

## ZONING AND PLANNING BOARD MEETING MINUTES

**January 18, 2024**, Zoning & Planning Board meeting was called to order at 7:00PM at City Hall at 206 Main Street, Three Forks, MT 59752.

Chairman George Chancellor, Members Matt Jones, Kelly Smith, Amy Laban, Niki Griffis and Racheal Tollison were present at City Hall. City Planner Randy Carpenter was also present at City Hall, no one attended via Zoom.

Public Present: Joanna & Steven (Chuck) Lightner, Tod Davis, Paul Davis, Diane Fuhrman, D.K. Brooks, Mickie Imberi, Mary Miller, Don Barney, Lucas McCauley, Daryl & Victoria Miller, Matt & Kelly Bugland, and Jade Benjamin

Chairman Chancellor reminded everyone the meeting was being recorded.

**PUBLIC COMMENT** (items not on the agenda): There were no public comments on items not on the agenda.

### CONSENT AGENDA

#### **Minutes from the meetings held on 7/20/2023 and 10/19/2023**

Kelly Smith moved to approve the minutes of July and October meeting minutes. Amy Laban seconded the motion. **Motion Passed Unanimously.**

### NEW BUSINESS

#### **Election of Officers**

Kelly Smith nominated George Chancellor for President and Matt Jones for Vice-President. Amy Laban seconded the motion. **Motion Passed Unanimously.**

### PUBLIC HEARINGS

#### **Public Hearing and Recommendation on a Request by Matt and Kelly Bugland and Jade Benjamin to Amend the zoning classification from Residential Zoning to Central Business District for the properties located at Block 54, Lots 1-12, Milwaukee Land Company's 2<sup>nd</sup> Addition, Plat D-29, Addresses included at 604, 608, 618 and 622 S. Main Street**

Randy Carpenter read his staff report into the record with the recommendation that if the Board feels the intent of the zoning code is being met, and assuming no significant comments protesting this change, that he still recommends denial of this zone change request. Randy expanded his recommendation to the Board verbally (not written in the staff report), "At this time we are already thinking of changing zoning regulations and revising the entire code. We applied for a grant to rewrite our 1980 code. I found this to be a hard call. I think that the use the applicant would like to do at this site is compatible with that area, but as I said you need to base rezoning on all the potential uses that could be allowed. I think it is a hard decision for you all in my opinion, it is a logical extension of the Central Business District downtown and that will happen in the future. However, timing is everything and what is appropriate for the municipality to consider, timing does not always match up with what landowners would like to do."

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**Applicant Presentation:** Matt Bugland spoke on behalf of himself, Kelly Bugland and Jade Benjamin. “Looking at the neighborhood, looking at what’s going on across Main Street, this is totally acceptable. Per the City’s existing rules when asked about a conditional use permit, we would be required to put in 11 parking spaces, and the city requires 9-feet by 18-feet per parking space, even though I would never have 11 cars there – it pretty much necessitated that I would have to pave the entire back yard and front yard. This would degrade the value, the nice look of this property, just to get a conditional use permit for this property. There are more than one businesses going on in that neighborhood. It’s going to be rezoned eventually, just trying to save time, space, money and effort by doing this once and get it done. It’s going to happen eventually, it’s going to be rezoned, for the city to grow it’s going to be rezoned. The concerns we’ve heard so far, people have worried there could be a bar there. As I recall, you have to have so much feet between a church (and there are existing churches around) and a bar. A pot shop, bar, sex shop – all those require a conditional use so all those uses would have to come before this board and the council anyway. If something will be needed in the future, why not do it now?”

Kelly Bugland also spoke stating they are trying to correct some deficiencies on the property that were in existence when they purchased the property. “We were told when we purchased the property that two of the exits/accesses are not up to code and the stairs are sketchy. Having this property turned commercially will allow the exists and their egresses to be brought up to code,” Kelly said. She said that the previous owners did a lot of improvements that were not done well and if the Board thinks the outside needs a lot of work, just imagine what the inside needs. She also stated there are two other businesses located in this neighborhood which only has four houses on this half side of the block.

(Board questions with applicant was skipped.)

