



Missoula Consolidated Planning Board Minutes

November 19, 2019, 7:00 PM
City Council Chambers
140 W. Pine Street, Missoula, MT

Voting members present: Peter Bensen (Co. Alt.), Vince Caristo (City Alt), Neva Hassanein (Mayor appointee), John Newman (Mayor appointee), Jason Rice (BCC appointee)

Regular member(s) absent: Dudley Improta (CC appointee), Helen Pent Jenkins (CC appointee), Michael Houlihan (BCC appointee), Andy Mefford (BCC appointee), Stephanie Potts (BCC appointee)

1. Call to Order

Mr. Newman called the meeting to order at 7:00 p.m.

2. Roll Call

Donna McCammon called the roll.

3. Approval of Minutes

A motion was made by Mr. Bensen, seconded by Mr. Caristo, to approve the November 5, 2019 Missoula Consolidated Planning Board Minutes as submitted. With a voice vote of all ayes the minutes were approved.

4. Public Comment

There were no public comments.

5. Staff Announcements

There were no staff comments.

11. Comments from MCPB Members

Ms. Hassanein asked Ms. Dascenzo about MCPB participation in the Master Planning process now that the BUILD grant had been awarded. Ms. Dascenzo stated that it was still in the very early stages and had not yet developed beyond staff level meetings. Master Planning and the BUILD grant are two separate but very inter-related projects, with Master Planning proceeding independently of grant approval. She anticipated it would entail an open and public process, public outreach, and steering committee input over an 18-month time frame.

6. Public Hearings

6.1 Missoula County Subdivision Regulation Update. Christine Dascenzo/Missoula County Community and Planning Services

Christine Dascenzo, Missoula County Community and Planning Services (CAPS), presented maintenance updates and new content proposed for the Missoula County Subdivision Regulations. Two main focuses were 1) the incorporation of land use designations from the Missoula Area Mapping Project to determine urban vs. rural distinctions, and 2) the incorporation of State of Montana statutes from 2017, which changed processes for phased developments and final plat review. Public comment and agency comment were requested. Staff received comments from agencies but no comment was received from members of the public. Ms. Dascenzo stated that these changes would impact the following chapters of the subdivision regulations:

- Chapter 2: Definitions
- Chapter 3: General Design for all Subdivisions, and Appendix A
- Chapter 5: Procedures for Subdivision Review, Preliminary Plat, Variances, and Appeals
- Chapter 6: Final Plat and Subdivision Improvement Guarantees
- Chapter 7: General Submittal Requirements

In 2016, a major overhaul of the subdivision regulations was completed and with that process CAPS began implementing more frequent routine maintenance revisions. This was the second time this year that revisions were being presented to MCPB members. Page numbers referenced in her presentation were from the "tracked changes" documents; not the "clean". A legal ad ran in the *"Missoulian"* on November 3 and 10, 2019 and would be re-posted prior to the December 12, 2019 County Commissioner hearing. Proposed changes:

- Chapter 2: Definitions. Changed were noted: 2.2.71 Phase Development. This was from the State of Montana Statute on page 2-9, section 2.2.71. 2.2.89 Rural Area definition was altered, reflecting the change in Chapter 3, as was 2.2.102, the Urban Area definition.
- Chapter 3: General Design Standards for all Subdivision, and Appendix A. In addition to reformatting and updating the references, new content was noted on:
 - Page 3-4, Section 3.1.3.3 H. High Groundwater Hazard
 - Page 3-5, Section 3.1.3.3 O. Other Hazard. Ms. Dascenzo noted that this was new information provided by Missoula County's Floodplain Administrator; to define high groundwater hazards and acknowledge it in the list of hazards if groundwater is within ten feet of natural ground surface.
 - Page 3-6, Section 3.1.3.4 C.5. Mitigation for high groundwater and prohibiting basements and limiting the depth of structures.
 - Page 3-8, Section 3.1.3.6 A.2. Flood hazard area standards and access. When there is only one access to a subdivision there has to be demonstrated access through no more than one-foot deep water in a 100-year flood event. Ms. Dascenzo explained that this was for areas where access already existed; a new subdivision would not be allowed to create an access through floodplain.

