

## CASE STUDY ANALYSIS

Local Case Study Analyses are intended to provide a baseline understanding of the experiences and outcomes of the Missoula Subdivision and TED processes to support the development of recommendations. The primary goal is to identify thematic areas of the process that are working well and those that are not working well. More specifically, the case study analyses are intended to shed light on what areas, if any, may have agreement from the city and development community related to the process and overall outcomes. Technical analysis of physical and process outcomes was coupled with focus group meetings and interviews to provide color and general perspective from the development community and City Staff.

**TABLE 1 OVERVIEW OF CASE STUDIES**

<b>Name of subdivision</b>	<b>Type of subdivision</b>
Cowboy Flats	Major Subdivision
Orchard Home Estates	Major Subdivision
Hellgate Gardens	Larger TED
Marshall Street Townhomes	Smaller TED

### **Methodology**

A total of four (4) cases studies of local subdivision and TED cases (2 each) were determined in consultation with City staff, stakeholders, and technical team members. The case studies are intended to cover a broad range of development scenarios in Missoula that cover a variety of locations, constraints, scales, and outcomes. The following criteria were used in the determination of case studies:

- **Location** – Include a greenfield location, as well as an infill location.
- **Residence Type** – Include a mix of residential typologies if possible.
- **Project Scale** – Include a large- and small-scale example (in terms of overall project acreage/units).
- **People** – Include a diversity of applicants, ensuring all four examples are not from the same applicant group.
- **Environment** – If possible, include an example that has environmental constraints to understand how those are addressed in the regulations and review process.
- **Economics** – If possible, include examples that span the economic spectrum in terms of housing cost and overall city housing goals.
- **Process** – If possible, include an example that went through a significant portion of the review process, but was either not approved or was withdrawn by the application. Additionally, include examples that went through a more streamlined process and those that went through a very detailed or more time-consuming process.
- **Time** – To the extent possible, limit the examples to the last 5-years to ensure they are reflective of the current development climate.

Once chosen, City Staff delivered project documentation for review by the consultant team to establish a baseline understanding the project, development process and outcomes. Staff reports and agency reviews provided insight on the City Staff perspective while interviews were conducted with the applicant teams to gain a deeper understanding of the process from a private standpoint. The interviews were purposely held as informal conversations to allow the discussion to cover various topics but had the following rough outline:

- Introductions and Role on Project
- Confirmation of Background Information
- Target market and development approach/rationale
- Project Timeline/Process Discussion
- Approvals, Variance and Conditions of Approval (if any)
- Major issues/costs in process
- Outcomes and lessons learned

# MAJOR SUBDIVISION PROJECT: COWBOY FLATS

TABLE 1 COWBOY FLATS DATA

Project Type	Major Subdivision
Site Type	Infill
Location	Southgate Triangle Neighborhood
Size of project (area)	4.99 acres
Zoning	R5.4
Allowable density	8 du/ac allowed by zoning
Actual Density	6.4 du/ac
Number of units delivered	32 (1 existing)
Type of housing delivered	Single-Dwelling Detached (5,400 – 7,592 sf)
Target Sales Price Range	Roughly \$380k
Final Sales Price Range	Expected to hit price points
Parkland Dedication	Cash-in-Lieu
Project initiation start date	Pre-application meeting on 2/13/17
Project completion date (substantial completion)	City Council approval on 11/6/17
Duration	8 months, 24 days from Pre-application meeting to City Council approval



**Project Description**

The Cowboy Flats Subdivision is a two-phase major subdivision infill project that was proposed by Gary Bryan and Gene Mostad of Dore Lane, LLC. The applicant team proposed to divide a 4.99-acre parcel in the Southgate Triangle Neighborhood, into 32 lots intended for single-family detached patio home units. The site was a generally flat (0-3% slopes) greenfield except for one existing single-dwelling residence and garage that would remain as an individual lot. All lots would range in size from 5,400 – 7,592 square feet. The site was within City zoning designation of R5.4, which has a minimum lot size of 5,400, and designated Residential Medium Density (3 - 11 du/acre) by the Growth Policy. With 32 lots proposed on the 4.99-acre parcel, the proposed density was 6.4 du/ac and consistent with the Growth Policy and zoning designation.

Dore Lane, LLC. purchased the property for the specific purpose of a major subdivision infill project targeted towards older retirees with zero-step single-family detached homes. Once the team settled on a conceptual layout of the 32 lots, they anticipated sales prices of roughly \$380,000 for each lot. The applicant team would have preferred to request a re-zone of the parcel to RT2.7 Residential zoning, which would have potentially doubled the density and lowered sales prices to around \$300,000 per lot, but the rezone would not have been in compliance with Residential Medium land use designation dictated by the Growth policy. The team moved forward with the subdivision application within the existing R5.4 zoning.

Prior to a formal pre-application meeting to begin the subdivision process, the team had to address an irrigation ditch agreement which added significant time and cost to the process. The team also had to address parkland dedication, via cash-in-lieu, and request a variance to allow for six short courts, which are not allowed by Missoula Subdivision Regulations. The variance request and subdivision were both approved by City council subject to conditions of approval. Overall, the project is considered a success by both the developers and City Staff. The parcel had few serious constraints, and the team was proactive in engaging with City Staff and reviewing agencies to avoid unforeseen complications. The approval process took just eight months and 24 days from the pre-application meeting to City Council approval.

**Development Process**

**TABLE 2 COWBOY FLATS TIMELINE**

	<b>Date</b>	<b>Action/Outcome</b>
<b>Pre-Application</b>	8/16/2016	Scoping meeting requested
	8/31/2016	Scoping meeting held
	2/13/2017	Pre-application meeting held
<b>Neighborhood Meeting</b>	2/22/2017	Neighborhood Meeting notice released by applicant
	3/17/17	Neighborhood meeting date
<b>Element Review</b>	5/26/2017	Subdivision application and Preliminary Plat submitted
	6/5/2017	Not certified
	7/18/2017	Re-submitted
	7/25/2017	Certified

<b>Sufficiency Review</b>	7/28/2017	Submitted
	8/18/2017	Sufficient
<b>Governing Body Review</b>	8/31/2017	Submitted
	10/17/2017	Planning Board Review
	10/25/2017	Land Use and Planning Committee (Pre-public hearing information item)
	11/6/2017	City Council public hearing, approved

**Scoping Meeting**

After significant due-diligence and pre-development work to develop initial site plans, the process began with the team’s request for a scoping meeting on August 16, 2016 to discuss plans for the proposed subdivision of the 5-acre parcel connecting 38<sup>th</sup> Street to Dore Lane. At that point, the plans proposed 30 lots. The meeting was held 15 days later, on August 31, 2016, and included review of site plans and a range of topics including subject property characteristics, zoning, setbacks, comprehensive plan compliance, hazards, , parkland requirements, natural resources, etc. While the meeting identified several application components that would need to be addressed before submittal, the main topics of discussion were as follows:

- **Zoning** –Their initial lot layout did not meet R5.4 standards in terms of minimum lot size for some of the lots. In order to comply with the Title 20 zoning ordinance, all lots needed a minimum parcel area of 5,400 square feet. Title 20 has since been revised to allow lots smaller than the minimum parcel area of the zoning as long as the subdivision does not exceed the density of the zoning district.
- **Comprehensive Plan** – With 30 lots on 5-acres, the proposed density of the subdivision was 6 du/ac in compliance with Our Missoula 2035 Growth Policy.
- **Parkland Dedication** – Plan did not show any dedicated parkland so a cash-in-lieu would be required
- **Legal Access, Roads and Driveways** – Short courts would require a variance and meet standards listed in 3-020.6B City Subdivision regulations with approval
- **Irrigation Ditch** – Applicant would need to confirm existing water rights associated with new property and address them in the application along with any change to easements.

