Policies and procedures manual for the Park County planning office

Linda Lang

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POLICIES AND PROCEDURES MANUAL
FOR THE PARK COUNTY PLANNING OFFICE

By

Linda Lang

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for the degree of
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Approved by:

Paul E. Miller
Chairman, Board of Examiners

Dean, Graduate School

Date

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Chapter 1. About the Manual

The purpose of this document is to provide information which can be used as a reference by planners in Park County. The manual will attempt to cover all aspects of the Park County Planner's job including different zoning applications and procedures, subdivision review, floodplain administration and basic office administration. To help the user locate the necessary information easily, the manual will be divided into nineteen chapters, each chapter covering a specific aspect of the job.
Chapter 2. Job Description and Duties

Zoning

The Planning Director for Park County is responsible for land use regulation for two jurisdictions:

a. The City-County Jurisdictional Area.
b. Park County (that part of Park County outside of the four and one-half mile jurisdictional area of the City-County Planning Board).

The planner administers the zoning regulations within the City-County Jurisdictional Area by reviewing and preparing reports on all zoning applications. The findings are presented to: the City-County Zoning Commission, the City-County Board of Adjustment, and finally to the Park County Board of County Commissioners (the commissioners). The planner also handles all code enforcement including investigating complaints, recommending mitigation procedures, and preparing cases for prosecution. The planner schedules meetings, reserves the room, and sets up the agenda for the City-County Planning Board and the City-County Board of Adjustment. The City-County Planning Board also sits as the City-County Zoning Commission. Both boards act in an advisory capacity to the commissioners. The City-County Board of Adjustment has the authority to make final decisions on the matters it hears.
Land Use

The planner is responsible for the administration of the subdivision regulations enacted under Montana law. The planner:

1. Checks all subdivision application packets for completeness.
2. Reviews the project for compliance with all local design standards and eight public interest criteria provided by state law.
3. Makes a recommendation to and presents the proposal to the City-County Planning Board or the County Planning Board and the commissioners for a decision.

The planner schedules a public hearing when necessary and must notify the relevant parties. Upon completion of the subdivision review process, the planner reviews the final plat to determine if all of the state and local criteria for final plats has been met and to see if all of the conditions of approval, (if any), are met. When the final plat is ready to be filed, the planner presents the final plat to the commissioners for approval and filing. The planner is also responsible for enforcement of the subdivision laws. This includes investigating complaints, recommending mitigation procedures and preparing cases for prosecution.

The planner is part of a three person team which reviews all Certificates of Survey. The planner uses the Revised Criteria for Local Determination of Evasion of the Subdivision and Platting Act to determine if a claimed exemption is appropriate. If the planner believes an improper exemption has been claimed, this must be documented.
and a case made to the county attorney and the commissioners.

**Floodplain Regulation**

Another aspect of the job of planner for Park County is floodplain administration. The planner and the Park County sanitarian are jointly responsible for the administration of the **Revised Park County Floodplain Regulations**. The planner is responsible for evaluating and either approving or denying all applications for floodplain development. The planner has the authority to determine where the floodplain boundary lies for parcels located along the Yellowstone River when provided with sufficient information.

**Office Administration**

The planner is responsible for the administration of the office. This includes: file development and management; developing and administering a budget; keeping an equipment and supplies list; maintaining the planner's reference materials; maintaining the zoning and floodplain maps; and ordering supplies when needed by the office.
Chapter 3. The Office

The planning office is a one-person show. The planner is ultimately responsible for everything which does or does not occur. The planning office is located in an office cluster which includes the county health nurse, the county sanitarian, the courthouse switchboard and the courthouse mail room. The secretary for the planning office is able to handle many of the questions from people who need zoning information. She currently takes minutes for the City-County Planning Board, the City-County Board of Adjustment and the County Planning Board. The secretary does some typing as a pool secretary.
The City-County Jurisdictional Area is an extra-territorial zoning jurisdiction which extends approximately 4 1/2 - 6 miles outside of the corporate limits of the City of Livingston. An exact legal description of the jurisdictional area is as follows:

Township One (1) South, Range Nine (9) East, Sections; Thirty-five (35), and Thirty-six (36).

Township One (1) South, Range Ten (10) East, Sections; Twenty-eight (28), Twenty-nine (29), Thirty-one (31), Thirty-two (32), Thirty-three (33), and Thirty-four (34).

Township Two (2) South, Range Nine (9) East, Section; One (1), Two (2), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), South Half of Seventeen (S1/2 of 17), North Half of Twenty (N1/2 of 20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), East Half of Twenty-seven (E1/2 of 27), Thirty-five (35), and the West Half of Thirty-six (W1/2 of 36).

Township Two (2) South, Range Ten (10) East, Sections; West Half of Two (W1/2 of 2), Southeast Quarter of Two (SE1/4 of 2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), West Half of Twenty-three (W1/2 of 23), West Half of Twenty-eight (W1/2 of 28), Twenty-nine (29), and Thirty (30).

Township Three (3) South, Range Nine (9) East, Sections; West Half of One (W1/2 of 1), Two (2), East Half of Eleven (E1/2 of 11), and West Half of Twelve (W1/2 of 12).

The area is covered by a HUD 701 plan completed in 1967 by consultants from Seattle. The zoning district and regulations were set up in 1976. A zoning map, done at that
time, has disappeared. There is a partial series of maps, currently in use, which have zoning designations shown on them.
Chapter 5. Zoning

City-County Zoning Plan

The City-County Zoning Plan (the zoning plan) was drafted and adopted in October, 1976. The document was adopted by the commissioners after public hearings. Except for several amendments, the document has never been updated or revised. The zoning plan is out of date and should be rewritten and the zoning maps redone as soon as possible.

Special Exception Permit

A special exception is defined as:

"A use which would not be appropriate without restrictions throughout a zone, but which is controlled as to number, area, location and/or relation to the surrounding neighborhood and would promote public health, safety, welfare, or convenience. Such uses may be permitted in a zone as a special exception if approved by the Board of Adjustment or Zoning Coordinator in accordance with Articles V and VI."¹

The permit may be authorized by the planner acting as the zoning coordinator or by the City-County Board of Adjustment (the board of adjustment). The City-County Zoning Plan, Article V details the procedure for a special exception permit to be issued by the zoning coordinator. The zoning coordinator may grant a permit in eight situations which are:

1. Day care facility for three or more children in any residential zone.
2. Golf course, miniature; golf and baseball driving ranges, in the Highway Commercial (HC) zone.

¹Park County, Montana, City-County Zoning Plan, art. II.
3. Home occupations in all zones where permitted by special exception.
4. Off-street parking in connection with a permitted use in any Residential Multi-Family (RMF), Commercial (C) or Industrial (I) zone.
5. Off-street parking on land reserved for street or highway purposes in connection with commercial or industrial uses lawfully being conducted on the remainder of the parcel of land or recorded lot.
6. Private education institution (dancing school, etc.) for five or fewer students in any residential zone.
7. Temporary structures in any residential or commercial zone.
8. Renewals of temporary special exceptions originally granted by the zoning coordinator.²

The zoning coordinator has ten (10) days to make a decision after the application packet has been certified as complete. An application packet is certified as complete when the packet contains all the information and maps necessary to review the application. Any decision of the zoning coordinator must be based on a written report that contains findings of fact which relate to evidence presented in the application.

Upon reaching a decision, the zoning coordinator must notify both the chairperson of the board of adjustment and the chairperson of the commissioners. A copy of the letter notifying the applicant of the decision and the staff report satisfies this requirement.³

A decision of the zoning coordinator can be appealed to the board of adjustment. The appeal must be made within ten (10) days of the zoning coordinator's decision. While not

²Id., Zoning Plan, art. V, sec. A.
³Id., Zoning Plan, art. V, sec. C.
stipulated, the appeal should be in writing so that dates and requests can be verified. The board of adjustment will consider the petition as it would any petition brought before it.⁴

There are certain uses listed as permitted by special exception in each zone under the City-County Zoning Plan, Article III. In addition to the listed uses, each zone has a provision which allows uses not specifically listed, to be permitted in that zone if the board of adjustment determines the use is of the same character and nature as those specifically listed. The zoning plan sets out specific standards for some of the uses the board of adjustment may allow by special exception permit.⁵

When an application for a special exception permit is received, the first step in the process is to review the application for completeness. Once the application packet is certified as complete and the fee is paid, the coordinator must schedule a meeting of the board of adjustment. A good rule of thumb is to allow at least twenty (20) to thirty (30) days to prepare a staff report on the application and all of the notices. A legal notice of the application request must be published in the Livingston Enterprise at least fifteen (15) and not more than thirty (30) days prior to the date of the board of adjustment

⁴Id., Zoning Plan, art. V, sec. E.
⁵Id., Zoning Plan, art. VI, secs. 10-11.
hearing. All property owners within 300 feet of the boundaries of the property the special exception is requested for must be notified of the request and the details of the hearing by first class mail. Notice must be received by the neighboring landowner at least fifteen (15) and not more than thirty (30) days prior to the public hearing. In addition, the property the special exception is proposed for must be posted with a sign advertising the hearing. While a time line is not specified, posting ten (10) days prior to the hearing date is recommended.\(^6\) Public notice is extremely important and these rules should be followed to the letter. Errors in legal notice can lead to a decision being thrown out if challenged in court.

