



**Yellowstone County Zoning Commission
To Be Approved by Motion
Monday, September 11, 2023**

The County Zoning Commission met at 4:00 p.m. in the Miller Building 1st Floor Conference Room, 2825 3rd Ave. North.

	Position	01/09/2023	02/13/2023	03/13/2023	04/10/2023	05/08/2023	06/12/2023	07/10/2023	08/14/2023	09/11/2023	10/09/2023	11/13/2023	12/11/2023
Blaine Poppler	Commissioner	x	-	-	-	1	-	E	C	1	C		
Melissa Ray Gentry	Commissioner	X	-	-	-	1	-	1	C	A	C		
Tyler Bush	Commissioner Chairman	X	-	-	-	1	-	V	C	V	C		
Todd Hewitt	Commissioner	X	-	-	-	1	-	1	C	1	C		
Morgan Tuss	Commissioner	-	-	-	-	-	-	-	C	V	C		

Pro Tem Chairman Todd Hewitt opened the meeting and introduced the County Zoning Commission members and Planning Division staff.

Commissioners Tyler Bush and Morgan Tuss participated virtually.

Staff Present: Nicole Cromwell, Zoning Coordinator; Karen Husman, Planner; Brenda Berns, Planning Clerk

Public Comment

Pro Tem Chairman Hewitt asked if there was anyone wishing to speak during the public comment portion of the meeting. The Public may call in during specific Public Comment periods at (406) 237-6165. All callers will be in a queue and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to three minutes of testimony as is customary. There were no public comments.



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Motion. Approval of Minutes: July 10, 2023 (The August 14, 2023 meeting was cancelled due to a lack of applications).

Motion

It was moved by Pro Tem Chairman Todd Hewitt and seconded by Commissioner Tyler Bush to approve the July 10, 2023 meeting minutes as submitted. The motion was carried with a unanimous voice vote.

Disclosure of any Conflict of Interest-Members of the Commission and Staff. There were none.

Disclosure of Outside (Ex Parte Communication) Members of the commission and Staff.

- a. There were 2 Ex-Parte communications filed for Zone Request 720 and 7 Ex-Parte communications filed for Zone Change 721. The Ex Parte Communication Binder is available at the Sign-In and Agenda Station.**

Zoning Coordinator Nicole Cromwell read aloud the procedures for a public hearing.

The Public Hearing before the Board of County Commissioners will be held on Tuesday, October 3rd at 9: 30a.m in the 3rd floor meeting room at 316 N 26th St, Billings MT 59101.

Zoning Coordinator, Nicole Cromwell notified the Board of a request filed by the Applicant's Agent, Scott Worthington, In-Site Engineering for partial withdrawal of the zone change that is related to the 31.15 acres of General Commercial proposed for the property. Board Members may act before or after the public hearing is complete.

Pro Tem Todd Hewitt asked if the Applicant's Agent, Soctt Worthington would like to speak.

Scott Worthington, In-site Engineering spoke about the intent of the withdrawal. He agrees with Zoning staff, not all General Commercial permitted land use would be appropriate and therefore, we are requesting to withdraw the Zone Change request application for the General Commercial zoning.

Commissioner Blaine Poppler asked for clarification regarding the parcel on the low side of the ditch and another parcel on the upper side of the ditch. The upper parcel was originally requested for a zone change to General Commercial, however it is now being withdrawn. They will continue plans for the residential development below the ditch.



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Scott Worthington affirmed Blaine's understanding and further clarified that the 70 acres within the original zone change application would remain.

Commissioner Poppler asked if the acreage outside the residential development will remain zoned Agriculture.

Nicole Cromwell, Zoning Coordinator affirmed; yes.

Motion

Motion. It was moved by Commissioner Poppler, seconded by Chairman Hewitt to accept the partial withdrawal of Zone Change 720 as presented by the Applicant's agent, Scott Worthington WWC Engineering.

Item #1: County Zone Change 720 -2424 S 48th St W – Agriculture (A) to General Commercial (C3) and Large Lot Suburban Neighborhood (N4)

Request

County Zone Change 720 -- 2424 S 48th St W - Agriculture (A) to General Commercial (C3) and Large Lot Suburban Neighborhood (N4) - A zone change request from Agriculture (A) to 70.63 acres of N4 and 31.15 acres of C3, on the NE ¼ of Section 28, Township 1S, Ranger 25 E, south and east of the BBWA Canal excepting C/S 1590, a 101.78-acre parcel of land. A pre-application neighborhood meeting was held on June 30, 2023 at the subject property of 2424 S 48th St W. Tax ID: D00908 Presented by: Karen Husman, Planner I.

