

To: Missoula City Council, Attention LUP Chair John DiBari
Missoula Mayor John Engen

From: Teresa Jacobs (137 Cohosset), Jeff Stevens (123 Saranac), Don and Karen Henrikson (121 Saranac) and co-signers (listed below)

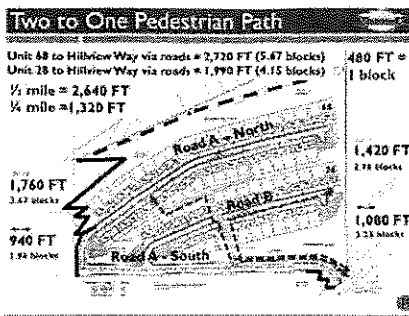
Date August 27, 2019

Re: Violation of citizens' rights to know/participate on April 3 and August 14, 2019

Background Case A: Missoula citizens Teresa Jacobs and Jeff Stevens met with Mayor John Engen on August 20th to share concerns and questions about the review of development projects, and specifically about "Conditional Use Request - Hillview Crossing TED". Ms. Jacobs reported and expanded on her public comment at the April 3rd Land Use and Planning (LUP) Committee meeting. Council members at that meeting voted on a new trail proposal (Trail Exhibit Secondary Option) that had just been introduced for the first time by the developer, only about 45 minutes prior to the vote. When asked how to best register her concerns, Mayor Engen suggested a letter to him and the city council. Ms. Jacobs also called LUP Chair John DiBari to tell him of the meeting with the mayor and to expect a letter.

Concerns Case A: We, the undersigned believe the right to participate was undermined in a number of ways in relation to the April 3rd LUP committee meeting. The right to participate is not just about being allowed to get up and say something at a public meeting. It's about stakeholders getting timely access to critical documents to study ahead of meetings in order to provide meaningful input on important decisions that affect them. We were denied this. Associates of the developer did not provide a copy or PDF of their new trails diagram to the city by the Friday noon deadline. It was not part of the online documents list that the public (and council members) can access! Also, because Mary McCrea of Missoula Development Service had no time to review their plans, she was not able to start off the discussion as usual with a concise presentation regarding compliance with TED standards and Conditional Use factors - such as "functional pedestrian access" (the length of paths through the development). Key perspectives were simply missing as Mr. Rice got to be the main presenter on 4/3/19 on behalf of the developers. And it appears that he included erroneous information about Hillview Crossing being in a non-bussing area for Russell School. The public was not even allowed to provide comment on the new trails diagram until a motion was already on the floor to adopt the developer's plan. (see timecode 53:00 on video). This is contrary to the order described in the city council's own rules (see Rule 21 A).

Please note that Ms. McCrea had already presented fully on another trail diagram idea at the April 3rd LUP meeting (based on a council member's request at the previous meeting). However, the public was not allowed to provide public comment on it. It got ignored. Was it ever added to the document list? It is not part of Memo 5 but appears to only be a slide shown at the April 3rd meeting for purposes of discussion). Here is a small screenshot taken from the video of the meeting.



Remedy A: There is a natural solution because Missoula City Council's Rules express a commitment to Montana's Open Meeting laws, and our elected officials are obliged to follow these laws (see attached pages from the Montana Freedom of Information Hotline, Inc. <http://montanafoi.org/>). We respectfully request that you nullify the single decision voted on at the 4/3/19 meeting. The mechanism is unclear. But it could be accomplished by a member of the council who initially voted for the motion asking to place a motion of reconsideration on the next agenda (which I believe would meet Council's Rule 20 that this action be taken "before or during the second regular meeting" since the LUP took the action on April 3rd.

Rule 20. Reconsideration

A motion to reconsider any action may be made at any time before or during the second regular meeting after such action is taken. Such a motion may be made only if it has been regularly placed on the agenda (see Rule 11(A)) by a Council member who voted with the prevailing side in the original vote on the item. Approval of a motion to reconsider requires two-thirds of those members present and voting.

During reconsideration, we expect that the "Two to One Pedestrian Path" above will be given due consideration in equal fashion to the "Trail Exhibit Secondary Option" at a future meeting (led by city development staff, followed by the developer and the public, before any motions are entertained). Could the designs be combined by placing a length of trail along the top of the planned retaining wall? Have the developers provided an updated proposal for the wall's location, height and length (the drawing in the application packet was for the previous project on this plot of land)? City staff recommended approval of Hillview Crossing LLC's Conditional Use Request on 12/12/18 based on agreed upon conditions, but the record shows a resistance to the condition to shorten block lengths and ensure efficient passage through the planned development on 12/12 - and even before.