- Page 3-20, Section 3.4.2 Urban and Rural Standards. The new land use designations are used to align those standards with the urban area being made up of designations recommending densities of 3 dwelling units per acre or greater. Urban exceptions now only apply to residential subdivisions.
- Page 3-21 3.4.2.2 Rural Area. Reformatting the rural area exceptions for clarity and better match the flow of the urban area.
- Appendix A, map of the urban area boundaries was updated.
- Page 3-26, Urban Area Requirements for Non-Motorized Facilities. Ms. Dascenzo referred the board members to the "hash" areas in Appendix A; areas with recommended density of eight dwelling units per acre or greater. She stated this would be the determining factor in non-motorized facilities where options may or may not exist to have a sidewalk on only one side of the street. A higher density would require sidewalks on both sides of the street. In the urban area, where density is greater than three dwelling units per acre, but less than 8 dwelling units per acre, there would be the option to have sidewalks on only one side of the street.
- Page 3-27, Rural Area Requirements [for Non-Motorized Facilities]. An additional option for an off-road trail was included. This option had been included as an urban area choice but had not existed in the rural area. She explained that this could be an option as a stand-alone trail if the subdivision were large enough and not connected to existing trail networks.
- Chapter 5: Procedures for Subdivision Review, Preliminary Plat, Variances, and Appeals
 - Page 5-21, Section 5.7.15 Extension of Preliminary Plat. This section was reformatted, and language was added for clarity. Subdivisions approved for preliminary plat can be extended up to six years after the original approval date. Ms. Dascenzo explained that following the 2016 overhaul of the subdivision regulations, a working approval date was given to subdivisions that were already approved but hanging on through extensions, and with that re-write they were given the working approval date of November 4, 2016, the effective date of those regulations. Extensions for phase developments are newly referenced in this section to link them to the section detailing their own separate processes.
 - 5.7.15 Extension of Preliminary Plat. When a subdivider requests an extension beyond the original three-year effective period of an approved preliminary plat/plan established in Section 5.7.14.11.A, Effective Period of Preliminary Plat, it shall not be extended beyond 6 years from the original date of plat/plan approval. Ms. Dascenzo stated that the number of years had not changed in that regard.
 - Page 5-23/30, Section 5.7.16 - Phased Developments, as opposed to phasing in the preliminary plat. A parallel process for subdivisions approved prior to the effective date of May 8, 2017 follow one process for extensions; those approved after May 8, 2017 have the process spelled out in the state statute.

- Page 5-25, Section 5.7.16.5. Phasing plan extension length clarification that the requests for extensions cannot go beyond three years from the date of the request. This applies to all the phases.
- Page 5-26, Section 5.7.16.6. Subdivisions approved prior to 2017 already have an established maximum extension schedule. Phased subdivisions approved after 2017 have a 20-year deadline.
- Page 5-28, Section 5.7.16.8 B. This outlines the procedures and processes for phased developments, as directed by state law, and includes a County Commissioner hearing to determine if changes have occurred to the site. New conditions could be imposed by the commissioners that that time.
- Page 5-33, Section 5.8.5. In 2016 the change was made than any adjustment procedure, i.e. - changes to the covenants of an approved subdivision, the original public process for approval would be mirrored. CAPS is proposing to strike Section 5.8.5.6 Major Subdivision and 5.8.5.7 Planning Board Consideration (major subdivisions) for adjustments to preliminary plats. This would simplify the process and decrease the overburdening of staff and developers for minor changes to a preliminary plat.
- Chapter 6: Final Plat and Subdivision Improvement Guarantees. The state law in 2017 changed the review process of the final plat.
 - Page 6-2, Section 6.2.3. Change due to state law.
 - Page 6-2, Section 6.2.2.3. This is a new requirement to include the altered parent parcel as each phase of a subdivision is filed. This would track the changes that have occurred to the parent parcel as the phases come in.
 - Page 6-7, Section 6.3. The final plat review process had been re-worked to accommodate a digital review. The regulations outline the process, which includes a written notice from the applicant, a County Commission hearing prior to filing each phase, and the ability for Commissioners to impose new conditions to address new information or changed impacts which must be met prior to filing.
- Chapter 7: General Submittal Requirements. Text cleanup required to keep the regulations consistent.
 - Page 7-12, Section 7.6.10.9. This was a new inclusion for mitigation for high groundwater hazards. The developer shall submit plans, prepared by a licensed engineer, on mitigating the problem.
 - Page 7-13, Section 7.6.10.15. A section on "other hazard" was added. "A map and a written description detailing other natural or human-created hazards as identified on or near the property to be subdivided."
 - Page 7-7, Table 7.5. This is standard procedure but a new inclusion in the regulations, requiring submittal of the final plat checklist.
 - Page 7-16, Section 7.7.1. Remaining tracts less than 160 acres would be required to be surveyed and included with the filing of the subdivision phase.

