

From: [Teresa C. Jacobs](#)
To: [Mary McCreary](#); [Grp. City Council and City Web Site](#); [Mayor Staff](#)
Subject: An email and two attachment re: Hillview Crossing Agenda on 10/9 LUP meeting
Date: Saturday, October 5, 2019 9:15:08 AM
Attachments: [GroupLetterEngenCitCouncil.pdf](#)
[Altered agenda.pdf](#)

Hello Mary,

I am following up after my call to you yesterday afternoon after the agenda for Wednesday's Land Use and Planning (LUP) committee meeting was posted on the city website. **I have attached the joint letter (signed by 11 residents of the Wapikiya neighborhood because it appears that it's missing from the list of new documents on the city website attached to the "Hillview Crossing ..." agenda item.** I delivered the letter in-person to the Mayor's office on August 29th (after the last LUP meeting of 8/14). Please give it to the person you mentioned who can add this letter to the city website. Meanwhile, I am also cc'ing this to the Mayor and to City Council's joint email (and so the public too) to make sure they have all received copies too.

I was surprised to learn that a copy of our joint letter was not shared with you. I wish I would have contacted you myself to make sure, since it appears there's been some "end runs" around your key role in helping the LUP committee to review review proposals with clarity and fairness (as outlined in City Council Rule 14-E & F). Since you were not given documents of proposal early for your review, Council members were also deprived of concise presentations on the possible actions. City Council Rule 14-E prescribes that in regards action (votes) on development or zoning matters, "the action shall be concisely presented by the Zoning Officer ... to explain the background and set forth the reasons for the proposed action. The applicant for the subdivision or zoning action shall then be heard, followed by opponents and proponents." Council members should only be asked to vote on proposals that they had had time to review and study ahead of the meeting, and which is presented precisely to them by city development staff the meeting.

The joint letter we signed and delivered in August points to the LUP committee's lack of compliance with Montana's Open Meeting Law and City Council Rules at its last two meetings - on April 3rd, and August 14th. We hope that council members will read our letter and find merit in our concerns, and somehow honor our request to nullify or just re-vote on all proposals that were acted on at meetings where Open Meeting Laws were violated. We assume that it would involve a consultation with the city attorney's office and that would involve your help in presenting concisely on all these issues/votes being reconsidered?

It must be somebody's job to make sure that city council members are not taking action on proposals (and documents) that were just introduced. That is what happened at the April 3rd meeting. It fundamentally undercuts the public's participation, but also the public's confidence that LUP committee members were truly making informed votes. We ask that the City Council stick to both Open Meeting laws and their own City Council Rules that they are obliged to follow.

The public's rights to know and to participate, guaranteed in the MT Constitution, are companion provisions that are inextricably linked. Montana case law shows that adherence means more than just announcing meeting dates and times in advance, but notifying the public when a quorum will meet to **discuss or act** on any issue of significant public interest." Also, "the agenda should be sufficiently detailed to alert the public as to the topic of discussion." See <http://montanafoi.org/access-in-montana/open-meetings> Citizens also require a reasonable amount of time to examine documents that will be discussed. Larry and Deborah Elison sum it up well: "To participate effectively and knowledgeably in the political process of a democracy one must be permitted the fullest imaginable freedom of speech and one must be fully apprised of what government is doing, has done, and is proposing to do."

The most basic problem with the 8/14 LUP meeting is that **action was taken (votes), when the posted agenda for that meeting did not indicate that action (votes) could be taken.** I came to the meeting expecting that the Mayor's requests (I mean, the applicant's requests) could be discussed, alongside the legitimacy of the LUP committee's requests for additional information, and how that plays out in terms of next steps. I think that it could have been productive if the Mayor was being more careful about being fair and being transparent about "ex parte" - private meetings with the developers/applicants.

As it was, the Mayor seemed to seriously undermine the LUP committee's commitment to City Rule 14-F, to

function in "quasi-judicial" mode when zoning and development proposals are before them. As an ex-officio member of the LUP committee, who could be asked to break a tie vote at City Council, shouldn't the Mayor also be neutral and encourage "deliberations" to be held in publicly noticed and open meetings, rather than "ex parte" private meetings?

The council and the public are not privy to what was behind all the changes, additions, and omissions in the conditions of approval under the letterhead of the city's "Development Services". The Mayor's offered assurances that the revised conditions were generated by staff, and that the new conditions were agreeable to the applicant. Who all was involved in those changes? And why were the conditions that the LUP committee had voted on, missing? Condition #11 on road width should have reflected LUP's vote on 35-foot residential road. Why were the voted-on conditions of approval for #1 (Geotech) and #2 (Stormwater) altogether missing (see Options A - page 3 of Memo #4) and replaced with Options B for these issues - rather than being placed side-by-side for comparisons? And who exactly developed new conditions #27 and #28 and why? Was the city attorney's office consulted in regards to the implicit legal and financial entanglements with the HOA, and conditions being placed on the city? Would this benefit the applicants?

Again, any action (votes) taken at the 8/14 LUP meeting violated Montana's Open Meeting Law since the posted agenda for the meeting, on September 9th, did not indicate action might be taken on the Hillview Way Conditional Use Request. A cursory review of the agendas for many city council meetings will show that it is standard to indicate action might be taken while other agenda items are just for discussion. **It is critical for City Council to know that somebody altered the agenda after the meeting, adding 4 lines that indicated action could be taken. See attached document entitled "Altered Agenda".** That was a serious error. And although it was swiftly reported and reversed, it is very damaging to public trust (please see my last paragraph in the attached document).

Even if the posted agenda for the 8/14 LUP committee meeting had indicated "action" was possible at the meeting, it was a problem that the public (and perhaps the council also?) were not provided with the Powerpoint document ahead of the meeting. It would have helped immensely in tracking the proposed changes to conditions of approval. A good example is Slide #10 in the Powerpoint document entitled "***New Condition for Approval #9 Prepared by the Applicant***". It begs the question "How did this come to the city and who reviewed it? And since we were not able to study this document before the meeting (it was posted on the city website the day after), some key questions did not get asked. I did not catch on to a key switch made when the majority of council members voted on the developer's version of Condition #9. It seems that they agreed to neutralize requests from city engineering and parks and recreation for more information on the east-side trail portion of the "Secondary Option" configuration of pedestrian trails BEFORE a vote on the Conditional Use Permit, to prove their design on the edge of their property line is actually viable. With the vote on 8/14 though, now developers would only have to provide more information AFTER a vote on their conditional use request, when they are applying for permits to build it. The developers have repeatedly said that if the east-side trail is not approved, then the entire development will be scrapped. But the city does not have that in writing, to ensure that if the TED goes forward anyway, an alternative design will meet the TED zoning standards AND all five of the "Criteria for Conditional Use Requests."

In conclusion, if LUP committee members see fit to re-visit conditions of approval that were adopted unlawfully on 8/14/19, it would appear that actions taken on items need to be re-considered, concisely re-presented and discussed, and re-voted (in a meeting that is noticed specifically regarding such possible action):

1) New conditions #27

2) New conditions #28

Items 1 and 2 found on page 5 of the Mayor's attachment to his August 9th email.haven'tt even been presented or discussed by the LUP committee yet, right?

3) The Pedestrian Pathways - Secondary Option / Back up Option?

4) Geotech

5) Storm water

Thank you for taking the time to read this.

Sincerely,

Teresa Jacobs

Wapikiya neighborhood, Missoula