

## EXECUTIVE SUMMARY

**LEAD PLANNER** Christine Dascenzo, Missoula County Community and Planning Services

**PUBLIC HEARING DATES** MCPB August 2, 2016  
BCC September 14, 2016

**REVIEWED AND APPROVED BY** Tim Worley, Missoula County Community and Planning Services

**AGENDA ITEM** Amendments to the Missoula County Subdivision Regulations – Chapter 5 – Procedures for Subdivision Review, Preliminary Plat, Variances and Appeals

**APPLICANT** N/A

**LEGAL NOTIFICATION** The legal advertisement was published in the *Missoulian* on July 17 and 24, 2016.

In addition to the legal notice, staff has provided information about this project through the following methods:

- Letters/emails sent to agencies
- Email notice of project updates to the Missoula County Community and Planning Services email list (more than 700 addresses)
- Project updates included in the monthly Missoula County Community and Planning Services Newsletter
- Informational Briefings and Question/Answer Session on July 20, 2016
- Missoula Organization of Realtors Briefing on July 21, 2016

<b>Proposal</b>	<b>Recommendation</b>
To amend Chapter 5 of the Missoula County Subdivision Regulations.	To approve the proposed amendments, including those in the Staff Memo, to Chapter 5 of the Missoula County Subdivision Regulations.

# **MISSOULA CONSOLIDATED PLANNING BOARD**

**August 2, 2016**

## **I. RECOMMENDED MOTION**

THAT THE PROPOSED AMENDMENTS TO THE MISSOULA COUNTY SUBDIVISION REGULATIONS, AS SHOWN IN ATTACHMENTS A & B, BE RECOMMENDED TO THE MISSOULA BOARD OF COUNTY COMMISSIONERS FOR ADOPTION.

## **II. INTRODUCTION**

Missoula County is proposing a set of amendments to Chapter 5 of the Missoula County Subdivision Regulations in an effort to conduct a final cleanup on a majority of the chapter, and more substantially amend Sections 5.7 and 5.8. The types of amendments pursued in this project include the following:

- Renumbering and moving of multiple sections
- General cleanup to ensure consistent language throughout the Regulations
- Text amendments to *Section 5.7 General Procedures*
- Text amendments to *Section 5.8 Adjustments to Preliminary Plats and Related Documents*

## **III. AGENCY AND PUBLIC COMMENT**

Public drafts of Chapter 5 were released July 15, 2016. An underline/strikethrough draft of the regulations was released, along with a “clean copy.”

Preliminary work on this section began in late 2015 and continued through the first half of 2016. Over the last several months, staff provided information about the upcoming project in the Community and Planning Services E-Newsletters and a variety of standing meetings with interested parties.

No public comments were received on this draft to date.

## **IV. PROPOSAL**

The proposed changes to the Missoula County Subdivision Regulations are explained in further detail below, beginning with a general description of changes. Section changes follow in an outline format.

### **OUTLINE OF PROPOSED AMENDMENTS**

#### **Chapter 5**

This effort is considered to be the final cleanup of a majority of Chapter 5, which was reorganized and updated in 2015. Many of the proposed amendments to this Chapter are considered to be minor. However, amendments to Sections 5.7 and

5.8 may be considered more substantial, as they introduce or alter County timelines and/or process for public notice, submittal to the governing body, preliminary plat approval, creating and extending phasing plans, and adjusting preliminary plats and related documents.

## **Section 5.7 – General Procedures**

### **5.7.11 Public Meeting Notice (minor subdivision)**

Language in *Section 5.7.11.1 Notice Recipients* has been amended to introduce a 15 day notice period to the Board of County Commissioner public meeting for minor subdivisions.

### **5.7.13 Planning Board Consideration (major subdivisions)**

Language in *Section 5.7.13.4 Submittal to Governing Body* has been amended for consistency with other sections of the regulations to change staff's submittal requirement from 30 days after the public hearing to 5 days prior to the Board of County Commissioners meeting.

### **5.7.14 Governing Body Consideration**

Language in *Section 5.7.14.10.C Time Period* extends the time period for preliminary plat/plan approval from 2 years to 3. Language in *Section 5.7.14.11.A Effective Period of Preliminary Plat* links the effective period to *Section 5.7.15 Extension of Preliminary Plat*, which requires all preliminary plats to be filed within a maximum of 6 years. If this requirement is not met, the subdivision will need to establish a phasing plan or be voided.

### **5.7.15 Extension of Preliminary Plat**

Language in this section has been amended to permit the filing deadline of a preliminary plat to be extended by up to 6 years from the subdivision approval. This is an increase from 5 years. In *Section 5.7.15.4 Decision*, the decision timeline has been extended from 10 working days to 30 to reflect the current practice of requesting agency comments.

### **5.7.16 Phasing of Preliminary Plat**

Language in this section has been amended to standardize procedures and outcomes. These changes also make the process more consistent with State Law and recent court precedents while building in some discretion as to the filing deadlines by allowing extensions of 1 to 3 years and all phase deadlines falling within a three year period. Extensions cannot exceed the maximums allowed in *5.7.16.4 Phasing Deadlines*, which have been updated to reflect three year increments. For minor subdivisions, all plats shall be filed within 9 years, 15 years for subdivisions with 6-20 lots, 21 years for subdivisions with 21-49 lots, and 24 years for subdivisions with 50 lots or greater.

This section has also been amended to clarify the requirements and criteria for establishing a phasing plan and introduces a public process for modification of requests.

