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David W. Wilcox

The University of Montana

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A REORGANIZATION PROPOSAL FOR ZONING AND BUILDING CODE ADMINISTRATION IN MISSOULA, MONTANA

By
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B.A., University of Montana, 1972

Presented in partial fulfillment of the requirements for
the degree of
Master of Public Administration
UNIVERSITY OF MONTANA
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PREFACE

This paper serves a two-fold purpose. It fulfills in part the requirements for an M.P.A. degree from the University of Montana. And, it presents an analysis and reorganization proposal of zoning and building code administration for use by local governmental officials in Missoula. Accordingly, the paper is written with the intention of providing a remedy for problems which exist in the current organizational structure.

The analysis may contain certain distortions because of my position within the very structure I have chosen to write about. I have held the position of city zoning officer for approximately three years. Moreover, the comments made by interviewees may well have been affected because of their familiarity with me and my points of view. Although participants willingly and openly responded to questions, my presence, as opposed to an outside interviewer, may have skewed the outcome. It should be noted that the purpose of my research was explained to all of those interviewed.

Eight key local government figures were interviewed for this paper. Comments noted during conversations with several other city and county officials may also be reflected in the attitudes attributed to government officials. And, to some extent, the analysis presented is the result of my own third person observation of comments made in the context of various conversational formats, from city council sessions
and committee meetings to appointments arranged to discuss numerous and diverse problems with various officials.

I am aware that the proposal for reorganization, as well as the problems identified with the present structure, reflect the position I occupy in the organization. I have attempted to present an objective analysis, but I found no one willing to tell me what problems they observe emanating from my corner. A few such problems are evident and discussed in this paper. If they seem softened by a careful choice of words, I can only say that the entire paper is written with diplomacy and mediation in mind. Hopefully, government officials will read the paper, recognize the symptom, and accept at least some of the solutions without placing blame or becoming defensive.
EXECUTIVE SUMMARY

The subject of this paper is an organizational structure for the administration and enforcement of zoning ordinances and building codes in Missoula, Montana. The culmination of this study is a proposed agreement between the city and county of Missoula establishing a shared staff to carry out these two regulatory functions. Although the two governing entities currently cooperate in the areas of zoning administration and building code enforcement, responsibility is disbursed to two separate line departments, a complex structure which involves two interlocal agreements. Cooperation between the two line departments is essential to efficient and effective application of the city and county land use and development codes, but departmental jealousy and lack of trust have resulted in a guarded relationship between the two departments. The proposal contained in this paper would eliminate the inherent problems of shared responsibility by combining the two functions as a division of the planning department.

The current structure of the planning program in Missoula is defined by an intergovernmental agreement between the city and county of Missoula, as well as state enabling legislation for establishing local planning boards. As a result of the agreement Missoula maintains three planning boards, although only one, the Missoula Planning Board, meets regularly as the planning advisory body to the city and county. A fourth board, known as the Missoula Planning Policy Board is designated by the planning interlocal agreement to determine the course of
planning in Missoula. This mandate is accomplished by hiring a planning staff whose yearly work program and budget are approved by the policy board.

In addition, the City and County of Missoula have incorporated zoning and building code enforcement into their cooperative adventure by entering into a second intergovernmental agreement. Problems in the areas of city zoning enforcement prior to 1977 resulted in action by the City Council to separate zoning from building code administration. During the same period, the county created an office to administer and enforce an expanded county zoning program. Both city and county zoning administration were assigned to the planning staff, which established a separate division for each function. Building inspection remained a city department within city hall, directly responsible to the mayor. The county commissioners also adopted for the first time the Uniform Building Code; and through an interlocal agreement, the county contracted with the city for building inspection services. The agreement included a funding plan for city and county zoning through building permit fees. The primary purposes of the agreement were to use existing city and county staffs to administer zoning and extend building inspection to all areas of the county and to establish a funding method for the two services. The zoning staff as a county department and the building inspection staff as a city department were to gain final budget approval from their legislative bodies, subject to review and coordination by the Missoula Planning Policy Board.
 Though these two functions are administered by different departments, even different governments, zoning and building inspection remain inseparably linked because of the nature of the two functions. By city ordinance and county resolution, a building permit may not be issued until a zoning compliance permit is issued. Moreover, during the construction stages building inspectors conduct several inspections, which must necessarily include a check of certain zoning requirements such as setbacks and location of the structure on the lot in accordance with an approved site plan. Final inspections of multi-family and commercial structures are conducted by both building inspectors and zoners; but for single-family structures and duplexes, building inspectors check for both building code and zoning compliance. Since the timing of inspections can be important, the zoning division must rely heavily on informal cooperation from the building inspection department for notification of the completion of various construction stages and, especially for single family structures, of any zoning problems.

A number of problems have resulted from this administrative structure. These problems are discussed in terms of two dimensions of performance: effectiveness and efficiency. For this study the measure of effectiveness is the degree to which the administrative structure can be expected to result in compliance with building and zoning codes. Efficiency depends on the quantity of community resources expended to achieve compliance. The current structure for city/county zoning and building code enforcement contains inherent problems which limit both the program's efficiency and its effectiveness. The dual permit and
inspection process requires duplicated efforts, wasting resources and manpower, thus decreasing the program's efficiency. There is a lack of coordination between the two departments, opportunity for mistakes and nonenforcement because of overlapping responsibility, and confusion and distrust between the building inspection and zoning department, all of which decreases the effectiveness in performance. No single administrative head has overall control over both zoning and building inspection which are inseparably linked in process. Additionally the presence of two independent administrative heads for city and county zoning, one of which also serves as assistant director, causes administrative problems within the zoning staff; and the special appointment status of the two zoning officers greatly limits the planning director's ability to create a more efficient organizational structure. Moreover, conflicting political positions produce a three-way split of political support for the three administrative positions involved. Cooperation between the three administrators--building inspector, city zoning officer, and county zoning officer--is hindered because each responds to different, often opposing political heads. The building inspector reports to the mayor. The two zoning officers are appointed by the planning director with the approval of their respective jurisdictional legislative bodies; and they may be removed only with the consent of the appropriate legislative body.

The proposed reorganization is designed with the primary goal of increasing the performance of city and county zoning and building code administration through an improved permit process. The proposal merges
building inspection with zoning under one administrative head, taking advantage of an existing intergovernmental cooperative relationship. This logical hierarchical structure will increase the accountability of both zoning and building inspection to the two partner governments. Combining the two functions in a single intergovernmental division of the planning staff, a Division of Land Use Regulation, will eliminate duplication. A comparison of the FY 1980 budget with a realistic projection of the 1981 budget shows that the proposal will result in considerable savings without necessitating cutting any personnel from the ranks of inspectors or planners. In addition, the planning director's administrative authority and flexibility will be improved by removing the special status now attributed to city and county zoning officers. Finally, an important aspect of this proposal is the reconstitution of the Missoula Planning Policy Board so that city and county representation is more equally balanced and the role of the board in overseeing planning staff responsibility is broadened. A change in the Policy Board composition and function is necessary to establish a clear line of hierarchical authority from the top down to the supervisor of the Division of Land Use Regulation of the planning staff.
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>i</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>iv</td>
</tr>
<tr>
<td><strong>Chapter</strong></td>
<td></td>
</tr>
<tr>
<td>I. EXISTING STRUCTURE OF ZONING AND BUILDING CODE ADMINISTRATION</td>
<td>1</td>
</tr>
<tr>
<td>Missoula Planning Organization</td>
<td>2</td>
</tr>
<tr>
<td>Zoning and Building Code Administration</td>
<td>9</td>
</tr>
<tr>
<td>The Zoning Division</td>
<td>9</td>
</tr>
<tr>
<td>The Building Inspection Department</td>
<td>11</td>
</tr>
<tr>
<td>The Budget Connection Between Zoning and Building Inspection</td>
<td>12</td>
</tr>
<tr>
<td>The Functional Link Between Zoning and Building Inspection</td>
<td>15</td>
</tr>
<tr>
<td>II. PROBLEMS OF PERFORMANCE</td>
<td>21</td>
</tr>
<tr>
<td>The Dual Permit System of Zoning and Building Code Enforcement</td>
<td>22</td>
</tr>
<tr>
<td>Administrative Problems Within the Zoning Staff</td>
<td>30</td>
</tr>
<tr>
<td>Conclusion</td>
<td>35</td>
</tr>
<tr>
<td>III. A PROPOSAL FOR THE REORGANIZATION OF ZONING AND BUILDING CODE ADMINISTRATION</td>
<td>37</td>
</tr>
<tr>
<td>A Proposed Division of Land Use Regulation</td>
<td>40</td>
</tr>
<tr>
<td>An Improved Permit System</td>
<td>41</td>
</tr>
<tr>
<td>Budget Comparison</td>
<td>43</td>
</tr>
<tr>
<td>The Division Supervisor</td>
<td>48</td>
</tr>
</tbody>
</table>

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CHAPTER ONE

EXISTING STRUCTURE OF ZONING
AND BUILDING CODE ADMINISTRATION

Under authority derived from state law, municipalities and counties may adopt certain land use regulations for the purpose of promoting public health, safety, morals and the general welfare. Specifically, building codes and zoning regulations may be enacted by local governments for these stated purposes. Zoning enacted by either a municipality or county government must be in conformance with a comprehensive plan. Both the city and county of Missoula have undertaken planning programs authorized by state law, enacted zoning regulations, and adopted building codes for all new construction in their respective jurisdictions.

In this chapter, the existing structure for zoning and building code administration in the city and county of Missoula is described. In order to place zoning administration and building inspection in the broader context of Missoula's governmental structure, it is first necessary to understand the function and organizational structure of planning. Following this description of Missoula's planning organization is a more detailed description of zoning and building code administration in both the city and county as it has evolved from two interlocal agreements.
Missoula Planning Organization

In 1973, the city and county of Missoula entered into an agreement establishing the present structure of Missoula's planning organization. The full text of this agreement is included in Appendix A. The agreement established two boards: a combined county and city-county planning board for planning advisory purposes and a planning policy board. Membership of the latter board, known as the Missoula Planning Policy Board, was specified by the agreement.

The composition and relationship of these boards is shown in Figure 1. The Missoula Planning Policy Board is the primary policy-making body. Under the 1973 agreement, the Missoula Planning Policy Board is to establish the Missoula Planning Board, which is composed of a five-member county planning board and a nine-member city-county planning board, each of which maintains a distinct jurisdictional area under state law.

The Missoula Planning Policy Board is the pivotal agency around which planning in Missoula revolves. The board is designed to give equal representation to the city and county governments as is evidenced from the following portions of the agreement:

1. The City shall be represented by the Mayor and one (1) City Councilman, chosen by that body, who will constitute the governmental representatives. The citizens of the City will be represented by the President of the City-County Planning Board or another member of the City-County Planning Board.
MISSOULA PLANNING ORGANIZATIONAL DIAGRAM

Figure 1. Missoula Planning Organization Diagram
Board, chosen by that body, in the event that the President serves as a governmental representative.  

2. The County shall be represented by two (2) members of the Board of County Commissioners, chosen by that body, who will constitute the governmental representatives. The citizens of the County will be represented by the President of the County Planning Board or another member of the County Planning Board, chosen by that body, in the event that the President serves as a governmental representative.

3. The Missoula Planning Board shall be represented by the Chairman, Missoula Planning Board or another member of the Missoula Planning Board, chosen by that body, in the event that the chairman serves as a governmental representative.

As the representative body for the two governments, the Missoula Planning Policy Board was given the authority to promote area-wide comprehensive planning on a continuing basis by establishing the Missoula Planning Board. (see Appendix A, p. 80). The Missoula Planning Policy Board also has authority to adopt policies and goals for planning, develop an annual work program, hire a planning director and staff to implement the program, and to carry out numerous other responsibilities necessary to its planning directive (see Appendix A, p. 80). One of the policy board's most important functions is its budgeting responsibility.
Section four of the agreement requires that the policy board formulate and submit a budget to both governing bodies for approval. (see Appendix A, p. 81).

