

## City of Billings Zoning Commission Meeting Minutes- May 5, 2015

**The City of Billings Zoning Commission met on Tuesday, May 5, 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 **Tuesday, May 26, 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.

<b>Commission and Staff</b>		<b>01/06/2015</b>	<b>02/03/2015</b>	<b>03/03/2015</b>	<b>04/07/2015</b>	<b>05/05/2015</b>	<b>06/02/2015</b>	<b>07/07/2015</b>	<b>08/04/2015</b>	<b>09/08/2015</b>	<b>10/06/2015</b>	<b>11/10/2015</b>	<b>12/01/2015</b>
Leonard Dailey, Jr.	Chairman	1	1	1	-	1							
Barbara Hawkins	Commissioner	1	1	1	-	1							
Dan Wagner	Vice Chairman	1	1	1	-	E							
Dennis Ulvestad	Commissioner	1	E	1	-	1							
Mike Boyett	Commissioner	1	1	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	-	-	-	-
Jeannette Vieg	Receptionist	-	-	-	-	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	2	0	0								6
Special Review	1	1	3	0	3								8

Chairman Dailey introduced the Planning Department Staff and Commission: Nicole Cromwell, Zoning Coordinator; and Jeannette Vieg, Receptionist

**Others in Attendance:**

Mike Ferguson, Billings Gazette, Scott Nielson, Harvey Bonner, Margy Bonner, Keith Ligman, Ogden Hanson, William Smith, Gene Culver, Elizabeth Heal, Ryan Cremer, Scott Atwood, Dave Hawkins, Spencer Zaugg, Beverly Zaugg, Steven Winkle, Natasha Winkle, John Hanson, Darrin Williams, Mark Sinben, Mikaela Sinben

**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: March 3, 2015 (The April 7, 2015 meeting was cancelled).**

Chairman Dailey called for approval of the March 3, 2015 meeting minutes.

**Motion**

**Commissioner Boyett made a motion and Commissioner Ulvestad seconded the motion to approve the March 3, 2015 meeting minutes as submitted. Chairman Dailey, had a question on the vote count. Ms. Cromwell will clarify the votes. The motion carried with a unanimous voice vote with the provision above.**

**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. Commissioner Hawkins met with two residents from the neighboring subdivision of the special review #926. Margy and Harvey Boner and then Keith Ligman and Commissioner Ulvestad was also present. The residents wanted to discuss the special review #926 and we look at the site. They had the information we didn't have yet. Ms. Cromwell, what information was that, just to clarify. Commissioner Hawkins, they had the

plat and the drawing of where the building was going to go and whatever the information you had sent regarding the 300 feet. Chairman Dailey, would that meeting impact your ability to be impartial? Commissioner Hawkins, I don't think so as far as impartiality. It was informational, as we hadn't gotten our packet yet. Chairman Dailey, and you Commissioner Ulvestad? Commissioner Ulvestad, also Chairman, they asked what I thought and I said I was not going to make a decision at this time because I wanted to get all the information.

### **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.

**Item 1:** Ms. Cromwell read aloud the legal notice and gave an overview of the application and staff's recommendation

**Return Item - City Special Review #924 – Bench Boulevard – Multi-family residences** This is a special review to allow four, nine-plex multi-family buildings (36 dwelling units) in a Residential 6,000 (R-60) zone on Lot 4, Block 1, Chalice Acres Subdivision, a 1.98 acres parcel of land, generally located west of 1442 Bench Boulevard. The City Council allowed the applicant to withdraw on March 23, 2015 to re-design the site plan.

### **REQUEST**

This is a special review request on the re-designed site plan. This is in a Residential 6000 zone on the west side of Bench Blvd just South of Wicks Lane and Bench Blvd. To the West is Hwy Commercial zoning which is the Volunteers of America Elderly Housing Apartments. To the North is Community Commercial Zone that is Best Friends Animal Hospital and the Billings Heights Water Association offices. There are three single family dwellings that front on Bench Blvd in front of this lot, there is a common access easement that goes between the property line of 1448 and 1442 and then another common access easement on the South of 1432. That is how access to the property will be gained. To the East across Bench Blvd is Residential 7000 and Residential Multi Family Restricted. Many of those homes are duplex or townhomes, condo unit ownership. Also Residential 7000 south of the subject property, and those are single family or duplex homes. One of the conditions is that the developer provide the relocation of the driveways of the single family dwellings onto the new access road at no cost or expense to the owners.

### **RECOMMENDATION**

The Planning Division is recommending conditional approval based on the findings of the 3 criteria for Special Review 924.

