

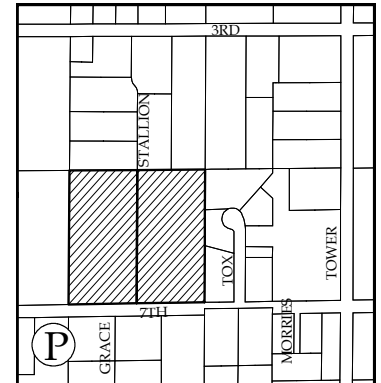
E X E C U T I V E S U M M A R Y

CASE PLANNER: Tim Worley and Janet Rhoades

REVIEWED AND APPROVED BY: Mary McCrea

PUBLIC HEARINGS: Planning Board: February 3, 2009
CC: February 23, 2009

60-DAY LIMIT: February 23, 2009



AGENDA ITEM: #6A: Chickasaw Place

APPLICANT: George Lake
3536 S. 7th St. West
Missoula, MT 59804

AGENT: WGM Group, Inc.
P.O. Box 16027
Missoula, MT 59808

LOCATION OF REQUEST: The area is legally described as Lots 53 and 54 of Dinsmore's Orchard Homes #5, located in the Southeast $\frac{1}{4}$ of Section 24, T13N, R19W, P.M.M.

LEGAL NOTIFICATION: A legal ad was published in the Missoulian on 01/18/09 and 01/25/09, and in the Missoula Independent on 01/15/09 and 01/22/09. Notice of the project was posted on 01/15/09, and adjacent property owners were notified by certified mail on 12/23/08.

ZONING: The property is zoned C-RR1 (Residential) in the County, with a request for annexation and rezoning of the property to RLD-IV (Residential).

GROWTH POLICY: Growth Policy (2005); applicable amendment to the Growth Policy is the 1998 Urban Area Comprehensive Plan Update. The land use designation is and Residential, 2 dwelling units per acre.

Surrounding Land Uses		Surrounding Zoning
North:	Residential	C-RR1 (Residential)
South:	Residential	C-RR1 (Residential)
East:	Residential	C-RR1 (Residential)
West:	Residential	C-RR1 (Residential)

<u>PROPOSAL</u>	<u>STAFF RECOMMENDATION</u>	<u>PLANNING BOARD RECOMMENDATION</u>
Rezoning from C-RR1 in the County to RLD-IV in the City.	Approval of the rezoning	To be determined.
Chickasaw Place major subdivision.	Approval of the subdivision with conditions.	To be determined.

MISSOULA CONSOLIDATED PLANNING BOARD

February 3, 2009

Agenda Item #6A

CHICKASAW PLACE

I. STAFF'S RECOMMENDED MOTION FOR REZONING

1. **THAT** the request to rezone properties legally described as Lots 53 and 54 of Dinsmore's Orchard Homes #5, located in the Southeast ¼ of Section 24, T13N, R19W, P.M.M., from C-RR1 to RLD-IV be **approved**.

II. STAFF'S RECOMMENDED MOTION FOR SUBDIVISION

1. **THAT** the variance to City Subdivision Regulations Article 3-2(15)(B) to allow a 5' sidewalk with a 7' boulevard along South 7th Street West be **denied**, requiring installation of a 6' sidewalk with a 10' boulevard.
2. **THAT Chickasaw Place** be **approved** based on the findings of fact in the staff report and subject to the recommended conditions of approval.

III. STAFF'S RECOMMENDED CONDITIONS OF APPROVAL

1. The proposed rezoning shall be adopted prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B).*

Roads/Pedestrian Facilities/Boulevards

2. Plans for and installation of curb/gutter and paving the portions of South 7th Street West adjacent to this subdivision to an 18' width from back-of-curb to centerline of right-of-way shall be reviewed and approved by the City Engineer prior to final plat approval. *Subdivision Regulations Article 3-2(3), 3-2(9), 3-2(14) and City Engineering recommendation.*
3. Plans for and installation of curb/gutter and paving Chickasaw Loop to a 32' width from back-of-curb to back-of-curb, including traffic calming devices if required by City Engineering, shall be reviewed and approved by the City Engineer prior to final plat approval. *Subdivision Regulations Article 3-2(3), 3-2(9), 3-2(14) and City Engineering recommendation.*
4. Plans for and extension of the public road right-of-way to the north boundary of the subdivision and installation of a public road to the north boundary of the subdivision, aligned with Stallion Lane, shall be reviewed and approved by OPG prior to final plat approval. The plans shall include a 26' wide roadway (back-of-curb to back-of-curb), and 5' wide sidewalks, 7' wide boulevards, and "No Parking" signage along each side of the roadway. *Subdivision Regulations Article 3-2(3), 3-2(9), 3-2(14), 3-2(1)(F), 3-2(13), City Parks and Recreation and City Engineering recommendation.*
5. Final plans for and installation of grading, drainage and erosion control shall be reviewed and approved by City Engineering prior to final plat approval. *Subdivision Regulations Article 3-4.*
6. Plans for revision of the 1' no-access strip along the South 7th Street West frontage of the subdivision excepting the Chickasaw Place access points and the Lot 1 driveway shall be reviewed and approved by City Engineering prior to final plat approval. *Subdivision Regulations Article 3-2(1)(F) and City Engineering recommendation.*