Recommendation

The Planning Division recommends approval of the N4 zone district for Zone Change 720 and adoption of the 11 criteria detailed in the summary section of this memo.

Background

The subject property is located at Neibauer Rd. and 48th Street West. This request, if approved, will create approximately 31 acres of C3 to the east of the BBWA ditch and the easterly portion is proposed to be approximately 70 acres of N4 allowing large lot residential. The current zoning of Agriculture (A) allows one residential dwelling unit per 10 acres. The majority of this property has been used for agriculture purposes. The proposed zoning of N4 is intended for large lot residential



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neighborhoods primarily with single family homes. Characteristics include wide, large lots and attached garages often located on the front facade of the home. Individual lot sizes for the N4 zone can vary but must be between 15,000 square feet and one acre. This type of development pattern is similar to the residences nearby and does not create development challenges. The zone would be suitable; therefore, staff has recommended approval. The West Billings Plan and 2008 Growth Policy address the desire for nodal development. The West Billings Plan encourages commercial nodes at intersections of arterial streets. Although a portion of the proposed C3 zone is adjacent to an intersection of two arterial streets, the proposed zone is not a desirable commercial node location because it is not in character with the area and lacks improvements. The intersection allows through traffic moving east to west and is a 2-way stop for north and southbound traffic. Further, approval of the C3 zone district as proposed is considered spot zoning. Spot zoning occurs when a new zone would be wholly surrounded by dissimilar zones. In other words, spot zoning would be a commercial zone surrounded in whole by residential zones. Spot zoning would not be one type of residential zone wholly surrounded by a different type of residential zone. Spot zoning is frequently cause for compatibility concerns. Spot zoning, should not be used as a singular means of denying a zoning request as spot zoning may be ruled invalid as an "arbitrary, capricious and unreasonable treatment." This application creates a situation where the proposed C3 zone would be wholly surrounded by residential and agricultural zones. To reiterate, spot zoning should not be a singular means to deny a request, instead the findings of the criteria as a whole should guide the action on the application.

Scott Worthington, In-Site Engineering stated the acreage in the zone change is compatible with the current properties and recommended the approval of the N4 zone change request.

Commissioner Poppler asked how the Neighborhood Meeting went with the residents,

Scott said it was mixed as some did not agree with the commercial portion and some had concerns about the residential development. Specifically, concerns with ground water and traffic impacts, all of which would be addressed during the subdivision review.

Public Hearing

Chairman Hewitt opened the public hearing and asked if there is anyone wishing to speak regarding County Zone Change 720.



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In Opposition

Niki Serafin 3111 Harrow Dr. Billings MT 59102

Ms. Serafin asked where the line between the Residential and Commercial zones exists.

Scott said the line is approximately at the excavated drain located at 48th & 52nd West.

Ms. Serafin asked if there have been water studies done and if each lot will have its own well or a community well system.

Chairman Hewitt asked if the DEQ's process will provide for a water study.

Nicole said the Planning Department will address it during review.

Scott said Traffic Impact Studies are under way and preapplication meetings have been done for water rights. Preliminary studies look favorable.

At 4:19pm, Chairman Hewitt closed the Public Hearing.

Discussion

Commissioner Poppler stated N4 is the right zoning and would recommend approving the zone change.

Commissioners Bush and Tuss agreed.

Motion

Commissioner Poppler made a motion, seconded by Pro Tem Chairman Hewitt recommending approval and adoption of the findings of fact for Zone Change 720. It was carried with a unanimous voice vote.

Zone Change 720 approval is granted. The Board of County Commissioners public hearing for these applications will be held on October 3rd at 9:30am at 316 N 26th Street – 3rd Floor, Commissioner's Hearing Room. The Board of County Commissioners will hear all persons wishing to speak relative to the proposed Zone Changes.



