

Name	Address	<p><b>DISCLAIMER: These comments were taken by the CD&amp;P department for the convenience and benefit in better understanding the participants' concerns. However, these comments are not to be considered the official comments/minutes of the Planning Board meeting</b></p>	Staff Comments
Tom Rolfe	226 Willowbrook Dr	<p>provided written comments. Can you hear them now? Can you hear the people? Voters sent a strong and clear message 2 weeks. 5,000 residents were not shy about their opinions regarding government initiated zoning. Property rights, attempts to restrict by government cannot happen without a majority vote by the people. Take our rights seriously, including the right to use property as wanted. The current plan is not acceptable. Listen and understand the community and their needs. Urge to act in the best interest of the community.</p>	<p>In order to establish Part 2 zoning in Montana, the local jurisdiction must prepare zoning that complies with the approved growth policy for that jurisdiction. Lewis and Clark County went through an extensive process when updating its growth policy, which was completed in 2015. Both stakeholders and the public were directly involved in this process. This Part 2 zoning initiative is following the policies laid out in the growth policy update. To initiate the Part 2 zoning process, Staff has held several meetings with both stakeholders and the public prior to the statutorily required public process for the Planning Board. Staff has been listening to everyone's concerns and will continue to listen to them. In addition, the Planning Board has been hearing these concerns. These are proposed DRAFT regulations and we welcome the iterative process with the stakeholders to find opportunities for improvements. The regulations can be updated based on stakeholder and/or public concerns, so long as the updates keep the document in compliance with the growth policy update.</p>

**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 2 of 106**

Zoom Caller- Russell Hill		Own property above Rimini. Hard to know if he is in support due to the inability to identify the water bodies included. Important to know if his property fits in any of those categories. References the "flume" that carries water to the reservoirs. ??	For properties along Tenmile Creek, there is a 200-foot setback from the edge of the highwater mark of this Creek. Within this setback there is also a buffer area that extends 75 feet from the edge of the highwater mark of this Creek. There are structure and uses that are prohibited within the setback, and in the buffer portion of the setback, there are additional restrictions. If a property cannot be built on in the same manner that adjacent properties are built on, a variance from the zoning regulations may be warranted. There is a process that a property owner must go through to request a variance from the zoning regulations. Also, the Variance Section has an option for Administrative Variances to minimize the cost, time, and inconvenience to the landowner and ensure maximum flexibility in implementing the regulations.
Abigail St. Lawrence	PO Box 2019 Helena, MT	wants to submit written comments in lieu of paraphrasing.	Specific responses to the submitted written comments to be prepared under separate cover.
Zoom Caller- Dan	5545 Woods Crossing	Appreciate the post card. First time they are aware of this process. What improvement will this bring? Believes that this will lower property value. Does not see the benefit.	The proposed zoning will bring predictability to portions of the Helena Valley Planning Area located in the Rural Growth Area with minimum lot sizes and uses, and will especially help with planning future infrastructure maintenance and improvements in this Area. There is no evidence to show that zoning in general will reduce property values.

**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 3 of 106**

<p>Jerry Hamlin</p>	<p>1625 University St Helena</p>	<p>Developer for over 47 years. MT provides for inalienable rights to own property. Told that rights may have to be sacrificed for the "greater good". Who determines this? Governments are instituted to secure a person's rights. Zoning will cause the property values to County initiated zoning is an over-reach of the government. Top down zoning is almost always bad. Citizens should be able to request zoning when they need it, not the government telling citizens when they need it. Affects large parcel owners the most. Does not address the 5 key issues, it doubles the burden. Penalizes farmers and ranchers and takes away their rights to develop their property.</p>	<p>The right to own property in Lewis and Clark County will still exist and not be diminished in any manner. County - Initiated Zoning is specifically allowed under Montana State law. Two processes have been initiated for this zoning: (1) updating the Lewis and Clark County Growth Policy for the Helena Valley Planning Area, which was completed in 2015 and (2) establishing zoning in the Helena Valley Planning Area, which is where we are currently. Both processes have included citizen input. In fact when the Growth Policy update was approved by the Board of County Commissioners, no one spoke in opposition to its adoption. All meetings/listening sessions for the zoning that have occurred up to this point in time and any notices that have been provided thus far have been done outside of the start of the statutorily-required public process for Part 2 zoning and are therefore considered "above and beyond" what is required. The statutorily-required public process for the Part 2 zoning will begin following the final Planning Board meeting. The five key issues have clearly been addressed under the Part 2 zoning regulations. For example, the lot size/density limitations under the RR zoning regulations have been put in place in many areas due to water availability concerns or in other cases due to flooding, or because roads do not meet County standards, or because rural fire protection is of concern, or because there are issues with being able to place an on-site wastewater treatment system. The majority of the proposed Part 2 zoning regulations being</p>
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**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 4 of 106**

