



Promoting thoughtfully planned development in order to protect and enhance Park County's vibrant communities, sustainable working lands, and healthy natural resources.

Testimony on Mountain View Subdivision Preliminary Plat Re-Application
Livingston Planning Board

Transmitted August 15, 2023

Summary

The Planning Board should recommend denial of the application because the legal and factual bases for the City Commission's 2022 denial of the prior application remain substantially unchanged. Those bases were and remain¹:

1. Montana Code Annotated 76-1-605: Consistency with Growth Policy provisions.

The proposed subdivision would be inconsistent with:

- Objective 2.1.1. Community gateways that celebrate its character.
- Objective 6.2.3. Making a good first impression on visitors.
- Objective 3.1 Prioritize infill over expansion.
- Goal 3.4 Evaluate proposed developments against Smart Growth principles.
- Objective 4.3.3 Preserve the night skies and natural scenic views.
- Objective 6.1.1 Support existing local business.

2. Montana Code Annotated 76-3-608(3)(a): Primary subdivision review criteria:

- Adverse impact on local services.
- Wildfire and high wind hazards.
- Adverse impacts on wildlife.
- Potential surface water contamination.

To recommend approval, the Planning Board would have to repudiate its prior decision and the findings of fact and conclusions of law set out in the City's November 2022 decision.

¹ Friends of Park County is not taking a position on the parkland dedication issue which was another basis for denial.

Table of Contents

<i>The City and the applicant concur that Montana’s subdivision statutes require the Planning Board to consider the proposed subdivision’s consistency with the 2021 Growth Policy.</i>	<i>3</i>
<i>The applicant has failed to address all but one of the City’s determinations of inconsistency with Growth Policy Goals, Objective and Strategies.....</i>	<i>3</i>
Objective 2.1.1 Establish community gateways to indicate entrances to Livingston and celebrate its community character.	4
Strategy 3.1.1.4: Promote any growth that maintains the compact, historic development patterns found in the historic city center.	4
Objective 3.4: Encourage the responsible [growth] of Livingston by evaluating proposed developments against the ten principles of Smart Growth (listed on next page.)	4
Objective 4.3.3: Preserve the night skies as well as the natural scenic views.	4
Objective 6.1.1: Support existing local business.	4
<i>The application does not comply Growth Policy Goal 3.1: “Prioritize infill over expansion by taking advantage of existing and planned infrastructure, such as transportation, energy, water, and sewer facilities.”</i>	<i>5</i>
<i>Because there has been no change in state law, no major and responsive revision to the subdivision proposal (with one minor exception) and no new relevant facts submitted, the City’s prior findings of fact and conclusions of law under Montana Code Annotated 76-3-608 (3)(a) still require the Planning Board to recommend denial.....</i>	<i>5</i>
Impact on local services:	5
Natural Environment:	6
Effect on Wildlife & Habitat:	7
Public Health & Safety:.....	8
<i>Friends of Park County submits its September 21, 2022 testimony on the original application as part of the record of this proceeding.</i>	<i>8</i>
<i>Conclusion: The Planning Board should recommend denial of the re-application. No additional time or review should be allowed to amend the application.</i>	<i>8</i>

The City and the applicant concur that Montana’s subdivision statutes require the Planning Board to consider the proposed subdivision’s consistency with the 2021 Growth Policy.

Montana Code Annotated 76-1-605 describes the use of an 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;

The City’s subdivision ordinance provides:

III-B-4 Planning Board Hearing, Consideration and Evidence

c Consideration-Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider, without limitation, the following, as applicable:

(i) an officially adopted growth policy;

Under the previously cited Montana statutes and the City’s subdivision ordinance the Growth Policy is not only “applicable” it is directly relevant and essential to making a sound decision.

The City’s November 3, 2022, findings of fact and conclusions of law found that the proposed subdivision did not comport with six objectives, two goals and one strategy in the Growth Policy, reproduced and discussed below, (in the same order as in the City’s decision.)

The City’s decision and in the narrative submitted as part of the re-application show that the City and the applicant concur that Growth Policy applies to this decision.

