



COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

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MAJOR SUBDIVISION, ANNEXATION, REZONING, AND MASTER SITE PLAN STAFF REPORT

Agenda Item: Sapphire Place Major Subdivision, Annexation, and Master Site Plan Review.

Report Date: May 30, 2023

Case Planner: Spencer Starke, Associate Planner

Report Review & Approved by: Dave DeGrandpre, Planning Supervisor

Governing Body Review Deadline: June 27, 2023

Public Meetings & Hearings:

City Council (6/5/2023): Approval of resolution of intent to annex and rezone the property, referral to Land Use and Planning Committee, and set public hearing

Planning Board (6/6/2023): Public hearing

LUP (6/7/2023): Pre-public hearing informational item

City Council (6/12/2023): Public hearing

LUP (6/21/2023): Discussion and motion to adopt resolution to annex and rezone the property and approve/deny the preliminary plat application and master site plan City Council (6/26/2023): Final consideration

I. GENERAL PROJECT INFORMATION

Owners:

James D. Dougherty Family LLC
2704 Stratford Lane Missoula,
MT 59808

Subdivider:

Cathcart Properties, Inc.
200 Reserve Blvd, Suite 300 Charlottesville,
Virginia 22901

Representative:

IMEG, Corp.
1817 South Ave. W, Suite A
Missoula, MT 59801

Location of Request: Tract 2-A of Certificate of Survey No. 6689, located in the NW1/4 of Section 7, Township 13 North, Range 19 West, P.M.M. Missoula County, Montana.

Legal Notification: The legal ad was published in the Missoulian on May 14, 2023 and May 21, 2023. Two subdivision posters were placed on the property on May 12, 2023. Adjacent property owners were notified by certified mail on May 11, 2022.

II. DECISION AND REGULATORY FRAMEWORK

The Missoula Consolidated Planning Board considers and makes a recommendation on the subdivision and master site plan. City Council considers and makes a decision on the annexation, rezoning, subdivision, and Sxwtpqyen master site plan.

Applicable State Law: Montana Code Annotated 2021

Annexation Policy: Resolution 8363 adopted 7/22/2019. The property is within Annexation Area “A” and meets the majority of the city’s criteria to determine priority for annexation. Zoning upon annexation must comply with Title 20 Zoning Code, Section 20.85.040.I.

Growth Policy: The Sxwtpqyen Neighborhoods Master Plan, which is an amendment to the Our Missoula Growth Policy, is the applicable regional plan.

Local Zoning Law: Title 21, Sxwtpqyen Neighborhoods Form Based Zoning Code adopted December 14, 2020.

Current and Proposed Zoning: Approximately 15.73 acres of the 18.73-acre property are zoned Town Center Neighborhood Unit, with the remainder zoned Crossroads Center Neighborhood Unit in the County. If City Council approves the annexation and zoning upon annexation, the subject property would be zoned Sxwtpqyen Neighborhoods Form Based Zoning Code transect zones OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, and T4-R Neighborhood General - Restricted.

Subdivision Regulations: Missoula City Subdivision Regulations adopted by City Council as amended on July 18, 2022.

Surrounding Land Uses:

North: General warehousing (Summit Beverage)
South: Vacant land and West End Homes residential subdivision (preliminary approval)
East: Agriculture/vacant
West: Agriculture/vacant and a potential residential subdivision currently undergoing annexation, rezoning, master site plan and preliminary plat review (Icon Apartment Homes at Dougherty Ranch)

Surrounding Zoning:

North: Town Center Neighborhood Unit (County)
South: Crossroads Center Neighborhood Unit, T2 Rural (County)
East: Town Center Neighborhood Unit (County)
West: Crossroads Center Neighborhood Unit, Town Center Neighborhood Unit, and Community Center Neighborhood Unit (County)

III. RECOMMENDED MOTIONS

City Council (6/05/2023)

Set a public hearing on June 12, 2023 and adopt a resolution of intent to annex the subject property legally described as Tract 2-A of Certificate of Survey No. 6689, located in the NW1/4 of Section 7, Township 13 North, Range 19 West, P.M.M. Missoula County, Montana as shown on Exhibit A, and zone upon annexation to Sxwtpqyen Area Form Based Zoning Code transects OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, T4-R Neighborhood General - Restricted, and T5 Mixed-Use Center, and refer this item and the Sapphire Place Subdivision and Master Site Plan to the Land Use and Planning Committee on June 7 and June 21, 2023.

Planning Board Public Hearing (6/6/2022)

Recommend City Council approve the Sapphire Place Subdivision Preliminary Plat Application and Master Site Plan, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

Recommend City Council approve the variance request from Article 3, Section 3-030.1.C.3 of the City Subdivision Regulations, which requires each lot to abut and have access to a public or private street or road, to allow 3 lots to be provided access via an alley and require a public access easement containing a pedestrian path.

LUP pre-public hearing informational only item (6/7/2023)

Introductory presentation and discussion on the proposal and staff recommended motions to approve the annexation, rezoning, preliminary subdivision plat application, variance, and master site plan, subject to the recommended conditions of approval.

City Council Public Hearing (6/12/2023)

Presentation, public comment, and discussion on the proposal and staff recommended motions to approve the annexation, rezoning, preliminary subdivision plat application, variance, and master site plan, subject to the recommended conditions of approval.

LUP (6/21/2023)

Discussion and motion to adopt/deny resolution to annex and rezone, and approve, approve with conditions, or deny the preliminary subdivision application, subdivision variance, and master site plan.

Adopt/deny a resolution to annex the subject property legally described as Tract 2-A of Certificate of Survey No. 6689 located in the NW1/4 of Section 7, Township 13 North, Range 19 West, P.M.M. Missoula County, Montana as shown on Exhibit A, and zone upon annexation to Sxwptqyen Area Form Based Zoning Code transects OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, T4-R Neighborhood General - Restricted, and T5 Mixed-Use Center, subject to the conditions of approval, based on the findings of fact and conclusions of law in the staff report.

Approve/deny the variance request from Article 3, Section 3-030.1.C.3 of the City Subdivision Regulations, which requires each lot to abut and have access to a public or private street or road, to allow 3 lots to be provided access via an alley and public access easement containing a pedestrian path, based on the findings of fact and conclusions of law in the staff report.

Approve/deny the Sapphire Place Subdivision Preliminary Plat Application and Master Site Plan, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

City Council Final Consideration (6/26/2023)

Affirm the motions made at the 6/21/2023 LUP Committee meeting.

IV. INTRODUCTION

Development Services has received a request from IMEG Corp., on behalf of Cathcart Properties Inc., for annexation, rezoning, preliminary plat, and master site plan approval of a 39-lot major subdivision and annexation of 18.73 acres located west of Flynn Lane on Tract 2-A of Certificate of Survey No. 6689. The proposed subdivision is named Sapphire Place. The application materials state the developer's intent is to create 301 dwelling units (rental apartments) in a variety of residential building types.

The project is within the Sxwtpqyen Neighborhoods Master Plan area and must comply with the Sxwtpqyen Neighborhoods Form Based Zoning Code (Title 21). Title 21 regulates street types, block perimeters, minimum and maximum densities, lots sizes, ratio of zoning districts (also called transect zones), land uses, design and more. Title 21 requires that City Council either approve, approve with conditions, or deny the master site plan.

To comply with the Form Based Zoning Code, the applicant requests zoning upon annexation of Title 21 transect zones OS Open Space (2.6 acres), T3 Neighborhood Edge (1.06 acres), T4-O Neighborhood General – Open (4.56 acres), T4-R Neighborhood General – Restricted (1.92 acres) and T5 Mixed-Use Center (3.71 acres).

The T3 transect zone primarily permits residential uses at a density of 6 to 8 dwelling units per acre, some civic uses, and some educational uses. The T4-R transect zone primarily permits residential uses at a density of 12 to 36 dwelling units per acre, some civic, and some educational uses. The T4O transect zone primarily permits residential uses at 12 to 36 dwelling units per acre, small scale lodging, commercial, some civic, and some educational uses. The T5 zone permits residential uses at 24 to 72 units per acre, the highest intensity and mix of uses, with buildings located close to the sidewalk.

All lots zoned T3, T4-R, and T4-O are currently proposed to be used for only residential purposes. The T5 transect is proposed to have residential uses and a club house with retail and office space. The average lot size in the T3 transect zone is 15,246 square feet (0.35 acres). The average lot size in the T4-R and T4-O transect zones is 10,890 square feet (0.25 acres). The average lot size in the T5 transect zone is 16,117 square feet (0.37 acres).

The Form Based Code requires a minimum of three residential building types per zoning district. In the T3 zoning district the applicant proposes cottages, duplexes, and mansion apartments. In the T4O, T4-R, and T5 zoning districts the applicant proposes row houses, mansion apartments, and apartments.

Access to the subdivision would be provided from Flynn Lane to the east and Burnet Drive, a planned road extending from West End Homes Subdivision to the south. The proposed subdivision would include new City streets identified in the application materials as Pine Butte Boulevard, Roper Way, and Sapphire Lane in addition to several alleys. A new section of Flynn Trail is also proposed, which is planned to ultimately extend from the future Grant Creek Trail to Hellgate Elementary School.

The subject property is within the Urban Growth Area, the Utility Service Area, and the Air Stagnation Zone. Development on each of the lots is proposed to be connected to City sewer and water.

The property includes the historic Dougherty Ranch residence and icehouse, which are eligible to be included on the National Register of Historic Places. These structures are proposed to be kept on the property and adaptively re-used. The proposal also includes several open space and park areas. The park area surrounding the historic residence includes some of the oldest and largest trees in the Missoula Valley.

The applicant is requesting a variance from Article 3, Section 3-030.1.C.3 of the City Subdivision Regulations, which requires each lot to abut and have access to a public or private street or road. Three lots do not fully abut and have access from a street or road. Instead, the lots front upon and have access to open space and the planned Flynn Trail, with rear access via an alley.

The Planning Board will provide a recommendation to City Council on the variance request, subdivision, and master site plan. City Council will act and make a decision on the annexation and rezoning, variance, subdivision, and master site plan. City Council may approve, deny, or approve with conditions the annexation and subdivision and master site plan requests.

Upon annexation, the parcels would be located within City Council Ward 2 and the Captain John Mullan Neighborhood Council.

V. GENERAL FINDINGS OF FACT

The following findings of fact are applicable the annexation and rezoning request, subdivision preliminary plat request, and the master site plan request.

1. Tract 2-A of Certificate of Survey No. 6689 is located in the NW1/4 of Section 7, Township 13 North, Range 19 West, P.M.M. Missoula County, Montana. *(Pg. 2, 9, 13 and 14 of City Major Subdivision Application, ALTA Commitment for Title Insurance)*
2. Surrounding land uses include warehousing, agriculture/vacant land, and planned residential subdivisions. *(County Property Information System, City Files)*
3. The subject property is 18.73 acres, currently contains historic structures, and was most recently used for agriculture. *(Pgs. 3, 9 and 13 of City Major Subdivision Application, Heritage Property Report)*
4. The subject property is zoned Sxwtpqyen Neighborhoods Town Center Neighborhood Unit and Crossroads Center Neighborhood Unit in the County. *(Pg. 3 of City Major Subdivision Application)*
5. The subject property is within the Urban Growth Area, Utility Services Area Boundary, and the Air Stagnation Zone. *(Missoula County Property Information System)*
6. The subject property has frontage on and would be accessed from Flynn Lane, which is functionally classified as a Neighborhood Bike Street (Two-Way Track). *(Master Site Plan Maps)*
7. The subject property is within floodplain designation Zone X, Area of Minimal Flood Hazard. *(FEMA Map Service Center)*

VI. ZONING AND GROWTH POLICY FINDINGS OF FACT

The following findings of fact are applicable the annexation and zoning request, subdivision preliminary plat request, and the master site plan request.