Perhaps the most significant issue was an irrigation ditch on the northern boundary of the parcel with a 15-foot-wide easement that crossed five of the proposed subdivision lots. The team did not initially recognize the existence of the irrigation ditch and only began to address it after Development Services identified it in the scoping phase. The City advised the team to address the ditch before submittal if it was to be relocated or removed, rather than having the issue raised during sufficiency review. There was a general recognition that working with the Ditch District can be difficult, so a conversation between the development team and the Ditch District early in the process could assist in the timeliness of the overall process. The team requested

more information from Development Services regarding standards related to irrigation ditches in subdivision review. Information provided stated that easements must be provided for all ditches and that easement locations and widths must be reviewed and approved by the City Engineering Division (Section 3-060.1). Because the submittal packet would suggest the removal/relocation of the ditch, the team knew that staff would look to recommendations from the Missoula Irrigation District during Sufficiency review. Although the team would have preferred to address the irrigation ditch and resulting agreements during the pre-application process, they chose to have the ditch agreement in place beforehand to avoid potential complications related to concurrent review processes and challenges in working with the Ditch District.

While not technically included in the Subdivision review process timeline, the process of recording a ditch agreement and addressing issues from the scoping meeting took 5 months and 13 days before being prepared for a pre-application meeting.

### ***Pre-Application Meeting***

Once the applicant team had addressed the major items from the scoping meeting and the irrigation ditch agreement was in place, the pre-application meeting was held on February 13, 2017 to officially begin the Subdivision process. The team's revised plans included 32 lots, for a proposed density of 6.4 du/ac. The pre-application meeting determined that the revised site plan met zoning standards and was still in compliance with the comprehensive plan. In addition to the identification of several items that would need to be provided for submittal, the meeting also identified variances that would need to be requested, potential conditions of approval and standards that would need to be met in plans.

### ***Neighborhood Meeting***

As items from the pre-application meeting were being addressed, the team also hosted a neighborhood meeting as required by Section 4-010.2. The applicant team sent public notice of the meeting on February 22, 2017 for a meeting to be held on March 17, 2017. There were minor concerns from neighborhood residents regarding the wildlife habitat, flooding, traffic congestion, soil, parkland dedication and density requirements. The meeting and notes and comments were recorded but not addressed in any changes to the site plans.

### ***Element Review***

After working with City Staff and various agencies to address anticipated issues identified in the pre-application meeting, the applicant team submitted its subdivision application and preliminary plat to Development Services on May 26, 2017 (102 days after the pre-application meeting) for 1<sup>st</sup> element review. The application included a request for a variance to the subdivision standard that prohibits short courts to allow the construction of six short courts that met the standards provided in Article 3.020.6B of Missoula Subdivision Regulations.

On June 5, 2017 Development Services responded that the application could not be certified as containing all the necessary elements for submittal due to various issues regarding maps, phasing plans, water rights clarifications, verbiage, misspellings, and covenants. The applicant team addressed the comments and re-submitted the application for a second element review on

July 18, 2017, which was certified on July 25, 2017. The notice of certification from Development Services included information for sufficiency review and identified water rights regarding the irrigation ditch as an issue likely to be raised during the Sufficiency period.

### ***Sufficiency Review & Agency Comment***

Upon successful certification of the second element review, the packet was revised slightly to become the “First Agency Sufficiency Review” and was officially submitted by the applicant team on July 28, 2017. The team circulated the packet to project review agencies for comment. Comments were received from the following agencies before being deemed sufficient on August 18, 2017:

- Fire Marshal
- Utilities Engineer
- City Engineering
- Wastewater Division – No comment
- Environmental Health
- Public Health
- City Forester
- Park and Recreation

Agency comments were addressed and added to the application packet before the applicant team officially submitted the subdivision application on August 31, 2017 for governing body review.

### ***Governing Body Review***

Once submitted for Governing Body Review, the City sent notice to adjacent and affected property owners, posted public notice, and ran two legal ads in the Missoulian. One public comment was received.

Because the project proposed more than five lots, it was considered a major subdivision and required Planning Board review. Development Services notified the Planning Board with a memo sent on October 10, 2017 that included the application packet, staff report and review criteria for subdivision requests. The Planning Board reviewed the subdivision request on October 17, 2017 and voted unanimously to recommend approval of the variance request and subdivision. The Planning Board also approved all of the conditions of approval included in the staff report and the discussion focused on addressing public comment, the road network, cash in lieu instead of parkland dedication, and the reasons behind the prohibition of short courts and the variance process.

With recommended approval from the Planning Board, the request then needed to be reviewed by the Land Use and Planning Committee. Development Services sent a memo with action required, staff and Planning Board recommendations, and background information. The committee met to review the project request on October 25, 2017.

With recommended approval from Staff and the Planning Board, the subdivision request was to go before City Council for approval at a public hearing. The hearing took place on November 6,

2017 and received approval of the requested variance and subdivision request subject to conditions of approval from City Council on November 6, 2017, eight months and 24 days after the pre-application meeting.

## **Development Process Analysis and Lessons Learned**

### ***Lost Opportunity for Added Density and More Affordability***

The applicant team was initially interested in rezoning the parcel to RT2.7 which would have allowed 16 dwelling units per acre and significantly increased the density of the project. The team indicated feeling that a re-zoning request would add “politics” to an already complex process and that there was no certainty of the outcome. In order to avoid additional complications, time and costs, the team moved forward with the subdivision application consistent with R5.4 zoning. If the property had been re-zoned to allow for more density, the team estimates that lots would have been 20% more affordable, selling for around \$300,000, or around per lot.

Although, the team cited a lack of confidence in the City’s ability to conduct concurrent review processes as the reason for lower density, the City points out that State Law requires rezoning applications to comply with the Growth Policy. The land use designation of Residential medium (3-11 du/ac) from the Growth Policy does not support 16 du/ac rezoning request. The City’s stated desire for infill projects and comprehensive plan compliance was crafted with the recognition that varying land uses densities will occur in various places for an overall effect of supporting a focus inward concept. The City believes that land owners and developers need to be part of the process of updating growth policies and land use mapping and also recognize that it’s a community-driven process that may not always yield individual suggestions, but will result in overall community expression of need and opportunities.

The team could have pursued a targeted growth policy amendment but it would have been an additional detailed process that could have been processed at the same time as a rezone request, requiring a solid case for the change. The disparity between the allowable density of standard base zones and the growth policy’s land use designations does present a challenge for developers when trying to maximize density. Although the Residential Medium land use designation allows up to 11 dwelling units per acre, the standard base zones within it only go as high as 8 du/ac with R5.4. The City could consider adding a residential density zoning category that allows 11 du/ac.

### ***Room for Improvement***

The applicant was pleased with the outcome of the project but felt that the process could be improved in the following ways:

- More detailed minutes and/or notes from each point in the review process could provide more predictability for developers and accountability for City staff/agencies. The team reported that preliminary plan aspects were supported early in the process, but concerns were raised from the same entities later on. The lack of note taking throughout the process resulted in the team making multiple changes that could have been avoided.



- The City's inability to conduct concurrent review processes with the Ditch District added time and cost for the developer. If the ditch agreement with the Irrigation District could have occurred during the pre-application period, the homes may have been delivered at a more affordable price point.
- The team felt that parkland dedication requirements negatively impacted the final outcome of the project. Although the team never proposed any parks or open space in the plan, the team reportedly would have preferred to provide well-designed pocket parks within the neighborhood to serve residents but was not given that option by the Parks and Recreation Department. The team reported that the department would not allow or recognize pocket parks for parkland dedication because of maintenance concerns regarding smaller parks. Because pocket parks would not be recognized, the team never included them in plan proposals and paid a cash-in-lieu fee instead of providing parkland within the development. However, Parks and Recreation reported that there is no prohibition on pocket parks and that they would have been recognized if they met the parkland dedication requirements in the regulations and were maintained by the HOA.

