



## PARKS & RECREATION

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### EXECUTIVE SUMMARY

<b>Agenda item:</b>	Amendment to City Subdivision Regulation Article 3, Section 080.7, cash-in-lieu of parkland dedication valuation methodologies
<b>Report Date:</b>	3/19/2021
<b>Project Lead:</b>	Grant Carlton, Open Space Program Manager
<b>Public Meetings &amp; Hearings</b>	
<b>Planning Board (PB) public hearing:</b>	4/6/2021
<b>Planning Board and City Council public hearing legal ad:</b>	Published in the Missoulian on March 14 and 21, 2021
<b>City Council public hearing:</b>	4/12/2021
<b>Land Use and Planning Committee review:</b>	4/14/2021
<b>City Council final consideration and vote:</b>	4/19/2021
<b>Applicant:</b>	This is a Missoula Parks & Recreation initiated request.
<b>Notification:</b>	<ul style="list-style-type: none"><li>• Sent agency and interested party memo via email to interested parties for review</li><li>• Posted on Engage Missoula</li><li>• Published a legal ad in the Missoulian</li><li>• Presented plan and intentions at the Land Use and Planning Committee of City Council on 2/10/2021</li></ul>

### RECOMMENDED MOTION

#### Planning Board Recommended Motion (4/6/2021)

Recommend the Missoula City Council adopt a resolution to amend Article 3, Section 080.7 of the existing Subdivision Design Standards, Missoula City Subdivision Regulations to reflect the proposed language as set forth in the attached Exhibit A "Proposed Amendment Language."

#### City Council Recommended Motion (4/19/2021 final consideration and vote)

Adopt a resolution to amend Article 3, Section 080.7 of the existing Subdivision Design Standards, Missoula City Subdivision Regulations to reflect the proposed language as set forth in the attached Exhibit A "Proposed Amendment Language."

### I. PROPOSAL SUMMARY

This proposal seeks to amend Section 3-080.7 of the City Subdivision Regulations with the specific objectives of 1) resolving ambiguities existing in the current language, and 2) creating a more predictable, clear, and expedient process with respect to calculating cash-in-lieu of parkland dedication figures as part of the subdivision review process. A mutually beneficial outcome that provides the development community with an efficient and expedient process, as well

## I. PROPOSAL SUMMARY

as bolsters Missoula Parks & Recreation's ability to meet the community's adopted objective of providing open space and park opportunities in every neighborhood in proportion to development and growth is desired.

## II. BACKGROUND

Throughout the process of creating the 2004 Master Parks and Recreation Plan, it became abundantly clear that Missoulians value and desire parkland and open space opportunities in close proximity to their homes and neighborhoods, and these opportunities are a primary component of the community's sense of place. This notion and its resounding importance has been further emphasized throughout the on-going Sxwtpqyen Master Planning (formerly Mullan Area Master Plan) process. Due to the demonstrated public interest and expressed importance of open space and parks, requirements related to the provision of these opportunities were infused in the City's subdivision process in 2004.

The City's residential land subdivision process, with some exceptions, requires a dedication of parkland, or City-approved alternative, as a matter of course. Upon receipt of a subdivision application, City Council may, in consultation with the Planning Board, Park Board, or City staff, determine whether the park dedication must be a land donation, a cash donation, or a combination of both. (Section 3-080.6). This request concerns the subdivision regulation language (i.e., Section 3-080.7) that outlines the requirements when City Council concludes that a subdivision applicant is required to provide "cash-in-lieu of parkland dedication" to meet open space and park requirements.

Fundamentally speaking, when a subdivision application is submitted, one of the City's objectives is to provide an open space opportunity or park either directly adjacent to the proposed development or in close proximity to the proposed development. Donation of actual parkland achieves the former and cash-in-lieu of parkland dedication is intended to achieve the latter. This is consistent with the mission of the Parks and Recreation Department to deliver a park, trail, open space land, natural area, or recreation area within a short walk of every neighborhood in Missoula. (Missoula Urban Area Open Space Plan 2019). This objective serves as a primary component of the vision of a growing Missoula, as it contributes to shaping our community's character, reinforcing and enhancing our community's environmental and social values, and helps guide growth.

