



## DEVELOPMENT SERVICES

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October 16, 2020

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

### RE: Heron's Landing Phased Subdivision, Annexation with Zoning, and Rezoning

Dear Mr. Salisbury,

At its regularly scheduled meeting of September 21, 2020 the Missoula City Council voted to annex Tracts 1 and 2 of Certificate of Survey No. 5963 into the municipal boundaries and apply the RT5.4 Residential zoning, subject to the conditions of annexation; approve the adoption of an ordinance to apply the Heron's Landing Neighborhood Character Overlay District; and approve the Heron's Landing Phased Subdivision, subject to the conditions in the attached document entitled "Conditions of Approval." The reasons for the decision to approve the subdivision and zoning, including the imposition of conditions of approval, may also be found in the attached document entitled "Findings of Fact and Conclusions of Law." The Resolution to Annex with conditions of annexation is attached, and will be assigned a resolution number and placed on the City's website here:

<https://www.ci.missoula.mt.us/DocumentCenter/View/1010/Ordinance-Index-and-Ordinances?bidId=>

As part of these actions the City Council approved the following motions:

1. **Adopt** a resolution to annex and incorporate within the boundaries of the City of Missoula, Montana a certain parcel of land described as Tracts 1 and 2 of COS No. 5963 in the SE ¼ of Section 12 and the N ½ of Section 13, Township 13 North, Range 20 West, P.M.M., and zone the property RT5.4 Residential in the city, based on the findings of fact in the staff report, subject to the recommended conditions of annexation approval as amended by City Council.
2. **Adopt** an ordinance to establish the Heron's Landing Neighborhood Character Overlay District and to rezone the subject property from RT5.4 Residential to RT5.4 Residential / NC-HL Heron's Landing Neighborhood Character Overlay, based on the findings of fact in the staff report.
3. **Approve** the variance request from Section 3-020 Table .2A, allowing George Elmer Drive improvements to be made within the existing 80-foot right-of-way instead of a 90-foot right-of-way.
4. **Approve** the variance request from Section 3-020 Table .2A, allowing Chuck Wagon Drive improvements to be made within the existing 80-foot right-of-way instead of a 90-foot right-of-way.
5. **Approve** the variance request from Section 3-020.2A(2), allowing Block A to be longer than 480 feet.

6. **Approve** the variance request from Section 3-020.2A(2), allowing Blocks B, C, D, E, F, G, and J to be longer than 480 feet.
7. **Approve** the variance request from Section 3-020.2A(2), allowing Block H to be longer than 480 feet.
8. **Approve** the variance request from Section 3-020.2A(2), allowing Block I to be longer than 480 feet.
9. **Approve** the variance request from Section 3-020.15.D.1, allowing a 10-foot wide Secondary Commuter Trail along street rights-of-way within an additional 6 ½-foot easement.
10. **Approve** the variance request from Section 3-020 Table .2A allowing Heron's Landing Drive, Nesting Lane, and Audubon Trail (Loop) to be built within 60-foot rights-of-way instead of 70, so long as an additional one-foot access and utility easement is provided along the outer edge of each right-of-way to allow for maintenance.
11. **Approve** the Heron's Landing Phased Subdivision, based on the findings of fact and subject to the recommended conditions of approval in the staff report as amended by City Council.

If you wish to appeal this decision on the subdivision, you must follow the procedure established by M.C.A. §76-3-625(2), which states as follows:

A party . . . who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

The statute includes the applicant within the definition of an aggrieved party.

According to M.C.A. §76-3-617(3) all phases of a phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

If you have further questions, please contact me at 529-0709 or email me at [degrandpred@ci.missoula.mt.us](mailto:degrandpred@ci.missoula.mt.us).

Sincerely,



Dave DeGrandpre, AICP  
Planning Supervisor, Development Services

Copy:

Gary Schnell, Teton Land Development Group, LLC  
Mary McCrea, Development Services  
Kevin Slovarp, Development Services  
Troy Monroe, Development Services  
Eric Anderson, Development Services

**CONDITIONS OF APPROVAL**  
**HERON'S LANDING PHASED SUBDIVISION**  
**September 21, 2020**

Note 1: Montana Code Annotated (MCA) Section 76-3-604(9)(a) states review and approval, conditional approval, or denial of a proposed subdivision may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review. The Heron's Landing Phased Subdivision application was deemed sufficient for review on May 14, 2020. The City of Missoula Subdivision Regulations Amended June 28, 2010 and 2019 Montana Subdivision and Platting Act were in effect at that time. The 2019 Montana Subdivision and Platting Act includes provisions for phased subdivisions in Section 76-3-617. Those provisions apply to the Heron's Landing Phased Subdivision.

Note 2: The Heron's Landing Phased Subdivision application includes a phasing plan that lists the anticipated platting of W phases to the west of George Elmer Drive and E phases to the east of George Elmer Drive. The subdivider has indicated the sequence of final platting depends in part on construction of George Elmer Drive, which is planned to be developed as part of the Mullan BUILD project. The City of Missoula acknowledges that under 76-3-617, MCA the subdivider may seek to amend the phasing plan in the future, following review and approval by City Council.

**Streets, General**

1. All street and non-motorized improvements shall be designed and built in accordance with City of Missoula Public Works Standards and Specifications and City of Missoula Subdivision Regulations (except as modified by variance). All plans must comply with Americans with Disabilities Act requirements. All plans must be reviewed and approved by the City Engineer in accordance with City policies. *City Subdivision Regulations Section 3-020.2*
2. The subdivider shall provide a street naming exhibit to be reviewed and approved by Development Services prior to final plat filing of the first phase. *Subdivision Regulations Section 3-020.12*
3. The subdivider shall provide a street signage plan in accordance with the Manual on Uniform Traffic Control Devices to be reviewed and approved by the City Engineer and City Fire Department prior to final plat filing of each applicable phase. *City Subdivision Regulations Section 3-020.4(H)(2)*
4. The following statement shall appear on the face of each plat, in the covenants, and on each instrument of conveyance:  
"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for the upgrading of streets within this subdivision, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities" *City Subdivision Regulations Section 5-050.4(M&N)*
5. All proposed rights-of-way shall be dedicated to the public on the face of each plat and approved by the City Engineer. *City Subdivision Regulations Section 3-020.3.B*
6. All proposed easements, except as modified by these conditions, shall be shown on the face of each plat and identified for their width and purpose, including easements for vehicular and pedestrian access, utilities, and irrigation ditches. *City Subdivision Regulations Section 3-060.1*