***Successful, Timely Process Overall***

Despite some minor issues resulting from the above topics, the developer did not report any major unforeseen hurdles or surprises throughout the process. The team's proactive outreach to agencies and staff prior to review and submission may have aided in the timeliness and success of the project. Throughout the process the developer representative was facilitating conversations with agencies that would be asked to comment during the sufficiency review period. This aided in the avoidance of major issues that would have caused re-engineering or re-designs later in the process. At completion, the developer anticipates meeting the targeted sales price of roughly \$380,000 per home. The team was also pleased with the City's willingness to work with them on short courts and approving the variance request without detrimental conditions of approval.

# MAJOR SUBDIVISION PROJECT: ORCHARD HOME ESTATES

**TABLE 1 ORCHARD HOME ESTATES DATA**

Project Type	Major Subdivision (TED considered first)
Site Type	Infill
Location of Project	Two-Rivers Neighborhood
Size of project (area)	5.97 acres.
Zoning	RT2.7, C1-2 requested
Number of units proposed/delivered	31 lots with 20 single-family homes in first phase
Type of housing proposed	Single-family with potential for multi-family in later phases
Planned target sales price range	Trying to hit price point of \$350k or less
Project initiation start date	TED Conditional Use scoping meeting requested on 12/28/17 Pre-Application meeting on 3/8/2019
Project completion date (substantial completion)	Withdrawn 10/15/19
Duration	21 months, 17 days (from early TED submittal to withdrawal) 7 months, 10 days (from pre-application to withdrawal)



**Project Description**

Orchard Home Estates was a major subdivision project proposed by John Brauer and WGM Group in the Two Rivers Neighborhood. The applicant team proposed to divide 5.97 acres into 31 lots that would be built out in three phases. The first phase would consist of 20 single-family lots that would not displace existing residents, while the remaining phases consisted of additional single-dwelling lots, multi-dwelling in the location of existing mobile homes and a commercial lot.

The site consisted of 3 parcels already owned by the developer, two within the City and one in the County. The site had a mix of zoning including Z.D. 12, RT2.7 and C1-2, which allows general commercial and multi-dwelling residential. Existing land uses including single-dwelling residential, mobile homes and vacant field. While the project complied with the City of Missoula’s desire to build inward, there were several constraints to the proposed infill project within a transitioning neighborhood including existing homes, meeting setbacks from existing homes, jogged property lines, fixed property line dimensions, block lengths, existing businesses, lack of road connectivity, homes surrounding the development and potentially substandard street, sewer and water infrastructure. The developer’s intention was to provide much-needed housing for retirement-age households with modest for-sale single-dwelling homes and/or the option to rent multi-family units. The development was intended to be marketed to the 55 and older population but open to the general public.

The project involved a series of strategic steps to get to subdivision including annexation of the county parcel into the City with zoning upon annexation. Following the annexation, the next step was for a boundary line relocation to reconfigure boundaries, and re-zoning to place the commercial strip mall on its own parcel so that it would not be part of the subdivision application and to avoid split zoning, which is prohibited by City regulations. The project was initially proposed as a TED Conditional Use project but moved to the subdivision process to allow for cash-in-lieu of parkland dedication. The project was certified complete at its 3<sup>rd</sup> element review and was withdrawn during first sufficiency review.

**Development Process**

**TABLE 2 ORCHARD HOME ESTATES TIMELINE**

	<b>Date</b>	<b>Action/Outcome</b>
	4/10/2017	Initial scoping meeting request
<b>Early TED Submittal</b>	12/28/2017	Request for TED conditional use scoping meeting with revisions
	1/11/2018	Conditional Use Scoping Meeting, move to subdivision process
<b>Pre-Application Meeting</b>	3/5/2019	Written request for meeting submitted
	3/8/2019	Meeting held
<b>Neighborhood Meeting</b>	5/15/19	Meeting held
<b>Element Review</b>	8/2/2019	Subdivision application and preliminary plat submitted for 1 <sup>st</sup> element review
	8/9/19	1 <sup>st</sup> element review not certified
	9/17/2019	2 <sup>nd</sup> element review not certified

	10/15/2019	3 <sup>rd</sup> element review certified
	10/15/2019	First Sufficiency review begins, project withdrawn

**Early TED Submittal**

The applicant team initially pursued a townhome exemption development based on a notion that the process was more streamlined after witnessing the success of Scott Street Village. The process began with a request for a scoping meeting that was initially submitted on April 10, 2017. The team worked with Development Services to understand the series of strategic steps that would be needed to move the project forward. The team had several preliminary meetings with the City to work through the complications of annexation, rezoning, boundary line relocations and townhome exemption before developing a high-level conceptual development plan. The plan was revised several times before the team requested a final scoping meeting on December 28, 2017, to discuss the feasibility of the proposed annexation, re-zoning and TED conditional use based on a high-level conceptual development plan that specified potential uses as single-dwelling, multi-dwelling residential and assisted living. At the time, the team was considering a rezoning upon annexation of B-3.

The final scoping meeting was held on January 11, 2018, more than nine months after the initial request, and covered zoning and comprehensive plan compliance, floodplains, steep slopes, historical/cultural resources, connectivity, road networks, parking, fire protection, water, sanitation, utilities, and conditional use review. From the outset, Development Services made the team aware of the need for road connection between Strand Avenue and Mount Avenue as a condition of annexation and the TED Conditional Use. Because Title 20, Section 20.05.040(D) stated that a TED of greater than 10 units must request conditional use approvals in the requested zoning district, the team also needed a conditional use approval for the project. The team would need additional applications for annexation and would also have to comply with TED review criteria and conditional use criteria summarized below:

TED Standards Review Criteria (Title 20, Section 20.40.180):

- Density
- Setbacks and Separations
- Minimum building envelop area
- Surface Infrastructure
- Block lengths
- Open Space

Conditional Use Review Criteria (Title 20, Section 20.85.070):

- Compliance with Zoning standards and other applicable regulations;
- Compatible with the character – site and building design;
- Compatible operating characteristics; and
- Traffic safety – all modes of transportation.

As the team worked to prepare the TED Conditional Use Project Application, the team engaged in conversations with reviewing entities to aid in the preparation of plans that would meet the required criteria. The team felt they ran into a major obstacle with the Parks and Recreation Department regarding parkland/open space dedication. TED Standards required that 11% of the parcel area be dedicated as common area/open space and cash-in-lieu was not an option. The applicant suggested that nearby vacant land owned by the State (DNRC) be used for parkland dedication requirements but DNRC was unwilling to dedicate the property as parkland. Because CIL was not an option, the 11% parkland dedication was required which equated to about five of the 20 lots in Phase One. The parkland dedication would have had a significant impact on the sales prices and the applicant team decided to switch gears to pursue the traditional subdivision process which allows for cash-in-lieu. The revised lot layout included common area in Phase 2 on the parcel zoned C1-2 and would have qualified as the activity area if the lots were developed with multi-dwelling units.

### ***Pre-Application (Subdivision)***

The subdivision application process requires significantly more materials than the TED process and the applicant team took over a year to prepare for the subdivision process. During this time, the team began executing the strategic steps to get to subdivision and submitted requests for boundary line relocation and annexation with zoning upon annexation of RT2.7. The team also continued outreach to reviewing entities to develop its site plans which had to be revised several times based on the comments provided by different reviewers. The team felt that the amount of detail required to prepare for review had a negative impact on the process as reviewers had to recall what issues were being addressed and why. From the City's perspective, the process could have been faster overall if the team had submitted for annexation, rezoning and subdivision from the start rather than trying to make a TED Development work and proposing roads that did not meet subdivision regulations, adding complications to the process.