Douglas Tapper	6050 Willowcreek Rd	Agrees with Mr. Hamlin and Mr. Rolfe. Moved into the county to be able to do with the property as they wish within the law. Did not know about this process and only found out last week in conversation. Opposed to zoning.	Part 2 zoning is something that is allowed under State law. All meetings/listening sessions that have occurred up to this point in time and any notices that have been provided thus far have been done outside of the start of the public process for Part 2 zoning and are therefore considered "above and beyond" what is required. Zoning has been discussed since 2015 when the Growth Policy was updated and nothing about the concept of the regulations is new. The amount of public outreach and notice has been unprecedented with multiple layers of social media uses, radio spots, newspaper press releases, along with many community area meetings.
George Harris	2707 Colonial, Helena	Appreciate the work that has been done. Submitted record to Mr. Italiano and Mr. Baltz. Government affairs reports to the Board of Directors. National standards and state wide standards. Tried to be constructive in comments, approach. Respectfully oppose the zoning regulations that have been presented. Chairman of the Government Affairs has direct comment.	Specific responses to the HAR submitted comments to be prepared under separate cover.

**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 5 of 106**

<p>William Gowen</p>	<p>8229 Avocet Dr</p>	<p>Chairman of the Government Affairs. Support of the process, encourage listening to the comments. Value of property make this the strongest country in the world. The most important right. Provided written comment. Regulations are so restrictive that we will not be able to provide enough housing to meet the growth. Easy way of not doing the hard work and planning. Create uncertainty for landowners. Job is to ensure and protect property rights of new homeowners. Be wary of any proposal that comments were received in Dec/Jan. Don't participate and encourage the largest "taking"</p>	<p>The majority of the proposed Part 2 zoning regulations currently being considered are for the Rural Growth Area. This is one of three Areas discussed in the Growth Policy Update. The other two Areas are the Urban Growth Area and the Transitional Growth Area. The bulk of future housing will take place in the Urban Growth Area, which has no minimum lot size if lots are utilizing public infrastructure. These Part 2 regulations will not create uncertainty for landowners. On the contrary, they will provide predictability for both current and future property owners, and for the County when considering future infrastructure maintenance and improvements in this Area. They also have much flexibility built in vis a vis the very relaxed approach to nonconforming uses and also an administrative variance process for ease of use. Part 2 zoning is allowed under State law.</p>
<p>Dave Lewis</p>	<p>5871 Collins</p>	<p>Lives in the valley. 4 times in Legislature, has a good feel for what people want out in the valley. Sold of 4 parcels of ground, made about \$20,000 per year (grass land) Should have the right to choose what they want to do with their land. The dollars collected on developed land benefits. Step back and give more rights to the property owners.</p>	<p>Part 2 zoning will provide predictability for both current and future property owners, and for the County when considering future infrastructure maintenance and improvements in this Area. Development does provide some revenue, but the amount collected is often far below what is needed for the upkeep of infrastructure.</p>