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Item 2: County Zone Change 721 – Text Amendment to adopt permanent regulations for Marijuana Business

Presented by Nicole Cromwell, Zoning Coordinator

Request

County Zone Change 721 -- Text Amendment to adopt permanent regulations for Marijuana Businesses -- In November 2021, the Board of County Commissioners (BOCC) adopted Interim Zoning Regulations pertaining to the operation of marijuana businesses within the jurisdictional zoning area of the County (4.5-mile jurisdiction surrounding the City of Billings). The BOCC extended the interim regulations for one additional year in November 2022. The interim regulations will expire on November 23, 2023. No further extension of the regulations is allowed by state law. Permanent regulations must be adopted. The Planning staff has prepared a report on its study of the impact of the land use in the County and has devised permanent regulations for marijuana businesses based on this study. The text amendment will modify Sections 27- 803.C, 27-1000, 270-1005, 27-1006, 27-1009, 27-1010, 27-1400, 27-1504 and 27-1800 of the Yellowstone County Zoning Regulations (December 2020). Presented by : Nicole Cromwell, Zoning Coordinator.

Most of the existing interim zoning regulations are proposed to become part of the permanent zoning regulations. There are several specific changes the staff is recommending based on findings from the report on Marijuana Businesses in Yellowstone County. First, staff is recommending removing the required separation distance from a residential zone and a marijuana dispensary, cultivation location or processing facility. There have been few reported calls for public safety services at any of the marijuana business locations in the County, and few, if any, reported complaints to the Planning Division or Code Enforcement Division. The anticipated impacts from these businesses did not materialize, so staff believe the separation to residential zones is unnecessary especially when considering other allowed uses in the zoning code that do not require separation distances. Second, Planning staff and County legal staff are recommending the County Commissioners act on a resolution to provide a definitive sunset date for locations and marijuana uses that are in non-commercial zone districts, or in zone districts where the specific marijuana business type is not allowed. In March 2023, the County Commissioners adopted a resolution putting these business owners on notice that their ability to operate may not extend beyond the expiration of the interim zoning regulations (Attached Resolution 23-25). Staff is also recommended that locations that do not meet the required 600-foot separation to churches, schools, public parks with playgrounds and other named protected uses, could continue as legally nonconforming uses with the ability to re-establish, if necessary, through a special review process. The re-establishment might be required if the location were to burn down or need a major renovation. Staff is not recommending



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this legal nonconforming status be applied to businesses located in residential zones or in neighborhood zone districts. These businesses are prohibited and commercial enterprise of any kind beyond a home occupation is not allowable in residential and neighborhood districts. Lastly, and related to the sunset resolution, is a proposal to allow cultivation-only in the Agriculture zone district. This may allow some businesses to keep the cultivation portion of the current business going, while moving the retail sales or manufacturing to another location. The state now issues licenses for each type of marijuana related activity - cultivation, dispensary, manufacturing, transporting, or testing laboratories. For example, a dispensary is no longer required to grow all its own product. The dispensary could purchase from a grower or could purchase from a processor who manufactures consumer products from marijuana. Yellowstone County has a handful of cultivation-only operations that sell marijuana to in-state dispensaries and processors. An analysis of available information on marijuana businesses in Yellowstone County indicates a high level of compliance with zoning and land use regulations. Some locations outside zoning are not in what would be considered commercial areas or on arterial roads where some level of commercial activity is expected. The County Commissioners and County Code Enforcement received some complaints early on about these locations, but the complaints have not persisted over the last two years. Planning staff has gathered information on existing business from a variety of sources. The Department of Revenue Cannabis Control Division does not publish all information on license holders. The division publishes the "location" which could be a city, town, county or general place name, the name of the licensed business and the phone number on the license application. The state does not provide the street address of the business, the name of the license holder or other information. State law restricts the information that can be made public by the agency. Planning staff has been providing licensees with letters of zoning compliance for nearly two years. Our zoning conformance applications require a business name, an owner name, the exact location of the business and the nature of the business at each location. Staff can match this information with the state-provided information to get a more complete picture of the marijuana business activity in the county. There are seven locations within the zoning jurisdiction of the county that are not in the correct zoning to operate a marijuana business. Three are located in the Agriculture (A) zone, three are in Rural Residential (RR) zones and one is in the Neighborhood Mixed Use (NMU) zone. These are not considered legal nonconforming uses of land. If any or all of these locations were to be abandoned or damaged through fire, they could not be re-established at those locations in those zone districts. Six of the locations never inquired with the Planning office prior to establishing their business in an incorrect zone district. One was established prior to the County's adoption of the interim zoning regulations and did receive a written notice of compliance with the zoning at the time. This is the location in the Neighborhood Mixed Use (NMU) zone at the intersection of Shiloh Road and Central Avenue. Since the County did not have zoning regulations related to marijuana businesses at the time (early in 2021), and the zone district allowed retail businesses, Planning approved this location. These locations have several options available to bring the location into conformance. First, the owner could apply