The written request for the pre-application meeting was submitted on March 5, 2019, roughly 13 months after the TED conditional use scoping meeting. The revised meeting request included plans for annexation, re-zoning, boundary line relocation and the subdivision of the parcel into 31 lots. The meeting was held on March 8, 2019 and discussed the subject property, zoning and Growth Policy, density, hazards, constraints, parkland dedication via cash-in-lieu, block lengths and road networks. Based on the information provided, Development Services identified items needed for application and determined that the proposal would require variances regarding short courts, street cross-section dimensions and block length.

The development team's main objective was to be able to move forward with Phase One of the project, which proposed 20 single-family units without displacement of existing mobile home units. Parkland dedication would be satisfied via cash-in-lieu for the first Phase while common areas would be used to satisfy the requirement in later phases. Another major item of discussion was the road connection between Strand Avenue and Mount Avenue which had been identified in the annexation public hearing before City Council. The team was firm on preserving an existing unit that would have been within the road connection right-of-way and prepared plans showing the location of an offset road connection that would be built in a later phase. The plans

and location for the offset connection received initial support from Development Services and City Engineers but a later cross-section of the road connection developed by the team made it clear that the road would need to be one-way without sidewalks on the southern end to preserve the existing home. City Staff affirmed that a variance would be required for the road and that it would need two drive lanes, curbs, gutters, and sidewalks on each side.

### ***Neighborhood Meeting***

As the team prepared its subdivision application and preliminary plat for submittal, a neighborhood meeting was held on 5/15/2019 with 15 attendees. The meeting was hosted by WGM Group and discussed the developer, subdivision process, site location and plan. Attendees asked questions while exhibits and artist renderings of the site were available for viewing.

### ***Element Review***

The team spent just over five months hosting the neighborhood meeting, revising plans, and preparing materials before submitting its subdivision application and preliminary plat for element review on August 8, 2018. The annexation with zoning upon annexation had been approved, followed by approval of the boundary line relocation was being reviewed. The detailed materials included a project summary that covered zoning and growth policy compliance, phasing plans, cash-in-lieu of parks for Phase 1, roadways, water and sanitation, responses to primary review criteria, impacts on local services, variances, neighborhood meetings, and covenants.

Five variances were requested to address obstacles relating to the development of infill sites and substandard existing infrastructure. The variances pertained to short courts, street cross-section dimensions and block lengths. The application made clear that the variances were not made to reduce costs but to accommodate existing conditions and still meet the goals of the Growth Policy and regulations. Each variance discussed the existing condition specific to the request and the associated justification for the variance. During the annexation process, City Council expressed concern about the north/south road connection between Mount and Strand. Development Services notified the team that the full road would need to be built in Phase 1. The team's plans indicated that only half of the road connection would be built in Phase 1 with a reduced, one-way section being added in Phase 2. This raised concerns due to the fact that the team was not confident second phase would ever occur and that the subdivision layout and road sections could not be built as proposed unless the team could gain ownership of an additional parcel on Strand Ave.

The team had spent over 18 months preparing plans for submittal and felt that the amount of detail should have been sufficient but Development Services provided notice on August 9, 2019 that the application could not be certified as containing all the necessary elements. Several items were identified as needing to be addressed for element review including deficiencies with the preliminary plat, the maps and exhibits, the subdivision application, covenants, and variances. Additionally, other issues that were likely to be raised during sufficiency review were identified. The team attempted to address the issues and resubmitted the packet for 2<sup>nd</sup> element review on September 17, 2019, which was also not certified. The applicant team attempted to

address the changes yet again and the 3<sup>rd</sup> element review was certified on October 15, 2019, two months, and seven days after submitting the subdivision application and preliminary plat. From the City's perspective, these issues could have been avoided if the applicant team had more familiarity with subdivision regulations.

Despite the certification, the applicant team withdrew from the process after re-evaluating the project and determining that they could not deliver homes anywhere near their targeted price point of \$350,000. Unanticipated infrastructure costs and time costs associated with preparing the application made it difficult to hit a \$420,000 price point for the homes. The team withdrew to avoid incurring more costs on the project as the price points continued to climb.

## **Development Process Analysis and Lessons Learned**

### ***Interpretation of Code and Unrelated Concerns Cost Time and Money***

While the development team agreed that Orchard Home Estates was a somewhat complex project, they felt that it was completely within the realm of land use planning and zoning, which should have been clearly understood and interpreted by all parties involved. Despite this, the team noted that City staff and agencies had different interpretations of the code and requirements throughout the process. Because there were several reviewers for the subdivision application, the team reported getting drastically different opinions from individual reviewers regarding the same issues which added costly re-engineering and re-designing of the plans.

Additionally, the team reported having to address recommendations and objections late in the process that they felt were coming from "outside parties" and unrelated to land use planning and zoning. The specific incident cited was a request made by the Chair of the Land Use and Planning committee regarding the proposed road connection. The team's site plan proposed the road connection to be offset from existing roads to accommodate an existing unit on the site. The offset road was supported by City reviewers and Development Services had initially recommended approval with the offset connection. The council member had attended a recent transportation meeting and determined that the road connection should not be offset and proposed requiring an easement as a condition of approval of the annexation to ensure that the connection would be made in the future. The team felt that getting a comment as significant as relocating a road that late in the process verged into being obstructionist, but still had to spend valuable time and money to address the issue.

From the City's perspective, the team's failure to design a project and road that met the regulations contributed to the lack of clarity in code interpretation. The City felt that the owner's insistence on retaining the existing home on Strand Ave. and expecting the City to support a road variance for a one-way road that did not fit on land owned by the team was unreasonable. The City points out that these were the same reviewers that worked on Cowboy Flats and other successful subdivision projects. With a number of regulations to be considered and several reviewing entities including Engineering, Parks and Recreation, and Public Works, the City recognizes that there will be often conflicting comments from reviewers. Additionally, limited capacity and high turnover within City Staff contributes to more coordination being required during the review process.

The City also feels that a concern raised by a council member is not coming from an outside party, and that the council member had a right to raise the concern and advocate for it. The City points out the issue only had to be addressed during the annexation process and the team should have realized that staff's information about the road connection was important to the governing board. The City felt that it was unwise for the team to submit a road section in the element packet that reduced the road to a one-way on the southern end. During annexation, the Council approved the road easement where the applicant proposed it and NOT where the council member requested it. While the concern could have been raised much earlier in the process and was the first that Development Services had heard of it, it is the City Council's role and responsibility to raise such concerns as long as they pertain to relevant review criteria and result in conditions of approval that mitigate impact. Furthermore, Development Services continued to advocate for their recommendation of approval with the offset connection given the way that it directly addressed relevant conditions while also preparing the condition for alignment through the road easement based on council request. While Development Services is often successful in identifying and resolving conditions of approval that go beyond mitigation measures, this case study illustrates the difficulty a development team may face when new conditions and requests are raised.

***Process was Arduous and Amount of Detail Required was too Costly***

While the team believes that much of the time and costs associated with revisions can be attributed to different interpretations of code, in the end the team felt that the amount of detail required for the process was too costly. Although the subdivision application and preliminary plat are required just to get to agency and planning review, the team felt that the amount of detail required for the plat and road designs were almost as much as a final plat. The team prepared about 330 pages of information for the application which they felt should be necessary for a subdivision that complied with requested zoning and Growth Policy. Having to make the switch from the TED process to the subdivision process required a massively detailed plans and information that was ultimately too costly to deliver units at their original targeted price.