After notice is properly given, the coordinator must prepare a staff report which analyzes the application based on criteria set out under the zoning plan.\(^7\) The standards set forth within the codes must be met for the permit to be granted. The board of adjustment will hold a public hearing and decide on the application based on the staff report and the public comment. If the board of adjustment overturns the coordinator's recommendation on a project, the board should specify the reasons for their decision. The board of adjustment makes the final decision in granting a special

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\(^6\) Id., Zoning Plan, art. VI, secs. 5.A-B.

\(^7\) Id., Zoning Plan, art. VI, sec. 8.C(1-3).
The granting of the special exception permit must be recorded in the Official Record Book and on the Official Zoning Map. Unfortunately neither document can be located.

Variance

A variance is an adjustment in the strict application of the terms of the zoning plan. It is defined as:

"An adjustment in the application of the specific regulations of this resolution to a particular piece of property which because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity or zone." \(^9\)

Park County only allows set-back, lot size, and coverage variances. It does not allow use variances under any circumstances. \(^10\) A variance should never be granted unless there is a hardship which is caused by some aspect of the land itself. Economic hardship or self-imposed hardship are not valid hardships. In theory, the planner should never recommend granting a variance. In practice, there are times when it is appropriate to recommend a variance.

The first step in processing a variance application is to certify that all of the necessary information has been submitted and that the variance request is legal. If the request is for a use variance, send everything including the

\(^{8}\text{Id., Zoning Plan, art. VI, sec. 1.C.}\)

\(^{9}\text{Id., Zoning Plan, art. II.}\)

\(^{10}\text{Id., Zoning Plan, art. VI, sec. 1.A.}\)
fee back to the applicant with a letter explaining why the application has been rejected. Once the application is certified as legal and complete, notice of the request must be placed.

Notice of the hearing must be published in the Livingston Enterprise not less than fifteen (15) or more than thirty (30) days. Notice by first class mail must be sent to property owners within 300 feet of the parcel boundaries for which a variance is proposed. Notice must be received by the neighboring landowners not less than fifteen (15) or more than thirty (30) days prior to the public hearing. Finally, notice of the request and hearing must be posted on the property for which a variance is requested. There is not a time limit stipulated under law, however, posting ten (10) days prior to the hearing is recommended. As with the special exception, notice is critical.

The next step after notice, is to prepare a staff report which evaluates the application based on the criteria required in the zoning plan. The board of adjustment will hold a public hearing on the application. After the public hearing, the board of adjustment will discuss the application and decide whether to grant approval, conditional approval or deny the application based on the

\[11\text{Id., Zoning Plan, art. VI, sec. 5.A-B.}\]
\[12\text{Id., Zoning Plan, art. VI, sec. 1.A.}\]
staff report and the public comment. If the board of adjustment rejects the planner's recommendation, they should explain their reasons for the record. The board of adjustment makes the final decision on all variance applications.13

Zone Change - Map Amendment

A zone change-map amendment is one of the most powerful zoning tools available. If successful, it can completely change the uses allowed on a parcel and alter a neighborhood permanently. For this reason, a request for a map amendment should be carefully analyzed. The guidelines for processing a map amendment are found in the City-County Zoning Plan, Article VII. This section of the code should be carefully read.

When a request for a zone change-map amendment is received, the first step is to review the application packet with the applicant to determine if the packet is complete. If anything is missing, request the applicant to present the information to you at his/her earliest convenience. Do not process the application or schedule hearings until the application is complete.

When the packet is complete, the next step is to review the packet for additional information needs. Needs to look for include: an environmental assessment, a floodplain

13Id., Zoning Plan, art. VI, sec. 1.A.
study, or, a traffic study. Base the request for additional information on legitimate needs which can be documented. If additional information is warranted, require the study to be completed before the parcel is submitted to the City-County Zoning Commission (the zoning commission) for public hearing and review. If there are any questions as to whether such studies can be legally required, ask the county attorney.

If no additional studies are required and the information available is sufficient to draft a staff report, schedule the application for a public hearing before the zoning commission. This public hearing is not required by state law or county codes, but it is a reasonable action. The zoning commission should have public input in making its recommendation to the commissioners. To provide notice of this meeting, place a legal advertisement describing the request, the hearing date, and time in the Livingston Enterprise at least fifteen (15) days prior to the hearing. In addition, send a letter to property owners within 300 feet of the boundaries of the property proposed for re-zoning. The letter should describe the property, the request, the time, date, and location of the public hearing before the zoning commission. The letter should be received by neighboring landowners not less than fifteen (15) days prior to the public hearing date.

The planner should prepare a staff report analyzing the application and all the supporting documents based on the
twelve public interest criteria and questions set out in the zoning plan. The decision on the application should be based on the staff report which must be able to withstand a court challenge.

The zoning commission will hold a public hearing and make a decision to recommend approval or denial of the request based on the staff report and public comment. They can delay a decision for no longer than 30 days following the public hearing.

The recommendation of the zoning commission, along with the application, must be scheduled for a public hearing before the commissioners. Notice for this hearing involves placing a legal advertisement in the Livingston Enterprise. The advertisement must list: the property, the request, the date, time, and location of the public hearing, and, the recommendation of the zoning commission. The advertisement must run once a week for at least two weeks prior to the hearing. In practice, this means the ad will run three times, two times before the hearing and once the week of the hearing. The commissioners must approve the hearing by initialing the original copy of the advertisement. The property owners within 300 feet of the boundaries of the property the request is proposed for must be notified of the second hearing by first class mail. This notice must

14Id., Zoning Plan, art. VII, sec. 3.
15Id., Zoning Plan, art. VII, sec. 4.
contain information on the request, the date, time, and location of the hearing, and the recommendation of the zoning commission. The zoning coordinator should post the property the rezoning is requested for at least ten (10) days prior to the public hearing date. Notice is very important in a rezoning request, so be thorough.\(^{16}\)

After the commissioners hold the public hearing, they will make a decision to grant or deny the request for a rezoning. If they decide against the zoning commission and the staff recommendation, they should state for the record why they made the decision. A rezoning cannot be requested on the same parcel for (12) months after an application has been approved or denied by the commissioners.\(^{17}\)

Rezoning should be a simple grant or deny recommendation. As a rule, conditions cannot be attached to an application for rezoning. This is known as contract zoning and it is almost always illegal. Under very specific conditions, this can sometimes be waived. If the planner is not dealing with a developer and a specific proposal, conditions designed to mitigate a worst case scenario can sometimes be added. Always discuss the case with the county attorney before setting conditions on an application for a zone change-map amendment.

\(^{16}\)Id., Zoning Plan, art. VII, sec. 2.C.

\(^{17}\)Id., Zoning Plan, art. VII, sec. 5.
Zone Change—Text Amendment

An amendment to the text of the zoning plan follows a procedure similar to the map amendment. Text amendments can be initiated either by a private citizen or by the zoning commission and/or the commissioners. The process for both types will be discussed simultaneously as there are few differences.

If the application is initiated by a private citizen, the first step is to review the application materials with the applicant for completeness. If the packet is complete, then the zoning coordinator can proceed.

If the application is initiated by the zoning commission or the commissioners, the first step will be for the zoning coordinator to research and gather background material for drafting the text amendment. This information should be presented along with staff recommendations to the zoning commission. The zoning commission should discuss and debate the issues in order to draft a text amendment.

Once an application has been certified as complete or the zoning commission has a draft text amendment, a public hearing before the zoning commission, although not required, should be held. Notice of the hearing must be accomplished by placing a legal advertisement in the Livingston Enterprise at least fifteen (15) but not more than thirty (30) days prior to the public hearing. The notice must contain the type of request, the section of the zoning code
to be amended, and the time, date, and location of the hearing.

After the public hearing, the zoning commission must decide whether to recommend approval or denial of a citizen initiated text amendment proposal to the commissioners. The proposal can be tabled for thirty (30) days. If the proposal has been drafted by the zoning commission, they can amend it in response to the public comment and reschedule another public hearing. This process can continue until the zoning commission has a document which is acceptable to them.

After the final public hearing, the zoning commission, will make a recommendation on the proposed text amendment to the commissioners. Notice of this hearing must be accomplished by placing a legal advertisement in the Livingston Enterprise which will run once a week for two weeks prior to the hearing date and a third time the week of the public hearing. The advertisement must contain the request, a summary of the new text, the recommendation of the City-County Zoning Commission, and the date, time, and location of the public hearing. The commissioners must approve the hearing by initialing the original advertisement for the public hearing.