7. Plans for and installation of street lights at road intersections with South 7th Street West adjacent to the subdivision shall be reviewed and approved by City Engineering prior to final plat approval. *Subdivision Regulations Article 3-2(2)(C) and City Engineering recommendation.*
8. Final driveway design for Lot 1, including paving, shall be reviewed and approved by the City Engineer prior to final plat approval. The covenants shall be amended to include the requirement that this driveway be paved. *Subdivision Regulations 3-2(16)(A) and City Engineering recommendation.*
9. Plans for and installation of 6' concrete sidewalks with 10' boulevards on South 7th Street West adjacent to the subdivision, with allowance for sidewalk meandering to avoid power poles and/or trees, shall be reviewed and approved by the City Engineer prior to final plat approval. Plans for expansion of the sidewalk maintenance easement where appropriate along South 7th Street West shall be reviewed and approved by City Engineering prior to final plat approval. *Subdivision Regulations Article 3-2(15)(A-C) and City Engineering recommendation.*
10. Plans for and installation of 5' concrete sidewalks with minimum 7' boulevards on both sides of Chickasaw Place shall be reviewed and approved by the City Engineer prior to final plat approval. *Subdivision Regulations Article 3-2(15)(A-C) and City Engineering recommendation.*
11. Plans for street-tree plantings shall be reviewed and approved by City Parks and Recreation prior to final plat approval. *Subdivision Regulations Article 3-2(15)(B) and OPG recommendation.*

Fire/Emergency Response

12. Plans for address signs, including temporary signage during construction, and a fire hydrant plan shall be reviewed and approved by the City Fire Department prior to building permit approval. Fire hydrants shall be installed prior to combustible construction as required by the City Fire Department approved hydrant plan. *Subdivision Regulations Article 3-2(2)(E), 3-7 and City Fire Department recommendation.*

Weeds/Environment/Open Space

13. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(F) and County Weed District recommendation.*
14. The covenants shall be amended to include a Weed Management Plan (Plan) for all undeveloped and planned open space areas of the subdivision, to be reviewed and approved by the County Weed District prior to final plat approval. The Plan shall include provisions making the developer responsible for its implementation, until enough development has occurred to support the Homeowner's Association. The Plan shall include a mechanism allowing the Homeowner's Association to assume weed management duties from the developer, continuing after the subdivision has been filed. The Plan and the covenant provisions related to weed management shall be reviewed and approved by the County Weed District, City Parks and Recreation and OPG prior to final plat approval. *Subdivision Regulations Articles 3-1(4), 3-1(9) and OPG recommendation.*
15. Plans for removal of the dead or decadent black cottonwood trees on residential lots following the nesting season (after September 1 and before March 1) in question shall be reviewed and approved by Parks and Recreation prior to final plat approval. *Subdivision Regulations 3-1(2), 3-1(9) and City Parks and Recreation recommendation.*
16. The subdivider shall designate a portion of Lot 53 of Dinsmore's Orchard Homes #5 as Common Area for Agricultural Use on the plat. This area shall be bounded on the south and east by the boundaries of Lot 53 of Dinsmore's Orchard Homes #5; the western

boundary shall be a minimum of 290' from the eastern boundary of Lot 53 of Dinsmore's Orchard Homes #5; and shall encompass a minimum of three contiguous acres of Lot 53 of Dinsmore's Orchard Homes #5, subject to review and approval by OPG prior to final plat approval. The plat shall include bearings and distances descriptions of this Common Area for Agricultural Use, subject to review and approval by OPG prior to final plat approval. Subdivision lot relocation and reconfiguration shall be reviewed by the governing body prior to final plat approval. *Subdivision Regulations Article 3-1(8), 4-1(14)(B)(4)(a), MCA 76-3-608(4-5a), CFAC and City Parks & Recreation Department recommendation.*

17. The Common Area for Agricultural Use shall prohibit all residential structures, and the Development Covenants shall be amended to state that residential structures are prohibited in the Common Area for Agricultural Use. Facilities related to agriculture may be permitted as outlined in the covenants, subject to review and approval by OPG and City Parks and Recreation prior to final plat approval. The approved section of the covenants shall not be amended or deleted without governing body approval. *Subdivision Regulations Article 3-1(8), 4-1(14)(B)(4)(a), MCA 76-3-608(4-5a), CFAC and OPG recommendation.*
18. The subdivider may reconfigure the lot layout to recuperate the lots deleted by the required Common Area for Agricultural Use. The subdivision shall include a maximum of 30 lots which shall be located outside of the designated Common Area for Agricultural Use. The subdivision reconfiguration shall meet the design standards required by the Subdivision Regulations subject to review by OPG and the governing body prior to final plat approval. *Subdivision Regulations Article 3-1(8), 4-1(14)(B)(4)(a) and OPG recommendation.*

Miscellaneous

19. Cluster mailboxes shall be installed in this subdivision prior to approval of the first building permit in a location subject to review and approval by USPS and City Engineering prior to final plat approval. *Subdivision Regulations 3-2(15)(K) and City Engineering recommendation.*

Covenants

20. The Amendments section of the covenants shall be amended to include the Paving of the Lot 1 Driveway, Weed Management Plan and Common Area for Agricultural Use as sections that may not be amended without Governing Body approval. *Subdivision Regulations Articles 3-1(2), 3-1(9) and OPG recommendation. Subdivision Regulations Articles 3-1(4), 3-1(9) and OPG recommendation.*

IV. REZONING REQUEST

The property is currently zoned C-RR1 (Residential, 1 du/acre) in the County. The applicant has requested annexation, and upon annexation, and the property will be zoned RLD-2 (Residential, 2 du/acre) in the City. The applicant proposes to rezone the property to RLD-4 (Residential, 4 du/acre) in the City.

REZONING FINDINGS OF FACT

Findings of Fact:

1. The subject property is 9.36 acres and is located along South 7th Street West, approximately ¼ mile west of Tower Street, in the Orchard Homes area. The subdivider proposes 30 lots, for a residential density of 3.2 dwelling units per acre.
2. The subject property is primarily vacant except for an existing home on the southwest corner. The site has been used for agriculture (commercial farm operations and horse pasture) in the past. The eastern half of the site was farmed by Clark Fork Organics in 2004 and 2005.
3. The subject property is surrounded by rural residential areas and small farms/ranches.

