

**JOURNAL OF SPECIAL WORK SESSION
OF THE
GREAT FALLS PLANNING ADVISORY BOARD/ZONING COMMISSION
January 29, 2014**

CALL TO ORDER: 6:00 p.m. in the Gibson Room of the Civic Center

ROLL CALL & ATTENDANCE:

Planning Advisory Board:

Ms. Dana Ball
Mr. Scot Davis
Dr. Heidi Pasek
Ms. Cheryl Patton
Ms. Sophia Sparklin
Mr. Mark Striepe
Mr. Wyman Taylor

Design Review Board:

Mr. Jule Stuver

Historic Preservation Commission:

Robert Milford
Jane Weber
Carol Bronson

Neighborhood Councils:

Kelly Manzer, Council 2
Shyla Patera, Council 2
Richard Calsetta, Council 3
Terry Thompson, Council 3
Dan Payne, Council 4
Eric Ray, Council 5

Planning & Community Development (P&CD) staff:

Mr. Craig Raymond, CBO, Director P&CD
Mr. Lee Nellis, FAICP, Deputy Director P&CD
Ms. Ellen Sievert, HPO
Ms. Galen Amy, Planner II
Mr. Gregg Benson, Planner I
Mr. Andrew Finch, Sr. Transportation Planner
Mr. Charlie Sheets, CFM
Ms. Phyllis Tryon, Sr. Administrative Assistant

Others present:

City Commission Bill Bronson
Jennifer Rowell, Great Falls Tribune
Mark Sage

PRESENTATION AND DISCUSSION:

Lee Nellis, FAICP, Deputy Director of P&CD, provided a PowerPoint presentation on the Foundations for Land Use Regulation. The presentation is incorporated in the minutes. Mr. Nellis explained that staff would review specific problem areas in the Land Development Code relating to Planned Unit Developments (PUDs) and clarity of procedures and definitions. He said staff would like to form four ad hoc committees to address the particular concerns for each of the following areas:

Residential In-fill
Commercial Corridors
Medical District
Industrial Land Supply

All present were invited to participate on the ad hoc committees. Mr. Nellis entertained questions throughout the presentation.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further business, the work session was adjourned a 7:30 p.m. and those present signed up for ad hoc committees.

POWERPOINT PRESENTATION:

Slide 1



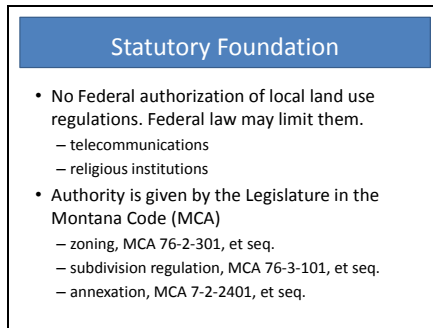
Slide 2



On what authority is local land use regulation based? How is it limited?

- **Legal Foundations**
 - Statutes of the U.S. and, mostly, Montana
 - Constitutions of the U.S. and Montana
 - U.S. and Montana court decisions
- **Policy Foundations**
 - *Imagine Great Falls* (the city's growth policy)
 - other planning documents: downtown, medical district, west bank

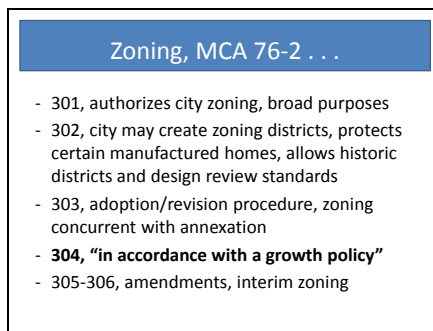
Slide 3



Statutory Foundation

- No Federal authorization of local land use regulations. Federal law may limit them.
 - telecommunications
 - religious institutions
- Authority is given by the Legislature in the Montana Code (MCA)
 - zoning, MCA 76-2-301, et seq.
 - subdivision regulation, MCA 76-3-101, et seq.
 - annexation, MCA 7-2-2401, et seq.

Slide 4



Zoning, MCA 76-2 . . .

- 301, authorizes city zoning, broad purposes
- 302, city may create zoning districts, protects certain manufactured homes, allows historic districts and design review standards
- 303, adoption/revision procedure, zoning concurrent with annexation
- **304, "in accordance with a growth policy"**
- 305-306, amendments, interim zoning

Slide 5

Zoning, MCA 76-2 . . .