After the commissioners have held a public hearing on

18Id., Zoning Plan, art. VII, sec. 4.
the proposed text amendment, they must make a decision. If the proposal is citizen initiated, the commissioners must decide whether to amend the zoning code to include the proposed text or not. If the proposed text has been drafted by the zoning commission, the commissioners can accept the text, deny it, or send it back to the zoning commission for more work. If this occurs, the text must be noticed for a public hearing until the commissioners make a final decision.\(^{20}\) The commissioners should state the reasons behind their decision for the record.

All proposals for a text amendment must have a staff report prepared prior to the public hearing before the zoning commission. The staff report must address five criteria set out under local laws.\(^{21}\)

**Zoning Compliance Permit**

A zoning compliance permit is required for all external additions, modifications or the moving of any structure within the jurisdictional area. This applies to all homes, mobile homes, commercial buildings, and accessory buildings. It does not apply to improvements like re-roofing a home, putting on new siding, or remodeling the interior of a home. The zoning coordinator reviews the setback and parking requirements for the proposal. If an application comes in

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\(^{20}\)Id., *Zoning Plan*, art. VII, sec. 4.

\(^{21}\)Id., *Zoning Plan*, art. VII, sec. 3.
which is incomplete, ask for the necessary information. The fee is a sliding scale based on the value of the construction. This is a simple and straightforward process.

**Sign Permit**

The zoning plan has a sign code attached to it in Article XIV. The code is old, poorly written, and difficult to administer. In general, the sign code does not allow commercial signs in residential zones and prohibits all animated signs. Within a commercial or industrial area, most types of signs are allowed as long as they meet certain size and height restrictions.²² In general, the sign code does not regulate off-premises signs or billboards. The only off-premise sign which is regulated is for existing commercial uses within a residential zone.²³

Signs within the commercial and industrial zones must have a sign permit. The permit is designed to review size, height, and setbacks for compliance with the code. There is no fee for the permit.²⁴

A permit from the Montana Department of Highways may be required if the sign is on I-90 or Highway 89 South. Advise the applicant to check with the state.

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²²Id., Zoning Plan, art. XIV, sec. 7.
²³Id., Zoning Plan, art. XIV, sec. 6.B.
²⁴Id., Zoning Plan, art. XIV, sec. 10.
Zoning Data Base

The zoning coordinator has an on-going project which is to create a data base detailing the zoning history on each parcel in the City-County Jurisdictional Area. The data base is on the computer using the dBase III Plus program. The goal of the data base project is to compile all of the applications and permits granted on each parcel into a single file. When this is done, the zoning coordinator will have immediate access to a complete zoning history on each parcel. This will save hours spent digging through back files. As zoning applications are processed, the relevant file can be updated. This will lessen the immediate need for new zoning maps. Names and addresses will be updated yearly with information from the County Assessor's Office.

The data base can be utilized by real estate professionals and will aid in appraisals. Copies of each parcel file can be sold for $2.00 per copy. Once the zoning data are compiled, the data on septic systems and floodplain designations should be added.

At this point, the data base is set up with parcel descriptions, owners and mailing addresses, and assessor's numbers. Some of the zoning data have been compiled, but this process is continuing. Each parcel is accessed by using the County Assessor's code number.
Chapter 6. Subdivision Review

The details of the subdivision review process will be covered under chapter 10. All subdivisions in the City-County Jurisdictional Area are reviewed under the Park County, Montana Subdivision Planning Regulations. The City of Livingston is allowed to review all subdivision proposals within the City-County Jurisdictional Area to ensure conformity with City requirements in anticipation of future annexation of the proposed subdivision.
Chapter 7. Boards

City-County Planning Board

The City-County Planning Board (the planning board) is authorized under Montana Code Annotated 76-1-101 et seq. Membership on the planning board consists of nine members appointed as follows:

1. Four members who reside within the city limits appointed by the city council.
2. Four members who reside outside of the city limits appointed by the commissioners.
3. One member appointed by the Board of Supervisors of the Park County Soil Conservation District.
4. If no one from the soil conservation district wishes to serve, then the ninth member shall be selected by the planning board and confirmed by the city council and the commissioners.

The members of the planning board must be resident landowners of Montana and Park County. A term of office for planning board members runs for two years with a majority of the members constituting a quorum at a meeting. The planning board meets on the fourth Tuesday of every month at 7:30 p.m. in the East Room of the Courthouse. The room and dates are scheduled, in December for the next year through the Clerk and Recorder's Office. The planning board has two officers, the president and the vice-president. The planning board members, which governing body appointed them, and their terms of office are kept by the recording secretary.

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25 Montana Code Annotated, 76-1-201-4, 76-1-304.
26 Id., M.C.A. 76-1-302.
The primary duty of the planning board is to review all proposed subdivisions within the jurisdictional area and the City of Livingston. The planning board also develops policies and procedures on the development of services and public ways.\textsuperscript{27} In addition to the land use duties, the planning board is authorized to act as the zoning commission for the City-County Jurisdictional Area.\textsuperscript{28} The purpose of the zoning commission is to allow the zoning code and map to be amended.\textsuperscript{29} When serving as the zoning commission, the planning board should adjourn and reconvene as the zoning commission. This type of information should be included on the agenda. The planner should draft a set of policies and procedures for conducting meetings and public hearings for the zoning commission to adopt and use. This would reduce Park County's risk of a lawsuit on procedural due process grounds.

\textbf{The City-County Board of Adjustment}

The City-County Board of Adjustment is composed of five members who are appointed by the planning board and approved by the commissioners for two year terms. The board of adjustment meets only when needed to hear and decide an

\textsuperscript{27}Id., \textit{M.C.A.} 76-1-101-9.

\textsuperscript{28}Id., \textit{M.C.A.} 76-1-108. \textit{Zoning Plan}, art. VII, sec. 3.

\textsuperscript{29}Id., \textit{M.C.A.} 76-2-220. \textit{Zoning Plan}, art. VII, sec. 3.
application. Three members are required for a quorum.\textsuperscript{30} The terms of office for the board of adjustment members is kept by the recording secretary.

The board of adjustment also should have a set of procedures drawn up and approved for conducting public hearings and meetings to avoid procedural due process problems.

The board of adjustment is empowered to hear and grant variances and special exceptions. In addition, the board of adjustment serves as the appeals committee when a citizen feels the zoning coordinator has erred in a decision relating to a zoning compliance permit or other administrative decision. Upon an appeal, the board of adjustment will stay all proceedings, hold a hearing, and make a decision.\textsuperscript{31}

\textsuperscript{30}Id., M.C.A. 76-1-221-23. Zoning Plan, art. VI. sec. 1-2.

Chapter 8: Comprehensive Plan

Prior to adopting zoning for an area, a comprehensive plan must be prepared. For the City-County Jurisdictional Area, a comprehensive plan was prepared using H.U.D. 701 funds in 1967. The plan was prepared by a Seattle firm with an office in Billings and was adopted by the Livingston City Council and the Park County Board of Commissioners in December, 1967. The plan was prepared in a cookbook fashion with some relevant data for the area inserted. In general, the comprehensive plan is old, out-of-date, and not a helpful tool for the planner.

However, since the comprehensive plan is still in force, it must be used. The document must be consulted when reviewing all applications for a zone change-map amendment, a zone change-text amendment, a special exception permit request, and all subdivisions. Read the document and its companion, the Capital Improvements Program: Livingston Planning Area. Updating this plan must be a top priority.\(^\text{32}\)

\(^{32}\text{Id., M.C.A. 76-1-601 et seq., 76-2-201.}\)
Chapter 9. Park County

Park County encompasses everything outside of the corporate limits of the City of Livingston. This includes the City-County Jurisdictional Area and the towns of Springdale, Clyde Park, Wilsall, Emigrant, Pray, Chico, Corwin Springs, Gardiner, Jardine, Silvergate and Cooke City. The town of Clyde Park is incorporated and has a city government. However, the planner serves the planning needs of this community. Park County also includes portions of the Main Boulder River and the West Boulder.

There is one large gold mine, the Mineral Hill Mine, operating at Jardine, and a second mine, the New World Project, to be operated by Crown Butte and Noranda Minerals Corporation is proposed just outside of Cooke City. The area surrounding Chico Hot Springs is being investigated for its gold potential. Hunter's Hot Springs has been purchased by a Japanese firm, Natural Foods USA, Inc. The firm has developed a green house operation which grows organic fruits and vegetables. The operation will be expanding into a full resort complex. The development is still in the conceptual stages and is expected to be a long term project.