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for a zone change to a district that allows the existing use. Zone changes need to meet the county's 11 review criteria to be approved. Not all of these locations are appropriate for commercial zoning. Secondly, the businesses in the Agriculture zone (A) could modify the type of license at the facility to a cultivation license and move the retail and processing license to a conforming location. Third, the businesses could obtain by purchase or lease, a new location in a conforming zone district or outside the county's zoning jurisdiction. Twenty-eight percent of the existing 57 locations in Yellowstone County are outside the zoning jurisdiction. Finally, the businesses can propose an amendment to the pending permanent regulations to allow continuation of the businesses in these zone districts. There are several locations in the zoning jurisdiction located in a correct zone district that may not meet the required 600-foot separation distance to a church, public school, public park with a playground, a day care center, a youth center, or a behavioral health clinic. The listed uses are considered protected uses in the interim zoning and in the proposed permanent code. Marijuana businesses located within the 600-foot protected area around these uses would be considered legally nonconforming uses. The proposed permanent code would allow these locations to continue and to have the ability to rebuild or re-establish the use in the future if for some reason the building or structure was damaged. This re-build would only be available through a special review application to the Board of County Commissioners. In this way, the initial investment to establish a business in a commercial zone district is preserved. The locations that are not within the correct zone districts are not afforded the same protection. The Rural Residential and Agriculture zone districts generally do not allow retail businesses of any kind. Planning staff will present to the Board of County Commissioners an updated study to support the proposed permanent regulations for marijuana businesses in the County's jurisdictional zoning area on October 3rd. Seven of the existing 57 locations in Yellowstone County will need to take positive action to remain at their current locations or seek new locations for their businesses. Sixteen locations are outside the County's zoning jurisdiction. The remaining 24 locations are within the correct zoning districts for the business activity. There are 424 licensed dispensaries state-wide in counties where the 2020 ballot initiative was approved. Planning staff recommends approval of the proposed zoning text amendments related to marijuana businesses in the county. The study has informed the proposed final regulations and findings have been prepared to support the proposed regulations.

Recommendation

The Yellowstone County Zoning Commission, prior to making a recommendation to the County Commissioners, shall consider the 11 criteria.

Nicole gave an overview of permanent regulations regarding locations and licensing. Zone changes may require some businesses to relocate.



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Nicole described where businesses are located and current zoning regulations as it relates to the businesses. Nicole mentioned that Johnson Lane is a business arterial, slated to be the new main thoroughfare of Lockwood. There will be more zone changes.

Chairman Hewitt expressed concerns with zone districts where certain marijuana businesses are currently allowed and the effect it would have on them if they were annexed into the City of Billings.

Nicole explained that there would be an Annexation Agreement between the City and the business owner to allow that business to remain, in some capacity.

Discussion

Chairman Hewitt called for discussion from the Commissioners.

Chairman Hewitt asked about the 4028 Central location, surrounded by City of Billings, and whether it should be addressed by County Commissioners?

Nicole responded that if it were annexed, existing businesses would follow. The business owners would need to ask for zoning consideration. Currently the City only has medical and cultivation business allowed, the City does not allow recreational marijuana use. Some businesses are in a red zone, which could be annexed anytime, however we are only looking at those businesses right on the line bordering City and County. The County cannot enforce City rules, conversely the City cannot enforce County rules.

Public Hearing

Chairman Hewitt opened the public hearing and asked if there is anyone wishing to speak regarding County Zone Change

In Opposition

Melinda Driscoll, Attorney Frontier Law Firm

Ms. Driscoll said she brought the original lawsuit against the County in 2022. She wanted to let the members of the public know that a recent resolution was adopted and proposed by the Planning Commission and sent letters regarding an approaching sundown. Ms. Driscoll believes the YC Zoning Board will be liable for established providers that have invested



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money into their business and now the Board tells them that they cannot continue to operate, she stated, they will be sued. She continued, the business owners are owed the money invested and hopes the Board is properly educated. Ms. Driscoll does not believe the Board understands what their liability will be. She has the opinion that the lawsuit against the County was dismissed with prejudice and that it will be revived if the businesses are not grandfathered in Zone Change 721.

