

**City of Billings Zoning Commission Meeting
April 3, 2012**

The City of Billings Zoning Commission met on Tuesday, April 3, 2012 in the City Council Chamber, 2nd Floor City Hall 210 N 27th Street, Billings, Montana.

Chairman Leonard Dailey called the meeting to order at 4:30 p.m. The City Council has designated **Monday, April 23, 2012**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against this zone change application.

Commission and Staff		01/03/2012	02/07/2012	03/06/2012	04/03/2012	05/01/2012	06/05/2012	07/03/2012	08/07/2012	09/04/2012	10/09/2012	11/06/2012	12/04/2012
Leonard Dailey, Jr.	Chairman	1	1	1	1								
Matt Krivonen	Commissioner	A	A	E	R								
Barbara Hawkins	Commissioner	E	E	1	E								
Dan Wagner	Commissioner	1	1	1	1								
Bill Ryan	Commissioner	1	1	1	1								
Candi Beaudry	Director, Planning & Community Services	-	-	1	-								
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1	1								
Tammy Deines	Planning Clerk	1	1	1	1								
Wyeth Friday	Planning Division Manager	-	-	-	-								
Juliet Spalding	Planner II	-	-	-	-								
Lora Mattox	Planner II	-	-	-	-								
Karen Miller	Planning Assistant	-	-	-	-								

Total Number of 2009 Applications	01/03/2012	02/07/2012	03/06/2012	04/03/2012	05/01/2012	06/05/2012	07/03/2012	08/07/2012	09/04/2012	10/02/2012	11/06/2012	12/04/2012	TOTAL
Zone Change	2	2	8	3									15
Special Review	1	0	1	0									2

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

Others in Attendance: There was none.

Public Comments:

Chairman Leonard Dailey called for public comment at 4:33 p.m. There were no public comments. Chairman Leonard Dailey closed the public comment portion of the meeting.

Approval of Minutes: March 6, 2012

Chairman Dailey called for approval of the March 6, 2012 minutes.

Motion

On a motion by Commissioner Wagner seconded by Commissioner Ryan and approved with a 3-0 voice vote, the minutes of March 6, 2012.

Disclosure of Conflict of Interest

Chairman Dailey called for disclosures of conflict of interest.

Disclosure of Outside Communication

Chairman Dailey called for disclosure of ex parte communication. There was none at this time.

Public Hearings:

At 4:33 p.m. Chairman Leonard Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted and asked Ms. Cromwell to open first agenda item. Ms. Cromwell read aloud the legal notification for City Zone Change #891.

Item #1: Zone Change #891 – Text Amendment – Townhomes – Section 27-201 and 27-622 - A zone change to the Unified Zoning Regulations to amend language to conform to new state law regarding townhomes and townhouses. The City Zoning Commission initiated this amendment on February 7, 2012.

Zoning Coordinator Nicole Cromwell gave a short presentation of the staff report.

REQUEST

This is a zone change that will amend Sections 27-201 and 27-622 of the Billings, Montana City Code (BMCC) to eliminate the definition of “townhome” as a type of residential land use and update the section that requires a Master Site Plan review for multi-unit developments. In 2011, the Montana Legislature approved a bill, HB0460, to amend state law to include a definition of a townhome under the unit ownership act (MCA 70-23-101 et seq). The zoning code regulates land uses and buildings but does not regulate ownership or types of ownership. The proposed amendment would update the code to align the definition of condominium and townhome/townhouse with the new state law. In March 2012, the City Council approved a previous amendment that eliminated “townhouse” as a type of use within residential zones. Townhomes can now be allowed in any residential zone provided enough lot area exists for more than 1 dwelling unit on an undivided lot. The City Zoning Commission initiated this amendment on February 7, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

BACKGROUND

In 1977, the City Zoning Code defined “rowhouse” as a type of use. This definition has evolved over the years. In 1977, rowhouses were defined as 3 or more single dwelling units attached with the common wall along a property line. Rowhouses were allowed only by special review approval in R-50, R-60, RMF and RMF-R zoning districts. By 1985, the term “rowhouse” was replaced by the term “townhouse” then defined as 2 or more single dwelling units with common walls on the dividing line and fee simple ownership of the land and structure. The code required a property line between the units to be defined as a “rowhouse” or “townhouse”. The definition and regulation by special review in certain zoning districts identified the use by its architectural style. The building code has also adopted a definition of “townhome or townhouse” that anticipates a type of fire-rated construction that essentially isolates each dwelling unit from another.

In 2011, the Montana Legislature adopted a definition of townhome into law that relates to the ownership of the dwelling unit. The change in state law was primarily to handle the current lending practices in the real estate industry. The zoning code regulation of a townhome is an artifact of a previous era and is centered on the architecture – 2 or more attached dwelling units with a property line between each unit. The building code definition is geared toward life and safety of each unit owner. The new state law definition is focused on the type of ownership and financing of the

property. These 3 definitions – zoning code, building code, and unit ownership type – have created confusion for owners, regulators and lenders.

