

POTENTIAL LIST OF ISSUES  
INCLUDING ISSUES TO DATE

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KEY:

Language in black is existing zoning

Language in red is original staff proposed language in Draft Ordinance

Language in purple is planning board recommended language

Language in green is new staff proposed language

## **TEDs Amendments Issues Worksheet**

### **1. Threshold for Parks Requirement**

#### **Issue Type: Response to Comment**

#### **Comment Received: From Parks Department**

**From:** Neil Miner

**Sent:** Tuesday, August 27, 2019 6:09 PM

**To:** Gwen Jones <[GJones@ci.missoula.mt.us](mailto:GJones@ci.missoula.mt.us)>; Jordan Hess <[JHess@ci.missoula.mt.us](mailto:JHess@ci.missoula.mt.us)>

**Cc:** Donna Gaukler <[GauklerD@ci.missoula.mt.us](mailto:GauklerD@ci.missoula.mt.us)>

**Subject:** LUP - TED Amendments

Hi Gwen/Jordan,

We were just reviewing the TED amendments again, and specifically the Planning Board's recommended changes. My original review, and staff comment of the proposed TED amendments was that Parks supported the proposed amendments. The only real change to the Park requirement was adding that only TED projects of more than 10 units must provide the Park and Trail requirements. My original thought, was that this was in-line with the Multi-family activity area requirement. However, as you can see in my highlighted email below, there could be some TED projects that were a little larger, that would not require any park/trail dedication. I did not think of this before.

For example, the recent Mountain View Addition Subdivision on 9<sup>th</sup> street, which was 1.9 total acres, and was subdivided into 5 lots, required a parkland dedication (cash-in-lieu in that case). A similar TED project would not require anything.

I will try to attend the LUP tomorrow, and can talk about this. Please email me if you have any questions/recommendations from your viewpoint.

Thanks!

Neil

Parks and Trails Design/Development Manager

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#### **Existing Approach/Background:**

The existing trigger for a parkland requirement for TED projects is when a conditional use approval is required. The trigger for conditional use is for those projects that are over 5 dwelling units for TED projects in R and RT zoning districts, and over 9 dwelling units for all other TED projects. The existing TED parkland requirements are described in 20.40.180.G of the zoning code.

#### **Proposed Approach:**

The proposed TED amendments use the Building and Use Specific Standards section 20.40.180 for all TEDs and removes the conditional use approval requirement. The proposed amendment for parkland sets a trigger for requiring parkland at any TED project that contains over 10 dwelling units. The proposed parkland amendment would then match with the activity area landscaping requirement for multi-dwelling buildings in the zoning (20.65.020.C).  
Some things to consider with the proposed threshold:

- When parkland requirements were added to the zoning for TEDs, there was no limit on how big a TED could be. If this proposal is adopted TED development will be held at a ceiling of either 10 or 20 units. Considering the trigger for proposed parkland is more than 10 units, the requirement for parkland dedication would only apply to TED projects between 10 and 20 units. This also means that any TED in the zoning districts that have a size cap of 10 units (all R districts, and RT5.4 and RT10) would not have a parkland requirement.
- Projects that are bigger than 20 units would need to go through some kind of subdivision in combination with TED review. Parkland dedication is included in the subdivision process. The proposed amendment exempts TEDs that are done on newly subdivided lots from requiring parkland of the TED, so as avoid doubling up on the parkland dedication requirement.
- The parkland requirement section for TED projects includes a provision that allows cash-in-lieu of actual parkland. It can be assumed that this option would be the more likely route for most TED projects where this requirement is triggered. Setting a lower threshold for the parkland requirement would capture more potential cash-in-lieu monies, which would supply more funding for parks maintenance. However, additional costs on the development side will likely be passed on to the purchaser of the TED units.
- For reference, the most recent major subdivision, Cowboy Flats, utilized cash-in-lieu, which totaled \$30,000 total for a development that created 32 new lots, which comes out to roughly \$1,000 of cash-in-lieu per lot.

**Page Reference in Public Hearing Draft: 8**

**Language in Proposed Amendments:**

**20.40.140.G**

**G. Parks and Trails**

TED projects of more than 10 (ten) dwelling units must:

**Alternate Language for Consideration:**

**Recommendation 1:** Reduce the trigger from above 10 dwelling units, to above 5 dwelling units.

**TED projects of more than 5 (five) dwelling units must:**

*Explanation:*

*Rather than aligning to the multi-dwelling activity area standards, this would align with when a subdivision would cross over from a minor to a major review. This would likely make this standard apply more frequently to TED projects, and would capture some TEDs in the less dense residential zoning districts, which the current proposal does not.*

**Recommendation 2:** Reduce the trigger for less dense zoning districts, and maintain as is for higher zoning density districts.

