to accomplish good neighborhood design. Accessory building locations have also been adjusted to allow a street side yard location and not just a rear yard. Staff is also proposing to eliminate the requirement to match a block-face average build-to setback. Staff proposes to make the build-to averaging an option for builders. This ordinance also includes some changes to Section 27-1800 for definitions and measurements to conform the changes. Mr. Wild also stated his support for these proposed.

The third ordinance is related to fence materials, specifically metal panels (un-corrugated or corrugated) are proposed to be added as an allowed fence material in commercial and residential zone districts. The material has become more common as more durable and its ability to withstand hail damage and lasts longer than other common fence materials. The ordinance specifies metal panels must be framed and coated with non-reflective materials.

The final ordinance concerns changes to the sign code. The proposal includes changes to the nonconforming sign section that would allow existing business to change and update their signs so long as the nonconforming aspect of the sign is not increased. New businesses would need to install a conforming sign. The next set of changes in the code will allow a specific amount of wall sign area for each tenant in a building. The current code requires the building owner to allocate this wall sign area across the tenants in the building. This is not a tenable approach to sign budgeting for wall signs. Most building owners do not track tenant signage other than to require the tenant to get permits and comply with sign code. The code amendment keeps the maximum area for any single wall sign regardless of building frontage. The final part of the sign code amendment is related to billboard signs or off-premise signs. The existing code section is built off a moratorium on new off-

premise signs put in place in 1999. This moratorium allowed existing sign owners to receive a sign face "credit" whenever a non-conforming billboard sign was removed. The sign face credits do not expire and can be used by the owner to install a new billboard sign in a conforming location. Lamar Montana has accrued the most sign face credits since the moratorium was put in place. Lamar does look for new locations whenever the market and traffic volumes on arterial streets meet minimum requirements for outdoor advertising. The current billboard sign code allows these types of signs in Corridor Mixed Use 2 (CMU2), Heavy Commercial (CX),

Light and Heavy Industrial (I1 and I2), and on boulevard streets in the EBURD zones. In the CMU2 zone only, there is a minimum separation to a residential zone of 200 feet. If a sign is less than 200 feet, but at least 150 feet from a residential district can be allowed by special review approval. Lamar applied last year for a location of a new back-to-back digital billboard in a parking space in front of the Den on Grand Avenue. The location met the 200-foot rule since the code does not include County zone districts that allow residential use. The West End Task Force learned of the proposed new billboard sign and the application was withdrawn by Lamar. This area of Billings is on the urban/rural interface and there are not many structures or developments to contain the visibility of these types of signs. Staff chose the 700-foot distance to match the distance of two city blocks. In addition, staff is proposing to add County zones that allow residential uses and Planned Development zones that allow residential zones as districts to include in the spacing requirement. Kelly Strobel of Lamar Montana, stated he doubts the staff direction came from the City Council and believes the existing language is protective of the residential neighborhoods in Billings. He stated they applied for a new sign in front of the Den and then the West End Task Force got wind of the new location. Mr. Strobel stated the permit was withdrawn, but he was questioning why the sign was not approved. Allie Carley from Lamar stated the 700-foot separation will be detrimental to their business and to other businesses in the community that rely on billboards for advertising. She stated the Commission should vote to deny this amendment. She stated Lamar is interested in cleaning up the old billboards and converting them to digital sign faces. She stated the amendment will tie their hands by making most of their signs nonconforming. Staff provided clarification on how nonconforming signs can be updated and what is meant by "rebranding". Staff explained the right to continue a nonconforming aspect of a sign for an existing business. Rebranding will not include a company name change since that would be a new business. Rebranding is the creation of a new look and feel for an established product or company. It typically includes changes to a market strategy that include color, design and images. Staff provided information on billboard signs, spacing, and process for identifying nonconforming billboard signs.

The Zoning Commission closed the public hearing. The Zoning Commission members chose to vote on each individual ordinance for its recommendation to the City Council.

On the ordinance concerning front-load garages in the NX1 and NX2 zones, Commission member Trina White made a motion to recommend approval and adoption of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved on a 3-0 vote.

For the ordinance for building and siting standards in Neighborhood and Mixed Residential zone districts,

Commission member Trina White made a motion to recommend approval and adoption of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved in a 3-0 vote.

For the ordinance on fence materials, Commission member Trina White made a motion to recommend approval and adoption of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved in a 3-0 vote.

For the ordinance on sign code amendments, Commission member David Goss made a motion to recommend approval and adoption of the 10 review criteria. There was no second of this motion. A new motion was made by Vice Chair Greg McCall to recommend approval with an amendment to reduce the 700-foot separation to 500 feet for new billboard signs in CMU2 zones and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member David Goss and approved on a 2-1 vote with Commission member Trina White voting against the motion.

Other Business: 1 Zone Change for June meeting and next group of Text Amendments. July 2023 will be moved to July 11, 2023.

Adjournment: The meeting adjourned at 8:24 PM.

ATTEST: To be Approved by a motion at the next regularly scheduled meeting.

--Robbin Bartley, Administrative Assistant

Zoning Commission

Date: 06/06/2023
Title: Zone Change 1027 - Viking Tvetene Planned Development Amendment
Presented by: Nicole Cromwell
Department: Planning & Community Services
Presentation: Yes

Information

RECOMMENDATION

Planning staff recommends approval and adoption of the findings of the 10 review criteria for Zone Change 1027.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

This is a zone change request to amend the underlying Zoning master-plan for the several lots in the Viking Tvetene Planned Development zone generally located south and west of the intersection of East Lane and Elysian Road. The original Planned Development zone was approved by the County Commissioners in 2013 to include land west of Elysian School with underlying zoning of Highway Commercial (HC) and Controlled Industrial (CI), two zone districts that have now been retired. The Planned Development also included a reduced set of allowed uses in both underlying zone districts to protect the school and the surrounding agricultural and residential uses. The property was recently annexed to the city and property has been sold to Elysian School to accommodate the growing campus. This zone change and amendment to the PD agreement will update the names of the owners to include the school district, and a development company along with Viking Land, LLC. The amendment also updates the special agreements in the document and names the city's code for landscaping requirements for parcels that were recently annexed to the city. The amendment will make this agreement easier to interpret and enforce and provide continuing predictability for the school and owners of property in the development and surrounding owners.

The change in the underlying Zoning master-plan will expand the area with underlying HC zoning and decrease the area for the underlying CI zoning. In addition, the two parcels recently purchased by the school will be zoned Public 2 (P2) to match the school's existing zoning. The HC and CI zone districts are archived zone districts in use for all Planned Developments in the city and county. The new zoning code adopted in February 2021 anticipated the need to use these archived zone districts for the 80+ Planned Development zone districts. The owners in these Planned Developments can rely on these archived districts to guide the development within these areas. Section 27-107 of the zoning code does provide language to guide the interpretation of these Planned Development documents:

Section 27-107.D. Planned developments and master site plans approved prior to the effective date.

- 1. Any planned development identified on the zoning map and approved prior to the effective date shall remain valid. Planned developments that refer to zone districts not included in this zoning code shall use the archived zoning code requirements. For example, a reference to an underlying zone district of "community commercial" shall refer to the use table, use standards, and other requirements for that zone district in the archived zoning code.*
- 2. Planned development and master site plan approvals that predate the adoption of this zoning code shall be narrowly interpreted and are limited to the specified terms of approval. Where a term was not defined or a process not specified in the PD or MSP approval, the most closely similar provision of this zoning code shall be applied. For example, if a planned development does not specify a process for amendment, the process for amending planned development approvals in this zoning code will be used.*

Planning staff is recommending approval of the proposed zone change and amendment to the Planned Development agreement. The increase in the underlying HC zone is to accommodate a multifamily development project adjacent to the school property. The HC zone district allows multifamily residential development similar to the retired Residential Multifamily-Restricted (RMF-R) zone district. For example, the original zoning for Riverfront Pointe Estates (east of Mullooney Lane) was Highway Commercial. There is no substantial change in the original findings for this Planned Development except the type of traffic may change from commercial truck traffic to more residential type traffic.

A minor subdivision of the property was approved by the City Council on May 22, 2023. One of the conditions of approval is to require an update to the Traffic Impact Study and road improvements as required to handle the intended type and volume of traffic on adjacent streets and roads. Another condition of the approval requires at least three pedestrian connections to the school property. This will allow any students in the new residential neighborhoods to walk to the school without traveling on a collector or arterial street. The updates and amendments align with the 2016 City Growth Policy to encourage strong neighborhoods with walkable streets and housing choices. In addition, the limitation of uses within both underlying zone districts protects and encourages compatible uses on the property.

STAKEHOLDERS

The applicant conducted a pre-application neighborhood meeting on March 24, 2023, at the Elysian School. Approximately 13 surrounding property owners attended the meeting along with the agents for the owners, IMEG Corp staff Anna Vickers, Matt Suek, and Renae Heisler. The meeting notes are attached.

The Planning staff published a legal ad, posted the property and sent notification to the 69 property owners within the required notice area of 1,320 feet. The Planning staff did not receive any letters, emails or phone calls regarding the proposed zone change.

ALTERNATIVES

The Zoning Commission may:

- Recommend approval and adoption of the findings of the ten review criteria for Zone Change 1027; or,
- Recommend denial and adopt different findings of the ten review criteria for Zone Change 1027; or,
- Delay action on the zone change request for up to 30 days; or,
- Allow the applicant to withdraw the zone change request.

The applicant has not requested a delay or a withdrawal of the application. The Zoning Commission must make a recommendation to the City Council. In the case of a tie vote, the item will be delayed to the next Zoning Commission meeting date.

FISCAL EFFECTS

Approval or denial of the proposed zone change will not have an effect on the Planning Division budget.

SUMMARY

Before making a recommendation to the City Council, the Zoning Commission shall consider the following findings of the 10 review criteria.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following guidelines of the 2016 Growth Policy:

The proposed amendment is also in line with the adopted 2016 Growth Policy goals for:

Essential Investments:

Landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors

Infill development and development near existing City infrastructure may be the most cost-effective

Community Fabric:

Developed landscape areas in commercial areas encourage more pedestrian activity and vibrant commercial activity

Attractive street-scapes provide a pleasant and calming travel experience in urban and suburban neighborhoods

Outdoor public spaces provide casual and relaxing gathering areas for people

Developed landscape areas in commercial areas encourage more pedestrian activity and vibrant commercial activity

Attractive street-scapes provide a pleasant and calming travel experience in urban and suburban neighborhoods

Strong Neighborhoods:

Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, good will and social interaction

Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels

Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale streetlights, street trees and walkable access to public spaces

Home Base:

A mix of housing types that meet the needs of a diverse population is important

Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe

Mobility and Access:

Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings

"Safe Routes to Schools" promotes physical health and reduces vehicle trips, earning parents more time and less cost for transportation

Prosperity:

A diversity of available jobs can ensure a strong Billings' economy

Successful businesses that provide local jobs benefit the community

Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses

Retaining and supporting existing businesses helps sustain a healthy economy

2. Is the new zoning designed to secure from fire and other danger?

The subject property is currently served by the Billings Fire Department. No development has occurred yet but a new city subdivision has been approved. The nearest fire station is located on S 24th Street, approximately 3 miles north of the

subject property. Depending on the specific uses, additional review for fire protection would be conducted during the development process for this property. City water and other improvements will be in place to protect the new uses from fire and other dangers.

