



MISSOULA

COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

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West End Homes and West End Farms

RE: Options for dividing the West End Farms park parcel and follow up to 3rd Element Review

Responses to email from Justin 3/30/22

1. BLR

- a. The Seller is upset and not willing to sign the BLR docs if the remaining parcel has to pay fee in lieu. They feel I represented that the parkland would count as the open space contribution for the southern parcel. Unfortunately, I did represent this, (though it didn't make it into the contract), since I copied them on the letter I sent to the City on September 13th (attached). The letter summarizes the high-level concept, seeking general approval for the concept and the conditions, specifically *"The City's approval of a developer agreement for open space between 1) the 18-acres of land that we would buy for open space, and 2) the 18-acres below it that is shown as "clustered homes" on the attached PDF. The developer agreement would state that the developer who buys and develops the 18-acres to the south as housing would not have to provide open space or fee-in-lieu because the 18-acres to the north is providing it. Since it's significantly more open space than what is required I thought it was "ok", but I know there are a lot of details at play within the FBC. This detail is important to the seller so they can maximize the value on the remaining 18-acres of land and (I hope) give us a slight discount on the 18-acres we are proposing to acquire."* The seller did indeed give us a break on the land (we are under contract at \$70K/acre vs. roughly \$110K blended for the rest) and has been marketing the southern parcel at \$200K/acre with the representation that no fee in lieu or parkland dedication would be made.
- b. **QUESTION:** Can you confirm there is no way around the southern parcel having to pay fee in lieu using the BLR approach?

I brought this question to DRT on 4/4/22 and received direction from the City Attorney's Office. There are two options for moving forward without the southern developer and full subdivision of the entire parcel. For either option, a development agreement stating the parkland dedication is met for the southern parcel and that cash-in-lieu is not required is an option. This will need to be a binding agreement that runs with the land. Realistically, the parkland abuts the property to be developed and the City is really just getting parkland earlier than we normally would. A development agreement to memorialize this will work.

There two options for moving forward with the park ahead of subdividing the entire parcel. Option 1 is to move forward with the BLR to include the park with Evergreen, with a development agreement that parkland is met for the southern parcel. Alternatively, Dougherty could convey a public park easement to you. This alternative would encumber Dougherty's land, but with a development agreement could ensure the park dedication requirements are met for the rest of the parcel.

If going the BLR route, we do need the plat and documents in the West End Homes packet modified to add the park area prior to certifying for element review. Though we'll

need all of the information added to the packet and a proper legal description to certify for element, DRT decided we can move into sufficiency without the BLR finalized by the County. The plat will need to be filed prior to moving into governing body.

Dougherty still needs to agree to a development agreement, in addition to either signing off on a BLR or easement. However, they can be assured that parkland dedication requirements will be met in full for the southern parcel.

If you go the BLR route, the park will be part of West End Homes and needs to meet the subdivision regulations at this time. If you go the easement route, we would be looking at compliance when the full parcel comes in for subdivision, once the southern developer is ready to move forward.

If going the BLR route, Article 3, Section 3-080.8 requires parkland to meet one of five criteria. Most parks, including the current piece of parkland in West End Homes, comply with criterion B. Criterion B includes a provision that the park must be adjacent to public streets on at least 50% of the park's perimeter. The proposed parks do not meet Criteria C, D, or E. The agricultural activity (garden) portion of the park may be able to count under Criterion A, but the remainder of the park will need to fall under Criterion B, meeting the road standard.

I haven't done the math, but I believe this standard isn't met once the full park is added to West End Homes. Note the alley way does not count as a road. However, the alley way does provide access which is mitigation. IMEG can see if the park meets the road requirement, possibly excluding the area of the park used for agricultural activities.

We understand that building roads would affect the affordability of your project. If IMEG determines this code is not met, we are proposing meeting the road requirement through a variance with support from a development agreement. The development agreement for the parkland would also state that a road bordering the southern line of the park will be constructed by the southern developer, meeting the 50% rule for the park in the future. This means Lance (or whoever purchases the southern lot) will be taking full responsibility for construction of the road. The future road could be further memorialized with a conditional easement along the southern park boundary, either established with the BLR or with the subdivision.

Recent parks designs show a skinny green space running along the eastern property line, down to the southern property line. Can you confirm this piece would be included with the northern parcel used for the park? If so, make sure to include it in the BLR.

2. IMEG Concerns with BLR

- a. Bringing an additional 18.5 acres into our subdivision throws off all the transect densities (T3 falls way below the required 50% by example). **QUESTION:** Are you concerned about this or is there a path through?

I chatted with DRT about this. The code is really vague about how to interpret the percentages, but we are not concerned about compliance. Division 2.1.B.2 states;

"Each Master Site Plan submitted shall contain a mix of Transect Zones as established in Table 2-1.... With the following exceptions:

- b. Any Master Site Plan may consist of 100 percent... OS.. Transect Zones..."

If any master site plan can consist of 100 percent OS Open Space, then it implies that other percentages above the requirement are acceptable as well. It is listed as an

exception to the percentages in Table 2-1. DRT determined that we can check for compliance with the percentages on the remaining portion of the property once park space is excluded. Once parkland is excluded, do the transect percentages work out for the remaining net lotted area?

