



## **MAJOR PHASED SUBDIVISION, ANNEXATION, AND REZONING STAFF REPORT**

**Agenda Item:** Aspire Major Phased Subdivision, Annexation, and Rezoning.

**Report Date:** July 9, 2024

**Case Planner:** Dave DeGrandpre, Land Use Supervisor

**Governing Body Review Deadline:** August 26, 2024

**Public Meetings & Hearings:**

City Council (7/15/24): Adopt resolution of intent to annex, 1<sup>st</sup> reading of rezoning ordinance, referral to LUP committee and set public hearing

Planning Board (7/16/24): Public hearing

LUP (8/7/24): Pre-public hearing informational item

City Council (8/12/24): Public hearing and decision

### **I. GENERAL PROJECT INFORMATION**

**Subdivider:**

DeNova Homes  
P.O. Box 2016  
Phillipsburg, MT 59858

**Land Owners:**

Meadow Creek Group, LLC  
1500 Willow Pass Court  
Concord, CA 94520

RCS, LLC  
418 Laura Louise Lane  
Bozeman, MT 59718

**Representative:**

Brian Throckmorton, 406 Engineering  
1201 S. 6<sup>th</sup> Street West #102  
Missoula, MT 59801

**Location of Request:** The property is addressed as 106 and 110 Sommers Street and 885 Speedway Avenue in East Missoula. The property abuts existing residential development to the west and north, the Clark Fork River to the east, and Interstate 90 to the south.

**Legal Notification:** The legal ad was published in the Missoulian on June 29, 2024 and July 6, 2024. Two subdivision posters were placed on the property on July 1, 2024. Adjacent property owners were notified by certified mail on June 6, 2024.

### **II. DECISION AND REGULATORY FRAMEWORK**

The Missoula Consolidated Planning Board considers and makes a recommendation on the rezoning and subdivision. Missoula City Council considers and makes a decision on the annexation, zoning upon annexation, rezoning, and subdivision.

**Applicable State Law:** [Montana Code Annotated 2023](#).

**Annexation Policy:** [Resolution 8363](#) adopted 7/22/2019. The property is within Annexation Area "A" and meets the majority of the City's criteria to determine priority for annexation. Zoning upon annexation must comply with Title 20 Zoning Code, Section 20.85.040.I.

**Growth Policy:** The [Our Missoula 2035 City Growth Policy](#) is the applicable regional plan and recommends a land use designation of Residential Medium Density (3 to 11 dwelling units per acre) for the subject property.

**Local Zoning Law:** [Title 20, Missoula Municipal Code](#) amended March 25, 2024.

**Current and Proposed Zoning:** The parcel is zoned R Residential in Missoula County. If City Council approves the annexation, the initial recommended City zoning is RT5.4 Residential. The application materials also include a request to apply a new neighborhood character overlay zoning district to the property. If approved, the property would be zoned RT5.4 Residential / NC-A Aspire Neighborhood Character Overlay.

**Subdivision Regulations:** [Missoula City Subdivision Regulations](#) adopted by City Council as amended on October 16, 2023.

**Surrounding Land Uses:**

North: Residential (duplex houses)  
South: Interstate 90  
East: Clark Fork River  
West: Residential (detached houses) and a small public park

**Surrounding Zoning:**

North: R Residential and Water's Edge Special Zoning District (County)  
South: R Residential (County)  
East: RO Resource (County)  
West: R Residential (County)

### **III. RECOMMENDED MOTIONS**

#### **City Council Consent Agenda (7/15/24)**

**Adopt** a resolution of intent to annex and zone to RT 5.4 Residential the subject property as shown and legally described in Exhibits A and B; **preliminarily adopt** an ordinance rezoning the subject property from RT5.4 Residential to RT5.4 Residential / NC-A, Aspire Neighborhood Character Overlay; **refer this item** to the Land Use and Planning Committee for discussion on August 7, 2024, and **set a public hearing** on August 12, 2024.

#### **Planning Board Public Hearing (7/16/2024)**

Recommend City Council **approve** the adoption of an ordinance to rezone the subject property as shown and legally described in Exhibits A and B from RT5.4 Residential to RT5.4 Residential / NC-A, Aspire Neighborhood Character Overlay.

Recommend City Council **approve** a variance from City Subdivision Regulations Article 3, Section 3-020.2 Table .2A to allow Aspire Loop, Heartwood Place, Jumbo Drive, Crosscut Way, Sommers Street (onsite), and a portion of Waterside Drive (onsite) to have a 62-foot right-of-way easement instead of 70 feet for the Low Density Urban Local Street type.

Recommend City Council **approve** a variance from City Subdivision Regulations Article 3, Section 3-020.2 Table .2A and 3-020.4.N to allow the northernmost approximately 415 feet of Waterside Drive to have a 54-foot right-of-way easement and one parking lane instead of two.

Recommend City Council **approve** a variance from City Subdivision Regulations Article 3, Section 3-020.2 Table .2A to allow a sidewalk on only one side of the street for approximately 460 feet along the northwest corner of Aspire Loop.

Recommend City Council **approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 1-18 and 103-113 to exceed the maximum 480-foot block length requirement.

Recommend City Council **approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 19-31, 114-123, and 47 - 48 to exceed the maximum 480-foot block length requirement.

Recommend City Council **approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 32-46 and 68-87 to exceed the maximum 480-foot block length requirement.

Recommend City Council **approve** a variance from City Subdivision Regulations Article 3, Section 3-030.1.C(3) to allow Lots 62, 65, and 66 to abut and have access to an alley instead of a public or private street or road.

Recommend City Council **approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 58 - 67 to exceed the maximum 480-foot block length requirement.

Recommend City Council **approve** the Aspire Phased Subdivision preliminary plat application, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

#### **LUP pre-public hearing informational only item (8/7/24)**

Introductory presentation and discussion on the proposal and staff recommended motions to approve the annexation, rezoning, and phased subdivision preliminary plat application subject to the recommended conditions of approval.

#### **City Council Public Hearing (8/12/24)**

Presentation, public comment, and action on the recommended motions, as listed below:

**Adopt** a resolution to annex the subject property as shown in Exhibit A and apply RT5.4 Residential City zoning to the property.

**Approve** the adoption of an ordinance to rezone the subject property as shown and legally described in Exhibits A and B from RT5.4 Residential to RT5.4 Residential / NC-A, Aspire Neighborhood Character Overlay.

**Approve** the variance request from Article 3, Section 3-020.2 Table .2A of the City Subdivision Regulations to allow Aspire Loop, Heartwood Place, Jumbo Drive, Crosscut Way, Sommers Street (onsite), and a portion of Waterside Drive (onsite) to have a 62-foot right-of-way easement instead of the typical 70 feet for the Low Density Urban Local Street type.

**Approve** the variance request from Article 3, Section 3-020.2 Table .2A and 3-020.4.N to allow the northernmost approximately 415 feet of Waterside Drive to have a 54-foot right-of-way easement instead of 70 feet and to have one parking lane instead of two.

**Approve** the variance request from Article 3, Section 3-020 Table .2A to allow a sidewalk on one side of Aspire Loop instead of two for approximately 460 feet.

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 1-18 and 103-113 to exceed the maximum 480-foot block length requirement.

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 19-31, 114-123 and 47 and 48 to exceed the maximum 480-foot block length requirement.

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 32 – 46 and 68 – 87 to exceed the maximum 480-foot block length requirement.

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.1.C(3) to allow Lots 62, 65, and 66 to abut and have access to an alley instead of a public or private street or road.

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 58 - 67 to exceed the maximum 480-foot block length requirement.

**Approve** the Aspire Phased Subdivision preliminary plat application, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

#### **IV. INTRODUCTION**

City of Missoula Development Services has received application materials from 406 Engineering, Inc., on behalf of DeNova Homes, for annexation of 35.28 acres, zoning upon annexation to RT5.4 Residential, rezoning to apply a new neighborhood character overlay to the RT5.4 Residential base zoning, and subdivision into 172 single-dwelling lots and 10 multi-dwelling lots. The development is called the Aspire Subdivision, which is proposed to be platted in six phases over 10 years. The application materials indicate the subdivision could eventually include approximately 250 homes.

The property is located in East Missoula at 106 and 110 Sommers Street and 885 Speedway Avenue. The property abuts the Clark Fork River to the east, Interstate 90 to the south, and residential development to the west and north. Two existing streets are proposed to provide access to the subdivision, Waterside Drive to the north and Sommers Street to the southwest. Sommers Street is projected to receive the majority of the traffic from this subdivision and the application includes a proposal to improve Sommers Street from the property to Highway 200 to accommodate the increased traffic.

The proposal includes several new internal streets with boulevards and sidewalks and two new public parks including a 2.4-acre linear riverfront park and a 1.73-acre park adjacent to the existing Missoula County Canyon View Park just west of the property.

The proposal includes connection to the municipal sewer and water systems. All post-development stormwater runoff is proposed to be retained onsite.

The proposal includes eight variance requests relating to street specifications and block length specifications required under the City Subdivision Regulations.

City staff reviewed the application materials, agency comments, and public comments received to date and base the recommendations of approval on the following findings of fact and conclusions of law.

#### **V. GENERAL FINDINGS OF FACT**

1. The subject property is located at 106 and 110 Sommers Street and 885 Speedway Avenue in the East Missoula area. The property is currently located outside of the Missoula municipal boundary. See Exhibit A. (*Subdivision Application Page 2, Missoula County Property Information System*)

2. The subject property is 35.28 acres and contains three homes, a kennel, and outbuildings that are no longer occupied. (*Project Summary Page 1, Montana Cadastral Website, Personal Observation*)
3. The property consists of eight existing tracts of record that can be described as Tracts 1, 2, 3, 4, and 5 of Certificate of Survey No. 6629, Tracts 7 and 8 of Certificate of Survey No. 5298, and Tract A of Certificate of Survey No. 6338, all located in Section 19, Township 13 North, Range 18 West and Section 24, Township 13 North, Range 19 West. (*Project Summary Pages 1 & 2*) For a full legal description see Exhibit B.
4. Surrounding land uses include detached and duplex houses and transportation (Interstate 90). The Clark Fork River abuts the subject property to the east. (*Subdivision Application Page 3, Aerial Vicinity Map, Personal Observation*)
5. The subject property was previously used for irrigated hay production. (*Subdivision Application Page 8*)
6. The subject property is inside the Missoula Utility Services Area, Urban Transportation District, Air Stagnation Zone, Bear Buffer Zone, and Wildland Urban Interface/Intermix. (*Missoula County Property Information System*)
7. The property owners are requesting annexation of the property. If annexed, the property would become a part of City Council Ward One and the Marshall Canyon Neighborhood Council area. (*Missoula County Property Information System, Annexation Petition, Ward and Neighborhood Council Maps*)
8. The property abuts and can be accessed by extensions of Waterside Drive and Sommers Street, which are under the jurisdiction of and maintained by Missoula County. (*Preliminary Plat, Vicinity Map, Agency Comment from Missoula County Chief Public Works Officer Shane Stack, 3/28/24, Agency Comments from City PW&M Staff*)
9. A public sewer main currently exists on the property and public water mains are located nearby to the north and south. City Public Works & Mobility Department staff have indicated the ability to provide municipal services to the development. (*Subdivision Application Pages 22 and 23, Preliminary Plat, Correspondence with City PW&M Staff*)
10. A narrow portion of the property along the Clark Fork River is designated as Flood Zone AE, 1% annual chance floodplain. No development is proposed in this flood zone. The remainder of the subject property falls under floodplain designation Zone X, Area of Minimal Flood Hazard. (*Preliminary Plat, FEMA Map Service Center*)

## **VI. GROWTH POLICY GENERAL FINDINGS OF FACT**

1. The Our Missoula 2035 City Growth Policy is the applicable regional plan. The City Growth Policy recommends a land use designation of Residential Medium, which provides for a density of 3 to 11 dwelling units per acre.
2. The Residential Medium land use designation is intended to fit with many already established residential neighborhoods and acknowledges the single dwelling and two-unit townhouse / duplex residential building types as the primary use with the potential for accessory dwellings as well. (*Our Missoula 2035 City Growth Policy Page 123*)
3. Current relatable zoning districts to the Residential Medium land use designation are RT10, R8, R5.4, and RT5.4 (*Our Missoula 2035 City Growth Policy page 124*) The R8 and R5.4 zoning districts permit only detached single dwellings, while RT10 and RT5.4 also permit two-

unit and two-unit townhouse buildings. Commercial uses are largely prohibited in these districts. (*Title 20 Zoning Code Section 20.05*)

4. The RT5.4 Residential zoning district is considered a current, relatable zoning district to the Residential Medium land use designation. If developed as proposed, the residential density would be approximately 7.1 dwellings per acre, in conformance with the City Growth Policy. (*Our Missoula 2035 City Growth Policy page 128, Project Summary Page 5*).
5. The *Livability* section of the City Growth Policy encourages walkable neighborhoods, access to parks and trails, and easy accessibility to amenities and commercial and local services to meet the needs of an expanding diverse population. (*Our Missoula 2035 City Growth Policy Page 30*)
6. The *Safety and Wellness* section of the City Growth Policy encourages building in areas close to existing infrastructure, as is the case here. (*City Growth Policy Page 44*)
7. The *Community Design* section of the City Growth Policy aims to conserve and protect open space and riparian resource areas while providing convenient connections to trails and parks. (*City Growth Policy pages 71-73*)

## **ANNEXATION**

### **I. RECOMMENDATION**

Staff recommend City Council **adopt** a resolution to annex the subject property and adjacent road rights-of-way as shown and described on Exhibits A and B, and zone upon annexation to RT5.4 Residential subject to the conditions of approval, based on the findings of fact and conclusions of law in the staff report.

### **II. CONDITIONS OF ANNEXATION APPROVAL**

#### Phasing

1. Final plat submittals shall be made in accordance with the Revised Phasing Plan, unless the timeframes are extended or the phasing plan is amended as per City Subdivision Regulations Section 4-070.3.C. The Revised Phasing Plan includes deadlines for submittal of each final plat phase and shows Phase 6 being Lots 58 - 67. (*City Subdivision Regulations Section 4-070.2 and 4-070.3.C*)

#### Streets, General

2. All street and non-motorized improvements shall be designed and built in accordance with the City Public Works Standards and Specifications Manual and the City of Missoula Subdivision Regulations (except as modified by variance), and comply with Public Rights-of-Way Accessibility Guideline requirements, subject to the review and approval by City Public Works & Mobility or secured with an improvements agreement, prior to final plat approval. (*City Subdivision Regulations Section 3-020.2*)
3. The following statement shall appear on the face of each final plat, in the Development Covenants, and on each instrument of conveyance, subject to review and approval by Public Works & Mobility and Development Services, prior to final plat approval of all phases: "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID/SLID, based on benefit, for future improvements and

maintenance of Sommers Street, Deer Creek Road, Speedway Avenue, Waterside Drive, Lupine Lane, Crosscut Way, Jumbo Drive, Heartwood Place, and Aspire Loop as shown on the preliminary plat, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening, street lighting, and drainage facilities, and may be used in lieu of their signatures on an improvement district petition." (*City Subdivision Regulations Sections 5-050.3.AA, 5-050.3.BB, 3-020.3.A.1, 3-020.3.G and 3-020.4.B, Title 12.10.110 and 12.02*)

4. The subdivider shall provide a road naming plan for review and approval of Missoula City GIS and City Public Works & Mobility prior to final plat approval of Phase 1. The signage plan shall include a name for the alleys providing vehicular access to lots. The subdivider shall install or secure with an improvements agreement the approved road name signs appurtenant to each phase prior to final plat approval of each phase. (*City Subdivision Regulations Section 3-020.4.H and 3-020.12*)
5. The subdivider shall provide a street signage plan in accordance with the Manual on Uniform Traffic Control Devices subject to review and approval of City Public Works & Mobility and City Fire prior to final plat approval of each phase. The subdivider shall install or secure with an improvements agreement the approved street signage appurtenant to each phase prior to final plat approval of each phase. (*City Subdivision Regulations Section 3-020.4.H*)

#### Sommers Street Offsite

6. The subdivider shall provide plans for improvements to Sommers Street from the Aspire property to the Montana Highway 200 right-of-way prior to final plat approval of Phase 1, subject to review and approval of Missoula County Public Works and City Public Works & Mobility. The subdivider shall install or secure with an improvements agreement the approved street improvements prior to final plat approval of Phase 1, with final approval required upon completion by Missoula County Public Works and City Public Works & Mobility. [*City Subdivision Regulations Section 3-020.13.C(1), 3-020.4.A, and 4-010.14.D(2)*]

#### Onsite Streets and Alleys

7. The subdivider shall provide plans for and install or secure with an improvements agreement all streets and alleys within each phase as shown on the preliminary plat, phasing plan, and road and trail plans submitted with the preliminary plat application, subject to review and approval of City Public Works & Mobility, prior to final plat approval of each appurtenant phase. (*City Subdivision Regulations Sections 3-010.5, 3-020.3.B, and 3-020.4.A*)
8. The subdivider shall provide plans for and install or secure within an improvements agreement all non-motorized facilities within each phase as shown on the preliminary plat, phasing plan, and road and trail plans submitted with the preliminary plat application, subject to review and approval of City Public Works & Mobility and Parks & Recreation, prior to final plat approval of each appurtenant phase, except for the pathways leading to and within the riverfront park, which shall be installed prior to final plat approval of Phase 3. Landscaping improvements along the southern property boundary shall be installed prior to final plat approval of Phase 6, as shown in the road and trail plans, subject to review and approval of Parks and Recreation. (*City Subdivision Regulations Sections 3-010.5, 3-020.3.B, and 3-020.4.A*)

9. The subdivider shall install a sewer maintenance road along Lots 6 – 18 and Lots 103 – 113 within a 12-foot drivable easement as shown on the preliminary plat to allow City utility staff to access, maintain, and replace the sewer main. The plans shall be reviewed and approved by City Public Works & Mobility and the road shall be installed prior to final plat approval of Phase 1, with the portion running along the south boundary of the 1.73-acre western park to be paved prior to final plat approval of Phase 4, all subject to review and approval of Public Works & Mobility and Parks & Recreation. *[Preliminary Plat, City Subdivision Regulations Section 4-010.14.D(2)]*

#### Rights-of-Way and Easements

10. The subdivider shall establish and dedicate right-of-way easements to the City of Missoula from Sommers Drive to Crosscut Way to the proposed and existing Waterside Drive, subject to review and approval of the City Attorney and Public Works & Mobility, prior to final plat approval of Phase 1. *(City Subdivision Regulations Section 3-020.3.B and 3-060.1)*
11. All proposed rights-of-way and easements shall be shown on each appurtenant final plat, identified for their width and purpose, dedicated to the City of Missoula, and recorded with the County Clerk & Recorder's Office with book and page of the recorded documents provided in accordance with Missoula City Public Works Standards and Specifications Manual, subject to review and approval by City Public Works & Mobility, prior to final plat approval of each phase. *(City Subdivision Regulations Sections 3-020.3.B, 3-040.2.B, 3-040.3.H & 3-060.1)*
12. The subdivider shall include the following statement on the face of each final plat, subject to review and approval by City Public Works & Mobility: "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever." *(City Subdivision Regulations Section 5-050.3.X)*

#### Stormwater and Drainage

13. The subdivider shall submit complete grading and drainage plans showing proposed grades of streets, proposed drainage facilities, and a stormwater pollution prevention plan for all lots, blocks and other areas meeting Montana Department of Environmental Quality standards, subject to the review and approval of City Public Works & Mobility, prior to final plat approval of each phase. All drainage facilities shall be constructed in accordance with the approved plans prior to final plat approval of each appurtenant phase. *(City Subdivision Regulations Section 5-020.11)*
14. Prior to construction of the riverbank trail and planting of vegetation within 50 feet of the ordinary high watermark of the Clark Fork River, the subdivider shall acquire a 310 permit from the Missoula Conservation District and submit a copy of the permit to Development Services and Parks & Recreation. *(City Subdivision Regulations Section 3-010.1)*
15. The following statement shall be placed on each final plat and added to the Development Covenants: Runoff from roofs shall be diverted via gutters to street rights-of-way or residential rock sumps to avoid overflow onto adjoining properties, to limit the potential for erosion, and to protect Clark Fork River water quality in accordance with the approved

grading and drainage plans. (*City Subdivision Regulations Section 3-040 and 5-0203.B, MCA 76-3-608(3)(a) Effect on the Natural Environment*)