The Church Universal and Triumphant (C.U.T.) is the most controversial land developer operating within Park County. The C.U.T. owns between 30,000 - 40,000 acres
scattered within Park County. The parcels which have been
developed or are proposed for development are:

1. Big Spur Campground (developed)
2. North Ranch (partially developed)
3. North Glastonbury (developing)
4. South Glastonbury (developing)
5. Ranch Headquarters (developed)
6. Corwin Springs/Eastgate/Camp Mustang (developed)
7. Summit University (proposed for development)
8. Ranch Office (developed)

C.U.T. is involved in a lawsuit with the state of Montana
over some of its developments on the area known as the South
Ranch which includes the Ranch Headquarters, Corwin
Springs/Eastgate/Camp Mustang, Summit University, and the
Ranch Office. The state of Montana is seeking to include
the Glastonburys, the North Ranch, and Big Spur Campground
in the lawsuit. The planning office has been gathering
information on potential subdivision violations which exist
in North and South Glastonbury and is assisting the state of
Montana in its lawsuit. A substantial body of material
which has been collected is located in the planning office.
Chapter 10. Subdivision Review

Overview

Subdivision development in Park County is guided by state law and local regulations. The state regulations are very general guidelines which enable local jurisdictions to enact their own laws. While the law is sufficient, it contains several loopholes which have been abused. The state law defines a subdivision as:

"Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any re-subdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple spaces for recreational camping vehicles or mobile homes.\(^{33}\)

The Park County, Montana Subdivision Planning Regulations are the local regulations guiding subdivision development in the county. The regulations were written and adopted in 1979 and are fairly complete but very dated. The regulations discuss how to review a major subdivision, a minor subdivision, an amendment to a subdivision, a planned unit development, a subdivision for rent or lease, and a condominium development.

A reference manual, A Manual for the Administrator of the Montana Subdivision and Platting Act, prepared by the Community Technical Assistance Program within the Local

\(^{33}\)Id., M.C.A. 76-3-103(15).
Government Assistance Division of the Montana Department of Commerce is a complete guide to reviewing subdivisions. The manual is in the office library, and should be reviewed.

Major Subdivision

Major subdivisions are not defined by statute. They are generally described as being a division of a parcel of land into more than five lots which have to be reviewed under fairly stringent standards.

Pre-application Meeting

The procedure for a major subdivision begins with a pre-application meeting between the developer and the planner. At that meeting, the general size, layout, and scope of the proposed subdivision should be discussed. The developer should have a sketch of the proposed development which shows the layout of the lots, roads, and easements. The sketch must also show the general topography of the land, especially, the location of any rivers and streams. Based on the sketch, the planner will assess what information will be needed and will explain the subdivision process, including time lines and parkland requirements, to the developer.34

34 Park County, Montana, Park County, Montana Subdivision Planning Regulations, art. II, sec. A.2.
Preliminary Plat

The next step in the process is a review of the preliminary plat of the proposed subdivision. The developer must submit twelve (12) copies of the preliminary plat at least fifteen (15) days prior to the regularly scheduled meeting of the Park County Planning Board or the City-County Planning Board. The preliminary plat must contain the following information:

1. Name and location of subdivision, scale, north arrow, and date of preparation.
2. The exterior boundaries of the platted tract.
3. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.
4. All lots and blocks, designated by numbers, and the approximate dimensions and area of each lot.
5. All streets, alleys, avenues, roads and highways, and the width of the right-of-way of each with existing and proposed street names, and proposed locations of intersections or other access points for any subdivision requiring access to highways, arterial, and collectors.
6. The approximate location, boundaries, dimensions, and areas of all parks, common grounds or other grounds dedicated for public use.
7. Any existing and proposed utilities located on or adjacent to the tract including:
   a. The approximate location, size, and depth of sanitary and storm sewers.
   b. The approximate location and size of water mains and fire hydrants.
   c. The approximate location of gas, electric, and telephone lines and street lights.
   d. The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the tract.
8. Ground elevations on the tract: Contour intervals shall be provided at vertical intervals of two (2) feet where the average slope of the subdivision is less than ten percent (10%) or greater. If the proposed density of the subdivision is one (1) dwelling unit per acre or less, the respective vertical intervals required shall be five (5) feet and ten (10) feet. United States Geological Survey
data or other information may be used, if it meets
the foregoing interval requirements.
9. The approximate location and identity of all
existing easements and rights-of-way, including
description of their width and purpose.
10. The proposed locations of intersections or other
access points for any subdivision requiring access
to major highways or arterial.\(^{35}\)

The following supplements must also be included:

1. A vicinity sketch or sketches showing conditions on
adjacent land including:
   a. The boundaries and ownership of all land adjacent
to the subdivision and to the access road leading
from a present public right-of-way to the
boundary of the proposed subdivision. Where the
adjacent land is shown on a subdivision plat or
certificate of survey filed with the County Clerk
and Recorder, it shall be identified by reference
to the final plat or certificates.
   b. Approximate direction and gradient of ground
slope, including any embankments or retaining
walls.
   c. Location of buildings, railroads, power lines,
tower roads, and other nearby non-residential
land uses.
   d. Zoning or covenants, existing or proposed.
2. A copy of the current U.S. Geological Survey
topographic map, an aerial photograph or a location
map of the subdivision clearly indicated thereon.
3. When a tract of land is to be subdivided in phases,
the subdivider must provide an overall development
plan indicating his intentions for the remainder of
the tract.
4. Where a proposed subdivision contains land to be
dedicated to public use, the subdivider shall submit
with the preliminary plat either:
   a. A certificate of a licensed title abstractor
showing the names of the owners of record of the
land to be dedicated and the names of lienholders
or claimants of record against the land and the
written consent of the dedication by the owners
of the land, if other than the subdivider, and
any lienholders or claimants of record against
the land; or

\(^{35}\)Id., M.C.A. 76-3-601-5. Subdivision Regulations, art.
II, secs. A.3-7.
b. Title insurance guaranteeing the public's interest in the dedicated land in a reasonable amount to be determined by the governing body.

5. Drafts of covenants and restrictions to be included in deeds or contracts for sale.

6. If common property is to be deeded to a homeowners' association, the subdivider shall file a draft of the covenants and restrictions and these shall, at a minimum, provide that:
   a. The homeowners' association will be formed before any property is sold.
   b. Membership is mandatory for each property buyer and any subsequent buyer.

7. Environmental Assessment: An environmental assessment shall accompany the preliminary plat, unless the subdivider has been exempted from the completion of the assessment pursuant to Section 8 of these regulations. Appendix "A" to these regulations provides the format of and questions to be addressed by the assessment.\(^{36}\)

Upon submittal of a preliminary plat packet by the developer, the planner must review all of the information and certify the packet as complete. Certification should be done by a letter which states when the sixty (60) day review period begins.\(^{37}\) Always follow up all requests, time discussions, and phone calls with a letter to protect the county from lawsuits. There is no penalty if the commissioners take more than sixty days to review the application.

The planner then reviews the preliminary plat packet and sets up an internal time line for review. The planner must be realistic and not let the developer rush the process. The planner should plan for two public hearings on

\(^{36}\)Id., Subdivision Regulations, art. II, sec. A.7.

the proposed subdivision, noting the legal requirements when setting up the internal time line.

A public hearing is required for all major subdivisions. The public hearing is usually held before the planning board. A second public hearing may be held before the commissioners. Having two hearings is recommended, but not required by law. The planner must place a legal notice in the Livingston Enterprise at least fifteen (15) but not more than thirty (30) days prior to the date of the public hearing. In addition, the planner must notify all property owners with land adjoining the proposed subdivision plat. Notice of the public hearing must be received by the adjoining land owners not less than fifteen (15) or more than thirty (30) days prior to the hearing date. Both the legal advertisement and the property owner's notice must contain the following information:

1. A legal description of the property proposed for a subdivision.
2. A general description of the subdivision including the number of lots and the type of uses proposed.
3. Information on the owner and the developer of the proposed subdivision.
4. The day, date, time, and location of the public hearing.
5. What board the public hearing will be held by.
6. A phone number of address the public can call for more information.
7. The advisory board's recommendation (if before the commissioners). 38

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Staff Report

Next, the planner should review the preliminary plat packet. A complete review with a staff report will take several weeks, so be prepared. First, the planner will need to send the preliminary plat documents to various departments for their comments. These department include:

1. Park County Sheriff's Department
2. Rural Fire District (the addresses of each one can be obtained from the D.E.S. Coordinator)
3. Park County Roads Department
4. Park County Sanitarian
5. Park County Soil Conservation Service
6. Montana Department of Fish, Wildlife and Parks

Write a letter to each department explaining the proposal and the type of comments and information requested. Set a reasonable time line (at least two weeks) for comments to return.

While the departments are reviewing the proposal, the planner should begin to review the plat documents in relation to eight public interest criteria set up under state and local law. An environmental assessment prepared by the developer is reviewed by the planner for completeness and as part of the public interest criteria.

When the comments are returned, prepare a final staff report which discusses the proposal; its background; findings of fact for the proposed subdivision on each of the

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40Id., M.C.A. 76-3-603. Subdivision Regulations, art. II, sec. A.7(g).
eight public interest criteria; the planner's comments and observations; and the planner's recommendation to the planning board. Conditions can be attached to the approval of a subdivision. The need for each condition must be clearly established within the appropriate public interest criteria in the staff report. Conditions cannot be arbitrary and must be related to a legitimate need to protect the public health, safety, and welfare.

