

## City of Billings Zoning Commission Meeting Minutes- February 3, 2015

The City of Billings Zoning Commission met on Tuesday, February 3, 2015 in the Miller Building 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana.

Chairman Leonard Daily called the meeting to order at 4:30 p.m. The City Council has designated **Monday, February 23, 2015**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

Commission and Staff		01/06/2015	02/03/2015	03/03/2015	04/07/2015	05/05/2015	06/02/2015	07/07/2015	08/04/2015	09/08/2015	10/06/2015	11/10/2015	12/01/2015
Leonard Dailey, Jr.	Chairman	1	1										
Barbara Hawkins	Commissioner	1	1										
Dan Wagner	Vice Chairman	1	1										
Dennis Ulvestad	Commissioner	1	E										
Mike Boyett	Commissioner	1	1										
Candi Millar	Director, Planning & Community Services	-	-	-	1	-	-	-	-	-	-	-	-
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1	1	1	1	1	1	1	1	-	-
Tammy Deines	Planning Clerk	1	1	1	1	-	1	1	-	1	1	-	-
Wyeth Friday	Planning Division Manager	-	-	-	-	-	-	-	-	-	-	-	-
Juliet Spalding	Planner II	-	-	-	-	-	-	-	-	-	-	-	-
Lora Mattox	Planner II	-	-	-	-	-	-	-	-	-	-	-	-
Karen Husman	Planning Assistant	-	-	-	-	1	-	-	1	-	-	-	-

Total Number of 2015 Applications	01/06/2015	02/03/2015	03/03/2015	04/07/2015	05/05/2015	06/02/2015	07/07/2015	08/04/2015	09/08/2015	10/06/2015	11/10/2015	12/01/2015	TOTAL
Zone Change	2	2											4
Special Review	1	1											2

Chairman Dailey introduced the Planning Department Staff and Commission: Nicole Cromwell, Zoning Coordinator; and Tammy Deines, Planning Clerk

**Others in Attendance:** Yvonne Kelly; Riley Kelly; Tom Llewellyn; Marita Herold; Fred Pierce II; Jean Pierce; Bill Stene; John Robinson; David Mitchell; Max Griffin

**Public Comment**

Chairman Dailey called for public comments. There were no public comments. Chairman Dailey closed the public comment portion of the meeting.

**Approval of Minutes: January 6, 2015**

Chairman Dailey called for approval of the January 6, 2015 meeting minutes.

**Motion**

**Mike Boyett made a motion and Dan Wagner seconded the motion to approve the January 6, 2015 meeting minutes as submitted.**

**The motion carried with a unanimous voice vote.**

**Disclosure of Conflict of Interest**

Chairman Dailey called for disclosures of conflict of interest. There was none.

**Disclosure of Outside Communication**

Chairman Dailey called for disclosure of ex parte communication. Nicole Cromwell disclosed staff received a letter concerning Zone Change #932 from Cole Law Firm on the behalf of the applicant. Copies were distributed to the Commissioners prior to this meeting.

**Public Hearings:**

Chairman Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and asked Ms. Cromwell to open the next agenda item. Ms. Cromwell read aloud the legal notice and gave an overview of the application and staff's recommendation.

**Item #1: Special Review #922:** This is a special review request to allow a new 100 foot wireless communication tower and ground equipment within 1 mile of another communication tower over 50 feet and a special review to allow a new wireless communication tower over 50 feet in a Public (P) zoning district at the Billings Airport. The property is directly adjacent to an existing 100-foot wireless communication tower owned by Verizon Wireless. The tower is on a proposed lease parcel of 4,200 square feet within Tract 1 of C/S 2334 generally located at 284 Southview Drive just north of Highway 3. The intended lease holder is Network Information Systems and the agent for the City of Billings is Tom Binford, Aviation and Transit Director.

#### RECOMMENDATION

The Planning Division is recommending conditional approval and a waiver of the 1-mile separation requirement based of the findings of the 3 review criteria for Special Review #922.

