

THE MONTANA PLANNING BOARD MEMBER'S HANDBOOK



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MONTANA DEPARTMENT OF COMMERCE
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FOREWORD

This publication is a substantial revision of the original document “**The Montana Planning Board Member’s Handbook**” that was first published by the Community Technical Assistance Program in 1998. The handbook is intended to assist people who are members of planning boards within the State of Montana, and is meant to provide them with guidance about how to appropriately carry out their duties and how to better understand the complexities of community planning, its purposes, and its benefits.

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We view this publication as “a work in progress,” and invite your comments or contributions for how it can be improved and made more useful for Montana’s planning boards.

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SECTION I PLANNING BOARD BASICS

1. Introduction

So, you have been appointed to serve on the planning board for your community. You are likely asking yourself, “What is a planning board? What is the board’s function, and what is expected of me?” This handbook is intended to answer these and other questions by providing some of the essential information and advice you need to make your time with the planning board a productive and rewarding experience.

In Montana, the local planning board generally has a greater opportunity to affect community change than many other citizen organizations, because the recommendations provided by a planning board have the potential to significantly affect the development of the community the board represents. Planning boards are advisory bodies and assist elected officials in making community development decisions that balance both protection of the public interest and private property rights. The rationale for establishing a planning board composed of local citizens is that community planning is too important to be left solely to professional planners and elected officials and by representing the values and goals of the community it serves, the board should address land use issues.

2. Qualifications of Membership

There are no experiential or educational requirements to be a planning board member, but serving on a board in Montana does require that you become something of a “jack of all trades.” In other words, you will need a basic understanding Montana’s people, economy, natural environment, amenities, opportunities, and challenges. You will need to know how to handle contentious situations involving the public, planning staff, and a governing body. You also need to know your legal duties and responsibilities as a board member.

Who serves on a planning board? Typically, board members are a diverse group representing a variety of perspectives and experiences: ranchers, farmers, lawyers, real estate agents, homemakers, public employees, doctors, merchants, and so on. There is no ideal profile for membership on a planning board.

It is important to have a board membership that is representative of your community and that will assure fairness and impartiality. A member's background, knowledge and experience are important, but each board member's objectivity and consideration of the community's best interests is the most crucial asset. This means that a planning board member should have a genuine desire to preserve and improve the community's quality of life. A board member dedicated to serving the long-term interests of the community is far more valuable than a member with a specialized professional background concerned only with protecting a narrow interest.

The following are some important traits that an effective board member should have:

- Willingness to serve the long-range interests of the community and a basic understanding of the impact each land-use decision could have on the short-term and long-term future of the community;
- Ability to avoid biases that affect decisions. Dedicated planning board members should base all decisions on facts, and an objective view of the pertinent regulations and law, as well as the best interests of the community;
- Ability to represent the feelings in the community on all sides of an issue. A board member is responsible for sorting out diverse opinions to make a balanced recommendation enabling the governing body to determine the best interests of the community. The planning board can help their elected officials by ensuring that issues are clearly defined and understood;
- Understanding of the economic, social, and physical needs of the community;
- Knowledge of the community's planning tools, such as subdivision regulations, zoning regulations, or other pertinent ordinances. These tools are some of the means for implementing long-range planning documents, such as growth policies.

3. Duties

Under Montana statute, planning boards have a number of roles to play in land-use planning. The board's primary duty is to serve in an advisory capacity to the governing body with regards to community planning issues and while the board does not have the authority to enact regulations or adopt growth policies, it is essential for providing advice and recommendations to the governing body.

In an advisory role, planning boards serve several functions. First, they help the governing body by sharing the work load of community planning. In many jurisdictions, governing bodies are busy dealing with all facets of local government (sheriff, public health, roads, and planning) and they need the assistance of the planning board to gather information, review land-use issues and to make informed recommendations. Also, planning boards ensure that interested persons are treated in a fair and equitable manner, and that the adopted regulations and plans are followed.

The following is a brief overview of each potential duty that a planning board might have:

Development of a Growth Policy (76-1-601, MCA): In Montana, a growth policy is an official public document adopted and used by local governments as a general guide for decisions regarding the community's physical development. Growth policies were previously known as, and you may still hear them referred to, as "master plans" or "comprehensive plans." A growth policy itself is not a regulatory document; rather, it is an official statement of public policy to guide growth and manage change for the enhancement of the community. **If a community wants to develop a growth policy, under State statute the planning board is the entity that must prepare the document, hold a public hearing(s), and prepare a resolution containing the board's recommendations to the governing body about the growth policy.**

Development of Other Policies (76-1-106, MCA): In an advisory capacity, the planning board can develop and propose policies and requirements for the following:

- Subdivision regulations;
- Regulations for the development of public street-roads, public facilities, public buildings and public-private utilities;

- Regulations for improvement location permits
 - *(This is a permit stating that a proposed improvement complies with the provisions of any existing zoning regulations and any other applicable regulations). This type of permit is not commonly administered within the state.*
- Capital improvement plans for the planning and development of public infrastructure (roads, water, sewer, parks etc).

Review of Subdivision Applications (76-1-107, MCA): In jurisdictions that have adopted a growth policy and administrative subdivision regulations, the governing body is required to seek the advice of the planning board when considering the approval or denial of subdivision applications. The review of subdivision applications constitutes the bulk of the work performed by most planning boards. See Section IV for a more detailed look at subdivision applications and their review.

Zoning Commission (76-1-108, MCA): City-county planning boards can be called upon to function as a zoning commission for municipalities. The duties of such a commission are to develop zoning regulations and to review amendments to the regulations. Section II contains a detailed description of zoning.

County Initiated Zoning (76-2-204, MCA): County initiated zoning is known commonly as “Part 2” zoning because of its location within the statute. When county commissioners wish to implement zoning in the unincorporated areas of a county or portions thereof, the statute requires the commissioners to ask the planning board to develop and recommend boundaries and appropriate regulations for any proposed zoning districts. Ultimately, the planning board must provide a written report of their recommendations about the proposed regulations to the commissioners.

Review of Conservation Easements (76-6-206, MCA): A conservation easement is a voluntary legal agreement that a landowner enters into to restrict the type and amount of development that may occur on his or her property. Under statute local governments are required to review proposed conservation easements in order to “minimize any conflicts with local community planning efforts.” In many jurisdictions, the planning board is the local government body that reviews conservation easements.

4. Types of Boards

There are five types of planning boards defined by Montana statute. It is important to understand which type of board you are serving on. Their description and required memberships are as follows:

County Planning Board, 76-1-211, MCA

- County planning boards must consist of not less than five members appointed by the board of county commissioners.
- At least one member of a county planning board must be a member of the governing board of a conservation district. If no one is available from that governing board then the County Commission can appoint an associate member of a conservation district designated by the governing board of a conservation district, or a member of a state cooperative grazing district, if officers of either of the conservation or grazing district reside in the county.

City Planning Board, 76-1-221, MCA

- A city planning board shall consist of not less than seven members to be appointed as follows:
 - One member to be appointed by the city council from its membership;
 - One member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;
 - One member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;
 - Four citizen members to be appointed by the mayor

City-County Planning Board, 76-1-201, MCA

- A city-county planning board is created by the board of county commissioners and city/town council and must consist of no fewer than nine members to be appointed as follows:

- Two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board. They are appointed by the board of county commissioners and may be employed by, or hold public office in, the county;
- Two official members who reside within the city limits. They are appointed by the city council and may be employed by or hold public office in the city;
- Two citizen members who reside within the city limits and are appointed by the mayor of the city/town;
- Two citizen members who reside within the jurisdictional area of the city-county planning board (either city or county) and are appointed by the board of county commissioners;
- The ninth member must be appointed by the board of supervisors of a conservation district from the members or associate members of that board. However, if there is no member or associate member of that board, who is able or willing to serve on the city-county planning board, the ninth member of the city-county planning board must be selected by the eight other planning board members with the consent and approval of the board of county commissioners and the city council.

Joint or Consolidated Planning Board, 76-1-112, MCA

- Joint or consolidated planning boards are the fourth and fifth types of planning boards, respectively.
- Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board, or any combination of these boards.
- The manner of combination must be set forth by inter-local agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.
- If a consolidated board is formed, the existing city, county, and city-county planning boards must be dissolved. The new consolidated board

has the rights, duties, powers, and obligations of each of the dissolved boards.

- If a joint board is formed, the existing planning boards may not be dissolved. The new joint board has the rights, duties, powers, and obligations that are set forth in the inter-local agreement.
- Membership of any city-county board formed as a joint or consolidated board must have representation consistent with the requirements of the other types of boards.

5. Workload

Depending upon what type of planning board you serve on, your workload will vary. In the areas where rapid growth is occurring, the board may have a substantial workload, including informal work sessions on planning projects such as growth policies as well as formal hearings on subdivision applications several times during a month. If you are on a board in a community experiencing limited growth, your responsibilities may be much less.

Bear in mind that your duties as a board member can change quickly, particularly if your community experiences rapid residential and/or commercial growth. In such an instance, the governing body will probably request that the board assume additional planning duties. Generally your “workload” will be dictated by such things as market pressures, the impact of adopted regulations or outside influences such as changes to state land use statutes. Ultimately you should consult the appropriate local staff to find out what the expectations are for the board’s workload.

6. Responsibilities of Board Officers

Each member of the planning board has an important role to play, but there are three individuals who are essential to the effective operation of the board, the chair, the vice-chair and the secretary. The following briefly outlines the responsibilities of each:

Chair (President):

- Preside over all meetings and hearings of the board and maintain order;
- Call special meetings of the board in accordance with the board bylaws;

- Sign official documents of the board;
- See that all actions of the board are properly taken; and
- Keep all other board members informed of the business before the board.
- Represent the board in discussions with the governing body or in other public forums.

Vice-Chair (Vice-President)

- During the absence, disability or disqualification of the Chair, the Vice Chair will exercise or perform all the duties and responsibilities of the Chair.

Secretary (Planner or other Staff):

- Keep the minutes of all board meetings and hearings;
- Give or serve all notices required by law;
- Prepare the agenda for all meetings of the board;
- Be the custodian of board records;
- Inform the board of correspondence sent to the board;
- Sign official documents of the board (as delegated by the board);

7. **Informed and Effective Membership**

Effective planning board members need to be well informed. They should understand how their responsibilities relate to the community's planning policies and regulations. The following is a list of key documents and tools that you should understand in order to be an effective member of the board:

Growth Policy (Title 76, Part 1, Chapter 6, MCA): Since the growth policy is your jurisdiction's official planning document and is the general guide for decisions regarding your community's physical development, you should thoroughly understand the goals and objectives of the document. It is not necessary to

understand every detail of the growth policy, but you should grasp the goals identified in the policy and how they are to be achieved. Remember that under Montana statute, the growth policy is not a regulation; it is an official statement of your community's policy for guiding growth and managing change for the enhancement of the community. Planning tools such as regulations or capital improvements plans are used to implement the goals and objectives of the growth policy. Detailed information on growth policies can be found in the "Growth Policy Handbook" published by the Community Technical Assistance Program, Montana Department of Commerce.

Subdivision Regulations (Title 76, Part 3, Chapters 1 - 6, MCA): Since the review of subdivision applications is the primary duty for most planning boards, it is essential that you understand the basic content of these regulations. You should obtain a copy of your local regulations so that you can refer to them as necessary. Remember, an important part of your duties involves making informed decisions. Attorneys and planners constantly refer to the local regulations to ensure they are being administered correctly and as a board member you should do the same. Simply relying upon planning staff to tell you what is in the regulations is not acceptable; it is your responsibility to read and understand them and, if you have questions, discuss them with the appropriate staff.

Zoning (Title 76, Part 2, Chapters 1 - 9, MCA): While not common in the unincorporated areas of the state (counties), zoning is a typical form of land use regulation in municipalities. Zoning regulations can be adopted to separate incompatible uses and achieve a quality and character of development that ensures attractive, safe, and healthy communities. Zoning can be effective in regulating density, set construction standards, and permit or deny specific land uses. If zoning regulations exist in your jurisdiction, you should understand the basic contents of the regulations and what the boundaries of each district are.

Capital Improvement Plans: Capital improvements plans (CIP) are becoming increasingly common in many jurisdictions in Montana and can be an important element in guiding growth. A CIP is a detailed document that helps communities identify their public facility needs (e.g. water, sewer, roads, buildings), establish priorities for each project, and outlines a long-range program for the scheduling and funding of the projects. CIP's are an important planning tool because they can help to promote residential and commercial growth in areas preferred by the community by providing infrastructure such as roads, water, sewer etc. to aid in development. Determine whether your community has a CIP and how it is being used to plan for growth.

Relationship with Governing Body: As mentioned before, the planning board serves in an advisory function to the governing body (76-1-106, MCA). This combination of planning board recommendations and governing body decisions influences land use in a community. Because the relationship between the two bodies is so important, the two should meet periodically to discuss issues regarding community planning and land-use policy. If the governing body has certain policies it wishes to pursue, the planning board needs to understand them, and how the governing body would like to achieve them. Conversely, the planning board members should share their concerns and ideas with the governing body. Ultimately, the two entities may not agree on policy or how to implement it, but at least each will be informed so they can make decisions and recommendations accordingly.

Operation of the Board: Along with State law and local regulations, every planning board should have by-laws that govern the operation of the board (76-1-305, MCA). Ideally your jurisdiction has formally adopted by-laws for the planning board. If it has, obtain a hardcopy so that you understand the operation and make-up of your board. A good set of by-laws should outline the operation of the board and state the rules for conducting hearings. Robert's Rules of Order is the most commonly accepted method for conducting planning board hearings. Along with reading the by-laws, take the time to observe the more experienced board members for the first few meetings, this can help you understand how a board meeting is conducted. Example by-laws can be found in Appendix A and information on Robert's Rules of Order can be found in Appendices E and F.

Relationship with Staff: The governing body of your community should provide the planning board with staff to assist in fulfilling the board's duties (76-1-306, MCA). This usually includes at least a land use planner, a sanitarian, or other staff. No matter who assists the board, the two should develop a good working relationship. One of the best steps to take in achieving this is arranging regular meetings between the board and staff. Such meetings can provide the board and staff with the opportunity to ask each other questions, clarify their respective roles and provide a venue for sharing concerns. Bear in mind that staff is employed by the governing body and is ultimately responsible to that body for their work.

The staff should have a good understanding about the key land use issues in a community because they are working "on the ground" with the public,

developers and others in the administration of subdivision regulations, zoning and other land use regulations. Because of their knowledge, staff can help the board identify the short and long term challenges the community faces, and identify possible solutions to those challenges. The staff can also help the board understand the community's growth policy, regulations, and the State statutes that govern local regulations. Board members should never hesitate to ask staff or the city/county attorney to explain the rationale for the regulations and the statute --- it is part of their job and this understanding will only make you a more effective board member.

The board must understand that the planners and other staff can and will face enormous pressures when dealing with land use issues, particularly subdivision applications. Subdividers and adjacent property owners alike will often be unhappy with the requirements of the subdivision regulations as well as with staff's recommendations. Remember, the staff is simply administering the rules and regulations adopted by the governing body and you need to provide them with support, because it is not easy to be the constant target of everyone's ire during a public review process.

In order to work effectively together, it is critical that the board and staff understand one another's expectations. In general, the planning board should expect its staff to:

- Be competent and accurate;
- Complete assigned work on time and in a professional manner;
- Be able to interpret, rather than just collect and provide data;
- Possess the education and experience to fulfill their responsibilities;
- Act professionally and ethically;
- Avoid conflicts of interest;
- Interact well with other staff members and the planning board;
- Avoid publicity and indiscreet disclosure of confidential information;
- Become well acquainted with the community: its land, people, laws, opportunities and constraints;
- Work within the limits and policies established by the planning board and the governing body.

The staff should expect the planning board to:

- Seek its professional opinion on planning matters;

- Be prepared for hearings and meetings, *i.e.* read all the staff prepared reports and associated documents in advance;
- Support the staff when challenged on issues that have been discussed and mutually agreed upon;
- Never use the staff as a scapegoat if a planning issue becomes unpopular;
- Be supportive of staff in public meetings and hearings;
- Reserve legitimate criticism for private meetings between staff and the board;
- Be willing to work with staff and compromise when necessary;
- Insulate staff from partisan politics to allow them to accomplish their work.

The expectations cited above are critical to create and maintain a good working relationship between staff and the planning board. The good will and professionalism that these expectations can create is essential for the community planning process to succeed, so do not underestimate their importance.

Consultants: Private planning consultants are often retained when there is no in-house staff or if the existing staff does not have the time or resources to handle certain planning tasks (76-1-306, MCA). Consultants may be called upon for on a temporary or long-term basis. The working relationship and expectations for the board and consultant should be similar to those described for the staff and board. The board should work closely with the consultant, with the board providing local input, and the consultant providing professional advice. Remember it is not the responsibility of the consultant to make policy decisions, they simply provide the technical skills to identify problems and issues, and then develop and evaluate solutions.

Orientation and Training of Members: Many local governments offer an orientation for new planning board members. This provides new members the opportunity to sit down in an informal setting with other board members, staff, and, occasionally, members of the governing body to discuss the “ins and outs” of board operation, local regulations and State laws, and their relation to land use issues. If your jurisdiction does not provide a planning board orientation, encourage the governing body and staff to organize one. In the long term, it will benefit everyone.

Veteran members of the board should periodically be provided with the training and educational opportunities in order to stay abreast of what is happening in

the world of land use planning. There are numerous opportunities for training and education. The Montana Association of Planner's (MAP) hosts an annual statewide conference which typically includes many topics of interest to planning board members. MAP's website is found at: <http://www.montanaplanners.org/>; The Community Technical Assistance Program (CTAP) of the Montana Department of Commerce is available to provide on-site workshops and training for any interested planning board, as well as providing training materials. CTAP's website is found at: http://comdev.mt.gov/CDD_ctap_contact.asp There are also resources available from the American Planning Association at: <http://www.planning.org/>

Statutory Changes to Planning & Zoning Laws: The community planning statutes of the State of Montana are not static --- just about every legislative session sees many of them modified. During some sessions the changes may be minor, while in others they are substantial. It is essential for the planning board and its staff to stay well-informed about any statutory changes that could impact community planning policies and regulations. Such changes cannot be ignored by a local jurisdiction as doing so opens the door to potential litigation and create an atmosphere of distrust between the public and the local government.

The planning board, staff and the governing body can stay "up to speed" on proposed and adopted land use legislation through several sources. First, you can contact member associations for counties or cities, such as the Montana Association of Counties (MACO) or the Montana League of Cities and Towns (MLCT). Planners and planning board members can also use the resources provided by the Montana Association of Planners (MAP). The Montana Legislature also has a website that is easy to navigate and track proposed and adopted legislation by topic. <http://leg.mt.gov/css/services/default.asp>. Finally, information is always available from the Montana Department of Commerce, Community Technical Assistance Program (CTAP) at 406-841-2598.

8. Quasi-Judicial and Legislative Decisions

Land use decisions made at the local level can be separated into two categories: legislative, and quasi-judicial.

Legislative decisions are made by the governing body and establish rules, policies, or standards of general applicability to an entire community. These should be well informed decisions based upon information gathered at public

hearings, informal conversations with the public and information provided by staff and other sources. In Montana, the adoption of a growth policy, subdivision regulations, and zoning regulations are examples of legislative decisions.

During a legislative decision-making process, members of the governing body can be “lobbied” by individuals or groups who have an interest in the adoption of the regulations. Such lobbying is not considered “*ex parte*” communication, as the regulation, policy, or standard being considered will generally affect the community as a whole.

Quasi-judicial decisions, on the other hand, are decisions made under circumstances similar to that of a court of law. In a quasi-judicial action, a governing body or planning board is not setting new policy through the adoption of regulations, but is rather applying a legislative rule, policy, or standard to a particular property. The review of subdivision applications, for example, is a quasi-judicial decision. In this situation, the planning board applies the adopted subdivision regulations to an individual subdivision application and makes a recommendation based upon the facts gathered about the application at a public hearing. In this instance, the board may consider information from the subdivider, the public and staff when making a recommendation on a specific proposal.

9. Ethics and the Board

Lack of trust in government by the public is a perpetual problem. Because the planning board is a quasi-governmental body, its members are considered official representatives of local government. Since the work of the planning board can influence the future of a community and can influence the value of private property, it is extremely important that the actions and behavior of board members are at all times legally sanctioned and completely ethical.

The canons of ethics are sometimes imprecise and therefore providing general rules for ethical behavior can be difficult. However, guidelines for ethical behavior in community planning do exist and fall into three categories: conflict of interest, gifts and favors, and “*ex parte*” communication.

Conflict of Interest

A board member who could obtain some private benefit as the result of a planning board action should be very careful how they participate in that action. A private benefit may be either direct or indirect, such as creating a material personal gain or providing an advantage to relatives, friends or groups and associations to which the board member belongs. Bear in mind that mere membership in a group or organization is not be considered a conflict of interest regarding a planning board action concerning such group or organization unless a reasonable person could conclude that such membership in itself would prevent an objective consideration of the matter at hand.

Montana law requires that a public official experiencing a conflict of interest declare the conflict publicly. In the case of the planning board it is strongly recommended that a board member with a conflict recuse themselves and abstain from voting on the action in question. A conflict of interest may exist even though a board member may not believe that a conflict exists. A board member who has any question about a potential conflict of interest should raise the matter with planning staff and the county or city attorney's office so a determination may be made as to whether a conflict of interest exists.

In making appointments to the planning board, elected officials should not attempt to exclude whole categories or associations of business, professional, or other persons in anticipation of conflict of interest problems. The service of competent people of good character does not need to be sacrificed, to concerns about conflicts of interest. The withdrawal of a board member from participation in planning matters is necessary only in those specific cases in which a real or apparent conflict of interest arises.

Gifts and Favors

Gifts, favors or advantages should not be accepted if they are offered because the receiver holds a position of public responsibility. Even minor considerations that come in the form of business lunches or small gifts are not acceptable. The best guide to follow regarding gifts and favors is this: If in doubt, *decline the gift*.

Ex parte Communication

It is important to distinguish between community planning information that belongs to the public and planning information that does not. Reports and official records of a public planning agency must be open to all inquiries. A good "rule of thumb" to follow is that planning information should not be furnished to an individual unless it is available to the entire public. Planning board members

often ask whether they can speak to persons about a pending subdivision application prior to a public hearing, or before a recommendation has been made. Information, whether verbal, written, electronic, or graphic received outside of the public record is considered “*ex-parte* communication.” Ex parte is Latin for “On one side only” or more specifically “Done by, for, or on the application of one party alone.”

Montana does not have legislation addressing *ex parte* communication with regards to local government proceedings, and there is limited case law in the state on the matter. Some state courts have held that such communication is improper and may provide legal grounds for overturning a decision. (*Fasano v. Board of County Comm’rs of Washington County*, 264 Or. 574, 507 P.2d 23, 30 (Or. 1973) (en banc).) However, other courts have taken a less strict view, allowing *ex parte* contact so long as the decision-maker discloses the nature of the communication on the record and provides all interested parties an opportunity to respond and rebut any evidence presented. (See *Idaho Historic Preservation Council, Inc. v. City Council of Boise*, 134 Idaho 651, 8 P.3d 646, (Idaho 2000).) In Montana, the Supreme Court has emphasized that a quasi-judicial decision maker must not have an “irrevocably closed mind” on the subject under consideration. (*Madison River R.V., Ltd. v. Town of Ennis*, 2000 MT 15, 15; 994 P.2d 1098 (2000).)

