

STAFF REPORT & REFERRAL

Agenda item: Rezone 2103, 2103 ½, 2105, and 2105 ½ River Road from RT10 (Residential 10 Two-Unit / Townhouse) to RT5.4 (Residential 5.4 Two-Unit / Townhouse).

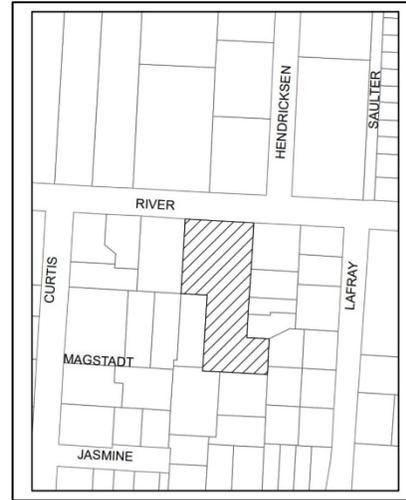
Report Date(s): 4/13/2021

Case Planner: Dave DeGrandpre, Land Use Supervisor

Report Reviewed & Approved By: Mary McCrea, Permits and Land Use Manager

Public Meetings & Hearings:
Planning Board (PB) hearing: 4/20/2021
City Council (CC) 1st reading: 4/26/2021
City Council hearing: 5/10/2021
Land Use & Planning Committee: 5/12/2021
City Council final consideration: 5/17/2021

Applicant & Fee Owner: DLE Investments, LLC
 327 S. East Street
 Missoula, MT 59802



Location of request: On the south side of River Road between North Curtis Street and LaFray lane in the River Road Neighborhood Council and City Council Ward 6.

Legal description: That part of Lot 24 of Cobban and Dinsmore's Orchard Homes Subdivision and a parcel of land lying in Lot 24 of Cobban and Dinsmore's Orchard Homes Addition located in Section 20, Township 13 North, and Range 19 West, P.M.M.

Legal ad: The legal ad was published in the *Missoulian* on April 4, 2021 and April 11, 2021. The site was posted on April 5, 2021. Adjacent property owners and the physical addresses within 150 feet of the site were notified by first class mail on March 31, 2021.

Current Zoning: RT10 (Residential 10 Two Unit / Townhouse)

Growth Policy: The applicable regional plan is *Our Missoula: City Growth Policy 2035* which recommends a land use designation of Residential Medium Density, 3 – 11 Units Per Acre. This designation is intended to fit with many already established residential neighborhoods and acknowledge the single dwelling residential building type as the primary use with the potential for accessory dwellings as well.

Surrounding Land Uses	Surrounding Zoning
North: Detached and two-unit residences	RT10 (Residential 10 Two Unit / Townhouse)
South: Detached and two-unit residences	RT10 (Residential 10 Two Unit / Townhouse)
East: Detached and two-unit residences	RT10 (Residential 10 Two Unit / Townhouse)
West: Detached residences	RT10 (Residential 10 Two Unit / Townhouse)

STAFF RECOMMENDATION

Approve the adoption of an ordinance to rezone the subject property located at 2103, 2103 ½, 2015, and 2105 ½ River Road and legally described as that part of Lot 24 of Cobban and Dinsmore's Orchard Homes Subdivision and a parcel of land lying in Lot 24 of Cobban and Dinsmore's Orchard Homes Addition located in Section 20, Township 13 North, and Range 19 West, P.M.M from RT10 (Residential 10 Two-Unit / Townhouse) to RT5.4 (Residential 5.4 Two-Unit / Townhouse).

