



Yellowstone County Zoning Commission Minutes for the Meeting of Tuesday, October 14, 2014

The County Zoning Commission met on Tuesday, October 14, 2014 in the Miller Building 1st floor conference room located at 2825 3rd Avenue North. Vice Chairman Al Littler called the meeting to order at 4:00 p.m.

Commissioners and Staff		01/13/2014	03/10/2014	04/16/2014	05/12/2014	06/09/2014	09/08/2014	10/14/2014							
Dennis Cook	Chairman	1	1	1	E	1	1	E							
Al Littler	Vice Chairman	E	1	1	1	1	1	1							
Terri Welborn	Commissioner	-	1	1	1	1	1	1							
Ole Shafer	Commissioner	1	1	1	1	E	1	1							
Nicole Cromwell	Planner II/ Zoning Coordinator	1	1	1	1	1	1	1							
Wyeth Friday	Planner II	-	-	-	-	-	-	-							
Juliet Spalding	Planner II	-	-	-	-	-	-	-							
Lora Mattox	Planner II	-	-	-	-	-	-	-							
Tamara Deines	Planning Clerk	1	1	1	1	1	1	1							
Karen Husman	Planning Assistant	-	-	-	1	-	-	-							

At 4:05 p.m., Vice Chairman Littler stated he is going to allow a review period for the Commission members to familiarize themselves with the new information submitted at this meeting. He commenced the meeting at 4:10, and introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Tammy Deines, Planning Clerk.

Others in Attendance: Ralph Quarnburg; Sharon Ingraham; Carol Hardy; Josie Quarnburg; Chuck Quarnburg; Bob Whalen; Blaine Poppler; Jeremy Vanetta; Lowell Cooke; Dennis Randall, Sanderson Stewart; Leroy Walter; Norma J. Walter; Haley Vanetta; Greg McCall, McCall Development; Carolee Bonner; Laurie Hickethier; Kelly Smith; Brad McCall, McCall Development; Dax Simek, Sanderson Stewart; Bryan Wilson

Announcements: The Board of County Commissioners will hear this application at the Board of County Commissioners meeting on Friday, September 28, 2014.

Disclosure of Conflict of Interest:
There was no disclosures of conflict of interest.

Disclosure of Outside Communication

There was no one on the Commission wishing to disclose any outside communication.

The following items were submitted to the Commission:

1. 09/02/2014 Arial Map submitted by Attorney Carol Hardy with attached letters in support of County Zone Change #652.
2. Petition in Support of County Zone Change #652 with 14 signatures
3. Copy of a letter from McCall Homes to Quarnburg Corp delivered via E-mail regarding Zone Change #652
4. Copy of a letter dated September 11, 2014 to the Elysian School District School Board regarding Zone Change #652
5. Letter received from Arlis Keller in objection to Zone Change #652

Approval of the September 8, 2014 Meeting Minutes

Vice Chairman Littler called for approval of the September 8, 2014 minutes.

Motion

Ole Shafer made a motion and Terri Welborn seconded to approve the September 8, 2014 meeting minutes as submitted.

The motion carried with a unanimous voice vote.

Public Comment

Vice Chairman Littler asked if there was anyone wishing to speak during the public comment portion of the meeting. He stated any member of the public can be heard on any subject that is not on the agenda; the Yellowstone County Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting agenda for discussion. There were no public comments at this time.

Public Hearings:

Vice Chairman Littler reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the Board of County Commissioners on Tuesday, October 28, 2014, in the Board of County Commissioners Board Room 403A in the Yellowstone County Courthouse.

Item #1: County Zone Change #652 – 6132 S Frontage Road – A zone change request from Agriculture-Open Space (A-1) to Highway Commercial (HC) on a 126.51 acre parcel of land described as the SW1/4, Sec18, T1S, R26E, less the RY, HWY & C/S 1614 and C/S 2038 and an area already zoned HC. The area is presently used as a sod farm for Tvetene Turf. A pre-application meeting was held at the subject property on July 28, 2014. Tax ID D01913.

Zoning Coordinator Nicole Cromwell stated the compromise between the applicant and the school district allowed for by the County Zoning Commission at the previous meeting was not reached in time for legal notification so the original application is moving forward.