Example:

Area of transect zone / (Net lotted area – OS transect area) = percentage of transect zone with the understanding that more of the land is zoned OS than would normally be required per the exception allowed in 2.1.B.2.

Clear as mud?

- b. A concern over mechanics – **QUESTION:** are you concerned about this?
 - i. *“City required an accurate Legal Description of the “parent parcel” prior to application. I understood this was for “Legality Purposes”, meaning the city council has to have a accurate legal description to make a motion towards that also matches what the staff and Planning Board reviewed against. Why are they now okay changing it in the middle of review?”*

Yes, we will still need an accurate legal description to certify for element. This can be provided before the BLR is filed (IMEG can determine what the future legal description will be). DRT stated that it can move into sufficiency while you are working on the BLR. However, we cannot move into governing body review until the plat is filed. I understand this is different than when we had decided the BLR needed to be filed to move out of element. DRT has revised their decision to allow more flexibility. Plat filing is necessary prior to governing body – otherwise the tract to be subdivided does not exist for City Council to annex.

Maybe we have to wait until after Pre Plat approval before the BLR can be filed? In this scenario, would the change qualify as a “material change” and need an amendment approval from city council? May not affect your timeline to construct, but would likely delay filing the first phase(s).”

I’m not sure I’m fully understanding this question. Again, we need a tract of land to include in the resolution to annex. We cannot wait until after preliminary plat approval/annexation/zoning for the BLR to be filed. This means we would not get to the future stage of needing an amendment or material change. I do understand how this could delay your time line, which is why the alternative easement option might be more attractive. Does that help answer the question?

3. The Seller

- a. As per Katie Ward there are two competing buyers from out of state trying to put all land in the FBC under contract, including back-up offers on all the land we (and others) have under contract, at higher prices than we are paying. The seller seems very contentious and less motivated to make concessions and it was referenced that if we didn’t close on the future parkland “others will buy it at a higher price”.

I’m sorry to hear this and hope we can make this work. All feasible routes forward require collaboration from the property owner through a development agreement and easement/BLR. I’m hoping the development agreement mitigates their concerns about parkland and they’ll be willing to work with us.

- b. They still do see value in the park and have been using the concept as marketing materials, so I believe they do want to see it happen despite the bluster.

3rd Element Review Follow Up:

General

a. Revised per email to state that the new COS should be added to the packet since original BLR was filed.

b. Upon closer review of the Preliminary Grading and Drainage Engineering Design Report I noticed that stormwater facilities are proposed in Flynn Square Park and still seem very preliminary. Do you have a sense of how much of the park will be dedicated parkland versus stormwater facilities? Have you spoken with Parks and Rec about whether they will accept the swale in the location shown or whether they will accept the swale at all? Additionally, I see reference to a pond in the report though the drawings only show a swale. Article 3, Section 3-080.9.D states "Stormwater retention or detention ponds that are designed to hold stormwater runoff from less than 100- year events" ...

I've heard that stormwater for the subdivision no longer needs to be managed in the park. Is this true? There is a difference if the park is just managing it's own stormwater versus managing storm water for the rest of the development. If stormwater for the rest of the development is not managed in the park, then we don't need a design for the park. If stormwater for the rest of the development is being managed in the park, then you must submit a plan so that you can estimate how much parkland is dedicated and how much is maintained by the HOA for stormwater infrastructure. In the second case, they may need to be separate lots within the park. We understand the plan will likely change throughout the process, but this gives staff a starting point to provide detailed feedback and push toward a final design.

Road Construction Plans

i. Staff had requested that the neighborhood street (Road C) continue through as Neighborhood Street and should not switch to a Fietsstraat. The zoning officer opinion will modify the transect zone assignment, allowing the T4-O to abut the Neighborhood Street in cases where one street type should continue for the entire length of the road. We are not writing a Zoning Officer Opinion stating the 4' textured portion is not required for Fietsstraats. Change the portion of Road C that is a Fiestraast to a Neighborhood Street (no need to modify transect zones as this will be covered in the Zoning Officer Opinion). Add the textured center back to Road A which will remain a Fietsstraat.

***DRT honed in on an easier solution to the Fietsstraat issue. Overall, Engineering has stated the Fietsstraat road design is not ideal in terms of maintenance and not ideal because it has to be modified to meet fire code. Rather than using the zoning officer opinion to modify the transect zones in certain cases, we're simply going to **add the T4-O transect zone to the Neighborhood Street for all cases. DRT determined that all Fietsstraat streets should be converted to Neighborhood Streets. Revise the plans accordingly. The Neighborhood Street will comply with the T3, T4-R, and T4-O transect zones and work with your site plan. Considering both T4 districts have the same density, we can argue in the Zoning Officer Opinion that the Neighborhood Street is appropriate for T4-O transect zones.**

ADDITIONAL DRT DECISIONS:

- Since the parkland design has progressed, the conditional easement for Dougherty Drive is no longer needed. You can remove this from the plat on future submittals.
- As BUILD Grant plans have progressed, we've identified a need for a conditional easement for a trail along the southern portion of the current West End Homes Park. This easement should align with Road D, providing future connectivity options.