**Townhome Exemption Development (TED) projects of 6 (six) or more dwelling units in RT5.4, RT10, and all R districts (except R3), or 11 (eleven) or more dwelling units in RT2.7, R3, and all RM, B, C, and M1R districts, must:**

*Explanation:*

*This would align the parkland requirement with the multi-tier approach that currently exists when conditional use approval is required, and also preserves the proposed cap on number of dwelling units. The result would be that TED projects between 6-10 dwelling units would require parkland dedication in lower density residential zoning districts, and TED projects*

Amendments to Title 20 Re: Townhome Exemption Development (TED)  
Preparation for LUP: 9/18/19

*between 11-20 dwelling units would require parkland dedication in higher density residential zoning districts. This would have the effect of triggering parkland dedication requirements for any TED project approximately at the point that it was around 1.5 acres and above.*

## **TEDs Amendments Issues Worksheet**

### **2. Community Land Trusts**

#### **Issue Type: Request from Council**

#### **Comment Received:**

How can we ensure that definitions and standards for Townhome Exemption Developments do not preclude the ability to permit community land trust projects as TED?

#### **Existing Approach/Background:**

Community land trusts are a tool used to provide permanently affordable housing in which a community-controlled organization retains ownership of the land and sells or rents the housing on that land to lower-income households. In exchange for purchasing homes at below-market prices, owners agree to resale price restrictions that keep homes permanently affordable to subsequent households with similar income levels. There are several community land trust projects in Missoula, including the Burns Street Commons, the Lee Gordon Place apartments, and the recent tiny-house Homeword project on Catlin Street. The ownership model is somewhat different in a community land trust, though it is possible for a land trust project to be set up as a TED through a TED declaration. The intent of this proposal is to allow community land trust projects so that they can be reviewed as a TED project if that is what is desired by the land trust project. Staff recommends that the TED ordinance not directly define community land trust, as that will maintain flexibility for community land trusts in the future to proceed either through TED or not, depending on what best suits the individual community land trust project.

#### **Page Reference in Public Hearing Draft: 12**

#### **Alternate Language for Consideration:**

20.40.180.A: Townhome Exemption Development (TED) Standards, Applicability

#### **A. Applicability**

1. The following standards apply to Townhome Exemption Developments of ten or fewer dwelling units in RT5.4, RT10, and all R districts (except R3), or 20 or fewer dwelling units in RT2.7, R3, and all RM, B, C, and M1R districts. Developments that exceed these numbers are not permitted through the TED process.
2. The only permitted building types that may be included in a TED project are detached houses, two-unit townhouses, and 3+-unit townhouses as described in Section 20.05.030 and as allowed in the applicable zoning district.
3. Two unit townhouse and 3+-unit townhouse building types as part of TED projects must also comply with Section 20.40.140, Townhouse Standards.
4. TED shall not be used for nonresidential developments.
5. Community Land Trusts may be reviewed as TED if applicable.

## **TEDs Amendments Issues Worksheet**

### **3. Agency Review List**

#### **Issue Type: Request from Council**

Should the proposal include an agency review requirement?

#### **Existing Approach/Background:**

Currently, TED projects that require a conditional use approval include an agency comment period as one of the factors to be considered by Council. The zoning does not specify which agencies should be contacted.

Similarly, subdivision review includes an agency comment period during the sufficiency evaluation. The list of contacted agencies during subdivision is generally more extensive than that used during conditional use approvals.

Sample lists from previous projects are included in this worksheet.

#### **Proposed Approach:**

Depending on the zoning district, the proposed amendments do not mandate agency comment for individual TED projects that are within the allowed size cap of up to 10 or 20 units. Projects larger than the 10 or 20 unit size cap would need to go through subdivision review prior to TED review, including agency review and comment. This includes those projects receiving a bonus to what is allowed by the size cap.

The implications of the proposed approach are that projects allowed by the size cap may be not be considered by agencies outside of Development Services, who would otherwise be given a chance to make comment or request changes through the subdivision process.

It is not easy to determine a clear size threshold where agency comment might be most relevant. That is to say that a three unit development adjacent to a river corridor might be as relevant to the Conservation District as a 20 unit, or similarly for a project adjacent to a wildlife corridor or WUI area. However, if a notification period is required of projects at all scales, it could have the effect of removing the benefit of being an expedited process.