4. The 1998 Missoula Urban Area Comprehensive Plan Update, as an amendment to the Missoula County Growth Policy, 2005 Update, is the applicable plan for this property. The recommended land use designation is Residential, 2 dwelling units per acre.
5. The subject property and surrounding area are currently zoned C-RR1 in the County, which permits a residential density of 1 dwelling unit per acre. Setback standards include 25-foot front and rear yards, and 15-foot side yards. Building height is limited to 30 feet.
6. Permitted uses in the C-RR1 district include single family dwellings and accessory buildings. Two-family dwellings are not permitted.
7. The applicant has requested annexation and the property will be zoned RLD-2 in the City upon annexation. RLD-2 zoning permits a residential density of 2 dwelling units per acre. Setback standards include 25-foot front and rear yards, and 15-foot side yards. The minimum lot width is 100 feet, and building height is limited to 30 feet.
8. Permitted uses in the RLD-2 district include community residential facilities serving eight (8) or fewer persons, day-care homes serving twelve (12) or fewer persons, one-family dwellings, parks and playgrounds, and residential accessory buildings and uses. Two-family dwellings are not permitted.
9. The applicant proposes RLD-4 zoning for the subdivision, which permits a residential density of 4 dwelling units per acre. Setback standards include 20-foot front and rear yards, and 7½-foot (or 1/3 the building height) side yards. Building height is limited to 30 feet.
10. Permitted uses in the RLD-4 district include day-care homes serving twelve (12) or fewer children, [persons of any age: OPN], one-family dwellings, parks and playgrounds, residential accessory buildings and uses, and two-family dwellings.
11. The Residential Low Density (RLD) Zoning District standards require minimum lot sizes, including 20,000 square feet for RLD-2 and 10,000 square feet for RLD-4. For the purposes of subdivision review, minimum lot sizes and lot widths may vary for the purpose of protecting natural resources, conserving open space and enhancing environmental amenities and allowing for flexibility in site planning and project design.
12. The subdivider proposes residential lot sizes ranging from 7,350 to 14,757 square feet, with most lots being approximately 7,000 to 10,000 square feet. A 56,654-square foot (1.3-acre) agricultural open space parcel is also proposed. Lots in the vicinity generally range from 0.5 acres (21,780 square feet) to 5 acres (217,800 square feet).
13. The subject property is entirely inside the Urban Growth Area (UGA), the area in which development is generally considered to be appropriate.
14. The 1998 Missoula Urban Area Comprehensive Plan Update (Comprehensive Plan) states that “within the urban growth area, residential, commercial, public, and other forms of development should be encouraged at urban densities (p.62).”
15. The Primary Urban Growth Area is generally considered appropriate for immediate development if surrounded by or contiguous to existing urban development and served by existing urban services, including sanitary sewer infrastructure.
16. The Comprehensive Plan encourages a density of two dwelling units per acre in locations adjacent to the growth area with no community sewer, including Orchard Homes. The Plan goes on to state that “greater density may be appropriate” where sewer and other services are available. City sewer and Mountain Water will be extended to the site.
17. The Missoula County Growth Policy, 2005 Update (Growth Policy) encourages the logical expansion of communities while maintaining environmental quality and keeping the expenditures for public services and facilities at a reasonable level.

18. Residential land use goals stated in the Comprehensive Plan include the following: “Establish development standards to encourage smaller lots and more flexible use of land (p. 80).”
19. The Growth Policy encourages development that accommodates growth, retains historical resources, and provides appropriate open spaces in the design of development so that areas of greater density remain healthy, safe, and livable (p. 3-4).
20. The Comprehensive Plan encourages compatibility with surrounding land uses, as well as preservation and enhancement of the diversity, integrity, and unique values of neighborhoods, communities and rural areas. Development in this area is a combination of established and newer single family homes, with a smaller number of duplex and multi-dwelling units, mixed with open space areas.
21. Single-family residential uses are common in the vicinity of the proposed subdivision, but are generally lacking the density proposed with this subdivision. The closest subdivision approved with a zoning district of comparable density (RLD-4) is Stonybrook Subdivision, at the corner of 3rd Street West and Tower Street, approximately 1/10 mile north of the subdivision.
22. The Comprehensive Plan states that urban levels of development should be conditioned upon 1) adequate public water supply, 2) connection to a wastewater treatment facility with adequate capacity, 3) adequate stormwater disposal facilities, 4) a road system within the development that is able to connect to public roads and walkways, 5) area schools with adequate capacity for enrollment, 6) other public services affected by the proposed development able to serve it as well as other parts of the urban area.
 - a. The subdivider is proposing to connect to Mountain Water and City sewer and participate in the extension of these services.
 - b. Stormwater disposal will be provided primarily by curbside sumps in Chickasaw Loop. Runoff from a small portion of the site will flow overland to the west of the site; the total runoff from the site will be reduced from the predevelopment condition.
 - c. South 7th Street West, adjacent to the proposed subdivision, is classified as a collector street by the Missoula Transportation Plan.
 - d. The property is served by Mountain Line Route 9 and falls within the existing Missoula Urban Transportation District (MUTD) boundary.
 - e. The development will include the construction of Chickasaw Loop and the upgrading of South 7th Street West adjacent to the subdivision to provide stormwater disposal (curb, gutter, and drainage sumps) and boulevard sidewalk improvements.
 - f. No adverse impacts to schools requiring mitigation have been identified by the Missoula County Superintendent of Schools.
 - g. Other public services affected by this development include City Police and Fire. The subdivision is an estimated 4 miles from police protection and 2 miles from fire protection. The proximity to these services appears to be similar to many other parts of the urban area.
 - h. None of the reviewing service agencies had any adverse comments regarding their ability to provide adequate services to the site.
23. Staff recommends approval of the rezone to RLD-4 (Residential, 4 dwelling units per acre).

Conclusions of Law:

1. Whether the zoning is compatible with the Comprehensive Plan

1. The proposed rezone does not comply with the applicable Comprehensive Plan land use

designation for the subject property.

2. The proposed rezone will substantially comply with the goals and objectives of the applicable Comprehensive Plan, which encourages growth to occur within the Urban Growth Area where services are available.
3. The proposed rezone will substantially comply with the development pattern and land use goals in the Growth Policy (2005) of establishing a logical increase in residential density in the neighborhood and keeping expenditures for public services and facilities at a reasonable level, because these parcels are adjacent to existing residential neighborhoods and inside the Urban Growth Area where services are available.