1. The Sxwtpqyen Neighborhoods Master Plan is the applicable regional plan. The Master Plan recommends development based on neighborhood units. Approximately 15.73 acres of the subject property are located within the Town Center Neighborhood Unit and approximately 3 acres are located within the Crossroads Center Neighborhood Unit. *(Missoula County Property Information System)*
2. When a parcel contains more than one neighborhood unit designation, the applicant can designate the entire parcel within the neighborhood unit type that comprises the majority of the existing parcel area. In this case, the applicant chose to apply the Town Center Neighborhood Unit designation to the entire property. *(Pg. 4 of City Major Subdivision Application, City Zoning Officer Opinion #23-03)*
3. The Town Center Neighborhood Unit requires 5% to 30% of the net lotted area proposed to be zoned T3 (6 to 8 dwelling units per acre). The neighborhood unit allows 30% to 60% of the net lotted area to be zoned T4-R and T4-O (12 to 36 dwelling units per acre). The T5 transect can comprise between 10 to 50% of the net lotted area within the neighborhood unit. The minimum

OS Open Space zoning requirements are calculated per Title 21, Section 2.1.C. (*Table 2-1 & Section 2.1.B.2.b, Title 21 Zoning Code*)

4. Title 21, Section 1.4.E states all fractional results of calculations required by the code shall adhere to standard rounding rules.
5. Upon annexation, the applicant requests to zone 7.6% of the net lotted area proposed for development T3, to zone 32.8% T4-O, 13.8% T4-R, and 26.7% T5. (*Transect & Development Table of the Master Site Plan*)
6. For more information on how the minimum OS Open Space and parkland dedication requirements are calculated, see the Subdivision section of this report.
7. The subject property contains soils designated as prime farmland if irrigated. (*NRCS Soils Report_Updated*)
8. The site is not located with the Missoula International Airport Extended Approach and Departure Area, but is within the Airport Influence Area Zoning Overlay. (*Title 21 Figure 2-1, West End Homes Regulating & Development Plan Map, City Development Plan Review Planning Map*)
9. All lot dimensions and block perimeters within the preliminary plat comply with the requirements of Title 21, Table 3-1. (*Preliminary Plat; Master Site Plans*)
10. Title 21, Section 3.1.C requires that each T3, T4-R, T4-O, and T5 transect zone contain a minimum of three residential building types per zoning district. In the T3 zoning district the applicant proposes cottages building, duplexes, and mansion apartments. In the T4-O, T4-R, and T5 zoning districts, the applicant proposes row houses, mansion apartments, and apartment residential building types. (*Transect & Development Table of the Master Site Plan*)
11. The proposed zoning allocation complies with the Sxwtpqyen Neighborhoods Master Plan, the Town Center neighborhood unit, and Title 21 Zoning Code, if the recommended conditions of approval are imposed.

ANNEXATION

I. RECOMMENDATION

Staff recommends City Council **adopt** a resolution to annex the subject property legally described as Tract 2-A of Certificate of Survey No. 6689 located in the NW1/4 of Section 7, Township 13 North, Range 19 West, P.M.M. Missoula County, Montana as shown on Exhibit A, and zone upon annexation to Sxwtpqyen Area Form Based Zoning Code transects OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, T4-R Neighborhood General - Restricted, and T5 Mixed Use Center, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

CONDITIONS OF ANNEXATION APPROVAL

Zoning

1. Approval of the annexation shall be contingent upon City Council approval of the Sapphire Place Subdivision and Master Site Plan.

Streets, General

2. The following statement shall appear on the face of each plat, in the covenants, conditions, and restrictions, and on each instrument of conveyance, subject to review and approval by Public Works & Mobility and Development Services, prior to final plat approval: "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for future improvements and maintenance of Flynn Lane, Sapphire Lane, Roper Way, Burnet Drive, and Pine Butte Boulevard including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities, and may be used in lieu of their signatures on a SID petition."
3. The developer shall provide a street signage plan and install street signage in accordance with the Manual on Uniform Traffic Control Devices, subject to review and approval by Public Works & Mobility and the Fire Department, prior to final plat approval. The signage plan shall include a name for the alley providing vehicular access to Lots 24 – 29.

Road and Alleys

4. The developer shall provide plans for and install half street improvements to Flynn Lane, a neighborhood bike street (two-way track), including dedication of public right-of-way, drive lane, curb and gutter, landscaped boulevard, street trees, stormwater facilities, and bicycle and pedestrian facilities as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks & Recreation, prior to final plat approval.
5. The developer shall provide plans for and install improvements to Sapphire Lane, an urban secondary street, including two drive lanes, parking lane, curb and gutter, sidewalks, landscaped boulevard (includes landscaped parking islands and tree wells, with topsoil as specified in the Missoula City Public Works Standards and Specifications Manual), street trees, and stormwater facilities as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval.
6. The developer shall provide plans for and install alleys within public access easements and rights-of-way as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and City Fire, prior to final plat approval.
7. The developer shall provide plans for and install improvements to Roper Way, an urban secondary street, including two drive lanes, parking lane, curb and gutter, sidewalks, landscaped boulevard (includes landscaped parking islands and tree wells, with topsoil as specified in the Missoula City Public Works Standards and Specifications Manual), street trees, and stormwater facilities as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval.
8. The developer shall acquire an emergency fire access easement across a portion of Tract B of COS No. 6850 and extend a fire access road from Lot 9 to Roper Way as shown on the preliminary plat, or construct a fire apparatus turnaround on the Sapphire Place property, subject to review by Public Works & Mobility and City Fire, prior to final plat approval.
9. The developer shall provide plans for and install improvements to Pine Butte Boulevard, a main street primary street, including two drive lanes, parking lanes, curb and gutter, boulevards, (includes landscaped parking islands and tree wells, with topsoil as specified in the Missoula City Public Works Standards and Specifications Manual), street trees, and sidewalk as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval.
10. The developer shall acquire and dedicate a public access easement and provide plans for and install half-street improvements for the eastern half of Burnet Drive, a neighborhood street,

along Lot 33 to the intersection with Pine Butte Boulevard, including two drive lanes, parking lane, curb and gutter, landscaped boulevard, street trees, and sidewalk as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval.

11. The developer shall acquire additional public access easement and install an alley along the south property boundary, including a full connection to Burnet Drive, subject to review and approval by Public Works & Mobility and City Fire, prior to final plat approval.

Non-Motorized Transportation

12. The developer shall provide plans for and install Flynn Trail through the Common Area, on the north side of Pine Butte Boulevard, and the west side of Flynn Lane, as shown on the preliminary plat and plans, and amend the existing right-of-way agreement if seeking reimbursement, subject to review and approval by Public Works & Mobility and Parks & Recreation, prior to final plat approval. The amendment to the right-of-way agreement shall address impact fee offsets/reimbursement for installation costs for these improvements, pursuant to Title 15.
13. The developer shall provide plans for and installation of improvements to a mid-block pedestrian path within Open Space #5 and provide a 20-foot non-motorized public access easement, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval.
14. The developer shall provide plans for and installation of improvements to the pedestrian path in Open Space #1 within a 20-foot non-motorized public access easement along the frontage of abutting lots to the east, subject to review and approval by Development Services, Public Works & Mobility, and Parks & Recreation, prior to final plat approval.
15. The developer shall construct a Trail Street within the existing 40-foot public right-of-way located immediately to the north of the subject property including a 12-foot multi-use path with 14-foot vegetated planting strips on both sides of the path, subject to review and approval of Public Works & Mobility and Parks & Recreation, prior to final plat approval.

Rights-of-Way and Easements

16. All proposed rights-of-way and easements shall be shown on the face of the plat and identified for their width and purpose, in accordance with Missoula City Public Works Standards and Specifications Manual, subject to review and approval by Public Works & Mobility, prior to final plat approval.

Transit

17. The developer shall petition for the property to be included in the Missoula Urban Transportation District, subject to review and approval by Development Services, prior to final plat approval.

Airport Influence Area

18. The developer shall obtain an aviation easement from the Airport Authority, in compliance with the Airport Influence Area Resolution, and present evidence of the easement, subject to review and approval by Development Services, prior to final plat approval.

Fire Protection

19. The developer shall provide plans for fire suppression water flow and hydrant placement, subject to review and approval by City Fire Department and Public Works & Mobility, prior to final plat approval. The developer shall install all fire hydrants prior to final plat approval. In the event the developer enters into an improvements agreement with the City of Missoula to

postpone installation of certain improvements until after final plat approval, fire hydrants must be installed prior to combustible construction in the area the hydrants are intended to serve, subject to review and approval by City Fire Department and Public Works & Mobility.

Water Supply, Sewage Disposal, Stormwater Management, and Solid Waste

20. The developer shall provide plans for and installation of water supply, sewage disposal, stormwater management, and solid waste disposal facilities for review and approval by Public Works & Mobility, City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval. Construction of all appurtenant facilities shall be in accordance with City policies and agency approvals.

Agricultural Water Rights

21. The developer shall dedicate on the final subdivision plat ditch or culvert easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities on the property to lands adjacent to or beyond the property boundaries in quantities and in a manner that is consistent with historic and legal rights. The language on the final plat shall also prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
22. The developer shall present documentation that the water rights have been removed from the property and provide a statement on the face of the final plat and in the Development Covenants as follows: "Water rights have been removed from the property and lot owners are notified that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable," subject to review and approval by Development Services, prior to final plat approval.

Ground Water

23. The developer shall include the following note on the final plat and in the Development Covenants: "Basements shall be prohibited until such time as the owner provides sufficient evidence to the City of Missoula Public Works & Mobility Department that no threat to the public safety or loss of property will result in those areas proposed for basements," subject to review and approval by Development Services and Public Works & Mobility.

Historic Resources

24. The developer shall submit plans for the restoration of and modifications to the historic icehouse and residence for review and approval by Development Services and the City Historic Preservation Officer prior to any structural alterations and prior to final plat approval.
25. The developer shall submit an application to the State Historic Preservation Office to individually list/register the historic ice house and residence prior to any structural alterations and prior to final plat approval.
26. Any alteration or demolition which affects the exterior appearance of either the historic ice house or residence shall require a historic preservation permit prior to issuance of a building permit.

Natural Resources

27. The developer shall submit plans for the preservation and maintenance of the existing orchard and pine trees in the vicinity of the historic structures in Open Space #4, as presented in the Master Site Plan Parkland Dedication and Conceptual Landscape Plan exhibits, subject to review and approval of Development Services and Parks & Recreation, prior to final plat approval.

Landscaping

28. The developer shall provide plans for boulevard landscaping and landscape plans for all streets, trails, parking lots, and open space, common area, and parkland areas, subject to review and approval by Parks and Recreation, prior to final plat approval. The property owner shall be responsible for obtaining boulevard landscaping permits prior to building permit approval and for installation of boulevard landscaping adjacent to development prior to certificate of occupancy, subject to review and approval of Parks and Recreation, prior to final plat approval.

Parkland

29. The developer shall provide plans for and install park improvements in all open space and parkland areas including but not limited to grading, application of topsoil, irrigation systems, turf grass and dryland seed or sod, and installation of park trees, subject to review and approval by Parks & Recreation, prior to final plat approval.
30. The developer shall provide maintenance plans for common areas and mutually controlled facilities per Section 5-020.14.K of the City Subdivision Regulations, subject to review and approval by Development Services and Parks & Recreation, prior to final plat approval.

Noxious Weeds

31. The developer shall provide a Weed Management and Revegetation Plan, appended to the Development Covenants and approved by the Missoula County Weed District, subject to review and approval by Development Services, prior to final plat approval.