**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 6 of 106**

Steven Smith	2008 5th Ave	<p>Property South of Rimini. This has been forwarded and advertised as the Helena Valley, the map includes other areas that are not part of the valley. The map and regulations should reflect the valley area only. Waterbody setbacks do not apply in mountainous areas. A lot of the areas are mining claims, limits the way a person can build on their lots.</p>	<p>The proposed zoning is for the Helena Valley Planning Area, which is one of six Areas with pre-established boundaries discussed in the 2004 Growth Policy and again in the 2015 Growth Policy update. The Helena Valley Planning Area includes what some might think of as the "Helena Valley" as well as other areas, including but not limited to Rimini, Colorado Gulch, Birdseye, and more. As currently proposed, the waterbody setbacks would apply to the Rimini area. Tenmile Creek, for example, runs through this area and is considered a Type II watercourse with a 200-foot setback from the highwater mark of the Creek that includes a 75-foot buffer within this setback that is also measured from this same highwater mark. The setback and its associated buffer are measured along a horizontal plane. If a property cannot be built on in the same manner that adjacent properties are built on, a variance from the zoning regulations may be warranted. In order to ensure maximum flexibility and ease of use by landowners, the regulations include both a relaxed non-conformity section along with a variance section which also includes an administrative process for reduced time and costs.</p>
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**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 7 of 106**

<p>Clint Pullman</p>	<p>16 Arrowhead Ln, Clancy</p>	<p>Own mining claims in Rimini. Purchased first property 13 years ago. These proposals will make their property useless. Ten Mile runs through. Appreciates the post card, but would have rather had a time and place listed. Took time off of work to pass on the word. Has not found a person that is not surprised about the process. Read the process in regards to notice, and how to stop a planning committee or change a committee. Rimini is not Helena Valley. Surrounded by forest service, want to be able do what they want on their property. EPA remediation over the last several years. Tired of all the restrictions. Remove the western and southern portion of the zoning area. Plan to retire and build a cabin on his land with his son.</p>	<p>All meetings/listening sessions that have occurred up to this point in time and any notices that have been provided thus far have been done outside of the start of the statutorily-required public process for Part 2 zoning and are therefore considered "above and beyond" what is required. Zoning has been discussed since 2015 when the Growth Policy was updated and nothing about the concept of the regulations is new. The amount of public outreach and notice has been unprecedented with multiple layers of social media uses, radio spots, newspaper press releases, along with many community area meetings. The statutorily-required public process for the Part 2 zoning will begin following the final Planning Board meeting. The proposed zoning is for the Helena Valley Planning Area, which is one of six Areas with pre-established boundaries discussed in the 2004 Growth Policy and again in the 2015 Growth Policy update. The Helena Valley Planning Area includes what some might think of at the "Helena Valley" as well as other areas, including but not limited to Rimini, Colorado Gulch, Birdseye, and more. As currently proposed, the waterbody setbacks would apply to the Rimini area. Tenmile Creek, for example, runs through this area and is considered a Type II watercourse with a 200-foot setback from the highwater mark of the Creek that includes a 75-foot buffer within this setback that is also measured from this same highwater mark. The setback and its associated buffer are measured along a horizontal plane. If a property cannot be built on in the same</p>
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**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 8 of 106**