Review and Approval

The planning board will hold the public hearing, discuss the merits of the proposed subdivision, and make a recommendation, based on the staff report and public comment, to the commissioners. The planner will prepare a letter for the chairman of the planning board to sign discussing the proposed subdivision and the recommendation of the planning board which will be sent to the commissioners. The planning board's recommendation must be submitted to the commissioners within ten (10) days after the public hearing.\textsuperscript{41}

Upon submitting the planning board's recommendation, the planner should meet with the commissioners to set up a time for them to review the proposed subdivision and determine if they wish a public hearing. Schedule and provide notice of any public hearing as set forth above.

\textsuperscript{41}Id., M.C.A. 76-3-605. \textit{Subdivision Regulations}, art. II, sec. A.9.
All legal advertisements must be initialed as approved by the commissioners prior to placing the advertisement.

On the appointed day, the commissioners will review the proposed subdivision, set out the necessary parkland dedications and grant preliminary plat approval, conditional approval, or denial. The decision must be part of the minutes and the minutes must state the reasons for the decision. The planner must notify the applicant of the commissioners' decision.\textsuperscript{42}

If the proposed subdivision is granted approval or conditional approval, the developer shall have not less than one (1) year nor more than three (3) years from the date preliminary plat approval was granted to meet the conditions and file a final plat.\textsuperscript{43}

\textbf{Minor Subdivision}

A minor subdivision is defined as a subdivision containing five (5) or fewer lots which is eligible for

\textsuperscript{42}Id., M.C.A. 76-3-610. Subdivision Regulations, art. II, secs. A.10-11.

\textsuperscript{43}Id., M.C.A. 76-3-610. Subdivision Regulations, art. II, sec. A.11.
The summary review procedure is designed to streamline the subdivision review process for small subdivisions. It eliminates:

1. The preliminary plat
2. The environmental assessment
3. The public hearing requirements
4. A land dedication for parkland allowing only a cash-in-lieu of parkland[^1]

Pre-application Process

The first step in the summary review process is to set up a pre-application meeting with the planner to discuss the requirements and time frame for minor subdivision review in Park County. The developer should bring in a sketch plan of the proposed subdivision which shows the lots, roadways, easements, and any important topographical features such as rivers or streams.

The developer then needs to hire a surveyor to prepare a plat suitable for filing as a final plat with a blue-line copy of the proposed final plat for the review process. The developer must submit to the planning office, the final plat copy along with the following information:

2. Certificate of examining land surveyor.
3. All engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body.

4. Certification of the subdivider that all or part of the required public improvements have been installed and/or a subdivision improvements agreement securing the future construction of public improvements.

5. Copies of covenants and restrictions deeded with each lot; statements or notices to be inserted in deeds or contracts requiring water and sewer facility approval and certification; a certified abstract or certificate of title shall be filed at time of recording.

6. Where appropriate, a copy of the homeowners' association incorporation and by-laws for maintaining common property.

7. Certifications: When zoning change is involved, certification of change by the proper authorities; certificate of dedication for public sites and right-of-way including acceptance of same by governing body and other certificates as may be required.

8. A copy of the state highway permit when a new street will intersect with a state highway.

9. When any private access is proposed, certification to improve or maintain the access and it shall be so noted on the plat.

10. Application.46

Staff Report

Upon receiving a minor subdivision packet, the planner must review it and inform the developer in writing if the application needs more information or is complete. The certification of the packet as complete begins the thirty five (35) day review deadline.47 There is no penalty if the commissioners take more than thirty five days (35) to review the application.


The planner then reviews the minor subdivision packet to set up an internal time line for review. The planner must be realistic and not let the developer rush the process. A complete review with a staff report of the proposal will take several weeks, so be prepared.

First, the planner will need to send the subdivision proposal to various departments for their comments. These departments include:

1. Park County Sheriff's Department
2. Rural Fire District (the addresses of each one can be obtained from the D.E.S. Coordinator)
3. Park County Roads Department
4. Park County Sanitarian
5. Park County Soil Conservation Service
6. Montana Department of Fish, Wildlife and Parks

Write a letter to each department explaining the proposal and the type of comments and information requested. Set a reasonable time line (at least two weeks) for comments to return.

While the departments are reviewing the proposal, the planner should begin to review the proposal in relation to the eight public interest criteria set up under state and local law. When the comments are returned, prepare a final staff report which discusses the proposal; its background; findings of fact for the proposed subdivision on each of the eight public interest criteria; the planner's comments and observations; and the planner's recommendation to the planning board. Conditions can be attached to the

48 Id., M.C.A. 76-3-608.
approval of a subdivision. The need for each condition must be clearly established within the appropriate public interest criteria in the staff report. Conditions cannot be arbitrary but must be related to a legitimate need to protect the public health, safety, and welfare.

Review and Approval

While it is not required under state or local law, it is recommended that the planner schedule a review of the proposed minor subdivision before the City-County Planning Board or the Park County Planning Board as a courtesy to the planning board. The planning board often has valuable experience and suggestions to contribute. The planning board will review the information submitted and make a recommendation to the commissioners.

When the planning board has made a recommendation, the planner will prepare a letter to the commissioners discussing the proposal and the recommendation to be signed by the chairperson of the planning board. The planner should present the information to the commissioners and schedule a meeting with them to discuss the proposal, including the planning board's recommendation. The meeting should be held as early as possible due to the thirty-five (35) day limit.

At the meeting, the commissioners will review the application, the staff report, and the supplemental materials. They will discuss the proposal and make a
decision to grant approval, conditional approval, or deny the proposal. The reasoning behind their decision must be in the minutes. The planner must notify the developer of the commissioners decision by a letter. The developer has one (1) year from the date of conditional approval to meet all conditions imposed and file a final plat.\textsuperscript{49}

**Final Plat**

When the developer has met all of the conditions set out in the preliminary approval or minor subdivision approval, a final plat may be submitted to the planning office for review. The final plat must meet certain criteria and have certain documents submitted with it. The contents of the final plat are:

2. Certificate of examining land surveyor.
3. Certificate of subdivider that final plat conforms in all major respects to the preliminary plat as previously reviewed and approved by the governing body.
4. Certification of the subdivider that all or part of the required public improvements have been installed and/or a subdivision improvements agreement securing the future construction of public improvements.
5. Certifications: When zoning change is involved, certification of change by the proper authorities; certificate of dedication for public sites and right-of-way including acceptance of same by governing body and other certificates as may be required.
6. When any private access is proposed, certification to improve or maintain the access and it shall be so noted on the plat.

\textsuperscript{49}Id., Subdivision Regulations, art. II, secs. A.20-21.
7. Certification that the local governing body will not be required to improve or maintain any proposed private road within or providing access to the subdivision.\textsuperscript{50}

The supplemental documents required are:

1. Application.
2. Certified abstract of title or title insurance, and mortgage, lienholder or claimant's consent when applicable.
3. Copies of covenants and restrictions; or deed and contract statements relative to public improvements.
4. A Certificate or stamp of approval by the State Department of Health and Environmental Sciences that it has approved the plats and plans, and specifications and that the subdivision is subject to no sanitary restrictions.
5. Copies of incorporation articles and by-laws for homeowners' association.
6. Certification by the subdivider that all or part of the required public improvements have been installed and/or a subdivision improvements agreement securing the future construction of public improvements to be installed.
7. All engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body.
8. Copy of the state or county highway permit when a new street or road will intersect with a state highway or county road.
9. Copies of covenants and restrictions deeded with each lot; statements or notices to be inserted in deeds or contracts requiring water and sewer facility approval and certification; a certified abstract or certificate of title shall be filed at time of recording.
10. Where appropriate, a copy of the homeowners' association incorporation and by-laws for maintaining common property.\textsuperscript{51}

The planning office will review the final plat documents to see if all the conditions of approval have been satisfied.

\textsuperscript{50}Id., M.C.A. 76-3-611. \textit{Subdivision Regulations}, art. II, sec. A.13.

met and for compliance with the guidelines set out above. If they have, the planner will set up a time with the commissioners to review the final plat documents and prepare a report on the final plat. At that meeting, the commissioners will make a decision based on the documents and staff report to grant final plat approval or deny the subdivision. The commissioners' decision should be part of the minutes. The planner must notify the developer of the commissioners' decision in writing and state the reasons for the decision. This must occur within forty five (45) days after the application for final plat approval is accepted by the planning office. The developer has one (1) year from that date to file the final plat and related documents.\textsuperscript{52}

Amended Plat

Amendments to all subdivision plats will follow the same procedure as a minor subdivision eligible for summary review.\textsuperscript{53} The procedure for amending a subdivision under state and local law is very vague. Montana law states that an amendment to a subdivision must be reviewed as a minor subdivision using a summary review procedure. This is true even when the amendment will place a minor subdivision in the category of a major subdivision.\textsuperscript{54}

\textsuperscript{52}Id., M.C.A. 76-3-611. Subdivision Regulations, art. II, secs. A.16-19, 21.

\textsuperscript{53}Id., M.C.A. 76-3-505, 76-3-609.