The applicant has failed to address all but one of the City’s determinations of inconsistency with Growth Policy Goals, Objectives and Strategies.

In its November 3, 2022, letter to the applicant (Appendix A) the City presented the findings of fact and conclusions of law, that were the basis for denial of the subdivision application under MCA 76-1-605.

In the re-application narrative, the applicant describes how its project may conform to various *other* goals and objectives in the Growth Policy. The City’s 2022 decision never discussed or disputed whether the application complied with those other provisions; the question is whether it does comply with the ones cited by the City.

With one exception (discussed in the next section), the applicant does not even attempt to demonstrate the consistency of the subdivision with provisions the City identified as conflicting with the preliminary plat.

Objective 2.1.1 Establish community gateways to indicate entrances to Livingston and celebrate its community character.

The re-application does not address this objective, (nor does the Staff Report.) This alone is grounds for denial.)

Objective 6.2.3 Make a good first impression to [sic] visitors.

The re-application does not address this objective, (nor does the Staff Report.) This alone is grounds for denial.)

Strategy 3.1.1.4: Promote any growth that maintains the compact, historic development patterns found in the historic city center.

The re-application does not address this Strategy, (nor does the Staff Report.) This alone is grounds for denial.

Objective 3.4: Encourage the responsible [growth] of Livingston by evaluating proposed developments against the ten principles of Smart Growth (listed on next page.)

The re-application does not address this Objective or the ten Smart Growth principles, (nor does the Staff Report.) This alone is grounds for denial.

Objective 4.3.3: Preserve the night skies as well as the natural scenic views.

The re-application proposes a covenant that will require “shielded downlight exterior lighting only in conformance with the City of Livingston’s Night Sky Protection Act.” (Exhibit H) but does not address the preservation of “natural scenic views,” (nor does the Staff Report.) This alone is grounds for denial.

Objective 6.1.1: Support existing local business.

The re-application does not address this Objective, (nor does the Staff Report.) This alone is grounds for denial.

The application does not comply Growth Policy Goal 3.1: “Prioritize infill over expansion by taking advantage of existing and planned infrastructure, such as transportation, energy, water, and sewer facilities.”

The City found that the subdivision did not comport with this Goal 3.1: “Prioritize infill over expansion by taking advantage of existing and planned infrastructure, such as transportation, energy, water, and sewer facilities”

The applicant responds that the proposed subdivision “represents the continuation of infill of this property....” Application Narrative page 6 (scrolling page 19.)

However, the City’s policy clearly refers to prioritize infill across the City not on a single property separated by more than a mile from the rest of the City’s developed area and infrastructure. The applicant’s statement misinterprets the Goal and is thus not relevant.

Because there has been no change in state law, no major and responsive revision to the subdivision proposal (with one minor exception) and no new relevant facts submitted, the City’s prior findings of fact and conclusions of law under Montana Code Annotated 76-3-608 (3)(a) oblige the Planning Board to recommend denial.

MCA 76-3-608(3)(a) states:

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) or except as provided in [76-3-509](#), [76-3-609](#)(2) or (4), or [76-3-616](#), the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils;

Next, we review the City’s findings of noncompliance under this statute and address whether and how the applicant has addressed those deficiencies.

Impact on local services:

The City found that:

“the subdivision will create an increase in infrastructure a significant distance from the majority of the land developed in the city limits which significantly increases the costs to maintain it,” referencing specific details about water, sewer and transportation infrastructure enhancements.

The subdivision improvements proposed in the re-application are in the same location, no closer to the city than they were when first proposed, and there is no indication that the City's financial situation is much improved and no new facts are provided about those costs or an explanation of why the prior factual assertion is now in error.

The City found:

We know that new development pays for itself when it comes to long-term maintenance and upkeep of new services. The City of Livingston is currently not able to maintain our historic and current infrastructure. Our sewer lines are being infiltrated by groundwater and we have water lines to residences that are failing. By adding additional water and sewer lines so far outside the city center we will be adding additional burden to current city residents.