**Public Comment:** the following letters of support were read into the record from the following people – Dean Folkvord, Christina Kamps on behalf of Main Street Office, Shawna Eva, Leann Bryant on behalf of the Chamber of Commerce, Leann Bryant as owner of Hollowtop Heating and Cooling, Paul Schlosser on behalf of Three Forks Auto Repair, Eric and Angie Raube, Mo Denny on behalf of Three Forks Floral, Jamie Taylor on behalf of the Iron Horse Café, Joe Petersen of Three Forks Saddlery, Pam Carey, Stacy and Jody Bellamy owners of Venture West Realty and Remuda Coffee (respectively), Jodi Moore of BookTherapy and Moore Brooke Pestel. Tod Davis spoke in concern that medical/recreational pot could be allowed. He questioned if the existing residential use would remain allowed. Randy Carpenter explained the grandfathering process. There was discussion regarding the 90-day limit to rebuild a non-conforming use. Kelly Bugland spoke that she had made several phone calls to the Department of Revenue asking how they tax – whether it was based on use or zoning and DOR said they do not base taxes off of zoning it was based off highest and best use. Diane Fuhrman asked about the other properties on Main Street labeled on cadastral as residential, and why they were not zoned CBD. She also asked if you can build a residence at those locations now? George answered that one could still apply for a conditional use permit to have residential use on commercially zoned property. Diane said she was making that request now (unclear as to what her request was); which George replied you need to file an application. Lucas McCauley stated he had to jump through hoops to get financing on his home because it was “commercial” but had a residence on it. He said that two out of the four properties on this half of the block have operating commercial businesses. George Chancellor said the land has always been zoned residential, but his bank just called it commercial. Kelly Smith added that perhaps it was because the property is on Main Street, but since zoning was adopted for Three Forks in the 1980s, it has been zoned residential.

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(There were several speaking regarding bank financing and commercial/residential zoned properties that had nothing to do with the board's recommendation or this application.) D.K. Brooks spoke in support of the Bugland's because they "always do everything first class". He added there is personality conflict and that, "I have seen how this board operates and that is all I'm going to say, I've said my peace." Mary Miller spoke that she has been in this neighborhood her whole life, and the rest home business that was there had some shady people. "Since Kelly and Matt have owned it there are a lot less police cars driving by. I think it would be good neighbors, but I only worry that it would affect our tax bill." Joanna Lightner spoke with concern because she and Kelly Bugland have not always gotten along, and she worries she will have issues with her neighbor when she visits her parents' property. "I want to come in peace," Joanna said. Kelly Bugland said she would do the same. Paul Davis said why not just get it over with, he does not want to have a fence between the neighbors if they do not get along. "The place was nice, it was kept up and the original owners did a nice job, but these last owners did not keep it up," Mr. Davis said. Mickie Imberi supported the zone change request. "All down Main Street is businesses – we have the Christmas Stroll; we have Ladies Night and people stop at all these businesses down Main Street. Why not just make it a little farther?" she asked. She added this would keep the business flowing down Main Street and keep businesses in town rather than growing up on the hill (Broadwater County) where she currently is. "I encourage you to do this now, rather than waiting until you decide to update the zoning," Mickie said. Mary Miller asked Randy Carpenter why he recommends not approving this? Randy Carpenter said the list of uses currently is so expansive that, if these folks decide not to do this or they sold it, any one of these uses would be allowed and I think you should protect the existing residential. "When we do update the zoning, I will recommend striking *all permitted Neighborhood Highway Business uses* from being allowed," Randy said. (George Chancellor started to speak and Matt Bugland spoke over so it was difficult to hear on the recording what the chair was trying to say.) Matt Bugland asked about when the City does rezone, and if they remove *everything allowed in NHB* that will negate the issue Randy Carpenter is hesitant for. If those businesses do not exist at that time the zoning is rewritten, then the issue goes away. Randy Carpenter said, "With all due respect, this is not about you, this is about all those uses. The municipality must consider if all the uses that are listed, could be allowed on this property. Amy Laban added, "On the entire block," and Kelly Bugland corrected it is only this half of the block. Amy thanked Mrs. Bugland for her clarification, "But I want everyone to understand we are not just thinking about your business, this is not just your lot or building. It is all 12 lots we must consider." Matt Bugland said in the future, when the zoning is changed, everyone would still be tied to the new requirements of CBD. Randy said he cannot guarantee what this land will be zoned, he was just giving his comment. Mickie Imberi asked, "Doesn't changing the zoning now allow the residences to be grandfathered in and continue to be what they are?" Randy answered yes. There was a question about if it burned down and if you could not rebuild the non-conforming use within 90 days. Kelly Smith added there is also the conditional use permit process which if the house burns down, and they could not rebuild in 90 days, they could apply for a conditional use permit to have a residence in the CBD.