#### **The Planning Division recommends approval, subject to the following conditions:**

1. The special review approval is for the construction of a 100-foot tall wireless communication facility and ground base equipment shelter.
2. The approval is limited to the proposed 4,200 square foot lease parcel as shown on the submitted site plan dated March 11, 2014, generally located at 284 Southview Drive in Tract 1, C/S 2334.
3. Minor modifications of the tower are allowed as follows: the addition of more antenna arrays, so long as the addition of the antenna arrays add no more than twenty (20) feet in height to the facility and the increase in height of the support structure is no greater than ten (10) percent. Placement of additional antennae, up to the number the antenna support structure was originally designed to accommodate, shall be considered a minor modification.
4. The site will be developed in substantial conformance with the submitted site plan dated March 11, 2014. Minor modification of the site plan are allowed within the proposed 4,200 square foot lease area.
5. The site is granted a waiver of the 1-mile separation distance to another wireless communication facility over 50-feet in height (BMCC 27-620(g) 11) since it is technically infeasible to place the required antennae on any existing tower within 1 mile or to re-locate the facility to another location 1 mile or more from the proposed location.
6. A building permit must be applied for within six (6) months of special review approval and the project shall be completed within one (1) year from the date the special review is granted by the City Council
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

## **Discussion**

Chairman Dailey called for questions and discussion from the members of the Commission. Mike Boyett asked for clarification on the purpose of this request. Nicole Cromwell stated this provider needs additional space to provide service and there is not enough room on the existing tower to accommodate additional antennae. Leonard Dailey asked about Staff's position on the waiver for the 1-mile separation distance. Nicole Cromwell referenced the City Code and explained if this request were not approved, the 100-foot facility would be required to move one mile away from the existing facility; this would be very difficult to do with the rim face and topography.

**Public Hearing:** Chairman Dailey opened the public hearing and called for proponents or opponents of City Special Review #922

## **Proponents**

### **Jonathan Robison, Network Information Systems, 8428 King Avenue West, Billings, Montana**

Mr. Robison said he made a considerable effort to find a suitable site, and he pointed out the limitations of the airport and the rim face. He said there is limited capacity of building rooftops that can hold an antenna. Mr. Robison stated this location is preferred by the airport due to the existing utilities and the fact the new tower will be virtually invisible due to the existing tower. Network Information Systems is the intended lease holder for the 100-foot wireless communication tower. They intend to supply reliable data services to Billings businesses as an independent provider not associate with a large carrier. Dan Wagner asked about the longevity for capacity for this site. Mr. Robison said it is conceivable this could last indefinitely with tower replacements. The time frame for construction will include a portable temporary enclosure after the lease is approved and follow with the permanent structure once the weather permits.

### **Marita Herold, City of Billings Aviation and Transit Business Manager, 1901 Terminal Circle, Billings, Montana**

Ms. Herold is attending on behalf of Tom Binford, Director of Aviation, and agent. Leonard Dailey asked about the overall Airport's position on this request. Ms. Herold stated they were contacted regarding a site in this vicinity over a year ago. They referred him to Verizon who has a collocation requirement but chose not do to so as they expanded for the 4G communications. Ms. Herold stated any changes require FAA approvals. She said the airport is supportive of locating this tower at this location as they prefer to cluster the towers. They plan to work with the applicant with the fencing and access. She said this is a 42,000 square foot parcel under a 10 year lease which is based on the square foot on the ground plus an antennae fee. Mike Boyett asked if this will be an "antenna park". Ms. Herold explained it has been quite some time since the last request but capacity is becoming an issue with the expansion of cellular use. In response to a question by Dan Wagner, Ms. Herold stated consideration of liability of environmental conditions is part of the lease. Mr. Robison stated FAA approval has been submitted and approved for this tower.

## **Opponents**

There was none. Chairman Dailey closed the public hearing for City Special Review #922.