#### Riparian Resource Area

16. The subdivider shall submit a Riparian Resource Management Plan addressing the requirements in City Subdivision Regulations Sections 3-130.3 and 5-020.14.L, subject to review and approval of Development Services, prior to final plat approval of Phase 1. The final approved plan shall be appended to the Development Covenants and referenced during subdivision and park improvement design and construction. (*City Subdivision Regulations Sections 3-130.3 and 5-020.14.L*)

#### Water Systems, Sewer Systems, and Solid Waste Disposal

17. The subdivider shall submit plans for water supply and sewage disposal facilities meeting the requirements of the Montana Department of Environmental Quality, Missoula City/County Health Department, and City of Missoula, prior to final plat approval of each phase. The subdivider shall install or secure with an improvements agreement the approved facilities prior to final plat approval of each phase, subject to review and approval of City Public Works & Mobility. (*City Subdivision Regulations Section 3-070.1*)
18. The subdivider shall provide plans for and upgrade the existing water mains in Sommers Street, Dakota Avenue, and Staples Street to a 12-inch main to maintain fire flows necessary to serve homes in the Canyon River Subdivision, subject to review and approval of City Public Works & Mobility, prior to final plat approval of Phase 3. Before initiating work, the subdivider shall enter into a work plan and cost sharing agreement with City Public Works & Mobility to pay a proportionate share of these improvements. (*City Subdivision Regulations Section 3-010.5, 3-070.1*)
19. The subdivider shall submit solid waste disposal plans meeting the regulations of Montana Department of Environmental Quality, Missoula City/County Health Department, and the City of Missoula, subject to the review and approval of City Public Works & Mobility and the Missoula City/County Health Department prior to final plat approval of Phase 1. (*City Subdivision Regulations Section 3-070.1*)

#### Fire Protection

20. The subdivider shall provide plans for fire suppression water flow, hydrant placement, and address signage standards, subject to review and approval by the City Fire Department and City Public Works & Mobility, prior to final plat approval of Phase 1. The subdivider shall install fire hydrants and related improvements, subject to review and approval by City Fire Department and City Public Works & Mobility, prior to combustible construction in each appurtenant phase. (*City Subdivision Regulations Section 3-010.1.F and 3-070.1*)

#### Mail Delivery

21. The subdivider shall provide plans for and install or secure an improvements agreement for mail delivery facilities for future subdivision residents, subject to review and approval by the U.S. Postal Service and City Public Works & Mobility, prior to final plat approval of Phase 1. The subdivider shall install or secure with an improvements agreement the approved mail delivery facilities prior to final plat approval of each appurtenant phase, subject to review and approval of the U.S. Postal Service and Public Works & Mobility. (*City Subdivision Regulations Sections 3-020.15.D(2)(c) and 3-100.18*)

## Parkland Dedication, Boulevard Landscaping & Weeds

22. The subdivider shall provide plans for and install or secure with an improvements agreement park improvements to all parkland, including but not limited to grading, preservation of existing mature vegetation where possible, application of topsoil, installation of commercial grade irrigation system, installation of turf grass and dryland seed or sod, installation of park trees, and design to allow for future amenities, subject to review and approval by City Parks & Recreation, prior to final plat approval for each phase containing parkland. Park improvements must meet standards found in the City of Missoula Parks and Recreation Design Manual. (*City Subdivision Regulations Section 3-080 and 5-020.14.H*)
23. The subdivider shall dedicate to the City 2.4 acres of parkland in a linear park along the Clark Fork River as shown on the preliminary at the time of final plat approval of Phase 1. The subdivider shall install or secure with an improvements agreement the proposed 8-foot gravel pathway with improved access points from Waterside Drive along with selection and planting of park trees as depicted on the plat and landscaping plans, prior to final plat approval of Phase 3, subject to review and approval of City Parks & Recreation. (*City Subdivision Regulations Section 3-080*)
24. The subdivider shall dedicate to the City 1.73 acres of parkland adjacent to the Missoula County Canyon View Park as shown on the preliminary plat at the time of final plat approval of Phase 4, subject to review and approval by Parks and Recreation. (*City Subdivision Regulations Section 3-080 and 5-020.14.H*)
25. The subdivider shall provide or secure with an improvements agreement a paved path from the internal extension of Sommers Street, through the 1.73-acre park and Canyon View Park, to Robinson Street, subject to review and approval by City Parks & Recreation and Missoula County Parks, Trails, and Open Lands Department, prior to final plat approval of Phase 4. The sewer maintenance access road along the southern edge of the park shall be used for a portion of this path. [*City Subdivision Regulations Section 3-080.8.C, 4-010.13.B(c) and (g)*]
26. The subdivider shall remove the substandard playground equipment in Canyon View Park, subject to review and approval by City Parks & Recreation and Missoula County Parks, Trails, and Open Lands Department, prior to final plat approval of Phase 4. [*City Subdivision Regulations Section 3-080.8.C, 4-010.13.B(c) and (g)*]
27. The following statement shall appear on the face of each final plat, in the Development Covenants, and on each instrument of conveyance, subject to review and approval by City Parks & Recreation and Development Services: "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for future improvements and maintenance of parks within and adjacent to the Aspire Subdivision, including but not limited to lighting, watering, drainage, planting, transportation, play equipment, exercise equipment, garbage facilities, signage, and maintenance, and may be used in lieu of their signatures on an improvement district petition." [*City Subdivision Regulations Sections 5-050.3.AA, 3-080.8.C, 4-010.13.B(c) and (g)*]
28. The subdivider shall provide plans for boulevard landscaping for all roads within and adjacent to development lots, subject to review and approval by City Parks & Recreation, prior to final plat approval for each phase. Except as provided in the condition immediately

below, the subdivider shall plant or secure with an improvements agreement Class II street trees at a linear spacing between 25 and 35 feet, with a minimum of one tree per lot, and while tree locations shown on the landscape plans may change slightly in final design, the total number of trees shown (357 total) within the rights-of-way will remain the same. If during final design and installation a tree cannot be located where planned due to a fire hydrant or other appurtenance, the subdivider shall install a tree in one of the subdivision parks, subject to review and approval of City Parks & Recreation. (*City Subdivision Regulations Section 5-050.5.C*)

29. The subdivider shall amend the Development Covenants to state that "Lot owners shall be responsible for obtaining boulevard landscaping permits prior to building permit approval and for installation of boulevard landscaping adjacent to development lots prior to Certificate of Occupancy in accordance with City of Missoula standards," subject to review and approval by Parks and Recreation prior to final plat approval. (*City Subdivision Regulations Section 5-050.5.C*)
30. The subdivider shall provide a Weed Management and Revegetation Plan, appended to the Development Covenants and approved by the Missoula County Weed District, subject to review and approval by Development Services, prior to final plat approval. (*City Subdivision Regulations Section 5-010.14.K*)

#### Water Rights

31. The subdivider shall convey the water rights associated with the property to the City of Missoula prior to final plat approval of Phase 1, subject to review and approval of the City Attorney. In doing so, the subdivider shall cooperate with the City's efforts to obtain approval from DNRC to convert the water rights to the City's ownership, including possible changes in use, point of diversion, or changes to accommodate the City's use, integrating the subdivider's water rights into the City's larger water rights holdings to ensure water can be provided to support the subdivision's need for domestic and irrigation water. This cooperation shall include responding verbally or in writing to requests for information on historic water use on the property, assisting the City in obtaining any necessary information in the subdivider's possession, and executing any documents necessary to convey the rights or process change applications with the DNRC. [*City Subdivision Regulations Section 4-010.14.D(1)*]
32. The subdivider shall denote on all final plats that water rights have been severed from the land within the Aspire Subdivision, subject to review and approval by Development Services. (*City Subdivision Regulations Section 3-060.4*)

#### Development Covenants

33. The subdivider shall submit final Development Covenants meeting the requirements of City Subdivision Regulations Section 5-020.14.K, subject to review and approval by Development Services, prior to final plat approval of Phase 1. (*City Subdivision Regulations Section 5-010.14.K*)
34. The subdivider shall include language in the Development Covenants prohibiting obstructions to be placed within any proposed public access or pedestrian access easements and any dedicated parkland, or any obstructions aside from fences in proposed utility easements, so as to maintain sufficient perpetual legal access, subject to review and

approval by Public Works & Mobility and Development Services, prior to final plat approval of Phase 1. (*City Subdivision Regulations Section 5-020.5*)

35. The subdivider shall include the following sections in the Development Covenants, subject to review and approval by Public Works & Mobility and Development Services, prior to final plat approval: maintenance and replacement of mail delivery facilities, address signage standards, easements remaining unobstructed, wood burning devices, weed control, MTFWP "Living With Wildlife" recommendations, radon mitigation, riparian resource management plan, SID/RSID/SLID, and wildland urban interface fire protection standards, and said sections may not be amended or deleted without written approval by the governing body, prior to final plat approval of Phase 1. (*City Subdivision Regulations Sections 5-010.14.K, 5-020.14.F & 3-010.2*)

### **III. ANNEXATION FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Annexation Request**

1. Development Services received Annexation Petition No. 10203 from representatives of property owners Meadow Creek Group, LLC and RCS, LLC for annexation of 35.28 acres into the City of Missoula and zoning upon annexation of RT5.4 Residential. (*Annexation Petition No. 10203, Subdivision Application Page 3*)

#### **Property Information**

2. The property consists of eight existing tracts of record that can be described as Tracts 1, 2, 3, 4, and 5 of Certificate of Survey No. 6629, Tracts 7 and 8 of Certificate of Survey No. 5298, and Tract A of Certificate of Survey No. 6338, all located in Section 19, Township 13 North, Range 18 West and Section 24, Township 13 North, Range 19 West. (*County Property Information System, Annexation Petition*) An annexation map is located in Exhibit A and a complete legal description is in Exhibit B.
3. The property does not abut the Missoula municipal boundary. The Canyon River Golf Course and residential lots to the east of the subject property across the Clark Fork River are within City limits. (*Missoula County Property Information System*)
4. Properties in the East Missoula area receive water and sewer services from the City of Missoula. Typically, this would allow the City to require annexation under Montana Code Annotated Title 7, Part 47, Annexation With the Provision of Services. However, the City and the East Missoula County Sewer District have an interlocal agreement stating the City will not proceed with this method of annexation until the indebtedness required to finance the infrastructure improvements is paid off. At the request of the sewer district and the East Missoula Community Council, in 2021 the City agreed to delay 'forced' annexation until at least 2034. However, the agreement allows the City to annex land when the property owners voluntarily petition to be annexed into the municipal boundary. (*City of Missoula Public Utility Map, Interlocal Agreement Page 10, Resolution 8566*)
5. If annexed, the property would become a part of City Council Ward One and the Marshall Canyon Neighborhood Council area. (*City of Missoula Ward and Neighborhood Council Maps*)
6. Except for a narrow strip of property along the edge of the Clark Fork River, the property proposed for annexation falls under floodplain classification Zone X, Area of Minimal Flood Hazard. (*FEMA Map Service Center, Preliminary Plat*)

7. The subject property abuts Sommers Street and Waterside Drive, which are maintained by Missoula County. State law requires annexation of the full width of rights-of-way adjacent to property being annexed to occur along with annexation of the property. In this case, small portions of Sommers Street and Waterside Drive are adjacent to the subject property, as shown on Exhibit A. (*Montana Code Annotated 7-2-4211*)

## **Annexation Policy**

8. The subject property is located within the Utility Service Area. The City Annexation Policy states the City should prioritize the annexation of property located within the Utility Service Area. (*City of Missoula Public Utility Map, Annexation Policy*)
9. The subject property is located within Annexation Area "A" shown on the City Annexation Policy Map. Areas designated as Annexation Area "A" largely meet the guidelines of the City's Annexation Policy. Per the City Annexation Policy, the City should prioritize the annexation of areas located within Annexation Area "A".
10. The Annexation Policy also states the City should prioritize the annexation of areas that contribute to the logical growth pattern of the City by creating orderly and contiguous municipal boundaries and that fill in gaps left by previous annexations that created islands. The Canyon River Golf Course and associated homes are within City limits and located to the east of the subject property, while the subject property is located closer to the larger body of the City. Annexing the subject property would help to create a more orderly and contiguous municipal boundary and fill in some of the gap left by previous annexation. (*Missoula County Property Information System*)
11. Per the City Annexation Policy, the City should prioritize the annexation of areas that meet current city standards, including water, sewer, and transportation infrastructure, and equitably provide the same levels of service and infrastructure as other parts of the municipality with similar topography, land use, and population density. This is reflected in the recommended annexation and subdivision conditions of approval.
12. The subject property is located in the East Missoula Delayed Annexation Area. The interlocal agreement for the provision of sewer service in this area allows for the City to accept requests for annexation by petition method. Additionally, the Annexation Policy states the City should prioritize annexation where the property owners are generally favorable toward the annexation and have petitioned to do so, as is the case here. (*Interlocal Agreement Page 10, Annexation Policy*)

## **Growth Policy and Zoning**

13. The applicable regional plan is the Our Missoula 2035 Growth Policy, which provides a land use designation of Residential Medium (3 to 11 dwelling units per acre). The City Annexation Policy states that any annexation by the City should be guided by the current City Growth Policy.
14. Current relatable zoning districts in the Residential Medium land use designation are RT10 Residential, R8 Residential, R5.4 Residential, and RT5.4 Residential. (*Our Missoula 2035 City Growth Policy Page 124*)
15. The requested zoning upon annexation for the subject property is RT5.4 Residential, which aligns with the Residential Medium land use designation. (*Subdivision Application Page 3*)
16. The current Missoula County zoning is R Residential, which is intended to provide a range of small-scale housing options that reflect the traditional character of existing residential neighborhoods, promotes compatible infill development, and supports housing diversity. This

district permits lots with a minimum lot size of 5,000 square feet, or a maximum density of 8.7 dwelling units per acre, with greater density possible under some circumstances. This district also permits single-unit and two-unit homes. (*Missoula County Zoning Code Pages 47-48*) The current county zoning generally aligns with the proposed RT5.4 Residential district, which permits 8 dwelling units per acre and allows for detached houses and two-unit townhouses.

17. A subsequent rezoning is requested to apply a new / NC-A, Aspire Neighborhood Character Overlay to the annexation area. (*Project Summary, Rezoning Application*) For more information, see the rezoning section of this report.

## **Road Improvements, Non-Motorized Improvements, Transit, and Utility Infrastructure**

### Roads, Alleys, and Non-Motorized

18. Findings of fact regarding roads, alleys, non-motorized facilities, transit, and utilities are located in the Subdivision section of this report and are incorporated here by reference.
19. In order to meet current City Standards and the Annexation Policy, staff recommend conditions of approval requiring the applicant to provide plans for and installation of improvements to all roads, alleys, and non-motorized facilities shown on the preliminary plat within the annexation area, as well as Sommers Street extending from the property to MT Highway 200.
20. The road, alley, and non-motorized improvements within the proposed annexation area will equitably provide the same levels of service as other parts of the municipality with similar zoning if the recommended conditions of approval are imposed and met.

### Transit

21. The property is located within the Missoula Urban Transportation District (MUTD). Mountain Line Route 4 currently runs along Speedway Avenue through East Missoula every hour seven days per week. Speedway Avenue is located less than 800 feet from the property. (*Agency Comment from Garin Wally of MUTD 6-11-24, Mountain Line Route Map, Missoula County Property Information System*)
22. Initial plans for the Aspire Subdivision included a possible bus stop structure located at the intersection of Sommers Street and Speedway, but according to Spencer Starke of MUTD, they are currently studying how planned improvements to MT Highway 200 will impact the route, so requested the developer not be required to install such improvements as part of this project. (*Agency Comment from Spencer Starke of MUTD, 4-3-24*)

### Fire Protection

23. In order to provide the same level of service and infrastructure as other parts of the municipality with similar zoning, including adequate protection from fire, staff recommend a condition of approval requiring the applicant to provide plans for fire suppression water flow and hydrant placement, prior to final plat approval for each phase. The staff recommended condition of approval requires the applicant to install fire hydrants prior to combustible construction in each phase. (*City Subdivision Regulations Section 3-010.1.F*)

### Utilities

24. In accordance with City regulations and following annexation, future development of the property must include approved design, installation, and connection to municipal water and sewer services. The Annexation Policy states the City should prioritize the annexation of areas that meet current city standards, including water and sewer infrastructure. (*City Subdivision Regulations Section 3-010.5*)

25. The currently vacant structures on the subject property are served by private septic systems. New construction within the City requires abandonment of the septic systems and connection to City sewer and water. (*City Central Maps, Missoula County Property Information System*) The application includes a water and sanitation report providing preliminary design information for extension of municipal utilities. (*Water and Sanitation Report*)
26. Additional findings of fact regarding utilities are located in the Subdivision section of this report and are incorporated here by reference.
27. In order to meet the Annexation Policy and current City standards, staff recommend conditions of approval requiring plans for and installation of water supply and sewage disposal facilities.
28. The utility infrastructure within the proposed annexation area will equitably provide the same levels of service and infrastructure as other parts of the municipality with similar zoning if the recommended conditions of approval are imposed.

## **Statutory Requirements**

29. Section 7-2-4211 MCA requires municipalities to include the full width of any public street or road right-of-way that is adjacent to the property being annexed.
30. The subject property is adjacent to right-of-way for Sommers Street and Waterside Drive. (*Missoula County Property Information System*)
31. The subject property proposed to be annexed, as shown on Exhibit A, includes the full widths of the portions of right-of-way adjacent to the subject property proposed to be annexed.
32. The City will meet the statutory requirements for a petition method annexation in regards to MCA 7-2-4601 and the MMC 20.85.040(1)(2) by considering the petition, adopting a resolution of intent, and scheduling a public hearing regarding the zoning upon annexation, and advertising public notice for at least 15 days prior to the public hearing with the appropriate recommended zoning. The final step for council is to adopt a resolution to adopt or deny the annexation request.

## **Zoning Upon Annexation**

33. Montana Code Annotated (MCA) 76-2-303 allows a municipality to conduct a hearing on the annexation in conjunction with a hearing on the zoning of the property proposed for annexation. Title 20 Zoning Ordinance, Section 20.85.040(1)(2) outlines the three review criteria taken from MCA 76-2-303 which may be considered for zoning upon annexation. The following are the three criteria from Title 20 and a staff assessment as to whether the annexation complies with the criteria. An annexation must comply with at least **one** of the criteria. The zoning district classification assigned at the time of annexation must:

- a. **Authorize land uses comparable to the land uses authorized under the county zoning classification that applied to the property immediately before it was annexed in the city;**

### Staff Assessment

- i. The current Missoula County zoning classification is R Residential, which is intended to provide a range of small-scale housing options that reflect the traditional character of existing residential neighborhoods with the intent of promoting compatible infill development and housing diversity. Land uses permitted in the R Residential district are agriculture, community residential facilities, daycares, a few commercial uses, one- and two-unit homes, mobile home parks, schools, religious assembly, and parks and recreational uses. If

affordable housing or conservation design are proposed, triplex, quadplex, and small multi-plex housing is allowed. For typical one- and two-unit homes, the minimum lot size is 5,000 square feet or a maximum of 8.7 dwelling units per acre. (*Missoula County Zoning Code Section 2.3.F.3 and Table 5*)

- ii. The proposed City zoning is RT5.4 Residential. Land uses permitted in this district are agriculture, community residential facilities, daycares, a few commercial uses, one- and two-unit homes, schools, religious assemblies, and parks and recreational uses. The maximum residential density in the RT5.4 Residential zoning district is approximately 8 dwelling units per acre. (*Title 20 Zoning Code Table 20.05-1*)
- iii. The land uses and densities authorized in the City RT5.4 Residential zoning district are comparable to those authorized in the county R Residential zoning district. The City RT5.4 Residential zoning district is slightly more restrictive in terms of permitted uses and permitted residential building types, while the County zoning is more restrictive in terms of river setbacks.
- iv. Based on compliance with the criteria in Title 20, Section 20.85.040.I.2.a, staff recommends annexation of the subject property and zoning upon annexation to RT5.4 Residential, subject to the recommended conditions of approval.

