

## **Missoula City Council Land Use and Planning Committee Minutes**

Date: August 14, 2019  
Time: 1:05 pm  
Location: City Council Chambers  
140 W. Pine Street, Missoula , MT

**Members present: Stacie Anderson, Mirtha Becerra, John DiBari, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Bryan von Lossberg, Heidi West**

**Members absent: Julie Armstrong, Michelle Cares, Jesse Ramos**

**Others present: Jeff Stevens, Joe Loos, Rock Sehnert, Kathy Farrell, Laurie Richards, Richard Seintek, Lucy Seintek, John Nugent, Jim Nugent, Mary McCrea, Randy Frazier**

### **1. ADMINISTRATIVE BUSINESS**

#### **1.1 Roll Call**

#### **1.2 Approval of the Minutes**

##### **1.2.1 Approve Minutes from July 31, 2019 as presented.**

The minutes were approved as presented.

### **2. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

### **3. COMMITTEE BUSINESS**

#### **3.1 Conditional Use Request – Hillview Crossing - Townhome Exemption Development (10+ units)**

John DiBari shared that this item had been in front of the Land Use & Planning committee previously; this is a continuation of the discussion.

John DiBari informed that he had a discussion with Teresa Jacobs and helped her navigate through the item documents attached to the item in eSCRIBE. Mr. DiBari shared a letter from Don and Karen Henrickson that has been added to the item record. The letter identified concerns related to water and flooding and the responsibility to the homeowner in the event of failure of water containment.

The discussion today is at the request of the Mayor to address issues related to this project. A letter from Mayor John Engen has been added to the item record. No additional information has been provided by the development team as requested by the committee.

Mary McCrea, Development Services, spoke on this item and provided a PowerPoint presentation attached to the item record. She presented information relating to the revised draft of the conditions of approval dated August 5, 2019, forwarded by Mayor Engen. There are issues with numbering for those conditions following condition #24; a corrected Draft with Revised Numbering is attached to the record in eSCRIBE, however, the Revised Numbering draft does not include the revisions to condition #9. There are 30 total proposed conditions. This presentation focused on the following items:

- Road Width – Conditions #11, #12 and #13,
- Mid-block Pedestrian Pathway – Condition #9,
- Geotech - Conditions #2, #24, #25, and #26,
- Storm Water Plan – Conditions #2, #3, #23, #24, #26, #27 and #28,
- Living With Wildlife – Condition #29, and
- Fencing – Condition #30

Road Width:

This item was discussed at several Land Use and Planning meetings starting on January 16, 2019. On March 13, 2019, the Land Use and Planning Committee voted to require Road B and the northern portion of Road A to be built to a 35-foot wide road, back of curb to eliminate the no parking on these roads.

Road A from Hillview Way to the end of the northernmost cul-de-sac is over a half-mile long or 2,720 lineal feet and serves 40 homes. The southern portion of Road A is 21 feet wide with no parking on each side. The northern portion of Road A as proposed by the applicant is 28 feet wide with parking on one side.

The length of Road A from Hillview Way to the end of Road B, the southernmost cul-de-sac is 1,960 lineal feet and serves 28 homes. The southern portion of Road A is 21 feet wide with no parking on each side. Road B as proposed by the applicant is 28 feet wide with parking on one side.

Hillview Crossing TED units will each have a two-car garage with two parking spaces in the driveway for a total of four off-street parking spaces per unit. With 68 TED units, the development will provide 272 off-street parking spaces. There will be approximately 47 on-street parking spaces provided on one side of Road A –North and Road B.

The applicant sent out information on cul-de-sacs in the surrounding area. Shadow Lane is approximately 826 feet long and serves 10 homes. The lots on Shadow Lane have 125 feet of street frontage. The TED units in Hillview Crossing have about 60 feet of frontage on the road. Shadow Lane is one-third of the length of Road A – in Hillview Crossing and serves one-quarter of the homes.

Woodbine Place forms a loop road with Black Pine Trail to the north so there is more than one way in and out for homes on Woodbine Place and Black Pine Trail. Woodbine Place is 1,100 feet in length and serves 16 homes. The lots on Woodbine Place have over 100 feet of street frontage.