2. Whether the zoning will lessen congestion in the streets

1. Increased traffic due to the rezone will likely have a negligible impact on congestion given the adjacent collector street.

3. Whether the zoning will secure safety from fire and other dangers

1. Available tools to mitigate and control the threat to public safety, including fire and police service, appear to be adequate or could be made readily available.

4. Whether the zoning promotes the health and general welfare

1. The proposed rezone would promote health and general welfare by locating development along a collector street with access to bus service, pedestrian facilities, Mountain Water, and City sewer.
2. Law enforcement personnel and procedures are available to address potential problems of noise, property damage, or personal injury.
3. Available tools to mitigate and control the threat to public safety appear to be adequate.

5. Whether the zoning provides adequate light and air; AND

6. Whether the zoning will prevent overcrowding of the land; AND

7. Whether the zoning will avoid undue concentration of population

1. This proposed rezoning will not adversely impact the provision of adequate light and air because of minimum front, rear and side-yard depth requirements in the proposed zoning district. Building height limitations will remain the same following rezoning.
2. The rezoning request would not result in the overcrowding of the land or undue concentration of population.

8. Whether the zoning facilitates the adequate provision of public services

1. The proposed rezone facilitates the adequate provision of public services because these parcels are inside the Urban Growth Area and the Sewer Service Area where public infrastructure, including the adjacent collector street, Mountain Line public transportation, and police and fire service, is available to serve the site.

9. Whether the zoning gives reasonable consideration to the character of the district; AND

10. Whether the zoning gives consideration to the particular suitability of the district for particular uses

1. The proposed rezone gives some consideration to district character by encouraging single-family residential uses, but it permits a density exceeding that of surrounding neighborhoods.
2. The proposed Residential Low Density (RLD-4) Zoning District is consistent with the suitability of this area for residential uses.

11. Whether the zoning was adopted with a view toward conserving the value of the buildings

1. Careful building design of any possible new construction may conserve the value of this and nearby properties.

12. Whether the zoning will encourage the most appropriate use of land throughout the municipality

1. The proposed rezone will encourage the most appropriate use of land throughout the municipality because these parcels are adjacent to residential neighborhoods inside the Urban Growth Area where higher residential densities are appropriate and adequate water and sewer infrastructure and other public services are available.

V. INTRODUCTION

This is a proposal by George Lake, represented by WGM Group, Inc., for 30 residential lots on 9.36 acres located on South 7th Street West approximately 600 feet west of Tower Street. The dwelling on Lot 3 is proposed to remain following subdivision.

The applicant has requested to annex the property into the City and rezone the property from C-RR1 (Residential) in the county to RLD-IV (Residential) in the city. Lot sizes are proposed to range from 7,498 square feet to 14,757 square feet. The City Council adopted a resolution of intent to annex the property on July 16, 2007, conditioned upon approval of the subdivision and subject to review by the City under authority of MCA 76-3-601(2)(d) that states:

“When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports and other requirements whenever possible.”

The subdivision has access from South 7th Street West and the developer proposes half-street improvements to city standards for this road that include curb, gutter and a concrete boulevard sidewalk. A loop road, Chickasaw Loop, is proposed to provide access to all but one subdivision lot. Lot 1 will have driveway access onto South 7th Street West.

The lots are proposed to be served by City sewer and Mountain Water. The applicant proposes fire hydrants to supply water for fire protection. The applicant held a neighborhood meeting on May 31, 2007 and a summary of the meeting is included in the submittal packet.

VI. SUBDIVISION FINDINGS OF FACT

A.) ZONING AND COMPREHENSIVE PLAN COMPLIANCE

Findings of Fact:

a) Zoning Compliance

1. The 9.36 acre parcel is currently zoned C-RR1. The applicant has requested to annex the property into the city and requests rezoning of the parcel to RLD-IV.
2. The maximum residential density in the RLD-IV district is four dwelling units per acre and the minimum lot size is 10,000 square feet per single-family dwelling.
3. The subdivider proposes 30 lots for a residential density of 3.2 dwelling units per acre.
4. Lot sizes and lot width may vary through subdivision review in the RLD-IV zoning district to allow flexibility in site planning and project design. The subdivider proposed lot sizes

ranging from 7,498 square feet to 14,757 square feet. Lots in the vicinity generally range from 1.0 to 5.0 acres.

5. The required front and rear-yard setbacks in the RLD-IV district are 20 feet. Side-yard setback requirements in the RLD-IV district are 7 ½ feet or 1/3 the building height, whichever is greater. Building height is limited to 30 feet.

b) Comprehensive Plan Compliance

6. The 1998 Missoula Urban Comprehensive Plan Update is the applicable plan for this property. The recommended land use designation is Residential, 2 dwelling units per acre.
7. The subdivider proposes 30 lots on 9.36 acres for a residential density of 3.2 dwelling units per acre.
8. The Plan encourages compatibility with surrounding land uses, as well as preservation and enhancement of the diversity, integrity, and unique values of neighborhoods, communities and rural areas. The subject property is surrounded by rural residential areas, small farms, and open space.
9. The Plan encourages a density of two dwelling units per acre in locations adjacent to the growth area with no community sewer, including Orchard Homes. The Plan goes on to state that “greater density may be appropriate” where sewer and other services are available. City Sewer and Mountain Water are available and will be extended to serve the subdivision.
10. The Plan states that “within the urban growth area, residential, commercial, public, and other forms of development should be encouraged at urban densities (p.63).”
11. Residential land use goals stated in the Plan include the following: “Establish development standards to encourage smaller lots and more flexible use of land (p. 80).”

Conclusions of Law:

1. The proposal is consistent with the intended zoning for the property.
2. The proposal does not comply with the Comprehensive Plan land use designation for the property.
3. The proposal substantially complies with some of the goals and objectives of the 1998 Missoula Urban Area Comprehensive Plan Update.