A copy of the comments from agencies was provided to board members at the meeting. Ms. Dascenzo detailed changes which were a result of comments from agencies:

Missoula Valley Water Quality District

- Comment to Page 4 - 3.1.3.3-J. Polluted Water Hazard
Ms. Dascenzo stated the comment was due to differences in context. The Water Quality District approach was that the subdivision was the hazard and may or could produce pollution downstream; whereas the CAPS approach was the protection of the subdivision when hazard situations exist upstream. She provided the definition for polluted water: "surface or groundwater within or upstream from a proposed subdivision that has pollutants at levels higher than Montana or U.S. standards." Missoula Valley Water Quality District also recommended using groundwater standards found in the most recent version of DEQ-7. CAPS accepted the suggested change to use DEQ-7 standards over Montana or U.S. standards.
- Comment to Page 15 - 3.2.4.2. Common Area, No Build
The recommendation was to include any riparian area(s) on the plat. In the current regulations for major subdivisions, riparian areas must be in the common area; in minor subdivisions they must be within a no-build area on the plat. Requirements would be reformatted for clarity.
- Comment to Page 39 - 3.7.11. Erosion Control
A section of the application would be updated and incorporated in the future.

Parks Trails and Open Lands (PTOL)

- Comment to Section 3.1.2-C Measuring for easement of ditches
Ms. Dascenzo stated that if the ditch was less than three (3) feet wide it would be measured from the centerline; if greater it would be measured from the ditch edge. The current text would be reformatted to clarify the two measuring methods.
- Comment to 3.4.2.2-A Exception to Rural Standards
The word "all" would be incorporated as suggested: "Urban standards for roads and non-motorized facilities shall apply to subdivision in the Rural Area that meet all the criteria below."
- 3.4.9.1-D Off-Road Pedestrian Trail Option
Parks Trails and Open Lands encouraged non-motorized pedestrian infrastructure adjacent to roads and internal subdivision roads, within the right-of-way, to meet the Urban standard. Ms. Dascenzo clarified that this would apply to off-road pedestrian trails where they intersect with right-of-way. This could be accomplished by referencing existing standards in Table 3.4.9.4 and Section 3.4.9.4 Sidewalk Standards. The change would be the addition of these references to 3.4.9.1-D. PTOL recommended striking numbered items 1 and 2. These are criteria, and CAPS would prefer to maintain these in the regulations for context.
- 3.4.9.2.B.3 PTOL asked to consider adding proposed language regarding non-motorized transportation facilities to read: "Non-motorized transportation facilities shall be required along the frontage of Rural Area subdivision where a Transportation Plan has been adopted Missoula County Subdivision Regulations - December 12,

2019 Page 3-22 by the governing body that calls for non-motorized transportation facilities, or the proposed subdivision can provide a logical extension to an existing non-motorized facility pursuant to Section 3.4.9.2.b. Alternate options subdivider shall extend or install the non-motorized facility across the frontage of the subdivision.

- There was also a general comment from PTOL to encourage paved surfaces on non-motorized pedestrian infrastructure adjacent to roads and internal subdivision roads to reduce long-term maintenance and ensure ADA accessibility. Ms. Dascenzo emphasized that there were already sections with trail construction standards; moreover, they like the ability to give developers options to use innovative materials as well as more porous materials. She recommended possibly using "alternative hardened surface" instead of "alternative materials" for Section 3.4.9.4.E for sidewalks, and to use "comparable hardened surface material" for trails in Section 3.4.9.5.