Members of the planning board should generally avoid receiving “testimony” or evidence on any pending quasi-judicial matter outside of the public record (such as a public hearing on a subdivision application). Many local jurisdictions in Montana have adopted specific rules prohibiting *ex parte* communication in quasi-judicial proceedings to ensure impartial decisions by requiring disclosure of all evidence and argument to be presented to the Board in its public hearings. Such rules can also ensure that everyone involved in the process is provided a fair chance to respond to all available evidence and argument that may affect the decision.

SECTION II COMMUNITY PLANNING

1. What is Community Planning?

Community planning is an organized approach to identifying the challenges and opportunities facing a community and includes setting goals and objectives to address them. It is a process primarily concerned with the physical, economic and social development of the community and ultimately is intended to create places to live that are attractive, convenient, efficient, functional and safe. To be effective, the process must consider all elements of the community and should provide elected officials with the information to make important land-use decisions that will benefit the community as a whole.

Community planning entails a lot of time, work and resources. It includes making difficult decisions and is neither quick nor easy. Ultimately it should be a process that benefits all Montanans by providing:

- Sustainable rural lifestyles and vibrant cities and towns.
- Conservation of rural landscapes.
- Balance between economic growth and quality of life.
- Education and engagement of the public.
- A sound basis for land use decisions.

Many advocates of planning would like you to believe that it is the only means to maintain functional communities and to address the many issues faced by local jurisdictions. This is not the case. There are many communities throughout Montana that have functioned well for over hundred years without any formal planning other than the platting of lots and installation of basic infrastructure. Though planning is not necessary for communities to survive, those that plan have the opportunity to manage new development and take advantage of opportunities better than those that do not.

Without a sound planning process, rapid land use changes that occur in a community often happens in a haphazard manner, due mainly to uncoordinated decisions made by many different individuals. In this situation, individual land use decisions are generally made without thought for the relationship of one development to another. It is not unusual for an individual to propose a new subdivision in a part of the community that has poor infrastructure such as fire

protection, substandard roads or limitations on groundwater quantity or quality, thus, placing additional strain on limited community resources.

Planning provides a way to coordinate these individual decisions so that subsequent developments can support one another and make efficient use of a community's services and infrastructure. Good planning can also provide information on existing conditions and trends within a community and thus help evaluate new development based upon the goals identified by the community.

2. Why Plan?

There are many reasons for a community to undertake land use planning; the following are probably the most important:

Create and maintain the character desired by the community: Land use planning can create a distinctive sense of place by regulating the design and location of new developments and can preserve those features a community feels are important, such as "traditional neighborhoods." Planning can also build upon the features that define a community, such as the traditional industries of forestry and ranching or the enhancement of natural features such rivers or mountains. Planning can also preserve historic areas of a community such as central business districts which help to create a sense of place. Ultimately the planning process should generate pride in the community, which benefit the community in many intangible ways.

Conservation of Landscapes: Planning can help conserve landscapes which provide important public benefits such as wildlife habitat, storage of flood waters, groundwater recharge and view sheds that would be difficult and expensive to replace if damaged.

Predictability for future development: Good planning should provide everyone in the community with guidance about where and what type of development is desired. This is important because it allows private individuals to assess the costs and benefits associated with selling or developing land and can set the community's expectations for where and what type of development will occur. Along with this, the planning process should also provide a standardized process for reviewing development proposals, which is intended to increase the consistency and the fairness for everyone involved in the development process.

Efficient Use of Local Services and Infrastructure: As mentioned earlier, communities can save tax dollars through good planning. Not only can planning prevent the expenditure of public resources on unneeded facilities, it can help to organize new growth in more financially efficient ways. It is less expensive for a community to provide services such as fire and police protection to an orderly pattern of development than it is to provide those services to widely scattered development. These savings can be used to enhance public services and can help keep property taxes low.

Promotion of economic development: Planning can be used to promote economic development by maintaining or enhancing the capacity of local services and infrastructure, such water and sewer service, medical services and streets and roads, which are essential for retaining and attracting new business. Planning can also assist existing or potential businesses by providing them information on population and workforce issues. It can also prevent the establishment of non-compatible land uses near existing businesses that could negatively impact their operation.

Protecting private property rights: Good planning can protect property values and minimize the negative impacts that might be created by new development. Without the appropriate planning and regulatory framework, new development can expose adjoining landowners to negative impacts and loss of land value. Even though property owners sometimes view land regulations, such as zoning, as an infringement upon their property rights, the purpose of such regulations is to protect those rights.

3. Community Planning Tools in Montana

The primary elements of community planning in Montana are: growth policies, subdivision regulations, zoning regulations, capital improvements plans, and other related regulations and plans. Communities practicing what would be called “comprehensive” planning will generally be using all of these elements.

Growth Policies: Authorized by the Montana Growth Policy Statutes (Title 76, Chapter 1, Part 6, MCA), a growth policy is how a community defines the long-term vision for how it would like to grow and it spells out the steps that a community may take to achieve that vision. Growth Policies are often referred to in other states as comprehensive plans, master plans or general plans. Growth policies are not required by Montana statute, unless a local government wishes to adopt or amend municipal or county zoning regulations. According to the

staff at the Community Technical Assistance Program, seventy-three (73) municipalities and forty-six (46) counties had either adopted growth policies or were in the process of developing one.

In Montana, the growth policy is a non-binding, non-regulatory document that should be considered a general guide for decisions regarding the community's physical development. The document is developed by the planning board and adopted by the governing body through a public process. That public process should identify community issues and give direction for addressing them. The growth policy is an official statement of public policy about how to guide growth and manage change for the betterment of the community.

The growth policy should be a valuable reference for the public, planning boards and elected officials. When faced with a development issue and decision, they should be able to consult their growth policy, and refer to its recommendations and policies for guidance. The document should also assist in day-to-day decision-making, such as reviewing subdivision applications or considering a proposed amendment to zoning regulations. However, the governing body may not withhold, deny or impose conditions on a land use approval based solely on compliance or non-compliance with a growth policy.

Under Montana statute, growth policies must meet certain minimum requirements for content. The growth policy must provide a framework for any existing or potential regulations and plans, including zoning, capital improvements planning, and subdivision regulations.

Section 76-1-601, of Montana Code Annotated identifies the elements that must be included in a growth policy, but it does not define the extent to which each element must be addressed. The **required** elements are:

- Community goals and objectives;
- Maps and text that describe the existing characteristics and features of the jurisdictional area (including information on land uses, population, housing needs, economic conditions, local services, public facilities, natural resources, and other characteristics);
- Projected trends for each of the above listed elements for the life of the growth policy (except public facilities);

- A description of the policies, regulations, and other tools to be implemented in order to achieve the goals and objectives of the growth policy;
- A strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges (Not necessarily a CIP, but very similar);
- An implementation strategy that includes:
 - A timetable for implementing the growth policy;
 - A list of conditions that will lead to a revision of the growth policy;
 - A timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
- An explanation of how the governing body will coordinate and cooperate with other jurisdictions (i.e., cities with surrounding counties and vice versa); and
- An explanation of how the governing body will evaluate and make decisions regarding proposed subdivisions with respect to the "public interest" criteria established in section 76-3-608 (3)(a), MCA. The public interest criteria are agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;
- A statement explaining how public hearings regarding proposed subdivisions will be conducted.
- An evaluation of the potential for fire and wildland fire in the jurisdictional area that includes:
 - Delineation of the wildland-urban interface; and
 - Adoption of regulations that require:
 - Defensible space for structures;
 - Ingress and egress to facilitate fire suppression; and
 - Adequate water supplies for fire protection.

Planning tools such as subdivision and zoning regulations and capital improvements plans are methods that can be used to implement the goals and objectives of the growth policy by describing, in specific language, any requirements that govern the use and/or development of the land and growth of the community.

Subdivision Regulations: Subdivision regulations (76-3-501 *et seq.*, MCA) are the primary means by which local governments in Montana to facilitate new development while protecting public health and safety, taxpayers, lot buyers, and the environment. Subdivision regulations are mandatory for all local governments under state statute, while other land use regulations, such as zoning, are optional.

Although each community is unique, similar opportunities and problems are encountered wherever land is divided. Local officials know that properly regulated land divisions can substantially benefit the community. Much of the form and character of a community is determined by the design of subdivisions and the standards to which they are built. When cities or counties cannot, or do not, exert proper control over the division of land, the result can be poor quality or substandard development, excessive or premature development of land, or partial or inadequate infrastructure development. Many of the most frustrating problems that Montana communities face today are the result of haphazard and poorly designed subdivision development.

Subdivision regulations essentially regulate the process of dividing land into lots and providing public infrastructure and facilities (e.g., roads, water, sewer, and storm drainage) to those lots. Effective review of proposed land divisions in conjunction with comprehensive planning is vital to:

1. Prevent or minimize adverse impacts on public health and safety, the natural environment, and wildlife;
2. Ensure desirable future land use patterns; and
3. Allow cost-effective provisions of public facilities and services, thereby reducing tax expenditures and assuring a more efficient delivery of public services.

Understanding this, each county and community in the State has a legitimate interest in the location, design and development of a new subdivision. The most important benefit of subdivision regulation is the protection of public health, safety and welfare, including that of potential purchasers of lots. The manner in which the subdivision is located, designed and built directly affects the safety and health of the residents and the community at large. These elements also determine the permanent character of an area or community.

The process should ultimately ensure that new subdivisions are served by adequate infrastructure and services including:

- Properly designed and constructed roads or streets
- Adequate road/street easements or rights-of-ways providing legal access;
- Integrated street and road networks;
- Safe drinking water supplies and wastewater treatment;
- Fire and police protection;
- Parks or open space;
- Provision of utility easements and essential utilities such as electrical service, telephone service and if available natural gas; and
- Safe walking routes between homes and schools.

The Montana Department of Commerce's Community Technical Assistance Program (CTAP) is responsible for developing and maintaining a set of "model" subdivision regulations for the State. The model subdivision regulations are intended to serve as an example and reference for local governments throughout Montana who are revising their own subdivision regulations. The document is an advisory publication that reflects best management practices and the statutory changes made to the Montana Subdivision and Platting Act during the State's legislative sessions. Contact CTAP at 406-841-2598 for more information.

Zoning Regulations: The basic premise of zoning is that property owners accept some limitation on the type of development allowed on their own property in exchange for some predictability about the types of development that they can undertake and that can occur in the area around them. For example, property owners within a residential subdivision would likely not be happy about the impacts that adjacent gravel pit, sewer lagoon or industrial operation could have upon a person's quality life or property values. Zoning can ensure such impacts do not occur, or are limited so as to ensure compatibility with adjacent land uses.

Zoning regulations can also be used to achieve a quality and character of development that provides attractive, safe and healthy communities. Such regulations are the only way to regulate such land use details as density of lots, building size, height and architecture, and the actual use of land. It is important to understand that the subdivision review process cannot control changes in neighborhood land use; it can only ensure proper design and adequate facilities and services for the subdivision.

Zoning should be thought of as a flexible tool that can be designed to fit the needs of each community. A rural county or small town will probably not want or need the complex regulations demanded by more the populous counties and larger cities.

In order for zoning regulations to be effective and legally sound, they must be developed in a manner that is consistent with the goals and objectives found in a community's growth policy. Additionally, any potential zoning regulations must be identified as an implementation method in the growth policy. Montana statute specifically requires that county or municipal zoning regulations conform to an adopted growth policy. The purpose of this requirement is to ensure that zoning regulations are drafted, adopted and enforced consistently and within the context of the broad, carefully considered, public purposes that have been identified in the growth policy. Under Montana statute, zoning regulations cannot be adopted or amended by cities or counties without a compliant growth policy after October 1, 2006.

In Montana, three statutes authorize local governments to enact zoning regulations:

1. Cities and towns may adopt and enforce zoning ordinances under the Municipal Zoning Enabling Act (76-2-301, MCA);
2. The County Planning and Zoning Commission Act (76-2-101, MCA), allows a county to enact land use regulations for an area within the county where at least 60 percent of the property owners sign a petition requesting formation of a district and adoption of regulations. (This alternative for county zoning is often referred to as "Part One Zoning" because of its location in the MCA or as "citizen initiated zoning".)

The statute authorizing zoning by petition (Part One Zoning) does not require the county to have an adopted growth policy, but the planning

and zoning commission must prepare a "development pattern along with accompanying maps, plats, charts, and descriptive matter" for the district that identifies the desired location or requirements for future development; and

3. Counties may enact zoning under the County Zoning Enabling Act (76-2-201, MCA). (This alternative for county zoning is often referred to as "Part Two Zoning" because of its location in the MCA.)

Interim Zoning Regulations: Counties and municipalities are authorized to adopt interim zoning regulations while a growth policy or zoning regulations are being prepared and adopted (76-2-206, MCA and 76-2-306, MCA). The purpose of interim zoning is to protect the integrity of the community from incompatible development during the time the policy and or the regulations are being prepared and adopted. Interim zoning can only be in effect for one year, with an additional one-year extension permitted by statute. Essentially, interim zoning can only be used by a local government for two years.

Floodplain Regulations: Floodplain regulations (76-5-101 *et seq.*, MCA) are developed and administered to prevent loss of life; excessive property damage; and, to reduce public tax expenditures for emergency evacuation and restoration of personal property. In addition to preventing property loss and human injury, floodplain regulations can indirectly protect wetlands, riparian areas, and natural stream banks.

If the Montana Department of Natural Resources and Conservation (DNRC) have delineated 100-year floodplains within a local government's jurisdiction, then that local government is required by statute to administer regulations for development in those identified floodplains. Both federal and state agencies have established minimum standards regarding types of land use allowed in delineated (identified) 100-year floodplains. Delineated 100-year floodplains are those lands bordering a stream that are inundated by a flood event equal to or exceeded, on average, once every 100 years. This means that in any given year, there is a one percent chance that a 100-year flood event will occur. The DNRC officially delineates 100-year floodplains, using detailed hydrological models, as well as topographic and historic data.

A floodplain comprises two zones:

- the "floodway" is generally the "main" channel of any floodplain and

- carries deeper, faster moving flood waters; and
- the "flood fringe" consists of the backwater areas of low water depths and slower water velocities.

Prohibited uses in the floodway include: residential, commercial and industrial structures. Prohibited uses in both the floodway and flood fringe include: land fills, septic systems, and storage of toxic, flammable, or explosive materials.

For more information on floodplain regulations, contact the county floodplain administrator, or the Montana DNRC Water Resources Division, 1424 9th Avenue, Helena, MT 59620-1601, Floodplain Management Manager at (406) 444-6654; website: http://dnrc.mt.gov/wrd/water_op/floodplain/default.asp

Conservation Easements: A conservation easement (76-6-101 *et seq.*, MCA) is a voluntary, legal agreement that a landowner can enter into to restrict the type and amount of development that may occur on his or her property. Such an easement ensures that the resource values of the land will be protected according to the terms of the easement contract. Easements may be granted either in perpetuity, or for a minimum of 15 years with an option to renew for 15 or more years.

A landowner may grant an easement to a public agency or to a qualified private tax-exempt organization. If the conservation easement meets federal requirements, property owners may be entitled to reductions in income and estate taxes. Each easement is different and must be tailored to the specific needs of the landowner, while assuring that legitimate conservation objectives are met. Conservation easements may prevent the division of land; construction of new residential, commercial and industrial structures; activities resulting in soil erosion or water pollution; mining; or loss of fish and wildlife habitat.

Under Montana statute, the local planning authority is required to review and comment on all proposed conservation easements within the jurisdiction to ensure there are no conflicts between an easement and comprehensive planning (76-6-206, MCA).

Capital Improvements Plans: Capital Improvement Programs may be adopted by both county and municipal governments. Capital improvements planning is a process used to identify capital (public facility) needs, establish priorities, and schedule and fund projects to improve existing, or construct new facilities. The end result of this process is called the "Capital Improvements Plan" (CIP). The

plan is a budgeting and financial tool used by a local governing body, whether a municipality, county, county water and sewer district, or a tribe, for maintaining, improving, or building new, public facilities. The CIP looks at the “big picture” of community needs. A CIP should cover all public facilities owned or maintained by the local government including: water systems, wastewater systems, storm drain systems, solid waste systems, streets/roads, bridges, parks, and all public buildings, such as courthouses, jails, fire stations, etc. The plan identifies specific projects, costs, priorities, timetables, and funding sources.

Local governments can encourage development in designated growth areas by making them a priority for public investments such as roads and sewers. However, few Montana localities have adopted CIP’s, and those that do usually focus their priorities more on the phasing than the location of public investments. Using a CIP to direct the location of growth requires strong policy statements and clearly defined maps in the Growth Policy, which is often difficult to achieve from a political and/or technical standpoint. Detailed information on CIP’s is available in *Capital Improvements Planning: A Strategic Tool for Planning and Financing Public Infrastructure*, which is available from the Community Technical Assistance Program.

SECTION III PUBLIC MEETINGS AND HEARINGS

1. Introduction

Public meetings and hearings are an integral part of any planning process. Such venues allow citizens the opportunity to observe and participate in the development of public policy and public decision-making on land use and community development.

Montana statute frequently uses the words “meeting” and “hearing”, but it only provides a definition for the term “meeting.” Under Section 2-3-202 of the Montana Code Annotated (MCA) a meeting is defined as:

“the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, MCA, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.”

It is important to note that Section 2-2-203, MCA, requires that all public meetings must be open to the public. This would include all meetings or hearings of the planning board.

Public participation is not only required under statute, but local governments must encourage participation by developing local procedures for such purposes. Section 2-2-103, MCA, states that “Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.”

Adequate notification is critical for not only ensuring public participation but also to avoid any litigation that could arise for not following statutory procedures. Section 2-3-104, MCA spells out that “An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.”

In Montana “*meetings*” are generally considered informal gatherings or work sessions and “*hearings*” are considered formal proceedings where testimony is received and decisions are made. The main focus of this section is the public hearing. The following are the definitions used in this handbook to describe a planning board meeting and a hearing:

Public Meeting: An informal gathering held to solicit the public’s ideas and feelings about matters affecting the community. Public meetings help the planning board gather information crucial to its advisory role and permits citizens to express their concerns in an informal manner.

Public Hearing: A formal and official meeting held to obtain information and public input on a proposal, such as a subdivision application or growth policy. Public hearings assure that the planning board makes well informed recommendation and that the individuals participating in the hearing receive “due process.”¹

It is important to note, whether the planning board is holding a meeting or a hearing, the statutory provisions for public notification must be followed.

2. The Public Meeting

All too often, the only dialogue between the planning board and the public takes place during heated public hearings where issues such as subdivision applications are being reviewed and people are forced into adversarial roles during these situations. This “*me versus them*” mentality benefits no one and can

¹ Due process can be defined as an established procedure for governmental activities that is designed to safeguard the legal rights of all the individuals involved in a decision making process.

sabotage a well-intended community planning process. In an attempt to diffuse this potential conflict, the planning board should meet with the public under conditions more conducive to informal discussion and understanding. This can be achieved by making an effort to periodically hold public meetings to discuss issues of concern to the public. In areas of rapid growth, the public may have a lot to talk about with the planning board, while in the “quieter” parts of the State it may be difficult for the planning board to generate public interest.

Informal public meetings can provide the planning board and planning staff with a venue to listen to the concerns of the public, learn what they expect from the planning program, and to educate the public about what their local government can and cannot do to meet their expectations.

3. The Public Hearing

Public hearings are held to assist the planning board in making the appropriate recommendations to the governing body and to meet specific statutory requirements for notice, public participation and due process. Ultimately, these hearings are intended to provide information that helps the governing body make informed, thoughtful, and defensible decisions regarding land-use proposals.

Because of the official nature of public hearings, certain requirements must be met concerning adequate notification, procedural rules and due process. Just as with public meetings, be sure to verify the requirements for legal notification with the planning staff or the city or county attorney. The planning board must set the agenda well before the hearing and make it available to the public.

During the hearing, the proceedings must be conducted according to established and written rules of order, and recommendations of the board need to be recorded. The planning board must assure an open flow of ideas from all the affected parties, including subdividers, the public, the board, and staff. Procedural rules are especially helpful in guaranteeing the right of all parties to be fairly heard, and the duty of the board to end public testimony in order to deliberate on proposals. Therefore, by-laws are important for the operation of the board, as they should clearly spell out to members and the public how the board conducts business.

Appendix A has an example set of by-laws for the makeup, duties and operation of a planning board, which include parameters and expectations for the process to be followed in a public hearing. Appendices E and F contain information about using parliamentary procedure (Robert's Rules) during a meeting or hearing.

4. Before the Hearing

Presentations by the staff and the applicants, public comment, and board deliberation can take considerable time. Therefore, the agenda of a public hearing should not be overloaded. Members of the audience do not want to sit through a hearing, only to find out at the end of the evening that the agenda item that concerns them is going to be continued to another date. To avoid this situation, the board should limit the number of items on the agenda, so that business can be conducted in the allotted time and not continued late into the evening. If there is substantial business pending before the planning board, the members may want to consider calling an additional hearing to handle the backlog at a later date. If a hearing is continued, the date and time should be announced to those in attendance.

The public hearing should be carefully planned by the board and staff. Rooms should be reserved in an appropriate building that provides handicapped accessibility, adequate seating and audio-visual equipment. Before the hearing, staff should check that the materials for presentations, computers, projectors, screens and maps are ready and can be viewed by planning board members and the audience alike. Creating an audio or video record of the hearing is important, so having a tape/video recorder available maybe essential. Copies of the agenda should be made available at the hearing.

5. The Start of the Hearing

At the beginning of the hearing, the chair (*president*) should explain the rules of order used for the hearing. The chair should declare an ending time for the hearing and a time for taking up the last new item before adjournment. For example, if the board has a set adjournment time of 10 p.m., it might decide not to tackle any new items after 9:00 p.m. The agenda should reflect that a continuance may be called if the meeting runs too long. Keep in mind that most people who come to public hearings have work or family obligations that preclude them from remaining late into the evening.

A sign-up sheet is recommended to record attendance and contact people at a later date if necessary. It is important that everyone wishing to offer testimony be afforded the opportunity to do so and in those cases when a continuance has been called and some individuals have already left, the sign up sheet can be used to contact them.

The chair (*president*) of the planning board should start the hearing on time. The chair may begin by stating the reasons for the hearing and explaining the rules of order for the hearing. Depending upon what issue the planning board is considering, people need to know that the hearing process is directed by statute. The chair (*president*) of the board should inform the audience why the hearing is being held and why action by the board is required. It is very important for the board and the planning staff to explain the wherefore and why of each proposed agenda item in terms the public will understand. The use of acronyms, technical jargon, and statutory language will only confuse and frustrate the audience.