The language of the 1973 agreement clearly indicates the intent to establish a joint planning board, rather than a consolidated board. Prior to 1973, Missoula had a city-county planning board established pursuant to state law. Section three of the 1973 agreement preserves, rather than consolidates, this pre-existing planning board in stating that the agreement "shall (not) be construed as altering any existent Planning Boards and these Boards shall retain their statutory powers regarding planning within their respective jurisdictions" (see Appendix A, p. 81).

Both joint boards and consolidated boards are provided for in Montana Code Annotated 76-1-112 (1979). The difference between the two types of boards is found in subsections (4) and (5) of that statute. In the event a consolidated board is formed, other existing planning boards are dissolved, and the single board is vested with the "rights, duties, powers, and obligations of the existing planning boards." If a joint board is desired, existing planning boards are not dissolved but are given whatever authority is set out in the interlocal agreement.

Thus, in spite of the policy board's budgetary power over the combined Missoula Planning Board, it appears that under the agreement, both the county and city-county planning boards retain their individual statutory powers for planning. This contradiction has proved to be
functionally unimportant, although the structure is confusing and seemingly superfluous. Both the county board and the city-county board are represented on the Missoula Planning Board which meets regularly and acts as the singular and official planning advisory body to the city and county.

The membership of the two parent boards, the Missoula County Planning Board and the Missoula City-County Planning Board, is important to this discussion because each board is represented on the Missoula Planning Policy Board. The Missoula City-County Planning Board, established in 1965, has jurisdiction over land within the city limits and land within a four and one-half mile radius measured from the outermost points of the city boundary. A city-county board is required to have at least nine members. Membership of this board as determined by state law includes: four members who reside outside the city limits and within the four and one-half mile jurisdictional area, two of which may be county employees or officials, to be appointed by the county commissioners; two members who reside within the city limits to be appointed by the city council; two members who reside within the city limits to be appointed by the mayor; and a ninth member to be selected by the eight appointed citizens. The appointment of additional members is apparently permitted but is not specified by state law. All nine members of the Missoula City-County Planning Board are members of the Missoula Planning Board and the president of the Missoula City-County Planning Board is a member of the Missoula Planning Policy Board.
The Missoula County Planning Board has jurisdiction over that portion of Missoula County beyond the four and one-half mile boundary and is composed of eleven county residents. One member represents the county soil conservation district, while the other members represent ten rural citizen advisory groups from various parts of the county. State law requires that at least five resident freeholders be appointed by the county commissioners, but there is no maximum number which can be appointed. Five members of the Missoula County Planning Board sit as members of the Missoula Planning Board and the county planning board president is a member of the Missoula Planning Policy Board.

The Missoula Planning Board is the joint board established by the 1973 planning interlocal agreement. Section two of the agreement specifies the board's composition as five members of the county planning board and nine members of the city-county planning board. (see Appendix A, p. 80). Therefore, the primary planning advisory body to both the city and county governments of Missoula is comprised of nine county residents, appointed by the county commissioners, and four city residents, two appointed by the city council and two appointed by the mayor. The fourteenth member may be either a city resident or a county resident elected to the post by the eight appointed members of the city-county planning board. The chairman of the Missoula Planning Board rounds out the seven member Missoula Planning Policy Board.

As an advisory body, the Missoula Planning Board has no policy making authority under the interlocal agreement unless the policy board
elects to delegate certain of its functions to the Missoula Planning Board. Primarily, the board makes recommendations to the governing bodies on the adoption of or amendments to the comprehensive plan, subdivision proposals, and zoning ordinances.

The planning staff is the agency established under the 1973 agreement to implement the work program for the policy board. As set forth in the agreement, the staff maintains an office in a centrally located place to transact the business of the policy board. The staff is expressly identified as a county department in the interlocal agreement. The county is authorized by MCA 76-1-402 (1979) and section four of the interlocal agreement (see Appendix A, p. 81) to levy up to two mills for planning purposes in both the incorporated and unincorporated areas of the county. However, the policy board is given budget authority for all planning activity and all planning expenditures are likewise subject to policy board approval. According to section four, the county merely has the authority to "levy" the tax and "handle" financial transactions. Thus, the policy board determines the direction of planning in Missoula by reviewing the staff work program and setting the budget.

In summary, the structure of the planning program in Missoula is defined by an intergovernmental agreement between the city and county. As a result of the agreement, Missoula maintains three advisory planning boards, although only one, the Missoula Planning Board, meets regularly as the planning advisory body to the city and county. A fourth
board, the Missoula Planning Policy Board, designed to equally represent the city and county, determines the course of planning in Missoula. This mandate is accomplished by hiring a planning director and staff whose yearly work program and budget are approved by the policy board.

**Zoning and Building Code Administration**

On September 30, 1977, officials of the city and county signed a second interlocal agreement establishing a mechanism for zoning enforcement and building inspection throughout the city and county of Missoula. The full text of this agreement is included in Appendix B. The primary purposes of the agreement were to use existing city and county staffs to administer zoning and extend building inspection to all areas of the county and to establish a funding method for the two services. Under the agreement, two zoning staffs were formally established under the supervision of the planning director, a county department head. Building inspection remained a city department, essentially contracting services to the county. Both services were to be funded primarily through building permit revenues. The zoning staff as a county department were to gain final budget approval from their respective legislative bodies. The Missoula Planning Policy Board was to review and coordinate the budgets for the two services. This agreement became effective on November 1, 1977.

**The Zoning Division.** The 1977 agreement established two zoning officers, one for the county and one for the city. In reality, the
county zoning officer had existed as part of the planning staff since the passage of the county zoning resolution in 1976. Prior to 1977, city zoning had been administered by the building inspection department. The 1977 agreement transferred all responsibility for city zoning enforcement from the building inspector to a new position in the planning department. Both zoning officer positions were filled by appointment of the planning director, subject to confirmation of their respective legislative bodies.

Originally, each zoning officer position was designed to be supported by two staff persons, measured in full-time equivalent. Yet from the beginning, the planning director established a zoning organization in which the two zoning officers shared a staff of six. In 1979, the newly hired planning director, Will Walton, implemented a plan which had been outlined by previous directors and carried the organizational scheme a bit farther than had been anticipated. Walton, recognizing a need for an assistant director, appointed the county zoning officer to fill that position. The city zoning officer was made supervisor of the entire zoning division. The new assistant director maintained his position as county zoning officer, even though his role in the daily administration of zoning was necessarily reduced to make time for new responsibilities. Thus, the zoning staff was effectively reduced to five positions.

The zoning staff is responsible to six boards and commissions, in addition to the city council and the county commissioners. In that
capacity the staff processes all applications for review by these various official advisory and quasi-judicial bodies, prepares reports and recommendations for each application as well as meetings of each official body. The city zoning officer also signs applications for business licenses attesting that the proposed use conforms to zoning regulations applicable to a specific location. The zoning staff is responsible for investigating alleged violations of city and county zoning regulations, administering county floodplain regulations, conducting research and writing zoning ordinances and resolutions, and supplying staff support in the form of reports and recommendations to zoning commissions and boards of adjustment in both city and county.

The Building Inspection Department. The City of Missoula has maintained building inspection services for over thirty years for the purpose of enforcing the Uniform Building Code. The department is currently under the direction of a chief building inspector, whose staff support consists of a plans checker, six inspectors, and two secretaries. All of the building inspection department personnel have offices in city hall and are on the city payroll. The staff now has responsibility for approving all building plans for new construction and remodeling of residential, commercial and industrial structures. Once a building plan is determined to be complete and in compliance with building codes, the staff issues a building permit. Inspections for compliance are also made for plumbing and electrical work, sewer and water excavation, and various other phases of construction which
relate directly to fire and building safety. The building inspector conducts inspections of existing public structures to insure continued compliance with building codes. Publicly used structures are of special concern, and therefore, the building inspector approves all applications for business licenses, certifying that buildings in which a business is conducted remains safe for occupancy. City floodplain regulations are also administered by the building inspector.

The Budget Connection Between Zoning and Building Inspection. Although building inspection and zoning enforcement are functions of different departments, subject to the policies and control of different governments, they are inseparably linked by the budget. Building inspection is a line department of the city, whose budget is approved by the city council. Revenue for operating the department comes entirely from building permit fees. Zoning is a division of planning, a county department, whose budget is approved by the county commissioners. Zoning is funded by building permit revenues as well as zoning fees and some additional monies obtained through the planning mill levied by the county.

The building inspection and zoning agreement, like the planning agreement, assigns authority for budget review to the Missoula Planning Policy Board. Agreement number seven states that "(t)he operation budget of the zoning staff shall be part of the Missoula Planning Board budget, with approval of the Commissioners" (see Appendix B, p.86 ). Similarly, for building inspection, agreement number eight states that "(t)he
operating budget of the building inspector shall continue to be part of the city budget, with approval of the Council" (see Appendix B, p. 86). These statements appear to give budget approval to one governing body for a service performed by and/or for the other. Building inspection in the county is seemingly controlled by city budgeteers; and the city zoning budget is subject to county dictates. However, agreement number nine brings these two provisions together, in stating "(z)oning and building inspector budgets shall be coordinated and jointly reviewed by the city and county through the Missoula Planning Policy Board" (see Appendix B, p. 86). Thus, when agreements number seven, eight, and nine are read together, it is clear that budget authority rests with the policy board for zoning and building inspection, just as for planning.

This budget arrangement is essential in view of the agreement's structure. The budget of both building inspection and zoning depends in part on projected revenues from the same source, building permit fees. One budget cannot be determined independently of the other when both depend on the same scarce resources. If projected revenue for the approaching fiscal year falls short of fully supporting both services, a reduction in services becomes necessary or new sources of revenue must be found for each function. Consequently, it is necessary for the budget to be reviewed by a group of people who equally represent both governing bodies, so that one governing body cannot reduce services deemed very important by the other governing body.
Agreement number thirteen reinforces the concept that the budget decision is to be jointly made. While stating that the joint cost of zoning and building inspection should not exceed projected permit revenue, the agreement also provides for an alternative method of financing. In so providing, it is clear that the document contemplates further agreement between the two governments. "If the governing bodies elect to budget zoning services at a level which, when combined with the Building Inspection budget, exceeds projected permit revenue, the balance shall be funded from the Planning mill levy." (see Appendix B, p. 87, emphasis added). On the other hand, "(w)hen in the judgment of the governing bodies, zoning and building inspection costs exceed the projected permit revenue and other income sources, an immediate reduction in personnel shall be made . . . " (see Appendix B, p. 87). Thus, both governing bodies must reach a mutual decision to retain zoning and building inspection or to reduce services. Additionally, agreement number thirteen ties zoning and building inspection funding to funding from the mill levy under the 1973 planning agreement. Even though the city relies on the county to exercise this revenue raising authority which it has by virtue of the planning interlocal agreement, the two governing bodies are potentially equal partners in reaching budgetary decisions via the policy board. Under section four of the 1973 agreement, each governing body has parallel authority to approve or disapprove the budget submitted to them by the policy board.
The Functional Link Between Zoning and Building Inspection. The purposes of zoning and building codes are to protect and promote public health, safety, and the general welfare. Building codes, which include standards for electrical and plumbing installation, are designed to insure that the structures used for living, shopping, and working are safe, as well as comfortable. In general, zoning codes are designed to separate incompatible land uses, control the amount of land which can be covered by building and paving, and provide sufficient separation of structure for fire safety and adequate light and air. Zoning codes also provide for an aesthetically pleasing and healthy environment by limiting density, requiring yard areas and landscaping, and controlling visual clutter. The city building inspector is responsible for administering building codes throughout the city and county of Missoula. The Missoula planning director is responsible, through the appointment of a city and a county zoning officer, for zoning administration throughout the city and county. Both the building inspector and the two zoning officers carry out their responsibility through a system of permits and inspections.