7. Street lighting shall be installed within the subdivision along Chuck Wagon Drive and George Elmer Drive in accordance with the Missoula Public Works Standards and Specifications Manual. The subdivider shall install lighting along Chuck Wagon Drive and George Elmer Drive prior to filing any plat that abuts those streets as part of that phase's improvements. Prior to final plat filing of the first phase, the subdivider shall petition to create a new street light improvement district. *Missoula Public Works Standards and Specifications Manual Section 7.3.6*

### Specific Streets

8. The Heron's Landing Phased Subdivision is located within the Mullan BUILD project area and George Elmer Drive, which provides access to the subdivision property, is planned to be improved as part of the Mullan BUILD project. Federal funds are planned to pay for a portion of the Mullan BUILD improvements. Funding mechanisms are currently being explored to pay for the remainder of the improvements. The funding mechanisms may include, but are not limited to, a special improvement district, impact fee, latecomers fee, or cost share agreements that allow the City of Missoula and Missoula County to recover the cost of constructing infrastructure from the properties that benefit from the Mullan BUILD project. To the extent that such funding mechanism(s) is created in accordance with state law and applicable principles of land use law, the subdivider, successors, and assigns shall participate in and be bound by the fees assessed and not oppose the creation of or participation in such a district. *Montana Code Annotated 76-3-510*
9. Chuck Wagon Drive through the length of the subdivision shall be improved to Urban Collector (with parking) standards as proposed including two 10-foot drive lanes, 6-foot bike lanes, 8-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks within the existing 80-foot wide right-of-way. All improvements to Chuck Wagon Drive from back of curb to back of curb shall be reviewed and approved adjacent to Phase W1 prior to final plat approval of Phase W1. All improvements to Chuck Wagon Drive from back of curb to back of curb north of Phase W1 shall be reviewed and approved prior to final plat approval of the third west phase. All other street improvements including boulevards and sidewalks shall be reviewed and approved prior to final plat approval of each adjacent phase. *Subdivision Regulations Table .2A modified by variance.*
10. Heron's Landing Drive, Nesting Lane, and Audubon Loop shall be designed and built to Low Density Urban Local Street standards including two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (except where the Secondary Commuter Trail is to be located) within 60-foot rights-of-way. The subdivider shall provide an additional access and utility easement at least one foot wide along the outer edge of the sidewalks and secondary commuter trail along these streets to allow for maintenance. *Subdivision Regulations Table .2A modified by variance, Correspondence with City Engineer.*

### Drainage

11. The subdivider shall submit complete grading and drainage plans prior to final plat approval of each applicable phase showing proposed grades of streets, proposed drainage facilities, and a storm water pollution prevention plan for all lots, blocks, and other areas meeting Montana DEQ standards and subject to approval of the City Engineer. All drainage facilities shall be constructed in accordance with the approved plan and accommodate the planned runoff from all upgradient phases. *City Subdivision Regulations Section 5-020.11*

## Transit

12. The subdivider shall petition for the property to be included in the Missoula Urban Transportation District prior to final plat filing of the first phase. *City Subdivision Regulations Section 3-010.7 and 3-020.1, City of Missoula Annexation Policy*

## Water System and Sewer System

13. The subdivider shall submit plans for water supply and sewage disposal for review and approval of the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of each applicable phase. Construction of all water supply and sewer systems shall be in accordance with City policies. *City Subdivision Regulations Sections 3-070.01 and 3-070.04*

## Solid Waste

14. The subdivider shall submit plans for solid waste disposal for review and approval of the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of each applicable phase. *City Subdivision Regulations Sections 3-070.01*

## Parkland

15. The subdivider shall meet the parkland dedication requirement as depicted on the Phasing Plan Exhibit and on the Parkland Dedication Exhibit of the application by providing 5.14 acres of dedicated common area to be maintained by the Heron's Landing Homeowners Association. *City Subdivision Regulations Section 3-080.3.A*
16. The subdivider shall draft an agreement for review and approval of the Parks and Recreation Department and City Attorney to provide for the dedication of land and/or payment of money prior to final platting of each phase. The agreement shall provide for different circumstances including where more than the required land is dedicated per phase, where an insufficient amount of land is dedicated per phase and cash is also required to make up for the insufficient amount of land, and where refunds may be issued by the City when more land is dedicated than needed to meet the dedication requirement. The agreement shall be submitted, reviewed and approved prior to final plat filing of the first phase. *City Subdivision Regulations Section 3-080.6*
17. When cash in lieu of parkland is proposed, the amount shall be equal to the fair market value of the amount of land that is statutorily required to be dedicated for that phase. The fair market value shall be determined by a Montana certified general real estate appraiser, hired and paid by the subdivider. Fair market value means the value of the unsubdivided, unimproved land based on the zoning designation that applies to the property at that time. The City reserves the right to require a separate appraisal for each phase. *City Subdivision Regulations Section 3-080.7*
18. The subdivider shall submit a park and common area landscape and maintenance plan and a boulevard landscaping plan to be reviewed and approved by the City Parks and Recreation Department prior to final plat filing of each applicable phase. *City Subdivision Regulations Section 5-050.4*

## Covenants, Conditions, and Restrictions

19. Final covenants, conditions, and restrictions meeting the requirements of City Subdivision Regulations Section 5-020-14.K shall be submitted for review and approval prior to final plat filing of the first phase. *City Subdivision Regulations Section 5-020-14.K*

## Non-Motorized Transportation Facilities

20. The subdivider shall provide five-foot sidewalks along all street frontages (except for where the Secondary Commuter Trail is to be located) and at the proposed mid-block locations depicted on the circulation plan exhibit. The subdivider shall provide a 10-foot Secondary Commuter Trail in the locations, dimensions, and within the rights-of-way and easements proposed in the preliminary plat phased subdivision submittal and approved by City Council. All sidewalk and trail plans, including specifications for ADA accessibility and safe street crossings, shall be reviewed and approved by the City Engineering and Parks and Recreation departments prior to final plat filing of each applicable phase. Construction of the non-motorized transportation facilities shall occur as proposed in the application submittal and as required to serve each phase. *City Subdivision Regulations Section 3-020.15 and Table .2A*
21. The subdivider shall provide a five-foot ADA accessible asphalt path connecting to existing sidewalks north of Heron's Landing along Chuck Wagon Drive in conjunction with Phase W1 and George Elmer Drive in conjunction with Phase W2 as depicted on the Phasing Plan. *Subdivision Application Phasing Plan*