3. Whether the new zoning will promote public health, public safety and general welfare?

Public health and public safety will not be affected by the proposed change. The underlying zone districts and prohibited uses will continue to provide predictability and compatibility between uses.

4. Will the new zoning facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements?

Transportation: The existing zoning and new development will increase traffic on East Lane, Elysian Road and Shackelford Lane, the three access roads available to the property. The increase is addressed through the traffic analysis during the recent subdivision. Street and road improvements will be needed as part of the final plat.

Water and Sewerage: The property will be served by city water and sewer. There were issues raised during the annexation or subdivision of the property effecting the provision of water or sewer.

Schools and Parks: The proposed zoning will help protect the Elysian School property and function. The proposed adjacent development will be residential in nature. The School district supports the amendment to the agreement.

Fire and Police: The subject property is serviced by the Billings Fire Department and the Billings Police Department. The Fire Department and BPD commented at the annexation request that additional development will continue to strain current department resources.

5. Will the new zoning provide adequate light and air?

The existing PD zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air. The amendment does not alter these requirements.

6. Will the new zoning effect motorized and non-motorized transportation?

Non-motorized travel -- walking and biking -- is an essential part of the circulation plan for this area of Billings. Elysian Road will be widened and a new multi-use path will be constructed. At least three pedestrian accesses will be provided to Elysian School from the new residential development in the underlying HC zone district. The preliminary traffic impact study identified that all accesses from the development should be stop-controlled intersections and that several surrounding intersections will require improvements either as part of the subdivision or with contributions to improvements in the future. Those contributions will be done at the time of final plat approval.

7. Will the new zoning promote compatible urban growth?

The proposed expansion of the HC zone and the reduction in the CI zone will accommodate the school's anticipated growth and will add more compatible urban growth around the school. The CI zoning will accommodate uses that are in demand in this area of southwest Billings including warehousing.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?

The proposed PD amendment does consider the character of the district and the suitability of the property for the proposed uses. This area of southwest Billings is undergoing rapid development compared to other areas of Billings. The demand for housing choices including townhomes, apartments and smaller single family residences is increasing. The underlying HC zone also allows some retail and personal services that can provide neighborhood services. This area of southwest Billings has limited access to retail and personal services south of the interstate. Subdivisions to the east, Annafeld and parts of Harmony Meadows, have mixed use zoning that can support additional retail and commercial development.

9. Will the new zoning conserve the value of buildings?

The property consists of undeveloped parcels. Approval of the zone change to amend the PD agreement will continue to provide certainty to surrounding landowners and may help to maintain property values of adjacent buildings.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?

The proposed amendment to the PD may encourage the most appropriate use of this land in Billings.

Attachments

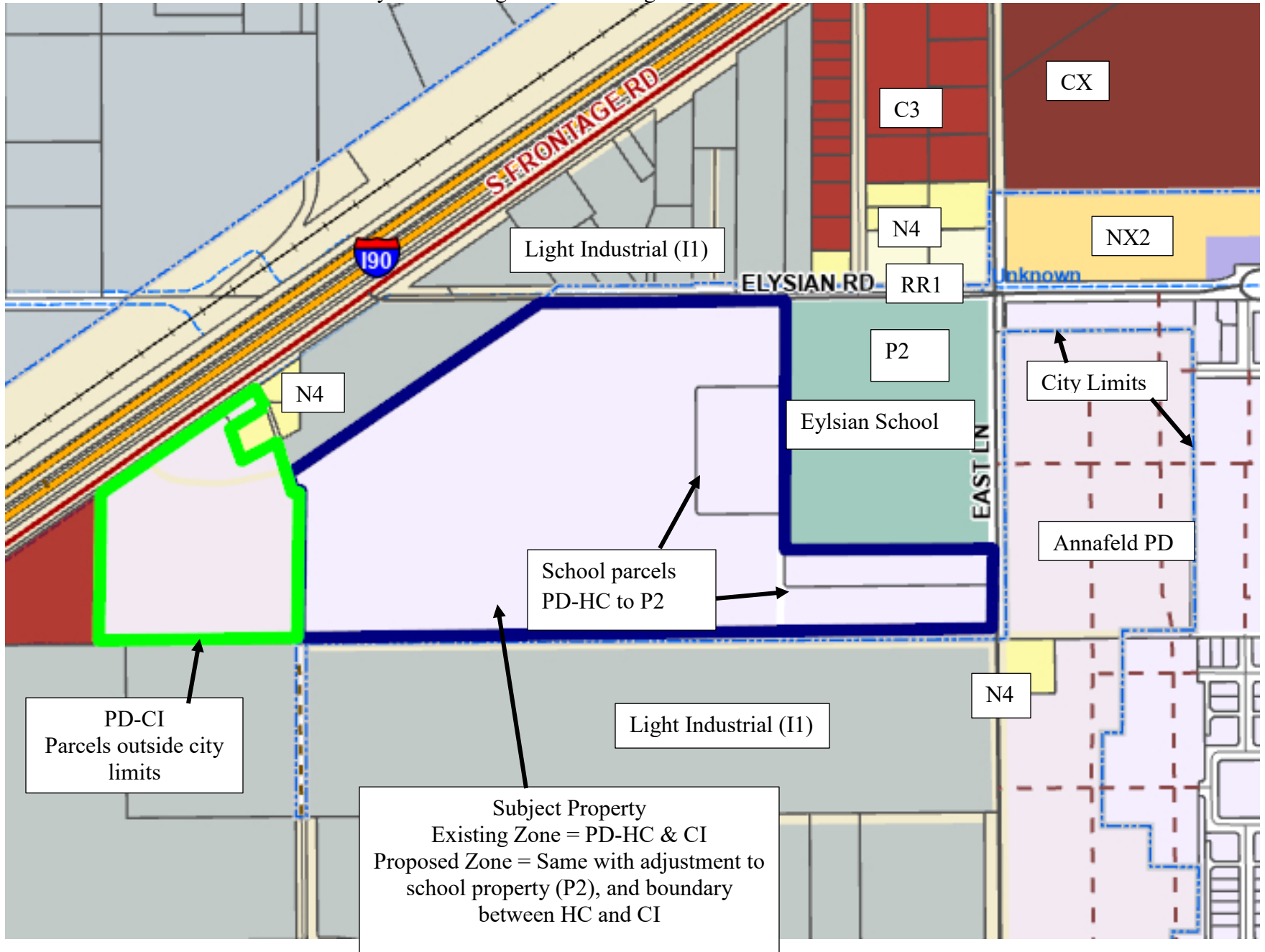
Zoning Map and Site Photos

Existing PD Agreement

Amended PD for city parcels

Pre app meeting notes
Application and Letter

City Zone Change 1027 – Viking Tvetene PD Amendment

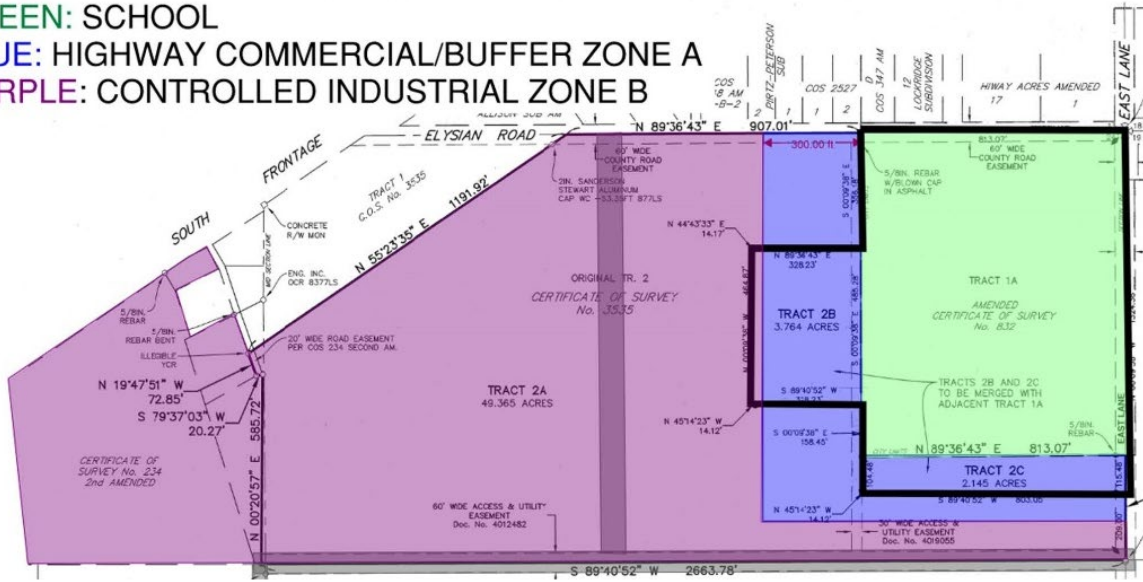




Subject Property

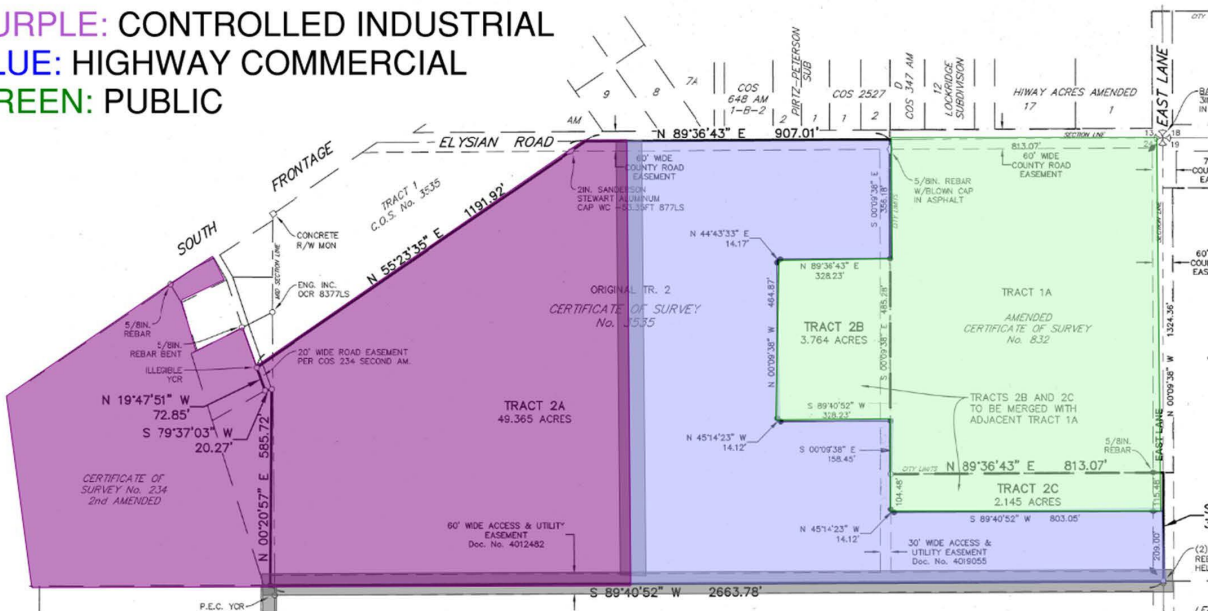
EXISTING ZONING

GREEN: SCHOOL
BLUE: HIGHWAY COMMERCIAL/BUFFER ZONE A
PURPLE: CONTROLLED INDUSTRIAL ZONE B



PROPOSED ZONING

PURPLE: CONTROLLED INDUSTRIAL
BLUE: HIGHWAY COMMERCIAL
GREEN: PUBLIC





Subject Property view south from Elysian Rd



View south and west from Elysian Rd



View west on Elysian Rd



View north across Elysian Rd



View north and east across Elysian Rd



View east on Elysian Rd – Elysian School



View north west from East Lane



View south east from Elysian Rd

Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

PLANNED DEVELOPMENT AGREEMENT

TRACTS 2, 3, 4, AND 5, OF CERTIFICATE OF SURVEY NO. 234, SECOND AMENDED, AND TRACT 6-A OF AMENDED TRACTS 6 AND 7, CERTIFICATE OF SURVEY NO. 234, SECOND AMENDED IN YELLOWSTONE COUNTY, MONTANA

