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March 2, 2022

To: Ron Bartsch – Applicant, Westside Subdivision

Subject: Westside Major Phased Subdivision

At the regularly scheduled City Commission meeting on January 24, 2022, the City Commission voted to DENY the Westside Subdivision and Annexation applications.

Appeal Process: 76-3-625

76-3-625. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court 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 this chapter within 180 days of the final action, decision, order, or adoption of a regulation. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(2) (a) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located to challenge the approval, imposition of conditions, or denial of the preliminary plat.

(b) A party identified in subsection (3) who is aggrieved by any other final decision of the governing body regarding a subdivision may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located to challenge the decision.

(c) A petition allowed in subsections (2)(a) and (2)(b) must specify the grounds upon which the appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and (d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Applicable Regulations and/or statutes:

76-3-601.2.a – Submission of application and preliminary plat for review:

When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

76-3-601-2.b - Submission of application and preliminary plat for review:

When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county.

76-3-601.2.d – Submission of application and preliminary plat for review:

When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

The city is required to hold joint hearings whenever possible when a subdivision proposal is also proposed to be annexed. At that joint hearing the Helena City Commission denied the Resolution of Intent to Annex for the subject property. The proposed subdivision does not lie within the boundaries of the City of Helena. As such the City has no authority to act on the subdivision proposal.

76-3-608.3.b.ii – Local Subdivision Regulations:

the local subdivision regulations provided for in part 5 of this chapter;

A. §12-4-2(A) of the Helena City Code, Helena Subdivision Ordinance, GENERAL REQUIREMENTS FOR STREETS: Streets must be designed according to standards and requirements of the city, including, but not limited to, the city's policy as reflected in resolution 19799, requiring that the planning, design, and construction of streets work toward the goal of making streets in Helena complete streets.

B. §12-4-2(C), Blocks may not exceed six hundred feet (600') in length except when a longer length is needed to meet grade limitations, the existing built environment, water bodies or railroad crossings, or industrial uses.

The subdivision as designed does not comply with the City of Helena Subdivision Regulations. Specifically, 3 variances were denied to HCC 12-4-2.C – Block Length.

Findings of Fact:

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2021 Westside Major Phased Subdivision

The Helena City Commission considered the staff report, information submitted in the application for the preliminary plat, public comment, other related information, the subdivision review criteria set forth in §76-3-608, MCA, and the City Code of Helena including the City of Helena's Subdivision Regulations in Title 12, in evaluating the subdivision proposal. Based upon this review and after considering the applicant's preferences for mitigations of impacts from this subdivision, the Helena City Commission makes the following Findings and Conclusions:

C. Subject property is not within the city limits of Helena, Montana.

D. The Helena City Commission has no jurisdiction on land that is outside the city limits per M.C.A §76-3-601.2(A) and §76-3-601.2(B)

E. The applicant submitted applications for annexation, pre-zone, major phased subdivision, and variances to the Helena Subdivision Regulations.

F. M.C.A requires coordination of subdivision and annexation to avoid duplication of hearings.

a. 76-3-601.2.d – Submission of application and preliminary plat for review:

When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

G. The applicant submitted applications for 3 variances to §12-4-2(C) for the below block lengths.

H. §12-4-2(A) of the Helena City Code, Helena Subdivision Ordinance, GENERAL REQUIREMENTS FOR STREETS: Streets must be designed according to standards and requirements of the city, including, but not limited to, the city's policy as reflected in resolution 19799, requiring that the planning, design, and construction of streets work toward the goal of making streets in Helena complete streets.

I. §12-4-2(C), Blocks may not exceed six hundred feet (600') in length except when a longer length is needed to meet grade limitations, the existing built environment, water bodies or railroad crossings, or industrial uses.

J. Conformance to these regulations and related laws of the State of Montana is the responsibility of the subdivider. (§12-2-4 (A) – HCC)

K. Two phases of this subdivision have block lengths over 600 feet.

Phase 1: Livezey Avenue to Lee Drive. 659.52'

Phase 3: Lee Drive to Livezey Avenue. 636.61'

Phase 3: Brakeman Avenue to Brakeman Court. 922.49'

L. The above block length variances were unanimously denied by the City Commission.

M. While MCA 76-3-601.2.d requires the City Commission to “coordinate the subdivision review and annexation procedures, 76-3-605(2), MCA further requires that “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.” Because the requested variances to the subdivision were denied, the City Commission was unable to approve the annexation because the design of the subdivision could not be approved in its current form.

N. The Helena City Commission unanimously denied the application for annexation.

Conclusion:

1. The subdivider did not meet the burden of proving the following:

a. Granting of the variance will not be detrimental to the public health, safety, or general welfare, or injurious to other adjacent properties;

b. Literal enforcement of the provisions of these regulations will result in unnecessary hardship due to particular physical surroundings, shape, or topographical conditions that are unique to the specific property involved and that cannot be reasonably resolved by redesigning the subdivision proposal;

c. The variance will not cause a substantial increase in public costs; and

d. The variance conforms to the growth policy and this Code.

1. Subject property is not within the city limits of Helena, Montana.

2. The Resolution of Intent to Annex was denied.

3. The variances to the City of Helena Subdivision Regulations were denied.

4. The Helena City Commission has no jurisdiction on land that is outside the city limits per M.C.A §76-3-601.2(A) and §76-3-601.2(B)

Based on the above findings and conclusions the Helena City Commission unanimously denied the application for preliminary plat for the Westside Major Phased Subdivision.

Regards,

A handwritten signature in cursive script, appearing to read "W. Collins", written in black ink. The signature is fluid and extends across the width of the page.

Wilmot Collins

Mayor, City of Helena