Zach Schopp, Owner, Seed of Life Labs

Mr. Schopp asked for clarification on the proposed permanent regulations, specifically as it relates to the Nonconforming Use. Mr. Schopp believes he is zoned properly since opening and wants Combined Use clarification.

Nicole read from the code (page 10 of 12) Nonconforming section covering all Nonconforming uses. Nicole stated, businesses operating as nonconforming nonresidential shall be terminated unless the owner applies for exemption. It applies to all uses that may be Nonconforming because of the separation requirements that cannot be met at the specific location.

Drew Stensland, Owner Granite Peak Dist. 2412 22nd St W, Billings MT.

Mr. Stensland stated he appeared today to bring a financial packet describing his business. He went through all the proper permitting for a building and to operate a medical recreational dispensary at this location. He included current zoning letters from the County Attorney Jeana Lervick and supporting documents. He said it is ridiculous and this could destroy his business and force him to relocate it. Mr. Stensland continued, I have a letter stating all proper coding we went through to be in business prior to the interim zoning regulations and the State of Montana had passed it. There is the nonconforming dispensary list that was initially put out noting the 14 businesses this could affect. The 4th document in the packet is our tax record. The #5 is a building permit that's dated back to August 25, 2021, but prior to the interim laws going into effect on November 23, 2021 and that is proof that I should be allowed to continue to do business without change. The 6th document is a letter from Jeana Lervick. She was Chief-in-house counsel for Yellowstone County at the time and stated my business was not in violation of the interim zoning laws, as it was an existing business prior to these regulations going into effect. The 7th document is a zoning clarification letter that also states my business was not in violation. I would like to note that we are not a cultivation dispensary, we are only a retail dispensary at this location. The 8th document is the Zoning Regulations, and this is where my amendment requests are outlined. The City/County Planning Department has informed me that retail sales were not allowed, but it clearly states retail sales are allowed there. Page 9 highlights the sections 271501-C and I'm requesting that any language be amended or deleted and stipulate neighborhood districts only. Section 10 discusses Commercial and Mixed-use districts. I ask, why would we be able to lump Neighborhood Mixed-use in with Neighborhood districts for these



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interim laws and their language. I believe I have a very good case on why that part does not make sense and why I believe you're cherry picking what you want in place. This was all recorded, so we should be up to date and accurate.

Mr. Stensland then shared pictures of his business and the surrounding buildings, including a senior living facility. Mr. Stensland said he has put a brand-new building up and it is a thriving business. He has no negative impact on the neighborhood. He proposes that if the regulations have an amendment to state that any pre-existing business, prior to instituting the interim zoning regulations, should be grandfathered in and allowed to continue to do business without shame. If that doesn't work, he asks that they be amended to say or to delete the Neighborhood Mixed-use from the Neighborhood district section.

David Hillier 1310 US Hwy 87E, Billings MT - I don't have a dog in this fight, I was one of 14 listed and now it's obviously been taken off there and I'm not listed. But I feel that I need to urge the Advisory Board here to just take a second look at this. We don't feel this is the intentions of the Commissioners from the last meeting. However, a Commissioner had admittedly said that he had a level of expectation for us to be grandfathered in moving forward. I did receive letters from Jeana Lervick as well, she let me know I could continue my business. So, in good faith, we built these businesses relying on the County's word at the time. Now they are looking at 7 businesses that are going to be sunset, that's 10% of the providers here in Yellowstone County. I think it's problematic for the county's liability and as an Advisory Board, I think you are in a position to just slow the County Commissioners down and take a second glance at this. Some of us have invested millions of dollars and all of our savings into our businesses and realistically, what it's done is improve the value of surrounding neighborhoods. I'd like to ask the board if there has been any evidence of negativity surrounding our businesses in this study that you have come out with.

Nicole Cromwell, there was nothing specific, but we only asked about the commercial locations.

Mr. Hillier, So again it's documented that there are no issues with any of our businesses within the County. The Commissioners told us that if we worked well with other local businesses, then we would be recognized for being a valid business. I urge you to take a second look before agreeing to adopt these new regulations and I ask that you amend them to include that all the people prior to 2021 would be grandfathered in as well.