Clerk and Recorder (face-to-face/not written) Comments.

- 2.2.21 Contiguous Tract. Lands separated by easements are contiguous; but not contiguous if separated by owned right-of-way. Text change: "public right-of-way easements shall be construed as abutting and therefore contiguous."
- Chapter 3. Request for an info box to clarify easements. Language to be drafted by the Clerk and Recorder's office.
- Page 37, Section 3.6.7.1 Lots Smaller than 20 acres
Clarify item to acknowledge that regulations regarding RVs and mobile homes are in the section. This would change the heading from "Lot Smaller than 20 Acres" to "Lot Smaller than 20 Acres, RVs or Mobile Homes" but would not change the content of the regulation.
- 6.2.1 Applicability
Change references to "condominium" to "declaration of unity ownership" for more inclusivity of land trusts and TEDs. Ms. Dascenzo stated that this would not apply in Chapter 8, where there is a separate definition and is exempt from the rest of the regulations.
- Final plat checklist in Chapter 6. The Clerk and Recorder's office stated that the final plat checklist was in progress and is being transitioned to an online process. The resolution is expected to be amended soon. The "as amended" language would be added after any mention of the resolution outlining the process for final plat.
- Typos and numbering would be corrected.
- Change of "distributed to" to "reviewed by" to better reflect the new digital final plat process.
- Section 6.2.4.5 Surveyor. Clerk and Recorder office requested the inclusion of a reference for addressing minor affidavits of correction as a matter of clarification. Ms. Dascenzo stated that there was a list of minor affidavits, but the section would be reference here to provide better context.

- Section 6.2.6 Filing Deadline
Clerk and Recorder's office requests the inclusion of all extension approval letters in the packet when filing for final plat.
- Section 6.6.3.1 Affidavit
Specific language was requested to clarify the process for affidavits; adding: "and sealed" and striking "approved by the County Attorney and shall be".
- Table 7.5 Final Plat Submittal Requirements
Addition of text "and consent if applicable", which would provide context.
- Section 7.7.1 Remaining Tracts less than 160 Acres - Phased Development.
Text change from "submitted upon" to "surveyed and included on".
- Section 7.7.3 Title Abstract
Request for a new section for written consent of the owners: "Section 7.7.4 Consent by the Owners. The written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land shall be on the face of the plat."

Fish Wildlife and Parks Comments

Ms. Dascenzo stated that comments from Fish Wildlife and Parks did not require any changes at this time.

PUBLIC COMMENT PERIOD OPEN [7:50 PM]

No public comments presented at this meeting.

BOARD COMMENTS

Mr. Newman appreciated the presentation efforts for the maintenance amendments. He was concerned about possible unintended consequences. He asked about reasoning for the requirement of surveying the remainder of the parent parcel. Ms. Dascenzo stated that it was to clean up the tract of record and the legal description for it.

Mr. Bensen identified the many changes that could occur between the time a subdivision is initially approved to the time it was fully developed. He asked about the 20-year time limitation. Ms. Dascenzo stated that they do not have any flexibility in the 20-year deadline as it comes from state law. Extensions can be requested during that 20-year period; with the state law change it would have to come back for a hearing before the County Commissioners.

Mr. Caristo asked for clarification on the 3-year extension rule. He asked if this meant they had to come back every 3 years. Ms. Dascenzo stated that the original length of the approval for a plat is between 1 and 3 years. This would maintain a level of public participation and honor that right. Mr. Caristo asked if the extensions would be taken care of administratively or return to the planning board. Ms. Dascenzo stated they would go to the County Commissioners. Mr. Caristo asked about the filing of plats; when a phase of a plat is filed do new surveys need to be included for all other phases or only

the un-built phases? Ms. Dascenzo stated that lots would not need to be shown for future phases, but instead demonstrate how the phase of the subdivision being filed altered the parent parcel, in the context of the larger parent parcel. Mr. Newman asked if it would get submitted or filed, and would it be included in Missoula County property records. Ms. Dascenzo stated that it would, and this would formalize the process.

