



April 3, 2019

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**VIA EMAIL ONLY**  
Missoula City Council  
435 Ryman  
Missoula, MT 59802

RE: Hillview Crossing Townhouse Development

Dear Council Members:

Due process is a fundamental requirement of all land use review processes. At its core, it requires proper notice and an opportunity to be heard. But diving into the details reveals more. Proper notice means an applicant for a land use permit has been fairly apprised of the requirements needed to obtain a fair review. The past three months of discussions on the Hillview Crossing project have revealed quite the opposite in this case. Shifting design standards and vague information requests have left our client, the landowners and developers, with little means to ascertain what is required to advance their application.

At the end of the last LUP meeting, we specifically asked what the Council needed in regards to geotechnical and stormwater information. We received no useful response. We understand issues arise in any review process which may call for additional information. Our client has repeatedly been responsive to all such requests made since December, but can't provide what we can't decipher.

Protecting public health and safety is an essential role for the Council to advance. Finding reasonable mitigation for potential impacts is a legitimate interest in a conditional use permit process. That said, the review criteria are not blank checks for ignoring adopted standards. In this letter we address three of the topics of conversation that have taken on an arbitrary quality and strayed far from reasonable mitigation.

### **Road Width**

The Hillview Crossing project has a long history. The City Council first approved a traditional subdivision for the property in 2006 with a similar road and development layout. The preliminary plat approval expired in 2016. Meanwhile, the City issued a zoning compliance permit for a townhouse project with 68 dwelling units with 28' wide streets and parking on one side of the road in October 2015. The configuration was very similar to the current project. That approval lapsed during litigation filed by an adjacent landowner challenging the validity of the approval. The City and developers of the Hillview Crossing project prevailed.

In the interim, the Council adopted new standards for townhouse projects. These new standards were adopted with the 2015 Hillview Project fully in mind. It was even included in the presentation materials for the Council's consideration of the new standards.

Even after the Council's actions, the 2015 version of the Hillview Project complied with every newly adopted design standard except for front yard setbacks which increased from 10' to 20'. In response, the developers redesigned the project to meet the setback requirements which had the benefit of adding 136 off-street parking spaces. Development Services issued a staff report recommending approval of the 2018 version of the project on December 6, 2018, including approval of the proposed 28' road width.

Development Services' subsequent Memo No. 3 of March 11, 2019 states, as a proposed finding of fact, that Title 12, Section 12.22.140.C.1(a) requires a 35-foot wide back-of-curb to back-of-curb road for a local residential street with parking on both sides. This is not correct.

The full text of Section 12.22.140.C.1(a) states:

1. Roadway or street widths ( Back of curb to back of curb minimum widths)
  - a. Local Residential Roadway or streets (serving 12 or more living units)
    - i. 35' with parking on both sides
    - ii. 28' with parking on one side
    - iii. 21' with no parking

These are the standards adopted by the City Council specifically for Townhome Exemption Developments. In adopting them, the City Council deemed them acceptable. There are no criteria for determining when one might be more acceptable or less acceptable. They are approved options for project design. They are not a menu of options for the Council to pick from when its feels more comfortable with one design over another. That is the epitome of arbitrariness.

The genesis for the road width discussion appears to stem from two sources: 1) comments submitted by City Fire; and 2) conditional use permit review criteria 20.85.070 H.1.(e) which requires a determination that the project "will not have a significant adverse impact on traffic safety or comfort, including all modes of transport (non-motorized and motorized.)" One of the "Factors to be Considered" to determine whether the criteria have been met (which is different than the criteria themselves) is "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 I.4.)

City Fire submitted comments expressing concern for the provision of emergency services if the residents do not honor the parking prohibition along one side of the street or fail to properly address snow removal. These are the same concerns City Fire expressed during design review team meetings where all parties accepted the 28' road width. They are valid concerns and the mitigation City Fire requested is appropriate – proper signage and striping. At no point over the course of more than three years of meetings and discussions did anyone suggest, much less require, the project to be designed to a 35' standard.

Nevertheless, members of the LUP committee subsequently voted to require the developers to increase the width of the street to 35 feet to allow for parking on both sides of the street. Ironically, this has the effect of making snow removal more difficult and decreases the width of the driving lanes during snow events because the snow can no longer be plowed completely off one side of the street. Anyone traveling a city-maintained side street during this past winter is familiar with this phenomenon.

The decision has other consequences as well. It increases stormwater generation for one. More importantly, given Council's other concerns, it requires more mass grading of the slopes and pushes the houses further out onto non-native soils.

As an alternative, the developers could seek a variance from the 20' setback for part of the project to leave the mass grading and house locations as presently designed. The net result would be a loss of approximately 34 parking spaces. Again, an ironic result stemming from a concern the "no parking" restrictions would not be enforced on a street that fully meets the City's design standards.

For these reasons, we respectfully ask the Council to reverse its decision to increase the road width to 35'.

### **Block Lengths and Pedestrian Pathways**

The Staff Report, and much of the Council's subsequent discussion about block lengths, states "Per Title 20 Section 20.40.180.F, blocks may not be longer than 480 feet. This is not correct.