Development Covenants

32. The developer shall submit final Development Covenants meeting the requirements of City Subdivision Regulations Section 5-020.14.K, subject to review and approval by Development Services, prior to final plat approval.
33. The developer shall include the following statements in the Development Covenants, subject to review and approval by Development Services, prior to final plat approval: Sections of the Development Covenants regarding common area maintenance, wood burning devices, weed control, agricultural operations, radon mitigation, basements, water rights, SID/RSID, and fire protection may not be amended or deleted without written approval by the governing body.

II. ANNEXATION FINDINGS OF FACT AND CONCLUSIONS OF LAW

Note: The findings of fact located in Section V. of this report, General Findings of Fact, are incorporated herein by reference.

Introduction

1. Development Services received a petition from Joe Dehnert of IMEG Corp., on behalf of property owner James D. Dougherty Family, LLC, for annexation of 18.37 acres into the City of Missoula and zoning upon annexation to Title 21 transect zones OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General – Open, T4-R Neighborhood General – Restricted, and T5 Mixed-Use Center.

Property Information

2. The subject property is adjacent to city limits to the north (Summit Beverage) and south (West End Homes Subdivision). (*Missoula County Property Information System*)

3. Upon annexation, the subject property would become part of City Council Ward 2 and the Captain John Mullan Neighborhood Council. (*City of Missoula Ward Map and Neighborhood Council Map*)
4. The subject property has frontage on Flynn Lane. The portion of Flynn Lane adjacent to the property and extending to Camden Street to the south has not been annexed into the City of Missoula. (*Missoula County Property Information System, Resolution No. 8655*)

Annexation Request

5. The property owners, James D. Dougherty Family, LLC, filed Petition No. 10156 requesting the annexation of the property. (*Annexation Petition*)

Annexation Policy

6. The subject property is within Annexation Area “A” on the City Annexation Policy Map. Areas designated as Annexation Area “A” largely meet the guidelines of the City’s Annexation Policy. Per the City Annexation Policy, the City should prioritize the annexation of areas located within Annexation Area “A”.
7. The subject property is within the Urban Growth Area and Utility Service Area. Per the City Annexation Policy, the City should prioritize the annexation of areas located within the Utility Service Area.
8. According to the Missoula County Property Information System, the area proposed to be annexed is adjacent to Missoula city limits on the northern and southern property boundaries. Per the City Annexation Policy, the City should prioritize the annexation of properties that contribute to the logical growth pattern of the City by creating orderly and contiguous municipal boundaries, as well as properties that would fill gaps left by previous annexations that created islands and non-contiguous boundaries. Annexation of the subject property would fill in a gap in city limits created by previous annexations.
9. Per the City Annexation Policy, the City should prioritize the annexation of areas that meet current city standards, including water, sewer, and transportation infrastructure, and equitably provide the same levels of service and infrastructure as other parts of the municipality with similar topography, land use, and population density. This is reflected in the recommended annexation and subdivision conditions of approval.

Growth Policy and Zoning

10. The Zoning and Growth Policy Findings of Fact in the above Section VI of this report are incorporated here by reference.
11. The City Annexation Policy states that any annexation by the City should be guided by the current City Growth Policy applicable to the area. The applicable regional plan is the Sxwtpqyen Neighborhoods Master Plan, which is an amendment to the Our Missoula Growth Policy 2035. (*City of Missoula Resolution No. 8487*)
12. Missoula County adopted the Sxwtpqyen Neighborhoods Master Plan and the Sxwtpqyen Neighborhoods Form Based Zoning Code. There are two current county zoning districts or Neighborhood Unit types for the subject property, the Town Center and Crossroads Center Neighborhood Unit types. Approximately 15.73 of the 18.73-acre property is within the Town Center Neighborhood Unit, so that county zoning designation applies to this property under Zoning Officer Opinion #23-03.
13. The requested zoning upon annexation to transect zones OS Open Space (2.6 acres), T3 Neighborhood Edge (1.06 acres), T4-O Neighborhood General – Open (4.56 acres), T4-R Neighborhood General – Restricted (1.92 acres) and T5 Mixed-Use Center (3.71 acres)

complies with the recommendations of the Sxwtpqyen Neighborhoods Master Plan, the Town Center Neighborhood Unit type, and Title 21.

14. The requested annexation and rezoning is contingent upon City Council approval of the Sapphire Place Subdivision preliminary plat and master site plan in order to comply with City regulations and avoid split zoning, which is prohibited per Title 21, Section 2.3.D.2.c. Staff recommends a condition of approval stating the annexation is contingent upon City Council approval of the subdivision preliminary plat and master site plan.

Airport Influence Area

15. The subject property is located within the Airport Influence Area Overlay, which is an overlay established to promote public health, safety, and general welfare, to protect the lives and property of users of the airport and of occupants of land in its vicinity, and to preserve the utility of the airport and the public investment in it.
16. Staff recommends a condition of approval requiring the applicant to obtain an aviation easement from the Airport Authority, in compliance with the Airport Influence Area Resolution.

Road Improvements, Non-Motorized Improvements, Transit, and Utility Infrastructure

Roads, Alleys, and Non-Motorized Transportation

17. Findings of fact for conditions of approval regarding roads, alleys, and non-motorized facilities are located in the Subdivision section of this report (below) and are incorporated here by reference.
18. In order to meet current City Standards and the Annexation Policy, staff recommends conditions of approval requiring the applicant to provide plans for and installation of improvements to all roads, alleys, and non-motorized facilities shown on the preliminary plat and plans. Additionally, staff recommends conditions of approval requiring additional right-of-way along Flynn Lane and additional easements and installation of a fire access road from Lot 9 to Roper Way, along the west boundary of Burnet Drive, and to provide an alley along the southern property boundary.
19. The road, alley, and non-motorized infrastructure within the proposed annexation area will equitably provide the same levels of service and infrastructure as other parts of the municipality with similar zoning if the recommended conditions of approval are imposed.

Transit

20. The nearest Mountain Line bus stop is located less than 600 feet from the northeastern corner of the subject property at the intersections of Mary Jane Boulevard and Veterans Way. This bus stop serves Route 11. City Public Works & Mobility staff will not be requiring the installation of bus stop facilities for this subdivision. (*Steve Reichert, City Public Works & Mobility*)
21. The subject property is within the walking boundary for Hellgate Elementary and Middle School. The nearest school bus stop serving Big Sky High School is located at the intersection of England Boulevard and Mary Jane Boulevard, approximate 0.5 miles from the southeast corner of the subject property (*Application Section B, Bus Routes Map*).
22. Per the City Annexation Policy, proposed annexation areas should be conditioned to join the Missoula Urban Transportation District.
23. In order to comply with the City Annexation Policy, staff recommends a condition of approval stating the applicant shall petition the property into the Missoula Urban Transportation District.

Fire Protection

24. In order to provide the same level of service and infrastructure as other parts of the municipality with similar zoning, including adequate protection from fire, staff recommends a condition of approval requiring the applicant to provide plans for fire suppression water flow and hydrant placement, prior to final plat approval. The staff recommended condition of approval requires the applicant to install fire hydrants prior to combustible construction.

Utilities

25. In accordance with City policies and following annexation, future development of the property must include approved design, installation, and connection to municipal water and sewer services. The Annexation Policy states the City should prioritize the annexation of areas that meet current city standards, including water and sewer infrastructure.
26. The subject property has no structures that are currently connected to city water or sewer. New construction and adaptive re-use of the historic home will be required to connect to city sewer and water. The application includes a water and sanitation report and utility construction plans.
27. The subject property is within the City's Utility Service Area.
28. Findings of fact for conditions of approval regarding utilities are located in the Subdivision section of this report and are incorporated here by reference.
29. In order to meet the Annexation Policy and current City Standards, staff recommends conditions of approval requiring the applicant to provide plans for and installation of water supply and sewage disposal facilities in accordance with City requirements.
30. The utility infrastructure within the proposed annexation area will equitably provide the same levels of service and infrastructure as other parts of the municipality with similar zoning if the recommended conditions of approval are imposed.

Statutory Requirements

31. Section 7-2-4211 MCA requires municipalities to include the full width of any public street or road right-of-way that are adjacent to the property being annexed.
32. The subject property is adjacent to Flynn Lane, a portion of which has not already been annexed into the City of Missoula (*Missoula County Property Information System*). In order to meet statutory requirements, staff recommends the portion of Flynn Lane along the subject property extending south to Camden Street be annexed into the City limits.
33. The City will meet the statutory requirements for a petition method annexation in regards to MCA 7-2-4601 and MCA 76-2-303 by considering the petition, adopting a resolution of intent to annex and rezone the property, holding a public hearing regarding the zoning upon annexation, and advertising public notice for at least 15 days prior to the public hearing. The final step for council will be to adopt a resolution to adopt, adopt with conditions, or deny the resolution to annex and rezone the property.

Zoning Upon Annexation

34. MCA 76-2-303 allows a municipality to conduct a hearing on the annexation in conjunction with a hearing on the zoning of the property proposed for annexation. MCA 76-2-303 outlines the three review criteria which may be considered for zoning upon annexation. The following are the three criteria and staff's assessment as to whether the annexation complies with the criteria. An annexation must comply with at least **one** of the criteria. The zoning district classification assigned at the time of annexation must:

a. Authorize land uses comparable to the land uses authorized by [the] county zoning [classification that applied to the property immediately before it was annexed in the city]; or

Staff Assessment

- i. The Missoula Board of County Commissioners and the Missoula City Council both adopted the Swxtpqyen Neighborhoods Form Based Zoning Code.
- ii. The current county zoning classification is Swxtpqyen Neighborhoods Town Center Neighborhood Unit type.
- iii. The proposed zoning districts (transects) comply with the Town Center Neighborhood Unit type.
- iv. The proposed city zoning districts are comparable to the county zoning because the county's zoning requirements at the time of development would be the same as the city's.
- v. The proposed zoning complies with MCA 76-303(3)(a)(i).

b. Authorize land uses that are consistent with [the] land uses approved by the Board of County Commissioners or the County Board of Adjustment; or

Staff Assessment

- i. The Missoula Board of County Commissioners and the Missoula City Council both adopted the Swxtpqyen Neighborhoods Master Plan and applied a Town Center Neighborhood Unit type to the subject property.
- ii. The proposed zoning complies with the Swxtpqyen Neighborhoods Master Plan and the Town Center Neighborhood Unit type.
- iii. The proposed city zoning districts and allowed land uses are comparable to land uses approved by the Board of County Commissioners.
- iv. The proposed zoning complies with MCA 76-303(3)(a)(ii).

c. Be consistent with the zoning requirements recommended in the growth policy [as set forth in the Swxtpqyen Neighborhoods Master Plan].

Staff Assessment

- i. The Swxtpqyen Neighborhoods Master Plan is the applicable regional plan (i.e. the applicable Growth Policy). The Master Plan recommends development based on neighborhood units and the subject property is located within the Town Center Neighborhood Unit type.
- ii. The proposed zoning complies with the Swxtpqyen Neighborhoods Master Plan and the Town Center neighborhood unit type.
- iii. Based on compliance with the criteria in MCA 76-2-303(3)(a)(iii), staff recommends annexation of the subject property and zoning upon annexation to OS Open Space, T3 Edge, T4-R Neighborhood General – Restricted, T4-O Neighborhood General – Open, and T5 Mixed-Use Center subject to the recommended conditions of approval.
- iv. If the City Council does not approve the request to annex the subject property and/or the zoning upon annexation of the subject property, the Resolution to Annex and the zoning upon annexation of the property shall become null and void, and the property shall revert to its original status in the County of Missoula.