THIS AGREEMENT is made and entered into this 30 day of April, 2013, by and between **Viking Land, LLC**, whose address for the purpose of this agreement is 6844 South Frontage Road, hereinafter referred to as "Owner," and **Yellowstone County, Montana**, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, the owner is in discussions with the Elysian School District No. 23 regarding a potential sale of a portion of the owners property to the school district for the purposes of expansion of the existing Elysian School.

WHEREAS, the School District and the Owner desire to provide for harmonious development of the property with land uses and restrictions acceptable to both parties.

WHEREAS, the undersigned is the Owner of all of Tracts 2, 3, 4, and 5 of Certificate of Survey No. 234, Second Amended and Tract 6-A of Amended Tracts 6 and 7, Certificate of Survey No. 234, Second Amended in Yellowstone County.

WHEREAS, the aforesaid Owner and the County desire to place building and use restrictions on the above-described property, as provided in this agreement.



THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporations, or other entities, who shall hereafter acquire any interest in and to the above described property, in whole, or in part, shall be taken and held to agree, to conform to, and observe the following land uses, restrictions, and other stipulations as to the use thereof, and as the construction of improvements thereon.

II. LAND USES AND BUILDING RESTRICTIONS

Unless expressly designated below, all other standards or requirements of the Yellowstone County's Zoning Ordinance shall be followed for the type of use within each of the areas described herein.

- A. Restricted Use **School Buffer Zone A** and **School Purchase Parcel** as depicted on attached **Exhibit A** (underlying county zone: Highway Commercial - HC).

All allowed land uses as outlined within the Yellowstone County Zoning Regulations for the underlying Zone shall be allowed within the **School Buffer Zone A** and **School Purchase Parcel**, with the following exceptions (SIC numbers noted are as defined by the "*Standard Industrial Classification Manual*", 1987 Edition by the Executive Office of the President, O.M.B.):

Exceptions (uses not allowed) within School Buffer Zone A and School Purchase Parcel:

Division A: Agriculture, Forestry, and Fishing

Group 07 - Agricultural Services

- Veterinary services for Livestock - Boarding
- Veterinary services for Animal specialists - Boarding

Group 08 - Forestry

- Equipment storage and wholesale sales

**Division B: Mining**

- Construction sand and gravel mining (SIC 1442)

Division C: Construction

Group 16 - Heavy Construction Other Than Building Construction - Contractors

- Open storage of equipment and supplies

Division D: Manufacturing

Group 20 - Food and Kindred Products

Alcoholic beverages manufacturing & bottling (SIC 2082, 2083, 2084, 2085)

Group 21 - Tobacco Products

- Offices only

Group 24 - Lumber and Wood Products, Except Furniture

- Hardwood and special product sawmills (2426, 2429)
- Millwork, plywood veneer, wood members manufacture (2431, 2435, 2436, 2439)
- Wood Buildings and Mobile home manufacture (245)

Group 28 Chemicals and Allied Products

- Growing, harvesting, or selling of Marijuana based products

Group 31 - Leather and Leather Products

Division E: Transportation, Communications, Electric, Gas, and Sanitary Sewer

Group 41 - Local & Suburban Transit & Interurban Highway Passenger Transportation

- Bus terminal operation only, without maintenance facilities (4173)

Group 42 - Motor Freight Transportation and Warehousing

- Trucking terminal and maintenance facilities (421, 423)

Group 43 - U.S. Postal Service

- With truck terminal

Group 46 - Pipelines, except natural gas

Group 47 - Transportation services

- Warehouses, terminals

Group 48 - Communications

- Amateur Radio Antenna Support Structures
- Broadcast antenna or tower farms



- Group 48 - Commercial Antenna Support Structures
 - Tower farms
- Group 49 - Electric, Gas, and Sanitary Services
 - Transmission and distribution, electric and gas

Division F: Wholesale Trade

- Group 51 - Wholesale Trade - Nondurable Goods
 - Groceries; beer, wine and distilled beverages (514, 518)
 - Tobacco and tobacco products; (5194)

Division G: Retail Trade

- Group 52 - Building Materials, Hardware, Garden Supply, and Mobile Home Dealers
 - Mobile home dealers (manufactured homes) (527)
- Group 58 - Eating and Drinking Places
 - With the sale of beer and wine only for on-premise consumption, without gaming
 - With the sale of beer and wine only for on-premise consumption, with gaming
 - With the sale of all alcoholic beverages for on-premise consumption, with gaming
- Group 59 - Miscellaneous Retail (Strictly Carryout)
 - Fuel dealers (598)

Division I: Services

- Group 70 - Hotels, Rooming Houses, Camps, and Other Lodging Places
 - Rooming, boarding houses; organization hotels and lodging houses, on a membership basis (702, 704)
 - Camps and recreational vehicle parks (703)
- Group 72 - Personal Services
 - Funeral service and crematories (726)
- Group 78 - Motion Pictures
 - Drive-in motion picture theaters (7833)

- B.** Restricted use **Zone B** as depicted on attached **Exhibit A** (underlying county Zone: controlled Industrial - CI)



All allowed land uses as outlined within the Yellowstone County Zoning regulations for the underlying zone shall be allowed within the restricted use **Zone B**, with the following exceptions:

Exceptions (uses not allowed) within restricted use Zone B:

Division A: Agriculture, Forestry, and Fishing

Group 09 - Fishing, Hunting, and Trapping

- Fish hatcheries and preserves (092)

Division B: Mining

- Construction sand and gravel mining (1442)

Division D: Manufacturing

-

Group 21 - Tobacco Products

- Offices only

Group 24 - Lumber and Wood Products, Except Furniture

- Hardwood and special product sawmills (2426, 2429)
- Millwork, plywood veneer, wood members manufacture (2431, 2435, 2436, 2439)

Group 28 - Chemicals and Allied Products

- Growing, harvesting or selling of Marijuana based products

Group 31 - Leather and Leather Products

- Offices only

Division E: Transportation, Communications, Electric, Gas, and Sanitary Sewer

Group 40 - Railroad Transportation

- Passenger and freight terminals

Group 46 - Pipelines, Except Natural Gas

The following uses are allowed within the Restricted Use Zone B, with special review approval:

Division D: Manufacturing



Group 20 - Food and Kindred Products

- Alcoholic beverages manufacturing and bottling (2082, 2083, 2084, 2085) By Special Review

Group 41 - Local & Suburban Transit & Interurban Highway Passenger Transportation

- Bus terminal operation only, without maintenance facilities (4173)
- By Special Review

Division F: Wholesale Trade

Group 51 - Wholesale Trade - Nondurable Goods

- Groceries; beer, wine and distilled beverages (514, 518) - By Special Review
- tobacco and tobacco products; (5194) By Special Review

IV. LANDSCAPING REQUIREMENTS

Unless expressly designated below, all landscaping and performance standards as outlined within section 27-1101 of the Yellowstone County's Zoning ordinance shall be followed as required within the underlying county zone outlined herein, with the following exceptions:

A. School Buffer Zone A

Within the **School Buffer Zone A** as depicted on attached Exhibit A, regardless of the size of the development, a bufferyard shall be provided on the common boundary with the Elysian School property which shall include

- 15' Minimum width bufferyard
- Three trees per 40 lineal feet
- 6' sight obscuring fence or wall located on property.

The bufferyard shall be required at the time of development of the property adjacent to the Elysian School Purchase Parcel.

V. OTHER SPECIAL AGREEMENTS

A. Access



PLANNED DEVELOPMENT AGREEMENT

TRACT 2A OF COS 3535 AMENDED, AND TRACT 1A-1 OF COS 832 AMENDED IN YELLOWSTONE COUNTY, MONTANA

THIS AGREEMENT is made and entered into this ___ day of _____, 2023, by and between **Development 55, LLC**, whose address for the purpose of this agreement is 2210 N Plaza Drive, Rapid City, SD 57701, hereinafter referred to as “Owner.” **Elysian School District #23, Billings, Montana** whose address for the purpose of this agreement is 6416 Elysian Road, Billings Montana 59101 hereinafter referred to as “School.” And the **City of Billings**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the School and the Owner desire to provide for harmonious development of the property with land uses and restrictions acceptable to both parties.

WHEREAS, the undersigned are the owners of Tract 2A of COS 3535 Amended, and Tract 1A-1 of Certificate of Survey No. 832, Amended in the City of Billings.

WHEREAS, the aforesaid Owner, School, and City desire to amend and supplement the existing Planned Development Agreement recorded as Document Number 3666419, on file and of record at the Yellowstone County Clerk and Recorder’s Office, as provided within this agreement.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporation, or other entities, who shall hereafter acquire any interest in and to the above-described property, in whole, or in part, shall be taken and held to agree, to conform to, and observe the following land uses, restrictions, and other stipulations as to the use thereof, and as the construction of improvements thereon.

II. LAND USES AND BUILDING RESTRICTIONS

Unless expressly designated below, all other standards or requirements of the 2019 Yellowstone County’s Zoning Ordinance shall be followed for the type of use within each of the areas described herein.

- A.** Restricted Use **School Buffer Zone A** as depicted on attached **Exhibit A** (underlying county zone: Highway Commercial – HC).