Anthony Saur, owner Green Bee Dispensary 911 Miles Ave, Billings MT 59101. I echo what these people are saying, and we expected to be grandfathered in as existing businesses prior to the interim zoning changes in July. So as you are aware, we received the notification from the state of Montana saying that we can transition our medical businesses into the Adult Use and thusly, we invested a significant amount of money in doing so. These businesses diligently followed all the State rules and



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regulations, operating within the boundaries that were set forth by the State and the transition was not only a pivotal moment for us but also a testament to our commitment to serving the community responsibly. We received a letter on January 6th for signed original under which apologized confusion and explicitly stated that the county is notifying the Department of Revenue via this letter to your business as an existing conducting business within the county is not a violation of temporary restrictions to describe it better period the letter did provide some relief but also underscores the importance of fear and reliable communication. We received a letter on January 6th stating that we were not in violation of the interim regulations, which did provide some relief. On May 11th my partner initiated the process for zone changing and actively working on this. However, despite our active participation in this process, we also began to notify that moving on August 15th specifically for marijuana to come and question to clarify what was happening with the interim zoning. As far as I can tell so we firmly believe that our businesses and business like ours should be grandfathered in because we were in operation prior to the zoning changes taking effect and moreover the geographical context of our location we feel further strengthens our argument against having the 25-mph speed limit implemented. We also have another commercial business that provides storage therefore there are equipment trucks and the like, also there's an adjacent business, Canyon Creek Nursery directly South of us which are commercial businesses, and it makes it logical to continue the Commercial status there. So we have consistently demonstrated that we're trying to be part of the solution here and believe that grandfathering is not enough.

Nicole Cromwell, I would like to clarify one thing. The words in italics on page 9, are not part of the permanent regulations. That was put in there for informational purposes only because the County Commissioners will be adopting a separate resolution that will not be part of the modified zoning regulations related to those seven locations.

Carey Chapman 1745 Mary St., Billings MT 59105. *Inaudible...* we have commercial businesses around us and therefore should have the right to continue to do business in our current location.

Richard Abermeit, CEO of One Team Advanced Caregivers 2705 Sage Springs Circle, Billings MT. It's been six years since my lawsuit against the City on that issue, the same things that we're dealing with here. I am watching the county do the same exact thing to you people that they've done to this that the City did to me. So I have a case against the City and it's still not going away. We're six years into litigation with wasted money, as you're trying to get rid these businesses out of our counties and cities. I look at the tax dollars that come into this county and they're the top of the state. But yet we have a city that won't allow it and a county that treats us the same way. I urge you to stop some of this madness, slow the roll. Every one of these businesses that you guys are after, all support your community and your children. They support your neighborhoods, they support everything within their area. People come from every walk of life to these businesses and obviously the people voted



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to allow cannabis the campaign that we had just last year. I think that we should try to keep an open dialogue with the businesses and let them be involved with this process instead of sending these notices about sundown or whatever you want to call it. It's basically to kill these businesses and snuff them out. I don't think that's what people in Billings and Yellowstone County are about. Everybody that I've talked to about this, and it's a pretty big issue with me, want to allow these businesses to exist and to support your community and pay taxes. Thank you.

Chairman Hewitt, is there anyone else who would like to speak?

Isabella – South Frontage Rd, Billings MT Ms. Isabella asked if the original 7 businesses were nonconforming before the interim regulations.

Nicole answered that the proposed rules take out the separation distance to residential zones. Some of those businesses did not meet those distance. These are all in the County. The businesses in Agriculture, or Neighborhood Mixed-Use are non-conforming solely based on the zoning.

Ms. Isabella asked if they were non-conforming before the interim regulation changes. She also asked if the decision is based on a case-by-case basis.

Nicole responded that all zones changes are done at the request of the applicant or property owner and are dealt with separately.

Nicole briefly gave an overview of legal non-conforming and illegal non-conforming. The use had to be legal in the first place. Business owners needed to locate their businesses in the properly designated zoning district for their specific use. Prior to the interim zoning regulations, Commercial businesses were allowed in Neighborhood Mixed Use, and they are still allowed. However, it was not one of the districts that the County Commissioners allowed for marijuana businesses. They chose general commercial, light industrial, and heavy commercial for interim regulations and those haven't changed for the permanent regulations. The City adopted Adult Use into their zoning in 1994, which the City gave 2 years to those businesses that were non-conforming to move. Steve Williams is the new Chief-in-House Yellowstone County Attorney. The YC Zoning Board

Chairman Hewitt, is that everyone that wishes to speak? There were no other members of the public wishing to speak.