## Fire Protection

22. The subdivider shall provide plans for address signage and a fire hydrant plan for review and approval prior to final plat filing of each applicable phase. All approved fire protection improvements shall be installed in accordance with the approved plans. *City Subdivision Regulations Section 3-010.1.F*

## Noxious Weeds

23. The Weed Management and Revegetation Plan for Heron's Landing shall be appended to the covenants, conditions and restrictions. The subdivider shall provide evidence of plan implementation and noxious weed control prior to final plat filing of each phase. *City Subdivision Regulations Section 5-020.14.K*

## Airport Influence Area

24. Each final plat shall include the following statement:  
"This property is in the airport influence area and subject to the requirements of the Airport Influence Area Resolution. The Heron's Landing Subdivision may also be within an extended approach and departure zone for a proposed second runway as shown in the Airport Authority's 2004 plan and lot owners should be aware of the resultant safety risk. Lot owners should consult the airport layout plan and any relevant documents to determine the status of the proposed runway location at the time of purchase." *City Subdivision Regulations Section 3-010.2*

## Zoning

25. The Heron's Landing Neighborhood Character Overlay Zoning District shall be adopted concurrent with City Council approval of the subdivision request based on the findings.

**FINDINGS OF FACT & CONCLUSIONS OF LAW**  
**HERON'S LANDING PHASED SUBDIVISION**  
**September 21, 2020**

**A. GROWTH POLICY COMPLIANCE**

Findings of Fact:

1. City of Missoula Subdivision Regulations Section 3-010.1.I. requires that subdivisions be reviewed for compliance with the growth policy and its amendments.
2. The *2035 Our Missoula City Growth Policy* contains a future land use map with land use designations that visually depict the community's desired direction as it meets new growth challenges and changing times. The land use descriptions and recommended locations help to set a broad understanding of future land use patterns that enables city services and agencies along with residents, property owners, and neighborhoods to plan effectively for the future. The mapping is a visual representation of the balanced, value-based review of the goals, objectives, and actions recommended as part of the growth policy.
3. The *2035 Our Missoula City Growth Policy* future land use map provides a land use designation of Residential Medium Density – 3 to 11 Dwelling Units Per Acre for the property.
4. The subdivision is intended to create 347 lots from the 72.11 acres, for a density of 4.8 dwelling units per acre.

Conclusions of Law

1. City Council determined the Heron's Landing Phased Subdivision substantially complies with the *2035 Our Missoula City Growth Policy*.

**B. PRIMARY CRITERIA COMPLIANCE**

**CRITERION 1: EFFECTS ON AGRICULTURE & AGRICULTURAL WATER USER FACILITIES**

Findings of Fact:

Agriculture

1. The USDA Natural Resources Conservation Service lists three soil types on these tracts: Desmet loam, Grantsdale loam, and Moiese gravelly loam.
2. The NRCS Soil Survey classifies these soil types as "Prime Farmland if Irrigated" and "Farmland of Local Importance." Roughly 2/3 of the site is Prime Farmland if Irrigated, with the remaining 1/3 in the southeast corner of the site Farmland of Local Importance.
3. The application submittal states the land has been used for raising livestock and growing hay in the past, although not within the past three years.
4. The property is currently zoned by Missoula County as C-RR1 Residential, which provides a maximum residential density of one dwelling unit per acre. The existence of County residential zoning on the parcels anticipates their use for residential rather than agricultural purposes. The *Our Missoula City Growth Policy* designates the property for urban scale residential development.

Agricultural Water User Facilities



5. The Flynn Lowney Irrigation Ditch crosses the property from roughly the center of the northern boundary running southwest to the western boundary. An irrigation ditch is also located along part of the north boundary of the property.
6. The preliminary plat sheets show culverts are planned to be installed where the Flynn Lowney Ditch intersects planned roadways and easements to provide for access and maintenance of the ditches.
7. Fifteen proposed lots numbered F332 through F346 are encumbered by the irrigation ditch to the extent the lots are undevelopable at present. These lots are labeled on the phasing plan as W7, the last potential lots to be created. The application states there is only one downstream user of the irrigation water and discussion has occurred to possibly abandon and vacate the ditch at the discretion of the Hellgate Valley Irrigation Company. If the ditch remains, the lots in this phase will not be developed.
8. The property owner has no rights to the irrigation water. Future homeowners in this subdivision would not have any rights to the irrigation ditch water either. There is a note on the plat which indicates this, and it is also specified in the covenants.

#### Conclusions of Law:

1. This subdivision would prevent use of productive soils for agriculture. However, the property is zoned for residential use and is planned for urban scale residential development.
2. City Council determined that no impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision.

### **CRITERION 2: EFFECTS ON LOCAL SERVICES**

#### **Transportation and Drainage**

##### Findings of Fact:

##### Streets and Alleys

1. Access to the subdivision would be from George Elmer Drive and Chuck Wagon Drive, both classified as Urban Collector Streets. The internal subdivision road network includes Low Density Urban Local Streets and Local Residential Streets, differentiated by the anticipated daily traffic volumes. The subdivider would be responsible for designing and building/upgrading all of the transportation facilities within the subdivision, including George Elmer Drive and Chuck Wagon Drive, in accordance with City Public Works Standards and Specifications and the City Subdivision Regulations (except as may be modified by variance). The plans must comply with Americans with Disabilities Act requirements and be approved by the City Engineer.
2. The subdivision application submittal includes a traffic impact study. The study indicates that currently planned transportation improvements to reduce congestion and increase safety along Mullan Road are pending and include a two-way left turn lane at the Mullan Road / Chuck Wagon Drive intersection and a traffic signal and eastbound left turn lane at the Mullan Road / George Elmer Drive intersection. The traffic impact study states the planned transportation improvements are sufficient to accommodate the site generated traffic at the Mullan Road intersections and that no further intersection improvements are required to mitigate the site generated traffic. The study also indicates the proposed internal street network design is sufficient to accommodate projected levels of traffic within and travelling through the subdivision.

