

## City of Billings Zoning Commission Meeting March 2, 2010

**The City of Billings Zoning Commission met on Tuesday, March 2, 2010 in the City Hall Council Chambers at 210 N. 27<sup>th</sup> Street, 2<sup>nd</sup> Floor.**

Chairman Leonard Dailey, Jr. called the meeting to order at 4:30p.m. Chairman Dailey said the recommendations of the Zoning Commission on the items heard tonight will be forwarded to the City Council to be heard at their meeting during a public hearing scheduled for **March 22, 2010**, at 6:30 p.m. in the City Council Chambers.

<b>Commission and Staff</b>		<b>01/05/2010</b>	<b>02/02/2010</b>	<b>03/02/2010</b>	<b>04/06/2010</b>	<b>05/04/2010</b>	<b>06/01/2010</b>	<b>07/06/2010</b>	<b>08/03/2010</b>	<b>09/07/2010</b>	<b>10/05/2010</b>	<b>11/02/2010</b>	<b>12/07/2011</b>
Leonard Dailey, Jr.	Chairman	1	1	1									
Matt Krivonen	Commissioner	1	1	1									
Barbara Hawkins	Commissioner	1	E	E									
Dan Wagner	Commissioner	-	-	1									
Edward Workman	Commissioner	1	1	1									
Candi Beaudry	Director, Planning & Community Services	-	-	-									
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1									
Tammy Deines	Planning Clerk	1	1	1									
Wyeth Friday	Planning Division Manager	-	-	1									
Juliet Spalding	Planner II	-	-	-									
Lora Mattox	Planner II	1	-	-									

<b>Total Number of 2009 Applications</b>	<b>01/05/2010</b>	<b>02/02/2010</b>	<b>03/02/2010</b>	<b>04/06/2010</b>	<b>05/04/2010</b>	<b>06/01/2010</b>	<b>07/06/2010</b>	<b>08/03/2010</b>	<b>09/07/2010</b>	<b>10/05/2010</b>	<b>11/02/2010</b>	<b>12/07/2010</b>	<b>Total</b>
<b>Zone Change</b>	<b>1</b>	<b>2</b>	<b>4</b> (2-return items)										<b>3</b>
<b>Special Review</b>	<b>1</b>	<b>0</b>	<b>0</b>										<b>1</b>

Chairperson Dailey introduced the Planning Department Staff and Commission:  
 Nicole Cromwell, Planner II/Zoning Coordinator  
 Tammy Deines, Planning Clerk

**Public Comments:**

Chairman Dailey called for public comments at 4:31 p.m. There were none. Chairman Dailey closed the public comment portion of the meeting.

**Approval of Minutes: February 2, 2010**

**On a motion by Commissioner Workman, seconded by Commissioner Krivonen and approved with a 4-0 voice vote the minutes of February 2, 2010 were approved as submitted.**

**Disclosure of Conflict of Interest**

Nicole Cromwell explained that this is for any one who may be in a legal notification area or has financial ties with an applicant or an applicant’s agent. She said that this is also for staff. There was no one on the Commission wishing to disclose any conflict.

**Disclosure of Outside Communication**

Nicole Cromwell explained that there are times that applicants communicate directly with Board members and said that this should be disclosed at the public hearing. She stated that written ex-parte communication to the Board is available to the public in the Ex-Parte Notebook. She said that there is a letter from the BIRD and a copy of the amended code for parking permit districts is available. She said that this agenda item is in response to a public comment received and the City Council maintains an agenda section and a disclosure notebook.

**Public Hearings:**

At 4:36 p.m. Chairman Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted.

**Item #1: (Return Item) City Zone Change #857 – Text and Map Amendment East Billings Parking Overlay District**

– This is a zone change that will amend the City of Billings zoning map and amend the zoning regulations to create an overlay district to allow separate off-street parking regulations to apply within the East Billings Urban Renewal District (EBURD), a tax increment finance district east of the Central Business District. The EBURD Master Plan identifies existing parking requirements in this area as a major deterrent to future development. Current code establishes off-street parking standards based on use. The requirements result in a substantial portion of the developable property to be set aside for parking. As a first step in implementing the EBURD Master Plan, the Planning Division requested the County Planning Board initiate this amendment and on July 28, 2009, the Board granted the request. The Zoning Commission opened the public hearing on February 2, 2010, for this amendment and agreed to continue the hearing until March 2, 2010, so additional information could be presented regarding the various changes to City Code.

**RECOMMENDATION**

The Planning Division is recommending approval of the map and the text amendment.

