



Board of Planning

The City-County of
Butte-Silver Bow

May 28, 2020

5:30 p.m. Thursday
VIRTUAL

Members

Janet Lindh

Mike McLeod

Denise Anderson

Matt Stajcar

Jim Clary

Bart Riley

Josh O'Neill

Jeremy Salle

Tim Schrapps

AGENDA

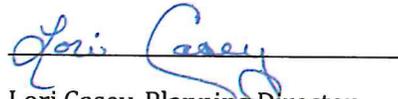
- I. Call to Order: 5:30 p.m. – Butte-Silver Bow Courthouse – Virtual Meeting
- II. Roll Call of Members
- III. **Approval of Minutes** – Approval of minutes of the February 27, 2020 Planning Board meeting.
- IV. **Public Hearing/Board Action**
 - A. Montana Connections Subdivision – An application by the City and County of Butte-Silver Bow, care of Kristen Rosa, owner, Everly and Associates, engineer, to create nine (9) lots for industrial development.
 - B. Zone Change Application No. 180 – An application from the approval of Resolution No. 20-06, by B-SB Council of Commissioners on February 19, 2020. Resolution No. 20-06 is a resolution of intent to amend Title 17, Zoning Ordinance, of the Butte-Silver Bow Municipal Code to require a conditional use permit in order to maintain the community residential facility in all residential zones within the City-County of Butte-Silver Bow County of Butte-Silver Bow, Section 76-2-411 (1) MCA defines a community residential facility as:
 - a community group home for developmentally, mentally, or severely disabled persons that does not provide skilled or intermediate nursing care;
 - a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in Section 52-2-602 MCA;
 - a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons;
 - a licensed adult foster family care home; or
 - an assisted living facility under Section 50-5-227 MCA; and Section 76-2-412 (1) MCA provides that a foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24 hour-a-day basis; and Section 76-4-412 (4) MCA provides that a city or county may require a conditional use permit in order to

maintain a community residential facility, other than a day care, if the home is licensed by the Department of Public Health and Human Services.

V. Other Business

VI. Adjournment

BY:

A handwritten signature in blue ink, reading "Lori Casey", is written over a solid black horizontal line.

Lori Casey, Planning Director

Butte-Silver Bow Planning Board

**BUTTE-SILVER BOW
PLANNING BOARD
STAFF ANALYSIS**

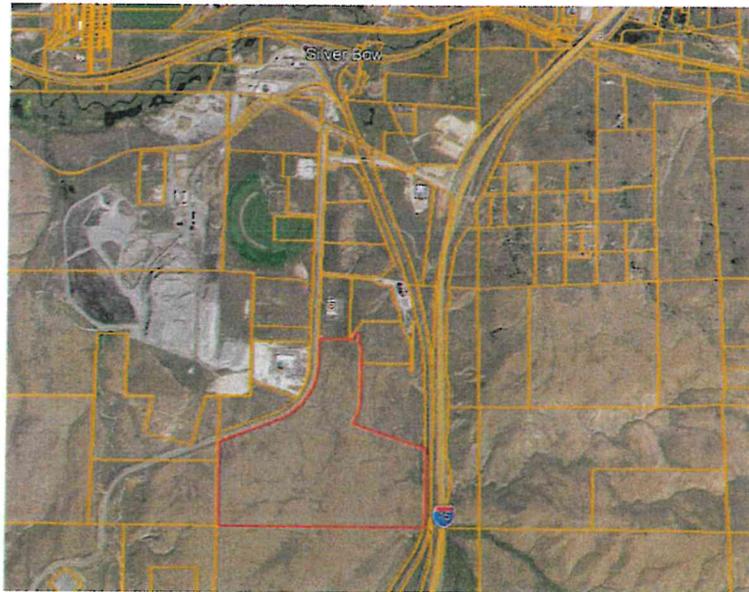
ITEM: **Preliminary Plat of the Montana Connections Subdivision** – The Preliminary Plat of the Montana Connections Subdivision proposes creating nine (9) lots for industrial use. All of the lots are proposed to be serviced by public water and sanitary sewer and the road will be dedicated for public use.