Mr. Caristo asked about the comment from PTOL requiring non-motorized facilities on frontage roads in rural areas when included in a transportation plan. He stated that Ms. Dascenzo's comment had been that it would not be appropriate to use the plan as a trigger to require off-road trails. He requested additional details to better understand this. Ms. Dascenzo explained that Comment 21 applies to when an off-road trail is proposed or could be triggered in given scenarios. Where a transportation plan had been adopted by the governing body the extension should happen. They do not disagree with this, but rather than include it in the off-road trail option, CAPS would want to include it in the section for extending frontage trails. She stated that this is how one would usually see trails proposed in transportation plans; along major commuter routes within the right-of-way. Existing trails adjacent to the subdivision could be used a trigger or where a transportation plan had been adopted. Ms. Dascenzo stated that she agreed with the PTOL comment, just not where it would be implemented. Mr. Caristo provided an example that a subdivision with a non-motorized trail identified in the plan would be required to build it. Ms. Dascenzo stated this was correct and this was a change. Mr. Caristo stated that this was successfully used as tool in Bloomington, Indiana.

Ms. Hassanein asked about the hazards referenced in Chapter 3.1.3.3 and the section above that. Could these be combined and expanded to include the interstate highway and railroad transportation corridors? She asked who established the groundwater to surface measurement and why this number was felt to be sufficient. Ms. Dascenzo stated that the number was established by the county's floodplain administrator, Todd Klietz. Ten feet is a standard height of a dwelling story, and 10' below ground surface is a typical basement allowance. Ms. Hassanein expressed continued hydrology concerns in floodplain zones and adjacent areas and how this number may be arbitrary over time. Ms. Dascenzo stated that there is room in the regulations to re-address this as floodplain changes occur.

Mr. Rice did not feel that the section was entirely appropriate for the topic. He asked about the frequency of the county commissioners approving hazard mitigation requests. Ms. Dascenzo stated that when a request is included in an application, most were approved. Mr. Rice stressed that these are for the protection of the homeowners, and risks could never be totally eliminated nor predicted.

Mr. Bensen asked about comments 28 and 29 from the Clerk and Recorder which addressed issues of ownership; RVs, mobile homes, condominiums, and other gradients of ownership. He asked if the changes in language were for clarification or if they would open the door for limited ownership issues such as mobile homes. Ms. Dascenzo stated that this was to clarify existing content, which was buried deeper in the document. Mr. Bensen was concerned that although the intent was for clarification, it could also open up unintentional and unforeseen issues. Ms. Dascenzo stated that it was to direct owners of these dwelling types to this section in the document.

Mr. Rice was concerned at the lack of builders and realtors in the process. Although CAPS may feel the changes were administrative housekeeping, Mr. Rice would like to

see more comments from industry professionals as well as community residents that could be affected. He remains uncomfortable with the document and the number of comments received and would need to abstain if a vote were called. He would prefer to see the final version of the document before voting. Mr. Bensen agreed that persons not in the building industry would find it difficult to ascertain the ramifications of certain proposed changes. He remained concerned about possible unintended consequences caused by language changes. Mr. Rice asked about advertisement for the changes and who was included in that. Ms. Dascenzo stated that it was promoted in the CAPS email newsletter as well as the legal notice. Ms. Rice felt it was too tight of a timeline to allow builders and developers to attend the meeting. He would prefer to study the document further to see if the PTOL recommendations add substantial cost, if the benefits match the costs, and how costs are covered.

Board members agreed to more time was needed to comprehend potential outcomes of the suggested changes.

Moved by: Neva Hassanein
Seconded by: Vince Caristo

To continue public hearing, public comment, and discussion at the next scheduled Missoula Consolidated Planning Board meeting.

Vote results: Approved

7. Communications and Special Presentations

7.1 TED Updates; Memorandum from Ben Brewer (written presentation)

8. Committee Reports

There were no committee reports.

9. Old Business

There was no old business.

10. New Business and Referrals

There was no new business nor referrals.

12. Adjournment

Mr. Newman adjourned the meeting at 8:34 p.m.