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Commissioner Morgan Tuss said. my understanding is that under the way that this proposed permanent new zoning code is going to read, it would allow businesses that are in conforming use, however if they become nonconforming then they have two years to up and move, correct?

Nicole Cromwell, responded; No, any place that is in a conforming location, but doesn't meet the separation can stay and run their business forever. The exception is that if there is something like a fire that burns the building down, then they apply to get rebuilt through a special review and then that becomes non-conforming because hypothetically, a church moves in next door. Same thing, they don't have to do anything but if it burns down and the church is still there they have to go against a special review. This sun setting special clause would only apply to locations that are not in conforming districts now like rural residential or agricultural zone districts where they're running a dispensary or manufacturing. It's just the seven that we've listed that we are aware of at this time. The zoning regulations already say that uses that are illegal will never become legal under the code, unless the zone district is changed. Those rules already exist as per the code is defined in section 1501.C.

Commissioner Tuss, asked so these seven that have been identified as potentially being affected by these regulations, are those seven currently non-conforming because of the setbacks or what not? I just need to understand exactly how this is playing together before I have any kind of recommendation.

Nicole Cromwell stated that the seven three hours are in districts where the uses that were established were never allowed with one exception Mr. Stenlund's location which is in a neighborhood mixed-use zone which was established prior to the interim zoning regulations and was allowed because it was a retail use and in general, retail businesses are allowed in neighborhood mixed use. The other six businesses are in rural residential zone districts or agriculture districts.

Commissioner Poppler stated that he was also concerned. We are completely unprepared for this discussion about what may or may not happen at the Commissioners level. I'm going to recommend we make no recommendation.

Nicole Cromwell stated it is not allowed by the code, a commissioner cannot choose to not vote or say we have no recommendation. A motion may be put on the table and the motion could fail, or the motion could tie. A tie vote results in a no recommendation. They will have the planning Staff's recommendation, they will have all of your discussion and testimony, they will have the publics testimony, and so they can make a decision. I can believe the county zoning code requires you to make a recommendation or at least attempt to.

Chairman Hewitt asked for a discussion by the Board.



**Yellowstone County Zoning Commission
To Be Approved by Motion
Monday, September 11, 2023**

**The County Zoning Commission met at 4:00 p.m. in the Miller Building 1st Floor
Conference Room, 2825 3rd Ave. North.**

Commissioner Tuss said, I have a couple of things and have been taking notes. I have some thoughts on this that I'd love to be able to share so it's on the record. What's happening here is a balancing act, right? Because you're trying to protect existing businesses while trying to regulate businesses going forward and I think that's something that happens every time that new zoning regulations or codes within the city or state regulations. It's always a balancing act and I'm glad to see that there's a lot of participation from interested parties, from business owners, and from supporters. I think that's wonderful and I'm glad to see everybody here. I think that what I can see has played out here is that you know under its authority the county enacted interim regulations and they are just that, interim regulations. They are allowed to exist for, Nicole, I think you said two or three years or something like that and when you're developing a business it's your due diligence to look around and to look at getting legal opinions and to seek advice. There might be millions of dollars that are pushed into businesses, that are going to be returned to you in the form of capital investment or capital return. And it seems to me there that there are some circumstances here where some businesses took the leap and I think it's great that businesses want to get into our community flush revenue into our tax system, and they want to participate in Yellowstone County. I think it's something that should be applauded even in the face of uncertainty under the interim regulations. But again, they are exactly that, interim regulations. So I cannot say why the county does a study and it says well, we think that these are the proposed effects we think that this is how these might damage residential areas, churches, schools, or whatever I don't I don't know the basis of these studies I don't know the basis of why they chose to do these particular regulations I don't know if they are aimed at particular businesses and particular businesses locations for example you know neighborhood mixed-use things like that I don't know I do think that there I do think that they me most of our criteria and to that end I do think it's important you know miss Driscoll got up and made and attempt to threaten the board or whatever that happened to be I think it's important that it be said that our power isn't an Advisory Board we are limited to whatever it is 12 or 13 criteria and our scope on the zoning board is to review zone change requests and special reviews the recommendations are forwarded to the City Council or county commissioners for final action that is all we do here and that I'm happy to be a part of it but we're not legislators we're not executives not judges here so based on the information that's before us I see the competing considerations between the businesses that are that are existing and I do understand there's concerns and I do think that our permanent zoning ordinances could do a better job of reflecting the investments that businesses put into our county and I do think would that we should be asking our commissioners and we should be asking our staff to go back and make appropriate drafts to reward the conforming business and make the changes with amendments to reflect the vestments of the existing businesses as they deserve some leeway. They're taking a leap in uncharted waters, and I think that as much as our county wants to try to get ahead, we're now tied up in 60 or so businesses that are impacted by this, one way or another.

