

From: [Mike Morgan](#)
To: [Benjamin Brewer](#)
Subject: RE: TED Ordinance Update: Follow up
Date: Tuesday, September 17, 2019 12:22:00 PM
Attachments: [image002.png](#)
[image001.png](#)

Thanks Ben for your attention, I know all of you are slammed at the city. A few replies below for you in green. And yes, please feel free to post my comments where helpful in your work with council. Where you have clarified my questions, it's all as I expected, so probably not necessary to post those comments unless you see otherwise.

Michael Morgan, Architect, LEED AP

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From: Benjamin Brewer [mailto:BrewerB@ci.missoula.mt.us]
Sent: Tuesday, September 17, 2019 10:02 AM
To: 'Mike Morgan'
Subject: RE: TED Ordinance Update: Follow up

Hi Mike, thanks for the comments. I've put some some responses in red below.
Are your comments something that you would like posted for Council?
Regards, -Ben

From: Mike Morgan <mikemorgan@hm-assoc.com>
Sent: Monday, September 16, 2019 6:38 PM
To: Benjamin Brewer <BrewerB@ci.missoula.mt.us>
Subject: RE: TED Ordinance Update: Follow up

Hi Ben,
A couple bits of input and questions for you:

Community Land Trusts: Lee Gordon Place is a townhouse TED, not apartments as your draft describes. Thanks for the correction.

Comments from Parks makes me nervous. It appears they are requesting the equivalent of reduced TED options. Do not require Parks requirements for 5 or more units. It will kill small infill. Please be careful, keep it at 10 or more. I can see Parks going for 5 or more next for apartments. It's going too far at 5 DUs. I like Recommendation 2 at 11 or more for higher density districts and 6 or more for R and RT districts. That does make sense. I think it could be helpful to provide Council with a comment on this; I'm happy to present it in my presentation, or as written comment. Feel free, thanks

20.40.180.1 ZCP expiration:

I might not be following you, but just in case... Once a TED is recorded with the county, it's as permanent as a lot. It's a fee simple property. The recorded TED includes architectural drawings of the building. To potentially expire the ZCP doesn't make sense. To not allow a TED to proceed because of a ZCP expiration would mean the legal description of the property would change. It would be the equivalent of reversing the approval of a lot created by subdivision. That can't occur, it would cause legal problems for a landowner. This needs taken into serious consideration. Once a TED is approved and recorded, there can be no expiration. For example, if TED parcels are divided and recorded, but buildings are not built yet, the ZCP cannot expire and disallow the building from being built. To do that will null and void the legal definition of the parcel. That cannot occur. If an amendment is submitted for approval, I can understand that it would then have to meet current ZCP requirements. The intent of the ZCP language is that there is a two year expiration period for the ZCP before the declaration needs to be filed. If the ZCP expires and the TED has not been filed, then a new ZCP would need to be approved. If the TED is filed, and there are outstanding conditions or requirements of the ZCP, then they would have either been covered under an improvements guarantee, or passed on as conditions on associated building permits. Does that get at your concern?

Yes, thanks, just what I was hoping you'd say

Minimum Parcel Size: I'm confused. Will there no longer be a minimum lot size requirement? For example, if I were to do a BLR for two lots, would that mean there would no longer be a 3,000 sf minimum lot size requirement? If so, that would be a highly positive benefit for infill housing. For example, if the two lots have an existing house and are zoned RM, I could do a BLR to minimize the lot for the house and maximize the 2nd lot for maximum multi-family density, or for TED homes. Huge improvement for land-use options. Am understanding correctly? Unfortunately no; the removal of the minimum lot size requirement only applies to new subdivisions; it doesn't include BLRs. This is something that I am hoping might come out of the upcoming talk on subdivision regulations, as I think that removing minimum parcel size for BLRs could help get at what you have brought up with me in our conversation a while back. But it was not something we were able to evaluate enough to include in this process.

Too bad, but thanks for tracking with me. It would be a huge step in the right direction that could allow us to follow intentions within the Growth Policy. We have to let infill play out in our city chore to meet contemporary needs. We need to let our city grow smart and not follow outdated philosophies.

20.110.050.F Building Separation:

Be careful to not increase the separation requirement for small infill TEDs. That requirement kills options for true infill. I do like the equivalent of two side yards for districts with no side yards setbacks such as M, B, and C. That is a huge help. We are really trying to clarify the distinction between setbacks for TED projects (the perimeter of the whole TED parcel) and building separation. The intent is that the focus goes to preserving setbacks for the perimeter of the project to best fit in with the character of the surrounding neighborhood, but that building proximity, either between buildings or to interior roadways, should be able to maintain more flexibility. Also, because building separation requirements are so minimal, the thought is that slightly increased side setbacks could be absorbed without too much of a challenge.