**Applicant Rebuttal:** Jade Benjamin spoke that if this turns into a different business, or if they sold or something else, the zoning sounds like it's something that will be happening, we are community minded.

George Chancellor **closed public comment.**

Kelly Smith asked for clarification prior to closing public comment – because if the neighboring properties protest this change it requires a higher number of votes from the Zoning & Planning Board. "So are you protesting this?" Lucas McCauley said he was for it. Mary Miller said she was for it (Kelly Smith clarified

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Mary's property does not count towards the protest.) Paul Davis said he was for it and that Gina Bennett told him and Mr. McCaulley that however they voted, she would do the same.

**Board Questions/Comments/Discussion with staff and/or applicant:** Rachael Tollison spoke regarding the rezoning of Three Forks and asked for clarification on that process. Randy Carpenter explained what happens, but he cannot say for sure that the rezoning of this block would become CBD or not, or something else even. Rachael was trying to determine what the timeline would be. Randy Carpenter said as soon as the City is notified on the grant to rewrite the zoning code is awarded, which is in a few weeks, we could start the process. There was discussion on existing uses at the time of zoning, and grandfathered use process. Nikki Elmore asked if there are any structures on this property that would need to have conditions to be allowed, or grandfathered in. Randy Carpenter said no. Amy Laban asked if there has been any discussion with the City Council on the recommendation or discussion to consider the excessive parking requirements. George Chancellor said, "Not to my recollection," but Rachael Tollison said at the meeting she attended this past summer it was discussed. Randy Carpenter said it would make sense to do a parking study, but it is difficult to conduct the winter. We do need to go around and count all the parking spaces on each block and what is being used. This was done one day last summer, but has not been conducted in the fall, winter or spring yet.

The majority of the public left the meeting at this time.

Matt Jones said he has no problem with the Bugland's business, but he still feels this is a conditional use permit would be more applicable. "I don't know that we are going to rezone that half of block to CBD, like when we rewrite the zoning. Leann's letter says we shouldn't deny it if we're going to do it anyway, but we do not know if that is what the zoning will be when we do have that full discussion," Matt said. He asked if the parking is the only issue, it seems like this still should be a conditional use permit. Kelly Bugland said there are other deficiencies that need to be fixed and they would be unable to correct them at the current zoning. "To rezone it in order to fix your stair problem is not our problem either. And I don't really know where I'm at yet, part of me says just push it through. You could accomplish what you are trying to accomplish via a conditional use permit and a variance," Matt said. Matt Bugland no, not at this time. "If everyone on that block that is using their property for a business you would have three conditional use permits on that block," Mr. Bugland said. "So three conditional use permits now solved with one zoning change," he added. Kelly Smith said McCauley's would not need one. Kelly Bugland argued they would. Kelly Smith stated the McCauley's do not have customers coming to their home/business. Kelly Bugland stated she did not either but was required to obtain a conditional use permit for KTB Property Management in her home on Jefferson Street. Kelly Smith said that they also had customers coming over for the long-arm quilting (Knot What it Seams business). Matt Bugland argued they did not have customers coming to the property. Kelly Bugland said she had their application reviewed by her attorney who recommended the zoning change request would be the best route. Kelly Smith asked if the quilt retreats would still be considered residential? She asked because of the yard setback requirements for residential use in the Central Business District. Kelly Bugland said residential means that one rents the property for more than 29 days. There was discussion regarding whether or not the Bugland's would be renting rooms out to anyone other than visitors of the quilt retreats and what definition that would fall under. Niki Elmore said her concern is because of the timing for the rewrite of the zoning. George Chancellor interrupted and said the zoning rewrite will be done before they are even ready to open. Matt Bugland said he doubted that. George repeated, "I think our zoning is going to be done before you get rid of your property." The Bugland's both said, "Oh, we thought you said *get ready* not *get rid*. We will be ready to use this in two weeks." Niki Elmore spoke again about looking at a full plan for rezoning the town,