RECOMMENDED MOTIONS

PB p/h: 4/20/2021	Approve the adoption of an ordinance to rezone the subject property located at 2103, 2103 ½, 2015, and 2105 ½ River Road and legally described as that part of Lot 24 of Cobban and Dinsmore's Orchard Homes Subdivision and a parcel of land lying in Lot 24 of Cobban and Dinsmore's Orchard Homes Addition located in Section 20, Township 13 North, and Range 19 West, P.M.M from RT10 (Residential 10 Two-Unit / Townhouse) to RT5.4 (Residential 5.4 Two-Unit / Townhouse) based on the findings of fact in this staff report.
CC first reading: 4/26/2021	[First reading and preliminary adoption] Set a public hearing on May 10, 2021 and preliminarily adopt an ordinance rezoning the subject properties located at 2103, 2103 ½, 2015, and 2105 ½ River Road and legally described as that part of Lot 24 of Cobban and Dinsmore's Orchard Homes Subdivision and a parcel of land lying in Lot 24 of Cobban and Dinsmore's Orchard Homes Addition located in Section 20, Township 13 North, and Range 19 West, P.M.M from RT10 (Residential 10 Two-Unit / Townhouse) to RT5.4 (Residential 5.4 Two-Unit / Townhouse) and refer this item to the Land Use and Planning Committee for presentation on May 12, 2021.
CC p/h: 5/10/2021	Public hearing – Staff and applicant presentations, public comment, no motions
LUP: 5/12/2021	Discussion only – post public hearing
CC: 5/17/2021	[Second and final reading] (Adopt/Deny) an ordinance to rezone the subject property located at 2103, 2103 ½, 2015, and 2105 ½ River Road and legally described as that part of Lot 24 of Cobban and Dinsmore's Orchard Homes Subdivision and a parcel of land lying in Lot 24 of Cobban and Dinsmore's Orchard Homes Addition located in Section 20, Township 13 North, and Range 19 West, P.M.M from RT10 (Residential 10 Two-Unit / Townhouse) to RT5.4 (Residential 5.4 Two-Unit / Townhouse) based on the findings of fact in this staff report.

I. INTRODUCTION

Development Services has received a request from Paul Forsting of IMEG Corp., representing DLE Investments, LLC, to rezone the subject property at 2103, 2103 ½, 2015, and 2105 ½ River Road from RT10 (Residential 10 Two-Unit / Townhouse) to RT5.4 (Residential 5.4). The requested RT5.4 zoning district is a standard one that applies equally to other areas of the City with the same RT5.4 zoning designation. City Council either approves or denies the rezoning request and cannot approve it subject to conditions.

RT10 and RT5.4 allow for similar residential building types and the same land uses, property line setbacks, and building heights. The main difference between the two districts is RT10 has a minimum parcel size and minimum area per unit of 10,000 square feet, while RT5.4 has a minimum parcel size and minimum area per unit of 5,400 square feet. This means the RT5.4 zoning district allows for higher density residential development than the RT10 zoning district.

Staff has reviewed the applicant's rezoning submittal packet and bases the recommendation of approval on the following findings of fact:

II. REZONING REVIEW CRITERIA

Findings of fact:

General

1. The property is approximately 38,420 square feet in size and contains four existing dwelling units – three conventional homes and one mobile home. According to the owner, all of the homes are currently occupied. No new development or redevelopment has been proposed.
2. The property is located in a developed area of Missoula between Russell Street and Reserve Street and is surrounded by detached and two-unit residences.
3. The subject property is inside the Urban Growth Area, the Wastewater Facilities Service Area, the Air Stagnation Zone.
4. The four homes are served by private septic systems and a shared well. (Septic systems are common in this part of Missoula.) City water and sewer mains are available along River Road. Upon redevelopment, homes would be required to connect to City sewer. Use of the existing water system may continue until failure, but no new wells can be developed on the property.
5. The property is part of City Council Ward 6 and the River Road Neighborhood Council area.
6. The property is located within an established service area for Missoula hospitals and the City Fire and Police Departments. The nearest fire hydrant is located approximately 300 feet to the west at the intersection of River Road and North Curtis Street.
7. LaFray Park is approximately 0.16 miles to the southeast of the property and is accessible via sidewalk.
8. The property is located within the attendance boundaries of Hawthorne Elementary, C.S Porter Middle School, and Big Sky High School.
9. There are no steep slopes on the property. The parcel is in FEMA Flood Zone X, an area of minimal flood hazard risk.