Landon's Way is 700 feet in length and serves 11 homes. The Landon's Way lots have an average of 110 feet of street frontage. At the point that Landon's Way connects with Woodbine Place, there are two routes to travel to connect to Hillview Way. It is 40% of the length of Road A in Hillview Crossing and serves roughly one-quarter of the homes.

The section of road that connects Colter Court and Hunter Lane to Macie's Way and connects to Landon's Way is 1,621 feet in length and serves 20 homes. Once Landon's Way connects with Woodbine Place there are two routes to travel to connect to Hillview Way. The Colter Court/Macie's Way/Hunter Lane/Landon's Way route is 60% of the length of Road A in Hillview Crossing and serves roughly half the homes.

Amendments to conditions 11 and 13 approved by Land Use and Planning on March 13, 2019, widened the portions of the roads with homes adjacent to 35 feet back of curb to back of curb. Memo #3 included the revisions to Condition #11 and #13 along with 11 findings of fact.

The 11 findings of fact from the discussion at Land Use and Planning that began on January 16, 2019, that resulted in amending conditions of approval #11 and #13 were covered.

Title 20, Review Criteria for conditional uses, Section 20.85.070.H.2b states that uses that require conditional use approval may be approved by the City Council when they determine that the proposed use is in the

interest of public convenience and will not have a significant adverse impact on the general welfare of the neighborhood or community.

In determining whether all applicable review criteria have been satisfied, the City Council may specifically consider the factors listed under Title 20, Section 20.85.070.1. Section 20.85.070.1.4 requires that the overall project will be functional, attractive and safe in terms of pedestrian, bicycle and vehicular access, parking, loading, and servicing. Section 20.85.070.1.5 lists the factor of agency and public testimony.

On December 12, 2018, at the Land Use and Planning committee meeting City Council asked the question of who is responsible to enforce the “No Parking” prohibitions on one or both sides of the private roads and snow removal on the private roads within the Hillview Crossing TED to ensure emergency personnel has access.

In the first staff Memo dated December 14, 2018, staff responded that the Homeowner’s Association for the TED development would be responsible for snow removal and enforcing the “No Parking” restrictions on the private roads within Hillview Crossing TED.

City Engineering does not approve of the roads dedicated as right-of-way because they are dead-end cul-de-sacs. Public Works, Street Maintenance staff stated that the roads would be difficult to maintain using standard City equipment such as snowplows because the roads are narrow.

The applicant’s representative testified that the City Police Department could enforce the “No Parking” restrictions.

City Police Department and City Attorney’s office responded that City Police officers cannot enforce the “No Parking” restrictions and snow removal on private roads.

City Fire Marshal, Dax Fraser commented that Road A – South proposed at a 21-foot width needs to be signed prohibiting parking on both sides of the road and Road A – North and Road B proposed at a 28-foot width needs to be signed prohibiting parking on one side of the road.

Dax Fraser also stated that concerns about emergency traffic on these streets hold merit. Emergency traffic on narrow roads with slope is slow with optimal conditions but has the potential to inhibit arrival on the scene in an emergency if the restrictions for parking on one or both sides of the road are not followed or enforced or if snow removal does not occur.

Public testimony received expressed concern regarding the requirement for a Homeowner's Association to be responsible for enforcing the "No Parking" restrictions and for snow removal, especially if the Homeowner's Association did not remain active over time or if homeowners did not pay their dues to cover road maintenance and snow removal.

Title 12, Section 12.22.140.C.1 (a) requires a 35-foot wide back-of-curb to the back-of-curb road for a local residential street with parking on both sides. The need for the Homeowner's Association to enforce the "No Parking" restrictions on Road A – North and Road B is eliminated with the amendment to the condition of approval #11 & #13 because a 35-foot road back-of-curb to back-of-curb width provides parking on both sides of these roads.

The applicant has requested reconsideration of the Land Use and Planning decision to widen the portions of the roads adjacent to homes to 35 feet back-of-curb to back-of-curb. If the vote to reconsider the road width proceeds, Council members should state on the record the reasons for their vote for staff to craft findings of fact representing the Council decision.