All allowed land uses as outlined within the Yellowstone County Zoning Regulations for the underlying Zone shall be allowed within the **School Buffer Zone A** with the following exceptions (SIC numbers noted are as defined by the “*Standard Industrial Classification Manual*”, 1987 Edition by the Executive Office of the President, O.M.B.):

Exceptions (uses not allowed) within School Buffer Zone A:

Division A: Agriculture, Forestry, and Fishing

Group 07 – Agricultural Services

- Veterinary services for Livestock – Boarding
- Veterinary services for Animal specialists – Boarding Group 08 – Forestry
- Equipment storage and wholesale sales

Division B: Mining

- Construction sand and gravel mining (SIC 1442)

Division C: Construction

Group 16 – Heavy Construction Other Than Building Construction – Contractors

- Open storage of equipment and supplies

Division D: Manufacturing

Group 20 – Food and Kindred Products

Alcoholic beverages manufacturing & bottling (SIC 2082, 2083, 2084, 2085)

Group 21 – Tobacco Products

- Offices only

Group 24 – Lumber and Wood Products, Except Furniture

- Hardwood and special product sawmills (2426, 2429)
- Millwork, plywood veneer, wood members manufacture (2431, 2435, 2436, 2439)
- Wood Buildings and Mobile home manufacture (245)

Group 81 – Chemicals and Allied Products

- Growing, harvesting, or selling of Marijuana based products

Group 24 – Leather and Leather Products

Division E: Transportation, Communications, Electric, Gas, and Sanitary Sewer

Group 41 – Local & Suburban Transit & Interurban Highway Passenger Transport

- Bus terminal operation only, without maintenance facilities (4173)

Group 42 – Motor Freight Transportation and Warehousing

- Trucking terminal and maintenance facilities (421, 423)

Group 43 – U.S. Postal Service

- With truck terminal

Group 46 – Pipelines, except natural gas

Group 47 – Transportation services

- Warehouses, terminals

Group 48 – Communications

- Amateur Radio Antenna Support Structures

- Broadcast antenna or tower farms
- Group 49 – Electric, Gas, and Sanitary Services
- Transmission and distribution, electric and gas

Division F: Wholesale Trade

- Group 51 – Wholesale Trade – Nondurable Goods
- Groceries; beer, wine and distilled beverages (514, 518)
- Tobacco and tobacco products; (5149)

Division G: Retail Trade

- Group 52 – Building Materials, Hardware, Garden Supply, and mobile Home Dealers
- Mobile home dealers (manufactured homes) (527)
- Group 58 – Eating and Drinking Places
- With the sale of beer and wine only for on-premise consumption, without gaming
- With the sale of beer and wine only for on-premise consumption, with gaming
- With the sale of alcoholic beverages for on-premise consumption, with gaming
- Group 59 – Miscellaneous Retail (Strictly Carryout)
- Fuel dealers (598)

Division I: Services

- Group 70 – Hotels, Rooming Houses, Camps, and Other Lodging Places
- Roaming, boarding houses; organization hotels and lodging houses, on a membership basis (702, 704)
- Camps and recreational vehicle parks (703)
- Group 72 – Personal Services
- Funeral service and crematories (726)
- Group 78 – Motion Pictures
- Drive-in motion picture theaters (7833)

B. Restricted use **Zone B as depicted on attached **Exhibit A** (underlying county zone: Controlled Industrial – CI)**

All allowed land uses as outline within 2019 Yellowstone County Zoning regulations for the underlying zone shall be allowed within the restricted use **Zone B**, with the following exceptions:

Exceptions (uses not allowed) within restricted use **Zone B:**

Division A: Agriculture, Forestry, and Fishing

- Group 09 – Fishing, Hunting, and Trapping
- Fish hatcheries and preserves (092)

Division B: Mining

- Construction sand and gravel mining (1442)

Division D: Manufacturing

Group 21 – Tobacco Products

- Offices only

Group 24 – Lumber and Wood Products, Except Furniture

- Hardwood and special product sawmills (2426, 2429)
- Millwork, plywood veneer, wood members manufacture (2431, 2435, 2436, 2439)
- Wood Buildings and Mobile home manufacture (245)

Group 81 – Chemicals and Allied Products

- Growing, harvesting, or selling of Marijuana based products

Group 24 – Leather and Leather Products

- Offices only

Division E: Transportation, Communications, Electric, Gas, and Sanitary Sewer

Group 40 – Railroad Transportation

- Passenger and freight terminals

Group 42 – Pipelines, Except Natural Gas

The following uses are allowed within the Restricted Use Zone B, with special review approval:

Division D: Manufacturing

Group 20 – Food and Kindred Products

- Alcoholic beverages manufacturing and bottling (2082, 2083, 2084, 2085) By Special Review

Group 41 – Local & Suburban Transit & Interurban Highway Passenger Transportation

- Bus terminal operation only, without maintenance facilities (4173)
- By Special Review

Division F: Wholesale Trade

Group 51 – Wholesale Trade – Nondurable Goods

- Groceries; beer, wine and distilled beverages (514, 518) – By Special Review
- Tobacco and tobacco products; (5149) By Special Review

III. LANDSCAPING REQUIREMENTS

Unless expressly designated below, all landscaping, buffering, and screening standards as outlined within Article 27-1200 of the 2021 City of Billings Zoning Code shall be followed as required with the following exceptions:

A. School Buffer Zone “A”

Within the School Buffer Zone “A” as depicted on the attached Exhibit “A,” a residential development is not required to install an opaque screen fence or open fence adjacent to the School’s property.

IV. OTHER SPECIAL AGREEMENTS

A. Access

Vehicular Access onto Elysian Road and East Lane from School Buffer Zone A and Restricted Use Zone B shall be a minimum of 150 feet from the **School**.

[Left intentionally blank, signature pages to follow]

IN THE WITNESS WHEREOF, the OWNERS have set their hands and official seals on this _____ day of _____, 2023.

“OWNER”

DEVELOPMENT 55, LLC

By: _____

Its: _____

STATE OF _____)

: ss

County of _____)

On this ___ day of _____, 2023, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the _____ of **DEVELOPMENT 55, LLC** who executed the foregoing instrument and acknowledged to me he/she executed the same.

SS _____

[Intentionally blank with signatures on the following pages]

IN THE WITNESS WHEREOF, the SCHOOL have set their hands and official seals on this _____ day of _____, 2023.

“SCHOOL”

ELYSIAN SCHOOL DISTRICT #23, BILLINGS, MONTANA

Luke Shelton, Superintendent of Elysian
School District #23, Billings, Montana

STATE OF _____)

: ss

County of _____)

On this ___ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Luke Shelton, known to me to be the Superintendent of **ELYSIAN SCHOOL DISTRICT #23, BILLINGS, MONTANA** who executed the foregoing instrument and acknowledged to me he executed the same.

SS _____

[Intentionally blank with signatures on the following pages]

Viking Land, LLC as a party of the existing agreement recorded as Document Number 3666419 hereby recognizes and accepts the amendments identified within this document.

I hereby set my hand on this _____ day of _____, 2023.

VIKING LAND, LLC

By: _____

Its: _____

STATE OF _____)

: ss

County of _____)

On this ___ day of _____, 2023, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the _____ of **VIKING LAND, LLC** who executed the foregoing instrument and acknowledged to me he/she executed the same.

SS _____

[Intentionally blank with signatures on the following pages]

This agreement is hereby approved and accepted by the City of Billings, this _____ day of _____, 2023.

“CITY”

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF _____)

: ss

County of _____)

On this ___ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

SS _____

[Left intentionally blank]



MEETING NOTES

Date	March 24, 2023
Project	Elysian Subdivision Zone Change
Project Number	22008916.01
Attendees	Anna Vickers, Matt Suek, Renae Heisler

Arlynn Lafurge, Mike Lahey, Luke Shelton, Scott Lawson, Jolynn Lawson, Tammy Cosgrove, Arliss Keller, Janna Ostermiller, Tracy Ostermiller, Mike Fouch, Linda Buckaman, G. Armstrong, T. Tafoya

ANNA: Started Presentation

Mike L.: In relation to the school is this located to the east?

Scott: No this is south of the school.

Arlynn: This is going on the other side of east lane

Scott: Looking at the school from Elysian this is going left of the school then?

Matt: Let's let Anna get through the presentation, because she may answer some of these questions in this presentation.

IMEG: *please see included presentation slides.*

Arliss: So, you are essentially just moving the buffer zone out more?

IMEG: That's correct, the school's boundary line relocation took some of the property that was initially set up within the PUD as a buffer zone. The desired result is to adjust buffer zone A that has an underlying zoning of Highway Commercial to the spot shown.

Arliss: Lot 4 is not going to contain residential homes, right?

IMEG: Lot 4 has the potential to contain residential homes along with all other allowable uses within highway commercial that are not excluded through the Planned Development Agreement. At this point the use of Lot 4 is unknown.

Mike F.: Are all 5-lot going to be annexed into the city?

IMEG: Yes, the proposed 5-lots are slated to be annexed into the city.

Arlynn: Are we all going to annexed into the city as well?

IMEG: No, annexation will only be applicable to the area proposed to be subdivided.

T. Tafoya: My biggest concern is how will this affect the traffic that is already so bad out here?

IMEG: I can understand that would be a concern. During the subdivision process there is a requirement to undergo a traffic impact study. This study includes a number of intersections in the area, as you see in the map. At this point, the extent of this

particular development's effect on traffic is unknown. What we have learned in the study is what you say, traffic is already bad in this area.

T. Tafoya: With the new development down the road, we have people that drive down Elysian going 60 MPH now.

Anna: Have you tried calling the police department?

T. Tafoya: We call it in, but the Sheriffs don't want anything to do with it.

Scott: So, with the traffic are you guys responsible for making changes based on your traffic impact study?

IMEG: As part of subdivision, the developer will be required to contribute a sum or provide improvements associated with the development. This sum or improvements are dictated to us from City Public Works or MDT. Typically, a sum is provided to the City. How the City chooses to spend that money is not determined by us.

T. Tofoya: But how are you going to make that happen when we had to fight tooth and nails for the county to even put in a cross walk at Elysian Rd, just so that the kids could safely get to school.

IMEG: As part of subdivision, we must have sidewalks.

Tracy: We used to let our kids play out in the street all the time and now we are so worried that someone speeding down the road not paying attention will hit a child.

T. Tofoya: I really think East Lane and Elysian need a four way stop.

T. Tofoya: How many more kids will be using the school?

IMEG: It's unknown at this time. But we have had conversations with the school who is excited at the prospect of additional students.

Mike: The city has already approved all of this?

IMEG: No, this meeting is a preliminary step in the process. In order of operations, we have to have this meeting regarding zoning before submittal of items to the City for the zone change.

Tracy: I mean you guys have already started to put in utilities on the lots.

IMEG: Those were not done by us. Those were done by a different owner.

T. Tofoya: Going back to the traffic who is going to be responsible for maintaining the roads with all the additional truck traffic, I see how much damage those big trucks do to our roads.

IMEG: As part of annexation the portion of roadways adjacent to the property will be annexed as well. So Elysian Road, East Lane, and Shackelford Lane will all be City maintained roads. Frontage Road is a state maintained road.

T. Tafoya: So, do you also have to contribute money to the school like you would with the traffic

IMEG: Contributions to the school are paid through taxes, so yes.



Janna: No one seems to really know what city is and what is the county out here

Scott: Is this going to affect our taxes

IMEG: It shouldn't be we are not tax assessors.