This is why our Growth Policy prioritizes infill as a way to mitigate those costs to the City and its current residents."

November 2022 Decision page 2.

The applicant asserts (and the staff agrees) that the new taxes will indeed cover project costs but there are no facts just speculative assertions. Nor do the applicant (or the staff) address the question of an overall shortfall in funding maintenance and upkeep of new services.

Natural Environment:

The City's November 2022 Decision (page 2) found that once the subdivision lots were built out it could contaminate surface waters with runoff:

There are wetlands in the subdivision so it's likely surface water contamination from run-off at maximum build out could contaminate surface waters especially given that highway commercial zoning is very permissive with a variety of potential contamination vectors at full build out,

City Decision page 2.

The June 2023 revised subdivision application's incorporates the 2022 wetland delineation (scrolling pages 249 and 265) and site drainage report for the original application, which confirms rather than contradicts the City's conclusion about surface water contamination:

Proposed Watershed A is hydrologically split into two sections, Proposed Watershed A1 and A2. Runoff from Proposed Watershed A2 will match existing drainage patterns. Runoff from Proposed Watershed A1 will flow into Antelope Drive east towards the intersection with PFL Way. Runoff will flow in the gutter of PFL Way until the end of the curb where runoff is diverted into the existing wetland to the east. No new inlets and pipes are proposed for Proposed Watershed A.

Runoff from Proposed Watershed B is split into three separate basins as Shown on Exhibit B in Appendix A. Proposed Watershed B1 is the area west of the new Street B, Proposed Watershed B2 is the area east of the new Street B and Proposed Watershed B3 is the area that drains into the proposed retention area to matching the existing retention area.

Mountainview Subdivision Preliminary Plat Application June 23, 2023 scrolling page 58. See also reference to surface waters in Sundog Ecological Inc. hydrology report page 5, scroll page 244.

Effect on Wildlife & Habitat:

In finding that the subdivision does not address effects on wildlife, the City decision states: “There is a recommendation to connect open spaces for safe wildlife corridors. The subdivision doesn’t connect the open spaces.”

The revised application design still shows the two dedicated open spaces as two separated lots, shown bat right:



Figure 2. Site Layout
Mountain View Subdivision T15

3

The decision notes (page 2) “Montana Wildlife & Parks has stated that the area is used by big game especially pronghorn as well as black bear, mountain lions and non-game species. The Applicant has not addressed these issues fully or offered any mitigation strategies like providing safe wildlife passage corridors, wildlife friendly fencing and bear proof garbage cans,”

The applicant has proposed a covenant requiring bear-proof garbage containers (Exhibit H) but otherwise has not addressed these concerns.

Public Health & Safety:

The City's November 2022 Decision (page 2) found that the steep grassy slopes near I-90 were a "known fire hazard" during the dry seasons and that the proposed subdivision is in "a very high wind area."

Friends of Park County did not find documentation in the re-application of how the applicant addressed and mitigated these public health and safety risks.

A new traffic analysis was submitted with the re-application. It is not clear whether or how this considered additional traffic volumes when I-90 is re-routed through the city, and what analysis or mitigation addressed the City's concerns about the hazards presented by the proximity to I-90 and the main line railroad.

Friends of Park County submits its September 21, 2022 testimony on the original application as part of the record of this proceeding.

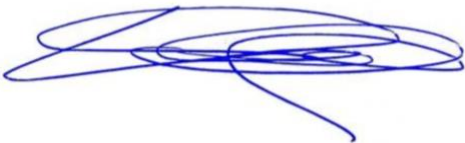
As part of its testimony on the re-application, Friends of Park County resubmits its September 21, 2022, testimony to the Planning Board on the original application, at Appendix B.

Conclusion: The Planning Board should recommend denial of the re-application. No additional time or review should be allowed to amend the application.

For the reasons presents the Planning Board should recommend that the City Commission deny the re-application.

The applicant has had nine months to address the legal and factual reasons for denial of the original application and so the Planning Board should not grant it additional time to amend, supplement or revise the re-application.

Respectfully submitted,



Ken Cochrane, President
Friends of Park County