Just to clarify: for the M, B and C districts, are you saying that there *should* required side setbacks? I

think the way it's written now, that wouldn't be the case.

I can see the effort, that's really good. I see no benefit in increasing setback requirements at the perimeters above and beyond what zoning already dictates. And within the interior, I see no need to regulate increased separations there either. I am NOT suggesting side setbacks in M, B, and C districts. I'm suggesting we follow zoning, it's already good in those districts. It's the RM districts that I'm mainly concerned about any increased setbacks or separations. RM already has enough perimeter setback requirements within the zoning. Building separation in RM needs to be less than 10' (2 side yards).

Generally speaking, we need to let increased density succeed, and the only way to do that is to let everything get tighter. The intent in the Growth Policy is good, there is no reason to worry about fighting it with larger separations in the zoning districts that allow for the increased density. We need to let it play out, it will result in good solutions. Yes, there may be some bad examples out there, there always will be. To regulate that would be best using design excellence standards. Separation regulations will not stop the bad examples.

Thank you

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From: Benjamin Brewer [<mailto:BrewerB@ci.missoula.mt.us>]

Sent: Monday, September 16, 2019 5:12 PM

To: 'Clint Burson'; 'Dave Edgell'; 'DJ Smith'; 'Dwight Easton'; 'Grant Kier'; 'Jim Schafer'; 'Julie Lacey'; 'Mandy Snook'; 'Matt Mellott'; 'MBIA'; 'Mike Morgan'; 'Mike Nugent'; 'Nick Kaufman'; 'Nicole Rush'; 'Paul Forsting'; 'Ruth Hackney'; 'Ryan Frey'

Cc: Jeremy Keene; Laval Means

Subject: TED Ordinance Update: Follow up

Greetings

This is to follow up on last Friday's email regarding the TED amendment ordinance.

Attached is a document for the LUP committee members to consider in the upcoming discussion on TED on Wednesday, and should be posted publicly soon as well. It is meant to give background and guidance to the committee members as we work our way through the planning board recommendations that we didn't get to at last LUP, as well as several other questions and issues that have been brought up. In most cases, it includes the specific language that we would propose for changes to the TED ordinance that came out of the last LUP meeting.

I do want to point your attention to one issue that was raised by the Parks Department recently regarding the threshold for when parkland or cash-in-lieu for parkland could be required of a TED project. This is something that we haven't discussed as a group too much, but it is possible that the committee may consider lowering that threshold for when parkland may be required.

As always, please feel free to contact me with any questions or thoughts.

Regards, -Ben

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From: Benjamin Brewer

Sent: Friday, September 13, 2019 2:07 PM

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Cc: Jeremy Keene <KeeneJ@ci.missoula.mt.us>; Laval Means <meansl@ci.missoula.mt.us>

Subject: TED Ordinance Update

Dear Development Group members

Not many of you were able to make today's monthly meeting at Development Services, so for those of you who are interested I wanted to send out an update on the TED ordinance update.

As many of you are aware, the TED update was motioned out of LUP on August 28th, and had its first reading on September 9th. This set things in motion for a final city council hearing on the proposal for **Monday, October 7th**.

As many of you are aware, the last LUP meeting for this did not get through all of the planning board recommendations. By the end of the meeting, the committee had taken motions on adopting the original staff language with an addition of the planning board recommendation to provide a bonus to the maximum cap number for projects that are reviewed at the same time for subdivision and TED. The motion also rejected the planning board recommendation to raise the cap numbers outright. The ordinance draft that is currently posted reflects these motions.

The next LUP meeting on this subject will be scheduled for **Wednesday, September 18th** (time TBA), and will basically pick the conversation back up where we left off. This meeting will be to consider the planning board recommendations that we didn't get to at the last LUP meeting, and also to discuss issues and questions that have come up from Council, as well as additional staff recommended changes. Whatever motions come out of this next LUP meeting will result in a revised ordinance that can be adopted at the final hearing on October 7th. That is to say that the planning board recommendations that we didn't get to last meeting still have time to be added.

I have heard that the date for next week's LUP meeting might be problematic for some of you who

might otherwise want to participate in this discussion. If that's the case, you can always submit written comment to be considered by the committee members in advance of the meeting. I will be posting new materials on this by next Monday afternoon, which will mainly be a set of issue sheets for Council to consider for the various things that we haven't covered yet. One of these will address the idea of phasing within TEDs, which we have been exploring on how that could be included in the ordinance, and which I had hoped to go over in the meeting this morning. I have attached a draft of the language we are considering with this email and welcome your comments in advance of what we recommend to the committee next week. If you are able to get responses to me by early afternoon Monday, that would be ideal. I'm also happy to talk through things or answer questions over the phone.

Thanks and have a good weekend, -Ben

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