**Motion**

**Commissioner Dan Wagner made a motion and Commissioner Hawkins seconded the motion to forward a recommendation to City Council of conditional approval of City Special Review #922 with the and Findings of Fact presented by Staff.**

**Discussion**

Chairman Dailey called for discussion on the motion. Mike Boyett commented this is a “win” for all concerned. Dan Wagner pointed out the benefits to the community of more providing additional cell service and the revenue generated to the City.

**The motion to approve City Special Review #922 carried with a unanimous voice vote, 4-0.**

REQUEST

**Zone Change #931:** This is a zone change from Residential 7,000 (R-70) to residential 6,000 (R-60) on Parcel A of amended Tracts A-G of C/S 87 and an unplatted portion of Section 5, T1S, R26 E, for the proposed Midway Townhomes development. The property is located on Yellowstone Avenue between 10th St West and 11th St West. The parcel is about 3 acres in area. The applicant conducted a pre-application neighborhood meeting on December 17, 2014, at the Shrine Lodge Room, 1125 Broadwater Avenue.

RECOMMENDATION

The Planning Division is recommending approval of the zone change and adoption of the findings of the 10 criteria.

**Discussion**

Chairman Dailey called for questions and discussion from the members of the Commission. In response to a question by Mike Boyett, Nicole Cromwell stated the City Engineer and the applicant have started on a development plan through a Master Site Plan Review and discussed Yellowstone Avenue. She said the alleyway will remain; she thought parts of Yellowstone Avenue may be open to the public. She noted the points of connection for the city services for water and sewer. Leonard Dailey commented this is an interesting property due to the street configuration. Nicole Cromwell said there will be further discussion as to what will be closed off on 10<sup>th</sup> Street and 11<sup>th</sup> Street. Dan Wagner asked if there will be legal issues with this reclamation as the public has used this for a “cut through” access for several years. Nicole Cromwell gave further explanation and said this should not be preventive easement onto this property.

**Public Hearing**

At 5:00 p.m., Chairman Dailey opened the public hearing and called for proponents or opponents of City Zone Change #931.

**Tom Llewellyn, 1925 Grand Avenue, Billings, Montana**

Mr. Llewellyn is the agent for applicants Yvonne and Riley Kelly. He stated they have come to terms through the site plan review and pointed out the street configuration. The storm water management will be handled on site; the water will come into a water vault and distributed. The plan is to build fourteen duplexes and one single unit. There will be no alley loading garages. He said the neighborhood meeting had a good representation of attendees. He stated there will be one way in and one way out off of Lewis Avenue and 11<sup>th</sup> Street West and a gated emergency exit. He state the contractors will be ready to start this project within 30 days following City Council approval.

Chairman Dailey closed the public hearing at 5:18 p.m.

**Motion**

**Commissioner Hawkins made a motion and Commissioner Boyett seconded the motion to forward a recommendation to City Council of approval of City Zone Change #931 with the Findings of Fact presented by Staff.**

**Discussion**

Chairman Dailey called for discussion on the motion. It was the consensus of the Commission this project will be a positive addition to the City.

**The motion to approve City Zone Change #931 carried with a unanimous voice vote, 4-0.**

REQUEST

**Zone Change #932:** This is a zone change from Residential 7,000 (R-70) to Community Commercial (CC) on the north 36,000 square feet of Lots 2 & 3, Pierce Subdivision. The total area of the property includes lots 1 and 2 of Block 2, in Robbins Subdivision and is a total of 1.72 acres. Only the northern 36,000 square feet is proposed for this zone change. The property is located at 808 Grand Avenue. A pre-application neighborhood meeting was held at 805 Alderson Avenue on December 18, 2014.

RECOMMENDATION

The Planning Division recommends approval and adoption of the findings of the 10 criteria for this zone change.

**Discussion**

Chairman Dailey called for questions and discussion from the members of the Commission.

