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Legal Opinion 2008-008

TO: Mayor John Engen; City Council; Bruce Bender, Chief Administrative Officer; Roger Millar, OPG Director; Mike Barton, OPG; Denise Alexander, OPG; Mary McCrea, OPG; Jennie Dixon, OPG; Jim Worley, OPG; Michelle Reinhart, OPG; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Doug Harby, Public Works; Carla Krause, Public Works

CC: Legal Staff; City Clerk's Office

FROM: Jim Nugent, City Attorney

DATE June 9, 2008

RE: Subsequent subdivision public hearings for consideration of information that is new, relevant, and credible.

FACTS:

During the Wednesday morning May 28, 2008 City Council plat annexation and zoning (PAZ) committee, City Council Committee Chairperson Bob Jaffe requested information about the subsequent subdivision public hearings for consideration of new information.

ISSUE:

What are the statutory criteria to be established in order to schedule an additional subdivision public hearing for the consideration of new evidence?

CONCLUSION:

Pursuant to subsection 76-3-615(2)(b)MCA, a city council may establish a subsequent subdivision public hearing to consider new information for which the city council as governing body determines that either public comment or documents presented to the governing body constitute "new information regarding subdivision application that has never been submitted as evidence or considered by either the governing body or agency at a hearing during which the subdivision application was considered.

LEGAL DISCUSSION:



Title 76 chapter 3 MCA is entitled the "Montana Subdivision and Platting Act." Part 3 of Title 76, Chapter 3 is entitled "Local Review Procedure." Section 76-3-615 MCA in that part is entitled "subsequent hearings—consideration of new information—requirements for regulations."

Section 76-3-615 MCA provides as follows:

76-3-615. Subsequent hearings -- consideration of new information -- requirements for regulations. (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or documents presented to the governing body at a hearing held pursuant to 76-3-605 constitute:

(a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered.

(3) If the governing body determines that the public comments or documents constitute the information described in subsection (2)(b), the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision. (Emphasis added.)

See subsections 76-3-615(2) and (3)(b)MCA.

Pursuant to section 76-3-615 MCA, it statutorily appears that the following factual circumstances must exist in order for the city council as a local governing body to determine that there should be a subsequent subdivision public hearing to consider new information pertaining to a subdivision application.

1. The governing body shall determine;
2. whether public comments or documents presented to the governing body at a public hearing on the subdivision application constitute;

3. new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent at a hearing during which the subdivision application was considered;

4. as long as the governing body does not determine that the new information is neither relevant nor credible to their review of the subdivision application.

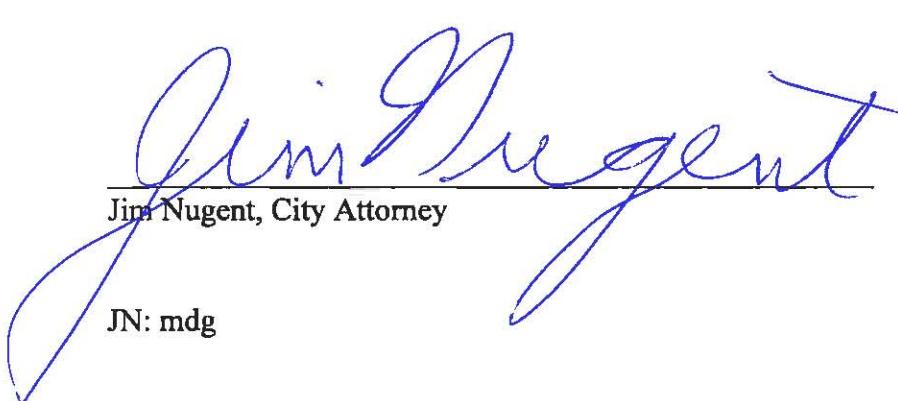
If the city council as a governing body determines that the public comments or documents presented to the governing body do potentially constitute relevant and credible new information, a majority of the city council governing body may determine to schedule a subsequent subdivision public hearing to consider "only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision." See subsection 76-3-615(3)(b) MCA.

If a subsequent subdivision public hearing is scheduled to consider new information, then subsection 76-3-615(4) MCA statutorily identifies how the subdivision application review process is statutorily delayed to absorb the subsequent public hearing to consider new information.

CONCLUSION:

Pursuant to subsection 76-3-615(2)(b)MCA, a city council may establish a subsequent subdivision public hearing to consider new information for which the city council as governing body determines that either public comment or documents presented to the governing body constitute "new information regarding subdivision application that has never been submitted as evidence or considered by either the governing body or agency at a hearing during which the subdivision application was considered.

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JN: mdg