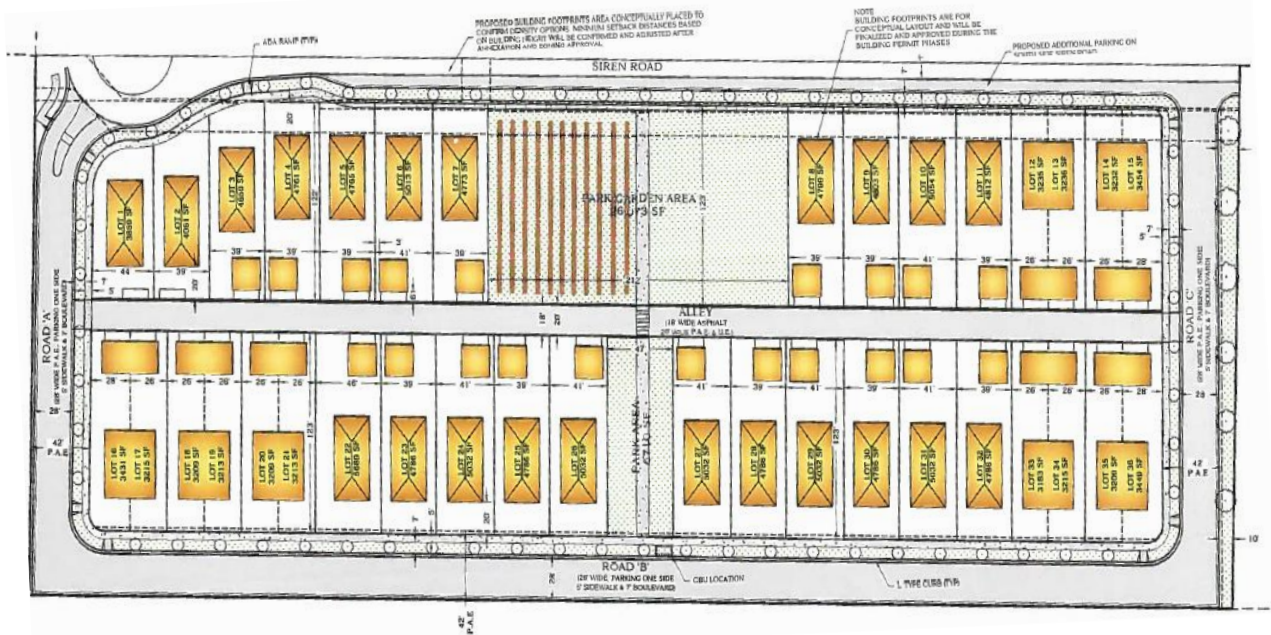
In the City's opinion, much of the added time and costs were the result of the team choosing to pursue a TED development instead of proposing annexation, rezoning and subdivision from the beginning. Additionally, the City felt the many of the complications were the result of the applicant team's failure to design a project and roads that met subdivision regulations.



# LARGER TED PROJECT: HELLGATE GARDENS TOWNHOMES

TABLE 2 HELLGATE GARDENS TOWNHOMES DATA

Project Type	Larger TED (Conditional Use)
Location of project	Mullan Neighborhood
Size of project (area)	6.51 acres
Zoning	Initially C-RR1 and requested zoning upon annexation of RT5.4 Residential
Allowable density	3 -11 du/ac allowed by Growth Policy, about 8 du/ac allowed by RT5.4
Actual density	5.5
Number of units delivered	36 units
Type of housing delivered	Single-dwelling detached and 2-unit townhouses
Planned target sales price range	Townhouse: \$250k SF homes: \$275k-\$300k
Final sales price range	Townhouse: \$275k-\$295k SF Homes: \$300k - \$320k
Target market	SF went for \$300-\$320
Project initiation start	TED Conditional Use request submitted on 8/17/2017
Project completion	City Council Approval on 11/13/2017
Duration	2 months, 27 days (from TED CUP request to City Council approval) 11 months, 15 days (from TED CUP request to TED Declarations)



**Project Description**

Hellgate Gardens Townhomes is a larger TED project in the Mullan Neighborhood that was proposed by Adam Hertz and Territorial Landworks on behalf of the owners. The team proposed the townhome exemption development of 36 townhome units (22 single-dwelling and 14 units in two-unit townhouse format) on the 6.51-acre vacant, greenfield parcel. The property was zoned C-RR1 in the County, so the team requested that the parcel be annexed into the City with zoning upon annexation of RT5.4. The site was designated Residential Medium by the Growth Policy which allows 3 to 11 dwelling units per acre and the requested zoning of RT5.4 upon annexation would allow for about 8 dwelling units per acre. The proposed density with 36 units was 5.5 du/ac in compliance with the Growth Policy and requested zoning but the TED standards at the time stated that a project of 10 or more units in RT5.4 must request conditional use approval from City Council. Additionally, the project would have to comply with the TED building specific standards and conditional use criteria outlined in Title 20.

The team strategically chose the property and located the units to create a positive relationship with other neighboring properties in the area while creating much-needed affordable housing for Missoula residents. The proposed development also included .73-acres of open space and community garden area to comply with parkland dedication requirements of the TED Standards in zoning and the agricultural land recommendations in the Growth Policy. The community was targeted towards families due to its proximity to excellent schools and sidewalks were also included in the plan as required by Title 12 Road Standards for TEDs and to ensure safe walking routes to the schools. Based on schematic designs, the team was targeting a sales price point of \$250,000 for the townhouse units and \$275,000 to \$300,000 for the single-dwelling townhome units. The team was unable to achieve the target price points due to costs associated with the process and parkland dedication but Hellgate Gardens was still one of the only projects that delivered newly constructed units at median or less than median prices. The actual sales prices were \$275,000 to \$295,000 for the townhouse units and \$300,000 to \$325,000 for the single-dwelling units.

The team submitted its TED Conditional Use application in August of 2017 and received approval from City Council in November of the same year, just three months after submittal. Overall, the project is considered to have been a major success and the development team would pursue more projects like it if the TED regulations had not been amended and the regulatory environment were more accommodating.

**Development Process**

**TABLE 2 HELLGATE GARDENS TIMELINE**

	<b>Date</b>	<b>Action/Outcome</b>
<b>Pre-Development</b>	03/01/2017	Conceptualization, schematic design, and plan preparation begin
<b>Annexation &amp; Conditional Use Request</b>	8/7/2017	Annexation request submitted
	8/17/2017	TED Conditional Use request submitted
	9/13/2017	TED Conditional Use request revise and re-submitted

<b>Public Notice &amp; Agency Review</b>	10/5/2017	APO notice agency review sent
	10/27/2017	Site posted
	10/27/2017	Legal Ad in Missoulan
	10/29/2017	Legal Ad in Missoulan
<b>Annexation/Conditional Use Approval &amp; Conditions</b>	11/2/2017	Staff report with conditions of approval and recommendations provided
	11/8/2017	LUP Committee Meeting
	11/13/2017	City Council Public Hearing and Approval
	11/27/2017	Notice of Approval and conditions
<b>Zoning Compliance Permit</b>	7/12/2018	ZCP submitted
	7/27/2018	Townhome Certification letter approved
<b>TED Declarations</b>	8/1/2018	Declarations filed

### ***Pre-Development***

Conceptualization for the project began in March of 2017 and the team began preparing schematic designs for the site. The team initially considered ways to maximize density on the site and proactively engaged in conversations with Development Services and relevant entities during site plan development. An initial plan included 46 units and the potential for condominium and apartments in the future. The plans were revised based on conversations with the City Parks and Recreation Department to meet code requirements that 11% of the site area would need to be dedicated to parks and community gardens to meet parkland dedication requirements and the Growth Policy’s agricultural land preservation goals. Cash-in-lieu was not available at that time and the team had to revise plans to accommodate a .73-acre open space resulting in a loss of several units.

During this time, the team developed its plan for gaining the necessary approvals and reviewed the criteria that would be considered for annexation, rezoning and conditional use requests. Development Services informed the team that there would likely be public opposition to the development due to surrounding properties and its proximity to the school. The team reviewed the plans with relevant entities and approached adjacent property owners for comment before preparing the final annexation and conditional use requests.

### ***Annexation and TED Conditional Use Request***

Before submitting a Zoning Compliance Permit, the team needed to request that parcel be annexed into the City with zoning upon annexation of RT5.4 residential. The criteria for zoning upon annexation included the following:

- authorize land uses comparable to the land uses authorized under the county zoning classification that applied to the property immediately before it was annexed into the city.
- authorize land uses that are consistent with the land uses approved by the Board of County Commissioners or the County Board of Adjustment; or
- be consistent with the land use and zoning recommendations for the subject areas, as set forth in the Growth Policy.

Because Title 20, Section 20.05.040(D) stated that a TED of greater than 10 units must request conditional use approvals in the requested zoning district, the team also needed to be granted conditional use approval for the project. The development would also have to comply with TED review criteria and conditional use criteria summarized below:

TED Standards Review Criteria (Title 20, Section 20.40.180):

- Density
- Setbacks and Separations
- Minimum building envelop area
- Surface Infrastructure
- Block lengths
- Open Space

Conditional Use Review Criteria (Title 20, Section 20.85.070):

- Compliance with Zoning standards and other applicable regulations;
- Compatible with the character – site and building design;
- Compatible operating characteristics; and
- Traffic safety – all modes of transportation.

After months of schematic design, site planning and review with relevant entities, the team submitted a request for a conditional use permit on August 17, 2017 before revising and resubmitting on September 13, 2017. The request included a cover letter addressing conditional use factors to be considered by Council and an application packet containing the required information, responses to conditional use review criteria and site plans.

#### ***Public Notice & Agency Review***

With the submission of the annexation and conditional use request, Development Services sent public notice to adjacent and affected property owners on October 5, 2017 as required by TED standards for a project proposing more than five dwelling units. Six public comments were received regarding vehicular traffic near the school, student safety, density, opposition to the zoning request and potential effects on adjacent properties. Four adjacent property owners filed a formal protest to the annexation and development which requires a supermajority vote by City Council for approval per State Law.

Development Services also sent the request to reviewing agencies for comment on October 5, 2017. Four comments were received and summarized below:

Environmental health: Project will need to receive either an exemption letter from DEQ or go through Sanitation in Subdivision review and gain approval prior to being filed at the Clerk & Recorder's office

Air Quality Division: Recommended conditions of approval regarding the Missoula Air Stagnation Zone

City Parks and Recreation: Support of the project with comments regarding park/garden design and future trail connections

Housing and Community Development: Underutilizing the available density will have an upward push on sales prices that may not be affordable for many homebuyers. The developer originally proposed 46 units, 12 more than the 36 now proposed. This would represent a 28% increase in density that could decrease the development cost per unit and therefore result in lower purchase prices for homebuyers. We would encourage the developer to maximize the allowable density to allow for a lower purchase price while increasing housing supply.

***Annexation/Conditional Use Approval and Conditions***

Upon receipt of public and agency comment, Development Services provided a staff report on November 2, 2017 recommending approval of the TED conditional use request based on findings of fact and subject to thirteen conditions of approval summarized below:

- If the annexation/zoning upon annexation is not approved by 2/3 vote, conditional use does not go forward.
- Title 20 regulations plans must conform with those approved as part of conditional use.
- Avigation easement: development covenants must advise potential buyers of noise, safety issues within the Airport Influence Area.
- Development covenants address public health issues of radon and air quality as affected by wood stoves.
- Engineering will review plans for road improvements prior to zoning compliance approval of the TED Declaration.
- Engineering will review plans to ensure that parking is allowed on only one side of private roads, to include painted curbs, signage
- All roads require maintenance and replacement by homeowners
- City Parks will review & approve landscaping and maintenance plans for boulevards, park area
- Revegetation & weed management done in accordance with state law.

A memo, including the staff report, was then sent on November 2, 2017 referring the Hellgate Gardens TED conditional use request to the Land Use and Planning Committee as pre-public hearing information item. The committee reviewed and discussed the request on November 8, 2017.

The City Council public hearing was held on November 13, 2017 for approval or denial of both the annexation request and the conditional use request. A presentation from Development Services reviewed the subject property, site plans, zoning upon annexation criteria, TED review criteria, recommended conditions of approval, Conditional Use Review criteria before recommending the following motions on the annexation, rezoning upon annexation and conditional use request:

- Adopt a resolution to annex and incorporate within the boundaries of the City of Missoula a certain parcel of land described as Tract 1-B-2 of COS 4204 and zone the property RT5.4 Residential in the city subject to one condition of annexation.
- Approval of the townhome exemption development (TED) conditional use request, in accordance with Missoula City Zoning Ordinance, Title 20, Sections 20.05.040D, 20.05.050, 20.40.180 and 20.85.070 based on the findings of fact in the staff report and subject to the conditions of approval.

Both motions received unanimous votes for approval from the Council members present and the team received official notification of the approvals and conditions of approval on November 27, 2017, just three months after submitting the request. The annexation and zoning upon annexation would take effect immediately while the conditional use approval would be valid for two years. Several of the conditions of approval required statements added to the development covenants which could not be amended or deleted without prior approval from City Council.

#### ***Zoning Compliance Permit & TED Declarations***

With annexation and conditional use requests approved, the team worked to satisfy the conditions of approval over the next several months before submitting the Zoning Compliance Permit on July 12, 2018. They received ZCP approval on July 27, 2018 and TED Declarations were filed on August 1, 2018, 11 months, and 15 days after submitting the conditional use request.

## **Development Process Analysis and Lessons Learned**

#### ***Successful, Timely Process with Few Complications***

Overall, the team considers the process and resulting project to have been a huge success that was achieved quickly and went well. The developer stated that he would pursue several more projects of this nature if he could and advocated for keeping the TED process how it was for Hellgate Gardens. The review and permitting processes were described as exceptional and the team felt that being able to get a land use decision quickly was key to avoiding complications. The team also reported that the case planner for the project was very competent and recommended that the designation of a director would provide on-going leadership for City Staff.

#### ***Concurrent Annexation Process was Critical***

The team indicated that annexation occurred very quickly in their case and provided momentum as requested zoning was approved. They felt it was critical to get to a land use decision quickly to understand what is possible. However, a new annexation policy has since been adopted by the City which identifies annexation as primary process yielding the need for a development plan to be submitted for consideration. While the process is still free for applicants, the change has given the City a chance to understand the potential impacts of annexation before approval and ensure that the annexed land meets City standards, including level of service. The annexation policy aligns with the growth policy especially as it helps to focus on incentivizing development in areas where services already exist. The change provides the City with the ability to understand the project and site, to fully consider the ability to serve the site and create

cohesive orderly development , and to consider future development nearby that may also require significant infrastructure. The policy change was made to address land annexations that were previously approved by the City without a basic understanding of what was being proposed. Such projects have resulted in on-going issues related to level of service, sub-par infrastructure, and connectivity. The development team reported that the current annexation process takes significantly longer and has resulted in developers viewing new residential projects as a bad investment because approvals are more likely to be drawn out and then projects lack momentum. However, the City pointed out that because the Hellgate Gardens team had detailed and accurate development plans for the site, including road improvements meeting Title 12 TED Standards, the current annexation policy would not have significantly impacted the project timeline or altered what was required.

### ***Recent Changes Negatively Affected the Process***

Despite considering the project a major success, the team reported that they would not pursue another project in the current regulatory environment. In addition to the annexation policy adoption, the current cap of ten units for TED project was also viewed as a negative change. Land availability, infrastructure requirements and adjacent property owners make it extremely difficult for most developers to find suitable properties. The team understands that extremely large subdivision projects deserve more scrutiny but feel that the current cap of ten units makes it nearly impossible for any new projects to come to fruition. The team also indicated that they would only be pursuing multi-family projects and uses that exist by right unless the review process and code requirements are amended.