3. Many of the lots are planned so the fronts of homes would face the street with rear access via alleyways. The City Subdivision Regulations require alley rights-of-way to be at least 20 feet wide with a paved surface of at least 12 feet. The proposed alleys meet these requirements. All of the lots appear to be suitable for driveway or alley access in accordance with the subdivision regulations.
4. Street names are provided on the preliminary plat. Section 3-020.12 of the City Subdivision Regulations requires the street naming plan to be reviewed and approved prior to final plat approval. This requirement is reflected in a condition of preliminary plat approval.
5. Section 3-020.4(H)(2) of the City Subdivision regulations requires street signs and traffic control devices to be approved by the City Engineer and consistent with the Manual on Uniform Traffic Control Devices adopted by the Montana Department of Transportation. A condition of approval requires a signage plan reviewed and approved by City Fire and the City Engineer prior to final plat approval of each applicable phase and installation of signage meeting the above-named standards prior to platting of each phase.
6. All streets and alley rights-of-way are to be dedicated to the public. Section 3-020.3(A)(1) of the City Subdivision regulations requires each public road to provide for construction and perpetual maintenance of the road. Section 5-050.4(M & N) of the City Subdivision regulations requires the Special Improvement District (SID) statement to be provided on the plat and on each instrument of conveyance. A condition of approval requires a SID statement on the plat and in the subdivision covenants for future improvements and maintenance to all streets providing access to the subdivision lots.
7. Section 3-060.1 of the City Subdivision Regulations requires easements be provided for vehicular and pedestrian access, utilities and irrigation ditches and City Engineer approval of the easements. A condition of approval requires that the location and width of all easements including streets, utilities and the irrigation ditches shall be approved by the City Engineer prior to final plat approval of each phase.
8. Subdivision Regulations Section 3-020.2 and .3C requires improvements to streets within or adjacent to a subdivision to meet the standards prescribed in Table .2A.

#### George Elmer Drive and Chuck Wagon Drive

9. George Elmer Drive and Chuck Wagon Drive are classified as Urban Collectors (with parking). Table .2A shows Urban Collectors with parking require a minimum 90-foot wide right-of-way that includes two 10-foot drive lanes, 6-foot bike lanes, 8-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total, with a small amount of additional space for maintenance). Table .2A also includes the possibility of a center turn lane, which would require additional space.
10. The subdivider requested separate variances to build the required street improvements within 80-foot rights-of-way instead of 90 for both George Elmer Drive and Chuck Wagon Drive. These requests are addressed below.
11. George Elmer Drive was also proposed to include 20-foot access and utility easements on the east and west sides to allow for a meandering sidewalk and commuter trail (discussed below) as well as for utility placement and maintenance.

#### Heron's Landing Drive, Nesting Lane, and Audubon Loop

12. Subdivision Regulations Table .2A identifies Low Density Urban Local Streets as those streets serving less than 12 dwelling units per acre and having an average daily traffic of up to 2,500 vehicle trips. (Residential streets with more than 250 and less than 2,500 ADT.)

According to the traffic impact study and supplemental analyses, Heron's Landing Drive, Nesting Lane, and Audubon Loop fall into this category. Table .2A shows Low Density Urban Local Streets to have a minimum 70-foot wide right-of-way that includes two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total). City Engineer Kevin Slovarp requested an additional one-foot easement along the outer edge of the street improvements to allow for maintenance.

13. The subdivider requested a variance to build the above street improvements within 60-foot rights-of-way instead of 70. This request is addressed below.

Lariat Loop, Tenderfoot Way, Riata Road, Flycatcher Lane, Bulrush Way, Horsetail Lane, Marsh Lane, Rookery Trail, and Woodpecker Lane

14. Subdivision Regulations Table .2A identifies Local Residential Streets as those streets with up to 250 average daily vehicle trips. According to the traffic impact study and supplemental analyses, the above-listed streets fall into that category. Table .2A shows Local Residential Streets to have a minimum 47-foot wide right-of-way that includes two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total). City Engineer Kevin Slovarp requested an additional one-foot easement along the outer edge of the street improvement to allow for maintenance.
15. The subdivider is proposing that the above-listed streets be built in accordance with Table .2A within 60-foot wide rights-of-way in compliance with the subdivision regulations.

#### Drainage

16. The City of Missoula Storm Water Specifications and Design Standards and Section 3-040 of the City Subdivision Regulations provide minimum standards for site grading and control of stormwater runoff.
17. The subdivision application submittal contains a preliminary storm drainage report and hydrogeologic evaluation. The proposed method of managing storm runoff is grading the site and developing a storm drainage system with drywell sumps to collect and infiltrate runoff, with backup or overflow retention on Common Area 1 and Common Area 6. The overflow area is also provided in the event of irrigation ditch flooding. The hydrogeologic evaluation addresses risk of basement flooding on-site due to increases in the water table elevation caused by flooding in Grant Creek; risk of basement flooding on- and off-site from the use of sumps during an extreme storm event (100-year, 24-hour), and the risk to groundwater quality impacts from the use of sumps following a typical storm event. The evaluation concludes there is no risk of basement flooding within the subdivision boundary even during an extreme storm event; there is no risk of flooding of basements on-site or on surrounding properties associated with the planned use of sumps for on-site storm water management, and the use of sumps would result in no detectable concentrations in nitrate in groundwater beyond the site boundary.
18. Section 3-040.2 and Section 5-020.11 of the City Subdivision Regulations require a complete grading and drainage plan showing proposed grades of streets, proposed drainage facilities, and a storm water pollution prevention plan for all lots, blocks, and other areas to be submitted prior to final plat approval meeting Montana DEQ standards and subject to approval of the City Engineer. All drainage facilities must be constructed in accordance with the approved plan as per Section 5-020.11.B and due to the phased development, must be constructed to accommodate the planned runoff from all upgradient phases.

## Transit

19. Section 3-010.7 and 3-020.1 of the City Subdivision Regulations require subdividers to provide safe, efficient, and convenient transportation corridors for motorists, pedestrians, bicyclists and bus riders. Section 3-020.4.E requires subdivision circulation systems to provide for various modes of transportation such as automobiles, pedestrians, bicycles, buses, and emergency vehicles. The City of Missoula Annexation Policy states that where appropriate, proposed annexation areas should be conditions to join the Missoula Urban Transportation District.
20. The property is not currently within the Missoula Urban Transportation District, which is necessary to provide for future transit service. A condition of approval is the subdivider is required to petition into the district prior to final plat approval of the first phase.