Ms. Cromwell read the legal description for this property. She said that the Planning Division and the Steering Committee has worked with the consultant, Nelson/Nygaard, to develop a companion amendment to better manage off-street parking within this district. She called the Commission's attention to the draft amendment which was distributed to the Commission members prior to this meeting. She asked that they replace pages 35-41 with the new pages that have been provided. Ms. Cromwell continued with a PowerPoint Presentation, gave a synopsis of this request, and stated that the City/County Planning Board initiated this amendment to the zoning code in July 2009. She said that it is anticipated in the future that on-street parking may become scarce. She explained the on-street 15% vacancy goal during the peak demand period and how this would function. Ms. Cromwell stated that all property owners were notified by letter and one public meeting has been held. She read aloud the recommended strategies for the district and reviewed the companion code changes. Ms. Cromwell said that metering in this district will not take place any time soon as the supply exceeds the current demand in the district. She said that with adoption of this amendment, the tools will be in place to address development and parking needs in the future.

**Discussion:**

At 4:55 p.m., Chairman Dailey asked the members of the Commission for questions and discussion. Commissioner Workman asked regarding the amendments and the affects on the Clausen property. Nicole Cromwell said that only the Clausen property will be considered. Commissioner Workman asked how the 15% vacancy goal can be achieved, and Nicole Cromwell gave several scenarios. Commissioner Workman noted that he serves on the EDA Board and asked if this is a conflict of interest. Chairman Daily noted that the Planning Department has worked extensively with the City Legal Department. He commented that it seems as though the work has been done to identify workability of this text. Nicole Cromwell stated that the vacancy goal is related to a parking permit district. She said that if the City wished to expand this to apply to existing parking zones within the

City, it would be very easy to amend. Chairman Dailey stated that the language will work with on-street or metered parking. Per request of Chairman Dailey, Nicole Cromwell explained the “cash out” proposal which is a way of encouraging use of other means of transportation. She noted that it is a little complicated, as there is no means of tracking this within the district. Chairman Dailey noted the concerns listed in the letter that was submitted by BIRD. Nicole Cromwell stated that this is a consultant’s recommendation to the City. Commissioner Workman asked if the “blue writing” should be included as a part of the amendment. Nicole Cromwell stated that the blue text denotes the changes that the consultant is recommending to the City. She said that everything in the consultant report will not be adopted this evening. She stated that unbundled parking would have to go through the Parking Advisory Board and that she does not know if the City can assert itself under Montana Law into this relationship. She said that recommendations can go to the consultant. Chairman Dailey suggested that this Commission approve the amendment with the stipulation that the cash-out option for employees recommended by Nelson/Nygaard not be adopted.

**Proponents:**

At 5:00 p.m. Chairman Dailey called for proponents for City Zone Change #857.

**Matthew McDonnell, Big Sky Collision Center, representing B.I.R.D.( no address given)**

Mr. McDonnell stated that they are in support of this zone change. Mr. McDonnell said that they were not in favor of the cash-out option and the multi-modal transportation impact fees as recommended by the consultant.

**Opponents**

At 5:15 p.m. Chairman Dailey called for opponents of City Zone Change #857. There were none. Chairman Dailey closed the public hearing.

**Motion**

*On a motion by Commissioner Workman seconded by Commissioner Krivonen and approved to recommend to City Council approval of City Zone Change #857 as presented by staff with the inclusion of Mr. Clawson’s property and that City Council adopt the recommended changes to the consultants memorandum dated Jan 11, 2010 as stated in the Feb 12 BIRD recommendations.*

**Discussion**

Chairman Daily called for discussion on the motion. Commissioner Workman commented that he is in strong favor of this request.

**Motion carried unanimously, 4-0.**

The City Council has designated **Monday, March 22, 2010**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the above-mentioned item.

**Item #2: (Return Item) City Zone Change #861 – 2302 Meadowood Street** – This is a zone change request from Residential 9,600 (R-96) to Residential 7,000 (R-70) on Lot 8, Block 1 of Meadowood Subdivision located at 2302 Meadowood Street. The property is owned by Mark Dawson and BlueLine Engineering, represented by Marshall Phil, is the agent. The owner and agent conducted a pre-application neighborhood meeting on December 28<sup>th</sup>, 2009 at 6:00 pm at the Century 21 office at 1605 Shiloh Road. The applicant requested a delay at the hearing on February 2, 2010. The Zoning Commission granted the delay until March 2, 2010.

### **RECOMMENDATION**

The Planning Division is recommending denial.

Ms. Cromwell stated that the applicant or agent is not in attendance this evening.