\textsuperscript{54}Id., M.C.A. 76-3-609(4).
Correction of a recorded plat is allowed when a survey error has been made. If the error does not materially alter the original subdivision, a revised final plat may be submitted and reviewed. If the error will materially alter the plat, then the alteration must be reviewed as an amendment under minor subdivision, summary review procedures.\(^5\)

Vacation of plats is also very unclear under state law. Handle this on a case-by-case basis.\(^6\)

**Subdivision for Rent or Lease**

This type of subdivision is reviewed in the same manner as a major or minor subdivision during the preliminary review process.\(^7\) The difference is that this type of subdivision does not create lots which must be individually described and recorded so that title can be transferred. It creates lots which are not legally described but are marked on the ground so that the lot can be rented or leased. Permanent structures may be placed on the lot but this is not necessary. Generally the structure will be temporary.

\(^{5}\)Id., M.C.A. 76-3-614., Subdivision Regulations, art. II, sec. A.22.

\(^{6}\)Id., M.C.A. 76-3-305, Subdivision Regulations, art. II, sec. B.6.

\(^{7}\)Id., Subdivision Regulations, art. II, sec A.23(b), (c), (e).
The subdivision is required to meet all of the design standards for a mobile home or recreational vehicle park. In addition to the design standards, all of the improvements must be installed and all conditions of approval met prior to renting or leasing a space.

Instead of filing a final plat, the developer is required to file a final plan which meets the following criteria:

1. Name and location of subdivision, scale, north arrow, and date of preparation.
2. The exterior boundaries of the platted tract.
3. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.
4. All lots and blocks, designated by numbers, and the approximate dimensions and area of each lot.
5. All streets, alleys, avenues, roads and highways, and the width of the right-of-way of each with existing and proposed street names, and proposed locations of intersections or other access points for any subdivision requiring access to highways, arterial, and collectors.
6. The approximate location, boundaries, dimensions and areas of all parks, common grounds or other grounds dedicated for public use.
7. Any existing and proposed utilities located on or adjacent to the tract including:
   a. The approximate location, size, and depth of sanitary and storm sewers.
   b. The approximate location and size of water mains and fire hydrants.
   c. The approximate location of gas, electric, and telephone lines and street lights.
   d. The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the tract.
8. Ground elevations on the tract: Contour intervals shall be provided at vertical intervals of two (2) feet where the average slope of the subdivision is

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58 Id., Subdivision Regulations, art. III, secs. C, D.

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less than ten percent (10%) or greater. If the proposed density of the subdivision is one (1) dwelling unit per acre or less, the respective vertical intervals required shall be five (5) feet and ten (10) feet. United States Geological Survey data or other information may be used, if it meets the foregoing interval requirements.

9. The approximate location of existing buildings, structures, and improvements.

10. The approximate location and identity of all existing easements and rights-of-way, including description of their width and purpose.

11. The proposed locations of intersections or other access points for any subdivision requiring access to major highways or arterial.60

In addition, the developer shall also file the following documents:

1. A vicinity sketch or sketches showing conditions on adjacent land including:
   a. The boundaries and ownership of all land adjacent to the subdivision and to the access road leading from a present public right-of-way to the boundary of the proposed subdivision. Where the adjacent land is shown on a subdivision plat or certificate of survey filed with the County Clerk and Recorder, it shall be identified by reference to the final plat or certificates.
   b. Approximate direction and gradient of ground slope, including any embankments or retaining walls.
   c. Location of buildings, railroads, power lines, tower roads, and other nearby non-residential land uses.
   d. Zoning or covenants, existing or proposed.

2. A copy of the current U.S. Geological Survey topographic map, an aerial photograph or a location map of the subdivision clearly indicated thereon.

3. When a tract of land is to be subdivided in phases, the subdivider must provide an overall development plan indicating his intentions for the remainder of the tract.

4. Where a proposed subdivision contains land to be dedicated to public use, the subdivider shall submit with the preliminary plat either:

60Id., M.C.A. 76-3-208. Subdivision Regulations, art. II, secs. A.23(a), (e)., A.6.
a. A certificate of a licensed title abstractor showing the names of the owners of record of the land to be dedicated and the names of lienholders or claimant of record against the land and the written consent of the dedication by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land; or

b. Title insurance guaranteeing the public's interest in the dedicated land in a reasonable amount to be determined by the governing body.

5. Drafts of covenants and restrictions to be included in deeds or contracts for sale.

6. If common property is to be deeded to a homeowners' association, the subdivider shall file a draft of the covenants and restrictions and these shall, at a minimum, provide that:
   a. The homeowners' association will be formed before any property is sold.
   b. Membership is mandatory for each property buyer and any subsequent buyer.

7. Environmental Assessment: An environmental assessment shall accompany the preliminary plat, unless the subdivider has been exempted from the completion of the assessment pursuant to Section 8 of these regulations. Appendix "A" to these regulations provides the format of and questions to be addressed by the assessment.\(^{61}\)

These documents shall remain on permanent file with the planning office.

**Exceptions**

The Montana Subdivision and Platting Act (MSPA) has several exceptions which allow the developer to avoid subdivision review. While amendments are being drafted to close some of the loopholes in the law, it is important to understand the exemptions. Part 2 of the MSPA lists the various exemptions. The Manual for the Administrator of the

\(^{61}\)Id., M.C.A. 76-3-208. Subdivision Regulations, art. II, secs. A.23(a), (e), A.7.
Montana Subdivision and Platting Act goes into more detail on each of the exemptions.

There are four exemptions which are commonly used. The first is part of the definition of a subdivision. The MSPA defines a subdivision as a parcel of land divided into parcels under twenty acres. Thus, any division of land which is divided into parcels of over twenty acres is by definition not a subdivision subject to review. There are four major twenty acre developments in Park County:

1. Great Escape Subdivision;
2. Wineglass Subdivision;
3. North Glastonbury;
4. South Glastonbury.

In addition, much of Park County has been split into one or two twenty acre tracts. This type of land division is also exempt from Health Department review.\(^2\)

The second most commonly used and abused exemption is the "occasional sale". The occasional sale allows a landowner to split off a piece of land once every twelve months. When a Certificate of Survey claiming this exemption comes in for review, the planner must check other surveys and documents to determine if the landowner has used this exemption recently.\(^3\)

The third most commonly used exemption is the family conveyance. This exemption is used by a landowner to

\(^2\)Id., M.C.A. 76-3-103(15), 76-3-104.

\(^3\)Id., M.C.A. 76-3-207(d). Subdivision Regulations, art. II, sec. A.25(c).
transfer a parcel of land to a member of the immediate family.\textsuperscript{64}

The fourth exemption commonly used is to relocate a common boundary between parcels. This can be used to add a parcel to another parcel, or it can be used to shift the boundary between two or adjoining parcels. The key to look for is whether a second parcel or building site can be created.\textsuperscript{65}

The planner is part of a three person team which includes the sanitarian, and the county attorney. This team reviews all Certificates of Survey submitted for filing with the Clerk and Recorder's Office. The team reviews each document to be sure it has all the right titles and certifications; the division has the right Health Department approvals; that all of the taxes are paid; and that the exemption claimed is one which is legally proper for the survey. The key is to look at the pattern of land division surrounding the proposed division.

The document which will determine whether the claimed exemption is proper is the \textit{Revised Criteria for Local Determination of Evasion of the Subdivision and Platting Act}. This document discusses the different exceptions and the conditions for their use. If the planner or county attorney believes the exemption claimed should not be

\textsuperscript{64}Id., M.C.A. 76-3-207(b).

\textsuperscript{65}Id., M.C.A. 76-3-207(a), (e), (f).
allowed, they should check their facts and notify the
landowner who submitted the Certificate of Survey. The
landowner has the ability to defend their use of the
exemption before the planner, the county attorney and the
commissioners. The commissioners have final authority and
their decision should be in writing and part of the minutes.
The use of evasion criteria has been upheld in a split
decision by the Montana Supreme Court. 66

Chapter 11. Park County Planning Board

The board which handles all subdivision review outside of the City-County Jurisdictional Area is the Park County Planning Board. It is composed of seven members, six of them are appointed by the commissioners and one who is appointed by the Park County Soil Conservation Service. Their terms run two years. The board must elect a president and vice-president and must hold meetings at least once every quarter. A majority of the members constitutes a quorum. The board members are compensated for their travel expenses twice a year. The Park County Planning Board meets on the third Thursday of every month at 2:00 p.m. in the Community Room of the City-County Complex. The planner should schedule all the meetings for the year in early December and book the community room with the clerk and recorder.

The planning board is authorized to review subdivision proposals and work on the development of public facilities. The planning board is responsible for promoting, coordinating, and implementing attempts at


68Id., M.C.A. 76-1-204.

69Id., M.C.A. 76-1-301-4.

70Id., M.C.A. 76-1-307(1).

71Id., M.C.A. 76-1-106-7.
comprehensive planning in Park County.\textsuperscript{72} The planning board is also one of the watchdogs monitoring development in Park County.