Arlynn: So where are the schools additional 6 acres

IMEG: *Reference to the BLR from the school.*

Janna: What exactly are the uses for controlled industrial and highway commercial

IMEG: The Planned Development Agreement makes the uses on this property be more restrictive than typical zoning. Additionally, Controlled Industrial is a lot like what it states a lot of commercial offices. Highway commercial is the allowances within that designation of zoning if not restricted by the Development agreement. This allows for commercial uses, such as offices and also for residential uses.

T. Tofoya: So that means that no bars and stuff like that will be allowed in these lots

IMEG: There's restrictions on alcohol and marijuana sales within the development agreement.

T. Tofoya: Another one of my major concerns is the wildlife, when I moved out here you would always see deer and other animals and now it is very rare to see any wildlife.

Janna: I mean the new developments have already started to push out all the wildlife

IMEG: As part of zoning, we are required to assess items such as accordance with the growth policy, neighborhood character and uses, typically assessment of wildlife is something that is done within the subdivision and will be done within the subdivision. But as you've mentioned, unfortunately, much of the wildlife has already left the area due to prior developments.

Luke: My name is Luke Shelton I am the superintendent here at Elysian Schools and I have been in conversation with Anna and the School Board, and I know that there have been a lot of concerns about the buffer zone, but I just want you all to know that the school board is very on board with this new buffer zone. We all think that this is very favorable for all parties.

Tracy: How is this going to affect the crime in our neighborhood? We used to be able to keep our doors always unlocked, and now as soon as we get home have to lock our doors. We used to let our kids out to play and now we can't even let them out without worrying about them.

IMEG: Crime is a concern everywhere in the City. As the property lies right now, these two zonings are allowed. All this proposal does is allow for a larger buffer zone. This would benefit the school and the potential developer. And at least have two known uses on two of the lots. One being a fulfillment center and the other being residential. Otherwise this property will continue to have it's existing zoning and someone else could develop it and that use is unknown.

Scott: The city limits will stay the same for our properties, correct?



IMEG: If your property is part of the City it will remain in the City. If your property is part of the County it will remain in the County.

Arlynn: What is going to happen to the population of the school, and will the school be able to handle it?

IMEG: The number of new students is currently unknown. The school has indicated a desire for new students.

Arlynn: Who exactly are you representing in this meeting?

IMEG: We are here on behalf of the prospective buyer of the property to discuss the zoning change.

IMEG discussed next steps regarding school board meeting on April 3. Compilation and submittal of the zone change request. City Planning Department review of the zone change request. Future notification regarding a public hearing of the zone change request. And the ability for anyone to reach out via email or phone call in order to ask questions or receive the presentation information. Meeting was then concluded.





ATTENDANCE RECORD

IMEG #: 22008916.00

Project: Elysian Subdivision

Meeting Description: Pre-application Neighborhood Meeting

Date: 03/24/2023 Time: 5:30 p.m.

Place: Elysian Elementary School

ATTENDEE NAME	PHONE #	E-MAIL
Aelynn LaFuege	406-697-1477	aelynn.lafuege@gmail.com
MIKE LAHEY	406 672 7732	
Luba Shultz	656-4101	w/ Elysian school
Scott Lawson	698 5047	
Jolynn Lawson	670 1319	
Tammy Cosgrove	406 861-0902	Tammy Cosgrove FR eg medicine



ATTENDANCE RECORD

IMEG #: 22008916.00

Project: Elysian Subdivision

Meeting Description: Pre-application Neighborhood Meeting

Date: 03/24/2023 Time: 5:30 p.m.

Place: Elysian Elementary School

ATTENDEE NAME	PHONE #	E-MAIL
Aelynn LaFuege	406-697-1477	ARlynn.LaFuege@Gmail.com
MIKE LAHEY	406 672 7732	
Luba Shultz	656-4101	w/ Elysian school
Scott Lawson	698 5047	
Jolynn Lawson	670 1319	
Tammy Cosgrove	406 861-0902	Tammy Cosgrove FR eg medicine



ATTENDANCE RECORD

IMEG #: 22008916.00

Project: Elysian Subdivision

Meeting Description: Pre-application Neighborhood Meeting

Date: 03/24/2023 Time: 5:30 p.m.

Place: Elysian Elementary School

ATTENDEE NAME	PHONE #	E-MAIL
Arhiss Keller	696 2654	
Janna Ostermiller	671 5512	
Troy Ostermiller	671-0054	
MIKE FOUCH	425-1661	
Linda Buckman	690 1432	



ATTENDANCE RECORD

IMEG #: 22008916.00

Project: Elysian Subdivision

Meeting Description: Pre-application Neighborhood Meeting

Date: 03/24/2023 Time: 5:30 p.m.

Place: Elysian Elementary School

ATTENDEE NAME	PHONE #	E-MAIL
G. ARMSTRONG	406.655.4439	GARMSTRONG@IN-TECH.COM
T. Tafors	406-647-3861	

Pre-Application Statement of Owner(s) or Agent(s)

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a completed zone change application packet, including any required fees, for a zone change to be processed by the Planning Division.

1. **Present Zoning:** Planned Development Agreement

2. **Written description of the Zone Change Plan** including existing and proposed new zoning:

The existing zoning provides for highway commercial underlay of school restricted use buffer zone A and controlled industrial underlay of school restricted use buffer zone B. The proposed zoning provides both of these zoning types but relocates the boundary of restricted use buffer zone A and buffer zone B to accommodate for the school's growth that's occurred since 2013, when the original agreement took place. Additionally, the expansion of highway commercial with buffer zone A allows for potential residential uses adjacent to the school.

3. **Subject Property Map:** please attach to this form

4. **Legal Description of Property:**

Parcel 1A1 of COS 832 (Amd), Parcel 2A of COS 3535 Amended,

Tracts 2, 3, 4, and 5 of COS 234 Second Amendment in Section 24, Township 1 south, Range 25 east, PMM, Yellowstone County, MT

5. **Neighborhood Task Force Area:** Yes // (No) If Yes, Name of Task Force and mailing address of Chairperson:

6. **Roster of persons who attended the pre-application neighborhood meeting:** please attach to this form

7. **A copy of the meeting notice.** please attach to this form

8. **A brief synopsis of the meeting results including any written minutes or audio recording.** please attach to this form

9. **The undersigned affirm the following:**

1) The pre-application neighborhood meeting was held on the 24th, day of March, 2023.

2) The zone change application is based on materials presented at the meeting.

Owner (s): Viking Land, LLC; Development 55, LLC, Elysian Telephone: _____
School District #23, Billings, Montana, and Cogburn Holdings, LLC - Under contract

Address: 6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101; 2210 N Plaza Dr. Rapid City, SD 57701 **Email:** _____

Agent (s): IMEG Corp - Anna Vickers Telephone: 406-248-9000

Address: 175 N 27th St. Ste 1312, Billings, MT 59101 **Email:** anna.m.vickers@imegcorp.com

APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #** _____ **- Project #** _____

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning Planned Development Agreement

Proposed Zoning: Planned Development Agreement

TAX ID# D008620, D008600, D008560, D008570 CITY ELECTION WARD _____

Legal Description of Property: Parcel 1A1 of COS 832 (Amd), Parcel 2A of COS 3535 Amended,
in Section 24, Township 1 south, Range 25 east, PMM, Yellowstone County, MT

Address or General Location (If unknown, contact City Engineering): 6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101

Size of Parcel (Area & Dimensions): 62.55 (see included)

Present Land-Use: Industrial, School, and vacant

Proposed Land-Use: Industrial, School, Residential, and unknown

Covenants or Deed Restrictions on Property: Yes _____ No x _____

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Viking Land, LLC, Development 55, LLC, Cogburn Holdings, LLC (Under contract with Development 55), and Elysian School

(Recorded Owner)

6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101; 2210 N Plaza Dr. Rapid City, SD 57701
(Address)

(Phone Number)

(email)

Agent(s): IMEG Corp - Anna Vickers

(Name)

175 N 27th St. Ste 1312, Billings, MT 59101

(Address)

406-248-9000

anna.m.vickers@imegcorp.com

(Phone Number)

(email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: _____ Date: _____

(Recorded Owner)



Date Stamp

APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #** _____ **- Project #** _____

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning Planned Development Agreement

Proposed Zoning: Planned Development Agreement

TAX ID# D008620, D008600, D008560, D008570 CITY ELECTION WARD _____

Legal Description of Property: Parcel 1A1 of COS 832 (Amd), Parcel 2A of COS 3535 Amended,
in Section 24, Township 1 south, Range 25 east, PMM, Yellowstone County, MT

Address or General Location (If unknown, contact City Engineering): 6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101

Size of Parcel (Area & Dimensions): 62.55 (see included)

Present Land-Use: Industrial, School, and vacant

Proposed Land-Use: Industrial, School, Residential, and unknown

Covenants or Deed Restrictions on Property: Yes _____ No x _____

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Viking Land, LLC, Development 55, LLC, Cogburn Holdings, LLC (Under contract with Development 55), and Elysian School

(Recorded Owner)

6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101; 2210 N Plaza Dr. Rapid City, SD 57701
(Address)

(Phone Number)

(email)

Agent(s): IMEG Corp - Anna Vickers

(Name)

175 N 27th St. Ste 1312, Billings, MT 59101

(Address)


406-248-9000

anna.m.vickers@imegcorp.com

(Phone Number)

(email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature:  Authorized Signer: Cogburn Holdings Date: 4/14/2023
(Recorded Owner)



Date Stamp

APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #** _____ **- Project #** _____

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning Planned Development Agreement

Proposed Zoning: Planned Development Agreement

TAX ID# D008620, D008600, D008560, D008570 CITY ELECTION WARD _____

Legal Description of Property: Parcel 1A1 of COS 832 (Amd), Parcel 2A of COS 3535 Amended,
in Section 24, Township 1 south, Range 25 east, PMM, Yellowstone County, MT

Address or General Location (If unknown, contact City Engineering): 6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101

Size of Parcel (Area & Dimensions): 62.55 (see included)

Present Land-Use: Industrial, School, and vacant

Proposed Land-Use: Industrial, School, Residential, and unknown

Covenants or Deed Restrictions on Property: Yes _____ No x _____

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Viking Land, LLC, Development 55, LLC, Cogburn Holdings, LLC (Under contract with Development 55), and Elysian School

(Recorded Owner)

6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101; 2210 N Plaza Dr. Rapid City, SD 57701

(Address)

(Phone Number)

(email)

Agent(s): IMEG Corp - Anna Vickers

(Name)

175 N 27th St. Ste 1312, Billings, MT 59101

(Address)

406-248-9000

anna.m.vickers@imegcorp.com

(Phone Number)

(email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: 

(Recorded Owner)

Authorized Signatory,
Development 55 LLC

Date: 4/14/2023



Date Stamp

APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #** _____ **- Project #** _____

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning Planned Development Agreement

Proposed Zoning: Planned Development Agreement

TAX ID# D008620, D008600, D008560, D008570 CITY ELECTION WARD _____

Legal Description of Property: Parcel 1A1 of COS 832 (Amd), Parcel 2A of COS 3535 Amended,
in Section 24, Township 1 south, Range 25 east, PMM, Yellowstone County, MT