Growth Policy:

10. The applicable regional plan is the *Our Missoula: City Growth Policy 2035*, which recommends a land use designation of Residential Medium Density, 3 – 11 dwelling units per acre. This land use designation is intended to fit with many already established residential neighborhoods to acknowledge the single dwelling residential building type as the primary use with the potential for accessory dwellings as well.
11. The City Growth Policy indicates the following districts are most closely aligned with the Residential Medium Density designation: RT10 (Residential 10 Two-Unit / Townhouse), R8 (Residential 8), R5.4 (Residential 5.4), and RT5.4 (Residential 5.4 Two-Unit / Townhouse). These four zoning districts permit a variety of lower intensity residential supportive land uses such as day cares, schools, areas for religious assembly, and community gardens.
12. The property is currently zoned RT10 (Residential 10 Two-Unit / Townhouse). The applicant is requesting to rezone the subject property to RT5.4 (Residential 5.4). Both of these designations are consistent with the Growth Policy recommendation for the Residential Medium Density land use designation.
13. The City Growth Policy calls for a focus inward approach to encourage infill development in the urban core where infrastructure already exists and promotes mixed-use, compact development, and enhanced connectivity while limiting sprawl and promoting efficient use of existing infrastructure.
14. The *Community Design* section of the City Growth Policy encourages building where there is existing infrastructure, as is the case here.
15. The *Housing* section of the City Growth Policy describes the Focus Inward approach to development as one that provides opportunities by designating appropriate areas for higher density and housing near existing infrastructure and services. The Growth Policy states such development has added benefits, including decreasing household expenses like transportation.
16. The *Safety and Wellness* section of the City Growth Policy encourages healthy lifestyles by promoting a complete active transportation network to increase safety for all transportation systems including vehicular and active transportation. As discussed in the Transportation section below, although River Road does not currently have

designated pedestrian and bicycle facilities, developing active transportation facilities along this road is a recommended project in the draft 2050 Long-Range Transportation Plan.

Zoning

17. The property and surrounding area is zoned RT10 (Residential 10 Two-Unit / Townhouse). The applicant is requesting to rezone the subject property to RT5.4 (Residential 5.4).
18. Given the approximate 38,420 square foot size of the property, the existing RT10 zoning district, which has a minimum parcel size and minimum parcel area per unit of 10,000 square feet, would allow 3 dwelling units. Four dwelling units are currently located on the property, making it out of compliance with the RT10 zoning. (The four homes average 9,605 square feet of parcel area per unit instead of the required 10,000 square feet.) Under Title 20 Section 20.80.010, this is considered a pre-existing non-conforming use and is allowed to continue subject to certain limitations.
19. In the requested RT5.4 zoning district, the minimum parcel size and minimum area per unit is 5,400 square feet. The 38,420-square foot property would allow up to 7 dwelling units and bring the property into compliance with the zoning density.
20. Both the existing RT10 zoning district and the proposed RT5.4 zoning district allow detached houses, lot line houses, two- unit townhouses, mixed-use buildings, and Townhome Exemption Developments. The RT10 zoning district also allows three-unit townhouses.
21. The setbacks are the same for the existing RT10 and the proposed RT5.4 zoning districts: 20-foot front and rear setbacks, 10-foot street-side setbacks, and 7.5-foot or 1/3 of the building height interior side setbacks, whichever is greater. The maximum building height permitted in both districts is 30 feet, or up to 35 feet with a roof pitch steeper than 8 in 12.
22. The main difference between the two zoning districts is RT10 has a minimum parcel size and minimum area per unit of 10,000 square feet, while RT5.4 has a minimum parcel size and minimum area per unit of 5,400 square feet.
23. Any new development on the subject property will be required to meet all applicable portions of Title 12 & Title 20, as required by the Missoula Municipal Code, including sanitation and building setbacks.

Transportation

24. The subject property has frontage on River Road, which is classified as a Major Collector. The homes are accessed from an unnamed, shared private road.
25. Missoula Mountain Line Route 2, which runs approximately every 15 minutes from 7 a.m. to 6 p.m. on weekdays and every 60 minutes from 10 a.m. to 6 p.m. on Saturdays, is located approximately 0.6 miles east of the subject property along Russell Street. There is limited sidewalk and no designated bicycle route along River Road from the property to Russell Street.
26. The draft 2050 Long-Range Transportation Plan recommends creating a 'complete street' from Russell Street to Reserve Street including bicycle, pedestrian, and streetscape improvements. Funding is not yet in place and it is not clear when these improvements will be made.
27. The Milwaukee Trail, a City-maintained shared use path that can be used to access the downtown and other parts of Missoula, is located approximately 0.4 miles south of the property and can be accessed from Curtis Street. The majority of Curtis Street has pedestrian facilities.
28. Any new development on the subject property will be required to meet all applicable portions of Title 12 & Title 20, as required by the Missoula Municipal Code, including installation of a bicycle lane, curb, boulevard, and sidewalk as well as private street improvements.