III. ANNEXATION EXHIBITS AND ATTACHMENTS

Attachments

1. Resolution of Intent to Annex

Exhibits

1. Exhibit A Annexation Map

SAPPHIRE PLACE SUBDIVISION AND MASTER SITE PLAN

I. RECOMMENDATION

Staff recommends City Council **approve** the Sapphire Place Subdivision preliminary plat application, master site plan, and variance request, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

II. CONDITIONS OF SUBDIVISION APPROVAL

Streets, General

1. The following statement shall appear on the face of each plat, in the covenants, conditions, and restrictions, and on each instrument of conveyance, subject to review and approval by Public Works & Mobility and Development Services, prior to final plat approval: "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for future improvements and maintenance of Flynn Lane, Sapphire Lane, Roper Way, Burnet Drive, and Pine Butte Boulevard including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities, and may be used in lieu of their signatures on a SID petition." (5-050.3.AA, 5-050.3.BB, & 3-020.3.A.1, *City Subdivision Regulations*)
2. The developer shall provide a street signage plan and install street signage in accordance with the Manual on Uniform Traffic Control Devices, subject to review and approval by Public Works & Mobility and the Fire Department, prior to final plat approval. The signage plan shall include a name for the alley providing vehicular access to Lots 24 – 29. (3-020.4.H.2, *City Subdivision Regulations*)

Road and Alleys

3. The developer shall provide plans for and install half street improvements to Flynn Lane, a neighborhood bike street (two-way track), including dedication of public right-of-way, drive lane, curb and gutter, landscaped boulevard, street trees, stormwater facilities, and bicycle and pedestrian facilities as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks & Recreation, prior to final plat approval. (*City Subdivision Regulations Section 3-020 and Sxwtpqyen Form Based Zoning Code Division 6*)
4. The developer shall provide plans for and install improvements to Sapphire Lane, an urban secondary street, including two drive lanes, parking lane, curb and gutter, sidewalks, landscaped boulevard (includes landscaped parking islands and tree wells, with topsoil as specified in the Missoula City Public Works Standards and Specifications Manual), street trees, and stormwater facilities as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval. (*City Subdivision Regulations Section 3-020 and Sxwtpqyen Form Based Zoning Code Division 6*)
5. The developer shall provide plans for and install alleys within public access easements and rightsof-way as shown on the preliminary plat and plans, subject to review and approval by Public

Works & Mobility and City Fire, prior to final plat approval. (*City Subdivision Regulations Section 3-020 and Sxwtpqyen Form Based Zoning Code Division 6*)

6. The developer shall provide plans for and install improvements to Roper Way, an urban secondary street, including two drive lanes, parking lane, curb and gutter, sidewalks, landscaped boulevards (includes landscaped parking islands and tree wells, with topsoil as specified in the Missoula City Public Works Standards and Specifications Manual), street trees, and stormwater facilities as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval. (*City Subdivision Regulations Section 3-020 and Sxwtpqyen Form Based Zoning Code Division 6*)
7. The developer shall acquire an emergency fire access easement across a portion of Tract B of COS No. 6850 and extend a fire access road from Lot 9 to Roper Way as shown on the preliminary plat, or construct a fire apparatus turnaround on the Sapphire Place property, subject to review by Public Works & Mobility and City Fire, prior to final plat approval. (*Preliminary Plat, Road Construction Plans Sheet 11 of 18 and Cross Sections, and City Subdivision Regulations Section 3-020*)
8. The developer shall provide plans for and install improvements to Pine Butte Boulevard, a main street primary street, including two drive lanes, parking lanes, curb and gutter, boulevards, (includes landscaped parking islands and tree wells, with topsoil as specified in the Missoula City Public Works Standards and Specifications Manual), street trees, and sidewalk as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval. (*Section 3-020, City Subdivision Regulations & Division 6, Sxwtpqyen Form Based Zoning Code*)
9. The developer shall acquire and dedicate a public access easement and provide plans for and install half-street improvements for the eastern half of Burnet Drive, a neighborhood street, along Lot 33 to the intersection with Pine Butte Boulevard, including two drive lanes, parking lane, curb and gutter, landscaped boulevard, street trees, and sidewalk as shown on the preliminary plat and plans, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval. (*Section 3-020, City Subdivision Regulations & Division 6, Sxwtpqyen Form Based Zoning Code*)
10. The developer shall acquire additional public access easement and install an alley along the south property boundary, including a full connection to Burnet Drive, subject to review and approval by Public Works & Mobility and City Fire, prior to final plat approval. (*3-020, City Subdivision Regulations & Division 6, Sxwtpqyen Form Based Zoning Code*)

Non-Motorized Transportation

11. The developer shall provide plans for and install Flynn Trail through the Common Area, on the north side of Pine Butte Boulevard, and the west side of Flynn Lane, as shown on the preliminary plat and plans, and amend the existing right-of-way agreement if seeking reimbursement, subject to review and approval by Public Works & Mobility and Parks & Recreation, prior to final plat approval. The amendment to the right-of-way agreement shall address impact fee offsets/reimbursement for installation costs for these improvements, pursuant to Title 15. (*3020.15.F.1, City Subdivision Regulations*)
12. The developer shall provide plans for and installation of improvements to a mid-block pedestrian path within Open Space #5 and provide a 20-foot non-motorized public access easement, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval. (*Title 21, Section 2.4.A.3*)
13. The developer shall provide plans for and install improvements to the pedestrian path in Open Space #1 within a 20-foot non-motorized public access easement along the frontage of abutting

lots to the east, subject to review and approval by Development Services, Public Works & Mobility, and Parks & Recreation, prior to final plat approval. (*Variance Request #1*)

14. The developer shall construct a Trail Street within the existing 40-foot public right-of-way located immediately to the north of the subject property including a 12-foot multi-use path with 14-foot vegetated planting strips on both sides of the path, subject to review and approval of Public Works & Mobility and Parks & Recreation, prior to final plat approval. (*Application Materials Parkland Dedication Exhibit, Civil Construction Plans*)

Rights-of-Way and Easements

15. All proposed rights-of-way and easements shall be shown on the face of the plat and identified for their width and purpose, in accordance with Missoula City Public Works Standards and Specifications Manual, subject to review and approval by Public Works & Mobility, prior to final plat approval (*3-020.3.B & 3-060.1, City Subdivision Regulations*).

Transit

16. The developer shall petition for the property to be included in the Missoula Urban Transportation District, subject to review and approval by Development Services, prior to final plat approval. (*City Annexation Policy*)

Airport Influence Area

17. The developer shall obtain an aviation easement from the Airport Authority, in compliance with the Airport Influence Area Resolution, and present evidence of the easement, subject to review and approval by Development Services, prior to final plat approval. (*Airport Influence Area Resolution*)

Fire Protection

18. The developer shall provide plans for fire suppression water flow and hydrant placement, subject to review and approval by City Fire Department and Public Works & Mobility, prior to final plat approval. The developer shall install all fire hydrants prior to final plat approval. In the event the developer enters into an improvements agreement with the City of Missoula to postpone installation of certain improvements until after final plat approval, fire hydrants must be installed prior to combustible construction in the area the hydrants are intended to serve, subject to review and approval by City Fire Department and Public Works & Mobility. (*3-010.1.F, City Subdivision Regulations*)

Water Supply, Sewage Disposal, Stormwater Management, and Solid Waste

19. The developer shall provide plans for and installation of water supply, sewage disposal, stormwater management, and solid waste disposal facilities for review and approval by Public Works & Mobility, City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval. Construction of all appurtenant facilities shall be in accordance with City policies and agency approvals. (*City Subdivision Regulations Section 3-040, 5-020.11, 3010.5, and 3-070.1*)

Agricultural Water Rights

20. The developer shall dedicate on the final subdivision plat ditch or culvert easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities on the property to lands adjacent to or beyond the property boundaries in quantities and in a manner that is consistent with historic and legal rights. The language on the final plat shall also prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner. (*3-060.3, City Subdivision Regulations*)

21. The developer shall present documentation that the water rights have been removed from the property and provide a statement on the face of the final plat and in the Development Covenants as follows: "Water rights have been removed from the property and lot owners are notified that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable," subject to review and approval by Development Services, prior to final plat approval. *(MCA 76-3-504(1)(j) and 3-060.4, City Subdivision Regulations)*

Ground Water

22. The developer shall include the following note on the final plat and in the Development Covenants: "Basements shall be prohibited until such time as the owner provides sufficient evidence to the City of Missoula Public Works & Mobility Department that no threat to the public safety or loss of property will result in those areas proposed for basements," subject to review and approval by Development Services and Public Works & Mobility. *(3-010.2 City Subdivision Regulations)*

Historic Resources

23. The developer shall submit plans for the restoration of and modifications to the historic icehouse and residence for review and approval by Development Services and the City Historic Preservation Officer prior to any structural alterations and prior to final plat approval. *(3-010.8 City Subdivision Regulations)*
24. The applicant shall submit an application to the State Historic Preservation Office to individually list/register the historic icehouse and residence prior to any structural alterations and prior to final plat approval. *(3-010.8 City Subdivision Regulations)*
25. Any alteration or demolition which affects the exterior appearance of either the historic icehouse or residence shall require a historic preservation permit prior to issuance of a building permit. *(Title 20 Section 20.85.085, 3-010.8 City Subdivision Regulations)*

Natural Resources

26. The developer shall submit plans for the preservation and maintenance of the existing orchard and pine trees in the vicinity of the historic structures in Open Space #4, as presented in the Master Site Plan Parkland Dedication and Conceptual Landscape Plan exhibits, subject to review and approval of Development Services and Parks & Recreation, prior to final plat approval. *(3-010.8 City Subdivision Regulations)*

Landscaping

27. The developer shall provide plans for boulevard landscaping and landscape plans for all streets, trails, parking lots, and open space, common area, and parkland areas, subject to review and approval by Parks and Recreation, prior to final plat approval. The property owner shall be responsible for obtaining boulevard landscaping permits prior to building permit approval and for installation of boulevard landscaping adjacent to development prior to certificate of occupancy, subject to review and approval of Parks and Recreation, prior to final plat approval. *(5-050.5.C City Subdivision Regulations)*

Parkland

28. The developer shall provide plans for and install park improvements in all open space and parkland areas including but not limited to grading, application of topsoil, irrigation systems, turf grass and dryland seed or sod, and installation of park trees, subject to review and approval by Parks & Recreation, prior to final plat approval. *(5-020.14.H City Subdivision Regulations)*
29. The developer shall provide maintenance plans for common areas and mutually controlled facilities per Section 5-020.14.K of the City Subdivision Regulations, subject to review and

approval by Development Services and Parks & Recreation, prior to final plat approval.
(5020.14.H City Subdivision Regulations) Noxious Weeds

30. The developer shall provide a Weed Management and Revegetation Plan, appended to the Development Covenants and approved by the Missoula County Weed District, subject to review and approval by Development Services, prior to final plat approval. (5-010.14.K City Subdivision Regulations)

Development Covenants

31. The developer shall submit final Development Covenants meeting the requirements of City Subdivision Regulations Section 5-020.14.K, subject to review and approval by Development Services, prior to final plat approval.
32. The developer shall include the following statements in the Development Covenants, subject to review and approval by Development Services, prior to final plat approval: Sections of the Development Covenants regarding common area maintenance, wood burning devices, weed control, agricultural operations, radon mitigation, basements, water rights, SID/RSID, and fire protection may not be amended or deleted without written approval by the governing body. (5-010.14.K and 3-010.2 City Subdivision Regulations and Variance Request)

III. SUBDIVISION FINDINGS OF FACT

A. ZONING AND COMPREHENSIVE PLAN COMPLIANCE

Findings of Fact:

1. City Subdivision Regulations Section 3-010.1 requires that the subdivision be reviewed for compliance with the Sxwtpqyen Neighborhoods Master Plan which is the applicable growth policy for the area.
2. The findings of fact located in Section V., the General Findings of Fact section of this report, are incorporated herein by reference.
3. The findings of fact located in Section VI., the Zoning and Growth Policy Findings of Fact section of this report, are incorporated herein by reference.
4. Section 3-010.B of the City Subdivision Regulations states that subdivision plats must comply with the Missoula City Zoning Ordinance. The applicable Missoula City Zoning Ordinance is Title 21.