She read the legal description and opened with a PowerPoint presentation. She stated that this public hearing was continued from the February 2, 2010 City Zoning Commission meeting as the applicant, Mr. Dawson, was unable to attend. Ms. Cromwell stated that the Planning Division has reviewed this application and is recommending denial based on the twelve (12) criteria for zone changes. The reasons below were listed in the Staff report and reviewed in the presentation:

- The proposed zoning is not compatible with existing zoning and surrounding neighborhood
- Only 1 other property within 600 feet is similar to this site
- Could be considered an illegal spot zoning based on three tests for spot zoning. She explained that illegal spot zoning is not one of the twelve review criteria for zone changes required by Montana law and local zoning regulations; and that a court may determine whether an illegal spot zoning has occurred and reverse a zoning decision based on this determination. Some of the twelve review criteria for zone changes are directly related to the determinations for illegal spot zoning.

### **Discussion:**

Chairman Dailey asked the members of the Commission for questions and discussion. Commissioner Dailey asked if Nicole Cromwell has communication with the applicant. Ms. Cromwell replied that Staff sent an updated notice and staff report to the applicant. She said that Staff received a communication from the original property owner who was not aware that Mr. Dawson, a contract buyer, had made this application.

### **Proponents:**

Chairman Dailey called for proponents for City Zone Change #861. There was none. Chairman Dailey called for opponents of City Zone Change #861. There was none. Chairman Dailey closed the public hearing at 5:29 p.m.

### **Motion**

***On a motion by Commissioner Daily seconded by Commissioner Wagner and was approved with a vote of 4-1, (Commissioner Workman dissenting), to forward a recommendation to City Council to deny City Zone Change #861 as recommended by Staff.***

### **Discussion**

Chairman Dailey called for discussion on the motion. Nicole Cromwell gave information on the case on spot zoning. Chairman Dailey said that as a City we are subjecting this to the interpretation of the judge. Nicole Cromwell concurred and gave some examples of such cases. In response to a question by Commissioner Workman who asked if the applicant could build a duplex if the current structure would be destroyed if the zone change is allowed. Nicole Cromwell noted that there is no owner occupancy rule in the code. Chairman Dailey noted that this property is incongruent with the surrounding properties.

The City Council has designated **Monday, March 22, 2010**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the above-mentioned item.

**Item #3: City Zone Change #862** This is a zone change request from Community Commercial (CC) to Highway Commercial (HC) to allow the expansion of a limited pharmaceutical manufacturing facility on Tract 2A1 of C/S 1965 and Lot 5 of Block 1 Bergquist Subdivision located at 2414 Roundup Road and 621 Pemberton Lane. The property is vacant and has access to Roundup Road, Pemberton Lane and to the adjacent property. The applicant is Vacant Land, LLC and Tom & Cheri Bergquist. The agent is Ernie Dutton. A pre-application neighborhood meeting was held on January 22, 2010 at 2376 Main Street, All American Pharmaceuticals.

### **RECOMMENDATION**

The Planning Division is recommending approval based on the 12 criteria for zone changes.

Ms. Cromwell read the legal description and presented a brief power point presentation.

### **Discussion:**

Chairman Dailey asked the members of the Commission for questions and discussion. There were none.

### **Proponents:**

At 5:41 p.m. Chairman Dailey called for proponents for City Zone Change #862.

### **Ernie Dutton, 2046 Mariposa Lane, Billings, Montana**

Mr. Dutton is the agent for the applicant, Vacant Land, LLC and Tom & Cheri Bergquist. He gave a brief review of this property's history and noted that City Council gave an exception to the zoning code by approving a request for "All American Pharmaceuticals". He said that they have not received any dissenting comments from neighbors. Regarding the Pemberton property, he said that several of the neighbors attended the pre-application meeting and a good discussion was held. He said that All American Pharmaceutical is proposing an addition to their current building and the access will be from the current parking lot. Mr. Dutton stated that current setbacks will have to be maintained in order to preserve the applicant's access around the property. He said that any new fencing will be vinyl to create some buffering to the adjacent properties. Mr. Dutton pointed out the copies of the Deed Restrictions that were provided to the members of this Commission in the

review packets. He said that these restrictions preclude any other highway commercial use other than for “All American Pharmaceuticals”. Commissioner Krivonen asked about security for this business and if the lighting may aggravate the neighbors. Mr. Dutton said that lighting shielding will be required with this new development. Chairman Dailey asked as to where the addition will be located and Mr. Dutton stated that it will extend in both directions. Mr. Dutton stated that Mr. Poleni is unable to change the restrictions on his own and it would require consensus of the neighbors.

### **Opponents**

At 5:53 p.m. Chairman Dailey called for opponents of City Zone Change #862. There were none. Chairman Dailey closed the public hearing.

### **Motion**

*On a motion by Commissioner Workman seconded by Commissioner Wagner and approved to recommend to City Council approval of City Zone Change #862 as presented by staff.*

### **Discussion**

Chairman Daily called for discussion on the motion. Commissioner Wagner stated that this is a reasonable request. Chairman Dailey noted that outside comments have been received stating that this is a clean business who employs several employees.

