EXHIBIT 1
DATE 1-15-2009
HB Meeting with Realtors & Dept. of planning & Development.

Planning 101

A Primer on Land Use Planning, Growth Policies, Subdivision, and Zoning

prepared by

Montana Association of Planners

January 15, 2009

Planning 101

A Primer on Land Use Planning, Growth Policies, Subdivision, and Zoning

- Introduction to Planning . . . . . Tab 1
- Growth Policies . . . . . Tab 2
- Zoning. . . . . Tab 3
- Subdivision. . . . . Tab 4

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Planning 101

FEDERAL/STATE CONSTITUTIONS AND PLANNNING BOARDS

Prepared by
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I. Planning and Zoning activities are allowed under state and federal constitutions as an exercise of "police power," i.e., local government's responsibility to protect the health, safety and welfare of its citizens.

II. Early zoning ordinances – involving separation of uses – first occurred in urban areas like New York City, San Francisco, and Chicago, in the 1890s and early 1900s, in response to tenement slum conditions and close proximity of industry next to residential areas – spread of tuberculosis, influenza, dysentery, as well as spread of crime, were rampant.

III. 1924 – basic concept of zoning was challenged in Amber Realty vs. City of Euclid, OH – "Euclidian Zoning", or dividing City into zoning districts. Supreme Court upheld Euclid's right to segregate uses as a means to protect public health, safety, and welfare.

IV. Standard Zoning Enabling Act – 1925. Promulgated by U.S. Department of Commerce during Herbert Hoover administration. Viewed as a means to protect the interests of business as well as residents. Provided model language for zoning ordinances. Standard Enabling Planning Act followed, also out of Department of Commerce. Set forth that zoning and land use regulations should not be ad-hoc decisions, but instead should be based on comprehensive planning goals and objectives arrived at democratically.

V. Montana developed its own Planning and Zoning enabling acts in the early 1930s. City of Bozeman adopted its first zoning ordinance in 1936.

VI. "Plan Before You Zone" – important court case out of Flathead County affirmed notion that zoning must be in substantial compliance with an adopted comprehensive plan."

VII. Zoning has evolved to where now we can zone for aesthetics (design review programs), regulate signage, and impose landscape requirements on developments, all in an effort to protect public health, safety and welfare.

VIII. Due Process – no plan or zoning regulation can be adopted without adequate and meaningful opportunity for public involvement.

IX. Equal Protection – Nobody gets preferential treatment under a legitimate regulatory program.

X. Regulatory Takings – Occurs when "all economic use of a property has been removed as a result of the imposition of a regulation. Also called "inverse condemnation."

Growth Policies

Title 76, Chapter 1
Montana Code Annotated

Senate and House Local Government Committees

Roger Millar, PE, AICP
Director, City-County Office of Planning and Grants, Missoula, MT

January 15, 2009

Montana's Growth Policy Statute

- Citation: 76-1-601 MCA
- Enacted: 1999
- Agency/Organizational Support:
  - The Community Development Division of the Montana Department of Commerce ~ Community Technical Assistance Division
  - Montana League of Cities and Towns
  - Montana Association of Counties
  - Montana Association of Planners

What is a Growth Policy?

- A Vision for the Community's Future
- A Measure of where we have been and where we are going with respect to:
  - Land Use
  - Population
  - Housing
  - Community Facilities and Infrastructure
  - Economic and Community Development
  - Natural and Cultural Resources

Why Prepare a Growth Policy?

- To identify community goals and objectives
- To set priorities in order to allocate resources efficiently
- To provide a framework and context for:
  - Land Use Regulations
  - Community and Economic Development Programs
  - Capital Improvement Planning

Community Goals and Objectives

- Based on Key Findings
  - Research
  - Public Input
- Should be achievable through identified strategies

Existing Characteristics and Features and Projected Trends (maps and text)

- Land Uses
- Population
- Housing Needs
- Economic Conditions
- Local Services
- Public Facilities
- Natural and Cultural Resources
- Other Characteristics

Implementation

- Description of Policies, Regulations and Other Measures for Implementation
- Public Infrastructure Strategy
- Timetable for Implementation
- Statement of Inter-jurisdictional Cooperation

Wild Land Fire Provisions (new)

- Evaluation of the potential for fire and wildland fire in the jurisdictional area
- Recommendations as to whether there is a need to:
  - delineate the wildland-urban interface; and
  - adopt regulations requiring:
    - defensible space around structures;
    - adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
    - adequate water supply for fire protection.