## Non-Motorized Transportation

21. City Subdivision Regulations Section 3-020.15 requires sidewalks and boulevards adjacent to all streets in accordance with Table .2A.
22. The subdivision application submittal includes preliminary plat sheets and a circulation plan exhibit that show five-foot wide sidewalks along street frontages and in several mid-block locations.
23. The circulation plan exhibit also shows a 10-foot wide Secondary Commuter Trail extending from Roundup Drive near the southwest corner of the property along the Flynn Lowney Irrigation Ditch, Nesting Lane, Heron's Landing Drive, George Elmer Drive, and through common area and across the irrigation ditch past the northeast extent of the subdivision. The trail is intended to provide bike and pedestrian access as part of a larger trail network that is hoped to eventually connect the Old Milwaukee railroad grade to the southwest with Tipperary Way and Hellgate Elementary School to the east. Providing a Secondary Commuter Trail instead of sidewalk along street frontage requires a variance from City Subdivision Regulations, as addressed below. City Subdivision Regulations Section 3-020.15.g requires trails to be constructed in accordance with the subdivision regulations and Missoula City Public Works Standards and Specifications.

## Conclusions of Law:

1. City Council determined the subdivision will meet the Subdivision Regulations requirements for streets and non-motorized improvements if the variance requests are approved and the conditions of approval are imposed and met.
2. City Council determined the subdivision will meet the City of Missoula Storm Water Specifications and Design Standards and grading and drainage standards in the Missoula City Subdivision Regulations if the condition of approval is imposed and met.
3. City Council required final grading, drainage and stormwater plans will be reviewed and approved by Montana DEQ and the City Engineer prior to final plat approval of each phase.
4. City Council determined the subdivision will meet the transit standards in the City Subdivision Regulations if the condition of approval is imposed and met.

## Water System and Sewer System

### Findings of Fact:

1. The property is within the Missoula Wastewater Facility Service Area and planned to be connected to existing water and sanitary sewer mains that were extended into the area for the

44 Ranch development, Flynn Ranch development, and RSID #8474 sewer mains along north side of Mullan Road.

2. The subdivision application submittal includes preliminary sewer and water design reports. The City of Missoula provided a letter stating the intent to provide water and sewer service to the subdivision in June of 2019. Individual water and sanitary sewer mains internal to the subdivision are planned to be extended as the project builds out.
3. As per Sections 3-070.01 and 3-070.04 of the City Subdivision Regulations, water supply and sewage disposal systems require review and approval from the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of any phase. This is required as a condition of approval.

#### **Conclusions of Law:**

1. City Council determined water and sewer are available to the subdivision.
2. City Council determined review of water and sewer systems is under the jurisdiction of City Engineering and state and local health authorities under the Montana Sanitation in Subdivision Act.
3. City Council determined the water and sewer systems will meet the subdivision regulations if the conditions of approval are imposed and met.

#### **Solid Waste**

##### **Findings of Fact:**

1. Republic Services is expected to provide disposal service to the subdivision.
2. Solid waste systems must meet the minimum standards of the Montana Department of Environmental Quality and City/County Health Code as per Section 3-070.1 of the City Subdivision Regulations. This requirement is a condition of approval.

#### **Conclusions of Law:**

1. City Council determined solid waste disposal service are expected to be available to the subdivision and in compliance with Subdivision Regulations.
2. City Council determined review of solid waste disposal is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

#### **Parks and Recreation**

##### **Findings of Fact:**

1. Section 3-080.3A of the City Subdivision Regulations requires parkland dedication equal to 11% of the net lotted area in subdivisions with residential lots of 0.5 acres or smaller.
2. The total lotted acreage of the subdivision at 41.6 acres. Eleven percent of 41.6 acres is 4.58 acres, the amount needed to meet the parkland dedication requirement. The subdivider is proposing 5.14 acres of dedicated common area including a 4-acre central park area to be maintained by the Heron's Landing Homeowners Association.
3. Section 3-080.6 and 7 of the City Subdivision Regulations also provides for cash donation in lieu of land dedication.
4. The subdivider proposed to phase the dedication of parkland in conjunction with platting individual phases of the subdivision. However, the application materials state the subdivider is not sure which phase, W1 or E1, will be filed first. Some phases do not include the required parkland dedication acreage required for that phase, while others include more

parkland than required for that phase. (For example, Phase E1 would require 0.64 acres of parkland but only includes 0.32 acres, while Phase W1 requires 0.6 dedicated acres and includes 0.76 acres.) To address this issue, the subdivider proposed to enter into an agreement with the City so that land and cash could be dedicated in phases where sufficient land is not provided and cash could be refunded in phases where more land is dedicated than required.

5. Per Section 5-020.14.H of the City Subdivision Regulations, a landscaping and maintenance plan may be required for common areas and parkland. Section 5-050.4 also requires a boulevard landscaping plan to be reviewed and approved prior to final platting of each applicable phase. The draft covenants, conditions, and restrictions state the Heron's Landing Homeowners Association would be responsible for maintenance of common areas and the secondary commuter trail. A condition of approval is for the subdivider to submit a landscape and maintenance plan and boulevard landscaping plan to be approved by the City Parks and Recreation Department prior to final plat filing of each applicable phase.
6. The subdivider is proposing covenants, conditions, and restrictions as a way to manage affairs of the homeowners association and to communicate information and requirements to lot purchasers. City Subdivision Regulations Section 5-020.14.K. contains requirements for covenants including that the property owners' association be formed before any property is sold, the association is responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities, and other matters. A condition of approval is for the subdivider to submit final covenants, association bylaws, and articles of incorporation along with the final plat materials for the first phase.

#### Conclusion of Law:

1. Parkland dedication is required in this subdivision in accordance with the City Subdivision Regulations. City Council determined the subdivider's proposal would meet the parkland dedication requirements if the conditions are imposed and met.
2. City Council determined the parkland and common areas are to be managed by a homeowners association and the City Subdivision Regulations require homeowners association documents to include specific provisions that will be reviewed prior to final platting of the first phase if the recommended condition is imposed and met.
3. City Council determined the City Subdivision Regulations require plans for landscaping, maintenance, and boulevard landscaping, which will be reviewed and approved prior to final platting of the each applicable phase if the condition is imposed and met.

#### Schools

##### Findings of Fact

1. The subdivision will create up to 347 additional residential lots with an estimated addition of 65 – 174 school age children to Hellgate Elementary and Big Sky High School. Several school bus stops are located in close proximity to the subdivision. The application says Hellgate Elementary officials have stated capacity exists with completion of a new building in 2020, and this development expands their tax base.

