

Section 3-080.7 Subdivision Regulation Amendment

"Cash-in-Lieu of Parkland Dedication"

LAND USE AND PLANNING COMMITTEE- MAY 5, 2021

Timeline / Process

- ▶ 3/4/21- Plan and proposal sent to development community and stakeholders via email; posted on Engage Missoula
- ▶ 4/6/21- Planning Board public hearing
- ▶ 4/12/21- Council opens public hearing
- ▶ 4/14/21- Land Use Planning (LUP) Committee continues discussion
- ▶ 4/19/21- Council recommends sending item back to LUP for further deliberation and public comment
- ▶ 5/5/21- LUP Committee discussion and possible motion

Work Flow Planning Process

- ▶ This amendment is meant to be “surgical” in nature and is intended to address the identified issues in the near term
- ▶ City is currently undergoing a work flow planning process to address recommendations from the City’s Recommendation Report for Subdivision and TED Regulations
- ▶ Timeline for completion is unknown at this time
- ▶ More systematic changes will be explored

Appraiser/Client Relationship and Transparency

- ▶ Cash-in-lieu requirements / parkland dedication regs are intended to manifest public amenities and assets that have been identified and prioritized in our plans
- ▶ Specific purposes found in Section 3-080.1
- ▶ These amenities will ultimately serve the residents of the subdivision and the community
- ▶ Transparency is lacking in the current process
 - ▶ Two private entities contracting with one another = no public transparency

Appraiser Procurement Process

- ▶ Community appraisers will be invited to submit qualifications via the standard City RFQ process
 - ▶ Transparency
 - ▶ Development community will provide input on objective criteria OR review of criteria prior to posting RFQ
- ▶ Potential for new RFQ procurement process every 3-5 years to ensure fairness in appraiser selection
- ▶ Limitations on length of contract for selected appraisers
- ▶ Appraisal fee structure will be clearly delineated to ensure fees are appropriate and consistent (excessive fees will not be passed on to future home buyers)
- ▶ City will engage selected pool of ~2-5 appraisers via professional services contracts (dependent upon number of applicants)
- ▶ Timing of commissioning and receipt of appraisals will also be a component of the process and required criteria to avoid extending the timeline

Zoning Designation and FMV

- ▶ No material change is proposed as part of this amendment related to zoning designation
- ▶ Simple clarification of language
- ▶ Intent has always been to use zoning designation at time of final plat = consistent with other communities
- ▶ Appraisal will value unsubdivided, unimproved land in accordance with State law

Benefits of Proposed Amendment

- ▶ Critical to meeting City objectives of providing high quality parks/open space/trail connections in every neighborhood and to keep pace with a growing community = serves interests of the public
- ▶ Addresses zoning designation ambiguity in current language
- ▶ Creates a more transparent, predictable, clear, and efficient process = mutual benefits to public and development community
 - ▶ City received appraisals with FMV ranging from ~\$2 to ~\$12+ per sq. ft. over a span of ~18 mos.
- ▶ Save valuable staff and developer time

Section 3-080.7 Existing Language

.7 Cash donation in-lieu of land dedication must be equal to the fair market value of the amount of land that would have been statutorily required to be dedicated. For the purpose of these regulations, the fair market value is the value of the unsubdivided, unimproved land based upon the zoning designation that will apply to the proposed subdivision (i.e. the existing zoning, if the subdivision application is not accompanied by a rezoning request or the new proposed zoning if the subdivision application is accompanied by a rezoning request). Fair market value must be determined by a Montana State certified general real estate appraiser (as provided under MCA 37-54-201 et seq) hired and paid for by the subdivider.

A. For major subdivisions, a copy of the Summary Appraisal Report must be provided to the City Council for calculating the cash-in-lieu donation prior to final plat approval.

B. For minor subdivisions, a copy of the Summary Appraisal Report or a Restricted Use Appraisal Report must be provided to the City Council for calculating the cash-in-lieu donation prior to final plat approval.

C. For purposes of these regulations, appraisals are valid only if prepared within six months of the date that a complete final plat application is submitted for approval.