Address or General Location (If unknown, contact City Engineering): 6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101

Size of Parcel (Area & Dimensions): 62.55 (see included)

Present Land-Use: Industrial, School, and vacant

Proposed Land-Use: Industrial, School, Residential, and unknown

Covenants or Deed Restrictions on Property: Yes _____ No x _____

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Viking Land, LLC, Development 55, LLC, Cogburn Holdings, LLC (Under contract with Development 55), and Elysian School

(Recorded Owner)

6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101; 2210 N Plaza Dr. Rapid City, SD 57701

(Address)

(Phone Number)

(email)

Agent(s): IMEG Corp - Anna Vickers

(Name)

175 N 27th St. Ste 1312, Billings, MT 59101

(Address)

406-248-9000

anna.m.vickers@imegcorp.com

(Phone Number)

(email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: 
(Recorded Owner)

Authorized Signatory,
Viking Land LLC

Date: 4/14/2023



Date Stamp

APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #** _____ **- Project #** _____

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning Planned Development Agreement

Proposed Zoning: Planned Development Agreement

TAX ID# D008620, D008600, D008560, D008570 CITY ELECTION WARD _____

Legal Description of Property: Parcel 1A1 of COS 832 (Amd), Parcel 2A of COS 3535 Amended,
in Section 24, Township 1 south, Range 25 east, PMM, Yellowstone County, MT

Address or General Location (If unknown, contact City Engineering): 6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101

Size of Parcel (Area & Dimensions): 62.55 (see included)

Present Land-Use: Industrial, School, and vacant

Proposed Land-Use: Industrial, School, Residential, and unknown

Covenants or Deed Restrictions on Property: Yes _____ No x _____

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Viking Land, LLC, Development 55, LLC, Cogburn Holdings, LLC (Under contract with Development 55), and Elysian School

(Recorded Owner)

6844 South Frontage Rd. Billings, MT 59101; 6416 Elysian Rd. Billings, MT 59101; 2210 N Plaza Dr. Rapid City, SD 57701

(Address)

(Phone Number)

(email)

Agent(s): IMEG Corp - Anna Vickers

(Name)

175 N 27th St. Ste 1312, Billings, MT 59101

(Address)


406-248-9000

anna.m.vickers@imegcorp.com

(Phone Number)

(email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature:  Elysian School District #23 Date: 4/15/2023

(Recorded Owner)

Superintendent



Date Stamp

Billings Zone Change Application Packet Elysian PUD Rezoning

Summary:

The new zoning is a restructuring of the old zoning PUD. The restructure of the layout accommodates Elysian School's expansion of property. The original PUD that was negotiated between Elysian School and Viking Land allowed for a School Buffer Zone 'A'. This buffer zone restricted uses adjacent to the school's parcel and had the underlying zoning of Highway Commercial. As the school expanded its property, the buffer zone was diminished, placing the school adjacent to Zone 'B' of the PUD. Zone 'B' continues restricted uses with the underlying zoning of Controlled Industrial. However, Zone 'B' is not as restrictive of development as Zone 'A'.

During the development process of the adjacent proposed Elysian Subdivision, the issues within the current PUD's restricted zones was discovered. In an effort to allow Elysian School the intended buffer zone within the PUD the proposed reallocation of each zone is the requested update. This reallocation allows the school the intended Zone 'A' buffer. Additionally, within the Highway Commercial uses that are allowed within zoning and not restricted by the agreement, residential uses are allowed. The allowance of residential use is highly supported by the school and the developer of the proposed Elysian Subdivision.

10 Statutory Zone Change Criteria:

Below is a list of the 10 Statutory Zone Change requirements in *italics*. Response to each criteria is provided below.

1. Whether the new zoning is designed in accordance with the growth policy.

The requested new zoning is designed in accordance with many criteria within the growth policy. The City of Billings Growth Policy states the following growth guidelines:

- "Planning and construction of safe and affordable interconnected sidewalks and trails are important to the economy and liability of Billings."
 - The new zoning allows for safe and affordable interconnected sidewalks and trails. The property adjacent to the school, currently owned by Development 55, is desired to be developed by new purchasers. The purchasers are currently undergoing subdivision and have completed annexation of the property. As part of the subdivision design, the new purchasers would like the possibility to have residential that is allowed within Zone 'A'. The rezoning is a realignment of the existing zonings within the Planned Development Agreement (PUD). The existing zonings and subdivision regulations allow for planning and construction of safe and affordable interconnected sidewalks and trails.
- "Infill Development and development near existing City infrastructure may be the most cost effective."
 - The property has been annexed to the City of Billings contingent upon annexation conditions. The intent of the annexation was the ability for future development to use existing City infrastructure. The zoning is supportive of desired infill development. The proposed zoning allows for a variety of uses of residential, commercial and industrial.

- “A supportive school system that inspires, motivates, and prepares students for meaningful employment is important for ensuring a high quality competitive community.”
 - The proposed zoning realignment is supportive of the school system. By realigning School Buffer Zone ‘A’ the property will protect the schools undesired surrounding uses while encouraging development through the ability to connect to city infrastructure. This ability allows for more tax dollars in the area which increases school funding. Additionally, the zoning revision allows for the use of residential. Elysian School has specifically requested the possibility for additional residential and the desire for more students.
- “Public Health and safety and emergency service response are critical to the well-being of Billings’ residents, business, and visitors.”
 - The zoning allows for setbacks, landscaping, maximum density restrictions all of which are important to public health. In addition, the proposed new zoning alignment will allow for a mix of uses that will mutually benefit properties in the area. This PUD is specifically designed to accommodate the school, the adjacent industrial and residential.
- “Public and private partnerships are valuable for creating enhanced entryways into Billings.”
 - The proposed PUD amendment has been done through partnership of private businesses such as Viking Land and Development 55, and public entity, Elysian School. This proposed change allows for a cohesive area and design.
- “Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels.”
 - The proposed zoning allows for the existing School Buffer Zone ‘A’ to be relocated which accommodates for the schools expansion over the years. The underlying zoning of School Buffer Zone ‘A’ of Highway Commercial refers to the standards of Residential Multi-Family Restricted zoning for residential development. Residential Multi-Family Restricted allows for one to 8 unit residential. If the property were to remain as is, a mixture of housing types would not be possible. The current Restricted Use Zone ‘B’ only allows for single family homes after a special review.
- “Strategically placed industrial parks will encourage a more diverse city economy and will better help manage effluent and emission from industrial processes.”
 - As the zoning currently sits on the property, Restricted Use Zone ‘B’ is adjacent to the school. By allowing for the proposed amendment to the PUD, the industrial uses will be strategically placed. This will allow for continued industrial use, which is compatible with some parts of the neighborhood. The reallocation of School Buffer Zone ‘A’ will place Highway Commercial uses close to the school and existing residential.

2. Whether the new zoning is designed to secure from fire and other dangers.

The proposed new zoning will continue to secure from fire and other dangers. The zoning allows for open space, setbacks and other design standards that are associated with parking, building location for emergency access, etc.

3. Whether the new zoning will promote public health, public safety, and general welfare.

The zoning code will continue to promote public health, safety, and general welfare. It is the desire of the school and future developer to allow for the School Buffer Zone 'A.' This buffer zone allows for additional public safety associated with any development next to the school. Additionally, the restructuring of the two buffer zones allows for potential compatible uses adjacent to similar uses. The Controlled Industrial which underlies, Restricted Zone 'B,' would continue to be on the western side of the property, in proximity to existing industrial use. The Highway Commercial zoning which underlies, School Buffer Zone 'A,' allows for the potential of commercial or residential uses in proximity to the school and existing residential uses.

4. Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The intent of this zoning restructure is to continue to allow for the schools buffering and use restrictions on the property adjacent to them. The zoning allows for provisions of transportation, water, sewer, and parks as required with development. The potential developer has annexed the parcel owned by Development 55 into the City of Billings. As part of the annexation a set of conditions was given to the developer that requires a subdivision improvements agreement. The Elysian Subdivision is currently being reviewed by City of Billings agencies. This rezoning accompanies the overall development plan for the properties regarding transportation, water, sewer, school and other public requirements.

5. Whether the new zoning will provide adequate light and air.

The new zoning will provide for adequate light and air. The new zoning will still use zoning code which addresses setbacks, spacing between buildings, maximum density, etc.

6. Whether the new zoning will affect motorized and nonmotorized transportation.

The new zoning is a reallocation of existing zonings in the area. The effect of motorized and nonmotorized transportation will remain the same as it is currently.

7. Whether the new zoning will promote compatible urban growth.

Yes, the proposed new zoning alignment is compatible with urban growth. This realignment accommodates for the school's growth that has occurred since the original PUD in 2013. This request protects the school and existing residential areas, while allowing for additional opportunities for mixed residential uses.

8. Whether the new zoning considers the character of the district and the peculiar sustainability of the property for particular uses.

The proposed new zoning is a realignment of an existing PUD on the property. These zoning and uses are allowable on the property already. This rezoning request simply expands School Buffer Zone 'A' in order to allow the school the buffer zone that was originally negotiated in 2013 within this PUD. The Controlled Industrial zoning which underlies, Restricted Zone 'B', would continue to be on the western side of the property, in proximity to existing industrial use. The Highway Commercial which underlays,

School Buffer Zone 'A,' allows for the potential of commercial or residential uses in proximity to the school and existing residential uses.

9. Whether the new zoning will conserve the value of buildings.

The proposed new zoning is a realignment of an existing PUD on the property. These zoning and uses are allowable on the property already. This rezoning request simply expands School Buffer Zone 'A' in order to allow the school the buffer zone that was originally negotiated in 2013 within this PUD. The value of buildings in the area should not be affected as this is not a new zoning, simply a realignment of existing zoning on the property.

10. Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings.

The proposed new zoning is a realignment of an existing PUD on the property. These zoning and uses are allowable on the property already. This rezoning request simply expands School Buffer Zone 'A' in order to allow the school the buffer zone that was originally negotiated in 2013 within this PUD.

Zoning Commission

Date: 06/06/2023
Title: Discussion and Review of Phase II Zoning Text Amendments
Presented by: Nicole Cromwell
Department: Planning & Community Services
Presentation: Yes

Information

RECOMMENDATION

Planning staff recommends the Zoning Commission discuss the draft amendments to the Zoning Regulations and ask questions for clarification and suggest edits prior to the public hearings on July 11, 2023.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

In February 2021, the City Council adopted a new zoning code and zoning map for the entire city. The Council directed staff to continually monitor the new code to ensure the text of the regulations was working as intended and any corrections or housekeeping changes could be made. The Council also directed staff to monitor the implementation to consider any substantive changes to adjust the code, so it continues to provide support to the development goals of the adopted Growth Policy and general policies of Billings.

