

## **Fourth 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:

- Emails and attachments received by the County Community Development and Planning Department after noon on June 25, 2020 and until Noon on Tuesday, July 21, 2020, and
- An updated telephone log, which includes telephone calls received by Greg McNally, Planner between June 1, 2020 and noon on Tuesday, July 21, 2020.

**From:** [Peter Italiano](#)  
**To:** [Greg McNally](#)  
**Subject:** Gus" Comments  
**Date:** Tuesday, June 16, 2020 9:35:54 AM  
**Attachments:** [County Draft Zoning Comments 2020.docx](#)

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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)

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**From:** Gustav Byrom III <[gbyromiii@gmail.com](mailto:gbyromiii@gmail.com)>  
**Sent:** Saturday, June 13, 2020 9:57 AM  
**To:** Peter Italiano <[PITALIANO@lccountymt.gov](mailto:PITALIANO@lccountymt.gov)>  
**Subject:** County Zoning Comments

Peter-

Here are my comments on the draft County zoning ordinance.

Just some thoughts.

Congratulations on your great work!

Keep going!

Thank you,

Gus Byrom

June 13, 2020

Peter Italiano, Director  
Department of Community Development  
Lewis and Clark County  
City-County Building  
Helena, Mt 59623

Dear Peter:

I wish to express support for the latest version of the proposed zoning ordinance for the Helena Valley and commend the County Commissioners, Planning Board, and staff for undertaking the difficult path to develop the tools to implement the 2015 County Growth Policy, developing a plan for the orderly development of the Helena Valley, at the same time seeking to protect areas of high environmental values.

**General Comment-**

Massachusetts conservationist Robert Lemire is quoted as saying that the hallmark of an enlightened society is that it “builds what needs to be built and at the same time protects what needs to be protected”. I believe we must provide areas for population growth within the Helena Valley, but at the same time protect the areas that need to be protected, like areas of irrigated agricultural lands with the best soils, floodplains, wetlands, and key corridors for wildlife movement as well as general wildlife habitat.

I believe these principles are consistent with the key policies described in the 2015 County Growth Policy.

**Specific Comments-**

I offer three specific comments, as follows:

## **1. Bob's Valley Market Area – residential and commercial development is occurring at urban densities.**

The recent announcement of an Ace Hardware and plans for a grocery store dramatize the urbanization that is occurring at the Lincoln Road Interchange. Already the area is taking on the character of a small town.

If this area is going to be a Valley growth center, it needs to be zoned accordingly and plans undertaken for design of an urban community with urban infrastructure, including plans to provide water service from the City of Helena or, possibly, construction of a water treatment plant and connection to Hauser Reservoir. A public water and sewer district serving the area can be formed, thus making the area eligible to receive federal and state grant and low interest loan assistance for infrastructure improvements. Zoning to support a planned urban community in this vicinity is a key tool, along with the need to undertake a major study as to how to provide adequate water and wastewater resources to this area.

## **2. 10- Acre Minimum for Rural Residential-**

The proposed 10-acre minimum may lead to more sprawl and development that would be extremely expensive to provide with public services. No minimum lot size may be necessary since State wastewater disposal regulations already address minimum lot size requirements.

## **3. Creation and Conservation of Interconnected Lands with High Environmental Values – A “Grand Rounds” for the Helena Valley**

Any zoning considered should encourage the creation and conservation of interconnected lands with high environmental values. Similar to the Grand Rounds Open Space and Trails System extending around the Twin Cities of Minneapolis and Saint Paul, key “green” areas and corridors can be established, connecting an overall Helena Valley Open Space system, based especially on connected lands with high agricultural values, creeks and floodplains, parklands, and wildlife habitat.

Such a system would be developed in coordination with similar open space plans of the cities of Helena and East Helena. Such a “Grand Rounds” open space system could include privately held agricultural lands as well as parcels administered cooperatively with State Fish, Wildlife, and Parks; State Lands; County lands; Helena Valley Irrigation District; Prickly Pear Land Trust; BLM; etc. – all cooperating together on a voluntary basis under the umbrella of a County-sponsored “Grand Rounds” open space community trust. Such a “Ground Rounds” open space system would constitute a tremendous gift to future generations of Valley residents.

### **Conclusion-**

Finally, many thanks to you, staff, the County Commissioners, members of the Planning Board, and members of the public, who have worked so hard to support the future welfare of the Helena Valley. In conclusion, thank you, Peter, for all your hard work and service to Lewis and Clark County.

Sincerely

Gus Byrom  
703 Red Letter St.  
Helena, Mt 59601  
(406) 443-0677  
gbyromiii@gmailcom

**From:** [bocc](#)  
**To:** [Susan Good Geise](#); [Andy Hunthausen](#); [Jim McCormick](#); [Roger Baltz](#); [Peter Italiano](#); [Greg McNally](#)  
**Subject:** FW: zoning proposal for Helena Valley  
**Date:** Friday, July 17, 2020 11:51:50 AM

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**From:** William Cook <reho1951@yahoo.com>  
**Sent:** Friday, July 17, 2020 11:38 AM  
**To:** bocc <bocc@lccountymt.gov>  
**Subject:** zoning proposal for Helena Valley

Dear County Commissioners and members of the planning commission:

Perhaps you saw the letter from one Gus Byrom in the July 14 issue of the I-R. In that letter, he urged support of the zoning proposal for the Helena Valley, and urged everyone in the Helena area to appreciate the good work that went into that proposal. I agree 100% with those sentiments.

I saw in the news that public comment at a recent hearing ran in opposition to the zoning proposal. I think that if a poll was taken of everyone in the Helena area (not just the Valley, but within the city limits of Helena as well), the result would be different. Most folks here are concerned about the way sprawl is making its way across the Valley, and want good zoning to control that development in a way that benefits everyone and protects the values that make the Helena area a wonderful and unique place to live. Good zoning will necessarily include some regulation of development, including buffers and setbacks.

I thought the zoning proposal was reasonable and fair. I hope that there is another chance to weigh in on the proposal (or new proposals), so that the rest of us can submit our comments. Is there some way to get on any mailing list for future actions concerning the zoning proposal for the Valley? I wish there was some citizen organization that promoted wise land use planning in the Helena area.

Thanks for listening.

Bill Cook  
1129 9<sup>th</sup>  
Helena

**From:** [John W. Herrin](#)  
**To:** [County Planning Mail](#)  
**Subject:** Re: JH response to GM notice of June 25th posting of my Additional Questions based on June 16, 2020 Planning Board Hearing. County must address all factual concerns presented past 6 months.  
**Date:** Thursday, June 25, 2020 1:29:49 PM

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Greg,

In addition to the original 3 written reports submitted to the County in March, I submitted two emails -- one April 22 and the second May 14.

As indicated the county never responded in writing or in comments to Planning Board to any of my long lists of technical, legal, administrative concerns.

I read through the summary of oral testimony of last Tuesdays PB hearing and under my name for the first oral presentation where I presented many factual based information over the course of the 10 to 15 minutes oral testimony, the the 4 lines attributed to my presentation was largely unedgible and did not in the least cover 90 plus percent of what I presented.

I formally request that L & C remove the comments attributed to me and the County's inadequate response and replace it with the complete hearing testimony with appropriate County responses. The official record is extremely biased against what I actually said I can not allow the county to miss characterize my testimony in such a blatant and unprofessional manner.

My oral testimony covered very important historical and factual details--supported by the over 60 pages of my written testimony against the rural property 10-acre and setback restrictions.

The county is legally not allowed to distort public records and introduce bias into the rule making process. On Tuesday June 16 I presented an overview summary of the information I had submitted in writing, addressing specific topics that the County did not accurately include in the staff written summary and as such the responses by staff are totally inaccurate and do not thoughtfully, factually, legally or scientifically address the real underlying problems with the proposed Zoning plan.

Just as a remainder, my June 26 June 16 public testimony before the PB, addressed the following major challenges the county faces in pushing forward with the Zoning proposal:

- 1) Since 2004, the County's BoCC and some staff have implemented illegal and targeted Zoning and Subdivision regulations designed to slow rural growth by driving up the costs to develop only rural property. Resulting in close to 20 District court lawsuits that the county had either lost in court or agreed to settle to avoid further costs and negative publicity.
- 2) the new proposed Zoning plan again targets only rural property for taking of real property values ( a likely legal takings claim) which the county has never justified technically, legally or socially despite my and others repeated requests for county staff and BoCC to address.
- 3) County has not addressed the technical issues of the 5 areas of concern including: fire, flooding, roads, Wastewater impacts on groundwater quality, and water supply.
- 4) In addition, I addressed the fact that the zoning targeting only real property we will have a

very negative impact on the social structure of the county.

5) And this Zoning proposal of only rural property would reinstitute the one development right per parcel that will further restrict landowner uses, income and property values.

I have the same public record shortcomings and county responses to my second oral testimony. (E.g. proposed setbacks take too much land from waterfront property for no good reason; the arbitrary and capricious manner in laying out map sub-zone boundaries where one side is enriched and the other side if a road has severe property rights restrictions.

And I I strongly suspect many of the other citizens who gave public testimony feel equally miss represented and their valid concerns not being adequately addressed or incorporated into any meaningful proposed changes in the actual map or associated rules.

Plus I see absolutely no effort by county staff to address the 15 questions requested answers to any least 2 weeks in advance of the first PB hearing. As stated before the only question Mr Italiano answered was my public informational request-- response being I had to pay county at least \$1700 for staff time etc.

Not one questions or concerns raised in over 60 pages of written testimony!! That is not good government. That is not legally acceptable even for L & C County and really does not allow the county solid footing for any further action on the 2020 Zoning proposal. Either answer the questions and prove there is a environmental or safety crisis justifying the public taking of private property-- or stop and reassess the facts.

The county must answer all 60 plus pages of legal, technical and administrative challenges and address all the questions clearly spelled out in my May 14 email, the April 22 email and latest Thursday June 18 letter addressed to County planning.

The Planning Board can not move forward with any actual motions until the County addresses all written and oral testimony in a meaningful and legal manner.

By not addressing all the elephants in the room, how can the county prove thier proposed Zoning plan is for "THE GREATER GOOD" of this county.

How can the county staff, and BoCC keep avoiding addressing all the factual information I and others have submitted and hope that the county is not sued in court and even more importantly not forced to pay damages to impacted landowners, contractors, trades business owners etc. that will be negatively impacted?

If possible please have someone respond to this short email before the 6PM PB hearing.

I will be up at the county again this afternoon so I will stop into your office.

Jh

On Thu, Jun 25, 2020, 9:44 AM County\_Planning\_Mail  
<[County\\_Planning\\_Mail@lccountymt.gov](mailto:County_Planning_Mail@lccountymt.gov)> wrote:

Mr. Herrin,

As we discussed on Tuesday afternoon, these comments will be provided to the Planning

Board at their June 25th 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

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**From:** John W. Herrin <[2freedomrings@gmail.com](mailto:2freedomrings@gmail.com)>

**Sent:** Thursday, June 18, 2020 7:11 AM

**To:** County\_Planning\_Mail <[County\\_Planning\\_Mail@lccountymt.gov](mailto:County_Planning_Mail@lccountymt.gov)>; Mike Fasbender <[mj.fasbender@bresnan.net](mailto:mj.fasbender@bresnan.net)>; Jerry Hamlin <[jerry1@hamlinconstruction.com](mailto:jerry1@hamlinconstruction.com)>; Steve Kuntz <[invitations@linkedin.com](mailto:invitations@linkedin.com)>; Steven R Burch <[steveburch@missouririvercontractors.com](mailto:steveburch@missouririvercontractors.com)>

**Subject:** Additional Questions based on June 16, 2020 Planning Board Hearing

L & C County Planning Department.

Please these Additional questions and comments as supplement to my oral testimony given at Tuesday's planning Board hearing plus I have attached the complete text of my May 14 2020 email which contained 15 specific questions one of which Mr. Italiano has answered relating to my request for all emails, text and supporting documentation for the Zoning proposal which he indicated would cost around \$1700 to produce but otherwise he did not respond to any of these key questions. Given the county has finally committed to answering questions surrounding the Planning Board hearing please incorporate this final questions into the Comment record being transmitted to the Planning Board and therefore to addressed

with appropriate responses by staff.

1. Attached please see the Zoning Rule page 7-6 which shows a few examples of lot size layouts wherein the average lot size is 10-acres.

Please explain why the examples shows lot sizes down to 1-acre, but then big tract sizes to reach the average lot size density of 10-acres – and why the 1-acre or mid-range lot size density could not continue instead of the conforming to the 10-acre or greater average lot size minimum? Please specifically incorporate My 15-page technical review and counter argument paper discussion wherein I believe I have proven the lot size of 10-acres is not technically valid for any of the 5 key factors of public safety and environmental concern that is mentioned but not supported by real facts in the County's 2015 Updated Growth Policy.

2. As requested in several comment emails with attached Impact Assessment Report supporting documents – the County must prove an Emergency exists and Concrete Proof that Future Rural Growth would severely impact the natural and human environment that warrant the taking of rural property value for current and future generations.

Additionally, the County must provide proof to the citizens and the Planning Board that existing subdivision and county permitting regulations are insufficient to address cumulative impacts on the 5 key natural environmental and public systems. Please clearly define the areal extent of the HVPA impacted and clearly show the need for Lot Size density restrictions of 10-acre is warranted over the entire 100,000 plus acres of undeveloped rural private property being targeted relative to each 5 Key concerns. Additionally please define legal and technical benchmark criteria used to define threshold limits and define where we are now and in the year 2035 (Source 2015 GP) relative to these thresholds.

More Specifically, the county must document -- to the proposed regulated rural landowner and for the matter all county citizen & voters -- why only rural property land in the HVPA must never more be allowed to average less than 10-acre/lot in order to protect public/environment health and safety for each of the 5 key concerns future detailed in each subsection topic further detailed below:

- 1) Water Quality. Please prove that the entire HVPA area is exceeding or close to exceeding a water quality standard or public health concern level that justifies the 10-acre lot size restriction? Please address the cumulative impacts relative to the entire HVPA rural areas that the county has identified that are not adequately addressed by existing County and Subdivision regulatory reviews and approval processes.

Please document where supporting engineering and consultant developed groundwater supply investigations developed for recent subdivision application do not adequately address cumulative impacts and identify areas within the HVPA are experiencing cumulative water supply issues that the County or State of Montana reviewers did not adequately assess the cumulative water supply impacts that justify the 10-acre lot size restrictions.

For added clarification please address all issues raises in my February 22, 2020 “2020 Proposed Zoning – Technical Basis Failures to Disclose Report” , page 1 Summary and Pages 2-4 GW Quality – Natural and Septic Waste Impacts.

2) Water Supply -- Please specifically identify the cumulative impacts that are not addressed by County & State of Montana Subdivision and DNRC water Rights application permitting requirements. Please provide any solid technical reports, data analyzes, or expert testimony proving that the Entire HVPA has inadequate water supply that would justify limiting lot size densities greater than 10-acres over.

In addition, please provide specific examples of approved or pending subdivisions in the HVPA that have not adequately addressed cumulative groundwater supply and define the excessive ground depletion limited areas that justify the 10-acre average lot size restrictions are necessary and the only valid solution to address the wide spread and proven groundwater supply limits would be reached if approximately 850 new homes were built in the rural planning area over the next 15 years.

For added clarification please address all issues raises in my February 22, 2020 “2020 Proposed Zoning – Technical Basis Failures to Disclose Report” , page 1 Summary and Pages 4-10.

3) Roads -- produce documentation that shows the entire HVPA rural area is deficient or largely deficient of adequate road systems and incorporate specific County or Consultant generated reports that not only identify deficiencies but provide proof of what corrections have been made and what corrections are needed to safely handle continued growth in the rural areas of the county in order to need measurable and enforceable safety standards.

Please note, it is not acceptable for the county to say rural property road networks don't meet current Subdivision regulations design standards given the fact only a small portions of county roads and private actually meet county Subdivision Design Standards.

Stated another way – the fact that the county has done a horrible job in planning for growth for the past 30 years relative to improving county roads – the county can not then turn around and blame growth as justification for the county not adequately planning and implementation of needed Transportation improvements to meet growth demands as every other town and city in Montana and the nation all face and manage growth without ever resorting to large scale growth restrictions using density limits such as L & C County has proposed. Please produce many examples of other Montana or national communities that have implemented 10+-acre lot size restrictions to control rural growth and please provide some basis to support this approach from technical standpoint and then relate it back to our specific valley area geographic or financial etc. constraints.

It is important for the County to address the fact that the only option the County has selected to deal with future growth in rural areas is to limit growth through costly subdivision regulations (e.g. two entrance requirements, costly and illegal fire water storage requirements etc) and now proposing Zoning Lot Size Density Restrictions to slow rural growth, because the county refuses to address emergency or safety problems with the other listed options in the Growth Policy -- educations, infrastructure improvements, and performance standards.

The County all ready has enacted very costly and targeted performance standards which has severely retarded rural growth in all corners of the county, but the Zoning plan only focuses on density control as the only answer – so please justify why the only solution the county can support for rural area future roads is to severely limit future growth with large lot size density controls..

Please address why the county has at least 3 road design and maintenance standards in the county (Note: the different County accepted Standards appears to violate constitutional protections of equal treatment under the US and Montana Constitutions and taking clauses). The county must address the following issues in order to remove the cloud of suspicion that County managers collectively over the years ignored implementing real ground network improvements in order to discourage rural growth:

- a) the County Road design Standard that only new subdivisions developments must meet not only apply to construction standard for internal roads but they also apply to the requirement that major subdivision assess and pay for the proportional share contributions to future traffic by giving the county money to make some improvements on off-site roads. It should be noted here that for the most part the only party improving off-site roads is the new land developers, and the county can chose to spend the money on the road anyway they want to even though that road after the improvements still does not meet county standards and no one else has to contribute a dime. That to me is somewhat suspect legally?

b) the road design standard for the county is whatever the maintenance and design staff can accomplish with very limited and insufficient road budgets. Examples I can cite include the following:

i) Lake Helena drive does not come close to meeting county Subdivision Road Design standard for ditches (many places no ditches) and was constructed with recycled asphalt which is not allowed for new subdivisions.

ii) Roads like Birdseye Road and Flowery Lane plus most of the 500 plus miles of County owned roads (Non-MDT assistance roads) are way out of County compliance with County Subdivision Road Design Standards and most will never be brought into compliance under current budget allotments and under existing department management practices. One of the only real funds for improvements beyond crisis maintenance – is MDT funds and those provided by new Subdivision for off-site improvements.

iii) Most of the existing private roads in the HVPA and the county as a whole do not come close to meeting county road design standards and the county allows all the private RIDs and property owners to have very low cost road maintenance and almost never upgrades and as one of the only real sources of road improvement funds is County enforced new major subdivision regulatory mandated assessments. Otherwise these private rural roads never meet county standard and still only one class of landowner is paying more than their fair share – the new person on the block.

iv) Fact is even this year the County and Forest Service have teamed up to improve the Snowdrift Roads of the NE valley large tract residential area leading to FS public lands. But instead of meeting County road design standard of 9 inches of road mix gravel, the County and FS are cheating and only putting down 6 inches. The County does that all over the county – bending their own rules wherever they want to in order to save dollars and Stretch the \$ for additional mileage.

So Please Document why the County can justify limiting only Rural Property for 10-acre lot size restrictions given the very limited obvious inequity briefly outlined above and why new subdivisions are not good for the county because all roads inside subdivision are built to the highest standards the county has and the only way deficient county and private roads every will get major upgrades (beyond minimal maintenance) is with new rural property regulatory forced assessments.

Please also prove to everyone, why well built county standard roads are a major air pollution source for the valley which is the reason the county forces all new subdivision to pave roads if the number of houses exceed 40 – when in fact there are countless miles of private and county roads that exceed 400 ADVT and the county is not forcing these road to be paved – and it should be noted a lot of private roads in the county do not have crushed gravel surfacing as such they are major sources of dust especially in areas where native soils are rich in clay and silt.

A side point comment that the county staff do not have to reply but is entered herein for the record -- the county has never proven the actual daily traffic count per household in L & C County is 10 vehicle trips per day which local data I've seen the actual ADVT is much lower so the county is again targeting new subdivisions to over design roads to exact as much money as possible from new development because their objective is to slow rural growth .

According to second hand information-- Eric Griffith stated at a public meeting, the County's maintenance budget is upside down in the fact that 60% of the total budget is consumed by none-structural overhead and non-road transport structural improvements costs, while only 40% actually goes into real road maintenance and upgrades (note: this maybe a misquote, so please detail the actual 2019-2020 department budget figures addressing the way tax-payer's money is being spend with emphasis on the HVPA factual county expenditures to make valley roads better (please include overhead and other county budget expenditures relative to actual on the ground improvements).

Also explain why and how other major communities in Montana are able to address growth outside the city limits and not resort to the Lot Density 10-acre approach detailed in the 2020 Zoning proposal? Please explain in detail many examples where other cities like Missoula, Kalispell, Butte, Great Falls Livingston, Billings, Bozeman-Belgrade where they have impose similar large tract size density controls to deal with rural growth.

The County must provide detailed citations from their own 2004 & 2014 etc. transportation plans and more recent assessments etc. that provide justifications for the only solutions to future growth is restriction rural property to a minimum 10-acre lot size average.

For added clarification please address all issues raises in my February 22, 2020 "2020 Proposed Zoning – Technical Basis Failures to Disclose Report" , Summary page 1 and ROADS Pages 10-12.

4) Flooding. As I state in my 13-page Technical Basis Failures to Disclose Report, flooding within and pass-through are regulatory requirements of State Subdivision Regulations that require a certified engineer or qualified expert to design the flood routing and storage systems for each new subdivision – something existing older homes and subdivisions are not required to address.

SO again please carefully and completely defined why the rural property owners solely are required to give up valuable property development rights for the “Greater Good” for mitigating cumulative flooding impacts not adequately addressed under existing State and County subdivision regulations.

5) Wildland Fires – Please see page 13 of the February 22, 2020 Technical Basis Failures to Disclose Report for issues the county must address relative to the need to restrict all rural property to 10-acre limits in order to protect the real safety of only new rural property owners that are not adequately addressed by State and County subdivision regulations and local fire district approvals. Specifically, what cumulative issues of wildland fire safety are not being address by the entire 100,000 plus undeveloped rural land that warrant the 10-acre lot size restrictions.

Please also address the major points raised in my 17-page [April 12, 2020 Letter to the County Planning Staff](#) as part of the response to comments that the county. In that document I requested the county respond in writing at least 2 weeks in advance of the June 16 2020 Planning board hearing the following responses:

1. Page 9. The county must provide proof of the positive and negative Social and Economic costs/benefit of the proposed Rural Property 10-acre property taking aspects of the Zoning proposal in order to meet the citizens right to know and full regulatory transparency. Please address all issues and provide Social economic cost benefit analysis equal quality or better than I submitted back in February.

I developed the 8 page SE Impact assessment report in part because the County has never provided any paperwork documentation that adequately supports the Rural property 10-acre lot size restrictions. However even more specifically Mr. Italiano stated at several December January Listening Sessions “the county had not received any comments or requests that they provide an SE impact assessment of the rural property Zoning Proposal.”

Given the huge area and number of potentially impacted rural property owners (Number of properties like exceed 10,000 residents) then the County has an obligations to provide SE impact assessment details proving the large tract size restrictions would not adversely impact landowner current and future property values and also assess the cost to our economy, business and affordable housing/employment and overall social structure & economy of the Tri-county communities.

2. Pages 9-10. County Track Record of all past lawsuits must be addressed by staff and also the fact that the county has repeatedly and consistently added costly aspects into the county's administrative decision making review process relative to New Major Subdivision developments, that has unduly driven up the cost of developing rural property -- unnecessarily increasing average lot development cost by \$5000 to \$15000 per lot – increased cost that significantly slow rural growth and drive up the cost of all housing in the HVPA and surrounding bedroom communities, with no real justifiable underlying reasons.

County subdivision regulations that since the mid 2000's that appear largely added by this county to slow rural growth include:

- a) 2 county standard road entrances,
- b) costly on-site fire supply system infrastructure only for new subdivisions,
- c) past illegal administrative takings damage claims relative to off-site road requirements that totaled nearly \$8M in County/MACO costs, and
- d) 2006-2007 Interim and Emergency Zoning regulations where in the county staff fabricated WQ conclusions that painted an unrealistic and grossly inflated assessment that HVPA groundwater was severely polluted by inadequate septic systems and as such the Zoning mandated costly Level II systems that cost at least 34 county residents about 3-4 times the cost of normal septic system to install and maintain.
- e) One development right per parcel which the county implemented to control property precluding rental and business buildings on the same tract of land as a home (Note: a very regressive requirement); a position the legislature and the governor agreed was unreasonable – but now with this zoning proposal would

become law for all HVPA rural property.