Sec. 3-080.7 Proposed Language

.7 Cash donation in-lieu of land dedication must be equal to the fair market value of the amount of land statutorily required to be dedicated. For the purpose of these regulations, the fair market value is the value of the unsubdivided, unimproved land based upon the zoning designation that will apply to the proposed subdivision at the time the final plat is submitted to the City for approval. Satisfactory evidence of fair market value shall be demonstrated by either of the following:

- A. An appraisal report prepared within six months of the date that a complete final plat application is submitted for approval, and conducted by a Montana State licensed general real estate appraiser (as provided under MCA 37-54-201, et seq) chosen by the City. The City shall hire the appraiser, but the appraisal fee shall be the responsibility of the subdivider. Any appraisal fees paid by the City to hire an appraiser to determine fair market value shall be reimbursed by the subdivider prior to final plat approval; or
- B. The sale price of the property being subdivided, documented by a purchase and sell agreement or other executed contract, if it was purchased within one (1) year of the date of the final plat application submittal, provided the property's zoning designation remains unchanged.

Staff Proposed Language- Addition of “Arm’s Length” Qualifier

B. The sale price of the property being subdivided, documented by a purchase and sell agreement or other executed contract, if it was purchased within one (1) year of the date of the final plat application submittal, provided the property’s zoning designation remains unchanged **and the sale was an arm’s length transaction.**

Background and Context

- ▶ Parkland dedication is a component of subdivision review process
 - ▶ Council, along with Boards and staff determine when cash-in-lieu of parkland dedication is warranted
- ▶ Impetus for current open space and park requirements in subdivision regulations was 2004 Master Parks and Rec. Plan development
 - ▶ Missoulians desire quality open space opportunities close to home
 - ▶ Further highlighted by the PROST survey
- ▶ Experiencing upward trend in new subdivision applications
- ▶ Cash-in-lieu is a substantial funding source for furthering community adopted parkland and open space goals
- ▶ City has experienced recent issues related to demonstration of FMV and arguably ambiguous language

Purpose and Objectives of Parkland Dedication Regs.

- ▶ Preserve and protect wildlife habitat, agricultural uses, historical and cultural features, scenic views, natural drainage areas and systems, and other desirable features of the natural environment
- ▶ Provide open space areas for conservation or passive recreation.
- ▶ Provide active recreational areas for use by residents of the development and the community.
- ▶ Implement the Open Space Plan, Non-motorized Transportation Plan, the Missoula County Parks and Conservation Plan and the Master Parks and Recreation Plan
- ▶ Provide areas for social interaction and livability
- ▶ Functional and accessible use by residents of development and community (**Sub. Reg. Section 3-080.1**)

How can “cash-in-lieu” funds be used?

Pursuant to MCA 76-3-621(5)(a):

- ▶ To acquire, develop, or maintain parks or recreational areas to serve the subdivision
- ▶ For the purchase of public open space or conservation easements to serve the subdivision
- ▶ Must be within a reasonably close proximity to the proposed subdivision
- ▶ Must be a formally adopted park plan or similar document that establishes the needs and procedures for use of the money (2004 Master Parks Plan)
- ▶ May use up to 50% of the dedicated money for park maintenance