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and maybe we need to look at the north border for instance. Amy Laban said her only concern is setting the precedent is that anytime anyone wants to rezone, we just do it. And that may not be what is best for this town, it changes the shape of this community. I am just airing my concern since everyone else is." Mickie Imberi spoke next about a previous application to rezone a half a block. Kelly Smith answered the specifics and Mickie said, "So adding to what Amy just said, the City has already set that precedence." (Some voice on the recorder reminded all the Board is in Board Discussion.) Matt Jones said he remembered that Pestel application to change the zoning from CBD to Residential, and he was on the board at the time and remembered after that happened, he really felt that he made the wrong decision. There was discussion regarding it needing to be done due to financing, but either the mortgage rules have changed since then, or their specific lender had issues with the zoning. Kelly Bugland and Kelly Smith have both made calls and question financing based on zoning or not. Mickie Imberi continued discussing taxing, taxbase, zoning, financing. Randy Carpenter chimed in about appraisals and best use. Matt Bugland attempted to get the conversation back to Board Discussion and provided his recommendation to the Board to approve this request. There was discussion regarding residential setbacks again for the stairs that are not supposed to be there. Matt Bugland said it did not matter, because he was going to replace those entrances with windows if he cannot do the stairs. Kelly Bugland stated she Leann (did not state last name) and her had a heart to heart and Kelly shared the staff report with her and there is no reason to deny this application. "You have fourteen letters sitting in front of you...." George interrupted her and said this is enough and said he was going to end Board Discussion. Kelly Smith asked if the full board was really finished discussing. Matt Jones said he was not finished and was still undecided as to how to vote for his recommendation. "If Lucas decides tomorrow, this goes through, and I'm selling this and building a bar or a muffler shop [lots of input from other Board members and perhaps Mr. McCauley from the audience who said he was not going to do that] or repair garage – you got to be good with any of these four places being any of these buildings without any control over that. I don't know where I'm at on that," Matt said. George said he knows where he is at. Matt said he just wants to be good with this decision, and he still feels this would be better served as a conditional use permit. Matt asked how many people can stay at one time? Kelly Bugland said there are a total of 11 bedrooms, but that does not count the basement. Matt asked her how many people does she intend on sleeping there during these retreats. Kelly Bugland answered fourteen. Matt Jones said that is a lot of cars. Matt Bugland said generally they show up together and do not drive separately. Kelly Bugland added they house ten people now and typically have four cars parked at the current quilt shop and retreat area. Matt Bugland said, "Apparently there are nine parking spaces already mapped out for the old Pathways but I can't make it out and I've walked all over the property." Kelly Smith explained there were five in the back, two on the side and two in the front. Matt Bugland argued he measured, and it does not fit. He went on about the measurements and the existing barriers on the property to prevent parking, and then said, "I'm trying to do things right. I appreciate the fact that we are trying to look out for the growth of the community and what it is going to be in the future." He gave an example of a teamster's hall to hold weird meetings and burn flags and adversely affect the neighborhood. "I literally don't have the heart to fight this anymore," Matt Bugland said. Kelly Bugland recommended the Board re-read Leann's (no last name stated) letter. Matt Jones said he does not believe this application is wrong, but he does not know how the zoning will be best places in the future. Kelly Bugland re-read Randy Carpenter's recommendation from the staff report which says, "assuming no significant comments as to the contrary..." and then merged into reading Leann Bryant's letter of Hollowtop Heating and Cooling that says, "However, unless there is intent to restrict this type of business in the CB I see no reason to deny the application now as that denial would negatively impact the timeline of the business plan and in turn the positive economic impact of other Three Forks businesses. If there is intent to restrict this

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type of business in the 'wholesale update' it is, in my opinion, deceitful to deny this application prior to those changes being made." Matt Bugland said to Kelly Bugland that she is not reading the staff report though. Matt Jones said he does not believe it is the Board's intent to restrict your type of business in the CBD. Randy's staff report also does not say the City intends to change this half or the whole block to anything. "I can agree that perhaps we should do that on Main Street, make it all CBD and be done with it. But we have not done that," Matt Jones said.

Lucas McCauley said he and Paul [Davis] thought the property was already commercial so what is the problem? George Chancellor said it is not commercial and this whole conversation has gone off on a tangent. "Lucas could do something clear out in left field on his property as long as it says it can be done in the CBD, but I'd like to think there is a little bit of common sense here to make some decisions without going out in left field." Amy Laban echoed, "Right!?" Matt Jones said he is just expressing his point of view on the application for this half block of town and all those allowed businesses. There was a lot of discussion regarding uses and potential businesses in the future. Matt Jones struggled to find balance in a decision that he felt was best for the community. Amy Laban said she thinks Matt's comments are vital to Board Discussion and that the Board does need to debate at times to understand. "I don't think anybody's discussion is invalid." And then to (which according to the recording sound like was directed to the Bugland's), "I'm sorry you feel like you're always in for a fight. I don't think you should. We are just discussing policy. I hope you understand that, I am not discussing this with any individuals." Matt Bugland said he appreciates the fact that there is that much emotion and brain power for two steps ahead for what is best for this town. Kelly Bugland said they first applied for a conditional use permit, then switched it to the zone change for Neighborhood Highway Business, then after discussion on NHB, it was changed to an application to change to Central Business District.