\textsuperscript{72}Id., M.C.A. 76-1-601-3.
Chapter 12. Floodplain Development

Park County participates in the National Flood Insurance Program under the United States government. Participation in this program allows residents of Park County to purchase flood insurance for their homes and businesses. There are two types of flood designations in Park County. The Livingston area from just above Carter's Bridge to where the Shields and Yellowstone Rivers meet was studied by the U. S. Army Corps of Engineers in 1974. The study determined flood water flows, flood elevations, and designated flood zones. The rest of Park County is considered to have an un-numbered A-zone floodplain which are shown on Flood Insurance Rate Maps.

In order to participate in the flood insurance program, Park County must enforce a set of regulations designed to minimize development in flood prone areas.\(^\text{73}\) The Revised Park County Floodplain Regulations were adopted by Park County for the area covered by the U.S. Army Corps of Engineers' study. The official enforcement officer is the Park County Sanitarian. The planner has been delegated that duty by the commissioners without a change in the law.\(^\text{74}\) All other floodplain enforcement is handled by the

\(^{\text{73}}\text{Id., M.C.A. 76-5-102, Revised Park County Floodplain Regulations, sec., 1.1, 1.3, 1.5.}\)

\(^{\text{74}}\text{Id., M.C.A. 76-5-302, Floodplain Regulations, secs., 3.2-3.}\)
Floodplain Management Section of the Montana Department of Natural Resources and Conservation (DNRC).

A study is underway by the state of Montana and Park County to study flood flows on the Shields River from Wilsall to the entrance to the Yellowstone River. The study will set out flood water flows, flood elevations, and designate flood zones. The study should be completed and ready for public hearings on adoption by the spring of 1991.

Floodplain Boundary Determination

The floodplain administrator is asked to determine the boundary of a floodplain for a piece of property. This type of determination can be done for the Yellowstone River outside of the Army Corps study area. The following information may be requested for a boundary determination:

1. A legal description of the property including the section, township, range, subdivision name, block and lot number.
2. A road map showing how to get to the property. This must include visible landmarks such as mailboxes, creeks, rivers, driveways, anything which will help the administrator to find the property.
3. A site plan of the property drawn to scale showing all proposed and existing buildings, all proposed and existing wells, all proposed and existing septic systems including drainfields, and all existing and proposed roads and driveways.
4. The appropriate section of the Flood Hazard Boundary Map with the property for which the determination is requested, drawn to scale.
5. Any known elevations for the property.
6. An aerial photo (or photos) taken of the Yellowstone River flood June 18, 1974 by either the Montana State Highway Department (land from Emigrant to the east county line) or by Christian, Spring, Sielbach, and Associates (land from the Yellowstone Park boundary to Emigrant). The aerial photo(s) shall show the property in question in its entirety, with
the property boundaries drawn in ink on the photos.

7. A photo (or photos) taken within the last year, which clearly show the course of the Yellowstone River with respect to the property.

8. A scaled contour map of the property in question. The map shall show the elevation of the property in two (2) foot intervals for twenty (20) vertical feet (or the total property elevation gain, if less than twenty [20] feet) above the mean high water elevation. The map shall show the floodline of the 1974 flood as depicted in the aerial photo(s), and shall also show a line drawn one (1) vertical foot higher than the aerial photo floodline.

Based on the information submitted for each parcel, a determination may be made.\textsuperscript{75}

Determinations within the U.S. Army Corps of Engineers' study area may only be made by the Army Corps. Other floodplain boundary decisions must be made by the Floodplain Management Section.

\textbf{Floodplain Development Permit}

All development within the floodplain must have a permit issued prior to starting construction.\textsuperscript{76} The first step in the permit process is to determine if the proposed use is allowed in that flood zone.\textsuperscript{77} The second step is to complete an application including the following information:

1. Have a photocopy of the portion of the map with the property on it made, and draw the property to scale on the photocopy. The scale is 1" (inch) = 2,000' (feet). This will help to determine the floodplain boundary and the building site.

2. Prepare a dimensioned site plan of the property

\textsuperscript{75}Id., \textit{Flood Regulations}, sec. 3.4.

\textsuperscript{76}Id., \textit{Floodplain Regulations}, sec. 4.1(B).

\textsuperscript{77}Id., \textit{M.C.A. 76-5-401-4. Floodplain Regulations}, sec. V.
which includes, but is not limited to the following:

a. A legal description of the property including the section, township, range, subdivision name, block, and lot number.

b. A road map showing how to get to the property. This must include visible landmarks such as mailboxes, creeks, rivers, driveways, anything which will help the administrator to find the property.

c. A site plan of the property drawn to scale showing all proposed and existing buildings, all proposed and existing wells, all proposed and existing septic systems including drainfields, and all existing and proposed roads and driveways. All information must be labeled.

d. State the elevation for the building site. A registered surveyor can determine the elevation.

3. Submit a well log, location, and date the well was drilled.

4. Submit detailed information on the septic system with copies of all previous septic system permits.

5. Include a copy of any covenants on the property.

6. State the zoning on the property if there is any.\footnote{Id., Floodplain Regulations, secs. 4.2(A, B, C).}

If the information submitted is sufficient to determine that the proposed structure will not cause significant increase in flood heights, velocities, and is adequately floodproofed, the permit can be issued.

After the completion of the structure, the applicant must submit a completed elevation or floodproofing certificate to the floodplain administrator.\footnote{Id., Floodplain Regulations, sec. 4.2(D).}

Copies of all applications and the supplemental documents must be submitted to the Floodplain Management Section of the D.N.R.C.\footnote{Id., Floodplain Regulations, sec. 4.1(E, F).} A permit must be either approved or denied within sixty days of submittal to the
floodplain administrator or it is considered automatically approved.\textsuperscript{81}

**Floodplain Variance**

The regulations recognize that there will be times when a non-conforming use or structure may be appropriate. The non-conforming use or structure may be allowed by a variance.\textsuperscript{82} The variance application must meet seven standards and be supported by engineering data.\textsuperscript{83}

The procedure for a variance is to submit an application and the supplemental documents to the floodplain administrator. The administrator will prepare a staff report addressing the seven criteria for granting a variance. A hearing before the commissioners must be scheduled. Notify the applicant by letter of the date and time for the hearing. Include a copy of the staff report.

At the hearing, the commissioners and the applicant should be briefed on the report and the reasons for the recommendation. The commissioners will base a decision on the hearing and the staff report. If they decide to grant the variance, the application and information must be submitted to the Floodplain Management Section for review.

\textsuperscript{81}Id., *Floodplain Regulations*, sec. 4.1(C).

\textsuperscript{82}Id., *M.C.A.* 76-5-404-5. *Floodplain Regulations*, sec. 4.4(A.1).

\textsuperscript{83}Id., *M.C.A.* 76-5-406. *Floodplain Regulations*, sec. 4.4(A.2).
and approval. This approval must be secured before final approval of the variance may be granted.\textsuperscript{84}

\textbf{Floodplain Violation}

The floodplain administrator has the authority to enter private property to investigate suspected floodplain violations. Written notice must be personally delivered to the landowner and/or the legal agent. If that person cannot be found, the notice must be posted on the property.\textsuperscript{85} If a violation is found, the floodplain administrator must notify the commissioners, the county attorney, and the Floodplain Management Section of the DNRC.\textsuperscript{86}

\textsuperscript{84}Id., \textit{Floodplain Regulations}, sec. 4.2(A,2g).

\textsuperscript{85}Id., \textit{M.C.A.} 76-5-105.

\textsuperscript{86}Id., \textit{Floodplain Regulations}, sec. 4.6.
Chapter 13. Filing System

The filing system is separated into jurisdictional areas with the City-County file labels in red and the County file labels in blue. Each jurisdictional area is broken down into two types of files. The top drawer holds the general files such as correspondence and board minutes. The next three drawers hold project files. These files are separated into section, township, and range for the City-County and County files and by street and subdivision where applicable for the City-County files. There are two file cabinets in the planner's office. The gray cabinet on wheels holds all of the files on the Church Universal and Triumphant. These files are ongoing and are updated with clippings and other information on a regular basis. The other filing cabinet contains personal files on the Glastonbury developments. This cabinet is kept locked at all times. There is one drawer of files in the front office which has all files relating to comprehensive planning in Park County. These should be reviewed at some point in time. There are two drawers which contain floodplain files. The top one holds the general information files on floodplain in Park County. The bottom one holds the project files. These files need to be re-organized by year. At this time, the files are in alphabetical order and it is difficult to keep the permit numbering system in order. There is another drawer in the front office which holds the
files on the state of Montana and planning related organizations.

Not all of the files are in the cabinets. There are about ten boxes in the back store room of old files. These include past board minutes, correspondence and message books. There are also old zoning and subdivision files. One box is full of old tapes. One box holds the survey documents from a county-wide survey on comprehensive planning. There is no reason to destroy any of the old files. They should be kept permanently.