Spot Zoning

All of the land surrounding the subject property is zoned RT10 so it is important to consider whether this rezoning would constitute illegal spot zoning and therefore might be prohibited based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions. Below are the three spot zoning criteria

and an evaluation of whether rezoning the property to RT5.4 would constitute illegal spot zoning. Generally, for illegal spot zoning to occur, all three factors would have to be met.

1. *Is the requested use (or zoning) significantly different from the prevailing use in the area?*

No - The prevailing land use in the area is residential, primarily detached and two-unit homes. The existing RT10 zoning district allows detached houses, lot line houses, two- and three-unit townhouses and mixed-use buildings. The proposed RT5.4 district allows detached houses, lot line houses, and mixed-use buildings. Based on this information, the requested use (or zoning) does not appear to be significantly different than the prevailing use in the area.

2. *Is the area in which the requested use is to apply rather small with regard to the number of separate landowners benefited by the proposed change?*

Yes – only the applicant would benefit from the proposed rezoning.

3. *Would the requested change amount to special legislation or preferential treatment designed to benefit only one or a few persons at the expense of the surrounding landowners or the general public?*

No – although the rezoning would benefit only the applicant, the City Growth Policy calls for this area to be developed with medium density housing at a scale of 3 – 11 dwelling units per acre and provides four zoning districts, including the requested RT5.4, to help implement that vision. The RT5.4 district provides for residential development at a similar, but slightly higher, scale than the surrounding lots. The property is currently developed with four homes. The RT5.4 zoning would allow up to seven, within the recommended density set by the growth policy, which is the City's primary policy document for guiding growth and development in the public interest. Therefore, there is no reason to believe that rezoning the property to RT5.4 would be made at the expense of surrounding landowners or the general public.

Conclusions of Law:

1. *Whether the zoning is made in accordance with a growth policy;*

1. The proposed rezoning is made in accordance with the Growth Policy because the RT5.4 district is a 'current relatable district' of the Residential Medium Density future land use map designation.
2. The rezoning helps to support with the 'focus inward' guidance provided in growth policy.

2a. *Whether the zoning is designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; 2b. Whether the zoning considers the effect on motorized and non-motorized transportation systems;*

1. The rezoning facilitates the adequate provision of transportation and sewerage because it would allow for redevelopment that would trigger requirements for boulevard and sidewalk, drainage, a bike lane, private road improvements, and connection to City sewer. If redevelopment were in the form of a Townhome Exempt Development, park and open space requirements would also apply. LaFray Park is located within walking distance of the property. The effect on City water, schools, and other public requirements appears to be neutral.
2. The rezoning gives reasonable consideration to the effect on motorized and non-motorized transportation systems because the property is within the Missoula Urban Transportation District, is served by public transit, is located on a street where non-motorized improvements are planned, and is located approximately 0.4 miles from the Milwaukee Trail which can be used to travel to other parts of the City.

3. *Whether the zoning considers the promotion of compatible urban growth;*

1. The rezoning reflects compatible urban growth because it permits residential development at a similar – but slightly higher – scale than surrounding residential development.
2. The rezoning promotes compatible urban growth because it helps to implement the focus inward approach of the City Growth Policy and provides for increased density while promoting efficient use of existing infrastructure.

4a. Whether the zoning is designed to promote public health, public safety, and the general welfare; 4b. Whether the zoning is designed to secure safety from fire and other dangers; 4c. Whether the zoning considers the reasonable provision of adequate light and air; 4d. Whether the zoning conserves the value of buildings and encourages the most appropriate use of land throughout the jurisdictional area;

1. The rezoning will promote public health, public safety, and the general welfare by providing for residential uses in an area with access to public sewer, water, emergency services, streets, schools, and other urban services.
2. Emergency services are available to the site. Law enforcement personnel and facilities are available to address potential problems of noise, property damage, or personal injury. Fire protection is also available to the site.
3. This rezoning will not adversely impact the provision of adequate light and air as all future development will meet required internal and external building code and zoning requirements for building heights, ventilation, and other elements.
4. This rezoning encourages the most appropriate use of the land because it would allow for redevelopment as envisioned in the Growth Policy.