It is not uncommon for a subdivider to withdraw a subdivision application from the agenda for one reason or another. Dealing with these routine issues at the start of any meeting is extremely important so everyone in the audience knows whether or not they can leave or how much time each remaining agenda item has.

6. During the Hearing

As far as the hearing itself, most planning boards follow a “standardized” process for conducting the proceedings, be it a hearing on a growth policy, major subdivision application or proposed zoning regulations. This process should be included in the by-laws adopted for use by board. The following is a brief outline of those steps:

1. The planning board chair brings the board to order and opens the proceedings. The chair will generally explain to the audience what the agenda is and what the procedures are for the operation of the hearing. The chair will then move onto the agenda.
2. The staff or other appropriate individual makes an oral report or presentation to the board and the public about the topic in question. At

the conclusion of the presentation the board has the opportunity to ask staff questions.

3. Following staff's presentation, the board chair opens the hearing to public comment. If there are a large number of people wishing to testify, it is not unreasonable to limit the time for each person to speak. Once everyone has had an opportunity to speak, the board may allow those with further comments to add to address the board again.
4. When all members of the public have had an opportunity to speak, the chair should close the public testimony portion of the hearing. It is usually at this point in the hearing that staff or other individuals are given an opportunity to answer questions from the board, and respond to the public's questions or comments.
5. When ready, the chair of the board moves the board on to deliberate the merits of the issue and the board takes an action on the issue. At the conclusion of the board's action, the chair closes the hearing and moves onto another agenda item or dismisses the board if no other items are left to be dealt with.

7. Elements of a Successful Meeting or Hearing:

Management: The chair of the board (*president*) is probably the most important element for a successful hearing. The chair has the responsibility to keep the hearing/meeting on schedule, bring discussion to a conclusion and ensure that the hearing is conducted fairly with civility and courtesy. The chair is the one person who can ensure that the board is decisive and does not become bogged down with procedural distractions, petty details and endless requests for more information.

Purpose: There should be a good reason to hold a meeting or hearing. It might be to gather information on a particular project, to listen to general statements by the public about development in their community, provide the public important information about a project, or to perform official functions of the planning board, such as reviewing major subdivision applications or developing a growth policy.

Notice: Any meeting or hearing of the planning board must meet statutory notification requirements. The public needs to know that there is a meeting or hearing, and where and when to go. Newspaper articles, flyers and posters help notify the public about meetings or hearings. For official hearings, publications of legal notice are required. State law provides for specific legal notice requirements.

Preparation: For a meeting or hearing to be successful, an agenda must be prepared and published, notification given, arrangements made for a proper meeting place, a logical date and time selected, and the board or staff must draft any needed reports or visual aids.

Agenda: An agenda should be available for public review prior to a meeting or hearing to give the public and board members an opportunity to prepare. By following the agenda, the board can operate more efficiently, allow adequate time for public participation, and expedite the items on the agenda without undue delay.

Rules: Public meetings and hearings need clear and fair rules about the procedures to be followed, to ensure “due process” to all participants. Having adopted by-laws can aid in this regard.

Participants: Make sure that the subdivider, his/her consultants and/or appropriate staff are invited to attend the meeting or hearing. Board members should review and understand all topics on the agenda.

Place: The site of the meeting or hearing should be suitable for the number and needs of expected participants, and to receive and record public testimony.

Records: A record of the meeting or hearing must be kept. A list of the time, place, participants and results may be adequate for an informal meeting, but for public hearings, written minutes or audio recordings should be kept. Because decisions of governing bodies and their associated boards can be appealed to district court, the record of any hearing and decisions made should be accurate. In addition, any hearing should be conducted with enough formality to assure that a proper record can be made.

8. 2008 Montana Code Annotated Related to Meetings and Hearings

2-3-103. Public participation -- governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

76-1-602. Public hearing on proposed growth policy. (1) Prior to the submission of the proposed growth policy to the governing bodies, the (*planning*) board

shall give notice and hold a public hearing on the growth policy.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

76-3-605. Hearing on subdivision application. (1) Except as provided in 76-3-609² and 76-3-616³ and subject to the regulations adopted pursuant to 76-3-504(1)(o)⁴ and 76-3-615⁵, at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency (planning board), or both and the governing body, its authorized agent or agency (planning board), or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing.

² Review procedure for minor subdivisions -- determination of sufficiency of application

³ Exemption for certain subdivisions

⁴ Establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615

⁵ Subsequent hearings -- consideration of new information -- requirements for regulations

SECTION IV SUBDIVISION REVIEW PROCESS

1. Types of Subdivisions

As mentioned earlier in this document, subdivision review is one of the primary functions of planning boards. For planning board members in rapidly growing communities and counties, much of your time will be spent reviewing subdivision applications. Subdivision applications brought before the board must be examined to insure that they are consistent with the adopted regulations, growth policies and other special plans, and that adequate services and infrastructure are provided to serve the lots.

There are three kinds of subdivisions as defined by Montana Subdivision and Platting Act (MSPA) and the review period and public hearing requirements vary for each. The following outlines the types of subdivisions, the length of the review period and whether there is a public hearing required for each:

Major subdivisions: (division resulting in 6 or more lots)

- 60 working day statutory review period or 80 working day if the proposed subdivision contains 50 or more lots, 76-3-604(4), MCA. (*Statutory change to this part of the MCA made by the 2009 Legislature via SB 305*);
- At least one public hearing required

First minor subdivision: (division resulting in 5 or fewer lots)

- 35 working day statutory review period
- No public hearing permitted.

Subsequent minor subdivision: (subdivision from a tract of record that has been previously subdivided since July 1, 1973 or a subdivision from a tract of record that has had more than five (5) parcels created from the tract using exemptions found under 76-3-201 and 76-3-207, MCA, since July 1, 1973.)

- Statutory review period, review process and requirement for a public hearing depend upon the regulations adopted by a local jurisdiction for subsequent minor subdivisions.

2. Statutory Review Period: Decisions, Extensions and Suspensions

As mentioned above, the MSPA clearly defines the review period for each type of subdivision. The review period for each is intended to allow local governments to adequately review subdivision applications and to ensure that the subdivider's application is dealt with in a timely manner. Because of this, the planning board should always be aware of the statutory review deadlines.

Occasionally, a planning board will encounter a situation during a public hearing where the board determines it needs additional time or information to adequately review and consider a subdivision application. It is also not uncommon for a subdivider to decide that he or she needs more time to address issues raised at the hearing. In these instances, the board should ask the subdivider on the public record if they would be willing to extend or suspend the statutory review period to a date certain in order to provide more time for the review of the application. Planning staff and the subdivider should be integral in these discussions to ensure that the extension or suspension is adequate to obtain the necessary information, and to provide adequate time for the planning board and/or governing body to hold any required hearings and to render recommendations or decisions.

It is important that any request for an extension or suspension of the statutory review period be part of the public record for the hearing. If there is a future legal challenge to the extension or suspension, the public record needs to reflect what took place. When possible, it is always preferable to obtain the subdivider's request for an extension or suspension of the statutory review period in writing. Bear in mind that the subdivider does not have to agree to an extension or suspension of the review period, when this happens the planning board must make a recommendation to the governing body; the board cannot simply ignore the time frame for statutory review.

3. Roles & Responsibilities for Players in Subdivision Review

A. General

A number of public offices are involved in the reviewing a subdivision application. In addition, private utilities, citizens, adjacent property owners, and, of course, the subdividers have roles in the process.

The review process functions most effectively when everyone involved understands the responsibilities of the other parties and participates in a cooperative manner. It is very important that the planning board and governing body develop review procedures that promote coordination among affected parties, especially local officials.

The following text outlines the basic roles and responsibilities of the various parties involved in subdivision review.

B. Governing Body

The governing body of a local jurisdiction is the most important public entity in the subdivision review process because the final decisions for approval or denial are made by it. Many other public offices and personnel make recommendations, but the final decision on subdivision applications rests with county commissioners in unincorporated areas, and with city or town councils (or commissions) within city or town boundaries. Not only does the governing body approve or deny a subdivision application, but in making and decision to approve an application, it must make important decisions regarding conditions for approval, such as the improvements the subdivider must install. The governing body also acts on the final subdivision plat when it and all necessary documentation have been obtained, and the required conditions of approval have been completed. Despite the fact that staff planners and the planning board make recommendations, it is the elected officials who must make the final decisions that will best serve the long-term public interest and rights of the subdivider. The caveat to this fact is that the governing body cannot simply ignore the public record, including the planning board's recommendations. It must carefully weigh and consider all the information that has been provided to them.

C. Planning Board

Under statute (76-1-107, MCA), the governing body for each local jurisdiction is required to seek the recommendation of the planning board on the approval or denial of all subdivision applications if all of the following are in place:

- A planning board has been formed for the jurisdiction;
- Subdivision regulations exist for the jurisdiction;
- A growth policy has been adopted for the jurisdiction;

Generally, this means that planning boards serve as the “agency” that reviews subdivision applications for the governing body, especially for major subdivision applications. With regards to minor subdivisions, the statute gives the planning board the discretion to delegate the review of minor subdivision applications to planning staff. Hence, the review of minor subdivision applications by planning boards varies from one local government to another. In some jurisdictions the planning board reviews all subdivision applications, and in others they only review major subdivision applications.

In their role of reviewing subdivision applications, planning boards, along with their assigned staff, carry out a detailed examination of proposed subdivisions. Depending upon the local regulations, the planning board may hold a public hearing on major or subsequent minor subdivision applications. At the hearing it takes testimony from the subdivider, receives comments from the general public, and possibly local, state and federal agencies and ultimately makes a recommendation to the governing body. Please note that public hearings are not permitted for first minors under the statute. Because the governing body can rely heavily on the recommendation of the planning board, the board has a responsibility to thoroughly evaluate the subdivision application in order to make an informed recommendation.

D. Planning Staff, Subdivision Administrator or Consultants

In many local jurisdictions, there is a planner while in others there is a sanitarian who serves as the subdivision administrator. There are also jurisdictions that rely solely upon the services of a consulting planner or the duties of subdivision review may be handled by other local government personnel such as the city or county clerk, sanitarian, a planning board member, a consultant, the mayor or a county commissioner.

Regardless of who manages the subdivision review, those responsible must handle the details of the process by examining the subdivision application for completeness, distributing requests for comments to appropriate agencies, publishing notices and arranging public hearings, making on-site inspections, notifying adjacent landowners, reviewing the application for compliance with statute and local regulations, checking clerk and recorder records, drafting written finding of facts, and making a recommendation to the planning board.

Ideally, the staff should be available at least on a part-time, as this allows a subdivider or the general public to contact the staff with questions or comments about a proposed subdivision. Under the MSPA staff is required to meet with the subdivider in a pre-application meeting to discuss the statutes and local regulations. Beyond the pre-application meeting, it is essential for the planning staff to assist the subdivider throughout the process, and to provide information to the general public.

E. The Subdivider, Engineers and Surveyors

The subdivider initiates the subdivision review process by applying for subdivision approval. The type of subdivider found in Montana runs the gambit from the professional developer creating large “master planned” subdivisions to “mom and pop” who simply plan to create a couple of lots in order to generate extra income.

The first and foremost thing a subdivider can do to minimize difficulties is arrange a pre-application meeting with the local planner to discuss the requirements, standards and procedures found in the local subdivision regulations. Pre-application meetings are required by the statute, so eventually the subdivider must take this step. The pre-application meeting should be more than just a discussion of procedural and regulatory requirements; the planner should use the pre-application meeting to highlight potential opportunities or “pitfalls” a subdivider should be aware of.

One of the single most important things a subdivider can do to facilitate the subdivision review process is to work cooperatively with the local government. A subdivider can also minimize conflict and delay by hiring an experienced engineer, surveyor or planning consultant who is familiar with the subdivision review process and can work cooperatively with the staff. Conversely, the subdivider is entitled to the expectation that staff is there to assist them through the review process.

The following are some simple tips for easing the review process:

- Provide thorough and complete application materials;
- When in doubt, ask questions of staff; and
- Communicate with the staff on a frequent basis.

F. County Clerk and Recorder

The office of the county Clerk and Recorder is crucial because he or she must review all land records, including subdivision final plats, to determine whether they are in proper form and eligible for filing. The Clerk and Recorder also is responsible for determining whether a certificate of survey (COS) for an exemption to the Subdivision and Platting Act can be filed or, if under state and local requirements, the land division must be reviewed as a subdivision. Because of the multitude of statutes, administrative rules, legal opinions and local regulations regarding subdivision final plats, the Clerk's work can be very complex. For this reason it is important that the Clerks work closely with staff on final plats.

G. Other Local Agencies

School districts, solid waste districts, fire departments or districts, road departments, park departments, and public works departments, are among the local government entities that should have the opportunity to review a subdivision proposal and comment on the potential impacts that it might have. Where possible, personnel from each applicable entity should estimate the need for additional personnel, equipment, space and maintenance, and additional costs that may be generated by the subdivision. Department heads should work with the subdivider to identify means of minimizing impacts on services, while avoiding excessively expensive requirements upon the subdivider.

H. Private Utilities

Private utility companies providing electric, gas and telephone service should also be involved in subdivision review. Those companies need to plan for the provision of service through easements or rights-of-way for utility lines. The width and location of those rights-of-way can be critical to the effective provision of those services to a subdivision. Under Montana statute, all the affected utilities must be provided a copy of the preliminary plat or given an opportunity to examine the application and comment on how the subdivision will affect their provision of services. As is the case with public agencies and districts, when private utilities

work with the subdivider, services can generally be provided with minimal impact on the utility and other customers and with a minimum of cost to the subdivider.

I. Affected Property Owners and the General Public

The MSPA specifically requires that owners of property adjacent to proposed major subdivisions must be notified. Others in the public may also be concerned about a subdivision, believing that the subdivision would affect public resources or services. Not surprisingly there is frequent opposition to proposed subdivisions. In expressing opposition to a proposal, adjacent property owners and the public should be aware that a subdivider has certain property rights, including a limited right to subdivide. Therefore, it is incumbent upon opponents to carefully assess their opposition to a subdivision application in order to determine specifically what aspects of the proposal they are most concerned about and then they should weigh the reasons they oppose the subdivision against the rights of the subdivider.

It is important to note that opponents of a proposed subdivision can contribute to a thoughtful consideration of a subdivision application when they express their concerns in relation to those factors the governing body can consider in approving or denying an application i.e. compliance with statute and local regulations and an evaluation of the subdivision based on the statutory review criteria found in 76-3-608, MCA. The statutory review criteria are discussed in detail in Section VI.

J. Montana Department of Environmental Quality

The Montana Department of Environmental Quality (DEQ) is responsible for the review of the drinking water supplies, wastewater treatment and disposal systems, solid waste disposal, and the storm water drainage systems for a proposed subdivision. Before it will approve a subdivision, the DEQ must be assured of the following:

- The water supply system will serve the needs of the proposed subdivision and will not adversely affect the water supply of the surrounding neighborhood;
- The wastewater treatment and disposal system will properly dispose of wastewater without causing a health hazard and without degrading surface water or ground water;
- The solid waste from the subdivision will be disposed of in an approved manner;

- Storm-water will not create problems for property owners within and adjacent to the subdivision, will not interfere with the operation of the drinking water supply or wastewater treatment systems and will be channeled in a manner that will not erode roads, approaches, borrow pits, and will not pollute state waters.

K. Local Health Agencies

The Administrative Rules of Montana (ARM's) permit DEQ to enter into contracts with local governments to review water supply, wastewater treatment and the other related facilities for subdivisions. In this situation, the county sanitarian is typically the individual who conducts the review of subdivision applications. Under the ARM's, the sanitarian has 50 days to evaluate the site, and information submitted by the subdivider to determine whether the proposed systems for water supply, sewage treatment and disposal, solid waste disposal, and drainage would meet the DEQ standards. The sanitarian sends a recommendation to DEQ regarding the adequacy of the proposed sanitation facilities and DEQ then has an additional 10 days to take a final action on the application.

In many rural or small counties, the staff planner and the sanitarian work in the same office, or a single person performs both duties. Although each has different review responsibilities under two different statutes, working closely with one another helps to make both review processes more effective and can reduce the time of the review and any potential duplication of efforts.

4. Local Review Process

The local subdivision review process can be separated into three phases: (1) pre-application, (2) subdivision application review, and (3) final plat approval and filing (*if the application was grant preliminary approval*). The process of subdivision review is intended to minimize delay and misunderstanding among the subdivider, staff, planning board, and the governing body and yet ensure a proper evaluation of the proposed subdivision.

The three-phase process should allow for adequate preparation by the subdivider, the local planner, the planning board and the governing body in order to ensure that a subdivision application meet the requirements of statute and local regulations. The process should also provide adequate opportunity for discussion and review before a subdivider's design is finalized and he or she has incurred

considerable expenses. It is important to understand that the level of detail and preparation costs increase as the review process moves from the first phase (pre-application) through the third phase (filing the final plat).

5. The Pre-application Meeting

The pre-application meeting is the initial step in the subdivision review process. During this meeting some of the most important discussions about the subdivision proposal will take place and the working relationships between the subdivider and the local planning staff are established. A pre-application meeting is required by the statute and its importance should not be underestimated.

The pre-application meeting is the most flexible step in the entire review process, and provides the best opportunity to incorporate design considerations or changes. Subdividers can greatly benefit from these meeting(s) because it provides them an opportunity to become more familiar with the local regulations, and thus allow them to make any changes necessary to comply with the local subdivision regulations before they invest significant time and money.

It is during this step that the subdivider meets with the planning staff prior to developing and submitting the subdivision application and fees. The subdivider should provide the staff with information regarding the overall design of the project, location of the property and the types of uses proposed. The planner, in turn, informs the subdivider how the subdivision regulations, existing growth policy, other plans or policies that might affect the proposal. Staff should also explain the potential requirements for on-site and off-site improvements i.e. roads and streets, storm-water drainage facilities and fire protection water supplies.

It is common for the planner to offer an initial assessment of the proposed subdivision including the opportunities or issues that the subdivider should be aware of. In addition to this, the subdivider should be provided with a schedule of application deadline, dates of planning board meetings, governing body meetings, hearings and other aspects of the process. These preliminary discussions should provide the subdivider with enough information to help him or her create a subdivision application that conforms to the local policies and regulations.

A. Information Packet-Local Planner

Pre-application meetings are most beneficial when the subdivider is provided with a prepared packet of materials that includes copies of state requirements, local regulations, application forms and checklists and a list of the entities to be contacted for comments. Having these materials available for the subdivider's review and use early in the process will avoid many questions and delays later in the process.

B. Information Packet-Subdivider

In order to make the meeting as productive as possible, the subdivider needs to provide the planner with basic information about the proposed subdivision. In order for the planner to receive appropriate information about the subdivision proposal, a standardized pre-application checklist should be provided to the subdivider to ensure that the subdivider understands what information is necessary for the planner to make an adequate assessment of the proposal.

A typical pre-application checklist might require a draft preliminary plat and other information describing the following:

The current status of the site, including it's:

1. location;
2. approximate boundaries of property proposed for subdivision;
3. description of general terrain;
4. natural features on the land, including water bodies, floodplains geologic hazards, and soil types;
5. existing structures and improvements;
6. existing utility lines and facilities serving the area to be subdivided;
7. existing easements and rights of way;
8. existing zoning regulations or design standards;
9. existing conservation easements;
10. existing covenants or deed restrictions; and
11. existing noxious weeds;

Documentation on the current status of the site, including:

1. ownership information such as a deed, liens, options to buy or buy-sell agreement, including permission to subdivide;
2. water rights, including location of agricultural water user facilities;
3. any special improvement districts; and

4. rights of first refusal for the property.

Information on the proposed subdivision, including:

1. proposed lot configurations and boundaries;
2. proposed public and private improvements;
3. location of utility lines and facilities;
4. easements and rights of way; and
5. parks and open space.

C. Guidance on Local Requirements

76-3-504(1)(q) of the Montana Code Annotated, requires the planner to identify for the subdivider the state laws, local regulations, and growth policy provisions that may apply to the subdivision review process. This statute also requires that a list be made available to the subdivider of the public utilities, agencies of the local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application.

D. Planner's Assessment

Probably the most important aspect of a pre-application meeting is the local planner's identification of potential issues or concerns regarding the proposal. Examples include:

- Suitability of the site for development due to: floodplain, shallow water table, soils, steep slopes, high fire hazard;
- Extensive infrastructure improvements such as those for streets and roads;
- Physical access: street or road design elements that do not meet the subdivision regulations;
- Legal access: easements or rights-of-way that do not meet the subdivision regulations;
- Layout of lots and blocks that do not meet local standards;
- Severe storm-water drainage issues;
- Conflicts with zoning regulations;
- Potential public opposition.

With such advice, the subdivider may wish to redesign the subdivision or reconsider any plans for development.

6. Review of the Subdivision Application

A. General

The actual review of the subdivision application is the most important phase of the entire process. It is at this stage that governing body can require changes in a subdivision application, or deny the proposal before the subdivider has invested additional time and money in developing the project.

Generally the subdivision review phase includes the following steps:

- Submittal of the subdivision application and fees;
- Review of the preliminary plat and application materials for “completeness;”
- Inspection of the property proposed for subdivision;
- Preparation of a staff report;
- Public hearing (*always for major subdivisions and when applicable, for subsequent minor subdivisions*);
- Submission of the planning board's recommendation to the governing body, if applicable;
- Governing body approves, conditionally approves or denies the subdivision application.

B. Subdivision Application

To initiate the review of a subdivision application, the subdivider must submit an application containing the information and fees required by the local subdivision regulations. The MSPA provides a framework for the types of information that can be required, but it allows local governments the latitude to specify in their regulations exactly what an application must contain and how detailed the information should be.

The following are items that generally accompany an application for a major subdivision:

- A Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, boundaries, utility easements, proposed improvements, and park lands. Typically drafted by a registered professional land surveyor;

- A Location or Vicinity Map: Identifies the location of the subdivision within the jurisdiction, and its relationship to the overall community and to local services;
- A Topographic Map: Showing the subdivision (lots-roads etc) in relation to the terrain;
- An Environmental Assessment: (*required for major subdivisions and for subsequent minor subdivisions depending upon local regulations*): The assessment must include a description of:
 - (1) A description of every body or stream of surface water that may be impacted by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;
 - (2) A summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608, MCA;
 - (3) A community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and
 - (4) Additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501, MCA as may be required by the governing body.
- Supplemental Information: including storm-water drainage plans, traffic impact studies, floodplain studies and groundwater availability analyses all generally compiled by a professional engineer.

In addition, local regulations may require information such as:

- A reduced copy of the plat for inclusion in mailed correspondence to adjacent landowners and state and local agencies;
- A list of the adjacent landowners;
- Copies of proposed covenants and restrictions, if any, to be included in deeds or contracts of sale;

- Any approach permits where proposed roads or access points will intersect with public streets or roads;
- Fire protection plan;
- A letter of approval from the appropriate governing body where a zoning change is necessary (if not handled concurrently with the subdivision proposal); and
- Ownership of mineral and water rights associated with the subdivision.

It is essential to have a comprehensive checklist outlining the information that must be submitted as part of the subdivision application. This will assist the subdivider in creating a good application and help the local planner (or planning board) determine if the application is complete.