Growth Policy Updates

- Growth Policy Review Schedule
- Conditions Requiring Revisions and Updates to the Growth Policy

Other Requirements

- Inter-jurisdictional Cooperation
  - Cities, Counties, Tribes, Federal and state land management agencies
- Subdivision Review Statement
  - Define criteria
  - Evaluation and decision criteria
- Subdivision Public Hearing Statement
- Formal Adoption Process

Public Participation – the Key Ingredient

- General Meetings
  - Information Gathering
  - Public Review of Draft Goals, Objectives and Strategies
- Open Houses to Showcase Elements
- Focus Groups for Special elements – e.g. housing, land use, facilities
- Surveys
- Web Based Methodologies

Public Participation – Marketing

- Local Media
- Schools and Libraries
- Newspaper
  - Inserts
  - Area Briefs
  - Legal Notice(s)
- Posters
- Notice in utility bills
- Web Based Methodologies

Existing Characteristics and Projected Trends Overview

- Research and Data Gathering
- General Public Input
- Focus Groups
- Interviews

Existing Characteristics & Trends – Population

- Population- Historic, current and projected
  - Census Data – Montana Census and Economic Information Center and American Fact Finder
  - http://ceic.mt.gov/MtByNumb.asp
  - http://www.factfinder.census.gov/
  - Other Sources – NPA Data Services (link from CEIC Site) and EASI Analytic Software (fee based)
  - Woods & Poole, http://www.woodsandpoole.com (fee based)

Existing Characteristics & Trends – Housing

- Housing-Condition, Market, Availability and Affordability
  - Census Information
  - Montana Consolidated Plan (Department of Commerce)
  - Human Resource Council Programs/Senior Programs/Special Needs Housing Programs/Public Housing Authorities
  - Realtors and Rental Associations

Existing Characteristics & Trends – Economic Conditions

- Census Data
- Montana Department of Labor and Industry
- Bureau of Business and Economic Research – University of Montana
- U.S. Bureau of Economic Analysis
- Local Economic Development Authorities and Chambers of Commerce

Existing Conditions & Trends – Facilities and Services

- Public Facilities
  - Water, sewer, parks, streets, solid waste, nursing home, library, fairgrounds, courthouse, city hall
- Local Facilities & Services
  - Fire, law enforcement, health, education, social services, public transportation
- Transportation
  - Streets, bridges, traffic controls

Existing Characteristics & Trends – Maps

- Maps
  - Census Data
  - Montana State Library's Natural Resource Information System http://nris.mt.gov/
  - Land use inventory
  - USDA's MT Agricultural Statistics Services http://www.nass.usda.gov/Statistics_by_State/Montana/index.asp

Setting Goals, Objectives & Strategies

- Problem Statement (Existing Conditions and Trends)
- Goals
- Objectives
- Actions (Strategies)
- Guidelines and Standards (Evaluative Measures)
- Timeframe
- Responsibility

Non-Regulatory Implementation

- Programs
  - Housing
  - Economic Development
  - Downtown Revitalization
- Additional Planning and Analysis
  - Transportation Plan
  - Capital Improvements
  - Housing and Economic Development

Regulatory Implementation

- Subdivision
  - **76-1-606.** When a growth policy has been approved, the subdivision regulations adopted must be made in accordance with the growth policy
- Zoning
  - **76-2-201.** After 10.01.06, a county that has adopted a growth policy is authorized to adopt zoning regulations for all or parts of the jurisdictional area
  - **76-2-304.** After 10.01.06, zoning regulations must be made in accordance with a growth policy

Implementation Resources

- Local Mechanisms for funding such as SID's, general obligation bonds, general funds
- State and Federal resources
- Non-Profit resources
- Public Private Partnerships

Implementation Time Line

- Timetable for Implementation
  - Establish programs
  - Develop plans
  - Revision of Subdivision Regulations
  - Revision of Zoning Regulations
- Conditions for a Growth Policy Revision
  - % gain or loss in population
  - Gain or loss of a major employer
- Review Growth Policy at least every 5 years to determine if a revision is necessary.

Resources

- "Montana's Growth Policy Resource Book" MDOC, Community Development Division http://comdev.mt.gov/

Municipal & County Zoning in Montana

Title 76, Chapter 2
Montana Code Annotated

Senate and House Local Government Committees

Candi Beaudry, AICP
Director, Planning and Community Services Department, Billings, MT

January 15, 2009

What is Zoning?