Conclusion of Law:

1. The subdivision complies with the Sxwtpqyen Neighborhoods Master Plan, the Town Center Neighborhood Unit type, and Title 21 Zoning Code, subject to the recommended conditions of approval.
2. Per State Law MCA 76-1-605(2)(b), no land use proposal shall be conditioned or denied based solely upon the lack of compliance with the Growth Policy.

B. PRIMARY CRITERIA COMPLIANCE

CRITERION A AND B: IMPACT ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

Agriculture

1. Section 5-020.6.A of the City Subdivision Regulations states the subdivider must demonstrate the subdivision proposal will have no adverse impacts on agriculture, or must

identify the adverse impacts and describe proposed avoidance and mitigation efforts that will be used to mitigate the adverse impacts. The regulations state mitigation of adverse impacts will not be based on a loss of agricultural soils, and set-aside of land or monetary contribution for the loss of agricultural soils will not be required.

2. The application packet states the subject property has periodically been used for hay production. (*Pg. 10, Subdivision Application*)
3. The Natural Resources Conservation Service (NRCS) Soil Survey for Missoula County shows 100% of the subject property has a soil type classified as Prime Farmland if Irrigated. The remaining portion has a soil type classified as Farmland of Local Importance. (*Pg. 11, Subdivision Application; NRCS Soils Report_Updated*)
4. Surrounding parcels contain agricultural uses. The subdivider has included language in the covenants to apprise future residents of the adjacent agricultural operations and the potential for noise, dust, and odors. (*Proposed Draft Covenants*)

Agricultural Water Users

5. Section 5-020.6.B of the City Subdivision Regulations states in areas where agricultural water user facilities exist on the subject property or adjoin the property, the application packet must identify the agricultural water user, describe any proposed changes to the agricultural water use, and describe alterations to availability of water.
6. There is an irrigation ditch located on the subject property. The irrigation ditch is proposed be relocated underground in culverts, and within a proposed irrigation ditch easement. (*Pg. 11, Subdivision Application*)
7. There are multiple surface water and groundwater rights for stock water and irrigation associated with the subject property. The subdivider intends to sever water rights from the land. The water rights will be retained by James D. Dougherty Family, LLC, but have not been severed from the land at this time. (*Pg. 11, Subdivision Application; Buy Sell Agreements*)
8. Section 3-060.3 of the City Subdivision Regulations requires the subdivider to provide irrigation easements to allow for delivery of water for irrigation to persons and land legally entitled to the water.
9. Section 3-060.4 of the City Subdivision Regulations states irrigation easements are not required if the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights and if the subdivider discloses and notifies potential buyers of lots that the land is classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable. If removing water rights, the fact that the water rights have been removed must be denoted on the face of the plat. (*MCA 76-3-504(1)(j); Section 3-060.4, City Subdivision Regulations*)
10. Staff recommend a condition of approval requiring the subdivider to present documentation that the water rights have been removed from the property and to provide a statement on the face of the final plat and in the Development Covenants as follows: "Water rights have been removed from the property and lot owners are notified that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable." (*MCA 76-3-504(1)(j); Section 3-060.4, City Subdivision Regulations*)

Conclusions of Law:

1. The subdivision would prevent use of productive soils for agriculture. However, the property is located within the Sxwtpqyen Neighborhoods Master Plan area which anticipates urban development.
2. No impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision, if the recommended conditions of approval are imposed.

CRITERION C: IMPACT ON LOCAL SERVICES

1. Section 5-020.6.C of the City Subdivision Regulations states the subdivider must identify services and evaluate the impacts on those services including transportation elements, utilities, water supply, sewage disposal, and solid waste disposal, schools emergency services, and information pertaining to residential units and taxation.
2. Section 3-010.5 of the City Subdivision Regulations states the subdivision must be served by adequate public facilities and services such as transportation systems (including nonmotorized), parking, police and fire protection, drainage structures, solid waste disposal, water supply, and sanitary sewage disposal; or the subdivider will provide adequately for such services.

Transportation Elements

Findings of Fact:

3. The subdivider proposes to access the subdivision via Flynn Lane. Two new streets, Sapphire Lane and Pine Butte Boulevard, are proposed intersect with Flynn Lane, providing connection to the rest of the development. Roper Way is planned to connect the subdivision to future development to the north and Burnet Drive is proposed to connect the subdivision to West End Homes Subdivisions to the south. (*Preliminary Plat, West End Homes Subdivision Files*)
4. The subject property is located within the Mullan BUILD project area. Flynn Trail is planned to be improved as part of the Mullan BUILD project. The City received federal funds to pay for a portion of the Mullan BUILD improvements. The Sxwtpqyen Area Special Transportation Impact Fee was adopted to pay for the remainder of the improvements. (*City of Missoula Resolution 8502*).
5. A segment of Flynn Trail is proposed to be built within and along the Subdivision, starting at the western boundary, going south until turning east along the Pine Butte Boulevard right-of-way, extending to the eastern boundary of the subject property, then along Flynn Lane. (*Mullan BUILD Website, Application Section D, Civil Construction Plans*).
6. Section 3-020.3.A.1 of the City Subdivision regulations requires each public road to provide for construction and perpetual maintenance of the road. Sections 5-050.3.AA and .BB of the City Subdivision regulations requires the Special Improvement District (SID) statement to be provided on the plat and on each instrument of conveyance for future street and related improvements that benefit the subject property. Staff recommends a condition of approval requiring a SID/RSID statement on the plat and in the Development Covenants for future improvements to Flynn Lane, Sapphire Lane, Roper Way, Burnet Drive, and Pine Butte Boulevard.
7. Section 3-020.4.H.2 of the City Subdivision regulations requires street signs and traffic control devices to be approved by the City Engineer and consistent with the Manual on Uniform Traffic Control Devices adopted by the Montana Department of Transportation. Preliminary plans for street signs and traffic control devices are provided on the preliminary construction plans. Staff recommends a condition of approval requiring the subdivider to

provide a street signage plan and installation of street signage in accordance with the Manual on Uniform Traffic Control Devices, subject to review by Public Works & Mobility and City Fire.

8. Section 3-020.12 requires street names to be reviewed and approved by City Council. Preliminary street names are provided on the preliminary plat.
9. Section 3-020.4.J states the City Engineer may require a traffic study for subdivisions that will generate 200 or more average daily trips. A traffic analysis was completed as part of the Mullan BUILD project and further analysis is not required. (*Mullan BUILD Technical Memorandum #4*)
10. Section 3-020.2 of the City Subdivision Regulations requires improvements to roads within and adjacent to a subdivision. Title 21, Section 6.3.A.3 states streets shall adhere to the pre-approved new or improved street section provided in Section 6.7. Title 21, Section 1.3.E states development shall comply with the City Subdivision Regulations unless a conflict exists between the Subdivision Regulations and the Form Based Zoning Code, in which case, unless there is a public health and safety issue, the Form Based Zoning Code applies.
11. Title 21, Section 6.3.A.1 states some dimensional flexibility is permitted for street types to account for varying circumstances. However the streets shall be designed to have all the basic functional characteristics of the street type as provided in the Form Based Code.

Flynn Lane

12. Flynn Lane adjacent to the subject property is functionally classified as a Neighborhood Bike Street (Two-Way Track). Title 21, Section 6.7.O shows Neighborhood Bike Streets (Two-Way Track) require a minimum 60-foot-wide right-of-way that includes two 10-foot-wide drive lanes, curb and gutter, a 12-foot-wide two way track on one side, 6-foot sidewalks, 8-foot boulevards, and bioswales.
13. Flynn Lane adjacent to the subject property does not meet the standards in Title 21, Section 6.7.O for a Neighborhood Bike Street (Two-Way Track).
14. In order to accommodate all of the required components of a Neighborhood Bike Street (Two-Way Track), additional right-of-way of varying width is necessary along the property. Staff recommends a condition of approval requiring the subdivider to dedicate additional right-of-way, in conjunction with other improvements to Flynn Lane necessary to meet the requirements of the Form Based Code for a Neighborhood Bike Street (Two-Way Track).

Urban Secondary Streets

15. Sapphire Lane and Roper Way are functionally classified as Urban Secondary Streets. Title 21, Section 6.7.F shows Urban Secondary Streets require a minimum 45-foot-wide right-of-way width that includes two 10-foot-wide drive lanes, curb and gutter, a parking lane on one side alternating with tree wells, 6-foot-wide sidewalks, and stormwater facilities.
16. After consulting with the City Street Cleaning department, the Urban Secondary Street design provided in Title 21, Section 6.7.F was determined to not be compatible with the City's equipment used to sweep streets. To accommodate necessary maintenance of these streets, the parking stalls and tree wells are proposed to be grouped rather than alternating, to allow for a more gradual transition between the parking stalls and tree wells that is more accommodating to street cleaning and maintenance. This design change would provide all of the elements of Urban Secondary Streets, but in a slightly different configuration as permitted under Title 21, Section 6.3.A.1.

17. In order to meet the City Subdivision Regulations and Title 21, Section 6.7.L, staff recommends conditions of approval requiring the subdivider to provide plans for and install improvements to Urban Secondary Streets Sapphire Lane and Roper Way as discussed above.

Burnet Drive

18. Burnet Drive is functionally classified as a Neighborhood Street. Title 21, Section 6.7.L shows Neighborhood Streets require a minimum 55-foot-wide right-of-way width that includes two 10-foot-wide drive lanes, curb and gutter, a 7-foot-wide parking lane on one side, 6-foot-wide sidewalks, 8-foot-wide boulevards, and stormwater facilities.
19. Burnet Drive is planned to connect this development to West End Homes, a residential subdivision located immediately to the south of the subject property, when that subdivision is developed. Proposed improvements for Burnet Drive in the Sapphire Place Subdivision include acquisition of additional public access easement on land adjacent to the west of the subject property, as well as installation of street improvements for the eastern half of Burnet Drive along Lot 33 to the intersection with Pine Butte Boulevard. (*Master Site Plans and Application Section D, Civil Construction Plans*).
20. In order to meet the City Subdivision Regulations and Title 21, Section 6.7.L, staff recommends a condition of approval requiring the subdivider to acquire additional easement and provide plans for and install two drive lanes, a parking lane, curb and gutter, landscaped boulevard, street trees, and a sidewalk, prior to final plat approval. Additionally, staff recommends a condition of approval to connect Burnet Drive to the alley proposed to be located along the south edge of the subdivision, thereby providing access to Lots 33 – 39 and connecting Burnet Drive to Flynn Lane.

Pine Butte Boulevard

21. Pine Butte Boulevard is classified as a Main Primary Street. Title 21, Section 6.7.L shows Neighborhood Primary Streets require a minimum of a 76-foot-wide right-of-way width that includes two 10-foot-wide drive lanes, curb and gutter, 8-foot-wide parking lanes on both sides, 12-foot-wide sidewalks, tree wells every 35 feet, and stormwater facilities. (*Application Section A, Master Site Plans*)
22. The Flynn Trail, part of BUILD Grant project connecting the future Grant Creek Trail to Hellgate Elementary School, is proposed to be routed within the Pine Butte Boulevard right-of-way. To meet the requirements of a trail in the Form Based Code, the applicant is proposing a 12-foot paved shared use path and a 10-foot boulevard to separate the trail from the street. (*Application Section D, Civil Construction Plans*)
23. In order to meet the City Subdivision Regulations and Title 21, Section 6.7.L, staff recommends condition of approval requiring the subdivider to provide plans for and install improvements for Pine Butte Boulevard and a segment of the Flynn Trail as proposed in the subdivision application materials prior to final plat approval.