APPLICANT: The City and County of Butte-Silver Bow, c/o Kristen Rosa, TIFID Administrator, 155 W. Granite, Butte, MT 59701, developer; and Robert Everly, PE, Everly & Associates, PO Box 603, Butte, MT, 59703, engineer.

DATE/TIME: Thursday, May 28, 2020, at 5:30 P.M., virtually at <https://co.silverbow.mt.us/2149/MEDIA>

REPORT BY: Dylan Pipinich, Assistant Planning Director

VICINITY MAP:



**LOCATION/
DESCRIPTION:**

This parcel is legally described as Tract BE of Certificate of Survey 1037B-RB, Section 26, T3N, R9W, P.M.M., Butte-Silver Bow County, Montana, commonly located south of Montana Precision Products, adjacent to Rick Jones Way, Silver-Bow County, Montana.

ZONING:

The property is located in the "RM-2" (Rural Industrial) Zone. The proposed lots range in size from 6.24 acres to 54.49 acres. The lots meet the development standard of the Zoning Ordinance.

PROPOSAL: The applicants are proposing to create 9 lots for industrial development with lots ranging in size from 6.24 acres to 54.49 acres. The proposed road is 14.36 acres in size. All of the lots will be serviced by public water and sewer.

In regard to the access to the proposed lots, the applicants have proposed to construct Sugarloaf Loop to connect to the existing Rick Jones Way. The proposed Sugarloaf Loop consists of a 120 foot wide public roadway and utility corridor and occupies 14.36 acres. The subdivision road is required to be built to the standards as outlined by the B-SB Public Works Department and will become public right-of-way, with maintenance of the roads being the responsibility of B-SB.

PROCESS: This proposal is defined as a subdivision by the Montana Subdivision and Platting Act, Section 76-3-104, as it comprises lots less than 160 acres. Because the division of land creates more than five tracts of land, the subdivision is classified as a major subdivision and the requirement to hold public hearings applies.

STAFF FINDINGS: The proposed use for the subdivision is for industrial purposes, therefore parkland dedication does not apply to this subdivision. Also, the requirement of an environmental assessment does not apply to this subdivision.

By law, the governing body must approve, conditionally approve, or disapprove of the preliminary plat of a major subdivision within 60 working days from the notification that the subdivision is sufficient for review, unless the subdivider consents to an extension.

COMMENTS RECEIVED: The Planning Office has issued a request for review to the appropriate agencies and utilities. The comments received are stated below.

B-SB Public Works Department-Water Utility Division: The B-SB Water Utility Division has reviewed the preliminary Water Profiles and find that the design looks satisfactory. The subdivision proposes connecting to the existing potable water main and industrial water main in Rick Jones Way, extending the mains underneath the proposed Sugarloaf Loop. The industrial water main will be utilized for fire suppression.

Final engineering plans shall be reviewed and approved by the B-SB Public Works Department and the Montana Department of Environmental Quality. Plans shall be in Compliance with all sections of Chapter 13.20, Water System Regulations, of the Butte-Silver Bow Municipal Code, including Chapter 13.24, Main Extensions and Material Specifications.

All costs associated with the project will be the responsibility of the developer.

B-SB Public Works Department-Sanitary Sewer: The Public Works Department has reviewed the preliminary Sanitary Sewer Profile and find that the design is satisfactory.

Final engineering plans shall be approved by the B-SB Public Works Department and the Montana Department of Environmental Quality. Plans shall be in compliance with all sections of Chapter 13.04 Wastewater Treatment System, of the Butte-Silver Bow Municipal Code. A video inspection tape and as-builts of the sewer main extension shall be submitted as a condition of acceptance.

All costs associated with the project will be the responsibility of the developer.

B-SB Public Works Department-Storm Sewer: The preliminary storm water drainage profiles, including the existing natural storm water drainage that transects the site, was submitted with the preliminary plat application. A complete Storm Water Management Plan will be submitted at a later date.

The Storm Water Management Plan shall be designed to be in compliance with all sections of Chapter 32 Storm Water Management, of the Butte-Silver Bow Municipal Code. All costs associated with the project will be the responsibility of the developer.

