

City of Billings Zoning Commission Meeting Minutes December 4, 2012

The City of Billings Zoning Commission met on Tuesday, December 4, 2012 in the City Council Chambers, 2nd Floor City Hall 210 N 27th Street, Billings, Montana.

Chairman Leonard Daily called the meeting to order at 4:30 p.m. The City Council has designated **Monday, January 14, 2013**, 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	1	E	1	1	1	-	E	1
Matt Krivonen	Commissioner	A	A	E	R	-	-	-	-	-	-	-	-
Barbara Hawkins	Commissioner	E	E	1	E	1	E	1	1	E	-	1	1
Dan Wagner	Commissioner	1	1	1	1	1	E	E	E	1	-	E	1
Bill Ryan	Commissioner	1	1	1	1	1	E	E	A	E	-	1	1
Mike Boyett	Commissioner							1	1	1	-	1	1
Candi Beaudry	Director, Planning & Community Services	-	-	1	-	-	--	-	-	-	-	-	
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1	1	1	1	1	1	1	-	1	1
Tammy Deines	Planning Clerk	1	1	1	1	-	1	-	-	1	-	1	
Wyeth Friday	Planning Division Manager	-	-	-	-	-	-	-	-	-	-	-	1
Juliet Spalding	Planner II	-	-	-	-	-	-	-	-	-	-	-	
Lora Mattox	Planner II	-	-	-	-	-	-	1	1	-	-	-	
Karen Miller	Planning Assistant	-	-	-	-	1	-	-	-	-	-	-	
Steve Zeier	TIF'D Coordinator	-	-	-	-	-	-	1	1	-	-	-	

Total Number of 2012 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	5	1	3	4	1	0	2	1	32
Special Review	1	0	1	0	2	0	0	1	1	0	0	0	6

Leonard Dailey introduced the Planning Department Staff and Commission: Nicole Cromwell, Zoning Coordinator; Wyeth Friday, Planning Division Manager sitting in for Tammy Deines, Planning Clerk

Others in Attendance:

Terry Smith, City Traffic Engineer; Applicant Agent Rick Leuthold, Sanderson Stewart; George Warner, Coldwell Banker

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

Approval of Minutes: November 7, 2012

Leonard Dailey called for approval of the November 7, 2012 minutes.

Motion

On a motion by Commissioner Boyett seconded by Commissioner Ryan and approved with a 3-0 voice vote, the minutes of November 7, 2012 were approved.

Disclosure of Conflict of Interest

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

Disclosure of Outside Communication

Leonard Dailey called for disclosure of ex parte communication. There were no disclosures of outside communication by the Commission.

Nicole outlined information provided to the Commission, including a memo from City Traffic Engineer Terry Smith; a letter from Fiberworks; and a letter and information from Sanderson Stewart. All documents aside from the whole traffic study are in exparte´ notebook at the back of the room.

Public Hearings:

Leonard 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.

Agenda Item: City Zone Change #906 – Pickle Barrel

Ms. Cromwell gave a short presentation of the staff report. (Continued Public Hearing from November 4, 2012).

REQUEST

This is a zone change request from Planned Development – Residential Multi-family-Restricted (PD-RMF-R) to Planned Development – Neighborhood Commercial (PD-NC) The existing zoning also allows the location of a church as an allowed use in addition to the residential use. The application is for a 45,950 square foot parcel of land described as Lot 2, Block 28, Harvest Subdivision, 3rd Filings located generally at 3225 Rosebud Drive. The property is a unit-ownership parcel that includes 15 residential units and the now-vacant church/day care. The vacant structure is owned by Stockman Bank. The residential owners are Terry Havener, Susan Havener, Brittany Evans, Kimberly Erbacher, John Erbacher, Folmer Christensen, and Mari Christensen. The agents are R.L. McComish and Sanderson Stewart representing the potential purchasers of the Stockman Bank unit. The intent of the purchasers is to establish a Pickle Barrel restaurant. The agents and owner conducted a pre-application neighborhood meeting on September 24, 2012. A preliminary review meeting was held by city staff on October 29, 2012.

The Zoning Commission granted the applicant a 30-day delay of the public hearing on November 7, 2012. The applicant was preparing a detailed traffic study for the adjacent streets and intersections. The detailed report is not yet available, but the results should be available before the continued hearing on Tuesday, December 4, 2012.