Alleys

24. Title 21, Section 6.3.F states “a continuous network of alleys and rear lanes is desirable to serve as the primary means of vehicular ingress to individual lots. Such networks are mandatory in the T5, T4-O, and T4-R Transect Zones, and encouraged in the T3 Transect Zone.”
25. The subdivision provides a continuous network of alleys that would provide access to the lots. The proposed subdivision complies with Title 21, Section 6.3.F.

26. In order to meet Title 21 Section 6.3.V, staff recommends a condition of approval requiring plans for and installation of improvements to alleys including paving and public access easements and rights-of-way, prior to final plat approval. Related conditions of approval require easement acquisition and extension of an alley along the southern property boundary from Burnet Drive to Flynn Lane and an extension of the alley/rear lane that will serve as an emergency fire access for Lots 1- 9 that connects Lot 9 to Roper Way, unless a Fire Department approved turnaround is approved and installed.

Non-Motorized

27. Improvements to Flynn Trail were designated with the Mullan BUILD project. Trail improvements are to be funded through the Sxwtpqyen Area Special Transportation Impact Fees. The right-of-way agreement states the City will install improvements as funding becomes available, but that the subdivider may install improvements. Section 3-020.15.F.1 of the City Subdivision Regulations requires subdividers to construct trails depicted in local or neighborhood plans.
28. The City will not have funding available to install improvements to Flynn Trail in time for final plat approval. In order to meet Section 3-020.15.F.1 of the City Subdivision Regulations, staff recommends a condition of approval requiring the subdivider to install Flynn Trail from the west property boundary to and along Flynn Lane, and to amend the existing right-of-way agreement if seeking reimbursement, prior to final plat approval. The amendment to the right-of-way agreement will address offsets to impact fees for installation costs for secondary improvements incurred by the subdivider, pursuant to Title 15.
29. A 40-foot public right-of-way is located immediately to the north of the subject property. The application materials show the developer plans to build a Trail Street within this right-of-way, which includes 12-foot wide multi-use path with 14-foot planting strips on both sides of the trail. Staff recommends a condition of approval to ensure the Trail Street gets built. (*Parkland Dedication Exhibit, Civil Construction Plans*)
30. Title 21, Section 2.4.A.3 requires any block face within the T3, T4-O, T4-R, and T5 transect zones that exceeds 600 feet in length to contain a mid-block pedestrian access of at least 12 feet in width. The northernmost block containing Lots 1 – 9 is approximately 760 feet wide, according to the preliminary plat. In order to comply with Title 21 zoning code, staff recommends a condition of approval requiring the subdivider to provide plans for and install a mid-block pedestrian path between Lots 5 and 6 within a common area and a public nonmotorized public access easement, prior to final plat approval.
31. Section 3-020.15.B.1 of the City Subdivision Regulations requires the subdivision to provide active transportation facilities that provide continuous access to all lots within the subdivision and access to adjoining developments. The subdivision application packet shows sidewalks along all street frontages within the subdivision (*Grading, Drainage, and Road Plans*). Staff recommend conditions of approval requiring installation of sidewalks for all streets.
32. The subdivider is requesting a variance to Section 3-030.1.C.3 of the City Subdivision Regulations to create lots which do not abut a public or private street or road. See the variance request section of this report for more information. Lots applicable to the variance front Open Space #1 and the Flynn Trail rather than streets (*Preliminary Plat*). In order to comply with Section 3-020.15.B.1 of the City Subdivision Regulations requiring active transportation facilities to all lots, staff recommends conditions of approval requiring plans for and installation of improvements to the pedestrian paths within these open spaces along the frontage of abutting lots.

Transit

33. Section 3-020.4.G of the City Subdivision Regulations states when development is adjacent to or within one quarter mile of an established public transit or school bus route, the subdivider may be required by the City Engineer to construct bus stop facilities along with accessible routes, meeting ADA standards, to those facilities.
34. City Engineering (Public Works & Mobility) will not be requiring the installation of bus stop facilities for this subdivision. The nearest Mountain Line bus stop is located less than 600 feet from the northeast corner of the subject property at the intersections of Mary Jane Boulevard and Veterans Way. This bus stop serves Route 11. (Application *Section B, Bus Route Map*).
35. The subject property is not within the Missoula Urban Transportation District. A staff recommended condition of approval is to require the developer to petition the district to annex the property as per the City's Annexation Policy.
36. The subject property is within the walking boundary for Hellgate Elementary and Middle School. The nearest school bus stop serving Big Sky High School is located at the intersection of England Boulevard and Mary Jane Boulevard, approximately 0.5 miles from the southeast corner of the subject property. (Application *Section B, Bus Routes Map*)

Conclusions of Law:

1. The Sapphire Place Subdivision and Master Site Plan will meet the road improvement and non-motorized facility standards in the Missoula City Subdivision Regulations and Title 21 Form Based Zoning Code if the recommended conditions of approval are imposed.
2. The Sapphire Place Subdivision and Master Site Plan provides active transportation facilities that provide safe routes to bus stops, open space, other neighborhoods, and all lots within the subdivision in compliance with Section 3-010.7 and 3-020.15.B.1.b of the City Subdivision Regulations if the recommended conditions of approval are imposed.

Rights-of-Way and Easements

Findings of Fact:

1. Section 3-020.3.B of the City Subdivision Regulations requires all streets within a subdivision to be dedicated public right-of-way or, at the City Engineer's discretion, may be a private street and public access with private maintenance easement. Title 21, Section 2.3.D.2.e states new streets and alleys/rear lanes shall be dedicated to the City and publicly owned. Section 3-060.1 of the City Subdivision Regulations requires easements to be provided for utilities, drainage, watercourse, channel, ditch, stream, vehicular, and pedestrian access.
2. All streets and alleys in the subdivision are proposed to be dedicated public right-of-way or within public access easements. All utilities and drainage facilities are located within easements (*Preliminary Plat, Grading, Drainage, and Civil Construction Plans*).
3. In order to comply with Sections 3-020.3.B and 3-060.1 of the City Subdivision Regulations and Missoula City Public Works and Specifications Manual, staff recommend a condition of approval requiring all proposed rights-of-ways and easements to be shown on the face of each plat and identified for their width, purpose, and the recorded book and page numbers.

Conclusions of Law:

1. The Sapphire Place Subdivision will meet the easement and right-of-way requirements of Sections 3-020.3.B and 3-060.1 of the City Subdivision Regulations, and Title 21, Section 2.3.D.2.e, if the recommended conditions of approval are imposed.

Drainage

Findings of Fact:

1. Section 3-040 of the City Subdivision Regulations provides minimum standards for site grading and control of stormwater runoff.
2. Section 3-040.2.E of the City Subdivision Regulations states all drainage systems must meet the minimum standards of the Montana Department of Environmental Quality (DEQ), as required by MCA Title 76, Chapter 4 and 5, Part 1, as amended, and all applicable state and local regulations.
3. The subdivision application includes a Preliminary Grading Drainage Engineering Design Report that evaluates pre- and post-development conditions. Additionally, a Preliminary Stormwater Prevention Pollution Plan has been provided (*Grading, Drainage, and Road Plans*). Stormwater will be managed using drywell sumps, shallow detention ponds, and a storm water pond (*Pg. 1, Preliminary Grading Drainage Engineering Design Report*).
4. Title 21, Section 4.7.B.1 requires the use of light imprint storm drainage methods. The subdivision proposes to utilize gutters, bioswales, and detention ponds (*Preliminary Grading Drainage Engineering Design Report; Grading, Drainage, and Road Plans*).
5. Section 5-020.11 and 3-040 of the City Subdivision Regulations requires the subdivider to submit a complete grading and drainage plans showing proposed grade of streets, proposed drainage facilities, and a storm water pollution prevention plan for all lots, blocks, and other areas meeting Montana Department of Environmental Quality standards, subject to the review and approval of the City Engineer. All drainage facilities must be constructed in accordance with the approved plans.
6. In order to comply with Section 5-020.11 of the City Subdivision Regulations, staff recommends a condition of approval requiring the subdivider to provide plans for and installation of grading, drainage, and stormwater facilities, subject to review and approval by Montana Department of Environmental Quality and Public Works & Mobility, prior to final plat approval.

Conclusions of Law:

1. The Sapphire Place Subdivision will meet the grading and drainage standards of the Missoula City Subdivision Regulations and the Montana Department of Environmental Quality, as well as the light imprint storm drainage requirements of Title 21 Zoning Code, if the recommended conditions of approval are imposed.
2. Final grading, drainage, and stormwater plans will be reviewed and approved by the City Public Works & Mobility Department prior to final plat approval if the recommended conditions of approval are imposed.

Water Supply, Sewage Disposal, and Solid Waste

Findings of Fact:

1. The subject property is within the Utility Services Area Boundary. (*City Central Maps*)
2. Section 3-010.5 of the City Subdivision Regulations requires subdivisions to be served by adequate public facilities and services including water supply, sewage disposal, and solid waste disposal.
3. Utility main extensions are planned from existing mains located in Flynn Lane. The subdivision application includes a water and sanitation report meeting the City's

requirements for this stage of the review process. (*Preliminary Construction Plans; Water and Sanitation Report*)

4. In order to comply with Section 3-010.5 of the City Subdivision Regulations, staff recommends a condition of approval requiring the subdivider to provide plans for and installation of water supply and sewage disposal facilities for review and approval by Public Works and Mobility, City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval.
5. Section 3-070.1 of the City Subdivision Regulations states the means for solid waste disposal is subject to approval of the City Council. Republic Services is expected to provide solid waste disposal service to the subdivision (*Pg. 26, Subdivision Application*). Staff recommends a condition of approval requiring the subdivider to submit plans for solid waste disposal for review and approval by City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval.

Conclusions of Law:

1. Public sewer and water services are available to the subdivision and will be in compliance with the City Subdivision Regulations, if the recommended conditions of approval are imposed.
2. Solid waste disposal service will be available to the subdivision and will be in compliance with the City Subdivision Regulations, if the recommended conditions of approval are imposed.
3. Review of water supply, sewage disposal, and solid waste is under jurisdiction of state and local health authorities under the Montana Sanitation and Subdivision Act.

Parks and Recreation

Findings of Fact:

1. Title 21, Section 2.1.C requires dedication of open space (parkland) equal to 11% or 0.02 acres per dwelling unit, to a maximum of 10 dwelling units, whichever is greater. The open space requirements are calculated based on the maximum allowable densities of each zoning district within the subdivision. The methods for calculation are clarified in a 2022 Zoning Officer Opinion. The total parkland dedication required in this subdivision is 2.2 acres. (*Master Site Plan, Parkland Dedication Exhibit, Zoning Officer Opinion #22-04*).
2. City Subdivision Regulations Section 3-080.11.B requires that City Council waive parkland dedication for areas that provide long-term protection of cultural, historical, and natural resources. The applicant is proposing to use 1.3 acres of the parkland dedication to preserve historic and natural resources existing on site.
3. Historic and natural resources on the site include the Dougherty Ranch residence, an icehouse, fruit orchard, and some of the largest pine trees in the Missoula Valley. The application materials include a historic evaluation of the Dougherty Ranch Site, which documents the site and structures. The evaluation indicates the Montana State Historic Preservation Officer found the site is eligible for inclusion on the National Register of Historic Places. Staff recommends a condition of approval requiring the developer submit an application to the State Historic Preservation Office to individually list/register the historic structures. (*Application Section D, Cultural Resource Inventory, Correspondence with City Parks & Recreation*)

4. The developer plans to renovate-in-place and re-use the residence, turning it into a duplex, and restore and re-use the icehouse. The application indicates that adaptive re-use of the structures is feasible. *(Pg. 14 of Subdivision Application, Master Site Plans)*
5. Title 20 Section 20.85.085 requires historic preservation permits for alterations to exteriors of historic structures. Staff recommends conditions requiring plan submittal and obtaining an historic preservation permit prior to exterior alterations of the icehouse or residence.
6. The Master Site Plan Parkland Dedication exhibit shows 4 open spaces totaling 2.6 acres that are intended to meet the parkland dedication requirements, while 2.2 acres of parkland are required. Open Space #4, in combination with Lot 21 where the residence and icehouse are located, provides for the protection and preservation of significant historic and natural resources. City Parks and Recreation staff have found Open Space #1, 2, and 3 also meet the parkland dedication requirements, subject to conditions of approval. *(Master Site Plans, Agency Correspondence)*
7. Staff recommends a condition of approval requiring plans for and installation of improvements to all Open Spaces, including but not limited to: grading, application of topsoil, installation of commercial grade irrigation system, installation of turf grass and dryland seed or sod, and installation of park trees in compliance with Section 5-020.14.H of the City Subdivision Regulations.
8. Staff recommend a condition of approval requiring the subdivider to provide maintenance plans for common area per Section 5-020.14.K.10 of the City Subdivision Regulations which requires a maintenance program for common area and mutually controlled facilities.
9. Section 5-050.5.C of the City Subdivision Regulations requires the subdivider to submit a boulevard landscaping plan. For findings of fact regarding installation of boulevards, see the roads section of this report. Preliminary plans for boulevard landscaping are provided in the preliminary construction plans. Staff recommends a condition of approval requiring the subdivider to submit final plans for boulevard landscaping, prior to final plat approval. For boulevards adjacent to development lots, boulevard landscaping installation is the requirement of the lot owner, prior to Certificate of Occupancy. Staff recommend a condition of approval requiring the subdivider to include a note in the Development Covenants apprising future owners of this requirement.