A common complaint of subdividers is that additional information is often required after submittal of the subdivision application. While the statute permits the request for additional information, in order to minimize this, the local subdivision regulations should clearly specify the required information and indicate the level of detail expected.

C. Element and Sufficiency Review (76-3-604, MCA)

Under the MSPA the local planner or other appropriate staff is required to review the subdivision application to determine whether they are complete and sufficient in order to adequately review the subdivision application. The MSPA essentially spells out a two-step process for doing this: an “element review” and a “sufficiency review.”

During the element (*completeness*) review, the planner must determine whether the application contains all of the elements required by the jurisdiction’s regulations within 5 working days of receipt of a subdivision application and fees. If the planner determines that elements are missing from the application, the subdivider must be notified in writing, and the missing elements must be identified. The planner should also return the application and no further action should be taken until the application is resubmitted with the necessary elements. The element review continues until planning staff deems that all of the elements have been submitted.

If an application is deemed to contain all of the required elements, the planner must determine if the materials in the application are sufficient to proceed with the review. The planner has (15) fifteen working days to determine whether the application contains adequate *“detailed, supporting information sufficient to allow for review of the proposed subdivision”* under the jurisdiction’s regulations. The planner must provide written notification to the subdivider of the determination for *“sufficiency.”*

No further action should be taken on the application by the planner until the required material is resubmitted. This continues until the application is deemed to be complete.

Deficiencies in the subdivision application should not be addressed during the review of an application. If an application does not meet the requirements of the “element” and “sufficiency” reviews made by staff, the application should not be processed. While the planning board would be correct in noting any apparent deficiencies, under the statute the planning board hearing is not the appropriate venue for addressing such concerns.

D. Site Inspection

A site inspection of the property proposed for subdivision is absolutely essential. The inspection allows the planner and other local officials to view the property in relation to the proposal and to consider the physical features of the site as they relate to the proposed design and layout. Based upon the site visit and application materials, the planner or planning board should be able to understand many of the following design elements and potential issues:

- Location of lot boundaries and parkland areas;
- Information on culverts, bridges, cuts and fills, grading, and drainage swales and other facilities;
- Location of internal access roads and approaches onto public roads;
- Availability of legal and physical vehicular access to each lot;
- Availability of a suitable building site on each lot;
- Grades and widths of each proposed street, road or cul-de-sac;
- Hazards from wildland fire (slope and vegetation);
- Surface waters and floodplains that might affect the subdivision (Artificial water systems such as canals, reservoirs and irrigation systems should be observed to determine how they may affect, or would be affected by, the subdivision, particularly the potential risks to children.);

- Any evidence of high ground water or wetlands that could affect proposed lots, septic drain fields, roads, or storm drainage;
- Soils and slopes: highly erodible soils, steep slopes; toes of slopes that might be cut for roads (potential for slumping or sloughing);
- Evidence of bedrock that might interfere with drain fields or installation of utilities;
- Natural features: vegetation, wildlife habitat, visual impacts; or areas that are better left undisturbed;
- Historic or prehistoric features that should be inventoried or preserved;
- Utility locations (existing and proposed); and
- Easements.

E. Preliminary Plats

A preliminary plat is generally a complex property survey drafted by a registered professional surveyor that is one of the factors used in determining the suitability of a property for subdivision. The term “preliminary” indicates that it is the *proposed* design of the subdivision and may be subject to change.

Preliminary plats are not recorded with the County Clerk and Recorder and are not legal documents used for the sale of lots, but rather they are used to allow for a comprehensive review of the proposed subdivision and ultimately if approved by the governing body, the plat becomes a blueprint for how the subdivision should be completed.

Depending upon the requirements of the local jurisdiction, preliminary plats generally include the following information:

- The proposed subdivision name and location;
- The name and address of the owner or owners;
- The name of the surveyor;
- Date of creation, approximate north point and graphic scale;
- The location of existing and platted property lines, streets and road easements/right-of-ways, utility easements;
- The legal descriptions of both the land to be subdivided and adjoining properties;
- The names of adjoining property owners or subdivisions;
- The names, locations, widths and other dimensions of proposed lots, streets, alleys, right-of-ways, easements, parks and open spaces, lot lines and utilities;
- The acreage of the land to be subdivided; and

- o Location map showing relationship of subdivision site to surrounding area.

Calling these plats "preliminary" is somewhat of a misnomer. A substantial amount of time and expense is involved in surveying and drafting them. This is why a pre-application meeting between the subdivider and the planner is so important. It can ensure that the subdivider does not go to the expense of preparing preliminary plat only to be told they have to make major adjustments to the plat.

F. Supplemental Reports and Analysis

Many local subdivision regulations require the submittal of supplemental reports and analysis by the subdivider to help the local government better understand the impacts of a proposed subdivision. Some of the more common reports that are seen include traffic impact studies, fire protection plans, or aquifer pump tests and analyses. Such reports are typically far more focused and detailed than the environmental assessment and can not only assist the local government in reviewing a subdivision application, but can help the subdivider design a better proposal.

G. Agency/Utility Review

Most subdivision regulations adopted by local governments require that the appropriate utility companies and local government agencies have the opportunity to review and comment on a proposed subdivision. Agency and utility comments are important for providing authoritative opinions regarding the expected impacts of a proposed subdivision on local services.

Bear in mind that that 76-3-504(1)(q)(iii), MCA, requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond.

It is also common for state and federal agencies to review and comment on proposed subdivision. Such agencies might include the Montana Departments of Fish, Wildlife and Parks, Natural Resources and Conservation; the Montana Bureau of Mines and Geology and agencies of the United States such as the Forest Service,

Fish and Wildlife Service, Natural Resources and Conservation Service and Bureau of Land Management.

H. Staff Report

The results of the planner's review and research on the proposed subdivision will be most useful to the subdivider, planning board, governing body, and general public when it is compiled into a clear and concise staff report. The staff report is typically the primary document used by the planning board to develop a recommendation to the governing body.

The staff report should bring key issues into focus and answer questions. It should also be concise and deal only with issues pertinent to the proposed subdivision and within the local government's authority. In writing the report, the planner should avoid generalities, irrelevant issues, or unsubstantiated opinions. Typically the participants in the process have limited time to review a subdivision application, so brevity and clarity are important.

Creating a standardized format for staff reports will help the local planner quickly draft a report that addresses the most important aspects of the subdivision application and present the information and staff recommendations in an understandable manner. A standardized format can also aid the planning board in its review, because board members will know where to look in the document to locate the information they need.

The report should be prepared well in advance of any public hearing in order to provide the subdivider, planning board, and the general public with an opportunity to read the report before the hearing.

Staff reports typically contain four primary parts: an introduction, background information, discussion and findings of facts, and a recommendation:

1. Introduction:

This section describes the basic information regarding the proposed subdivision, including the location, type (e.g., residential, commercial, mobile home), number and average size of lots, number of dwelling units, current land use, current zoning (if any), how the subdivision will be accessed, what type of drinking water and wastewater treatment systems are proposed, etc.

2. Background:

This section gives a brief history of the application, including pre-application meetings, dates of site inspections, other land divisions in the vicinity, and adjacent land uses. The background section might also include the schedule for important dates such as hearings or meetings, and the statutory review period. This section could also list the materials that comprise the subdivision application (e.g., preliminary plat, environmental assessment, traffic impact study, fire protection plan, covenants, maps, drainage plans).

3. Discussion and Findings of Fact:

This is the "substance" of the staff report and is where the planner analyzes the subdivision application, including the preliminary plat, environmental assessment, supplemental reports and analysis, and comments from agencies.

The planner uses the information in the application to assess the proposal with regards to compliance with the local regulations and design standards, and based upon this analysis may make suggestions for changes to the project design. The planner should also determine how the proposed subdivision would comply with other existing regulations, such as those used for zoning and floodplain management. In jurisdictions with an adopted growth policy, the planner should also examine how the proposed subdivision relates to the goals and objectives identified in the growth policy. In doing this, the planner and the planning board must remember that a subdivision cannot be denied based solely on whether or not it complies with the growth policy, per 76-1-605(2)(b), MCA.

It is general practice for a local planner to draft findings of fact that outline the impacts that a proposed subdivision will have upon the statutory review criteria found in 76-3-608(3)(a), MCA. Ultimately, the governing body must make such findings, so it is appropriate for the local planner to assist in their preparation.

In some jurisdictions, the planning board may prefer to weigh the review criteria themselves and determine whether the subdivision would comply with the provisions of the MSPA. In these instances the local planner's involvement is limited to preparing the factual statement of circumstances surrounding the proposal.

The following is an outline of what the Discussion section of a staff report might include:

- An analysis of the:
 - preliminary plat;
 - environmental assessment;
 - agency comments ;
 - legal and physical access;
 - drainage plan;
 - traffic impact study;
 - floodplain analysis;
 - fire protection plan;
 - groundwater availability analysis; and
 - existing or proposed covenants.

- Written findings of fact that weigh:
 - whether the subdivision complies with the growth policy, zoning and other regulations and policies (*remember, compliance with a growth policy cannot be the sole reason for denying a subdivision application*);
 - whether the subdivision conforms to the review criteria found in the MSPA and the design standards and requirements of the local regulations;
 - whether legal and physical access is provided; and
 - whether utility easements will be provided.

4. Recommendations:

Whether the local planner provides recommendations regarding approval or disapproval of a subdivision can vary from jurisdiction to jurisdiction. Some local governments simply asks that the planner provide the factual information and research questions that might arise, but in most the planner is asked to prepare draft recommendations for the review of the planning board and governing body. Those recommendations generally include whether a subdivision would conform with the statute and existing regulations and whether the application should be approved, approved with conditions, or denied.

Where the local planner is required to make draft recommendations, the recommendation must be supported by concise justifying statements. Whether conditional approval or denial is recommended, supporting statements need to be specific and clearly set out. Where public opposition or questions about the subdivision have emerged, the local planner should address those issues in

recommending approval. When disapproval is recommended, the reasons must also be clearly and specifically set out.

THE STAFF REPORT: The report should be clear, understandable, and concise. Jargon, acronyms and vague generalizations can confuse the lay reader. Pertinent attachments, including maps, and covenants, can greatly aid a readers understanding of a subdivision proposal and the relevant issues pertaining to it. Sending copies of the staff report to the planning board and subdivider prior to the public hearing is essential because it allows them to become familiar with it, and better prepare for the hearing. It also provides an opportunity to correct any factual errors before it is presented at the public hearing. Copies also should be made available to the public both before and at the hearing.

I. Planning Board Recommendation to Governing Body

Under statute (76-1-107, MCA), *“the governing body of any city, town, or county that has formed a planning board and adopted a growth policy pursuant to this chapter and subdivision regulations pursuant to chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.”* This means that in jurisdictions that have an established planning board and an adopted growth policy, the planning board must be called upon to provide recommendations to the governing body on that approval or denial of major and minor subdivision applications.

The board should provide written recommendations that address the following topics: (1) the findings of fact about the proposal, (2) the determination as to whether the subdivision would or would not comply with the provisions of the statute and the local regulations, and (3) whether to approve, conditionally approve or deny the proposed subdivision. A recommendation for conditional approval should be accompanied by the specific conditions for approval i.e. road construction, parkland dedication, DEQ approval etc.

The written of recommendation should spell out the board's rationale for its recommendations. The recommendation to the governing body should also include a copy of the staff report, agency and public comments, technical reports, and a written transcript or minutes of the hearing. These documents are then provided to the governing body along with any other pertinent information such as

the preliminary plat, environmental assessment and the other application documents.

J. Action by the Governing Body

The governing body must approve, conditionally approve or disapprove the application for a subdivision within the statutory timeframe after the application was deemed sufficient (76-3-604(4), MCA).

Depending upon your local subdivision regulations, the governing body may or may not hold a public hearing on a major or a subsequent minor subdivision application. It is important to remember that public hearings are not permitted on first minor subdivisions (*See Section V for a more detailed discussion about this topic*). If the governing body does hold a public hearing, it will generally be similar in procedure to a planning board hearing.

A local government may take one of three actions with regard to a subdivision application (76-3-604(4), MCA):

1. Approval. The governing body may decide to simply approve the subdivision application, which would permit the subdivider prepare and submit a final plat without meeting any conditions of approval other than the requirements dictated by state statute and the Administrative Rules of Montana (ARM's), i.e. Department of Environmental Quality (DEQ) approval and ensuring the plat meets the requirements of the ARM's.
2. Conditional approval. Conditional approval is the most common type of approval granted by a governing body because there are almost always impacts created by a subdivision that must be mitigated. If conditional approval is granted, the governing body must specify in writing the conditions that must be met before a final plat may be submitted for approval. A copy of the conditions must be sent to the subdivider.

A conditional approval may include requirements such as: changes in lot configuration and road locations, installation of improvements (roads, fire protection water supplies, parks, *etc*), DEQ approval, or reasonable off-site improvements that serve the subdivision (*upgrading a street or road intersection or installing an offsite mailbox bank*). Improvements or steps required by a conditional approval should be completed prior to the filing of

the final plat. In lieu of this, the improvements should be guaranteed by a subdivision improvements agreement.

3. Denial. Denial of a subdivision should only occur if the governing body finds that the application fails to comply with the requirements of MSPA, the local subdivision regulations or would be in conflict with adopted zoning or any other applicable regulations. Denial of an application is the end of the review process, and the governing body must send a written statement to the subdivider detailing the reason(s) the subdivision was denied.

Depending upon the decision made by the governing body, some or all of the following information must be provided in writing to the subdivider:

- Information regarding the appeal process for the denial of an application or imposition of conditions of approval;
- Identification of the regulations and statutes used in reaching the decision on an application and an explanation of how they apply to the decision to deny or approve with conditions;
- Findings and conclusions that the governing body relied upon in making its decision and references documents, testimony, or other materials that form the basis of the decision; and
- The required conditions applicable to the preliminary subdivision approval that must be completed before the final plat may be approved.

The MSPA specifically prohibits a local government from imposing additional conditions on a proposed final plat that were not included in the original preliminary subdivision approval. So if something was missed by the local planner, the planning board or the governing body during the review of the original subdivision application, there is nothing that can be done to change the situation at that point.

K. Extensions or Suspensions of the Subdivision Application Review Period

It is not uncommon for circumstances to arise that prevent a local government from completing the review of a subdivision application within the statutory timeframe. This may be caused by a lack of a quorum on the part of the planning board or

governing body. It may be that the planning board or governing body have requested additional information that they feel is essential to properly review an application. When these situations arise, many subdividers may feel that an extension or suspension of the statutory review period is in their best interest. The additional time can ensure a full quorum or help the subdivider obtain information for the either body, which may in turn help the subdivider gain approval of the subdivision application.

To accommodate unforeseen situations that may prevent timely action on a subdivision application, the MSPA allows an extension or suspension of up to one year where the subdivider and the reviewing agency (planning board or governing body) consent to the extension. It is important that an action that extends or suspends the statutory review period for a subdivision application be part of the public record.

SECTION V PUBLIC HEARINGS ON SUBDIVISIONS

1. Difference Between Subdivision Types

Under the MSPA, if a local government has a planning board, an adopted a growth policy and subdivision regulations, then the governing body of that jurisdiction must seek the recommendation of the planning board in all matters pertaining to the approval or denial of subdivision applications. Under this same statute, the planning board has the authority to delegate the review of all minor subdivision applications (5 or fewer lots) to the planning staff.

Most local governments in Montana have the planning board hold public hearings on major subdivision applications (6 or more lots). Depending upon the subdivision regulations adopted by the jurisdiction's governing body the planning board hearing may be the only hearing on a major subdivision or subsequent minor application. Or it could be just the first of two.

Please note that public hearings for first minor subdivisions are not permitted under 76-3-609(2)(e), MCA. *(Statutory change made to this part of the MCA by the 2009 Legislature via HB 486).* It is advisable that the planning board not hold any meetings on first minor subdivision applications and that the governing body be the only body of local government to consider first minor subdivisions. These recommendations are based on the fact that no public hearings are permitted for first minor subdivisions, thus, holding both a planning board and governing body meeting on first minors only increases the opportunity for confusion and litigation over the requirements of 76-3-609, MCA.

Unless administrated carefully by planning staff, the planning board chair, and the governing body, these meetings on first minors can essentially end up being public hearings, with the first minor being subject to not only one, but two hearings both contrary to the provisions of Section 76-3-609, MCA. Limiting public meetings on first minor subdivisions to only the governing body helps limit the procedural liability the local government may face and ensures that applicants for first minors obtain the benefit of the exemptions provided by 76-3-609, MCA.

One has to bear in mind that sections 76-3-609 and 76-3-605 of the MCA must be read, if possible, to be consistent with other statutory provisions. Section 2-3-103,

MCA clearly provides that the public has the right to participate (*i.e.*, comment) on actions being taken by their elected officials. The statute states the following

- *“However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter.*
- *Public comments received at a meeting must be incorporated into the official minutes of the meeting, as provided in [2-3-212](#).”*

Although 76-3-609 exempts first minors from the requirement of a public hearing, that exemption is qualified by the words "pursuant to 76-3-605." The only way this exemption can be read consistent with Section 2-3-103 and the public's right to participate is to ensure that only **one meeting is held**, and that the **notice provisions of 76-3-605 are not required for first minor subdivisions**.

The deficiencies in a subdivision application should not be addressed by the planning board during its review of an application. If an application does not meet the requirements of the “element” and “sufficiency” reviews by staff, the application should not be processed. The recommended conditions of approval for a subdivision application are not the appropriate mechanism for dealing with these problems. Such issues should have been addressed before the application was deemed complete and sufficient for review.

2. Purpose of Public Hearings

The purpose of a public hearing on a major subdivision application or subsequent minor application (*if applicable*) is to consider all of the information provided by the subdivider, planning staff, agencies and the public in order to determine whether or not the application should be recommended to the governing body for approval, conditional approval, or denial. The planning board should use a hearing as a venue for providing the governing body with a will informed recommendation, including findings of fact about the subdivision application that discuss and weigh the review criteria identified in statute (76-3-608(3), MCA).

3. Procedures for Public Hearings

Planning board hearings on subdivision applications vary in procedure throughout Montana. Nonetheless, there are many common elements:

1. The planning board chair (*president*) brings the board to order and opens the proceedings and explains to the audience what the agenda is and what the procedures are for the operation of the hearing.
2. The planning staff makes a presentation about the subdivision application to the board, subdivider and public detailing the design features of the proposed subdivision and any issues or impacts that have been identified during staff's review of the application. The planning staff might then conclude the presentation by providing the planning board with a recommendation to approve, conditionally approve and, if necessary, to deny. The board then has the opportunity to ask staff questions.
3. Following staff's presentation, the subdivider(s) or their representative(s) provide a presentation regarding the application and discuss any issues they might have identified with staff's report and recommendations or other pertinent issue. The planning board members would then have the opportunity to ask questions of the subdivider.
4. The board chair opens the hearing to public comment. During public comment, the board should note all the public's questions or comments and assure them that they will be addressed at the end of the public testimony. If there are a large number of people wishing to testify, it is not unreasonable to establish a time for each person to speak and once everyone has had an opportunity to speak, the board may allow those with further comments to address the board again.
5. When all members of the public have had an opportunity to speak, the chair should close the public testimony portion of the hearing. It is usually at this point in the hearing that the subdivider and staff are given an opportunity to answer questions from the board, and respond to the public's questions or comments.
6. The chair then opens the board's deliberation on the merits of the subdivision application according to the "primary review criteria." Ultimately, the board makes a recommendation to the governing body to approve, conditionally approve, or to deny the application.

It is not uncommon for hearings on subdivision applications to be contentious. Neighboring property owners may be upset about the proposed change in land use, the impacts to the neighborhood, increased traffic, affects on water quality

and quantity, the safety of school children, *etc.* Whether a person's concerns are valid or not, people need an opportunity to express them, and they expect the planning board to listen to them. In addition to public angst, the subdivider may be upset about the staff's report and recommendations, particularly if the recommendation is for a denial of the application, or if the recommendation is for conditional approval and the conditions include costly improvements for mitigating identified impacts.

As a planning board member, you need to be prepared for these situations. It is essential that the chair of the board maintain control of the hearing, including the civility and language of the participants. Once the action(s) of an individual(s) is out of control, it is difficult to bring any decorum back to a hearing. So although such hearings can be contentious, they should not be a venue for individuals to attack one another or otherwise be un-civil.

SECTION VI

SUBDIVISION REVIEW: TOPICS OF EMPHASIS

1. Subdivision Review Criteria

When reviewing subdivision applications, local governments are required to address the review criteria specified in 76-3-608, MCA. Those criteria are identified as follows:

- a. The impacts on: agriculture, local services, the natural environment, wildlife and wildlife habitat, the public health and safety;
- b. Compliance with the survey requirements of the MSPA;
- c. Compliance with local subdivision regulations;
- d. Compliance with local subdivision review procedures;
- e. The provision of easements within and to the proposed subdivision for the location and installation of utilities; (*Statutory change made to this part of the MCA by the 2009 Legislature via HB 486*);
- f. The provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

The governing body must issue written findings of fact that weigh the review criteria to determine if a subdivision complies with the provisions of the MSPA. Subdivision approval is contingent on this determination; so the criteria must be taken seriously.

Two aspects of the review criteria deserve special attention. First, the written findings are to be findings of fact, which require the local government to make every attempt to provide an assessment of the expected effects of the subdivision upon each of the review criteria. The second is the requirement is that local officials must "weigh" each criterion as part of the review process to determine whether the subdivision application complies with the provisions of the MSPA.

The five (5) "primary criteria" - impacts on agriculture, local services, natural environment, wildlife, wildlife habitat, and public health and safety - are very general statements and can create confusion and uncertainty about how to address them. This in turn may cause difficulties for planning staff, the planning board, the governing body, subdividers, and the public. It is important to understand that the manner in which a local government handles the review criteria can affect the

credibility of the subdivision review process in the eyes of the public and subdividers.

To more accurately determine the impact of a subdivision upon each of the review criteria, everyone involved in the process needs to know how each of the criteria is defined. This issue is addressed in the statutes governing the development of growth policies. The statute requires that a growth policy include *"a statement explaining how the governing bodies will: define the criteria in 76-3-608(3)(a) [MCA]; and evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a) [MCA].* So an adopted growth policy that complies with the statute should provide definitions for each of the "primary review criteria," and therefore eliminate some of the questions about what each term means. In jurisdictions without a growth policy, the review criteria should be defined within the subdivision regulations.

Local government can also minimize generality or vagueness with the review criteria by developing specific standards for evaluating a subdivision application under the review criteria. The first set of standards should address the preparation of the findings of fact in order to ensure consistency in determining what the "facts" surrounding a subdivision are. This can best be done by creating a standardized template of how the findings of fact should be drafted.