The zoning and building inspection process is shown in Figure 2. By city ordinance and county zoning resolution, the initial building permit may not be issued until a zoning compliance permit is issued. A zoning compliance permit attests that the building and its arrangement of the lot are permissible under the applicable zoning regulations. The proposed purpose or use of the building is also confirmed as legal. If
a zoning compliance permit is presented to the building inspector, a building permit may legally be issued for the specified building and location.

In order to determine the legality of a proposal for which a zoning compliance permit is requested, the zoning staff requires a site plan to include certain specific information. The site plan must be drawn to scale, showing the boundaries of the parcel of land to be used, location of buildings to be placed on the lot, the parking arrangement, and landscaping. Distances from lot lines to structures must be shown, as well as important dimensions and measurements. Landscaping must be indicated in some detail. The number of floors and use of the building are also important to determine the number of parking spaces necessary. Three identical copies of a site plan must be submitted. When approved, the copies are stamped and two are returned to the applicant. The applicant retains one copy and submits the other to the building inspector, along with a copy of a zoning compliance permit. The third copy is kept on file in the zoning office.

During construction, a structure is inspected eight or more times, commencing with an inspection of the foundation footings. The inspector determines whether the required foundation supports have been included, and if the footings conform to code. At this time the inspector is also required to determine if the location of the building on the lot corresponds to the permit issued by the zoning officer. Seven other inspections are required. At subsequent intervals in the
Figure 2. Building and Zoning Flow Chart

* A Certificate of Occupancy is not required in the County.
construction, the inspector also looks at the framing, nailing, roofing, vapor barriers, electrical and plumbing installation. In addition a final inspection is conducted prior to certifying the building safe for occupancy.

The first inspection of the footings is crucial to effective zoning compliance. Once the footings are set and the concrete poured, it is extremely difficult, if not impossible, to achieve any degree of zoning compliance. Unless the builder uses the plan and the building inspector checks the location of the building on the lot as it was approved by the zoning staff, the purpose of the zoning compliance permit is defeated.

The zoning staff also uses the plan to conduct a final inspection of the building, parking area, and landscaping. By informal agreement between the two departments, the building inspection department notifies the zoning staff when a building is ready to be occupied. However, the building inspector may independently issue an occupancy permit based on his final inspection for building code compliance, without waiting for zoning staff approval. Generally, the building inspectors do not check zoning requirements during the final inspection but leave that task to the zoning staff. Thus, notice by the building inspector to the zoning staff is extremely important. Once a building is occupied it is all the more difficult to require compliance with zoning codes.

It should be noted that the zoning staff does not conduct final inspections of single family and duplex structures. In general, fewer
zoning standards apply to these structures. Zoning requirements include building setback and height, number of parking spaces, and paved parking areas and driveways. Because final inspection by the zoning staff of all single family and duplex structures in the city and county would be too time consuming, the zoning staff must rely on the building inspection department to notify them of any zoning problems. For all other structures in the city, however, the permit process begins and ends with the zoning office.

The zoning staff conducts no inspections of buildings in the county, unless a problem is reported to the staff, nor is there a formal or informal agreement with the building inspector to conduct final inspections for zoning purposes. This circumstance is in part a result of vague legislation. Section 8.05, Permits, of the Missoula County Zoning Resolution does not mandate a final inspection or require a certificate of occupancy. Yet it is evident that the resolution allows for a routine inspection similar to that conducted by the city. Section 8.17, Complaints and Violations, gives the county zoning officer the authority to prevent occupancy of a building where a violation exists. The practice of not conducting a final zoning inspection to determine compliance and thereby conclude that no violation exists is an administrative decision not to carry zoning enforcement beyond issuing a permit unless a complaint is received. There is virtually no zoning staff follow-up to assure that development in the county proceeds according to an approved site plan. Based on experience, it is dubious to expect building inspectors to inspect for zoning concerns.
In summary, it is important to remember for purposes of this proposal that under the current administrative structure the zoning division must rely heavily on informal cooperation from the building inspection department for notification of the completion of various stages of construction and of any zoning problems. The task of monitoring building progress in the context of zoning ordinances is further complicated by the existence of two zoning officers, one for the city and one for the county, and by the fact that the county zoning officer also serves as the assistant director of the planning staff.
CHAPTER TWO

PROBLEMS OF PERFORMANCE

A number of problems in the operation of zoning and building code enforcement, as those functions currently exist under the 1973 and 1977 interlocal agreements, can be identified. The source of these problems in performance is two-fold. First, the zoning division and building inspection department are physically and administratively separated, which results in a lack of coordination and sometimes in confusion between the two functions. Second, within the zoning division, the continued existence of two zoning officers in parallel positions of decisionmaking authority results in confusion for the zoning staff, conflict between the two zoning officers, and delay in determining policies where administrative discretion under the county ordinance is allowed.

For purposes of this paper, these problems are discussed in terms of "performance" as defined by Rapp and Patitucci. According to these authors, "(p)erformance has two dimensions: effectiveness and efficiency. Performance is effective according to the degree to which a stated community condition is achieved or maintained." As applied to this study, public officials in Missoula have enacted ordinances and resolutions to regulate land use and building practices. Assuming that these regulations reflect a community goal for a desired condition, the measure of effectiveness is the degree to which these development standards are followed. However, this study does not purport to quantify
the relative success of enforcement on a given number of premises in Missoula. Rather, this study examines the structure and process used to administer the regulations and identifies the problems inherent in the current structure of building and zoning code enforcement, which may lead to the conclusion that an effective job is not being done. In this study, the measurement of effectiveness is the degree to which the process, in the context of the present structure, facilitates the effectiveness of regulating development activity.

Secondly, according to Rapp and Patitucci, "(p)erformance is efficient depending on the quantity of resources expended in the effort to achieve a desired condition." The bottom line measurement of resource use is the yearly budget, and whether the services are provided within the budget guidelines established. Indicators of inefficiency for the purposes of this study are duplication of effort, conflict which causes unnecessary confusion, and time delay.

The Dual Permit System of Zoning and Building Code Enforcement.

For every new structure or addition built in Missoula, at least two permits are required, a zoning compliance permit and a building permit. Most new structures also require electrical, plumbing, sewer and water excavation, access, and sanitation permits, but these permits may be issued absent any requirement for a zoning compliance permit. As described in the preceding chapter, the zoning compliance permit and the building permit are procedurally interdependent. Therefore,
proper administration of building code enforcement affects the effectiveness and efficiency of administration of zoning ordinances.

The dual requirement for zoning compliance and building inspection permits is necessitated by the fact that two different departments are responsible for administering the applicable regulations. In addition, each department is housed in a different building. This separation of administrative authority and physical facilities results in inconvenience for the permit applicant, who must submit multiple copies of plans to both offices and present a plan approved by the zoning office prior to obtaining a building permit. The two-permit system requires a duplication of effort for both the applicant and the city or county. Extra site plans are required from the developer so that the zoning staff and the building inspector can conduct their independent reviews. This means that the site plan is reviewed twice, doubling paperwork, record keeping, and time spent by departmental personnel on review and communications.

The most critical problem with the two-permit system aside from inconvenience to the applicant, is the increased opportunity for mistake. The zoning office approves a specific site plan. The building inspection department approves a specific building plan. On occasion the plans reviewed by each department do not match because the initial review by the zoning staff can result in changes in the site plan which are not transferred to the building plan. Discrepancies between the site plan and the building plan can become important if the plan actually approved
by the building inspector does not comply with certain zoning requirements. For example, the zoning staff may require a modification of the site plan which necessitates changing the design of a building in order to conform to parking requirements under the zoning ordinance. If the building inspector approves the original building plan which does not comply with the zoning ordinance, it is extremely difficult to achieve compliance with the zoning ordinance once the building is constructed on the lot.

Modification of the building plan can also be made by the building inspector, which may not necessarily conform to zoning requirements. For example, the location of drive-in doors on commercial buildings must be approved by the building inspector but can affect the location of the driveway which is regulated by the zoning ordinance. When the building inspector approves a modification of the location of such a door, he should theoretically check with the zoning staff for compliance of the driveway. However, such conflicting plans frequently go undiscovered until the zoning staff conducts a final inspection. At that time the zoning staff may be faced with a driveway from the door leading off the property which has not been approved. Nevertheless, the builder has the approved building plan as a defense.

This opportunity for mistake is further aggravated by the fact that building inspectors frequently conduct inspections without the site plan in hand. Even small errors of four or five feet may result in improper or unusable parking spaces. Because site plans are not always
checked during the foundation inspection, such discrepancies can easily occur. On one occasion, a building was placed ten feet farther forward on the lot than approved by the zoning office. This kind of displacement can result in parking spaces on one side of the building which are nearly twice the length required, leaving no room on the other side of the building for the required landscaping in the front yard.

A third problem in performance is manifested especially during the final inspection process. It is at this stage that discrepancies between plans approved by the zoning staff and plans approved by the building inspector become evident. When such discrepancies are discovered by the zoning staff and the staff attempts to enforce the zoning ordinance after the fact, there is frequently tension and confusion between the two departments.

For single family and duplex structures, the confusion and distrust arises from the fact that the zoning staff has no role in final inspections. By interdepartmental agreement the building inspectors conduct the only final inspection of single family and duplex structures. A shortage of zoning staff personnel makes this arrangement necessary. Because there are relatively few zoning requirements for those structures, responsibility for compliance is placed with the building inspector. Nevertheless, the inspectors have shown inattention to zoning requirements by overlooking unpaved driveways, unapproved garages, and construction in excess of the structure or addition approved. Such oversights are
only discovered by the zoning staff by accident or by complaint after the structure is completed.

For structures larger than duplexes, a final inspection is completed by both building inspectors and zoning staff. At the very least, this procedure is a duplication of effort. In addition, the process lacks coordination, causes confusion and creates tension between the two responsible departments. The zoning staff relies on building inspectors to monitor building activity and notify them when a building is complete. The zoning staff request to be notified is a simple one since the building inspection department conducts its own final inspection. According to building inspector Joe Durham31 a building code certificate of occupancy is issued for all structures. Yet in reality, the building department seldom notifies the zoning staff before a building code certificate of occupancy is issued. The zoning staff is faced with checking and rechecking structures for which zoning compliance permits have been issued in order to monitor building occupancy.

Although builders are also required to notify the zoning office upon completion of a project many resist the requirement. If the building inspection department has given the go-ahead either verbally or in writing, the builder typically claims to have misunderstood "such a ridiculous" requirement for two separate certificates of occupancy. In spite of the fact that several builders have been fined by the municipal court for violating this requirement,32 many builders avoid the final inspection by the zoning staff. The zoning staff is
often faced with many hours of work, over months of time, to achieve compliance with zoning codes after the buildings have been occupied.

Many structures are occupied for several weeks without any city certificate of occupancy before the zoning staff becomes aware of it. This repeated occurrence fosters mistrust among the zoning staff and building inspectors. Some members of the zoning staff express suspicion that building inspectors are either avoiding formal certificates and notice to the zoning staff, or failing to conduct inspections and monitor building activity properly.

Finally, repeated efforts have been made by the zoning officer and building inspector to coordinate responsibility. Except in isolated instances, these efforts have failed. There seems to be no genuine interest to bring the two offices together. Each is most concerned with his own turf and neither has exhibited sufficient willingness to support the other. In part this lack of coordination is difficult to overcome because of the history of each department. The building inspector has been part of city government since the days when Missoula had the atmosphere of a small and friendly town. Consequently the current building inspector maintains a more informal and trusting approach to administration. In contrast, zoning enforcement is a relatively new concept in Missoula and its administration is entrusted to a younger, more aggressive staff which favors a more systematic approach.
In part, the failure of efforts to coordinate responsibility between the zoning staff and the building inspector stems from the traditional division between city and county government. Some responsibility for this problem rests with individual political leaders. The building inspection office is generally supported by the mayor, while the zoning office is neither supported by the mayor nor subject to the city administrative hierarchy. The city zoning officer draws support from and must be directly accountable to the city council.\textsuperscript{33} The mayor and city council are frequently at odds, which is in part the initial reason for the hybrid structure. The county zoning officer has no particular interest in better cooperation with the building inspector either. There is no advantage from his point of view because the current political climate in county government does not favor aggressive zoning enforcement. The county commissioners hold a direct line to the county zoning officer and they are not particularly supportive of the building inspector because they have gained no budget review of that office. It is no secret that city and county government are frequently at odds.

