

## **Fifth Addendum to the Consolidated City and County Planning Board Packet Regarding Regulations and Map for the Helena Valley Planning Area.**

This Addendum includes the following:

- An updated draft of Resolution 2020-01 for consideration at the August 4, 2020 Planning Board Meeting per Planning Board motion on July 21, 2020. Prior draft resolutions provided should be disregarded.
- Exhibit D: Proposed Amendment to the April 14, 2020 DRAFT Helena Valley Planning Area Zoning Regulations.
- Three comments that were given but not previously included in Planning Board Materials. These include, 1. An email from Lucy Morrell-Gengler, City of Helena Planner; 2. An email and attached comment form from Mel Griffin (Note that the email was previously provided but the attached comment form was not); and, 3. A comment form signed for the Schwarzhans Family LLC by Ritch Rauser, Steve Wong, and Andy Johnston.
- Emails and attachments received by the County Community Development and Planning Department after noon Tuesday, July 21, 2020 and up until Noon on July 30, 2020.
- Written comments provided by Abigail St. Lawrence and Jerry Hamlin during the July 21, 2020 work session. Staff responses to those written comments are also provided. Staff responses to John Herrin comments are also included.
- Summary of verbal public comment provided at July 17, 2020 meeting.
- Summary of verbal public comments provided at July 21, 2020 meeting.
- An updated telephone log, which includes telephone calls received by Greg McNally, Planner between June 1, 2020 and noon on July 30, 2020.



**Updated draft of Resolution 2020-01 for consideration at the August 4, 2020 Planning Board Meeting per Planning Board motion on July 21, 2020. Prior draft resolutions provided should be disregarded.**



# **RESOLUTION 2020 - 01**

## **A RESOLUTION OF THE CONSOLIDATED CITY AND COUNTY PLANNING BOARD TO RECOMMEND BOUNDARIES AND APPROPRIATE REGULATIONS FOR THE VARIOUS ZONING DISTRICTS FOR PART-2 COUNTY INITIATED ZONING IN THE HELENA VALLEY PLANNING AREA**

**WHEREAS**, the Board of County Commissioners (Board) has required that the Consolidated City and County Planning Board (Planning Board) make recommendations regarding County Initiated Part-2 Zoning in the Helena Valley Planning Area as set forth in Section 76-2-204, MCA; and

**WHEREAS**, the Planning Board is authorized, as set forth in Section 76-2-204, MCA to make written reports of their recommendations to the Board; and

**WHEREAS**, on May 19, 2020 the Planning Board held a public work session regarding the April 14, 2020 draft of the proposed Helena Valley Planning Area Part-2 regulations and boundaries; and

**WHEREAS**, on June 16, 2020, at the Civic Center in Helena, Montana, the Planning Board held a public meeting to take comments from the public specific to the establishment of the proposed Zone Districts and Regulations as presented by County Staff; and

**WHEREAS**, the Planning Board held work sessions during additional public meetings which were held on June 25, 2020, and July 21, 2020, also in the Civic Center wherein the Planning Board accepted additional public comment; and

**WHEREAS**, on August 4, 2020, at the Best Western Premier Helena Great Northern Hotel Conference Center in Helena, Montana, the Planning Board held a public meeting to take comments from the public specific to the establishment of the proposed Zone Districts and Regulations as presented by County Staff; and

**WHEREAS**, the Planning Board public meetings were also hosted electronically via the ZOOM meeting technology to afford members of the public the opportunity to participate in the public meetings without being physically in attendance during this time of the COVID-19 pandemic; and

**WHEREAS**, the Planning Board held a work session public meeting on July 17, 2020 which was hosted electronically via ZOOM meeting technology wherein the Planning Board was invited to preview the materials to be presented at the July 21, 2020 work session public meeting and at which they accepted additional public comment; and

**WHEREAS**, the draft zoning map of the various districts and the regulations presented at the public meetings of the Planning Board were the same version as uploaded onto the County Website and otherwise made available to the public, and which regulations were dated April 14, 2020 and which map

was dated April 13, 2020 (both attached hereto as Exhibit: A); and

**WHEREAS**, in addition to the above noted regulations dated April 14, 2020, a “~~strikethrough / underlined~~” document dated June 11, 2020 (attached hereto as Exhibit: B), a “~~strikethrough / underlined~~” document dated July 14, 2020 (attached hereto as Exhibit: C), and a “~~strikethrough / underlined~~” document dated July 30, 2020 (attached hereto as Exhibit: D) depicting some Staff proposed revisions to the aforesaid regulation document were also uploaded to the County Website and otherwise made available to the public; and

**WHEREAS**, the Planning Board reviewed and considered the draft zoning regulations, draft map, and Staff proposed revisions thereto; and

**WHEREAS**, the Planning Board has had time to review and consider the draft zoning regulations, draft map, and proposed “~~strikethrough/underline~~” revisions thereto during the public meetings; and

**WHEREAS**, the Planning Board has reviewed and considered all public comments and other information obtained through the public meeting process; and

**WHEREAS**, the Planning Board took action on a recommendation to the Board regarding the proposed regulations and zoning districts.

**NOW THEREFORE BE IT RESOLVED** by the Planning Board:

That the Planning Board does hereby recommend to the Lewis and Clark County, Montana, Board of County Commissioners the boundaries and regulations for the various zone districts as presented by Staff and which regulations document is dated April 14, 2020, and which map is dated April 13, 2020, along with amendments as presented in “~~strikethrough / underlined~~” documents dated June 11, 2020 (attached hereto as Exhibit: B) and dated July 14, 2020 (attached hereto as Exhibit: C), and dated July 30, 2020 (attached hereto as Exhibit: D) which depicts revisions to the aforesaid regulation document.

**PASSED AND APPROVED** BY THE CONSOLIDATED CITY AND COUNTY PLANNING BOARD on this

\_\_\_\_\_ Day of \_\_\_\_\_, 2020.

CONSOLIDATED CITY AND COUNTY PLANNING BOARD:

\_\_\_\_\_  
Dr. Gregory Thomas, Chair

Attest:

---

Paulette DeHart, Clerk to the Board

Attachments:

Exhibit: A (April 14, 2020 Draft Helena Valley Planning Area Zoning Regulations and April 13, 2020 Draft Zoning Map)

Exhibit: B (June 11, 2020 "strikethrough / underlined" revisions document)

Exhibit: C (July 14, 2020 "strikethrough / underlined" revisions document)

Exhibit: D (July 30, 2020 "strikethrough / underlined" revisions document)



**Exhibit D: Proposed Amendment to the April 14, 2020 DRAFT Helena Valley  
Planning Area Zoning Regulations.**



**EXHIBIT D:**  
(to Resolution 2020-01)

**July 30, 2020**

**Proposed Amendments to the  
April 14, 2020 DRAFT Helena Valley Zoning Regulations**

This proposed amendment was drafted in an attempt to address a concern raised during the Consolidated City and County Planning Board work session on July 21, 2020. The amendment is presented with a page number, and section number citation to facilitate review. The amendment proposed by Community Development and Planning Staff (Staff) is in colored underlined text (underlined text), while proposed deletions are indicated with colored strikethrough text (~~strikethrough text~~).

Previously proposed Staff amendments (Exhibit B to Resolution 2020-01 and Exhibit C to Resolution 2020-01) are shown herein where a similar section is presented. Staff has added an explanatory note after the proposed changes indicated by bolded italic text in brackets [*italic text in brackets*]. Staff recommends that the proposed amendment be reviewed in consultation with the April 14, 2020 DRAFT Helena Valley Zoning Regulations which are available online at <https://www.lccountymt.gov/cdp/zoning.html>.

**SECTION 7 RURAL RESIDENTIAL MIXED USE**

**Page 7-2, April 14, 2020 DRAFT Helena Valley Zoning Regulations**

708.04 Non-Conforming Parcel Minimum Setbacks

~~For non-conforming parcels, the front, side, and rear setbacks shall be ten (10) feet for a principal use, special exception use, and accessory use. A conditional use shall be subject to the same setbacks unless otherwise defined with the CUP.~~

For any parcel which does not meet the minimum lot area requirement as defined in Section 706 and which is subject to Section 1802, the front, side, and rear setbacks (for principal, accessory, and special exception uses) shall be ten (10) feet. A conditional use shall be subject to the same setbacks unless otherwise defined with the CUP.

***[STAFF NOTES ON PROPOSED CHANGES: On June 25, 2020, Planning Board Members requested options to reduce the impacts of zoning on existing parcels, particularly in the Rimini area. The addition of a reduced front, side, and rear setback for non-conforming parcels provides greater flexibility for existing parcels and will reduce the need for variance requests. After reading the proposed language (in Exhibit C), a Planning Board member expressed a concern that the language was not clearly referring to a parcel that does not meet the minimum lot area requirement in Section 706.]***



**Three comments that were given but not previously included in Planning Board Materials. These include, 1. An email from Lucy Morrell-Gengler, City of Helena Planner; 2. An email and attached comment form from Mel Griffin (Note that the email was previously provided but the attached comment form was not); and, 3. A comment form signed for the Schwarzhans Family LLC by Ritch Rauser, Steve Wong, and Andy Johnston.**



**From:** [Lucy Morell-Gengler](#)  
**To:** [Greg McNally](#)  
**Cc:** [Sharon Haugen](#)  
**Subject:** Re: Proposed County Zoning  
**Date:** Wednesday, April 22, 2020 11:26:13 AM

---

Hi Greg,

WOW

This is quite impressive!

I have a few comments; I'm not sure how you want them submitted - here they are.

--Maybe include definitions of Apiculture and Silviculture in the definition section since they are not commonly known terms.

*Single-Dwelling Unit Residence: A single building situated on one lot that contains one dwelling unit for residential occupancy by one family.*

*Two-Dwelling Unit Residence: A single building situated on one lot that contains two (2) dwelling units for occupancy by two (2) families living separately from each other, also known as a Duplex-Dwelling Unit Residence, or two buildings situated on one lot that each contain one dwelling unit for occupancy by one family.*

*Multiple-Dwelling Unit Residence: A **single building** containing three (3) or more dwelling units for occupancy by three (3) or more families living separately from each other.*

--Where would multiple detached cottages on one lot fit in these definitions?

--704 Conditional Uses - That is a long list of relatively intense commercial and non-residential uses!

--Is 706.01 Cluster Lot Design consistent with the Subdivision Regulations?

*In the 80 acre example below in figure 1, each of the 8 cluster lots is **one acre in size** as allowed under DEQ rules for water and wastewater*

D. Cluster Development from Subdivision regs. the maximum size of parcels, not designated as open space, allowed within a cluster development is **five (5) acres**

--709.02 Fences and walls are not allowed in the front setback. The front set back is 25'. Why are fences and walls not permitted? What about retaining walls? A fence for pets or children seems to be a reasonable use of a front yard. Should that restriction be left up to covenants?

--I did not see any sign regulations; is that coming later?

Again a great job! Good Luck!

Lucy

---

**From:** Greg McNally <GMCNALLY@lccountymt.gov>

**Sent:** Wednesday, April 15, 2020 1:23 PM

**To:** Sharon Haugen <shaugen@helenamt.gov>; Michael McConnell <MMCCONNELL@helenamt.gov>; Lucy Morell-Gengler <LGENGLER@helenamt.gov>; Hillary Taylor <HTAYLOR@helenamt.gov>; Stefani Reinhardt <SREINHARDT@helenamt.gov>; Ellie Ray <ERAY@helenamt.gov>

**Cc:** Peter Italiano <PITALIANO@lccountymt.gov>

**Subject:** Proposed County Zoning

Hello City Planning Staff!

I wanted to drop you a note that the County has posted on our Website a draft Zoning Regulations

document that you can access here: <https://www.lccountymt.gov/cdp/zoning.html>

We appreciate any feedback you might have.

The document includes multiple districts to coincide with our Urban, Transitional, and Rural Growth Areas described in our Growth Policy Update. While we have created an Urban Residential Mixed-Use Zone and a Suburban Residential Mixed-Use Zone (for the Urban and Transitional Growth Areas), they currently do not include any regulations. The Rural Residential Mixed-Use, however, does include regulations.

We anticipate working closely with all of you to advance regulations for the Urban Residential Mixed-Use Zone and will welcome your input as we prepare the Suburban Residential Mixed-Use Zone regulations.

Please join us in support of what is a big step for our office in meeting the goals of our Growth Policy.

Best,  
Greg

**Greg McNally, Planner III**

Lewis and Clark County  
Community Development and Planning Department  
316 N. Park, Rm 230  
Helena, MT 59623  
(406) 447-8343 (Direct)  
(406) 447-8374 (Front Office)  
[gmcnally@lccountymt.gov](mailto:gmcnally@lccountymt.gov)

**From:** [County Planning Mail](#)  
**To:** [Mel Griffin](#)  
**Subject:** RE: zoning comments  
**Date:** Tuesday, June 9, 2020 3:40:00 PM

---

Mel Griffin,

Thank you for your comments. Please note that we will provide them to the Planning Board for their June 16th public meeting at the Helena Civic Center at 6:00 p.m.

Best,  
Greg

**Greg McNally, Planner III**

Lewis and Clark County  
Community Development and Planning Department  
316 N. Park, Rm 230  
Helena, MT 59623  
(406) 447-8343 (Direct)  
(406) 447-8374 (Front Office)  
[gmcnally@lccountymt.gov](mailto:gmcnally@lccountymt.gov)

**From:** Mel Griffin <[melogriffin@gmail.com](mailto:melogriffin@gmail.com)>  
**Sent:** Monday, June 8, 2020 1:37 PM  
**To:** County\_Planning\_Mail <[County\\_Planning\\_Mail@lccountymt.gov](mailto:County_Planning_Mail@lccountymt.gov)>  
**Subject:** zoning comments

Thank you for soliciting public comments. I really hope that zoning efforts are successful this time around. My comments are attached.



**Community Development and Planning**  
Lewis and Clark County

316 N. Park Ave. Room 230 Helena, MT 59623  
Phone: 406-447-8374 Fax: 406-447-8398  
e-mail: [planning@lccountymt.gov](mailto:planning@lccountymt.gov)



**COUNTY-INITIATED ZONING IN THE HELENA VALLEY**  
**COMMENT FORM**

Do you reside in... (Circle One)

City of Helena

City of East Helena

**Outside City Limits**

How do you think additional zoning could positively or negatively affect the current and future residents of the Helena Valley?

It is imperative that we plan for the future in order to preserve and protect our aquifers and ensure that future residents have access to clean water and fire protection (especially as temperatures rise and wildfires increase).

What should additional zoning in the Helena Valley include?

Density restrictions (or lot size restrictions) of 10 acres (minimum)

What should additional zoning in the Helena Valley **NOT** include?

Mixed use areas that allow for gravel pits (for example) to be built in largely residential areas, particularly those in flood plains and with shallow wells.

Let us know your thoughts, concerns, and ideas about additional zoning in the Helena Valley Planning Area:

I see zoning as both restrictive AND protective, and believe that is necessary. We HAVE TO zone to protect groundwater in ALL residential areas, particularly those growing at urban (and even suburban) rates. Clean water is a human right, and it's our job to protect that right for everyone. I live in Sunny Vista RID, and our groundwater has only lasted as long as it has because of 10 acre subdivision rules. These need to be enforced, and we can't accept proposals from developers that ask for rezoning provisions. Proper zoning can ensure that we grow at a rate that will not overwhelm our water sources.



**Community Development and Planning**  
Lewis and Clark County

316 N. Park Ave. Room 230 Helena, MT 59623  
Phone: 406-447-8374 Fax: 406-447-8398  
e-mail: [planning@lccountymt.gov](mailto:planning@lccountymt.gov)



**COUNTY-INITIATED ZONING IN THE HELENA VALLEY**

**COMMENT FORM**

Do you reside in... (Circle One)

City of Helena

City of East Helena

Outside City Limits

(1) How do you think additional zoning could positively or negatively affect the current and future residents of the Helena Valley?

WE BELIEVE TO ADD ADDITIONAL LAYERS OF CONTROL OR RED TAPE IS REDUNDANT. OUR BUREAUCRACY'S STATE, FEDERAL & COUNTY ALREADY HAVE THE TOOLS NECESSARY TO CONTROL THE ISSUES THAT RESIDENT LAND OWNERS MUST FOLLOW TO INSURE

(2) What should additional zoning in the Helena Valley include?

(CONT OVER)  
(ONE SIZE SHOULD NOT FIT ALL)

- NOT RIMINI
- NOT SETBACKS
- NOT LOT SIZE

What should additional zoning in the Helena Valley NOT include?

**PLEASE REMOVE THE RIMINI AREA FROM THESE PROPOSED HELENA VALLEY ZONING REGULATIONS!**  
Rimini is a unique community and should not be subject to these highly restrictive zoning proposals. Similar communities in the county (Marysville, Canyon Creek, York, Silver City, Wolf Creek) are not subject to these restrictions. Rimini deserves the same treatment and should be left to decide on their own if they wish to initiate any type of citizen initiated zoning. PLEASE DON'T FORCE THESE REGULATIONS ON OUR COMMUNITY!

Let us know your thoughts, concerns, and ideas about additional zoning in the Helena Valley Planning Area:

THEIR ADJACENT NEIGHBORS ARE NOT EFFECTED.

WE BELIEVE STRONGLY BELIEVE IN A LIVE & LET LIVE PHILOSOPHY!!

PLEASE LEAVE US ALONE AND MAKE HELP US MANAGE OUR ALREADY MASSIVE TAX DEBT BY NOT ADDING UNNECESSARY ADDITIONAL LAYERS TO THE EXISTING BURDENS.

ALSO, WHY THE NEED TO RUSH.