## **PROPOSED CONDITIONS:**

1. The special review is limited to Lot 4, Block 1 Chalice Acres Subdivision generally located west of 1442 Bench Boulevard.
2. The special review approval is for the construction of four, 9-plex multi-family dwellings and no other use or development configuration is intended or implied by this approval.
3. Any expansion of the proposed building or off-street parking greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
4. All exterior lighting, including security lighting shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. Exceptions to this requirement are allowed for porch or entry doorway lighting. The maximum height of any light pole in the outdoor areas shall be 15 feet above grade.
5. No construction or demolition activity will occur before 7 am or after 8 pm daily.
6. Any centralized solid waste storage shall be enclosed by a wall on 3 sides and a closing gate or gates. The wall and gates for the solid waste storage shall be similar or complimentary in color to the adjacent buildings and shall be sight-obscuring. The wall and gates shall be tall enough that no part of the interior dumpster(s) are visible from the outside.
7. The site will be developed in substantial conformance with the revised site plans submitted April 10, 2015 including Site Plan and Section (Sheet 1 of 4), Storm Water Drainage Plan & Details (Sheet 2 of 4) and Detailed Site Plan and Landscaping (Sheet 1-A) including landscaping, parking, mail service area, solid waste storage area and building locations.
8. The applicant will install and provide, at no cost to the City or adjacent owners, the required improvements to the private access road including but not limited to all pavement, utilities, pavement markings, private driveways, signs and other road appurtenances as required. The applicant will coordinate any such improvements with the City Engineering Division.
9. 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.
10. 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. Commissioner Boyett asked the last time we met, how many units were proposed? Ms. Cromwell, 36, the same number. Commissioner Ulvestad asked was there was indicated a perimeter fence? Ms. Cromwell, yes with exception of the west property line, they intend to leave that open. Chairman Dailey asked was it was deemed we would not put that as a condition. Ms. Cromwell, the condition is

#7 which references the landscape plan that note showing the fencing is on landscape plan. Chairman Dailey asked about the street scene of Bench Blvd., when is Bench in front of these properties to be reconstructed. Ms. Cromwell, I believe MDT hopes to get started this summer. Other questions for Ms. Cromwell? There were none.

**Public Hearing:** Chairman Dailey opened the public hearing and called for proponents or opponents of City Zone Change #924.

### **Proponents**

#### **Gene Culver, Kincaid Land LLC, (no address given)**

Mr. Culver is the property owner. Managing Partner of Kincaid Land

We took into consideration the concerns this group raised and the suggestions given and put them into the current design. We have been in contact with the neighbors in the area especially those bordering on Bench Blvd and are working with them to provide some conditions that they would like to see. He explained their plans for the fencing and how they would like to accommodate the neighbors and the children of the neighborhood. Commissioner Boyett, asked what their discussion was with the neighbors. Mr. Culver said we have been discussing hooking one of the neighbors into sewer. Property 1444 built property 1448. He ran his sewer over to 1448 and then 1448 hooked in to the city sewer. We will hook 1444 into our development at no cost to him. We have also talked about site obscuring fences, being of commercial grade vinyl. Also spoke where they would like a little additional landscape. Chairman Dailey, asked how was it determined how the sewer was hooked up. Mr. Smith, at the time it was agreement with Public Works, the City only wanted one connection into their system. Chairman Dailey, asked when the date of the agreement was. Mr. Smith, shortly after the subdivision was approved which was in 2008.

#### **William E. Smith, P.E., Octagon Consulting Engineers, PO Box 78, Emigrant, Montana**

Mr. Smith is the engineer for Kincaid Land LLC. In regard to a couple of points here, we talked about not putting fences along the easement. In our conversations with the neighbors that was some of the most substantive conversations we had about putting fences there. Ms. Cromwell, I believe that it is not in conflict with one of the conditions that you would do all the improvements for the new access road and that would include new fencing just make sure anything over 4 feet is 15 feet back from the new property line. William Smith, we will need a fence permit and will work out the details. With regard to the sidewalk, shown on the map here, with a buy in from NW energy since that is their easement down to the boundary between lots 4 and lot 3. We intend to put the sidewalk in there and have discussions with the City Engineering and pending approval by the power company. That has not been clarified at this point. If you have any specific questions I will take them now. There were no questions.

### **Opponents None**

Chairman Dailey closed the public hearing for City Special Review #924 and called for a motion.

### **Motion**

**Commissioner Mike made a motion and Commissioner Barbara seconded the motion to forward a recommendation to City Council of May 26, 2015 conditional approval of City Special Review #924 with the Findings of Fact presented by Staff.**

### **Discussion**

Chairman Dailey called for discussion on the motion. Commissioner Ulvestad and Commissioner Smith stated they are voting in favor.