**b. Authorize land uses that are consistent with the land uses approved by the Board of County Commissioners or the County Board of Adjustment; or**

Staff Assessment

- i. The *Missoula County Growth Policy*, approved by the Board of County Commissioners, recommends a land use designation of Residential for the subject property.
- ii. The *Our Missoula 2035 City Growth Policy* provides a land use designation of Residential Medium (3 to 11 dwelling units per acre).
- iii. The land uses and densities permitted in the City RT5.4 Residential are consistent with the land uses and densities permitted County R Residential zoning district.
- iv. An annexation only needs to comply with one criterion. However, the request to annex and zone upon annexation to RT5.4 Residential also complies with the criteria in Title 20, Section 20.85.040.I.2.b.

**c. Be consistent with the land use and zoning recommendations for the subject areas, as set forth in the “Our Missoula Growth Policy.”**

Staff Assessment

- i. The *Our Missoula 2035 City Growth Policy* recommends a land use designation of Residential Medium for the subject property.
- ii. The requested RT5.4 Residential zoning district is a current relatable zoning district to the Residential Medium land use designation in the Growth Policy.
- iii. An annexation only needs to comply with one criterion. However, the request to annex and zone upon annexation to RT5.4 Residential will comply with the criteria in Title 20, Section 20.85.040.I.2.c if the requested zoning upon annexation is approved by City Council.

## IV. ANNEXATION EXHIBITS AND ATTACHMENTS

### Exhibits

1. Exhibit A, Annexation Map
2. Exhibit B, Legal Description

### Attachment

3. Resolution of Intent to Annex

## **REZONING**

### I. RECOMMENDATION

Staff recommend City Council **adopt** an ordinance to rezone the subject property legally described in Exhibit B from RT5.4 Residential to RT5.4 Residential / NC-A, Aspire Neighborhood Character Overlay based on the findings of fact and conclusions of law in the staff report.

### II. CONDITIONS OF REZONING APPROVAL

None. The rezoning from RT5.4 Residential to RT5.4 Residential / NC-A, Aspire Neighborhood Character Overlay may not be conditioned per MCA 76-2-302, which requires the regulations for a particular zoning district to be uniform for each class or kind of buildings throughout all locations within the City of Missoula within the same zoning district.

### III. REZONING REVIEW CRITERIA

#### Findings Of Fact

##### General

1. The subject property is not currently within the City of Missoula municipal boundary. Upon annexation, the applicant is requesting the City Council apply a base zoning district of RT5.4 Residential. (*Missoula County Property Information System, Project Summary*)
2. Following annexation and initial zoning, the applicant is requesting rezoning to apply a new neighborhood character overlay zoning district in addition to the base RT5.4 Residential zoning. The new zoning would apply to the entire property. If approved, the property would be zoned RT5.4 Residential / NC-A, Aspire Neighborhood Character Overlay. (*Zoning Application, Project Summary page 1, Aspire Community Neighborhood Character Overlay*)

##### Neighborhood Character Overlay Zoning, Generally

3. Overlay district regulations may be established only in accordance with the zoning amendment procedures of Title 20.85.040. (*Title 20 Zoning Code Section 20.25.010.A.1*)
4. Overlay zoning district regulations apply in combination with the underlying base zoning district regulations and all other applicable regulations of the Title 20 zoning code. When overlay district standards conflict with standards that would otherwise apply, the regulations of the overlay district govern. (*Title 20 Zoning Code Section 20.25.010.B*)
5. Neighborhood character overlay districts are intended to: A. Recognize and protect the physical character of neighborhoods that exhibit unique development building patterns; B. Encourage neighborhood investment in the form of construction and development that conform to the size, orientation and setting of existing buildings in the neighborhood; C. Implement

adopted neighborhood plans; D. Foster development and redevelopment that are compatible with the scale and physical character of original buildings in the neighborhood through the use of development/design standards; E. Ensure a stabilized tax base, and F. Promote natural and cultural assets. (*Title 20 Zoning Code Section 20.25.040.A*)

6. A neighborhood character overlay district must be a geographically defined area that has a significant concentration, linkage, or continuity of sites that are united by physical development or architecture. To be eligible for /NC zoning, the area must possess urban design, architectural or other physical development characteristics that create an identifiable setting, character, and association. The area must also be a contiguous area of at least five acres unless it abuts and extends an existing /NC overlay district or if deemed necessary by the City Council to address specific circumstances. (*Title 20 Zoning Code Section 20.25.040.B*)
7. Land uses allowed by the underlying zoning district are allowed in all /NC overlay districts unless expressly modified when the specific neighborhood character overlay district is adopted. (*Title 20 Zoning Code Section 20.25.040.C*)
8. In establishing an /NC overlay district, the City Council may adopt district-specific development and design standards to guide development and redevelopment within the subject /NC Overlay district. /NC overlay districts may modify development and design standards, which include setback, height, use, and building specific requirements. (*Title 20 Zoning Code Section 20.25.040.C and D*)

#### Aspire Neighborhood Character Overlay Zoning

9. The /NC-A Overlay District is intended to be 'overlain' on top of the RT5.4 Residential district applied to the entire Aspire Subdivision property. (*Project Summary, Aspire Community Neighborhood Character Overlay*)
10. The stated purpose of the overlay district is to create a variety of housing options for households of varying income levels within a cohesive neighborhood; to provide for medium-density residential development in a similar pattern and intensity to the existing East Missoula Community in accordance with the Our Missoula 2035 Growth Policy, and to provide for the development of workforce-attainable housing by allowing modified building setbacks, lot coverage, and multi-dwelling structures in addition to the residential building types allowed in the standard RT5.4 Residential zoning district. (*Aspire Community Neighborhood Character Overlay*)
11. The RT5.4 zoning district permits detached houses, lot line houses, two-unit houses, and two-unit townhouses. The RT5.4 district does not allow multi-dwelling buildings. However, the proposed / NC-A, Aspire Neighborhood Character Overlay would allow multi-dwelling buildings on Lots 58-67 near the southern boundary of the Aspire Subdivision. (*Title 20 Zoning Code Section 20.05.030, Aspire Community Neighborhood Character Overlay*)
12. The RT5.4 zoning district provides for a maximum density of 5,400 square feet per parcel and dwelling unit. This base zoning would allow for the creation of up to 284 lots or dwelling units based on the following calculation: 35.28 acres x 43,560 square feet per acre = 1,536,796 square feet ÷ 5,400 square feet per dwelling unit = 284.59 dwelling units. The / NC-A, Overlay does not include provisions to increase the maximum density of the base RT5.4 Residential district. (*Title 20 Zoning Code Table 20.05-3 Including Footnote 7, Aspire Community Neighborhood Character Overlay*)
13. Required setbacks in the RT5.4 Residential base district are: 20-foot front and rear, 10-foot side along streets, and 7.5-foot side along interior lots lines or 1/3 the building height, whichever is greater. (*Title 20 Zoning Code Table 20.05-3*). The proposed / NC-A, Aspire

Neighborhood Character Overlay would allow minimum setbacks of 10 feet in the front and rear, except for street-facing garages, where 20 feet would still be required to allow for parking in the front of garages. The overlay would also modify interior lot setbacks to from 7.5 feet to 5 feet. No change to the maximum building height is proposed. (*Aspire Community Neighborhood Character Overlay*)

14. The Title 20 Zoning Code Section 20.60.040.B.2 says, "No more than 40% of the front yard area in an R district may be paved or used for parking or vehicular use. On corner parcels, not more than 20% of the street side yard area may be paved or devoted to parking or other vehicle use." The proposed / NC-A, Aspire Neighborhood Character Overlay would waive these standards, but limit curb cuts (driveway accesses) to 12 feet wide to limit conflicts with pedestrians using sidewalks and ensure street trees can be spaced according to City standards and on-street parking is maximized.
15. In summary, the / NC-A, Aspire Neighborhood Character Overlay District would allow for a slightly denser development pattern with a wider variety of residential building types by reducing minimum setbacks, permitting multi-dwelling buildings on a portion of the property, and allowing for greater lot area to be used for vehicle parking. All other applicable requirements of the Title 20 zoning code would remain in effect.

#### Review Procedure

16. To establish a neighborhood character overlay district, the zoning amendment procedures of Title 20 Section 20.85.040 must be followed. The following actions have been or are scheduled to be taken in accordance with the procedural requirements:
  - a. Public hearings are scheduled for July 16, 2024 (Planning Board) and August 12, 2024 (City Council).
  - b. Notice of the hearings was published in the Missoulian on June 29, 2024 and July 6, 2024. Notice of hearings was mailed first class to the subject property owner and physical address as well as owners and physical addresses of property within 150 feet of the subject parcels on June 6, 2024. Notice was physically posted on the subject property on July 1, 2024.
  - c. Relevant findings of fact and conclusions of law regarding the rezoning review criteria of Title 20, Section 20.85.040.G are established in this report.

#### Criteria to Establish the Aspire Neighborhood Character Overlay District (/NC-A)

17. Title 20, Section 20.25.040.B states neighborhood character overlays must comply with the following criteria.
  - a. **The area must possess urban design, architectural, or other physical development characteristics that create an identifiable setting, character, and association.**
    - i. The Aspire Subdivision is planned as a new and cohesive 35-acre neighborhood on a largely undeveloped edge of East Missoula. It is a geographically distinct area between existing residential development to the west and north, the Clark Fork River to the east, and Interstate 90 to the south.
    - ii. The streets are planned with treed boulevards and sidewalks, which would provide neighborhood continuity. Two new public park areas are planned: a 2.4-acre linear park with walking trail above the Clark Fork River to the east and a

1.73-acre park abutting the existing 0.62-acre Canyon View Park to the west. Pedestrian connections are planned throughout.

- iii. In addition to the street network and parks, the neighborhood's urban design would be characterized by the reduced setbacks that bring homes closer to the street and to each other, an area of multi-dwelling lots, and detached and two-unit attached homes aimed at creating a pedestrian-oriented, urban development pattern. A mix of detached and attached homes would provide housing options to people with different income levels in a single, distinct neighborhood.
- iv. Reduced setbacks and multi-dwelling buildings would allow preservation of significant public open spaces and river access, creating an identifiable setting. Private yard areas are planned to be reduced due to reduced setbacks and smaller lots. The neighborhood would be characterized by significant public recreational areas in lieu of large private yards, and medium density development in a distinct and cohesive neighborhood.
- v. The proposed overlay does not include architectural standards. However, the proposed development covenants include some standards such as a prohibition on temporary structures, a limit of no more than two stories in height, a requirement for at least a one-car attached garage per home, paved driveways, and fire-wise type roofing materials and landscaping. The covenants also provide limitations on fencing and storage buildings.

b. **The designated area must be a contiguous area of at least five acres. Areas of less than five acres may be designated if they abut and extend an existing /NC overlay district, or if deemed necessary by the City Council to address specific circumstances.**

- i. The district is planned to span 35.28 contiguous acres, meeting the minimum five-acre requirement. (*Project Summary, Legal Descriptions*)

## Rezoning Conclusions of Law

1. Title 20, Section 20.85.040.G: In reviewing and making decisions on zoning amendments, the zoning officer, Planning Board, and City Council must consider at least the following criteria:
  - a. Whether the zoning is made in accordance with a growth policy;
  - vi. Per the Our Missoula 2035 City Growth Policy, the subject property has a land use designation of Residential Medium (3 to 11 dwelling units per acre). The Residential Medium land use designation is intended to fit with many already established residential neighborhoods and acknowledges the single dwelling and two-unit townhouse / duplex residential building types as the primary use with the potential for accessory dwellings as well. (*Our Missoula 2035 City Growth Policy page 123*)
  - vii. The current relatable zoning districts to the Residential Medium land use designation are RT10 Residential, R8 Residential, R5.4 Residential, and RT5.4 Residential. (*Our Missoula 2035 City Growth Policy page 124*)
  - viii. The RT5.4 / NC-A zoning, along with the Aspire Subdivision layout, would permit a density of 7.1 dwelling units per acre in conformance with the recommended density for this area in the growth policy.

- ix. The *Livability* section of the City Growth Policy encourages walkable neighborhoods, access to parks and trails, and easy accessibility to amenities and commercial and local services to meet the needs of an expanding diverse population. (*Our Missoula 2035 City Growth Policy* page 30)
- x. The *Safety and Wellness* section of the City Growth Policy encourages building in areas close to existing infrastructure, as is the case here. (*City Growth Policy* page 44)
- xi. The *Community Design* section of the City Growth Policy aims to conserve and protect open space and riparian resource areas while providing convenient connections to trails and parks. (*City Growth Policy* pages 71-73)
- xii. The rezoning to RT5.4 / NC-A complies with the Our Missoula 2035 City Growth Policy goals for providing appropriate housing types and density, allowing housing near existing infrastructure and services, parks and trails, and a walkable neighborhood.

b. Whether the zoning is designed to secure safety from fire and other dangers;

- i. Emergency services including those provided by hospitals, City Police, and City Fire are available to the site. Law enforcement personnel and procedures are available to address potential problems of noise, property damage, or personal injury. Fire protection is also available through a municipal fire hydrant network planned for the site.

c. Whether the zoning is designed to promote public health, public safety, and the general welfare;

- i. The rezoning will promote public health, public safety, and the general welfare by promoting medium-density development in a location where existing transportation and utility infrastructure are available.
- ii. Future development will be subject to all applicable local, state, and federal regulations ensuring the protection of public health, safety, and welfare.
- iii. No development is proposed in the floodplain, promoting public health, safety, and the general welfare by decreasing risk to people and property.
- iv. The /NC-A Overlay proposes compact development and active transportation to promote public health and the general welfare.
- v. Installation of utility, stormwater, and street infrastructure would be required prior to the sale or development of lots, ensuring protection of public health, safety, and general welfare.

d. Whether the zoning is designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;

- i. The RT5.4 / NC-A zoning would allow for an urban residential subdivision, providing adequate provision of vehicular and pedestrian access, water supply, and sewage disposal through conditions of subdivision approval.
- ii. Additional findings of fact and conclusions of law related to adequate provision of public requirements, including schools, are located in the Subdivision section of this report.

- iii. The zoning, in combination with subdivision review, is designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
- e. Whether the zoning considers the reasonable provision of adequate light and air;
  - i. The zoning district would allow for a subdivision providing significant, functional, and valuable open spaces, which would provide light and air to subdivision residents and the general public.
  - ii. The /NC-A overlay makes minor modifications to setbacks, but no setbacks are reduced to less than 5 feet, allowing for provision of adequate light and air.
  - iii. The /NC-A overlay would not modify the underlying height limit of 35 feet, allowing for adequate light and air on adjacent properties.
- f. Whether the zoning considers the effect on motorized and nonmotorized transportation systems;
  - i. The zoning would allow for a subsequent subdivision that includes new sidewalks along an existing, offsite public street improvements and new internal streets lined with sidewalks, as well as additional pedestrian pathways.
- g. Whether the zoning considers the promotion of compatible urban growth;
  - i. One- and two-unit residential development is located to the west and north of the subject property. Although the RT5.4 / NC-A zoning would allow a slightly denser development pattern than nearby residential areas, the zoning would allow similar residential development that is considered medium-density under the Our Missoula City Growth Policy and compatible in scale and building type with neighboring development.
- h. Whether the zoning considers the character of the district and its peculiar suitability for particular uses; and
  - i. The zoning would help to implement the Our Missoula 2035 Growth Policy Residential Medium land use designation, which reflects the primary one- and two-unit residential character of this area.
  - ii. The residential nature of the area would continue through the RT5.4 / NC-A zoning district, as opposed to allowing a wider range of uses where compatibility might be a concern.
- i. Whether the zoning conserves the value of buildings and encourages the most appropriate use of land throughout the jurisdictional area;
  - i. The appropriate use of land throughout the jurisdictional area is determined by the Growth Policy and zoning.
  - ii. The RT5.4 / NC-A zoning would comply with the Growth Policy land use designation of Residential Medium and would encourage the most appropriate use of land throughout the jurisdictional area. The residential zoning aligns in terms of use with surrounding residential development.
- j. Whether the proposed zoning amendment corrects an error or inconsistency in the zoning ordinance or meets the challenge of a changing condition;
  - i. The zoning amendment would not correct an error or inconsistency in the zoning ordinance. However, the RT5.4 / NC-A zoning would allow a variety of

residential building types at urban density to help to meet the well documented challenge of providing housing at different price levels in the Missoula area.

- k. Whether the proposed zoning amendment is in the best interests of the city as a whole.
  - i. The RT5.4 / NC-A zoning district would allow for a mix of residential building types to address a pressing need for housing stock at varying prices. The /NC-A Overlay allows for medium density housing that would preserve the floodplain and riparian area. The property is planned for this type of development, would be served with adequate transportation, water, sewer, fire and police protection, and other services. Therefore, the RT5.4 / NC-A zoning district is in the best interests of the City as a whole.