The Very questionable aspect of this is again it flies directly in the face of legislative corrections intended to free rural property from the unruly overlords. It also screams of personal bias against rural property, which can not be allowed to stay in this document – and could easily be another reason to challenge this 2020 Zoning proposal in court. No other County is reversing the legislation and contending they County manager know what's best for it's citizens and expecting them to meekly comply and not put up a fuss.

3. Page 10-11 –The total Lack of any real factual supporting documentation support the Zoning plan which absolutely must be produced prior to the Planning Board decision on this Zoning plan and to date the county has not bothered to produce any factual rational justifying the 5 key issues or any other real justification for the taking of rural property rights for the “Greater Good”. Zero facts and ZERO supporting technical, SE or Legal responses to date after 6 months of public hearings and negative feed back, the county staff has totally ignored to 60 plus pages of documents I've written and the 20 pages of additional supporting negative historical case history and legal court ruling fact sheets -- is not acceptable and likely will be challenged in court.

Please note that county BoCC and staff can not all say they are working for the citizen and are protecting our interests if they abide by this taking actions without proper justification – as stated repeatedly -- to date has been totally lacking.

The County planning staff has been asked to produce real factual reports and expert witness or reports supporting the large lot size restrictions, since the first meeting in December 2019. And still not one ounce of effort to respond to any questions or adverse challenges. The staff is negligence in their duty to their real employer and bosses – the citizens of this great county. ZERO responses to date is absolutely not acceptable and only will assure the county losses in any legal challenges.

We should have been crafting a workable plan from the ground up and not the top down as so may citizens have complained. Yet here we are after 6 months of public negative feedback the County has only managed to remove the most obvious and easily challenged aspects of the Rural Zoning proposal and that is the obviously outlandish and easily challengeable aspect – then

160 and 20-acre lot size restriction that remained in place through 4 public listening sessions and 2 county commissioners hearings only to be dropped on the way to the planning board.

Why did it take so long for the county staff and BoCC to realize the huge overreach and back off??? It was only when real ranchers stood up and pleaded their collective hardship cases, did the BoCC and Staff finally backoff and compromise on 10-acre lots size restrictions which are still way too costly and impacting, but not quite as outlandish as the first 4 months of public fears the county inflicted on all rural landowners that were in the know.

And the County can not hide behind the smoke and mirrors claiming they were not challenged from the very first meeting in December at the Montana Wild when I stood up and challenged the scientific, ethical and legal quicksand the county was standing on hoping not to sink in over their heads. Blindly the Planning Staff repeatedly chanted the mantra "Zoning will add predictability, increase property values and the proposal protects everyone's future." Zoning will protect us all from going off a cliff with future uncontrolled rural growth.

But in reality this whole rationale for the Rural Property Zoning Restrictions is all about the a select few County Staff members and BoCC collectively believing they need to do whatever they can to slow or stop future rural growth because it has gone unbridled for decades and now is the time to reign it in.

However, besides the fact that they choose to ignore the obvious fact that this was a huge and grand taking of private property rights without compensations and all that entails legally and PR wise with the citizens, the county has made no effort to really justify the ends justify the means. Without real scientific and legally justifiable proof, I have no clues on how the county staff and BoCC could have envision this every working without a legal challenge.

Does the planning staff and BoCC really think we landowners that are being targeted are just going lay down and accept their edicts especially when there is absolutely no rational justification other than they are trying to avoid conflict and make their job easier at the expense of many many peoples livelihood and life savings – cutting in half their investment in their land and homes.

The County managers have mistakenly assumed that given they were able to pull this taking of rural property around Fort Harrison as a signal the citizen will just accept their power play without a fight. Well they found out on Tuesday (June 16) evenings PB hearing just how wrong their assumptions were. And the momentums -- just like the Black Lives matters movement has grown and spread across the world -- so will the message spread about this proposed land grab without compensation plan must be challenged by those with a horse in the race.

Despite the Planning Board assurances that the county original plan was merely a concept, the basic plan was hatched back at least as far back as 2015 and the plan all along since has been to slip this plan in as soon and without fanfare as possible – and don't let the impacted people know what is going on

(Note: the County Staff came to the first 3 public listening sessions with ZERO maps and absolutely would not give me one even though PI had one in his hand as he was speaking. SO it is very apparent that the County has made every effort to pretend to open and wanting citizen inputs but in reality they are purposefully attempting to limit information with not electronic comment forms available, hidden Zoning plans in the obscure Website placements, very limited advertising despite their claims of going way over board – but the worst example is the fact that they purposefully came to 3 public listening sessions without having one map to give anyone, when in fact real transparency and a real effort the County would have handed each and every person a copy of the map and a real summary of the plan (never happened WHY?) for landowners to take home and show others.

It is so obvious they way Peter I would not let me have a copy of the map and even when I asked the Planning support staff and I even made it a point to talk directly with Greg McNally after the second listening session to please bring 100 copies of the map to the 3<sup>rd</sup> listening session I received horrible push back that I was not their boss and I could not tell them what to do and the cost was too high etc. WOW was that a bunch of negative garbage and unwarranted because I was very polite and merely requesting that they do this for the people to know what is really being proposed.

Guess what happened. The County staff came to the 3<sup>rd</sup> listening sessions again with ZERO maps to hand out and the only reason they brought maps to

the 4<sup>th</sup> and final public hearing is I called Rodger Blatz at 3 on the day of the meeting and left a message that the Staff has to bring maps to this meetings or it is a very bad deal for everyone.

I am convinced that just like in 2005-2008 I witnessed the heavy handed back door maneuvering going on with County Staff and Planners during breaks in subdivision reviews and the same plotting has been happening at every phase of this Zoning process. I am also 100% convinced that the county would never have sent out the early June flyer had I not insisted in writing on several submittals and several other comments had made it a point to the county had an obligation to the citizens to inform them and yet they resisted to the last second and they only a come to meeting announcement with the time and place to be determined??

That again is very suspect behavior.

So the plan all along has been – keep the plan details secret and don't come out with the actual rules until right before the planning board hearing and sneak just a few quick small newspaper announcements out their and lets pretend we're being overlying sharing the news, The plan was -- don't let the people have the maps because then they will be able to talk to other people and get the message out.

Commissioner Good Giese laid out a rapid fire plan to have this through the Planning Board by April 16 and back to the County Commissioners for adoption by early Summer. Then the pandemic happened to slow the greased cogs of progress. The strategy of down playing impacts, not really answering questions and concerns, taking a couple notes, not recording the listening sessions, none of the 3 County Commissioners attending any of the 4 listening sessions is also very suspect and the lame excuse was exparte communication which absolutely does not apply for rule making processes for the county commissions.

The rush and plan was originally to have no hand out and no rules or technical documentation – just present the trust me I work for the government and we are here to protect you – they assumed would worked again as it did at Fort Harrison 2 years ago. With the planning staff assurances “we are here to listen and nothing is cut in stone.” With the added inference Everything is fixable – but not really.

Sorry to have digressed into the procedure failings of the County to date, but I believe it is a pattern I have witnessed over the 1 years of attempting to work with the county at all levels and realizing the staff and BoCC are in lock step with one another working hard to appear to follow the procedural process but knowing there best advantages is game the system to their advantage and in large part the County by far has the upper hand in make things happen as they see fit as long as they don't go to far over the legal challenge limits.

But jut one last thought here – the county staff and BoCC must be very careful not in the least way use there advantages in ways that can be used against them in the court of public opinion, peer interactions and most importantly in the actual legal court filing that could result from this Zoning proposal just as they did back 10-15 years ago.

4. See item 3 in the April 12 2020 – request for the county to adequately inform all impacted rural landowners of the proposed taking actions – still has not been done by the county. Merely sending on a very basic mailer notifying some of the rural landowners (note: County Staff said 13,000 mailers were sent out but half the people including me – did not receive the postcard PB meeting announcement. Really this mailer is so bad it had absolutely no real information, a map or even the time and location of the hearing. I wanted to see the county actual send out maps and a good solid summary and I encouraged them to do so. But again to no avail.

The county planning staff repeatedly said when asked if they would inform the rural property owners said it would be to costly even though in my mind the Montana constitution requires all government agencies to adequately inform and allow public interacts at all levels of public rule making policy.

And really the county has hidden this proposal ad every step of the process. Countering the unreasonable high cost to produce a real information flyer argument I would say too things. Informing the public could prevent much costlier legal challenges down the road and 2) look at 2015 costs to produce the Growth Plan where 10,000 detailed survey questionnaires were mailed out plus the cost of bring in Consultants and all the staff hours required in meetings and cost to actually produce the 2015 Updated Growth Policy. This Zoning proposal is extremely important for the county to act in the best interest of all citizens, no matter the their social status, political belief or other issues – we all deserve to know what is being proposed and how it will affect me, my family and future generations.