- 307, zoning commission, in GF the PAB serves as the zoning commission, which deals with amendments, map and text
- 308-309 enforcement, conflict of laws
- 310-12, city may adopt extraterritorial zoning IF the county has none
- 315, violations, penalties
- 321-322, establishes a Board of Adjustment

Slide 6

Zoning, MCA 76-2 . . .

- 323, powers of the BOA – a quasi-judicial body
 - City Commission may serve as BOA
 - appeals, special exceptions, variances (which are really just a specific type of appeal), sets criteria for variances
- 324-328, BOA procedures, appeal is to Court
- 340, exempts amateur radio towers

Slide 7

Types of Decisions

- **Quasi-judicial, the review of individual cases**
 - appeals (BOA's decisions) are quasi-judicial
- **Legislative, adoption of policies for everyone**
- **Subject to different levels of scrutiny in the courts, deference to legislative decisions**
- **Making decisions that affect a single land owner quasi-judicial generally improves the results.**
 - zoning map amendments, subdivisions

Slide 8

Special Exceptions - Variances

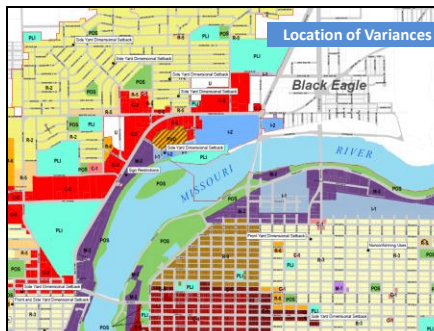
- Sources of poor public perceptions land use regulation. "Special treatment."
- Great Falls has not recently (and will not) use the special exceptions language.
- Variances may be granted if special conditions create unnecessary hardship. They must not be contrary to the public interest and must be in the spirit of the ordinance.

Slide 9

Special Exceptions - Variances

- What are special conditions? Unique to the parcel. Not self-imposed.
- What is unnecessary hardship? Where a conforming use is **not possible** without the variance.
- Consistent grant of variances for the same reason is a symptom of problems with the code. Will guide some proposed revisions.

Slide 10



Slide 11

Zoning, MCA 76-2 . . .

- 401-402, applicability to public agencies
- 411-412, limits regulation of foster homes, group homes, day care homes
- 901-903, limits regulation of agriculture

Slide 12

Subdivisions, MCA 76-3 . . .

- **MT has a complicated system of regulating of land division. Why?**
- **There is little effective zoning in rural areas, so subdivision regulations are used to attempt to do what zoning is intended to do.**
- **This makes processing of subdivisions by cities that have effective zoning more difficult than it ought to be.**

Slide 13

Subdivisions, MCA 76-3 . . .

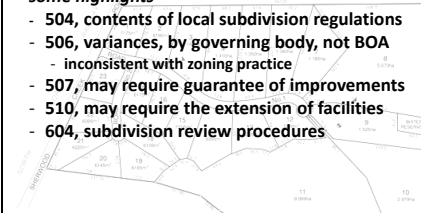
- **101-210, definitions, exemptions**
- **301-307, lot sales, platting**
- **401-411, surveying**
- **501-625 enable and limit local subdivision regulations**
- **MCA 76-4-101, et seq., state regulation of subdivisions**

Slide 14

Subdivisions, MCA 76-3 . . .

some highlights

- 504, contents of local subdivision regulations
- 506, variances, by governing body, not BOA
 - inconsistent with zoning practice
- 507, may require guarantee of improvements
- 510, may require the extension of facilities
- 604, subdivision review procedures

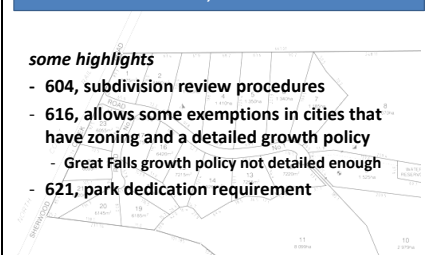


Slide 15

Subdivisions, MCA 76-3 . . .

some highlights

- 604, subdivision review procedures
- 616, allows some exemptions in cities that have zoning and a detailed growth policy
 - Great Falls growth policy not detailed enough
- 621, park dedication requirement

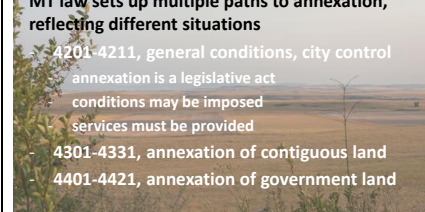


Slide 16

Annexation, MCA 7-2 . . .