#### Conclusion of Law:

1. City Council determined no adverse impacts to schools requiring mitigation have been identified.

## **Fire Department**

### **Findings of Fact:**

1. The Missoula City Fire Department will serve the subdivision. The closest station is located at 3011 Latimer Street, approximately 2.5 miles from the subdivision.
2. Subdivision Regulations Section 3-070.1 requires that water supply for fire protection be provided via a public or community water system with 1,000 gallons per minute minimum flow, or via residential sprinkler systems.
3. Water supply for fire protection for this subdivision is planned to be supplied via 20 new fire hydrants. A fire hydrant spacing exhibit provided with the subdivision application shows each hydrant and indicates a minimum 1,000 gallons per minute would be provided. Missoula City Fire Marshall Dax Fraser signed the exhibit, indicating approval.
4. The Missoula City Fire Department regularly requires an addressing system to be developed that conforms to the addressing requirements of the City. All new buildings are assigned an address at the time of building permit approval, and are required to meet City standards for signage.
5. A condition of approval requires the developer to provide plans for address signage and a fire hydrant plan subject to review and approval of the Missoula City Fire Department prior to final plat approval of each applicable phase. Fire hydrants shall be installed prior to combustible construction as required by the City Fire Department approved hydrant plan.

### **Conclusion of Law:**

1. City Council determined fire service is available to the subdivision if the condition of approval is imposed and met.

## **Law Enforcement**

### **Findings of Fact:**

1. The subdivision is located within the jurisdiction of the Missoula Police Department.
2. The Missoula Police Department did not provide comments on the subdivision application.

### **Conclusion of Law:**

1. City Council determined law enforcement service is expected to be available to the subdivision.

## **CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT**

### **Findings of Fact:**

1. The subject property was historically used for hay and livestock production. It does not have trees or significant vegetative cover. The property does not have naturally occurring surface water, high groundwater, or wetlands. The only water sources are two irrigation ditches.
2. The property does not contain critical plant communities or support vegetative species of concern.
3. The property is surrounded by residential development on three sides. It is located between Mullan Road and West Broadway in an area being planned for urban development.

4. The property may support common wildlife mammals including rodents, deer, skunks, and fox. Potential bird species of concern in the area are yellow-billed cuckoo, bobolink, ferruginous Hawk and sharp-tailed grouse. Section 13.m of the covenants advises lot owners of potential issues associated with wildlife concerning pets, garbage, and other potential areas of conflict.
5. The subdivision is not located adjacent to public lands and will therefore have no impact on public land uses, public land management policies, or public land access.
6. No riparian resources or regulated floodplain exist on the property.
7. The subdivision application submittal contains a preliminary storm drainage report and hydrogeologic evaluation that assesses the risk to groundwater quality impacts from the use of sumps following a typical storm event. The evaluation concludes the use of sumps would result in no detectable concentrations in nitrate in groundwater beyond the site boundary.
8. Section 5-020.14.K of the City Subdivision Regulations requires that a management plan be developed for common areas and that the management plan address noxious weeds.
9. The covenants, conditions, and restrictions include a weed management and revegetation plan for the entire property that identifies numerous noxious weed species including spotted knapweed, Canada thistle, leafy spurge, houndstongue, and others. The plan recommends herbicide treatments and reseedling of exposed soils. A condition of approval is the final covenants include the weed management and revegetation plan and evidence of plan implementation to be submitted to Development Services prior to final plat approval of each phase.

#### Conclusion of Law:

1. City Council determined no impacts to the natural environment and wildlife habitat are foreseen as a result of this subdivision if the condition to manage noxious weeds is imposed and met.

### **CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY**

#### Findings of Fact:

##### Hazardous Land

1. Subdivision Regulations Section 3-010.2 requires the mitigation of hazards to subdivision development, including but not limited to flooding and slopes of 25% or more.
2. The subject property is outside of the FEMA-identified 1% annual chance flood hazard areas and floodplain.
3. Outside of irrigation ditches, the property does not contain slopes of 25% or more.

##### Wood Stoves

4. The property is located within an air stagnation zone. The Section 13. J. of the covenants, conditions, and restrictions includes language prohibiting wood burning devices (fire places, wood burning and pellet stoves, etc.)

##### Airport Influence Area

5. The property is located within an airport influence area of Missoula International Airport. A portion of the property is also within an extended approach and departure area.



6. The preliminary plat includes the following statement, which is required to be included on each final plat in the Heron's Landing Subdivision:

"This property is in the airport influence area and subject to the requirements of the Airport Influence Area Resolution. The Heron's Landing Subdivision may also be within an extended approach and departure zone for a proposed second runway as shown in the Airport Authority's 2004 plan and lot owners should be aware of the resultant safety risk. Lot owners should consult the airport layout plan and any relevant documents to determine the status of the proposed runway location at the time of purchase."

Conclusion of Law:

1. City Council determined if the airport influence area statement is printed on the plats, no adverse impacts to public health and safety are foreseen as a result of this subdivision.

**C.) COMPLIANCE:  
SURVEY REQUIREMENTS**

Findings of Fact

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3. Forthcoming review of the final plats will ensure compliance with state subdivision and platting law.

Conclusion of Law:

1. City Council determined this proposal will meet the survey requirements of state law.

**D) SUBDIVISION REGULATIONS**

Findings of Fact

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

Conclusion of Law:

1. City Council determined the plat will be brought into compliance with the local subdivision regulations if the requested variances are approved and the conditions of approval are imposed.

**E) REVIEW PROCEDURE**

Findings of Fact

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula City Subdivision Regulations and the Montana Subdivision and Platting Act.
2. The public hearing before the Missoula Consolidated Planning Board occurred on August 18, 2020. The Missoula City Council hearing occurred on September 14, 2020.
3. Development Services staff sent notices of the public hearings by certified mail to adjacent property owners and the subdivider on July 30, 2020. Five posters were placed on the property August 3, 2020. Legal notice of the public hearings was published in the Missoulian August 2<sup>nd</sup> and 9<sup>th</sup>. All noticing occurred at least 15 days prior to the public hearings.
4. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within 30 days of such decision. The application must specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a

contiguous landowner, an owner of land within the City of Missoula who can establish a likelihood of material injury to property or its material value, or the City Council. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

1. City Council determined this subdivision proposal followed the necessary application procedure and has been reviewed within the procedures provided in Article 4 of the Missoula City Subdivision Regulations.