Matt Jones said if the neighboring people were not here tonight to say that they are OK with this change, and it is the next block from current Central Business District, he could NOT have supported this application. I do still have conflict with what can be in that block, and we really need to expedite the process to redo that zoning. "The other two lots behind them (across the alley) were in support of it to so should we just rezone that too?" he asked. Amy Laban said no that the Board should look at a whole zoning rewrite not do it piece by piece throughout town. There was quite a bit of comments regarding future zoning all around town and the process of applying for that change versus the Board recommending a change to the code on its own.

Niki Elmore asked what a realistic time frame is to redo the entire zoning code. Randy Carpenter answered one year.

George Chancellor moved that we amend the residential zone from Block 54, Lots 1-12, Milwaukee Land Company's Second Additions, Plat D-29, Addresses in this request 604, 608, 618 and 622 S. Main Street to Central Business District. Niki Elmore seconded the motion.

**Motion Passed Unanimously.**

### OLD BUSINESS

**Continued Discussion to Work on Recommendation of Zoning Regulation Updates due to Growth Policy, and now 2023 Legislative Changes**

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Randy Carpenter said that the Department of Commerce has not released awards yet for the grant Randy applied for \$30,000 to rewrite the Zoning Code. The City may not get the full amount requested, but there is another pot of State money we could apply for as well. “When we know that, we will get someone under contract. I would recommend the same person who is updating our Impact Fee and Capital Improvement Plan language, I would call him the dean of western planning,” Randy expressed. Niki Elmore agreed this has been something we have talked about for a long time and we just need to get going on it. Kelly Smith provided an update on the Accessory Dwelling Unit (SBB528) new law and an that injunction was issued against it. Randy Carpenter discussed the bill (SB 323) is for populations over 5,000. (These minutes reflect the actual law that was to take place 1/1/2024 and the injunction filed against it – rather than the misrepresentation provided to the Board.) There was an Accessory Dwelling Unit (ADU) bill (SB 528) which required every municipality to allow ADU’s by right, not charge impact fees, not require additional parking for the ADU. There was another bill which required municipalities with population over 5,000 to allow duplexes/multi-family on any residentially zoned lot. An injunction has been filed by Judge Salvagni on both of these new laws which took effect 1/1/2024. This means the City of Three Forks does not have to amend its ordinance about this law currently until after the Court decides on this bill.

### **Review of Last Discussion on After-the-Fact Zoning Permit Fee and Recommendation to Council if Any Increase is Agreed**

Kelly Smith refreshed the Board’s memory on a meeting held in December 2022, in which the Board discussed 10x the fee for after-the-fact permit application fee. It is currently 2x the fee right now. The Board had questioned whether an appeal to the after-the-fact determination could be filed, and if so, who would hear that appeal. Susan Swimley has provided the advice to include the hourly expense incurred by the City for any hours of the City Planner over three hours, any hours of the City Attorney over two hours, and all engineering fees. Kelly added that Susan also replied that there is an appeal process and those would go to the Board of Adjustments.

Kelly Smith moved to recommend the after-the-fact fee be two times the standard fee, plus any hourly for planner in excess of 3 hours; hourly for attorney in excess of 2 hours and all engineering fees incurred by the City. Amy Laban seconded the motion.

**Motion Passed Unanimously.**

### **Recommendation on Accessory Dwelling Unit Review Fee so that City Council can Include it on the Fee Schedule Resolution**

Kelly Smith explained State law set the Accessory Dwelling Fee at a maximum of \$250.00. Whenever this is all figured out with ADUs with the Courts, the Legislature said no more can be charged than \$250 – so we just want to get it on the fee schedule, so it is ready whenever we do have to start reviewing these applications. The Board agreed it should be the maximum as we have people who spend time reviewing all these applications.

Kelly Smith moved that if we allow Accessory Dwelling Units in Three Forks that we charge the maximum of \$250.00. Matt Jones seconded the motion.

**Motion Passed Unanimously.**

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Amy Laban moved to adjourn. Kelly Smith seconded the motion.

**Motion Passed Unanimously.**

Meeting was adjourned at 9:10PM.

DRAFT