The current zoning code does not and should not regulate the type of ownership of property. Townhomes should be allowed in any residential zoning district as long as lot area requirements are met and setbacks, building heights and lot coverage maximums are also observed. The zoning code requires multi-unit developments where more than 2 dwelling units share common private facilities such as internal driveways or private streets, to submit a Master Site Plan. The Master Site Plan ensures compliance with local codes including fire access, utilities, engineering, building and zoning. Attached dwelling units are allowed in several zoning districts. If an owner proposes to divide those dwelling units along common walls by a property line, then a side setback variance would be required. The proposed amendment will clarify the local regulation and ensure that existing and proposed townhomes are not unnecessarily regulated.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Leonard Dailey inquired regarding the writing of the ordinance. Nicole Cromwell stated she wrote the ordinance but it was reviewed by Planning Staff and the City Attorney's office. She clarified the Master Plan Review for the members of the Commission. Dan Wagner commented he is glad to see this ordinance move forward but he feels further clarification is needed on the differences between townhomes and condominiums. Leonard Daily agreed. Nicole Cromwell said the County Zoning Commission will hear this next Monday and City Council on April 23, 2012.

Public Hearing

Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of City Zone Change #891. There was none. Chairman Dailey closed the public hearing.

Motion

Commissioner Leonard Daily made a motion and it was seconded by Commissioner Ryan to forward a recommendation of approval to City Council of City Zone Change #891-Text Amendment-Townhomes-Section 27-201 and 27-622.

The motion carried with a unanimous voice vote.

Item #2: Zone Change #892 – Text Amendment – City Zone Change Procedures – Section 27-1502 - A zone change to the Unified Zoning Regulations to amend language to conform to new state law regarding city zone change procedures. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend Section 27-1502 of the Billings, Montana City Code (BMCC) to align the local zone change procedures with new state law amendments passed in 2009 and 2011. In 2009, the Montana Legislature approved a bill, HB0486, to amend state law to clarify the criteria for zone changes. In 2011, the Montana Legislature approved a bill, HB0181, to amend state law to allow zone change protests by condominium or townhome owners. Both of the changes require amendments to local ordinances to conform to the new requirements. The City Zoning Commission initiated this amendment on February 7, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

BACKGROUND

The state periodically updates its authority for municipal and county zoning. These provisions are the parameters under which all local zoning must be formed. These provisions set standards for each jurisdiction to follow when changing zoning districts and the minimum notification requirements for those changes. The proposed amendment will bring local codes into conformance with state law.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission and asked who sponsored the legislation. Nicole Cromwell said the legislation was sponsored by Montana State Representative Elsie Arntzen along with a 2009 Coalition. She explained the verbiage comes from State Law. Dan Wagner commented the Realtor's Association was also instrumental in moving this forward.

Public Hearing

Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of City Zone Change #892. There was none. Chairman Dailey closed the public hearing.

Motion

Commissioner Ryan made a motion and it was seconded by Commissioner Wagner to forward a recommendation of approval to City Council for Zone Change #892-Text Amendment-City Zone Change Procedures as presented by staff.

Discussion

Chairman Leonard Dailey called for discussion on the motion. There was none.

The motion carried with a unanimous voice vote.

Item #3: Zone Change #893 – Text Amendment – County Zone Change Procedures – Section 27-1508 and 27-1704 - A zone change to the Unified Zoning Regulations to amend language to conform to new state law regarding county zone change procedures and enforcement. The City Zoning Commission initiated this amendment on February 7, 2012.

REQUEST

This is a zone change that will amend Sections 27-1508 and 27-1604 of the Billings, Montana City Code (BMCC) to align the County zone change procedures and enforcement with new state law amendments passed in 2009. The zoning code is a unified code for the city and the 4 ½-mile jurisdictional area outside the city limits in the county. In order to incorporate the changes that apply outside the city limits, the City Council must adopt an ordinance to effect the changes. In 2009, the Montana Legislature approved a bill, HB0486, to amend state law to clarify the criteria for zone changes. The changes require amendments to local ordinances to conform to the new requirements. The City Zoning Commission initiated this amendment on February 7, 2012 and the County Zoning Commission initiated this amendment on February 13, 2012.

RECOMMENDATION

The Planning Division is recommending approval.

BACKGROUND

The state periodically updates its authority for municipal and county zoning. These provisions are the parameters under which all local zoning must be formed. These provisions set standards each jurisdiction must follow when changing zoning districts and the minimum notification requirements for those changes. The proposed amendment will bring local codes into conformance with state law.

Discussion

Chairman Dailey called for questions and discussion from the members of the Commission. Bill Ryan asked if there were problems with noticing that brought this amendment forward. Nicole Cromwell said the notification issues came out of Ravalli County and this was the legislative response. She said the city limits and county unzoned properties are often coterminous; and further clarified the zoning districts used in the County. Leonard Dailey asked how County zoning applies within the reservation. Nicole Cromwell stated the local land use regulations do not apply within the boundaries of the reservation. She stated the County regulations have applied since 1973 and she pointed out the dichotomy of the zoning boundaries.

Public Hearing

Chairman Leonard Dailey opened the public hearing and called for proponents or opponents of Zone Change #893. There was none. Chairman Dailey closed the public hearing at 4:59 p.m. and called for a motion.

Motion

Commissioner Wagner made a motion and it was seconded by Commissioner Ryan to forward a recommendation of approval to City Council for Zone Change #893 – Text Amendment –County Zoning Procedures Section 27-1508 and 27-1704 as presented by staff.

Discussion

Chairman Dailey called for discussion on the motion. There was none.

The motion carried with a unanimous voice vote.

Other Business

- A. The next City Zoning Commission meeting will be held on May 1, 2012, at 4:30 p.m., in the City Council Chambers.
- B. Nicole Cromwell Commissioner Krivonen has notified staff of his intent to resign his position which will create an opening on this Commission.

Adjournment:

The meeting was adjourned at 5:10 pm.

ATTEST:

APPROVED BY A MOTION ON MAY 1, 2012

Leonard Dailey, Chairman

Tamara L. Deines, Planning Clerk