## **IV. REZONING EXHIBITS AND ATTACHMENTS**

### Attachments

- 1. Neighborhood Character Overlay
- 2. Rezoning Ordinance

## **ASPIRE PHASED SUBDIVISION**

### **I. RECOMMENDATION**

Staff recommend City Council **approve** the Aspire Phased Subdivision preliminary plat application, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

### **II. CONDITIONS OF SUBDIVISION APPROVAL**

#### Phasing

- 1. Final plat submittals shall be made in accordance with the Revised Phasing Plan, unless the timeframes are extended or the phasing plan is amended as per City Subdivision Regulations Section 4-070.3.C. The Revised Phasing Plan includes deadlines for submittal of each final plat phase and shows Phase 6 being Lots 58 - 67. (*City Subdivision Regulations Section 4-070.2 and 4-070.3.C*)

#### Streets, General

- 2. All street and non-motorized improvements shall be designed and built in accordance with the City Public Works Standards and Specifications Manual and the City of Missoula Subdivision Regulations (except as modified by variance), and comply with Public Rights-of-Way Accessibility Guideline requirements, subject to the review and approval by City Public Works & Mobility or secured with an improvements agreement, prior to final plat approval. (*City Subdivision Regulations Section 3-020.2*)
- 3. The following statement shall appear on the face of each final plat, in the Development Covenants, and on each instrument of conveyance, subject to review and approval by Public Works & Mobility and Development Services, prior to final plat approval of all phases: "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID/SLID, based on benefit, for future improvements and maintenance of Sommers Street, Deer Creek Road, Speedway Avenue, Waterside Drive,

Lupine Lane, Crosscut Way, Jumbo Drive, Heartwood Place, and Aspire Loop as shown on the preliminary plat, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening, street lighting, and drainage facilities, and may be used in lieu of their signatures on an improvement district petition." (*City Subdivision Regulations Sections 5-050.3.AA, 5-050.3.BB, 3-020.3.A.1, 3-020.3.G and 3-020.4.B, Title 12.10.110 and 12.02*)

4. The subdivider shall provide a road naming plan for review and approval of Missoula City GIS and City Public Works & Mobility prior to final plat approval of Phase 1. The signage plan shall include a name for the alleys providing vehicular access to lots. The subdivider shall install or secure with an improvements agreement the approved road name signs appurtenant to each phase prior to final plat approval of each phase. (*City Subdivision Regulations Section 3-020.4.H and 3-020.12*)
5. The subdivider shall provide a street signage plan in accordance with the Manual on Uniform Traffic Control Devices subject to review and approval of City Public Works & Mobility and City Fire prior to final plat approval of each phase. The subdivider shall install or secure with an improvements agreement the approved street signage appurtenant to each phase prior to final plat approval of each phase. (*City Subdivision Regulations Section 3-020.4.H*)

#### Sommers Street Offsite

6. The subdivider shall provide plans for improvements to Sommers Street from the Aspire property to the Montana Highway 200 right-of-way prior to final plat approval of Phase 1, subject to review and approval of Missoula County Public Works and City Public Works & Mobility. The subdivider shall install or secure with an improvements agreement the approved street improvements prior to final plat approval of Phase 1, with final approval required upon completion by Missoula County Public Works and City Public Works & Mobility. [*City Subdivision Regulations Section 3-020.13.C(1), 3-020.4.A, and 4-010.14.D(2)*]

#### Onsite Streets and Alleys

7. The subdivider shall provide plans for and install or secure with an improvements agreement all streets and alleys within each phase as shown on the preliminary plat, phasing plan, and road and trail plans submitted with the preliminary plat application, subject to review and approval of City Public Works & Mobility, prior to final plat approval of each appurtenant phase. (*City Subdivision Regulations Sections 3-010.5, 3-020.3.B, and 3-020.4.A*)
8. The subdivider shall provide plans for and install or secure within an improvements agreement all non-motorized facilities within each phase as shown on the preliminary plat, phasing plan, and road and trail plans submitted with the preliminary plat application, subject to review and approval of City Public Works & Mobility and Parks & Recreation, prior to final plat approval of each appurtenant phase, except for the pathways leading to and within the riverfront park, which shall be installed prior to final plat approval of Phase 3. Landscaping improvements along the southern property boundary shall be installed prior to final plat approval of Phase 6, as shown in the road and trail plans, subject to review and approval of Parks and Recreation. (*City Subdivision Regulations Sections 3-010.5, 3-020.3.B, and 3-020.4.A*)
9. The subdivider shall install a sewer maintenance road along Lots 6 – 18 and Lots 103 – 113 within a 12-foot drivable easement as shown on the preliminary plat to allow City utility

staff to access, maintain, and replace the sewer main. The plans shall be reviewed and approved by City Public Works & Mobility and the road shall be installed prior to final plat approval of Phase 1, with the portion running along the south boundary of the 1.73-acre western park to be paved prior to final plat approval of Phase 4, all subject to review and approval of Public Works & Mobility and Parks & Recreation. *[Preliminary Plat, City Subdivision Regulations Section 4-010.14.D(2)]*

#### Rights-of-Way and Easements

10. The subdivider shall establish and dedicate right-of-way easements to the City of Missoula from Sommers Drive to Crosscut Way to the proposed and existing Waterside Drive, subject to review and approval of the City Attorney and Public Works & Mobility, prior to final plat approval of Phase 1. *(City Subdivision Regulations Section 3-020.3.B and 3-060.1)*
11. All proposed rights-of-way and easements shall be shown on each appurtenant final plat, identified for their width and purpose, dedicated to the City of Missoula, and recorded with the County Clerk & Recorder's Office with book and page of the recorded documents provided in accordance with Missoula City Public Works Standards and Specifications Manual, subject to review and approval by City Public Works & Mobility, prior to final plat approval of each phase. *(City Subdivision Regulations Sections 3-020.3.B, 3-040.2.B, 3-040.3.H & 3-060.1)*
12. The subdivider shall include the following statement on the face of each final plat, subject to review and approval by City Public Works & Mobility: "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever." *(City Subdivision Regulations Section 5-050.3.X)*

#### Stormwater and Drainage

13. The subdivider shall submit complete grading and drainage plans showing proposed grades of streets, proposed drainage facilities, and a stormwater pollution prevention plan for all lots, blocks and other areas meeting Montana Department of Environmental Quality standards, subject to the review and approval of City Public Works & Mobility, prior to final plat approval of each phase. All drainage facilities shall be constructed in accordance with the approved plans prior to final plat approval of each appurtenant phase. *(City Subdivision Regulations Section 5-020.11)*
14. Prior to construction of the riverbank trail and planting of vegetation within 50 feet of the ordinary high watermark of the Clark Fork River, the subdivider shall acquire a 310 permit from the Missoula Conservation District and submit a copy of the permit to Development Services and Parks & Recreation. *(City Subdivision Regulations Section 3-010.1)*
15. The following statement shall be placed on each final plat and added to the Development Covenants: Runoff from roofs shall be diverted via gutters to street rights-of-way or residential rock sumps to avoid overflow onto adjoining properties, to limit the potential for erosion, and to protect Clark Fork River water quality in accordance with the approved grading and drainage plans. *(City Subdivision Regulations Section 3-040 and 5-0203.B, MCA 76-3-608(3)(a) Effect on the Natural Environment)*

## Riparian Resource Area

16. The subdivider shall submit a Riparian Resource Management Plan addressing the requirements in City Subdivision Regulations Sections 3-130.3 and 5-020.14.L, subject to review and approval of Development Services, prior to final plat approval of Phase 1. The final approved plan shall be appended to the Development Covenants and referenced during subdivision and park improvement design and construction. (*City Subdivision Regulations Sections 3-130.3 and 5-020.14.L*)

## Water Systems, Sewer Systems, and Solid Waste Disposal

17. The subdivider shall submit plans for water supply and sewage disposal facilities meeting the requirements of the Montana Department of Environmental Quality, Missoula City/County Health Department, and City of Missoula, prior to final plat approval of each phase. The subdivider shall install or secure with an improvements agreement the approved facilities prior to final plat approval of each phase, subject to review and approval of City Public Works & Mobility. (*City Subdivision Regulations Section 3-070.1*)
18. The subdivider shall provide plans for and upgrade the existing water mains in Sommers Street, Dakota Avenue, and Staples Street to a 12-inch main to maintain fire flows necessary to serve homes in the Canyon River Subdivision, subject to review and approval of City Public Works & Mobility, prior to final plat approval of Phase 3. Before initiating work, the subdivider shall enter into a work plan and cost sharing agreement with City Public Works & Mobility to pay a proportionate share of these improvements. (*City Subdivision Regulations Section 3-010.5, 3-070.1*)
19. The subdivider shall submit solid waste disposal plans meeting the regulations of Montana Department of Environmental Quality, Missoula City/County Health Department, and the City of Missoula, subject to the review and approval of City Public Works & Mobility and the Missoula City/County Health Department prior to final plat approval of Phase 1. (*City Subdivision Regulations Section 3-070.1*)

## Fire Protection

20. The subdivider shall provide plans for fire suppression water flow, hydrant placement, and address signage standards, subject to review and approval by the City Fire Department and City Public Works & Mobility, prior to final plat approval of Phase 1. The subdivider shall install fire hydrants and related improvements, subject to review and approval by City Fire Department and City Public Works & Mobility, prior to combustible construction in each appurtenant phase. (*City Subdivision Regulations Section 3-010.1.F and 3-070.1*)

## Mail Delivery

21. The subdivider shall provide plans for and install or secure an improvements agreement for mail delivery facilities for future subdivision residents, subject to review and approval by the U.S. Postal Service and City Public Works & Mobility, prior to final plat approval of Phase 1. The subdivider shall install or secure with an improvements agreement the approved mail delivery facilities prior to final plat approval of each appurtenant phase, subject to review and approval of the U.S. Postal Service and Public Works & Mobility. (*City Subdivision Regulations Sections 3-020.15.D(2)(c) and 3-100.18*)

## Parkland Dedication, Boulevard Landscaping & Weeds

22. The subdivider shall provide plans for and install or secure with an improvements agreement park improvements to all parkland, including but not limited to grading, preservation of existing mature vegetation where possible, application of topsoil, installation of commercial grade irrigation system, installation of turf grass and dryland seed or sod, installation of park trees, and design to allow for future amenities, subject to review and approval by City Parks & Recreation, prior to final plat approval for each phase containing parkland. Park improvements must meet standards found in the City of Missoula Parks and Recreation Design Manual. (*City Subdivision Regulations Section 3-080 and 5-020.14.H*)
23. The subdivider shall dedicate to the City 2.4 acres of parkland in a linear park along the Clark Fork River as shown on the preliminary at the time of final plat approval of Phase 1. The subdivider shall install or secure with an improvements agreement the proposed 8-foot gravel pathway with improved access points from Waterside Drive along with selection and planting of park trees as depicted on the plat and landscaping plans, prior to final plat approval of Phase 3, subject to review and approval of City Parks & Recreation. (*City Subdivision Regulations Section 3-080*)
24. The subdivider shall dedicate to the City 1.73 acres of parkland adjacent to the Missoula County Canyon View Park as shown on the preliminary plat at the time of final plat approval of Phase 4, subject to review and approval by Parks and Recreation. (*City Subdivision Regulations Section 3-080 and 5-020.14.H*)
25. The subdivider shall provide or secure with an improvements agreement a paved path from the internal extension of Sommers Street, through the 1.73-acre park and Canyon View Park, to Robinson Street, subject to review and approval by City Parks & Recreation and Missoula County Parks, Trails, and Open Lands Department, prior to final plat approval of Phase 4. The sewer maintenance access road along the southern edge of the park shall be used for a portion of this path. [*City Subdivision Regulations Section 3-080.8.C, 4-010.13.B(c) and (g)*]
26. The subdivider shall remove the substandard playground equipment in Canyon View Park, subject to review and approval by City Parks & Recreation and Missoula County Parks, Trails, and Open Lands Department, prior to final plat approval of Phase 4. [*City Subdivision Regulations Section 3-080.8.C, 4-010.13.B(c) and (g)*]
27. The following statement shall appear on the face of each final plat, in the Development Covenants, and on each instrument of conveyance, subject to review and approval by City Parks & Recreation and Development Services: "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for future improvements and maintenance of parks within and adjacent to the Aspire Subdivision, including but not limited to lighting, watering, drainage, planting, transportation, play equipment, exercise equipment, garbage facilities, signage, and maintenance, and may be used in lieu of their signatures on an improvement district petition." [*City Subdivision Regulations Sections 5-050.3.AA, 3-080.8.C, 4-010.13.B(c) and (g)*]
28. The subdivider shall provide plans for boulevard landscaping for all roads within and adjacent to development lots, subject to review and approval by City Parks & Recreation, prior to final plat approval for each phase. Except as provided in the condition immediately below, the subdivider shall plant or secure with an improvements agreement Class II street

trees at a linear spacing between 25 and 35 feet, with a minimum of one tree per lot, and while tree locations shown on the landscape plans may change slightly in final design, the total number of trees shown (357 total) within the rights-of-way will remain the same. If during final design and installation a tree cannot be located where planned due to a fire hydrant or other appurtenance, the subdivider shall install a tree in one of the subdivision parks, subject to review and approval of City Parks & Recreation. (*City Subdivision Regulations Section 5-050.5.C*)

29. The subdivider shall amend the Development Covenants to state that “Lot owners shall be responsible for obtaining boulevard landscaping permits prior to building permit approval and for installation of boulevard landscaping adjacent to development lots prior to Certificate of Occupancy in accordance with City of Missoula standards,” subject to review and approval by Parks and Recreation prior to final plat approval. (*City Subdivision Regulations Section 5-050.5.C*)
30. The subdivider shall provide a Weed Management and Revegetation Plan, appended to the Development Covenants and approved by the Missoula County Weed District, subject to review and approval by Development Services, prior to final plat approval. (*City Subdivision Regulations Section 5-010.14.K*)

#### Water Rights

31. The subdivider shall convey the water rights associated with the property to the City of Missoula prior to final plat approval of Phase 1, subject to review and approval of the City Attorney. In doing so, the subdivider shall cooperate with the City’s efforts to obtain approval from DNRC to convert the water rights to the City’s ownership, including possible changes in use, point of diversion, or changes to accommodate the City’s use, integrating the subdivider’s water rights into the City’s larger water rights holdings to ensure water can be provided to support the subdivision’s need for domestic and irrigation water. This cooperation shall include responding verbally or in writing to requests for information on historic water use on the property, assisting the City in obtaining any necessary information in the subdivider’s possession, and executing any documents necessary to convey the rights or process change applications with the DNRC. [*City Subdivision Regulations Section 4-010.14.D(1)*]
32. The subdivider shall denote on all final plats that water rights have been severed from the land within the Aspire Subdivision, subject to review and approval by Development Services. (*City Subdivision Regulations Section 3-060.4*)

#### Development Covenants

33. The subdivider shall submit final Development Covenants meeting the requirements of City Subdivision Regulations Section 5-020.14.K, subject to review and approval by Development Services, prior to final plat approval of Phase 1. (*City Subdivision Regulations Section 5-010.14.K*)
34. The subdivider shall include language in the Development Covenants prohibiting obstructions to be placed within any proposed public access or pedestrian access easements and any dedicated parkland, or any obstructions aside from fences in proposed utility easements, so as to maintain sufficient perpetual legal access, subject to review and

approval by Public Works & Mobility and Development Services, prior to final plat approval of Phase 1. (*City Subdivision Regulations Section 5-020.5*)

35. The subdivider shall include the following sections in the Development Covenants, subject to review and approval by Public Works & Mobility and Development Services, prior to final plat approval: maintenance and replacement of mail delivery facilities, address signage standards, easements remaining unobstructed, wood burning devices, weed control, MTFWP “Living With Wildlife” recommendations, radon mitigation, riparian resource management plan, SID/RSID/SLID, and wildland urban interface fire protection standards, and said sections may not be amended or deleted without written approval by the governing body, prior to final plat approval of Phase 1. (*City Subdivision Regulations Sections 5-010.14.K, 5-020.14.F & 3-010.2*)

### **III. SUBDIVISION FINDINGS OF FACT**

#### **A. GROWTH POLICY AND ZONING COMPLIANCE**

##### Findings of Fact:

1. City Subdivision Regulations Section 3-010.1.I. requires that a subdivision be reviewed for compliance with the Missoula City Growth Policy and its amendments. See the Growth Policy General Findings of Fact, Annexation, and Rezoning Findings of Fact sections of this report, which are incorporated here by reference, that address and demonstrate compliance with the Our Missoula 2035 Growth Policy.
2. Section 3-010.B of the City Subdivision Regulations states subdivision plats must comply with the Missoula City Zoning Ordinance. Section 4-010.14.B.(2) of the City Subdivision Regulations states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, City Council must consider whether the proposed subdivision complies with the applicable zoning regulations. See the Growth Policy General Findings of Fact, Annexation, and Rezoning Findings of Fact sections of this report, which are incorporated here by reference, that address and demonstrate compliance with the Title 20 Zoning Ordinance and the proposed RT5.4 / NC-A, Aspire Neighborhood Character Overlay zoning district.

##### Conclusion of Law:

1. The Aspire subdivision complies with both the Our Missoula 2035 City Growth Policy and the standards of the RT5.4 / NC-A, Aspire Neighborhood Character Overlay zoning district, subject to the recommended conditions of approval.
2. Per State Law MCA 76-1-605(2)(b), no land use proposal shall be conditioned or denied based solely upon the lack of compliance with the Growth Policy.

#### **B. PRIMARY CRITERIA COMPLIANCE**

##### **CRITERIA A AND B: IMPACT ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES**

##### Findings of Fact:

##### Agriculture

1. Section 5-020.6.A of the City Subdivision Regulations states the subdivider must demonstrate the subdivision proposal will have no adverse impacts on agriculture, or must identify the adverse impacts and describe proposed avoidance and mitigation efforts that will be used to mitigate the adverse impacts. The regulations state, “Mitigation of adverse

impacts will not be based on a loss of agricultural soils and set aside of land or monetary contribution for the loss of agricultural soils will not be required."

2. Agriculture includes the use of the land for growing, raising, or marketing of plants and animals to produce food, feed, and fiber commodities, not including gardening for personal use. Agricultural land includes land used for agriculture or having a soil type defined by the Natural Resources Conservation Service (NRCS) as having agricultural importance including prime farmland, farmland of statewide importance, and farmland of local importance. (*City Subdivision Regulations Section 2-020.5*)
3. The subdivision application says the land was historically used for hay production, but has not been in production for four years. (*Subdivision Application Page 8*)
4. The NRCS Soil Survey submitted with the application shows almost all of the subject property has a soil type classified as Prime Farmland if Irrigated. (*NRCS Custom Soil Resource Report*)
5. Land north and west of the property is developed with residences. Land to the south is an interstate highway. Across the river to the east is a golf course with homes. No working agricultural lands are located in the vicinity of the property. (*Missoula County Property Information System*)
6. The City's Our Missoula 2035 Growth Policy future land use map designation is Residential Medium (3 to 11 dwelling units per acre). The Missoula Area Land Use Element is a 2019 amendment to the Missoula County Growth Policy. The associated County land use map identifies this area as residential, which seeks to accommodate a range of housing options, preserve and enhance the residential character of existing neighborhoods, and provides for compatible infill housing where land uses are in transition. Neither the City or County land use plans call for agricultural land use on this property or in the vicinity. (*Our Missoula City Future Land Use Map, 2019 Missoula County Area Land Use Element, Page 39*)

#### Agricultural Water Users

7. Section 5-020.6.B of the City Subdivision Regulations states in areas where agricultural water user facilities exist on the subject property or adjoin the property, the application packet must identify the agricultural water user, describe any proposed changes to the agricultural water use, and describe alterations to availability of water.
8. Agricultural water user facilities are those facilities that provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities. (*City Subdivision Regulations Section 2-020.7*)
9. The subdivision application states the property has an irrigation well that has historically been used to irrigate the property, but is not part of a larger shared system with other users. The application states the Clark Fork River provides irrigation water to downstream users, but they will not be impacted by this subdivision. (*Subdivision Application Page 10*)
10. The subdivision application includes two ground water certificates from the Montana Department of Natural Resources and Conservation indicating groundwater water rights for domestic, lawn and garden, stock watering, and irrigation on the subject property with a total combined maximum flow rate of 80 gallons per minute. The application also includes a statement of claim for water from the Clark Fork River used for sprinkler irrigation on the property at a maximum flow rate of 120 gallons per minute. The application states there are

no other water users who have legal access to these points of diversion. (*Subdivision Application Page 10, Water Rights General Abstracts*)

11. The application states the water rights are proposed to be transferred to the City of Missoula to be used to irrigate the proposed parkland as a condition of preliminary approval. Staff recommend a condition of approval requiring transfer of water rights to the City as proposed. [*Subdivision Application Pages 10 and 22, City Subdivision Regulations Section 4-010.14.D(2)*]
12. City Subdivision Regulations Sections 3-060.3 and 3-060.4 provide for irrigation easements in subdivisions. The regulations state the subdivider need not establish irrigation easements if the water rights have been removed from the land within the subdivision, or the process has been initiated to remove the water rights from the land, and the fact the water rights have been or will be removed from the land within the subdivision is denoted on the plat. Staff recommend this statement be denoted on the final plats for all phases.

**Conclusions of Law:**

1. The subdivision would prevent use of productive soils for agriculture. No agricultural production occurs in the vicinity of the property, so no other agricultural operations would be impacted by this subdivision. The property is planned for residential use and development and mitigation may not be required for the loss of agricultural soils.
2. No impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision if the recommended conditions of approval are imposed and met.

**CRITERION C: IMPACT ON LOCAL SERVICES**

1. Section 5-020.6.C of the City Subdivision Regulations states the subdivider must identify services and evaluate the impacts on those services including transportation elements, utilities, water supply, sewage disposal, and solid waste disposal, schools emergency services, and information pertaining to residential units and taxation.
2. Section 3-010.5 of the City Subdivision Regulations states the subdivision must be served by adequate public facilities and services such as transportation systems (including non-motorized), parking, police and fire protection, drainage structures, solid waste disposal, water supply, and sanitary sewage disposal; or the subdivider will provide adequately for such services.

**Transportation Elements**

**General Findings of Fact:**

3. Section 3-020.2 and .3C of the City Subdivision Regulations requires improvements to roads within and adjacent to a subdivision and states all public and private street and road improvements, including pavement, curbs, sidewalks, bike facilities, and drainage to be in accordance with the Missoula City Public Works Standards and Specifications Manual and standards prescribed in Table .2A, except as authorized by variance.
4. Section 3-020.3.A.1 of the City Subdivision Regulations requires that each legal access to a subdivision must provide for the construction and perpetual maintenance of the access road. Sections 5-050.3.AA and .BB of the City Subdivision Regulations requires a Special Improvement District (SID) statement to be provided on the plat and on each instrument of conveyance for future street and related improvements that benefit the subject property. Staff recommend a condition of approval requiring a SID/RSID/SLID statement on the plat and in the Development Covenants for future improvements to Sommers Street, Deer

Creek Road, Speedway Avenue, Waterside Drive, Lupine Lane, Crosscut Way, Jumbo Drive, Heartwood Place, and Aspire Loop.

5. Section 3-020.4.H.2 of the City Subdivision regulations requires street signs and traffic control devices to be approved by the City Engineer and consistent with the Manual on Uniform Traffic Control Devices adopted by the Montana Department of Transportation. Staff recommend a condition of approval requiring the subdivider to provide a street signage plan and installation of street signage in accordance with the Manual on Uniform Traffic Control Devices, subject to review by Public Works & Mobility (the City Engineer), and City Fire.
6. Section 3-020.12 of the City Subdivision Regulations provides requirements for street names, with review and approval required prior to final plat approval. Staff recommend a condition of approval to reflect this requirement.
7. The subdivider proposes access to the subdivision from Sommers Street at the southwest corner of the property and Waterside Drive to the north. During early-stage planning for the subdivision, the subdivider also sought a western road connection to Robinson Street through the Canyon View Park, but the Missoula County Commissioners did not act on this request. (*Traffic Impact Study page 7, Personal Communication with Juniper Davis of Missoula County Parks, Trails, and Open Lands, 6/21/24*)
8. Based on trip generation rates from the Institute of Transportation Engineers Trip Generation Manual, the traffic impact study submitted with the application estimates the subdivision would produce up to 2,266 vehicle trips per day, with approximately 90% of the trips using Sommers Street and 10% using Waterside Drive. (*Preliminary Plat, Traffic Impact Study*)

#### Sommers Street

9. Sommers Street extends from the subject property approximately 2,200 feet to MT Highway 200. MT Highway 200 is a minor arterial leading to the City of Missoula proper. Sommers Street is maintained by Missoula County and currently contains two driving lanes, informal parking lanes, and no pedestrian or bicycle facilities within a 50-foot right-of-way easement. (Note: If built today, Sommers Street would require a 60-80-foot easement but existing development along the street makes increasing the easement width unlikely.) To mitigate impacts from the subdivision and to provide adequate transportation facilities along Sommers Street within the existing right-of-way easement, the subdivider is proposing to improve Sommers Street with two 11-foot driving lanes, 8-foot parking lanes, curb and gutter, and 5-foot sidewalks from the subject property to Highway 200. Staff recommend a condition of approval requiring the subdivider to improve Sommers Street prior to final plat approval of Phase 1, with review and approval by Missoula County Public Works and City Public Works & Mobility. (*Missoula County Property Information System, MDT Functional Classification Route Map, Missoula County Subdivision Regulations, Subdivision Application page 20, Offsite Improvements Exhibits, Traffic Impact Study, Correspondence with Missoula County Chief Public Works Officer Shane Stack, 3/28/24, Plat of the East Missoula Addition*)
10. The subdivider proposes a new internal extension of Sommers Street to provide access to lots along the southwest side of the subdivision. This section of Sommers Street is proposed to be dedicated to the City of Missoula with standard 10-foot driving lanes, 8-foot parking lanes, curbs and gutters, 7-foot boulevards, and 5-foot sidewalks within a 62-foot right-of-way easement. This street is considered a Low Density Urban Local Street. All of the proposed specifications meet the Low Density Urban Local Street standards in the City

Subdivision Regulations Table .2A, except for the right-of-way width, which is typically 70 feet wide. The subdivider has requested a variance from the 70-foot requirement, as detailed in the Variance Requests section of this report. (*Project Summary, Preliminary Road and Trail Construction Plans, Variance Requests*)

#### Waterside Drive

11. Waterside Drive extends north from the subject property approximately 650 feet through the Waters Edge Subdivision to Deer Creek Road, which intersects with Speedway Avenue. Waterside Drive is maintained by Missoula County and contains two driving lanes and one parking lane within a 54-foot right-of-way easement. Homes and a sidewalk are located along the east side of the road. The traffic impact study estimates approximately 10% of the vehicle trips to and from the subdivision would use Waterside Drive. The subdivision application states the subdivider is not proposing any additional offsite improvements to Waterside Drive. (*Traffic Impact Study, Missoula County Property Information System, Subdivision Application Page 20*)
12. The subdivider proposes a new, internal extension of Waterside Drive that would run the length of the subdivision from north to south and be dedicated to the City. This new street can be divided into three segments. The northern segment includes two approximately 45-degree curves to calm vehicle speeds and would have 10.5-foot driving lanes, one 8-foot parking lane, curbs and gutters, 7-foot boulevards, and 5-foot sidewalks within a 54-foot right-of-way easement. This street section is proposed to meet and match the offsite Waterside Drive. It is considered a Low Density Urban Local Street, which is required to in City Subdivision Regulations Table .2A to have two parking lanes instead of one within a 70-foot wide right-of-way easement instead of the proposed 54-foot one. The subdivider has requested a variance from the second parking lane and 70-foot easement requirement, as discussed in the Variance Requests section of this report. (*Road and Trail Plans, Project Summary*)
13. The central segment of Waterside Drive would provide access to lots along the east side of the subdivision. This street section is considered a Low Density Urban Local Street and is proposed to meets all of the street specifications for driving lanes, parking lanes, curb and gutter, boulevards and sidewalks except for right-of-way width. The subdivider is proposing a 62-foot right-of-way instead of the required 70 feet, as detailed in the Variance Requests section of this report below. (*Road and Trail Plans, Project Summary*)
14. Near the southern edge of the subdivision, Waterside Drive is proposed to transition into an alley and 25-foot right-of-way with a 19.5-foot drive lane, curb and gutter, and 5-foot landscape buffer strip where trees are proposed to be planted along the property boundary with Interstate 90. This alley would provide vehicle access to multi-dwelling Lots 64-67 and intersect with a new extension of Sommers Street near the southwestern property boundary. (*Road and Trail Plans, Preliminary Plat*)

#### Lupine Lane

15. Located near the southern end of the subdivision, Lupine Lane is proposed as an alley to serve multi-dwelling lots 58 – 61. The driving surface is proposed to be 19.5 feet with curb and gutter. Lupine Lane would connect with Sommers Street and Crosscut Way. (*Preliminary Plat, Road and Trail Plans*)

#### Crosscut Way, Jumbo Drive, Heartwood Place, and Aspire Loop

16. Crosscut Way, Jumbo Drive, Heartwood Place, and Aspire Loop are proposed to provide access to the lots and parkland in the central portion of the subdivision. These streets are

proposed to be dedicated to the public and are considered Low Density Urban Local Streets. They are proposed to meet all of the street specifications for driving lanes, parking lanes, curb and gutter, boulevards, and sidewalks except for right-of-way width (62 feet are proposed instead of 70 feet) and for sidewalk on one side of the street instead of two for a segment of Aspire Loop along the western edge of the subdivision. These two variance requests are detailed in the Variance Requests section of this report below. (*Preliminary Plat, Road and Trail Plans, Project Summary, Variance Requests*)

#### Non-Motorized

17. Sections 3-020.15.B.1 of the City Subdivision Regulations requires a subdivider to provide active transportation facilities that provide continuous access to all lots within the subdivision and access to adjoining developments and community active transportation systems.
18. Each proposed lot in the Aspire Subdivision would have frontage on and access to a sidewalk in conformance with City standards. The sidewalk at the northern extent of the proposed Waterside Drive segment would align and connect with the existing sidewalk on the east side of Waterside Drive in the adjacent subdivision. Offsite Waterside Drive only has sidewalk on the east side of the street, but this subdivision would also provide sidewalk on the west side of the new Waterside Drive segment. (*Preliminary Plat, Road and Trail Plans*)
19. A mid-block pedestrian access easement is proposed between Lots 25 / 26 and 119 / 120 to mitigate for a block length exceeding the maximum 480 feet, as required in the City Subdivision Regulations Section 3-040.2.A(2). This is discussed in greater detail in the Variance Requests section of this report. (*Preliminary Plat, Variance Requests*)
20. An 8-foot wide pathway is proposed along the top of the river bank near the east property boundary in an area proposed to be dedicated to the City as parkland. This path would link with the riverfront path in the adjacent Waters Edge Subdivision to the north. Also included are four 8-foot wide pathways leading from Waterside Drive to the park, which are intended to break up the block length and provide accesses to the riverfront park. (*Preliminary Plat*)
21. The subdivider is also proposing to rebuild Sommers Street from the southwest corner of the subdivision approximately 2,200 feet to MT Highway 200. Part of the planned improvements are the installation of new, 5-foot wide sidewalks on both sides of the street where there currently are none. (*Offsite Street and Water Improvements Details*)

#### Transit

22. Section 3-020.4.G of the City Subdivision Regulations states when development is adjacent to or within  $\frac{1}{4}$  mile of an established public transit or school bus route, the subdivider may be required by the City Engineer to construct bus stop facilities along with accessible routes, meeting ADA standards, to those facilities.
23. The subject property is within the Missoula Urban Transportation District. Mountain Line Route 4 currently runs along Speedway Avenue, less than  $\frac{1}{4}$  mile from the property. Route 4 includes service 7 days per week at 60-minute intervals. According to Spencer Starke of MUTD, due to recent receipt of funding for improvements to MT Highway 200 through East Missoula, there is a high likelihood the route will change so MUTD is not requesting amenities such as a new bus stop to be installed in conjunction with this subdivision. (*Mountain Line Route Map, Agency Comment from Spencer Starke of MUTD, 4/3/24*)

24. School bus pick-up and drop-off for Hellgate High School, Washington Middle School, and Hellgate Elementary is currently located at the now closed Mount Jumbo School, approximately 1,000 feet from the subdivision at the intersection of Robinson Street and Minnesota Ave. Robinson Street extends from Canyon View Park near the subdivision's west boundary and is a low volume, low speed road that does not have pedestrian facilities. Development Services has not received comments from school representatives regarding bus service despite multiple attempts. Additionally, as school children inhabit the subdivision over time, bus routes may change. Therefore, staff do not recommend the subdivider be required to construct bus stop facilities or routes other than a paved path through the proposed western subdivision park and existing County park connecting to Robinson Street as part of subdivision improvements. (*Missoula County Public Schools Bus Schedules and Stops, Agency Requests for Comments*).

#### Conclusions of Law:

1. The Aspire Subdivision will meet the road improvement and non-motorized facility standards in the Missoula City Subdivision Regulations if the recommended variances are granted and conditions of approval are imposed.
2. The Aspire Subdivision provides active transportation facilities that provide safe routes to bus stops, open space, other neighborhoods, and all lots within the subdivision in compliance with Section 3-020.15.B. of the City Subdivision Regulations if the recommended conditions of approval are imposed.

#### **Rights-of-Way and Easements**

##### Findings of Fact:

1. Section 3-020.3.B of the City Subdivision Regulations requires all streets within a subdivision to be dedicated public right-of-way or, at the City Engineer's discretion, may be a private street and public access with private maintenance easement. Section 3-060.1 of the City Subdivision Regulations requires easements to be provided for utilities, drainage, watercourse, channel, ditch, stream, vehicular, and pedestrian access.
2. All streets and pedestrian pathways in the subdivision are proposed to be within dedicated public right-of-way and public access easements. All utilities and drainage facilities are proposed to be located within public utility easements. There are no irrigation ditches or other watercourses in the subdivision that would require easements. (*Preliminary Plat*)
3. In order to comply with Sections 3-020.3.B and 3-060.1 of the City Subdivision Regulations and Missoula City Public Works and Specifications Manual, staff recommend a condition of approval requiring all proposed rights-of-ways and easements to be shown on the face of each plat and identified for their width and purpose.

##### Conclusions of Law:

1. The Aspire Subdivision will meet the rights-of-way and easement requirements of Sections 3-020.3.B and 3-060.1 of the City Subdivision Regulations if the recommended conditions of approval are met.

#### **Drainage**

##### Findings of Fact:

1. Sections 3-040 and 5-020.11 of the City Subdivision Regulations provide minimum standards for site grading and control of stormwater runoff and require the subdivider to submit a complete grading and drainage plan.

2. Section 3-040.3.E of the City Subdivision Regulations states all drainage systems must meet the minimum standards of the Montana Department of Environmental Quality (DEQ), as required by MCA Title 76, Chapter 4 and 5, Part 1, as amended, and all applicable state and local regulations.
3. The subdivision application includes a Grading and Drainage Engineering Design Report that evaluates pre- and post-development conditions. The report indicates groundwater is typically 25 to 30 feet below ground surface. The report states that during site exploration, no groundwater was observed in any test pits which extended to 10.2 feet below ground surface.
4. The proposed drainage system consists of street curbs and gutters to collect and divert runoff to approximately 75 dry wells (sumps) within the public rights-of-way. The sumps are intended to infiltrate post-development runoff generated by impervious areas such as streets, sidewalks, and driveways. Runoff from roofs is planned to be diverted via gutters to residential rock sumps to avoid overflow onto adjoining properties and to protect Clark Fork River water quality. The report indicates that even during the 100-year, 24-hour storm event, post-development runoff will be contained onsite. (*Grading and Drainage Engineering Design Report*)
5. In order to comply with Section 5-020.11 of the City Subdivision Regulations, staff recommend a condition of approval requiring the subdivider to provide plans for and installation of grading, drainage, and stormwater facilities, subject to review and approval by Montana Department of Environmental Quality and Public Works & Mobility, prior to final plat approval for each phase. Additionally, staff recommend language be included in the Development Covenants requiring runoff from roofs to be diverted via gutters to residential rock sumps to avoid overflow onto adjoining properties, limit the potential for erosion, and to protect Clark Fork River water quality.
6. Within the eastern parkland, the subdivider proposes to construct an 8-foot wide pathway on top of the bank that would have four trail connections to Waterside Drive. Storm runoff from the pathway is planned to be drained to the west, away from the river, and maintained onsite. The subdivider also included landscape plans showing trees to be planted along the pathway. The Missoula Conservation District requires a 310 permit prior to work within 50 feet of the ordinary high watermark of a stream, which staff recommend be required prior to trail development and tree planting as a condition of approval. (*Preliminary Plat, Subdivision Application* page 10, *Grading and Drainage Report* page 5, *Agency Comment, Radley Watkins of the Missoula Conservation District, 10/12/23*)

Conclusions of Law:

1. The Aspire Subdivision will meet the grading and drainage standards of the Missoula City Subdivision Regulations and Montana Department of Environmental Quality if the recommended conditions of approval are imposed.
2. Final grading, drainage, and stormwater plans will be reviewed and approved by the City Engineer prior to final plat approval of each phase if the recommended conditions of approval are imposed.

**Water Supply, Sewage Disposal, and Solid Waste**

Findings of Fact:

1. Section 3-010.5 of the City Subdivision Regulations requires subdivisions to be served by adequate public facilities and services including water supply, sewage disposal, and solid waste disposal.
2. The subject property is within the Utility Services Area Boundary. (*City Central Maps*)
3. The subdivider proposes to connect to existing public water mains at Waterside Drive to the north and Sommers Street to the southwest, looping the lines under streets in the subdivision to serve each lot. The application states the water system would be constructed in phases to provide for domestic supplies and fire flows to the future buildings and fire hydrants. (*Subdivision Application Page 22, Water and Sanitation Report*)
4. The average daily demand for domestic water service and landscaping irrigation for the proposed subdivision is 65,500 gallons per day. Maximum daily demand is projected to be twice the average daily demand. Missoula Water has requested the existing water rights be transferred to the City to help serve the subdivision. The application states that during meetings with Missoula Water, City staff have indicated there will be adequate water quality and quantity to serve the subdivision with ongoing upgrades anticipated over time. For example, prior to development of Phase 3, existing, offsite water mains will have to be upgraded to maintain fire flows necessary to serve homes in the existing Canyon River Subdivision. Staff recommend a condition of approval requiring participation of the subdivider in the cost sharing agreement. (*Subdivision Application Page 22, Water and Sanitation Report*)
5. In order to meet Section 4-010.14.A.1.d requiring disclosure and disposition of water rights and Section 3-010.5 of the City Subdivision Regulations, staff recommend a condition of approval requiring the subdivider to transfer the existing water rights to the City of Missoula prior to final plat approval for Phase 1 and adding a statement to the plat that water rights have been severed from the property.
6. A sewer main runs along the western side of the subject property and a lift station is located to the northeast of the subdivision just offsite. New 8-inch mains are proposed to be extended in phases under the streets and alleys throughout the subdivision. The application materials state the proposed mains have the capacity to support sewer demands from the subdivision. (*Preliminary Plat, Water and Sanitation Report*)
7. The existing sewer line along the west side of the subdivision along Lots 6 – 18 and Lots 103 – 113 will require a maintenance road for access. The preliminary plat depicts this road with 12 feet of clear space and connecting in two locations to the proposed extension of Sommers Street. Staff recommend a condition of approval requiring the developer to construct this road for use by City utility maintenance staff prior to final plat approval of Phase 1, with the portion running along the south boundary of the proposed western park to be paved. (*Preliminary Plat*)
8. Section 3-070.6 of the City Subdivision Regulations requires that all utilities be placed in public rights-of-way or public utility easements. The preliminary plat shows all utility lines within proposed easements and staff recommend a condition of preliminary approval to reflect this requirement.
9. In order to comply with Section 3-010.5 of the City Subdivision Regulations, staff recommend a condition of approval requiring the subdivider to provide plans for and installation of water supply and sewage disposal facilities for review and approval by Public Works and Mobility, City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval for each phase.

10. Section 3-070.1 of the City Subdivision Regulations states the means for solid waste disposal is subject to approval of the City Council. Republic Services is expected to provide solid waste disposal service to the subdivision (*Subdivision Application page 21*). Staff recommend a condition of approval requiring the subdivider to submit plans for solid waste disposal for review and approval by City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval for each phase.

**Conclusions of Law:**

1. Public sewer and water services are available to the subdivision. Each lot will be served by municipal sewer and water facilities in compliance state and local standards, if the recommended conditions of approval are met.
2. Solid waste disposal service will be available to the subdivision and will be in compliance with state and local standards, if the recommended conditions of approval are met.
3. Review of water supply, sewage disposal, and solid waste is under jurisdiction of state and local health authorities under the Montana Sanitation and Subdivision Act.