Due to relatively rapidly increasing land values and a variety of other market-driven factors, Missoula has seen a marked increase in subdivision applications over the last couple of years. There are a number of factors that dictate the City's decision of whether to require parkland dedication or cash donation in lieu of parkland dedication, but size of the proposed development has recently been the driving factor. As a general rule (with demonstrated exceptions), when a proposed subdivision is relatively small, it typically makes more sense to require a cash donation that allows the City to pool funds from other nearby similarly-sized proposed subdivisions and ultimately invest the aggregation of funds in open space amenities in the immediate vicinity.

A cash donation in-lieu of parkland dedication must be equal to the fair market value of the land that would have been statutorily required to be dedicated. (Section 3-080.7). Thus, the underlying intent of Section 3-080.7 is to provide the City of Missoula sufficient funds to quite literally compete in the open market to purchase parkland and/or open space amenities (or invest in bolstering existing park and open space amenities in certain cases) in both proportion to the rate of growth and in close proximity to proposed development. In other words, this requirement of the subdivision process provides one of the only tools and substantial funding sources that affords the City the ability to keep up with rising land values and exponential increases in development with respect to its objectives of providing neighborhood parks and open space.

As a prerequisite to calculating the amount of a cash donation in lieu of parkland dedication, Section 3-080.7 requires that a subdivider demonstrate the fair market value of the unsubdivided, unimproved property being developed by submitting an appraisal report created by an independent qualified appraiser. Further, the language intends that the appraisal should incorporate the zoning designation that will apply to the final approved plat. Once the appraisal is received, City staff conducts "cash-in-lieu" calculations based on the submitted appraisal. Implicit in that language is an assumption that the submitted demonstration of fair market value is calculated in a manner that provides an accurate, defensible, and realistic statement of fair market value using pertinent and appropriate market data.

## **II. BACKGROUND**

The City has recently experienced a number of instances in which an appraisal that is submitted pursuant to the language of Section 3-080.7 and accompanying a subdivision application has presented various challenges, all of which are related to the demonstration of fair market value. One of those issues, for example, was a direct result of arguably ambiguous language in Section 3-080.7 that speaks to the timing of zoning designations. These on-the-ground valuation issues have created a tangible and quantifiable impediment to carrying out the objectives and intent underlying the parks and open space requirements in the subdivision regulations. Further, these challenges have resulted in significant expenditure of City staff and leadership's time and energy, as well as caused tension between the City and the development community.

It is worth noting that the City is currently undergoing work flow planning to address recommendations from the City's Recommendation Report for Subdivision and TED Regulations including the need to update code provisions related to Parks Dedication Requirements. The anticipated timeline for completing the work flow planning process is at least several months. Initiating a broader regulatory amendment would occur after that. Due to an expected stream of subdivision applications, the City will continue to face financial consequences related to the issues described above if Section 3-080.7 is not amended in the near term. This amendment proposal is intended to be a near term, "surgical" remedy, and the City will explore broader, more systematic changes to the process as part of a future comprehensive subdivision regulation review process.

Parks staff feels these valuation challenges can be largely addressed by amending the language of Section 3-080.7. The subject amendment proposal seeks to do two things: 1) resolve ambiguities existing in the current language, and 2) provide clarity and clear direction related to the process and methodologies for demonstrating fair market value. The development community has made it clear that it desires the process to be predictable, expedient, and clear. The proposed amendment heavily weighs those three basic tenets and the Parks Department's intention is that the result of the amendment is mutually beneficial, with an eye towards bolstering the City's ability to meet its objective of providing open space and park opportunities in every neighborhood in proportion to development and growth as well as providing the development community with the desired predictability and clarity.

## **III. PROPOSAL EXPLANATION**

The first objective of the proposed amendment is to resolve existing ambiguities in the current language. Section 3-080.7 arguably contains ambiguous language related to the zoning designation or potential rezoning that will apply when determining the fair market value of a property undergoing the subdivision review process. The proposed language attempts to add clarity by stating that the property should be valued (i.e., appraised for cash-in-lieu purposes) using "the zoning designation that will apply to the proposed subdivision at the time the final plat is submitted to the City for approval." This is consistent with the underlying intent of the section, but provides more succinct and clear language.