Ms. Cromwell provided an overview of the traffic study and issues with traffic flow and access to the property. The final traffic study was provided since the last meeting and has been reviewed by City staff. A meeting to discuss the conclusions with the applicant's agent was held on December 3, 2012. Ms. Cromwell stated that after review of the traffic study, the City is not supportive of the application as existing traffic issues are already serious and the intersections do not function well at this time. The City Engineer's Office did not find the recommended traffic mitigation plans acceptable and the City does not plan to improve the intersection now or in the future. She said she reviewed the traffic mitigation proposals that the applicant provided for the property.

Discussion

Leonard Dailey called for questions and discussion from the members of the Commission. In response to a question by Commissioner Boyett regarding uses for this site, Ms. Cromwell explained that a church, day care or multifamily use could be allowed outright under the current zoning. Chairman Dailey stated that the Zoning Commission's packet has a lot of information about traffic flow and activity in the area. He noted Public Works Director Dave Mumford had

commented the City was not prepared for all of the traffic it was seeing and there were plans for improvements for Shiloh Road and 24th Street West. He asked if there are plans for other improvements. Ms. Cromwell stated that while Shiloh Road is improved, the traffic volumes continue to be high in 32nd Street West and 24th Street West as well. She noted additional study may be needed to help with traffic volume increases in this area; a roundabout might work but analysis is needed.

Public Hearing-

At 4:54 p.m. Leonard Dailey opened the public hearing and called for proponents or opponents of City Zone Change #906.

Rick Leuthold, Sanderson Stewart, 1100 North Transtech Way, Billings, Montana

Mr. Leuthold is an agent for the applicants, Terry Havener, Susan Havener, Brittany Evans, Kimberly Erbacher, John Erbacher, Folmer Christensen, and Mari Christensen. He said the project has been interesting as he said has been involved with the site since the church was there, the property was purchased, and the housing development started. Mr. Leuthold gave a brief history for this parcel and noted the subject property was a daycare for some years. Stockman Bank has owned the site and has been looking for a new tenant/buyer; day cares have considered the building but did not move forward. Recently, Pickle Barrel is looking for new site and found this to be a prime location.

Mr. Leuthold stated there are things with this project to be questioned, specifically the traffic analysis and findings. He said there has been opposition from the neighbors in the area. He reported a public meeting was held to get feedback on the proposal; attendance was low but they had surprisingly good support. People commented they wanted to get across 32nd Street West to access the Pickle Barrel if built. He said the issues discussed included parking, access, and mail boxes. He said the unit ownership documents will need to be rewritten, and the planned unit development zoning is a challenge as well.

Mr. Leuthold explained they heard traffic concerns at the staff review and followed with completion of the traffic impact study. He explained mitigation options include a signal and $\frac{3}{4}$ turn but what is really needed is a progression study of the entire corridor for signal compatibility. He pointed out the traffic problem already exists, and uses that that could be added today would add traffic that would make it worse. He stated this whole corridor needs to be fixed and should be in the Capital Improvement Plan, (CIP). Regarding the recommendation of denial for this project, Mr. Leuthold said there are traffic issues now regardless of the Pickle Barrel coming into the area.

Chairman Dailey stated that this will go to the City Council regardless of this Commission's recommendation. He asked Mr. Leuthold how long a progression study would take and when would improvements be installed. City Traffic Engineer Terry Smith said the question is less to the need for a study as the issue today is equipment compatibility and the cost of about \$25,000 per intersection for upgrades and work. He concurred that this intersection should be placed in CIP. He said they are concerned about the close spacing of the traffic signals. He stated he believes this

is a very selective comparison of this use and a day care; the report shows the traffic demands can be greater for the Pickle Barrel than the day care. Commissioner Boyett asked what Mr. Smith foresees happening in 5 years in this area with the traffic increases. Mr. Smith said they have looked at some of these issues already and it is hard to say. He noted they have already started to restrict left turns at Henesta.

Richard McComish –(no address given)

Mr. McComish is an applicant. He thanked the Commission for taking the time to consider this application. He stated they employ about 135 people, and the community is important to them. Mr. McComish said he is an engineer and became aware of the traffic problem when they met with staff. He commented people use 32nd Street West because it is a major corridor. Mr. McComish noted there are other lots to be developed in the area and said they wish to move forward while doing things right. He pointed out the franchisor chose the site. He stated he is concerned that if the basis for denial is traffic, other uses can do other things that generate a lot of traffic now. He said a master plan for the City promoted nodal development and they think this will contribute to it. He stated this business would be of value to the community and he asked for the Commission's consideration.

George Warmer – 2608 Highwood Drive, Billings, Montana

Mr. Warmer is the managing partner for Coldwell Banker Commercial and have had listed this property for more than two years due to limited use of property. He said the applicants approached them with the Pickle Barrel project along with a plan and investment in the process. Mr. Warmer said they see this as an attractive solution to this location similar "Great Harvest" on Poly Drive or "Harper-Madison" on 10th Avenue North. Mr. Warmer read aloud a letter in support from Citizen Dale Davis, 3130 Myrtle Drive, Billings, Montana 59102.

Tim Ludwig, 5826 Kit Lane South, Billings, Montana

Mr. Ludwig is an employee of Stockman Bank, representing the seller. He stated it seems that allowed uses or a sandwich shop is the best use for this location but either use will impact traffic. Mr. Ludwig said considering length of time to address traffic the plan is to put it back into use knowing what we know right now. Chairman Daily asked him if they have had day care users look at it or consider buying this property. Mr. Ludwig replied that people looking at it are mostly considering day care since it is an allowed use. Chairman Dailey commented the limited use has limited interest in buying the property.

Opposition:

Gale Zeek – 625 Choke Cherry, Billings, Montana

Ms. Zeek said the back of her house runs down 32nd Street West and increased traffic and impacts will make the issue worse. She stated she cannot open her windows. She has a statement from MDT that the City has condemned her property due to the allowance for highway traffic going down 32nd Street West. Ms. Zeek stated sound barriers are needed and she is thoroughly against any zone change that would increase added traffic in this area.

Brittany Evans – Unit 15, 3229 Rosebud Drive, Billings, Montana

Ms. Evans stated she did some research and found that added traffic will impact her home values. She also tried to research tax issues but did not find a definitive answer. She said she was prepared for a church or day care but not a “Pickle Barrel”. She said she has documentation to submit and will submit copies to staff later. Ms. Evans said she wants the McComishes to open “Pickle Barrel” but doesn’t believe this is the right location. She said it will be successful in any location as that is the type of people they are, but she does not wish to have it located across from her house.

Chairman Dailey called for rebuttal.

Rebuttal

Rick Leuthold, Sanderson Stewart, 1100 North Transtech Way, Billings, Montana

Mr. Leuthold stated need to go back with the City and collectively address the traffic issues as indicated by Traffic Engineer Terry Smith as it will continue to be a heavily used street. He commented it is hoped that Shiloh Road will take more of the traffic as the community develops in that direction and a progression study will be needed to move the traffic efficiently. Regarding Ms. Evans comments, Mr. Leuthold pointed out she is the only other owner in the unit ownership project. He said sound barriers are needed with some type of aesthetics to allow uses to be compatible. In order to assure the residential owners are not burdened by the commercial development, there are plans to mitigate the impacts to the residential units. The McComishes have offered to shoulder the burden of any incremental tax issues. Mr. Leuthold pointed out mixed use developments which intermingle small businesses with residential areas are becoming more popular as they promote walk ability and increase property values. He asked this Commission to provide a favorable recommendation to City Council and address the traffic issues separately.

**Nicole Cromwell stated Commissioner Dan Wagner left the meeting at 5:30 p.m., and Commissioner Barabara Hawkins has recused herself from this vote as she is an adjacent property owner. Chairman Dailey asked if there was anyone else wishing to speak in favor or against Zone Change #906. There was none. Chairman Dailey closed the Public Hearing at 5:31 p.m. and called for a motion.

Motion

Commissioner Boyett made a motion and it was seconded by Commissioner Ryan to forward a recommendation of approval to City Council for City Zone Change #906.

Discussion

Leonard Dailey called for discussion on the motion. Commissioner Ryan said if they addressed the existing problem of the traffic issues, this use is as reasonable as the allowed use of a day care. He said he feels this is a good use of the property. Commissioner Boyett said he feels a denial would penalize the property owner as the traffic issue needs work regardless of this application.

Commissioner Dailey said the Commissioner is pushing this to the City Council to address the traffic issue as it is not going away.

The motion carried with a voice vote, 3 in favor, one abstention (Commissioner Hawkins)

Other Business

- A. The next City Zoning Commission meeting may not be until February based on application submittal.

Adjournment: *The meeting was adjourned at 5:35 pm.*

ATTEST: APPROVED BY A MOTION ON February 5, 2013

Leonard Dailey, Chairman

Wyeth Friday, Planning Division Manager