5. Whether the zoning considers the character of the district and its peculiar suitability for particular uses;

1. The rezoning to RT5.4 is suitable for the subject property and gives reasonable consideration to the character of the district because it permits the same and similar residential building types as currently developed in the surrounding neighborhood.
2. The rezoning considers the location and character of the property, which has easy access to urban infrastructure and services in Missoula.

6a. Whether the proposed zoning amendment corrects an error or inconsistency in the zoning ordinance or meets the challenge of a changing condition; 6b. Whether the proposed zoning amendment is in the best interests of the city as a whole.

1. The zoning amendment is a map amendment and not a text amendment, so there is no change to the Title 20 zoning ordinance that would correct an error or inconsistency. It would provide for an incremental increase in housing, which is in great demand in Missoula.
2. The rezoning is in the best interest of the city as a whole because the rezoning implements the recommendations of the 2035 Our Missoula City Growth Policy for areas designated Residential Medium Density 3 – 11 dwelling units per acre. The RT5.4 zoning designation is listed in the Growth Policy as currently relatable to lands with the Residential Medium Density land use designation.

7. Would approval of the zoning amendment constitute illegal spot zoning?

1. Approval of the zoning amendment would not constitute illegal spot zoning because the RT5.4 district allows types of housing that are consistent with the prevailing land use pattern of detached and two-unit homes in the area. Additionally, the amendment would not be made at the expense of surrounding landowners or the general public because it would be in accordance with the future land use map and 'grow inward' guidance provided in the growth policy, which is the primary City policy document intended to guide growth and development in the public interest.

III. AGENCY COMMENT

Missoula Valley Water Quality District:

"No concerns or objections from the Water Quality District." Travis Ross, Environmental Health Specialist. March 25, 2021.

City – County Health Department:

"The Air Program at the Missoula City-County Health Department has no comments on the 2103 River Road rezone request." Ben Schmidt, Air Quality Specialist. March 24, 2021

City Parks & Recreation Department:	Agency comment has not been received.
City Attorney:	Agency comment has not been received.
Missoula Redevelopment Agency:	Agency comment has not been received.
City Police:	Agency comment has not been received.
City Fire:	Agency comment has not been received.
Montana Department of Transportation:	“Thanks for the opportunity to comment on the rezone application. I have no highway related comments or concerns.” Glen Cameron. March 25, 2021.
Community Planning, Development and Innovation:	Agency comment has not been received.
City Public Works and Mobility:	<p>“Thank you for the opportunity to comment on the 2103 River Road rezone. The proposed rezone does (support) transportation goals by developing at higher densities closer to the urban core and associated infrastructure. Although the subject property is adjacent to River Road as stated in section 2a of the review criteria, transit opportunities to access the site are over a half a mile away. There is also concern lack of sidewalk connectivity in the area will impede the utilization of transit services on Russell Street and other transportation options such as biking and walking. However, there is good sidewalk connectivity to the east to access LaFray Park and also to non-motorized connections to the south toward Montana and Wyoming Streets. These connections offer initial connectivity that can be improved with future development or public improvement projects. The rezone should consider the City’s complete street policy to address safety as the River Road area is developed. Adequate ROW should be provided to ensure future complete streets projects can be constructed along River Road, as recommended in the Long Range Transportation Plan.” Jon Sand, Assistant Transportation Planner. April 5, 2021</p> <p>“I don’t have any comments regarding the rezone per se. However, the developers should be aware that this is an area with potentially high groundwater, which may preclude the use of dry wells.” Tracy L. Campbell, Storm Water Manager. March 24, 2021.</p>
Neighborhood Council:	Agency comment has not been received.
Office of Emergency Management:	“OEM has no comment.” Adriane Beck, DES Coordinator. March 25, 2021.

V. EXHIBITS:

- Application Submittal
- Presentation Slides
- Ordinance