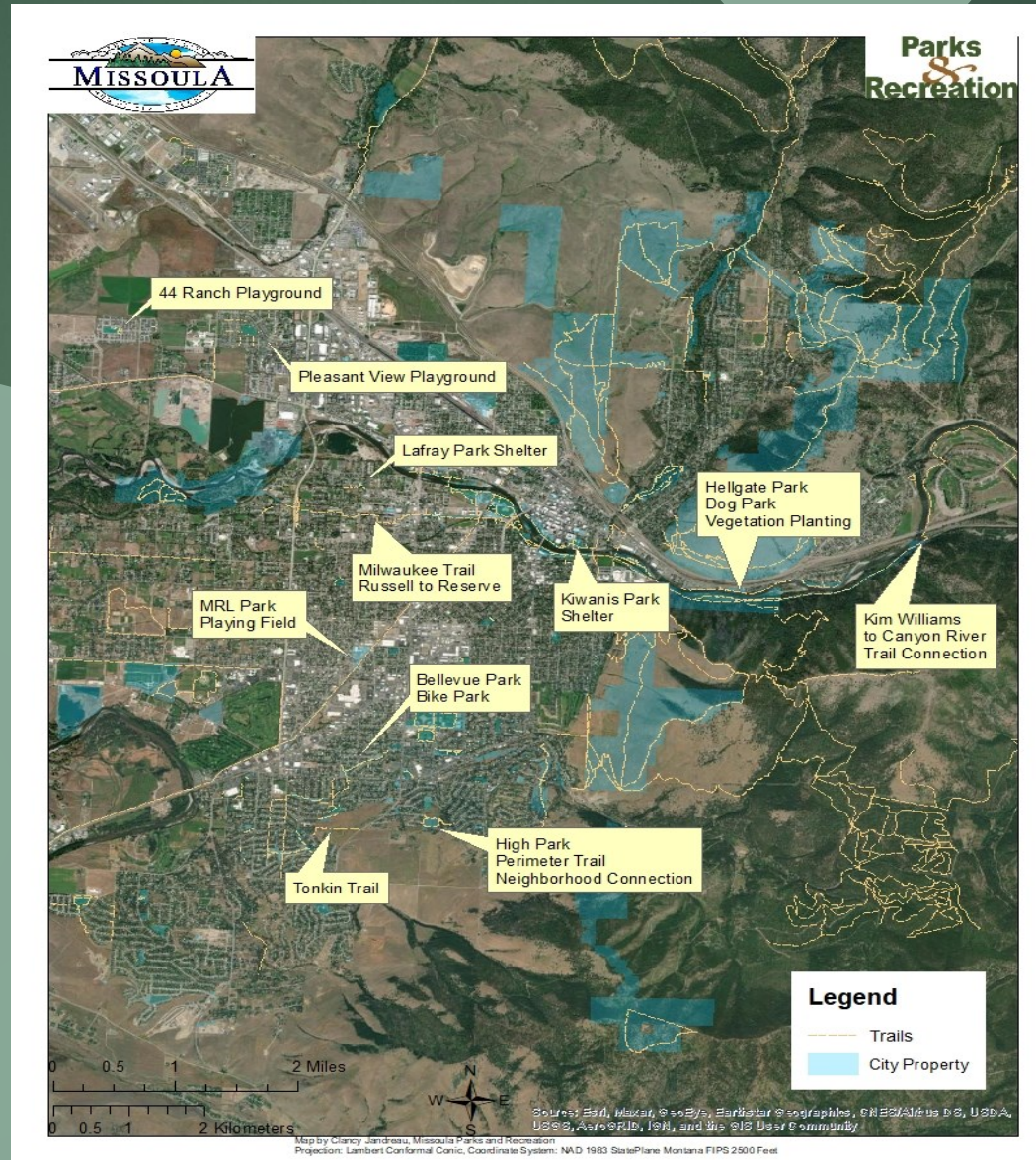
Objectives of Proposed Amendment

- ▶ Support community adopted goals with respect to providing high quality parkland and open space amenities
 - ▶ Provide an open space “opportunity” within a 10-12 minute walk
 - ▶ Provide 2.5 ac. of Neighborhood Parks and 4.5 ac. of Community Parks for every 1000 residents
(2004 Master Parks Plan)
- ▶ Create a predictable, clear, and efficient process
 - ▶ Mutually beneficial outcomes = public and development community benefit
- ▶ Save valuable staff time

Example of Past Cash-in-Lieu Community Investments

- ▶ Milwaukee Trail Russell to Reserve
- ▶ Lafray Park - shelter
- ▶ Hellgate Park – dog park, vegetation planting, trail, walk in river access
- ▶ Bellevue Park – bike park
- ▶ High Park – Open Space Park - perimeter path and neighborhood connecting path to east through gully
- ▶ 44 Ranch – Playground
- ▶ Pleasant View – Playground
- ▶ Kiwanis Park – Shelter
- ▶ MRL – playing field
- ▶ Tonkin Trail in South Hills
- ▶ Kim Williams to Canyon River Trail Connection

Recent Examples of Cash-in-Lieu Community Investment



Example from Billings

Three options available to demonstrate fair market value:

A. Comparative Market Analysis performed by a licensed realtor that meets the following criteria:

1. It provides the per acre sale price of at least three (3) comparable parcels of land.
2. The comparable sales must have occurred within one (1) year of the date of the subdivision final plat application submittal.
3. The comparable sales must be within two (2) miles of the subdivision.