The lack of coordination between the zoning staff and the building inspection department and the resulting discrepancies in the spacing of buildings or the location of doors may seem insignificant in an isolated instance. This view is in fact a typical defense presented by a builder who finds his building out of compliance with a particular zoning standard. However, the cumulative effect of these discrepancies will eventually serve to defeat the very purpose of the zoning ordinance. Assuming that the legislative bodies of both the city and county adopted
the zoning ordinances as a proper exercise of their police power for the public health, safety, and general welfare, then each discrepancy which is allowed to slip through the enforcement mechanism contributes to the ineffectiveness of the governing bodies' power to protect the public. Consequently, the fact that the current administrative structure is so vulnerable to mistake is a serious shortcoming to the effectiveness in performance to achieve the stated community goal adopted by the governing bodies.

In summary, the two-permit system causes inconvenience to developers, lacks coordination between the two administering agencies, requires the two agencies to duplicate efforts, and fosters a lack of trust. The zoning staff is compelled to increase time spent on monitoring building activity and achieving zoning compliance of new construction. The effectiveness of a regulatory system filled with these problems is not likely to be improved without additional zoning staff to compensate for the lack of coordination and trust between the two departments, but the efficiency of the system will inevitably decline if the answer lies in adding personnel. Cooperation within the existing structure has not worked well in part because there has been no political force pushing for greater effectiveness or efficiency, and in fact, the contrary seems true.
Administrative Problems Within the Zoning Staff

As explained in the previous chapter, one zoning staff exists in the planning department by virtue of a merger. Personnel working separately in city and county zoning were brought together by the current planning director as one staff responsible for the administration of zoning in both the city and the county. The city zoning officer was placed in the position of zoning division supervisor by the planning director. The county zoning officer, while retaining his zoning title, was named to the position of assistant director. The resulting administrative structure, the best choice available to the director under the circumstances, is not only contrary to sound management practices, it is unnecessary as a means of maintaining executive/legislative integrity of county zoning from the point of view of the county commissioners.34

A very basic rule of organizations is that an employee should have only one boss.35 A hierarchical structure is used to channel control from the top. An employee has the right to know from whom he should take directions. Where an employee is placed in a position of working for more than one boss, problems are likely to surface. In this light, several problems are apparent with the current zoning staff structure.

First, some employees in the zoning division receive directions from two supervisors. The directions fall in different areas of administrative concern: how to accomplish a task; what the task
consists of; and, which task has priority. Employees who were formerly assigned to county zoning now under the supervision of the city zoning officer become confused and concerned that no matter what they do, there will be a conflict with a supervisor. Feelings of inadequacy develop and employees become reluctant to take decisive action. In the end, employees are forced to take sides, choosing the safest posture on an issue. Very often the employee is forced to resolve a conflict with one supervisor or the other. Because it is the employee who receives conflicting directions, the supervisors are often not aware that a conflict exists.

Both supervisors are in a decision-making position. Neither the city zoning officer nor the county zoning officer feels compelled to consult one another; and neither consistently recognizes the other as a necessary part of the hierarchical structure for normal supervisory or discretionary actions. The county zoning officer is accustomed to direct communication with employees in county zoning and because he maintains the title and authority of county zoning officer, it remains his prerogative to maintain involvement in county zoning. As supervisor of the entire zoning staff, the city zoning officer does not feel compelled to channel work assignments through the county zoning officer who he views as the assistant director. Aside from employee confusion, conflicts in policy determination occur between the two zoning officers, and the zoning supervisor finds it difficult to plan work assignments for the entire zoning staff when he does not know what the county zoning officer has assigned.
While the city zoning officer has clear authority for discretionary decision making in the realm of city zoning questions, he must recognize the continuing authority of the county zoning officer under the provisions of the county zoning resolution. There is an effort to channel county zoning policy matters for review by the assistant director/county zoning officer and to include him in staff discussions of zoning issues. These efforts are not always successful, however, partly because the county zoning officer is not involved in the daily routine of zoning administration, and his office is physically not among the other zoning staff offices. Decisions and actions are delayed by the need to consult the policy making head who is not always available to address zoning matters.

These decision making considerations are important to both the content and the timing of the decision. Group decisions should be encouraged. According to Banovetz, "(t)he group is always a greater source of information than the individual. It offers an opportunity for discussing and criticizing the proper course of action." Decisions of the county zoning officer made in the absence of the staff who experience the day to day problems run the risk of being faulty as well as alienating subordinates. Decisions should not be subject to delay because of excessive or needless hierarchical stratification. To the waiting public, time is frustration and anger.

In addition, there is a fine line at times between daily administrative decisions and real policy decisions. For example,
where a question of interpretation arises under the county zoning ordinance, the method chosen to exercise discretion, if it is to be followed consistently by the staff, can result in a policy being set by the zoning officer. The staff hierarchical structure is designed to keep as much of the assistant director's time as possible free to fill the duties of that position, but he is supposed to be available as the need dictates to participate in reviewing county decisions. The staff proceeds in a normal administrative posture which frequently involves staff discussion as a means of reaching a decision. However, these decisions are frequently reviewed by the county zoning officer outside of the staff debate process. Again, delay can result, staff time is wasted, and conflict surfaces.

The problems identified in the preceding paragraphs have been manageable largely because of the individuals currently in the positions of city and county zoning officers. Conflicts and problems have generally been resolved informally by the two zoning officers who have worked together on the same staff for several years. Yet, for other individuals, these problems may become a severe impediment to effective and efficient performance. The advisability of perpetuating such a problematic administrative structure must be questioned. The necessity of maintaining a county zoning officer with whom the commissioners are familiar is also questionable and in the long run problematic.
The county commissioners are apparently reluctant to transfer the authority for county zoning to someone with whom they are unfamiliar. The current county zoning officer conducts that office in comport with their wishes. There seems to be some concern that another individual will administer county zoning regulations in a different manner and it would be difficult to support any contention that others filling the county zoning position would do exactly the same job. There are bound to be differences in administrative style and interpretation of gray areas in the ordinance. Yet over all, administration is not likely to change drastically under a different county zoning officer unless the elected officials want a change. Bureaucrats are aware of the necessity to be responsive to elected officials and the general citizenry alike.

The organization principles of hierarchical conformation and unity of command apply to an organization from the bottom all the way to the top. The county commissioners are the elected executives of county government to whom all channels of administrative authority lead. When taken to the top, unity of command means that one body has the ultimate responsibility for coordinating all administrative agencies. Where channels of administrative authority are properly applied, anyone filling the position of county zoning officer is ultimately answerable through the director of planning to the county commissioners. Therefore, the commissioners' preference for a particular personality as county zoning officer is unnecessary.
There is a two-fold danger in depending on individual personalities to achieve continuity and conformity. People do not last forever and there is a risk of leaving behind a legacy of an insufficient administrative organization. When government concentrates on the personality of administration as a means of controlling how a law works, there is a tendency to overlook the legislative process. Changing the law through administrative decisions ultimately lacks continuity, as well as public scrutiny. Changing the law through the legislative process creates, for better or worse, new law. However, the law is open to public examination and debate. Moreover, ultimately it is the legislation which guides administrators, not changing political winds or differing administrative philosophies.

Conclusion

The current structure for city/county zoning and building code enforcement contains inherent problems which limit both the program's efficiency and its effectiveness. The permit and inspection process wastes resources and manpower, decreasing the program's efficiency. Conflicting political positions produce a three-way split of political support for the three administrative positions involved. There is a lack of coordination, opportunity for mistake and nonenforcement, confusion and distrust between the zoning division and the building inspection department, all of which contributes to a decreasing effectiveness in performance. And, the county's position relating to the county zoning officer creates management problems within the planning
staff, limiting the overall efficiency and effectiveness of the zoning division itself.
CHAPTER THREE

A PROPOSAL FOR THE REORGANIZATION OF
ZONING AND BUILDING CODE ADMINISTRATION

According to Fox, "(o)rganization is the process of grouping
responsibilities and activities and establishing formal and informal
relationships that will allow people to work together most
effectively in setting and attaining the goals of an agency or
department." The term "formal relationship" refers to the rules
and procedures which specify the role of various divisions and positions
within the organizational structure. The term "informal relationship"
refers to the manner in which people in an organization adjust the
formal structure during the daily routine of work, as well as to
the social relationships which develop. An organization must there­
fore include all persons responsible for setting and attaining the
goals of an organization and all activities necessary to achieve a
desired product or service. The structure of an organization is a
deliberately contrived linkage between all responsibilities and
activities necessary to the continued effective delivery of a product
or service. The organization must include, in Tausky's words,
"control activities designed to monitor and regulate the correspondence
between actual and planned activities." 

Because organizations are seldom perfect structures, in the
sense that they initially and continually deliver their stated purpose
in the most effective way possible, they require almost constant

-37-
tinkering and manipulation. Even if organizations are initially very effective and efficient, external and internal forces may alter the ability of the organization to perform. As well, organization design usually reflects acceptance of the fact that perfection is evasive in the formal structure, so there is at least partial reliance on the role of "voluntary cooperation . . . to fill in the chinks in the formal design." 

But voluntary cooperation has limits. It is based on informal relationships as well as a perception on the part of both parties that continued cooperation is in their mutual best interest. To the degree that cooperation is mutually beneficial, gaps in the formal structure may indeed be bridged; but, there is very likely a point at which continued or expanded areas of cooperation will not equally benefit the agreeing parties. Similarly, informal behavior within a system designed to deliver a specific service may improve the ways things are done, and as Tausky states, "strengthen the cohesion between people." However, he cautions "that the formal structure . . . sets limits to and influences the patterns of . . . informal behavior." 

Reorganization is defined by Fox as "the restructuring of (the) responsibilities, activities and relationships" of an organization. Reorganization becomes necessary when there is a breakdown of one or more linkages in a structure and neither minor adjustments nor informally established relationships seem able to correct the problem. In the case of zoning enforcement and building inspection in Missoula, the failure of some necessary procedural linkages is severe enough to
warrant change. Yet because the process crosses departmental, even governmental jurisdiction, incremental adjustment and voluntary cooperation seem ineffective in solving problems.

As is evidenced in the preceding chapters, the structure for zoning and building code enforcement in Missoula is not designed for effective delivery of these two services. The requirement of two permits and a series of confusing inspection requirements unnecessarily burdens the public, causes duplication on the part of the two responsible departments, wastes staff time, and diminishes the effectiveness of the exercise of other zoning responsibilities. The zoning staff is further hampered by the existence of two zoning supervisors, despite the fact that only one full-time supervisor is necessary or desirable for effective administration. Finally, the planning director is not allowed adequate administrative latitude to adjust and fine-tune the organization without outside involvement from the city and county legislators.

The existing structure for zoning and building code enforcement is too complex and cumbersome. It is the result of political compromise, designed to preserve the 1976 status quo with regard to planning, maintain the autonomy of the existing building inspection department while stripping the department of zoning responsibility, and provide for direct legislative branch control over the administrators responsible for zoning enforcement. The latter result is apparently the product of some distrust of the planning director,
largely stemming from the perception that he is not subject to normal channels of administrative accountability.

The proposed reorganization is designed with the primary goal of increasing the performance of city and county zoning and building code administration through an improved permit process. An important aspect is the appointment of one administrative supervisor for all zoning and building inspection services. Increasing the direct accountability of zoning and building inspection to both governing bodies of the city and county, is an equally important motive of this proposal. This goal is accomplished because the supervisor of the combined staff is made directly accountable to the director of planning, who through a revised interlocal agreement becomes more fully accountable to the governmental partners in the interlocal agreement. The latter change is accomplished by revising the interlocal agreements for zoning and building inspection, as well as for planning. The new agreement is designed to clarify and expand the role of the intergovernmental agency created by the 1973 agreement to oversee planning department activities. The structure is designed to give equal representation to each governing unit and establish an administrative hierarchy in which building inspection, zoning, and planning are fully accountable to the city and county.

