

**City of Missoula, Montana
New Business Item**

Item: **Amendment to Subdivision Regulation Art 3, Sec 080.7 clarifying methodologies for determining value**

Council Meeting

Date: February 8, 2021

Sponsor(s): **Grant Carlton**

Prepared by: Grant Carlton, Open Space Program Manager

Ward(s) Affected:

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| <input checked="" type="checkbox"/> Ward 1 | <input checked="" type="checkbox"/> Ward 4 |
| <input checked="" type="checkbox"/> Ward 2 | <input checked="" type="checkbox"/> Ward 5 |
| <input checked="" type="checkbox"/> Ward 3 | <input checked="" type="checkbox"/> Ward 6 |
| | <input type="checkbox"/> N/A |

Action Required:

None

Recommended Motion(s):

I move the City Council:

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Background and Alternatives Explored:

Throughout the process of creating the 2004 Master Parks and Recreation Plan, it became abundantly clear that Missoulians value and desire parkland and open space opportunities in close proximity to their homes and neighborhoods, and these opportunities are a primary component of the community's sense of place. This notion and its resounding importance has been further emphasized throughout the on-going Sxwtpqyen Master Planning (formerly Mullan Area Master Plan) process. Due to the demonstrated public interest and expressed importance of open space and parks, requirements related to the provision of these opportunities were infused in the City's subdivision process in 2004.

This proposal encompasses a Missoula Parks and Recreation request to amend Article 3, Section 080.7 of the City's Subdivision Regulations. Article 3 dictates Subdivision Design Standards, and Section 3-080 outlines Parks and Open Space requirements with respect to the subdivision process. Further, Section 3-080.7 speaks to cash donation in lieu of parkland dedication.

The City's residential land subdivision process, with some exceptions, requires a dedication of parkland, or City-approved alternative, as a matter of law. Upon receipt of a subdivision application, City Council may, in consultation with the Planning Board, Park Board, or City staff, determine whether the park dedication must be a land donation, a cash donation, or a combination of both. (Section 3-080.6). This request concerns the subdivision regulation language (i.e., Section 3-080.7) that outlines the requirements when City Council concludes that a subdivision applicant is required to provide "cash-in-lieu of parkland dedication" to meet open space and park requirements.

Fundamentally speaking, when a subdivision application is submitted, one of the City's objectives is to provide an open space opportunity or park either directly adjacent to the proposed

development or in close proximity to the proposed development (e.g., within a ½ mile for a neighborhood park). Donation of actual parkland achieves the former and cash-in-lieu of parkland dedication is intended to achieve the latter. This is consistent with the mission of the Parks and Recreation Department to deliver a park, trail, open space land, natural area, or recreation area within a short walk of every neighborhood in Missoula. (Missoula Urban Area Open Space Plan 2019). This objective serves as a primary component of the vision of a growing Missoula, as it contributes to shaping our community's character, reinforcing and enhancing our community's environmental and social values, and helps guide growth.

Due to relatively rapidly increasing land values and a variety of other market-driven factors, Missoula has seen a marked increase in subdivision applications over the last couple of years. There are a number of factors that dictate the City's decision of whether to require parkland dedication or cash donation in lieu of parkland dedication, but size of the proposed development has recently been the driving factor. As a general rule (with demonstrated exceptions), when a proposed subdivision is relatively small, it often makes more sense to require a cash donation that allows the City to pool funds from other nearby similarly-sized proposed subdivisions and ultimately invest the aggregation of funds in open space amenities in the immediate vicinity.

A cash donation in-lieu of parkland dedication must be equal to the fair market value of the land that would have been statutorily required to be dedicated. (Section 3-080.7). Thus, the underlying intent of Section 3-080.7 is to provide the City of Missoula sufficient funds to quite literally compete in the open market to purchase parkland and/or open space amenities (or invest in increasing capacity of existing park and open space amenities in certain cases) in both proportion to the rate of growth and in close proximity to proposed development. In other words, this requirement of the subdivision process provides one of the only tools and substantial funding sources that affords the City the ability to keep up with rising land values and exponential increases in development with respect to its objectives of providing neighborhood parks and open space.

As a prerequisite to calculating the amount of a cash donation in lieu of parkland dedication, Section 3-080.7 requires that a subdivider demonstrate the fair market value of the unsubdivided, unimproved property being developed by submitting an appraisal report created by an independent qualified appraiser. Further, the language intends that the appraisal should incorporate the zoning designation that will apply to the final approved plat. Once the appraisal is received, City staff conducts "cash-in-lieu" calculations based on the submitted appraisal. Implicit in that language is an assumption that the submitted demonstration of fair market value is calculated in a manner that provides an accurate, defensible, and realistic statement of fair market value using pertinent and appropriate market data. Adding clear direction or expectations to Section 3-080.7 with respect to the methodology in which fair market value is demonstrated (e.g., requirements related to comparable sales) would be beneficial.

The City has recently experienced a number of instances in which an appraisal that is submitted pursuant to the language of Section 3-080.7 and accompanying a subdivision application has presented various challenges, all of which are related to the demonstration of fair market value. One of those issues, for example, was a direct result of arguably ambiguous language in Section 3-080.7 that speaks to the timing of zoning designations. These on-the-ground valuation issues have created a tangible and quantifiable impediment to carrying out the objectives and intent underlying the parks and open space requirements in the subdivision regulations. Further, these challenges have resulted in significant expenditure of City staff and leadership's time and energy, as well as caused tension between the City and the development community.

It is worth noting that the City is currently undergoing work flow planning to address recommendations from the City's Recommendation Report for Subdivision and TED Regulations including the need to update code provisions related to Parks Dedication Requirements. The anticipated timeline for completing the work flow planning is at least several months. Initiating broader regulatory amendment would occur after that. Due to an expected stream of subdivision

applications, the City will continue to face financial consequences related to the issues described above if Section 3-080.7 is not amended in the near term. This amendment proposal is intended to be a near term, “surgical” remedy, and the City will explore broader, more systematic changes to the process as part of a future comprehensive subdivision regulation review process.

Based on research and consultation, Parks and Recreation believes these valuation challenges can be largely addressed by amending the language of Section 3-080.7. The subject amendment proposal seeks to do two things: 1) resolve ambiguities existing in the current language, and 2) provide clarity and clear direction related to the acceptable methodologies for demonstrating fair market value. The development community has made it clear that it desires the process to be predictable, expedient, and clear. The proposed amendment heavily weighs those three basic tenets and the Parks Department intends for the outcomes to be mutually beneficial, with an eye towards bolstering the City’s ability to meet its objective of providing open space and park opportunities in every neighborhood in proportion to development and growth as well as providing the development community with the desired predictability.

Preferred/Anticipated Process Overview

1. Presentation and update to Land Use and Planning Committee- February 10, 2021
2. Two-week agency/development community review and comment period- February 12, 2021
The proposed amendment language, background and rationale, and timeline will be shared with interested stakeholders, and specifically the development community. Materials will be posted on Engage Missoula.
3. Planning Board public hearing- March 2, 2021
4. City Council public hearing- March 22, 2021
5. Land Use and Planning Committee review- March 24, 2021
6. City Council final consideration- April 5, 2021

Financial Implications:

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Links to external websites:

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