- Legal method by which local government can divide their jurisdiction into use districts that separate incompatible uses and prevent negative impacts
- Zoning is a process
  - Create district(s)
  - Land use standards and procedures
  - Review, evaluation, and revision of regulations and development plans

Why Zone?

- Zoning districts (residential, commercial, industrial) protect the safety and stability with standards and regulations
- Establishes predictability
- Balance competing rights
- Communicate community expectations
- Prevention of problems arising from incompatible uses
- Preserves neighborhood character

Article II, Montana Constitution

- Section 3. Inalienable rights.
  - All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Enabling Legislation

- **Municipal Zoning, 76-2-302, MCA:** To advance the purposes of 76-2-301, MCA the legislative body may *"...divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land."*

- **Citizen Initiated Zoning, 76-2-101, MCA:** "*...whenever the public interest or convenience may require and upon petition...*"

- **County Zoning, 76-2-201, MCA:** "*For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.*"

Common Elements of Zoning*

- Regulations divide jurisdictions into distinct districts. May also include special districts – overlay, conservation, historic
- Each zoning district has uses that are allowed outright, with Special Review/Conditional Use approval or not permitted
- Each zoning district has requirements for minimum setbacks from property lines, maximum allowed height and lot coverage and minimum required lot area
- Regulations include supplemental standards that may address:
  - Signage
  - Landscaping
  - Alcohol sales
  - Sexually Oriented Businesses
  - Parking