B-SB Public Works Department-Road Division: The Road Division has reviewed the preliminary overall road plan and typical road cross section and find that the design is satisfactory. Sugarloaf Loop shall be constructed to B-SB standards. The Final engineered road plan shall be approved by the B-SB Public Works Department. The plan shall be in compliance with all sections of Chapter 12.04, Construction within Public Right-of-Way, of the Butte-Silver Bow Municipal Code, including the Road Division Standard Drawings.

The applicant shall install all necessary signage (i.e. stop signs, road identification signs) in conformance with B-SB Regulations. All costs associated with the project will be the responsibility of the developer.

Butte-Silver Bow Fire Department: The applicants shall provide fire hydrants per the required standards.

B-SB Health Department: The Planning Department has been informed by the Health Department that all water and sewer main extensions are subject to review and approval by the Montana Department of Environmental Quality.

Noxious Weed Control Board: Montana Connections currently has an existing agreement to control weeds on the proposed development and an additional plan is not necessary.

Bert Mooney Airport: The Planning Department was notified by Bert Mooney Airport that the proposed subdivision will have no impact on the airport.

NorthWestern Energy: The Manger of Construction for NorthWestern has reviewed the subdivision and found that the proposed easements and clearances from existing utilities is adequate.

Montana Department of Transportation: The Montana Department of Transportation did not have any comments as the roads are not on their system.

The applicants will be required to address and comply with the above comments.

**REVIEW
CRITERIA:**

1. **In accordance with 76-3-608 (2) M.C.A., written findings of fact must be issued which weigh the criteria in Subsection 3 as applicable.**

a. **Effect on agriculture and agricultural waterways or water users.**

This subdivision is in an area zoned for heavy industrial use. Consequently, the agricultural potential of the site has long been compromised.

There is an existing storm drainage channel that traverses the subdivision. The location of the channel has been identified on the preliminary plat and an easement twenty feet each side of centerline of the channel has been identified to protect the drainage.

b. Effects on local services.

The applicants have submitted an engineering analysis to the B-SB Public Works Department for water and sewer infrastructure facilities. As stated in the comment section, there is capacity to service the subdivision. The engineering plans will require review by the Montana Department of Environmental Quality.

In regard to storm water management, the applicants have submitted preliminary storm water information. Prior to submitting the final plat application, applicants shall receive approval from B-SB Public Works for the Storm Water Management Plan. In addition, the storm water drainage plan will require approval from the Montana Department of Environmental Quality.

A preliminary road plan has been submitted to the Public Works department and the plan was found to be satisfactory. The applicants are required to submit a final engineered road plan to the Public Works Department – Road Division for review and approval. The plan shall be in compliance with all sections of Chapter 12.04, Construction within Public Right-of-Way, of the Butte-Silver Bow Municipal Code, including the Road Division Standard Drawings.

In addition, the applicants shall provide fire hydrants as required by the Butte-Silver Bow Fire Department.

Prior to filing for final plat application, the applicant will be required to submit a Subdivision Improvement Agreement for review and approval for the guarantee of the installation of all public infrastructure improvements (water, sanitary sewer, storm water infrastructure, roads) or install the required improvements. The required bond life shall remain in effect until the infrastructure has been reviewed and approved by the B-SB Public Works Department. If all public improvements are not installed according to the approved design, the bond may be foreclosed and the funds utilized to complete the public infrastructure improvements.

The proposed subdivision is within the normal patrol area of the Butte-Silver Bow Law Enforcement Department.

Finally, the applicant will be required to place any necessary easements for utilities on the face of the final plat prior to filing.

c. Effects on natural environment.

The natural elements that may be affected are soil, water and plant material. The effects of the subdivision on the soil should be minimal as long as proper drainage techniques are implemented during and after construction.

Lot 9 of the proposed subdivision is traversed by Sand Creek, a Zone A designated FEMA floodplain. Sand Creek is an intermittent stream in this location and the approximate location of the floodplain is shown on the preliminary plat. The proposed road and subdivision infrastructure is not located within the boundary of the FEMA floodplain. Because this is an intermittent stream and not a live channel, cross sections and flow path modeling are not required to determine the extent of the floodplain through the subdivision process. That being said, any development of this lot will be required to meet all applicable floodplain regulations as defined in Chapter 18 of the Butte-Silver Bow Municipal Code.