John Herrin	2855 Sundown Rd	<p>Appreciate the chance to speak. Has experience working with the county on various projects. Summarized a legal case regarding subdivision. Lewis &amp; Clark County has some of the most stringent and costly Subdivision Regulations. Refers to the Fire Protection section of the current regulations. County fire districts have a responsibility to maintain fire systems. Constitution says that you can't take something without compensation. Comparing the water study in the North Hills area, to Ranch View Estates. Need East West Corridor. Refers to the Growth Policy as the only tool being used to develop zoning. Regulations are bias and not backed up by science. County has done nothing. Refers to packets of information given to the Board. County is targeting rural property. This is bad management.</p>	<p>The majority of the proposed Part 2 zoning regulations currently being considered are for the Rural Growth Area. This is one of three Areas discussed in the 2015 Growth Policy update. The other two Areas are the Urban Growth Area and the Transitional Growth Area, which will be considered at a later date following another public process. The proposed Part 2 zoning regulations are based on the policies and goals laid out in the Growth Policy update.</p>
Maxwell Milton	111 Alfalfa Rd	<p>Special District 39. Lot is in a proposed rural zone. Sent comments to planning staff. In favor of adopting proposed map. Urge the planning board to take time with the ordinance. Take time in the next steps of the process. Supports planning as a whole. These are complicated and restrictive changes. Special zoning district near Bob's Valley for commercial multifamily units. Lets identify the things we need. Identify sites for new schools. Refers to the Growth Policy answering the question of why we plan. Work together to use resources wisely. Need to work together to develop regulations closer to the city. suggested advisory committees.</p>	<p>The majority of the proposed Part 2 zoning regulations currently being considered are for the Rural Growth Area. This is one of three Areas discussed in the growth policy update. The other two Areas are the Urban Growth Area and the Transitional Growth Area. The bulk of future housing will take place in the Urban Growth Area, which has no minimum lot size if lots are utilizing public infrastructure. Both the Urban and Transitional Area zoning regulations will be considered in detail at some point in the future. Part 2 zoning will provide predictability for both current and future property owners, and for the County when considering future infrastructure maintenance and improvements in the Rural Growth Area. All meetings/listening sessions that have occurred up to this point in time have been done outside of the start of the statutorily-required public process for Part 2 zoning.</p>

**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 9 of 106**

<p>Jim Dusenberry</p>	<p>1617 Sierra Rd E</p>	<p>Small land owner and producer of small ag. Referring to open land and how it is a waste of good land. Farms and ranches need to have less restrictions. More layers of government is not necessarily good. Opposed to zoning. Provided written comment.</p>	<p>Open space preservation is required if a large land owner decides to create a cluster development. This large open space lot can be retained by the property owner and continue to be farmed if the property owner considers the land to be agriculturally viable. Specific responses to the submitted written comments to be prepared under separate cover.</p>
<p>Steve Netschert</p>	<p>300 E Loren Rd</p>	<p>Thank you to Board and Staff. Fort Harrison zoning is 19 pages, current draft is 127 pages. Troublesome seeing some of the proposals. Urban development is strongly discouraged in the rural mixed use zone. Zoning complicates uses. Document needs a lot of work. Variance process, concerns about being "hijacked". Need perspective on what it takes to properly maintain large parcels. In the past planning department has been uncooperative. Is concerned that regs could be "abused" in the future. There is no predictability on the outcome resulting in costs incurred. minimize the use of the necessity for regs. Opposed to this draft of regulations. Better to do right than fast.</p>	<p>Urban development is strongly discouraged in the Rural Growth Area, which is where the proposed RR Zone District is located. Urban development is encouraged in portions of the Transitional Growth Area and in all of the Urban Growth Area. The proposed zoning regulations for both the Transitional and Urban Growth Areas will be considered at some point in the future. There will be a public process for consideration of those regulations as well. Numerous uses are allowed under the proposed RR zoning, along with a minimum lot size/density. This will provide both property owners and the County with predictability, especially when it comes to planning future infrastructure maintenance and improvements.</p>

**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 10 of 106**

<p>Dave Hoerning</p>	<p>5823 Danas Point</p>	<p>Agree with most of the comments already stated. Received 2 post cards last week. Neighbor did not get his card, nor did other neighbors. Concerned that not enough people know what is going on. Hard to use the same types of zoning in the valley as there is in the rural area. Transparency is important. This is the level (planning) to get things right. Refers to the water setback regulation on the draft zoning. Inconsistent regulations regarding Canyon Ferry and Hauser. Approx 190 lots on Hauser, 90% already developed. If zoning is enacted 60% of the lots will become non-conforming. If a lot is non-conforming a variance is required for anything. Subdivision regs already address. Water, everyone has their well. Wastewater, there is little increase in Nitrite levels in this area. Fire. Flood, higher chance of flood in this building than at Hauser reservoir. Do I need a variance to make my lawn a little bigger?</p>	<p>All meetings/listening sessions that have occurred up to this point in time and any notices that have been provided thus far have been done outside of the start of the statutorily-required public process for Part 2 zoning and are therefore considered "above and beyond" what is required. The statutorily-required public process for the Part 2 zoning will begin following the final Planning Board meeting. As currently proposed, the waterbody setbacks would apply to both the Canyon Ferry Reservoir and Hauser Lake. Both are considered Type III watercourses with a 100-foot setback from the highwater mark of the Reservoir/Lake that includes a 50-foot buffer within this setback that is also measured from this same highwater mark. The setback and its associated buffer are measured along a horizontal plane. If a property cannot be built on in the same manner that adjacent properties are built on, a variance from the zoning regulations may be warranted. In order to ensure maximum flexibility and ease of use by landowners, the regulations include both a relaxed Non-Conformity section along with a Variance Section which also includes an administrative process for reduced time and costs. Currently, these setback and buffer provisions are only in the County Subdivision Regulations, but in order for the provisions to be effective, they should apply to all future development within the setback and buffer areas described. Water, roads, and fire protection are the primary development constraints in the Rural Growth Area.</p>
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**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 11 of 106**