**The motion carries, 4-0.**

### **Item 2: City Special Review #926 – 2911 Rim Point Dr – LDS Meetinghouse**

A special review request to allow a new LDS Meeting House (place of worship) of 16,558 square feet and a future addition of 2,510 square feet, and a 171-stall parking area with landscaping in a Residential 9,600 (R-96) zone on Lots 28 through 37, Block 2 of Rim Point Subdivision, a 4.25 acre parcel of land.

Ms. Cromwell stated the applicant did forward to me the traffic study, sent that via email to the Board.

The City Engineer emailed me some preliminary comments on the recommendation and conclusion of that report. The chief concern by the City Traffic Engineer was that a right turn lane for the west bound traffic on Rimrock Road would be necessary so as not to impede thru traffic along Rimrock as people are turning north onto Rimrock Drive from Rimrock Rd. He was not concerned with the East bound study but was concerned the recommendation that no parking be allowed both sides of Rimpoint Drive from Rimrock Rd up to the N entrance drive. He stated he had no concerns of posting no parking directly in front of the LDS Meeting House property. Because the rest of the sub is not yet developed and is intended to be sold as single family homes he was concerned about restricting all of the parking on both sides of the street from this location down to Rimrock Road. Recommended the applicants traffic engineer to re-look at that proposal.

### **RECOMMENDATION**

The Planning Division is recommending conditional approval and adoption of the findings of the 3 criteria for Special Review 926.

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

1. The special review approval is for the construction of an LDS Meetinghouse of 16,558 square feet with a future addition of 2,510 square feet and a 171-space parking lot.

2. The approval is limited to Lots 28 through 37, Block 2 of Rim Point Subdivision, generally at 2911 Rim Point Drive.
3. Increases in the size of the meetinghouse including its future addition or the number of off-street parking spaces greater than 10% of the numbers shown on the site plan will require additional special review approval.
4. The site will be developed in substantial conformance with the submitted site plan submitted 3-24-15. Minor modifications to the site plan are acceptable.
5. The applicant will provide a screening wall around each mechanical pad as shown on the site plan to reduce noise and provide continuity with the adjacent building. The screening wall will be compatible in color and materials to the adjacent building.
6. The applicant will provide internal parking lot landscaping for the two center north-to-south parking rows east of the building. The applicant will provide at least one landscape island break along the row of 43 parking spaces against the north property line. This break should be at or near the mid-point of this row of parking spaces.
7. There shall be no construction activity before 7 am or after 8 pm.
8. 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.
9. 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. Ms. Cromwell stated that the traffic study is available for review. Chairman Dailey, asked if there have those been conversations about the conditions. Ms. Cromwell sent the applicant the report approximately a week ahead and have had emails with Mr. Nielson, the Agent. He did not voice any concerns with those conditions. Chairman Dailey, with condition #6, the parking and the fence to North or to the South, is that a condition or is that part of the site plan. Ms. Cromwell stated that is part of the substantial conformance with the submitted site plan in condition #4. Breaking up those rows of parking is just specific to #6. Chairman Dailey asked what is the city's definition of a church or place of worship. Ms. Cromwell read the definition. Commissioner Ulvestad stated the area is R9600 zoning. If the church is built there will the zoning change. Ms. Cromwell replied it will stay R9600, the zoning code allows churches by special review approval in all of our residential zoning districts. Commissioner Ulvestad would this be considered a meeting place or place of worship. Ms. Cromwell stated the applicant this is what they call a LDS meeting house which is used for every day religious activities. Commissioner Hawkins asked if there was a limitation on how many churches can be in allowed in an area. Ms. Cromwell, not specifically in the code, each site is evaluated based