Conclusion of Law:

1. Open Space (parkland) dedication is required in this subdivision in accordance with Title 21 Zoning Code and the City Subdivision Regulations. The subdivision, as proposed, will meet the open space dedication requirements if the recommended conditions of approval are imposed.
2. City Subdivision Regulations require plans for and installation of boulevard landscaping, which will be reviewed and approved prior to final plat approval and installed as per City policies, if the recommended conditions of approval are imposed.

Schools

Findings of Fact

1. Future school-age residents of this subdivision will be eligible to attend Hellgate Elementary, Hellgate Middle School, and Big Sky High School. *(Pg. 30-31, Subdivision Application)*
2. No additional comments were received following request for agency comment at the time of sufficiency review. *(Application Section E – School Inquiry)* Conclusion of Law:

1. No adverse impacts to schools requiring mitigation have been identified.

Fire Department

Findings of Fact:

1. The Missoula City Fire Department will serve the subdivision. The nearest station is located approximately 7 miles from the subject property. (*Pg. 31, Subdivision Application*)
2. Subdivision Regulations Section 3-070.1 requires that water supply for fire protection be provided via a public or community water system with 1,000 gallons per minute minimum flow, or via residential sprinkler systems.
3. Water supply for fire protection for this subdivision is planned to be supplied via new fire hydrants. A fire hydrant layout exhibit was provided with the subdivision application.
4. In order to comply with Section 3-070.1 of the City Subdivision Regulations, staff recommends a condition of approval requiring the subdivider to provide plans for fire suppression water flow and hydrant placement for review and approval by Public Works & Mobility and City Fire, prior to final plat approval.
5. The Missoula City Fire Department requires a street signage plan and an addressing system to be developed that conforms to the addressing requirements of the City. All new buildings are assigned an address at the time of building permit approval. A condition of approval is recommended to address signage standards. (*3-010.1.F, City Subdivision Regulations*).

Conclusion of Law:

1. Fire service is available to the subdivision if the recommended conditions of approval are imposed.

Law Enforcement

Findings of Fact:

1. Upon annexation, the subdivision will be located within the jurisdiction of the Missoula Police Department. The police station is located approximately 6 miles from the site. (*Pg. 31, Subdivision Application*)
2. The Missoula Police Department did not provide comments on the subdivision or annexation requests.

Conclusion of Law:

1. Law enforcement service is available to the subdivision.

CRITERIA D, E AND F: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT

Findings of Fact:

Natural Environment

1. City Subdivision Regulations Section 5-020.6.D states the subdivider must identify the resources and evaluate the subdivision's likely impacts on those resources including adjacent public lands, cultural resources, hydrological characteristics, soil characteristics, and vegetative cover types.
2. The subject property is not adjacent to public lands containing natural resources (*Pg. 12, Subdivision Application*).

3. The subject property does not contain any natural surface water features, riparian vegetation, wetlands, critical plant communities, or steep slopes (*Section B, National Wetlands Inventory Map, Vegetation Exhibit, Section D Biological Assessment, Cumulative Effects Analysis, and Aquatic Resources Report, Pgs. 12 & 19, Subdivision Application*). The subject property is located within floodplain designation Zone X, area of minimal flood hazard (*FEMA Map Service Center*).
4. Subdivision Regulations Section 3-010.1F requires the subdivision to comply with other regulations applicable to the land proposed for subdivision.
5. The Missoula County Noxious Weed Management Plan adopted by Resolution 2012-063 requires a weed management plan as part of subdivision plans.
6. The application packet includes a weed management and revegetation plan. The subject property currently contains bare soil intermixed with cover crop and noxious weeds. (*Section B, Vegetation Exhibit*) The weed management plan recommends herbicide treatments for the noxious weeds and revegetation of disturbed areas with red fescue and perennial rye grass.
(*Approved Weed Management and Revegetation Plan*)
7. Staff recommend a condition of approval requiring the subdivider to provide and append the Weed Management and Revegetation Plan to the Development Covenants, prior to final plat approval.
8. A Biological Assessment was conducted as part of the Mullan BUILD Project and was included in the application packet. (*HDR Biological Assessment*) The subject property is within the Mullan BUILD area which was assessed for environmental impacts prior to development of the Sxwptqyen Master Plan and Title 21 Form Based Zoning Code for the area.
9. The application packet indicates the property may be in the range of Grosbeak, Western Spotted Skunk, Rufous Hummingbird, Little Brown Myotis, North American Porcupine, American Wolverine, Grizzly Bear, Yellow-billed Cuckoo, Loggerhead Shrike, Bald Eagle, Golden Eagle, Columbian Ground Squirrels, Red Fox, Coyote, White-tailed Deer, and Raccoon, among other species. The HDR Biological Assessment indicates construction activities in the project area would be likely to have no impact on threatened, endangered, or listed species Canada Lynx, Grizzly Bear, Wolverine, or Yellow-billed Cuckoo. The covenants include information for lot purchasers about living with wildlife and advises lot owners of potential issues associated with wildlife concerning pets, garbage, and other potential areas of conflict. (*Pg. 21, Subdivision Application; HDR Biological Assessment, Proposed Draft Covenants*)
10. The parcel contains the original homestead buildings associated with the expansion of European descendants into the area. The original house and icehouse were identified as being historically significant. Staff is recommending a condition requiring that the homestead and icehouse be preserved in compliance with Article 3-10.8 City Subdivision Regulations.
11. The Parcel contains several trees that are unique in their age, quality, and size. At the recommendation of the Urban Forester and in compliance with Article 3-10.8 City Subdivision Regulations of the Subdivision regulations, staff is recommending a condition requiring that the trees that were identified as being significant natural resources, be preserved and maintained.
12. Article 3-080.11.B requires that City Council waive parkland dedication for areas that provide long-term protection of cultural, historical, and natural resources. The applicant is

proposing to use 1.3 acres to preserve the historic and natural resources existing on site. Additional detail regarding parkland dedication is provided above in the Parks and Recreation section of this report.

Conclusion of Law:

1. Minimal impacts to the natural environment and wildlife habitat are foreseen as a result of this subdivision if the recommended conditions of approval are imposed.
2. No significant historic or natural features will be destroyed, lost or damaged as a result of this subdivision if the recommended conditions of approval are imposed.

CRITERION G: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

1. Section 5-020.6.G of the City Subdivision Regulations states the subdivider must demonstrate the proposed subdivision will have no adverse impact on conditions that relate to public health and safety including disease control and prevention, emergency services, environmental health, flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes and other natural hazards, high voltage lines or high pressure gas lines, on-site or nearby off-site land uses that create nuisance (e.g. noise, dust, smoke, unpleasant odors), and are or vehicular traffic safety hazards.
2. The subject property does not contain steep slopes, floodplain, unstable soils, high voltage lines, or high-pressure gas lines. (*FEMA Map Service Center; Pg. 21, Subdivision Application; Master Site Plans*)
3. The subject property is located within an air stagnation zone. The Development Covenants include language stating no wood burning devices of any type shall be permitted or used within the subdivision and all lot owners shall abide by laws and regulations relating to air pollution. (*Proposed Draft Covenants*)
4. A groundwater modeling study was provided in the application packet. The Groundwater Modeling Study shows the subject property may have a depth to groundwater of 10 to 20 feet for portions of the subject property.
5. Staff recommends a condition of approval requiring a note on the plat and in the covenants stating, "Basements shall be prohibited until such time as the developer provides sufficient evidence to the City of Missoula Public Works & Mobility Department that no threat to the public safety or loss of property will result in those area proposed for basements."
6. For findings of fact on provision of emergency services, see Criterion C of this report. For findings of fact and mitigation related to nuisances created by off-site agriculture, see Criteria A and B of this report.

Conclusion of Law:

1. No adverse impacts to public health and safety are foreseen as a result of this subdivision if the recommended conditions of approval are imposed.

C. PRIMARY CRITERIA COMPLIANCE

This subdivision complies with:

1. SURVEY REQUIREMENTS

Findings of Fact:

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

2. City Subdivision Regulations Section 4-070 includes a process to ensure final plats contain all necessary seals and certificates prior to filing and comply with state survey requirements.

Conclusion of Law:

1. This proposal meets the survey requirements.
2. SUBDIVISION REGULATIONS

Findings of Fact

1. Subdivisions are required to comply with the local subdivision regulations provided for in Part 5 of M.C.A. 76-3.

Conclusion of Law:

1. The plat and plans will be brought into compliance with the local subdivision regulations if the conditions of approval are imposed.

3. REVIEW PROCEDURE

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula City Subdivision Regulations.
2. Notice of a public hearing on this subdivision was posted on the property on May 12, 2023 and letters were mailed to adjacent property owners on May 11, 2023. Legal notice was published in the Missoulian on May 14, 2023 and May 21, 2023.
3. The public hearing before the Missoula Consolidated Planning Board is scheduled for June 6, 2023 at 6 pm. The public hearing before the City Council is scheduled for June 12, 2023 at 6 pm.
4. City Council is scheduled to give final consideration to this subdivision on June 26th, 2023. The 60-working day review period for this subdivision expires on June 27, 2023.

Conclusion of Law:

1. This subdivision review has followed the necessary application procedure and has been reviewed within the procedures provided in Article 4 of the Missoula City Subdivision Regulations and the Montanan Subdivision and Platting Act.

D. PROVISION OF LEGAL AND PHYSICAL ACCESS

Finding of Fact:

1. Section 3-020.3 requires that perpetual legal access to subdivisions must come from an established public road or by a public perpetual access easement or right-of-way adequate to serve the subdivision. Access to the subdivision would be from Flynn Lane, an existing public road planned to be improved to serve the subdivision. (*Preliminary Plat*)
2. Legal and physical access to each lot would be provided via new public streets and alleys that are designed in compliance with City standards. (*Preliminary Plat, Civil Construction Plans*)

Conclusion of Law:

1. The subdivision proposal meets the physical and legal access requirements of the Subdivision Regulations.

VI. VARIANCE REQUEST – ACCESS TO LOTS FROM STREET OR ROAD

A variance is requested from Article 3-030.1.C.3 of the City Subdivision Regulations which prescribes lot and block standards and states, “Each lot must abut on and have access to a public or private street or road.”

Lots 24 through 26 do not abut on and have access to a public or private street or road. These lots front on Open Space #1 and are planned to have duplexes that are accessed from a rear alley within a 24-foot public access easement. Open Space #1 is planned to contain a pedestrian path within a public access easement.

