MISSOULA COUNTY

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Planning & Permitting ● Conservation & Communities ● Parks & Trails

MEMORANDUM

TO: Board of County Commissioners

FROM: Tim Worley and Christine Dascenzo, Missoula County Community & Planning Services

DATE: May 9, 2017

RE: Response to County Commissioner Questions

Commissioner Dave Strohmaier has asked Planning Staff a number of questions regarding agricultural impact mitigation for Spurgin Ranch Subdivision. Staff's response to these questions is included as part of this memo.

Christine and Tim (and John),

I may have some additional questions for you, but before I forget, I wanted to get a few on the table, which I hinted at during the Spurgin Ranch public hearing. Suffice it to say, I'm dubious of the proposal even with the additional conditions, so I'm interested in exploring whether the subdivision can be conditioned with additional ag mitigations short of flat out denial.

1. Would deletion of lots 1-4 (and incorporation of those lots into one large ag/utility lot) constitute a material change that would require the applicant to start over from scratch? If not from scratch, at one point in the review process would the applicant find him/herself? (Even if this was possible, it has yet to be seen whether the applicant would even be agreeable to this.)

   We do not believe that this would constitute a material change, since it would be initiated by the Commissioners and not the applicant. The context for amended applications is the subdivider amending the application (Subdivision Regulations Section 5.7.17). This would be impact mitigation, which is under the purview of the Commissioners in Subdivision Regulations Section 5.9.

   Evaluation of the expressed mitigation preference of the subdivider is key here. The Commissioners should show that due consideration was given to the developer's expressed preference to address subdivision impacts.

2. Would conditioning the subdivision to require a permanent agricultural deed restriction on lots 1-4 constitute a material change? It seems like it wouldn't, since the proposed condition 6 is similar to what I'm suggesting in that it is binding the sale of these lots to only agriculture.

The Commissioners have the discretion to mitigate adverse impacts to the review criteria. Again, the county should ensure that the expressed preference of the subdivider was given due consideration.

3. In the spirt of keeping lots 1-4 together as a unit, is there any ability to condition the subdivision, without making a material change, by linking lots 1-4 together in some way such that the lot lines remain as is but require that they be sold as a unit?

   Our comments would be the same regarding this concept.

4. Please explain staff's position on how condition 6 tips the scales to a recommendation of approval (re adequate ag mitigation) when it could very well be the case that the lots do not sell within a year after final plat approval and then we are basically back to the original proposal where only the original ag/utility lot is at play, which was deemed as insufficient mitigation. It seems to me that the adequacy of condition 6 is predicated on the lots actually selling.

   The impacts called out in the staff report have been mitigated as laid out in the conditions of approval. These include ensuring irrigation water to the agricultural parcel, and addressing the agricultural parcel's zoning compliance. The Right of First Refusal concept enhances the mitigation but in our evaluation doesn't necessarily "tip the scales." It was not the sole or primary factor in considering adequate mitigation. We think the Commissioners have the discretion to consider this adequate mitigation despite the fact that one year may lapse without an agricultural purchaser.

5. Please recap for me the acreages associated with the ag/utility lot, riparian area (no build), and lots 1-4. It seems like there were conflicting numbers between the applicant and staff during the hearing. Per the pre-Planning Board staff report, there were deemed to be only 2.95 usable farmland acres in the proposed ag/utility lot. This is different from the overall size of the ag/utility lot which, I think, the applicant is counting toward their acreage/percentage calculation of ag mitigation. At the end of the day, and for mitigation purposes, I'm most interested in what is truly useable farmland, which could either include (1) that useable portion of the ag/utility lot or (2) the ag/utility lot plus lots 1-4.

Potential Agriculture Impact Mitigation

	Acres	%	% of Subdivision
Spurgin Ranch Subdivision:	**20.01**		100%
Agricultural and Utility Lot:	5.28	100%	26%
Encumbered Riparian area:	1	19%	5%
Encumbered Drainfield:	0.28	5%	1%
Encumbered Parkland:	0.27	5%	1%
Encumbered Isolated area:	0.23	4%	1%
Total Encumbered:	**1.78**	**34%**	**9%**
Total Preserved:	**3.5**	**66%**	**17%**

First Right of Refusal on Lots 1-4	Acres	%	% of Subdivision
Lot 1:	0.78	24%	4%
Lot 2:	0.82	25%	4%
Lot 3:	0.76	23%	4%

Lot 4:	0.93	28%	5%
Total:	**3.29**	**100%**	**16%**
Encumbered Right-of-way:	0.39	12%	2%
Total Encumbered:	**0.39**	**12%**	**2%**
Total Preserved:	**2.9**	**88%**	**14%**

	Acres	% of Ag	% of Subdivision
Combined Concepts:	**8.57**	**100%**	**43%**
Combined Encumbered:	**2.17**	**25%**	**11%**
Combined Preserved:	**6.4**	**75%**	**32%**

6. In terms of appraised value for ag land, the applicant seemed to imply that this is a difficult number to come up with, but how are parcels appraised where conservation easements are contemplated? I'm assuming that the easement value constitutes the difference between the appraised value of the parcel based on zoning or the growth policy vs. the appraised value for just agricultural use. So surely it must not be that difficult to appraise a parcel only for ag use. Then the question becomes, is there a standard discount that applies in these cases, and where did the 20 percent figure come from?