Planning staff brought forward a bundle of code corrections and amendments last year (June 2022). Those amendments were approved by the Council. Planning staff has been working on more substantive amendments to the code based on staff experience implementing the new code, information from professionals who use the code, and from the Council in its reviews of zoning applications. These substantive amendments include adjustments to the Neighborhood building and siting standards, the sign code, the Planned Neighborhood Development (PND) process, open space requirements for PNDs and multifamily developments, zoning at annexation as well as the right to rebuild residential structures in mixed-use and commercial zone districts. These adjustments are not indicators of a "broken" set of regulations. Just as a new car or truck has a break-in period, so do new codes and regulations. As a completely new code, the need to monitor for glitches or "pain points" is important. These adjustments are just part of breaking in a new code. Planning staff believes this set of amendments should be the last significant adjustments needed for a few years. Planning staff and the City Council should re-visit the zoning and other land development codes regularly and when a new Growth Policy is adopted.

The City Council took action to initiate these amendments for review, public hearings and adoption at its meeting on April 24. The City Council's action was to begin the process of public review and adoptions. The City Council will act on the specific amendments once the Zoning Commission provides a recommendation and once the Council holds a public hearing. The number of amendments requires these to be brought forward in phases. This first phase included changes to the Neighborhood Districts building and siting standards, the code section on fence materials and the sign code. The City Council took action on these first amendments at its May 22 Regular Business Meeting. It will act on a second reading of these first set of amendments at its meeting on June 12.

Planning staff has worked with several stakeholders over the last several months to craft the draft amendments. At the May 2, 2023, hearing on the first set of amendments, the Zoning Commission asked for the next two phases to include one discussion meeting and then a public hearing meeting. The discussion meeting is intended to provide the Zoning Commission the opportunity to better study the amendments and ask questions of staff and make suggested edits prior to the public hearing.

PHASE TWO AMENDMENTS

This second set of amendments includes the following:

- Council action options for special reviews and zone changes
- Open Space provisions in NX and PND district assembly
- Allow rebuild of Residential Structures in Commercial and Mixed Use zones by right
- Step-backs of taller buildings between Neighborhood and Mixed Neighborhood zones

Council action options

The current code for Zoning Commission and Council actions on zone changes or special review requests is a limited set using the non-discretionary verb of "shall". Here is the current language in Section 27-1623 (special review) and Section 27-1628 (zone change):

Special Review *Section 27-1623.E. Review and decision-making.*

1. City zoning commission.

(a) *The zoning commission shall consider each application in accordance with the provisions of this section, and at a public hearing at which time the application has been legally advertised.*

(b) *The zoning commission shall make a recommendation to the city council to:*

- (1) Approve the application;*
- (2) Conditionally approve the application;*
- (3) Deny the application.*

2. *City council action.*

(c) *The city council shall:*

- (1) Approve the application;*
- (2) Conditionally approve the application;*
- (3) Deny the application;*
- (4) Allow withdrawal of the application; or*
- (5) Delay the application for a period not to exceed thirty (30) calendar days.*

Zone Change Section 27-1628.E. Review and decision-making.

1. *City zoning commission recommendation.*

(a) *The city zoning commission shall make a recommendation to the city council to:*

- (1) Deny the application;*
- (2) Approve the application; or*
- (3) Allow the application to be withdrawn.*

(d) *The zoning commission may, by a majority vote of the members present, delay action for a period not to exceed thirty (30) calendar days, without prejudice to the applicant.*

2. *City council action.*

(d) *The city council shall:*

- (1) Approve the application;*
- (2) Deny the application;*
- (3) Allow withdrawal of the application; or*
- (4) Delay the application for a period not to exceed thirty (30) calendar days.*

It is important to applicants and the community to have predictability built in to a regulation, however, there also needs to be a flexibility balance to allow options and choices. The code as currently written does not allow much flexibility in decision-making. For example, the Zoning Commission does not have the option of granting a delay of action on a special review even though this option is allowed for a zone change. The City Council would also like the ability to return zone changes or special review requests to the Zoning Commission for further hearings including when changes to a site plan or zoning boundary are contemplated after the Zoning Commission hearing is complete. The draft ordinance is attached.

Open Space provisions in NX and PND district assembly

The new 2021 code incorporated the requirement to provide open space and recreation space in multifamily developments of 3 acres or more and within any new property annexed to the city through the Planned Neighborhood Development (PND) process. Previously, the only way to require open space within a neighborhood was through the subdivision process. Some multifamily developments did not need to go through a subdivision process and the subdivision regulations allow the developer to "opt-out" from providing any on-site park or recreation space by giving the city an equivalent cash amount in lieu of dedicating parkland. The code for new multifamily developments over 3 acres does not specify any amount of open space or that it must be developed. There are three choices of open space type allowed. The language is also vague and hard to implement. Council directed staff to correct the code language to eliminate the vagueness and to be more specific on the size of open space and base it on the total area of multifamily development.

The Planned Neighborhood Development zone change process requires a minimum of 2 percent of the net area be designated as open space. There are 5 types of open space to choose from, but two of those are restricted to mixed use type developments. This code section requires development of the open space and continued maintenance either by a homeowner's association or by the city if it is accepted as public park land. Most of the open space designated through the PND process has not been accepted as public parkland because of its size and intended uses. The City Council has expressed concern the types of open space designated through the PND process are too small or provide little recreational opportunity in these new neighborhoods. The Council directed staff to increase the minimum percentage and put in some criteria for choosing an open space type.

The proposed revisions eliminate the vagueness from the NX zone district requirements and increase the minimum designation of the open space through the PND process from 2 percent to 5 percent. The draft ordinance is attached.

Allow rebuild of Residential Structures in Commercial and Mixed Use zones by right

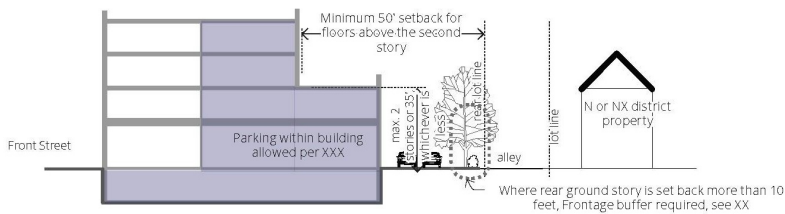
The new code for Mixed Use and commercial zone districts requires that a commercial (nonresidential) use be either on the same property or within the same building as a residential use. Many properties previously zoned commercial were allowed to have residential use as the sole use of the property without any paired commercial uses on the same property or in the same building. There are approximately 52 properties in commercial or mixed use zone districts in the Heights that are only

developed with residential uses. There are about 95 such properties in the downtown area, about 70 properties between downtown and 24th St W, and about 35 properties in the Southwest Corridor and West Billings. While this is not a large number, many of these properties are owner occupied and for many are the only substantial family investment. These properties cannot receive a standard mortgage or insurance because the code does not allow a full re-build of the residence as it is.

The current code for re-build in any neighborhood zone district allows any residential use to be re-built in the district even if it not conforming to the specific use limitations. For example, if there is a 4-unit structure in the N3 zone, a single family zone, then we can issue a re-build letter for a 4-unit structure. This amendment would extend this residential re-build allowance into the mixed use and commercial zones where residential uses are allowed but are required to be on the same lot as a commercial use or in the same structure as a commercial use. The draft ordinance is attached.

Step-backs of taller buildings between Neighborhood and Mixed Neighborhood zones

The current code allows NX zones and N zones to be adjacent to each other. The NX2 and NX3 zone allows building heights up to 4 stories. The code requires a larger setback for any structure in an NX2 or NX3 zone where the adjoining zone is a Neighborhood or Residential Manufactured Home zone. The additional rear setback is 20 feet and the additional side yard setback is 15 feet. Many homes in the N districts are single story with some 1-1/2 story or two-story homes. A four-story structure adjacent to a single story structure can be an abrupt change. In the Mixed Use (MU) zone districts any new structure where the property adjoins or is across an alley from a neighborhood zone district requires building setbacks of 30 to 50 ft depending on the number of stories on the commercial building. Here is the illustration of the requirement for the Mixed Use zones:



The proposed ordinance is attached.

ALTERNATIVES

The Zoning Commission will discuss the details of the proposed amendments in a non-public hearing work session. The board may request clarification of wording or additional background information on each text amendment. Staff will finalize the drafts and present to the Zoning Commission in a public hearing on July 11, 2023, at a hearing starting at 3:30 pm in the first floor conference room, 2825 3rd Ave N.

FISCAL EFFECTS

There is no effect on the Planning Division budget for the discussion of the planned text amendments. Once the amendments are heard and approved, the Division may pay a portion of the city's codification company, Municode, a fee to incorporate the amendments into the text of the city code.

Attachments

- Zoning Comm and City Council Action Options
- Open Space in NX and PND
- Rebuild of Res in all Comm and MU zones
- Stepbacks for NX buildings to N or RMH zone

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING Section 27-1623 SPECIAL REVIEW and 27-
1628 ZONE CHANGE, BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. RECITALS. Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.

Section 2. DESCRIPTION. The text of Section 27-1623 and Section 27-1628 be amended to allow the Zoning Commission and the City Council more options for decisions related to special reviews and zone changes.

Section 3. ZONE TEXT AMENDMENT. The text of Section 27-1623.E is amended as follows:

Section 27-1623.E. Review and decision-making.

1. City zoning commission.

(a) The zoning commission shall consider each application in accordance with the provisions of this section, and at a public hearing at which time the application has been legally advertised.

(b) The zoning commission shall make a recommendation to the city council to:

- (1) Approve the application;
- (2) Conditionally approve the application;
- (3) Deny the application.

(c) The zoning commission may also grant a request of the applicant to:

- (1) Allow the withdrawal of the application; or**
- (2) Allow a delay not to exceed 60 days.**

~~(c)~~ **(d)** Recommendations from the zoning commission shall be based on findings of fact for each criterion and shall be transmitted to the applicant or applicant's agent, and the city council within fifteen (15) calendar days of the date of the public hearing before the commission.

~~(d)~~ **(e)** The recommendation of the zoning commission shall be published in a newspaper of general circulation.

2. City council action.

- (a) At least fifteen (15) calendar days after the first publication of notice of the zoning commission recommendations, a public hearing shall be held by the city council.
- (b) Before taking any action on an application for a special review use, the city council shall first consider the findings and recommendations of the zoning commission.
- (c) The city council shall:
 - (1) Approve the application;
 - (2) Conditionally approve the application;
 - (3) Deny the application;
 - (4) Allow withdrawal of the application; or
 - (5) Delay the application for a period not to exceed thirty (30) calendar days; or
 - (6) Refer the application back to the zoning commission for an additional public hearing based on concerns or issues not previously considered by the zoning commission. A city council referral back to the zoning commission will require publication of a new legal ad, posting of the property and mailing to the surrounding property.**

Section 4. ZONE TEXT AMENDMENT.

The text of Section 27-1628.E is

amended as follows:

Section 27-1628.E. Review and decision-making.

1. City zoning commission recommendation.

(a) The city zoning commission shall make a recommendation to the city council to:

- (1) Deny the application;
- (2) Approve the application; or
- ~~(3) Allow the application to be withdrawn.~~

(b) The zoning commission may also grant a request, without prejudice to the applicant, to allow:

- (1) Withdrawal of the application; or**
- (2) A delay of the public hearing not to exceed 60 days.**

~~(b)~~ **(c)** Recommendations from the zoning commission shall be based on findings of fact and shall be transmitted to the applicant or applicant's agent, and the city council within fifteen (15) calendar days of the **conclusion** date of the public hearing before the zoning commission.

