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Subject: Fwd: questions for focus group and invite letter

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TO: Participants in Montana Smart Growth Coalition Focus Groups, March 20-24, 2000

FROM: Stuart Meck, AICP, Principal Investigator; Marya Morris, AICP, Senior Research Associate, American Planning Association, Chicago, tel. 312-431-9100

SUBJ: *Questions for Focus Groups*

DATE: March 13, 2000

As you know, the American Planning Association is conducting a study of the adequacy of Montana's planning and zoning enabling legislation for the Montana Smart Growth Coalition. Based on a review of the Montana statutes as well as the 1999 report of the Environmental Quality Council's Growth Study Subcommittee (including subcommittee minutes), we have developed a series of specific questions for discussion by the focus groups of which you are a participant. The nature of these questions indicates some of the issues we believe are presented by the statutes. We would appreciate your reviewing them in advance of the focus group meeting and, if you have a copy of the Montana Code, comparing the relevant sections of the Code with the questions. Many thanks for your assistance.

Growth Policy

1. Currently, local governments in Montana, when they prepare a "growth policy" under MCA §§76-1-601 et seq. ("growth policy" is the term for a comprehensive or master plan), do not have to incorporate any specific state policies, nor is there a formal mechanism for state agency review of such plans.

Should: (a) the state planning statutes be amended to list specific

policies that local plans must address, and, if so, what should those specific state policies be; and

(b) there be a formal mechanism for review of plans by state agencies and adjoining local governments?

2. Are the requirements for a growth policy in MCA §76-1-601 clear enough so that local governments know what to do to produce a quality document that is useful? If not, what needs to be changed? For example, the statute calls for the analysis of "housing needs," but not "affordable housing." And the statute calls for "projected trends for the life of the growth policy" for elements addressing "land use" and "local services" but not a specific plan map showing future proposed land uses as well the location of existing and proposed community facilities, including transportation.

3. Under MCA §76-1-601, if there is a "planning board" created, then the planning board must prepare and propose for adoption a growth policy, but there are no deadlines for doing so, and no consequences for legislative bodies that do not adopt a growth policy. Thus, comprehensive planning is conditionally mandatory. There have been proposals to change this. For example, the state could require certain counties and the municipalities within them that have certain levels of urban development or certain growth rates over the past decade to adopt plans as well as zoning regulations. What are the pros and cons of such a requirement?

4. MCA §§76-1-605 to 606 describe the general relationship of an adopted growth policy to zoning and subdivision, but do not describe criteria to be employed by the local government in determining consistency. If you were to propose specific criteria for determining consistency between a zoning change and a growth policy, what would they be? What would the criteria be for determining consistency between a subdivision and a growth policy?

5. If a growth policy is in place, and zoning changes must be consistent with the growth policy, should a referendum on proposed zoning changes be permitted?

Subdivision

6. Local governments in the state must adopt subdivision regulations under MCA §76-3-501, but do not have to adopt zoning ordinances. Some have suggested that this results in a situation where subdivision drives planning rather than vice-versa. What steps might be taken to either: (a) make the subdivision process the result of planning; or (b) incorporate other land-use considerations into subdivision standards, such as the adoption of minimum lot size requirements?

7. Montana statutes require, under certain circumstances, an "environmental assessment" for review of a preliminary plat of subdivision under MCA §76-3-603. The assessment must be prepared by the developer, not the local

government. How well has this worked?

8. Currently, proposed subdivisions are to be evaluated against a set of public interest criteria in MCA §76-3-608(3)(a). These criteria deal with agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety. However, if a local government adopts a growth policy that addresses these criteria, evaluates the overall impact of subdivision development against the criteria, and enacts zoning regulations that also address the criteria, then further subdivision development may be exempted from the review criteria. How well does the requirement for the review of subdivisions against the public interest criteria actually work? What other alternatives might be considered, other than incorporating the criteria into the plan?

9. MCA §76-3-610(2) prohibits a governing body and its subdivisions from imposing additional conditions on a final plat that were not imposed on preliminary plat, with the apparent consequence that a final plat must either be approved or denied. Has this language proved to be a problem and should it be changed?