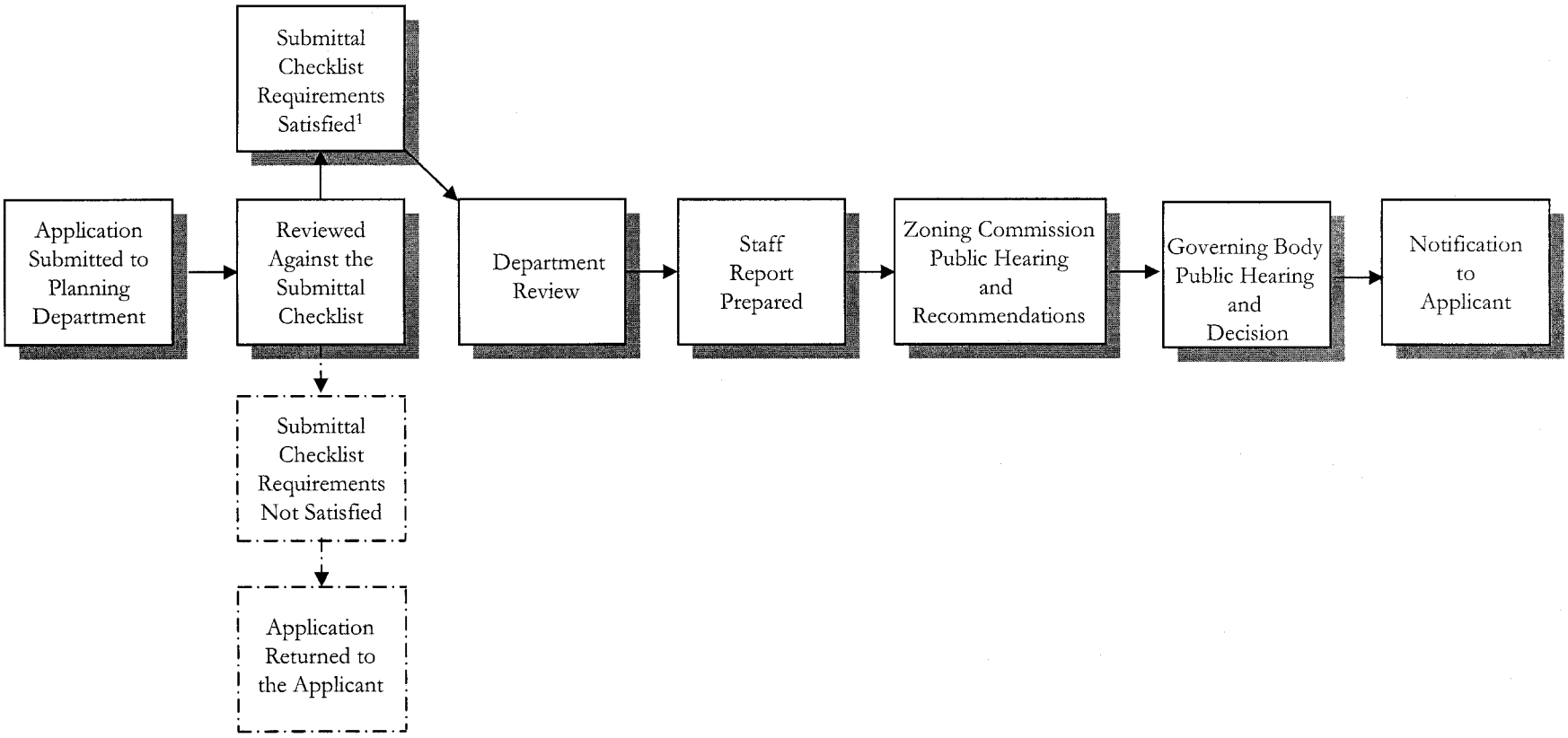
* Euclidean Zoning

Standards for Zoning Review

Twelve-Point "Lowe" Test *Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974)

(1) In accordance with a growth policy;
(2) Designed to lessen congestion in the streets;
(3) Designed to secure safety from fire, panic, and other dangers;
(4) Designed to promote health and the general welfare;
(5) Designed to provide adequate light and air;
(6) Designed to prevent the overcrowding of land;
(7) Designed to avoid undue concentration of population;
(8) Designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
(9) Gives reasonable consideration to the character of the district and its peculiar suitability for particular uses;
(10) Gives reasonable consideration to the peculiar suitability of the property its for particular uses
(11) Will conserve the value of buildings;
(12) Will encourage the most appropriate use of land throughout the municipality.

Zoning Review Process Example



Municipal Zoning
(76-2-301 thru 76-2-328, MCA)

- Adopted in 1929.
- Patterned after the Standard State Zoning Enabling Act published by the U.S. Department of Commerce in 1926.
- Authorizes cities and towns to create zoning districts and, regulate the construction of buildings and the use of land within these districts.
- Zoning regulations and map must be in accordance with an adopted growth policy.

Establishing Zoning

- Governing Body initiates action
  - Adopts Zoning Regulations:
  - Adopts an official zoning map
  - Regulations identify staff person responsible for day to day administration and enforcement of zoning regulations
  - Appoints Zoning Commission
    - Advises on zone changes, text amendments, and special reviews/conditional uses
  - Appoints Board of Adjustment or reserves some or all responsibility
    - Quasi-judicial
    - Decides on variances from regulations
    - Hears appeals regarding staff determinations

Other Zoning Provisions

- Valid Protest
  - Can force a two-thirds majority vote of legislative body to approve a zone change application
- Interim zoning
  - May be adopted as an urgency measure prohibiting uses which may conflict with contemplated zoning which the governing body is studying or intends to study within a reasonable time
  - Effective for 6 months, may be extended up to one year
- Extraterritorial Zoning and Subdivision Authority
  - Distance varies with class of city or town
  - Requires formation of a City-County Planning Board

County Zoning - Part 1, Citizen Initiated Zoning Districts

- MCA 76-2-101 et seq provides the opportunity for *affected freeholders to create a planning and zoning district* and create a planning and zoning commission (**citizen initiated**).
- Legislature enacted in 1953

County Zoning – Part 1
Adoption Process

- Legal petition by 60% of freeholders (MCA 76-2-101)
- Boundary map, Regulations, Plan (development pattern) (MCA 76-2-104(2))
- Notice to adopt posted three places within district (MCA 76-2-106)
- Public hearing for intention to adopt; 30 day protest; resolution to adopt unless a protest by freeholders representing 50% of titled property (MCA 76-2-101(5))
- Board of county commission creates a planning and zoning commission (MCA 76-2-101(1))
- Levy on the taxable value of real property (MCA 76-2-102(3)) for planning and zoning expenses.