Mid-block Pedestrian Path:

Three options related to the August 5<sup>th</sup> draft of conditions were covered:

- Condition of Approval #9 as recommended in the staff report,
- Amendment to Condition of approval #9 for the eastern trail option recommended by the applicant,
- Amendment to Condition of approval #9 in the August 5<sup>th</sup> draft of conditions.

Condition of Approval #9 from the Staff Report requires a pedestrian pathway and stairs that connect Road A – North to Road B and Road A – South.

The eastern trail option was presented by the applicant at the April 3, 2019, Land Use and Planning meeting. Land Use and Planning approved the following motion:

Amend condition of approval #9 to construct the trail proposal in the locations shown on the applicant's handout, subject to the trail meeting City Parks and Recreation's recreational trail standards, and subject to review and approval by City Parks and Recreation.

A replacement for Condition of Approval #9, prepared by the applicant's attorney, was presented as follows (Slide 10 in presentation) and suggests facilitating their proposed trail option:

9. The applicant shall dedicate a trail easement and prepare plans for and install a trail meeting recreational trail standards of City Parks and Recreation along the eastern edge of the property per the handout from the applicant received at the April 3, 2019 Land Use and Planning Committee meeting, subject to review and approval by City Parks and Recreation prior to zoning compliance approval of the townhome exemption declaration. The trail at the eastern edge of the property shall be maintained by the developer and/or the Homeowner's Association. The applicant shall also prepare plans for and install a pedestrian pathway/stairs from southern segment of Road "A" through the common area extending between unit ownership parcel numbers 6 and 7, crossing Road "B" per the handout from the applicant received at the April 3, 2019 Land Use and Planning Committee meeting. The exact route to be determined in coordination with City Parks and Recreation. The applicant shall also prepare plans for and install a pedestrian pathway/stairs crossing the northern segment of Road "A" then continuing between unit ownership parcel number 56 and 57 and continuing as a 6 foot wide trail to meet the western trail per the handout from the applicant received at the April 3, 2019 Land Use and Planning Committee meeting. The exact route to be determined in coordination with City Parks and Recreation. Plans for the pedestrian pathway/stairs shall be reviewed and approved by Development Services prior to zoning compliance approval of the townhome exemption declaration. Improvements shall be installed prior to building permit approval of the first structure or included in an Improvements Agreement guaranteed by a security, subject to review and approval by Development Services.

The amendments to Condition of Approval #9 as shown in the August 5<sup>th</sup> draft of conditions were covered (Slide 11 in presentation) as follows:

9. The applicant shall dedicate a trail easement and prepare plans for and install a trail meeting recreational trail standards of City Parks and recreation along the eastern edge of the property per the handout from the applicant received at the April 3, 2019 Land Use and Planning Committee meeting, subject to review and approval by City Parks and Recreation prior to zoning compliance approval of the townhome exemption declaration. The trail at the eastern edge of the property

shall be maintained by the developer and/or the Homeowner's Association. If the trail plans for the trail at the eastern edge of the property do not meet City Parks and Recreation recreational trail standards of slopes of 10% - 15% with limited areas not exceeding 20% slope, the applicant shall dedicate a minimum 20-foot wide easement and construct a paved pedestrian pathway/stairs from southern segment of Road "A" through the common area extending between unit ownership parcel numbers 8 and 9, crossing Road "B" then continuing between unit ownership parcel number 18 and 19, crossing the common area and extending between unit ownership parcels 38 and 39, crossing the northern segment of Road "A" then continuing between unit ownership parcel number 56 and 57. An easement for future trail improvements shall be dedicated from northern parcel boundaries of unit ownership parcel numbers 56 & 57 northward through the common area and connecting to the east-west trail easement near the northern property line of the TED. Plans for the pedestrian pathway/stairs shall be reviewed and approved by Development Services prior to zoning compliance approval of the townhome exemption declaration. Improvements shall be installed prior to building permit approval of the first structure or included in an Improvements Agreement guaranteed by a security, subject to review and approval by Development Services.

At this time, City Parks had not reviewed any details regarding the proposed trail on the eastern edge of the site, and it had not been verified by City Parks that the trail will meet recreational trail standards of 10% to 15% slope for each leg of the trail with limited portions at 20% slope. The August 5<sup>th</sup> draft of the conditions includes an option for the eastern edge trail and if that is not feasible then the condition requires the mid-block pathway/stairs as recommended in the staff report.