REQUEST

The applicant is requesting a zone change from Agriculture-Open Space (A-1) to Highway Commercial (HC) on a 126.51-acre parcel of land described as the Southwest ¼ of Section 18, Township 1 South, Range 26 East (LESS RY, HWY & C/S 1614, C/S 2038 & the area already zoned HC). The property is generally located at 6132 South Frontage Road approximately 1 mile west of the I-90 King Avenue West interchange. The applicant conducted a pre-application neighborhood meeting on July 28, 2014. The County Zoning Commission opened the public hearing on this request on September 8, 2014, and delayed the item to October 14, 2014, to allow the applicant, their agents and surrounding property owners (Elysian School) to discuss an alternate zone change plan. An alternate plan has not been negotiated, so the original application is moving forward. **The Planning staff is forwarding a recommendation of denial based on the 11 criteria for zone changes.**

Staff Presentation

There have been 11 similar zone change requests in this area of Yellowstone County since 1976. One of these applications was denied, one was withdrawn, and 9 were approved. Tvetene Turf to the west submitted a Planned Development zone change in 2013 and worked with Elysian School to customize the zoning so the school could purchase property and protect the school property from encroachment of incompatible uses. Three applications were submitted for the Hiway Acres Subdivision on the west side of East Lane. One application was denied for Lots 6 through 14. Subsequently, two applications were approved. One of those approved was for Lots 6 through 9. This zone change was approved based on the applicants filing a protective covenant on the property to require landscape screening and buffering of the adjacent residential properties on East Lane. The covenants were filed just prior to the County Commissioner's approval. Two zone changes in the Bottrell Subdivision south of Elysian School were approved and one was withdrawn. There was concern from adjoining land owners about direct access for truck traffic on to East Lane. The applicants at the time did not intend to access East Lane. Subsequent to the approved zone change, access was granted to East Lane and truck traffic uses East Lane to connect with the South Frontage Road.

REASONS

Planning staff has reviewed this application and is forwarding a recommendation of denial for the proposed zone change based on the 11 criteria for zone changes. Part of the property may be appropriate for HC zoning, particularly the area with access to South Frontage Road. The south west quarter of the property near the intersection of East Lane and Elysian Road would be more appropriate for residential uses, low-intensity commercial development that could serve this growing area of Billings, or some mixed use development with compatible residential and commercial uses. The HC zone does allow residential uses but there are few residential developments within HC zoning districts. The adjacent streets are not intended to handle the type and volume of commercial traffic that could result from the development with an HC zoning designation. The proposed zoning is incompatible with the existing adjacent uses to the south and west and planned development of those adjacent parcels. The HC zone could allow the construction of other uses that may also have a detrimental effect on traffic and the adjacent residential and agricultural uses.

Discussion

Vice Chairman Littler called for discussion. Al Littler asked if Staff agrees that HC zoning surrounds this property but there are concerns with the southern boundary. Nicole Cromwell clarified and stated there are also concerns with the western boundary. In response to a question by Terri Wellborn, Nicole Cromwell said the Zeiler family annexed and rezoned their property to Highway Commercial zoning last year. She noted the surrounding zoning on a posted zoning map.

At 4:23 p.m., Vice Chairman Littler opened the public hearing and asked if there was anyone wishing to speak in favor of County Zone Change #649.

In Favor:

Carol Hardy, 2211 Spruce, Billings, Montana

Ms. Hardy represents the Quarnburg Family as their attorney. She gave an overview of events that took place since the last meeting. Ms. Hardy stated the Quarnburg's offer to request a zone change that would make the zoning within 300 feet of the school the same as the zoning approved on the Tvetne/Viking Land property last year, which is a Planned Development with underlying Highway Commercial zoning, (HC). Ms. Hardy explained the school district turned down this offer as they desire protection along the entire length of Elysian Road. She said the Quarnburgs are willing to accomplish the same result as the Planned Development by using protective Covenants & Restrictions to establish the same protection within 300 feet of the school.

Ms. Hardy said these offers have not been acceptable to McCall Development or the School Board. She pointed out that one of the McCalls is on the school board.

In response to a question by Commissioner Littler, the Covenants and Restrictions would be in effect with an approval of the zone change to HC zoning. Commissioner Littler said he didn't find this offer in the supporting documents. Carol Hardy responded this was a verbal offer to the school district.

Ms. Hardy continued and commented on the recent public meeting and discussion on the Zoo Montana to Riverfront Trail network which includes a proposed trail alignment in this area. She noted a posted map and pointed out the preferred trail which travels north to East Lane to the school and at a future date potentially along the easement in Titan Subdivision. Ms. Hardy stated this addresses the issues of the dangers to children on Elysian Road and potential for additional traffic with the zoning. She reminded the Commission of the laws in effect to protect school children and schools, including traffic laws and prohibition of certain activities near a school.