5. Please address items 4-12 contained in the April 12 document so I don't have to repeat these requests for more information.

Also please address all the requests for more information contained in my May 14, 2020 Email with 15 questions which Mr. Italiano only responded to item #15 (text emails and supporting document requests relating to 2020 Zoning which Mr. Italiano estimated would cost around \$1700 to produce and billable to anyone requesting copies of these documents). I have pasted a copy of those 15 questions herein to avoid further translations and duplication of questions.

Subject: Re: Voice Mail message from John Herrin

May 14, 2020

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 land use 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.

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 message left me today, that the Planning Board hearings are 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.

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 too 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.

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 their 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.

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.

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.

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 technically sound impact assessments that clearly support the need for 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 there is a crisis in each of the 5 areas of concern promoted by the 2015 Growth Policy and now the 2020 Zoning proposal.

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 even more harsh and biased 2020 Zoning plan, 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" rationale 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. Specifically 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.

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.

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 Louisiana 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.

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.

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.

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.

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 the county for future growth 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.

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 lieu 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.

LEWIS and CLARK County planning and County commission have attempted to slow rural growth 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 re-vest subdividing land. The 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 their 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.

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.

Respectfully submitted,

John Herrin

2855 Sundown Road

Helena, Montana 59602

406 202-0528

**From:** [Mark Mackin](#)  
**To:** [County Planning Mail](#)  
**Subject:** Comment - Helena Valley Zoning Regulations  
**Date:** Tuesday, July 14, 2020 3:41:56 PM

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Community Development and Planning Dept, Consolidated Planning Board:

The county has a duty to protect human health and safety. In recent years the Helena Valley has recorded water pollution, water scarcity, and flooding issues. Each of these is a public health issue, and flooding is an immediate safety issue when it occurs. The Planning Board should recommend use of the zoning authority to prevent or mitigate public health and safety issues.

#### Flooding

With annually increasing global temperatures, flood events have become larger and more frequent. The board should re-examine the flood plain designations with that in mind, and expand them where indicated by historical floods or estimates of future flooding.

The board should then tighten up the regulations to allow free passage of flood waters through the valley. That means zoning out types of development that would impede flood waters and zoning in others that would allow flood waters to move freely through the valley to Lake Helena. Impedance of floodwaters backs up the flood, spreads it out wider, and increases the mass of water which will be released intermittently as the flood stacks up against obstacles such as structures, fences and accumulated debris. Spreading and deepening the flood increases the damage to public facilities, and increases the damage to adjoining private property that also might have escaped damage.

Opening areas for flood water flow reduces the need for a public emergency response to assist homeowners and others to preserve their property. It is important to reduce that preservation response, because damming and channeling further widens and deepens the flood. Prevention is the most effective method of dealing with flood damage. And the most cost-effective method is to allow floodwaters to move through an area prepared for that. Those areas need not be reserved exclusively floodways. Large scale agriculture and recreation are generally acceptable uses so long as specific applications do not impede the flood. Fences can be constructed to allow the flood to pass. Forestry, shelterbelts and structures must be placed strategically to minimize damming effects in the floodways.

Mark Mackin, 4703 Almosta Road, Helena MT 59602; Office Ph/fax: (406) 227 – 5237;

**From:** [Mark Mackin](#)  
**To:** [County Planning Mail](#)  
**Subject:** Comment - Helena Valley Zoning Regulations  
**Date:** Tuesday, July 14, 2020 3:41:56 PM

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Mark Mackin, 4703 Almosta Road, Helena MT 59602; Office Ph/fax: (406) 227 – 5237;

**From:** [Christopher J. Ries](#)  
**To:** [County Planning Mail](#)  
**Cc:** [Andy Hunthausen](#); [Susan Good Geise](#); [Jim McCormick](#); [Greg McNally](#); [Peter Italiano](#)  
**Subject:** ZONING RESPONSE LETTER  
**Date:** Friday, July 17, 2020 12:14:36 PM  
**Attachments:** [Helena Valley Zoning 2020.pdf](#)

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Please review attached Zoning Response Letter.

Thank you,

Christopher J. Ries, P.L.S. | Professional Land Surveyor & Planner

RIES & ASSOCIATES, P.C. | 6850 Green Meadow Drive | Helena, MT 59602

406.458.5243 | 406.458.8699 (fax) | [cjr@riesandassociates.com](mailto:cjr@riesandassociates.com)

July 16, 2020

Christopher Ries  
Ries Land & Livestock LLP  
6850 Green Meadow Drive  
Helena, Mt 59602

Community Development and Planning  
316 N Park Room 230  
Helena, MT 59623

Re: Helena Valley Zoning

To whom it may concern,

I have been a resident in Lewis and Clark County for over 46 years. I was born here, raised here, married my wife here and am raising my family here. During this time, I have seen Helena grow and change for the better. I realize that we all must help direct and incentivize good planning and stewardship with property ownership and development. The current subdivision laws and sanitary regulations have shown to greatly help this. Our County does have areas of concern for flooding/lack of water/public access/fire concerns/high density growth adjacent to the City/etc. to which I feel they are working towards solutions to the best of their ability.

However, the proposed new Helena Valley Zoning Regulations go too far and thus I oppose for the following reasons:

1) Emergency areas of concerns have not been isolated. I do not believe in blanketing areas and end up with unnecessary limitations.

2) Limits Tract/Lot area size for large tracts of land for further development. We already have the following protective measures to not over subdivide, for example:

- A) Limitations of water rights/usage set by the DNRC for each existing tracts of land,
- B) County Subdivision Regulations,
- C) County Certificate of Survey Review Committee process,
- D) Requirements/regulations for land use and development set by the State Department of Environmental Quality,
- E) Requirements /regulations of the Subdivision and Platting Act of Montana,
- F) Existing site constraints,
- G) Existing Zoning Districts, Covenants, Easements, etc..

3) Limits the use of Exempt Certificate of Surveys. The zoning limits examples such as:

- A) Boundary Relocations (if not conforming to area size),
- B) Family Transfers (if not conforming to area size).

These Exempt COS's as noted above have protective measures already. The existing review process for these surveys are already reviewed and consideration is given for each and every one.

4) Adds additional County oversight/restrictions/fees to Non-Conforming Exempt Certificate of Surveys. The current application process works very well with County Survey Review Committee.

5) Boundaries proposed divide families Homestead into two different districts, why? My families site has no constraints to water/access/fire/soils/etc., thus the Proposed Zoning does not fit the area for growth and development. Therefore, the proposed zoning becomes a control measure not a planning one.

6) Restricts Landowner ability to use/develop land the way they see fit and removes one of fundamental rights of ownership. The current Landowners' purchased the property without these new restrictions/limitations, but now has them forced on them without consent. This is not a just process. I do realize in areas of emergency/concern the County may impose protection measures such as Zoning with sound science/studies to warrant the new restrictions/oversight, but I feel they are already doing this legally through the existing subdivision and survey review process.

The concerns I have noted are just some of the reasons why I cannot support this Helena Valley Zoning Proposal. I firmly believe, we must be careful on over-regulating individuals and our society as a whole because we will lose the incentive to grow and develop. The key to a great government is to include all stake holders to the "table", not just allow a few members of society to direct. Thus, I urge less government and more individual property rights with responsibility/education of sound property management/growth. This will continue to keep our county a fantastic place to live and raise our families and allow our county government to properly manage growth.

Please consider my concerns.

Sincerely,



Christopher Ries

**From:** [Thomas, Andrew](#)  
**To:** [County\\_Planning\\_Mail](#)  
**Subject:** Re: Question about rural lot variance process and other issues under the proposed county comprehensive plan  
**Date:** Tuesday, July 21, 2020 9:51:58 AM  
**Attachments:** [Proposed County Planning.pptx](#)

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Thanks Greg.

Please see attached. I plan on commenting at tonight's meeting. If you can project this at tonight's meeting I would appreciate it.

On Tue, Jul 21, 2020 at 9:04 AM County\_Planning\_Mail  
<[County\\_Planning\\_Mail@lccountymt.gov](mailto:County_Planning_Mail@lccountymt.gov)> wrote:

Mr. Thomas,

Thank you for following your local government. I have provided responses to your questions under each as shown below in italics. Please contact me if you have any further questions. 406-447-8343

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:** Saturday, June 27, 2020 11:53 AM

**To:** County\_Planning\_Mail <[County\\_Planning\\_Mail@lccountymt.gov](mailto:County_Planning_Mail@lccountymt.gov)>

**Subject:** Question about rural lot variance process and other issues under the proposed county comprehensive plan

Hello,

I am following the county's proposed comprehensive plan and I have a couple of questions.