MT law sets up multiple paths to annexation, reflecting different situations

- 4201-4211, general conditions, city control
 - annexation is a legislative act
 - conditions may be imposed
 - services must be provided
- 4301-4331, annexation of contiguous land
- 4401-4421, annexation of government land



Slide 17

Annexation, MCA 7-2 . . .

- 4501-4511, annexation of enclaves
- 4601-4625, annexation by petition
- 4701-4761, annexation with services

The slide features a background image of a vast, flat landscape under a clear sky, with some greenery in the foreground.

Slide 18

Constitutional Foundation & Limits

- Montana Constitution

Section 3. Inalienable Right. . . . the right to a clean and healthful environment . . . Acquiring, possessing, and defending property . . . In enjoying these rights, **all persons recognize corresponding responsibilities.**

Sections 5, 7, 8, 9, 17. These sections establish rights of religion, speech, participation, and due process

The slide features a background image of the Montana state flag.

Slide 19

U.S. Constitution

- The most important challenges to land use regulations are grounded in the Bill of Rights.
- First Amendment, freedom of religion, speech
- Fifth Amendment, due process and takings
- Fourteenth Amendment applies due process clause to the states
- The Constitution also sets up equal protection and delegation of power challenges

The slide features a background image of the U.S. Constitution document.

Slide 20

The Bill of Rights & Land Use

- First Amendment, Religion
 - regulation of churches, Religious Land Uses and Institutionalized Persons Act (RLUIPA)
 - 1) no substantial burden, 2) have a compelling governmental interest, 3) use least restrictive means available
- First Amendment, Speech
 - regulation of adult uses
 - 1) can regulate place, manner, 2) cannot ban from community, 3) must leave open alternatives to the speaker, a reasonable opportunity

Slide 21

The Bill of Rights & Land Use

- First Amendment, Speech
 - regulation of signs
 - can regulate time, place, manner if 1) content is not regulated, 2) narrowly tailored, 3) serve a significant government interest, and 4) there are alternative channels of communication
- Fifth Amendment, Due Process
 - two types of due process, procedural and substantive – **the keys to a defensible code**

Slide 22

Due Process

- Procedural Due Process
 - a reasonable opportunity to be heard, including reasonable notice and access to information, as well as an opportunity to speak, right to appeal
- Substantive Due Process
 - government decisions must be guided by written standards
 - this does not eliminate discretion, but does put bounds on it

Slide 23

Other Constitutional Challenges

- Delegation of Powers
 - cannot delegate city's power to neighbors
- Equal Protection
 - no discrimination
 - uniform standards within districts, categories

Slide 24

The Policy Foundation

- **A plan. In Montana a "growth policy" is required before the city can regulate land use.**
- **Long before that requirement, in 1981, the MT Supreme Court emphasized the importance of planning:**
 - The Statutes are clear enough to send the message that in reaching zoning decisions, the local governmental unit should at least substantially comply with the comprehensive plan [nowadays, the growth policy].

Slide 25

The Policy Foundation

- Decisions must be demonstrably consistent with the growth policy.
 - Why have a plan if the local governmental units are free to ignore it at any time?
MT Supreme Court
- It is also worth noting that a more complete growth policy could speed approval of some developments (MCA 76-3-616)

Slide 26

Imagine Great Falls

- What is in Great Falls' growth policy that provides a foundation for revising our land use regulations?
- What's in the more detailed supporting plans for downtown, Medical District, West Bank?
- A LOT!

Slide 27

Policy Direction for Code Revisions

broad policy themes that are repeated

- promote diverse housing choices
- promote mixed-use development
- promote infill, redevelopment, re-use
- have adequate public facilities, in place

Slide 28

Policy Direction for Code Revisions

- promote safe walking, bicycling
- encourage urban amenities
- ensure industrial land supply
- streamline project review

Slide 29



Slide 30

Policy Direction for Code Revisions

more specific guidance

- lighting ordinance
- historic district regulations
- PUD provisions
- town home regulations
- storm water regulations
- spot zoning (zoning map amendments)
- nuisance (noise, glare, etc.) standards

Slide 31

Policy Direction for Code Revisions

more specific guidance

- non-conforming uses
- incentives for clean energy
- **Protect Missouri River, river views**

A photograph showing a scenic view of a river with a stone bridge. Two people are walking on the bridge. The background shows trees and a clear sky.

Slide 32



Slide 33

Five Tasks

- Staff revisions of specific problem areas in the code, for example PUDs, clarity of procedures, definitions . . .

Volunteer Work Groups for Major Topics

- Residential In-Fill
- Commercial Corridors
- Medical District
- Industrial Land Supply
- ?