10. MCA §76-3-207 exempts certain divisions of land from formal subdivision review; although they are still subject to survey requirements. These include divisions made outside of platted subdivisions for the purpose of a single gift or sale to each member of the landowner's immediate family. Should there be any changes in the types of land divisions that are exempt from subdivision review and, if so, what? Should all subdivisions of land receive some type of official review? In addition, MCA §76-3-505 and §76-3-609 apply to minor subdivision review, although they do not expressly define a "minor subdivision." In particular, §76-3-609 allows multiple minor subdivisions from the same tract of record. How well have these sections worked and should they be changed?

Zoning

11. For municipalities, MCA §76-2-305 allows owners of 25 percent or more of the area of lots included in any proposed zoning or those lots 150 feet from a lot included in a proposed change to sign a petition protesting the change. When that occurs, a zoning amendment can only be enacted by a two-thirds vote of the members of the municipal legislative body. Some have contended that this section interferes with the implementation of plans, and works against proposals for infill and mixed use development. Still others contend that it effectively delegates legislative authority to certain property owners by allowing such property owners to determine when legislation can be enacted, in a manner different than other legislation. Others contend that this disenfranchises people who do not own property.

Is this a good idea? Should it be retained and, if not, what should replace it, if anything?

12 Currently, MCA §§76-2-101 et seq. allow the creation of planning and zoning districts that constitute a portion of the area of a local government, upon petition of 60 percent of the freeholders in the area, which must be greater than 40 acres. The zoning regulations are adopted by the board of county commissioners. There is no requirement for a plan, and the regulations can differ from district to district. Some contend that this allows the protection through zoning for certain sections of the county, without the necessity of imposing zoning countywide. Others suggest that is really exclusionary, and is not much different than public enforcement of private covenants.

Is this a good idea? Should it be retained, and, if not, what should replace it, if anything?

13. Montana statutes do not detail provisions for issuance or enforcement of zoning permits, or the relationship of special exceptions (conditional uses), variances, and other types of development decisions to zoning permits. Instead, there is general authorizing language in MCA §§76-2-108, 76-2-207, 76-2-210, and 76-2-303. Should the process for issuing and enforcing such permits be more detailed, and if so, how? Should local governments be required to establish a uniform permit review system that would clarify the steps in applying for various types of permits, determining when applications are complete, and specifying time limits for decisions?

Other Issues

14. Montana does not have a statute specifically authorizing or requiring the adoption of an adequate public facilities ordinance for new development in certain areas (although there may be an implied authority under MCA §76-3-501 and §76-3-511). For example, an adequate public facilities ordinance could require central water and sewer in areas expected to urbanize outside a municipality but within its exterritorial authority.

Is this a good idea? If you agree, how might such a concept be implemented?

15. Under MCA §76-3-510, there is a general authorization for local governments to require a developer to pay for the extension of capital facilities. This appears to be like a development impact fee statute, although it is not called that, and it appears to apply only to extensions and not to overall upgrades of a facility to accommodate new development (such as expansion of a wastewater treatment plant or to the widening of a road). Should this section be modified, and, if so, how?

16. Some states have authorized a creation of a professional hearing examiner position to conduct hearings normally held by the planning commission or board of adjustment would improve the efficiency and quality of decisions and recommendations. For example, a hearing examiner could be delegated the authority to conduct a hearing for a proposed subdivision, and prepare findings

and recommendations in writing to the governing body. Alternately, a hearing examiner could hear appeals from the decision of the governing body in connection with the approval, conditional approval, or denial of a preliminary subdivision or final plat, before the matter goes to court. Is this a good idea, and, if so how should it be implemented?

17. Should Montana communities be required to evaluate their land development regulations on a periodic basis, regardless of whether they have an adopted growth policy? If so, what should this review consist of? Who should be responsible for the review?

18. What planning tools and techniques do you think Montana counties and municipalities should have that they don't have now?

19. Some have suggested that incentives rather than more regulation should encourage private landowners to implement plans. What specific incentives would do that? What specific incentives would persuade local governments in the state to prepare and update plans?

20. MCA §76-3-625 (1) allows a subdivider to sue the governing body to recover "actual damages" caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the subdivision chapter that is "arbitrary or capricious." MCA §76-3-625 (2) allows an "aggrieved party" to appeal to the district court the approval, conditional approval, or disapproval of a proposed preliminary plat or final subdivision plat. Are these sections problematic? If so, how, and how can they be modified?

21. Are there any other areas of Montana's planning and zoning statutes that need improvement. If so, what are they, and what changes do you think need to be made? For example, how well do the planning and zoning statutes relate to annexation?