Note: Lots 27 – 29 are in a similar situation but because they fully front on Flynn Trail, which is considered a Trail Street in Division 6 of the Form Based Code, technically these lots abut on and have access to a public street as required in the City Subdivision Regulations so no variance is required for Lots 27 - 29. (*Preliminary Plat, Conceptual Landscape Plan Exhibit, Variance Request*).

RECOMMENDATION:

Approve the variance request from Article 3, Section 3-030.1.C.3 of the City Subdivision Regulations, which requires each lot to abut and have access to a public or private street or road, to allow the proposed lots to be provided access via an alley and public access easement containing a pedestrian path.

FINDINGS:

The City Council must consider the following criteria and make a finding, based upon the evidence presented to it in each specific case, that:

1. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.
 - a. The alley is proposed to have at least a 20-foot-wide paved surface, which is sufficient for fire truck access. (*Grading, Drainage, and Road Plans, Preliminary Plat*)
 - b. Both non-motorized and motorized access to the lots is provided. (*Preliminary Plat, Master Site Plans*)
 - c. The lots are designed to allow for attached two-unit houses (duplexes). If small building access cannot be met at the time of building permit approval, fire suppression sprinkler systems must be installed to meet Fire Code. (*Preliminary Plat; Correspondence with City Engineering*)
 - d. Lots 24 - 26 have pedestrian and vehicular access and can be served by City Fire if the recommended conditions of approval are imposed.
 - e. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.
2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;
 - a. The conditions upon which this variance is based are unique in that the entire project must adhere to the Traditional Neighborhood Development Form-Based Code for the Sxwtpqyen Master Planned Area, which focuses on the “form” of proposals to ensure pedestrian-centric neighborhoods with aesthetically pleasing design are prioritized. This is accomplished by outlining specific design elements for each allowed building and road type with the allotted transect zones. In this case, the

- intent of the FBC is at odds with the regulation in the City of Missoula's Subdivision Regulations. This contradiction is unique to the proposed subdivision as the FBC is not applicable outside of the Sxwtpqyen Master Planned Area.
3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;
 - a. Design standards within the Traditional Neighborhood Development Form-Based Code for the Sxwtpqyen Master Planned Area prioritize pedestrian connectivity and aesthetic neighborhood design without sacrificing density and affordability. Those standards are not always congruous with the City subdivision regulations. Proposed lots 24 - 26 highlight areas where such a conflict exists. The lots are directly adjacent to the east of proposed Open Space #1. These lots front the proposed Open Space and align with the intent of the FBC by prioritizing pedestrian access and aesthetically pleasing design. However, requiring a typical street or road to bisect the proposed open spaces in an effort to comply with 3030.1.C(3) contradicts the objectives of the FBC. Proposed Open Space #1 will include a 20' Utility Easement and will be designed to provide adequate, safe, non-motorized transportation options to residents in the area. Additionally, addresses will be easily visible on the back of homes to ensure emergency services have ample identification and room to serve the homes fronting the Open Spaces.
 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy (Sxwtpqyen Neighborhoods Master Plan);
 - a. The variance will not violate the provisions of Title 21 Zoning Code or the Sxwtpqyen Neighborhoods Master Plan.
 5. The variance will not cause an increase in public costs;
 - a. The pedestrian path and alley, proposed as a condition approval, will be maintained by the Home Owners Association rather than by the City and will not result in increased costs.
 - b. The variance will not cause an increase in public costs.
 6. The hardship has not been created by the applicant or the applicant's agent or assigns.
 - a. The hardship has not been created by the applicant or the applicant's agent or assigns. The hardship is created by the differences between the City Subdivision regulations and Title 21.

VII. REFERENCES CITED

The following materials are referenced throughout this document. For ease of reading, short versions of the citations (shown in bold) are used in-text, and full citations are included here.

Plans and Regulations

M.C.A.: Montana Code Annotated, 2021

https://leg.mt.gov/bills/mca/title_0760/chapters_index.html

Subdivision Regulations: *City of Missoula Subdivision Regulations*, adopted by the Missoula City Council and amended on July 18, 2022

<https://www.ci.missoula.mt.us/DocumentCenter/View/58232/Missoula-City-SubdivisionRegulations2022-Amend?bidId=>

Annexation Policy, adopted July 22, 2019

http://www.ci.missoula.mt.us/DocumentCenter/View/50374/July-23_Annexation-Policyas-Amended?bidId=#:~:text=City%20annexation%20provides%20a%20united,addressing%20community%20goals%20and%20values.

Title 21, Zoning Code, adopted December 14th, 2020 [https://ehq-production-us-california.s3.us-west-](https://ehq-production-us-california.s3.us-west-1.amazonaws.com/820664ae4da9d4c9bda26447e634000203b170a4/original/1607714649/Mullan_FBC_FINAL-DRAFT_2020-12-10-RFS.pdf)

[1.amazonaws.com/820664ae4da9d4c9bda26447e634000203b170a4/original/1607714649/Mullan_FBC_FINAL-DRAFT_2020-12-10-RFS.pdf](https://ehq-production-us-california.s3.us-west-1.amazonaws.com/820664ae4da9d4c9bda26447e634000203b170a4/original/1607714649/Mullan_FBC_FINAL-DRAFT_2020-12-10-RFS.pdf) 8f9b839f173b7c586b82484c55447b9a?X-Amz-Algorithm=AWS4-HMACSHA256&X-Amz-Credential=AKIA4KKNQAKICO37GBEP%2F20221130%2Fus-west1%2Fs3%2Faws4_request&X-Amz-Date=20221130T103943Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=a0191e48caffbdf79e469e95f5a4cfb582a23eed2edf6263fc9ce231ebe40b90

Missoula Public Works Standards and Specifications Manual, amended December 1, 2022
<http://www.ci.missoula.mt.us/2708/Public-Works-Standards-Specifications-Ma>

Elements of the Application Packet for Governing Body Review

<https://www.ci.missoula.mt.us/3114/Sapphire-Place-Subdivision>

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Maechling Cultural Resources Inventory
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Other References

Missoula County Property Information System
<https://gis.missoulacounty.us//propertyinformation/>

City Central Maps
<https://missoulamaps.ci.missoula.mt.us/portal/apps/sites/#/gis>

FEMA Map Service Center
<https://msc.fema.gov/portal/home>

Mullan BUILD
<https://www.mullanbuild.com/improvements-1>

SUBDIVISION ATTACHMENT A

SUBDIVISION PROJECT HISTORY

Project: Sapphire Place Subdivision, Sxwtpqyen Master Site Plan, Annexation, and Rezoning

Applicant: Cathcart Properties, Inc.

Representative: IMEG Corp.

Pre-application Meeting: Scoping Meeting 11/22/2021; Pre-application Meeting 5/5/2022 **Element:** Submitted 7/14/2022, 10/24/2022; Complete 10/31/2022.

Sufficiency: Submitted 11/2/2022, 11/9/2022, 2/28/23, 3/24/23; Sufficient 3/31/2023

Start Governing Body Review: 4/3/2023

60 Working-Day Deadline: 6/27/2023 **Extension**

Granted: No.

City Council Consent Agenda: 6/5/2023

Planning Board: 6/6/2023

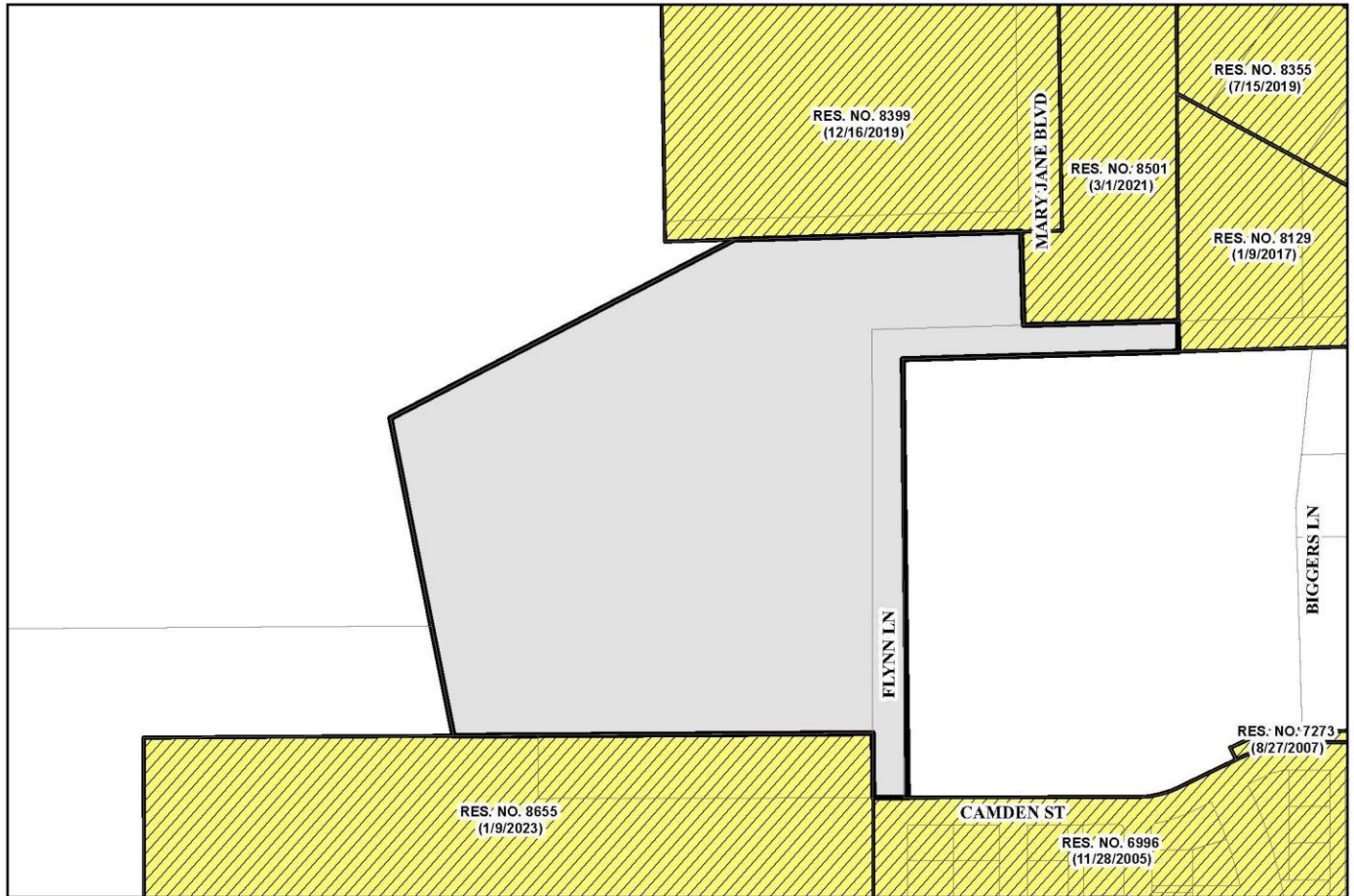
Land Use and Planning Committee: 6/7/2023; 6/21/2023

City Council Public Hearing: 6/12/2023

City Council Final Consideration: 6/26/2023

Public Notice: Posted 5/12/2023; Adjacent Property Owner Letters Sent 5/11/2023; Legal Ad in Missoulian 5/14/2023 and 5/21/2023

EXHIBIT A: ANNEXATION MAP



**Tract 2-A Certificate of Survey 6689
&
Adjacent Right-of-Way**
All Located in NW of Section 7, T.13 N., R.19 W., P.M.M.
Prepared by: CITY OF MISSOULA GIS SERVICES

- Legend**
- Proposed Annexation
 - Annexation Resolutions
 - Parcel Boundaries
 - City Limits