

From: John Hancock
To: [Dave DeGrandpre](#)
Cc: [Barbara Blanchard](#)
Subject: Heron's Landing Public Comment
Date: Thursday, August 6, 2020 8:00:18 AM

Dave:

Thank you for your call yesterday. As promised, what follows are my written comments about the Heron's Landing subdivision from what I understood about the project early in 2020.

Rather than send this as a pdf, I sent it this way so that you can simply read, print or forward as necessary. WGM picked up a physical copy at a Capt. John Mullan meeting and to assure Ryan Salisbury received it I sent it to him via email.

There has been no response from WGM.

As time marched on, homeowner documents like CCR's have become available for public review. In the Declaration of Covenants Page 14, letter R reads as follows:

"Water Ditches and Water Rights. The Lots have no surface water rights. To the extent water ditches adjoin any Lot, the water in such ditches is not the property of the Owner nor the Association, and they are not allowed to use such water for any purpose or to interfere with the delivery of water through such ditch. No structures (e.g., bridges, barriers or diversions) or vegetation shall be placed in a manner that will interfere with the construction, operation, maintenance, repair and inspection of any water ditch. In the event of an emergency concerning a ditch (e.g., ditch berm breaks or leaks, the ditch is blocked and starts overflowing its banks), the affected Owner should contact _____ at (406) ____ - _____."

The blank information for both a reliable contact and a working telephone number is unacceptable.

Here is the total letter.

Mr. Ryan Salisbury
WGM Group, Inc.
1111 E. Broadway.
Missoula, MT 59802

Subject: Review of Heron's Landing subdivision

Dear Ryan,

On January 9, 2020, members of the Captain John Mullan Leadership Team met with our two Ward 2 city council representatives and Tom Zavitz, a senior planner with the City of Missoula. We gained further insight into the Mullan Area Master Plan, the BUILD Grant and what is currently known about the status of the Heron's Landing subdivision. In subsequent

email, you confirmed the slides seen in a public meeting last spring at Crosspoint Church are current. We understand future revisions are likely as the subdivision process moves forward.

The main purpose of this letter is to provide input about our concerns based on those slides providing ongoing meaningful input both on current and future slide revisions. This letter is neither for, nor against, the development. It seeks to discuss a number of public safety issues.

WGM had a major hand presenting the compelling case for BUILD Grant funding. Few days go by without local news discussing a wealth of projects and issues throughout Missoula. With some affection we think that WGM is an acronym for:

We Get Missoula

We recognize and understand you are trying to work with a broad array of challenges chief among them affordability and density while dealing with the complexing of the approval process.

Obviously, you are deservedly proud of four testimonials appearing on your website including from leaders like Ellen Buchanan, Doug Reisig, Ed Toavs, and Steve King.

Clearly WGM does mean **We Get Missoula!**

On our end, this community council is faced with gaining an understanding of unprecedented number of projects and issues facing Ward 2, an area where significant growth is occurring. The implications of the BUILD Grant brings into sharp focus issues relative to housing, traffic safety, public transportation, parks, bike paths, trails, and snow removal. This letter seeks a reply to see if how Heron's Landing Project supports a vision of how these changes might impact these issues. Incorporating these changes serves to make a good project better!

BUILD grant implications:

Connecting Mullan Rd. to West Broadway makes George Elmer Dr. a new traffic "corridor" allowing:

- Residents to reach their homes from two directions.
- Residents and other commuters can reach commercial businesses at, near, or on the north end of George Elmer Drive, or roads coming off of it.
- A speedier route to Missoula International Airport potentially siphons traffic away from Reserve Street through the George Elmer "corridor" bypassing traffic signals, lowering driving distance at a higher rate of speed.

Safety

Our George Elmer Dr. “corridor” concerns focus on safety issues. The Heron’s Landing site layout slides dated April 22, 2019 shows substantial development of “Row House” along George Elmer Dr. Lots 170 – 177, 190 – 202, 217 – 231 and 250 – 256 are classified that way. That makes 43 of the 55 proposed “Row House” units or 78% overall.

A smaller number (10) or 20% of your total Duplex structures are likewise shown facing George Elmer Rd.

We feel this concentration is large a burden to impose on George Elmer Dr. considering a public school bus travels though it to pick up students at nearby 44 Ranch.

Whether you agree with the above or not, we ask you support a reduced speed limit from the present 45 MPH to 25 MPH. This is not unprecedented as Van Buren north into the Rattlesnake area imposes the same limit.

Steps to lower speed limits have already commenced. Mirtha Becerra is looking into a speed zone traffic study. There is no guarantee that the limit will be lowered.

She also advised us that the city is committed to installing, a roundabout at the intersection of George Elmer and Cattle Drives within two years.