As part of the council's business, we expect that accurate and updated information will be provided to the LUP Committee about Safe Routes to School, including MCPS bussing zones and current and potential MCPS bus stops for any students that could live on that mountainside above the Wapikiya neighborhood (that has no sidewalks). We hope that LUP can ensure functional connectivity up and down the hillside exploring the possibility of a potential Mountain Line pull out bus stop on Hillview Way uphill from the development where there is room for buses to exit and enter without impeding traffic flow or requiring cars to stop on hills in the winter. Might future residents want to ride their bikes down the hill to school or work in the morning and hook their bike onto a bus going up the hill at day's end? Please make a decision that matches not only what is required by city code, but taking into consideration the systemic green commitment that the council has made to make it easy for people young and old to make sustainable and healthy lifestyle choices that reduce traffic congestion and pollution.

Background Case B When citizens Stevens and Jacobs met with Mayor John Engen on August 20th, they expressed some discomfort with the Mayor's actions. In his letter to the LUP Committee, Engen proposed changes and additions to a list of conditions (for the Conditional Use Request) that were acceptable to the developers. And he called a LUP committee meeting for August 14, 2019 to request city council members reconsider two and even three previous decisions they made last Spring regarding geo-tech, storm water, and road width.

They asked Engen about the "condition" for the city to be the backup for any breakdown of the HOA systems that threatened other property. He said it was not a new condition, and that it was a "requirement". Ms. Jacobs said it seemed new, and wondered if the city attorney could provide a formal legal opinion, beyond the statement Mr Nugent made at the meeting that project designers would be liable for 10 years, since it could get complicated and financially risky.

It was nearly impossible to follow the discussion - and action taken - at the meeting while trying to track slides displayed on the screen. Most everyone seemed confused. It was clearly a rushed effort, with numbering mistakes and edits done on the wrong version. Ms. Jacobs' public comment at the meeting was that somebody had seemingly spilled the game board and reset it differently and added new pieces.

Concerns Case B:

We thought there would be a chance to see all the key documents before the meeting. But citizens did not have access to that Powerpoint presentation before the meeting so that we could follow the discussion and be able to participate meaningfully. The Powerpoint was uploaded to the city council's site after the August 14th LUP meeting, on August 15th. It's unclear if it was any better for members of council either. Some were having trouble scrolling on documents provided to them on their electronic devices.

We were unaware that the council was going to take action. The official agenda did not indicate this, as it usually does. And it's unclear what council members actually voted on. Note that condition #27 in the Mayor's letter does not match #27 in the Powerpoint slides that were relied on during the meeting as council members took two votes.

The two problems described above in Case B were reviewed by Attorney Mike Meloy of Helena, an expert in Montana Open Meeting Law, who consults with Montana Freedom of Information Hotline which provides free consultation to people like us. Meloy deemed these problems to be Open Meeting Law violations. Meloy also thought it was bad that the agenda was altered post-meeting (for a time). Could this be interpreted as trying to create an impression that the public was given notice that action could be take at the meeting?

We also wonder if any member of a committee (including the Mayor as an ad hoc member) can actually call for the wholesale reconsideration of items that were decided many meetings ago, beyond the limit of two meetings past, that is outlined in Rule 20 listed on the last page. And the other question is whether it is ultimately respectful to the public process to do so, for the sake of pleasing some developers who have threatened a lawsuit. There are other ways to proceed other than disregarding the 15 hours of presentations, public testimony, deliberations and reasoned voting efforts to protect the well-being of Missoula over the course of 9 meetings - up until the August meeting.

Remedy Case B

Again, we point to the possibility of a natural solution because Missoula City Council's Rules express a commitment to Montana's Open Meeting laws. We respectfully request that you nullify the results of the two votes held at the August 14, 2019 Land Use and Development Committee meeting. We hope that if there is a reconsideration of what the Mayor wants for the developers, we hope the council will be mindful of what constitutes a real compromise and what constitutes capitulation that harms the public trust and the public good. In any case, we expect the committee to conduct its quasi-judicial decisions in regular order without outside interference, as Hillview Crossing LLC's Conditional Use Request may go to City Council for a proper up or down vote.

We look forward to your prompt response to our appeals that you nullify three votes taken in two different meetings that violated Montana Open Meeting Law.

Most sincerely,

Missoula citizens who have been attending meetings or watching and reading minutes online,

(406) 251-6450
Teresa Jacobs

137 Cohosset

Jeffrey Stevens

123 Saranac

Karen Hendrikson

121 Saranac

Donald Hendrikson

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date

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LUIGY V. ZIENTEK 123 TAHOE DR Luigy V Zientek 8.28.19

Laurie Richards 126 Tahoe Laurie Richards 8-28-19

BRIAN MILLS 126 TAHOE DR Brian Mills 8-28-19

Kelli Walsh 139 Saranac Dr. Kelli Walsh 8/28/19

Tyler Stosich 139 Saranac Dr. Tyler K. Stosich 8-28-19