Mary McCrea covered the amendments to conditions of approval regarding the Geotech Report. Memo #4 included two options regarding the Geotech Report. The August 5<sup>th</sup> Draft of Conditions generally includes the conditions recommended in Option B of Memo #4.

Condition #2 was amended to require the Geotechnical Engineer to review and approve the locations for stormwater detention/retention basins and facilities for conformance with the updated Geotech Report.

New Condition #24 requires all TED ownership units, infrastructure and conditions of approval met and included in one TED declaration and all infrastructure constructed within 5 years of approval of Geotech Report.

New Condition #25 requires a Geotech Report for each two-unit townhome at building permit review.

New Condition #26 outlines the scope and requirements for the Geotech Report.

Mary McCrea covered the amendments to conditions of approval regarding the Storm Water Plan. Memo #4 included two options regarding the Storm Water Plan. The August 5<sup>th</sup> Draft of Conditions generally includes the conditions recommended in Option B of Memo #4.

Condition #2 was amended to require the final Storm Water Plan to be reviewed and approved by City Engineering and the Geotechnical Engineer.

Condition #3 fixed some typos to spell Storm Water as two words.

Condition #23 adds several sections to the amendments section of the Development Covenants that require City Council approval to amend or delete the sections.

Condition #24 includes stormwater facilities in the list of infrastructure that is required to be constructed within 5 years of approval of the Geotech Report.

Condition #26 requires a grading and drainage plan, stormwater facilities locations, etc. to be considered in the scope of the updated Geotech Report.

Condition #27 requires a Storm Water Management System As built and Maintenance Manual be provided to the Homeowner's Association (HOA) and City of Missoula Storm Water utility. Also, all Storm Water infrastructure is required to be placed within a public Storm Water Drainage Easement.

Condition #28 requires a Private Maintenance Acknowledgement of Infrastructure and Facilities Statement placed on the TED Ownership Units Site Plan and in the Development Covenants filed with the TED Declaration.

Condition #29 requires the Living with Wildlife Covenants recommended by Fish, Wildlife and Parks be included in the Hillview Crossing TED Development Covenants.

Condition #30 requires fences be excluded from the front and side yard areas of the TED Ownership Units in response to public concerns that the long stretch of buildings would block the movement of wildlife from Miller Creek to the valley floor.

Mayor John Engen stated that while the committee had approved the conditions, those conditions were very difficult for the applicant to meet without understanding if they had approval for a project; therefore, the applicant could not move forward with project design. The discussion today is to find a way to provide the committee with the assurances needed to protect the health, safety, and welfare of the community while providing the predictability the developer needs to move forward.

John DiBari provided a summary of the general proceedings related to this item as well as committee action to-date.

A motion was made by John DiBari to request that council conditionally approve the Hillview Crossing TED Conditional Use Permit subject to the conditions of approval in the memo dated August 5, 2019, Revised Numbering amended as follows:

Conditions #2 and #3 regarding Storm Water as detailed in Option A of Memo #4 as approved by the committee on March 20, 2019.

Condition #9: The applicant shall dedicate a trail easement and prepare plans for and install a trail meeting recreational trail standards of City Parks and Recreation along the eastern edge of the property per the handout from the applicant received at the April 3, 2019, Land Use and Planning Committee meeting, subject to review and approval by City Parks and Recreation and Development Services prior to zoning compliance approval of the townhome exemption declaration. The trail at the eastern edge of the property shall be maintained by the developer and/or the Homeowner's association.

Condition #9A: If the trail plans for the trail at the eastern edge of the property do not meet City Parks and Recreation recreational trail standards, the applicant shall dedicate a minimum 20-foot wide easement and construct a paved pedestrian pathway/stairs from the southern segment of Road A through the common area extending between unit ownership parcel numbers 8 and 9, crossing Road B then continuing

between unit ownership parcel numbers 18 and 19, crossing the common area extending between unit ownership parcels 38 and 39, crossing the northern segment of Road A then continuing between unit ownership parcel numbers 56 and 57. A minimum 20-foot wide easement for future trail improvements shall be dedicated from the northern parcel boundaries of unit ownership parcels numbers 56 and 57 northward through the common area and connecting to the east-west trail easement near the northern property line of the TED.