B.) PRIMARY CRITERIA COMPLIANCE

CRITERION 1: EFFECTS ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

1. According to the Soil Survey of Missoula County, the soil map unit on the property is the Grantsdale loam, 0 to 2 percent slopes. This is considered prime farmland if irrigated.
2. City Subdivision Regulations Article 4-1(14)(A) does not permit the governing body to approve or conditionally approve a subdivision plat without considering the Montana Subdivision and Platting Act, including impacts to agriculture.
3. An onsite soils analysis was undertaken to assess the distribution of soil map units on a scale appropriate to the acreage of the property. The analysis focused on roughly the eastern 5 acres of the property.
4. The onsite soils analysis confirmed the presence of DeSmet Loam in addition to the Grantsdale loam. These soils are prime farmland if irrigated and make up approximately 54% of the eastern 5 acres of the property. Moiese loam, not considered prime farmland or farmland of statewide importance, was also present, representing approximately 46% of the roughly 5 acres that make up the eastern half of the property.
5. The Project Summary indicates that a portion of the eastern half of the property was used for gardening purposes in 2004-2005. In comments dated May 14, 2008, the Missoula County Community Food and Agriculture Coalition (CFAC) noted that Clark Fork Organics

leased the property in 2004 and 2005. Produced raised on the property generated approximately \$8000/acre in net income upon the local sale of the produce.

6. The source of water for the 2004/2005 agricultural operation was a well that delivered 100 gallons per minute as estimated by CFAC. An underground PVC irrigation pipe was installed in conjunction with the well. This is proposed to be removed with the subdivision.
7. An onsite investigation indicated that the portion of property with greatest topographic undulation is the 1.3 acres of land designated as agricultural open space in the northeast corner. This area included rock and debris of a non-agricultural nature roughly in the center of the 1.3 acres.
8. Josh Slotnick of CFAC farmed roughly the southern three acres of the eastern half of the property in 2004 and 2005. Upon review of the subdivision design, he commented that this remains the preferable area for farming due to flat topography, access to the high-output well, and bindweed that is less prolific than on the northern portion of the property.
9. State law, MCA 76-3-608(3)(a), requires subdivision proposals to be reviewed for impacts on agriculture. MCA 76-3-608(4) allows the governing body to require a subdivider to design the proposed subdivision to minimize potentially significant adverse impacts to the primary review criteria, including agriculture.
10. Discussions with members of CFAC confirmed that a minimum of 3 contiguous acres of farmland, if set aside as a portion of the southeastern 5 acres of the property, would constitute a viable amount of farmland on the site. Jackie Corday, Open Space Coordinator for City Parks and Recreation, supports this minimum acreage being set aside as Common Area for Agricultural Use.
11. A condition of approval requires reconfiguration of lots to preserve approximately 3 acres of land on the eastern side of the property in an agricultural use. Lots originally planned to be platted in the area required to be set aside for agricultural uses may be recuperated in other areas within the subdivision.
12. Jackie Corday encourages covenant language about this area that describes its intent, and CFAC recommends language regarding facilities for agriculture, including agricultural buildings. Agricultural facilities language, and language prohibiting residential structures in the Common Area for Agricultural Use, is required in the covenants, which are required to be reviewed and approved by OPG and City Parks and Recreation.

Agricultural Water User Facilities

13. The subdivision is within the Missoula Irrigation District (MID). An irrigation ditch runs along the northern boundary of the property within a 20' Irrigation Ditch Easement.
14. According to the Missoula Irrigation District (MID), each lot will continue to be assessed for irrigation water following subdivision. City Subdivision Regulations Article 3-6(2)(A) does not require irrigation ditch easements for water delivery to individual lots in subdivisions with an average lot size under one acre as long as lot owners are notified of the ongoing assessment in a manner acceptable to the governing body. Article II, Section 18 of the covenants includes this notification.

Conclusions of Law:

1. The required common area for agricultural use mitigates the subdivision's impact on agriculture.
2. The 20' Irrigation Ditch Easement on the plat complies with the ditch easement requirement in City Subdivision Regulations Article 3-6(3).

CRITERION 2: EFFECTS ON LOCAL SERVICES

Roads

Findings of Fact:

South 7th Street West

1. The property is located along the north side of South 7th Street West, approximately 600' west of Tower Street. It is classified as a collector street at this location.
2. Collector street standards in the Subdivision Regulations require a minimum 36' street width (back-of-curb to back-of-curb). The subdivider proposes to build South 7th Street West to a 16' half-street width from back-of-curb to centerline, and therefore requests a variance. City Engineering recommends denial of the variance request.
3. A condition of approval requires review and approval of plans for reconstructing South 7th Street West to an 18' half-street width adjacent to the subdivision.
4. City Engineering comments that a no-access strip along South 7th Street West should be indicated for the lots along South 7th Street West, which is included in a condition of approval. City Engineering verbally commented that existing driveway access for Lot 1 was sufficient conditioned upon the driveway being paved prior to final plat approval.

Chickasaw Loop

5. Chickasaw Loop is proposed as a 32' wide loop road to serve the subdivision. City Subdivision Regulations Article 3-2(3) requires a minimum 26' wide roadway.
6. A condition of approval requires plans for construction of Chickasaw Loop to be reviewed and approved by City Engineering prior to final plat approval.