The applicant currently has a weed management agreement for weed control within the industrial park. This agreement is adequate for weed management within the subdivision, and therefore noxious weeds resulting from the subdivision should have minimal impact on the natural environment.

d. Effects on wildlife and wildlife habitat.

This subdivision is not located in an area containing critical wildlife habitat.

e. Effects on public health and safety.

The proposed Sugarloaf Loop meets the B-SB road design standards for an industrial subdivision. The connections of the loop road to Rick Jones Way are at or near 90 degree angles and there are no hill top intersections to ensure an adequate sight distance. The proposed road system should have minimal impact on public health and safety.

The applicant is proposing to serve the development with public water and sanitary sewer connections. As stated above, there is adequate capacity in to serve the proposed subdivision, so the development should have a minimal impact on health and safety in regards to utilities.

The applicant has proposed to extend the existing industrial water main to serve the subdivision for fire suppression. The Butte-Silver Bow Fire department has stated that the proposed fire hydrants are adequate for the development and the site access is adequate. Therefore, the proposal shall have minimal impact on public health and safety in regard to fire protection.

2. Compliance with the survey requirements of the Montana Subdivision and Platting Act (MSPA), and the regulations and review procedures of Butte-Silver Bow Subdivision Regulation.

The subdivision and final plat are required to meet the MSPA and the surveying requirements specified in the local subdivision regulations.

As presented, the plat does not meet the requirements outlined in Administrative Rules for the MSPA. The following items will need to be corrected prior to filing the final plat:

- Correct COS 1037-RB to COS 1037B-RB throughout the plat
- Add Butte-Silver Bow R180-C832 as owner in Section 35
- Remove Tracts 4C and \$d, Plat 298A, which is now Tract 4C-1, COS 1080B-RB

3. Easements for utilities.

The applicants shall also provide utility easements as requested by the utility companies. Private utilities that locate in the easement with the public mains must maintain the required separation from these mains.

4. Legal and physical access.

The Butte-Silver Bow Subdivision Regulations (Section 11 - Design Standards) require all major subdivisions (i.e., six or more lots) to have two access points *“to facilitate traffic and allow provisions for emergency services as well as the placement of utility easements.”*

As proposed, the applicants have designed the subdivision to meet the requirements of the regulations. Sugarloaf Loop shall connect to Rick Jones way in two places, creating two access points.

The proposed road right-of-ways are 120 feet wide and meet the design standards of the Subdivision Regulations. The road will be paved and include curb and gutter in accordance with the improvement standards of the B-SB Public Works Standard Drawings.

As previously stated within the comment section, the road and the associated curb and gutter will be required to be engineered and installed at the expense of the applicants. And the final engineered road plan shall be approved by the B-SB Public Works Road Division.

CONCLUSION:

This subdivision meets intent of the *Butte-Silver Bow Growth Policy*, complies with the provisions of the "RM-2" zoning classification, and satisfies the criteria outlined in the *Butte-Silver Bow Subdivision Regulations*.

Therefore, staff recommends approval of the Montana Connections Subdivision which includes nine (9) lots for industrial development, subject to the following conditions:

1. The proposed road name of Sugarloaf Loop has been approved by the B-SB Addressing Coordinator.

In order to properly identify all roads for emergency services personnel, the applicants are required to place a road identification sign at the beginning of each road and at the intersections of each road with another road. The signage shall be installed in accordance with Butte-Silver Bow regulations.

2. This preliminary plat is good for three (3) years. At the end of this period, the Governing Body may, at the request of the subdividing entity, extend this time frame.
3. The final plat shall conform to the requirements of the Butte-Silver Bow Subdivision Regulations and the requirements of the Montana Subdivision and Platting Act.