1. What would be the procedure for getting a lot size variance in a rural or ag zone based upon proof of water availability? Looking at the background for the proposal the lot size requirements are mostly due to issues of water and wastewater. However, in areas with large minimum lot sizes there is obviously a huge amount of variability in terms of water availability. For instance if I have 50 acres at the bottom of a ravine and I can prove water availability for 2t two acre lots what would be the procedure for getting a variance or would it be even allowed?

*The lot size requirements in the rural residential mixed use zone are 10 acres in size to reduce the impacts on water, roads, and fire protection. To creates lots less than 10 acres in size under the proposed zoning would require either the use of clustering (see Section 706.01) or the re-zoning of the property (see Section 107). In the future, a planned development section will provide another option for property owners to request approval of lots smaller than 10 acres in size. There is no longer an agricultural zone being proposed.*

2. What if any specific standards has the county adopted, if any, to ensure that housing affordability and property rights are explicitly considered?

*In addition to participating with the Tri-County Housing Taskforce, the County partners with other agencies, such as the United Way and Good Samaritan, to better understand housing needs. In 2015, the County's Growth Policy Update for the Helena Valley Planning Area anticipated we would see an increase of approximately 10,000 more people by 2035 and would need approximately 4,000 new housing units to accommodate that growth. A build-out analysis in the Growth Policy Update demonstrated that the Urban Growth Area (adjacent to Helena City Limits) could accommodate more than 8,000 housing units although it recognizes that those units will be distributed to each of the Growth Areas, Rural Transitional, and Urban. The proposed zoning will provide greater predictability for the citizens of the Planning Area as development occurs. The proposed zoning has provisions for allowing non-conforming lots, uses, and structures to continue, as well as other provisions for conditional use permits, home occupations, and temporary uses to provide property owners greater flexibility. Processes for applications are described as well as appeal procedures for decisions.*

3. With regards to building standards in proposed county zoned areas does the county have any interest in adopting the Uniform Building Code? If so, has the county contemplated a procedure for obtaining a variance on construction method?

*The County does not enforce the International Building Code, or other building codes, adopted by the State of Montana. At this time, the County is not considering enforcing these codes.*

Thank you,

Andrew Thomas

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**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)

ISB# 9748

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**Andrew R. Thomas**

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Office: 406-447-5454

Cell: 509-592-0720

ARThomas@Carroll.edu

# PROPOSED COUNTY PLANNING

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ANDREW THOMAS, JD, PHD

ARTHOMAS@CAROLL.EDU

QUESTION:

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- Do you want your children and grandchildren to be able to afford to live here?

## LOT SIZE RESTRICTIONS, UGB'S ETC.: A FAILED POLICY

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- These types of restrictions been tried in various places for the past 70 years with the same effect
- The Town and Country planning act of 1947 in the UK Housing prices quadrupled adjusted for inflation.
- Also, the policy was originally promoted by the wealthy to keep the poor and working classes out of the countryside.
- So, you well that's Europe. . . .
- <https://blogs.lse.ac.uk/politicsandpolicy/greenbelt-myth-is-the-driving-force-behind-housing-crisis/>
- <https://www.dailymail.co.uk/news/article-2259908/Nick-Boles-Build-green-sites-rich-homes-warns-planning-minister-tells-grandparents-stop-NIMBYs.html?amp;amp>

## THE AMERICAN EXPERIENCE

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- Same thing in Washington, Oregon, and California
- Before SB 100 and the GMA both Portland and Seattle were quite affordable. Even SF was affordable before they implanted their restrictions in the 1970's the Case Schiller index (income to house price) was around two or three which is considered affordable.
- Here are the house **prices** to **income** and **Case Schiller Indexes** in those areas:
- **SEATTLE WA : \$767,906 / \$121,000, 6.3**
- **PORTLAND OR: \$467,621 / \$87,900, 5.3**
- **SAN FRANCISCO CA: \$1,447,191 / \$112,376, 12.8**
- So..... You say "those are big expensive costal cities".....
- Source: Zwillow.com

## THE MONTANA EXPERIENCE

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- Experiences with this type of planning in Montana yield the same bad results:
- **BOZEMAN: \$475,185 / \$59,397, 8.0**
- **MISSOULA: \$347,838 / \$43,602, 7.97**
  
- **Finally there is Helena which is already in the range of unaffordability:**
- **HELENA: \$290,871 / \$53,892, 5.39**
  
- **Moral of the story: Helena is already expensive boarding on unaffordable. Don't make it worse.**
- <https://www.wbur.org/heretandnow/2019/12/06/missoula-montana-housing-affordability>
- [https://missoulian.com/news/local/missoula-makes-inroads-on-affordable-housing-but-prices-still-outpacing-incomes/article\\_2e3e3ef6-0107-50f3-b2ee-8f92946d912.html](https://missoulian.com/news/local/missoula-makes-inroads-on-affordable-housing-but-prices-still-outpacing-incomes/article_2e3e3ef6-0107-50f3-b2ee-8f92946d912.html)

## OTHER RESEARCH ON THIS TYPE OF PLANNING.

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**Randall O'toole who is a senior policy fellow at the Libertarian CATO institute as well as having been a research fellow at Yale University has compiled extensive documentation regarding the negative impacts of this type of policy.**

<http://is.org/planner/?p=11412#text=Oregon%27s%20land-use%20planning%20system%20and%20similar%20growth-management%20laws%20papers%20finding%20that%20land-use%20regulation%20increases%20housing%20costs>

- "Government regulation is responsible for high housing costs where they exist" — Edward Glaeser and Joseph Gyourko, [The Impact of Zoning on Housing Affordability](#)
- Rapid growth of housing prices is "correlated with restrictive growth management policies and limitations on land availability" — G. Donald Jud and Daniel T. Winkler, [The Dynamics of Metropolitan Housing Prices](#)
- "Metropolitan areas with more extensive regulation can have up to 45 percent fewer [housing] starts and price elasticities that are more than 20 percent lower than those in less-regulated markets" — C. Tsuriel Somerville and Christopher J. Mayer, [Government Regulation and Changes in the Affordable Housing Stock](#)
- "Places with more regulation experience a 17 percent smaller expansion of the housing stock and almost double the increase in housing prices" — Raven Saks, [Job Creation and Housing Construction: Constraints on Employment Growth in Metropolitan Areas](#)
- "Land-use regulations raise housing and developed land prices" — Henry O. Pollakowski and Susan M. Wachter, [The Effects of Land-Use Constraints on Housing Prices](#)
- "Regulatory stringency is consistently associated with higher costs for construction, longer delays in completing projects, and greater uncertainty about the elapsed time to completion of residential developments" — John M. Quigley, Steven Raphael, and Larry A. Rosenthal, [Housing Land-Use Regulations and Their Effects in the Housing Market](#)
- High housing prices are "associated with cost-increasing land-use regulations (approval delays) and statewide growth management" — Theo S. Eicher, [Growth Management, Land Use Regulations, and Housing Prices: Implications for Major Cities in Washington State](#)

## OTHER POLICY CONSIDERATIONS.

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- Cost is not everything.

I agree. . . .

## LEAPFROG DEVELOPMENT

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- First if you restrict development in areas contiguous to Helena it will merely leapfrog to even more remote areas like Townsend and it will overburden that area. People want a certain type of housing and will be willing to seek it out.

- <https://urbanpatternsblog.wordpress.com/tag/leapfrog-development/>
- Newburn, D., & Berck, P. (2011). Exurban development. *Journal of Environmental Economics and Management*, 62(3), 323-336.

## RESOURCE CONSERVATION

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- The argument that you are protecting resources is highly questionable. The first issue is that by densifying certain areas you will need more public infrastructure in the way of roads etc. than you otherwise would. Despite the rhetoric of getting people out of their cars people will still likely drive and congestions will increase. There are benefits to dispersion.
  - <https://knightfoundation.org/articles/authors/joe-cortright/>
  - Kahn, M. E. (2000). The environmental impact of suburbanization. *Journal of policy analysis and management*, 19(4), 569-586.