Per the plain language of the zoning provision, which is applicable only to townhouse exemption developments, block lengths are expressly allowed to be longer than 480 feet where topography or other constraining circumstances are present:

#### 20.40.180 (F)

Blocks shall be designed to assure traffic safety and ease of pedestrian and automobile circulation. Blocks shall not exceed 480 feet in length and be wide enough to allow two tiers of dwelling units in a Townhome Exemption Development *unless topography or other constraining circumstances are present*. Pedestrian access easements that create a break within a block *may be* required where there is a need for pedestrian access to school bus or transit stops, schools, shopping, parks, common areas or open space, and community facilities.

It is universally agreed the subject property has topographic and constraining circumstances. Thus, the regulation allows block lengths to exceed 480 feet, but kicks in a possible new requirement: pedestrian access easements to create a break within a block where there is a need for pedestrian access, etc. By adopting these zoning provisions – adopted only for townhouse exemption developments – the Council already determined the required mitigation for blocks exceeding 480 feet in length.

Nevertheless, the Staff Report recommends a condition of approval exceeding this standard and requiring actual construction of a vertical pathway through the center of the project. Accomplishing this construction would absurdly require more than 200 steps on the belief this would be a reasonable, functional, safe means for reducing the walking distance for pedestrians to reach Hillview Way. Subsequent discussions by Council have varied from requiring one such pathway, to two such pathways, to a goalpost style pathway, to a blend of all three.

Despite the limitation in 20.40.180 (F) for pedestrian easements only, our client is willing to provide a reasonable alternative to providing a staircase that is four times the height of the west stands at Washington Grizzly Stadium. In December, they provided an alternative trail along the east side of the development which would comply with City trail construction standards. Oddly, this alternative was not presented in Staff Memos and presentations on the subject.

More recently, our client has proposed creating a trail from the northern road and heading downhill, a much more likely path for pedestrians to take. This would be coupled with a trail from the middle road traveling uphill to reach the southern road. These routes still involve the construction of many stairs, but are an attempt

to compromise with the Council's desires and exceed what is required by the zoning regulations. We encourage you to take advantage of this offer and adopt this proposal in lieu of all others.

### **Geotechnical and Stormwater Reports**

Any development project on a hillside creates geotechnical issues. Yet the City's zoning regulations specifically allow hillside development and do not prohibit disturbance and development on slopes exceeding 25%. Rather, the 25% slope category is taken into consideration for determining density.

The Hillview Crossing Parcel is zoned RT 10 residential. Per Title 20 townhouse standards, land which exceeds 25% is excluded from determining permitted density. The proposed 68 units in the Hillview Crossing project fully comply with all density calculations in the zoning regulations.

Ensuring construction of the roads and dwellings can be done without adverse impacts onsite and to adjacent properties is a legitimate interest for the Council to consider. In that regard, the developers have submitted a geotechnical report. The report is based on actual soil borings of the site and considers a road and dwelling layout that closely matches the project proposed by the developers. The report indicates the site is suitable for the proposed development and includes recommendations for additional testing as the project is carried out.

No one has submitted any evidence in the record indicating the site is not suitable for the proposed development from a geotechnical perspective. No one has submitted any evidence suggesting a condition of approval requiring updated reports for small changes to the layout and development would not adequately mitigate potential impacts.

Instead, the Council has demanded our client provide an updated geotechnical report without specifying the contents which would satisfy its needs. Our client's consultants, Territorial Landworks, attempted to get clarification on the issue. In an email from John DiBari on March 25, he noted the Geotech report would need to address the Council's previous actions to increase the road width "as well as whatever subsequent action is taken concerning the block length and/or pedestrian access issue."

In other words, our client is required to submit a geotechnical report as a prerequisite to obtaining project approval and it must address decisions the Council has not made yet. This is an impossible, unrealistic, arbitrary request to meet. Further, it appears the Council has determined the applicant's information is inadequate based on preliminary changes the Council made to the project during its review. Redesigning the project for the developer, then telling the developer its information is inadequate for review wrecks of due process failures.

The same is true for the Council's request pertaining to stormwater facilities. We have no idea whether the Council desires feasibility level information or complete construction plans. To our knowledge, no such information has been required for any other project. The City uses a standardized methodology for determining stormwater impacts, calculations for which were included in the application materials. If the Council has a need for additional information, it must be able to articulate that request in a form that allows the applicant to comply. No such request has been provided.

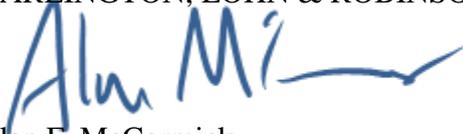
In an attempt to address this situation, our client has provided additional memoranda addressing both geotechnical and stormwater facilities. We urge you to take this information into consideration as an appropriate response to the Council's requests.

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In closing, we respectfully request the Council revisit its decision to require a 35' road width, request the council accept our client's compromise proposal on the pedestrian pathways, and ask the Council to consider the additional geotechnical and stormwater information as properly and fully addressing those remaining issues.

Sincerely,

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