I ATTENDED THE TUE MEETING AND ONE RESOUNDING COMMENT WAS " I JUST LEARNED ABOUT THIS "

FOR THE SCHWARZHANS FAMILY SIGNED,

*Ritch Rauser*

RITCH RAUSER

*Steve Wong*

STEVE WONG

*Andy Johnston*

ANDY JOHNSTON

FOR SCHWARZHANS FAMILY LLC

**Emails and attachments received by the County Community Development and Planning Department after noon Tuesday, July 21, 2020 and up until Noon on July 30, 2020.**



**From:** [Greg McNally](#)  
**To:** [DW Paulson](#)  
**Cc:** [threebars7@yahoo.com](mailto:threebars7@yahoo.com); [Denny Haywood \(ddhaywood@wildblue.net\)](mailto:ddhaywood@wildblue.net); [Drake Tummel](#)  
**Subject:** RE: Zoning Spokane Creek  
**Date:** Tuesday, July 28, 2020 10:02:00 AM

---

Mr. Paulson,  
We have received your comments and will share them with the Planning Board.  
Best,  
Greg

**Greg McNally, Planner III**

Lewis and Clark County  
Community Development and Planning Department  
316 N. Park, Rm 230  
Helena, MT 59623  
(406) 447-8343 (Direct)  
(406) 447-8374 (Front Office)  
[gmcnally@lccountymt.gov](mailto:gmcnally@lccountymt.gov)

---

**From:** DW Paulson <[dw3bars@outlook.com](mailto:dw3bars@outlook.com)>  
**Sent:** Monday, July 27, 2020 6:48 PM  
**To:** Greg McNally <[GMCNALLY@lccountymt.gov](mailto:GMCNALLY@lccountymt.gov)>  
**Cc:** [threebars7@yahoo.com](mailto:threebars7@yahoo.com); Denny Haywood ([ddhaywood@wildblue.net](mailto:ddhaywood@wildblue.net))  
<[ddhaywood@wildblue.net](mailto:ddhaywood@wildblue.net)>; Drake Tummel <[tummel@mt.net](mailto:tummel@mt.net)>  
**Subject:** Zoning Spokane Creek

Consolidated Helena & Lewis and Clark County Planning Board  
316 N. Park Ave. Room 230  
Helena, MT 59623

Board Members,

Please accept the attached information as public comment in support of the Spokane Creek Neighbor's letter of June 24, 2020. Your efforts and that of the Lewis and Clark County Community Development and Planning Department to develop zoning commensurate with sustainability of existing communities is greatly appreciated. Restraints and opportunity in the planning area are variable and in the Spokane Creek area the rapidly diminishing water resource is the restraint of paramount importance.

Please reply to acknowledge that the electronic submittal was received and is readable. The June, 25 2020 letter from Spokane Creek Neighbors is attached for your reference.

Sincerely,

Dale Paulson  
2610 Three Bars Drive

East Helena Montana 59635

To: Consolidated Helena & Lewis and Clark County Planning Board  
316 N. Park Ave. Room 230  
Helena, MT 59623

July 27, 2020

From Dale Paulson  
2610 Three Bars Drive  
East Helena Montana

To support the June 24, 2020 letter from the Spokane Creek Neighbors photographs and figures are provided for your consideration. The figures from Streamflow Depletion by wells USGS Circular 1376 provide a visual depiction of the result of ground water depletion on streamflow and vegetation. Notably in the last figure ground water recharge has ceased.



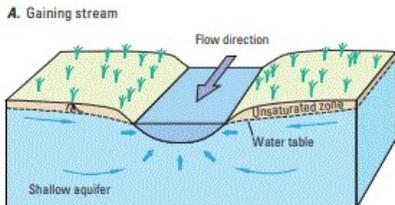
Summer 2010 photo showing typical flow and abundant grass fed by groundwater that was the norm until 2014 when flow was noticeably decreasing.



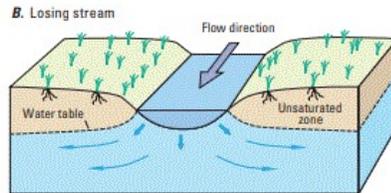
Summer 2020 photo of the dry creek bed illustrating how quickly the depletion is happening. There has been no creek flow since June of 2019. Recharge is not keeping up with well withdrawals.



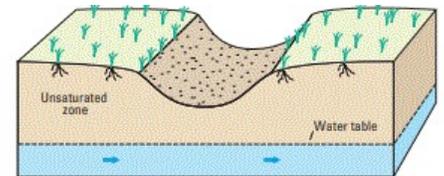
Summer 2020 photo of dead and dying trees. These trees were not visually distressed in 2014 even though creek flow was decreasing. Another example of how quickly the drawdown is happening.



Freshwater creek and groundwater ecosystem supporting abundant vegetation, wildlife and aquatic life that was typical of Spokane creek for many years.



Decreasing stream flow became noticeable and alarming in 2014. In 2018 local well levels were decreasing. Lewis and Clark Planning was notified of the impending problems in 2015 and 2018.



Current dry creek bed with no recharge capabilities. There has been no flow for more than a year where flow was historically well into August.

Consolidated Helena & Lewis And Clark County Planning Board  
316 N. Park Ave. Room 230  
Helena, MT 59623

June 24, 2020

Board Members:

This letter communicates concerns of several residents of the Spokane Creek Neighborhood centering near the intersection of Spokane Creek Road and Three Bars Road regarding the proposed Helena Valley Zoning Regulations. We wish to make three observations and one request of the Board.

**Observations:**

- Water withdrawal from certain aquifers within the Helena Valley Planning Area currently exceeds recharge, and as such, certain aquifer water supplies are already not sustainable. (Supporting information follows below).
- Aquifer boundaries and recharge characteristics within the Helena Valley Planning Area are highly variable and not well understood. While the general approach of limiting Rural Residential Mixed Use (RRMU) density to a minimum parcel size of 10 acres (assuming 1 well per 10 acres) is an approximation based on past research, the clustering concept described in Section 7 may not result in sustainable aquifer water supply for that cluster, and also may deprive adjacent clusters of water.
- Section 7, RRMU, paragraph 706.01.3 describes how rural 10 acre lots may be subdivided into clusters over a larger area in order to “reduce the potential for groundwater depletion”. This is a very mechanistic approach and does not take into consideration research and data on actual aquifer boundaries and ground water recharge rates through hydrogeologic analysis of sustainable groundwater withdrawal. Completion of a hydrogeologic analysis and extensiveness of that analysis is key. Further, an analysis of just the footprint of a subdivision cluster is not an analysis of the entire impact area, which is defined by the aquifer perhaps covering a large area.

Our concern is simply that aquifer water withdrawal is not less than aquifer recharge. The amount of aquifer recharge is quite variable within RRMU areas, and the subdivision scenarios described in Section 7 Figure 1 cannot guarantee water withdrawal will be sustainable without scientific analysis.

**Request:**

- The Helena Valley Zoning Regulations should mandate that a comprehensive hydrogeologic sustainability analysis be conducted before RRMU subdivision or cluster decisions are made, or, financial and engineering provisions must be provided to detail how water will be provided from other sources (e.g. river or reservoir) should aquifers prove to be unsustainable.

To restate our request more simply, we ask that at a minimum, subdivision density be based on scientific measurement and analysis of water sustainability. Hydrogeologic studies must precede development.

Sincerely,

Spokane Creek Neighbors

**Spokane Creek Neighbors Include the Following:**

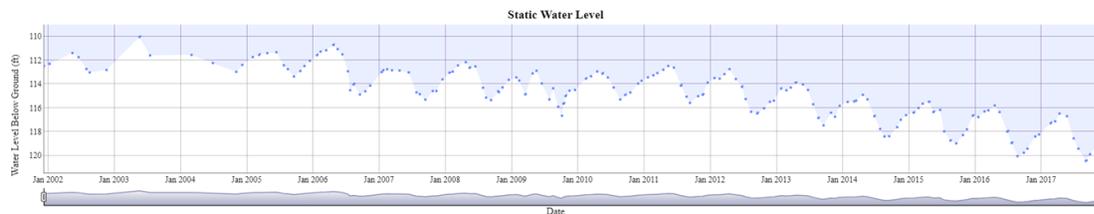
Nancy & Dale Paulson	2610 Three Bars Drive East Helena, MT 59635-9710
Joyce & Drake Tummel	2601 Three Bars Drive East Helena, MT 59635
Toni & Martin Van Slyke	5924 North Three Bars Road East Helena, MT 59635-9424
Marie and Denny Haywood	2485 Three Bars Drive East Helena, MT 59635-9709

**Indications of Declining Aquifer Water Levels Within the Helena Valley Planning Area**

**1.) Montana Ground Water Information Center Data: Prairie Nest & Lone Prairie Well**

**Groundwater Information Center Well Hydrograph**

The following chart represents the current hydrograph for this well. Data reported are static water levels in feet below ground surface. A filter has been applied to the data to remove all dry and/or non-static measurements.



GWIC Id: 191548  
 Site Name: LCNQPD - PRAIRIE NEST AND LONE PRAIRIE WELL  
 Location: 10N02W29DDBB  
 Total Depth: 136 feet  
 Number of Measurements: 169  
 Period of Record: 12/7/2001 2:15:00 PM - 12/1/2017 12:49:00 PM

This chart shows declining well levels from 2002 (110 feet) through 2017 (120 feet) near East Helena. This is but one example of long-term declining aquifer water levels within the Helena Valley Planning Area. Similar results can be observed for other wells.

**2.) Two studies indicate that 1 well per 10 acres was sustainable there, while 1 well per acre was not.**

- a. Bobst, A.L., Waren, K.B., Ahern, J.A., Swierc, J.E., and Madison, J.D., 2012, Hydrogeologic Investigaton of the North Hills study area, Lewis and Clark County, Montana, Technical Report.
- b. Bobst, A.L., Waren, K.B., Butler, J.A., Swierc, J.E., and Madison, J.D., 2014, Hydrogeologic investigaton of the Scratchgravel Hills study area, Lewis and Clark County, Montana, Technical Report.

**3.) Emerald Ridge Subdivision Aquifer Depletion**

- a. J. E. Swierc. 2014. Emerald Ridge Area Ground Water Resource Assessment. Lewis and Clark Water Quality Protection District

**4.) Personal Observations of Spokane Creek Surface Flow:**

Residents living here over 30 years note very infrequent flow in Spokane Creek, which used to run continually. Trees along the creek are stressed and a small wetland adjacent to the creek has dried. These observations did not correlate with annual rainfall, but were coincident with a large housing development nearby.

**From:** [County Planning Mail](#)  
**To:** "Richard Renck"  
**Subject:** RE: New zoning regulations for Helena Valley  
**Date:** Monday, July 27, 2020 9:54:00 AM

---

Richard and Anneliese Renck,

You are correct. The Planning Board is expected to make a recommendation to the Board of County Commissioners on the draft zoning regulations and map on August 4, 2020. After a recommendation is made, our staff will be scheduling a public hearing with the Board of County Commissioners. We have to post notice 45 days in advance of that hearing hence the inexact reference to 'late summer'. Once a recommendation is made by the Planning Board we will be able to identify an exact hearing date and post the date and time on our website.

<https://www.lccountymt.gov/cdp/zoning.html>

If the Board of County Commissioners decide to move forward with the regulations, they would adopt a resolution of intention and after 30 days they can establish the zoning regulations. The proposed regulations include a section (Section 18) on non-conforming uses, structures and land. I encourage you to review this section as it relates to your ongoing project. The proposed regulations can be accessed at the same online location noted above.

Contact me if you have any further questions.

Best,  
Greg

**Greg McNally, Planner III**

Lewis and Clark County  
Community Development and Planning Department  
316 N. Park, Rm 230  
Helena, MT 59623  
(406) 447-8343 (Direct)  
(406) 447-8374 (Front Office)  
[gmcnally@lccountymt.gov](mailto:gmcnally@lccountymt.gov)

---

**From:** Richard Renck <[richard@rcelectronics.com](mailto:richard@rcelectronics.com)>  
**Sent:** Monday, July 27, 2020 2:47 AM  
**To:** County\_Planning\_Mail <[County\\_Planning\\_Mail@lccountymt.gov](mailto:County_Planning_Mail@lccountymt.gov)>  
**Cc:** Renck, Anneliese <[arenck@carroll.edu](mailto:arenck@carroll.edu)>  
**Subject:** FW: New zoning regulations for Helena Valley

Hello,

Can you please provide me with a time frame for adoption of the new zoning regulations for our area (we live in Unionville)

It looks like there will be a meeting on August 4th where the Planning Board will make a recommendation to the Board of County Commissioners.

There is then a proposed public hearing for approval and implementation in "late summer 2020". Is there a proposed date for this public hearing?

At that hearing, if the draft regulations are approved do they become effective immediately or will there be an "effective as of date" thereafter ?

I am asking because we are completing construction on a residential greenhouse at our home located in Unionville and want to know when and how these new regulations might affect our project?

Thanks for any help you can give us in understanding what is going on here,

Richard and Anneliese Renck

**From:** [County Planning Mail](#)  
**To:** [Andy Shirliff](#)  
**Subject:** RE: Zoning Comments  
**Date:** Tuesday, July 28, 2020 10:25:00 AM

---

Andy Shirliff,  
Thank you for your comments. I will provide them (your correct attachment) to the Planning Board.  
Best,  
Greg

**Greg McNally, Planner III**  
Lewis and Clark County  
Community Development and Planning Department  
316 N. Park, Rm 230  
Helena, MT 59623  
(406) 447-8343 (Direct)  
(406) 447-8374 (Front Office)  
[gmcnally@lccountymt.gov](mailto:gmcnally@lccountymt.gov)

**From:** Andy Shirliff <[andy.shirliff@gmail.com](mailto:andy.shirliff@gmail.com)>  
**Sent:** Thursday, July 23, 2020 2:46 PM  
**To:** County\_Planning\_Mail <[County\\_Planning\\_Mail@lccountymt.gov](mailto:County_Planning_Mail@lccountymt.gov)>  
**Subject:** Re: Zoning Comments

Wrong document, please consider this attachment for my comments on the zoning in the Helena Valley.

Thank you!

Andy Shirliff  
903 Hollins Ave  
Helena, MT 59601

On Thu, Jul 23, 2020 at 2:25 PM Andy Shirliff <[andy.shirliff@gmail.com](mailto:andy.shirliff@gmail.com)> wrote:

Please find my comments in the attached document, thank you!

--

**ANDY SHIRTLIFF | 406-249-4546**

\_\_\_\_\_

[ ]

--  
**ANDY SHIRTLIFF | 406-249-4546**

[ ]

[ ]

[ ]

[ ]

[ ]

--  
**ANDY SHIRTLIFF | 406-249-4546**

[ ]

[ ]

[ ]

[ ]

[ ]



**Community Development and Planning**  
Lewis and Clark County

316 N. Park Ave. Room 230 Helena, MT 59623  
Phone: 406-447-8374 Fax: 406-447-8398  
e-mail: [planning@lccountymt.gov](mailto:planning@lccountymt.gov)



**COUNTY-INITIATED ZONING IN THE HELENA VALLEY**  
**COMMENT FORM**

Do you reside in... (Circle One)

City of Helena

City of East Helena

Outside City Limits

How do you think additional zoning could positively or negatively affect the current and future residents of the Helena Valley?

With the uptick in house purchases in the area during the pandemic, along with the current need for affordable housing for our workforce; zoning this area for new single-family home is a way we as a county can meet those needs.

What should additional zoning in the Helena Valley include?

The north valley, along Green Meadow Drive, and between Helena and East Helena.

What should additional zoning in the Helena Valley **NOT** include?

Let us know your thoughts, concerns, and ideas about additional zoning in the Helena Valley Planning Area:

To inform the citizens of our County and allow for their input, these meetings should be advertised and announced in the paper, on the radio, and online/social media. Thank you for your consideration and your work.

**From:** [County Planning Mail](#)  
**To:** "Thomas, Andrew"  
**Subject:** RE: Comment Proposed Helena Valley Comprehensive Plan  
**Date:** Tuesday, July 28, 2020 10:16:00 AM

---

Andrew Thomas,

Thank you for your additional comments. I will provide them to the Planning Board.

As an aside, you may access Volume 1 (Key Issues Report) and Volume 2 (Helena Valley Area Plan) of the 2015 Growth Policy Update for the Helena Valley Planning Area at this location:

<https://www.lccountymt.gov/cdp/county-growth-policy/2015-growth-policy.html>

Best,

Greg

**Greg McNally, Planner III**

Lewis and Clark County

Community Development and Planning Department

316 N. Park, Rm 230

Helena, MT 59623

(406) 447-8343 (Direct)

(406) 447-8374 (Front Office)

[gmcnally@lccountymt.gov](mailto:gmcnally@lccountymt.gov)

**From:** Thomas, Andrew <[arthomas@carroll.edu](mailto:arthomas@carroll.edu)>  
**Sent:** Tuesday, July 28, 2020 12:08 AM  
**To:** County\_Planning\_Mail <[County\\_Planning\\_Mail@lccountymt.gov](mailto:County_Planning_Mail@lccountymt.gov)>  
**Subject:** Comment Proposed Helena Valley Comprehensive Plan

Hello,

Please see attached comment. If you do not already do it as a matter of policy, please forward this comment to the planning board member who asked me the question about policy during the July 21st meeting.

Thank you,

Andrew Thomas

--

**Andrew R. Thomas JD, PhD**

Department of Business/MAcc Program

332B Simperman Hall

Office: 406-447-5454

Cell: 509-592-0720

[ARThomas@Carroll.edu](mailto:ARThomas@Carroll.edu)

Andrew R. Thomas  
5895 Redwing rd.  
Helena MT, 59602  
[ARThomas@carroll.edu](mailto:ARThomas@carroll.edu)  
509-592-0720

July 27, 2020

In response to the planning board member's question about how I would implement an alternative to the proposed top down comprehensive plan, I submit the following to highlight how a bottom up approach might be implemented to both satisfy the county's need to adequately plan for growth in the Helena Valley area while balancing other needs such as housing affordability and property rights.

### ***Bottom Up Approach***

The critical feature of the bottom up approach to public policy is that although it endorses general policy objectives such as mitigating environmental impact, enhancing economic growth, or ensuring housing affordability, it accomplishes these goals through assuming that no one monolithic approach should automatically apply (Colander and Kupers 2016). Instead the bottom up approach considers the specific requirements of each situation and progressively addresses the issues of that situation in a way that applies regulations and other restrictions to accomplish the policy goal in the least restrictive manner possible.

### ***Applying the Bottom Up Approach to water policy***

Consider the example of water which is a prominent issue being discussed relative to the comprehensive plan. Under the current proposed plan, the issue of water availability is indirectly addressed through mandating certain minimum lot sizes. However, this top-down approach is obviously highly restrictive and likely very inefficient in that it applies a monolithic standard to a very diverse set of circumstances.

A bottom up approach to water management would likely start with drilling test wells and considering existing hydrological data about a proposed building site. Depending upon the standards that currently exist, this review process may already exist, or existing standards may be adapted to meet the particular requirements mandated by the county. Assuming that the preliminary hurdle approving adequate water supply is met for either an individual or for a planned subdivision, the next possible route is to consider the amount of water available for that area either in terms of initial output or in a longitudinal sense as a consequence of other development in that area. For instance, if building is proposed in an area that has a relatively low recharge rate it may be desirable for the county to require that the homeowner does not irrigate or use large amounts of water that is not returned to the ground via the septic system. Through

these conservation efforts it would then be possible for a homeowner to be able to live in an area that is not as productive as it ideally would be. Although this constraint restricts the ability of an individual to have a lawn, it still allows the individual to build on the property and have a reasonable supply of water for their day-to-day necessities. Additionally, this process of evaluation and piecemeal mitigation can be used to more organically develop an area than simply by dictating lot sizes. Since groundwater resources are particularly diverse and often difficult to track this incremental approach to managing groundwater resources will likely yield more accurate results as to balancing water management with the need of individuals to develop those resources.

When we consider the other areas of concern outlined by the county it is possible to easily see how this bottom up approach to policy could be used to create a more fluid and organic pattern of development which better balances the county's interest in preserving the environment with the needs of homeowners and property developers.

### ***Implementation of the Bottom Up Approach***

In terms of technical implementation of a bottom up policy approach what I would strongly encourage both the planning staff as well as the planning board to do is to review existing regulations regarding the evaluation and management of the five areas of concern. Although I'm not familiar with the specific detail of existing regulations, from what I can gather there is likely already a substantial architecture in place that can be utilized and adapted to achieve these goals.

### ***Other considerations: Expansion of Municipal Water Service and Procedural Safeguards in the Variance Process***

In addition to implementing a bottom up policy approach to the comprehensive plan, I would strongly encourage the planning board and planning staff to consider a few other factors in their deliberations. Two areas of particular relevance that I did not have time to address in my comments that the county should consider are long-term planning to expand water delivery infrastructure throughout the Valley and procedures for appeal and variance. As both the county's hydrologists and others have clearly indicated overall there is not an inadequacy of water in the Helena Valley. Although there is a distributional issue depending upon what section of the aquifer and individual is over ultimately there is the availability of adequate water. From this and considering the current development patterns observed in the Helena Valley it may be very desirable for the county to consider the eventuality of expanding county/city water distribution to existing and new development. This could take a variety of forms including using the existing canal system as well as creating new water infrastructure. This system could include only water delivery, or it could also consider wastewater. Having originally come from the community on the East Coast that had municipal water delivery but private septic this may be a desirable option for the county since it is likely of lower-cost and it allows for a lower density of development that people in this area appear to find desirable. The second observation that I

would invite the planning board and planning staff to consider is engaging in efforts to more clearly delineate the standards for variance and appeal of projects. I have heard from numerous individuals that there is a concern about too much administrative discretion in the review process. Although there are a variety of ways of addressing this I would strongly suggest that a definite timeline for review and appeal be established as well as the creation of a review board assuming that it already does not exist of both planning staff and planning board members or other community members. Additionally, I would very strongly suggest that any comprehensive plan or regulation explicitly consider both the bottom-up approach I described above as well as the creation of various balancing tests which explicitly balance environmental, economic, social, and property rights related considerations.

My hope in providing this general perspective to the planning board and planning staff is that they thoughtfully consider these comments and integrate them and to the proposed regulation. Unfortunately, from what I have seen in other counties' proposed comprehensive plans is a neglect of these concepts which results in high levels of political acrimony and ultimately ineffective policy see e.g. (Maben 2015, Romeo 2018). Given the already highly contentious nature of this proposed policy along with the overall social and political environment that we are currently witnessing, it would be in everyone's best interest to thoughtfully approach this issue through and empirically driven, reasonable approach, that carefully balances individual's and society's interests.

I am available for further comment if need be.

Sincerely,

Andrew R. Thomas

Colander, D. and R. Kupers (2016). Complexity and the art of public policy: Solving society's problems from the bottom up, Princeton University Press.

Maben, S. (2015). Kootenai County comprehensive plan to get another look. Spokesman Reveiw

Romeo, J. (2018). What went wrong with La Plata County's land-use plan? . Durango Herald.

**From:** [County Planning Mail](#)  
**To:** "[Carolyn Zimmer](#)"  
**Subject:** RE: Opposed to Zoning  
**Date:** Monday, July 27, 2020 8:54:00 AM

---

Carolyn and Bob Zimmer,

Thank you for your comments. Your property at 6596 Rising Moon Road is not included in the proposed zoning. Portions of your property are located in the Helena Valley Planning Area and portions are located outside of the Helena Valley Planning Area. There are a number of parcels that are similarly situated along the boundary of the planning area. In these instances the Planning Staff has proposed to exclude said property from the proposed zoning. You are welcome to contact me if you have any further questions.

Best,  
Greg

Greg McNally, Planner III  
Lewis and Clark County  
Community Development and Planning Department  
316 N. Park, Rm 230  
Helena, MT 59623  
(406) 447-8343 (Direct)  
(406) 447-8374 (Front Office)  
gmcnally@lccountymt.gov

-----Original Message-----

From: Carolyn Zimmer <carolyn@image406photography.com>  
Sent: Sunday, July 26, 2020 5:36 PM  
To: County\_Planning\_Mail <County\_Planning\_Mail@lccountymt.gov>  
Cc: Carolyn Zimmer <carolyn@image406photography.com>  
Subject: Opposed to Zoning

Dear Planning Committee,

We are property owners of approximately 300 acres at 6596 Rising Moon Road, Helena, MT. We purchased our property in 2015 and it had no zoning or covenants. The property was divided into parcels in the late 1970's. In looking at the map, it looks like some of our property may be in the zoning area, and some not. We are opposed to all zoning that will limit our ability to use our property as we choose and request that our property be excluded from the zoning area. Is there something more formal that we need to do?

Carolyn Zimmer and Bob Zimmer  
Robert J. Zimmer and Carolyn M. Zimmer AB Living Trust  
406-461-5379

**From:** [County Planning Mail](#)  
**To:** "Carolyn Zimmer"  
**Subject:** RE: Opposed to Zoning  
**Date:** Thursday, July 30, 2020 12:47:00 PM

---

Carolyn,

Initially I only examined the single property at that address point. It appears that there are multiple properties, as you indicate, and I don't want to misidentify which is which. I have now examined approximately 8 properties totally approximately 317 acres that appear to be owned by ROBERT J & CAROLYN M ZIMMER AB LIVING TRUST or some variant. It appears some properties have the Helena Valley Planning Area boundary go through them, in which case they would be excluded from the proposed zoning as would those wholly outside the Helena Valley Planning Area (HVPA). At least one I see is wholly within the HVPA but is already zoned as part of the North Spokane Hills special zoning district and would not be subject to these newly proposed zoning regulations. Here is a link to our zoning page: <https://www.lccountymt.gov/cdp/zoning.html>

This page includes a link to an interactive map that you can find your properties on in relation to existing and proposed zoning.

The Planning Board is meeting on August 4th to make a recommendation on the zoning regulations and map to the Board of County Commissioners. The Board of County Commissioners would then consider the recommendation at a public hearing that has yet to be scheduled.

Please contact me should you have further questions. 447-8343. Your comments will be provided to the Planning Board.

Best,  
Greg

Greg McNally, Planner III  
Lewis and Clark County  
Community Development and Planning Department  
316 N. Park, Rm 230  
Helena, MT 59623  
(406) 447-8343 (Direct)  
(406) 447-8374 (Front Office)  
gmcnally@lccountymt.gov

-----Original Message-----

From: Carolyn Zimmer <carolyn@image406photography.com>  
Sent: Thursday, July 30, 2020 11:07 AM  
To: County\_Planning\_Mail <County\_Planning\_Mail@lccountymt.gov>  
Subject: Re: Opposed to Zoning

Greg,

Thank you for your prompt response, it is appreciated.

You indicate our property at 6596 Rising Moon Road is not included in the proposed zoning. We do have 8 different property ID's that make up the 300 acres at the 6596 Rising Moon Road address.

If I understand correctly, the Planning Staff is proposing to exclude properties such as ours on the boundary of the planning area. We would like all of our property to be excluded. Do we need to do anything else? When will the decision be made?

Thank you,  
Carolyn

> On Jul 27, 2020, at 8:54 AM, County\_Planning\_Mail <County\_Planning\_Mail@lccountymt.gov> wrote:  
>  
> Carolyn and Bob Zimmer,

> Thank you for your comments. Your property at 6596 Rising Moon Road is not included in the proposed zoning. Portions of your property are located in the Helena Valley Planning Area and portions are located outside of the Helena Valley Planning Area. There are a number of parcels that are similarly situated along the boundary of the planning area. In these instances the Planning Staff has proposed to exclude said property from the proposed zoning. You are welcome to contact me if you have any further questions.

> Best,

> Greg

>

> Greg McNally, Planner III

> Lewis and Clark County

> Community Development and Planning Department

> 316 N. Park, Rm 230

> Helena, MT 59623

> (406) 447-8343 (Direct)

> (406) 447-8374 (Front Office)

> gmcnally@lccountymt.gov

>

> -----Original Message-----

> From: Carolyn Zimmer <carolyn@image406photography.com>

> Sent: Sunday, July 26, 2020 5:36 PM

> To: County\_Planning\_Mail <County\_Planning\_Mail@lccountymt.gov>

> Cc: Carolyn Zimmer <carolyn@image406photography.com>

> Subject: Opposed to Zoning

>

> Dear Planning Committee,

>

> We are property owners of approximately 300 acres at 6596 Rising Moon Road, Helena, MT. We purchased our property in 2015 and it had no zoning or covenants. The property was divided into parcels in the late 1970's. In looking at the map, it looks like some of our property may be in the zoning area, and some not. We are opposed to all zoning that will limit our ability to use our property as we choose and request that our property be excluded from the zoning area. Is there something more formal that we need to do?

>

> Carolyn Zimmer and Bob Zimmer

> Robert J. Zimmer and Carolyn M. Zimmer AB Living Trust

> 406-461-5379

**From:** [Peter Italiano](#)  
**To:** [George Harris](#); [Roger Baltz](#)  
**Cc:** [Greg McNally](#)  
**Subject:** RE: 2 pm Friday Zoom meeting  
**Date:** Friday, July 17, 2020 1:53:00 PM  
**Attachments:** [image002.jpg](#)  
[image003.jpg](#)

---

Hi George:

Please note that today's Planning Board Zoom mtg. was requested by the Planning Board Chair. His desire was to spend some time with Staff previewing the draft amendments in order to be better prepared for a meaningful discussion next Tuesday evening the 21<sup>st</sup>. Once he decided to also include other Planning Board members as opposed to the only Staff, the meeting had to be considered a work session in accordance the Planning Board By-Laws (hence the public notice.)

We will record it in the event anyone should desire to review it after the fact. As with all work sessions, no decisions will be made.

Thanks,

Peter A. Italiano, Director  
Community Development & Planning  
Lewis and Clark County, Montana  
316 North Park Ave. – Suite 222  
Helena, MT 59623  
Office: (406) 447-8374  
[pitaliano@lccountymt.gov](mailto:pitaliano@lccountymt.gov)

*ALERT – This E-Mail account may become subject to the "Right to Know" provisions of the Montana Constitution and can be considered a public record pursuant to MT law. As such, e-mail sent or received, its sender and receiver(s), and the e-mail contents, may be subject to public disclosure.*



---

**From:** George Harris <[gharris@helenahar.com](mailto:gharris@helenahar.com)>  
**Sent:** Friday, July 17, 2020 1:23 PM  
**To:** Peter Italiano <[PITALIANO@lccountymt.gov](mailto:PITALIANO@lccountymt.gov)>; Roger Baltz <[rbaltz@lccountymt.gov](mailto:rbaltz@lccountymt.gov)>  
**Subject:** 2 pm Friday Zoom meeting

Peter and Roger:

Just so you both know I am getting a ton of complaints about an important zoom meeting being scheduled on Friday afternoon at 2pm. This is incredibly busy time for closing, showings etc. for our association.

Also there has been questions about public notice and concerns this may be rushing the process – hopefully more of my members can attend Tuesday night.

I felt I needed to pass this on to you for any future meeting scheduling for your consideration.

Thank you

George H. Harris, MPA, ARM  
CEO

Helena Association of Realtors  
2707 Colonial Drive  
Helena, Montana 59601

Work 406-449-3835

Mobile 406-422-7724

Email [gharris@helenahar.com](mailto:gharris@helenahar.com)





**Written comments provided by Abigail St. Lawrence and Jerry Hamlin during the July 21, 2020 work session. Staff responses to those written comments are also provided. Staff responses to John Herrin comments are also included.**



## **Responses to Abigail St. Lawrence's Letter to Planning Board of July 21, 2020**

Staff has copied and pasted sections of Ms. St. Lawrence's letter (added bolded emphasis) and has provided responses below; and the original letter is also attached.

### OPENING STATEMENTS ---

- Based upon the statement "**HBIA remains opposed to the overall proposal for Part II zoning**" staff acknowledges the opposition of HBIA to the County-Initiated zoning project.

- Staff rejects the author's statement that "**...with the focus of the Part II zoning primarily on lot size...**"

The proposed zoning is simply not focused primarily on lot size. In fact, the proposed zoning is a classic model of the oft common Euclidian Zoning approach. The proposed zoning is following closely the tenets of the updated Growth Policy, as developed by a well engaged public in 2015, which identified three distinct zone districts. The districts reflect the direction of the Helena Valley citizens whom were involved in the updated Growth Policy's direction to describe the entirety of the Helena Valley Planning Area in three separate categories. These are the Rural Growth Area, Transitional Areas, and Urban Area.

The proposed zoning utilizes development pattern density as a means to address the impacts of growth relative to the 5 key issues noted in the 2015 Growth Policy update. As density decreases, so will the attendant impacts associated with it. For example, on a given roadway, 300 trips per day (i.e. 30 lots) will equate to a lesser impact than 3,000 trips per day (i.e. 300 lots.) When looking at the industry standard of approximately 10 trips per day per lot, it's easy to see how reduced density also reduces impacts. This same rationale can also be applied to other development related impacts as well.

### SPECIFIC COMMENTS ---

- As noted the author has concerns with 3 issues regarding what appears to be 4 processes, the Variance Process, the Appeals Process, the CUP (conditional use permit) Process, and the PUD (planned unit development) process. Those 3 issues are *Staff Authority, Vague Standards, and Timelines*. The author states that "**HBIA has three fundamental concerns with the CUP, variance and appeals, and PUD processes as currently drafted: the authority invested in the planning staff, the vague standards for determination, and the timelines (or lack thereof).**" As a point of note, the PUD Section has not yet been written and therefore Staff cannot opine as to the author's concern. As

included in the proposed zoning document, the PUD section is merely a placeholder for the Planning Board and County Commissioners to consider for inclusion at a later date. It is not Staff's intent to have the PUD process be administrative. In all likelihood, Staff will move the PUD process draft such that it will entail time before both the Planning Board and Board of County Commissioners.

*SECTION 21 Planned Unit Development Overlay District (PD)*

*The Planned Unit Development Overlay Zone District is hereby adopted. Detailed regulations to be adopted with a future amendment.*

- In looking at the author's 3 concerns specific to the CUP Section, Staff notes as follows:

1. Staff's Authority is quite limited and it is the Board of Adjustment (BOA) which has the approval/denial authority as noted below.

1402 Criteria for Consideration of a Conditional Use Permit

A CUP may be approved only if the BOA finds and concludes that the proposed use satisfactorily addresses the criteria set forth in Section 1402.01

In the event the author is referring to the "Administrative Amendment process for existing approved CUPs, Staff remains a bit baffled at the concern. As noted below, the regulations show that it is the applicant and not Staff who drives the bus. As shown in 1416.02 below, the applicant may elect to opt for the Administrative process as opposed to going to the BOA. This Administrative process (wholly voluntary) is included for one reason, and that is to allow for increased efficiency with less cost and more timely decisions for the applicant. Staff simply cannot find a downside to this approach and assures the Planning Board members this sort of expedited, less costly process, has worked well in other jurisdictions.

1416 CUP Amendments

1416.01 Amendment of an Approved CUP - BOA

*An amendment to an approved CUP may be considered in accordance with the procedures identified in the Section 14 herein for a new CUP.*

1416.02 Amendment of an Approved CUP - Administrative

*When an existing CUP is proposed for a minor modification, it may be considered for an Administrative CUP Amendment by the Zoning Administrator as follows:*

2. The concern of Vague Standards is somewhat understandable insofar as the development community in the HVPA has been mostly focused on the

Subdivision Regulations which are very metric driven. In fact, they are too driven by simple “outputs” instead of being more appropriately focused on “outcomes.” Nevertheless, that is a State law (MCA) driven issue which is a topic for another day. By design, the CUP process looks at specific uses which may possess unique and special characteristics that otherwise may not be ordinarily compatible with all aspects of the zone district in question. It is in fact these special circumstances which mandate less rather than more rigidity in the process. The Planning Board members may be interested to know that Staff carefully considered several other Montana Part-2 Zoning Regulations and followed very closely those of Flathead County in this area. So while their inherent lack of rigidity may cause some consternation, please know that they have been well tested.