The second set of standards would be the establishment of thresholds for determining when the impacts of a subdivision are acceptable or unacceptable with regard to the review criteria. Establishing these thresholds can assure consistency in approving, conditionally approving or denying a subdivision application. Examples of thresholds where the impacts might be unacceptable could include:

- Conversion of 80 acres of "prime" farmland to residential use,
- The level of service (LOS) for the roads serving the subdivision fall below a Level of Service "C"
- Slopes of hillsides in a subdivision exceed 30 percent;
- Subdivision located entirely within the 100-year floodplain,
- Access to the subdivision is via a dead-end road over 1,000 feet in length.
- 500 acres of big game winter range would be converted to residential use.

2. Weighing the Criteria

Attempting to establish the threshold at which a subdivision is considered to have an unacceptable impact can be particularly challenging. It is one thing to state that a subdivision will have a certain effect on agriculture, local services, taxation, wildlife or public health, but it is entirely different to determine that the impact will reach a level at which the subdivision should be denied. If the planning board thinks the impacts of a subdivision can be mitigated, then the board should recommend conditional approval to the governing body in order to permit the subdivider the opportunity to mitigate the adverse impacts a subdivision will have.

Regardless of the manner in which a local government chooses to use the five primary review criteria in subdivision approval or denial, the basis for the recommendation or decision must consider 1) reasonableness, (2) a relation to the existing conditions and circumstances, (3) a relation to the identified land use goals in an adopted growth policy or other land use plans (if applicable).

As a general guideline, courts will usually not uphold the denial of a subdivision simply because local services must be expanded or extended. However, where a local government has adopted a detailed plan for expansion of its services over a period of time, courts may allow local officials to deny and approve subdivisions in order to implement the plan and maintain their schedule of expanding services. Disapproving subdivisions that convert agricultural land might be upheld if a local growth policy shows that preservation of agricultural land is vital to the community (economically or otherwise). Likewise, approving or disapproving subdivisions based on issues such as the reduction of wildlife habitat need to carefully reflect any policy statements in a growth policy regarding each subject, and should show the relationship between each policy statement and the local public benefit.

Thoughtful comprehensive planning through a growth policy and capital facilities plan can greatly aid the planning board and governing body in weighing the primary review criteria. It can provide the background information and the community desires that allow examination of difficult criteria as effects on agriculture, local services, or wildlife.

Determining whether a proposed subdivision meets the other review criteria is much easier. The requirements for surveying and preparing a subdivision plat are specifically prescribed in the statute and in the Administrative Rules of Montana

(ARMS) adopted by the Department of Labor and Industry. The design standards of local subdivision regulations are usually specific, dimensional criteria that can be readily measured. Likewise, the review procedures (*deadlines, hearings etc.*) in local subdivision regulations are usually clear and easily understood.

The provision of easements for locating and installing utilities is generally a matter of examining the proposed plat to determine whether easements are provided to each lot within the subdivision. Representatives of utilities companies should review the preliminary plat and other application materials to determine that easements are wide enough and located to allow ready installation and maintenance of the utility facilities.

"Legal access" is readily provided where a proposed subdivision will adjoin a public road. If a subdivision does not adjoin a public road, the subdivider should provide copies of easements or other agreements filed with the Clerk and Recorder that allow permanent public access across properties from a public road to the subdivision. An easement or other legal agreement must be provided for each property that must be crossed. "Physical access" is generally considered a road that has been constructed to the standards of the local subdivision regulations that is sufficient to handle the estimated traffic volumes created by the subdivision.

3. Environmental Assessment

The environmental assessment is a tool used by local governments to evaluate a proposed major subdivision's impact on the natural environment, adjacent properties, local services, and the community as a whole. The evaluation is used to identify any negative impacts the subdivision could create and how the impacts might be mitigated. An environmental assessment is required by MSPA for all major subdivision applications and can be required for subsequent minor subdivisions depending upon the local regulations.

The statutory requirements for environmental assessments include the following:

- (1) A description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(2) A summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608, MCA;

(3) A community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(4) Additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501, MCA as may be required by the governing body.

The MSPA does not set a standard for the level of detail that must be provided by the subdivider, but the statute authorizes the governing body to require more specific information as part of an environmental assessment. Therefore, local governments should establish policies regarding: (1) the information that will be required, (2) the level of detail that is necessary for review of the subdivision (yet is reasonably available to the subdivider), and (3) the format that facilitates the use of the information by the local planner, planning board and local officials.

The most important consideration for a local government is to require only data that will contribute to a proper review of a proposed subdivision. At a minimum, the environmental assessment should provide information that allows for the evaluation of a subdivision in relation to (1) the primary review criteria, (2) conformance with the growth policy (if applicable), (3) the general design standards of the local subdivision regulations and (4) any natural or environmental feature that could require mitigation to ensure public health or safety.

With the concurrence of the planning board and governing body, the local planner should develop a standardized template that describes the detail and format in which the information should be presented. Because the level of detail can be qualitative, specifying standards can be difficult. A good method of determining standards for the "adequacy" of the data in the assessment is to find or create an environmental assessment that meets the expectations of the local government and can be provided to subdividers as a "model."

Because the subdivider provides the environmental assessment, the local planner must find a reliable means of checking the data provided. Sometimes the information provided in the assessment may not give a true picture of the facts surrounding a proposed subdivision for a variety of reasons, including the

subdivider's: (1) desire to maximize (or overstate) the positive attributes of the subdivision, (2) indifference toward the benefit of the environmental assessment, (3) perception that there is insufficient time to be thorough, and (4) difficulty in obtaining information.

Finally, it is important that the local planner make on-site inspections, check available studies or reports, and contact agency personnel in order to check the accuracy of information provided in the environmental assessment.

4. Approving or Denying Subdivision Applications

Approving a Subdivision

Individuals who oppose the development of new subdivisions increasingly understand that one of the primary legal bases for subdivision approval is the adherence to statutory and regulatory procedures, such as proper notification of public hearings. Often, opponents are challenging a local government's approval of unpopular subdivisions on procedural grounds, in addition to the potential adverse impacts from the subdivision. Any failure by local officials' to follow proper procedures is a legal vulnerability that is easily proven. However, opponents also often express opposition in terms of non-compliance with the adopted growth policy, local subdivision standards, and impacts upon the review criteria.

The local government must ensure that both statutory and locally adopted procedures are carefully followed. Because procedural requirements are specific, deviations can be easily identified and are easier to challenge in court than are substantive decisions.

While the threat of a legal challenge to a subdivision approval can be frustrating for local officials, it has the effect of counteracting the threat of challenge by the subdivider. Local officials cannot avoid legal challenge by "playing it safe" and approving all subdivisions. The governing body must have solid documentation for any decision approving a subdivision application. Before the governing body renders a decision approving a subdivision application, it should understand the specific issues that have been raised by opponents of a subdivision and make an attempt to provide mitigation if their concerns are valid.

Denial of a Subdivision

More than ever, people are inclined to challenge local land-use decisions in court. That tendency may be even stronger where a subdivider has a considerable amount of money at stake in the approval or denial of a subdivision. Therefore, when a planning board recommends denial or the governing body believes that it must deny a proposed subdivision their actions must be properly executed and documented. When the denial of a subdivision application is being considered, the recommendation or decision must be related to the application's noncompliance with local regulations or due to the adverse impacts upon the review criteria. The reasons for a denial must be clearly stated in writing, and the governing body is required by statute (76-3-620, MCA) to send a letter to the subdivider detailing those reasons.

The disapproval of a subdivision for non-compliance with local design standards is usually legally sound. For instance, if the subdivider absolutely refuses to build roads within the subdivision to the required standard, denial of the application would be the only option for the governing body. The design standards are generally very specific therefore little judgment should be involved in determining whether or not a subdivision application complies with the standards. In addition, the role of the design standards in protecting the public health and safety is readily understood.

Caution is required if disapproval would be based on a weighing of the five "primary" review criteria. A typical situation involves a finding that the subdivision application should be denied because of the potential adverse impacts upon several of the criteria. As discussed earlier, clear definitions for the five primary criteria will make it easier for the planning staff, the planning board and the governing body to assess the impacts of a proposed subdivision. In addition, a decision regarding the five primary review criteria will be more legally defensible when the criteria are clearly defined.

As with the primary review criteria, determining whether a subdivision conforms to a growth policy will be much easier if the policies in the document set out specific goals and objectives for subdivision applications that minimize vagueness and personal judgment. A growth policy could identify areas where subdivisions of a certain type (e.g., residential, high density, or commercial) should be discouraged or prohibited. Such examples include:

- Limiting adverse impacts on irrigation canals, ditches, other irrigation facilities, water supplies or pumps;

- Requiring subdivisions in heavily forested areas to provide multiple access (and escape) routes in case of fire; and
- Limiting subdivision in flood prone areas.

Remember growth policies are not regulatory documents and must be one of several reasons considered when a subdivision application is recommended for denial (76-1-605, MCA).

5. Variance Requests

Variances from regulatory provisions, serve an important function in all types of land use regulations. Variances can provide legitimate relief to subdividers who are proposing the development of property that has unusual characteristics that make strict compliance with the regulations virtually impossible. For example, if a property is located in terrain where compliance with road grade limitations cannot be met, the local governing body might grant a variance from the grade provisions if they believe a steeper grade will not impact any public health and safety.

The haphazard issuance of many variances has diminished the effectiveness of many sound regulations. Therefore, approval of variances should be the exception rather than the rule. In light of this, there are three points that a planning board should consider when recommending approval of any variances from subdivision regulations. First, variances should be granted only from the design standards of the regulations, such as those related to roads or lot design, *etc.* Variances should not be granted for the procedural requirements identified in statute or the local regulations. The MSPA sets out general requirements for procedures (*deadlines, hearings etc.*) used in subdivision review and a governing body is not authorized to alter those statutory requirements. Where local subdivision regulations establish procedural requirements, variances should not be granted to allow a person to "short cut" the process.

The second point is that courts around the nation have determined that a "hardship" does not relate to a person's financial or economic situation, and local governing bodies should not issue a variance to a subdivider because that person does not want to spend the necessary money to comply with the regulations. "Hardship" relates to the physical characteristics of a property, not the personal circumstances of the subdivider that would render a property unusable with the

granting of a variance. 76-3-506, MCA, allows (but does not require) a governing body to grant variances from local regulations. The statute requires a governing body to base a variance approval upon clearly defined criteria found in its local regulations. In granting a variance the governing body must show that strict compliance with the regulations will both create a "hardship" and that the variance will not affect the public welfare. When considering a variance request bear in mind, financial costs are not considered by the courts to be an "undue hardship." Just because it will be expensive to comply with your jurisdiction's subdivision regulations is not a valid reason for granting a variance.

The third point relates to instances where a local government finds that it is issuing a considerable number of variances from the standards found in the regulations. The approval of a large number of variance requests would suggest that some of the adopted standards are not correct for the community, and the governing body needs to reassess and possibly revise their standards.

If a variance is granted, the governing body may impose conditions of approval to ensure the subdivision will meet the intent of the regulations. While the statute specifically gives governing bodies the authority to grant variances, the planning board may be called upon to provide the governing body a recommendation on any variance request that accompanies a subdivision application. Therefore it is important that the board handle variances in a manner similar to the governing body. Your local subdivision regulations should have a clearly defined process for reviewing variance requests.

When the planning board and governing body are considering a variance request the subdivider should be able to provide both with rationale answers to the following questions:

- Can the subdivision be "reasonably" redesigned to eliminate the need for a variance request?
- Is the hardship self-imposed? Did the subdivider create the situation?
- Is public welfare served by granting the variance?
- Will granting the variance reduce the cost of providing services or protect public health and safety?

6. Reasonable Mitigation

A subdivision proposal may have an impact upon some or all of the criteria identified in the statute and this will vary from application to application. As a planning board member, you must weigh whether the impacts can be mitigated. In some cases, the board may decide the impacts cannot be mitigated, and will recommend denial of a subdivision application, but normally the board will determine that the impacts can be mitigated, and will recommend conditional approval.

In a conditional approval, the planning board recommends approval of the application to the governing body, but bases that approval upon the subdivider providing mitigation for the identified impacts. Montana statute permits mitigation of impacts, but that mitigation must be reasonable. As a planning board member, you must determine what constitutes reasonable mitigation. The conditions placed upon a subdivision application will generally be considered reasonable if they mitigate the identified impact, but are not so onerous as to make the subdivision impossible. When the board considers what “reasonable” mitigation is, there needs to be a rational connection between the identified impact and the mitigation required to address the impact. This connection should be based upon facts provided in reports and professional/scientific comments, not anecdotal evidence or emotions.

In addition to “reasonable” mitigation, the statute requires that due weight and consideration be given to the subdivider’s preference for mitigation. Essentially, when the planning board is considering what mitigation is appropriate for the identified impacts of a proposed subdivision, the board should consult with the subdivider and ask him or her if they have other options that may work better for mitigation. This does not mean that the planning board must follow the subdivider’s wishes, but it provides the subdivider with the ability to express a preference for mitigation.

7. Recommending Conditions of Approval

In recommending a conditional approval, the planning board has determined that the impacts that would be created by the subdivision can be adequately mitigated and the conditional approval is the mechanism for providing that mitigation. The planning board should ensure that all conditions of approval are clear and concise. Vague or open-ended conditions of approval have the

potential to cause endless problems such as differences in interpretation between the subdivider, staff, the planning board and the governing body. Conditions of approval that are detailed and clear ensure that all of the parties involved in the process know exactly what is required by the subdivider in order for him or her to reach final plat approval.

The conditions of approval drafted by staff should reduce the amount of time and effort that the planning board has to spend on discussing or revising conditions. There is nothing more frustrating for a planning board than spending substantial amounts of time fleshing out the details of conditions of approval. In order to avoid this, it is essential that the planning staff should be given clear guidance by the planning board and governing body about how they wish conditions of approval to be drafted. Clear and concise conditions of approval should be a part of the staff's report and recommendations and not initiated at a planning board hearing. Rather than the board "reinventing the wheel" every time they review a subdivision application and trying to draft their own conditions of approval, they should rely upon staff's recommendations, which they have the option to revise as necessary.

Conditions of approval must be legally defensible and therefore supported by the board's recommended findings and conclusions. The findings and conclusions provide the rational connection between the impacts that can be attributed to the subdivision and the steps (conditions) that would provide the appropriate mitigation for those impacts. The findings and conclusions are intended to clearly explain why a condition of approval was recommended.

One way of the best ways for easing the burden of drafting conditions of approval is for a local government to create a standardized list of potential conditions. With the involvement of the staff, the planning board and the governing body, a jurisdiction should be able to address most of the issues/impacts that a local government encounters when reviewing subdivision applications. While this list conditions cannot anticipate every situation that comes up, it will provide everyone with an idea of what to expect in the way of conditions. It will also ease staff's burden in drafting recommendations for the planning board and the governing body. A set of example conditions of approval is located in Appendix D.

8. Discussions with Subdividers During the Review Process

Disagreement is often common between the staff and a subdivider during the subdivision review process. One of the primary complaints of subdividers is that the local subdivision regulations and procedures cause undue delay and therefore an increase in costs. Because there are financial and opportunity costs associated with unreasonable delay, every effort should be made to streamline procedures and provide consistent and understandable information.⁶ Many times conflict and undue delay can be avoided if the planning board and governing body encourage the planning staff and subdivider to try and discuss any differences of opinion before the staff report and recommendations are completed for a planning board or governing body meeting or hearing.

The first step in avoiding conflict and undue delay is a productive pre-application meeting between the subdivider and staff. While this meeting is the initial step at which the subdivider explains his or her proposal to the local planner, it is also the step at which the subdivider and planner can discuss the best options for achieving the project the subdivider wants. During the discussions, the planner should be able to point out any potential pitfalls or issues that the subdivider may encounter, and make recommendations regarding how to adjust the subdivision proposal so that it will comply with statute and the local regulations. Ultimately, the planner must review the subdivision application based upon not only statute and the local regulations, but also their professional expertise and experience. It is essential that the subdivider take the planner's advice seriously and consider incorporating their recommendations into the application.

The second stage where discussions usually take place is after the planner has finished the staff review of the subdivision application, but prior to any planning board recommendation or governing body decision. The typical scenario involves a situation where the staff report and recommendations are complete, but the subdivider does not agree with the contents of the staff report or any recommended conditions of approval. This is the point in the process where the planner must take the time to explain to the subdivider the contents of the staff report, the recommendations and, if applicable, the rationale for any conditions of approval. The planner should not only justify any recommendations, but also provide the subdivider with some realistic options for redesign or amendment. Often, simply explaining the why and wherefore of the situation will resolve the issue, while in

⁶ An "opportunity cost" is the cost of a commercial decision regarded as the value of the alternative that is forgone.

others, the subdivider may still disagree with the recommendations or conditions of approval. No matter what is occurring the planner needs to clearly explain to the subdivider that their role is to serve as the technical staff to the planning board and the governing body, and ultimately the governing body will make the final decision on the proposal.

The most common reasons for conditional approval or denial of a subdivision application are that the subdivision design does not conform to the local design standards or there is a philosophical difference between the subdivider and the planner over the type of subdivision proposed. The staff planner needs to do thorough research to determine if his or her recommendations are realistic, economically feasible, reasonable and consistent. The subdivider will be much more willing to accept recommended changes to a subdivision application or accept conditions of approval if they follow the local regulations and provide benefits commensurate with costs, are consistent with the staff's treatment of similar proposals, and allow a modified version of the original proposal that mitigates any identified problems.

Discussions between planning staff and professional or experienced subdividers often differ from those who are inexperienced in the process. An experienced subdivider will focus more on the specifics of design for a particular subdivision, and less on the review procedures. The experienced subdivider usually understands the process and believes time is better spent on details of the current proposal than battling over the administrative "hoops" that have to be followed. However, when a person new to development comes in to discuss a subdivision, the local planner may need to spend considerable time explaining the review procedures because this person will be unfamiliar with the process (and in many cases, its purpose). Typically, the first-time subdivider will be proposing a small subdivision, *i.e.* a minor subdivision and therefore they are generally less complex and the design specifics can be readily addressed.

Ultimately, misunderstanding and difficulties can be minimized if the planning board and governing body set out clear policies for the local planner regarding who participates on behalf of the local government in discussions with the subdivider. Will the local planner initially represent the planning board and or the governing body? Will members of the planning board routinely attend any meetings with the subdivider? It is very important that the planner, the planning board and the governing body clarify everyone's responsibilities, latitudes and limits in dealing with subdividers.

APPENDIX A: Example By-Laws

[NAME OF JURISDICTION] PLANNING BOARD

Adopted [Month, Day - Year]

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ARTICLE I

NAME AND LOCATION

Section 1. Name

The name of this Board shall be the [NAME OF JURISDICTION] Planning Board (hereinafter referred to as the Board).

Section 2. Location

The Board offices are located at [ADDRESS OF BOARD OFFICES].

ARTICLE II

DEFINITION OF TERMS

As used in these bylaws:

1. Board: The [NAME OF JURISDICTION] Planning Board
2. Governing Body: [NAME OF THE GOVERNING BODY FOR THE JURISDICTION]
6. Growth Policy: As defined by Section 76-1-601, Montana Code Annotated
7. MCA: Montana Code Annotated
8. Director(s): Those individual(s) so designated by [NAME OF GOVERNING BODY] as the Director of the [NAME OF PLANNING DEPARTMENT OR OTHER ORGANIZATION].
9. Planning Department: [NAME OF PLANNING DEPARTMENT OR OTHER ORGANIZATION]
9. Plat: As defined by Section 76-3-103, Montana Code Annotated

ARTICLE III

AUTHORITY, PURPOSE, POWERS, AND DUTIES

Section 1. Authority

The Board is authorized under Section [APPROPRIATE SECTION OF MONTANA CODE ANNOTATED], *et seq.*, MCA.

Section 2. Purpose and Objectives

The objectives of the Board as established by state law, are to encourage local government within the [NAME OF JURISDICTION] in promoting the orderly development of those units and their environs by improving the present health, safety, convenience, and welfare of their citizens and planning for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with, and promotive of, the efficient and economical use of public funds.

Section 3. Powers and Duties

1. The duty of the Board is to assure the promotion of public health, safety, morals, convenience, order, and the general welfare, and for the sake of efficiency and economy in the process of community development.
2. The Board shall prepare and update the Growth Policy for the jurisdictional area, as defined in Section 76-1-601, MCA.
3. The Board shall serve in an advisory capacity to the local governing body establishing the Board.
4. The Board may propose policies for:
 - a. Review of subdivision plats;
 - b. Development of public ways, public places, public structures, and public and private utilities;

- c. Laying out and development of public ways and services to platted and un-platted lands; and
 - d. Other public planning issues as deemed appropriate by the governing body.
- 5. The Board shall give advice to the governing body in all matters pertaining to the approval or disapproval of plats or subdivisions to be filed within the jurisdictional area of the Board. However, the governing body may designate that certain minor subdivisions may be reviewed through “summary review” process that may not necessitate Board review.
- 6. The Board shall perform other planning related functions, including but not limited to:
 - a. Prescribing uniform rules pertaining to hearings;
 - b. Adopting by-laws, which set forth the Board’s policies and procedures;
 - c. Recommending an annual work program; and
 - d. Keeping an accurate and complete record of all proceedings.
- 7. The Board may recommend that the [NAME OF JURISDICTION] comment upon plans and planning related policies subject to review or adoption by local, state, or federal agencies.

ARTICLE IV

JURISDICTIONAL AREA

The jurisdictional area of the Board will include all the area in [NAME OF JURISDICTION].

ARTICLE V

MEMBERSHIP AND TERMS OF APPOINTMENT

Section 1. Composition

The Board shall consist of citizen members and may include elected officials.

Section 2. Membership

The Board shall consist of [NUMBER REQUIRED UNDER STATUTE], to be appointed in accordance with [APPROPRIATE SECTION OF MONTANA CODE ANNOTATED], as follows:

1. LIST THE APPROPRIATE MEMBERS OF THE BOARD PER THE MONTANA CODE ANNOTATED.
- 2.
- 3.
- 4.
- 5.

Section 3. Qualifications

In accordance with [APPROPRIATE SECTION OF MONTANA CODE ANNOTATED] the citizen members of the Board shall be residents in the area over which the Board has jurisdiction, provided, that [APPROPRIATE QUALIFICATIONS UNDER STATUTE].

Section 4. Terms

The terms of the Board members who are officers of any governmental agency represented on the Board are co-extensive with their respective terms of office to which they have been elected or appointed; the terms of all other members of the Board shall be three (3) years. Members may serve no more than two (2) consecutive terms.

Section 5. Absences and Removal

1. Each member shall inform the Director (or designee) and Chair at least one day before the meeting of his/her inability to attend a Board or Committee meeting. Such an absence shall be considered an excused absence.
2. If any Board member accrues three (3) or more consecutive unexcused absences or six (6) or more absences from regularly noticed meetings during a calendar year, the Chair shall notify the Director, who in turn

shall notify the appointing authority, that the Board requests that such member be asked to resign and that another person be appointed to serve out his or her unexpired term.

3. Any appointee may be removed from office by a majority vote of the governing body of the governmental unit representing such appointee.

Section 6. Vacancies

Vacancies occurring on the Board shall be filled for the unexpired term by the governing body.

ARTICLE VI

BOARD OFFICERS, TERMS, AND DUTIES

Section 1. Officers

The officers of the Board shall consist of a Chair, Vice Chair, and Executive Secretary.