4. Prior to applying for final plat approval, the applicant shall submit the required documentation for review and secure written approval from the Butte-Silver Bow Public Works Department for the following public infrastructure:
 - a) Compliance with all sections of Chapter 12.04, Construction within Public Right-of Way, of the Butte-Silver Bow Municipal Code, including design specifications for the curb and gutter.
 - b) Compliance with all sections of Chapter 13.04 Wastewater Treatment System, of the Butte-Silver Bow Municipal Code.
 - c) Compliance with all sections of Chapter 13.20 Water System Regulations, of the Butte-Silver Bow Municipal Code, including Chapter 13.24 Main Extensions and Material Specifications;
 - d) Compliance with all sections of Chapter 13.32, Storm Water Management, of the Butte-Silver Bow Municipal Code, including the Butte Silver Bow Municipal Storm Water Engineering Standards;

In addition, all water and sewer main extensions and storm water plans must be approved by the Montana Department of Environmental Quality prior to submitting the final plat application.

5. The applicants will be required to complete all the public infrastructure improvements, including but not limited to sanitary sewer, water, roads, curb and gutter, and road signs prior to applying for final plat approval or enter into a Subdivision Improvement Agreement. The agreement shall stipulate which type of security arrangements the subdividing entity elects to use and the time schedule proposed to accomplish the required improvements.

The security guarantee shall be equal to the amount of the cost estimate to install the infrastructure improvements plus twenty-five percent (25%). The guarantee must be submitted to the Planning Department prior to filing the final plat with the Butte-Silver Bow Clerk and Recorder. This guarantee may be in the form of cash, surety bond, certified check, or some other guaranteed negotiable instrument.

Prior to the release of the bond the as-built drawings for the infrastructure, including the location of the private utilities shall be submitted as a condition of acceptance. In addition, the applicants shall submit a video inspection of the sanitary sewer.

6. Prior to filing for final plat application, the applicants shall submit a fire plan for review and approval by the B-SB Fire Marshall. At a minimum the plan shall include the location of the hydrants and flow capacity.
7. The applicants shall be required to secure all applicable permits that may be necessary to make improvements in or near designated wetlands or surface water bodies, including but not limited to: storm water discharge construction permit from Montana Department of Environmental Quality (MDEQ) Storm Water Program, a floodplain development permit from Butte-Silver Bow County, a 310 permit (streambed and land preservation) from the Mile High Conservation District, and a 404 permit (Clean Water Act) from the U.S. Army Corps of Engineers.

**BUTTE-SILVER BOW
PLANNING BOARD
STAFF ANALYSIS**

ITEM: **Zone Change Application No. 180** - An application from the approval of Resolution No. 20-06, by the Butte-Silver Bow (B-SB) Council of Commissioners on February 19, 2020.

Resolution No. 20-06 is a resolution of intent to amend Title 17, Zoning Ordinance, of the Butte-Silver Bow Municipal Code to require a conditional use permit in order to maintain a licensed community residential facility in all residential zones within the City-County of Butte-Silver Bow.

APPLICANT: B-SB Council of Commissioners (Resolution No. 20-06), 155 W. Granite Street, Butte, Montana.

DATE/TIME: Thursday, May 28, 2020, 5:30 p. m., virtually at <https://co.silverbow.mt.us/2149/MEDIA>

REPORT BY: Lori Casey, Planning Director

PROPOSAL: Resolution No. 20-06 is a resolution of intent to amend Title 17, Zoning Ordinance, of the Butte-Silver Bow Municipal Code to require a conditional use permit in order to maintain a licensed community residential facility in all residential zones within the City-County of Butte-Silver Bow.

**STAFF
FINDINGS:**

Montana Code Annotated (MCA) Section 76-2-411 (1) defines a community residential facility as:

- a community group home for developmentally, mentally, or severely disabled persons that does not provide skilled or intermediate nursing care;
- a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in Section 52-2-602 MCA;
- a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons;
- a licensed adult foster family care home; or
- an assisted living facility licensed under Section 50-5-227 MCA; and

Section 76-2-412 address the relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning.

Subsection (1) states: A foster home, kinship foster home, youth shelter care facility or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving eight or

fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24 hour-a-day basis;

Subsection (2) – a family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7 is considered a residential use of property for purposes of zoning.

Subsection (3) – the facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human service or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

Subsection (4) states: this section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services.

Currently, community residential facilities that meet the definition above are classified as a residential use and therefore are able to operate as a permitted use in all residential zones, subjected to only to the restrictions that govern other residences.