A Proposed Division of Land Use Regulation

This proposal combines the personnel of the building inspection department with those of the zoning division to form a division of land
use regulation within the planning department. This organizational structure is proposed for the express purpose of improving the land use permit process, presently involving two main permits, a zoning compliance permit and a building permit. Under the proposal, one administrative supervisor is responsible for both city and county zoning regulations and building codes. The supervisor of the land use regulation division reports directly to the planning director.

An Improved Permit System. This integrated building inspection and zoning staff is designed to facilitate the effective administration of land use regulations through an improved permit system. The benefit to users of the system will be substantial in that one permit, instead of two, will be required for all construction. The review process will consequently be shortened and submittal requirements decreased. Inconvenience to the applicant caused by the present need to obtain permits from two independent departments can likewise be eliminated. Also, misunderstandings between government officials and builders can be greatly reduced because the chance for mistake in plan checking will practically be eliminated, at least to the extent that mistakes are now the result of one department not examining plans approved by another. Lastly, only one final inspection will be required and only one certificate of occupancy necessary.

Both city and county governments benefit by increasing effectiveness and efficiency in the area of building and zoning code enforcement. The one permit system more fully utilizes existing personnel simply by
decreasing the present duplication in plan checking and final inspections. Plans will be checked for both building and zoning code compliance at the same time by the same person. Building inspections will also be examinations for zoning compliance, a simple matter requiring merely a few extra minutes of the inspector's time, since he will be in the right place at the right time anyway. Building inspectors will also be responsible for the final inspection to determine whether all building and zoning codes have been satisfied. There will be no need for the zoning staff to duplicate inspections and only one certificate of occupancy will be necessary.

This proposal for a combined zoning and building inspection staff will improve overall effectiveness in two additional areas of zoning responsibility. First, the staff can maintain a high degree of exposure to changes in the community. Building inspectors make rounds in familiar territory on a weekly basis. Their observations of changing land use and new construction can be passed directly on to office personnel to check zoning compliance. Violations can be readily identified and compliance sought immediately. This may prove especially beneficial in the area of sign ordinance enforcement.

There is an underlying assumption that building inspectors, when integrated with zoners, will adjust their current practice of inattention to zoning regulations. To some degree, this apparent lack of concern can be accepted by understanding the individual's relationship to his work organization. Individuals seek to belong in formal
organizations of which they are a part just as they do in social groups. If the organization has narrowly defined goals, so will the individual in the manner in which he dispatches his duties. Conversely, it is hoped that the individual scope of concern will broaden with the wider range of organizational purpose. The organization's goals become the individual's work priority.

The second area of improved effectiveness will be in zoning enforcement not necessarily linked to the permit process. As the responsibility for issuing permits and conducting all inspections is coordinated among the larger staff, many hours of staff time can be freed to other zoning responsibility. Improved performance can be expected in report writing, public information, and violation abatement. Perhaps most important, the staff will be able to concentrate more resources in research and development of solutions to existing land use and regulatory dilemmas.

Budget Comparison. A reorganization proposal is not likely to find wide acceptance, even for the sake of more effective administration, if it will also be more costly. This proposal, when compared to an equally effective staffing level for the present structure, will show a yearly savings of $37,000.

The FY 1980 budget for the building inspection department is $200,717. Of this total, $152,625.49 is for personnel salaries and wages for one building inspector, one plans checker, six inspectors, and two secretaries. An additional $14,565 is for supplies, purchased...
services, and capital outlay. The latter figure is not used in this comparison because expenditures in this category fluctuate for reasons not necessarily connected to personnel. The budget for zoning during FY 1980 is $104,747 for personnel, plus $18,674 for operations, capital, and contract services. The number of hours allocated to zoning in terms of full-time equivalent (FTE) employment accounts for 7.17 employees. As illustrated in Table 1, the 7.17 FTE includes 92% of the city zoning officer's time and 40% of the county zoning officer's time; four full-time planners in zoning; and, 1.85 FTE for secretarial and graphics personnel.

**TABLE I**

1980 PERSONNEL BUDGET

<table>
<thead>
<tr>
<th>Building Inspection (FTE)</th>
<th>Zoning (FTE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL BUDGET:</td>
<td>TOTAL FTE</td>
</tr>
<tr>
<td>$152,625</td>
<td>10.0</td>
</tr>
<tr>
<td>$104,747</td>
<td>7.17</td>
</tr>
</tbody>
</table>

The total personnel budget for the two departments is $257,372 for 17+ people.
The proposal to merge the two staffs will not necessitate cutting any personnel from the ranks of inspectors or planners. However, one secretarial position could be eliminated. Figure 3 shows the reorganized staff in a traditional structure. Under the proposal, the full-time equivalent personnel allocated to a division of land use regulation is sixteen. This decrease in personnel is achieved by eliminating the 40% county zoning officer position, leaving the assistant director free to perform vital administrative duties, decreasing secretarial support from 3.12 FTE to 2.5 FTE, and decreasing graphics from .80 to .50 FTE.

The savings to the city and county for the next fiscal year can be estimated by comparing the projected personnel budget at the current staff level with the projected budget for a staff of sixteen. The actual percentage increase for personnel is not available at the time of writing, but a comparison of the two projected budgets can be drawn by using the hypothetical figure of ten percent. Based on the current level of staffing, the building inspection budget for FY 1981 will be $167,887. To arrive at a reasonable figure for zoning, certain adjustments in personnel must be made. Graphics and drafting can be cut to more accurately reflect the current level of need, saving approximately $3,000. Without the combined organization, an additional secretary is essential to the zoning staff in FY 1981, adding $8,000 to the zoning budget. With the 10% adjustment, zoning would require a budget of $120,721 for FY 1981. Thus, the total budget for personnel
Figure 3: Proposed Structure of the Division of Land Use Regulation

(1) Planner III is the Division Supervisor
(2) PII = Planner II
(3) PI = Planner I
(4) AP = Assistant Planner
in building inspection and zoning under the existing structure would be $288,608.

Under the reorganization plan, the total personnel budget for a combined building inspection and zoning staff would be $265,250. Using the present staff distinctions this figure breaks down so that $159,087 is required for the building inspectors and $96,179 is required for the zoning staff. The building inspection total represents nine people and the zoning staff represents seven people. A major savings in the zoning staff budget is gained by reallocating the county zoning officer's time from zoning to the assistant director position, a necessary administrative position to maintain a smoothly operating staff.

This budget comparison for personnel does not accurately represent total savings because it does not take into account the overall improvement in staff efficiency. As previously explained, by combining the building inspection and zoning departments, a substantial amount of staff time can be reallocated by eliminating duplication. The zoning staff presently commits the equivalent in hours for approximately two full-time employees to permit processing, inspections, and office visits. With the merger of building inspection and zoning at least one half of this time can be reallocated to other areas in need of additional staff time. In fact, without the proposed merger, one additional zoning position would be needed in order for the staff to provide the demanded services to the public and government bodies alike.
Therefore, a more realistic comparison of the two budgets takes into account the necessary additional zoning position if the staffs are to remain separate. This addition would result in a budget of $302,908, compared to a budget of $265,250 for a combined staff.

The Division Supervisor. According to Rapp and Patitucci, "(s)upervisors have perhaps the most critical and least well-defined responsibilities within local government. On behalf of management, supervisors exercise one or more of the following functions: employment, promotion, transfer, suspension, discharge and adjudication of employee grievances." In addition, the supervisor is frequently the manager of a program. He is responsible for translating community goals into detailed action programs designed to satisfy often competing, conflicting interpretations of program objectives. Employees responsible to the supervisor depend on him to define their role in the program implementation stage. Additionally, the supervisor is expected by his employers to provide information, expert advice, alternative choices, and to some degree motivation in the process of developing community goals in his area of responsibility. The administrator does not need cumbersome organizational structure with overlapping authority to compound his problems.

Central to this reorganization proposal is the assignment of all supervisory and managerial responsibilities to a single division head. The immediate benefits are obvious. Employees will no longer be faced with the dilemma of receiving direction from two supervisors.
There will no longer be any source of conflict between two supervisors of the same personnel. The one division head will not be handicapped with incomplete knowledge of employee work load, making it easier to plan and monitor weekly work assignments. Finally, decisions will not be hampered by delay or changes at the last minute and the risk of errors caused by omission of critical concerns will not be as great.

In addition, there are other more subtle benefits to be found in the proposal to create a division of land use regulation with one supervisory head. Since one individual will have full responsibility for the performance of the division, accountability will be increased. City and county zoning and building inspection become one function, replacing three overlapping areas of responsibility, each with its own chief. There will be a clear-cut definition of responsibility and a definite hierarchy of authority. The division supervisor will be directly responsible to the planning director who will have the authority to hire and dismiss anyone filling the position, under the same employment guidelines covering other planning supervisory personnel.

The unique status of the present zoning officer positions will be changed under this proposal, thereby eliminating a potential challenge to the director's authority by an individual who enjoys a protected status. The director will no longer be faced with the possibility that conflicts with the zoning supervisor may be settled in the political arena. The structure necessarily makes the division supervisor accountable to the director strengthening his control in the area of zoning. This
structure is essential to maintain administrative control from the top down because the director is the one who is answerable to the ultimate authority in planning, the Missoula Planning Policy Board.

Zoning and Building Inspection in the Planning Hierarchy

This proposal logically merges the functions of building inspection and zoning because the two services are inseparably linked in process. Although various alternatives exist for placing such a staff in city and county government, the planning department is chosen because zoning is closely linked to the planning function. This placement is not a new concept, however. As indicated by the 1953 Iowa Model Ordinance, "(s)ince zoning is so closely related to planning and is one of the instruments by which planning can be made effective, it is considered sound procedure for both functions to be carried out by the same agency." This view is also taken by experts in public administration, as noted in a 1971 publication of the International City Management Association:

Planners must also concern themselves with many means of implementing plans, including the consolidation of codes and ordinances, development of interjurisdictional means of cooperation, urban renewal programs, capital investment budgets, the preparation of zoning ordinances and other devices for land use regulation, and the day to day administration of policies, ordinances, codes, and other legal and administrative mandates.
Chapter three of one of the most widely used and influential planning books in the United States, The Practice of Local Government Planning, discusses the function, organization, staffing and administration of a planning agency. Although various alternative organizational models are considered for including a planning agency within the local government structure, the inclusion of a land use controls division in the planning agency is virtually taken for granted. This division is responsible for administering the land use control mechanisms and for recommending periodic amendment to improve these mechanisms. Its personnel would review all subdivision plats, zoning petitions, and applications to the board of zoning adjustments.

The administration of zoning varies widely throughout the United States, and traditional systems usually involve several agencies "empowered to make or influence decisions: namely, the planning commission, the board of adjustment, and the city council or other local legislative body." The planning staff is usually responsible for writing reports and submitting information to these various decision making bodies, and in a growing number of cities, for issuing permits to allow development.

The movement toward an ever greater role of planning agencies in the permit process seems to be precipitated by two trends. The traditional system of disparate boards, commissions, and agencies "has come in for substantial criticism--for its casual practices and lack of a consistent administrative ethos." The recognition that traditional
zoning methods are unable to address complex land use problems has resulted in a barrage of innovative and flexible zoning techniques which require a relatively high degree of sophistication to administer. In response to the former, administration of all aspects of zoning including the issuance of permits has been entrusted to a "zoning administrator"; and some cities have employed the device of a "zoning hearing examiner" to improve the quality of hearings and findings rendered. Flexible zoning techniques employed by many jurisdictions include: floating zones (most commonly the planned unit development); transferable development rights; special districts for widely ranging purposes from historic preservation to designated areas for pornography; and special permits.