Ms. Hardy pointed out a portion of zoning code dealing with landscaping buffers and the landscaping required for properties with HC zoning. She said the buffering will protect the adjoining residential areas, and part of the proposed Covenants and Restrictions will put equivalent buffering around the corner within 300-feet of the school. She commented the entire area is requires buffering if the property is developed as a residential area. She reiterated the fact the Quarnburg family has farmed this property and said their desire to sell the property will

provide for four Quarnburg families. She asked the Commissioners to pass this request for a zone change and suggested they consider the use of Covenants and Restrictions. As supporting material, Ms. Hardy submitted staff reports for the zone changes for the Tvetne Land and the Zoning properties. Ms. Hardy pointed out the Commission will need to draft a response to the eleven criterion to support a recommendation of approval and offered criterion she drafted to this Commission for consideration. She pointed out there is one additional Finding of Fact used by the County Commission asking if the property is compatible with adjoining City zoning, which in this case would be the Zeiler property. She eluded to a posted map, "City/County Planning Board Growth Map 4.1.3", depicting anticipated development within the City/County jurisdictional area. She said the Growth Policy states this is a concept of growth in the greater Billings area, and suggests this zoning is appropriate for this area.

Commissioner Littler pointed out there is a difference between the 2008 Growth Policy and the 2014 Urban Boundary Plan. He said the Urban Boundary Plan supersedes some of the thought in the 2008 Growth Policy. Ms. Hardy said the 2014 Urban Plan extended water and sewer to this area along Elysian Road to the Elysian School and the City will pay for installation of the water and sewer lines that benefit the entire area. She pointed out the HC zoning allows for residential and commercial development.

Commissioner Littler thanked Ms. Hardy for her presentation and her attention to detail. Commissioner Littler called for those wishing to speak in opposition of County Zone Change #652.

Opposition

Bob Whalen, Superintendent, Elysian School, Billings, MT

Superintendent Whalen stated the School District is not in favor of this request. Vice Chairman Littler pointed out the written request submitted to the school district did not include the verbal offer for Covenants & Restrictions similar to the Viking Land Planned Development Covenants. He asked if the school board addressed this request. Mr. Whalen stated the initial conversations took place during the planning period for the school and at that time they were not aware of the opportunity for City water and City sewer services. He said that they would have leaned toward a residential zoning versus a Planned Development for the Viking Land property if those conversations had taken place today. Mr. Whalen said when the Quarnburg's delivered their response, the offer was the right of first refusal to buy the 300-foot area that they wanted as a buffer zone. He stated the Quarnburgs did not offer a compromise; only the 300-foot area discussed by the Commission was submitted.

Nicole Cromwell posted a copy of the Viking Land Planned Development Agreement and noted a portion of the document stating prohibited uses on properties directly adjacent to the school area.

Laurie Hicketier, 5222 Sacagawea Drive, Billings, Montana

Ms. Hicketier stated Elysian School employs her as a clerk. She said at the time the School Board was aware of the need for expansion, it was determined it was most feasible to do an addition to the current building instead of purchasing property. She said their best offer at the time with the Zeiler property was HC commercial zoning with covenants and Restrictions.

Ms. Hickethier said 150 of the 250 students come from the Josephine Crossing Subdivision, and the remainder of the students are bussed into the school from a 3-mile radius. She stated the school district desires a buffer along Elysian Road as the majority of their students are traveling this route. In response to a question by Commissioner Litter, she said there bonding capacity is increasing. Commissioner Littler noted the recommendation for a trail system located south of Elysian Road for children to travel. Ms. Hickethier said this is an unknown factor at this time.

Haley Vanetta, 1814 Front Street, Billings, Montana

Ms. Vanetta stated she is the president of the PTO. She said she feels the argument for trails is too vague as there is no guarantee that they will be built. Ms. Vanetta stated Elysian School deserves respect in terms of negotiation with the land use. She said this issue it is important to parents and they submitted a petition. She took exception with Ms. Hardy's comment of McCall's representation on the School Board and stated the Board Members are not monopolizing. Commissioner Welborn asked Ms. Vanetta how many are walking and Ms. Vanetta responded, "None at this time".

Dennis Randall, Sanderson Stewart, 1300 N Transtech Way, Billings, Montana

Mr. Randall stated he helped work on the Tvetne Planned Development Agreement, (PD). He said some of the concept plans considered included a plan for residential uses with City services but the Public Works Department told them the City had no plans of extending sewer and water. With that in mind, Sanderson Stewart developed a Highway Commercial Master Plan and later amended it to a Planned Development Agreement. Mr. Randall said the City has the funds to extend the services, and he has had conversations with Tvetnes as they are considering a residential component for their property that surrounds the school. Commissioner Littler asked about the difference between the Quarnburg's plan and the PD. Mr. Randall said once a zone change is in place there is no guarantee of the use. He said there is not a separate set of Covenants and Restrictions associated with the Tvetne's property. Commissioner Littler commented on the economic underlying factor to these decisions. Dennis Randall argued the residential use may be just as viable and he stated he feels letting the market drive the planning is inappropriate.