Background: In the Fall of 2019, Planning staff received an inquiry from an individual about the requirements to locate a home for the rehabilitation of alcoholics and/or drug dependent persons. Staff explained that if the home met the definition of a community residential facility it would be considered a residential use and would be permitted in any residential zoning district. Subsequently, a potential property was identified for the proposed halfway house. Residences of the neighborhood contacted the Planning Department and their County Commissioner to express their concern regarding a halfway house locating in their residential neighborhood. Staff explained that based on the above noted laws any community residential facility that met the definition and requirements as stated in MCA were considered a permitted use in the residential zoning district.

On October 2, 2019, Communication 19-466 was submitted by Commissioner Mankins to request a change in the zoning ordinance to require community residential facilities to receive a conditional use permit prior to locating in a residential zone. The communication was referred to the Judiciary Committee of

the Council of Commissioner for further discussion. A member of the Judiciary Committee requested information on the number of licensed community residential facilities we have. State of Montana personnel supplied the following information on the number of facilities:

- 11 licensed community homes for persons with developmental disabilities;
- 3 homes for adults with mental illness;
- 3 youth group homes;
- youth foster homes – number were not provided by the State, but testimony was given that we have approximately 100 foster homes;
- kinship foster homes – see note above;
- 0 halfway homes;
- 5 licensed adult foster care homes and 1 pending application;
- 0 assisted living facilities that are considered community residential (8 or fewer people).

After considerable discussion with staff and the County Attorney, a presentation by the State regarding licensed facilities, and hearing public comment on the matter, the Council approved a motion to draft a resolution of intent to initiate the requested zoning ordinance amendment. Resolution 20-06 was passed on February 19, 2020.

Resolution No. 20-06 proposes to amend Title 17, Zoning Ordinance, of the Butte-Silver Bow Municipal Code to require a conditional use permit in order to maintain a licensed community residential facility in all residential zones within the City-County of Butte-Silver Bow. Conditional uses are those uses not permitted “as a matter of right”, but those which may be appropriate in a zoning district under certain safeguards or conditions. In this particular case, the conditional use process would not be focusing on the use, as the use has been determined a residential use as a matter of law; the focus would be on the land use impacts associated with a community residential facility i.e., parking, lighting, signage, etc.

The following criteria is utilized to review conditional use permit applications per Chapter 17.38.150 of the Butte-Silver Bow Municipal Code:

- A. The location, character and natural features of the property;
- B. The location, character and design of adjacent buildings;
- C. Substantial changes that have occurred in the surrounding land uses since the original adoption of the ordinance codified in this title;
- D. Proposed fencing, screening and landscaping;
- E. Proposed vegetation, topography, and natural drainage;

- F. Proposed vehicular access, circulation, and parking, including that relating to bicycles and other unpowered vehicles and provisions for handicapped persons;
- G. Proposed pedestrian circulation, including provisions for handicapped persons;
- H. Proposed signs and lighting;
- I. All potential nuisances;
- J. Public safety and health;
- K. The availability of public utilities;
- L. Situations which prevent the utilization of the property for the full range of uses allowed in that district;
- M. The use or zone classification sought would enhance and promote the comprehensive development of the immediate neighborhood, and community;
- N. That the use or classification conforms generally to the objectives of the adopted comprehensive plan and to the purpose of this title;
- O. That the use will promote or not substantially impede the conservation of resources and energy, and the conservation policy of Butte-Silver Bow, State of Montana;
- P. That the use meets the overall density, yard, height, and other requirements of the zone in which it is located;
- Q. That the use or classification will not adversely affect nearby properties or their occupants
- R. Conformity of the proposed use with the neighborhood plan, if one has been adopted;
- S. Compatibility of proposed project with existing adjacent buildings, structures, neighborhood topography or other consideration; and
- T. Expressed public opinion relating to the criteria enumerated above, including the views of neighborhood associations.

It is important note that in *Mahrt v. Kalispell*, 213 Mont. 96 (1984) the Montana Supreme Court held that the local governments can require a Conditional Use Permit for a community residential facility but cannot deny it as such uses are protected by the Montana Constitution and 76-2-412(1) MCA and case law made it clear that the rule in Montana was that a group home for eight or fewer people was a residence and could be located in any area in Montana that was zoned residential. The court refused to require community residential facilities to repeatedly defend their well-established right to locate in any residential area in Montana. Therefore, the conditional use permit cannot be denied as a matter of law. In addition, it is important that any conditions imposed on the conditional use permit do not work to prohibit the use.