Through Connection to Stallion Lane

7. The Chickasaw Place plat shows a 60' wide conditional right-of-way per Otto's Acres, a subdivision under county jurisdiction that was filed in 2001. The conditional public access easement is intended to provide a through connection upon subdivision development to the south (the Chickasaw Place parcel).
8. The nature of the Otto's Acres conditional public access easement is indicated with the following language on the face of the plat: "The owners dedicate a 60 foot right-of-way for purposes of a public roadway over and across Lot 3 and Lot 4 of Otto's Acres, as shown on the subdivision plat of Otto's Acres, conditioned upon said right-of-way being used as a roadway at the time that it is needed to serve future subdivision on Lot 3, Lot 4 or the parcels to the south of Otto's Acres. The lot owners and future owners of lots in Otto's Acres will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the south. Further, that no access of any type will be allowed across the easement until the area shown as conditional public easement is opened for public access, as required by the Missoula County Commissioners. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway."
9. City Subdivision Regulations Article 3-2(1)(F) requires a subdivision's circulation pattern to accommodate the circulation demands of the proposed development, adjacent land uses, parcels of land in the immediate area and area-wide transportation plans. Article 3-2(13) requires developments with circle or loop streets to provide non-motorized access easements which connect the ends of these streets with each other or provide non-motorized access to present or reasonably-expected future streets.
10. Opportunities for opening Stallion Lane within the Conditional Public Access Easement include subdivision of the parent parcel proposed as Chickasaw Place. Future annexation of parcels to the north on either side of the Stallion Lane Conditional Public Access Easement within Otto's Acres at the time of subdivision development would provide other opportunities. In this scenario the Missoula City Council could order in public road

improvements and assess properties based on benefit, or implement a Special Improvement District for public roadway improvements. The Otto's Acres plat includes a waiver of the right to protest an RSID/SID for future improvements to Stallion Lane.

11. City Engineering and City Parks and Recreation recommend that Chickasaw Loop be connected to Stallion Lane. A condition of approval requires the through connection to be constructed to local street standards with curb, gutter and sidewalk improvements. These improvements would terminate at the northern boundary of the Chickasaw Place Subdivision, as the property to the north is within Missoula County jurisdiction. The construction of the final connection of Stallion Lane in Otto's Acres could occur with Missoula County approving an RSID, or in the future if properties to the north requested annexation or subdivision.

Driveways and Turnarounds

12. Lot 1 will be served by an existing driveway. A condition of approval requires paving of this driveway prior to final plat approval.

Other

13. The plat contains an RSID/SID waiver for future improvements to South 7th Street West and Chickasaw Place.
14. This property is currently within the Missoula Urban Transportation District and is served by Route 9.
15. City Engineering recommends cluster mailboxes for this subdivision. Cluster mailboxes are required in a condition of subdivision approval.
16. Stormwater disposal via roadway sumps is proposed. Review of grading, drainage and erosion control is required in a condition of approval.
17. Conditions of approval require land to be set aside as agricultural open space in locations proposed for residential lots. The conditions of approval allow for lot recuperation in areas not occupied by the required agricultural open space. Streets built to access the lots as newly configured are required to meet the standards of the City Subdivision Regulations.

Conclusions of Law:

1. South 7th Street West and Chickasaw Place meet required public road standards if the recommended conditions are adopted.
2. Construction of the required through connection to the north boundary of the property brings the property into compliance with City Subdivision Regulations Articles 3-2(1)(F) and 3-2(13).

Pedestrian Access

Findings of Fact:

South 7th Street West

1. The applicant proposes 5' sidewalks with 7' boulevards along South 7th Street West. Collector Streets are required to have a minimum 6' wide sidewalk and 10' wide boulevard width per City Subdivision Regulations Article 3-2(15)(B). Staff does not support the variance, and a condition of approval requires installation of 6' wide sidewalks with 10' wide boulevards. The condition allows for the sidewalk to meander in order to avoid power poles and trees as recommended by Jackie Corday of City Parks and Recreation.
2. The boulevard sidewalks proposed do not fit within the existing South 7th Street West right-of-way, and therefore additional sidewalk easement beyond the right of way will be required. This requirement has been included in the condition of approval.

Chickasaw Loop

3. The applicant proposes 5' concrete boulevard sidewalks with 7' wide boulevards on both sides of Chickasaw Loop. City Subdivision Regulations Article 3-2(15)(B) require minimum 5' wide sidewalks and 7' wide boulevards along local streets.
4. A condition of approval requires review and approval of plans for 5' wide sidewalks with minimum 7' wide boulevards along both sides of Chickasaw Loop.

Stallion Lane Extension

5. The Otto's Acres plat shows a 60' wide conditional public access easement that extends to the northern boundary of this subdivision. Stallion Lane is a county public road that has the potential of being extended within this easement area.
6. City Engineering recommends that full improvements, including sidewalks, be constructed to the northern boundary of the Chickasaw Place Subdivision aligned with Stallion Lane. City Parks and Recreation also recommends a street connection between Stallion Lane and Chickasaw Loop. In the event that a city-standard street is not approved, City Parks and Recreation recommends a 20' wide public bike/ped easement with a 6' wide asphalt trail in order to provide a through connection to the north. The City-County Health Department comments that a 20' wide non-motorized access easement shown on an earlier version of the subdivision should be retained in order to facilitate pedestrian connection to the north.
7. City Subdivision Regulations Article 3-2(1)(F) requires a subdivision circulation pattern to accommodate the circulation demands of the proposed development, adjacent land uses, parcels of land in the immediate area and area-wide transportation plans. Article 3-2(13) requires developments with circle or loop streets to provide non-motorized access easements which connect the ends of these streets with each other or provide non-motorized access to present or reasonably-expected future streets.
8. Full road and pedestrian improvements aligned with Stallion Lane and terminating at the northern boundary of Chickasaw Place are required in a condition of approval.

Other

9. City Subdivision Regulations Article 3-2(15)(B) requires street trees to be planted within boulevard areas. This is required in a condition of approval.
10. A condition of approval requires common area to be set aside to mitigate impacts to agriculture. A separate condition allows lot recuperation in areas outside of the required common area location. Any pedestrian facilities proposed as part of the subdivision reconfiguration are required to conform to the standards in the subdivision regulations.

Conclusions of Law:

1. The required 6' wide sidewalk with 10' wide boulevard brings the subdivision into compliance with Collector street sidewalk standards in City Subdivision Regulations Article 3-2(15)(B).
2. The proposed 5' wide sidewalk with 7' wide boulevard for Chickasaw Loop is compliant with local street sidewalk standards in City Subdivision Regulations Article 3-2(15)(B).
3. The required through connection to the north boundary of the property brings the property into compliance with City Subdivision Regulations Articles 3-2(1)(F) and 3-2(13).