on its location and size of the building or density of the housing. It is very site and design specific. Commissioner Hawkins regarding the retaining wall, do you know how tall it is going to be? Concerned about the slope of the parking lot. Ms. Cromwell stated the city is adopting a new storm drainage manual. As always the applicant will have to contain the water from a 50 year storm. Storm water is taken care of on site, then released into the city storm sewer at a rate set by the City Engineer. Commissioner Boyett stated the spire is 30 feet higher than the zoning limit. Ms. Cromwell replied it is an unoccupied space, under our code 27-310 there are exceptions for those types of unoccupied spaces. Commissioner Boyett one of the things we discuss is the lighting, how is it going to done? Any restriction on the lighting. Ms. Cromwell did not include it as a condition of the parking lot. I understand the building will not be lit. Chairman Dailey said he saw it in the application, the applicant can address the lighting. Commissioner Boyett asked if this facility is going to used on a daily basis for 171 cars. Ms. Cromwell stated she didn't believe so. I don't believe any of the other locations similar to this in the city are used that way. Commissioner Ulvestad on the addition to this on the 10% parking spaces in the special review for the certain number of parking spaces they have now, is that included in the 10% addition or would that be an addition to the parking area. Ms. Cromwell stated the 171 spaces they have allows them to increase that by 10% or 17 spaces without coming back. There is also a 10% that applies to the square footage together combined without coming back for another special review. Chairman Dailey asked in regards to what we have on the power point who wrote that. Ms. Cromwell replied it written was by Marvin and Assoc. at expense of the applicant. And the City Traffic Engineer has looked it over. Chairman Dailey stated the recommendation was no parking on Rimpoint Drive and then a right turn only. Ms. Cromwell stated there was no recommendation to have a right turn on Rimrock road. Chairman Dailey asked regarding the retaining wall and the private utilities. Could you expand on that? Ms. Cromwell replied in the subdivision typically we have utility easement that are shown on the plat that private utilities run between lots to provide phone, cable, other private utilities. They are preserving those utility easements as platted so the retaining wall will be 8'6" from the property line. Chairman Dailey can you describe a retaining wall with a fence on top of it. Ms. Cromwell they can be seen on Rimrock, the N side properties are on a slope and in order to retain the land so it doesn't slope away, so where you are putting a driveway you would put a retaining wall to hold the earth then you add the fence on top. Commissioner Hawkins which way is the water supposed to be sloping. Ms. Cromwell replied typically you have drive approaches you have the throat that slopes down in to the street to the catch basins and then it slopes into the center after that there are catch basins. The retention pond and snow storage would be part of that storm water for the parking lot. All of that water would be captured and retain for the 50 year storm. Chairman Dailey asked what dept. guides telling the property owner they need all that storm water retention and fencing. Ms. Cromwell the City Engineering Dept. for the storm water and building for the fence. Commissioner Ulvestad I was concerned about west of the temple, there a road west that connects to Audubon. Ms. Cromwell replied they take traffic counts from all of the different streets that would give access to this property. Chairman Dailey with regard to Rimrock Road and west of where we were just speaking what is the plans, are they going to widen Rimrock. What is the state plan on that? Ms. Cromwell replied the state has no plans on widening Rimrock for the next 5 years.

**Public Hearing:** Chairman Dailey opened the public hearing and called for proponents or opponents of City Special Review #926.

### **Proponents**

#### **Scott Nielson, NBW Architects, P.A., 990 John Adams Parkway, Idaho Falls, ID**

Mr. Nielson represents the Corporation of the Presiding Bishop of the Church of Jesus Christ LDS. There has been a lot of growth in the west end of Billings and that is why the LDS Church is here. The LDS Church has owned the property since they bought the land to build the church. The remainder of the lots will be sold to a private developer, the negotiations are under way now as hopefully that property will be filled out as it should. To clarify the mechanical walls will be 4 feet high out of the same material that the building will have. There is no intention at all that the Church will not restrict parking on Rimrock Drive. We have read all conditions that were included in the staff report and the Church is prepared to accept those, took no exception to any of those. The church's philosophy is only putting light poles around the perimeter of the building. The poles are only 18 feet tall with a shoebox head, strictly a down light. As far as any building mounted lights, the only ones that are there are at the entrances and they are down lights, just there for safety and security. The pole lights are photo sensitive, turn off with a time clock at roughly 10:30 or 11pm. The building mounted lights are for safety and security will go on with photo cell and off with photo cell. What we are going to propose on the South property line with neighbors permission and agreement. And the retaining wall will probably just have a short guard rail on it. We are interested in protecting the privacy of the neighbor's back yards. We know there are a variety of fences back there and most of them are wood and we will propose about a 5 foot commercial vinyl fence. Chairman Dailey while we are on that it was referenced that the lot line of the neighbors to the south the fence will be in about 8 feet. Mr. Nielson that easement has telephone boxes and power boxes, we tried to decipher how to deal with that. We felt that if we moved our fence to the north it would put all of the boxes in their back yards. We thought it would be much more pleasing if the Church were to provide a new fence for them on the property line then all those boxes would be on the north side of the fence, as they are now. Chairman Dailey asked if there be a retaining wall and then a fence. Mr. Nielson there will be a fence on lot line then 8 feet of landscaping with the power boxes then the short retaining wall with the guardrail on top of it. Chairman Dailey what is the distance from the retaining wall to the building. Mr. Nielson there is a 25 foot drive, a 6 foot walk then probably 18 feet to the building. Chairman Dailey many people will be parking on the east and how will they be accessing the structure. Mr. Nielson there is an entrance on the east end, the north end. Chairman Dailey did you write the special review? Is this a prototype building? Mr. Nielson yes it has been built hundreds of times. Closest one like this building is in Dylan, but it has a lot of similarities to the one on Monad. It has a sloped roof as a house would, has brick veneer as a house would, it has low eaves, and typically you would see a 2 story house that have a ridge height around 24 feet. Articulatory it is intended to sit in neighborhoods. As for the landscaping, the church designed landscape based on the region and one of their main reasons was to reduce water usage. We contract with local landscape maintenance companies. Our primary use is on Sunday and the size of the building is designed for three congregations in order to keep congregations to a

manageable the size. Couple of nights a week for a couple of youth groups. We believe the proposal we made does meet the three criteria mentioned in the staff report consist with zoning regulations. There will be a discussion with the City Engineers regarding the traffic. I would be happy to answer any questions. Commissioner Hawkins you said you would have the light poles up close against the building so in the parking lot there are no light poles as all. Mr. Nielson we are showing three currently at 18ft pointing back toward the building and are down lights that can be set up with house shields. That is negotiable, we do have members who come and go in the dark and are concerned about their safety. Commissioner Boyett could you add more poles? Mr. Nielson, the location is the key, we are trying not to do that. Commissioner Boyett # 10 condition it will be all down lighting. If the traffic engineers says you cannot park on the street is that something you could live with. Mr. Nielson I would have to get more information on that yes it is. Ms. Cromwell, I believe the recommendation from your traffic engineer was to eliminate parking on the street from Rimrock Rd north to your driveway on both sides. The City traffic engineer said he doesn't agree with that recommendation, if the Church wanted to put no parking along just their frontage on the east side of Rimpoint Drive you could do that. Mr. Nielson we have no intention of posting anything. Commissioner Ulvestad on the property that the LDS owned, how long have they owned it. Mr. Nielson assumed it was purchased right after 1996. Commissioner Ulvestad the LDS probably knew they were going to expand. Mr. Nielson, this is a great point. The LDS Church cares a lot about their facilities. They want their buildings to sit in a nice neighborhood. Commissioner Ulvestad has the LDS Church looked at other areas. Mr. Nielson yes but they already owned this property. This is not an easy site to work with. Chairman Dailey another Church has been proposed to hold approx. 1 to 3 wards. Mr. Nielson yes their optimum capacity would be 3 wards. This building is designed to handle it. Chairman Dailey the word ward and congregation is interchangeable and typically a ward is 300 to 500 individuals. I am looking at what this structure is able to hold and the site capacity. Are you looking at max numbers instead of minimum numbers? Mr. Nielson there is a planning dept. in Salt Lake who very carefully analyzes the numbers regarding size of meeting houses.

Does the applicant want to speak? Spencer Zuagg I am a dentist by trade and also a LDS leader. Our intention is to be great neighbors to provide service to others and assist our parish. Chairman Dailey my question was discussed that people from the LDS community say they have met with the neighbors. Mr. Zuagg, the main concern has been the fence, lighting and traffic have been three main concerns. Chairman Dailey the discussions are ongoing, they haven't been stalled. Mr. Zuagg we have open communication with people and the lighting concern was it going to stay on all night. I didn't have the answer so I asked and according to the builders it is phot elec. Chairman Dailey with regard to this if it goes thru zoning in a favorable way and it goes to the City Council, what is your time frame? Mr. Zuagg we would like to start permitting process in June, July to get the bidding and start July/August and built by 2016 August. Any other questions. The floor will be open to public testimony who wants to speak in favor. None.

## **Opponents**

### **Margie Bonner, 4613 Toyon Dr., Billings, Montana**

Our house will look directly over the 171 lot parking lot. Read the zoning code, R9600 zoning is intended to promote primarily a single family environment. The nonresidential usage would be 52.9 %. If you approve this as a special use you will be in violation of your code. Adopted Growth Policy of 2008, the purpose of this is to guide local officials to make decisions. One of the objectives is to preserve neighborhood integrity. Presented a petition signed by the neighborhood in opposition to this. Part of that goal is predictable land use decision and new decisions and that new developments that are sensitive and compatible with the character of the adjacent neighborhoods. This building being proposed is close to 20,000 sq. ft. with that addition. Our neighborhood the homes have a foot print between 12 to 1500 sq. ft. This size is not compatible with the footprint of the neighborhood. One of the objectives of the Growth Policy is that it would preserve community assets such as the rims. And another of your directives is to reduce the visual impact of the rims. This is going to be a big building that sits on a hill with a big spire and I think you need to look at if you are meeting your growth policy if you approve the building of this structure. There is a Bike path that runs along Rimrock and gets a lot of use by the neighborhood and kids. There are parks in the area, kids riding their bikes to the parks and the school. A lot of people on Sunday morning riding the bike path. The 171 stall parking lots, if you filled the lot and emptied it three times, that would be 526 vehicles crossing the path. As you are heading south on Rimpoint drive, there is a blind intersection to the path. There is a concern regarding this area. Rationale, we do not want to become a neighborhood of mega churches.

### **Harvey Bonner, 4613 Toyon Dr., Billings, Montana**

When we bought our house the temple has already been approved, assured it was going to be a single family neighborhood. We will be looking across that parking lot, there is a lot of light spillover. Mr. Bonner passed out the City Zoning Commission minutes of July 21<sup>st</sup> 1997. Third paragraph down “the lights will be turned off at 11pm”, that has not happened. Since this is a neighborhood with R 9600 zoning, we were looking forward to high end houses compatible like ours. Now we have to look at the draining area, and we will get a view of great big parking lot that will takes up almost a whole block. That is not compatible with our neighborhood or the promises that have not been kept. I strongly encourage you to deny the special review application.

### **Mark Singer, 4551 Audubon Way, Billings, Montana**

We paid extra for our house with three large windows to look at the mountains. That is gone because now we will look at the parking lot. What will happen to the run off that may be an issue for my home. Down lighting is a big issue. If those lights are on all night long, that is going to flash right into our home. Construction noise, we have two very small children, that will be an issue for me for a year. Traffic. I get the right hand turn lane, but you are completely ignoring the fact that if I take a left hand turn off of Hide Park on a Sunday I will not be able to get out there. That is a major issue for me. More building, what if they don't sell it a developer and they want to add on more church property. What is the value of my house going to be? I bought a very expensive home for basically the neighborhood.

**Ryan Cramer, 4602 Toyon Dr., Billings Montana**

I just bought house and moving in as we speak. Had not seen any of the planning for this church. What I did see was the zoning for about 20 houses to be built off of these cul-de-sacs. Bought the dream home and hoped that there would be other homes around us like ours. Like everyone else, does not want to look at the parking lot from my deck, was not aware of this planning when I bought the home. If I was to sell my home I feel I have already lost money on my home.

**Ogden Hanson, 4560 Palisades Park Dr, Billings, Montana**

I had just purchased my home when the temple came in, and we heard all the good stories about the temple. But the City of Billings, one of the stipulations that Rimrock above there are no commercial establishments, buying and selling. If you go to the Temple, if you do not have the right attire you have to purchase it at the door. I am upset that the city would even desire to put another church in our neighborhood.

**John Hanson, 4608 Palisades Park Dr, Billings, Montana**

I was actually a neighbor back in 1996, when the LDS church brought the temple property they also purchased the property we are discussing then. Ask the zoning commission why they need two large buildings churches on the same property. Any questions for me?

**Keith Ligman, 4607 Pine Cove Rd, Billings, Montana**

Mr. Zuagg sent him some elevation plans of this building. Mr. Ligman discussed the elevation and grade of the lot. Consider the grade of the lot, how high the building will stick up and it does not conform to the neighborhood. Concerned with the lighting also. It is a commercial building in a residential neighborhood.

**Steve Winckle, 4705 Rimrock Rd., Billings, Montana**

I also will be looking in their parking lot, but I am more concerned about the traffic, I have younger grandchildren who rides their bikes along the road. The lighting is I am afraid is going to be quite a bit. The Temple is lite up all the time. Shared a picture of the Temple at 4am. Concerned that I will have lights in my backyard all night long. Hoping there would be homes built back there to help the value of the neighborhood. Don't think it would be good for our neighborhood. I don't need to be spending more money on my house to have it worth less than we paid.

**Rebuttal**

Mr. Nielson stated that this is a Temple, not a commercial establishment and it does not have regular business hours. Chairman Dailey there are questions regarding the lighting. Mr. Nielson I cannot speak to promises made in 1997 but it is important to understand why 2 large buildings are on the same site. They have two complete different purposes. The Temple has a specific purpose, the meeting house is just that. The Temple is built to be seen, typically the lights are left on the temple. The meeting house has a different function, it is not the policy to run these lights after 11 at night.

Chairman Dailey the view of the Rims was the question with the view be changing with construction. The lots are on higher ground. Mr. Nielson the lots behind the meeting house have been sold to a residential builder, and they are no longer under control of the church. There will be homes built behind the church that will be taller than the meeting house.

Chairman Dailey the proposed use is not compatible with the existing area.

Mr. Nielson I have spent the last few years in Kansas doing work for the LDS. I hear the term mega churches. I have seen mega churches along that corridor and this is not a mega church. This building is bigger than a home, of course it is. We still want churches in our neighborhoods. Once they are there we don't seem to get the same response. The Church endeavors to be a good neighborhood.

Chairman Dailey, regarding the blind corner toward Rimrock Rd.

Mr. Nielson that is an issue, having a blind corner with a bike path is an issue. We will work with our civil engineers in town to address that. As far as traffic, the average would be 3 to 4 people per car, on an average we try to figure 3 per car. That is still a lot of cars, still a lot of traffic and we would be happy to look into this.

Chairman Dailey, on the value of the homes.

Mr. Nielson my honest experience is we have gone into vacant fields and built this very building and by time we are done the neighborhoods have built along with us. Church does maintain the property, and we build attractive buildings. Some people would not hesitate living next to one of these.

Chairman Dailey regarding new housing or existing homes. Will their values go down?

Mr. Nielson I have talked to a contractor about a bad rain storm. It is not our interest to have our water on your property. I appreciate these comments and it makes us better at what we do.

Any other questions. There were none.

### **John Hanson 4608 Palisades Park Dr., Billings, MT**

I want to Rebuttal the Rebuttal. I can speak for the promises made in 1997, I was there.

Chairman Dailey, would you hold that for the City Council meeting.

I have information that would clarify very quickly. #1 it is all on the record, #2 LDS promised that all of this property would be R9600. When the Temple went in we heard that people want to move in near the Temple. It has been 20 years, there are no houses because the LDS refused to sell the property. I would put to you why do they need 2 large buildings. #3 Back in 1997 they didn't call the Temple a Temple, they called it a Church.

Chairman Dailey closed the public hearing for City Special Review #924 and called for a motion.

### **Motion**

**Commissioner Ulvestad made a motion and Commissioner Hawkins seconded the motion to deny a recommendation to City Council of conditional approval and adoption of the findings of the 3 criteria for Special Review #926 presented by staff.**

## Discussion

Chairman Dailey called for discussion on the motion. Questioned the reason for denial. Commissioner Hawkins, her main concern is on the real-estate aspect of it. The people purchased their homes on what had been approved and found out what was said in the meetings was not true. This was all supposed to be R 9600, they were going to have residential houses built around the Temple. They purchased their homes on what had been told to them in the past now they are in their houses and they find out here comes a parking lot and building that wasn't supposed to be there. The housing and the storm water were my main concerns. The whole idea that they were told it was going to be houses and they now have another building.

Commissioner Ulvestad is concerned about the spiral and the height of the building. They said at 2008 that time you would not be able to see the temple at night. Concerned about commercial, is there going to be cooking inside there? Bake sales?

Ms. Cromwell typically a building this size if reviewed as an assembly for this purpose. All the required building codes, kitchen, bathrooms, class rooms, it would be reviewed as a commercial building. Based on the occupancy based on that building.

Commissioner Ulvestad was also concerned about the lighting, it is very bright. It also decreased the value of the home, it not compatible.

Commissioner Hawkins it the petition going to be a valid one.

Ms. Cromwell, there is not a valid protest review for a Special Review. The petition will be passed on to the City Council.

Commissioner Boyett if we approve this we can set restrictions. Lighting, etc.

Ms. Cromwell, yes you can add conditions, amend conditions. The Council also has that proactive.

Commissioner Boyett so we can also make recommendations for traffic.

Ms. Cromwell, since we haven't had a full review, I would not recommend getting into the traffic conditions. That would be something that the City traffic division would address that.

Commissioner Hawkins, has all of this property around the Temple been taxed or is it tax exempt. If this is built it would be tax exempt, correct?

Ms. Cromwell yes, but not fee exempt.

Chairman Dailey as far as the zoning history, City Council conditionally approved Special Review for the Temple in 1997, and then since 1997 there have been major additions which was approved by City Council for Faith Evangelical, Lutheran Church of the Good Shepard, Emanuel Baptist Church, and Apostle Lutheran Church, all located in west Billings. Are they similar to this Special review?