B. A raw land appraisal by a licensed appraiser.

C. The sale price of the property being subdivided if it was purchased within one (1) year of the date of the subdivision final plat application submittal. **(Sec. 23-1006).**

Example from Kalispell

Cash in Lieu of Parkland Requirements:

- a. It shall be the responsibility of the subdivider to provide satisfactory evidence of the fair market value.
- b. For the purpose of this section, the fair market value is the value of undivided, unimproved land at the time of filing of final plat.
- c. When the subdivider and the City are unable to agree upon the fair market value, **the City may require that the fair market value be established by an appraisal done by a qualified real estate appraiser of its choosing.**
- d. The appraisal fee shall be the responsibility of the subdivider. **(Sec. 28.03.22(D)(1)).**

Summary of Planning Board hearing

► Deliberation:

- Transparency/fairness is key when choosing pool of appraisers (RFQ public process)
- Potential new RFQ for appraisers every 3-5 years
- Developers have chance to weigh in on appraiser selection using objective criteria
- Developer's ability to challenge appraisal
- Ensure that Subsection B requires "arm's length" transactions
- Ensure City has actual ability to carry out intent of parkland requirements

The motion to approve ultimately failed on a 5-4 vote. Votes in opposition were generally related to the above comments, and entailed opposing stances of not ensuring sufficient parklands/cash-in-lieu to meet objectives versus requiring too much cash-in-lieu.

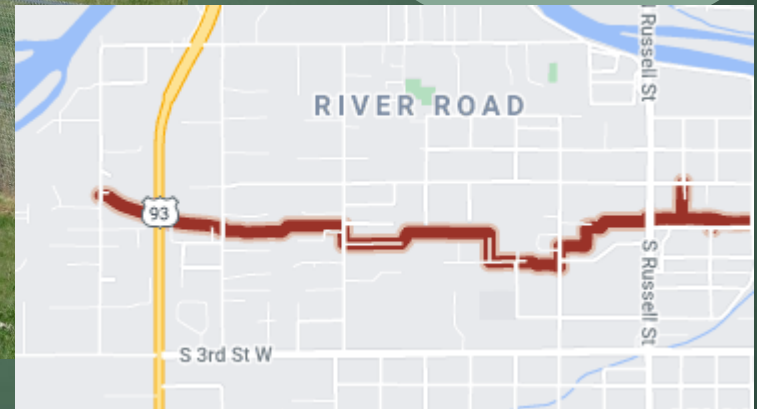
Developer's Ability to Challenge Appraisal

- ▶ Subdivider has opportunity to discuss appraisal and to challenge directly with City Council
- ▶ Development community will have input in developing RFQ and criteria used to select appraisers (robust, transparent process)
- ▶ Due to the RFQ process, the selected pool of appraisers will be highly qualified, independent professionals
- ▶ Avoid scenarios in which one professional community challenges another

Ensuring “Arm’s Length” Transactions

- ▶ Definition:
 - ▶ Of or relating to transactions between two parties who are independent and do not have a close relationship with each other. Presumably, these parties have equal bargaining power and are not subject to undue pressure or influence from the other party. (Wex legal dictionary).
- ▶ Staff recommends adding an “arm’s length transaction” qualifier to Subsection B
 - ▶ staff can provide specific language for LUP consideration