#### **Alternate Approach:**

Add a requirement for agency comment for some TED developments, which would be triggered at the same scale that the adjacent property owner notification is required. This requirement should not apply to TEDs on subdivisions that are reviewed in tandem with proposed TEDs.

Some implications to consider:

- Adding a requirement for agency review would not necessarily add to the permit review time, as it would be in tandem with the waiting period that is already required by the notice to neighboring property owners requirement, but it would add to the staff workload.
- A requirement for notification would provide a better likelihood that interested agencies would be kept abreast of development through TED. By keeping the list unspecified, it would allow staff to use the most current list for agency notification as it changes over time.

**Page Reference in Public Hearing Draft: NA**

**Language in Proposed Amendments: NA**

**Alternate Language for Consideration:**

**20.05.040.D.4: Townhome Exemption Development Option, Notification**

**4. Notice to Neighboring Property Owners and Request for Agency Comment**

The following is required for TED projects of more than 5 dwelling units:

- a. Notice of the application for a zoning compliance permit for Townhome Exemption Developments ~~of more than five dwelling units~~ must be mailed to all owners of property within 150 feet of the subject parcel at least 15 days before a permit is issued.
- b. Relevant agencies shall be notified and given 15 days for comment or testimony before a permit is issued. This requirement does not apply to TED projects being reviewed at the same time as an associated subdivision.

**Additional Materials:**

- 1) Sample Agency Review: Conditional Use
- 2) Sample Agency Review: Subdivision

1)

**M E M O R A N D U M**

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Ben Schmidt, City-County Health Department  
Travis Ross, Missoula Valley Water Quality District  
Donna Gaukler / Neil Miner / David Selvage /  
Chris Boza, Parks and Recreation Department  
Jim Nugent, City Attorney  
Corey Aldridge / Jennifer Sweten / Vince Caristo, Missoula Urban  
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Jane Kelly / Karen Gasvoda, Office of Neighborhood  
Bob Hayes / Logan McInnis, City Public Works  
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Adriane Beck / Nick Holloway, County Office of Emergency Management

CC: Julie Merritt, City Council Ward 6  
Michelle Cares, City Council Ward 6  
Franklin to the Fort Neighborhood Council

FROM: Planner III  
Land Use and Planning Section, Development Services

DATE: August 30, 2019

RE: **SAMPLE**

2)

## **Second Sufficiency Agency Review List – July 31, 2019**

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## **TEDs Amendments Issues Worksheet**

### **4. Review Process and TED Declarations**

#### **Issue Type: Staff Proposed**

#### **Explanation:**

A consistent source of confusion with TED is the process by which it happens. As well as the review and approval processes for the project that is being constructed, there is also the TED declaration itself, which is the mechanism by which TED Ownership Units are established. Fundamentally, TED is a financing mechanism, used for the purpose of enabling what would otherwise be one property into separate ownership. The TED declaration must be filed with the State through the office of the County Clerk and Recorder. Therefore, timing how and when projects are reviewed by the City in relation to when the declaration is filed is important.

As this process has gone on, much discussion and thought has gone into the ordering of processes with regard to what is required by the City before a TED declaration may be filed. The proposed new sections in 20.40.180 that specify the review process for TED projects have been reworked in order to provide better criteria for when a TED declaration may be filed in concert with City processes.

#### **Page Reference in Public Hearing Draft: 10 & 11**

#### **Proposed Change:**

20.40.180.I: Review Process and Submittal Requirements

#### **I. Review Process and Submittal Requirements**

1. TED projects shall be submitted in their entirety in one townhome exemption application and reviewed in one zoning compliance permit (ZCP) application in compliance with section 20.85.120. Phasing is not permitted for TED Projects.
2. The zoning compliance permit will lapse and have no further effect two years after it is issued by the Zoning Officer and the townhome exemption approval is rendered invalid unless:
  - a. ~~The Declaration has been filed with the County Clerk and Recorder. A building permit has been issued, and all infrastructure and other improvements, including but not limited to roads, curbs, gutters, utilities, sidewalks, boulevard improvements, storm water facilities, and drainage are installed and approved by Development Services, unless an estimate of probable cost is provided and an improvements agreement guaranteed by a security for the remaining infrastructure has been approved and received by the Development Services.~~
  - b. The Zoning Officer has extended the ZCP expiration period for no more than one year after determining that there are circumstances warranting the extension. Requests for extensions must be submitted to the Zoning Officer before the ZCP expires. An extension granted for the ZCP shall be subject to the applicable zoning regulations in place at the time the Zoning Officer grants the time extension.