1402 Criteria for Consideration of a Conditional Use Permit

*A CUP may be approved only if the BOA finds and concludes that the proposed use satisfactorily addresses the criteria set forth in Section 1402.01 In reaching its conclusions, it will assess the applicant’s information; however, the burden of proof for satisfying the approval standards shall rest wholly with the applicant, and not the BOA.*

1402.01 Approval Criteria

*Each CUP application shall demonstrate how the proposal will satisfactorily address the following five (5) approval criteria.*

1402.01.1 Site Suitability

*That the site is suitable for the use. This includes:*

- *adequate usable space; and*
- *adequate access; and*
- *absence of adverse environmental constraints.*

1402.01.2 Appropriateness of Design

*The site plan for the proposed use will provide the most convenient and functional use of the lot. Consideration of design should include:*

- *parking scheme; and*
- *traffic circulation; and*
- *open space; and*
- *fencing, screening; and*
- *landscaping; and*
- *signage; and*
- *lighting.*

1402.01.3 Availability of Public Services and Facilities

*The following services and facilities are to be available and adequate to serve the needs of the use as designed and proposed:*

- *sewer; and*
- *water; and*
- *storm water drainage; and*
- *fire protection; and*
- *police protection; and*
- *streets.*

1402.01.4 Immediate Neighborhood Impact

*That the proposed use will not be detrimental to surrounding neighborhoods in general. Typical negative impacts which extend beyond the proposed site include:*

- excessive traffic generation; and
- noise or vibration; and
- dust, glare, or heat; and
- smoke, fumes, gas, or odors; and
- inappropriate hours of operations.

1402.01.5 Growth Policy

*The proposed development will be consistent with the Growth Policy.*

3. The last of the three issues noted by the author is that of Timelines. As the author acknowledged, Staff provided the Planning Board with an amended draft to address the concerns previously raised as to timelines. As noted below, the July 14<sup>th</sup>, 2020 amended draft (1408.04) places the applicant in charge of moving the process along in timely and success driven manner. The driving force here is to find solutions rather than paths towards a denial. This approach gives the applicant control to address any and all concerns prior to moving into a hearing process wherein without all the criteria addressed would likely result in a path towards denial. This flexible and applicant friendly approach avoids that path, saving time and money. Lastly, as a local government, the elected officials are much closer to the applicant and Staff than at State or Federal agencies. As such, should the unfortunate situation arise wherein it is felt that Staff has been abusive, the feedback loop with the elected officials is much more likely to resolve such isolated issues before they become larger systemic problems. Lastly, the issue of mutual agreement was discussed at the last work session as well as within the author's letter. The author's reference to "much room for mischief" is somewhat frustrating. As used in 1408.05 below, the drivers of the mutual agreement are the applicant and the BOA, not Staff. Further, this argument seems a bit specious in that the applicant can proceed and then should the decision be unreasonable avail themselves to the appeals process.

1408.04 *The Planner Staff will review the referral agency comments, and discuss the concerns with the applicant. Upon receipt of written notice from the applicant that they are ready to proceed with a public hearing, Staff shall schedule a public hearing before the BOA. Once such public hearing has been determined, Staff shall notify the applicant in writing of the hearing date and time, and prepare a staff report for the BOA. The Planner Staff will provide the public notice for the hearing as set forth in Section 1412 herein.*

1408.05 *The BOA shall evaluate the CUP request, staff report, referral agency comments, applicant responses, and public comment and testimony, and shall approve, approve with conditions, table for further study, or deny the CUP request. The BOA's action shall be based on the evidence presented, public comment, compliance with the adopted County standards, regulations, policies, and other guidelines. The BOA shall have up to sixty (60) days from the date of the public hearing to render their decision unless an extension is mutually agreed-upon between the applicant and the BOA.*

- In looking at the author's 3 concerns specific to the Variance and Appeals Sections, Staff notes that for all intents and purposes the aforementioned reasoning also apply to the Variance and Appeals Sections. This was not unintentional as the BOA has direct involvement in all three areas and consistent regulations provide for more timely processing, a user friendly process, and less confusion for all involved; which usually translates into cost savings for the applicant.

In closing, Staff wants to assure the Planning Board Members that while the author raises concerns about the scheduling of the Planning Board work sessions and meetings, all such meetings have been compliant with all Statutory requirements as well as the Planning Board's By-laws. In fact, the By-Laws specifically contemplate that you may call "special" meetings. Finally, and to once again emphasize, Staff stridently rejects the construct that the zoning process has been rushed. Staff desired and in fact remains committed to working with the HBIA (notwithstanding their stated total opposition to the zoning project) as well as other local interested groups going forward in the future with further amendments to the proposed regulations. The amount of public notice and opportunity for citizen engagement has been above and beyond that required in MCA.



**To: Consolidated Helena & Lewis and Clark County Planning Board**  
**From: Abigail St. Lawrence, counsel for Helena Building Industry Association**  
**Date: July 21, 2020**  
**Re: Comments on Draft Zoning Regulations**

---

At the June 25, 2020 meeting of the Consolidated Helena and Lewis and Clark County Planning Board (“Board”), board member Lois Steinbeck requested that the Helena Building Industry Association (“HBIA”) provide further detail on where the conditional uses and permits (“CUP”) in Sections 14 through 16 of the draft zoning regulations, variance and appeals standards and procedures in Sections 19 and 20, and planned unit development (“PUD”) in Section 21 need to be modified. After internal discussion, HBIA is willing to provide some general comments. However, HBIA must be clear—the opposition to the proposed zoning regulations is not just because of isolated details. As set forth in the detailed comments dated June 16, 2020 that HBIA previously provided to the Board, HBIA has serious concerns with a large number of provisions within the draft regulations. Further, as HBIA has also detailed not only in previous written comments but in numerous oral comments to both the Board and to county planning staff at various “listening sessions,” HBIA remains opposed to the overall proposal for Part II zoning. As so many other groups and private citizens have stated to this Board, planning staff, and the county commission, with the focus of the Part II zoning primarily on lot size, the Part II zoning proposal before the Board not only has significant impacts on housing availability and affordability, it will have an overall impact on the livability and basic nature of our community for a broad spectrum of residents.

#### **Specific Comments**

HBIA provides the following comments on Sections 14-16 and 19-21 of the April 14, 2020 draft zoning regulations as subsequently modified up to and including the July 14, 2020 staff report. Because the regulation drafts are under constant modification, HBIA reserves the right to modify or amend these comments as further changes occur. HBIA has three fundamental concerns with the CUP, variance and appeals, and PUD processes as currently drafted: the authority invested in the planning staff, the vague standards for determination, and the timelines (or lack thereof).

#### **Staff Authority**

First and foremost, the CUP, variance and appeals, and PUD processes as set forth in the existing draft zoning regulations imbue an enormous authority in unelected planning staff, not only in decision-making, but also in filtering information and influencing the final determination. Part of this goes hand-in-hand with HBIA’s second primary concern of vague standards. Planning staff are the initial gatekeepers as to the acceptability of CUP, variance, and PUD requests, but with little guidance for either applicants or staff on standards for acceptability. Staff also has the discretion to solicit comment from other agencies, and staff controls the timeline and hearing process.

Setting aside concerns about staff's ability to have undue influence over final determinations because of the discretion the draft regulations place in staff, this discretion with little guidance also places staff in the unenviable position of being subject to critique and possibly legal action from both applicants and opponents to CUP, variance, and PUD requests for acting arbitrarily and capriciously. Addressing the subsequent two primary concerns on standards and timelines would go a long way towards protecting both planning staff and the public with clear guidance and leaving the decisions with the elected officials. Planning staff's role should be administrative only, and not a substantive decisionmaker.

### **Vague Standards**

Developers and builders, and, indeed, planning staff and regulators, expect and are used to detailed regulatory standards for subdivisions and construction in general. Clear and detailed standards provide everyone with a bright line. Developers and builders know what is expected of them so they can make an informed decision on whether and how to proceed, taking into consideration factors that contribute to cost. Regulators have direction on what actions they can and cannot take, relieving them of the burden of having to make legally questionable calls. The CUP, variance, and PUD process contains few clear detailed standards, which should be a concern for all parties involved.

Planning staff has stated at previous Board meetings that the intent is for the process to be "iterative" so all parties can have lots of discussion and collaboration. While that sounds inviting, the reality is that constant back-and-forth is a significant expense escalator, and that cost has to be recovered somewhere. Consequently, vague standards and an "iterative" process contribute to housing affordability concerns, which is one of HBIA's overriding concerns with the entire zoning proposal.

Further, vague standards only exacerbate a lack of trust between the public and the decisionmakers while also providing the decisionmakers with little in the way of guidance to protect them from successful legal challenges to their decisions. As discussed above when highlighting the concerns with the substantive decision-making authority granted to planning staff, large leeway for discretion has negative impacts. From the perspective of those creating housing for the public, vague standards frustrate responsible development and increase housing costs, and that's not good for anyone.

### **Timelines**

The clear timelines or lack thereof in the CUP, variance, and PUD process have already been highlighted by the Board, and HBIA appreciates that attention. While HBIA does acknowledge that the July 14, 2020 staff report does propose some amendments, the fact is that a clear answer upfront as to the outside limit for a final decision remains unclear. Further, the amendments still leave much room for mischief caused by delay, and delay only accelerates cost, if not discourages responsible housing development overall.

In multiple locations throughout the July 14, 2020 staff report proposed amendments, timelines are inserted with the exemption that they may be extended “upon mutual agreement.” While the idea of an extension seems helpful, the reality does not play out that way. Some of the Board members may be familiar with the process for reviewing and making final determinations on new water right permit application and applications to change existing water rights before the Montana Department of Natural Resources and Conservation (“DNRC”). Those processes as laid out in statute and rule contain similar language for extensions “upon mutual agreement.” In reality, for multiple applicants, the extensions have been forced because applicants are told that DNRC staff either lack the time, resources, and/or information to make an informed determination within the set timeline, so unless the applicant “agrees” to an extension, the application will be denied. On paper, the extension is “mutual.” The reality is that the agreement was forced and leaves applicants in indefinite limbo.

The processes for CUP, variance and appeal, and PUD need to have clear and definite timelines for each and every step of the process. Any extension of the timeline should be at the request of the applicant only. To allow the decisionmakers to extend the timeline, even if by “mutual” agreement of the applicant and the regulators, has the not-insignificant potential to force applicants into an indefinite holding pattern and needs to be avoided.

### Conclusion

HBIA provides the above comments on CUP, variance and appeals standards, and PUD as per the Board’s request. However, HBIA remains firmly and resolutely opposed to Part II zoning overall. HBIA does appreciate that this process is ongoing and looks further to further dialogue. However, as HBIA stated in the July 17, 2020 work session of the Board, the constant meetings—especially meetings that are on very short notice such as the July 17<sup>th</sup> meeting that was not noticed until the afternoon of July 14<sup>th</sup>—are not only decreasing public participation, they are eroding public trust. Few members of the public have the time and ability to constantly participate in multiple meetings. While the attempt at transparency is appreciated, the process needs to be clear and consistent rather than ad hoc. Towards that end, HBIA asks that the Board settle on the timeline for decision making rather than just moving from meeting to meeting.

Further and finally, HBIA would once again encourage the Board to remember that the Board is not here to serve the desires of the planning staff or the county commission. Rather, the Board is here to be a service to the people of the community and, as specifically set forth in Mont. Code Ann. §76-1-102(2), to serve in an advisory capacity. That means it is absolutely the Board’s purview and, indeed, duty to question the proposals of the planning staff and to advise on where changes are needed. HBIA appreciates the seriousness with which the Board undertakes this duty and encourages the Board to continue to exercise independent judgment in determining in what form and whether to forward the draft zoning proposal to the Lewis and Clark County Commission.

Consolidated Planning Board Re: Zoning Regulations and Map for the Helena Valley Planning Area, Page 53 of 91  
HBIA comments

July 21, 2020

Page 4 of 4

HBIA does appreciate the opportunity to comment on the existing draft zoning map and regulations and looks forward to further productive communication with county planning staff and the consolidated planning board on this topic. If there are any questions or concerns about the present comments, please do not hesitate to contact me directly as counsel for HBIA. Thank you.

## **Responses to Jerry Hamlin's Letter to Planning Board of July 21, 2020**

Staff has underlined sections of the author's letter and responded in bold face type; and the original letter is also attached.

Jerry Hamlin-Testimony for zoning public hearing-6:00PM 7-21-20

Mr Chairman, members of the board and staff, my name is Jerry Hamlin and I reside in Helena, Montana.

I have approximately 600 acres of land that I bought back in 2006 that will be very negatively affected if this current zoning proposal is adopted. I have asked 3 times to get my property removed from this zoning proposal to no avail.

Staff explained, on several occasions, to Mr. Hamlin that the zone districts will follow the growth policy's growth areas. Further, we explained that the basis for his request has been that the lines on the map are arbitrarily drawn. Staff has explained that the property in question lies along a line which is definitely not arbitrary and is based upon the constraint maps in volume 1 of the 2015 Growth Policy update. Further, Staff explained to the author that if the zoning is in fact approved, a potential path for him to consider would be a PUD submittal to amend the zoning for his property based upon adequately addressing the five key issues identified in the Growth Policy. The PUD process would afford maximum flexibility in both density and design while ensuring the public that the impacts of the project would be satisfactorily addressed.

Therefore, I am adamantly opposed to this zoning because of its significant negative impact on my own land but I also oppose it for the other reasons I have enumerated in several past public hearings.

At the outset, I thank you for this opportunity to, once again, offer testimony and let you know I appreciate your efforts to hear all sides of the story. I know your time is valuable and these meetings consume time you have to take away from your family and loved ones. Thank you for taking time to be public servants in this manner.

Tonight, I strongly feel we are at a critical stage in these hearings on the proposed zoning implementation. I understand that your review here at the Planning Board level will result in a recommendation to the county commission who will make the ultimate decision.

At every public hearing there has been overwhelming dissatisfaction with this proposal. It continues here tonight. There has been little, if any, support at any of

the meetings I have attended or the reports of the one I couldn't attend. Due to this massive resistance, I would like to ask this board to consider a recommendation to table this proposal, go back to the drawing board (which is the Growth Plan) and consider other alternatives to this zoning proposal. It is simply too rigid and inflexible, it is too comprehensive, it has had been no "cost benefit analysis", and it limits growth in the county at a time when we should be encouraging growth and figuring out ways to do it rather than "discouraging it". A simple look at Telluride, Colorado will tell you how that story ends. That area has become a hideaway for the rich and famous and prices are sky high. I do not think we want that to happen here.

**As to the concern over rigidity and inflexibility, I want to assure the Planning Board Members that nothing could be further from the truth. The CUP process affords much flexibility while addressing compatibility and impacts. Likewise, the generous Non-Conforming regulatory structure along with the high degree of flexibility in the Variance and Appeals process ensures all that the proposed regulations are anything but one size fits all and will serve many very well into the future. As to being too comprehensive, that is rather curious because that is exactly the purpose and benefit of Part-2 zoning as opposed to the myopic approach to Part-1 zoning.**

When deliberating, I would like to ask that you consider the following questions:

- 1) Why does this plan give better notice to adjoining landowners of a new subdivision than it does to the land owners whose land under this proposal is literally being taken away from them?

**This seems to be confusing or ignoring the reality that MCA has specific requirements for different types of processes. Please be certain that all notice requirements for this zoning process have and will continue to meet or exceed MCA requirements. Further, please note that Staff rejects the notion that any land is being "taken away" from anyone.**

- 2) Why has the process been rushed since its inception with inadequate notice and no discussion of the items brought up by those of us who are so negatively impacted by this government initiated zoning proposal?

**The process has been anything but rushed. In fact, the County has gone above and beyond all requirements for public notice. As can be seen in the State Law below, there are no specific notice requirements for the Planning Board relative to Part-2 County Initiated Zoning. Nevertheless, the County's strong commitment to open and transparent inclusive public process provided a plethora of public involvement with exceptionally well noticed meetings. Through a combination of press**

releases, social media posts, posted flyers, web postings, and especially an unprecedented mailing of over 13,000 postcards, the County exceeded all requirements by an enormous margin. In keeping with the County's strong commitment for an inclusive process, it will continue to exceed notice requirements. Also, please be certain that all issues raised by the public have been brought forward to the Planning Board.

*76-2-204. Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.*

- 3) Why are the planners relying on a Growth Plan that they admit was from the 2004 Growth plan and is now called the 2015 Growth Plan? Where are the studies showing the road and other improvements done in the county since 2004? Has that data been considered in this plan? If not, why not?

It would appear that the author has completely misunderstood the information previously presented on several occasions about the Growth Policy. The new and extremely well written Helena Valley Planning Area (HVPA) Growth Policy update of 2015 is anything but the 2004 Growth Policy simply "renamed." The 2015 update is a completely new document (with 2 distinct volumes) which was driven by an incredible public participation effort. The Planning Consultant worked with the County and the public to develop the Key Issues Report (Volume-I of the 2015 Growth Policy update) and listened carefully to concerned citizens in helping them craft their future vision for the HVPA (Volume-II of the 2015 Growth Policy update.) As required in MCA, the proposed zoning is compliant with the tenets of the Growth Policy update of 2015.

- 4) At what point do the confluence of Private Property Rights and government intervention result in an undue taking of the private property rights from the citizens in the county? This right is inalienable and it is a building block of our society and, yet, I haven't heard any discussion about the effect of this costly, restrictive and ineffective zoning proposal on the rights of a citizen. (I did hear a commissioner say "some must suffer for the good of the whole") Sounds good except if you are one of those suffering

There is absolutely nothing being proposed by the County's Part-2 zoning project which comes close to a takings. Throughout the United States the Courts have heard many takings claims over the years. The 5<sup>th</sup> Amendment of the U.S. Constitution is

clear on what is and what is not a takings. Within the 5<sup>th</sup> Amendment is the Takings Clause, which says "Private property shall not be taken for a public use, without just compensation." Several prominent cases such as *Nollan v. California Coastal Commssion - 1987*, *Lucas v. South Carolina Costal Commission – 1992*, *Dolan v. City of Tigard, OR - 1994*, and more recently *Kelo v. City of New London, CT – 2005* all provide a good look at both the complexity and reality of a takings claim.

Without writing a full and separate paper devoted specifically to takings, suffice it to say that the construct of whether or not zoning, in and of itself, is tantamount to a takings has long been debunked. Diving a bit deeper, we see that the government is charged with the protection of the public health, safety, and welfare. Often, what one person may desire could be viewed as potentially deleterious to others. Likewise, impacts from one property may create a need for public subsidy by others. As such government has long been afforded certain Police Powers, which include zoning of private property.

Zoning is anything but new. Most likely, the first documented zoning was in Los Angeles, CA in 1908; followed by New York City in 1916. During the 1920s the U.S. Department of Commerce developed the Model Zoning Ordinance which was intended to facilitate the States in drafting of their own enabling zoning laws.

The landmark zoning case often referenced throughout the Country derives from the U.S. Supreme Court case in 1926; *Ambler Realty v. Town of Euclid, OH*. In *Euclid*, the Courts were asked to look at the 14<sup>th</sup> Amendment to the U.S. Constitution and its protection of liberty and property. Supreme Court Justice Sutherland authored an opinion, based upon a 6-3 vote, that the "speculative" damages alleged by *Ambler Realty* were not sufficient to stop a local government from exercising its Police Powers. Based upon *Euclid* the common explanation has been, and in fact remains so today, that zoning does not violate the Constitution.

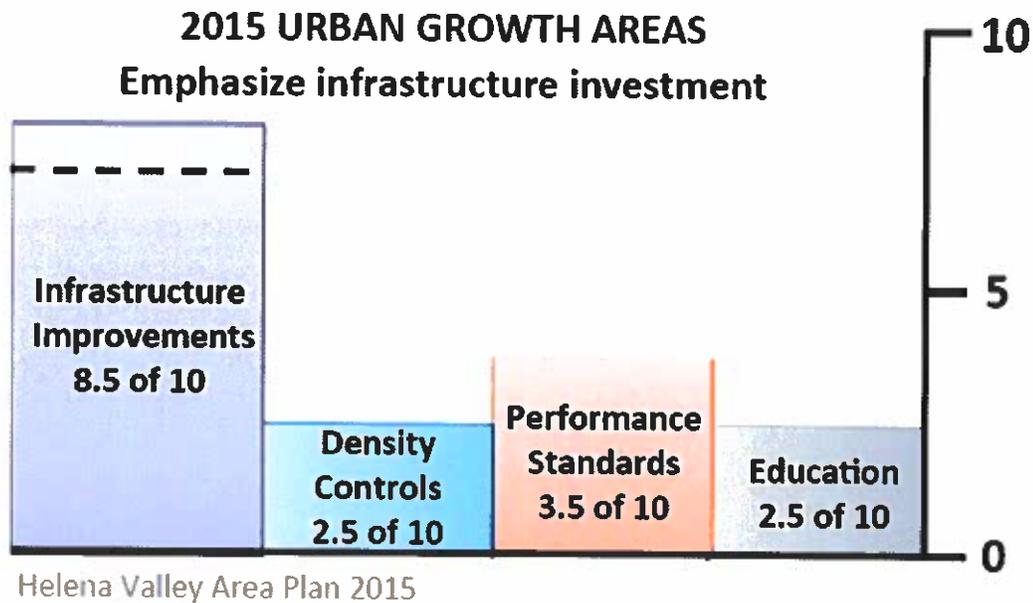
In looking closer to Lewis and Clark County, it must be likewise noted that zoning is certainly not new nor foreign within Montana; and in fact there are approximately 25% of the Counties in Montana that had County-Initiated Zoning at last review. Much closer to home, is the relationship of the proposed zoning in the Valley to the 2015 Growth Policy; and its support thereof, again in-sync with MCA.

- 5) If this proposal is adopted, where will the 4000 plus needed units be built? What will be the cost of those lots?

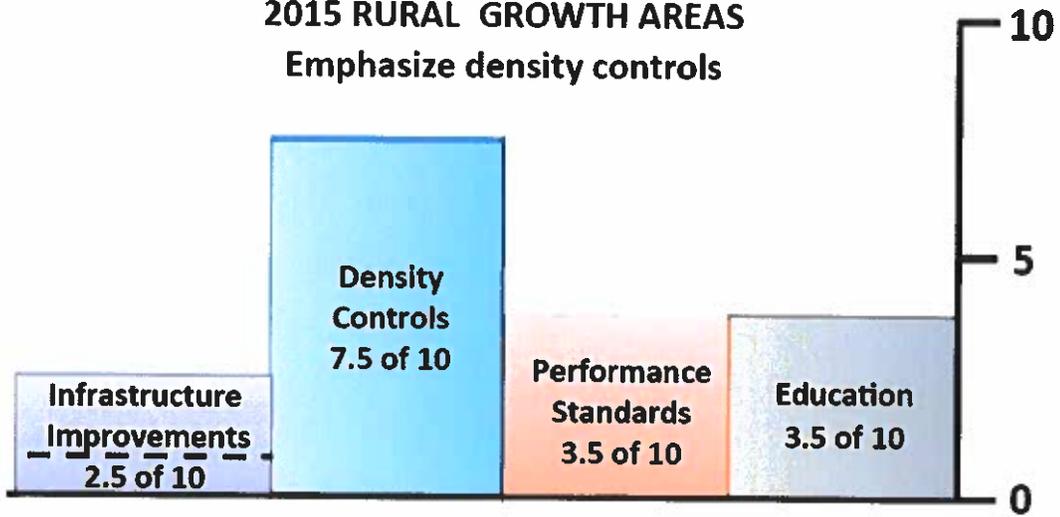
The 2015 Growth Policy update includes a build-out analysis which indicates that the Urban Growth Area can accommodate more than 3 times the projected need of 4,000 housing units if built at urban densities. This does not mean that all growth will, or should occur within that boundary but it does demonstrate that there is adequate buildable, vacant land to accommodate our housing needs well into the future.

6) Can we have a discussion about how to encourage, rather than discourage growth?

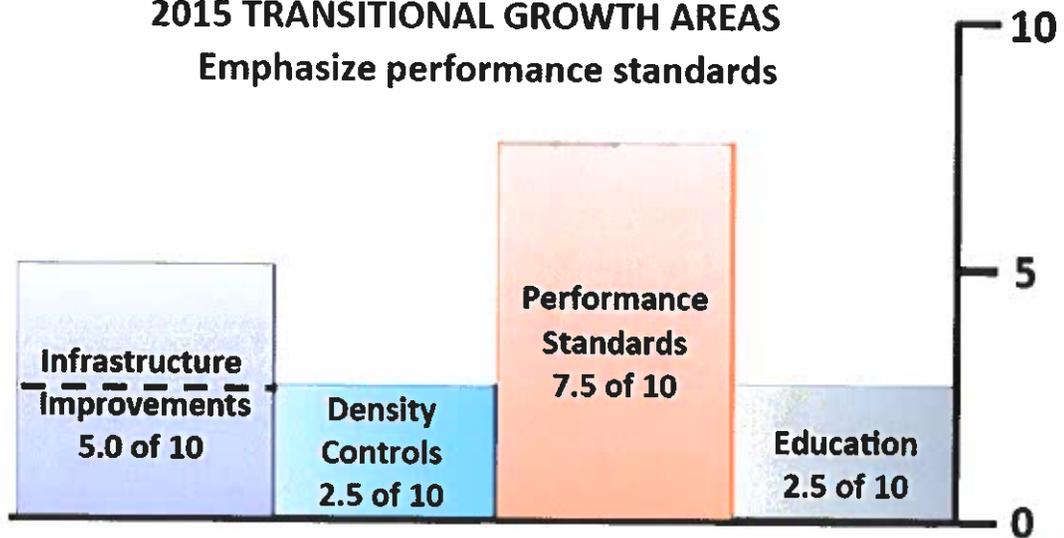
The County absolutely is desirous of encouraging growth; and specifically growth which is well planned and well located. Ostensibly, the author is basing this comment on specific language in the Intent Section of the Rural Residential Mixed-Use Zone District which does not support high density development in the rural areas of the HVPA. Staff believes that characterizing the entire zoning document based upon one sentence in one section is specious at best. As discussed in the 2015 Growth Policy update, higher density development should be directed into the Urban Growth Area (now proposed as the Urban Residential Mixed-Use Zone District.) The following images are taken from the 2015 Growth Policy Update and clearly show the citizens' vision for development within each of the 3 growth areas; i.e. the focus for the Rural Growth Area is Density Control, the focus for the Transitional Area is Performance Standards, and the focus for the Urban Area is based upon Infrastructure Improvements.



### 2015 RURAL GROWTH AREAS Emphasize density controls



### 2015 TRANSITIONAL GROWTH AREAS Emphasize performance standards



- 7) Can we discuss how to incentivize and promote reasonable growth in this county?

**The County will be working closely with the City as it develops the regulations for the Urban Residential Mixed-Use Zone District in the near future to incentivize growth in the urban area. This approach is consistent with the Growth Policy 2015 update to use infrastructure improvements to allow density to increase as capacity increases.**

- 8) Why is lot size restriction the only thing this zoning does? How about looking at the road system in the county and encouraging growth in the areas where there is adequate, well maintained roads, good water, no flood plain problems, adequate sewer facilities and adequate Fire Protection. This proposal acts like there are no such parcels in all of the county. That is simply not true but the county has done no studies to even consider those areas as potential for good development to occur.

**Staff rejects Mr. Hamlin's implication that the only thing the proposed regulations accomplish are lot size restrictions. In fact, the proposed zoning is a classic model of the oft common Euclidian Zoning approach. The proposed zoning is following closely the tenets of the updated Growth Policy, as developed by a well engaged public in 2015, which identified three distinct zone districts. The districts reflect the direction of the Helena Valley citizens whom were involved in the updated Growth Policy's direction to describe the entirety of the Helena Valley Planning Area in three separate categories. These are the Rural Growth Area, Transitional Areas, and Urban Area.**

**The proposed zoning utilizes development pattern density as a means to address the impacts of growth relative to the 5 key issues noted in the 2015 Growth Policy update. As density decreases, so will the attendant impacts associated with it. For example, on a given roadway, 300 trips per day (i.e. 30 lots) will equate to a lesser impact than 3,000 trips per day (i.e. 300 lots.) When looking at the industry standard of approximately 10 trips per day per lot, it's easy to see how reduced density also reduces impacts. This same rationale can also be applied to other development related impacts as well.**

- 9) Why does this proposal have to apply to the whole county? Is this one size fits all approach to zoning the whole county a good method to handle this issue? Before adopting such a costly, time consuming zoning proposal, why not at least do an inventory of existing parcels to see whether there are larger areas that don't require such a restrictive policy?

Staff assumes Mr. Hamlin has erred in using the phrase "whole County" and instead means the whole HVPA; which is the only portion of the County under consideration for zoning. For the record, the County has no plans to zone any area in the County outside the limits of the HVPA.

The proposed regulations are definitely not a one size fits all approach. There will be approximately six distinct areas with zoning. The largest area will be the Rural Residential Mixed-Use Zone District, while the Urban Residential Mixed-Use Zone District will encompass approximately 3 geographic areas around the incorporated City limits, and finally there will be two separate areas of Suburban Residential Mixed Use zoning. As noted above and depicted by the Growth Policy graphics, these areas will focus upon different growth management tools in each area. This approach ensures flexibility takes advantage of multiple mitigation tools based upon site specific impacts.

10) Have we adequately considered citizen initiated zoning rather than government mandated zoning?

Part-1 zoning is a myopic, site-specific tool similar to subdivision. These regulatory schemes are specifically not comprehensive and do not have the ability to address the bigger picture of impacts throughout the HVPA. As have many other Montana Counties, Lewis and Clark County believes it is now appropriate to use Part-2 zoning to help implement the vision of the 2015 Growth Policy update.

11) Is this zoning really just a mini moratorium on subdividing in the county? All of the supposed reasons for implementing this zoning are already covered under other sections of regulations. Are we just duplicating existing requirements and adding another layer of costly, time consuming review?

The idea that zoning is somehow tantamount to a moratorium is incorrect and unfounded. One need only look at the myriad high growth areas, whether in the nation or closer to home in Montana to see that they are zoned and their growth rates are not stymied. Part-2 zoning in no way duplicates existing regulatory schemes such as subdivision, which as previously noted is a myopic tool limited to the confines of the particular development site.

I have many more questions but you get the idea.

I have always been one that believed in planning so, and I still do. Therefore, in 2006, I bought 960 acres of ground so I could continue to develop my

construction business and keep my employees working. It took every dime I had but I felt it was worth the risk. Now the county wants to rezone the parcel I paid development prices for and I believe they are destroying my dream for no reason. It took me 14 long years to develop my last subdivision and I can tell you from that experience that every single reason the staff gives for the adoption of this zoning proposal is well covered under other existing regulations. I jumped through every single hoop and this regulation is simply overkill, it is costly to every landowner in the county and it is overwhelmingly opposed. Landowners, like myself, will face burdensome, if not insurmountable restrictions on development of their property and we will not be able to achieve the highest and best use of our property.

Tonight, I am just asking that you consider the plight of all landowners before making your decision on this zoning proposal. Is it fair for them to bear all of the burden to correct problems created over the last 30 years in this county? I think not! Thank you.

**This zoning project does not seek to resolve all the issues of yesteryear with each current development project. Instead, the comprehensive approach to growth management afforded by Part-2 zoning ensures the cumulative impacts of growth may be better addressed without unduly shifting the burden onto existing residents.**

## Jerry Hamlin-Testimony for zoning public hearing-6:00PM 7-21-20

Mr Chairman, members of the board and staff, my name is Jerry Hamlin and I reside in Helena, Montana.

I have approximately 600 acres of land that I bought back in 2006 that will be very negatively affected if this current zoning proposal is adopted. I have asked 3 times to get my property removed from this zoning proposal to no avail. Therefore, I am adamantly opposed to this zoning because of its significant negative impact on my own land but I also oppose it for the other reasons I have enumerated in several past public hearings.

At the outset, I thank you for this opportunity to, once again, offer testimony and let you know I appreciate your efforts to hear all sides of the story. I know your time is valuable and these meetings consume time you have to take away from your family and loved ones. Thank you for taking time to be public servants in this manner.

Tonight, I strongly feel we are at a critical stage in these hearings on the proposed zoning implementation. I understand that your review here at the Planning Board level will result in a recommendation to the county commission who will make the ultimate decision.

At every public hearing there has been overwhelming dissatisfaction with this proposal. It continues here tonight. There has been little, if any, support at any of the meetings I have attended or the reports of the one I couldn't attend. Due to this massive resistance, I would like to ask this board to consider a recommendation to table this proposal, go back to the drawing board (which is the Growth Plan) and consider other alternatives to this zoning proposal. It is simply too rigid and inflexible, it is too comprehensive, it has had been no "cost benefit analysis", and it limits growth in the county at a time when we should be encouraging growth and figuring out ways to do it rather than "discouraging it". A simple look at Telluride, Colorado will tell you how that story ends. That area has become a hideaway for the rich and famous and prices are sky high. I do not think we want that to happen here.

When deliberating, I would like to ask that you consider the following questions:

- 1) Why does this plan give better notice to adjoining landowners of a new subdivision than it does to the land owners whose land under this proposal is literally being taken away from them?
- 2) Why has the process been rushed since its inception with inadequate notice and no discussion of the items brought up by those of us who are so negatively impacted by this government initiated zoning proposal?
- 3) Why are the planners relying on a Growth Plan that they admit was from the 2004 Growth plan and is now called the 2015 Growth Plan? Where are the studies showing the road and other improvements done in the county since 2004? Has that data been considered in this plan? If not, why not?
- 4) At what point do the confluence of Private Property Rights and government intervention result in an undue taking of the private property rights from the citizens in the county? This right is inalienable and it is a building block of our society and, yet, I haven't heard any discussion about the effect of this costly, restrictive and ineffective zoning proposal on the rights of a citizen. (I did hear a commissioner say "some must suffer for the good of the whole") Sounds good except if you are one of those suffering
- 5) If this proposal is adopted, where will the 4000 plus needed units be built? What will be the cost of those lots?
- 6) Can we have a discussion about how to encourage, rather than discourage growth?
- 7) Can we discuss how to incentivize and promote reasonable growth in this county?
- 8) Why is lot size restriction the only thing this zoning does? How about looking at the road system in the county and encouraging growth in the areas where there is adequate, well maintained roads, good water, no flood plain problems, adequate sewer facilities and adequate Fire Protection. This proposal acts like there are no such parcels in all of the county. That is simply not true but the county has done no studies to even consider those areas as potential for good development to occur.
- 9) Why does this proposal have to apply to the whole county? Is this one size fits all approach to zoning the whole county a good method to handle this issue? Before adopting such a costly, time consuming zoning proposal, why not at least do an inventory of existing parcels to see whether there are larger areas that don't require such a restrictive policy?

- 10) Have we adequately considered citizen initiated zoning rather than government mandated zoning?
- 11) Is this zoning really just a mini moratorium on subdividing in the county? All of the supposed reasons for implementing this zoning are already covered under other sections of regulations. Are we just duplicating existing requirements and adding another layer of costly, time consuming review?

I have many more questions but you get the idea.

I have always been one that believed in planning so, and I still do. Therefore, in 2006, I bought 960 acres of ground so I could continue to develop my construction business and keep my employees working. It took every dime I had but I felt it was worth the risk. Now the county wants to rezone the parcel I paid development prices for and I believe they are destroying my dream for no reason. It took me 14 long years to develop my last subdivision and I can tell you from that experience that every single reason the staff gives for the adoption of this zoning proposal is well covered under other existing regulations. I jumped through every single hoop and this regulation is simply overkill, it is costly to every landowner in the county and it is overwhelmingly opposed. Landowners, like myself, will face burdensome, if not insurmountable restrictions on development of their property and we will not be able to achieve the highest and best use of our property.

Tonight, I am just asking that you consider the plight of all landowners before making your decision on this zoning proposal. Is it fair for them to bear all of the burden to correct problems created over the last 30 years in this county? I think not! Thank you.

**RESPONSE TO J. HERRIN EMAILS & LETTERS ON PART-2 ZONING**

Thank you for all the correspondence you've provided which has been received and provided to the Planning Board. Such information includes your letters of February 18, 22, & 29, 2020, March 2, 2020, April 13 & 17, 2020, and May 14, 2020. Additionally, the packet of previously written information which you hand delivered on June 12, 2020 was also provided to the Planning Board.

After thoroughly reviewing all the aforementioned information, Staff has concluded that much of it is repetitive; and also some not germane to the zoning proposal but rather instead relative to existing regulations such as the Subdivision, Roadway, and Floodplain regulations. Insofar as several common and repeated themes emerge once all the documents were closely reviewed, Staff has provided the below replies (with bolded emphasis within the body of your letter) to the May 14, 2020 letter as it appears to be the most comprehensive. Please do not hesitate to contact Greg or me should you have further questions or concerns.

May 14, 2020 (Herrin Letter)

Peter Italiano, Rodger Blatz, and BoCc

Primary questions I, and many others have expressed in various forums our collective concerns and real fundamental problems with the adverse impacts the 2020 County Zoning proposal would have on depressing Rural property values and agricultural business plus most likely significantly increasing land development cost and overall property values in the mixed use landuse transition and urban areas -- adversely impacting the supply of affordable housing and adversely impacting businesses labor pool employment problems.

This email is a follow up to my second email request to produce a formal written response to my April email and this point by point request for the county to respond to the most important concerns and problems evident in the county's Zoning proposal -- primarily the density lot size restrictions only on rural property which historically accommodate about 1/3 of the new residential home built in the HVPA (850 new homes over the next 15 years).

Please produce written responses to this email and the April email plus the supporting technical and social/economic impact assessment reports submitted to the county.

Please respond at least 10 days before the June 16 hearing and copy the HBIA, HAR, the local Livestock board, and other major commenting association. In addition please also send a copy to attorney Abigale St. Lawrence given the rather tight time frames involved. (emphasis added)

**NOTE: Based upon the following which was received by Ms. St. Lawrence immediately following receipt this (your) email request to keep her informed, Staff did not copy her.**

*"To be clear, Mr. Herrin is not a client of mine nor a retained expert working on behalf of any client of mine. I do not represent Mr. Herrin and he does not act on my behalf nor at my direction or request."*

*Abigail St. Lawrence  
Attorney at Law*

Please address in as much detail as possible all the following concerns:

1. When is the Planning Board hearings on the proposal? Wasn't the Planning Board to hear public and Administrative hearing on April 21? I have asked but no one has posted notices nor informed never others people who testified at the Listening sessions or BoCC hearings. No notices in the newspaper or other information sites.

I understand from the voice mail message today that the meeting is now scheduled for June 16. And this date is posted on the county website.

Please consider posting all future important actions by the county on the social media websites like Facebook as that is the new community and national information platform of choice of a large segment of State and country.

I know with Covid and county shutdown schedules changed. Plus the rules took time to write up.

However, the county has made no effort to inform anyone of the scheduling delay and that should be a primary objective of planning staff -- to get the message out to everyone especially those that have taken the time out of their busy lives to testify and comment.

**STAFF RESPONSE to Q1:**

**Notwithstanding the ever before unprecedented COVID-19 Pandemic impacts, the County has gone far above and beyond all requirements for public notice. While rescheduling can be frustrating, due to the Pandemic, much of it was simply unavoidable. While there are no specific notice requirements for the Planning Board relative to Part-2 County Initiated Zoning the County's incredible commitment to open and transparent inclusive public process provided a plethora of public involvement with well noticed meetings. Through a combination of press releases, social media posts, posted flyers, web postings, and especially an unprecedented mailing of over 13,000 postcards, the County exceeded all requirements by an enormous margin. In keeping with the County's strong commitment for an inclusive process, it will continue to exceed notice requirements.**

=====

2. In Greg McNally in a voice mail message today, in response to my asking if the county would be notifying all landowners of this new Zoning regulations, he indicated that the county was considering mailing out notices to the citizens.

In my voice mail with Rodger Blatz and on County Planning department I indicated that the Peter Italiano in public listening sessions that the county would not mail out mailers to all landowners. But when pressed he used the excuse it would be to costly.

To which I stated in my voice mail, this excuse did not hold water given the fact that in 2014 the county spent a lot more money designing the Growth Policy survey, and then mailing it out and then analyzing data and then writing the entire GP two volume document.

So a simple map and overview documents mailer should be very low cost and address the obvious problem to date of a lack of details, documentation, transparency, and necessary public outreach. Especially given the fact that the map has changed for the third time and the regulations were just released and much of the public listening sessions and BoCc did not have any of the final documents.

For future reference this is not the way to implement public policy nor consensus building in the community. It screams of top down management with a predetermined agenda.

If the county chooses not send out mailers, then the county must in writing explain in detail why the citizens do not have a right to know and a right to be informed by the county on matters so earth shattering and impactful.

I will strongly advise the county to make a very concerted effort do a great job from this point forward given the fact that only 150 at most have participated and been informed of a total population of nearly 60,000. So the county to date can not argue their efforts have been adequate in allowing citizens to actively participate in self governance.

**STAFF RESPONSE to Q2**Re: Zoning Regualtions and Map for the Helena Valley Planning Area, Page 68 of 91

**The County has gone far above and beyond all requirements for public notice. As can be seen in the State Law below, there are no specific notice requirements for the Planning Board relative to Part-2 County Initiated Zoning. Nevertheless, the County’s strong commitment to open and transparent inclusive public process provided a plethora of public involvement with exceptionally well noticed meetings. Through a combination of press releases, social media posts, posted flyers, web postings, and especially an unprecedented mailing of over 13,000 postcards, the County exceeded all requirements by an enormous margin. In keeping with the County’s strong commitment for an inclusive process, it will continue to exceed notice requirements.**

*76-2-204. Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.*

=====

3. Will the county staff address in writing why landowners would not be allowed to vote on the Rural land Zoning proposal given the potential harsh and negative impacts on thier land values? Why is a 60% vote required to approve Part 1 zoning, but no vote allowed with the Part II proposal. I understand the state regulations, but that does not protect the county and taxpayer from legal challenges afforded under the the US, State of Montana constitution against taking of property.

The county legal staff and administrative staff have never provided clear legal arguments in writing how the 10-acre tract zoning is not targeting one segment of the population and rewarding another. More to come in following points.

**STAFF RESPONSE to Q3:**

**The County is committed to closely following the requirements and procedures set forth in the Montana Code Annotated (MCA). There is no such contemplation of a direct democratic vote of the people for Part-2 Zoning. It may be something you chose to contact your State Legislators for future consideration. At this point MCA empowers your locally elected representatives, the County Commissioners, with this decision making authority.**

*76-2-201. County zoning authorized. (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.*

=====

4. Formal request for county to complete a detailed economic and social impact assessment which I sent you specific documents developed by me that you in public listening sessions said no one had submitted challenging the county false statements that property values generally go up under zoning which is absolutely not a factual statement the county can support relative to the 2020 zoning proposal.

This request falls under two aspects of the Montana constitution:1. Right to know regarding proposed county administrative actions, and 2. Right to protect property rights and associated business and property value. The taking issue must be clearly defined and defended by the County.

**A. The County worked closely with a very active and engaged group of County residents in reviewing impacts of development in the Valley as part of the 2015 Growth Policy update. As to this zoning process in particular, the County is closely following the procedures set forth within MCA and will continue to do so accordingly throughout the process. There is no such mandate for County governments to expend tax dollars on the type of studies you've suggested. Doing so could bring into the question the appropriateness of placing that burden on the taxpayers of the County outside the Helena Valley Planning Area (HVPA) when the study is focused upon the HVPA.**

**B. Specific to your reference to the Constitution of Montana and the "Right to Know" (Article II -- Declaration of Rights) your reference to it seems out of place. Please be clear that every document along with all deliberations of public bodies involved have, and will continue to be 100% available and open to the public for witnessing.**

*Article II -- Declaration of Rights Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.*

**C. Your reference to the "Takings" issue is quite curious. There is absolutely nothing being proposed by the County's Part-2 zoning project which comes close to a takings. Throughout the United States the Courts have heard many takings claims over the years. The 5<sup>th</sup> Amendment of the U.S. Constitution is clear on what is and what is not a takings. Within the 5<sup>th</sup> Amendment is the Takings Clause, which says "Private property shall not be taken for a public use, without just compensation." Several prominent cases such as Nollan v. California Coastal Commssion - 1987, Lucas v. South Carolina Costal Commission – 1992, Dolan v. City of Tigard, OR - 1994, and more recently Kelo v. City of New London, CT – 2005 all provide a good look at both the complexity and reality of a takings claim.**

Without writing a full and separate paper devoted to specifically to takings, suffice it to say that the construct of whether or not zoning, in and of itself, is tantamount to a takings has long been debunked. Diving a bit deeper, we see that the government is charged with the protection of the public health, safety, and welfare. Often, what one person may desire could be viewed as potentially deleterious to others. Likewise, impacts from one property may create a need for public subsidy by others. As such government has long been afforded certain Police Powers, which include zoning of private property.

Zoning is anything but new. Most likely, the first documented zoning was in Los Angles, CA in 1908; followed by NYC in 1916. During the 1920's the U.S. Department of Commerce developed the Model Zoning Ordinance which was intended to facilitate the States in drafting of their own enabling zoning laws.

The landmark zoning case often referenced throughout the Country derives from the U.S. Supreme Court case in 1926; *Ambler Realty v. Town of Euclid, OH*. In *Euclid*, the Courts were asked to look at the 14<sup>th</sup> Amendment to the U.S. Constitution and its protection of liberty and property. Supreme Court Justice Sutherland authored an opinion, based upon a 6-3 vote, that the "speculative" damages alleged

**Police Powers. Based upon Euclid the common explanation has been, and in fact remains so today, that zoning does not violate the Constitution.**

**In looking closer to Lewis and Clark County, it must be likewise noted that zoning is certainly not new nor foreign within Montana; and in fact there are approximately 25% of the Counties in Montana that had County-Initiated Zoning at last review.**

**Much closer to home, is the relationship of the proposed zoning in the Valley to the 2015 Growth Policy; and its support thereof, again in-sync with MCA.**

*76-2-202 "...the board of county commissioners may.... regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land."*

*76-2-203, the "Zoning regulations must be: (a) made in accordance with the growth policy;"*

=====

5. Again I have yet to see any factual basis justification for the 10- acre lot size density proposal beyond the 5-6 year old Growth plan. That plan is severely biased in the way the authors incorrectly added anti-rural to summary and recommended course of actions based on biased survey results.

As requested in last month's written challenge email and supporting documents- I formally again request the county respond to that email and address all point directly and completely along with responding to this email to justify the County's proposed 2020 Rural property 10- acre lot size restrictions.

**STAFF RESPONSE to Q5:**

**While we appreciate your opinions, we formally reject your assertions that 2015 Growth Policy update is biased, or that it is in any way anti-rural development. During the Growth Policy update, the Citizens were very involved and provided much value perspective on the future approach to growth management in the HVPA. The HVPA is a well balanced opportunity to have a good blend of all types of development opportunities from dense urban to moderately dense suburban, to low-density rural growth patterns. We have chosen to propose a fairly high density of 10 acre density in the rural area, as opposed to our neighboring County – Powell County which has a rural range all the way down to 160 acre density. The well written 2015 Growth Policy is still quite relevant and the current County-Initiated zoning is, per MCA, consistent with the Growth Policy. As identified in it, several approaches to growth management exist, and for the rural area of the HVPA, zoning based density controls are logical. While zoning is but one tool in the growth management toolbox, along with Subdivision and Floodplain regulations, the simple premise remains that reduced development density results in reduced impacts.**

=====

6. The county is required to produce scientific and legally valid justification for the 10-acre lot size restrictions.

As outlined in 15 page technical analysis of the Zoning proposal and the last months email, the county must produce current reports by county technical staff or consultants addressing the crisis for each of the 5 environmental and safety issues the County is leaning on to justify the 10-acre lot size restrictions.

These reports must be technical reports and maps that clearly support the need of the proposed large lot size restrictions. As a comparison, Simple logging proposals by the Forest Service are often legally challenged and the county's proposal is much more controversial than a logging project. I will remind the county staff and administrators that in 2006 K Paul Stalh threatened Kathy Moore's job ( he told her the department would be reorganized and she would be out of a job) if she did not write a fabricated water quality report pointing to on-site wastewater treatment systems adversely impacting groundwater quality.

Mike Fasbender, the late and great Attorney and PSC Commissioner Bill Gallagher and I challenged the county in three District and Supreme Court battles over Interim and Emergency Zoning which Judge Sherlock reluctantly allowed the County to implement Emergency Zoning based on Ms. MOORE'S false conclusion report.

Unfortunately as stated before, the county hired a very honest and competent hydrogeologist James Swierc who reviewed all the county data and could not support the County's earlier findings that only septic systems were adversely and critically impacting groundwater quality.

And the county never reversed the costly level II treatment systems requirements which force 34 unwilling and targeted rural property owners to install \$20,000 advanced treatment systems when in fact the county environmental staff ever since has largely required normal \$4,000 to \$5,000 standard on-site wastewater systems before and after this biased and illegal administrative Zoning regulations.

So the county has a very serious legal and technical set of Mountains to climb to prove that their is a crisis in each of the 5 areas of concern promoted by the 2015 Growth Policy and now the 2020 Zoning proposal.

**STAFF RESPONSE to Q6:**

**Your assertions that the County must produce scientific and legally valid justification vis a vis technically sound impact assessments is factually wrong. Please see the requirements imposed upon Montana Counties in adopting County-Initiated Part-2 Zoning as noted and excerpted below.**

*76-2-201. County zoning authorized. (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.*

*76-2-202 "...the board of county commissioners may... regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land."*

*76-2-203, the "Zoning regulations must be: (a) made in accordance with the growth policy;"*

=====

7. The County must also address those rural land owners and those opposed in writing -- the reason the only valid solution is Lot-size Restrictions to address each specific Crisis (all 5) environmental and safety issue the technical reports identified.

One of the major issues I have against the county using the 5-6 year old Growth Policy is that it merely suggests that lot size density might address issues but it provides no real specific facts that are true (the GP) cherry picked facts from reports which did not accurately support the conclusion that rural property must be limited to 10-acre sizes and additionally that no other options were thoughtfully and fairly considered in this 2020 Zoning proposal.

What about education, public outreach, public transportation, infrastructure improvements (eg roads) etc. as the growth plan defined for growth management for non rural growth.

Why is only rural property targeted for large tract size restrictions and the 10% of available undeveloped land in the urban mixed use and urban areas has no lot size restrictions?

It is apparent in both the ~~2015 Growth Policy and the 2015 Growth Policy~~ the select few county managers have a very negative view of rural growth and the only real reason for the lot size restrictions is to severely limit future growth by forcing 10-acre average lot size restrictions on 90% of the undeveloped land in the Helena Valley planning area.

The county planning managers and 3 county commissioners can not inject personal bias into regulations, and absolutely can not interject bias over science and facts.

Facts are facts. Truths are truth. Science must not be compromised nor ignored. And the county can not claim the right to take and in essence condemn private property without overwhelming justification and even then the claimed "Greater Good" rational may not stand up in court.

Example Roads. The county must evaluate in detail and writing the history of transportation planning in the HVPA and why the County has not been able to improve and implement the County's own 2004 and 2015? Transportation plan recommendations .

It is not appropriate for the county to make rural property growth infrastructure needs and the lack of adequate county Road funding the justification for limiting all future rural property lot sizes. The blame for inadequate County Road and network improvement funding lies squarely on the backs of the county managers and the taxpayers. See prior submittal for more details.

For instance, as stated previously, the need for the county to address future growth in a meaningful and well planned way was clearly defined in 2004 County Transportation Plan. But much of the non-State funded work was never done by the county. Specically the 2004 TP recommended N-S E-W connecting corridors like the County Contracted transportation engineers (Morrison Maierle Inc?) recommended to address future growth.

The County manager, BoCC, and planning staff must accept a large part of the blame very little meaningful growth infrastructure improvements for the past 16 years. And yet the county now wants the rural landowners to give up future land development rights and value because the county has not aggressively and methodically address transportation deficiencies like all other small-medium size communities must do all across the country.

One only has to look how much Growth Missoula, Billings and Bozeman-Belgrade managers have managed growth without lot size restrictions and facilitated road networks over these past 16 years, and here we sit with only MtDept Highway funded projects that largely only fix the big issues once every 10 years (e.g. South Hills and Custer Avenue interchanges with Lincoln Road west next in 10 year intervals).

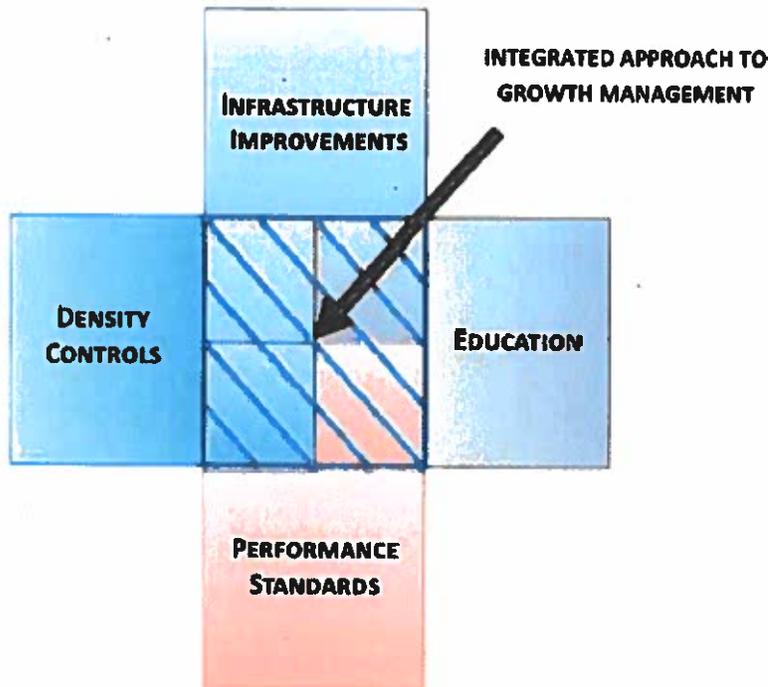
So please address very specific alternatives that the county has investigated for each of the 5 concern issues presented in 2015 GP and how those alternatives have changed over the past 6 years since the GP background research. Then assess each key concern point by point and address all reasonable alternatives and finally a well factually support decision matrix documentation report.

I am very familiar with alternative administrative choice impact assessment reports given I authored the groundwater quality and supply, reclamation plans, and mine alternative Impact Assessments for over 10 major coal and hardrock mine proposal for 6 years as a member of the State Lands EIS TEAM. So do the necessary background work to prove your case as I have attempted to do challenging this taking proposal.

#### **STAFF RESPONSE to Q7:**

**Please be certain that all comments, whether verbal, telephonic, or written have been and will continue to be carefully considered. At this point, all such comments have been forwarded to the Planning Board. Your description of the 2015 Growth Policy is simply incorrect. The very well involved and educated Citizens crafted a Growth Policy which**

not only focuses upon density as one tool for the rural areas, but also looks to infrastructure availability as well in the urban area, with performance standards in the transitional areas. Volume Two – Chapter 3 identifies this in the below graphic.



8. The county can not move forward with this taking of private property value without significant investments in documentation proving adequate justification. Otherwise the county and taxpayers will be very vulnerable legal challenges. Plus the public opinions will likely be quite hostile against the county managers if they subject the taxpayers and residents to millions more in defending and paying out for settlements the county does not do their homework and concretely prove their actions are legal, factually based and administratively compliant.

The county absolutely must produce a large collection of technical and impact assessment reports or the county should walk away from this proposed rural property density requirement.

Please address this overriding and very specific charge to arms request as is real underlying issue that needs to be addressed at every level. The county legally must justify the proposed action with written documentation. The US and Montana constitution require the county justify a takings of private property.

**STAFF RESPONSE to Q8:**

**Please see prior replies to Questions No. 4C and 6 above.**



9. Please also address the legal issue of justification of the proposed property takings and address the legal issues with specific court case documentation. That includes addressing court cases like the Lousianna Frog State overreach case I submitted to you last month. The court ruled against the State because there were no threatened Frog using the land they were attempting to take from private property owners. Sound familiar? Commissioners Good Giese stated the county has a very solid legal footing and has won a lot of the more recent legal battles. But fact is the county has a horrible record of attempting to limit rural growth through inappropriate administrative actions resulting in 10 years of legal battles and having to pay out close to \$8,000,000 in legal costs. I formally request the county document in writing detailed facts to Mrs. Good Giese contentions that the county has a good track record on legal battles over land use issues starting back in 2004 to the present. Specially please summarize each district and Montana and U S Supreme court cases the county believe both support and do not support the County's position. Also please completely and specifically detail all district court cases the county has been involved in from 2004 to present relating to land use and subdivisions, detailing direct legal defense costs, settlement and court mandate costs, indirect costs (eg staff time with associated salary plus benefits for county defense), summary of technical and legal issues, and summary of reasons why the county was sued and rationale for outcome and what the county has learned. If the county does adopt the proposed Rural land 10-acre and the county is challenged in District Court, the county will be forced to produce this same information during discovery, request for production and interrogatories. So the county may ask why would they produce such information now. Because it is the right of impacted landowners, and all county tax--payers have the right to know the counties legal positions and the county's legal history to be adequately informed and understand the potential consequences of the proposed action. In other words the public should be informed as to the legal risk analysis and the legal liabilities this Zoning plan will commit the citizens to should the county proceed as planned rural property 10-acre lot size restrictions.

**STAFF RESPONSE to Q9:**

**Regards your incorrect assertions regarding the Takings Issue, please see No. 4C above. The Community Development and Planning Department Staff, along with the County Attorneys regularly review pertinent land-use related court cases to ensure our processes and regulations all remain legally sound. Specific to your request for documentation regards Commissioner Good-Giese's comments and recent legal battles, please be advised that all such information is of public record and available to you through the Courts.**

=====

10. Please address the fact that this Zoning proposal is not complete by the standards defined under the Counties own subdivision regulations or the April version of the proposed Zoning regulations section 107.03 determination of complete Application, 108 Public NOTICING, 706 minimum lot sizes and Cluster lot size design and application, and all the specific development restrictions spelled out in great detail.

**STAFF RESPONSE to Q10:** Zoning Regulations and Map for the Helena Valley Planning Area, Page 75 of 91

**Please be advised that the requirements embedded within the Subdivision Regulations are not applicable to these zoning regulations. As to Section 107.03 of the proposed zoning regulations, they are not in force and effect at this time and therefore also not applicable. Please be certain that all aspects of the proposed County-Initiated zoning proposal have been and will continue to be fully compliant with all the applicable sections of MCA.**

=====

11. But in the end the cluster development still results in an average lot size density no greater than 10 acres per lot. So the end result is not future land sales will average less than 10-acres per parcel.

**STAFF RESPONSE to Q11:**

**Clustering is an extremely sound planning tool and certainly not uncommon. It is a strictly voluntary option which serves to afford the development community more options and more flexibility. When used correctly, it can provide significant cost savings to the developer relative to reduced infrastructure costs. Whether 10 acre lots or the smaller clustered lots approach, the overall gross density may not exceed that of the zone district.**

=====

12. In the April Zoning regulations section 701 -- it is clear the county views historic growth patterns of the defined rural property slated for only tract sizes Greater than 10-acres -- to require lower densities and promote opportunities for agricultural activities. Citing the reason again was the 5 key areas of concern presented in the 2015 Growth Policy. However, as stated 5 key area of concerns did not clearly support the County's Rural property Zoning proposal. No current documents or updates beyond the biased 2015 Growth Policy. Please address why variance to average lot densities less than 10acres can not be approved under a variance process as long as DEQ regulations are met.

**STAFF RESPONSE to Q12:**

- A. The intent of the Rural Residential Mixed-Use Zone District is to limit gross density to 10 acres. The 2015 Growth Policy is supportive of this concept, and as noted above these proposed regulations will be complaint with the MCA requirement for consistency with the Growth Policy.**
- B. Regards your question about using a variance to modify the zone district's overall density limitations, please be advised that the DEQ issue is but one issue to be considered. As noted before, in the rural area, road issues are also a contributing factor regards the density value. Using a variance to modify the district's density limitations would be incongruent with the purpose of the district.**

=====

13. But public testimony by local ranchers and farmers refute the 10-acre lot size restrictions as protecting or promoting thier businesses and in fact may harm their ability to keep and secure operational loans due to decreased property values for conservation easement type restrictions. Please address the social and economic impacts on all rural land owners and the impacts of the

"Sweet zone land preferred by zoning regulations and Map for the Helena Valley Planning Area, resulting in increased property values and reduced opportunities for fixed and lower income residents due to the Zoning proposal.

As requested in my April email the county must complete a detailed social and economic analysis of all alternatives.

**STAFF RESPONSE to Q13:**

**Please see prior reply to Question No. 6 above.**

14. Please explain why the county staff has not completed the review of the L & C County Subdivision regulations relating to the requirements for on-site fire water suppression requirements for all major subdivisions. I submitted a detailed 80 plus page assessment of the problems with this costly requirement especially given the fact that these systems were turned over to local Fire Districts who for the most part do not want to assume the costs of maintenance and operations of these systems and fear contamination of district fire equipment.

At the BoCc public hearing in May 2019, I submitted an additional 15 pages of details requesting the BoCc remove this costly requirement from subdivision regulations. I also provided verbal testimony at the May BoCc hearing which covered minor changes to the current subdivision regulations.

I was told that the County would not consider this request which they had sat on for 5 months -- given the excuse that these changes were not minor changes to the subdivision regulations.

But I would not let the BoCc or planning staff ignore the horrible waste of money, -- that only purpose was to drive the cost of rural property up and as a result slow the growth of rural property development.

So I pressed the BoCc not to kick this issue down the road. And despite resistance from all BoCc, I formally requested the commission not ignore this problem and pass a resolution to address the problem. And reluctantly the BoCc agreed to request the planning staff to assess the problems I and many engineers and subdivision applicants had come to underscore as a major problem.

In the end the BoCc directed the Planning staff to investigate the on-site fire protection requirements and bring forward a solution by fall 2019.

Peter Italiano did very little to resolve this potentially illegal and unethical and 15 year long costly regulations that served no real useful purpose and as I detailed only targeted new developments for costly on-site fire storage while ignoring existing homes and neighborhoods-- a potentially illegal exaction and takings class action lawsuit in the making.

So I asked Mr. Italiano in February why these regulations are still in the subdivision regulations and where was he at in submitting findings to the BoCc?

His reply was-- we are too busy drafting the Zoning plan (note at that time the County had only produced one version of the map and held a couple hearings). So I do not recognize he or the County has fulfilled their legal obligations to stop forcing new subdivisions to comply with requirements and the county should have removed this requirement by now.

In fact, the on-site fire water supply/storage requirements should have never been put in the subdivision regulations. Instead assessment fees like the parkland dedication in lue payment system could have been used to assess new lots fees to allow construction of new regional water supply fill stations strategically placed around the county.

Instead the county has added another anti- rural costly extraction to the long list of subdivision regulations and Zoning restrictions. Add that to the costly and unwarranted 2 entrance to county standard subdivision requirements and the illegal off-site road improvements administrative miss-steps, the pattern is clear.

through illegal administrative regulations that have collectively added \$10,000 or more to the average cost of a lot in the County and prevented many landowners from rvet subdividing land. Then end result is less affordable housing and more costly housing for those luckily enough to buy it build a home.

I only wish each of the the responsible parties were forced to pay back each and every person adversely impacted by thier anti-rural property actions just as the Catholic Church and Boy Scouts of America etc. have finally been forced to atone for past abuses.

So again please provide all legal and technical facts including all emails from BoCc, planning staff, fire districts, subdivision applicants and consultants pertaining to on-site fire protection storage.

Also please address why the county did not fix this issue back at least as far back as December 2018 and will the county agree to repay all Engineering and on the ground costs for all subdivision applicants.

And I respectfully request the county formally refine all new and pending subdivision applications to inform them they no longer are required to comply with part of the subdivision regulations or inform applicant's in writing why they must comply.

**STAFF RESPONSE to Q14:**

**A. The County has been actively involved in reviewing options to amend the Subdivision Regulations regarding the Fire Appendix. Staff has had myriad meetings with several of the fire chiefs and continues to discuss options to both revise the design criteria for the systems as well as looking at completely new conceptual options. This has been and will continue to be an evolving process. It not only is looking at site design issues but also the on-going long term financing mechanisms for maintenance. Please note that we stridently reject your incorrect assertions and accusations as to the process and timing. The issue of drafting the proposed zoning regulations has never hindered the on-going process of working with our fire service partners as noted above. Further, your assertion that the fire standards are intended to somehow be anti-rural development is wholly unfounded and factually inaccurate. The standards were developed in concert with our fire service partners and in fact serve to protect the public’s health and welfare.**

**B. As to your request for “...all emails for the BoCC, Planning Staff, Fire Districts, Subdivision Applicants, and Consultants pertaining to on-site fire protection storage” this appears to be an Open Records Request. Please see Staff Response to No. 15 below and advise as to how you’d like to proceed.**

=====

15. Please produce all county correspondence, emails, internal documents relating to this 2020 Zoning proposal going back to 2017 and covering the period for the Fort Harrison 10- acre model Part II zoning plan.

**STAFF RESPONSE to Q15:**

**This request was formally responded to in an email from Mr. Italiano to Mr. Herrin dated May 19, 2020 @ 1:10 p.m. as shown excerpted below.**

**In accordance with MCA 2-6-1006 the County will charge a reasonable fee to fulfill your open records request for information. The fee must be paid in advance and will based upon both an hourly rate and materials cost as follows:**

- **COPY FEES** Re: Zoning Regulations and Map for the Helena Valley Planning Area, Page 78 of 91
  - **Standard Letter and Legal Size - \$0.50 for 1<sup>st</sup> page and \$0.25 each subsequent page**
  - **Large Format (11x17) - \$1.00 for 1<sup>st</sup> page and \$0.50 each subsequent page**
  
- **PUBLICATIONS**
  - **Regulations, Plans, etc.; provided on a compact disc - \$10.00 each publication**
  
- **RESEARCH**
  - **Administrative Staff time necessary to process the requested information – 6 hours @ \$24.09 per hour or quarter increment thereof**
  - **Information Technology Services time to locate and process files/emails from former employees (specific to Fort Harrison) – 7 hours @ \$59.25 per hour or quarter increment thereof**
  - **Professional Staff time for retrieval of requested information and coordination with Administrative Staff – 28 hours @ \$36.66 per hour or quarter increment thereof**
  - **Supervisory Oversight – 3 hours @ \$52.08 per hour or quarter increment thereof**

**Based upon your above noted request (item # 15) the preliminary estimate of the cost for the Community Development and Planning Department to proceed is \$1,742.01 Please note this is only a preliminary estimate of Staff time; and does not include copying costs, which would be added as the copying proceeds. Should you desire to move forward, we will need your initial payment before we move ahead. Once the data has been assembled we will update you with another estimate cost for the copying; along with an updated cost for staff time.**

**At that point if you continue to wish to proceed, the information will be forwarded to our legal department for further review prior to release. Once the legal review has been completed, we will provide you with a follow-up of any additional costs of the legal review. The follow-up cost for the legal review (if any), staff time, and actual copying must be paid in advance of the information being made available to you.**

=====

Respectfully submitted, John Herrin  
 2855 Sundown Road  
 Helena, Montana 59602  
 406 202-0528

**Summary of verbal public comment provided at July 17, 2020 meeting.**



Part 2 Zoning		07/17/2020 CC&CPB Work Session		Public Comments		Column 1	
				<p>DISCLAIMER: These comments were taken by the CD&amp;P department for the convenience and benefit in better understanding the participants' concerns. <b>However, these comments are not to be considered the official comments/minutes of the Planning Board meeting.</b> Said <i>official minutes</i> are available through the Lewis and Clark County Community Planning &amp; Development Office by emailing <a href="mailto:planning@lccountymt.gov">planning@lccountymt.gov</a>.</p>			
<b>Name</b>	Abigail St Lawrence	<b>Address</b>		<b>Public Comment</b>	<p>Thank Chair for opportunity. Wants to express frustration and referenced previous comments already submitted. Appreciates that we are attempting transparency but feels that we fall short of proper notice to allow for public to attend the public meetings. Have some significant concerns in regards to the newest ammendment of the zoning specifically in regards to the PUD and CUP process. Is drafting a memo in response to Lois Steinbeck's request. Appreciate this is a big undertaking, the constant meetings are exhausting for members of the public to keep up with. Feels that the public needs to know what is happening. Is confused with the process in decision making and feels that the addition of multiple meetings is exhausting.</p>	<b>Staff Response</b>	<p>Staff is addressing the requests of the appointed vounteer Planning Board members and at their direction there have been multiple meetings. The Planning Board members are considering the draft regulations and amendments as well as the comments provided in a public setting over these multiple meetings. All meetings have been legally and adequately noticed and the materials provided to the Planning Board have also been made available on the County's Website. The commenters continued presence and participation in meetings is appreciated</p>



**Summary of verbal public comments provided at July 21, 2020 meeting.**



**Fifth Addendum to the Planning Board Packet  
Re: Zoning Regulations and Map for the Helena Valley Planning Area, Page 85 of 91**

Part 2 Zoning Session	07/21/2020 CC&CPB Work Session	Public Comments	Staff Response
<p><b>Name</b> Kim Smith</p>	<p><b>Address</b> 7510 Applegate</p>	<p><b>Public Comment</b> Years ago popular science, water resources, and one in Helena valley. Vast water availability. Development cannot do anything without taking risk. Emerald ridge aquifer does not have adequate water today, going deeper and finding water. If you are paranoid about risk, you are not moving forward. Take adequate water, if you make 10 acre, you risk all homeowners property values plus cost opportunities i.e. bobs valley market. Careful and defer to mechanisms for different processes can be quite burdensome. Comment about property values. Do not reduce property values. People previously using ag reduced property values. Try to protect them and let that determine if you affect their property values too. Criteria water, wastewater, 10 acre min better for wastewater tradeoff and need scenarios better for wastewater treatment. Water availability, one thing to look at is the big bucket of water and pump water in the valley to use in other areas. Process to do that later on. Map shows exactly where everything is and there is gray areas. If you do not do anything there is no risk. Fire protection look closely. Any properties in that area not 10 acres north I agree. Some lots have artesian springs. Roads department in Lewis and Clark County does a remarkable job with their resources. I contribute - Applegate is going to be better. All these things boil down to money, 10 acre is good and I encourage you to do more and Applegate 10 acres there. Greg appreciate if you could answer. BLR gives the right to have 3 buildings on a piece of property and no review. Grandma on property BLR specifically past by Montana Legislature. Driving force intent of BLR small houses for rent affordable housing - 10 acre minimum say they have 19 acres and now reduced to 1 building right and now cannot develop. Staff clarified - 19 acres 2 units and multi-family allowed through conditional use process. Specifically 29 acres 4 units.</p>	<p><b>Staff Response</b> The 10-acre density is only proposed under the Rural Residential Mixed-use District. This is based mainly on three of the five key issues laid out in the Lewis and Clark County Growth Policy, Helena Valley Area Plan Update (2015): water availability, rural roads, and rural fire protection. A 10-acre minimum lot size or density is not being proposed under the Urban or Suburban Residential Mixed-use Districts. These Districts will allow for higher density. Only one principal use is allowed on each parcel in the Rural Residential Mixed-use District; however, two-dwelling unit residences are allowed. This term is defined as: a single building situated on one lot that contains two (2) dwelling units for occupancy by two (2) families living separately from each other, also known as a Duplex-Dwelling Unit Residence, or two buildings situated on one lot that each contain one dwelling unit for occupancy by one family. This means that two residences are allowed on each parcel.</p>
<p><b>Name</b> Abigail St. Lawrence</p>		<p><b>Public Comment</b> Request from Board provide detail flushed out. 3 specific areas - Variance, CUP and PD. HBIA is opposed. Provided commissions laying out concerns. Other docs before - appeals process and water policy and interaction regarding growth policy. First primary concern 14-16-21 standards decision making - read in detail. The way regs and processes work it is not just staff and administrative. Staff filter and solicit information and that causes a lot of concern with developers and regulatory areas. It can get stuck in an endless loop. Quite a bit of legal challenge and roll and authority. Nothing in draft regulations that deal with large number of CUP, no standards with what that means. Application include the following elements. Unending process that staff can make iterative and for discussion. Regulation by exhaustion. There needs to be clear standards for application and availability of affordability housing etc. Timelines - some clarity. Still do not have outside barriers and particular concerns with agreement. Have had a 15 year career permitting and adjudication of water. Multiple revisions for permits etc and exception extension by mutual agreement. Staff has no resources and adequate time to make decision. By mutual agreement does not always put that way. Hate to see that inserted right front of the process. CUP and Variance - 1st and foremost water availability - long discussion Helena Valley. All discussions want to be clear regarding public water supply system. The City system has to go through the process of NRC. Board understand there are other layers and permitting process. Board to remember housing affordability multiple regulations. Training and interface of proposed regulation. Timing is problematic as some board members recognize question the efficiency of the timing when we will be reviewing the growth policy in five (5) months. Thanks the Board for their work, thoughtfulness. However, it is regulation by exhaustion. Meetings are short noticed and notice for last Friday work session was only three (3) days notice. Members of public to understand the end point. Board does not serve at the pleasure of the Planning Staff. Advisory compact and specific obligations to the public. Own independent advice to commissions.</p>	<p><b>Staff Response</b> The procedures for Conditional Use Permits (CUPs) and variances have been laid out in Sections 14 and 19 of the DRAFT Zoning Regulations. The Planned Unit Development (PUD) process has not been developed at this point in time, but when a DRAFT is prepared, it will follow a public process prior to adoption. The DRAFT Zoning Regulations contain three different zone districts: Rural Residential Mixed-use, Suburban Residential Mixed-use, and Urban Residential Mixed-use. The Regulations for the Suburban and Urban Residential Mixed-use Districts have not been written at this point in time and a DRAFT of these regulations has been prepared, a public process will be followed for their adoption as well. Densities in the Urban Residential Mixed-use District will be 1/4-acre lots and smaller for new lots, and the Suburban Residential Mixed-use District will have densities that range between 1/4-acre and 10 acres, depending upon the infrastructure. In the Rural Residential Mixed-use District, there is a 10-acre density; however, there are current provisions in the regulations that allow for lot clustering (meaning that the average lot size is 10 acres amongst the parcels being divided, but the minimum lot size can be much smaller if the smaller lots are grouped together and a portion of the property is dedicated as permanent open or agriculture) and in the future, PUD regulations will potentially allow for smaller lot sizes in this District. The boundaries for the three Districts are based on the locations of the Urban, Transitional, and Rural Growth Areas laid out in the Lewis and Clark County Growth Policy, Helena Valley Area Plan Update (2015). According to the Growth Policy, the bulk of the future housing will be located in the Urban Growth Area (Urban Residential Mixed-use District) where densities are much higher and in close proximity to services. Water availability is a concern in the Rural Growth Area (Rural Residential Mixed-use District), as this Area is located outside of the Helena Valley Alluvial Aquifer. The 10-acre density in the Rural Residential Mixed-use District should aid with concerns over water availability in this Area. The actual public hearing process has not even started yet. Any noticing completed to date has been above and beyond State law requirements.</p>
<p><b>Name</b> Jerry Hamlin</p>	<p><b>Address</b> Helena Montana</p>	<p><b>Public Comment</b> First thing - Thank you for the opportunity. Thank you for your time. Regardless of my comments, thank you for listening. It is important for you to know my personal experience with sufficiency and completeness and it was a disaster. Sixty (60) days took three (3) years. During three (3) years what was considered complete and sufficient depended on who was in charge. Better off having something in the regulations. Extension by every board. Pad development prices for that land and the last subdivision took 14 years. There is something wrong with the process if it takes that much time. I jumped through every hoop; the whole gamut. The existing regulations and the whole zoning proposal answers those 5 items. The zoning does not address and will only duplicate the regulations. I have a favor to ask - when you discuss things I have brought up please consider the following. Every meeting the opposition is overwhelming. Hard to find positive when adamsa specific. Millions of dollars in land and finally selling lots. Eleven (11) million over fourteen (14) years is an unreasonable length of time because regulations are not specific enough. Very little positives and I think of all the land owners in Lewis and Clark and all do not like the zoning. Five (5) reasons for justification already satisfied by existing regs. Many regulatory agencies NRC, DEC and subdivision regs. Fire, and state people - they are not perfect. Spent a lot of money on engineers - five (5) years on a floodplain permit. Some items in zoning and justifying existence. First 160 parcel zoning 600 acres would be three (3) parcels; twenty (20) acre parcels; and then DMIC exempt wells. If I do not have water I cannot do anything until I buy water; 1320 feet apart well spacing. 463 acre lot to 38; 10 acre go into arctic; and would be 1/4 return on my investment. Why penalize people that help firefighters. I have asked 3 times to my fire, road, and water. What reason would be included in the proposal? Major financial drain by 2 to 3 million - cost benefit analysis and owner justify time money and expense to go through this zoning proposal. There are 12 questions to consider 1) Plan better. You give better notice to subdivision than to land owners in County regarding zoning - get a certified letter; 2) Why has the process been rushed? Since inception inadequate notice; 3) Why are planners relying on growth plan taken from 2004 and updated to 2012 and 2015 - language sounds good who is it in favor of protecting is already protecting; 4) At what point, to the influence of private property and government intervention is a taking of property rights; 5) If the proposal is adopted, where will 4000 people live and where are people going to go as they will not be able to afford it. Go to Telluride. Land prices are so high people cannot afford it. I do not think that is what they want; 6) Have discussion to encourage and discourage development. This is a moratorium on development. There are areas in the County with adequate water, roads, etc. Growth improvements since 2004 encourage development; 10-12 mill project; 7) Incentive for more responsible growth - try that rather than penalty; 8) Lot restriction is the only thing zoning does. Look at road systems; 9) Why does the proposal apply to the County as a one size fits all before adopting. Do an inventory of existing parcels. There are no studies or comments; 10) Citizen initiated vs government. There are other ways to do the same thing; 11) Zoning is just a mini moratorium. I believe in planning. I served on the planning board. I have to stick with the growth plan and I will always be another rock in that. Think about the land owners burdens. Insurmountable restrictions and the highest bid. Use it is not in ten (10) years. If you have a 100 year plan and you cannot use whole ten (10) acres by dictating 3/4 acre. Please consider the plight of all landowners. It is not fair for landowner to correct all the burdens.</p>	<p><b>Staff Response</b> The DRAFT Zoning Regulations do not require a moratorium on creating lots smaller than 10 acres in size. There are three different zone districts under the Regulations: Rural Residential Mixed-use, Suburban Residential Mixed-use, and Urban Residential Mixed-use. The Regulations for the Suburban and Urban Residential Mixed-use Districts have not been written at this point in time and when a DRAFT of these Regulations has been prepared, a public process will be followed for their adoption. Densities in the Urban Residential Mixed-use District will be 1/4-acre lots and smaller for new lots, and the Suburban Residential Mixed-use District will have densities that range between 1/4-acre and 10 acres, depending upon the infrastructure. In the Rural Residential Mixed-use District, there is a 10-acre density; however, there are current provisions in the regulations that allow for lot clustering (meaning that the average lot size is 10 acres amongst the parcels being divided, but the minimum lot size can be much smaller if the smaller lots are grouped together and a portion of the property is reserved for permanent open space or agriculture) and in the future, there will be Planned Unit Development (PUD) regulations that will potentially allow for smaller lot sizes in this District. The boundaries for the three Districts are based on the locations of the Urban, Transitional, and Rural Growth Areas laid out in the Lewis and Clark County Growth Policy, Helena Valley Area Plan Update (2015). The Growth Policy was updated in 2015 in a very public process that laid out what future lot densities would be in the three future zone districts. This process took approximately three years to complete. The DRAFT Zoning Regulations follow the provisions laid out in the update. Areas that are not covered by other regulations to a certain extent. The density provisions alone in the Rural Residential Mixed-use District address a majority of the five key issues. Not all five issues are present in a single area. Future regulations in the other two Districts will address the key issues as well when those issues are present. When noticing proposed zoning regulations, the County follows the provisions laid out in State law. Any notices that have been provided to the public to date have been above and beyond the process and notice requirements under State law. The actual public hearing process has not even started yet.</p>



**An updated telephone log, which includes telephone calls received by Greg McNally, Planner between June 1, 2020 and noon on July 30, 2020.**



Telephone Calls received to Planner Greg McNally regarding Draft Helena Valley Zoning Regulations between 6/1/2020 and noon on 7/30/2020

Caller	Number	Address, if given	Date Called	Answered	Date 1st Return	Date 2nd Return	Date 3rd Return	NOTES
Mary Bullman	443-1374		6/1/2020		6/1/2020			Would like a paper copy of Regulations.
Tom Erdy	459-5145		6/1/2020		6/1/2020			What time will the Board meet on the 16th?
Hillary Troyer	431-6428	412 W Custer	6/1/2020		6/1/2020	6/1/2020		Misunderstood. Thought this had to do with improvements to Custer Avenue. Also concerned about being annexed. Does not want more rules. Vaguely described issues with neighbors and impacts on his property. Offered multiple times for him to come speak in more detail about his concerns about violations occurring on his property from others.
Vernard Miller	227-5936	3794 Canyon Ferry Road	6/1/2020		6/1/2020			Unable to reach after repeated attempts. Last on 6/5/2020
Clara Wilson	458-3800	Causeway	6/1/2020		6/1/2020	6/2/2020	6/3/2020	Card came to correct address, wrong person. Referred her to Dept. of Revenue at 444-6900
Jan Hemingway	431-7367	Birdseye area	6/1/2020		6/1/2020	6/2/2020		Supports Zoning
Debbie Walton			6/1/2020 x					Asked what part of the District he was in.
Ray Linder		3370 Wylie Drive	6/1/2020 x					Card went to her address but wrong person
Arlene Boulei	443-3120		6/2/2020		6/2/2020			No Computer. Asked to have Regs mailed to him. Explained the cost and he indicated he would seek another way to access regs.
Rob Beach	227-0440	3220 Howard Road	6/2/2020		6/2/2020			Questions about this attempt to re-zone and a money grab of his tax money.
Rick Van Der Sheuct	227-4072	Bucksnot	6/2/2020		6/2/2020			Asked generally what the zoning is.
Angie	458-5795		6/2/2020		6/2/2020			
Mary Gobbins	266-5740	2305 Blaine St	6/2/2020		6/2/2020			General Questions asked to have Fort Harrison Regs sent to her via email.
Clint Pullman	439-8338	Rimini	6/2/2020		6/2/2020			Zero Sense that Rimini properties are included. Will disrupt his efforts to protect his property and what he has worked for.
Bob McCoy	540-749-2629		6/3/2020 x					Couldn't find his property on Interactive Map - we found it - He is located in Fort Harrison Zoning.
Ken	431-5730		6/3/2020		6/3/2020			Concerned about taxes going up, city annexation, someone taking his water rights, and flooding. Will provide comment.
Clint Pullman	439-8338		6/3/2020		6/3/2020			Where will the meeting be? Talked a lot more about a variance procedure.
Mike Dodge	438-7282		6/3/2020		6/3/2020			Does not want to see zoning take place in Rimini. Is planning to use his annual leave to inform and engage neighbors.
Kate Cirullo	415-815-8289	Timberworks Estates	6/3/2020		6/3/2020			Questions about the 10 acre minimum
Al Griffiths	459-8499	1730 Broadwater Avenue	6/3/2020		6/3/2020			How will this affect us? In an existing Part I. What about the gravel pit?
Jan Sutton	909-559-5806		6/3/2020		6/3/2020			What area does the zoning apply too?
Jeni Martini	439-4465 or 439-0503		6/3/2020 x 6/10/20		6/5/2020	6/9/2020		Looking to buy property at Bishop Ct. What will the future hold for zoning in this area?
Lois Freeman	461-4465		6/4/2020		6/5/2020			Unable to reach after repeated attempts. Had Wrong #. In La Casa Grande #22- Will forward her those regulations.
Melody Ritchie	439-9019	Eastview Road and Shar Ct	6/5/2020		6/5/2020			Wanted a copy mailed to her although \$35 was too high  How will this apply to my existing uses on Shar Ct and Eastview Road? Nonconforming if currently in compliance with existing laws and regulations once regulations are adopted for property in this district.

Deena	945-1022	Dana Point Area	6/8/2020 x	6/8/2020	6/9/2020	Asked about the regulations and how they might apply to her. She has 10 acres - what if I want to build a shop? Would have to comply with setbacks Asked about the the regulations and how they might apply. Provided instruction on looking at the interactive map and scrolling through the regs and directed him to Section 7.
Dan Melick	538-8358	Rimini Area	6/8/2020 x	6/8/2020	6/9/2020	Unable to reach after repeated attempts.
Teresa Clarman	422-9448	Birdseye area/ Turk Road	6/8/2020	6/8/2020	6/9/2020	Called back to see if the agenda and location was set. Left a message that it was and provided that information as well as where it can be found online.
Clint Pullman	439-8338		6/8/2020	6/8/2020		Asked to about the regualtions in general and is supportive.
Leroy Breuer	458-9407	Sierra and Green Meadow	6/9/2020 x	6/9/2020	6/9/2020	Asked about owners listed on his property (they are beneficiary). Also asked about the adjoining conservation easement and if the zoning would change that - it would not.
Sonny Stiger	442-1361	Juniper Road	6/9/2020 x	6/9/2020	6/9/2020	Peter will email John on 6/9/2020
John Herrin	202-2058		6/8/2020	6/8/2020		Can't read the map would like a bigger map. Concerned about annexation. Ok with zoning.
Darla Cook	422-0717	Bridge Creek	6/9/2020	6/10/2020		
Sharon Linstead	859-250-437 or 458	Woodland Hills	6/10/2020	6/10/2020		Treasure of Woodland Hills HOA. Would like to have all of Woodland Hills included in the zoning however, it is bisected by the HVPA boundary.
Between 6/10/2020 and 6/25/20						
Mary Blake	677	Priarie Road	6/12/2020	6/12/2020		Asked questions about minimum lot size of 10 acres. Talked about re-zoning her property.
Douglas Ross	435-649-4198	Rimini	6/11/2020	6/12/2020	15-Jun	Why is Rimini included? What type of setback would there be for Beaver Creek (Type 3)?
Stan Melick	406-538-8358	Rimini	6/11/2020	6/12/2020		Does not think he should have to pay to have the regulations mailed to him. Offered they were available online; he could come in to the office to review.
Marty Heller	439-2744		6/15/2020	6/15/2020		Discussed general details in the regulations.
Dwayne Westerborough	431-0805		6/16/2020			City needs to stay out of it. Its an overreach. Opposed to the zoning.
Chris Norris	925-584-0895		6/17/2020	6/18/2020		Question about whether or not a meeting would be scheduled on the 18th like he heard at the June 16th meeting. Wants an audio copy of the meeting. Informed him that there is but that it was canceled as there was not a quorum of Plannng Board members. Informed him that we are trying to post the audio/video online but are having difficulty due to the file size, he could come in to the office to listen in the meantime.
Chris Ries			6/18/2020			Commented that he objects to the proposal
Terry McCartney	439-3894		6/18/2020	6/18/2020		Wondering if there would be a meeting on the 18th. Informed her that there is but that it was canceled as there was not a quorum of Plannng Board members. Hse had also provided comments on the 16th. She had expressed concerns that the zoning would displace her mobile home park renters. I informed her that and land use that is currently legally operating will be able to continue operating as a nonconforming use.