**Parks and Recreation**

**Findings of Fact:**

1. Section 3-080.3.A of the City Subdivision Regulations requires parkland dedication equal to 11% of the net lotted area in subdivisions when residential lots are 0.5 acres or smaller that will have one or two dwelling units on the lots, and 7.5% when the lots are between 0.5 acres and 1 acre in size. (Note: there are additional variables that change the calculation when the net residential density is known, but in this case, the exact number of residential units on the multi-dwelling lots, Lots 58 - 67, is not known so those variables are not factored into the calculation here.) Based on the parkland dedication requirements in the subdivision regulations, the Aspire Subdivision is required to provide a total of 2.25 acres of parkland. (*Preliminary Plat, Phasing Plan*)
2. The subdivider has proposed to dedicate to the City 2.4 acres of parkland and an 8-foot gravel pathway with several access points in a linear park along the Clark Fork River concurrent with final plat approval of Phase 1. The riverfront gravel pathway would be lined with newly planted trees and join a pathway in the Water's Edge subdivision to the north, which has a public access easement. City Parks & Recreation Department staff have requested the subdivider defer construction of the gravel pathway and tree planting until final plat filing of Phase 3 to ensure there is access for maintenance and to give time for a park district tax base to form, which would provide funding for park maintenance. Staff included these items in a recommended condition of approval. (*Preliminary Plat, Phasing Plan, Agency Comment, Nathan McLeod of City Parks & Recreation, 5-28-24, Landscaping Plans*)
3. The subdivider has also proposed to dedicate to the City 1.73 acres of parkland adjacent to the Missoula County Canyon View Park along the west property boundary concurrent with final plat approval of Phase 4. The landscaping plans submitted with the subdivision application state the landscape design and amenities for this park will be coordinated with the City of Missoula Parks Department during the design stage and will be reviewed and approved by City staff. The total parkland, 4.13 acres between both parks in this subdivision, exceeds the dedication requirement by 1.88 acres. (*Preliminary Plat, Phasing Plan, City Subdivision Regulations Section 3-080.3*)

4. City of Missoula Parks, Trails, and Open Lands Department staff expressed concern with the western park connection in part because the existing playground equipment in Canyon View Park is out of date and presents safety concerns, and in part because the existing special improvement district used to fund the County park is not sufficient to support increased use. Recommended conditions of approval are for the subdivider to remove the playground equipment and for future lot owners to waive the right to protest inclusion in a new or expanded park district that may be used to help fund improvements and maintenance in both parks. [*Preliminary Plat, Subdivision Application, Agency Comment, Nicholas Zanotos of Missoula County Parks, Trails, & Open Lands Department, 10/17/23, City Subdivision Regulations Section 4-010.14.B(3)(c) & (g)*]
5. Section 3-080.6 of the City Subdivision Regulations states, "Giving due weight to the expressed preference of the subdivider, the City Council may, in consultation with the Planning Board or the Park Board, determine whether the park dedication must be a land donation, a cash donation or a combination of both." City Parks & Recreation and Planning staff recommend City Council accepts the subdivider's proposal, ensuring the required acreage is dedicated to the City along with final plat approval Phases 1 and 4.
6. Section 5-020.4.C of the City Subdivision Regulations requires the subdivider to submit a boulevard landscaping plan. The subdivider submitted preliminary landscaping plans that include tree locations along all streets and the riverfront trail. The Road and Trail Plans also depict a 5-foot wide landscaping barrier / buffer along the south subdivision boundary abutting Interstate 90. Staff recommend a condition of approval requiring the subdivider to submit final plans for and installation of landscaping, subject to review and approval by Parks and Recreation, prior to final plat filing or each phase. For boulevards adjacent to development lots, boulevard landscaping installation would be required of the lot owner prior to issuance of the Certificate of Occupancy for a new residence. Staff recommend a condition of approval requiring the subdivider to include a statement in the Development Covenants apprising future owners of this requirement.

#### Conclusion of Law:

1. Parkland dedication is required in this subdivision in accordance with the City Subdivision Regulations. The subdivision, as proposed, will meet the parkland dedication requirements if the recommended conditions of approval are met.
2. City Subdivision Regulations require plans for and installation of boulevard landscaping, which will be reviewed and approved prior to final plat approval for each phase and upon construction on each lot if the recommended conditions of approval are imposed.

#### **Schools**

##### Findings of Fact

1. The subject property is within the Hellgate High School, Washington Middle School, and Hellgate Elementary School districts. The proposed subdivision would create 182 residential lots with an estimated 250 dwelling units. The subdivision application states after full buildout, the subdivision could have a range of between 50 and 126 school age children. (*Subdivision Application Page 24*)
2. In response to an inquiry from 406 Engineering regarding potential impacts to the Missoula County Public School District from the subdivision, on April 12, 2023 former Superintendent Russ Lodge wrote, "MCPS will be fine with the subdivision and additional students added to our District. The subdivision will be developed over a period of time and the District will be able to plan. I do not have a concern about our District's abilities to handle the subdivision

and additional students." Additional, more recent requests for comment from school officials have gone unanswered. (*Agency Comment, former MCPS Superintendent Russ Lodge, 4/12/23, Agency Comment Solicitation Letters*)

3. City Subdivision Regulations Section 3-020.4.G states when development is adjacent to or within  $\frac{1}{4}$  mile of an established public transit or school bus route, the subdivider may be required by the City Engineer to construct bus stop facilities along with accessible routes, meeting ADA standards, to those facilities.
4. School bus pick-up and drop-off for Hellgate High School, Washington Middle School, and Hellgate Elementary is currently located at the now closed Mount Jumbo School, approximately 1,000 feet (less than  $\frac{1}{4}$  mile) from the subdivision at the intersection of Robinson Street and Minnesota Ave. Robinson Street extends from Canyon View Park near the subdivision's west boundary and is a low volume, low speed road that does not have pedestrian facilities. As school children inhabit the subdivision over time, bus routes may change. Additionally, Development Services has not received comments from school representatives regarding bus service despite multiple attempts. Therefore, staff do not recommend the subdivider be required to construct bus stop facilities or routes as part of subdivision improvements, other than a paved path leading to Robinson Street through the adjacent parks that will help lessen impact of pedestrians on the parks. (*Missoula County Public Schools Bus Schedules and Stops, Agency Review Requests for Comments, Personal Communication with City Engineer for Development Review Troy Monroe, 6/28/24*)
5. The subdivision application states that with the addition of school age children residing in the subdivision, there is the potential that added students would allow for the Mount Jumbo Elementary School to re-open. This possibility has not been addressed by MCPS officials. (*Subdivision Application Pages 18 and 24*)

Conclusion of Law:

1. School bus service is currently located within one-quarter mile of the subdivision.
2. No adverse impacts to schools requiring mitigation have been identified.

**Fire Department**

Findings of Fact:

1. If the subdivision is approved, the Missoula City Fire Department will serve the future residents. The nearest station is located approximately 3.2 miles away at 625 East Pine Street. (*Subdivision Application Page 24, Missoula Maps*)
2. Subdivision Regulations Section 3-070.1 requires that water supply for fire protection be provided via a public or community water system with 1,000 gallons per minute minimum flow, or via residential sprinkler systems.
3. Water supply for fire protection for this subdivision is planned to be supplied via new fire hydrants, proposed to be installed with each phase. The subdivider provided a fire hydrant layout exhibit with the subdivision application. (*Fire Hydrant and Phasing Plan Changes*)
4. The Missoula City Fire Department requires an addressing system to be developed that conforms to the addressing requirements of the City. All new buildings are assigned an address at the time of building permit approval, and are required to meet City standards for signage. (*City Subdivision Regulations Section 3-010.1.F*)

5. Staff recommend condition of approval requiring the subdivider to provide plans for fire suppression water flow and hydrant placement, as well as road naming and street signage, prior to final plat approval for each phase.

Conclusion of Law:

1. Fire service will be available to the subdivision if the recommended conditions of approval are imposed.

**Law Enforcement**

Findings of Fact:

1. Following annexation, the subdivision would be located within the jurisdiction of the Missoula Police Department, with headquarters at City Hall approximately 4.3 miles away. (*Subdivision Application Page 24*)
2. The Missoula Police Department did not provide comments on the subdivision or annexation requests.

Conclusion of Law:

1. Law enforcement service will be available to the subdivision.

**Mail Delivery**

Findings of Fact

1. Sections 3-020.15.D(2)(c) and 3-100.18 state City Council may require mail delivery facilities for future subdivision residents, and such facilities may not obstruct or be located on a sidewalk.
2. Staff recommend a condition of approval requiring the subdivider provide plans for and install mail delivery facilities to be reviewed and approved by the U.S. Postal Service prior to final plat approval of each phase.

Conclusions of Law

Adequate mail delivery service can be provided to the subdivision if the recommended conditions of approval are imposed.

**CRITERIA D, E AND F: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT**

Findings of Fact:

Natural Environment

1. City Subdivision Regulations Section 5-020.6 states the subdivider must identify resources and evaluate the potentially adverse impacts on those resources from the subdivision, including mitigation measures to reduce or eliminate the impacts. Topics to be investigated include adjacent public lands, cultural resources, hydrological characteristics, soil characteristics and vegetative cover types.
2. The only public land bordering the subject property is the 0.62-acre Missoula County Canyon View Park, located adjacent to the west boundary of the subdivision. The subdivider is proposing to create a new 1.73-acre public park adjacent to the County park, so ultimately the two parks would function as one. Missoula County Parks, Trails, and Open Lands Department staff indicated the connection of the two parks will lead to an exponential increase in the use of Canyon View Park by new City of Missoula Residents. They wrote the increased use is a

concern because Canyon View Park is currently funded by an under-sized special improvement district that cannot provide sufficient funds for its management and upkeep. They stated it is also a concern because the playground equipment does not meet current playground standards and may present safety issues. To address these concerns, staff recommend the subdivider remove the playground equipment and for the future lot owners waive the right to protest the creation of a new or expanded City or County special improvement district to fund park facilities and maintenance prior to final plat filing of Phase 4, which is when the new parkland is proposed to be dedicated to the City. Staff also recommend the subdivider install a paved pathway from Robinson Street, through Canyon View Park, and connect it to the sewer maintenance road along the west side of the subdivision. This would provide a recreational and commuter non-motorized connection from the subdivision to Robinson Street. [Agency Comment, Nicholas Zanotos of Missoula County PTOL, 10/17/23, City Subdivision Regulations 3-080.8.C, City Subdivision Regulations Section 4-010.14.B(3)(c) & (g)]

3. The Clark Fork River borders the eastern property boundary. Along the length of the river frontage, the subdivider proposes to dedicate a strip of parkland generally 50+ feet wide and approximately 1,675 feet long totaling 2.4 acres. This area generally slopes to the east with varying steepness. The area is vegetated with grasses and shrubs, including riparian vegetation and some freshwater shrub wetland vegetation adjacent to the river. (*Preliminary Plat, Subdivision Application, National Wetlands Inventory Exhibit*)
4. Within the eastern parkland, the subdivider proposes to construct an 8-foot wide pathway on top of the bank that would have four trail connections to Waterside Drive. The riverfront pathway would connect to the riverfront path in the Water's Edge Subdivision to the north, which includes a public access easement. Storm runoff from the pathway is planned to be drained to the west away from the river and maintained onsite. Storm runoff from homes along the riverfront park is proposed to be contained in individual rock sumps from house downspouts. The subdivider also included landscape plans showing trees to be planted along the pathway. The Missoula Conservation District requires a 310 permit prior to work within 50 feet of the ordinary high watermark of a stream, which staff recommend be required prior to trail development and tree planting as a condition of approval. (*Preliminary Plat, Subdivision Application page 10, Grading and Drainage Report page 5, Agency Comment, Radley Watkins, Missoula Conservation District, 10/12/23*)
5. A portion of the proposed riverfront park contains Zone AE, a 1% annual chance floodplain. This area is proposed to be left undisturbed, dedicated to the public, and managed by the City Parks & Recreation Department. (*Preliminary Plat, Subdivision Application pages 10-11*)
6. The groundwater certificates included with the subdivision application state static water level was measured at 50 and 29 feet below ground surface in irrigation wells. The application states well data indicate the static water level is approximately 25 – 30 feet below existing grade. The subdivider submitted a geotechnical report which states groundwater was not observed in any of the test pits to the maximum depth explored, approximately 10.2 feet. The subdivision is proposed to be served by City sewer and include stormwater sumps that are planned to provide sufficient distance between collected stormwater water and groundwater to allow for water quality protection in accordance with adopted City public works standards. (*Subdivision Application Page 12, Geotechnical Report Page 4, Missoula Public Works Specification Standards*)
7. The subject property contains riparian vegetation along the Clark Fork River. The application documents include a Riparian Resource Report in compliance with Section 3-130.3 of the City Subdivision Regulations. The report states the riparian resource area ranges from 2 to 25 feet

wide along the length of the river frontage, beginning where the pasture grasses fade and the shrubby riverbank vegetation begins. No lots contain riparian vegetation in accordance with City Subdivision Regulations Section 3-130.4.A. The riparian area is proposed to be buffered by additional width of parkland and newly planted trees along the pathway, which would be maintained by the City Parks & Recreation Department if this application is approved. The pathway would not require removal of riparian vegetation. Staff recommend this plan be appended to the Development Covenants and referenced during subdivision and park improvement construction as a condition of approval. (*Riparian Management Plan, Preliminary Plat, Personal Observation, Landscaping Plans*)

8. The Missoula City-County Health Department commissioned a 2021 channel migration study that includes the Clark Fork River along the subdivision property. This study investigated the historic movement of the river channel using a combination of flood history, geologic data, and statistical calculations to anticipate future movement of the river channel. Along this stretch of the Clark Fork River and in aerial photos supplied by the subdivider, almost no changes to the river channel have occurred since 1955. Nonetheless, the study shows an erosion hazard area along both sides of the river, which is an erosion buffer to provide a margin of safety. (*Channel Migration Zone Report, Paper Titled 'Additional Information Regarding the Missoula County Channel Migration Study'*)
9. The subdivision application materials address the channel migration study as it relates to this site. The submittal attributes the lack of river movement to the property being along a relatively straight stretch of river between two bridges that confine the river to a locked position and to a relatively stable bank with healthy vegetation and underlying geologic material that allows for limited erosion. The paper states that based on these factors, in addition to the riverfront park and building setbacks, there is a measure of safety built into this proposal. The City of Missoula has not adopted the Channel Migration Zone Report or specific setback or buffering distances along the Clark Fork River. (*Channel Migration Zone Report, Paper Titled 'Additional Information Regarding the Missoula County Channel Migration Study'*)
10. The subdivision application materials include a geotechnical report that details the results of a field evaluation and analyses of soil conditions and presents recommendations to assist in design and construction of the proposed development. The report indicates the site has a thin layer of topsoil (3 – 10 inches) covering varying thicknesses of silty sand or silt and clay. Gravel containing varying silt and sand content was then observed to the maximum depth explored, approximately 10.2 feet. The investigation did not discover high groundwater, unstable, or highly erodible soil conditions and does not present findings that would be problematic for residential development. (*Geotechnical Report*)
11. Subdivision Regulations Section 3-010.1F requires the subdivision to comply with other regulations applicable to the land proposed for subdivision.
12. The Missoula County Noxious Weed Management Plan, adopted by Resolution 2012-063, requires a weed management plan as part of subdivision plans. The application packet includes a weed management and revegetation plan. The weed management plan states the site will be graded, topsoil will be stripped and stockpiled on site, then redistributed to landscaped areas including lots and streetside boulevards. The plan says lawn areas will be re-seeded. Weed control is expected to be conducted via mowing, with lot owners ultimately being responsible for maintenance of yards and the City Parks & Recreation Department being responsible for park maintenance. Staff recommend a condition of approval that the weed management plan be appended to the subdivision covenants. (*Weed Management Plan*)

## Wildlife and Wildlife Habitat

13. The bulk of the property was used for hay production, so the vegetation consists mainly of pasture grasses, with patches of alfalfa and noxious weeds. It also includes several coniferous and cottonwood trees of varying size as well as woody, shrubby riparian vegetation along the length of the river frontage and a narrow strip of wetlands along the northern portion of the river on the property. The application states, "During the layout of the site, existing vegetation was preserved to the highest extent practicable. A few examples of this are the placement of the park and riverside trail allowing the large existing pine trees with miscellaneous smaller trees and shrubs to remain." (*Subdivision Application Page 14*)
14. The application states animals that may use the site include whitetail deer, black bears, ground squirrels, chipmunks, fox, coyote, skunk, raccoon, bald eagles, osprey, hawks, and a number of other land mammals, reptiles, and birds. Aquatic species live in the Clark Fork River. Nesting and migrating birds also make home on the property and along the shoreline. (*Subdivision Application Page 16*)
15. Montana Fish, Wildlife, and Parks Regional Supervisor Randy Arnold provided comments on the subdivision, noting this area contains important fish and wildlife habitats and is an important wildlife corridor, stating bears, lions, and other wildlife cross through this area, and moose, wolves, and elk have been documented there. The letter states rivers are important wildlife travel corridors and for corridors to be effective, open space needs to be retained along the riverbank. The letter states this location is particularly important for wildlife, as it provides open spaces along the river south of East Missoula where wildlife can travel along the riverbank and cross underneath the I-90 bridge span over the Clark Fork River. To mitigate and reduce potential impacts to wildlife and wildlife habitat, Mr. Arnold recommends the inclusion of specific 'Living with Wildlife' covenants, which are intended to reduce the potential for human – wildlife interaction and conflict, which staff recommend as a condition of preliminary approval. (*Agency Comment, Fish, Wildlife & Parks Regional Supervisor Randy Arnold, 10/27/23*)
16. Other agencies or interest groups that have commented to date on the natural environment and wildlife habitat values of the property include Five Valleys Audubon, Missoula Conservation District, Missoula Valley Water Quality District, and Missoula County Planning, Development, & Sustainability Department. Some of the comments were submitted in 2023, prior to the decision to dedicate the parks to the City of Missoula as opposed to having them maintained by a property owners association, but all of these comments focused on the water quality and habitat values of the riparian area along the river, and included recommendations for larger setbacks and natural buffers from the river. Some comments cited the aforementioned channel migration zone report and Missoula County's zoning buffering requirements, which would require a minimum building setback of 175 feet from the highwater mark while the minimum setback proposed in the Aspire Subdivision, including riverfront parkland, is 60 feet. Unlike Missoula County, the City has not adopted the channel migration zone report or specific setback or buffering distances along the Clark Fork River. Instead, the City subdivision and zoning regulations require a more general riparian resource plan when riparian vegetation is located in or near a subdivision. In this case, a 50+ foot strip of land along the river includes all of the riparian vegetation with additional buffer and is proposed to be dedicated to the City and managed for habitat and recreational values by the City Parks & Recreation Department. (*City of Missoula Subdivision Regulations, Title 20 Zoning Code, Agency Comment, Subdivision Application*)

## Cultural Resources

17. The property currently contains three vacant homes and outbuildings. The subdivider commissioned a cultural resource inventory, which includes an assessment of the impact of the subdivision development on the integrity of any potentially historic resources and includes a determination of the current physical features, the condition of potentially historic resources, and a recommendation of their eligibility for the National Register of Historic Places. The inventory found the homes and property are not eligible for inclusion on the National Register, a conclusion supported by City Historic Preservation Officer Elizabeth Johnson. (*Cultural Resource Survey, Personal Observation, Agency Comment, Missoula Historic Preservation Officer Elizabeth Johnson, 2/27/24*)

Conclusion of Law:

1. Adequate protections are in place to limit the impact of the subdivision on the natural environment and water quality if the recommended conditions of approval are applied and the riverfront property is dedicated to and managed by the City of Missoula.
2. No historic / cultural resources would be impacted by the subdivision.
3. The subdivision would result in the loss of wildlife habitat and reduced wildlife values. However, the riverfront parkland would continue to provide habitat and the impacts can be mitigated through the imposition of living with wildlife covenants and stormwater management provisions as conditions of approval.

**CRITERION G: EFFECTS ON PUBLIC HEALTH AND SAFETY**

Findings of Fact:

1. Section 5-020.6.G of the City Subdivision Regulations states the subdivider must demonstrate the proposed subdivision will have no adverse impact on conditions that relate to public health and safety including disease control and prevention, emergency services, environmental health, flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes and other natural hazards, high voltage lines or high pressure gas lines, on-site or nearby off-site land uses that create nuisance (e.g. noise, dust, smoke, unpleasant odors), and are or vehicular traffic safety hazards.
2. Subdivision Regulations Section 3-010.2 requires the mitigation of hazards to subdivision development, including but not limited to flooding and slopes of 25% or more.
3. The subject property contains a narrow strip of land along the Clark Fork River designated as Zone AE, 1% annual chance flood, floodplain. The entire floodplain area is proposed to be located in parkland dedicated to the City. No building lots or development is proposed in the floodplain. (*Preliminary Plat*)
4. The subdivision application states the topography of most of the site is relatively flat, with a few bench areas, an old railroad bed with a steep side slope along the western boundary, and some slopes of natural grade at or above 25% along the river. Overall the property does not contain significantly steep slopes or highly erodible soils that would hinder or prohibit development. (*Subdivision Application Page 15, Geotechnical Report*)
5. The subject property is located within the Wildland Urban Interface / Intermix (WUI) Section 5-020.14.F of the City Subdivision Regulations requires the fire protection guidelines found in Exhibit 2 of the subdivision regulations to be included in the covenants when land is located in the WUI. Staff recommend a condition of approval requiring the subdivider to include the standards found in Exhibit 2 in the covenants.