Finally, zoning is bonded to planning by a growing legal trend which requires zoning to be adopted in accordance with a comprehensive land use plan. The Model State Zoning Enabling Act of 1922, which in some form appeared in most state laws when first enacted, "provided that the zoning ordinance shall be prepared 'in accordance with a comprehensive plan.'" Although virtually ignored for several decades of municipal zoning, the phrase still contained in most state enabling acts, and in some states strengthened and clarified by new legislation, is receiving greater attention by the courts. And, according to Rathkopf,

The comprehensive plan is the standard for zoning action, whether it be the initial adoption of a zoning ordinance, a revision of the ordinance, an amendment, or zoning
action relating to a specific parcel of property by way of a change in its zoning classification, a special permit, or a variance. In all of these situations, the body--legislative or administrative--which has the proposed action under consideration, even if only in an advisory capacity, must take the plan into consideration.65

No municipal or county agency is more knowledgeable of the comprehensive plan than the planning staff. Moreover, the Missoula planning staff is exemplary of successful interjurisdictional cooperation. It makes sense to utilize the existing successful planning structure, with some changes to combine and strengthen planning related services.

The Planning Director--the Hierarchical Link. If building inspection and zoning, which already serve both the city and county through the same department, are to be combined as recommended, it is eminently more sensible to use an existing cooperative agreement, rather than create a new structure to coordinate budgets and make other necessary administrative policy decisions. Moreover, the administrative structure of the planning staff is able to absorb the new responsibility with very little adjustment. The planning director is already responsible to an interlocal board, in an established hierarchical structure which lead to the top of both governments simultaneously.

The director under this proposal is accountable to the planning policy board for zoning and building inspection, as well as for the
other divisions of the planning staff. As will be shown in the next chapter, the planning policy board will be reconstituted under a single revised interlocal agreement, a proposal which gives the policy board new stature as a chief executive for the combined city-county planning program. When compared to the fragmented accountability described in chapter two, the proposal increases the administrative accountability of the zoning-building inspection supervisory position to the executives and legislators of both governments.

**The Planning Policy Board—Chief Executive by Committee.** The Missoula Planning Policy Board will continue to be the policy-making body for planning, zoning, and building inspection under the proposed reorganization. The board's responsibility will remain largely the same, but its authority will be more clearly defined. Membership on the board will change under the proposal, allowing the board the necessary stature of a policy-making body, made up primarily of elected officials. The only appointed member of the board will be the president of the Missoula Planning Board.

This proposal to reconstitute the Missoula Planning Policy Board is necessary in order to establish a clear line of hierarchical authority from the top down to the supervisor of the land use regulation division of the planning staff. In light of the description in chapter one, the necessity of including this as part of the reorganization proposal can be readily seen. Zoning officers are presently part of the planning staff, appointed by the director; yet, both the city
zoning officer and the county zoning officer can be hired or fired only with the approval of the legislative body whose zoning law each officer enforces. The reason for this extension of legislative hands into management represents a crisis of distrust within the planning interlocal agreement. Each group of governing officials perceives the planning structure as out of reach. The other governing body has more control over planning and it is just not acceptable to allow the person responsible for administration in the volatile area of land use control to be in a position of undue influence by the planning director. The planning director is seen by many elected officials as an administrator who is more responsive to the other governing body.

This belief is more prevalent among city officials with some justification. As illustrated in Figure 1, it is apparent that the city may be under-represented on the planning policy board. The policy board consisting of the mayor, one city councilman, two county commissioners, and one appointed representative from each of the three planning boards, is very likely to be made up of five county residents and two city representatives. This composition arises because membership on the boards which supply a representative to the policy board is heavily weighted toward county appointments. Whether or not the membership of the policy board more fully represents county interests is irrelevant because many city officials perceive that it does.
This belief on the part of city officials is exacerbated because most officials are unfamiliar with the planning budgetary process and believe control of the budget is entirely in the hands of the county. This belief is not surprising since the city council is represented on the policy board by only one individual. The mayor is not necessarily viewed as a city council representative. It has not been customary for the entire planning budget to be reviewed by the city council during the city budgetary process; while, the county exercises the authority for final approval of the planning budget. Nevertheless, county officials are just as reluctant to relinquish special control of the county zoning officer.

Despite the fact that two out of three county commissioners are members of the Missoula Planning Policy Board, the board is not identified by the commissioners as supplying any direct line of administrative authority from the county's tri-partite chief executive to the planning staff. The board is viewed by both county and city officials as a policy advisory body whose primary responsibility is to review the budget and hire a director. Because the director is hired by a multi-member board, the county commissioners seem to find him suspect when it comes to placing total reliance in his judgment to administer zoning in the county through an independently hired division supervisor. This reluctance to abrogate control of the zoning officer positions may also reflect the county commissioners overall administrative experience in county government. That is, in general, the county commissioners are able to exercise little control
over many departments except on the budgetary front. They are unwilling to risk what they perceive as indirect control over an office as controversial as zoning.

Although it is conceivable to establish a structure under which the planning director is directly accountable to the chief executive of one governing body or another, such an arrangement would not solve the problems posed in the preceding chapters. The other governing body would probably become even more distrusting.

Government by committee is not generally recommended, because it is more difficult for such bodies to make decisions. "They are not cut out for day-to-day supervision and coordination, and the compromises they must often make to function at all lose sight of key goals and objectives," according to Fox. Fox, and others who caution against government by committee, are generally referring to autonomous bodies appointed either by the chief executive or the legislature with complete authority over the program for which a board is established. These boards, they say, are unable to make consistent policy and are self-centered, concerned only with one dimensional viewpoint rather than overall community goals.

This proposal is based on the assertion that under certain circumstances and for specific reasons, boards are not only acceptable, but necessary and desireable. One such circumstance is that of coordinating the efforts of two or more governments to provide more effective and efficient services to the community. The combined building inspec-
tion and zoning staff which will serve both the city and county of Missoula, requires such a board to reach decisions which are in the best interest of both governing bodies. The board composed of elected officials is designed to reach compromises when necessary.

In short, the proposal alters the present membership of the Missoula Planning Policy Board to three elected representatives of both the city and county. The only appointed member of the board is the president of the Missoula Planning Board. The membership is designed to balance the board and make it directly accountable to both governments. Along with other elements of the revised interlocal agreement, the board will take on a more visible role in building inspection, zoning, and planning in Missoula. This new visibility is designed to increase understanding and confidence in the planning interlocal agreement and make planning policy determination more accessible to elected officials of the city and county alike. Moreover, the proposal should strengthen the role of the planning director by creating an atmosphere in which political leaders on both sides will be willing to delegate full authority and responsibility for achieving planning objectives to the planning director. By combining building inspection and zoning as a division of planning, the supervisor of the division becomes more accountable to the mayor, city council, and county commissioners, all represented on the policy board, than is presently the case.
Conclusion

The effectiveness of building inspection and city and county zoning administration in Missoula can be improved by merging the two functions into one staff under the direction of one administrative supervisor. The simplified permit system will serve the community better by increasing public access to permits and by improving government's performance. Placing one supervisor in charge of the three related functions will further reduce the possibility for mistake and eliminate the existing interdepartmental and intradepartmental tension. Furthermore, full accountability for administration of zoning and building inspection will be gained by eliminating the present overlapping responsibility of three administrators. In addition, a logical hierarchical structure will be achieved to increase the accountability of both zoning and building inspection to the two partner governments. The planning director will play a pivotal role within the proposed organization which can only be achieved by eliminating the special status of the city and county zoning officers and assigning normal supervisory status to one division supervisor assuming the responsibility of those positions. Finally, the administration of zoning and building inspection is made more accountable to both governing bodies through the reconstituted Missoula Planning Policy Board.

In summary, four primary adjustments of the existing structure will improve both the effectiveness and efficiency of building and
zoning code administration and make the administrator more accountable to elected officials. One, the functions are combined into a single intergovernmental division of the planning staff, thereby eliminating duplication. Two, one supervisor is placed in charge of the division, improving accountability across the board for zoning and building inspection. Three, the planning director's administrative authority and flexibility are improved by removing the special status now attributed to city and county zoning officers, thus establishing a clear line of hierarchical authority and responsibility. Four, the final link to political leaders is strengthened by balancing city and county representation on the Missoula Planning Policy Board which oversees the activities of the intergovernmental agency and by broadening the role of the policy board in overseeing planning staff responsibility.
CHAPTER FOUR

A PROPOSED INTERLOCAL AGREEMENT

AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MISSOULA AND THE COUNTY OF MISSOULA TO COOPERATE IN THE PROVISION OF PLANNING, ZONING, AND BUILDING INSPECTION SERVICES TO THE RESIDENTS OF MISSOULA

WHEREAS, the City and County of Missoula maintain a joint planning program pursuant to an interlocal agreement duly executed on May 31, 1973; and

WHEREAS, the City and County of Missoula provide zoning and building inspection services to the citizens of Missoula pursuant to an interlocal agreement duly executed on September 30, 1977; and

WHEREAS, the City and County of Missoula find it in the interest of the citizens served by each government to make the most effective and efficient use of the resources used in providing the services of planning, zoning, and building inspection; and

WHEREAS, the City and County of Missoula find that the most efficient and effective use of resources is not being achieved by the current administrative structure for planning, zoning, and building inspection; and

WHEREAS, the City and County of Missoula after thorough examination of the structure, conclude it to be in the best interest of their citizens to revise the interlocal agreements for planning, zoning, and building inspection.

-61-
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MISSOULA AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MISSOULA, EACH A PUBLIC AGENCY OF THE STATE OF MONTANA:

THAT, pursuant to MCA 7-11-104 (1979), the City of Missoula and the County of Missoula agree it is to their mutual advantage to adopt this third interlocal agreement for planning, zoning, and building inspection.

BE IT FURTHER RESOLVED, that this agreement withdraws and replaces the planning agreement jointly executed by the City and County of Missoula on May 31, 1973;

AND FURTHER, that this agreement withdraws and replaces the zoning and building inspection agreement jointly executed by the City and County of Missoula on September 30, 1977;

AND FURTHER, that an intergovernmental agency is established to serve the City and County of Missoula jointly and equally in the provision of planning, zoning, and building inspection services pursuant to the terms of this agreement, stated as follows:

Section 1: Missoula Planning Policy Board

An interlocal policy board is established and shall be known as the Missoula Planning Policy Board.

(1) Membership. The Policy Board shall consist of seven representatives as follow:
a. The Mayor of the City of Missoula, or in the Mayor's absence, the City Council President;
b. Two City Council persons appointed by that body;
c. Three members of the Board of County Commissioners;
d. The Missoula Planning Board President, or in the president's absence the vice-president, who shall serve as chairman of the Policy Board.

(2) Authority. The Policy Board is directed to administer the provisions of this agreement for which the following authority is granted:

   a. To hire a planning director, who shall hire an adequate staff to carry out the provisions of this agreement;

   b. To adopt an annual work program and budget for the staff;

   c. To receive and expend funds as authorized by state law and Section 5 of this agreement;

   d. To establish, furnish and maintain an office adequate for the daily transaction of public business; and,

   e. To contract to provide staff services to other government agencies, boards, and commissions of the City and County of Missoula.
Section 2: The Missoula Planning Board

A combined planning advisory board is established and shall be known as the Missoula Planning Board.

(1) Membership. The Missoula Planning Board shall consist of thirteen members whose terms are two years, except for elected officers whose terms are coextensive with their respective terms of office. The terms of the first members shall be staggered for the respective appointees of each governing body so that two members are appointed for one year, two members are appointed for two years, and two members are appointed for three years. Membership of the board shall be composed of the following:

a. Two citizen members who reside within the city limits to be appointed by the Mayor;

b. Two citizen members who reside within the city limits to be appointed by the City Council;

c. Two citizen members who may at the discretion of the City Council reside outside the city limits but within the 4½ mile radius of the city limits to be appointed by the City Council;

d. Two citizen members who reside outside the city limits but within the 4½ mile radius of the city limits to be appointed by the County Commissioners;

e. Two citizen members who reside outside of the 4½ mile radius to be appointed by the County Commissioners;
f. Two citizen members who reside anywhere in the County to be appointed by the County Commissioners, who may in the discretion of the County Commissioners be elected public county officials; and,
g. Thirteenth member to be selected by the twelve appointed citizen members.