**F) PROVISION OF EASEMENTS FOR UTILITIES:**

Findings of Fact:

1. City Subdivision Regulations Section 3-060 requires that easements be provided for utilities, drainage, ditch, vehicular, and pedestrian access and that easements be reviewed and approved by the City Engineering Division.
2. Access to utilities is planned to be provided to the subdivision from the north and south within public access and utility easements and public rights-of-way.
3. All utilities necessary to serve the subdivision, including water, sewer, electrical, phone and power, are planned to be located within public access and utility easements and public rights-of-way.

Conclusion of Law:

1. City Council determined utility services are available to this subdivision and the subdivision will be in compliance with the Subdivision Regulations if the condition of approval is imposed and met.

**E) PROVISION OF LEGAL AND PHYSICAL ACCESS:**

Finding of Fact:

1. Legal and physical access is planned to be provided to the subdivision via George Elmer Drive and Chuck Wagon Drive, which are publicly dedicated rights-of-way within the Missoula city limits. Each lot is designed with access to an alley or roadway that is to be located within easements or rights-of-way of appropriate width, with approval of certain variances.

Conclusion of Law:

1. City Council determined that with the approval of certain variances, the subdivision proposal meets the legal and physical access requirements of the Subdivision Regulations.

**F) VARIANCE REQUESTS**

**VARIANCE REQUEST #1:**

A variance was requested from Section 3-020 Table .2A, which requires an Urban Collector roadway – George Elmer Drive -- to be located within a 90-foot wide right-of-way. The applicant requested to provide all required improvements within an 80-foot wide right-of-way.

DECISION:

City Council **approved** the variance request, allowing George Elmer improvements to be made within an 80-foot wide right-of-way, based on the following findings of fact:

## FINDINGS:

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The proposed street improvements, including standard urban collector driving lanes, bike lanes, parking lanes, curbs and gutters, boulevards and pedestrian facilities, can all fit within the existing 80-foot right-of-way. The lots along George Elmer Drive are proposed with 20-foot access and utility easements that would allow for a meandering sidewalk and the proposed Secondary Commuter Trail, in addition to utilities. The traffic impact study concludes that turning lanes onto Heron's Landing Drive are not warranted. No impacts to other persons or property are expected. Based on these findings, granting this variance is not expected to result in a threat to the public safety, health, or welfare, and would not be injurious to other persons or property.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

The 80-foot right-of-way for George Elmer Drive north and south of the property already exists and was annexed into the City of Missoula in anticipation of future growth. This condition is fairly unique to the property and area. It is not applicable more generally to other property across the City or other areas of the City.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

This variance is not the result of physical surroundings or topographical conditions. It is the result of past decisions where it was determined 80 feet of right-of-way would be sufficient to provide efficient and effective transportation for future growth in this area. Requiring an additional 10 feet of right-of-way would not be consistent with the road section in the 44 Ranch development to the north. Such disparate treatment would result in a hardship to the landowner if the strict letter of the regulations were to be enforced.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

**E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

**F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where an 80-foot right-of-way was deemed sufficient to accommodate safe and efficient travel in this area.

## **VARIANCE REQUEST #2:**

A variance was requested from Section 3-020 Table .2A, which requires an Urban Collector roadway – Chuck Wagon Drive -- to be located within a 90-foot wide right-of-way. The applicant requested to provide all required improvements within an 80-foot wide right-of-way.

## DECISION:

City Council **approved** the variance request the variance allowing Chuck Wagon Drive improvements to be made within an 80-foot wide right-of-way, based on the following findings of fact:

#### FINDINGS:

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The proposed street improvements, including standard urban collector driving lanes, bike lanes, parking lanes, curbs and gutters, boulevards and pedestrian facilities, can all fit within the existing 80-foot right-of-way. The traffic impact study concludes that turning lanes into the subdivision are not warranted. No impacts to other persons or property are expected. Based on these findings, granting this variance is not expected to result in a threat to the public safety, health, or welfare, and would not be injurious to other persons or property.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

The 80-foot right-of-way for Chuck Wagon Drive north and south of the property already exists and was annexed into the City of Missoula in anticipation of future growth. This condition is fairly unique to the property and area. It is not applicable more generally to other property across the City or other areas of the City.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

This variance is not the result of physical surroundings or topographical conditions. It is the result of past decisions where it was determined 80 feet of right-of-way would be sufficient to provide efficient and effective transportation for future growth in this area. Requiring an additional 10 feet of right-of-way would not be consistent with the road section in the 44 Ranch development to the north. Such disparate treatment would result in a hardship to the landowner if the strict letter of the regulations were to be enforced.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

**E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

**F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where an 80-foot right-of-way was deemed sufficient to accommodate safe and efficient travel in this area.

#### **VARIANCE REQUEST #3:**

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block A (far eastern edge of the subdivision) is longer than 480 feet.

#### DECISION:

City Council **approved** the variance request the variance, allowing Block A to be longer than 480 feet based on the following findings of fact:

#### FINDINGS:

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

Block A is proposed to be approximately 1,203 feet long. Land to the east of the proposed lots has been platted and developed without plans for a future road extension. However, there is an existing 15-foot wide public pedestrian / bike easement in the adjoining West Ranch Estates Subdivision. The Heron's Landing subdivider proposed to provide a 10-foot wide non-motorized access and utility easement between lots 258 and 259 to generally align with this pedestrian /bike easement. The new easement would be a benefit to public safety, health and the general welfare. Granting the variance would not be injurious to other persons or property.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

The subdivision to the east is already platted and developed. It does not include a street extension to the Heron's Landing property so there would be no point in providing a street extension from Heron's Landing to the east. This is a condition that is unique to the property and not applicable generally to other property.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

This variance is the result of a development pattern made years ago on the subdivision to the east. The subdivider proposed to break up the block by providing a 10-foot non-motorized easement that will allow connection to the east. Enforcing the strict letter of the subdivision regulations to require the developer to further break up the block would result in a hardship.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

**E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

**F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where no connection from the adjoining subdivision to this property was provided.

**VARIANCE REQUEST #4:**

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Blocks B, C, D, E, F, G, and J are longer than 480 feet.