Water & Sewer Systems

Findings of Fact:

1. The proposed subdivision will be served by Mountain Water, which confirms it will provide water to this development. Water lines will be extended to the subdivision from South 7th Street West.

2. The developer proposes to connect all lots to City sewer. Sewer lines will be extended to the subdivision from the north.

Conclusion of Law:

1. Review of water and sewer systems is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

Parks and Recreation

Findings of Fact:

1. The subdivision application indicates that the parkland dedication requirement for this subdivision is 0.69 acre.
2. The applicant is proposing 1.3 acres of common area in the northeast corner of the subdivision. This is labeled as Agricultural Open Space.
3. Jackie Corday, Open Space Coordinator for City Parks and Recreation, noted that the 1.3 acres set aside for agricultural open space was not of a sufficient size or location to be suitable for farming according to CFAC. Therefore they are not in support of the proposal. City Parks and Recreation would continue to support cash-in-lieu of parkland as proposed in a former draft of the subdivision layout, particularly considering the small dedication requirement and the proximity of the Big Sky Community Park and the Tower Street Conservation Area.
4. City Subdivision Regulations Article 3-8(5) allows the governing body, in consultation with the Planning Board or the Park Board, upon giving due weight to the expressed preference of the subdivider, to determine whether the park dedication must be a land donation, a cash donation, or a combination of both.
5. City Parks and Recreation commented that the 1.3 acres dedicated as agricultural open space was inadequate, but that a larger dedication, including roughly the eastern 5 acres of land on the east side of the property while allowing development on the western half, would be adequate. If the governing body supports this or a similar proposal, City Parks and Recreation would be supportive of counting the larger amount of dedicated open space.
6. Discussions with members of CFAC confirmed that a minimum of 3 contiguous acres of farmland, if set aside as a portion of the southeastern 5 acres of the property, would constitute a viable amount of farmland on the site. Jackie Corday commented that City Parks and Recreation would therefore recommend that this area fully count toward the required parkland dedication.
7. A condition of approval requires roughly 3 acres in a location recently farmed in the southeastern portion of the property to be set aside for agricultural/open space purposes, including the well area.

Conclusion of Law:

1. The proposed subdivision meets the required standards for parkland dedication in City Subdivision Regulations Article 3-8(5) with the required expansion of the area dedicated as common area for agricultural use.

Schools

Findings of Fact

1. The applicant estimates that 13 school-aged children will be added to the Missoula County Public School District with this subdivision.
2. Children from this subdivision will attend Hawthorne Elementary School, C.S. Porter Middle School and Big Sky High School.
3. Rachel Vielleux, Missoula County Superintendent of Schools, had no comments on the subdivision.

Conclusions of Law:

1. No adverse impacts on schools requiring mitigation have been identified.

Fire Department

Findings of Fact:

1. Upon annexation, the subdivision will be located within the jurisdiction of the Missoula City Fire Department. The nearest fire station is within the Missoula Rural Fire District on South Avenue, roughly 2 miles away.
2. Missoula City Subdivision Regulations Article 3-7 establishes options for fire protection purposes, including residential sprinkler systems and fire hydrants. The applicant is proposing fire hydrants along South 7th Street West and Chickasaw Loop.
3. The City Fire Marshal comments that hydrant placement must be approved by the Missoula Fire Marshal, and that hydrants must be in place prior to commencement of combustible construction.
4. A condition of approval requires plans for hydrant locations to be reviewed and approved by the City Fire Department prior to building permit approval. Hydrants are required to be installed prior to combustible construction.
5. The City Fire Marshal comments that address signs shall be visible from the street. Temporary address signs will be required during construction. This requirement is addressed in a condition of approval.
6. The City Fire Marshal will require maintenance of a minimum 20' unobstructed width within subdivision roadways. This will be accomplished through the proposed 32' wide Chickasaw Loop allowing for 6' of parking on each side.

Conclusion of Law:

1. Fire service is available to the subdivision if the recommended conditions are adopted.

Law Enforcement

Findings of Fact:

1. Upon annexation, the subdivision will be located within the jurisdiction of the Missoula Police Department.
2. The Missoula City Police Department provided comment via a CPTED Analysis (Crime Prevention Through Environmental Design). They recommend general design strategies that include natural access control, natural surveillance and territorial reinforcement.

Conclusion of Law:

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

CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT

Findings of Fact:

1. The subject property includes a dwelling and land formerly in various agricultural uses. Outbuildings associated with the agricultural land have been removed.
2. Mature black cottonwood trees exist on the northern end of the property. Following a site visit Jackie Corday of City Parks and Recreation notes her support of removal of some of the dead and decadent trees (snags or live trees with dead limbs) on the property for health and safety reasons. A condition of approval permits removal of dead or decadent cottonwood trees on residential lots after the nesting season in question.
3. Montana Fish, Wildlife and Parks (FWP) recommends covenant language intended to prevent human/wildlife conflicts and acknowledge the natural setting in general proximity to the Clark Fork River. This language has been included in the covenants as recommended by FWP.

Weeds

4. A site visit confirmed the presence of knapweed on the site. Field Bindweed is also present according to Josh Slotnick, who recently farmed the eastern portion of the property in 2005.
5. Bill Otten of the County Weed District commented that the ground disturbance created by constructing the subdivision will require the applicant to develop a revegetation plan, which is included as a condition of approval.
6. Bill Otten confirms that the proposed covenants satisfy Weed District requirements pertaining to noxious weed control and revegetation.
7. State law requires continuing weed management on properties. Weed management will need to occur on lots prior to their development in addition to the required (expanded) agricultural open space area when this area is not under cultivation.
8. A condition of approval requires an ongoing plan to address weed management in the undeveloped and open space areas of the subdivision, and requires the developer to be responsible for its implementation until enough development has occurred to support the Homeowner's Association. Weed management duties are assumed by the Homeowner's Association from that time forward, continuing through full subdivision buildout.