   The sale of Lots 1-4 at a price that would not exceed 80% of the market rate is a concept presented by the applicant. It does not correlate to appraisals for conservation easements, which have a significant range depending on the qualities of the land, what the easement permits, location, and the size of the parcel.

7. Just because an area is zoned at a certain density, does that impart any RIGHTS to the property owner to build out to that level? For instance, in the case of CRR-1 and a 20-acre parcel, if 15 of those acres were riparian, where our county subdivision regulations prohibit building, does that entitle the property owner to cluster all 20 dwelling units on five acres? If there is no inherent right to build every dwelling unit that would otherwise be allowed under zoning, then it is conceivable that you could delete 4 lots without needing to rejigger the entire subdivision to fit those lots/development rights in (although, clearly, maximizing the number of lots is probably desirable from the property owner's perspective).

   We don't see this parcel as zoning limited, considering the flexibility afforded by density versus minimum lot size. For example, the total number of units that would be allowed would always be 20 on the parent parcel. This could be achieved by multiple dwellings on single lots to achieve the 20 total. The total number of lots is not critical in this regard.

   Zoning and subdivision could be viewed from the perspective of two parallel sections of State Law. Where zoning is 1/acre, that is the development right; however, there is no right to develop that precludes impact mitigation per Subdivision and Platting Act requirements. The mitigations occur under 76-3, MCA, which may affect the total density that can be achieved on a parcel.

That's enough for now! Thanks.
Dave

Tim,

As an addendum to my question 3 below, which relates to the idea Josh Slotnick proffered in his most recent message, might the subdivision be conditioned to combine lots 1 – 4 with the agriculture/utility lot but provide a building envelope within one of the existing lots 1-4? This would allow one dwelling unit on the expanded ag parcel, at market rate (as opposed to the time-limited discount idea) but would permanently deed restrict the balance of the parcel. This doesn't strike me as a radical reengineering of the subdivision, and would actually result in less intensive use than that contemplated by the original subdivision that would have allowed residential use of lots 1 – 4. Of course, if the applicant isn't open to this, then it's a moot point, but some additional creative thinking might do a better job of truly mitigating impacts to ag and retain value for the property owner(s). Thanks.

Dave

Would this be considered required mitigation, over and above what has been offered so far? The expressed preference of the subdivider needs to be considered. While there are no agricultural mitigation criteria per se, the Commissioners would have to make a case for why more mitigation like this is needed, and why the expressed preference of the subdivider wasn't considered to be enough to mitigate.

All,

I promise that this is my last message of the day. In looking at both the Montana Subdivision and Platting Act and our Missoula County subdivision regulations, I noticed reference to "material changes" only in our county regulations (which is not to say that it isn't in there MCA), although the language seems permissive as to what may be considered "material." Regardless, MCA 76-3-608(4) seems pretty broad in terms of allowing governing bodies the latitude to "require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) [review criteria]." Since this is the governing body's (BCC's) first crack at reviewing the subdivision since at no other point in the process have we had the opportunity to weigh in, and reading this at face value, I'm not seeing any inherent problem with modifying the design of a subdivision to combine or eliminate lots (or other more radical changes) if doing so will mitigate impacts to the criteria in 76-3-608(3). Moreover, at least in MCA, I don't see anything that specifies that if the governing body requires design changes of a certain magnitude that the application process must start from scratch. Indeed, I wonder if it is within the governing body's purview to determine if, and to what extent, the modified proposed subdivision must go through review again. Anyway, I welcome your thoughts on this.

We would agree that the governing body has broad discretion over what is considered impact mitigation. The context for the amended application section is changes made by the applicant. It's worth asking the questions of whether the public has had adequate time for review, and whether expert professional review (agencies) would be needed to evaluate such a thing. If the answer is "yes" to professional review, the application should at least be given that type of review. In this case, we don't believe additional agency review would be needed.

The expressed preference of the subdivider requires due consideration. If more mitigation is needed than offered by the applicant, it's appropriate to describe the original mitigation, and why more is needed, such as in this example.

Dave