**DECISION:**

City Council **approved** the variance, allowing Blocks B, C, D, E, F, G, and J to be longer than 480 feet based on the following findings of fact:

**FINDINGS:**

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has reasonable access either via street,

alley, or both. Each of these blocks is planned with one or more pedestrian corridor in common area to allow for connectivity through the subdivision. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

The curved shape of the existing Chuck Wagon Drive right-of-way, the presence of the existing George Elmer Drive right-of-way, the Flynn Lowney irrigation ditch, and the shape / dimensions of the property in relation to these features present design challenges. This situation is unique to the property and not generally applicable to other properties. The variance request states that longer blocks, along with the proposed pedestrian corridors, are a design solution to these conditions.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

This variance request is a result of existing rights-of-way, the irrigation ditch, and the shape and dimensions of the property. The proposed design allows for a reasonable level of access and connectivity with lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property and measures proposed by the subdivider to allow for connectivity and access, enforcing the strict letter of the law would result in an undue hardship.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

**E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

**F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

**VARIANCE REQUEST #5:**

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block H is longer than 480 feet.

**DECISION:**

City Council **approved** the variance, allowing Block H to be longer than 480 feet based on the following findings of fact:

**FINDINGS:**

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has reasonable access either via street, alley, or both. A common area is planned to provide pedestrian connection through the block,

with several of the lots facing the common area. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

The curved shape of the existing Chuck Wagon Drive right-of-way and the Flynn Lowney irrigation ditch present design challenges. This situation is unique to the property and not generally applicable to other properties. The variance request states that longer blocks are a design solution to these conditions.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

This variance request is a result of existing right-of-way and irrigation ditch as well as design choices. The proposed design allows for a reasonable level of connectivity and lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property, enforcing the strict letter of the law would result in an undue hardship.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

**E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

**F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

**VARIANCE REQUEST #6:**

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block I is longer than 480 feet.

**DECISION:**

City Council **approved** the variance, allowing Block I to be longer than 480 feet based on the following findings of fact:

**FINDINGS:**

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has alley access and street frontage. A Secondary Commuter Trail is proposed along the Flynn Lowney Ditch through this block, which would allow connectivity from Roundup Drive to Chuck Wagon Drive and on through the subdivision. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

The north extent of the block allows for an extension of Lariat Loop, which continues across Roundup Drive to the west. The property dimensions do not allow for connection to the southern leg of Lariat Loop. The Flynn Lowney Irrigation Ditch bisects this block, providing a design challenge. These conditions are unique and not applicable generally to properties.

- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

This variance request is a result of existing Lariat Loop right-of-way and irrigation ditch as well as design choices. The proposed design allows for a reasonable level of connectivity and lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property, enforcing the strict letter of the law would result in an undue hardship.

- D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

- E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

- F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

#### **VARIANCE REQUEST #7:**

A variance was requested from Section 3-020.15.D.1, which requires sidewalks adjacent to all streets, and Section 3-02015.F(6)(b), which states that rights-of-way and easements for trails may not be less than 10 feet wide if adjacent to the roadway. The subdivider proposed to construct a separated 10-foot wide Secondary Commuter Trail instead of a standard sidewalk within an additional 6 ½-foot easement extending from the 60-foot street rights-of-way along Nesting Lane and Heron's Landing Drive. The location of the trail is shown on the block length variance exhibit and the circulation plan exhibit.

#### **DECISION:**

City Council **approved** the variance, allowing the proposed Secondary Commuter Trail as proposed in the application based on the following findings of fact:

#### **FINDINGS:**

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The proposal was to provide a 10-foot wide, concrete, separated trail instead of a 5-foot sidewalk along subdivision roadways. Nesting Lane and Heron's Landing Drive were proposed to have 60-foot rights-of-way, which include boulevards. The trail would be located north of the boulevards, which would result in a separated bike and pedestrian path.

According to the application, the 10-foot wide Secondary Commuter Trail would only require



an additional 6 ½-foot easement instead of the required 10 additional feet. The subdivider plans to provide enhanced crossings at Chuck Wagon Drive and George Elmer Drive and make all crossings in accordance with industry standards with review and approval by Parks and Recreation. Based on agency comments from the Engineering and Parks and Recreation, there is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

A portion of the trail is planned to be located along the Flynn Lowney Irrigation Ditch and there has been discussion about continuing the trail along the ditch through the property. However, as the ditch leaves the property to the north, space was not reserved in the adjacent 44 Ranch development to extend the trail so another alignment is necessary. Instead, the trail is proposed to follow the ditch through Heron's Landing from Roundup Drive to Chuck Wagon Drive, then run east along Nesting Lane, along the 4-acre park area, and north and east along Heron's Landing Drive before crossing George Elmer Drive and heading north and east again and ultimately crossing the ditch onto Bell Tower Road. This provides a reasonable route given site conditions that are unique and not applicable generally to other properties.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

The trail would provide a community asset of greater benefit than a standard sidewalk. Based on the plans submitted with the application, additional easement is not necessary for maintenance so requiring it would result in an unnecessary hardship by diminishing the land area for lot development and common area.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

**E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

**F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent.

**VARIANCE REQUEST #8:**

A variance was requested from Section 3-020 Table .2A, which requires 70-foot rights-of-way for Low Density Urban Local streets with average daily traffic up to 2,500 vehicle trips. Based on average daily traffic projections in the traffic impact study, Heron's Landing Drive, Nesting Lane, and Audubon Trail (Loop) are planned to be built in accordance with City standards (10-foot driving lanes, 7-foot parking lanes, curbs and gutters, 7-foot boulevards and 5-foot sidewalks) within 60-foot rights-of-way instead of 70.

**DECISION:**

City Council **approved** the variance, allowing the streets to have 60-foot rights-of-way instead of 70, but only if an additional one-foot access and utility easement is provided along the outer

edge of each right-of-way to allow for sidewalk maintenance. The decision is based on the following findings of fact:

**FINDINGS:**

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The proposal would allow the streets to be built in accordance with City standards for Low Density Urban Local streets including driving lanes, parking lanes, curbs and gutters, boulevards and sidewalks. This would not result in a threat to public health, safety, or welfare, or be injurious to other persons or property.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

The conditions are unique to this subdivision in that additional right-of-way for turning lanes is not required now and is unlikely to be necessary in the future based on the configuration of the subdivision and projected traffic flows. This is not necessarily the case in other subdivisions.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

Granting the variance would allow more area to be used for lot development. It is not necessarily due to physical surroundings, shape, or topography, but would benefit the future lot owners. The hardship is that additional right-of-way is not necessary to provide for this subdivision now and in the future.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

**E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

**F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent.