

September 2020  
Prepared by  
WGM Group

# Montana Planning Board Member's Handbook



**MONTANA**  
DEPARTMENT OF COMMERCE

# INTRODUCTION

To all the planning board members in the state of Montana, we thank you for volunteering your time to do this important work in your community!

This planning board handbook is a practical guide for new planning board members as well as those with more experience.

Many planning board members come to the position without any training or experience in planning, land use regulations, or serving in an official public role. For many planning board members, fulfilling their roles can feel like a constant game of catch-up.

Our intent is to provide a handbook that covers a broad spectrum of planning board roles and point you in the direction of other resources for more detail. In particular, we recommend you become familiar with your local growth policy, local subdivision regulations, other regulations for which you are responsible, and applicable Montana statutes. These statutes authorize planning boards and provide many details regarding how to conduct meetings, review subdivisions, and prepare growth policies. All Montana statutes are subject to change with every legislative session and hardly a session has passed without some change to land use law. It can be a challenge to prepare a handbook that can last over time and still reflect principles of state statute.

This handbook is an update of a previous version prepared in 2009. Much of what is in that version is still valid and much is incorporated into this document. We have worked to make this version a little more reader-friendly, with fewer technical details, such as excerpts of exact language of state statute. We have, however, worked assiduously to ensure requirements of state statute as it exists in 2020 are the foundation for what is presented here, along with solid general principles that apply to planning boards across the nation.

This resource book is clearly not intended to provide a comprehensive review and explanation of all the detailed nuances of Montana's land use law. If you would like additional information about a specific topic, please refer to the resources in the appendices. This book does not replace the legal advice of the city or county attorney.

Again, thank you for your interest and dedication to the planning board in your community!

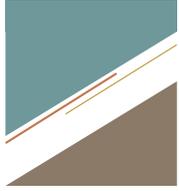
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# CHAPTER 1: PURPOSE & IMPORTANCE OF A PLANNING BOARD

## What is a Planning Board?

A planning board is a group of citizens who advise on planning, land use, and community development for towns, cities, and counties. The governing bodies of the local jurisdiction appoint them. The governing body of a county is the board of county commissioners and the governing body of a city or town is the city council or city commission. The planning board is an advisory board; the governing body makes decisions on land use matters.

In Montana, each planning board has a legally defined area for which it is responsible, the planning board's "jurisdictional area." The jurisdictional area can be a city, a county, or a combination of cities, or cities and counties. The number of planning board members and what jurisdictions they represent varies by what is included in the planning board's jurisdictional area.

## Why Have a Planning Board?

Governing bodies rely on the advice of planning boards for informed citizen-level perspectives on land use matters including subdivision review and growth policies.

An informed planning board with members who can represent various local interests helps pave the way for better decision-making. Informed planning board members understand the need for planning and land use regulations at a deeper level than the general public. New planning board members may not be more informed than the public when they first get on the board but they have a responsibility to learn over time. This handbook provides guidance for both new and more experienced members.

As a group, planning board members represent a balance of the various interests and perspectives in the community. Planning boards often are the first public body to hear comments from the public on a proposed action. Governing bodies rely on planning board recommendations to objectively consider public comment, staff input, and compliance with local plans and regulations. Although final decisions rest with the governing body, planning board recommendations are a crucial step in that process.

Planning boards are not just a good idea; in Montana they are required by state statute (Montana Code Annotated or MCA) for certain actions.

Planning boards  
in other states  
are called  
"Planning  
Commissions."

One of the first  
planning boards  
was created  
in 1902 in  
Cleveland, Ohio.

## Planning Board Role on Land Use Matters – Montana Requirements

This section provides more information on what Montana statute requires planning board members to do on certain land use matters. This section also identifies other planning board activities that are authorized, but not required, in Montana statute.

Although there are several land use matters that involve a planning board, most planning board members are involved in only a few. Some of the requirements apply only in counties and some apply only in cities.

In most Montana communities, planning boards spend more time on subdivision review than any other function. Developing and implementing growth policies is typically next in terms of work effort. Because these two functions comprise such a major portion of planning board efforts, separate chapters on growth policies and subdivision are included later in this handbook.

### Growth Policy

A growth policy is a long-range plan that guides decisions regarding the community's physical development. Planning for the development of land, roads, water, sewer, and other services is an important part of a growth policy.

Planning board role: The planning board is the entity responsible for preparing the document, holding a public hearing and submitting a recommendation to the governing body. (MCA 76-1-603)

### Subdivision

Subdivision, generally speaking, is a division of land into parcels intended for sale or other transfer of ownership. The plat is the document that creates the land into subdivision lots.

Planning board role: In jurisdictions that have adopted a growth policy and subdivision regulations, the governing body is required to seek the advice of the planning board on subdivision review. In addition, the planning board can provide recommendations on subdivision regulations. (MCA 76-1-107 and MCA 76-1-106)

### Zoning

Zoning regulates land uses and its primary purpose is to segregate incompatible uses. It can also address building dimensions and siting on a lot. In traditional zoning, the segregation of uses is accomplished by mapping use districts, such as residential, commercial, or industrial.

Planning board role: If county commissioners propose an area within the county to be zoned, statute requires the commissioners to ask the planning board to develop and recommend boundaries and regulations. Planning boards also can function as a zoning commission for municipalities. (MCA 76-1-108 and MCA 76-2-204)

## MONTANA STATUTE ON PLANNING BOARD ROLE

The statutory requirements discussed in this planning board handbook are those in the 2019 Montana Code Annotated (MCA). The statutory requirements may change over time as the legislature reviews and makes changes to portions of the MCA every two years. Appendix A includes more information on where to find the statutory requirements applicable to planning boards.



## Lakeshore Regulations

Lakeshore regulations address activities on the perimeter of lakes that could affect water quality, fish or wildlife habitat, recreation, public safety, or scenic values. Proposed activities that meet requirements for impacts are issued permits to construct. Activities that need lakeshore regulations include dredging, filling, or construction of various types including wharves, pilings, or docks. (MCA 75-7-201, 204, and 208)

Planning board role: When counties have planning boards, the governing bodies are required to seek the planning board's recommendations on lakeshore regulations and on the issuance of lakeshore permits. (MCA 75-7-207 and 211)

## Urban Renewal District Plans

An urban renewal plan is a plan for an area that has become blighted in an incorporated city or town. One of the major reasons for creating an urban renewal district is to utilize the tax-increment financing provision, which can target property tax revenues to address public infrastructure in the blighted area.

Planning board role: Statute requires planning board members to review a proposed urban renewal plan for conformity with the growth policy and make a recommendation to the governing body of the city. (MCA 7-15-4213)

## Conservation Easements

A conservation easement is a voluntary legal agreement that a landowner enters into to restrict the type and amount of development that may occur on his or her property.

Planning board role: Before a landowner can record a conservation easement with the clerk and recorder, the easement must be submitted to the planning board for review and comment regarding how the easement aligns with the growth policy. The conservation easement may be recorded after the landowner receives comments or after 90 days have elapsed since the time the easement was submitted to the planning board, whichever comes first. This is the one review process in which the planning board operates on its own, rather than making recommendations to the governing body. By statute, planning board comments on conservation easements are non-binding. (MCA 76-6-206)

## Authorization to Develop Other Policies and Requirements (MCA 76-1-106)

In an advisory capacity, the planning board can develop and propose policies and requirements for the following:

- Subdivision regulations
- Regulations for the development of public streets/roads, public facilities, public buildings and public-private utilities
- Plans for public infrastructure, including roads, water, sewer, parks, etc.

## Advice on Other Land Use Matters (MCA 76-1-102)

Planning boards may be requested to advise on other plans and actions related to community development and the health, safety, and welfare of residents.

**Other Plans** – There are a variety of other plans that the planning board may be asked to review for compliance with the growth policy. Examples include capital improvement plans or downtown master plans. More information on these other plans is included in the next chapter on growth policies.

**Zoning Amendments** – Even when the planning board has no other responsibility for zoning, it is a good idea to have a planning board review new zoning or proposed changes for compliance with the growth policy. All municipal zoning must be based on guidance in the growth policy. (MCA 76-2-304)

## Planning Board – Overview of Creation, Organization, and Staffing

This section provides a brief overview of the planning board organization. Chapter 6 provides more detail on each of the following topics.

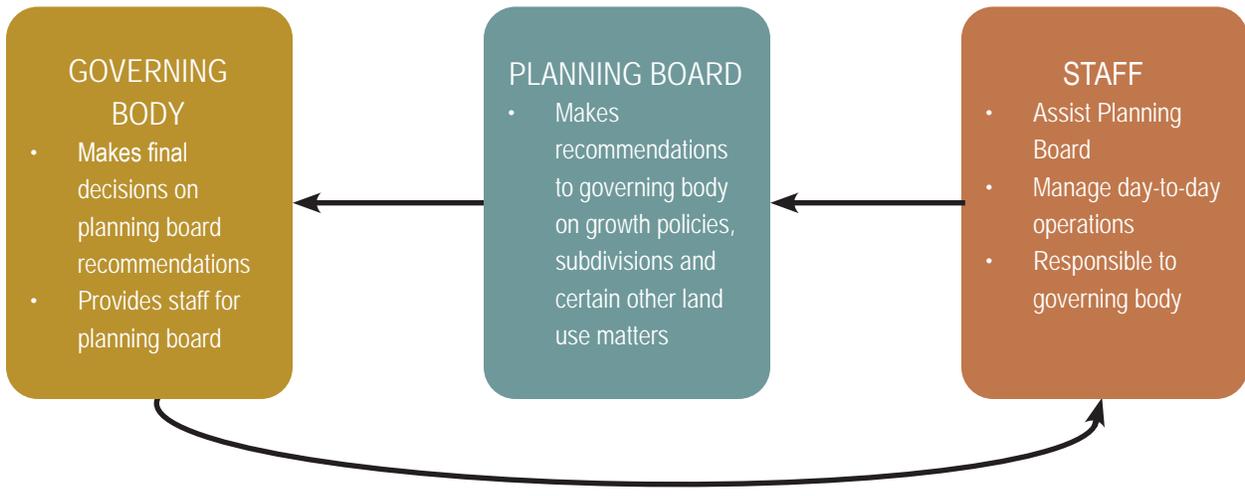
**Bylaws** – State statute instructs planning boards to develop “regulations” for planning board affairs. Planning boards adopt and operate under bylaws to fulfill this statutory duty.

**Governing Body** – The governing body establishes the planning board and appoints members. The planning board serves in an advisory capacity to the governing body. The planning board can make recommendations on land use matters, but the governing body makes the final decisions. The governing body is responsible for final decisions on budget and work plans that the planning board may recommend for planning related activities.

**Staff** – State statute recognizes that planning boards will need staff and requires governing bodies to provide staff. Staff typically administer local regulations and prepare detailed written reports for planning board review on proposed subdivisions, growth policies, and other land use matters. Chapters 2 and 3 contain more information on the role of staff in growth policies and subdivision review.

**Consultants** – Consultants may be hired by the governing body on a long-term basis to fulfill the role of staff or to work on shorter-term special projects, such as updating a growth policy or subdivision regulations.

## WORKING RELATIONS



## Planning Board Fundamentals

This planning board handbook provides information on planning board roles in growth policies, subdivisions, meetings, hearings, and general board operations. The following are fundamentals to guide how you act in any task you take on as a board member.

### 1. Act in the Public Interest

Planning board members must act and make decisions in the “public interest.” The public interest represents the benefits to society rather than to a certain group or an individual. For the planning board, the society is the community that you serve in your jurisdictional area.

The actions of the planning board should be transparent to the public. Part of acting in the public interest is ensuring that the public has the right to know about proposed actions and is provided an opportunity to review documents and submit comments prior to a decision. Public right to know and right to participate are embedded in the Montana Constitution.

### 2. Provide Objective Decisions

Objective, reasonable decision-making based on facts is fundamental to sound and legally defensible decisions. Objective, reasonable decisions also are fundamental to acting in the public interest.

Every decision on a land use application reviewed by the planning board should have a written record, called “Findings of Fact.”

### 3. Understand Plans and Regulations

Planning board members need to understand the basics of land use planning and the purpose of regulations. Read and be familiar with the local growth policy, local subdivision regulations, and any other regulations and plans the planning board deals with on a regular basis. Doing so will help to ensure objective decision making.

### 4. Work to Update Local Regulations to Conform to State Statute

Much of what you review as a planning board member is explicitly required by Montana statute. Montana land use statutes have been changed in nearly every legislative session for the past 20 years. Those changes can affect the scope of local land use decisions and how communities make those decisions. If local regulations, including subdivision regulations, are not updated to conform to state statute, it can result in confusion and potential legal issues.

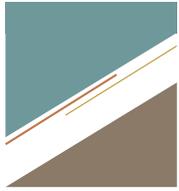
Work with planning board staff to identify needed updates. Communicate with the governing body about any need for changes and advocate for local regulations and planning processes to continually reflect current state law.

### 5. Involve the Public and Build Awareness

Encouraging public involvement, communicating the value of planning, and consensus building are important for planning board members. Planning board members learn what is important to everyone in the community by listening to citizens' concerns, especially those concerns of differing views. A planning effort should involve as broad a segment of the community as possible to assure that the community's opinions are heard. Consensus on issues can be difficult to achieve, and when it is not possible, demonstrate leadership in working toward compromise.

Promoting transparency and openness  
is critical to building trust in government.

– International City/County Management Association,  
excerpted from the “Checklist for Building Trust and Confidence in the Community”



## CHAPTER 2: PLANNING BASICS – THE GROWTH POLICY

This section and the following sections provide some key points for planning board members to know about growth policies. The Montana Department of Commerce has prepared a separate Growth Policy Handbook that is a far more detailed resource.

### Why Plan?

There are many reasons for a community to undertake land use planning; the following are some of the most important:

#### Ten Reasons to Plan:

1. Good planning helps communities drive constructive change – starting with a broad vision, developing achievable goals, and realizing them builds credibility and support for planned projects.
2. Communities that do not actively plan can be left behind.
3. Planning improves results – successful communities build momentum by undertaking priority projects that align with the community vision.



4. Planning identifies pressing issues and available resources – and makes sure that initiatives are not redundant or going in different directions.
5. Anticipating is more cost effective than reacting to problems – planning paves the way for more efficient use of local services and infrastructure. Unplanned spatial patterns are inefficient and require more resources to maintain. Communities can save tax dollars with good planning.
6. Planning provides predictability and fairness – for citizens, elected officials, city staff, and the development community regarding future development.
7. Provides more consistency for private development – identifies where and what type of development is desired, making it easier for private individuals to assess the costs and benefits associated with selling or developing land.
8. Provides for ensured continuity of plans through political cycles – establishing a stable road map and priorities that are acted upon, producing results and instilling public confidence.
9. Planning positively impacts the economy – communities compete to attract investment with a view to create and maintain jobs. Planning coordinates spatial location and distribution of economic activity.
10. Planning can help conserve landscapes that provide important public benefits such as wildlife habitat, storage of floodwaters, groundwater recharge and view sheds that would be difficult and expensive to replace if damaged.

## Growth Policy: Purpose and Content

In Montana, a growth policy – often referred to in other states as comprehensive plans, master plans, or general plans – is the plan that describes the community's long-term vision and the general steps needed to achieve the vision. The term growth policy is equally applicable to Montana communities that are experiencing dramatic population increases and those that have static or declining populations. All communities can benefit from establishing a vision for their future.



Hurcal - stock.adobe.com

**MY COMMUNITY IS NOT GROWING... WHY HAVE A GROWTH POLICY?**

Communities with no population growth or declining populations need growth policies to help plan for the future, at a minimum to address aging infrastructure. More positively, growth policies can stimulate a vision for what the community wants to become and identify steps to achieve the vision.

State statute has a long list of required contents for a growth policy.

The following content requirements are of particular interest to planning boards for their roles in growth policy implementation and reviewing other plans and regulations for conformance with the growth policy:

### Vision for the Future

Although not required, many growth policies include a generalized description of what the community would like to see for the future.

### Goals and Objectives

Includes discussion of future land use, specific goals and objectives, and may include a future land use map – these are important for the planning board when considering whether a particular action or plan complies with the growth policy or when establishing new or considering changes to existing zoning.

### Implementation Strategy

These are the action steps needed to implement the growth policy, which may be accompanied by a schedule or priority ranking.

### Provisions for Revising or Updating the Growth Policy

These provisions trigger when the growth policy needs updating. The role of the planning board is the same for updating/revising a growth policy as it is for developing the original growth policy.

### Subdivision Specifics

The growth policy must include specific content for subdivisions, as follows:

1. **“608(3)(a) criteria:”** The growth policy must define the criteria for reviewing subdivisions. These criteria are referred to as 608(3)(a) criteria, a reference to MCA 76-3-608, the portion of state law that require subdivision regulations to include criteria to assess the impact of subdivisions on agriculture, agricultural water user facilities, local services, natural environment, wildlife, wildlife habitat, and public health and safety.
2. **Public hearing process:** The growth policy is required to identify how public hearings on subdivisions will be conducted. If addressed in subdivision regulations or planning board bylaws, those documents will need to conform to the growth policy’s statement.
3. **Update subdivision regulations:** Statute requires subdivision regulations to conform to the growth policy.

## Planning Board Role in Developing and Updating a Growth Policy

In Montana, a planning board is responsible for preparing or updating a growth policy at the request of the governing body. A community cannot have a growth policy without planning board involvement, but the planning board is not charged with actually writing the document.

Planning boards typically work with staff or consultants who are familiar with statutory requirements for content and process and who have the experience and time to write the plan document.

Planning board members' roles generally include:

- Guiding development of the growth policy overall, with particular attention to the goals and objectives that help achieve the community's vision for the future
- Understanding why a growth policy is important and being able to communicate that to others
- Reviewing draft documents and other growth policy materials
- Discussing drafts and other growth policy items with staff or consultants, as part of scheduled planning board meetings
- Encouraging opportunities for sharing information with the public and obtaining comments to help shape the growth policy before the required public hearing
- Holding a public hearing, and considering comments prior to making a recommendation to the governing body (This last item is a requirement of Montana statute)

## Role of Planning Board in Implementing Growth Policy

The planning board plays an essential role in implementing the growth policy by advising the governing body on planning related issues. Planning boards review to ensure that new actions do not conflict with the growth policy and other plans. When serious conflicts arise due to new facts or data in another plan, it may be time to consider an updated growth policy.



## Planning Board Review of Other Plans

The growth policy is a long-range and comprehensive plan providing general guidance on a broad range of topics. Additional, more detailed planning is needed on some topics. Other plans include the following:

- *Area Plans Amended into the Growth Policy (Neighborhood Plans)*

Growth policies can include specific plans for smaller geographic areas. Referred to as “Neighborhood Plans” in Montana statute, they often are developed after the growth policy has been adopted. Downtown master plans, for example, are adopted in many communities as amendments to the growth policy.

- *Capital Improvement Plans (CIP)*

A CIP is a detailed document that helps communities identify their public facility needs (e.g. water, sewer, roads, buildings), establish priorities for projects, and outline a long-range program for the scheduling and funding of projects. CIPs are important because they provide detailed plans for infrastructure to serve areas and purposes planned for in the growth policy. Many communities use the term CIP for annual or five-year budgets for infrastructure costs. That is not the same as the comprehensive needs assessment and priority-setting in a CIP as described here.

- *Pre-Disaster Mitigation Plans*

Most Montana communities have a pre-disaster mitigation plan because it is a prerequisite for receiving government disaster mitigation funding. A pre-disaster mitigation plan profiles significant hazards to the community and identifies mitigation projects that can reduce those impacts. The purpose is to promote sound public policy to protect residents, critical facilities, infrastructure, private property, and the environment from natural and man-made hazards. These plans contain information that is useful in developing or updating a growth policy or other more specific plans and actions because they identify areas that are unsuitable for certain developments.

- *Annexation Plans/Policies*

An annexation policy or plan assists in providing a comprehensive policy and guidance for city decision-makers regarding annexation. The annexation policy will provide greater detail than the growth policy regarding annexation process and approval criteria, including what areas are desirable or suitable for annexation. The annexation policy should support annexation in areas planned for in the growth policy and determine effective provisions for sewer, water, and other public services.

- *Extension of Services Plans/Policies*

Extension of service plans or policies are developed to outline where services such as police, fire, emergency medical services, solid waste services, streets, street maintenance, and sometimes



water and sewer services, may extend beyond the municipal boundary or existing service area. These plans typically show anticipated development a minimum of five years in the future and how the municipality (or other service provider) plans to extend services.

- *Other Plans: Transportation, Housing, Trails, Parks, etc.*

There is a variety of other plans that communities use at a more detailed level than the growth policy. These include transportation plans that may include bike and pedestrian facilities in addition to vehicle roadways in the plan. Affordable housing has become another planning focus in Montana communities.

## Planning Board Review of Other Actions

Other actions reviewed by the planning board for growth policy compliance include:

- **Regulations**

Land use regulations, such as subdivision and zoning, need to conform to the growth policy. Once a growth policy or updated growth policy is adopted, regulations should be reviewed and updated as needed. Municipal zoning is required to follow the guidance of a growth policy. The subdivision regulation provisions of “608(3)(a) criteria” and subdivision hearing” will need to conform to the update. Other goals, objectives or implementation steps may also necessitate changes.

- **Proposed subdivisions**
- **Conservation easements**
- **Other development proposals**

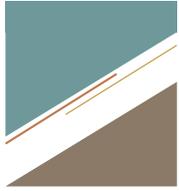
When the planning board reviews and comments on land use proposals, substantial consideration should be given to the growth policy’s goals, objectives, and future land use map.

## Planning Board Role in Monitoring Implementation

Planning boards can play an important role in growth policy implementation.

1. **Provide annual progress reports to the governing body**
2. **Be advocates for moving action strategies forward**
  - Communicate with the governing body on a regular basis regarding growth policy implementation
  - Work with staff to prepare recommendations to the governing body on project priorities, implementation schedule, and identify needed resource opportunities
3. **Be proactive about updates**

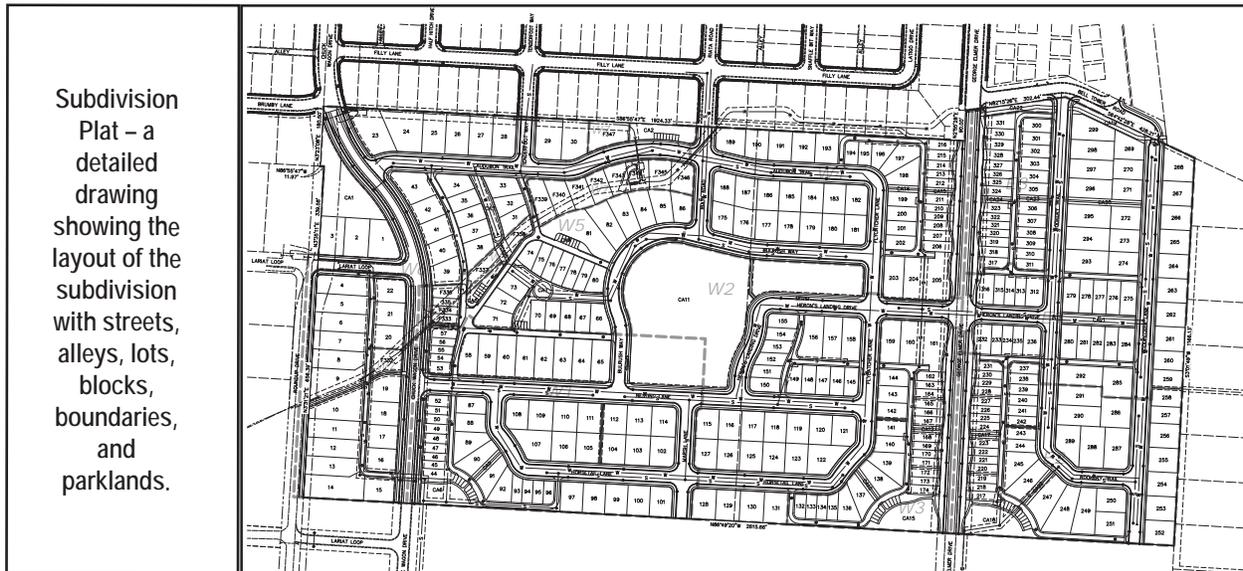
State statute requires growth policies to be reviewed at least every five years to determine if an update is needed. As part of your annual report, review the growth policy criteria for updating a growth policy and determine if updates are needed.



# CHAPTER 3: PLANNING BOARD ROLE IN SUBDIVISION REVIEW

Planning boards typically spend more time on subdivision review than any other responsibility. The planning board's role is to review the application and staff report and make a recommendation to the city council or county commissioners on whether to approve, approve with conditions, or deny the application. The recommendations must be documented with findings of fact that explain the rationale behind the recommendation.

There are two types of subdivisions, minor subdivisions and major subdivisions. Minor subdivisions contain five or fewer lots and do not, and cannot, require a public hearing. Major subdivisions, and subsequent minor subdivisions (Any subdivision of five or fewer parcels that is not a first minor subdivision), require a hearing.



Subdivision Plat – a detailed drawing showing the layout of the subdivision with streets, alleys, lots, blocks, boundaries, and parklands.

City of Missoula - [ci.missoula.mt.us/DocumentCenter/View/52380/21-preliminary-plat?bidId=](http://ci.missoula.mt.us/DocumentCenter/View/52380/21-preliminary-plat?bidId=)

## Subdivision Review Process

The Montana Subdivision and Platting Act, a separate chapter in Montana statute, mandates subdivision review. The review process includes the following steps.

### 1. Pre-Application Meeting

State statute requires local subdivision regulations to include a pre-application process. Typically, staff meet with the client to review the initial proposed subdivision concept and subdivision requirements. Information includes the applicable laws and regulations, growth policy provisions, agencies to contact for comments, and time limits for submitting the application.

### 2. Submitting the Preliminary Plat Application

The requirements for what must be included in an application are included in the local subdivision regulations.

The Montana Subdivision and Platting Act (MSPA) requires local subdivision regulations to list the materials required for an application. The MSPA provides a framework for the types of information that can be required, but allows local governments the latitude to specify exactly what an application must contain and how detailed the information should be.

The following items are generally required in a subdivision application:

- Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, boundaries, utility easements, proposed improvements, and parklands
- A Location or Vicinity Map: Identifies the location of the subdivision within the jurisdiction, and its relationship to the overall community and local services
- A Topographic Map: Showing the subdivision (lots, roads, etc.) in relation to the terrain
- An Environmental Assessment: This provides information needed for assessing the impact of the subdivision on the "608(3)(a)" criteria – agriculture, agricultural water user facilities, local services, natural environment, wildlife, wildlife habitat, and public health and safety
- Preliminary water and sanitation information (as required by the "Sanitation in Subdivisions Act")
- Supplemental Information: including storm-water drainage plans, traffic impact studies, floodplain studies, and groundwater availability analyses all generally compiled by a professional engineer

In addition, local regulations may require information such as:

- A reduced copy of the plat for inclusion in mailed correspondence to adjacent landowners and state and local agencies
- A list of the adjacent landowners

- Copies of proposed covenants and restrictions, if any, to be included in deeds or contracts of sale
- Any approach permits where proposed roads or access points will intersect with public streets or roads
- Fire protection plan
- A letter of approval from the appropriate governing body where a zoning change is necessary (if not handled concurrently with the subdivision proposal)
- Ownership of mineral and water rights associated with the subdivision

### 3. Application Review: Element and Sufficiency

Required by statute, this step determines if the application is ready for review. It consists of two steps: Element Review and Sufficiency Review. Staff are typically responsible for this review.

#### *Element Review*

Staff has five working days to determine if the application contains all of the basic elements required under statute and local regulations. If the application is deficient, staff notify the subdivider in writing and stop processing the application until the required elements are included. If it contains all the required elements, the application may move on to sufficiency review.

#### *Sufficiency Review*

Staff has 15 working days to determine if the material provided is sufficient for agency review. If the material is not sufficient then staff notify the subdivider in writing and stop processing the application. If the necessary elements are provided, then the subdivision review period may begin.

### 4. Site Inspection

A site inspection allows staff, planning board members, and other local officials to view the property in relation to the proposed subdivision and consider the physical features of the site as they relate to the proposed design.



## 5. Agency/Utility Review

Statute requires local subdivision regulations to include provisions for review of the subdivision application by utility companies and local, state, and federal government agencies. The comments help to determine if a proposed subdivision meets other applicable regulations and can provide useful information about impacts to the 608(3)(a) criteria.

## 6. Staff Report

The staff report is the primary document used by the planning board to develop a recommendation to the governing body. Staff reports typically provide five primary parts, an introduction, background information, findings of fact, conclusions of law, and a recommendation for approval, approval with conditions, or denial.

## 7. Public Comment

Prior to making a recommendation to the governing body, the planning board must provide a meaningful opportunity for public review of and comment on the proposed subdivision. The planning board typically does this with a meeting or a hearing. The Montana Subdivision and Platting Act requires at least one public hearing. Many communities have a hearing with the planning board and another with the governing body. Refer to the chapter on “Conducting Meetings and Hearings” in this handbook for more information.

## 8. Preliminary Plat – Planning Board Review and Recommendation

After considering the application, staff report, comments from the applicant, agencies, and the public, the planning board provides a written recommendation. It addresses the following topics: (1) findings of fact about the proposal, (2) conclusions of law regarding compliance with the Montana Subdivision and Platting Act and local subdivision regulations, and (3) whether to approve, conditionally approve, or deny the proposed subdivision. A recommendation for conditional approval is accompanied by the specific conditions for approval, e.g., road construction, parkland dedication, DEQ approval, etc. The board should provide a rationale for the recommendation provided.

This recommendation, along with a copy of the staff report, subdivider’s application, agency and public comments, technical reports, and a written transcript or minutes of the hearing, are provided to the governing body for final action.

## 9. Preliminary Plat – Action by Governing Body

The governing body makes the final decision to approve, conditionally approve, or deny the proposed subdivision. Prior to their final decision, they also provide another opportunity for public comment. If the planning board has not held a public hearing, then the governing body holds the hearing. The governing body’s final decision also includes (1) findings of fact about the proposal, (2) conclusions of law regarding compliance with the Montana Subdivision and Platting Act and local subdivision regulations, and (3) whether to approve, conditionally approve or deny the proposed subdivision.

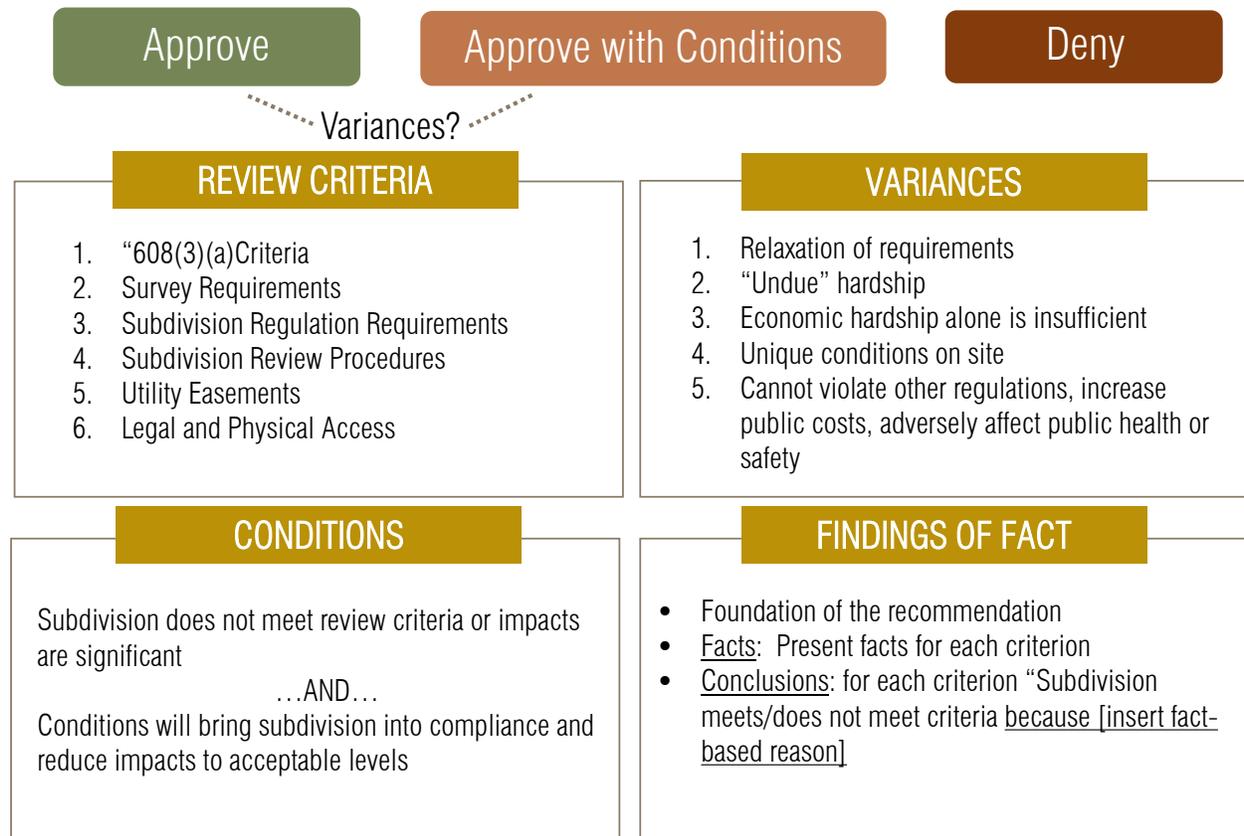
## 10. Final Plat

The governing body reviews the final plat and required materials, including documentation that conditions of approval have been satisfied. The governing body approves a final plat when the subdivision is determined to meet all requirements for a final plat. Requirements for final plats are included in state statute and local regulations. Upon receiving final plat approval, the subdivider may file the plat with the clerk and recorder, and the lots are officially recognized as individual parcels for transfer.

## Planning Board Recommendations

When a planning board makes a recommendation, it will come in one of these three forms:

1. **Approval:** This means that the reviewing body found that the facts and evidence indicate the criteria are satisfied.
2. **Approval with conditions:** This means that the reviewing body has found that the facts and evidence do not demonstrate the criteria are fully satisfied, but, through the application of conditions, the criteria can be satisfied.
3. **Denial:** This means the reviewing body has found that the facts and evidence have not demonstrated that the criteria are satisfied and the application cannot be made to comply with conditions attached to it.



The planning board submits their recommendation with the following information to the governing body:

1. **Findings of Fact**
2. **Conclusions**
3. **Recommendation to Approve, Conditionally Approve, or Deny and include:**
  - The rationale for the planning board's recommendation
  - A list of specific conditions if the recommendation is for conditional approval.
4. **Materials Used in Arriving at the Recommendation**
  - Copy of the staff report
  - Minutes or transcript of the planning board's public hearing or meeting
  - Other comments received
  - Application and materials submitted with the application
  - Technical reports, if any

## Review Criteria

The governing body's decision to approve, approve with conditions, or deny the subdivision must address the following review criteria specified in MCA 76-3-608. The planning board's recommendation must also address these criteria:

- The impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety
- Compliance with the survey requirements of the subdivision and platting act
- Compliance with local subdivision regulations
- Compliance with local subdivision review procedures
- The provision of easements within and to the proposed subdivision for the location and installation of utilities
- The provision of legal and physical access to each parcel within the subdivision, and the required notation on the plat and any instrument of transfer that access is available

## Findings of Fact and Conclusions

Findings of fact provide the facts and reasoning for the planning board's recommendation. "Findings of fact" is a term that originates from the courts, where judges often explain their determinations by issuing documents entitled "Findings of Fact and Conclusions of Law." These documents make conclusions by

applying facts to relevant legal criteria. Like courts, cities and counties need to apply facts to criteria when reviewing subdivisions.

**Findings of fact do the following:**

- Identify the subdivision review criteria
- Explain the relevant facts relating to the subdivision
- Apply those facts to the criteria to reach a conclusion

Sometimes more than one conclusion is possible. If the planning board takes care to develop thoughtful findings of fact that relate to the criteria, then there should be no mystery as to why the city reached the decision it did.

One of the most common reasons counties or cities lose legal challenges on subdivision applications is that findings of fact were missing or inadequate to support the decision that is ultimately made by the governing body. Planning boards can lead the way to more defensible decisions by including sound findings of fact with the planning board recommendation.

If there was no evidence given to prove one or more of the necessary elements, the findings of fact should declare the lack of information. If conditions are proposed, there should be findings that justify them. If the planning board rejects evidence because they believe it to be unreliable, then the planning board should state why it was determined to be unreliable, or why other evidence was more reliable.

The best findings will identify the review criteria, explain fact-by-fact why the evidence does or does not establish that the criteria has been met, and any mitigation efforts offered by the subdivider or proposed by staff. The planning board can determine their own mitigation measures but must provide rationale in the findings of fact. Any mitigation measure needed to meet criteria necessitates a condition of approval.

**A good way to prepare findings is to:**

- Identify all of the applicable criteria
- Discuss each criterion separately and identify:
  - » Facts – Discuss the relevant facts related to the criterion
  - » Conclusion – State whether the subdivision meets the criterion, or if it will meet criterion with specific mitigation measures. A simple way to ensure findings sufficiently connect the decision to legal criteria is to use the word “because” as in the following statement: “The subdivision meets the criteria for legal access because (insert the reason based on the facts) ... ”
- When a criterion is not applicable, state why it is not applicable
- Where there is conflicting evidence, the safest course is to state there was conflicting evidence, and explain the planning board’s rationale for relying on certain evidence

## Conditions of Approval

When a subdivision has an adverse impact on the review criteria, and facts indicate those impacts can be reduced to reasonable levels with mitigation, the planning board can recommend conditional approval.

The findings of fact and conclusions provide the rational connection between the impacts of the subdivision and the steps (conditions) that would provide the appropriate mitigation for those impacts. The findings and conclusions explain why the planning board recommended a condition of approval.

Conditions of approval requiring payment of a fee, the dedication of land, or funding of a public improvement are sometimes referred to as “exactions.” The United States Supreme Court has long held that the regulation of land use, including requirements for exactions and imposition of conditions, does not constitute a “taking” of property if the regulation substantially advances a legitimate governmental interest and does not deny the property owner economically viable use of the land.

The planning board’s recommendation for conditions should have a solid foundation in findings of fact that clearly establish the relationship between the condition and review criteria and standards. Conditions should also reflect a “rationale connection” and “rough proportionality” between the condition and the impact (see inset on “Nollan and Dolan” below).

### Conditions should meet two basic tests:

1. Is there a “rational nexus” that connects the condition to the regulations and is there a legitimate purpose for the condition? (Nollan case)
2. Is there a “rough proportionality” or a reasonable relationship between the condition and the impact caused by the development? (Dolan case)

On the Nollan case, the U.S. Supreme Court determined there must be a connection (a “rational nexus”) between the condition and the applicable regulations. There also must be a legitimate public purpose for the condition and the public purpose must relate to the impact of the specific proposal. The Nollan case involved a building permit for a beachfront residence and the California Coastal Commission’s requirement that the applicant dedicate a 10-foot wide pedestrian easement across the parcel’s beach frontage. The condition was based on a finding that the house would block the view of the beach and would be a “psychological barrier” because the public could not see the beach. The court held the trail dedication constituted a taking. The Court held that, although protection of the public’s ability to see the beach was a legitimate governmental interest, no nexus or connection existed between the identified impact of the project (obstruction of the ocean view) and the easement condition (physical access across a beach). However, the Court stated that requiring the dedication of a viewing spot on the Nollan property might have been legal since there would be a nexus.

*The Nollan case tells local governments that there must be a rational connection between the impact of a proposed development and the condition imposed on it.*

On the Dolan case, the U.S. Supreme Court determined there must be a “reasonable proportionality” between the exaction and the condition based on an individualized determination of the property’s impact. The case involved the doubling of an existing 9,000 square-foot plumbing supply store and addition of 39 paved parking spaces. The city required a 7,000 square-foot dedication for storm water and a bicycle path, based on drainage and bicycle master plans, under the assumption that customers and employees could use the path and it would offset some traffic impact. The city held that flood protection and reduction in traffic congestion are legitimate public purposes and that the conditions would substantially advance those purposes. After analyzing the findings upon which the city relied, the Court stated that the city had not shown the “required reasonable relationship” and “rough proportionality” between the floodplain easement and petitioner’s proposed new building.

*The Dolan case tells local governments that exactions should be roughly proportionate to the impact of the development. For subdivisions, for example, requiring a subdivider to pay for the entirety of extending infrastructure, such as water and sewer lines, may be disproportionate to the impact if others will benefit from the extension now or in the future.*

## Variances

A variance is an exception from the strict requirements of the subdivision regulations. It allows for the relaxation of the regulations when strict compliance will cause undue hardship. Economic hardship alone is insufficient to claim undue hardship.

The variance cannot pose a threat to the public safety, health, or welfare or be injurious to other property. Generally, unique conditions must be present on the site that are not applicable to other properties. If a variance is granted, it cannot violate other regulations or cause an increase in cost to the public.

Any variance granted must be based on the specific variance criteria contained in the subdivision regulations. The staff report will set out the facts of the request. Conditions may be applied to the variance to ensure the subdivision will meet the intent of the regulations.

## Other Regulations Important for Subdivision Review

All subdivisions need to comply with other regulations that could potentially affect a subdivision's design, layout or the ability to build on a lot. The following briefly discusses three key regulations that are typically included in the review of subdivision applications. Your jurisdiction's subdivision regulations may identify other relevant regulations. The staff report provides an analysis of how a proposed subdivision complies with these and other regulations that could affect lots, design, or layout of the subdivision.

## Sanitation in Subdivision

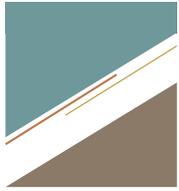
All subdivisions must comply with regulations for water supply, wastewater systems, and solid waste as required by Montana's Sanitation in Subdivisions Act. The Sanitation in Subdivisions Act is entirely different from the Montana Subdivision and Platting Act in Montana's statute.

## Floodplain Regulations

Floodplain regulations identify flood hazard areas and establish standards for construction in floodplains. Flood-prone areas have issues for development or may be unsuitable for development. Where appropriate and/or provided for by ordinance, mitigation measures, such as no-build zones or flood proofing, may be necessary.

## Zoning Regulations

When proposed subdivisions fall within zoning districts, lots need to meet requirements for zoning district use (such as "residential" or "industrial"), lot size and dimensions. The review at the subdivision stage also addresses lot capacity for building setback requirements and other zoning requirements that could affect the ability to build on the lot.



# CHAPTER 4: CONDUCTING MEETINGS & HEARINGS

## Public’s Right to Know and Participate

The Montana Constitution establishes the public’s right to know and participate in government actions. The public has a right to examine documents, observe deliberations, and participate prior to final decisions.

Montana’s Open Meeting laws require all local government meetings, including planning board meetings, to be open to the public. Any time a quorum of members is present at a location, or in a car, or via phone or online, could constitute a meeting subject to the open meeting requirements.

### Regular Meetings

- Held “regularly”
- Follow Bylaws
- Noticing: If none identified in bylaws, follow reasonable notice per open meeting laws

### Special Meetings

- Called by chair or request of any 2 board members
- Noticing - at least 2 days, can be less under specific conditions

### Meetings/Hearings - General Info

- Quorum: majority
- No action official without a quorum
- Follow open meeting law
- How/where to notice
- Access to materials to be discussed
- Meeting record
- Robert Rules of Order or similar
- Adjourn - or continue as a special meeting

MONTANA STATUTE REQUIRES  
ALL PLANNING BOARD MEETINGS  
TO BE OPEN TO THE PUBLIC.

Stella - stock.adobe.com

## Basic Public Participation Requirements

1. Notice prior to the meeting – date, time, place, and agenda, plus information on how to submit comments separate from the meeting and a deadline for all comments. The notice must occur in a “reasonable period” before the meeting. A general rule of thumb for minimum notice is 48 hours, but be aware there are specific and longer noticing requirements for hearings.
2. Information – the public should have an opportunity to obtain information for every agenda item when notice is published (decision-makers and public should be on equal footing with respect to participation in the decision).

3. No new items added to the agenda at the meeting or hearing – carry over new items to the next regularly scheduled meeting or a special meeting with two days posted notice of new items.
4. Provide the opportunity for public comment on each agenda item.
5. The public must have the opportunity to comment on items that are not on the agenda.

## Comment Provisions for Those Who Cannot Attend Meetings or Have Physical Limitations

Those who cannot attend or who need special accommodations must be given the opportunity to comment. Consider what may be needed for those with limited physical abilities – mobility, hearing, or sight.

For persons who cannot attend, provide information on how to submit comments and where to access meeting information. Issues associated with COVID-19, the pandemic that began in 2020, have highlighted the particular issue of persons who cannot attend meetings. Many communities have held in-person meetings with physical distancing, masking, rooms with good ventilation, or outdoor meetings. Others have opted for online meetings using Zoom or other software – and others have used both simultaneously.

Always provide contact information for questions and comments when persons cannot submit comments at a meeting.

Set a deadline for public comment in your notice. Setting a deadline that allows for all comments to be received before planning board deliberation is good practice.

## Planning Board Consideration of Public Comment

Public comments need to be considered before a final decision is made; that is part of the right to participate. The planning board does not need to respond to questions or comments individually; they need to listen to comments overall and then consider them in their entirety before making a decision.

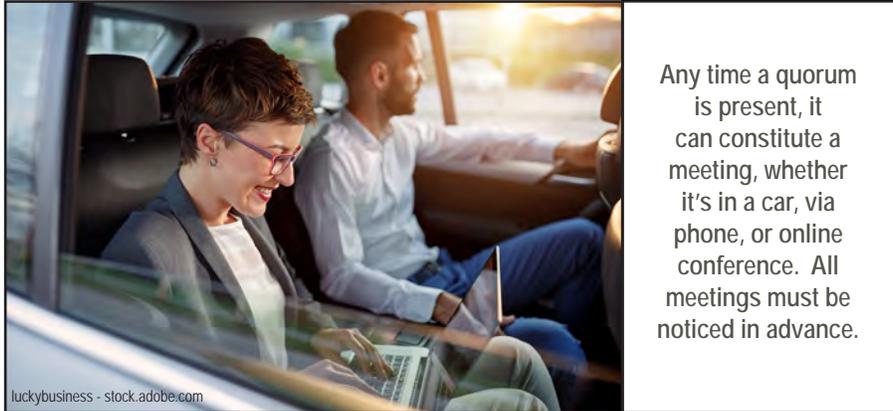
The purpose of a comment period at a meeting or via other means is to obtain the broadest possible participation and comment.

Responding to each comment in a public meeting or hearing can result in a lengthier meeting, and possible back-and-forth dialogue with a handful of participants, potentially limiting others' ability to discuss their concerns.

## Planning Board Meetings: Regular and Special

There are two types of planning board meetings – regular and special. A regular meeting is held according to a schedule and location identified in the bylaws. A special meeting is called by the chair, or upon request of any two board members.

All of the Open Meeting Law's basic public participation items listed above apply to both regular and special meetings.



Any time a quorum is present, it can constitute a meeting, whether it's in a car, via phone, or online conference. All meetings must be noticed in advance.

## Noticing – Regular and Special Meetings

The bylaws should specify the noticing requirements for both regular and special meetings. Typically regular meeting notices are posted a week or more in advance. Planning statute requires a two-day minimum notice for special meetings but that requirement can be waived if the time of the special meeting is set at a regular meeting with all planning board members present. Before setting a special meeting without two-day notice, the planning board should consider if the matters to be discussed are of public interest and necessitate a longer notice period.

## Noticing – Planning Board Meetings Combined with a Hearing

Public hearings conducted by the planning board often are held in conjunction with regularly scheduled meetings. When that occurs, noticing must adhere to the specific notice requirements for the type of hearing (refer to Public Hearing section below).

## Procedures for a Planning Board Meeting

Follow the meeting procedures in your bylaws. Typical meeting procedures include the following:

1. **Provide notice**
  - Include date, time, location, and agenda – it can be a good idea to include both start and ending times for a meeting to avoid meetings that go late into the night
  - Refer to planning board bylaws for information on when to provide notice and how to distribute the notice
  - Provide a contact number for those who may need special assistance to attend, e.g., sight, hearing, or physically impaired
2. **Provide access to materials to be discussed**
  - Paper copies available at planning office, local library, or other
  - Online copies available on city or county website

### 3. Procedures at Meeting

- Bylaws – Follow meeting procedures in your bylaws
- Sign-in Sheet – Have guests sign in before the meeting
- Call to order – President/Chair calls meeting to order, takes roll call, introduces the agenda and topics on the agenda, explains how the meeting will be conducted
- Comment – Chair allows for comment on each agenda item, prior to board discussion
- No new agenda items – They can be added to the next meeting's agenda
- No action on items not on agenda – Allow opportunity for comment on items not on the agenda, but no action can be taken on those items until they have been posted in a subsequent agenda
- Official Decisions and Actions by Parliamentary Procedure – Use Roberts Rules of Order or similar for planning board members to introduce a motion, discuss, revise the motion if needed, and vote
- Adjourn – Or set a date and time to continue the meeting if needed as a special meeting

## Public Hearings

### 1. Provide Notice

Montana statute sets out specific noticing requirements for hearings on certain topics. Hearings also must comply with open meeting law requirements for making materials available to the public.

- Subdivision Application (At least one hearing required – typically both the planning board and governing body have one each)
  - » Notice in newspaper of general circulation in county not less than 15 days prior to hearing



## AVOIDING CONTENTIOUS PUBLIC HEARINGS

1. Hold Neighborhood Meetings in Advance of a Hearing
2. Have a Plan for Citizen Participation
3. Conduct a Site Visit (With Proper Notification as a Meeting)
4. Make the Meeting Noticeable
5. Review the Agenda
6. Make your Introductions Count
7. Stay on Target
8. Have Visible Information
9. Allocate Time to Foster Useful Input
10. Stay Cool: Use Recesses, Continuances, or Multi-session Hearings
11. Show Respect

SOURCE: PLANNERS WEB  
[HTTP://PLANNERSWEB.COM/2010/01/DEALING-WITH-CONTENTIOUS-PUBLIC-HEARINGS/](http://plannersweb.com/2010/01/dealing-with-contentious-public-hearings/)

- » Notice to subdivider, land owners, and adjoining landowners must be notified by registered or certified mail no less than 15 days prior to hearing
- Growth Policy
  - » Notice in newspaper of general circulation in county at least 10 days prior to hearing
- Other Hearings
  - » Noticing requirements for zoning amendments, other regulations and other types of plans – refer to the requirements in statute for the particular action

## 2. Procedures at Hearing

Typical hearing procedures include the following.

- Bylaws – Follow hearing procedures in your bylaws and consider the following
- Subdivision Hearing Procedures addressed in Growth Policy – Montana statute requires procedures for a subdivision hearing to be included in the growth policy – follow what is in your growth policy.
- Sign-in Sheet – Have guests sign in before the meeting.
- Call to order – President/Chair calls meeting to order, takes roll call, introduces the agenda and topics on the agenda, explains how the meeting will be conducted.
- Staff Report Presentation – Staff presents the review of the application and staff report.
- Public Comment – The planning board may start by requesting comment from the applicant and then comments from the public. Anyone who comments should state their name and address for the record. To reduce repetition and lengthy meetings, you can request that individuals limit their comments to 3-5 minutes, and that others do not repeat topics, but merely indicate support for something already stated. When all have had a chance to speak, you can ask those who have already spoken if they have more to say.
- Close Public Testimony – Once all comment is completed, public testimony is closed.
- Board Questions – At this point, the hearing is open for questions from the board to staff, the applicant or others.
- Deliberation and Action – This is the point at which the planning board formulates their recommendation to the governing body
- Official Decisions and Actions by Parliamentary Procedure – Use Roberts Rules of Order or similar for planning board members to introduce a motion, discuss, revise the motion if needed, and vote.
- Adjourn or Set a Date to Continue – If a hearing is continued, the date and time should be announced to those in attendance and posted as soon as possible for those not in attendance. A two-day notice falls within the minimum requirements of the open meeting law.

# Planning Board Responsibilities at Meetings and Hearings

## Responsibilities of the Chair

The planning board chair controls the success of a hearing or a meeting. A responsible chair conducts a hearing according to the agenda and can bring the board to a decision even on difficult issues. The board should expect the chair to be tactful, decisive, respectful, articulate, and knowledgeable about the issues presented to them.

Some of the chair's procedural duties include:

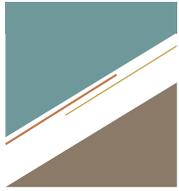
- Running a timely meeting. Other board members, staff, and the public look to the chair for leadership.
- Maintaining order. At the beginning of the meeting, the chair should formally introduce the agenda and topics on the agenda, explain how the hearing will be conducted, how to make comments, how the record will be released and how to make comments after the hearing, but before the governing body's decision.
- Keeping business moving. The planning board should avoid endless debate, continual requests for new information, or otherwise delay making a decision when the information needed for doing so has been presented. The chair should move the decision along by summarizing the facts and the positions presented by planning board members and bringing matters to a vote.
- Managing public testimony. A reasonable length of time should be established at the beginning of hearing or meeting for each person to provide his or her testimony. This is particularly important if a larger number of people want to address the board.
- Preventing arguments. The dialogue between the board, those testifying, and other members of the audience should be limited to fact gathering. The chair should require that comments and questions are directed to the chair.
- Understanding parliamentary procedure. To run an orderly meeting, the chair must be familiar with the basics of parliamentary procedure. The chair must understand motions and amendments to motions, the order in which business is conducted, motions that are and are not debatable, and so on.
- Providing a summary. The chair should be able to take into account public testimony, planning board deliberations, and the issue at hand, and guide the board toward a decision.

## Responsibilities of Other Members

To be an effective planning board member here are a few practical tips.

- Be on time for all meetings and hearings. It is unfair to the public and the other members of the planning board when board members are absent or tardy.
- Be familiar with the regulations and policies within your jurisdiction. These documents provide a basis for many of the decisions that a planning board member will make.

- Read the staff report. The staff report will contain the necessary facts and details that can be used to formulate your decision. A staff presentation will be given at the hearing, however, it is likely that the presentation is a general overview of the project and may not contain all the details.
- Consider all information. Before forming an opinion, consider all the facts within the staff report and public testimony given, including any testimony that is given at the hearing.
- Rely on facts, not opinions. Decisions must be based on facts and not opinions. Facts may be disputed or contended, and in some instances, you must rely on your best judgment to determine which facts are the most factual.
- Ask questions, take part in the debate. Decision making improves when all members contribute to the discussion. Ask questions and take initiative to educate yourself on issues you may know less about.
- Follow your bylaws. Allow the chair to run the meeting and maintain an orderly agenda and follow the parliamentary procedures as outlined in your bylaws.



## CHAPTER 5: PLANNING BOARD ORGANIZATION & OPERATIONS

### Type of Planning Boards – Jurisdictional Areas and Membership

In Montana, each planning board is responsible for a specific geographic area, called the jurisdictional area of the planning board. There are five types of planning boards authorized in Montana statute, each based on the type of jurisdictional area – city, county, or various combinations of cities and/or county. Each type of planning board has different requirements for membership.

The following summarizes types of planning boards and required membership in 2019 Montana statute.

#### 1. County planning board, MCA 76-1-211

*Required:* At least five members.

- All appointed by the board of county commissioners
- At least one member must be a member or associate member of the conservation district board or a member of a state cooperative grazing district, assuming they reside in the county

#### 2. City planning board, MCA 76-1-221

*Required:* At least seven members.

- A city council member
- A person appointed by the city council who may be an employee or hold public office in the city or county
- A member designated by the county commissioners and appointed by the mayor
- Four citizen members appointed by the mayor

#### 3. City-County planning board, MCA 76-1-201

*Required:* At least nine members.

Membership is a combination of persons living within and outside of city limits.

- County commissioners appoint four members
- City council appoints two members
- The mayor appoints two members

- The ninth member is a member of the conservation district, appointed by the board of the conservation district. If there is no conservation district member who can serve, the eight other planning board members select a member with approval of county commissioners and city council.

#### **4. Consolidated planning board, MCA 76-1-112**

*Required membership:* As specified by interlocal agreement.

Any existing city, county, or city-county board must be dissolved.

#### **5. Joint planning board, MCA 76-1-112**

*Required membership:* As specified by interlocal agreement.

The existing planning boards remain intact and the joint board's role and responsibilities are as described in the interlocal agreement.

## **Bylaws**

Along with state law and local regulations, planning boards have bylaws that govern the operation of the board. Ideally, your jurisdiction has formally adopted bylaws for the planning board. If it has, obtain a copy so that you understand the operation and make-up of your board. If not, work with staff to develop bylaws.

Along with reading the bylaws, take the time to observe more experienced board members for the first few meetings; this can help you understand how a board meeting is conducted.

Bylaws typically include the following information:

#### **1. Authority, Purpose, Power, and Duties**

This section includes a citation to state statute regarding the legal authority for creating the planning board as well as its purpose, powers, and duties.

#### **2. Jurisdictional Area**

Describes the jurisdictional area of the planning board. Include a map and descriptive text that mirror what is filed with the clerk and recorder for a county or city-county planning board.

#### **3. Members and Terms**

Describes number of members, qualifications, and length of terms. Although these are addressed in state statute and vary by type of planning board, the bylaws can provide additional information on topics such as absences, vacancies, and removal of a board member.

#### **4. Board Officers, Terms, and Duties**

Includes how and when to elect a president (chair) and vice-president (vice-chair). Montana statute requires officer election at the first regular meeting of each year. This section also typically addresses roles of the president and vice-president, officer vacancies, absences, removal of officers, and terms of office.

## 5. Meetings, Quorum, and Procedures

Provides detail for regular and special meetings, public hearings, what constitutes a quorum, noticing meetings, and procedures for board discussion and action (such as Robert's Rules of Order).

There are several statutory requirements to consider, including:

- Required regular meetings in January, April, July, and October
- Special meetings may be called by the president or two members upon written request to the secretary
- A quorum is a majority of members and no action is official without a quorum present
- Procedures for conducting open meetings and public hearings
- Procedures for public hearings on subdivisions as described in the area's growth policy
- Noticing requirements prior to meetings and hearings

More detail on public meetings and hearings is included in Chapter 4.

## 6. Board Member Ethics and Conduct

Provides information on adhering to the principles of operating in the public interest, and avoiding conflict of interest and ex parte communication.

## 7. Committees

Provides information on how committees might be established to advise the planning board.

## 8. Administration and Legal

Addresses board record-keeping, providing for a board secretary, which could be a staff person, to notice meetings, take minutes, and other administrative functions including financial record-keeping. Also clarifies the board will seek legal advice from the city or county attorney for the planning board jurisdiction. This may also address financial issues, such as reimbursement to planning board members for travel.

## 9. Staff

Discusses role of staff. The governing body provides staff to assist the planning board in routine functions. Functions typically include role of secretary, preparing staff reports on subdivisions or other applications, financial management, drafting an annual report and annual budget to be reviewed and approved by planning board prior to submission to governing body.

## 10. Amendment and Repeal Provisions

Identifies procedures for amending bylaws and for repealing previous bylaws.

## Responsibilities of Board Officers and Members

General responsibilities of the president, vice-president, secretary, and general members of the planning board are briefly described below.

### President (Chair)

- Preside over all meetings and hearings of the board and maintain order
- Call special meetings of the board in accordance with the board bylaws
- Sign official documents of the board
- See that all actions of the board are properly taken
- Keep all other board members informed of the business before the board
- Represent the board in discussions with the governing body or in other public forums

### Vice-Chair (Vice-President)

- During the absence, disability, or disqualification of the Chair, the Vice-Chair will exercise or perform all the duties and responsibilities of the Chair

### Secretary (Planner or Other Staff)

- Keep the minutes of all board meetings and hearings
- Give or serve all notices required by law
- Prepares agendas for board meetings
- Be the custodian of board records
- Inform the board of correspondence sent to the board
- Sign official documents of the board (as delegated by the board)

### All Members

- Attend all meetings and provide notification in advance when you are unable to attend
- Be prepared for discussion, read meeting materials in advance, contact staff if you have questions about materials they have developed
- Be familiar with the Bylaws and follow them
- Be familiar with the growth policy, subdivision regulations, and other plans and regulations applicable to your planning board's responsibilities (these can vary)
- Be objective and base decisions on facts, recorded in the "Findings of Fact"
- Act ethically and avoid conflicts of interest

# Planning Board Member Ethics

## Act in the Public Interest

Planning board members must act and make decisions in the “public interest.” Unlike a special interest, where a limited number of people would stand to benefit or profit, the public interest represents the benefits to society.

Planning board members have to determine what constitutes the public interest as decisions are made on subdivision applications and other matters. The following pointers may help to keep the public interest foremost in the decision-making process:

- 1. Remember you serve the public.**

It can be easy to think that an applicant is the “client,” but when you serve the public interest, the client is everyone in the community.

- 2. Who benefits?**

Does the applicant benefit at the expense of the public? Does the public benefit? Both? Work to ensure that the public at large benefits and not just certain individuals or groups.

- 3. Consider the future.**

Decisions made in the public interest should consider, to the extent possible, future as well as current generations.

## Conflict of Interest

A conflict of interest occurs when a board member could obtain some private benefit as the result of a planning board action. A private benefit may be either direct or indirect, such as creating a material personal gain or providing an advantage to relatives, neighbors, friends, or groups and associations to which the board member belongs.

Montana law requires that a public official experiencing a conflict of interest declare the conflict publicly. A conflict of interest may exist even though a board member may not believe that a conflict exists.

A board member who has any question about a potential conflict of interest should follow protocol in the planning board bylaws. If there is no guidance in the bylaws, raise the matter with planning staff and the county or city attorney’s office so a determination may be made as to whether a conflict of interest exists.

Having a conflict of interest does not necessarily mean that you have done something wrong; it is normal for conflicts to arise from time to time. Not declaring a potential conflict of interest is wrong. It is illegal to fail to declare a substantial conflict of interest or to participate in discussion on issues or decisions where such conflict exists.



## Gifts and Favors

Gifts, favors, or advantages should not be accepted if they are offered to influence the board member or if it could appear to the public that the gift was offered for that purpose. Even minor considerations that come in the form of business lunches or small gifts are not acceptable. The best guide to follow regarding gifts and favors is this: If in doubt, decline the gift.

## Ex Parte Communication

Ex parte is a Latin term that means, “from or on one side only.” It is related to the public interest because it deals with planning board members being influenced from outside the public forum without the benefit of hearing all sides of an issue.

Ex parte communication occurs separate from a public meeting or hearing and can include telephone calls, informal meetings, lunches, emails, or even a casual encounter on a street corner. The essential element of ex parte contact is that someone with a direct interest – an applicant or an opponent of the project – is attempting to influence a planning board member before they have had an opportunity to hear all sides of the matter. The individual is trying to influence decision-making before all sides have had an opportunity to present at public meetings, hearings, or other official means of submitting comment.

Citizens have a right to contact planning board members regarding their viewpoints on general matters. Public officials, including planning board members, have a responsibility to uphold the integrity of their office and maintain it as free of influence as possible.

### How to Deal with Ex Parte Contact:

1. Adhere to the planning board bylaws for ex parte communication
2. Stop the conversation when it veers to ex parte communication and invite the individual(s) to present testimony before the entire planning board
3. If the person is unwilling to testify, encourage them to send a letter to planning staff so it is on the record
4. If you receive written information not sent to other planning board members, send it to planning staff to include in planning board packets
5. If you have ex parte contact, disclose that fact on the record before the meeting begins



EX PARTE COMMUNICATION ... CAN HAPPEN ANYTIME AND WITHOUT APPOINTMENTS, SUCH AS ENCOUNTERS ON THE STREET.

# Planning Board Working Relationships

## Governing Body

Planning boards plan for future development and make recommendations on land use regulations and subdivisions. Only the governing bodies can make the decision on a subdivision or adopt a local growth policy, other plans, or local regulations. It is the planning board's responsibility to make objective recommendations based on the facts and findings and independent of how they anticipate the governing body will decide.

Planning boards that meet periodically with the governing body to share ideas and concerns about land use will help assure good working relationships with each other. At a minimum, an annual meeting is recommended to review a planning board's annual report and to discuss upcoming planning or regulatory items for the following year.

## Staff

The governing body provides staff to assist in fulfilling the planning board's duties. Staff are employed or contracted by the governing body. Staff work directly with the planning board, but are ultimately responsible to the governing body.

### **Staff typically have the following roles and responsibilities:**

- Possess the knowledge and experience to administer local regulations and help implement the growth policy
- Act as the planning board secretary (see "Secretary Responsibilities" in the preceding section)
- Non-Board subdivision review – meet with applicant for subdivisions, review applications for required elements and sufficiency, and prepare the materials needed for planning board review of subdivision applications
- Work respectfully with the public and applicants
- Stay informed of statutory changes and court decisions affecting local regulations and planning matters
- Assist the board in understanding the growth policy, regulations, and state statutes that govern local regulations
- Notify the planning board of needed changes to local regulations
- Act professionally and ethically
- Coordinate with contractors who may be hired for special projects

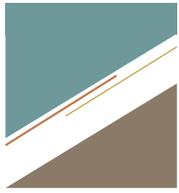
### **Planning board members also have some responsibilities to staff, including:**

- Respect your staff's professional expertise and consider their recommendations carefully
- Communicate with staff between meetings and ask questions to better understand growth policies, regulations and application materials
- Treat staff respectfully, especially in public meetings and hearings
- Reserve legitimate criticism for private meetings between staff and the board
- Be an advocate for staff to the governing body, particularly for continuing professional development
- Submit complaints about staff work to the governing body only as a board action and only after meeting with the staff

Following the responsibilities discussed above creates and maintains a good working relationship between staff and the planning board and is essential for the community planning process to succeed.

### **Consultants**

Private planning consultants often are retained when there is no in-house staff or if the existing staff does not have the time or resources to handle certain planning tasks, such as updating local regulations or assisting with a growth policy. Consultants may be called upon for on a temporary or long-term basis. The working relationship and expectations for the board and consultant are similar to those described for the staff and board. The board should work closely with the consultant, with the board providing local input, and the consultant providing professional advice. When there are existing staff and a consultant is hired for a special project, the existing staff also may be involved in working or coordinating with the consultant.

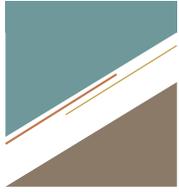


## CHAPTER 6: PLANNING BOARD MEMBER – BEST PRACTICES

After a person has been on the planning board for a while, they will begin to recognize best practices about how the planning board should conduct its business. Listed below are some pointers for effective planning boards:

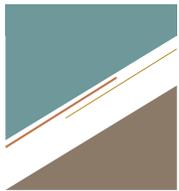
### Ten Best Practices for Planning Board Members

1. Prepare and maintain a growth policy, refer to it, make decisions that are consistent with its policies, and implement them
2. Develop and adopt bylaws and procedures and stick to them
3. Annually reexamine what you are doing as a planning board member, how well you are doing, and how to do better
4. Prepare an annual report that summarizes work of the past year and recommends priorities for the next year; submit the report to the governing body and share with the public
5. Consider a public forum every year or so – ask the public about how things are going and what they want to be done
6. As a board, ask to participate in preparing the planning agency's budget
7. Attend meetings with the governing body and planning board to exchange ideas and assess objectives
8. As a board, Communicate with staff what information you want that you may not be receiving, how you want materials presented to you, etc.
9. Educate yourself, attend courses on planning techniques or land use law
10. Advocate for good planning



# ADDITIONAL RESOURCES FOR PLANNING BOARD MEMBERS

- Montana Department of Commerce – Community Development Division
- Materials available online and person-to-person assistance at [commerce.mt.gov](http://commerce.mt.gov), 406.841.2700
  - › “Planning Boards: An Introduction to the Basics” – a webinar based on this handbook
  - › Webinars, handbooks, and other materials available on a variety of planning topics, including growth policies
- American Planning Association
- Montana Association of Counties
- Montana Association of Planners
- Montana League of Cities and Towns
- Planners Web: News and Information for Citizen Planners – <http://plannersweb.com/>
- Planetizen – <https://www.planetizen.com/>
- Robert’s Rules of Order Online – <http://www.rulesonline.com/>



# APPENDIX A

## 2019 STATUTORY AUTHORITY AND REQUIREMENTS FOR PLANNING BOARD-RELATED MATTERS



## APPENDIX A

# 2019 STATUTORY AUTHORITY AND REQUIREMENTS FOR PLANNING BOARD-RELATED MATTERS

The following provides a general guide to Montana statute as it applies to planning boards.

State statute specifically addresses or requires many planning board functions and responsibilities. The Montana Code Annotated (MCA) is Montana's statute. The 2019 MCA was the current statute when this handbook was prepared.