Conclusions of Law:

1. Impacts to the natural environment, wildlife, or wildlife habitat will be minimized if the recommended conditions are imposed.
2. The subdivision complies with weed control requirements in state law with implementation of the conditions of approval.

CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

General

1. The City of Missoula Fire Department will serve the property. The Missoula Police Department will provide law enforcement services.
2. This subdivision is within the Missoula Wastewater Treatment Plant Service Area (MWTPSA). It is the applicant's intent to connect to city sewer.
3. The property is located within the Air Stagnation Zone. The City-County Health Department comments that all new driveways must be paved 20' back from the edge of the pavement or right of way boundary, whichever is greater. A condition of approval requires paving of the driveway serving Lot 1.
4. The City-County Health Department comments that the EPA has designated Missoula County as having a high radon potential and recommends that all new construction incorporate radon resistant construction features. This language has been included in the covenants.

Conclusions of Law:

1. Emergency services, water, and sanitation are available to the subdivision.
2. Adverse effects on public health and safety as a result of this subdivision will be mitigated if the required condition of approval is adopted.

C.) COMPLIANCE: This subdivision complies with:

1) SURVEY REQUIREMENTS

Findings of Fact

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

1. This proposal meets the survey requirements.

2) SUBDIVISION REGULATIONS

Findings of Fact

1. Subdivisions are required to comply with the local subdivision regulations provided for in part 4 of M.C.A. 76-3.

Conclusion of Law:

1. The developer has submitted a plat which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

3) REVIEW PROCEDURE

Findings of Fact

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula City Subdivision Regulations.
2. Notice of public hearing of this major subdivision was published in the *Missoulian* on January 18th and 25th, 2009 and in the *Missoula Independent* on January 15th and 22nd, 2009. Certified letters were mailed to adjacent property owners on December 23rd, 2008. Two posters were placed on the property boundary on January 15th, 2009.
3. The Missoula Consolidated Planning Board held a public hearing on the subdivision on February 3, 2009.
4. The Missoula City Council held a public hearing on the subdivision on February 23, 2009. The 60-day deadline is February 23, 2009.
5. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty days of such decision. The application shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a contiguous landowner, an owner of land within the City of Missoula who can establish a likelihood of material injury to property or its material value, or the City Council. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

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

D) PROVISION OF EASEMENTS FOR UTILITIES:

Findings of Fact:

1. Northwestern Energy provides electricity to the subdivision. Qwest provides telephone service.
2. Public utility easements are located within the South 7th Street West and Chickasaw Loop rights-of-way.

Conclusions of Law:

1. The provision of easements for utilities will be met by this subdivision.

E) PROVISION OF LEGAL AND PHYSICAL ACCESS:

Finding of Fact:

1. Physical and legal access will be provided to the subdivision via South 7th Street West and Chickasaw Loop.
2. A driveway provides access for Lot 1 onto 7th Street West.

Conclusion of Law:

1. The proposal meets physical and legal access requirements.

1. A variance request from Section 3-2(15)(A) requiring installation of 6' concrete sidewalks and 10' boulevards along South 7th Street West.

RECOMMENDATION

The Office of Planning and Grants recommends **denial** of the variance request, based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health or welfare, and is not injurious to other persons or property.

A 5' wide concrete sidewalk with 7' wide boulevard may be a threat to public health, safety and welfare due to South 7th Street West's classification as a Collector street.

B. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.

There appear to be no unique conditions on the property, and the required condition allows some meandering of the sidewalk and boulevard width to accommodate existing obstacles (trees, etc.)

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations is enforced.

None of these elements have been demonstrated to create a hardship.

D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolutions or the Missoula County Comprehensive Plan or master plan areas.

The requirement for boulevard sidewalks is consistent with Comprehensive Plan goals.

E. The variance will not cause an increase in public costs.

If the variance is granted, boulevard sidewalk installation would most likely be built through a publicly funded mechanism, such as a Special Improvement District (SID), which would have some impacts on public costs.

VII. ATTACHMENTS

A. Project History Form

B. Agency Comment not included in Application Packet

1. Mountain Line, Oct. 1, 2007

2. Qwest, Oct. 1, 2007

3. Community Food & Agriculture Coalition (CFAC), May 14, 2008

4. Missoula Irrigation District, undated (received Sept. 15, 2008)

5. City Parks and Recreation (Jackie Corday, Open Space Coordinator), Jan. 28, 2009

C. Public Comment

SUBDIVISION REQUEST PROJECT HISTORY

Project : Chickasaw Place
Applicant: George Lake
Representative: WGM Group, Inc.

	Dates		
Scoping/ Pre-application Meetings	05/08/07 Preapp w/ WGM Group Present: Tim Worley (OPG), Kristin Smith (WGM)		
Neighborhood Meetings	05/31/07 Neighborhood meeting held at Orchard Homes Country Life Club		
Element & Sufficiency	Submitted	Mailing from OPG	Certified-Y/N
1 st Element	08/17/07	09/13/07	N
2 nd Element	09/14/07	09/21/07	Y
1 st Sufficiency	-----	10/23/07	N
2 nd Sufficiency	04/23/08	05/16/08	Y
<i>Project Restarted</i>			
1 st Element	08/12/08	08/19/08	N
2 nd Element	08/21/08	08/21/08	Y
1 st Sufficiency		08/25/08	N
2 nd Sufficiency		11/07/08	N
3 rd Sufficiency	11/17/08	11/25/08	Y
Submittal	Received 12/03/08	Accepted 12/03/08	35/60 Day Deadline 02/23/09
Planning Board	02/03/09		
Planning Status/ PAZ	02/11/09, 02/18/09		
BCC/CC	02/23/09		
Public Notice	Poster 01/15/09	Legal Ad 01/18/09, 01/25/09 (Missoulian); 01/15/09, 01/22/09 (Independent)	APO letters 12/23/08