~~(c)~~ **(d)** The recommendation of the zoning commission shall be published in a newspaper of general circulation.

~~(d)~~ **(e)** The zoning commission may, by a majority vote of the members present, delay action for a period not to exceed thirty (30) calendar days, without prejudice to the applicant. A report of the commission's recommendation, and the zoning coordinator's findings and conclusions shall be submitted to the city council.

2. City council action.

(a) The city council shall hold a public hearing within thirty (30) calendar days after the publication of the zoning commission recommendation.

- (b) Before taking action on a zone change application, and after presentation of the zoning commission report, the city council shall hold a public hearing on the application.
- (c) A second reading of the ordinance as is required by BMCC section 2-232.
- (d) The city council shall:
 - (1) Approve the application;
 - (2) Deny the application;
 - (3) Allow withdrawal of the application; or
 - (4) Delay the application for a period not to exceed thirty (30) calendar days; or
 - (5) Refer the application back to the zoning commission for an additional public hearing based on concerns or issues not previously considered by the zoning commission. A city council referral back to the zoning commission will require publication of a new legal ad, posting of the property and mailing to the surrounding property.**

Section 5. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 6. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 7. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this ____ day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this ___ day of August 2023.

CITY OF BILLINGS

BY: _____

William A. Cole, Mayor

Attest:

BY: _____

Denise R. Bohlman, City Clerk

Zone Change _____, Text Amendment for Zoning Commission and Council actions on special review or zone changes

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING Sections 27-307, 27-308 and 27-803 related to
the provision of open space in multifamily zone districts
and in Planned Neighborhood Development applications,
BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. RECITALS. Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.

Section 2. ZONE TEXT AMENDMENT. The text of Section 27-307 be amended to revise the requirements for provision of open space in developments of three acres or more as follows:

Section 27-307.D. Supplemental regulations.

5. Open space. **One or more of the following open space types equal to or more than 6,500 square feet must be provided for every each three (3) contiguous acres of NX1 district or combination of NX1, NX2 or NX3 districts. Developments of less than three contiguous acres are exempt from this requirement. NX1 or a combination of NX1, NX2 or NX3 developments within 1,320 feet (radius) of a developed public park or publicly accessible open space are exempt from providing open space. Unless otherwise exempt, developments of more than 3 contiguous acres, shall provide a developed open space type or types equal to or greater than 5% of the gross contiguous area. For example, a contiguous six-acre development consisting of both NX1 and NX3 districts must provide and develop at least 13,068 square feet of one or more of the open space types. Fractions of square feet shall be rounded up to the next whole number. Developments of 10 or more contiguous acres shall provide at least two types of open space, one of which shall be a "Green" as defined below.**

(a) Parklet. A parklet is a landscaped open space with a minimum seventy (70) percent living plant material, with at least twenty (20) feet of street frontage. **Parklets are intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.**

(b) Green. A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. **A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations,**

protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.

(c) Natural area. A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.

Section 3. ZONE TEXT AMENDMENT. The text of Section 27-308 be amended to revise the requirements for provision of open space in developments of three acres or more as follows:

Sec 27-308.D. Supplemental regulations.

5. Open space. One or more of the following open space types equal to or more than 6,500 square feet must be provided for every each three (3) contiguous acres of NX2 or NX3 district or combination of NX1, NX2 or NX3 districts ∴.

Developments of less than three contiguous acres are exempt from this requirement. NX2 and NX3 developments or combination of NX1, NX2 or NX3 developments within 1,320 feet (radius) of a developed public park or publicly accessible open space are exempt from providing developed open space on site. Unless otherwise exempt, developments of more than 3 contiguous acres, shall provide a developed open space type or types equal to or greater than 5% of the gross contiguous area. For example, a contiguous six acre development consisting of both NX2 and NX3 districts must provide at least 13,068 square feet of one or more of the open space types. Fractions of square feet shall be rounded up to the next whole number. Developments of 10 or more contiguous acres shall provide at least two types of open space, one of which shall be a “Green”, “Plaza” or “Square” as defined below.

(a) Parklet. A parklet is a landscaped open space with a minimum seventy (70) percent living plant material, with at least twenty (20) feet of street frontage. **Parklets are intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.**

(b) Green. A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. **A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations, protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.**

(c) Natural area. A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.

(d) **Plaza. A plaza must share street frontage with a CMU, NMU, NO, NX or P2 zone district. A plaza may provide areas for seasonal shopping or similar community activities. A plaza will be developed with landscaping and pedestrian facilities throughout.**

(e) **Square. A square is similar to a plaza except it is surrounded by street frontage on all sides. A square must be developed with landscaping and pedestrian facilities throughout.**

Section 4. ZONE TEXT AMENDMENT. The text of Section 27-802, Table 27-800.1. Types of Planned Neighborhood Districts, and Section 27-802.B.3 Minimum District Mix are amended as follows:

Zoning Districts															
Required Min. Acres	Types of PND	CMU1	CMU2	NMU	NO	NX1	NX2	NX3	N1	N2	N3	RMH	P1	P2	P3
10	Mixed-Use MU PND Choose at least 2 districts: Pick 1 MU and Pick 1 NX or 1 N Min. % of net acres	L	L	P	P	P	P	L	P	P	P	P	R	P	P
													2 5		3 buildings
10	Mixed Residential MR PND Choose at least 2 districts: Pick 1 NX and Pick 1 N Min. % of net acres	-	-	L	P	P	P	P	P	P	P	P	R	P	P
													2 5		3 buildings
10	Neighborhood N PND Choose at least 2 N/NX districts Min. % of net acres	-	-	L	L	L	L	L	P	P	P	P	R	P	P
													2 5		3 buildings

Sec. 27-802.B.3 Minimum district mix regulations.

(a) Unless Table 27-800.1 indicates otherwise, each type of planned neighborhood development requires a combination of at least two (2) development zoning districts with a percentage mix of **eight-eight (88) eighty-five (85)** percent maximum and ten (10) percent minimum measured by total net parcel area, plus the minimum required open space **two (2) five (5)** percent minimum). For example, an applicant with a 12-net acre lot may choose to create a Neighborhood PND (N-PND) with a mix of: (1) 10.56 acres (eight-eight (88) percent) N3, 1.2 acres (ten (10) percent) N2, and the required .24 acres of P1 open space.

Section 5. ZONE TEXT AMENDMENT. The text of Section 27-803. Private Open Space Requirements is amended as follows:

All PNDs must provide open space to ensure the walkability, sociability, and safety of residents and visitors.

B. *Types of open space.* The following types of open space are required.

1. The PNDs are required to provide one of the following:

(a) *Plaza.* A plaza must share street frontage with a CMU, NMU, NO, NX or P2 zone district. A plaza may provide areas for seasonal shopping or similar community activities. A plaza may be used to meet the required minimum dedication of open space for a subdivision. A plaza will be developed with landscaping and pedestrian facilities throughout.

(b) *Square.* A square is similar to a plaza except it is surrounded by street frontage on all sides. A square must be developed with landscaping and pedestrian facilities

throughout. A square may be used to meet the required minimum dedication of open space for a subdivision.

(c) *Parklet*. A parklet is a landscaped open space with a minimum seventy (70) percent living plant material and at least twenty (20) feet of street frontage. **Parklets are intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.**

(d) *Green*. A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. **A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations, protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.**

(e) *Natural area*. A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.

2) All of the above required open space may be counted towards the minimum required dedication of open space for a subdivision.

Section 6. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 7. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 8. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this ____day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this ____day of August 2023.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

Attest:

BY: _____
Denise R. Bohlman, City Clerk

Zone Change _____, Text Amendment for Open Space provisions in NX districts and PND applications

ORDINANCE 23-_____

**AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THE REGULATIONS IN SECTIONS 27-1500,
BE AMENDED TO ALLOW THE RECONSTRUCTION OF
RESIDENTIAL STRUCTURES IN COMMERCIAL AND
MIXED USE ZONE DISTRICTS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. RECITALS. Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC, provide for amendment to the City Regulations from time to time. The City Zoning Commission and staff have reviewed the proposed corrections and clarifications to the zoning regulations that pertain to all the real property within the City of Billings. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.

Section 2. ZONE REGULATION AMENDMENT Section 27-1504.C(3)(a).2 is amended as follows:

Sec. 27-1504. Nonconforming Uses C. Discontinuance. 3. Demolition, destruction, or obsolescence.

2. The operation of a nonconforming residential use located in an N1-4, NX1-3, or RMH, **NMU, CMU1, CMU2, CX, I1, DX, CBD, EBURD, or Public zone** district shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which the use is operated.

Section 3. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 4. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 5. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this ____ day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this ___day of August 2023

CITY OF BILLINGS

BY: _____

William A. Cole, Mayor

Attest:

BY: _____

Denise R. Bohlman, City Clerk

Zoning Code Allow rebuild of all R structures in all zone districts except HI

DRAFT May 23 2023

ORDINANCE 23-_____

**AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING Section 27-308 related to the location and
height of new structures adjacent to or close to
Neighborhood (N) zone districts, BE AMENDED**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. RECITALS. Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.

Section 2. DESCRIPTION. The text of Section 27-308 be amended to allow additional setbacks for new structures adjacent to or close to N zone districts.

Section 3. ZONE TEXT AMENDMENT. The text of Section 27-308 is amended as follows:

Sec. 27-308. NX2 and NX3 district.

The following site and structure regulations apply to any lot in the NX2 and NX3 district. Refer to section 27-303 for general regulations applicable to all districts and Table 27-300.7, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(5). See article 27-1800 for definitions and information on how to measure the following regulations:

Table 27-300.7. Site and Structure Regulations.

		Multi-Unit Building	Side-by-Side Units	REFERENCES
A.	BUILDING SITING			
5	Side Setback (feet) Space Between Principal Buildings on Lot (feet)	5 minimum; 15-abutting 50 ft of N1, N2, N3, or RMH districts 10 minimum	Stepbacks required within	See subsection 27-308.E for stepped-back stories.

6	Rear Setback (feet)	10 minimum; 20-abutting Stepbacks required within 50 ft of N1, N2, N3, or RMH districts	See subsection 27-308.E for stepped-back stories.
---	---------------------	--	--

Sec. 27-308.E Height Step-backs within 50 feet of N1, N2, N3, or RMH districts.

Where N, or RMH zoning districts abut the parcel or are located across an alley from the parcel, any story over the second story or over thirty-five (35) feet above grade shall be set back from the rear or side property line a minimum of fifty (50) feet.

Section 6. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 7. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 8. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this ____ day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this ___ day of August 2023.

CITY OF BILLINGS

BY: _____

William A. Cole, Mayor

Attest:

BY: _____

Denise R. Bohlman, City Clerk

Zone Change _____, Text Amendment for Stepbacks between NX and N/RMH zone districts