The second objective of the proposed amendment, as stated above, is to deliver a more predictable, clear, and expedient process for demonstrating fair market value when cash-in-lieu of parkland dedication is requested by the City to meet parkland dedication requirements. The current language requires that fair market value be determined by a Montana State certified general real estate appraiser who is hired and paid for by the subdivider. The proposed amendment offers two acceptable methods for demonstration of fair market value:

- 1.) An appraisal report completed by a Montana State certified general real estate appraiser. The distinction is that under the proposed language, the City would hire the appraiser. The subdivider would be responsible for the fees associated with the appraisal as dictated by the current language. The rationale for this change is based in efficiency and consistency. The City would have a small pool of qualified appraisers under professional services contracts, and would be able to easily request reports from one of those appraisers. Reports created by a small group of appraisers would manifest consistency among the appraisal reports, which will reduce the City review timeline. The City will also be able to clearly communicate its expectations with respect to timeline and

### III. PROPOSAL EXPLANATION

structure, which will further reduce the time required for review. Reduced review time equates to reduced holding costs for a subdivider; and

- 2.) If a property that is undergoing subdivision review has been purchased within one year of the date of the final plat application submittal, the sale price of the property, evidenced by an executed contract, can be used to demonstrate fair market value (provided the zoning designation does not change). This second acceptable method for demonstration of fair market value does not exist in any form in the current language of Section 3-080.7. This exception to providing an appraisal has been added to streamline the process and to provide a subdivider with flexibility and cost savings should the subdivision application encompass a recently purchased property.

### IV. AGENCY AND PUBLIC COMMENT

None to date.

### V. REVIEW CRITERIA

The proposed amendment is consistent with the enumerated purposes and intent of Missoula's Subdivision Regulations.

- 1.) The amendment seeks a mutually beneficial outcome that will serve to benefit Missoula's residents as well as the development community.

"Subdivision of land to accommodate community growth and development directly affects the government of the City of Missoula, the city's residents, and the subdivider. Subdivision regulation is intended to set standards that reflect the best interests of city residents and the subdivider." (Section 1-030.1).

"Review of subdivisions according to established standards and procedures benefits both the public and the subdivider. By incorporating standards in preparation for the review process, the subdivider can avoid excessive expenditures of time and money to rectify errors or omissions. The administration of these regulations as defined in the powers and duties of governing bodies assures the subdivider that treatment of the subdivision plat will be **equitable, consistent, and expeditious**. (Section 1-030.4).

- 2.) The amendment seeks to promote public health and general welfare by bolstering Missoula Parks & Recreation's ability to provide parks, trails, and open space opportunities in close proximity to every neighborhood in Missoula, which is consistent with the City's Master Parks and Recreation Plan and the 2019 Missoula Urban Area Open Space Plan. Parkland dedication requirements also serve to provide funding to offset the impacts of development, thus reducing the need for excessive expenditure of public funds in the provision of open space and parks. Further, parks and open space contribute to a neighborhood's unique identity and sense of community, and connectivity of these areas is valued by the public as evidenced by the recent Parks, Recreation, Open Space, and Trails (PROST) survey and outreach process.

"The purpose of these regulations is to promote public health, safety, and general welfare by regulating the subdivision of land, to prevent overcrowding of land, to lessen congestion in the streets and highways, to provide for adequate light, air, water supply, sewage disposal, **parks and recreation areas...**" (Section 1-030.2).

"To support the purposes of MCA 76-3-102, these regulations are also intended to promote:... the provision of adequate open spaces for travel, light, air, recreation, plant and animal habitat, and scenic views;...the avoidance of excessive expenditure of public funds for the supply of public services;...[and] the design of residential subdivisions that results in the creation of neighborhoods with distinct identities, a sense of

## **V. REVIEW CRITERIA**

community, and access to other neighborhoods, parks, common areas, open space, playgrounds, schools, transportation, bus stops, shopping and community facilities.” (Section 1-030.3(E),(J),(P)).

## **VI. ATTACHMENTS:**

- A. Proposed Amendment Language (Clean)
- B. Proposed Amendment Language (Redline)
- C. Section 3-080.7- Current Subdivision Regulation Language
- D. Public comment document (if comment is received)