**Motion carried unanimously, 4-0.**

The City Council has designated **Monday, March 22, 2010**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the above-mentioned item.

### **Item #4: City Zone Change #863 – Text Amendment to Section 27-614(e) – Temporary Uses.**

This is a zone change that will amend and updated Section 27-614(e) of the Billings, Montana City Code (BMCC) regulating temporary uses of land related to construction projects. The current code allows construction equipment, sheds and offices but does not mention the staging and storage of materials. The Planning, Engineering and Legal staff believes this was an oversight in the code development dating to its original adoption in 1972. The City Engineering Division requested the City Council initiate this amendment and on February 8<sup>th</sup>, 2010, the Council granted the request.

### **RECOMMENDATION**

The Planning Division is recommending approval.

### **BACKGROUND**

The existing temporary use regulations allow the placement of construction equipment, sheds and offices in any zoning district for an approved construction project. Any construction project whether for public or private purposes also requires the storage and staging of materials for such projects. This amendment inserts language to allow the storage and staging of materials and requires those materials to be stored in a safe, neat and orderly manner. Over the past several years,

the city has completed several large infrastructure improvement projects. During the 2009 construction season, it came to the attention of the Engineering and Planning staff that the temporary use code in this matter was not clear. Current language could be interpreted to mean that no storage of construction materials would be allowed except in industrial districts. This oversight in the code needs to be addressed so contractors, builders and surrounding owners are assured that construction staging areas have adequate oversight and are allowed on a temporary basis only. The Engineering Division has worked to develop specific amendments to the existing code that will clarify this section of the code. The Legal Division has reviewed the amendments for intent, form and language.

Ms. Cromwell read the legal description and presented a brief PowerPoint presentation. She pointed out that there has been a serious oversight in the code, as the language does not include allowances for storage of construction materials. She said that the text amendment requires that material storage has to be part of an approved construction project, and must be staged in an orderly manner. Ms. Cromwell said that Debi Meling, City Engineer, Public Works Engineering Department, is attending this evening.

#### **Discussion:**

Chairman Dailey asked the members of the Commission for questions and discussion. In response to a question by Commissioner Krivonen, Nicole Cromwell stated that the definition of “temporary” is a time frame less than a year. Commissioner Dailey noted the language on living or sleeping quarters. Nicole Cromwell stated that this has been included to avoid the construction yard becoming a place for transient workers. In response to Commissioner Dailey, Nicole Cromwell stated that this amendment has been reviewed by City Attorney Kelly Addy.

#### **Proponents:**

At 6:00 p.m. Chairman Dailey called for proponents for City Zone Change #863.

#### **Debi Meling, City Engineer, Public Works Department , Billings, Montana**

Ms. Mehling commented on some of the recent waste and sewer installation projects. She stated that they wish to minimize impacts to residents and the traveling projects. She noted the depicted project that was located west of 24<sup>th</sup> Street, south of Broadwater, and north of Central Avenue. She said that a neighbor had some concerns who felt that the material storage was disruptive. She commented on the potential for the material storage to become an attractive nuisance. She stated that the text amendment addresses project impacts. Commissioner Workman stated that it is “garage logic” to have the materials near the project. He asked about liability to the City and Ms. Meling. Commissioner Wagner asked if this site would be used again. Ms. Mehling said that there are no current projects for this area other than some overlay work.

#### **Opponents**

At 6:10 p.m. Chairman Dailey called for opponents of City Zone Change #863. There was none. Chairman Dailey closed the public hearing.

**Motion**

*On a motion by Commissioner Wagner seconded by Commissioner Workman to recommend to City Council approval of City Zone Change #863 as presented by staff.*

**Discussion**

Chairman Dailey called for discussion on the motion. Commissioner Krivonen asked if there is a stipulation on the types of materials that can be stored. Nicole Cromwell referred to the amendment and said if the materials are not a part of the approved construction project a complaint may be filed; and the City would respond and talk to the contractor. She said that temporary uses are addressed under complaint based enforcement.

**Motion carried unanimously, 4-0.**

The City Council has designated **Monday, March 22, 2010**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the above-mentioned item.

**Other Business:**

A. Nicole Cromwell stated that the April 6, 2010 City Zoning Commission meeting will not be held due to a lack of applications.

B. Nicole Cromwell and the members of the Commission welcomed new Commissioner Wagner to the Zoning Commission and thanked him for his willingness to serve.

**Adjournment:**

*The meeting was adjourned at 5:26 p.m.*

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**Chairman Dailey, Chairman**

**ATTEST:**

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**Tamara L. Deines, Planning Clerk**