Ms. Cromwell with the exception of the Apostle Lutheran Church all are much larger. Faith Chapel is in a residential zoning district, along with Lutheran Church of the Good Shepard, Apostles Lutheran Church, Faith Church all sit in residential zones. All has to go thru Special Review. The difference with most of the rest of these Churches is they have frontage on arterial streets.

Commissioner Hawkins I have one more question Rimrock Subdivision does not stand on its own it is also part of Lillis Subdivision.

Ms. Cromwell in order to re-arrange the lots for the original LDS Temple, Lillis Heights Subdivision was re-platted into Rimpoint Subdivision.

Commissioner Hawkins, is it still part of the Lillis Heights Subdivision? Concern is the square footage here is over 50% of Rimpoint Subdivision.

Ms. Cromwell I see that calculation, but I don't have the ability to check those numbers. 52% of the land area is for non-residential land purposes.

Chairman Dailey is there any further discussion? We have a motion on the floor to deny #926?

**The motion to carried 2-2. No recommendation. First public hearing the second will be the City Council meeting May 26, 2015.**

**Item 3 City Special Review #927– 4020 Montana Sapphire Dr (aka 920 Shiloh Road) – All Beverage without gaming:**

A special review request to locate an all beverage liquor license without gaming in a proposed new 4,500 square foot restaurant, The Divide Restaurant and Bar, an outdoor patio of 2,340 square feet, a parking lot and landscaping in a Highway Commercial (HC) zone on Lot 7, Block 1 of Montana Sapphire Subdivision a 1.69 acre parcel of land.

**RECOMMENDATION**

The Planning Division is recommending conditional approval based on the findings of the 3 review criteria for Special Review 927. The Planning Division is recommending the following conditions:

1. The special review approval shall be limited to Lot 7, Block 1, Montana Sapphire Subdivision.
2. The special review approval is for the location of an all beverage license without gaming and no other use is intended or implied.
3. Any expansion of the restaurant and patio area greater than 684 square feet will require an additional special review approval.
4. There shall be no outdoor public address system or outside announcement system, whether permanent or temporary, of any kind.
5. The outdoor patio shall have a continuous 4-foot fence around the perimeter with "exit only" gates as required for public safety. There will be no direct entrance from the parking area to the fenced patio area except through the restaurant.
6. The patio is allowed to have background music or un-amplified live music. Background music is defined as amplified music that is not audible beyond the patio perimeter.
7. The solid waste storage area shall have a sight-obscuring enclosure constructed in similar materials and colors of the building. The enclosure will include a sight-obscuring gate.

8. 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.

9. 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. It was mentioned there is a church right up the street in the strip mall on Sapphire Drive. It is 715 feet away from the proposed restaurant. Any questions for Nicole? There were none.

### **Public Hearing**

Chairman Dailey opened the public hearing and called for proponents or opponents of the City Special Review #927.

### **Proponents**

#### **Scott Atwood, Atwood Architecture, 1301 Division Street, Billings, Montana**

Mr. Atwood represents property owner David Williams and will address any questions. Question regarding the noise outside. It is not going to be that kind of bar, it is intended to be a nice sit-down restaurant with a bar. The owner does envision a nicer than normal landscaped patio area with maybe 3 fire pits.

Commissioner Ulvestad has a question on the all liquor license with no gaming. Who decides in the future if there gaming in the future, would he need a Special Review? Where did you acquire this liquor license?

Mr. Atwood there is a special lottery for this particular license and the owner was awarded one. He would have to get a different license with the state plus a Special Review if he wanted to add gaming. Chairman Dailey what is the time frame?

Mr. Atwood they have hired the contractor and he presented a tentative schedule of February 2016 opening date, they would love to be open by Christmas.

### **Opponents**

### **Rebuttal**

None

Chairman Dailey asked if there was anyone else wishing to speak in favor of Special Review #927. Chairman Dailey closed the public hearing and called for a motion.

**Motion**

**Commissioner Hawkins made a motion and Commissioner Boyett seconded the motion to forward a recommendation to City Council of May 26, 2015 of City Special Review #927 based on the findings of the 3 criteria presented by Staff.**

**Discussion**

Chairman Dailey called for discussion on the motion. Commissioner Boyett this area will be all apartments and restaurants plus the people in the area could walk to the restaurant. This is a great area and it would be easier for the residents.

**The motion carried 4-0.**

**Other Business:**

**\*\*The next meeting will be held on Tuesday, June 2, 2015.**

**Adjournment: The meeting adjourned at 7:45 p.m.**

**ATTEST: APPROVED BY A MOTION ON JUNE 2, 2015**

  
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Leonard Dailey, Chairman

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Jeannette Vieg, Receptionist