From the City's perspective, new TED limits were created, in part, to avoid the problem of road maintenance that is evident in the Hellgate Gardens project. The City points out that there was a significant number of private roads proposed which will need to be replaced/maintained by the HOA and can be very costly. One problem with this TED is the number of private roads that HOA will need to maintain and replace over time. The TED limits reduce the need for private roads and the maintenance costs for the HOA, which the City believes should be included when considering housing affordability.

### ***Open Space Requirements added costs for the Buyer***

The biggest factor in the final sales prices of the homes was meeting the requirements for parkland dedication and agricultural land preservation. At least ten units were removed from the plans to meet the requirements and added to the final unit sales prices. The team would have preferred a cash-in-lieu option to maintain a higher density and provide more homes, but it was not available at the time. The team believes that increased density is better overall for providing a greater supply of affordable homes and is also more profitable for developers which would increase the number of residential projects in the pipeline. While supportive of community open space and the preservation of Missoula's agricultural areas, the team feels that those requirements should not come at the expense of affordable housing when the result is sprawl that also negatively impacts the environment. Additionally, comments from Housing and Community Development encouraged the addition of more density and referenced the changes

in density throughout the project. This appears to be an area where the City's regulations and Park Plans are not consistent or aligned in the review and comment phase.

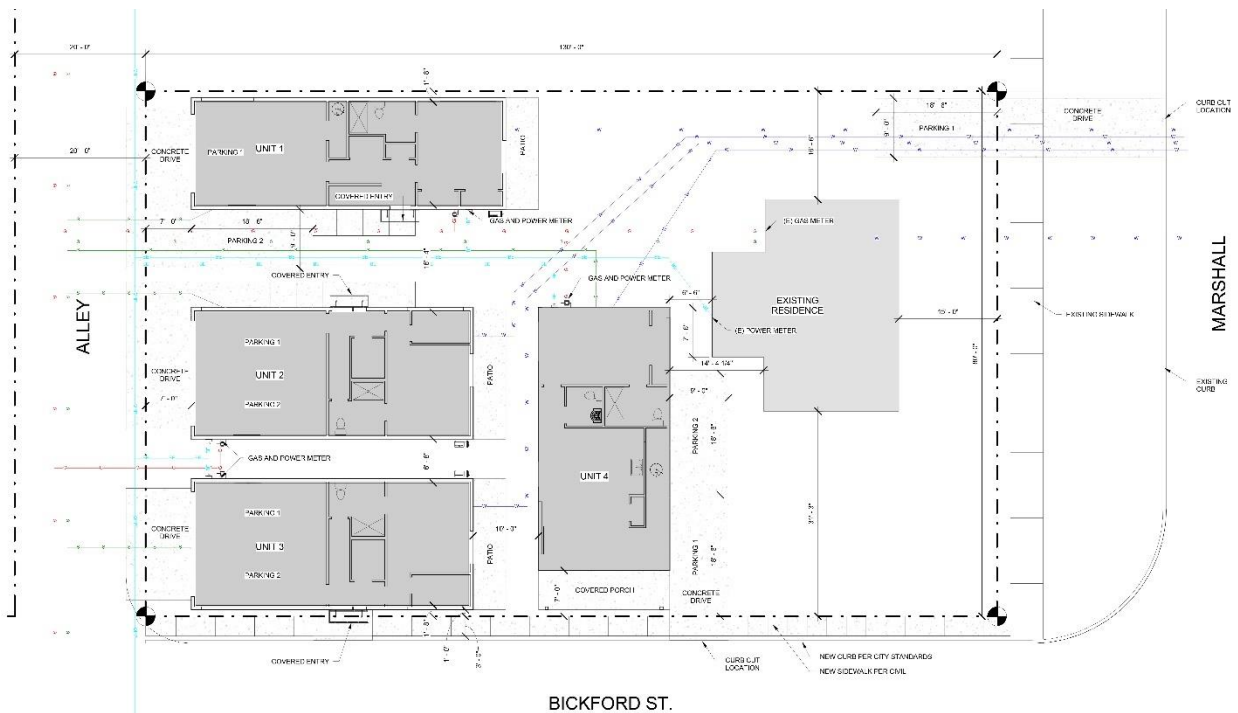
From the City's perspective, the open space requirements should not have come as a surprise to the team, as they are standard requirements. The site fell within an urban agriculture node and was not in proximity to any existing public park lands, which is a key indicator for any cash-in-lieu option. While the City indicated an interest in investigating policy alignments to re-evaluate the urgency of housing development in relationship to open space and other community needs, that is a long-term strategy and open space is consistently a high priority for surveyed residents. In this case, growth policy and regulations required open space. The City encouraged the Hellgate Gardens team to consider more allowed two-unit townhouses to increase density, but the developers did not want to sacrifice single-dwelling detached units.



# SMALLER TED PROJECT: MARSHALL STREET TOWNHOMES

TABLE 3 MARSHALL STREET DATA

Project Type	Smaller TED
Location of project	Rose Park Neighborhood
Size of project (area)	.24-acres (10,400 sf)
Zoning	M1R-2
Allowable density	10 units allowed by zoning (41.6 du/ac)
Actual Density	5 units (20.8 du/ac)
Number of units delivered	5 (4 new, 1 existing)
Type of housing delivered	Single-family detached
Target sales price range	Sub \$300k for new townhomes
Final sales price range	\$319k - \$329k
Project initiation start date	ZCP submitted on 7/27/2018
Project completion date	TED Declaration Filed on 2/1/2019
Duration	1 month, 22 days (from ZCP submission to approval) 6 months, 6 days (from ZCP submission to TED Declarations)



**Project Description**

Marshall Street Townhomes is a smaller, infill TED project that was developed by Marshall Properties Group (Ryan Frey and Jim Schaefer). The project site was a .24-acre (10,407 square foot) corner parcel in the Rose Park Neighborhood with alley access and one existing single-family home. The developer proposed the creation of 5 townhome units, and the construction of four new townhome units. The proposed density of the project was 20.8 du/ac in compliance with the property’s existing zoning of M1R-2 which allowed for 10 units and a density of 41.6 du/ac. The team would have preferred more density to lower the price points but was not interested in multi-dwelling or attached townhouse units, which are allowed by M1R-2, and determined that only 5 detached units were feasible due to site constraints and City parking requirements.

The development team purchased the property with the intent of a smaller, infill project with single-dwelling detached units. The process involved the vacation of City-owned right-of-way to increase the parcel area and allow more TED units prior to a timely TED process that involved a by-right fit with zoning and permitting process before Declarations were filed. Based on conceptual plans, the developers anticipated that the new homes would sell for under \$300,000 per unit to a range of millennial buyers because the units would have steps that deterred older demographics. The units attracted a wide-range of buyers, including retirees and the actual sales prices of the homes were around \$325,000 due to costs incurred during the permitting and construction process as the developer had to make retro-active changes to meet code requirements that could have been addressed earlier.

Overall, the project was a successful infill project that brought new supply of affordable units in just over six months (from ZCP submission to the TED Declaration being filed). The team considers the project a major success but felt there was room for improvement regarding the permitting process.

**Development Process**

**TABLE 2 MARSHALL STREET TOWNHOMES TIMELINE**

	<b>Date</b>	<b>Action/Outcome</b>
Pre-Development	12/01/2017	Property purchased, Schematic Design, Vacation process, and PRT review
ZCP Submission	7/27/2018	Submitted
ZCP Approval	9/18/2018	Approval
TED Declarations	2/01/2019	Declaration filed

**Pre-Development**

The property was purchased in December of 2017 and the team immediately began developing conceptual plans and layouts. As the team considered ways to maximize density, the civil engineering consultant noticed that the yard of the existing single-family home was located partially within a City public ROW. The project’s engineer recommended that team vacate 20 feet of the ROW to increase the lot size, maximize density and allow for building up to lot lines without altering existing streets or sidewalks.