6. The subject property is located within an air stagnation zone. The Development Covenants include language requiring all lot owners to abide by the woodstove, paving, and outdoor burning rules provided by the Missoula City-County Health Department, which staff recommend as a condition of approval. (*Draft Covenants*).
7. The subject property does not contain area prone to rock fall, unstable soils, significant steep slopes or other natural hazards, high voltage power lines, high pressure gas lines, or nearby offsite land uses that create nuisance.
8. For findings of fact on provision of emergency services and water, sewer, solid waste disposal, and transportation, see Criterion C of this report, which is incorporated herein by reference.

Conclusion of Law:

1. No adverse impacts to public health and safety are foreseen as a result of this subdivision if the recommended conditions of approval are imposed.

**CRITERION H: PRIMARY CRITERIA COMPLIANCE**

This subdivision complies with the following primary review criteria:

**SURVEY REQUIREMENTS**

Findings of Fact:

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.
2. City Subdivision Regulations Section 4-070 includes a process to ensure final plats contain all necessary seals and certificates prior to filing and comply with state survey requirements.

Conclusion of Law:

1. This proposal meets the survey requirements.

**SUBDIVISION REGULATIONS**

Findings of Fact

1. Subdivisions are required to comply with the local subdivision regulations provided for in Part 5 of M.C.A. 76-3.

Conclusion of Law:

1. The plat will be brought into compliance with the local subdivision regulations if the conditions of approval are imposed.

**REVIEW PROCEDURE**

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula City Subdivision Regulations.
2. The legal ad was published in the Missoulian on June 29, 2024 and July 6, 2024. Two subdivision posters were placed on the property on July 1, 2024. Adjacent property owners were notified by certified mail on June 6, 2024.

3. The public hearing before the Missoula Consolidated Planning Board is scheduled for July 16, 2024 at 6 pm. The public hearing before the City Council is scheduled for August 12, 2024.
4. The 80-working day review period for this subdivision expires on August 26, 2024.

Conclusion of Law:

1. This subdivision review has followed the necessary application procedure and has been reviewed within the procedures provided in Article 4 of the Missoula City Subdivision Regulations and the Montanan Subdivision and Platting Act.

## **PROVISION OF LEGAL AND PHYSICAL ACCESS**

Finding of Fact:

1. Article 3, Section 3-020.3 of the City Subdivision Regulations requires that perpetual legal access to subdivisions must come from an established public road or by a public perpetual access easement or right-of-way adequate to serve the subdivision. Access to the subdivision is proposed from Sommers Street and Waterside Drive, both publicly maintained streets. (*Preliminary Plat, Correspondence with Shane Stack, Missoula County Public Works, 3/28/24*)

Conclusion of Law:

1. The subdivision proposal meets the physical and legal access requirements of the Subdivision Regulations.

## **IV. PHASING**

Findings of Fact:

1. City staff deemed the subdivision application to be sufficient for review on May 9, 2024. A component of the application was a phasing plan depicting six phases anticipated to be developed from 2025 to 2035. On May 21, 2024, the subdivider's agent, Brian Throckmorton of 406 Engineering, submitted a revised phasing plan. (*Sufficiency Letter, Original Phasing Plan, Email Communication from Brian Throckmorton, 406 Engineering 5/21/24*)
2. City Subdivision Regulations Section 4-030.7.A states if a subdivider changes the subdivision application or preliminary plat after Development Services makes a determination of sufficiency but before the City Council has rendered a decision, City Council shall determine whether the changes constitute a substantial change to the design of the subdivision. If City Council determines the changes are not substantial and do not substantially impact the analysis of potentially significant adverse impacts, City Council can approve, conditionally approve, or deny the subdivision without a subsequent public hearing. If City Council determines the changes are substantial, City Council shall direct Development Services to schedule a subsequent public hearing on the changes.
3. City Subdivision Regulations Section 4-030.7.A.(2)(a) provides examples of changes that might be considered substantial. They include: a change that would require an additional variance request or expansion of a variance request; reconfiguration of the road layout that diminishes connectivity for all modes of transportation; reconfiguration of legal and physical access; relocation or reconfiguration of parkland; an increase in the number of lots, or changes to easements for public access, utilities, and irrigation ditches.

4. The originally submitted phasing plan anticipated the proposed multi-dwelling lots, Lots 58 - 67 near the southern property boundary, would be developed as Phase 3. The revised phasing plan proposes these lots to be developed as the final phase, Phase 6. The reason for the change given by Brian Throckmorton is "multifamily financing is really hard to get right now so they would like to push it to the end of the project." (*Phasing Plans, Email Correspondence from Brian Throckmorton of 406 Engineering, 5/21/24*)
5. City staff reviewed the proposed changes and found no additional or expanded variance request would be needed, no road or access or parkland changes would occur, there would not be an increase in the number of lots, or changes to easements, utilities, or irrigation ditches, and no other discernable impacts under the review criteria for subdivisions. (*Email Correspondence with Troy Monroe, City Engineer for Development Review 5/29/24 and Nathan McLeod, Senior Landscape Architect 5/26/24*)

Conclusion of Law:

1. The revised phasing plan does not constitute a substantial change to the design of the subdivision and does not substantially impact the analysis of potentially significant adverse impacts.

## **V. VARIANCE REQUESTS**

The City Council, upon recommendation of the Planning Board, may grant a variance from the City Subdivision Regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Costs or financial considerations may not constitute the sole basis for approval of a variance. The City Council must consider the review criteria and make a finding based upon the evidence presented in each specific case. In approving variances, the City Council may require that conditions be attached to secure the objectives of the standards or requirements of the City Subdivision Regulations.

### **Variance Request 1 – Right-of-Way Width**

The subdivider requests a variance from Article 3, Section 3-020.2 Table .2A to allow the Aspire Loop, Heartwood Place, Jumbo Drive, Crosscut Way, Sommers Street (onsite), and a portion of Waterside Drive (onsite) to have a 62-foot right-of-way easement instead of 70 feet for the Low Density Urban Local Street type.

#### RECOMMENDATION

**Approve** the variance request from Article 3, Section 3-020.2 Table .2A of the City Subdivision Regulations to allow Aspire Loop, Heartwood Place, Jumbo Drive, Crosscut Way, Sommers Street (onsite), and a portion of Waterside Drive (onsite) to have a 62-foot right-of-way easement instead of the typical 70 feet for the Low Density Urban Local Street type.

#### REVIEW CRITERIA AND FINDINGS

- 1. The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property;**
  - a. The proposed street design includes all physical elements of a new Low Density Urban Local Street in the required dimensions including two 10-foot driving lanes, 8-foot parking lanes, curbs and gutters, 7-foot boulevards, and 5-foot sidewalks, as well as 0.5 feet of clear space outside of the sidewalks. All elements of a new, standard street are proposed to be provided except for the additional 8 feet of right-of-way easement which, based on the design and site conditions, is unnecessary. The street elements, built to

City standards but within a narrower right-of-way, would not result in a threat to public health, safety, or welfare, and would not be injurious to other persons or property. *(Project Summary, Variance Requests, Road and Trail Plans)*

- 2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;**
  - a. The 70-foot right-of-way easement requirement provides extra room that can be utilized if needed. For example, in hilly terrain where a road runs across a slope, road cuts (uphill) and fills (downhill) are needed to provide safe and relatively mild, erosion resistant slopes along both sides of the road. Cut and fill slopes require additional space (right-of-way). In this case, the subject property is relatively flat, is planned to be graded prior to construction, and does not generally contain steep slopes that would require extra space for cuts and fills along the roads. If the property were steep and large cut and fill slopes were needed, more right-of-way easement would be needed, but that is not the case here. This is a condition that is site-specific, somewhat unique to the property, and not generally applicable to other properties. *(Existing Conditions Exhibit, Existing Slope Category Map, Road and Trail Plans)*
- 3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;**
  - a. The variance is being requested due to the physical characteristics of the subject property in that the additional 8 feet of width surrounding each road is not needed. That space multiplied across multiple roads in the subdivision would reduce the buildable area of the lots, resulting in an undue and unnecessary hardship if the strict requirements of the regulations were enforced. *(Variance Requests, Existing Conditions Exhibit, Existing Slope Category Map, Road and Trail Plans)*
- 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy;**
  - a. The Title 20 Zoning Ordinance and the City Growth Policy do not address specific street design standards.
  - b. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy.
- 5. The variance will not cause an increase in public costs;**
  - a. The applicant would be responsible for the costs of construction for the proposed roads. Future maintenance is not anticipated to be costlier than if the right-of-way easement were wider. Therefore, the variance will not cause an increase in public costs.
- 6. The hardship has not been created by the applicant or the applicant's agent or assigns.**
  - a. The applicant or the applicant's agent or assigns did not create the hardship. The variance is requested due the regulations providing additional space in case wider area is needed, which it sometimes is, to build Low Density Urban Residential streets. In this case additional space is not needed due to mild physical site conditions. The subdivider is proposing to provide all required elements of a Low Density Urban Residential street

at the required specifications. The hardship has not been created by the applicant or the applicant's agent or assigns.

## **Variance Request 2 – Right-of-Way Width and Parking Lane**

The subdivider requests a variance from Article 3, Section 3-020.2 Table .2A and 3-020.4.N to allow the northernmost 415 feet of Waterside Drive to have a 54-foot right-of-way easement instead of 70 feet, and to have one parking lane instead of two along a portion of Waterside Drive.

The internal segment of Waterside Drive is proposed to connect with the existing Waterside Drive located to the north of the Aspire Subdivision. The existing Waterside Drive that abuts the Aspire property has two driving lanes, one parking lane, curb and gutter, and a sidewalk on the east side, all within a 54-foot right-of-way easement. A 415-foot extension of Waterside Drive on the northern portion of the Aspire property is proposed to meet and match the existing Waterside Drive except it would provide sidewalk on both sides of the street.

### **RECOMMENDATION**

**Approve** the variance request from Article 3, Section 3-020.2 Table .2A and 3-020.4.N to allow the northernmost approximately 415 feet of Waterside Drive to have a 54-foot right-of-way easement instead of 70 feet and to have one parking lane instead of two.

### **REVIEW CRITERIA AND FINDINGS**

- 1. The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property;**
  - a. The design of the internal, northern segment of Waterside Aspire is intended to match the design of the existing Waterside Drive to the north of the subdivision while reducing vehicle speeds travelling into the adjoining subdivision. The transition in right-of-way easement from 54 feet to 62 feet in the rest of the subdivision would occur at an intersection instead of along a stretch of road. (*Variance Requests, Preliminary Plat*)
  - b. The design of this segment of Waterside Drive includes two 10.5-foot driving lanes, one 7-foot parking lane, curbs and gutters, 7-foot boulevards, and 5-foot sidewalks, as well as 0.5 feet of clear space outside of the sidewalks. The only physical difference from the standard street section is one parking lane instead of two. All of the lots along this portion of the street are planned with driveways and garages that can provide off-street parking. The remaining street elements, built to City standards but within a narrower right-of-way, would not result in a threat to public health, safety, or welfare, and would not be injurious to other persons or property. (*Project Summary, Variance Requests, Road and Trail Plans, Development Covenants*)
- 2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;**
  - a. The 54-foot right-of-way easement width and road design matches the existing easement width and design of Waterside Drive to the north, except it would include two sidewalks onsite while the offsite portion only has one sidewalk. (*Aspire Preliminary Plat, Water's Edge Phase 3 Subdivision Plat*)
  - b. The 70-foot right-of-way easement requirement provides extra room that can be utilized if needed. For example, in hilly terrain where a road runs across a slope, road cuts

(uphill) and fills (downhill) are needed to provide safe and relatively mild, erosion resistant slopes along each side of the road. Cut and fill slopes require additional space (right-of-way). In this case, the subject property is relatively flat, is planned to be graded prior to construction, and does not contain steep slopes that would require extra space for cuts and fills along the road. If the property were steep and large cut and fill slopes were needed, more right-of-way easement would be needed, but that is not the case here. This is a condition that is site-specific, somewhat unique to the property, and not applicable to all other properties. (*Existing Conditions Exhibit, Existing Slope Category Map, Road and Trail Plans*)

- c. The proposed 54-foot right-of-way easement in the northern part of the property is also intended to slow the speed of vehicles travelling into the existing subdivision to the north by allowing homes to be built closer to the street. The presence of an adjoining, developed residential subdivision is somewhat unique to this subdivision. (*Variance Request*)

**3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;**

- a. The variance is being requested due to the presence of the adjoining road section in the Water's Edge Subdivision and the physical characteristics of the subject property in that due to the mild grade of the site, an additional 16 feet along this segment of road is not needed to provide access and two lanes of vehicle parking for the 14 lots fronting on the reduced right-of-way easement. Denying the variance would reduce the buildable area of the lots, resulting in an undue and unnecessary hardship if the strict requirements of the regulations were enforced. (*Variance Requests, Existing Conditions Exhibit, Existing Slope Category Map, Road and Trail Plans*)

**4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy;**

- a. The Title 20 Zoning Ordinance and the City Growth Policy do not address specific street design standards.
- b. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy.

**5. The variance will not cause an increase in public costs;**

- a. The applicant would be responsible for the costs of construction for the proposed roads. Future maintenance is not anticipated to be costlier than if the right-of-way easement were wider and additional parking lane were required. Therefore, the variance will not cause an increase in public costs.

**6. The hardship has not been created by the applicant or the applicant's agent or assigns.**

- a. The applicant or the applicant's agent or assigns did not create the hardship. The variance is requested due the desire to match the road section in the adjoining subdivision and calm vehicle speeds entering that subdivision.

## **Variance Request 3 – One Sidewalk Instead of Two for a Portion of Aspire Loop**

The subdivider requests a variance from Article 3, Section 3-020 Table .2A to allow a sidewalk on one side of Aspire Loop instead of two for approximately 460 feet. This request is for the northwest corner of Aspire Loop where there is a relatively steep embankment along the west property boundary where an old railroad bed is located.

#### RECOMMENDATION

**Approve** the variance request from Article 3, Section 3-020 Table .2A to allow a sidewalk on one side of Aspire Loop instead of two for approximately 460 feet.

#### REVIEW CRITERIA AND FINDINGS

- 1. The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property;**
  - a. This portion of Aspire Loop is on the west boundary of the subdivision. It is not a main north-south thoroughfare. Due to its location, vehicle traffic can be expected to be significantly lower volume on this street segment than, for example, Sommers Street. (*Preliminary Plat*)
  - b. This area abuts proposed parkland and an adjoining offsite tract that will not access Aspire Loop. There are no subdivision lots that front the area where a sidewalk would increase public safety. A street crossing is proposed where the sidewalk is proposed to end and lead to another sidewalk on the east side of Aspire Loop. (*Preliminary Plat, Road and Trail Plans*)
  - c. Due to the expected low traffic volume and vehicle speeds and the ability of pedestrians to still walk along this segment of Aspire Loop, granting this variance would not result in a threat to public health, safety, or welfare, and would not be injurious to other persons or property. (*Project Summary, Variance Requests, Road and Trail Plans*,)
- 2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;**
  - a. The property is fairly long and narrow and has an embankment along the west boundary where an old railroad bed is located. The embankment is the main driver of the variance request, which is a condition unique to the property and not applicable generally to other property. (*Preliminary Plat, Variance Requests*)
- 3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;**
  - a. For a sidewalk to be constructed along this stretch of road, it would have to be elevated above the road, which would create a safety concern. The embankment along the west property boundary, along with the fairly long and narrow property dimensions, are the main driver of this request. Denying it under these conditions, where health and safety concerns are not apparent, would result in an undue hardship to the owner if the strict requirements of these regulations are enforced. (*Variance Requests, Existing Conditions Exhibit, Existing Slope Category Map, Road and Trail Plans*)
- 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy;**

- a. The Title 20 Zoning Ordinance and the City Growth Policy do not address specific street design standards.
- b. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy.

**5. The variance will not cause an increase in public costs;**

- a. The applicant would be responsible for the costs of construction for the proposed roads. Future maintenance is anticipated to be less costly than if additional sidewalk were required. Therefore, the variance will not cause an increase in public costs.

**6. The hardship has not been created by the applicant or the applicant's agent or assigns.**

- a. The applicant or the applicant's agent or assigns did not create the hardship. The variance is requested due the topography along this portion of the property.

### **Variance Request 4 – Block Length, Lots 1 – 18 and 103 – 113**

The subdivider requests a variance from Article 3, Section 3-030.2.A(2) stating blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. The subdivider requests a variance from this requirement to extend the length to 1,287 feet for the block along Sommers Street fronting Lots 1 – 18 and 103 – 113.

#### RECOMMENDATION

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 1-18 and 103-113 to exceed the maximum 480-foot block length requirement.

#### REVIEW CRITERIA AND FINDINGS

- 1. The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property;**
  - a. This area is located along the western property boundary extending from the southwest corner of the subdivision to the proposed western park. To the west are existing, developed residential lots where no street or pedestrian connections are available. Granting the block length variance would not result in a threat to public health, safety, or welfare, and would not be injurious to other persons or property. Staff recommend a condition of approval to pave a pathway along the north side of this block through the adjoining County Canyon View Park to Robinson Street to provide a developed westward connection as a way to mitigate for this variance. (*Variance Requests, Preliminary Plat, Missoula County Property Information System*)
- 2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;**
  - a. The lack of potential connections to the west is a condition that is site-specific, unique to the property, and not generally applicable to other properties. (*Existing Conditions Exhibit, Preliminary Plat*)

- 3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;**
  - a. The existing development bordering this stretch of lots does not allow for connections that could be used to break up the block. Therefore, the variance is based on the physical characteristics of the property, so failure to grant the variance would result in undue hardship if the strict requirements of the regulations are enforced. (*Variance Requests, Preliminary Plat*)
- 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy;**
  - a. The Title 20 Zoning Ordinance and the City Growth Policy do not address block dimensions.
  - b. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy.
- 5. The variance will not cause an increase in public costs;**
  - a. The variance would have no impact on public costs.
- 6. The hardship has not been created by the applicant or the applicant's agent or assigns.**
  - a. The applicant or the applicant's agent or assigns did not create the hardship. The variance is requested due to the existing development to the west of the proposed lots that do not allow for a street or pedestrian connection to the west.

## **Variance Request 5 – Block Length, Lots 19 – 31, 114 – 123, and 47 - 48**

The subdivider requests a variance from Article 3, Section 3-030.2.A(2) stating blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. The subdivider requests a variance from this requirement to extend the length to 547 feet for the block along Crosscut Way fronting Lots 19 – 31 and 490 feet along Jumbo Drive fronting Lots 114 – 123 and Lots 47 and 48. To mitigate for the variance request, the subdivider proposes to provide a 10-foot wide public access easement near the middle of the block for a north-south pedestrian connection.

### **RECOMMENDATION**

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 19-31, 114-123 and 47 and 48 to exceed the maximum 480-foot block length requirement.

### **REVIEW CRITERIA AND FINDINGS**

- 1. The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property;**
  - a. Granting the block length variance would be likely to result in slower vehicle speeds from southbound vehicles travelling on Heartwood Place because Heartwood Place is proposed to intersect with Jumbo Drive instead of travelling further in a straight line to the south. Granting this variance would not result in a threat to public health, safety, or welfare, and would not be injurious to other persons or property. (*Variance Requests, Preliminary Plat*)

- 2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;**
  - a. The property is relatively long and narrow as opposed to a square property that would more easily allow for a typical grid layout. The property abuts existing residential development to the west and the Clark Fork River to the east, which are constraints that impact design of the subdivision. These conditions are site-specific, unique to the property, and not generally applicable to other properties. (*Existing Conditions Exhibit, Preliminary Plat*)
- 3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;**
  - a. The long, narrow shape and surrounding constraints are unique to the property. It would be possible to continue the proposed Heartwood Place south through the middle of this block, thereby creating two mini-blocks, but that would provide little additional connectivity benefit above the proposed 10-foot public pedestrian access easement and would result in the loss of at least two lots, in addition to extra street maintenance, heat and stormwater runoff from roadways. This would be an unnecessary hardship based on the physical characteristics of the property. (*Variance Requests, Preliminary Plat*)
- 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy;**
  - a. The Title 20 Zoning Ordinance and the City Growth Policy do not address block dimensions.
  - b. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy.
- 5. The variance will not cause an increase in public costs;**
  - a. The variance would have no impact on public costs.
- 6. The hardship has not been created by the applicant or the applicant's agent or assigns.**
  - a. The hardship has not been created by the applicant or the applicant's agent.