County Zoning - Part 2 – County Zoning Districts

- MCA 76-2-201 et seq allows a County to *adopt zoning regulations for all or parts of the jurisdictional area.* (**county authorized**)
- Must have an adopted Growth Policy by 10/1/2006 for area to be zoned.
- Legislature enacted 1963

201 - Adoption Process

- Public Notice: Pursuant to MCA 76-2-205: Notice of the Planning Board public hearing on the proposed zoning district boundaries published once a week for 2 weeks in newspaper of general circulation
- Planning Board holds public hearing and forwards recommendations to Board of County Commissioners
- County Commissioners may pass a resolution of intention to create a zoning district and adopt zoning regulations (76-2-205(4), MCA)
- Publish for two weeks the passage of intention and declaration of 30-day protest period (and other notice information). (76-2-205(5), MCA)
- Within 30 days after expiration of protest period may adopt the resolution creating the zoning district and establishing regulations. (76-2-205(6), MCA) (unless successfully protested)

Similarities of 101 and 201

- Applies to unzoned and unincorporated areas (76-2-101(2); 76-2-202(1)(a), MCA)
- For the purpose of the public health and general welfare (76-2-104(2); 76-2-203(1), MCA)
- Allow continuation of legal non-conforming (76-2-105; 76-2-208, MCA)
- Action to challenge up to 5 years following adoption (76-2-101(4); 76-2-202(1)(b), MCA)
- Allow variances (76-2-106(2); 76-2-223, MCA)
- If protested, may not be considered again for zoning for a 1-year period (MCA 76-2-101(5); 76-2-205(6), MCA)

Differences of 101 and 201

- Annexation into district (76-2-117, MCA)
- Planning and Zoning Commission (76-2-102, MCA)
- Interim Zoning (76-2-206, MCA)
- Effects on natural resources - complete use, development, or recovery of any **mineral**...(76-2-209, MCA)
- Board of Adjustment (76-2-221, MCA) Planning Board (76-2-204, MCA) and County Commission (76-2-210 & 220, MCA)

Limits on Zoning

- Fair Housing Act
- Protected Free Speech
- Assembly
- Substantive and Procedural Due Process
- Access to Government
- Economic Return

Zone Changes: Items to Consider

- Growth Policy
- Spot Zoning
- 12 Point “Lowe” test
- Not conditional
- Uniformly applied

Need for a Growth Policy

- **<u>Adopt a Growth Policy</u>**. After October 1, 2006, zoning regulations may not be adopted or revised unless a Growth Policy has been adopted. (MCA 76-2-201(2) and 76-2-304(3))
- Sorry! No…Zone Map Amendments or Zoning Text Amendments
- Safe or Sorry??? Variances or Conditional Use Permits
- Safe – Land use permits and site plan approvals in compliance with existing zoning regulations

Reference Links

- Montana Code Annotated 2007
  http://data.opi.state.mt.us/bills/mca_toc/index.htm
- Montana Association of Planners
  http://www.montanaplanners.org/
- American Planning Association
  http://www.planning.org/

Subdivision Regulation and Review in Montana

Title 76, Chapter 3
Montana Subdivision & Platting Act

Senate and House Local Government Committees

Candi Beaudry,AICP
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January 15, 2009

Purpose of Regulation
76-3-102, MCA

- Promote public health, safety and welfare
- Prevent overcrowding of land
- Lessen traffic congestion
- Provide public improvements
- Develop in harmony with natural environment
- Promote preservation of open space
- Promote cluster development
- Protect private property interests
- Establish uniform monumentation and land transfer

What is Subdivision?

- Subdivision – a land division that:
  - Creates one or more parcels for conveyance
  - Parcels less than 160 acres that cannot be described as a ¼ aliquot part of a US government section
  - All parcels whether contiguous or not
  - To sell, rent, lease, or otherwise convey
  - Condominiums, RV spaces and mobile home spaces

Plat or COS?

- Plat
  - surveyed drawing depicting lots, rights of way, and easements
  - Approved by governing body
- Certificate of Survey
  - drawing of a field survey for the purpose of disclosing facts pertaining to boundary locations
  - No governing body approval (tracts)
- Both result in a legal description of property that can be conveyed

Subdivision Exemptions 76-3-201-210, MCA

- 207 – local examination and fee
  - Relocate common boundary outside platted subdivision
  - Family transfer (outside platted subdivision, once per county)
  - Exclusively for agricultural purposes (outside platted subdivision, mutual approval to reverse)
  - Five or fewer platted lots aggregation or boundary relocation
- 203
  - Condominiums constructed on land divided in compliance with parts 5 & 6 of chapter, and
  - with express contemplation of condominium construction, and
  - complied with park dedication requirements; - OR -
  - In compliance with local zoning regulations