Chairman Hewitt, I agree with Commissioner Tuss.



**Yellowstone County Zoning Commission
To Be Approved by Motion
Monday, September 11, 2023**

**The County Zoning Commission met at 4:00 p.m. in the Miller Building 1st Floor
Conference Room, 2825 3rd Ave. North.**

Chairman Hewitt, there's a gentleman here who's been fighting the fight for 6 years.

An unidentified member of the public asked about grandfathering in.

Nicole Cromwell, you can do that as a second and second recommendation because this permanent set of regulations has nothing in there that says anything about grandfathering locations that are not improper zones that would be a separate resolution.

Nicole Cromwell said, what I wrote down for a motion is; moves for approval of permanent regulations but with due consideration for existing businesses to possible grandfather in all locations.

Chairman Hewitt asked Commissioner Bush if had anything to add.

Commissioner Bush said that his take is that there's different circumstances for each one of these businesses but what hear maybe that I'm wrong, but what I from this is we only have one out of the 62 that was operating in accordance with what was existing established precedent so the other 61 or whatever I don't feel I feel like we're putting language in in here for one business not right not for these other six and I just would want to be clear and am I interpreting that correct we're talking about one business that was operating in accordance with zoning despite what some of the testimony was from members of the public there was only one business that was operating in accordance with existing zone regulations there's six the seven were illegal they were not operating in accordance with the current zoning regulations. Is that correct?

Nicole Cromwell said yes and no. The part the yes part is that before 2022 the state of Montana never required businesses to get local approval we're signed off for zoning and land use. Licenses were issued for locations in place play places where you wouldn't expect those licenses to be issued based on the land use, but they were. So these businesses existed prior to the interim zoning and then once the in terms zoning was adopted and Department of Revenue took over licensing and then new rules were adopted by the state that's when those local approvals were a requirement of their state licensing and that's where the conflict between the interim zoning, the county attorney's office, and who's in charge of saying something is in compliance with zoning all started to happen and that happened for a year until we have a new account T attorney who would deals with that.

Commissioner Bush said just to be clear, 2 years ago you could get a business license, and no one checked to see if that business was in accordance with how that area was zoned.



**Yellowstone County Zoning Commission
To Be Approved by Motion
Monday, September 11, 2023**

The County Zoning Commission met at 4:00 p.m. in the Miller Building 1st Floor Conference Room, 2825 3rd Ave. North.

Nicole Cromwell responded previously, a State license could be obtained and they didn't require a local sign off for it, in fact we weren't even allowed to know because it was all medical. So I think there is more gray area, which is what happened between the adoption of the interim zoning regulations and today.

Commissioner Tuss said she would not include language that included "due consideration" but would allow for a motion to approve the proposed permanent changes with appropriate amendments of the seven identified business.

Nicole presented a motion for the Board, recommending approval for the proposed permanent regulations but with appropriate amendments and due consideration for the existing seven businesses established prior to November 2021.

Mogan emphasized it is on the County Commissioners to decide on more appropriate amendments.

Motion

Chairman Hewitt made a motion and Commissioner Tuss seconded the Motion, recommending the approval of the proposed permanent regulations but with appropriate amendments and due consideration for the existing seven businesses established prior to November 2021 and located within either non-commercial zone districts, or districts where the use will not be allowed in the permanent regulations.

The motion carried a 2 to 2 voice vote. Chairman Hewitt and Commissioner Tuss, In Favor; Commissioner Bush and Commissioner Poppler, Against. Zone Change 721 is forwarded to the Board of County Commissioners public hearing to be held on October 3, 2023 at 9:30am located at 316 N 26th Street – 3rd Floor, Commissioner's Hearing Room. The Board of County Commissioners will hear all persons wishing to speak relative to the proposed Zone Changes.

Discussion: There was no further discussion.

Other Business: There is no other business.

Adjourned 5:50pm

Draft – To be approved by a motion at the next scheduled meeting.

Brenda J Berns, Planning Clerk



City-County Planning Division
 Monday, September 11, 2023
 Yellowstone County Zoning Commission



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