No similar device is shown on the Heron’s Landing Site Layout slide at the intersections permitting a turn toward the nearly 4-acres of dedicated park that may also include attractive gardens. If a significant traffic calming device is not installed, consider installing a rectangular flashing beacon similar to one shown at the north end of the subdivision and support a lower speed limit of 25 MPH.

This greatly improves safety for the estimated 101 Heron’s Landing homeowners living on both sides of George Elmer Dr.

Snow Removal

The city prioritizes snow removal along George Elmer Dr., in part, because it is a major school bus route. The aforementioned “Row House” makes snow removal more difficult with the addition of on street parking. As you may recall, there was considerable vocal opposition to parking on George Elmer when presented at the Crosspoint Church hearing last spring. Equally unclear is whether the alleyways permit parking? Small garages, limited or no alley parking forces people to resort to street parking. We want to avoid scenarios involving people driving over the top of snow berms, making a U-turn to proceed to the George Elmer/Mullan intersection.

We examined the “Opinion of Probable Cost” that you reviewed on July 22, 2019, noting a widening of Mullan Rd to 44 Ranch. We want to understand the beginning and end points of the 1,955 LF proposed along George Elmer Dr. along with the 3” asphalt section? As you know the BUILD Grant received less funding than requested. Total asphalt and widening is estimated at \$1,425,195. Is any or a portion of this cost being shifted to home buyers in the event that the full cost of these improvements remains unfunded?

Mountain Line

One element seen in the presentation Mullan Rd Master Plan is the need to expand bus service on George Elmer once it connects with Broadway. We see a western route turning northbound from Mullan Rd. onto George Elmer Rd. At Broadway it can turn toward Missoula International Airport or return to the main downtown Missoula depot.

On this point, we ask that a conversation take place where the most likely locations are for bus stops. Determination should be made if a bus route will be in both directions. Once the eventual route is established, we want you to paint curbs red denoting a No Parking Zone. We are NOT asking you to install the stops, signage or windscreens.

Mr. Zavitz mentioned that a consulting firm was being hired to examine issues like this and hold public hearings in 2020. We recognize your need to move forward in a substantial way with the subdivision and may conflict with the timing of this issue. The red stripe marker idea strikes us as a good compromise.

If the establishment of bus service cannot be established prior to the start of construction, consider building homes along your eastern and western subdivision boundaries. This allows for additional bus route planning to occur utilizing the red stripe and disclose it to buyer(s).

Park Allotment & Funding Consideration

As a former resident of Flynn Ranch, coupled with your observations of the park at 44 Ranch, you see significant differences in the both the aesthetic qualities and recreational opportunities of the two parks. One is barren land, the other contains exciting recreational opportunities driven by homeowner funding and later rewarded with additional funds. All of this occurred prior to the formation of any HOA Board at 44 Ranch.

“We Get Missoula” understood the value of garden plots including it with the initial announcement of subdivision plans. That should prove very appealing aiding home sales. City representatives tell us that the Heron’s Landing Park is for public use, not limited to just HOA residents. In the early stages of project development homeowners, particularly those with children will find recreational opportunities by walking or biking to 44 Ranch.

The park at 44 Ranch will also have an influx of use from the Remington Flats subdivision. They are currently negotiating a cash-in-lieu of arrangement alleviating the need to build a park but contributing to ongoing recreational usage. Whether those funds ever reach 44 Ranch to upgrade or replace recreational equipment as it requires replacement is currently unknown.

We ask that strong consideration be given to the following idea, and, if rejected, please forward the reason to us.

1. Establishment of a per home recreation fee not to exceed \$100 per household collected by the developer at the time of sale.
2. Hold collected funds in an interest bearing checking account requiring two signatures for any withdrawal.
3. Set an expiration date for the funds to be used.
4. Make clear to the homebuyer of the existence of these funds. Let them form a Heron's Landing Recreation committee to make periodic decisions on how best to use the money within this park.

Self-Funding Recreation Benefits

While not designed to provide total recreational funding, it provides "seed" money for recreational expansion within the subdivision. It eliminates door-to-door and GoFundMe campaigns having uncertain results. It removes some pressure from potential overuse of the 44 Ranch facilities balancing usage among two large subdivisions.

It also alleviates some recreational funding pressure faced by a newly formed HOA Board of Directors when the developer turns over management to the association. That board typically is initially involved with any number of pressing issues relating to CC&R's, assessing the adequacy of current operating income, costs, and reserves. This one-time per household recreation fee allows the board to concentrate on these issues since a recreational opportunities exists due to this funding arrangement. Under the worst case scenario, the board may have some amount of unspent money and it would take up the issue of how to spend it in the time originally allotted for full disbursement or the original funds collected.