Section 2. Election of Officers

The Chair and Vice Chair shall be elected by a majority of the Board members present and voting at the first regular scheduled meeting in January, or upon expiration of any term of a presiding officer. The terms of office of the Chair and Vice Chair shall commence on February 1, or, in the case of the expiration of any term of a presiding officer, on the first regularly scheduled meeting after such expiration.

Section 3. Board Chair

The Chair shall preside over all regular and special meetings of the Board and may vote anytime his/her vote is capable of changing the outcome. The Chair shall also sign such documents and communications of behalf of the Board, as the Board may authorize and are of such a nature as to require the signature of the Chair. The Chair may delegate such responsibility to the Vice Chair. The Chair shall have the authority to appoint Board members to Committees, as set forth in Article IX. The Chair shall be an "ex-officio" member of all committees

except the nominating committee, and shall retain voting rights on these committees, and shall be counted as a member for purposes of comprising a quorum.

Section 4. Board Vice Chair

The Vice Chair, in the absence of the Chair, shall preside over any regular or special meeting of the Board and, at the direction of the Chair, sign such documents and communications on behalf of the Board, as the Board may have authorized the Chair to sign.

Section 5. Office Vacancy

If the office of the Chair becomes vacant, then the Vice Chair shall fill the unexpired term. On assuming this office, the Chair shall ask the members of the Board to present their nominations for Vice Chair.

Section 6. Officer Absences

If the Chair and Vice Chair are absent from any regular meeting, the Executive Secretary shall call the meeting to order and a quorum of members shall elect a temporary chairperson for the meeting.

Section 7. Removal of Officers

If the Board votes no confidence in an officer, a motion to remove said officer shall be brought before the Board at its next meeting. Should the motion pass, a new officer shall be elected to serve the remainder of the term of office.

Section 8. Terms of Office

All officers shall serve a term of one (1) year. Any officer may serve for successive terms.

Section 9. Executive Secretary

The Director shall function as Executive Secretary for the Board, whose duties may include:

1. Keeping true and correct copies of the minutes of all regular and special board meetings, and the minutes of any committee meetings.
2. Administering the affairs of the Board in accordance with adopted Board policies and policies of the [NAME OF JURISDICTION].
3. Recommending policies, ordinances, or resolutions to be considered by the Board, which may be necessary to accomplish the objectives of the Board and implement the goals of the Growth Policy.
4. Preparing in the name of the Board correspondence, official notices, and agendas.
5. Signing all plats and affixing the official seal of the Board thereon only after such plat has been approved in accordance with the requirements of the Subdivision Regulations, adopted policies and procedures of the Board, and only after all requirements have been satisfied.
6. Reporting, at the Board's request, the progress and status of any program or project for which the Board has responsibility, and changes in local, state, or federal guidelines, rules, regulations, or laws which may affect any of the Board's programs or status.
7. Preparing an annual report summarizing the Board's activities during the previous year and identifying programs and projects, if any, for the Board's consideration in the upcoming year.

ARTICLE VII

MEETINGS, QUORUMS, AND PROCEDURES

Section 1. Regular Meetings

Regular meetings of the Board shall be held on the second Tuesday of each month at 6:00 p.m. in the [NAME AND ADDRESS OF VENUE], Montana, or in such other place and time as shall be advertised in the [NAME OF NEWSPAPER WITH GENERAL CIRCULATION]. Regular meetings of the Board and its committees are open to the public and testimony or correspondence may be received from any citizen at any public meeting. Regular and special meetings shall be recorded and all records shall be available for public inspection during

normal business hours at the [NAME OF JURISDICTION'S PLANNING DEPARTMENT].

Section 2. Quorums

1. A majority of voting members of the entire Planning Board shall constitute a quorum.
2. No action of the Board is official unless authorized by a majority of a quorum of the Board physically present at a regular or properly called special meeting. Official action, including discussion, making motions, and voting, can only be conducted when there is a quorum physically present at any meeting.

Section 3. Special Meetings

Special meetings of the Board may be called by the Chair, or shall be called by the Executive Secretary upon request by any two Board members. The Executive Secretary shall notify all members of any special meeting not less than three (3) days before the scheduled date of the special meeting of the date, time, and place of the meeting and the topic(s) to be considered.

Section 4. Agendas

The agenda for a regular meeting will be closed at 5:00 p.m. two (2) weeks prior to the date of the meeting. The Board may not take action on any item not listed on the published agenda. Agendas and copies of the minutes of all regular meetings shall be mailed to each member of the Board no later than the second Friday preceding the meeting date.

Section 5. Public Hearings

The Board shall cause to be published a Notice of Public Hearing containing the date, time, location, and purpose pursuant to statutory requirements in a newspaper of general circulation for each hearing held by the Board. At each meeting, the public shall be given the opportunity to address the Board on any item that is not on the current agenda. The Board shall conduct all business during a hearing following the procedures established under Robert's Rules of Order.

1. Public Hearings for Subdivisions
 - A. When a subdivision application is set for a public hearing pursuant to a public notice, the matter shall be heard even though no one in favor or in opposition to the application appears at the hearing, unless the Board has received a written request from the subdivider, twenty-four (24) hours prior to the public hearing, to continue such hearing at a later time due to good and sufficient reason, or to withdraw or to postpone the application for reason approved by the Board.
 - B. Each person who speaks at the public hearing shall stand and furnish his/her name and address to the Board and shall thereby become a part of the record. The Board may, by majority vote, impose reasonable and prudent limitations on the time allotted for each person's oral statement, comments, or testimony.
 - C. The Board or any member thereof may at any time question any staff, applicant, or member of the public about his/her statements, comments, or testimony.
 - D. Each subdivision application shall be heard in the following order:
 1. A Planning Department staff member shall summarize pertinent data and present or amplify the recommendations of staff and department heads.
 2. The applicant, or his/her representative, shall present the application to the Board, and summarize the proposed subdivision, the subdivisions compliance with the requirements of the governing body's adopted subdivision regulations, and, as applicable, the proposed subdivisions effects on the following primary criteria of public interests:
 - a. Agriculture;
 - b. Agricultural Water Users Facilities;
 - c. Local Services;
 - d. Natural Environment;
 - e. Wildlife and Wildlife Habitat;
 - f. Public Health and Safety.

3. Persons in favor or opposed to the application shall be heard or written comments received up and until the time of the close of the public hearing.
4. After hearing any and all statements, comments, and testimony as above provided, the Chair shall close the public testimony portion of the hearing. After closure, and after such discussion as may be appropriate, the Board may move and vote upon a recommendation for the item under consideration.

2. Other Public Hearings

- A. All other public hearings shall be conducted in accordance with the following procedure unless the Board determines by a majority vote to follow some different procedure. The Board may, by majority vote, impose reasonable and prudent limitations on the time allotted for each person's oral statement, comments, or testimony.
 1. The Board shall first hear a report on the subject item from the Planning Department staff, which report may include a recommendation as to the action to be taken by the Board.
 2. The Board shall then hear and receive written or oral statements from the public.
 3. The Board shall then hear any rebuttal or final comments, statements, or recommendations, if any, from the Planning Department staff.
 4. Any person wishing to speak a second time may do so only with the permission of the Chair or the approval of the majority of the Board members.
- B. The Board or any member thereof may at any time question any staff, applicant, or member of the public about his/her statements, comments, or testimony.

- C. After hearing any and all statements, comments, and testimony as above provided, the Chair shall close the public testimony portion of the hearing. After closure, and after such discussion as may be appropriate, the Board may move and vote upon a recommendation for the item under consideration.

- D. Subject to any time constraints imposed by law, the Board may, at any stage of a public hearing or proceeding, continue the same to a later date in order to allow or facilitate full public participation, to obtain additional information, to properly consider or deliberate any matter, or for any other lawful reason. In the case of such continuance, the time and place of all further proceedings in regard thereto shall be immediately fixed and announced to the Planning Department staff and the public, in which case no further legal notice of the hearing need be given.

3. Informal Hearings

The Board may follow some other procedure for the conduct of informal hearings or work sessions, where the Board may discuss issues related to scheduling or process, pending legislative decisions, or general planning items, but shall not take any final action on such item at other than a regularly scheduled and noticed public hearing.

Section 6. Quarterly Meetings

The Board may hold quarterly meetings with the [NAME OF THE GOVERNING BODY OF JURISDICTION]. These meetings shall be for bringing all said parties together to discuss planning issues and concerns. Quarterly meetings shall be held on a date and at a time to be mutually agreeable to all of the parties. The responsibility for preparation and distribution of agendas, meeting notices, *etc.*, shall be with the Director.

ARTICLE VIII

COMMITTEES AND ADVISORY COMMITTEES

Section 1. Committees

The Chair is responsible for creating committees to advise the full Board on matters pertinent to the work of the Board, and for selecting the chairman and individual members of each committee.

Section 2. Advisory Committees

Citizen Advisory Committees may be established by the Board in each of the geographical areas from which a Board member is appointed. The purpose of the committees is to provide advice to the Board on planning related matters of interest to their areas.

Section 3. Committee Action

In no case shall a committee take official action unless a quorum is present, and such action shall consist solely of providing reports and/or recommendations to the Board.

ARTICLE IX

LEGAL ASSISTANCE

The Board shall seek legal assistance from the attorney for the [NAME OF GOVERNING BODY OF JURISDICTION], as applicable.

ARTICLE X

FINANCING

Section 1. Board Financing

As provided in Section 76-1-306, MCA the governing body shall assign staff employed by them to assist the Board in conducting its duties. The board may delegate to assigned staff the authority to perform routine acts in all cases, except when final action of the Board is necessary. The governing body may make

contracts for special or temporary services and any professional service. The Board shall have the financial duties and authority provided in Sections 76-1-401 and 402, MCA and the Interlocal Agreement.

Section 2. Financial Summary

The Director shall provide a financial summary of the Planning Department budget to the Board as requested.

ARTICLE XI

MISCELLANEOUS

Section 1. Conflict of Interest

Any member(s) having a financial or personal interest in a quasi-judicial matter before the Board for discussion or vote shall publicly disclose the nature and extent of such interest and absent himself from the meeting until discussion on the matter has ended and a vote, if any, is taken. In such circumstances, the secretary shall note in the minutes that a conflict of interest was acknowledged and the Board member(s) was absent during the discussion and voting.

Section 2. Travel

Authorization of travel of any Board member to attend a conference, convention, or other meetings necessary to carry out the affairs of the Board must be approved by the Board and the appropriate governing body represented by the board member. Upon return, the Board member must submit a written summary of the expenditures and activities.

Section 3. Adoption of Plans and Studies

The Board shall formally adopt all plans or studies by resolution. Such resolution shall clearly state the authorization for the particular plan or study, the findings of fact that necessitated its preparation, and the recommendation to the respective governing body relative to action necessary to implement the objects of the plan or study.

Section 4. Amendments to Bylaws

Amendments to the bylaws of the Board may be initiated by any member of the Board. Such amendments must be submitted, in writing, at a regular meeting and approved by a two-thirds vote of the quorum physically present at the meeting.

Section 5. Repeal of Previous Bylaws

These bylaws repeal and supersede any and all previous bylaws adopted or amended by the Board and approved or amended by the City and County Commissions for the Board.

APPENDIX B: Example Findings of Fact

Recommended to the [Jurisdiction's Name & Governing Body's Name] by the [Jurisdiction's Name] Planning Board

"Big Sky Major" Subdivision Application

On [Day, Month, Date, Year] the [Jurisdiction's Name] Planning Board held a public hearing on the subdivision application for the [*"Big Sky Major Subdivision"*] creating [?? residential lot from??- acres] located in [Jurisdiction's Name]. The proposed subdivision is legally described as [Township, Range, Section, Property Legal Description]; [City, Town or County, Montana] generally located ½ mile north of gravel road and adjacent to paved road.

In compliance with the [Name of Jurisdiction's Subdivision Regulations], the Planning Board recommended that the [Name of Jurisdiction Commission or Board of County Commissioners] conditionally approve the preliminary plat.

The Planning Board considered the testimony, staff report and related information. The Planning Board evaluated the subdivision proposal and considered the subdivision review criteria set forth in §76-3-608, MCA and the [Jurisdiction's Name] Subdivision Regulations. This review also included documents and information submitted by the applicant in the application for preliminary plat approval, the proposed preliminary plat, the Environmental Assessment ("EA"), the Traffic Impact Study ("TIS") and the preliminary storm-water plan.

Based upon this review and after considering the applicant's preferences for mitigations of impacts from this subdivision, the Planning Board makes the following Findings and Conclusions:

1. Impact on Agriculture and Agricultural Water User Facilities

Findings:

- A. The [**Jurisdiction's Name**] Growth Policy and Subdivision Regulations states: *"Agriculture is defined as: The cultivation or tilling of soil for the purpose of producing vegetative crops for sale or for use in a commercial operation and/or the raising or handling of animals for commercial sale or use. This definition does not include gardening for personal use, care of house pets, or landscaping for aesthetic purposes."* "Agricultural Water User Facilities" as including *"facilities which provide water for irrigation and stock watering to agricultural lands and include, but are not limited to, ditches, pipes, and other water conveying facilities."*
- B. The impact of the subdivision upon irrigation water supplies and irrigation facilities.
- C. Removal from production of agricultural lands that are critical to the area's economy or agricultural operations (e.g., key irrigated lands, wintering pastures or hay lands that would limit the overall livestock production; removing production of a cash crop that is significant to the area economy).
- D. The number of acres of prime farmland (as defined by Natural Resources and Conservation Service) that would be removed from the production of crops or livestock.
- E. The productivity of the land (e.g., Natural Resources and Conservation Service soil classifications; number of acres per animal unit month). The number of acres, if any, that are under irrigation.
- F. Whether the property is part of an economically viable farm or ranch unit. Whether the property is adjacent to existing suburban development.
- G. Conflicts between the proposed subdivision and adjacent farm or ranch operations:
- interference with irrigation systems and facilities,
 - diminishing availability or quality of water for irrigation or stock watering,
 - interference with movement of livestock or farm machinery,
 - maintenance of fences,
 - spread of noxious weeds, and
 - potential for increased vandalism or theft.

- H. Potential for residents of the subdivision to generate complaints or lawsuits over dust, odor, noise, straying livestock or pesticide and fertilizer application.
- I. Effect of the subdivision on the value of nearby agricultural lands:
- market, mortgage, or loan value,
 - increased market value accelerate further land division; and
 - net effect on agricultural taxes resulting from additional services and tax revenues generated by subdivision.

Conclusion: This proposal [**would not have / would have**] adverse effects on agricultural lands and agricultural operations. Conditions of approval [**can / cannot be**] designed to mitigate the impacts identified above.

2. Impact on Local Services

Findings:

- A. The [**Jurisdiction's Name**] Growth Policy and Subdivision Regulations, define "Local Services" as including transportation, streets, water and wastewater, police and fire protection and other services.
- B. §76-3-510, MCA states in part: *"A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision."*
- C. Increased demand for services and resources:
- groundwater for individual on-site wells or public water systems;
 - on-site wastewater treatment systems;
 - connection to municipal water and sewer systems;
 - solid waste collections or use of land fill;
 - traffic volumes on streets or roads;
 - number of students in elementary and high school;
- D. Need to expand or extend public facilities:
- water or sewer treatment plants, lift stations, mains or trunk lines;
 - extension, widening or improvement of public streets or roads; need for approaches onto public roads;
 - additional capacity for fire protection water supplies;

- public land fill or solid waste collection sites;
- expanded school facilities;
- expanded park facilities.

E. Need for additional operations and maintenance:

- water and sewer repair and service;
- road and street plowing and maintenance;
- additional solid waste collection, landfill operation needs and costs;
- additional police and fire protection personnel and equipment;
- additional teachers or other personnel and equipment.

F. Tax classification, and taxable valuation of property prior to subdivision.

G. Expected tax classification and taxable valuation of property after full build out.

H. Estimated tax revenues generated by property prior to subdivision, and expected tax revenues after full development at existing mill levies:

- to the county;
- to the municipality;
- to the elementary school district;
- to the high school district;
- to special taxing jurisdictions (*e.g.*, rural fire district).

I. Any proposed special or rural improvement districts that would obligate local government involvement fiscally or administratively.

Conclusion: This proposal [**would not have / would have**] adverse effects on local services. Conditions of approval [**can / cannot**] be designed to mitigate the impacts identified above.

3. Impact on the Natural Environment

Findings:

A. The [**Jurisdiction's Name**] Growth Policy and Subdivision Regulations, define the "natural environment" as the physical conditions which exist within a given area, including land, water, flora, fauna, and objects of historic and aesthetic significance.

B. Expected alteration of any stream banks or lake or reservoir shorelines; draining, filling or alteration of any wetlands;

- C. Potential contamination of any surface or ground water as a result of storm water runoff, sedimentation, sewage treatment systems, concentration of pesticides or fertilizers;
- D. Cuts and fills on slopes as result of road or building construction;
- E. Significant removal of vegetation; potential soil erosion or bank or slope instability; and
- F. Presence of natural hazards such as flooding, rock, snow or land slides, high winds, wildfire, or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes.

Conclusion: This proposal [**would not have / would have**] adverse effects on the natural environment. Conditions of approval [**can / cannot**] be designed to mitigate the impacts identified above.

4. Impact on Wildlife and Wildlife Habitat

Findings:

- A. The [**Jurisdiction's Name**] Growth Policy and Subdivision Regulations, define "Wildlife" as animals that are not domesticated or tamed, and "Wildlife Habitat" as the place or type of habitat where wildlife naturally occurs.
- B. Critical wildlife areas such as big game wintering range, calving areas, migration routes, nesting areas, wetlands.
- C. Habitat for endangered or threatened species.
- D. Effect of human activity on wildlife.

Conclusion: This proposal [**would not have / would have**] adverse effects on the wildlife and wildlife habitat. Conditions of approval [**can / cannot**] be designed to mitigate the impacts identified above.

5. Impact on Public Health and Safety

Findings:

- A. The **[Jurisdiction's Name]** Growth Policy and Subdivision Regulations, define Public Health and Safety as “a condition of well-being, free from danger or injury, for a community at large, not merely for an individual or a small group of people.”
- B. The **[Jurisdiction]** Police/Sheriff Department and **[Jurisdiction]** Fire Department will serve the property to help secure the subdivision from fire, panic, and other dangers.
- C. Potential hazards to residents of subdivision from high voltage lines, high pressure gas lines, airports, highways, railroads or railroad crossings, nearby industrial or mining activity.
- D. Creation of public health or safety hazards by subdivision, such as traffic or wildfire fire conditions, contamination or depletion of water supplies, accelerated storm runoff, widening of existing floodplain or flood hazard area.

Conclusion: This proposal [**would not have / would have**] adverse effects on the public health and safety. Conditions of approval [**can / cannot**] be designed to mitigate the impacts identified above.

6. Compliance with Survey Requirements

Findings:

- A. Providing the final plat tied to the **[Jurisdiction's Name]** coordinate system on acceptable digital formats facilitates mapping and assists in keeping the **[Jurisdiction's Name]** records accurate and up-to-date.
- B. Complete compliance with State administrative rules for survey requirements cannot be evaluated until the final plat is reviewed for approval.

Conclusion: Survey requirements will be reviewed for compliance upon submission of final plat for approval.

7. Compliance with [Jurisdiction's Name] Subdivision Regulations

Findings:

- A. Lot layout and design;
- B. Right-of-ways and easements;

- C. Physical and legal access to subdivision;
- D. Road design and construction;
- E. Storm-water drainage;
- F. Fire protection;
- G. Parkland;
- H. Drinking water systems;
- I. Wastewater treatment;
- J. Mitigation of hazards;
- K. *Etc.*

Conclusion: The proposal in its present form [**will or will not**] comply with all of the applicable subdivision requirements. Conditions of approval [**can / cannot**] be designed to mitigate the impacts identified above.

8. Compliance of Subdivision Review Procedure with Statute

Certified letters have been sent to the adjacent property owners and legal notice has been advertised in the [**Name of local newspaper**] at least 15 days in advance in accordance with 76-3-605 MCA. The Planning Board will hold a public hearing at [**Time, Day, Month, Date, Year**]; and a [**Name of Governing Body**] [**public hearing or meeting**] will be held at **Time, Day, Month, Date, Year**.

Conclusion: The subdivision review process for the [**Big Sky Major Subdivision**] is consistent with the requirements of the Montana Subdivision and Platting Act.

9. Provision of Easements for Utilities

Findings:

- A. The [**Jurisdiction's Name**] Subdivision Regulations require "The location and identification of all existing easements and rights of way of record and proposed public and private easements and rights of way, including description of their width and purpose" be included on the preliminary plat.
- B. The proposed preliminary plat for the [**Big Sky Major Subdivision**] [**does / does not**] provide the requisite easements.

Conclusion: The proposed preliminary plat in its present form [**does / does not**] comply with the easement requirements of the [**Jurisdiction's Name**]

Subdivision Regulations. [The plat will be in compliance with the easement requirements if the conditions of approval are met.]

10. Provision of Legal and Physical Access

Findings:

- A. §76-3-608 (3) (d) MCA states a subdivision must be reviewed for “the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.” The existing and proposed rights-of-ways and road [will or will not] provide legal and physical access to the subdivision.
- B. The proposed easements/right of-ways [comply / do not] comply with the requirements the subdivision regulations for [width, public access etc].
- C. The [existing / proposed] access roads to the subdivision and within the subdivision [comply / do not] with the design and construction standards required by the subdivision regulations

Conclusion: The proposal in its present form [does / does not] provide adequate legal and physical access to proposed subdivision lots. Conditions of approval [can / cannot] be designed to mitigate the access issues identified above.

11. [Approval / Denial] of Preliminary Plat

Findings:

Final plat approval may be granted if the following requirements are met:

1. The applicant develops the property in accordance with the preliminary plat application as approved and modified by approval conditions;
2. The applicant satisfies the conditions of approval;
3. In accordance with Sections 76-3-507, MCA and 18-2-122, MCA, the plans for the public improvements must be complete and in compliance with standards of the [Jurisdiction’s Name] and the State of Montana, and bear the seal of a professional engineer for the engineering, a professional land surveyor for land surveying and a licensed architect for the architectural; and,
4. The improvements are either constructed to completion and accepted by the [Jurisdiction’s Name], or, pursuant to §76-3-507(2), MCA, the applicant shall provide a bond or other reasonable security, in amount and with surety and conditions satisfactory to the City Commission,

providing for and securing the construction and installation of the improvements within one year.

Final plat approval may be denied due to the following:

1. The adverse impacts upon [**criterion / criteria**] cannot be adequately mitigated.
2. The preliminary plat does not comply with design standards identified in the [**Jurisdiction's Name**] subdivision regulations.
3. Legal and or physical access would not be provided to the proposed subdivision.