(2) Authority. The Missoula Planning Board is a consolidated planning board and shall have all the rights, duties, powers and obligations for planning in the County and City of Missoula as provided by MCA 76-1-106 and 105 (1979), and as specified in this agreement, and as jointly or independently assigned by the County or City of Missoula. The Planning Board shall:

a. Advise the City and County on all matters relating to the adoption or amendment of a master plan and any other planning document designed to be a guide for the orderly development of the community; and,
b. Advise the City and County on all policies, ordinances, and resolutions adopted for the purpose of regulating subdivisions, and on all matters pertaining to the approval or disapproval of subdivision plats.
Section 3: Zoning and Building Inspection

The City and County of Missoula in the interest of effective and efficient zoning and building code administration, agree to jointly provide the services to the residents of the City and County pursuant to the following:

(1) The staff of the intergovernmental Missoula Planning Policy Board shall be responsible for providing equivalent building inspection services to all City and County residents consistent with the ordinances adopted by the City and resolutions adopted by the County.

(2) The staff of the intergovernmental Missoula Planning Policy Board shall provide administration and enforcement of all zoning ordinances adopted by the City of Missoula and all zoning resolutions adopted by the County of Missoula. Zoning administration and enforcement shall be provided to the City and County in an equivalent manner.

Section 4: Staff

The Missoula Planning Policy Board shall exercise executive authority over its staff. The following policies shall apply to employment:

(1) The director of the Missoula Planning Policy Board staff shall be an employee of and serve at the pleasure of that board.
(2) The employees of the Policy Board staff shall be County employees who shall receive full employment benefits as are afforded other County employees in accordance with the Missoula County Employment Plan and adopted contracts with collective bargaining units.

(3) The County is directed by this agreement to establish the Policy Board as an appellate body within the employee grievance procedure. The Policy Board shall review the findings of the Missoula County Personnel Officer pertaining to supervisory and other nonunion employees of the Missoula Planning Policy Board staff. Policy Board decisions shall be final unless appealed to a court of record.

Section 5: Fiscal Administration

(1) To finance the yearly operations of the staff, the Policy Board shall submit a budget for approval by the City Council of the City of Missoula and by the Board of County Commissioners of the County of Missoula. The budget shall be based on projected revenue from all sources and estimated expenditures.

   a. If the costs of the general planning work program exceed revenue from non-tax sources, the City and
County shall contribute an equal amount to be generated by a tax not to exceed two (2) mills as authorized by MCA 76-1-404 (1979), levied against all property within the County of Missoula.

b. The cost of building inspection and zoning shall be paid by building permit and zoning fees to the extent that revenue meets or exceeds expenditures. When the expenditures for building inspection and zoning exceed projected revenue from fees, the balance shall be funded from the planning mill levy. When estimated expenditures for zoning and building inspection services to either the City or County exceed the estimated expenditures for these services to the other, the governing body for which greater expenditures of money is anticipated shall appropriate the funds necessary to pay for the services received.

c. Where the budget involves expenditures not included in general planning or building inspection and zoning, the revenue to finance these expenditures shall be outlined within the budget. The Policy Board is authorized to receive the following revenue:

1. Gifts, donations, grants, bequests, or real property;
2. In-kind services from another agency, government, instrumentality, private organizations or individuals; and

3. Fees or other funds in return for contract services delivered to the source of funds.

d. Either the City or County of Missoula may appropriate additional funds to the operation of the authorized staff for special programs and services to the funding government.

(2) Funds received pursuant to the provisions (a) through (d) above shall be deposited into a Policy Board account with the County and thereafter all transactions as approved by the Policy Board shall follow regular county procedure, except that funds allocated for special programs and services may be deposited with the sponsoring governing body, and all transactions shall be approved by the sponsoring government or its designated agency, if any.

Section 6: Mutual Zoning Agreement

The City of Missoula and the County of Missoula hereby agree that all agencies, departments, and divisions of each government shall abide by the rules and regulations as enacted by zoning ordinances and resolutions by the two governments.
Section 7: Continuations

The City Council of the City of Missoula and the Board of County Commissioners of the County of Missoula retain all legislative and decisionmaking authority as provided by state law in the matters of planning, zoning, and building inspection. Nothing in this agreement alters the present structure or authority of the city and county boards of adjustment and zoning commissions, except that by Section 2 of this agreement, the membership of the Missoula Planning Board/County Zoning Commission is changed.

Section 8: Transition

In order to effect a smooth transition, the following steps shall be observed:

(1) Within five days from the date of adoption of this agreement, the County Attorney shall forward this agreement to the Attorney General of the State of Montana for his approval pursuant to MCA 7-11-106 (1979).

Upon notice of approval, the County Attorney shall immediately notify the Mayor of the City of Missoula and the Board of County Commissioners of the County of Missoula, who shall call a joint meeting of the City Council and County Commissioners, the purpose of which is to officially accept the agreement, whereupon the following schedule for implementation shall begin.
(2) The County Planning Board and the City-County Planning are dissolved as of the date of joint acceptance of this agreement.

(3) The new members of the Missoula Planning Policy Board shall meet within one week of the joint acceptance of this agreement and immediately assume responsibility as provided in this agreement.

(4) Members of the Missoula Planning Board on the date of acceptance of this agreement shall continue to serve for two full months.

To the degree possible, under the terms of membership of this agreement, existing members of the Missoula Planning Board shall be reappointed on the date of adoption to serve one or two year terms on the newly constituted Missoula Planning Board.

(5) Appointments to the Missoula Planning Board shall be made by the City and County of Missoula within one month of the joint acceptance of this agreement. The newly appointed Board shall be called together in a special meeting at which a president and vice-president shall be elected. The Policy Board shall prescribe the remaining agenda for the first meeting.

(6) On the first Tuesday of the third month following the joint acceptance of this agreement the new Missoula Planning
Board shall assume its full responsibility and authority under the terms of this agreement.

(7) The Planning Director shall present a schedule of staff adjustments as authorized and required under the terms of this agreement within one month of the date of joint acceptance. The schedule shall be devised to fully implement the terms of this agreement within six months from the date of acceptance.

Section 9: Effective Date, Duration, Dissolution

This agreement shall become effective and binding on the day of adoption by the governing bodies of the City and County of Missoula, and shall remain in effect until termination by withdrawal of either party by resolution of its governing body and upon giving notice in writing to the other governing body at least one hundred and eighty (180) days prior to said withdrawal. In the event this agreement is dissolved, the furniture and equipment obtained after its formation shall be returned to each unit of government on an equal basis.

IN WITNESS WHEREOF, the City of Missoula and the County of Missoula have caused this instrument to be duly executed by their proper officers on this _______ day of ________, 19__.
MONTANA CODE ANNOTATED (hereinafter cited as MCA) 76-2-201 (1979) authorizes counties to adopt zoning regulations "(f)or the purpose of promoting the health, safety, morals, and general welfare of the people in cities and towns and counties . . . " and MCA 76-2-301 (1979) authorizes municipalities to adopt zoning regulations for the same purpose. MCA 50-60-106 (1979) authorizes local governments to adopt and enforce building codes.

MCA 76-2-203 (1979) requires county zoning regulations to be made in accordance with a comprehensive development plan: MCA 76-2-304 (1979) requires city zoning regulations to be made in accordance with a comprehensive plan.

MCA 76-1-106 (1979) requires a planning board established under MCA 76-1-101 (1979) to prepare a master plan and propose policies for subdivision plats, development of public utilities and places, improvement permits, and laying out and development of public ways.

Missoula City Code (1961), Chapter 32, as amended; Missoula County Zoning Resolution, No. 76-113, adopted on July 13, 1976, as amended.

County planning board jurisdictional area is defined by MCA 76-1-105 (1979) as that area which is outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board. The jurisdictional area of the city-county planning board, under MCA 76-1-504 (1979) "shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved." If the boundaries are extended further than 4½ miles from the city limit, the consent of at least 5% of the resident freeholders is required under MCA 76-1-505 (1979).

Apparently, the alternative to the chairman or president of each board was provided for in the event a city councilman fills that position and also represents the city council on the Missoula Planning Policy Board. There is no other conceivable way for the situation to arise.

Interlocal Agreement between the City and County of Missoula, adopted May 31, 1973. See Appendix A.

Presumably, the term "area-wide" as used in the 1973 agreement means county-wide.


11 MCA 76-1-112(4) (1979).


13 This limit is established by MCA 76-1-504, 505 (1979). See note 6.

14 MCA 76-1-201 (1979)

15 Ibid.

16 MCA 76-1-201 (1979) simply states that "(a) city-county planning board shall consist of not less than nine members . . . ."

17 MCA 76-1-211(1) (1979)

18 Ibid.

19 Section 2 of the 1973 Interlocal Agreement allows "certain functions" to be delegated by the Missoula Planning Policy Board to the three boards which comprise the planning structure. What is meant by "certain functions" is unclear.

20 Missoula County Zoning Resolution No. 76-113, adopted on July 13, 1976, as amended.

21 A full-time equivalent (FTE) is the amount of time one person works on a full-time basis for one year or a total of 2080 hours.

22 Missoula City Code (1961), Ch. 5. The Uniform Building Code is adopted by the City Council every year.

23 Section 4, Finances. See Appendix A.

24 See note 1.


27 Ibid.

28 Ibid.

29 Access permits are issued by the city engineer, county surveyor, and state highway department. Sanitation permits are issued by the health department.
There is no charge for the zoning permit, but in practice a portion of the building permit fee is applied to the administration of zoning.

Interview with Joe Durham, City Building Inspector, March 14, 1980.

MCA 76-2-315 (1979) authorizes legislative bodies to provide for punishment of zoning violations as misdemeanors by fine or imprisonment or both.

City of Missoula, Ordinance Number 1857, adopted by the Missoula City Council, October 24, 1977.

In the county commissioner form of government, there is no distinct separation of legislative and executive branches. The commissioners serve in the capacity of both branches. The county zoning resolution is a legislative product, but its implementation is an executive responsibility. The commissioners, either out of fear that the legislation will somehow be subverted, or in the interest of direct executive control, perceive that it is to their advantage to maintain the person currently in the position of County Zoning Officer.


Ibid, note 35.

Only the county has been placed in the position of asserting its authority under the interlocal agreement, declining to accept a change in zoning officers. Under similar circumstances, the city council may react the same way.