Flood Potential and the Hellgate Valley Irrigation District (Company)

Ryan, you visited and took notes regarding a single home flood situation occurring in Flynn Ranch in close proximity to an irrigation ditch. This next section puts ditch overflow issues into perspective. Its intent is warn and safeguard the interests of Heron's Landing homeowners.

As shown in the site layout slides, proposed homes are planned for both sides of the Flynn-Lowney “irrigation ditch.” A determination of total homes affected is unavailable as that slide does not show all of the ditch running through or bordering the subdivision. Here is a bit of history concerning the district, the company responsible for running and maintaining it.

The Hellgate Valley Irrigation District (HVID) was formed in 1919 “when other farmers in the area expressed interest from the Flynn Lowney Ditch and its laterals, according to a document made part of the Flynn Ranch dispute. The ditch itself is operated by the Hellgate Valley Irrigation Company. Water rights are typically not granted to individual property owners or to a homeowner association. Typically, from the center of the ditch extending to some point on both sides of it, an easement is granted to which no homeowner may build upon.

The ditch company, Hellgate Valley Irrigation Company, has an understandable interest in keeping the canal free of grass clippings, weeds, tree limbs and occasional beaver dams that impede water flow. It hires a ditch rider, currently Race Pruyn to clear these obstructions by releasing water that flushes the system to rid it of obstructions while physically removing debris that water cannot move.

There is no form of communication going to existing water rights users, or the general public when water is released or maintenance occurs. Records are not kept pertaining to the location or type of maintenance performed on the ditch or its aging equipment. During a deposition Race Pruyn stated this is a part time job paying \$1,000 annually. He mentioned “self-calving” 200 head of cattle 30 miles east of **Helena**.

In 2019, a debris complaint was filed against the company when it piled along George Elmer Dr. in an area separating Heron’s Landing and Flynn Ranch. It took a city compliance officer, Charmel Owens, and Brian Hensel, Deputy Director of Public Works – Streets, nearly a month to work out details to resolve this. There is a critical lack of protection that may cause a potential drowning at that location due to inefficient construction limiting public access as the water flows west. Pictures of that debris and danger to children are available upon request.

Financial solvency and water flow issues affecting the Hellgate Valley Irrigation Company are highly questionable. Minutes produced during an Interim meeting of the company held on November 14, 2018 present a disturbing picture. The minutes were written by Maureen Edwards, who is the company secretary. She has served on the board since 1998 and serves as its Secretary since 2010. Here is what she reported:

Fellow board member Mike Flynn reported the potential of a \$10,000 fine resulting from new regulations regulating use of concrete blocks used earlier in the ditch that need to be removed due to new regulations. There was support among its board members to pay the money to the “Redevelopment Agency” to solve the problem, she wrote.

Ms. Edwards pointed out that without a substantial increase in dues the company would exhaust \$7,000 in bank proceeds held in the account with approximately \$3,000 in dues receivable. One member, Mike Flynn, suggested doubling the dues. Ms. Edwards quickly added that “if we raise fees we need to improve our service as the water availability the last 2 years (2017 – 2018) was ‘sporadic and unreliable.’ The company has not been billed nor has the \$10,000 fee been paid as of January 16, 2020, according to Chris Behan, MDA’S Assistant Director.

During that meeting, another member, Rollette Pruyn, father of the ditch rider, mentioned that “silt buildup” was making the ditch harder to fill impacting flow. In fact, some areas along the entire ditch attempt to move water uphill. That proved to be a contributing factor in the Flynn Ranch case, though water there comes for a lateral supplied by the Flynn-Lowney ditch. The ditch, rider confirmed water flow issues in his deposition.

The city of Missoula’s position on Flynn Ranch matter was articulated in an email following inspection by Mr. Don Verrue. On February 22, 2018 Verrue wrote he *“visited with the ‘attorney’s office’ and found that the irrigation ditches are regulated by state statute which means city ordinances cannot be applied over the irrigation ditches.”* (Italics for emphasis). My initial appeal to the city was not aimed at regulating ditches. The goal was to prohibit any removal of berms or diversion devices prior to either residential or commercial occupancy.

Mr. Verrue stated *“he will work with our staff in recommending caution to developers who develop near irrigation ditches and suggest communicating with the irrigation ditch authority during the development stage and constructing new homes that abut active irrigation ditches.”*

Assuming you have received guidance on this issue, please send us a copy of it. The job is even more difficult if lots adopt the 44 Ranch sales method of selling lots to several builders who may unaware of the overall flood potential.

Your CC&R’s or other governing documents must be consistent with how overgrowth and weed issues beyond the homeowner’s immediate property line are to be disposed of.