Brad McCall, 1621 Front Street, Billings, Montana

Mr. McCall stated he has been a School Board member for seven years and was intimately involved with the negotiations with the Tvetnes. He said he recuses himself from any decisions that could be considered a conflict of interest.

Mr. McCall said McCall Development is looking towards developing residential area on a parcel located south of this property. He said property value is a key factor to consider along with the need for "highest and best use". He said part of the applicant's request for homogenous zoning for the entire parcel may have to do with the inability to split the property; it is his opinion the size of the property is one of the biggest obstacles. He noted the difference between zoning restrictions and covenants is zoning is enforced by the City and County while Covenants are enforced by lawsuits. Mr. McCall commented the "game changer" in this area is the extension of City water and sewer, which shifted after the Urban Planning Studies were written and in place.

Mr. McCall related he has considered the tax fees and the system development fees. His findings indicated higher density residential development brings exponentially more revenue to the City for the cost of services. He spoke as a residential developer and stated he would not be interested if the buffering is not in place. He said he feels the request for Highway Commercial zoning is a mistake. He commented as a School Board member and said they had to agree with the Tvetne zone change due to the needs of the school at the time.

Jeremy Vanetta, 1814 Front Street, Billings, Montana

Mr. Vanetta stated he is a School Board member, and the Board was frustrated that the Quarnburg's resubmittal request had not changed. He stated it is not the responsibility of the Board to preserve the highest and best use of properties. He stressed the school system has existed for 100 years and must be considered. He voiced concern as the applicant does not know the future property owner or the outcome of the use. Mr. Vanetta said the school's first right is protecting the students.

Rebuttal

Sharon Ingram, 6132 S Frontage Road, Billings, Montana

Ms. Ingram noted the updated map property map and letters submitted to the Zoning Commission this evening. She said Elysian School is 100 years old and started in the Quarnburg's home. The upstairs was built with a large bedroom for the teachers to live in. Ms. Ingram said the majority of the traffic is coming from the Josephine Crossing Subdivision and she has only seen two students on bicycles going to the school on Elysian Road.

Carol Hardy, 2211 Spruce, Billings, Montana

Ms. Hardy discussed the probable traffic patterns if the Quarnburg's property were zoned Highway Commercial. She said it is important to know when construction is completed, the school's entrance will be facing Elysian Road but will be further west than the existing entrance. Ms. Hardy stated she is contesting the comment that this development will put additional traffic in front of the school. Ms. Hardy stated her client has agreed to a compromise with fairly onerous Covenants to be enforced by the school for whose benefit they are given. She pointed out the laws and ordinances are enforced along with zoning violations by Yellowstone County.

Commissioner Littler asked if it would be reasonable to extend the Covenants beyond the two acres near the school district due to the availability of water and sewer. Carol Hardy responded the McCalls are planning for residential neighborhood and existing laws would require buffer zones. Nicole Cromwell said it would not be required as the commercial use would be more than 50-feet away from the residential area. Discussion followed on the requirements for right-of ways and the requirements for landscape buffering for perimeters of large developments.

Vice Chairman Littler asked if there was anyone else wishing to speak in favor or against Yellowstone County Zone Change #652 – 6132 S Frontage Road. There was none. Vice President Littler closed the public hearing at 5:42 p.m.

Motion

Commissioner Welborn made a motion and it Commissioner Shafer seconded the motion to forward a recommendation of denial of Zone Change #652 as recommended by staff with the reasons given by staff.

Discussion

Vice Chairman Littler called for discussion on the motion. Commissioner Wellborn stated she agrees that placing Covenants and Restrictions not a good plan of action. Commissioner Shafer concurred and said he does not agree with the request for blanket zoning. Commissioner Littler stated he is going to vote against the motion as this is a difficult decision. He said he is disappointed the applicant and the School District did not find a compromise. The Commission thanked attendees for their good presentation and points of discussion.

The motion carried, 2-1, with Commissioner Littler voting against the motion.

The Board of County Commissioners will hear this application at the Board of County Commissioners meeting in the Commissioners' Board Room at 9:45 a.m. on Friday, September 28, 2014. Commissioner Littler encouraged all of tonight's attendees to be present as the Commissioner will receive all new testimony in addition to the information from the present hearing.

Adjournment: The meeting adjourned at 5:42 p.m.

ATTEST: Approved by a motion on Wednesday, November 5, 2014

Al Littler, Vice Chairman, Yellowstone County Zoning Commission

Nicole M. Cromwell, Zoning Coordinator