Each project will have its own file. These files are crucial and may be reviewed at some point in the future. An incomplete file means hours of digging to unearth information. A project file should have every bit of information which is available. Include the minutes of all public hearings and board meetings, initial applications, legal advertisements, letters, and correspondence. Always write the applicant to tell them of board and commissioners decisions, and always, always close a file with a letter or memo.
Chapter 14. Supplies and Equipment

The planning office has an extensive list of equipment. Each year, in January, the equipment is inventoried and a list is given to the clerk and recorder. When any new equipment is purchased, it is added to the list. Some of the items on the list are on loan to the Park County Rural Addressing program. All equipment must be approved by the commissioners as part of the budget for the year.

Supplies are purchased on an as needed basis using a claim form. Most of the supplies are purchased from Office Stop in Bozeman or the Quill Corporation. The secretary usually orders the supplies.

There are two types of supplies which are ordered under two different funds. Generally, if a supply will be used up, then it is purchased under the supplies general fund, 2250-047-0211. If the supply will be purchased from a business which sells a service, such as stationary or envelopes, then the appropriate fund is 2250-047-0311. The planner is responsible for coding all claims with the appropriate fund numbers. Uncoded claims will not be paid or returned, so code everything.
Chapter 15. Accounting System

In order to keep track of expenditures and revenues, the planning office has set up an accounting system. The system is divided into several sections by jurisdiction and type for revenues and by fund for expenditures. For the City-County revenues, each type of zoning application, and the major and minor subdivisions has a page. For Park County, each of the subdivision types has a page. There is a separate page for floodplain applications. When an application comes in, the fee is recorded in the appropriate section. At the end of the year, the fees are totaled and used to partially justify the yearly budget request.

Each expenditure fund, supplies, purchase services, and capital outlay, has its own page. Each expenditure is recorded when the claim is sent to the Accounting Office. After the claims are approved by the commissioners, they are entered into the computer by the accounting department. A monthly expenditure report is issued. This report is compared with the claim submitted and recorded to see if there are any errors. These figures are used to project costs for the coming year.
Chapter 16. The Computer

The planning office should have access to a computer. The planning office owns four (4) programs which are on the AMDEK Video 310A computer at this time. In addition, the planner has access to WordPerfect 5.0 for reports, letters and other correspondence. The planner has one main directory under WordPerfect 5.0. This directory is divided up into numerous subdirectories. When a letter, report, memo, legal advertisement, or to-who-it-may-concern letter is entered into a subdirectory, it is named by using the date entered (month, day, year), the initials of the person to whom the document is addressed, and the type of document (rpt, let, tow, etc).

Of the four programs owned by the planning office, the Grammatik IV program is loaded onto the computer but has never been accessed. The program is designed to proof a document for grammatical errors and suggest corrections.

The dBase III program is being used to develop a database with the zoning history of each parcel within the City-County Jurisdictional Area. There is one main file in the dBase III program. It was placed into the D drive under a file titled Master file. The file has been loaded onto a diskette as a backup. There is a user's manual which came with the program and a book on the program purchased by the planning office. This program is not very user friendly and it will take some practice to learn it.
The third program, Formtool 2.01D is a program which creates forms of all kinds. The program is very user friendly. The daily, monthly, and yearly time sheets were created using this program. This is a fun program which is easy to learn.

The final program is VP Planner Plus. It is a spreadsheet program purchased one planner ago. Part of the accounting system for the planning office has been computerized using this program. The secretary is familiar with the program.

The computer terminal which the planning programs and information is on is shared by seven departments. Access to this computer is very difficult to get due to heavy use. The planner has frequently had to work after 5 p.m. and on weekends to use the computer. Continued access is not guaranteed and this planner has tried for one and a half years to get a computer. Keep trying.
Chapter 17. Budgeting

The budgeting process is a very difficult and important one. The planner has put together a zero-based, line item budget. The planner lists each and every item which might be used by the office. This is justified by a narrative and includes a complete revenue estimation. Revenues come from:

1. City-County and County Mill Levy;
2. Service Fees;
3. Coal Tax Money;

The figures for supplies are updated using a recent office supply catalogue. The purchase service figures are obtained from several sources. The accounting office has the figures for travel which are used to calculate travel expenditures for the planner and the county planning board. Postage is estimated based on last year's actual costs. The service fees are calculated by adding up the entries and receipts for the year.

Spending a line item budget is easy. If it is in the budget, it can be purchased. Keep track of purchases and do not overspend your budget. A local government officer can be held legally liable for costs which exceed the budgeted amount. A claim form is filled out for each purchase and submitted to the commissioners for approval.
Chapter 18. Organizations

Montana Association of Planners

The Montana Association of Planners (MAP), is the professional organization for planners in Montana. Park County has a membership for the planner. The planner also sits on the Legislative Committee. The goal of MAP is to promote planning in Montana. The group is very active during the legislative session in trying to stall bills considered detrimental to planning and to amend the Montana Subdivision and Platting Act. Bill Murdock of the Big Sky Owners Association, is the current president.

MAP holds a yearly conference for all its members. This is a good opportunity to meet planners from all over Montana and learn more about planning issues. Other planners in the organization and throughout the state can be a great help. They have had experience with many of the issues facing Park County.

Church Universal and Triumphant

The Church Universal and Triumphant is a new age religious group. The church, or C.U.T., is a major developer in the county. C.U.T. owns title to two large residential developments, several work camps, and at least one bomb shelter designed to house up to 756 people. The church should be treated fairly, but as a major developer. Review the material collected by the planning office. After
a few weeks, call the church leaders and arrange a tour with Edward Francis and Richard Kalar. The tour will be an eye opener.

Upper Yellowstone Defense Fund

The Upper Yellowstone Defense Fund (UYDF) is part of the Greater Yellowstone Coalition which is dedicated to protecting the environment in the Park County area. This group is C.U.T.'s most outspoken critic, acting as a citizen's watchdog. U.Y.D.F. has sued the state of Montana over the E.I.S. done on the South Ranch owned by C.U.T. and lost. The chief contact person for this group is currently Julia Page.

Park County Environmental Coalition

This group is centered in the Livingston area and dedicated to land use and environmental issues. They are interested in working with the planning office on educating the public in the benefits of planning and land use regulation. Use them if possible.

Beartooth Alliance

This group was formed recently to act as an environmental watchdog for the Cooke City area. The group is monitoring timber sales and mineral development in the area. Some of the members of this group are members of the New World Mining Impact Committee.
New World Mining Impact Committee

This committee was formed to monitor the proposed New World gold mine. The group was elected by the members of the community who reside in Cooke City, Silvergate and Cooke Pass all year. During the summer, the townsfolk elected several representatives from the summer people. This group has not taken a stand either pro or con on the proposed mine. The goal is to see to it that tourism and the way of life as it exists in the Cooke City area is not destroyed. This group will be working with the planner on the comprehensive plan for the area.

Noranda Minerals

This mining company is based in Canada. It is working in cooperation with Crown Butte on the proposed New World Project which is one of the largest and richest gold deposits found in many years. Noranda has been very open and willing to work with Park County and the people of the Cooke City area.

Jardine Joint Venture

This was the name of the mining project which developed into the Mineral Hill Mine at Jardine, Montana. Located several miles outside of Gardiner, the mine is a fully developed underground gold mine. Facilities for smelting the ore into gold are located at the mine site. A tour of this facility is worth the time. The mine was permitted
under the Hard Rock Mining Impact Act. The mine pays a metal mines license tax, part of which may be available for planning.
Community Technical Assistance Bureau

This is a division of the Department of Commerce set up to provide assistance to planners around the state. There are three people who are part of the bureau. Currently Ann Desch handles all subdivision and zoning questions, Robb McCracken covers capital improvements planning, and Rich Weddle is the land use attorney for the department. All of them are very skilled in their areas and can be counted on to deliver solid advice and information. When in doubt, use these people.

Hard Rock Mining Impact Board

This board was created under the Hard Rock Mining Impact Act to monitor and implement the Hard Rock Mining Impact Plan for each hard rock mine. The law requires each new mine to prepare an impact plan designed to address the impacts to a local government which provides services for a community impacted by a hard rock mine. The impact board has a staff person, currently Carol Ferguson, who can assist the planner in interpreting the law.

Floodplain Management Section

This department is the part of the Engineering Bureau of the Montana Department of Natural Resources and Conservation which acts to oversee the administration of the federal flood insurance program. Park County is a
participant in this program and has floodplain regulations. This department has an engineer and an assistant. Both positions are vacant at this time.

**Soil Conservation Service**

The Park County Soil Conservation Service administers the 310 permits which are required for any development within a stream bed or the adjacent banks. If a project is within the stream or its adjacent banks, it may also affect the floodplain. The SCS will try to either inform the floodplain administrator directly or they will send the applicant of a 310 permit in to review the project.
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Park County, Montana. *City-County Zoning Plan: for the Unincorporated Area Outside the Limits of the City of Livingston Within the Four and One-Half Mile Jurisdiction of the City-County Planning Board*. 1976.