APPENDIX C: Example Conditions of Approval for Subdivision Applications

RECOMMENDATION

Staff recommends [APPROVAL / DENIAL] of the proposed preliminary plat of the [*Name of Subdivision*] Major or Minor Subdivision. The preliminary approval is for [*Number and Type of Lots*] located in the [*Section, Township, Range*]; [*Name of Jurisdiction*], Montana. Staff recommends this approval be subject to the following conditions:

1. Plans for wastewater treatment and water supply systems shall be submitted to the Montana Department of Environmental Quality and the [*Name of Jurisdiction*] Health Department for review and approval. All specifications and requirements of the approved plans shall be met.
2. A storm water drainage plan, meeting the requirements of the [*Name of Jurisdiction*] Subdivision Regulations and drafted by an engineer registered in the State of Montana, shall be submitted to the [*Name of Jurisdiction*] Planning Department for review and recommendation. All specifications and requirements of the approved plan shall be met.
3. Prior to any development or soil disturbance, a Weed Management Plan and Revegetation Plan for the proposed development shall be submitted to the County Weed District for review and approval. All specifications and requirements of an approved plan shall be met.
4. If required by the County Soil Conservation District, a sediment control plan, meeting the applicable sediment control regulations, shall be submitted to the District for review and approval. All specifications and requirements of the approved plan shall be met.
5. Prior to any development an Approach Permit shall be requested from the [*Name of Jurisdiction*] Road or Public Works Department for the proposed access point on [*Road Name*]. Installation of the approach shall be completed in accordance with the approved permit.

6. The Applicant shall have a reconnaissance archeological survey done to evaluate the potential for cultural resources on the property. If the study identifies any cultural sites, a complete inventory of the site must be completed prior to any disturbance of the site.
7. The Applicant shall have a reconnaissance geologic survey done to evaluate the potential hazard to structures. If the study identifies any areas of high hazard potential, these areas shall be restricted from construction of structures.
8. Plans for development of any floodplain areas shall be submitted to the [Name of Jurisdiction] Floodplain Administrator. All improvements to the property within the designated floodplain shall comply with the [Name of Jurisdiction] Floodplain Ordinance and its attendant regulations.
9. The Applicant shall complete the following to construct the internal access roads:
 - a. Prior to the construction of any roads or the installation of any utilities, three (3) copies of the plans for the subject roads and utilities shall be submitted to the [Name of Jurisdiction] Planning Department. The [Name of Jurisdiction] Planning Department shall submit the plans to [Name of Jurisdiction] Road or Public Works Department for review and recommendation. Said plans shall meet the requirements of the Department.
 - b. Improve all of the internal access road(s) to the specifications required by the [Name of Jurisdiction] Subdivision Regulations (Typical Road Section #1, 2, 3, and 4) and in accordance with the plans submitted to the [Name of Jurisdiction] Planning Department.
 - c. An engineer registered in the State of Montana shall certify all road improvements as meeting [Name of Jurisdiction] standards, with concurrence of the [Name of Jurisdiction] Road or Public Works Department
10. The following improvements and requirements (as required by the Subdivision Regulations) for the purpose of furthering fire protection shall be installed

11. The Applicant shall provide a location for a neighborhood box unit or the clustering of individual mailboxes for the entire subdivision. The location shall not impede traffic or turning movements. Plans for the location and installation of neighborhood box unit or clustering of individual mailboxes shall be reviewed and approved by the United States Postal Service prior to installation. The Applicant shall submit documentation from the United States Postal Service verifying their review and approval. The Applicant shall install the neighborhood box unit or individual mailboxes as indicated by the approved plans.
12. The Applicant shall relocate irrigation ditches in a manner that does not alter the present flow or distribution of irrigation water.
13. The Applicant shall install a fence along both sides of the easement for the irrigation canal. At a minimum, the fence shall be constructed of woven wire at least three feet in height with two strands of barbed wire at the top of the fence, and shall be of sufficient construction to effectively restrict the access of small children to the irrigation ditch
14. In cooperation with the [*Name of Jurisdiction*], the Applicant shall create Special Improvement District(s) or Rural Maintenance District(s) for the following: roads, parks, water system, wastewater treatment system, the collection and disposal of solid waste, fire protection apparatus...?????
15. The Applicant shall provide information on the market value of the property or an appraisal (by a land appraiser acceptable to the [*Name of the governing body*]) to assist the [*Name of Jurisdiction*] in determining the amount of the cash payment to be made in lieu of a parkland dedication.
16. Proposed road names shall be submitted to the [*Name of Jurisdiction*] Address Coordinator for review and approval. Approved road names shall be shown on the final plat and reflected in all documents of the subdivision (covenants, road easements, *etc.*).
17. A signing plan for traffic control and street identification signs, meeting the applicable [*Name of Jurisdiction*] regulations, shall be submitted to the [*Name of Jurisdiction*] Planning or GIS Departments for review and recommendation. All specifications and requirements of the approved plan shall be met.

18. A "Stop" sign (oriented for internal traffic) and a street identification sign shall be installed at the intersection of [*Road Name and Road Name*].
19. The Applicant shall install [#??] address plaques (one for each lot) at the approach to each lot. The plaques shall conform to the specification for road identification signs, in accordance with the [*Name of Jurisdiction*] Subdivision Regulations.
20. The Applicant shall establish a "no access" restriction along the [*north, south, east or west*] property lines of Lots [*A, B ???*], restricting direct access to [*Road Name*] except at the easements for the internal access roads
21. The final plat shall be prepared in accordance with the applicable State survey requirements and the [*Name of Jurisdiction*] Subdivision Regulations; in addition, the final plat shall graphically show and describe the following
 - a. public access easements;
 - b. all existing and proposed utility easements;
 - c. agricultural easements;
 - d. conservation easements;
 - e. an easement along the [*north, south, east or west*] of the property for the high pressure gas line;
 - f. identified floodplain;
 - g. required setbacks and buffer areas;
 - h. drainage easement that includes all riparian areas;
 - i. easement for the irrigation canal that crosses the lots;
 - j. a "no access restriction" along the north property line of Lots [*A, B ??*], prohibiting direct access to [*Name of Road*];
 - k. building envelopes or no build zones;
 - l. building setbacks;
 - m. see covenants for additional setback requirements;
 - n. see covenants for notification of special zoning district regulations.
22. Prior to filing of the final plat, the following improvements shall be installed or otherwise guaranteed
 - a. Roads;
 - b. parking areas;
 - c. parkland;
 - d. trails;

- e. wastewater facilities;
- f. water facilities;
- g. street identification signs;
- h. traffic control signs;
- i. address plaques;
- j. fire protection improvements;
- k. fencing;
- l. vegetative screening;
- m. mail delivery facilities;
- n. any necessary improvements required by the drainage plan, sediment control plan, revegetation plan, weed management plan, signing plan, approach permit, or floodplain permit;
- o. utilities abutting and available to each lot;

OR

the installation of conduit to each lot that will allow for the extension of utilities without negatively impacting other improvements and a signed agreement with each utility provider to ensure the utilities will be extended to each lot.

If said improvements are not installed, then the Applicant shall enter into a written subdivision improvements agreement with the [*Name of Jurisdiction*], guaranteeing the construction and installation of such improvements and shall provide an acceptable financial security guarantee, in accordance with the [*Name of Jurisdiction*]Subdivision Regulations.

23. Prior to filing of the final plat, the Applicant shall:
- p. Provide proof that all real property taxes and special assessments assessed and levied on the property are paid for the current tax year; including any past delinquencies; and,
 - q. Provide documentation showing that the Applicant is the lawful owner of the property with the apparent authority to subdivide the same, and showing the names of lien holders or claimants of record.
24. This preliminary approval shall be in force for not more than three (3) calendar years or less than one (1) calendar year.

APPENDIX D: Montana Code Annotated: Planning Boards

Part 1. General Provisions

Part 2. Membership

Part 3. Organization and Administration

Part 4. Financial Administration

Part 5. Jurisdictional Area

Part 6. Growth Policy

Part 1. General Provisions

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

6-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Growth policy" means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this chapter on or after October 1, 1999.

(5) "Mayor" means mayor of a city.

(6) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

(7) "Person" means any individual, firm, or corporation.

(8) "Planning board" means a city planning board, a county planning board, or a joint city-county

planning board.

(9) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.

(10) "Public place" means any tract owned by the state or its subdivisions.

(11) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(12) "Utility" means any facility used in rendering service that the public has a right to demand.

76-1-104. Procedure to establish county planning board -- protest. (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

76-1-105. Role of county in formation of city planning board. (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

76-1-106. Role of planning board. (1) To ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development, if requested by the governing body, the planning board shall prepare a growth policy and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands; or

(d) the laying out and development of public ways and services to platted and unplatted lands.

76-1-107. Role of planning board in relation to subdivisions and plats. (1) Except as provided in subsection (2), the governing body of any city, town, or county that has formed a planning board and adopted a growth policy pursuant to this chapter and subdivision regulations pursuant to chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

(2) The planning board may delegate to its staff its responsibility under subsection (1) to advise the governing body on any or all proposed minor subdivisions.

76-1-108. City-county planning board as a zoning commission. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under [76-2-307](#).

76-1-109. Interaction of local government and city-county planning board. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a growth policy, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, information, documents, and plans that have been prepared or, upon the request of the board, shall provide any information that relates to the board's activity.

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination of cities, counties, or towns wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented on the board, obtain representation on the board and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership, as well as the jurisdictional area of any board, may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town that becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of representation. Subject to [15-10-420](#), the governing bodies of any represented city, county, or town may levy on all property that is added to the jurisdictional area of an existing board by representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 40.

76-1-112. Joint or consolidated planning boards. (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination must be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement must:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may, subject to subsection (6), be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards must be dissolved and the consolidated board has the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards may not be dissolved and the joint board has the rights, duties, powers, and obligations that are contained in the interlocal agreement.

(6) Membership of any city-county board formed pursuant to this section must have representation consistent with the requirements of part 2 of this chapter.

76-1-113. Effect of chapter on natural resources. (1) Except as provided in subsection (2), nothing in this chapter may be considered to authorize an ordinance, resolution, or rule that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2.

Part 2. Membership

76-1-201. Membership of city-county planning board. (1) Except as provided in subsection (2), a city-county planning board shall consist of not less than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be selected by the eight officers and citizen members hereinabove provided for from the members of the board of supervisors of a conservation district provided for in [76-15-311](#).

(2) Subsection (1)(e) does not apply if there is no member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In such case, the ninth member of the city-county planning board shall be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

76-1-204. Vacancies on county and city-county planning boards. (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

76-1-211. Membership of county planning board. (1) County planning boards shall consist of not less than five members appointed by the board of county commissioners. At least one member of any county planning board existing on or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in chapter 15 or a state cooperative grazing district if officers of either reside in said county.

(2) In the event that any city or town subsequently becomes represented on the county planning board pursuant to [76-1-111](#), additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

76-1-212. Citizen members of county planning board. (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

76-1-223. County representative for city planning board. When a city council has enacted an ordinance creating a city planning board or when a vacancy occurs in the county's membership on the city planning board, the board of county commissioners of the county in which the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. The mayor may not reject or refuse to appoint to the city planning board a representative designated by a board of county commissioners as provided in this section, but if the county fails to designate a representative, then the mayor may appoint as a representative of the county a person of the mayor's own choosing and at the mayor's sole discretion.

76-1-224. Citizen members of city planning board. (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

Part 3. Organization and Administration

76-1-301. Planning board meetings. (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

76-1-302. Planning board officers. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

76-1-303. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

76-1-304. Quorum -- official action. (1) A majority of members shall constitute a quorum.

(2) No action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

76-1-305. Administration of board. To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of

the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;

(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

76-1-306. Staff -- service contracts. The governing body shall assign staff employed by the governing body to assist the planning board in conducting its duties. The planning board may delegate to assigned staff the authority to perform ministerial acts in all cases except when final action of the planning board is necessary. The governing body may make contracts for special or temporary services and any professional services.

76-1-307. Compensation and expenses of board members and employees. (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

Part 4. Financial Administration

76-1-401. Fiscal administration. (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

(a) supervise the fiscal affairs and responsibilities of the board;

(b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

76-1-402. Funding of board operation. (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district that must include the property that lies outside the limits of the jurisdictional area, as established pursuant to [76-1-504](#) through [76-1-507](#) or as modified pursuant to [76-1-501](#) through [76-1-503](#) in counties where a city-county planning board has been established, as well as that property that lies

outside the limits of any incorporated cities and towns. Subject to [15-10-420](#), the board of county commissioners may levy a tax on the taxable value of all taxable property located within the planning district for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

76-1-404. Tax levy by county for city-county planning board authorized. When a city-county planning board has been established, the board of county commissioners may create a planning district that must include the property within the jurisdictional areas as established pursuant to [76-1-504](#) through [76-1-507](#) that lies outside the limits of any incorporated cities and towns. Subject to [15-10-420](#), the board of county commissioners may levy on the taxable value of all taxable property located within the planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

76-1-406. Tax levy by municipalities authorized. Subject to [15-10-420](#), the governing body of any city or town represented on a planning board may levy a tax upon the taxable value of all taxable property located within the city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

76-1-408. Acceptance and administration of gifts and donations. (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

- (a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or mixed) or any improved or unimproved park or playground; and
- (b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any money so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, from state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

Part 5. Jurisdictional Area

76-1-501. Jurisdictional area of county planning board. The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to [76-1-504](#) through [76-1-507](#). Should any city or town become represented on the county planning board pursuant to [76-1-111](#), the jurisdictional area of the county planning board shall be extended to include that city or town.

76-1-502. Filing of map of jurisdictional area of county planning board -- revision of boundaries.

The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

76-1-503. Resolution of conflicts involving jurisdictional area of county planning boards. (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in [76-1-502](#) and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in [76-1-502](#) and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

76-1-504. Jurisdictional area of city-county planning board. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

76-1-505. Extension of boundaries of city-county planning board jurisdictional area. (1) The boundaries of the jurisdictional area can be extended further than 4 1/2 miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4 1/2 miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

76-1-506. Filing of map of jurisdictional area of city-county planning board -- revision of boundaries. The planning board, after approval of the jurisdictional area by the governing bodies, shall

file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

6-1-507. Resolution of conflicts over jurisdictional areas of several city-county planning boards. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in [76-1-506](#) and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

76-1-508. Planning projects outside city-county planning board jurisdictional area -- broad construction. (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in [76-1-504](#) through [76-1-507](#).

(2) Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

Part 6. Growth Policy

76-1-601. Growth policy -- contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

- (a) community goals and objectives;
- (b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:
 - (i) land uses;
 - (ii) population;
 - (iii) housing needs;
 - (iv) economic conditions;
 - (v) local services;
 - (vi) public facilities;
 - (vii) natural resources;
 - (viii) sand and gravel resources; and
 - (ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;
- (c) projected trends for the life of the growth policy for each of the following elements:
 - (i) land use;
 - (ii) population;

- (iii) housing needs;
- (iv) economic conditions;
- (v) local services;
- (vi) natural resources; and
- (vii) other elements proposed by the planning board and adopted by the governing bodies;
- (d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
- (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
- (f) an implementation strategy that includes:
 - (i) a timetable for implementing the growth policy;
 - (ii) a list of conditions that will lead to a revision of the growth policy; and
 - (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
- (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
 - (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;
 - (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;
- (h) a statement explaining how the governing bodies will:
 - (i) define the criteria in [76-3-608\(3\)\(a\)](#); and
 - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in [76-3-608\(3\)\(a\)](#);
- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
 - (i) delineate the wildland-urban interface; and
 - (ii) adopt regulations requiring:
 - (A) defensible space around structures;
 - (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
 - (C) adequate water supply for fire protection.
- (4) A growth policy may:
 - (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.
 - (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
 - (c) establish an infrastructure plan that, at a minimum, includes:
 - (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.

76-1-602. Public hearing on proposed growth policy. (1) Prior to the submission of the proposed growth policy to the governing bodies, the board shall give notice and hold a public hearing on the growth policy.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

76-1-603. Adoption of growth policy by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution:

(1) recommend the proposed growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the planning board;

(2) recommend that a growth policy not be adopted; or

(3) recommend that the governing body take some other action related to preparation of a growth policy.

76-1-604. Adoption, revision, or rejection of growth policy. (1) The governing body shall adopt a resolution of intention to adopt, adopt with revisions, or reject the proposed growth policy.

(2) If the governing body adopts a resolution of intention to adopt a growth policy, the governing body may submit to the qualified electors of the area covered by the growth policy proposed by the governing body at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election.

(3) A governing body may:

(a) revise an adopted growth policy following the procedures in this chapter for adoption of a proposed growth policy; or

(b) repeal a growth policy by resolution.

(4) The qualified electors of the area covered by the growth policy may by initiative or referendum adopt, revise, or repeal a growth policy under this section. A petition for initiative or referendum must contain the signatures of 15% of the qualified electors of the area covered by the growth policy.

(5) A master plan adopted pursuant to this chapter before October 1, 1999, may be repealed following the procedures in this section for repeal of a growth policy.

(6) Until October 1, 2006, a master plan that was adopted pursuant to this chapter before October 1, 1999, may be revised following the procedures in this chapter for revision of a growth policy.

(7) Except as otherwise provided in this section, the provisions of Title 7, chapter 5, part 1, apply to an initiative or referendum under this section.

76-1-605. Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to [76-1-601](#) must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

(c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

76-1-606. Effect of growth policy on subdivision regulations. When a growth policy has been approved, the subdivision regulations adopted pursuant to chapter 3 of this title must be made in accordance with the growth policy.

76-1-602. Public hearing on proposed growth policy. (1) Prior to the submission of the proposed growth policy to the governing bodies, the board shall give notice and hold a public hearing on the growth policy.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

76-1-603. Adoption of growth policy by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution:

- (1) recommend the proposed growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the planning board;
- (2) recommend that a growth policy not be adopted; or
- (3) recommend that the governing body take some other action related to preparation of a growth policy.

76-1-604. Adoption, revision, or rejection of growth policy. (1) The governing body shall adopt a resolution of intention to adopt, adopt with revisions, or reject the proposed growth policy.

(2) If the governing body adopts a resolution of intention to adopt a growth policy, the governing body may submit to the qualified electors of the area covered by the growth policy proposed by the governing body at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election.

(3) A governing body may:

- (a) revise an adopted growth policy following the procedures in this chapter for adoption of a proposed growth policy; or
- (b) repeal a growth policy by resolution.

(4) The qualified electors of the area covered by the growth policy may by initiative or referendum adopt, revise, or repeal a growth policy under this section. A petition for initiative or referendum must contain the signatures of 15% of the qualified electors of the area covered by the growth policy.

(5) A master plan adopted pursuant to this chapter before October 1, 1999, may be repealed following the procedures in this section for repeal of a growth policy.

(6) Until October 1, 2006, a master plan that was adopted pursuant to this chapter before October 1, 1999, may be revised following the procedures in this chapter for revision of a growth policy.

(7) Except as otherwise provided in this section, the provisions of Title 7, chapter 5, part 1, apply to an initiative or referendum under this section.

76-1-605. Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to [76-1-601](#) must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

(c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

76-1-606. Effect of growth policy on subdivision regulations. When a growth policy has been approved, the subdivision regulations adopted pursuant to chapter 3 of this title must be made in accordance with the growth policy.

APPENDIX E: FAQ's for Robert's Rules of Order

1. Do members have the right to explain their vote during voting?

"No, it would be the same as debate at such a time."

2. Is a second required for nominations?

"No second is required, but sometimes one or more members will second a nomination to indicate endorsement."

3. Can the chairman vote?

"If a member, the chairman has the right to vote. In large groups (more than 12), the chairman (who has a duty to maintain an appearance of impartiality) may vote when his vote would affect the outcome: to make or break a tie or to make or prevent a two-thirds vote."

4. Can a member vote on or second a motion to approve the minutes of a meeting that he/she did not attend?

"Yes. There is no requirement in RRO that a member have first-hand knowledge." "In fact, a motion need not be made to approve minutes.

The chair says, "Are there any corrections to the minutes?"

"If there are no corrections, they stand approved as read." Note that there is no second involved in this process.

5. How long can a member speak in debate?

"Ten minutes, unless he obtains the consent of the assembly to speak longer (2/3 vote), and then a second time for 10 minutes after everyone has been given a chance to speak once."

6. If a motion has been defeated, can it be brought up again at the next meeting?

"Yes, if the meeting is a different session."

7. Can a meeting be adjourned if there is still business pending?

"Yes."

8. What is a quorum?

"It is the minimum number of voting members who must be present at a meeting in order to conduct business, usually specified by the bylaws. If not specified in the bylaws, then in most societies a quorum is a majority of the entire membership."

9. Are abstentions counted as votes in determining the winner of an election requiring a majority?

No. Abstentions have no effect on the outcome of the vote when the requirement is either a majority or two thirds of the votes cast. If the vote requires a majority or two thirds of the members present or of the entire membership, an abstention may have the same effect as a "no" vote.

10. Are there conditions where an absolute majority of eligible voters is necessary to declare a winner?

Only when your organization has adopted a rule such as the "majority of the membership."

11. If a motion is before the assembly, can the assembly require more than a majority in order for the motion to be approved?

To change the vote requirement, someone must make a motion to "suspend the rules." Must be seconded - requires a 2/3 vote.

12. What happens when the president's vote causes a tie? How is the matter resolved?

The motion is defeated. A motion to reconsider the vote may be made by someone on the prevailing side. Requires a majority vote.

13. Does a chairman of the board of directors have the authority to refuse to let an issue come before the board?

No. The chairman can rule a motion "out of order" if it conflicts with bylaws or he/she may "object to consideration of the question," but the motion still comes before the board.

14. Can the board limit the debate on an issue?

Yes, by making a motion to limit debate. Requires a second and may be amended. Requires a 2/3 vote.