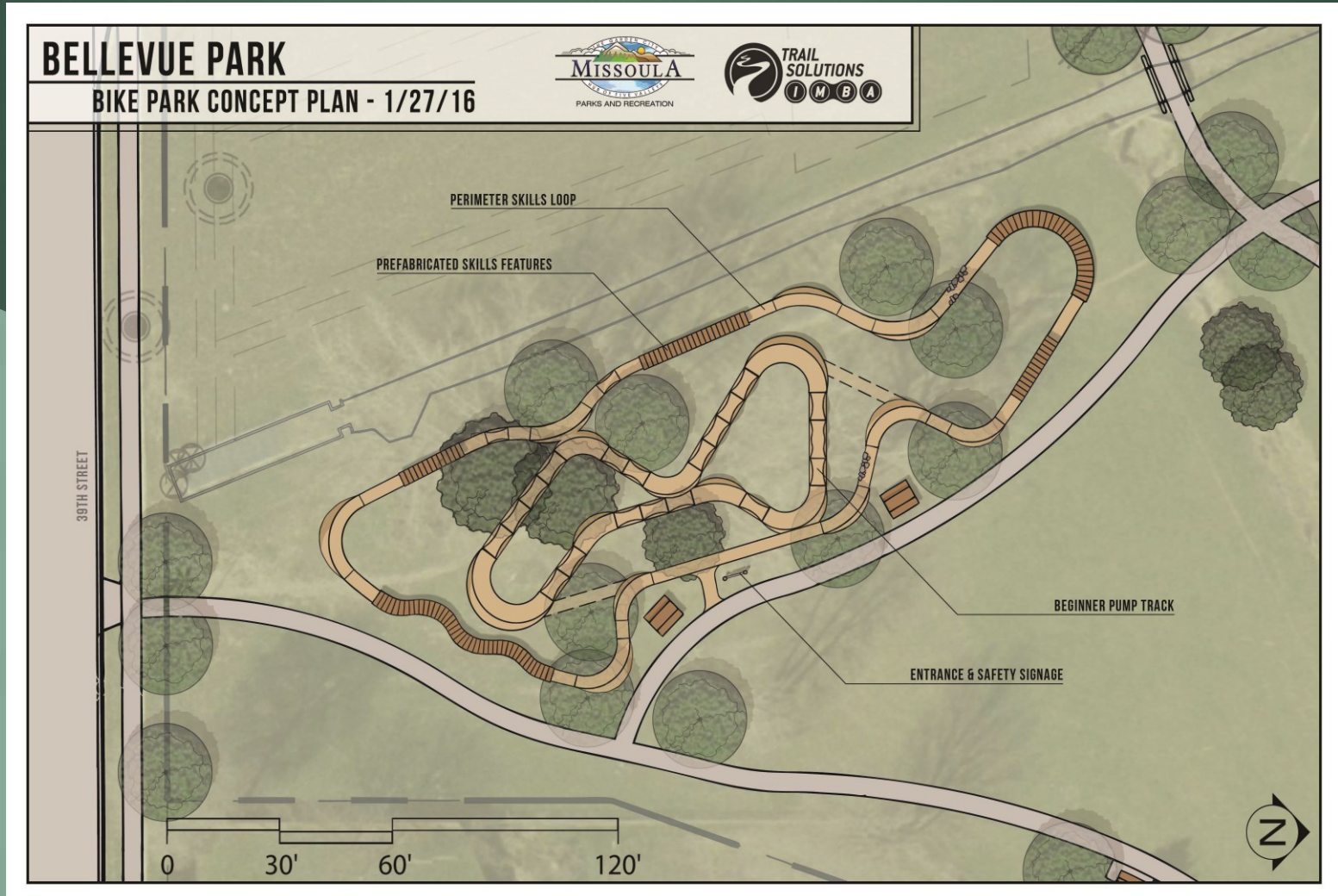
Milwaukee Trail- Russell to Reserve



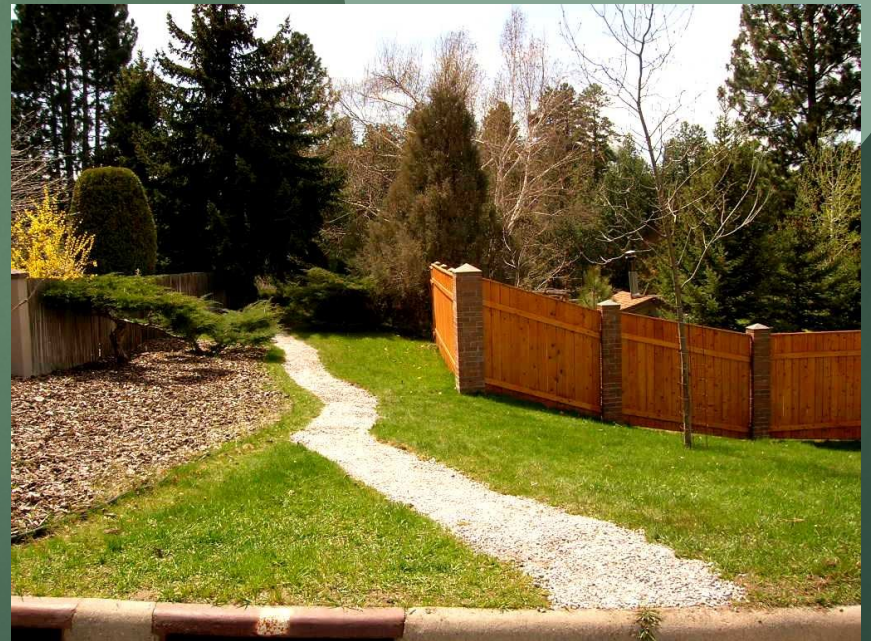
Kim Williams to Canyon River Trail Connection



Bellevue Park- Bike Park



High Park – trail construction



44 Ranch Playground



Pleasant View Park Playground



Thank you!



[Bellevue Bike Park]

Recommended Motion

- ▶ 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", amended to include the staff recommended change to Subsection B.