20.40.180.J: TED Declarations

**J. TED Declarations**

1. TED projects shall be filed as one townhome exemption declaration per TED parcel.
2. Before filing a TED declaration:
  - a. The final TED declaration must be reviewed by the Zoning Officer prior to when the declaration is filed by the Clerk and Recorder.
  - b. Conditions from the zoning compliance permit shall have received final zoning compliance approval, or been transferred to the applicable building permits.
  - c. All infrastructure and other improvements, including but not limited to roads, curbs, gutters, utilities, sidewalks, boulevard improvements, storm water facilities, and drainage are installed and approved by Development Services, unless an estimate of probable cost is provided and an improvements agreement guaranteed by a security for the remaining infrastructure has been approved and received by the Development Services.
  - d. Any required public access easement must be filed prior to the original TED Declaration is filed.
3. Amendments to filed TED declarations:
  - a. Approval of a new zoning compliance permit is required for all amendments to filed TED declarations unless the Zoning Officer has determined that the amendment complies with the following criteria:
    - i. The amendment involves incidental changes or minor modifications to building design; and
    - ii. The amendment does not include changes to site plan layout, easements, infrastructure improvements, or other Municipal code requirements.

## **TEDs Amendments Issues Worksheet**

### **5. Minimum Parcel Size**

#### **Issue Type: Planning Board Recommendation**

#### **Planning Board Motion:**

Add a statement to the end of footnote 8 to clarify the density implications for removing minimum parcel size requirements for new subdivisions: (Approved, 7-0)

#### **Background:**

This change to the general Title 20 zoning was included in the interim ordinance and is intended to make subdivision and TED equally appealing development options. TED Ownership Units are not recognized as lots, so the minimum parcel size requirement in zoning is not applied, allowing TED projects to develop to the maximum that zoning allows more easily than in subdivisions where individual lot size must be of a certain minimum size. Removing the zoning standard for minimum parcel size in new subdivisions will remove that barrier and enable development to reach maximum density potential in a similar manner to TED projects.

#### **Explanation for Planning Board Recommendation:**

The Planning Board expressed concern that the language as proposed was not clear enough for applicants and reviewers that the intention is to calculate density for a new subdivision based on the gross area of the original tract of land.

#### **Page Reference in Public Hearing Draft: 3**

#### **Language in Proposed Amendments:**

**20.05.050.B: Parcel and Building Standards, Basic Standards**

**Table 20.05-3: Footnote [8]**

[8] The minimum parcel area requirement does not apply to lots created through subdivisions approved under MCA 76-3, parts 5 and 6 after May 6, 2019.

#### **Alternate Language for Consideration:**

[8] The minimum parcel area requirement does not apply to lots created through subdivisions approved under MCA 76-3, parts 5 and 6 after May 6, 2019. Total unit yield is calculated based upon the gross parcel area divided by the minimum parcel area per unit and any applicable hillside density reductions size.

## TEDs Amendments Issues Worksheet

### **6. Blocks and Topographic Constraints**

#### **Issue Type: Planning Board Recommendation**

#### **Planning Board Motion:**

Add language to the end of 20.40.180.F: Blocks to clarify what qualifies as a topographic constraint.  
(Approved 7-0)

#### **Background:**

The existing zoning includes block length standards for TED projects that require conditional use approval. TED projects requiring conditional use approval are not restricted in size, so the block requirement was included to address potential TED projects that could contain multiple blocks, or to require that they contain multiple blocks after a certain scale of development. The standard for a maximum 480 block length is based on existing subdivision regulations.

Existing subdivision regulations contain a rather extensive treatment for block design, including a variety of exemptions to the maximum length. Rather than move all of the nuances contained in the subdivision regulations into the zoning code, the existing language allows for exemption to the block length requirement if 'topography or other constraining circumstances are present'. However, the lack of definition on what those constraining circumstances are has caused confusion with TED regulation. The current proposal gives authority to the Zoning Officer to define what constitutes a 'constraint'.

#### **Explanation for Planning Board Motion:**

The Board thought that further clarification on what constitutes a 'constraint' would be appropriate, as the situation would only arise in a limited number of places. Discussion on the matter led towards using existing Title 12 regulations as the basis for determining when enough of a constraint is present to warrant exempting a project from the required 480 foot block length.

#### **Page Reference in Public Hearing Draft: 8**

#### **Language in Proposed Amendments: 20.40.180.F**

##### **F. Blocks**

Blocks shall be designed to assure traffic safety and ease of ~~pedestrian non-motorized~~ and ~~motorized automobile~~ circulation. Blocks ~~lengths~~ shall not exceed 480 feet in length ~~and be wide enough to allow two tiers of dwelling units in a Townhome Exemption Development unless topographic constraints y or other constraining circumstances are~~ present as confirmed by the Zoning Officer. ~~TOUs shall not be designed as through parcels. Pedestrian~~ Non-motorized access easements ~~and installation of pedestrian facilities~~ that create a break within a block may be required where there is a need for ~~pedestrian non-motorized connectivity~~.