In *Section 5.7.16.8.B Void*, the preliminary plat/plan will be voided if the final plat is not submitted and no extension is requested before the expiration date.

### **Section 5.8 – Adjustments to Preliminary Plats and Related Documents**

This new section of the regulations creates a process and criteria for reviewing modest changes to a preliminarily approved subdivision while maintaining the intent of the original approval. Adjustments to conditions of approval, supplemental sheets, approval sheets, covenants, conditions and restrictions, and boundaries related to an approved preliminary plat/plan for a *minor subdivision* will be subject to a Commissioners meeting after the adjacent property owners are notified. Such adjustments on a *major subdivision* will be subject to a Planning Board hearing and Commissioners meeting after it is noticed in the newspaper and to adjacent property owners and interested parties.

## **V. FINDINGS AND CONCLUSIONS**

### **Findings**

1. Montana Code Annotated § 76-3-501 requires counties to adopt and provide for the enforcement and administration of subdivision regulations that reasonably provide for orderly development, adequate transportation, adequate open spaces, regulation of sanitary facilities, minimization of congestion, and the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard.
2. Montana Code Annotated § 76-3-610 limits the preliminary plat approval period to no more than 3 calendar years and allows for mutually agreed-upon extensions.
3. In Article II, Section 8 of the Constitution of Montana, the public's right to participate is protected.
4. In recent court cases, the importance of the public's right to participate, findings of fact, and the "hard look" standard have been reinforced.
5. Chapter 2 of the Missoula County Growth Policy includes guiding principles that establish the overall planning framework, including the following:

Sustainability: Local government should strive to make decisions that are environmentally sound, fiscally responsible, and supportive of healthy communities over the long term.

Clean and healthful environment: The right to a clean and healthy environment is fundamentally important. Missoula County's natural and

cultural resources make this place unique; they should be conserved, enhanced and enjoyed.

Public health and safety: Missoula County will strive to protect public health, safety, and welfare in a fiscally-responsible manner.

Private property rights: Respect for private property rights should be supported in policy.

Balancing interests and minimizing regulation: The public interests of promoting economic development, conserving natural resources, maintaining community character, protecting public health and safety, and supporting private property rights should be weighed and balanced in decision making. The use of regulatory and voluntary measures will be evaluated with an effort to employ the minimum amount of regulation necessary to protect the public interests.

Partnerships: Efforts by non-governmental groups, private individuals, Tribal governments, and state and federal agencies to achieve community goals are as vital to community development as local governmental actions. Partnerships among these groups, individuals and local government are essential.

Public Involvement: Communities and individuals should continue to be involved in the planning and decision-making processes that affect them.

6. The Missoula County Growth Policy Chapter 2 includes an Action plan that describes the key goals, objectives and action strategies specific to proposed amendments to Chapter 3.

Goal #8 – Proactively plan and provide for the logical growth of communities while protecting rural character and sustaining county resources by guiding development to areas most suited for it.

Goal #14 – Improve communication between Missoula County officials and residents and enhance opportunities for public engagement in local government.

Objective 14.1 – Increase contact and communication between Missoula County government and residents.

Action 14.1.2 – Implement other communication mechanisms to maximize public outreach and transparency

Action 14.1.3 – Utilize community councils and other advisory boards to help improve communication in both directions and provide opportunities for public engagement.

Action 14.1.5 – Implement policies regarding public meeting notice and update as needed.

Objective 14.2 – Enhance opportunities for public engagement.

Action 14.2.3 – Structure community development projects to incorporate a variety of opportunities for public involvement.

Action 14.2.4 – Increase PB members involvement in rural projects and provide opportunities for PB to learn about rural planning and community issues.

Goal #15 – Provide effective customer service and flexible, predictable and timely development review processes.

Objective 15.1 – Provide simple, clear and flexible land use and development regulations, procedures and forms.

Action 15.1.1 – Use plain language, graphics and build in flexibility as regulations are revised.

7. It is reasonable to require subdivision processes that increase public notice and participation.
8. There is a reasonable relationship between the validity of the finding of facts and conclusions of law for a subdivision and the length of a phasing plan. It is appropriate for developers of subdivisions to design developments that can be platted within a timely manner.
9. The proposed amendments to the Missoula County subdivision regulations related to phasing plan extensions were developed in compliance with § 76-3-610, MCA and Article II, Section 8 of the Constitution of Montana.

## **Conclusions**

1. The amendments included in the July 15, 2016 draft Chapter 5 Missoula County Subdivision Regulations are locally appropriate and meet requirements of State law.
2. The amendments included in the July 15, 2016 draft Chapter 5 Missoula County Subdivision Regulations are supported by relevant and recent case law.
3. The amendments included in the July 15, 2016 draft Chapter 5 Missoula County Subdivision regulations are supported by the 2016 Missoula County Growth Policy.

## **V. ATTACHMENTS**

- A. Memo on staff amendments proposed after public notice, dated July 26, 2016
- B. Proposed Draft Amendments to the Missoula County Subdivision Regulations, Chapter 5: Procedures for Subdivision Review, Preliminary Plat, Variance and Appeals - Underline strikethrough (July 15, 2016)
- C. Proposed Draft Amendments to the Missoula County Subdivision Regulations, Chapter 5: Procedures for Subdivision Review, Preliminary Plat, Variance and Appeals - Clean (July 15, 2016)
- D. Legal Notice