While MCA does provide a provision that does not prohibit local governments from requiring a conditional use permit to maintain a community residential

facility, it is important to note that the Fair Housing Act and the American with Disabilities Act also have laws that address zoning practices to ensure that zoning regulations do not discriminate against disabled persons.

Pacific Shores Property LLC v. City of Newport Beach (Sept 2013) was a case in which the United States Court of Appeals for the Ninth Circuit made a determination if group homes for recovering alcoholics and drug users did not have to identify a similarly situated entity that was treated more favorably in order to establish a prima facie case that a city ordinance violated the ADA, and the Fair Housing Act. The judgement was in favor of the plaintiffs. In rendering their decision in the case of Pac. Shores Props., LLC v. City of Newport Beach (Sept. 2013) the United States Court of Appeals for the Ninth Circuit cited the following headnotes:

- The Fair Housing Act (FHA) renders it unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap. [42 U.S.C.S. §3604\(f\)\(1\)](#). It is well established that persons recovering from drug and/or alcohol addiction are disabled under the FHA and therefore protected from housing discrimination. [42 U.S.C.S. §3602\(h\)](#). It is equally well established that zoning practices that discriminate against disabled individuals can be discriminatory, and therefore violate [§3604](#). If they contribute to making unavailable or denying housing to those persons. Amendments to FHA to include protections against disability discrimination also apply to state or local land use or health and safety laws, regulations, practices, or decisions which discriminate against individuals with handicaps. Finally, group homes are “dwellings” under [42 U.S.C.S. §3602\(b\)](#), and therefore the FHA prohibits discriminatory actions that adversely affect the availability of such group homes.
- The Americans with Disabilities Act (ADA) provides that no qualified individual with a disability shall, by reason of such disability be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. [42 U.S.C.S. §12132](#). Like the Fair Housing Act, this provision prohibits governmental entities from discriminating against disabled persons through zoning. Also like the FHA, , the ADA’s protections extend to persons recovering from drug or alcohol addiction.

The requested amendment to the Zoning Ordinance should take into consideration the Fair Housing Act and Americans with Disabilities Act as governments cannot discriminate against disable persons through zoning.

In regards to the criteria and guidelines for zoning regulations, they are outlined in MCA 76-2-203.

- (1) Zoning regulations must be:
 - (a) Made in accordance with a growth policy; and
 - (b) designed to:
 - (i) secure safety from fire and other dangers;
 - (ii) promote public health, public safety, and the general welfare; and
 - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
- (2) In the adoption of zoning regulations, the municipal governing body shall consider:
 - (a) reasonable provision of adequate light and air;
 - (b) the effect on motorized and nonmotorized transportation systems;
 - (c) promotion of compatible urban growth;
 - (d) the character of the district and its peculiar suitability for particular uses; and
 - (e) conserving the value of buildings and encouraging the most appropriate use of the land throughout the jurisdictional area.

In this particular case, the residential zoning districts as described in Title 17 of the Butte-Silver Bow Municipal Code were established under the criteria and guidelines of MCA. As noted above MCA 76-2-412 states that licensed community residential facilities that meet the criteria are a residential use of property for purposes of zoning and are permitted in all residential zones including but not limited to residential zones for single-family dwellings. Therefore, the criteria does not need to be evaluated again for this proposal. However, subsection 4 of 76-2-412 does have a provision that does not prohibit a city or county from requiring a conditional use permit in order to maintain a licensed community residential facility.

CONCLUSION: The issue before the Planning Board is to make a recommendation to the Council of Commissioners to approve or deny Zone Change 180 – a request to amend the Zoning Ordinance to require a conditional use permit in order to maintain a licensed community residential facility in all residential zones within the City-County of Butte-Silver Bow. The “Staff Findings” have outlined the background of the resolution, the appurtenant State laws, the review criteria for a conditional use permit, and the relevant case laws to aide in a determination as to whether or not it is appropriate to require licensed community residential facilities to maintain a conditional use permit to operate.