#### **Alternate Language for Consideration:**

##### **F. Blocks**

Blocks shall be designed to assure traffic safety and ease of ~~pedestrian non-motorized~~ and ~~motorized automobile~~ circulation. Blocks ~~lengths~~ shall not exceed 480 feet in length ~~and be wide enough to allow two tiers of dwelling units in a Townhome Exemption Development unless topographic constraints y or other constraining circumstances are~~ present as confirmed by the Zoning Officer. ~~TOUs shall not be designed as through parcels. Pedestrian~~ Non-motorized



access easements and installation of pedestrian facilities that create a break within a block may be required where there is a need for pedestrian non-motorized connectivity. A topographic constraint is defined as a condition where street connections are not feasible in accordance with Title 12 standards.

#### **New Staff Recommended Language:**

##### **F. Blocks**

Blocks shall be designed to assure traffic safety and ease of pedestrian non-motorized and motorized automobile circulation.

1. Blocks ~~lengths~~ shall not exceed 480 feet in length ~~and be wide enough to allow two tiers of dwelling units in a Townhome Exemption Development~~ unless topographic constraints ~~y~~ or other constraining circumstances are present as confirmed by the Zoning Officer in consultation with the City Engineer.
2. ~~Pedestrian Non-motorized~~ access easements and installation of pedestrian facilities that create a break within a block may be required where there is a need for pedestrian non-motorized connectivity. ~~A topographic constraint is defined as a condition where street connections are not feasible in accordance with Title 12 standards.~~
3. TOUs shall not be designed as through parcels.

#### **Explanation for Staff Recommended Language:**

In giving discretion to the Zoning Officer, it is assumed that Zoning Officer determinations will necessarily be in consultation with the City Engineer, and this proposed language helps to provide that additional guidance when making zoning decisions on this matter. If the planning board recommended language is used, it could curtail the Zoning Officer's participation more than is necessary.

It should also be noted that the proposed size cap will limit the area that can be used for a TED project, as determined by what the zoning allows for density. In almost all of the residential zoning districts, the applicable size cap will necessarily limit the development to an area of 1.5 acres or less, which is approximately the size of half a city block. In districts such as RT10 and R20, it is possible that a development within the size cap could be larger, in which case this standard would apply.

Also, staff recommend that this section be formatted differently to provide more clarity and ease in code citation.

## **TEDs Amendments Issues Worksheet**

### **7. Phasing**

#### **Issue Type: Planning Board Recommendation**

#### **Planning Board Motion:**

Amend chapter 20.40.180, replace the text of "Phasing is not permitted for TED projects" in I-1 to "If Phasing is proposed, a phasing plan shall be submitted, is subject to review, and approval of the zoning officer in consultation with the City Engineer." Staff was requested to work out the details of the permission to phase and incorporate any necessary additional amendments into the ordinance.  
(Approved, 7-0)

#### **Background:**

The phasing mechanism is addressed in subdivision regulations and allows timing flexibility for recording of different areas of a subdivision in the final plat. Typically, larger subdivisions will include a phasing plan which designates the length of time that a development has to provide required infrastructure, and what sequential order the different parts of a subdivision will be installed, which is reviewed and approved as part of the initial subdivision approval process. Phasing provides financial benefits to a development by postponing the point at which taxes are levied against new lots created through a subdivision, and provides benefits to future property owners and the City by providing a mechanism for orderly development of the subdivision. A perceived risk of phasing is the ability to extend the actual construction of a subdivision over a prolonged period of time.

A prohibition on phasing was included in the interim ordinance on TED, due to a lack of clarity within the existing TED regulations and associated state law on how and whether phasing could be reviewed and regulated. Furthermore, there have been projects proposed to Development Services that aimed to use phasing in a way that significantly challenged the City's ability to ensure orderly development. The proposed amendments carried over the prohibition on phasing, primarily to ensure that TED is used as a streamlined review process which enables the development of new housing supply in a timely manner. Also, the expectation that development happen in a timely manner reduces the likelihood for regulation (state, local or federal) to change between the time of approval and actual construction.

#### **Explanation for Planning Board Motion:**

Many members of the development community have made comments and raised concerns that by disallowing phasing in TED, the viability of future residential projects would be jeopardized at all scales. The Board expressed support for the need for even smaller projects to be able to phase in order to finance the development, and that the cap on the units already accomplish the concerns over timely development.

#### **Page Reference in Public Hearing Draft:**

#### **Language in Proposed Amendments:**

20.40.180.I.1

1. TED projects shall be submitted in their entirety in one townhome exemption application and reviewed in one zoning compliance permit (ZCP) application in compliance with section 20.85.120. Phasing is not permitted for TED projects.

#### **Alternate Language for Consideration:**

20.40.180.I.1: Review Process and Submittal Requirements, General

1. TED projects shall be submitted in their entirety in one townhome exemption application and reviewed in one zoning compliance permit (ZCP) application in compliance with section 20.85.120. Phasing is not permitted for TED projects

The following is new language, developed by staff:

20.40.180.I.6: Review Process and Submittal Requirements, General

6. If phasing is proposed within a TED project, a phasing plan shall be submitted with the initial zoning compliance permit for the entirety of the TED development, and is subject to review and approval by the Zoning Officer and the city engineer.
  - a. A phasing plan shall be subject to the following criteria:
    - i. The first phase shall include all proposed parkland and proposed dedicated Public Right-of-Way (if the right-of-way is accepted by the Development Services Director in consultation with the City Engineer), and any essential infrastructure as determined by the Development Services Director and the City Engineer.
    - ii. The deadline to establish each new phase shall be a maximum of two years from when the previous phase was established, starting with the initial declaration. The phasing plan shall not be for a duration of longer than 8 (eight) years.
    - iii. If it is deemed that future infrastructure is necessary for orderly development, then the developer shall include a development agreement with security for future installation of infrastructure.
    - iv. TED projects that include phasing do not need to provide information on building design, such as elevations or interior floor plans, for those structures not included in the first phase.
  - b. At the time a TED declaration is amended to add a new phase, the applicant shall meet all of the following requirements:
    - i. Phases shall be submitted sequentially in the order approved with the initial zoning compliance permit for the entire TED development.
    - ii. Amendment of a TED declaration to add a new phase requires approval of a zoning compliance permit.
    - iii. Each phase shall be subject to the regulations in effect at the time of submittal of the zoning compliance permit for that phase.
    - iv. Phases shall match the layout and number of units per phase in the phasing plan approved with the initial zoning compliance permit for the entire TED development.

20.40.180.J.2: TED Declarations, General

2. When phasing is proposed for a TED project, the phasing plan for the entire TED project shall be included in the original TED declaration.

20.40.180.J.4.b: TED Declarations, Amendments to Filed Declarations

- b. When phasing is proposed for a TED project, phases are established through amendment of the original TED declaration. Each new phase shall be reviewed for zoning compliance subject to 20.40.180.I.6.b.

## **TEDs Amendments Issues Worksheet**

### **8. Exception to Prohibition of TED with Public Roads**

#### **Issue Type: Planning Board Recommendation**

#### **Planning Board Motion:**

Revise section 20.40.180.B.4 to provide an exception from being prohibited as TED so that when public works identifies that the public right-of-way or connections of additional right-of-way in accordance with the transportation plan or maintenance plan are necessary, and the developer agrees, the project may move forward as a TED. (Approved, 7-0)

#### **Background:**

One of the key issues under consideration is that development should not jeopardize the City's ability to acquire public roadways that are crucial to connectivity, which has historically been enabled through the subdivision process. As part of the strategy development for this proposal, a list of Conditions Not Suitable for TED has been developed identifies whether TED is a suitable approach, or whether another development option (such as subdivision) should be pursued instead. One of the criteria added to the list for Conditions Not Suitable is if the dedication of public right of way is part of the project. So, in cases where development should include the creation of new public right-of-way, in order to best provide for orderly development and protect for the general health, safety and welfare of the community, it should be directed to the subdivision process. Even though the size cap will ensure that most new large developments are subject to some extent of subdivision review, the mechanism for receiving public right of way, the Conditions Not Suitable listing would address the rare case of a TED project that is within the size cap range and that is proposed in an area where it is vital that public roads be included in the project.

#### **Explanation for Planning Board Recommendation:**

The Board expressed concern that TED projects should not be prohibited if the applicant volunteers the public right-of-way.

There are three basic scenarios where public Right of Way might be included in a TED.

- One, the applicant offers to dedicate right of way and the City refuses.
- Two, the applicant and the City both agree to the dedication of right of way.
- Three, the city requests right of way, and the applicant refuses.

The reason for prohibiting TED projects that include right of way dedication is primarily to avoid the third scenario, where the City requests right of way, and the applicant refuses. Under state law, it is unclear what authority the City has to require the dedication of right of way when a development is reviewed as TED. Early in this process, attempts were made to include this nuance in the proposal, but that was changed to a stricter line as the process moved along. Be that as it may, staff can support this recommendation, as it still provides protection for the City to include right of way connections when deemed important, even if an applicant is unwilling to cooperate.

#### **Page Reference in Public Hearing Draft: 7**

#### **Language in Proposed Amendments: 20.40.180.B.4:**

4. Any property requiring dedicated Public Right-of-Way as determined by the Development Services Director in consultation with the City Engineer.

a. Reasons for requiring dedicated Public Right of Way include, but are not limited to: Riparian resource areas

- i. Allowing for public motorized and non-motorized connections;
- ii. Allowing for provision of emergency services; or
- iii. Completing road sections called for in applicable adopted City Plans or Resolutions

**Alternate Language for Consideration:**

- 4. Any property requiring dedicated Public Right-of-Way as determined by the Development Services Director in consultation with the City Engineer.
  - a. Reasons for requiring dedicated Public Right of Way include, but are not limited to: ~~Riparian resource areas~~
    - i. Allowing for public motorized and non-motorized connections;
    - ii. Allowing for provision of emergency services; or
    - iii. Completing road sections called for in applicable adopted City Plans or Resolutions
  - b. In situations where the City Engineer finds that RoW is necessary, and the developer agrees to dedication of that Public Right of Way, then the project may proceed through TED review.

## TEDs Amendments Issues Worksheet

### **9. Miscellaneous Planning Board Recommendations**

#### **Issue Type: Planning Board Recommendation**

NOTE: The following is a list of motions made by Planning Board that staff supports without need for comment.

#### **Planning Board Motion:**

Revise section 20.05.040.D.1.c to add the term 'administrative' and replace the word 'tool' with 'review'.  
(Approved, 7-0)

#### **Explanation:**

The Board expressed confusion on the use of the term 'tool', and thought 'review' was more appropriate. The reason for adding 'administrative' in advance of the term 'TED tool' is to clarify that TED reviews will be purely administrative once these amendments are adopted. The board also suggested changing these terms elsewhere as appropriate.

#### **Page Reference in Public Hearing Draft: 1**

#### **Alternate Language for Consideration:**

20.05.040.D.1.c: Townhome Exemption Development (TED)

c. The administrative TED ~~tool~~ review is not intended for new greenfield development if it is in an area that is lacking in existing infrastructure; or for sites that would jeopardize the City's ability to manage development in an orderly manner or protect and promote the general health, safety and welfare of the community.

#### **Planning Board Motion:**

Revise section 20.40.180.A. to add the term 'administrative review'. (Approved, 7-0)

#### **Explanation:**

The Board expressed confusion on the use of the term 'tool', and thought 'review' was more appropriate. The reason for adding 'administrative' in advance of the term 'TED tool' is to clarify that TED reviews will be purely administrative once these amendments are adopted. The board also suggested changing these terms elsewhere as appropriate.

#### **Page Reference in Public Hearing Draft: 6**

#### **Alternate Language for Consideration:**

20.40.180.A.1:

##### **A. Applicability**

1. The following administrative review standards apply to Townhome Exemption Developments of...

**Planning Board Motion:**

Recommend that the Missoula City Council amend Title 20 City Zoning chapter 20.40.180 item I-4 from “if a public access easement is required for a TED project, it must be filed prior to ZCP approval.” to be incorporated into Section J. (Approved, 7-0)

**Explanation:**

The Board found that moving this requirement was more applicable in relation to when a declaration is filed rather than when the zoning compliance permit is completed.

NOTE: See also, Issue Sheet on staff recommended changes to the Submittal and Review Requirements section, and the Declarations section. In response to this recommendation, and also as part of incorporating phasing into the proposal, these two sections have been reworked to coordinate better with the TED declaration process.

**Page Reference in Public Hearing Draft: 10 & 11**

**Alternate Language for Consideration:**

**20.40.180.I.4:**

- ~~4. If a public access easement is required for a TED project, it must be filed prior to ZCP approval.~~

**20.40.180.J.3:**

3.  
d. If a public access easement is required for a TED project, it must be filed prior to ZCP approval.

**Planning Board Motion:**

Recommend that the Missoula City Council amend Title 20 City Zoning chapter 20.40.180 item I-5 by changing the pronoun from “his” to “their” to remain gender neutral. (Approved, 7-0)

**Explanation:**

The Board recognized that the language for this standard was unnecessarily gender-specific.