The Montana Legislature meets every two years to consider and enact changes to the statute. If statute that affects planning boards changes over time, planning board members can track how it might affect what is in this handbook by comparing future statutes to the 2019 MCA.

The State of Montana provides online access to the following (including online links active at the time this handbook was prepared):

- Current MCA (<https://leg.mt.gov/statute>)
- Previous versions of the MCA from 1995 to the present (<https://leg.mt.gov/statute>)
- Proposed legislation and changes to the MCA (<https://leg.mt.gov>)
- Montana Constitution

## REFERENCES TO MONTANA CODE ANNOTATED IN THIS HANDBOOK

Statutes as discussed in this handbook are highlighted in the following list.

### 1. PLANNING BOARDS

TITLE 76. LAND RESOURCES AND USE

CHAPTER 1. PLANNING BOARDS

Part 1. General Provisions

Part 2. Membership

Part 3. Organization and Administration

Part 4. Financial Administration

Part 5. Jurisdictional Area

Part 6. Growth Policy

### 2. GROWTH POLICY

TITLE 76. LAND RESOURCES AND USE

CHAPTER 1. PLANNING BOARDS

Part 1. General Provisions

Part 2. Membership

Part 3. Organization and Administration

Part 4. Financial Administration

Part 5. Jurisdictional Area

Part 6. Growth Policy

### 3. SUBDIVISION

#### TITLE 76. LAND RESOURCES AND USE

##### CHAPTER 3. LOCAL REGULATION OF SUBDIVISIONS

Part 1. General Provisions

Part 2. Miscellaneous Exemptions

Part 3. Land Transfers

Part 4. Survey Requirements

Part 5. Local Regulations

Part 6. Local Review Procedure

### 4. ZONING

#### TITLE 76. LAND RESOURCES AND USE

##### CHAPTER 2. PLANNING AND ZONING

Part 1. County Planning and Zoning Commission

Part 2. County Zoning

Part 3. Municipal Zoning

Part 4. Application to Governmental Agencies Group and Foster Homes

Parts 5 through 8 reserved

Part 9. Agricultural Activities

### 5. LAKESHORE REGULATIONS

#### TITLE 75. ENVIRONMENTAL PROTECTION

##### CHAPTER 7. AQUATIC ECOSYSTEM PROTECTIONS

Part 1. Streambeds

Part 2. Lakeshores

Part 3. Flathead Basin Commission

Part 4. Phosphorus Compounds -- Model Rule

### 6. URBAN RENEWAL DISTRICT PLANS

#### TITLE 7. LOCAL GOVERNMENT

##### CHAPTER 15. HOUSING AND CONSTRUCTION

Parts 1 through 20 reserved

Part 21. County Housing Authorities

Parts 22 through 40 reserved

Part 41. General Provisions Related to Municipal Housing and Construction

Part 42. Urban Renewal

Part 43. Urban Renewal Continued

Part 44. Municipal Housing Authorities

Part 45. Municipal Housing Authorities Continued

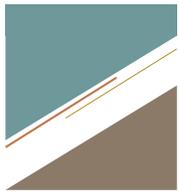
### 7. CONSERVATION EASEMENTS

#### TITLE 76. LAND RESOURCES AND USE

##### CHAPTER 6. OPEN SPACES

Part 1. General Provisions

Part 2. Conservation Easements



# APPENDIX B

ADDITIONAL “BEST PRACTICES”  
MONTANA ASSOCIATION OF COUNTIES –  
PLANNING BOARD TRAINING



## APPENDIX B

# ADDITIONAL “BEST PRACTICES” MONTANA ASSOCIATION OF COUNTIES – PLANNING BOARD TRAINING

The following “Best Practices” document prepared by Tara DePuy, Land Use Attorney, with MACo, provides additional detail on a number of topics discussed in the Planning Board Handbook. Ms. DePuy prepared this for a planning board training session in Park County.

### BEST PRACTICES FOR PLANNING BOARD MEMBERS

1. **PLANNING BOARD MEMBERS SHOULD BE COGNIZANT OF OPEN MEETING STATUTES**
  - a) Electronic meetings by email are a violation of the Open Meeting Act.
  - b) All subcommittee meetings must be noticed, public comment must be taken and minutes must be kept.
  - c) Emails regarding Planning Board activities should not be deleted and should be kept in a separate folder. In *Delaney & Co. v. City of Bozeman*, Delaney was awarded \$3,000,000 in damages for abuse of discovery; the abuse was that the City of Bozeman failed to retain emails that Delaney alleged would have shown that the City of Bozeman intentionally undermined his purchase of the Mandeville property after he disclosed to the City of Bozeman his intention to purchase and develop this property.
  - d) Limit the number of emails you use for Planning Board activities.
  - e) Copying parties outside of the Planning Board or County on Planning Board Activities may appear to be a conflict of interest and subject that party to email discovery if there is litigation.
2. **THE PLANNING BOARD SHOULD ACT AS A BOARD; NOT AS INDIVIDUAL MEMBERS**
  - a) All information regarding Planning Board activities should be shared with the entire Board so that all Board members have the same information when taking action on issues.
  - b) Inviting speakers to present to the Planning Board is Board action; not an individual member action.
  - c) If a matter is under the jurisdiction of the Planning Board, stating that you are representing yourself and not the Planning Board in regards to that matter may create a conflict of interest for you to act on that matter as a Planning Board member. The majority of the Zoning Board of Adjustments in Three Forks was recently removed for cause after they signed a petition against a development. The development application included a variance, which is heard by the Zoning Board of Adjustments.
  - d) The Planning Board acting as a Board should determine Planning Board work plans, agenda items and best use of staff time.
3. **PLANNING BOARD MEMBERS SHOULD NOT HIRE OUTSIDE CONSULTANTS TO ADVISE THE PLANNING BOARD**
  - a) State statutes states that all “staff” must be approved by resolution. 7-1-201(2)(d), MCA.
  - b) County employees and county hired contractors have a duty to represent the best interests of the county. Outside consultants hired by private individuals have no duty to represent the best interests of the county.
  - c) The County has disciplinary control and contract provisions to address county employee and county hired contractor actions. 2-2-121, MCA is a Code of Ethics for Public Employees.
  - d) County employees and county hired contractors are not allowed to have conflicts of interest in regards to County activities upon which they provide advice to the County.

4. **PLANNING BOARD MEMBERS SHOULD FREQUENTLY REVIEW PLANNING BOARD POLICIES AND COUNTY REGULATIONS**
  - a) Planning Board Bylaws should be consulted in regards to proper protocols for Board actions and activities. Bylaws can be amended to include protocols the Board wishes to put in place, subject to County Commission approval.
  - b) The Growth Policy is a living document that by statute should be updated every 5 years and it should be read frequently so the Planning Board knows what action items it is supposed to address in what time frame and to be familiar with the Growth Policy when reviewing subdivision applications.
  - c) Outdated regulations are a liability to the County as they do not accurately reflect state law and may misinform the public. Subdivision regulations should be updated to conform to the goals and objectives of the Growth Policy and state statutes.
  - d) County imposed zoning must be consistent with the goals and objectives of the Growth Policy and cannot be enacted without a Growth Policy.
  
5. **PLANNING BOARD MEMBERS SHOULD BE COGNIZANT OF WHEN EX PARTE CONTACT IS PROHIBITED**
  - a) Planning Board members should understand whether they are taking action on a legislative matter or a quasi-judicial matter.
  - b) Planning Board members do not take action on zoning permits, variances, or enforcement so where zoning is concerned, the Planning Board is only involved in legislative activities.
  - c) Subdivision review is strictly a quasi-judicial matter:
    - i. Planning Board members should not meet with a subdivider, neighbors or other agency outside of public meetings on the subdivision that have been noticed correctly.
    - ii. Site visits must be conducted in such a manner as limit ex parte contact with the subdivider or his representatives. If present, contact with the subdivider or his representatives should be limited to answering specific questions about location of subdivision features on the ground, i.e. where the fire fill site is located.
  
6. **PLANNING BOARD MEMBERS SHOULD DETERMINE HOW THE BOARD INTERACTS WITH THE PRESS**
  - a) Planning Board members should determine who has the authority to speak to the press on behalf of the entire Board.
  - b) Planning Board members should make sure that any representations to the press by comments in articles in the newspaper or letters to the editor represent the positions of the entire Board or those comments should be made as an individual and not as a member of the Planning Board.
  - c) Care should be taken to make sure that information repeated to the press is accurate so as to not misinform the public.
  
7. **PLANNING BOARD MEMBERS SHOULD MAKE SURE THAT PUBLIC COMMENTS ARE CAPTURED AND ANALYZED**
  - a) While Planning Staff captures all oral public comments at public meetings and written public comments, comments made to Planning Board members on legislative activities should be conveyed to the entire Board and made a part of the record.
  - b) In *Citizens for a Better Flathead v. Flathead County* the allegations were that both the County Commission and the Planning Board failed to consider and analyze public comment. The MSCt found that all public comments had been captured, made a part of the record, and analyzed.
  
8. **PLANNING BOARD MEMBERS SHOULD BE COGNIZANT THAT LAND USE DECISIONS ARE FREQUENTLY LITIGATED**
  - a) Land use issues are contentious across the State of Montana and Planning Board members should be aware that their activities and decisions will be under intense public scrutiny.

b) Planning Board members should remember that even if they follow proper protocols and processes they still may be involved in litigation. While this litigant was not successful, the Touris II complaint against Flathead County asserted 11 counts:

- I violation of due process by the Bigfork Land Use Advisory Committee;
- II negligence/negligence per se by the Bigfork Land Use Advisory Committee;
- III violation of equal protection by the Bigfork Land Use Advisory Committee;
- IV a negligence by the Planning Board;
- V violation of equal protection by the Board of Commissioners;
- VI negligence by the Board of Commissioners;
- VII violation of substantive due process by the Board of Commissioners;
- VIII negligent misrepresentation by the Flathead County Planning and Zoning Office;
- IX violation of equal protection by the Flathead County Planning and Zoning Office;
- X violation of procedural due process by Jeff Harris; and
- XI failure by Flathead County to adequately train and supervise employees and board members.