The team began the vacation process by preparing the application, paying the required fee, and meeting with City Development Services for preliminary approval. Development Services then made a presentation to City Council to recommend approval with the development team present to answer questions. City Council approved the vacation after a two to three-month process. Overall, the vacation process was a success but added significant time to the overall project because the lot size and details needed to be confirmed before final plans could be prepared for the TED process.

Once the vacation was approved, the team prepared site plans and proactively reviewed them with the Planning Review Team and other project review agencies. The team reported that it was difficult to get input from all necessary reviewers and agencies as meeting attendance was not consistent. The team felt that they had to pester people for input, comment, and approval before submitting the Zoning Compliance Permit.

#### ***Zoning Compliance Permit Submission***

Once the vacation was approved and the team had revised site plans to address review comments, the Zoning Compliance Permit Submission (site plan and build set) was made on July 27, 2018 to officially begin the TED process, nearly seven months after purchasing the property. Because the project proposed only five units, no public notice to adjacent property owners was required but the materials were sent to relevant agencies for comment.

#### ***Zoning Compliance Permit Approval and Conditions***

The team received Zoning Compliance Permit approval from Development Services on September 18, 2018. Based to the project's by-right fit with zoning and site plans, the proposed development was determined to be in compliance with local zoning regulations and with TED regulations.

#### ***Infrastructure, Permitting and Construction***

Currently, the filing of TED Declarations are the final step before a project can be built, but at the time of the Marshall Street project, building permits and construction could begin before TED Declarations were filed. The team submitted for building permits based on approved site plans but did so before new ownership lines were delineated, which impacts utilities, easements, and code requirements.

At this point, the team ran into issues obtaining the necessary permits and had to revise its plans several times to prepare for filing Declarations. Despite early approval of the proposed site plans and build set, the team had to alter its build set multiple times as agencies and departments had different interpretations of code requirements. The major issues that resulted in costly and time-consuming changes are listed below:

#### **Sidewalk Layout:**

The sidewalk layout that was included in the ZCP submission was recommended and approved by the City Engineer earlier in the process, but the team was told that sidewalk elevations would need to change upon meeting with permitting. As the team worked to address sidewalk

elevations, there was additional confusion as a result of conflicting direction between Engineering and the Parks and Recreation Department. The team had already begun constructing the new units based on an approved site plan that then changed significantly. The team estimates that three to four weeks was added to the process due to changing sidewalk layouts.

#### Easements:

The team reported that had to go back and forth with multiple entities within the City regarding what was required for utility easements. With the addition of ownership lines through the TED process, wider easements are often required for utilities and infrastructure. Despite initial approval, the permitting agencies decided on different requirements that resulted in several plan revisions.

#### Fire-rated Windows:

As the team was significantly underway with the construction of the new units based on approved plans, a building inspector visited the site and noted that the windows of the new units were too close to the property line and would need to be fire-rated to meet code. The team pointed out that framing, windows, and mechanicals were already in place based on approved site plans. The City admitted to having made an error by missing the requirement in review but determined that the team would have to retro-actively upgrade to fire-rated windows in order to meet code. The City's review/approval stamp includes a note that the City is not legally responsible for any omissions or errors, so it was the developer's responsibility to make changes to meet code. The issue added three months to the build process and added an additional \$8,000 to the price of each home.

#### Powerlines:

At another point during the construction of the new units, as the team was completing second floors, a service technician noted that the powerlines seemed to be too close to the buildings. Again, the team had to make a retroactive change to previously approved plans in order to add new powerlines that were raised above the roof lines to the required clearance. In addition to added time, the team had to make a \$10,000 change order that added \$2,500 to the cost of each unit. At the time of the project, information regarding powerline locations and clearances were not required to be in the site plan submitted for Zoning Compliance Permit approval. That has since been changed and the information is now required.

#### ***TED Declarations***

After nearly four and a half months of work to meet code requirements and obtain the necessary permits/approvals required, Ted Declarations of townhomes, covenants, conditions, and restrictions for the project were filed on February 1, 2019. The units were existing and complete at the time of the filing.

## Development Process Analysis and Lessons Learned

### *Retroactive Changes added costs for Buyers*

The team reported that site plans and build sets had to be revised at least four times after receiving support from PRT members and reviewing agencies. Despite the approval of site plans and build sets, the team had to make several retroactive alterations to the plans and build process to meet the code requirements for filing declarations. The project team expressed that they were very willing to meet all necessary and applicable codes, but the delay in correct information at key stage in the review created frustration and ultimately resulted in increased costs for buyers. The issues added months to the process and nearly \$30,000 to the cost of each new home. The team felt that those changes could have been avoided in the review and permitting process.

From the City's perspective, many of the retroactive changes and associated costs are related to the team's haste in obtaining building permits and starting construction before TED Declarations were filed. The TED Declarations establish the unit ownership lines which brings different standards and code requirements compared to multiple units on a single parcel. The City feels that reviewers may not have been aware of the anticipated TED Declarations and that the team could have been more proactive in providing enough information to avoid some of the retroactive changes. There can be a lack of clarity around permitting and code requirements before ownership lines have been officially drawn and the TED process has since been intentionally amended to require the filing of Declarations before building permits can be issued and construction can begin. The amendment should help avoid these issues in the future, but the City also feels that the applicant team should be responsible for meeting standardized code requirements and addressing public health and safety at any point in the process. The City felt that the issues related to fire code and powerline clearance could have been avoided with more due diligence and attention to detail by the building/design team. The City reported that owners/developers often say that they will accept responsibility for changes required with building permit submittal when they are allowed to submit prior to entitlement, but that any associated costs or complications are seen as error on the part of City Staff. The City also pointed out that some of the complications are the result of low staff capacity. With the loss of experienced staff, new planners must be hired and require time-intensive training. The team also reported that the City has no process for revisions once plans have approved. Even if the revisions were minor, the items for review go to the back of the review queue before being addressed/approved by City Staff. The City clarified that there is a resubmittal process and that there is only a queue for the initial submission of projects. While project revisions do not go to the back of the queue there are certain priorities based on permits and visitability that could be clearer.

### ***Conflicting Regulations Negatively Impact Development Processes***

While meeting standardized code and addressing public health and safety is a basic responsibility for both the City and the developers, the City does feel that regulations should generally be brought under one code to avoid conflicts between agencies. The issue with sidewalk layout may be attributed to the Engineering and Parks and Recreation departments being on different pages. If all regulations were in one document, moving plan elements could be avoided.

### ***Room for Improvement in Review Process***

In addition to the required revisions to the plans that could have been avoided, the team felt that there was room for improvement in the review process. One frustration was the difficulty in getting the necessary entities and agencies to attend review meetings early in the process. Despite getting approval from all entities, the team had to ask staff multiple times to get and address comments. The team felt that some of the retroactive revisions and errors in review could have been avoided if review meetings were better attended.

The team also felt that the lack of a standard note-taking system added to the complications. As the project was reviewed by different entities, each new reviewer had different interpretations of the requirements without the benefit of background information from previous meetings or reviewers. The team also felt that different interpretations of code were a result of the City being understaffed with high turnover that results in a lack of understanding of the code/process.

### ***Successful Exemption Project***

Despite some frustrations and added costs that got passed along to the buyers, the team felt that this was a successful project in that it provided less-expensive units on an infill site in a timely manner. The team felt that TED requirements at the time of the Marshall Street Townhomes project were reasonable and ultimately possible to work with from a development perspective. While recent TED amendments, including the new cap on units and parkland requirements, have been made to allow for more infill projects like Marshall Street, the team indicated that there are a limited number of sites in Missoula that would be feasible for redevelopment. The developers indicated that they will be focusing on multi-family projects until a “slam dunk property” becomes available or the process is amended.