Conditions #11 and #13 regarding road width as detailed in Memo #3 as approved by the committee on March 13, 2019.

Conditions #24 and #25 regarding the geotechnical report as detailed in Option A of Memo 4 as approved by the committee on March 20, 2019.

Condition #26 - Delete

For conditions #2 and #24, the developer shall provide to Development Services, City Engineering and/or other appropriate staff for review and approval the information requested before the full council taking final action on the conditional use request.

Mirtha Becerra suggested that the 20 foot wide pedestrian easement would need to be maintained.

A motion was made by Julie Merritt to request that council accept amended Condition of Approval #9 (Slide 11 in presentation) to read as follows:

9. The applicant shall dedicate a trail easement and prepare plans for and install a trail meeting recreational trail standards of City Parks and Recreation along the eastern edge of the property and the additional trails and stairs shown on the handout from the applicant received at the April 3, 2019 Land Use and Planning Committee meeting, subject to review and approval by City Parks and Recreation prior to zoning compliance approval of the townhome exemption declaration. The trail at the eastern edge of the property shall be maintained by the developer and/or the Homeowner's Association. If the trail plans for the trail at the eastern edge of the property do not meet City Parks and Recreation recreational trail standards of slopes of 10% - 15% with limited areas not exceeding 20% slope, the applicant shall dedicate a minimum 20-foot wide easement and construct a paved pedestrian pathway/stairs from southern segment of Road "A" through the common area extending between unit ownership parcel numbers and

9, crossing Road "B" then continuing between unit ownership parcel number 18 and 19, crossing the common area and extending between unit ownership parcels 38 and 39, crossing the northern segment of Road "A" then continuing between unit ownership parcel number 56 and 57. An easement for future trail improvements shall be dedicated from northern parcel boundaries of unit ownership parcel numbers 56 & 57 northward through the common area and connecting to the east-west trail easement near the northern property line of the TED. Plans for the pedestrian pathway/stairs shall be reviewed and approved by Development Services before zoning compliance approval of the townhome exemption declaration. Improvements shall be installed before building permit approval of the first structure or included in an Improvements Agreement guaranteed by security, subject to review and approval by Development Services.

Julie Merritt asked if block length of 480 feet was required or if it was a preference. Mary McCrea replied the requirement is that block length is to be 480 feet in length and an exception has been provided for slope and other site constraints.

Alan McCormick confirmed that the trail on the eastern edge was designed by professional engineers and should meet Parks and Recreation requirements. If the trail cannot meet Parks and Recreation approval, the project dies. Mr. McCormick added that there is room to adjust switchbacks if road widths are required to change from 28 feet to 35 feet.

The committee discussed language options for condition of approval #9 related to mid-block pedestrian path, easement maintenance, block length, and pedestrian trails.

Julie Merrit revised her amendment to be Condition of Approval #9 as provided by the Applicant (Slide 10 in Presentation).

John DiBari stated that if the trails shown on the April 3<sup>rd</sup> handout can't be constructed to meet City Parks and Recreation Trail standards then the condition can't be met there would be no project.

Teresa Jacobs shared that she feels the project is being rushed out of a reaction to a threat of a lawsuit. She spoke on the need for a safe route to school. She does not support the motion.

John DiBari stated that additional feedback from MCPS could be sought regarding safety of getting kids to school bus stops prior to project returning to City Council.

Jeff Stevens spoke in support of the east trail though is concerned about maintenance. He does not support the amendment as written.

Laurie Richards stated that a threat of a lawsuit should not result in the project moving forward without addressing the many concerns.

Rocky Sehnert spoke on the role of the committee to protect the population. He asked if the school district had been involved in the conversation. Mary McCrea stated that the school district was not included initially for comment on the TED conditional use as it is not standard. Due to public interest, a comment was sought; Burley McWilliams replied, and his emailed response had been attached to the item record. Mr. McWilliams also stated that he would be willing to come back to Land Use and Planning to further comment.

Jordan Hess repeated that if the trail does not meet Parks and Recreation approval, there is no project. He asked for a friendly amendment to include both Development Services and Parks and Recreation approval for the pedestrian trail. Julie Merritt accepted the friendly amendment.