## **Variance Request 6 – Block Length, Lots 32 – 46 and 68 - 87**

The subdivider requests a variance from Article 3, Section 3-030.2.A(2) stating blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. The subdivider requests a variance from this requirement to extend the length to 1,815 feet for the block along Waterside Drive fronting Lots 32 – 46 and 68 – 87. To mitigate for the variance request, the subdivider proposes to provide three 10-foot wide pedestrian connections from Waterside Drive to the riverfront park that align with street intersections to provide for pedestrian access to the park.

### **RECOMMENDATION**

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 32 – 46 and 68 – 87 to exceed the maximum 480-foot block length requirement.

## REVIEW CRITERIA AND FINDINGS

- 1. The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property;**
  - a. Granting the block length variance would not result in a threat to public health, safety, or welfare, and would not be injurious to other persons or property. (*Variance Requests, Preliminary Plat*)
- 2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;**
  - a. This portion of the property is near its eastern boundary along the Clark Fork River where no street connections to the east are possible. Another potential option is to build a street closer to the east property boundary above the river, with additional streets leading east-west, but that would have greater potential for water quality and wildlife habitat impacts and reduce the public benefit of the riverfront park so would be less advantageous overall. These conditions on which the variance is requested are site-specific, unique to the property, and not generally applicable to other properties. (*Existing Conditions Exhibit, Preliminary Plat*)
- 3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;**
  - a. The long, narrow shape of the property and river and floodplain abutting the east boundary are physical constraints that do not allow eastern road connections and are unique the property. Based on these characteristics, it would be an unnecessary hardship to deny the request. (*Variance Requests, Preliminary Plat*)
- 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy;**
  - a. The Title 20 Zoning Ordinance and the City Growth Policy do not address block dimensions.
  - b. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy.
- 5. The variance will not cause an increase in public costs;**
  - a. The variance would have no impact on public costs.
- 6. The hardship has not been created by the applicant or the applicant's agent or assigns.**
  - a. The hardship is due to the physical characteristics of the property and has not been created by the applicant or the applicant's agent.

## **Variance Request 7 – Lots Abutting and Having Access to a Street or Road**

The subdivider requests a variance from Article 3, Section 3-030.1.C(3) stating each lot must abut on and have access to a public or private street or road. Proposed Lots 62, 65, and 66 neither abut nor have access to a public or private street or road. Instead, they are proposed to abut and have pedestrian access to 20-foot wide public access easements and vehicular

access from alleys. Alleys are defined as a vehicular access to the rear of properties that abut on and are served by public roads.

These three lots, along with the other multi-dwelling lots south of Lupine Lane, are proposed to have 'cottage court' type buildings facing each other with front doors opening onto pedestrian access and green space between them. The proposed alleys are designed to have 19.5 feet of driving surface with curbs and gutters. These lots are intended for multi-dwelling structures, so would have interior circulation and parking areas to the rear of the buildings with fronts opening onto shared pedestrian and green space if developed as indicated in the subdivision application materials.

If the multi-dwelling structures were all built on one lot, as is the case with many multi-dwelling structures, no variance would be required. However, subdividing this area into lots subjects each lot to the requirement to abut and have access to a street, and alleys are not considered streets in the subdivision regulations.

### RECOMMENDATION

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.1.C(3) to allow Lots 62, 65, and 66 to abut and have access to an alley instead of a public or private street or road.

### REVIEW CRITERIA AND FINDINGS

- 1. The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property;**
  - a. The proposed alleys meet City Fire Department requirements for width and access to structures. Compared with typical streets, narrower alleys should result in slower vehicle speeds along the multi-dwelling lots where the population density would be higher than along single-dwelling lots. Each lot would also be provided with pedestrian access and sidewalks. Granting variance would not result in a threat to public health, safety, or welfare, and would not be injurious to other persons or property. (*Variance Requests, Preliminary Plat*)
- 2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;**
  - a. This portion of the property is along its southern boundary abutting Interstate 90 and is proposed for multi-dwelling structures intended to provide a variety of housing types to meet market demand. These types of structures are typically provided private, internal streets and parking areas that extend from public roads. This area of the property is oddly shaped, which constrains options for typical grid-type development. These conditions are unique to the property and not applicable generally to other property. (*Existing Conditions Exhibit, Preliminary Plat, Variance Requests*)
- 3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;**
  - b. The unique property conditions include Interstate 90 to the south, the goal of maintaining neighborhood character to the west by adjoining the existing single-dwelling lots with new single-dwelling lots, and the Clark Fork River to the east. Additionally, the City Growth Policy supports providing a variety of housing options, which necessitates

creativity in subdivision design. While standard roads could be built along the proposed lots, they are neither necessary nor desirable to provide safe and efficient access, and would include drawbacks such as requiring additional space, increasing stormwater runoff, and heat from additional pavement. Based on these circumstances, it would be an unnecessary hardship to deny the request. (*Variance Requests, Preliminary Plat, Our Missoula 2035 Growth Policy Goals H1 and H4*)

- 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy;**
  - a. The Title 20 Zoning Ordinance and the City Growth Policy do not address lot access to this degree.
  - b. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy.
- 5. The variance will not cause an increase in public costs;**
  - a. The variance would not increase public costs. Less pavement and stormwater runoff from the alleys would likely result in lower costs for maintenance over time.
- 6. The hardship has not been created by the applicant or the applicant's agent or assigns.**
  - a. The hardship has not been created by the applicant or the applicant's agent.

## **Variance Request 8 – Block Length, Multi-Dwelling Lots 58 – 67**

The subdivider requests a variance from Article 3, Section 3-030.2.A(2) stating blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. The subdivider requests a variance from this requirement to extend the length to 1,125 feet for the multi-dwelling block when combining the street frontage along Sommers Street (550 feet) and Crosscut Way (575 feet). The southern boundary of the block along an alley extension of Waterside Drive measures approximately 935 feet.

The word block has a general definition in the subdivision regulations: "A group of lots, tracts, or parcels within well-defined and fixed locations." City staff interpret this to mean a group of lots surrounded by streets. In this case, the multi-dwelling block would be broken up by an alley (Lupine Lane) and a 20-foot wide public access and utility easement that is intended to provide a green space and sidewalk between the multi-dwelling buildings. These breaks would function similarly to a street by providing additional access points within the block.

### **RECOMMENDATION**

**Approve** a variance from City Subdivision Regulations Article 3, Section 3-030.2.A(2) to allow the block serving Lots 58 - 67 to exceed the maximum 480-foot block length requirement.

### **REVIEW CRITERIA AND FINDINGS**

- 1. The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property;**
  - a. All of the multi-dwelling lots are proposed to have vehicular and pedestrian access meeting fire code and sidewalk width requirements. Fire hydrants are planned to serve the future structures. Granting the block length variance would not result in a threat to public health, safety, or welfare, and would not be injurious to other persons or property.

All of the lots are proposed to have vehicular and pedestrian access meeting fire code and sidewalk width requirements. (*Variance Requests, Preliminary Plat*)

- 2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;**
  - a. This block is located along the southern boundary adjacent to Interstate 90. Another potential option is to build Lupine Lane as a standard street through the middle of the block instead of a narrower alley, but this would provide no discernable access benefit to the multi-dwelling structures. It would also result in greater vehicle speeds and increased stormwater runoff and maintenance costs for the City over time. Additionally, City policy is to support the development of a variety of housing types, which would be aided by creating multi-dwelling lots served by alleys on the limited space in this section of the property. These conditions on which the variance is requested are site-specific, unique to the property, and not generally applicable to other properties. (*Existing Conditions Exhibit, Preliminary Plat*)
- 3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;**
  - c. The unusual shape of the property, which abuts a river to the east, existing development to north and west, and an interstate highway to the south, necessitates creativity in design to support City housing goals. Based on these characteristics, it would be an unnecessary hardship to deny the request. (*Variance Requests, Preliminary Plat*)
- 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy;**
  - a. The Title 20 Zoning Ordinance and the City Growth Policy do not address block dimensions.
  - b. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy.
- 5. The variance will not cause an increase in public costs;**
  - a. The variance would decrease public costs, as maintaining an alley is less expensive than maintaining a street due to street width, increased stormwater runoff, and additional features like curbs and gutters and sidewalks.
- 6. The hardship has not been created by the applicant or the applicant's agent or assigns.**
  - a. The hardship is due to the physical characteristics of the property and has not been created by the applicant or the applicant's agent.

## **VI. REFERENCES CITED**

The following materials are referenced throughout this document. For ease of reading, short versions of the citations (shown in bold) are used in-text, and full citations are included here.

### Plans and Regulations

M.C.A.: Montana Code Annotated, 2023

[https://leg.mt.gov/bills/mca/title\\_0760/chapters\\_index.html](https://leg.mt.gov/bills/mca/title_0760/chapters_index.html)

Subdivision Regulations: *City of Missoula Subdivision Regulations*, adopted by the Missoula City Council and amended on October 16, 2023

<https://www.ci.missoula.mt.us/DocumentCenter/View/61730/City-Subdivision-Regulations---Adopted-10-16-2023?bidId=>

Our Missoula 2035 City Growth Policy

[https://www.ci.missoula.mt.us/DocumentCenter/View/34746/OurMissoulaGP\\_full?bidId=](https://www.ci.missoula.mt.us/DocumentCenter/View/34746/OurMissoulaGP_full?bidId=)

Title 20 Missoula Zoning Ordinance, adopted by the City Council and amended March 25, 2024.

[https://library.municode.com/mt/missoula/codes/code\\_of\\_ordinances?nodeId=TIT20ZO](https://library.municode.com/mt/missoula/codes/code_of_ordinances?nodeId=TIT20ZO)

Annexation Policy, adopted July 22, 2019

[http://www.ci.missoula.mt.us/DocumentCenter/View/50374/July-23\\_Annexation-Policy-as-Amended?bidId=#:~:text=City%20annexation%20provides%20a%20united,addressing%20community%20goals%20and%20values.](http://www.ci.missoula.mt.us/DocumentCenter/View/50374/July-23_Annexation-Policy-as-Amended?bidId=#:~:text=City%20annexation%20provides%20a%20united,addressing%20community%20goals%20and%20values.)

Missoula Public Works Standards and Specifications Manual, amended December 1, 2022

<https://www.ci.missoula.mt.us/2941/Public-Works-Standards-Specifications-Ma>

Title 18 City of Missoula Floodplain Hazard Management Regulations, amended May 16, 2022

<https://www.ci.missoula.mt.us/DocumentCenter/View/36563/Floodplain-Regulations-31319-Title-18>

Missoula County Zoning Code, effective July 1, 2022

<https://www.missoulacounty.us/government/community-development/community-planning-services/regulations/zoning-regulations>

Missoula County Growth Policy, amended 2019

<https://www.missoulacounty.us/government/community-development/community-planning-services/plans/2016-growth-policy>

## Elements of the Application Packet for Governing Body Review

Section A - Maps, Plats, Plans, and Figures

Section B - Project Summary

Section C – Subdivision Application, Correspondence, Water Rights and Channel Migration

Section D – Neighborhood Character Overlay, Annexation Petition, and Rezoning Application

Section E – Development Covenants

Section F – Variance Requests

Section G – Neighborhood Meeting Information

Section H – NRCS Soils Survey Report

Section I – Montana Natural Heritage Program Wildlife Information

Section J – Noxious Weed Management Plan

Section K – Cultural Resource Survey

Section L – Traffic Impact Study

Section M – Geotechnical Report

Section N – Grading and Drainage Report

Section O – Water and Sanitation Report

Section P – Element and Sufficiency Reviews and Response

Section Q – Riparian Resource Plan

## Other References

Element and Sufficiency Review Letters and Applicant Responses

Agency Comment First Sufficiency Review

Agency Comment Second Sufficiency Review

Agency Comment Third Sufficiency Review

Missoula County Property Information System

<https://gis.missoulacounty.us//propertyinformation/>

City Central Maps

<https://missoulamaps.ci.missoula.mt.us/portal/apps/sites/#/gis>

FEMA Map Service Center

<https://msc.fema.gov/portal/home>

Interlocal Agreement Between East Missoula Sewer District and the City of Missoula

Missoula City Council Resolution 8566

Mountain Line Route Map

<https://mountainline.com/your-trip/maps-schedules/>

Montana Cadastral

<https://svc.mt.gov/msl/cadastral/>

Missoula County Property Information System

<https://gis.missoulacounty.us//propertyinformation/#>

Missoula Ward and Neighborhood Council Maps

<https://missoulamaps-cityofmissoula.hub.arcgis.com/pages/4877df22fee94b34a1f1fb4b8cff6b8c>

Montana Department of Transportation Functional Classification Route Map

<https://www.arcgis.com/home/item.html?id=3fe8695311b04116bdbbb776d44dd96b>

Missoula County Subdivision Plats and Certificates of Survey

<https://gis.missoulacounty.us/research/>

## **SUBDIVISION ATTACHMENT A SUBDIVISION PROJECT HISTORY**

**Project:** Aspire Phased Subdivision, Annexation, and Rezoning  
**Applicant:** DeNova Homes, LLC  
**Representative:** Brian Throckmorton, 406 Engineering

**Pre-application Meetings:** 6/8/21 and 11/16/22

**Element:** Submitted 5/9/23, 7/27/23, 9/13/23; Complete 9/20/23

**Sufficiency:** Submitted 9/28/23, 2/26/24, 4/19/24; Sufficient 5/9/24

**Start Governing Body Review:** 5/10/24

**80-day Deadline:** 8/26/24

**Extension Granted:** Not as of this writing

**City Council Consent Agenda:** 8/12/24

**Planning Board Public Hearing:** 7/16/24

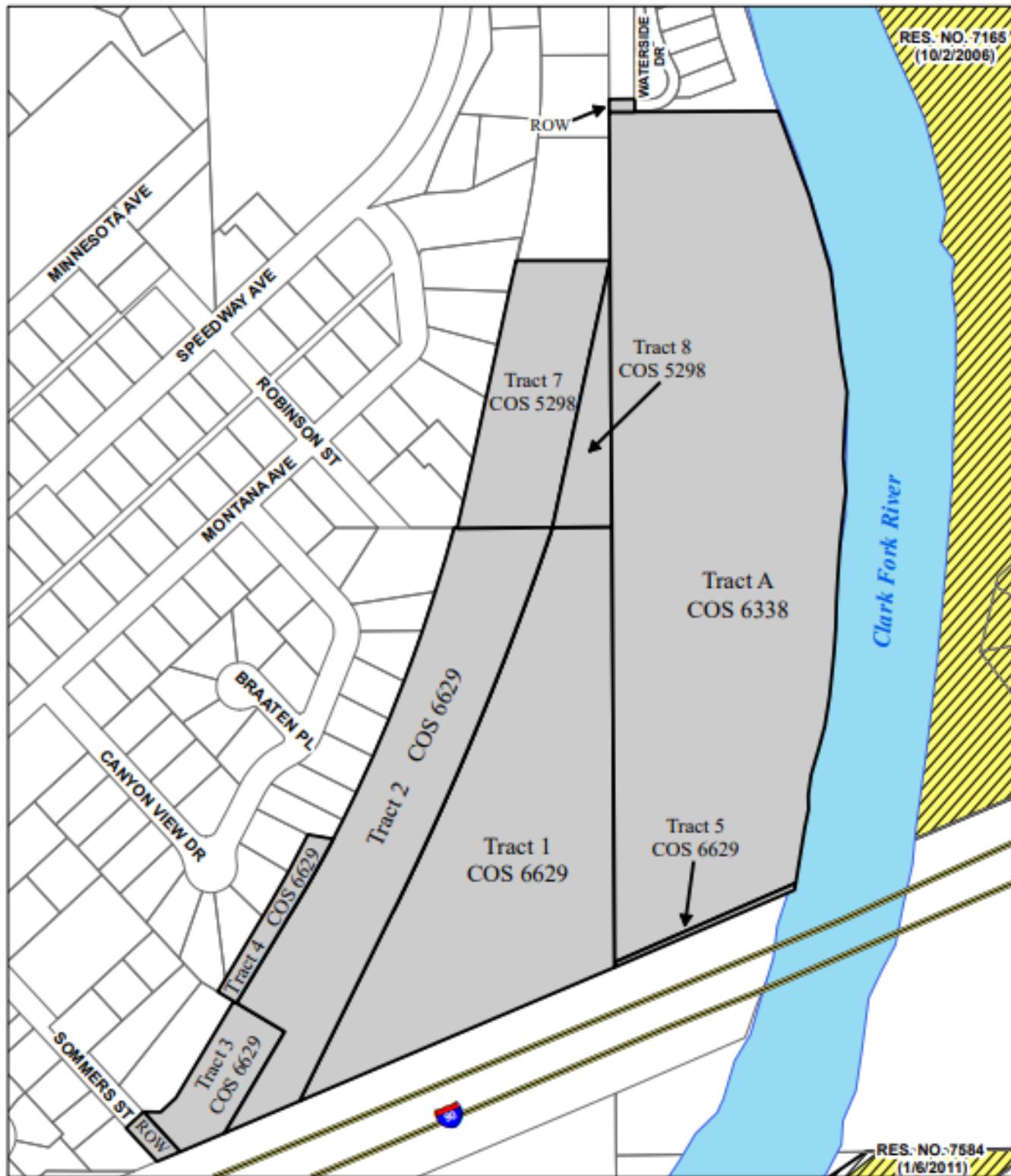
**Land Use and Planning Committee:** 8/7/24; 8/14/24 (if sent back to committee)

**City Council Public Hearing and Decision:** 8/12/24

**City Council Final Consideration:** 8/26/24 (if sent back to committee)

**Public Notice:** Posted 7/1/24; Adjacent Property Owner Letters Sent 6/7/24; Legal Ad in Missoulian 6/29/24 and 7/6/24.

## EXHIBIT A: ANNEXATION MAP



Legend

- Proposed Annexation
- Annexation Resolutions
- Parcel Boundaries
- City Limits
- Rivers



## **EXHIBIT B: LEGAL DESCRIPTION**

Tract 1 of COS 6629, Located in the Northeast One-Quarter (NE  $\frac{1}{4}$ ) of Section 24, Township 13 North, Range 19 West, PMM, Missoula County, Montana

Tract 2 of COS 6629, Located in the Northeast One-Quarter (NE  $\frac{1}{4}$ ) of Section 24, Township 13 North, Range 19 West, PMM, Missoula County, Montana

Tract 3 of COS 6629, Located in the Northeast One-Quarter (NE  $\frac{1}{4}$ ) of Section 24, Township 13 North, Range 19 West, PMM, Missoula County, Montana

Tract 4 of COS 6629, Located in the Northeast One-Quarter (NE  $\frac{1}{4}$ ) of Section 24, Township 13 North, Range 19 West, PMM, Missoula County, Montana

Tract 5 of COS 6629, Located in the Northwest One-Quarter (NW  $\frac{1}{4}$ ) of Section 19, Township 13 North, Range 18 West, PMM, Missoula County, Montana

Tract 7 of COS 5298, Located in the Northeast One-Quarter (NE  $\frac{1}{4}$ ) of Section 24, Township 13 North, Range 19 West, PMM, Missoula County, Montana

Tract 8 of COS 5298, Located in the Northeast One-Quarter (NE  $\frac{1}{4}$ ) of Section 24, Township 13 North, Range 19 West, PMM, Missoula County, Montana

Tract A of COS 6338, Located in the Northwest One-Quarter (NW  $\frac{1}{4}$ ) of Section 19, Township 13 North, Range 18 West, PMM, Missoula County, Montana