**Public Hearing**

At 5:30 p.m., Chairman Dailey opened the public hearing and called for proponents or opponents of City Zone Change #932. Mike Boyett asked there has been an agreement between the parties since the original application submitted last fall. Nicole Cromwell said this application was delayed and withdrawn; and another pre-application meeting was held to address the neighborhood issues that were brought up originally. Per request of Leonard Dailey, Nicole Cromwell explained potential uses with

approved zoning and the design for traffic mitigation. She stated there will not be an access onto Grand Avenue from this property.

**David Mitchell, 1010 Central Avenue, Billings, Montana**

Mr. Mitchell is the agent for property owner, 808 Grand, LLC, and (Max Griffin). The applicant is proposing to retain the residential zoning on the south to prevent encroachment of intense commercial uses on the neighborhood on Alderson Avenue. He explained the circumstance around the delay of the application submittal. He said this request falls in line with the City's infield policy. At this time they do not have a proposal for the use but are looking toward retail or office space. They feel the Community Commercial zoning will make the best use of the property. He pointed out potential locations for a relocated access. He said they have been in communication with Bill Cole, who represents the Pierce family.

Chairman Dailey asked if there was anyone else wishing to speak in favor or against City Zone Change #932.

**Fred Pierce III, 824 Grand Avenue, Billings, Montana**

Mr. Pierce stated the letter submitted by his representative Mr. Bill Cole states his objections. Mr. Pierce said he would like to protect the spring and its outlet and their access which has been in place since 1939. He does not want a driveway through their yard. He voiced concern with the proposal for commercial zoning. He is in protest of this application.

**Jean Pierce, 824 Grand Avenue, Billings, Montana**

Mrs. Pierce said they have spent a lot of work, time, and money developing their back yard off of Alderson, and they would be disheartened if it were ruined by the driveway access. She stated they want the environment protected along with the spring. They understand the need for development but are concerned with several issues.

**Rebuttal**

**David Mitchell, 1010 Central Avenue, Billings, Montana**

Mr. Mitchell said they are working to locate the piping for the spring. He stated they will do all of the research necessary and the Building permit review will address the issues with the spring. Nicole Cromwell said the City Engineers said Van Bramer Drain originated north of Grand Avenue and was piped when Grand Avenue was rebuilt from 8<sup>th</sup> Street West to 13<sup>th</sup> Street West. Mr. Mitchell said they do not intend to remove water from the spring. He said if they proposed to redirect the driveway, they have expressed willingness to mitigate some of the cost of the landscaping.

Chairman Dailey asked if there was anyone else wishing to speak in favor of City Zone Change #932. There was none. Chairman Dailey closed the public hearing at 5:51 p.m.

**Motion**

**Commissioner Boyett made a motion and Commissioner Hawkins seconded the motion to forward a recommendation to City Council of approval of City Zone Change #932.**

**Discussion**

Chairman Dailey called for discussion on the motion. Dan Wagner expressed unease with this proposition with the potential driveway going through the other property. He suggested an access onto Alderson would be a better solution. Mike Boyett expressed a desire for the two parties to come up with an agreement for an attractive access onto Alderson and suggested a 30-day delay to negotiate an access easement. Leonard Dailey voiced consternation with the inability of the applicant's attorney to attend and asked the applicant for his input on a potential delay.

**Max Griffin, Action Electric, (maxg@ctionelect.com)**

Mr. Griffin stated the problem is the Pierces are under no obligation to do anything with their easement, and they have been reluctant to consider an alternate access. Mr. Griffin is not in favor of a delay, and said he would be more than happy to meet with the Pierces.

**Jean Pierce, 824 Grand Avenue, Billings, Montana**

Mrs. Pierce stated she feels that approval of the Community Commercial zoning leaves them with no options.

**The motion to approve City Zone Change #932 is forwarded with not recommendation to CC with a 2-2 vote, with Commissioner Wagner and Commissioner Dailey opposing.**

**Other Business:**

**--The next meeting will be held on March 3, 2015**

**Adjournment: The meeting adjourned at 6:10 p.m.**

**ATTEST: DRAFT TO BE APPROVED ON MARCH 3, 2015**

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Leonard Dailey, Chairman

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Tamara L. Deines, Planning Clerk