Committee voted on the revised motion made by Julie Merritt. The motion passed by majority vote.

Aye: Gwen Jones, Bryan von Lossberg, Julie Merritt, Heather Harp, Stacie Anderson, Jordan Hess, Heidi West, Mirtha Becerra

Nay: John DiBari

Absent: Michelle Cares, Julie Armstrong, Jesse Ramos

A motion was made by Bryan von Lossberg for reconsideration of the language related to the storm water plan and geotechnical plans to adopt conditions of approval #23, #24, #25, #26, #27, and #28 and amends conditions of approval #2 and #3 to reflect language found in Memo #4, Option B with additional input received from public works.

Bryan von Lossberg stated that council has a fiduciary responsibility to take action which must be balanced with thorough vetting of ideas and information. If the storm water and geotechnical plans are not approved by Development Services and Public Works staff, there is no project.

John DiBari shared that this meeting was to provide clarity around the issues that influence the project design so the developer could move forward with preparation of the geotechnical report and storm water plan for staff review and approval. Once approved by staff, the geotechnical report and storm water plan would be presented to full council prior to a decision on the conditional use request.

Bryan von Lossberg stated that he did not think the geotechnical report and storm water plan needed to be approved by City staff before City Council votes on the project.

Julie Merritt inquired about water limitation amount of water allowed through a culvert into Wapikia. Troy Monroe stated that the applicant's initial storm water report was reviewed and does include the quantity allowed through the culvert; if the developer cannot engineer the design to meet allowed flow rate, the project would not move forward.

Heidi West asked about storm water management and liability. Troy Monroe replied that the storm water system is being designed to be maintained by Homeowners Association. Placement in an easement is to allow the city to step in if the HOA fails in their responsibility to maintain. Mary McCrea added that condition #28 ensures that if the city must act to protect public safety and adjacent private property, all costs would be assessed to the property owners.

Stacie Anderson spoke against the motion made by Bryan von Lossberg as it is revisiting a decision already made by committee. She would like staff to confirm approval of geotechnical report and storm water plan to full council prior to decision on the conditional use request.

Gwen Jones spoke in support of the motion to amend made by Bryan von Lossberg. Staff needs to scrutinize, provide due diligence and conservative review of the storm water plan because climate is changing, and the stakes are high.

Jeremy Keene stated that having all the information up front would be nice but if the process does not allow for that, there is confidence in staff to review the storm water plan and geotechnical report as a condition of approval. This project is on a hillside and involves mass grading. The grading and drainage plan must be reviewed. The individual TED units will need review as they come in for building permit with respect to how each unit impacts grading and drainage. All liability rests with the developer and their engineer; city staff will review to make sure they have a good plan.

The concern for an HOA to maintain the storm water system is addressed by a condition of approval which includes a mechanism for maintenance and a path if failure to do so occurs.

Heidi West asked how long the developer carries the responsibility. Jeremy Keene stated that if there is an error in the design, liability will stay with the engineer for the life of the project. Jim Nugent informed liability would fall to those who designed and constructed the project and that liability extends for ten (10) years.

John DiBari spoke against the motion made by Bryan von Lossberg. It is in the best interest to settle issues related to site design and require a storm water plan and geotechnical report prior to a decision on the conditional use request to address the concern of public health, safety and general welfare.

Mayor Engen appreciated the motion made by Bryan von Lossberg. Until the body decides on whether the project can move forward, the developer will not invest in storm water or geotechnical reports. The request to move forward with a decision is not due to the threat of a lawsuit, rather that there is a responsibility to decide. If this had been a subdivision project, there would have been required deadlines and a decision would have already been made.

Jeremy Keene shared that the engineering review and approval process for the storm water plan and the geotechnical report would be comprehensive and robust. City staff would be thorough and if the project could not be engineered in a way that meets requirements, staff would not approve. If not approved, the project would not move forward.

Heidi West cautioned against turning over responsibility to ensure public safety to a Homeowners Association. She was concerned that if the responsibility is something that the City may maintain in the future then more scrutiny is required by City Council before approval.

Heather Harp and Julie Merritt shared their support of the motion made by Bryan von Lossberg.

Mirtha Becerra commented that if this project was a subdivision, the information would have been provided ahead of time. The TED project has the impacts of a subdivision but does not receive all the review a subdivision would have required.