## ENVIRONMENTAL CONSIDERATIONS

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- Also, you are likely going to have more concentrated pollutants in those areas and in some wooded areas dense housing is a fire hazard.
  - <http://ri.org/antiplanner/?p=15566#more-15566>
- Another argument relates to open space. Keep in mind 56.3% of the county is already public lands.
  - [https://d32ogoqmya1dw8.cloudfront.net/files/research\\_education/mt\\_geoheritage/profile\\_land\\_use\\_lewis.pdf](https://d32ogoqmya1dw8.cloudfront.net/files/research_education/mt_geoheritage/profile_land_use_lewis.pdf)
- If anything public attention should focus on improved access to public lands than relegating private land that can be used for housing and businesses to viewsheds and things that only serve the wealthy who can afford 10 acre lots.

## FISCAL CONSIDERATIONS

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- If the county wants more tax revenue and the for that matter the city does as well, you want to attract as many people who will be contributing members of the community.
- Generally what this means is working people, businesses and families. If you restrict growth you are not going to attract that demographic. Likely with those 10 acre lots that are being proposed you will get wealthy retirees who will pay property taxes but likely not contribute that much more to the local community or economy.

## FISCAL CONSIDERATIONS CONTINUED

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- Also from the perspective of a business it desire low overhead costs but also affordability of housing and the like for its workers. It's a documented fact that many business are leaving places like California (I know that's a dirty word here) or the coasts because despite the high pay the cost of living is so high it makes no sense to stay there.
  - <https://www.bizjournals.com/sanfrancisco/news/2020/01/09/your-company-might-be-next-why-the-california.html>
  - <https://www.tecma.com/companies-are-leaving-california/>
- Thus, strategically policy that facilitates growth, minimizes costs, and attracts those business and young families as an area where Helena can thrive is what planning policy should aim to do.

## SOCIAL AND ECONOMIC IMPACTS

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- Any thing that can be done to facilitate home ownership is obviously something that is desirable
- When you look at Bozeman or these wealthy cities, working and middle-class people can't afford a home. So they leave. Also, when you look at the type of housing those families desire is not a 3-bedroom condo with a 10 foot by 30 ft yard. Nor is it an apartment building. It's a house with a decent yard or even some space to do other things.
- Also, these restrictions create an opportunity for rent seeking on the part of real estate speculators since they know where development will occur.
- Finally and most importantly:
- **Montana is facing a demographic collapse if current trends continue**
  - Golland, A., & Boelhouwer, P. (2002). Speculative housing supply land and housing, markets: A comparison. *Journal of Property Research*, 19(3), 231-251.
  - <https://missoulacurrent.com/business/2019/08/montana-aging-workforce>

## SOCIAL AND ECONOMIC IMPACTS

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- Along these lines I question how this will affect agriculture. You have already heard from many farmers who don't foresee staying in business as large ranches or farms. However, many people desire to engage in farming or forestry as a side business. Unfortunately, when you have large lot mandates like the do in Oregon you can do that. In fact when you look at the statistics farming in highly restrictive states like Oregon is in decline especially in the eastern part of the state. Thus, if you want to preserve some agriculture and forestry while accommodating change lots size limitations won't work.
- An Example from Oregon: <https://www.youtube.com/watch?v=MpFS4AcAslg> (can't have small farms)
- <https://www.qualityinfo.org/-/a-quick-look-at-population-trends-in-eastern-oregon> (Eastern OR's population is stagnating)
- <https://www.youtube.com/watch?v=7GMvGZJ842Y> (Overregulated farming)

## LEGAL CONSIDERATIONS

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- Generally speaking modern property law favors **flexibility**.
  - Land use codes are in conflict with that.
  - Also, things like conservation easements and other restrictions are not something traditional proper law has favored there are a couple of reasons for this.
    - <https://www.perc.org/2017/08/29/can-perpetual-conservation-easements-be-updated-to-changing-circumstances/>
  - The first is **alienability** that means property should be freely transferable and the next concept is that it should be put to the highest and best use.
  - Example: Is it really the best use to “protect” farm land directly adjacent to an urban area rather than use it for housing?
    - Priest, C. (2006). Creating an American property law: alienability and its limits in American history. *Harv. L. Rev.*, 120, 385.
    - Reid Jr, C. J. (1995). The Seventeenth-Century Revolution in the English Land Law. *Clev. St. L. Rev.*, 43, 221.

## LEGAL CONSIDERATIONS

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- **Each parcel is unique.** Each parcel is unique obviously cover all regulations aren't compatible with that.
- Another area to consider is **disparate impact**. The basic standard is that if you do anything that disparately impacts members of a certain minority group. Also we should think about how low income people fit into this as well.
  - Zasloff, J. (2016). The price of equality: fair housing, land use, and disparate impact. *Colum. Hum. Rts. L. Rev.*, 48, 98.

## LEGAL CONSIDERATIONS

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- The final legal concept that is very important for this discussion is that most of modern property law is in response and **opposition to feudalism**.
- I am not going to say that any one here desire to be a lord or noble but when you look at how property was handled in the middle ages the restrictions were very similar and they were intended to prevent change.
- - Kotkin, J. (2013). California's New Feudalism Benefits a Few at the Expense of the multitude. *The Daily Beast*.
  - Kotkin, J. (2014). *The new class conflict*. Telos Press Publishing.
  - <http://www.newgeography.com/content/006475-americas-drift-toward-feudalism>

## PSYCHOLOGY

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- **Why psychology?** Because how you think about an issue influences how you perceive it and what you want to do about it.
  - **People don't like change.** Thus people often irrationally and unfairly try to prevent change. Hence the term NIMBY. The problem is that that change is inevitable and on going.
  - The other psychological concept here is that many well meaning but often ill-informed people (I call them the **True Believers**) try to fix things with out really thinking or knowing what they are doing. I have noticed this with various rather zealous environmental groups as well as in the planning and policy communities. As I had mentioned before when you look at this approach to planning its pretty obvious at this point that it does not work.
    - An example of what happens when you create poorly formulated rules and they are cooped by activists: <https://www.youtube.com/watch?v=7GMvGZJ842Y> (17 year battle to develop a 20 lot subdivision)
    - <https://www.seattletimes.com/opinion/rural-washington-hardest-hit-by-hirst-water-ruling/> (Hirst case cost WA taxpayers hundreds of millions of dollars)
    - <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Case-law/Hirst-decision> (Hirst case cost WA taxpayers hundreds of millions of dollars)

## WHAT WORKS?

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- Limited and strategic policy geared to addressing issues in a flexible and direct way.
- **Bottom up planning** that assumes a default of being the least restrictive and then applies restrictions as needed. (this is opposed to top down planning we see proposed here.)
- Truly “**sustainable**” policy that transparently considers and balances **environmental, social, and economic** considerations
- Policy that is community driven. We already have citizen-initiated planning. I am not a libertarian on all issues, but the libertarians do have this right in that people should have control over their own property.
- Policy that prioritizes real issues, the environment, cost of living, infrastructure and not subjective things like view sheds.
- Ultimately Policy should not reflect what people think things should look like but what is. We what to work with reality.

## WHAT WORKS

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- For instance, the county outline five areas of concern.
- It would be desirable to see the county address issues of roads services or environmental impact specifically rather than assuming limiting density is going to fix that.
- A couple of specific examples:
  - If **water availability**, is an issue then mitigate, limit things like irrigation, plan for city water service.
  - If it is **roads**, then press for more funding for roads. (Also allow residents to work on the roads themselves)
  - **Sustainability and building** there is a lot of potential. I would love to see more energy efficient structures. I would like to see more people raising their own food or even working from home.
- Schwer, A., Tiller, D., & Cory, B. S. (2012). Analysis of Components in a Zero Net Energy Test House (ZNETH) in Omaha Nebraska. *International Journal of the Constructed Environment*, 2(1).
- Narayanan, L., Menon, S., Plaisent, M., & Bernard, P. (2017). Telecommuting: The work anywhere, anyplace, anytime organization in the 21st century. *Journal of Marketing & Management*, 8(2), 47-54.

## WHAT WILL WORK

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- Simply dictating lot size is not going to address these issues. In fact, I suspect forcing people into high densities and having arbitrary restrictions will make it more difficult to do such.
- Remember the focus should be on flexibility and addressing specific issues directly not via arbitrary proxy.

## AN INVITATION TO INNOVATE

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- As I have shown **this type of planning does not work.**
- When it does "work" housing prices go through the roof, businesses and people leave, individual liberties are infringed with and the environmental protection is questionable.
- Granted its still technically legal under the Rational Basis standard says so long as you can articulate a "rationale" for an economic regulation its legal, **BUT that does not make for good policy.** [United States v. Carolene Products Co.](#), 304 U.S. 144 (1938).
- This type of planning has spurred conflict and created problems where ever it is implemented.
- Both Liberals and Conservatives are critical of it.
- The proposed county plan should not be mindlessly attacked but should be seen as an opportunity for rational discussion about how to learn from prior policy failures and create an innovative and flexible approach that balances stake holder interests while systematically addressing issues in the least restrictive and most cost-effective manner possible.
- **THE DEFINITION OF INSANITY IS TO DO THE SAME THING AGAIN AND AGAIN AND EXPECT A DIFFERENT RESULT.**

## THE BIG QUESTION:

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- Ultimately the question here is what type of community do you want Helena to look like?

## WEIGH THE ANSWERS CAREFULLY

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- If you want more wealthy retirees and out-of-staters who buy out the locals and don't want to contribute to the community then support this policy.
- If you want working people to move here and stay here or, you want your children and grandchildren to be able to afford it here, then I encourage you to think of alternatives.

**From:** [Dick Thweatt](#)  
**To:** [Greg McNally](#)  
**Subject:** comment on zoning  
**Date:** Wednesday, July 8, 2020 12:36:02 PM

---

 IT&S finds this email suspicious! We know Dick Thweatt by name, but the email was sent from an unfamiliar address dickthweatt@gmail.com | [Know this sender?](#)

Greg:

Following is a letter about zoning which I'd like to enter into the record. I will be away for the rest of July and I'm afraid that I'll miss opportunities to participate.

TO THE HELENA/LEWIS & CLARK CONSOLIDATED PLANNING BOARD  
AND THE LEWIS & CLARK BOARD OF COUNTY COMMISSIONERS  
July 8, 2020

### THE HELENA VALLEY NEEDS ZONING

The Helena Valley needs zoning to ensure that future development occurs in a responsible manner. The Helena Valley area growth policy was carefully developed based on sound scientific evidence of five particular problems that area is facing

First, many areas of the county have inadequate roads, yet more lots are being created in those areas. This is unfair to the people that already live there, creates hazards and maintenance issues and is just not a responsible thing to do. Creation of new lots must be restricted until roads are adequate to handle the additional traffic.

Second, in some areas of the Helena Valley the availability of ground water is unreliable, while in some areas it is reliable. The water supply of residents where ground water is not reliable is threatened by new wells drawing on the same aquifers. The new growth policy is based on scientific evidence gathered by hydrogeologists from well logs and monitoring wells over a number of years. Areas where ground water supply is not reliable have been identified in these studies. It is necessary to restrict creation of new lots to protect existing residents in these areas.

Third, in some areas, the local geology limits the ability to treat wastewater discharges, threatening wells in those areas. Again, scientific studies have identified some of those areas. It is necessary to protect public health and the investment of existing homeowners to regulate the creation of new lots in these areas.

Fourth, homes in the wildland-urban interface are at risk of wildfire which stretches the already scarce resources of fire-fighting agencies and puts lives of fire fighters at risk. Creation of new lots in such areas must be conditioned on pre-treating the forest to reduce the frequency and intensity of wild fire. And lot size may need to be regulated to limit density in such areas.

Fifth, some areas of the valley are prone to flooding and measures to mitigate the risk of flooding and avoid development that might worsen flooding for those down stream are necessary to protect public safety.

I urge the city/county consolidated planning board and the Lewis & Clark County Commission to fulfill their obligation to protect public health and safety as well as the property rights of county residents by moving forward with zoning as recommended in the Helena Valley growth policy.

Dick Thweatt  
36 Harrison Avenue  
Helena MT 59601

**From:** [Diane Tipton](#)  
**To:** [County Planning Mail](#)  
**Subject:** Rimini Resident Public Comment  
**Date:** Thursday, July 2, 2020 3:16:37 PM

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## Ranch and County Zoning Plan Feedback

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

I reside in Rimini Gulch and Rimini Gulch is my main concern. I do not think think this area should be part of the Helena Valley Zoning initiative. Rimini Gulch is unique in several important ways that I think call for separate consideration. The zoning proposed for the Helena Valley plan as applied to Rimini in your "Rural" section of your plan would render 80 acres of our 160 acre ranch virtually useless. In addition, there are only three privately owned 160 acre ranches in the entire gulch...all are original homesteads. My family has lived continuously on this land for 80 years.

If you have not driven to the town of Rimini you may not realize there are lengths of the gulch where the width from toe slope to slope is less than about 1,000 feet. This gulch is also the Helena Watershed, and as such is rich in wetlands and accommodates the Upper Tenmile, which at flood stage can encompass nearly half the width of the bottom land in some places in the gulch at any particular time.

I support stream setbacks, but the additional requirement that any construction be at least 500 feet from boundary lines is outlandish. The main property boundaries in our gulch are with the US Forest Service. If you institute this zoning regulation in the Upper Tenmile, you are rendering many property owners land unusable and putting many people in the situation of having an existing home or other construction in violation of these new zoning rules. On 80 acres of our 160 acres it is not possible to be both 500 feet from a forest boundary and 200 feet from a water body and/or flood plain. This entire gulch is essentially a flood plain...as evidenced in 1980 when the city released the water held in its reservoirs and irreparably damaged land and the stream channel throughout the length of Rimini Gulch.

I think the impact of the zoning rules as you are proposing them in Rimini Gulch amount to confiscation, in many cases reducing or eliminating the use of lands currently in private ownership.

I support the idea of planning with a resident community to develop a vision for land use into the future that protects the inherent and traditional values of a place and the people who call it home. But this Helena Valley Zoning project went off track when you all decided to sweep

Rimini Gulch under the same broad plan. Rimini Gulch is a primary watershed in the state, it is home to a ghost town with multiple home sites that already have water and sewage waivers to continue to operate in proximity to the Upper Tenmile Creek. It is a location peppered with mining claims ripe for development deep in the woods. ...next to water. It is also Helena's recreational backyard and home to a full array of the wildlife species Montanans hold dear, including grizzly bear, moose, dispersing wolves, and other species. This is a place that is crying for a focused and tailored planning process to protect the many public and private interests here. What Rimini Gulch does not resemble in any way is the Helena Valley.

Please take Rimini Gulch out of your existing zoning plan and perhaps consider a separate and focused planning process.

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How do you think additional zoning could positively or negatively affect the current and future residents of the Helena Valley I think in the Helena Valley some zoning guidelines to manage explosive growth makes sense. The planning needs to be far sighted and take into account issues not usually part of city zoning, such as providing wildlife corridors for safe passage of species such as moose, bear and deer that have for eons used this habitat and will continue to use it as travel corridors. Other issues include the fragility of the environment and the two,e of development it can sustain, as well as providing areas of development that are connected and foster community, not simply clusters of housing with limited access or sense of relationship to the surrounding development.

---

What should additional zoning in the Helena Valley include? My main concerns are outlined above. One thing I would like to see is flexibility so if people have a concept for how they want to use their land they have a reasonable chance to petition for consideration if it doesn't exactly meet the zoning requirements it may be some modifications can create a benefit for all.

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:

Diane Tipton  
[1968 Rimini Road](#)  
[Helena, Montana 59601](#)  
[406-443-2228](#)

Sent from my iPad

Sent from my iPad

**Telephone Calls received to Planner Greg McNally regarding Draft Helena Valley Zoning Regulations between 6/1/2020 and 7/21/2020**

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. Unable to reach after repeated attempts. 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. Asked to about the regulations in general and is supportive. 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. Peter will email John on 6/9/2020 Can't read the map would like a bigger map. Concerned about annexation. Ok with zoning.
Dan Melick	538-8358	Rimini Area	6/8/2020 x	6/8/2020	6/8/2020	
Teresa Clarman	422-9448	Birdseye area/ Turk Road	6/8/2020	6/8/2020	6/9/2020	
Clint Pullman	439-8338		6/8/2020	6/8/2020		
Leroy Breuer	458-9407	Sierra and Green Meadow	6/9/2020 x	6/9/2020		
Sonny Stiger	442-1361	Juniper Road	6/9/2020 x	6/9/2020		
John Herrin	202-2058		6/8/2020			
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)? 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. Discussed general details in the regulations.
Stan Melick	406-538-8358	Rimini	6/11/2020	6/12/2020		
Marty Heller	439-2744		6/15/2020	6/15/2020		
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 Planning 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. Commented that he objects to the proposal
Chris Ries			6/18/2020			
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 Planning 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.