APPENDIX F: Summary of Motions - Robert's Rules of Order

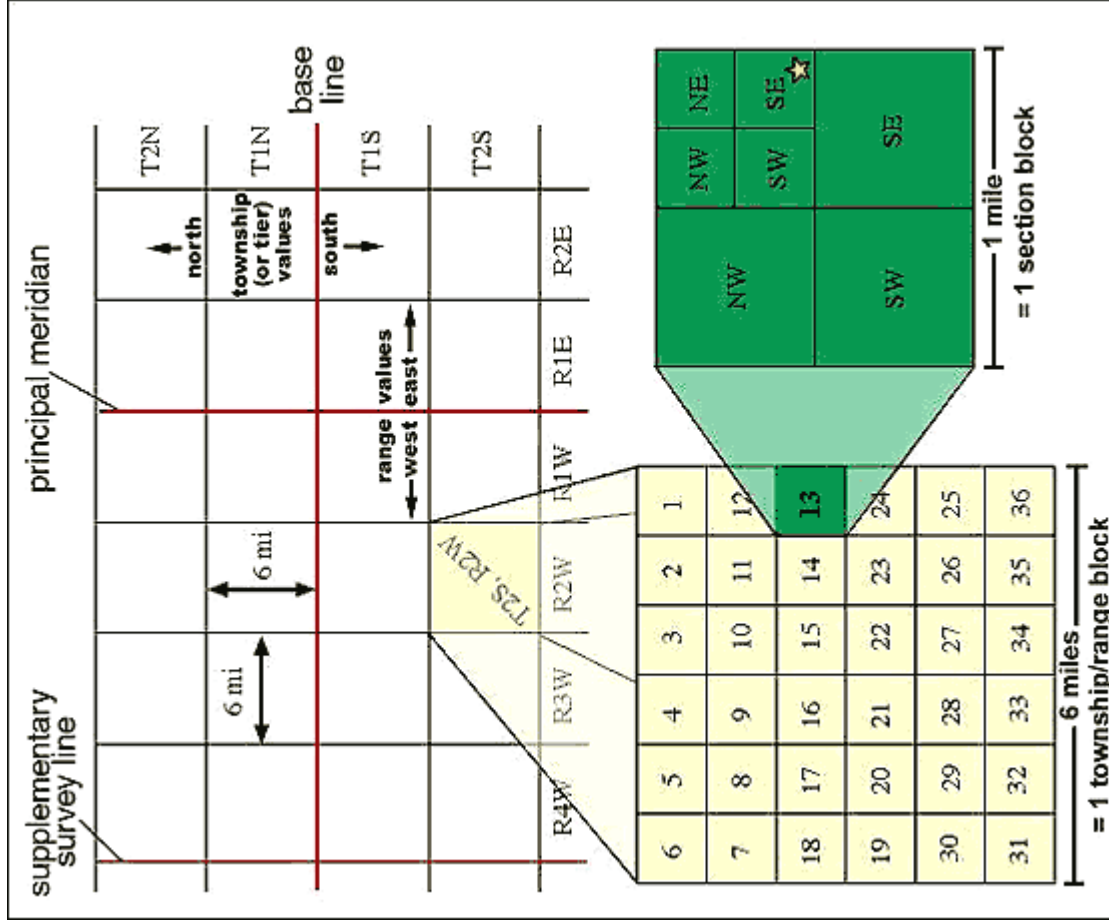
Motion	Remarks	Phrasing	Second	Debate	Amend	Vote
➔	Main Motions	Formal proposal that recommends a course of action. It is made before the discussion.				
Main	Used to present new business	"I move that the Activities Board . . ." (note specific action)	Yes	Yes	Yes	Majority
➔	Secondary Motions <u>Subsidiary:</u>	Helps the assembly dispose of the main motion. Adopting a subsidiary motion always does something to the main motion				
Postpone Indefinitely	Used to "kill" a motion during a meeting without taking a direct vote on it	"I move to postpone the motion indefinitely."	Yes	Yes	No	Majority
Amend	To change the pending motion before it is acted upon (to add or strike out words in the motion)	"I move to amend the pending motion by striking out or inserting the following words..."	Yes	Yes, if motion to amend is debatable	Yes	Majority
Refer to a Committee	Standing or Ad Hoc (appointed at any time) to investigate a proposal	"I move to refer the issue to a committee."	Yes	Yes	Yes	Majority
Committee of the Whole	Members of a large assembly act as a committee - allows members to speak an unlimited number of times to an issue. Vote not binding - recommends to assembly for later vote - Presiding officer appoints a chair for the committee	"I move to refer the issue to a committee of the whole."	Yes	Yes	Yes	Majority
Postpone Definitely	Used to put off or delay a decision until later in the meeting or until next meeting. Motion comes up under "unfinished business."	"I move that the pending motion be postponed until (note time)"	Yes	Yes	Yes	Majority

Limit or Extend Limits of Debate	To limit or extend the length of debate or to put a time limit on a particular motion	"I move to limit debate to five minutes per person."	Yes	No	Yes	Two-thirds
Previous Question (Close Debate)	Used to stop debate and immediately take a vote --Should be used when a member thinks the debate on the motion is tedious	"I move the previous question." or "I move to close the debate and take the vote immediately."	Yes	No	No	Two-thirds
Lay on the Table	To set the main motion aside temporarily to take up something of immediate urgency. Not intended to kill the motion or put off until the next meeting.	"I move to table the motion." or "I move to lay the motion on the table."	Yes	No	No	Majority

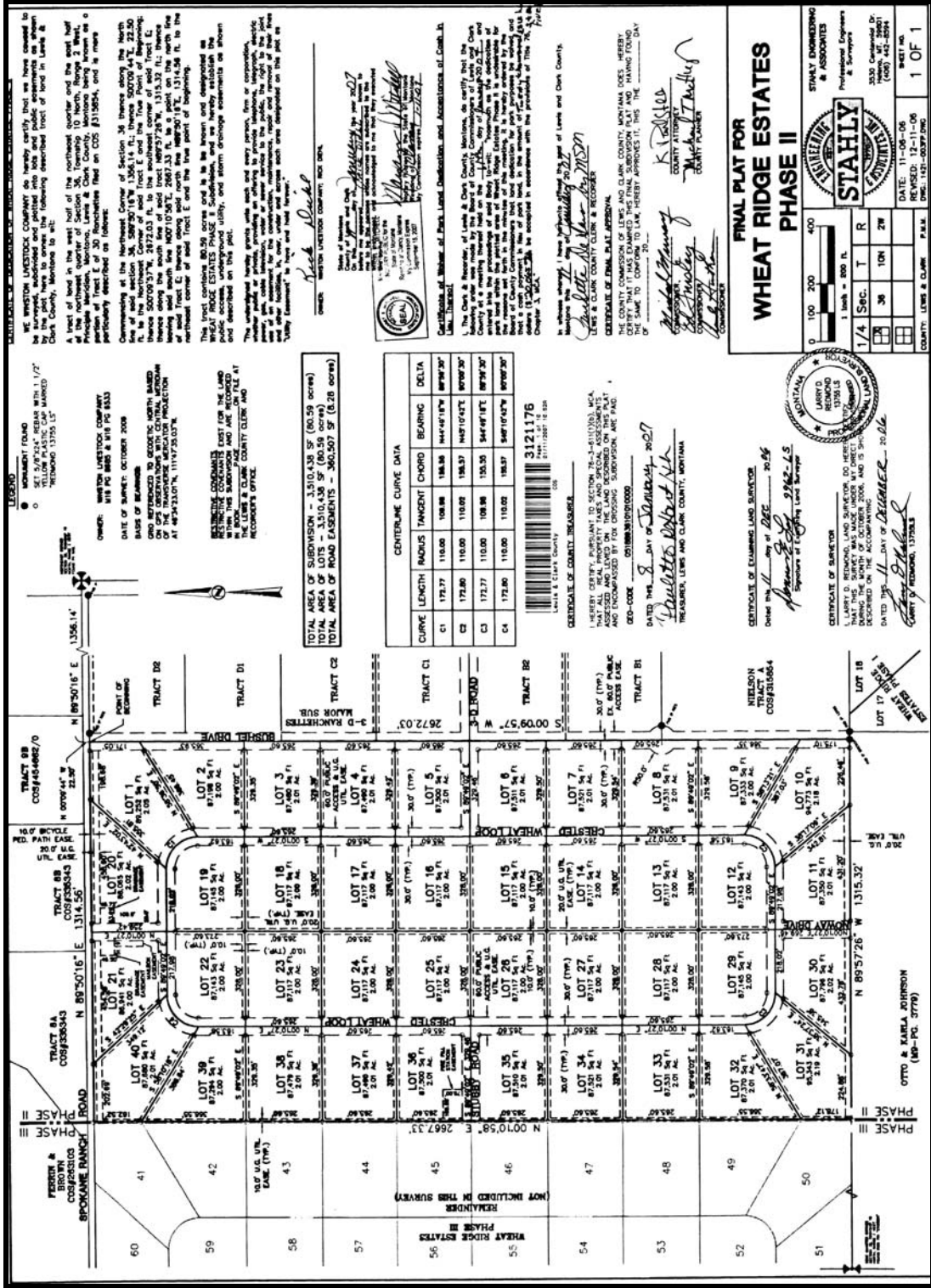
Motion	Remarks	Phrasing	Second	Debate	Amend	Vote
→	Secondary Motions: Privileged	Do not relate to main motion, but to matters of immediate importance arising from meetings				
Call for Orders of the Day	To make the assembly conform to the agenda or order of business	Member: "I call for the orders of the day."	No	No	No	No vote unless to set aside "orders of the day"
Raise a Question of Privilege	Member makes a request relating to the rights of the member immediately	"Mr. President, I rise to a question of privilege." Chair: "Please state the question." Member: "I can't hear the speaker."	No	No	No	Chair Rules
Recess	For a short intermission	"I move to take a ten-minute recess."	Yes	No	Yes	Majority
Adjourn	To end a meeting immediately	Note reason . . . "I move to adjourn."	Yes	No	No	Majority
→	Secondary Motions: Incidental	Deals with questions of procedure arising from pending business - Does not affect the business				

Point of Order	Used to remind or question the Chair of the by-laws or rules of order.	"I rise to a point of order" (await recognition of chair, state reason)	Yes	No	No	Chair Rules
Appeal Rule of the Chair	To disagree with the chair's ruling - Let members decide the disagreement	"I appeal the decision of the Chair."	Yes	No	No	Majority
Division of the Assembly	To doubt the result of the vote	"I call for a division of the vote." or "I doubt the result of the vote."	No	No	No	Vote retaken
Suspend the Rules	To set aside the rule of the assembly (except by-laws, charters) to speed up the process	"I move to suspend the rules."	Yes	No	No	Two-thirds
Division of the Question	To divide a motion with several topics into separate motions	"Madam President, I move to divide the motion into three parts."	Yes	No	Yes	Majority
➔	Motion that brings question again before assembly	This class of motions returns a motion to the assembly for reconsideration				
Take from the Table	To take a motion from the table	"I move to take from the table the motion relating to the pay increase."	Yes	No	No	Majority
Reconsider	To reconsider the vote on a motion - Only a member who voted on the prevailing side can make the motion	"I move to reconsider . . ."	Yes	If the motion is debatable	No	Majority

APPENDIX G: Public Land Survey System



APPENDIX H: Example Final Plats, Major and Minor Subdivisions



Fawn Meadows Subdivision

FOR: W.A. AND JENNIFER GALLAGHER

3901911
 2011-001 BY DP
 Lewis & Clark County

CERTIFICATE OF DEDICATION
 WE, THE UNDERSIGNED PROPERTY OWNERS, DO HEREBY CERTIFY THAT WE HAVE CAUSED TO BE SURVEYED,
 MEASURED, AND PLATTED AS SHOWN BY THE PLAN HERETO ANNEXED, THE
 FOLLOWING DESCRIBED LAND IN LEWIS & CLARK COUNTY, TO WIT:

A TRACT OF LAND LOCATED IN SE1/4 OF SECTION 5, TOWNSHIP 10 NORTH, RANGE 3 WEST, P.M. MONTANA
 LEWIS & CLARK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS, BEGINNING AT THE SE CORNER OF
 SECTION 5 89°07'20"W, 2060.70 FEET;
 THENCE N 07°28'53"W, 86.00 FEET;
 THENCE S 07°32'00"E, 1621.49 FEET;
 THENCE S 07°32'00"E, 1621.49 FEET;
 THENCE S 07°32'00"E, 1621.49 FEET;
 THENCE S 07°32'00"E, 1621.49 FEET;
 THE TRACTS CONTAINS 40.19 ACRES, MORE OR LESS, ON LOTS 1 THROUGH 30, BEING
 THE ABOVE TRACT OF LAND IS TO BE DIVIDED AND DESIGNATED AS FAWN MEADOWS SUBDIVISION.

NOTATION: (1) THE UNDERSIGNED HEREBY GRANTS UNTO ALL PUBLIC UTILITY COMPANIES AS SUCH ARE
 AUTHORIZED TO OPERATE IN THIS COUNTY, THE RIGHT AND PERMISSION TO LOCATE, CONSTRUCT,
 MAINTAIN, REPAIR AND REMOVE OF THEIR LINES, UNDER THE DESIGNATED AREAS ON THIS PLAT AS
 UNDERGROUND UTILITY EASEMENT TO HAVE AND HOLD FOREVER. LOTS ARE SUBJECT TO UTILITY AND ROAD
 EASEMENTS AS ACCORDING TO THE PLAN.

OWNER: W.A. AND JENNIFER GALLAGHER
 ON THIS 14 DAY OF June, 2001, BEFORE ME A NOTARY PUBLIC FOR THE STATE
 OF MONTANA, PERSONALLY APPEARED, W.A. & JENNIFER GALLAGHER, KNOWN TO ME TO BE THE
 PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME
 ME THAT THEY EXECUTED THE SAME.



CERTIFICATE OF WAIVER OF PARK LAND DEDICATION
 AND ACCEPTANCE OF CASH IN LIEU THEREOF
 COUNTY CLERK AND RECORDER OF LEWIS
 AND CLARK COUNTY, MONTANA, DO HEREBY CERTIFY THAT THE FOLLOWING ORDER WAS MADE
 BY THE BOARD OF COUNTY COMMISSIONERS OF LEWIS AND CLARK COUNTY, AND ENTERED INTO THE
 PROCEEDINGS OF SAID BODY TO-WIT: "INASMUCH AS THE DEDICATION OF PARK LAND WITHIN
 THE PLATTED AREA OF FAWN MEADOWS MAJOR SUBDIVISION, IS UNDESIRABLE FOR THE REASONS
 SET FORTH IN THE ORDER OF THE BOARD OF COUNTY COMMISSIONERS THAT LAND DEDICATED FOR PARK PURPOSES BE WAIVED
 AND THAT A CASH PAYMENT IN LIEU OF PARK LAND, IN THE AMOUNT OF ELITE MINNEAPOLIS
WINDMILL REAR W/P.P.C. 4128SINRES, BE ACCEPTED IN ACCORDANCE WITH THE
 PROVISIONS OF SECTION 10-1-10, M.T.S.A., BE ACCEPTED IN ACCORDANCE WITH THE
 PROVISIONS WHEREOF, I HAVE HERETO AFFIXED THE SEAL OF LEWIS AND CLARK COUNTY, MT.
 THIS 14 DAY OF June, 2001.

Donna S. Seltzer
 CLERK AND RECORDER, LEWIS AND CLARK COUNTY.

CERTIFICATE OF FINAL PLAT APPROVAL
 THE COUNTY COMMISSION OF LEWIS & CLARK COUNTY, MONTANA, DOES HEREBY CERTIFY THAT IT
 HAS EXAMINED THIS SUBDIVISION PLAT AND HAVING FOUND THE SAME TO CONFORM TO LAW,
 APPROVES IT, THIS THE 12th DAY OF June, 2001.

Kevin J. Stumpf
 COUNTY ATTORNEY

Michael T. Metzger
 COUNTY PLANNER

Yanville Seltzer
 COUNTY CLERK AND RECORDER

DATE: MAY 7, 2001
 200 NO. 99-1329PL

CERTIFICATE OF COUNTY TREASURER
 I HEREBY CERTIFY, PURSUANT TO SECTION 76-3-411 (7)(b) OF MCA, THAT ALL REAL PROPERTY
 DESCRIBED IN THIS PLAT HAS BEEN PAID FOR AND RECORDED IN THE COUNTY RECORDS. THIS PLAT
 AND ENCOMPASSED BY THE PROPOSED "FAWN MEADOWS SUBDIVISION" HAVE BEEN PAID.
 GEO CODE 1888-05-4-01-10-0000
 GEO CODE 1888-05-4-01-15-0000
 GEO CODE 1888-05-4-01-01-0000
 GEO CODE 1888-05-4-01-25-0000
 DATED THIS 31 DAY OF May, 2001.

Patrick DeMott
 TREASURER, LEWIS & CLARK COUNTY, MONTANA



RESTRICTIVE COVENANTS

1/4 SEC	T	R
5	10N	3W

P.M. MONTANA LEWIS & CLARK CO.
 GRAPHIC SCALE - FEET
 SHEET 1 OF 1



CERTIFICATE OF EXAMINING LAND SURVEYOR
 REVIEWED FOR ERRORS AND OMISSIONS THIS 12
 DAY OF JUNE, 2001.
 PURSUANT TO SECTION 10-1-10, M.T.S.A.
James J. Lane
 LICENSE NO. 41279

LEGEND
 * CALCULATED POSITION NOTHING FND OR SET
 * FND 5/8" REBAR W/P.P.C. (4128SINRES)
 * SET 5/8" REBAR W/P.P.C. (4128SINRES)
 * NOT TO BE MOVED AND NOT TO BE EASEMENT
 * EACH SIDE OF PROPERTY LINE
 BASIS OF BEARING: C.O.S. # 606321/B

825200-145

01 MAR -5 11:11:37

BOOK M PAGE

BY *William Grant*

SEC. 36 T12N, R67W

SEC. 1 T11N, R67W

SILVER CITY AIRPARK ESTATES

(FIVE LOT MINOR SUBDIVISION) - FOR: PATRICK J. LANE
ANDERSON PROPERTY



CERTIFICATE OF DEDICATION
I, THE UNDERSIGNED PROPERTY OWNER, DOES HEREBY CERTIFY THAT I HAVE CAUSED TO BE SURVEYED, SUBDIVIDED AND PLATTED INTO LOTS AND EASEMENTS, AS SHOWN BY THE PLAT HERETO ANNEXED, THE FOLLOWING DESCRIBED LAND IN LEWIS AND CLARK COUNTY TO WIT:

LEGAL DESCRIPTION (TRACT B1, C.O.S. NO. 607269/7)
TRACT OF LAND LOCATED IN THE NE 1/4 OF SECTION 1, TOWNSHIP 11 NORTH, RANGE 6 WEST, 64E MONTANA, LEWIS AND CLARK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH 1/4 CORNER OF SECTION 1; THENCE N 89°52'50"E, 485.00 FEET ALONG THE NORTH LINE OF SECTION 1 TO THE POINT OF BEGINNING; THENCE N 89°52'50"E, 1615.84 FEET ALONG THE NORTH LINE OF SECTION 1; THENCE S 89°52'50"E, 485.00 FEET ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LIMIT OF BRIDGEWAY ROAD; THENCE N 78°12'07"W, 820.04 FEET ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LIMIT OF BRIDGEWAY ROAD; THENCE S 89°52'50"W, 843.07 FEET; THENCE N 07°55'37"W, 308.41 FEET TO THE POINT OF BEGINNING.

THE TRACT CONTAINS 11.91 ACRES, MORE OR LESS AND IS SUBJECT TO ALL EXISTING EASEMENTS AND DOCUMENTS OF RECORD.

THE ABOVE DESCRIBED TRACT OF LAND IS TO BE KNOWN AND DESIGNATED 'SILVER CITY AIRPARK ESTATES'.

NOTATION: (1) THE UNDERSIGNED HEREBY GRANTS UNTO ALL PUBLIC UTILITY COMPANIES, AS SUCH ARE DEFINED AND ESTABLISHED BY MONTANA LAW, AN UNDERGROUND EASEMENT FOR THE CONSTRUCTION, MAINTENANCE REPAIR AND REMOVAL OF THEIR LINES; UNDER THE DESIGNATED AREAS ON THIS PLAT AS 'UNDERGROUND UTILITY EASEMENT' TO HAVE AND HOLD FOREVER. LOTS ARE SUBJECT TO UNDERGROUND UTILITY AND ROAD EASEMENTS. ALL LINES ACCORDING TO THE PLAT.

NOTATION: (2) THE UNDERSIGNED HEREBY CREATES THE 60 FOOT PUBLIC ACCESS AND UNDERGROUND UTILITY EASEMENT, AS SHOWN AND DESCRIBED ON PLAT.

OWNER: PATRICK J. LANE
ON THIS 21 DAY OF February, 2001, BEFORE ME A NOTARY PUBLIC FOR THE STATE OF MONTANA, PERSONALLY APPEARED PATRICK J. LANE KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

NOTARY PUBLIC FOR THE STATE OF MONTANA
RESIDING AT Helena
MY COMMISSION EXPIRES Aug. 7, 2001

NOTATION: (2) THE UNDERSIGNED HEREBY CREATES THE 60 FOOT PUBLIC ACCESS AND UNDERGROUND UTILITY EASEMENT, AS SHOWN AND DESCRIBED ON PLAT.

OWNER: H. HOWARD ANDERSON
ON THIS 21 DAY OF February, 2001, BEFORE ME A NOTARY PUBLIC FOR THE STATE OF MONTANA, PERSONALLY APPEARED H. HOWARD ANDERSON KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

NOTARY PUBLIC FOR THE STATE OF MONTANA
RESIDING AT Helena
MY COMMISSION EXPIRES Aug. 7, 2001

DATE: FEBRUARY 21, 2001
DRAFTED BY: CJR
JOB NO.: 97116F2M

PREPARED BY RIES SURVEYING
6650 GREEN MEADOW DR.
HELENA, MT 59602

RECORDING INFORMATION:
RECORDED AT REC. IN _____ PG _____
RECORDED AT REC. IN _____ PG _____

CERTIFICATE OF EXAMINING LAND SURVEYOR
REVIEWED FOR ERRORS AND OMISSIONS THIS
26 DAY OF FEB 2001
PURSUANT TO SECTION 76-3-811(2)(A), MCA

Sharon S. Spivey
EXAMINING LAND SURVEYOR
REG. NO. 9962-L-5

BIRDSEYE ROAD-70' R/W

CERTIFICATE OF COUNTY TREASURER
I HEREBY CERTIFY, PURSUANT TO SECTION 76-3-811 (1)(B) OF MCA, THAT ALL REAL PROPERTY TAXES AND SPECIAL ASSESSMENTS ASSESSED AND LEVIED ON THE LAND DESCRIBED ON THIS PLAT AND ENCOMPASSED BY THE PROPOSED SILVER CITY AIRPARK ESTATES HAVE BEEN PAID.

GEODEQUE 1993-01-7-30-0000
DATED THIS 26 DAY OF February, 2001.

Sharon S. Spivey
TREASURER, LEWIS AND CLARK COUNTY, MONTANA

BASIS OF BEARING:
THE WEST LINE OF SECTION 1, TAKEN FROM C.O.S. NO. 602068/8 (RES-4129L5).

CERTIFICATE OF FINAL PLAT APPROVAL
THE COUNTY COMMISSION OF LEWIS AND CLARK COUNTY, MONTANA, DOES HEREBY CERTIFY THAT IT HAS EXAMINED THIS SUBMISSION PLAT AND HAVING FOUND THE SAME TO CONFORM TO LAW, APPROVES IT, THIS THE 5th DAY OF March, 2001.

Patrick J. Lane
COUNTY ATTORNEY

Sharon S. Spivey
COUNTY CLERK AND RECORDER

Chris & Valerie
COMMISSIONER

Patrick J. Lane
COMMISSIONER

Sharon S. Spivey
COMMISSIONER

LEGEND
□ FND. 5/8" REBAR W/Y.P.C. (TANGEN-3366BS)
○ FND. 5/8" REBAR W/Y.P.C. (RIES-4125S)
● SET 5/8" REBAR W/Y.P.C. (C.J. RIES-122461S)
• CALCULATED POSITION, NOTHING FOUND OR SET

RESTRICTIVE COVENANTS
RECORDED AT REC. IN _____ PG _____
RECORDED AT REC. IN _____ PG _____

RECORDING INFORMATION:
RECORDED AT REC. IN _____ PG _____
RECORDED AT REC. IN _____ PG _____

GRAPHIC SCALE - FEET
SHEET 1 OF 1
CERTIFICATE OF SURVEY NO. _____