**Page Reference in Public Hearing Draft: 10**

**Alternate Language for Consideration:**

**20.40.180.I.5:**

5. TED Projects of more than 5 dwelling units require the review and approval of the Fire Chief or ~~his~~ their designee.



## TEDs Amendments Issues Worksheet

### **10. Miscellaneous Staff Recommendations**

#### **Issue Type: Staff Recommendations**

NOTE: The following is a list of staff recommendations that are primarily for cleanup purposes and to provide clarity in the proposed language.

**Reason for Change:** Align Commentary on the difference between Townhouse and Townhome to be consistent with other descriptions of Townhouse in the zoning.

**Page Reference in Public Hearing Draft: 6**

#### **Proposed Language for Consideration:**

20.40.180 - Townhome Exemption Development (TED) Standards  
Commentary: Townhome vs. Townhouse - Townhouse refers to a residential building containing more than one dwelling unit, each located on its own parcel or TED ownership unit with a common or abutting wall and that each has its own external entrance as described in 20.05.030.B.3, and is required to meet standards detailed in 20.40.140. Townhome Exemption Development refers to a development type consisting of residential dwellings that may be single unit or townhouse and owned in fee simple on TED Ownership Units (TOUs) and located on a TED Parcel as described in 20.05.040.D.

**Reason for Change:** Correction to language for hillsides in 20.40.180.D: 'On-Site Constraints'

**Page Reference in Public Hearing Draft: 7**

#### **Proposed Language for Consideration:**

20.40.180.D.1

1. Land with slopes averaging 15% or more: Provide a slope category map (20.50.010.C.1.a). Provide a complete geotechnical report by a soils engineer with a grading and drainage plan and storm water plan that evaluates the safety of construction on the subject property.
- 4-a. Each TED ownership unit (TOU) ~~building envelope~~ must have at least a 2,000 square foot contiguous building and disturbance area with an average slope of no more than 25%. and at least a 2,000 square foot contiguous building and disturbance area on parcels that are subject to hillside standards. See 20.50.010.B.1 for average slope determination.
- 2-b. Building and disturbance is prohibited on slopes of greater than 25% outside the minimum contiguous building and disturbance area within each TOU.

**Reason for change:** Clarify that if parkland is required, applicable materials must be submitted with the zoning compliance permit application.

**Page Reference in Public Hearing Draft: 9**

#### **Proposed Language for Consideration**

20.40.180.G.3.e: Parks and Trails, Required Parkland

3. Provide for 11% of the net site area (see 20.40.180.B above) as contiguous, useable private or public open space, on site, that is accessible by residents of the development and useable for passive or active recreation in conformance with the following standards:
  - a. Private Open Space shall not be sloped more steeply than five percent and must be a minimum 40 feet in width and length, unless it is used for the purpose of a trail and then the area must be a minimum of 20 feet in width.
  - b. Shall not include natural resource value areas of the site that are to be preserved.
  - c. Shall not include required zoning setback areas, parking spaces, drainage basins, driveways, or public utility features.
  - d. May be improved and dedicated as a public park, trail or open spaces subject to meeting minimum standards and approval of the Parks and Recreation Board.
  - e. Landscaping and maintenance plans for required parkland shall be included in the submittal for the zoning compliance permit.

**Reason for change:** Provide more nuance for increased side setback requirement for structures in TED projects in residential zoning districts.

**Page Reference in Public Hearing Draft: 13**

**Proposed Language for Consideration**

20.110.050.F: Setbacks and Building Separation of Residential Buildings on TED Parcels

**F. Setbacks and Separation of Residential Buildings on TED Parcels**

The following applies to buildings on TED Ownership Units (TOUs) created through the Townhome Exemption Development (TED) process after November 5, 2019.

1. Structures in TED projects (20.40.180) are required to meet setback standards for the underlying zoning district as described in Table 20.05-3, unless otherwise noted below.
  - a. Setbacks apply to the entire TED parcel used for a TED project as described in 20.110.050.
  - b. Setbacks for buildings within a TED parcel are measured to the nearest adjacent property line. A TOU separation line is not considered an adjacent property line. Depending on the design of the TED project, not every setback will apply to every TOU. (See 20.110.050.F.2 for information on TED building separation requirements).
  - c. Structures in TED projects located in residential zoning districts that exceed 22 feet in height shall provide a side setback of no less than 7.5 feet.
2. Building separation
  - a. Building separation requirements apply on TED projects for structures on TOUs as described in 20.110.050.E. Minimum distance between buildings is the equivalent of two side setbacks.