Jason Rice informed that they were asked by staff to provide more information and a revised storm water report was provided. A geotechnical report was done for a TED project that had been reviewed by a third party and who had provided comment. The request is for conditional use approval. The developer would like to know the conditions that would allow for the project to move forward and to know if council is moving towards a decision.

Alan McCormick stated that Bryan von Lossberg proposed a draft condition of approval; John DiBari is requesting a prerequisite to get to a vote which is contrary to the ordinance which states that council must take action. There had been as much, or more, information related to storm water and geotechnical reports provided for this request than what is provided for a subdivision review.

Laurie Richards stated that this project should go through the subdivision process. She mentioned a lawsuit in Great Falls where a HOA did not maintain and the City had to pay for it. She does not support the motion.

Teresa Jacobs spoke against the motion made by Bryan von Lossberg as she would like to see the storm water and geotechnical reports to come before council prior to a decision. She wants the public to be here back as well following staff review.

Joseph Gorsch stated his support of the motion made by Bryan von Lossberg. He strongly suggested that this development should go through standard subdivision review rather than a TED review.

Richard Sientek spoke against the recommended motion. He would like the Land Use and Planning committee to receive all information in advance of a decision.

Rocky Sehnert asked if the motion would have an impact on condition #24. Mary McCrea replied that condition of approval #24 was in both options A and B of Memo #4 so the whole 68-unit project would need to be filed in one declaration with a 5-year infrastructure build-out, which includes roads, storm water, site grading, etc.

Gwen Jones asked about the infrastructure build-out. Mary McCrea informed that infrastructure includes roads, sidewalks, pedestrian walkways, storm water facilities, retaining walls, and site grading. A geotech engineer is required to evaluate existing conditions and to provide recommendations for excavation and embankment, requirements for construction and oversight, and requirements for as-built and testing; a

geotechnical engineer would be inspecting the site at each step. Troy Monroe agreed that infrastructure is built on an incremental basis as other construction takes place; proposed conditions state that storm water will be built at the same time as the roads are built.

Jim Mortin spoke in opposition to the motion. He stated they have concerns about storm water and depending on how the development proceeds whether it will impact adjacent properties. If approved, it does not create a way for the public to continue to add comment.

Don Henrickson stated that Mother Nature is unpredictable, engineering cannot plan for unknown weather events. Insurance will not cover property at the bottom of the hill against water coming from higher and the liability should fall to the party that disturbs the land. Mary McCrea informed that the development covenants will state when the Homeowners Association takes over responsibility.

Jeff Stevens shared that he is not confident in the motion to amend as proposed.

Mirtha Becerra emphasized that the proposed motion means that geotechnical and storm water plans must be reviewed and approved by qualified staff prior to construction. If not approved, the project fails.

Bryan von Lossberg said that the information about the geotechnical and storm water reports would be made available to the public; the motion is about timing.

Heidi West said that Homeowners Association regulations are rudimentary and do not fall under city jurisdiction. Jordan Hess added that if the homeowner's association fails, the responsibility falls to the city who will assess property owners. Jim Nugent informed that this is a statewide mechanism and that it is not uncommon to utilize liens if a delinquency occurs.

The committee voted on the motion to amend made by Bryan von Lossberg. The motion to amend passed by majority vote.

Aye: Gwen Jones, Bryan von Lossberg, Mirtha Becerra, Jordan Hess, Heather Harp, Julie Merritt.

Nay: Stacie Anderson, Heidi West, John DiBari

Absent: Julie Armstrong, Jesse Ramos, Michelle Cares

Stacie Anderson asked the committee to reconsider requiring a 35-foot road width. Julie Merritt cautioned that requiring a 35-foot road width would result in homes to be built more on fill which creates a greater concern. Heather Harp agreed with Julie Merritt, stating that adding asphalt would increase runoff.

Jordan Hess recommended continuing this discussion during another Land Use and Planning Session. John DiBari stated this item would be added to a future Land Use and Planning agenda, tentatively on September 11, 2019; another 3 hours would be scheduled. Mary McCrea agreed to reach out to MCPS and Parks and Recreation to provide comment.

#### **4. ADJOURNMENT**