Another critical factor to convey whoever builds homes is making sure the property slopes so that water empties into the ditch. Negative drainage was a major contributing cause of the Flynn Ranch overflow.

A different solution...

Another option exists that substantially lessens the need to rely heavily on the availability of either limited resources or personnel of the company. In a letter to Missoula Development

Services in June 2017 discussing the Flynn Ranch flood, Ms. Edwards told them that she had been approached by one of the developers (Flynn Ranch) about the possibility of installing a culvert. She thought “it was a great idea” if the culvert’s size matched the carrying capacity of the ditch in high water situations. She also favored it since it eliminated open and unprotected areas where children potentially can fall into the ditch. The developer chose to do nothing. The culvert allows city plows to do their job without creating snow dams, an event that occurred in 2019, in the ditch since it is likely buried beneath dirt.

The installation of a well-designed and buried culvert eliminates both safety and flooding concerns for an undetermined number of homeowners.

Without a culvert

If the culvert option is not utilized, several questions must be answered by both the developer and one or more building contractors:

Does the Hellgate Valley Irrigation Company have the financial resources and personnel necessary to protect homes built within Heron’s Landing from flooding?

Should any flood incident occur what individual(s) can be relied upon to reduce flow at either head gates or some other method on a 24 hour, 7-day basis during the irrigation season?

Does the ditch company have liability insurance to defend itself, if named in a lawsuit?

Implications of Failure to conduct due diligence on this issue.

Given the anticipated quality workmanship and installation of a local park, the last issue on any homeowners mind might be one arising from a Flynn Lowney Irrigation Ditch overflow. Even if the developer prohibits crawl spaces or basements, the next obvious place for water to enter is at the surface causing significant damages to floors, carpets, drywall and personal property.

Many homeowners are unaware that homeowner policies exclude water damages caused by flood or surface water intrusion. To mitigate damages immediate water extraction must occur and is best handled by water restoration companies equipped to do so. Fans and dehumidifiers are often so noisy forcing home based business or families to find alternative working and living arrangements. These expenses are not paid by the homeowner policy since the cause of loss is also not covered.

Equally troubling in this analysis is who potentially is available to answer an emergency call, much less act in the event this occurs. In the Flynn Ranch case, the homeowner began a

frantic online search and fortunately reached someone who acted quickly. Unlike Missoula Water, the Hellgate Valley Irrigation Company has few employees and lacks a specific emergency response telephone number or team to effectively deal with this situation. The homeowner may not be home at the time of the incident losing valuable time that significantly increases the loss.

The homeowner carries the burden of seeking legal advice, obtaining engineering reports, and home appraisals to build a case. Attorneys do not generally take these cases on a contingency fee basis. Out of pocket expenses can quickly soar and may go beyond the financials of the homeowner. In the Flynn Ranch case, the Montana Department of Revenue refused to grant temporary tax relief for the diminished value of the home. If an attempt to sell the property occurs prior to resolution of the claim the nature and extent of damages must be disclosed to the future buyer. Adding to the loss is time away from work to attend depositions, mandatory mediation, and court dates. No Interest is typically paid on lost investment opportunity when the claim is resolved.

Homeowners look to suit the developer, a separate builder, if applicable, or the Hellgate Valley Irrigation Company. In most instances these organizations have liability insurance and their defense costs are covered by the insurer.

In a recent email you indicated that the developer “is planning to sell and not necessarily build homes.” You added, that similar to the homes sold in 44 Ranch “their lots are actually sold direct to builders for spec homes” that meet quality workmanship standards sought by the developer. It is a workable approach but adds a layer of complexity to this particular issue.

It is too early to say if the entire block of lots near the ditch will be purchased by a singular builder. However, if multiple builders are involved there is an absolute need to coordinate grading efforts so that **drainage is always away from the home.** Will that level or cooperation exist among multiple builders?

Water is often a powerful attraction to children. Demonstrate that protection is built into the housing plan that addresses this important safety concern. All things considered, the culvert is a vast improvement for all concerned.

End Notes

The Captain John Mullan Leadership Council has access to various photos, depositions and written documents and mediations supporting the difficulties discussed relative to flooding. We have pointed toward other aspects of the project that need further discussion and or revisions. In the end, we all want to make a good project better. We hope you will examine it as well.

Sincerely,

Note: This was hand delivered to Nick Kaufman Feb. 24th at a Capt. John Mullan meeting.

Finally, I am willing to meet with any city staff member that wants a better understanding of the George Elmer corridor and the proposed subdivision. Again, I do not oppose the project but want modifications, outlined above, to be part of the approval process.

Sincerely,

John Hancock
721-2789

cc: Barb Blanchard, Flynn Ranch HOA President