The idea of the deliberately contrived linkage is borrowed from Curt Tausky's Work Organizations, Ibid. note 35, pp. 7-12.
42 Ibid., p. 9.
43 Ibid., p. 8.
44 Ibid., p. 11.
45 Ibid. Tausky's use of the two terms to describe informal behavioral relationships is not adopted in this analysis. The more popular adaptation of the term "informal," referring to both work-related and non-work-related interaction not prescribed by the formal structure, is used here instead.
46 Ibid., note 40, p. 48.
47 The present requirement for separate electrical, gas, plumbing, and excavation permits is not changed, largely because these utility aspects of construction are frequently done independently of new construction or structural changes in buildings.
48 Ralph P. Hummel, The Bureaucratic Experience (New York: St. Martin's Press, 1977), Ch. 3, pp. 92-137. Tausky, Ibid. at note 41, also points out this individual organizational commonality is in part based on the fusion of organizational goals with whatever the individual seeks to gain from his work. The individual identifies certain motivational criteria, and to the degree that these can be supplied by the organization, he will seek to fulfill organizational needs as a fair exchange.
49 The figure for salaries and wages is used for ease of comparison. Employer contributions for personnel in building inspection total $33,527, including overtime and termination benefits.
50 It is recognized that fluctuation may occur in purchased services based on staff level.
51 Ibid., note 26, p. 60.
52 Ibid.
53 Iowa Model Ordinance, 1953, Title VI, Ch. 1, p. 1.
54 Ibid., note 36, p. 298.
55 Ibid., note 40, p. 51.
65 *Fasano v. Board of County Commissioners,* 264 Or. 547, 507 P.2d 23 (1973).
APPENDIX A: 1973 INTERLOCAL AGREEMENT

AGREEMENT

WHEREAS, Chapter 49, Title 16, of the Revised Codes of Montana, 1947, permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and,

WHEREAS, said Chapter provides that an Interlocal Agreement may be adopted by authorization and approval by the governing body of each party to said contract; and,

WHEREAS, the City of Missoula, Montana, hereinafter called the "City" is a public agency of the State of Montana; and,

WHEREAS, the County of Missoula, Montana, hereinafter called the "County" is a public agency of the State of Montana; and,

WHEREAS, the City and County have a City-County Planning Board and the County has a County Planning Board established pursuant to Chapter 38, Title 11, of the Revised Codes of Montana, 1947, which require the services of a professional planning staff; and,

WHEREAS, the City and the County are desirous of making the most efficient use of their resources by entering into an Interlocal Agreement for the joint use of a professional planning staff;
NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED, AS FOLLOWS:

Section 1. Missoula Planning Policy Board

There is hereby established an interlocal advisory board to be known as the Missoula Planning Policy Board, hereinafter called the MPPB. The MPPB shall consist of three representatives from each of the contracting units of government to be chosen as follows:

1. The City shall be represented by the Mayor and one (1) City Councilman, chosen by that body, who will constitute the governmental representatives. The citizens of the City will be represented by the President of the City-County Planning Board or another member of the City-County Planning Board, chosen by that body, in the event that the President serves as a governmental representative.

2. The County shall be represented by two (2) members of the Board of County Commissioners, chosen by that body, who will constitute the governmental representatives. The citizens of the County will be represented by the President of the County Planning Board or another member of the County Planning Board, chosen by that body, in the event that the President serves as a governmental representative.

3. The Missoula Planning Board shall be represented by the Chairman, Missoula Planning Board or another member of the Missoula Planning Board, chosen by that body, in the event that the chairman serves as a governmental representative.
The MPPB shall adopt bylaws for the conduct of its business which shall be consistent with the provisions of this Agreement and of any laws applicable hereto and shall have the power to amend and rescind such bylaws.

Section 2. Authority of the MPPB

The MPPB shall have the authority to promote area-wide comprehensive planning on a continuing basis in Missoula County by establishing the Missoula Planning Board. The Missoula Planning Board shall be comprised of 5-member County Planning Board and 9-member City-County Planning Board. The Missoula Planning Policy Board shall formulate the policies and goals of the Missoula Planning Board. The Missoula Planning Policy Board shall meet no less than quarterly to review, revise and amend the policies and goals of the Missoula Planning Board. Quarterly reports shall be provided to reflect the policies and goals. The MPPB shall approve statements of area-wide goals and objectives and development of an annual work program; the hiring of a planning director and staff to implement said work program; the establishment and maintenance of an office for the transacting of its business in a centrally located place; the acquisition, subject to applicable state laws, for any of its purposes and functions under this agreement, furniture, equipment, supplies, materials, and services; the receipt and expenditure of Federal and other funds; and the ability to contract with the Federal Government, other units of government, private organizations,
and individuals. The MPPB may, if it elects to do so, delegate certain functions to the City, County, or the Missoula Planning Board.

Section 3. Continuation of Planning Boards

No portion of this Agreement shall be construed as altering any existent Planning Boards and these Boards shall retain their statutory powers regarding planning within their respective jurisdictions.

Section 4. Finances

The MPPB shall submit to the governing bodies a budget of its estimated expenditures and sources of revenue in advance of each fiscal year. In providing for the local contributions to the Missoula Planning Policy Board's budget, Missoula County is hereby authorized to levy within the county, including unincorporated and incorporated areas, based on the taxable valuation of the entire county. The local funds and other revenue collected shall be placed in the Missoula Planning Policy Board account and thereafter, all financial transactions shall be handled by the County after approval by the MPPB.

Section 5. Entry Into Force and Withdrawal

This Agreement shall enter into force and become binding when adopted by the governing bodies of the City and County, and shall remain in effect until termination by withdrawal of either party hereto by resolution of its governing body and upon the giving of ninety (90) days notice in writing to the other party. In the event the MPPB
is dissolved, the furniture and equipment obtained after its formation shall be returned to each unit of government on an equal basis.

IN WITNESS WHEREOF, the City of Missoula and the County of Missoula have caused this instrument to be duly executed by their proper officers, this 31st day of May, 1973.

Mayor, City of Missoula

Chairman, Missoula County Board of County Commissioners

ATTEST:

City Clerk

ATTEST:

Clerk of the Board
ADDENDUM TO INTERLOCAL AGREEMENT
Of May 21, 1973

Section 4 of Interlocal Agreement between the City of Missoula and the County of Missoula, dated May 31, 1973, and relating to the integration of the County Planning and the City-County Planning Board is hereby amended to read as follows:

Section 4. Finances

The MPPB shall submit to the governing bodies a budget of its estimated expenditures and sources of revenue in advance of each fiscal year. In providing for the local contributions to the Missoula Planning Policy Board's budget, Missoula County is hereby authorized to levy under Section 11-3825, R.C.M., 1947, a levy not to exceed two (2) mills, within the county, including unincorporated and incorporated areas, based on the taxable valuation of the entire county. The local funds and other revenue collected shall be placed in the Missoula Planning Policy Board account and thereafter all financial transactions shall be handled by the County after approval by the MPPB.

IN WITNESS WHEREOF, the City of Missoula and County of Missoula have caused this instrument to be duly executed by their proper officers this 28th day of June, 1973.

ATTEST:

/s/ R.E. Brown
Mayor, City of Missoula

/s/ H. Stoutenburg
Chairman, Missoula County Board of County Commissioners

ATTEST:

/s/ Dorothy L. Head
Clerk of the Board
APPENDIX B: 1977 INTERLOCAL AGREEMENT

AGREEMENT

WHEREAS, the City and County of Missoula entered into an interlocal Agreement for Planning on May 31, 1973, to . . . "make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and thereby to provide services and facilities in a manner pursuant to forms of government organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of their respective jurisdictions"; and,

WHEREAS, the City and County of Missoula did agree to extend the services of the City Building Inspector through the 4½ mile urban area by the adoption of City Resolution 3307 on February 25, 1974, and County Resolution 126 on March 6, 1974; and,

WHEREAS, the Missoula Planning Board staff currently provides zoning administration and support services to the County; and,

WHEREAS, the Missoula Planning Board staff currently provides zoning support service to the City; and,

WHEREAS, the City desires to establish a staff service to support City zoning administration and enforcement; and,

WHEREAS, the City had adopted a budget for FY 78 which funds City and County zoning administration and enforcement costs, from permit revenue; and

WHEREAS, the City and County desire to make the most efficient use of existing staff structures and facilities to provide zoning and building code enforcement services; and,

-84-
WHEREAS, the City and County desire to promote the integration of planning and zoning by the establishment of zoning staffs with the Missoula Planning Board, under the supervision of the Planning Director; and,

WHEREAS, the 45th Legislature amended Sections 69-2112 and 69-2114, R.C.M., 1947, to allow counties to extend inspection services county-wide, establish building inspection departments and collect inspection fees; and,

WHEREAS, the County desires to extend building inspection services throughout the County under the authority of Section 69-2112, R.C.M., 1947, as amended; and,

WHEREAS, the City and County desire to make the most efficient use of permit revenue by maintaining one Building Inspection staff to serve both jurisdictional areas.

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED AS FOLLOWS:

1. Building inspections, zoning administrative services and related auxiliary services shall be funded and provided at a level which is approximately equivalent to revenue generated from permit fees.

2. Building, plumbing, gas and electrical inspection services shall be extended to all new structures outside the 4½ mile urban area except mobile homes and out-buildings located on farms and ranches.

3. The Building Inspector shall maintain equivalent inspection services to City and County residents and sufficient staff to meet inspection demands.
4. Performance of staff services for City and County zoning administration and enforcement shall be provided by the staff of the Missoula Planning Board.

5. The Planning staff shall maintain equivalent City and County zoning services, and provide equivalent Planning staff support to zoning personnel, zoning commissions, boards of adjustment, the Council, and the Commissioners.

6. The Council and the Commissioners shall confirm the appointment or removal of their respective zoning officers, based on the recommendation of the Planning Director, who shall exercise supervisory responsibility.

7. The operation budget of the zoning staff shall be a part of the Missoula Planning Board budget, with approval by the Commissioners.

8. The operating budget of the Building Inspector shall continue to be a part of the City budget, with approval of the Council.

9. Zoning and Building Inspector budgets shall be coordinated and jointly reviewed by the City and County through the Missoula Planning Policy Board.

10. The City shall continue to provide office space for the Building Inspector's staff and the County shall provide office space for the City and County zoning staffs, collocated with the Missoula Planning Board.
11. Operating costs of City and County zoning administration shall be met by periodic reimbursements by the City from permit revenue into an account maintained by the County for the purpose of funding zoning costs.

12. The zoning account shall be initially funded by a "start-up" allotment from the Planning mill levy.

13. It is the position of the City and County that the cost of zoning and building inspection services shall not exceed projected permit revenue during FY 79 and thereafter. If the governing bodies elect to budget zoning services at a level which, when combined with the Building Inspection budget, exceeds projected permit revenue, the balance shall be funded from the Planning mill levy. When in the judgment of the governing bodies, zoning and building inspection costs exceed the projected permit revenue and other income sources, an immediate reduction in personnel shall be made commencing with the zoning staffs.

TRANSITION

14. This agreement shall become effective November 1, 1977.

15. During the period of October 1, to November 1, 1977, the Building Inspector and Planning staff shall initiate an information campaign through the media, notifying the public of changes in zoning administration and extended building inspection services.
16. The Building Inspector and Planning Director shall, within the scope and intent of this Agreement, coordinate to develop and carry out an operational transition plan to meet the November 1 effective date.

17. The City and County shall designate the appropriate officials to develop and carry out the necessary financial arrangements.

CONTINUATIONS AND WITHDRAWAL

18. Nothing in this Agreement shall change the present structure or operation of City and County zoning commissions, boards of adjustment, or enforcement procedures. Further, the Council and Commissioners retain their legislative functions and decision making powers on zoning matters within their respective jurisdictions.

19. It is recognized that the Mayor, by law, is empowered to appoint the Building Inspector and that the Building Inspector shall continue to be responsible to him. It is the desire of the City and County that the Building Inspector continue to advise and coordinate with the Commissioners and Planning staff on matters pertaining to inspection services.

20. This Agreement shall enter into force and become binding when adopted by the governing bodies of the City and County, and shall remain in effect until termination by withdrawal of either party hereto by resolution of its governing body and upon the giving of ninety (90) days' notice in writing to the other party.
In the event this agreement is dissolved disposition of assets shall be determined by mutual agreement of the governing bodies.

IN WITNESS WHEREOF, the City of Missoula and the County of Missoula have caused this instrument to be duly executed by their proper officers, this 30 day of September, 1977.

Approved as to form and content:  
/s/ Mae Nan Ellingson  
Office of the City Attorney

/s/ Richard Gebhardt  
Office of the County Attorney

/s/ Bill Cregg  
Bill Cregg, Mayor  
City of Missoula

/s/ Wilfred V. Thibodeau  
Wilfred V. Thibodeau, Chairman  
Board of County Commissioners  
County of Missoula

ATTEST:  
/s/ Barbara Horton  
City Clerk

/s/ Ludvig G. Browman  
Ludvig G. Browman, Commissioner  
/s/ Jim Waltermire  
Jim Waltermire, Commissioner

ATTEST:  
/s/ Roberta Frank

ACCORD:  
/s/ Evan Denney  
Chairman, Missoula Planning Policy Board
Selected Bibliography