<p>Jason Merkel</p>	<p>5824 Danas Point</p>	<p>Heard about this meeting a couple days ago. Concerns about water setbacks. At times in process, we're using the same tool and it doesn't fit. Understands why setbacks can be critical. Worked on Hauser Resevior hydrology project. Erosion occurs slowly. From a flood perspective, setbacks are not the correct tool. Section 102 when 1 regulation overlaps with another regulation the most restrictive regulation applies. Regs are full of negative information. We need a positive approach. Not for regulations as they are now.</p>	<p>All meetings/listening sessions that have occurred up to this point in time and any notices that have been provided thus far have been done outside of the start of the statutorily-required public process for Part 2 zoning and are therefore considered "above and beyond" what is required. The statutorily-required public process for the Part 2 zoning will begin following the final Planning Board meeting. As currently proposed, the waterbody setbacks would apply to Hauser Lake, which is considered a Type III watercourses with a 100-foot setback from the highwater mark of the Lake that includes a 50-foot buffer within this setback that is also measured from this same highwater mark. The setback and its associated buffer are measured along a horizontal plane. If a property cannot be built on in the same manner that adjacent properties are built on, a variance from the zoning regulations may be warranted. In order to ensure maximum flexilbity and ease of use by landowners, the regulations include both a relaxed Non-Conformity section along with a Variance Section which also includes an administrative process for reduced time and costs. Currently, these setback and buffer provisions are only in the County Subdivision Regulations, but in order for the provisions to be effective, they should apply to all future development within the setback and buffer areas described. The proposed waterbody setbacks are not being implemented to protect structures from flooding, but to protect surface water resources.</p>
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**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 12 of 106**

<p>Zoom Caller - Mark Erickson</p>	<p>3877 Deer Park Dr</p>	<p>Disappointed with the timing due to social distancing. Does not solve the issues. Too much impacts, little public involvement. Attempt to push limited growth during a time when people are focused on a health crisis. Create conflict and mistrust in rural areas due to limited public input. reduces the tax base. Should break up area into smaller areas. buffer areas around reservoirs that are heavily developed. Should eliminate from the proposed regs. proposal is too broad and does not address the issues. provided written comment after meeting started. follow up to question from board (What areas are you concerned with?). areas that are already subdivided and existing lots, setbacks and buffer zone requirements. Overall concerns, feels like the zoning proposed is putting the cart before the horse.</p>	<p>The process first was discussed in late 2018 and the actual process for the proposed Part 2 zoning regulation began in the Summer of 2019 and is based on the goals and policies laid out in the 2015 update to the Lewis and Clark County Growth Policy. While the current pandemic situation is very unfortunate and has reinvented how many of us do business, including the County, every possible safety protocol has been followed regarding the meetings. In fact, the County Public Health Officer specifically reviewed and advised upon the plan we used to create and hold the public meeting for the Planning Board to ensure the highest level of safety for all involved. In addition, all meetings/listening sessions that have occurred up to this point in time and any notices that have been provided thus far have been done outside of the start of the statutorily-required public process for Part 2 zoning and are therefore considered "above and beyond" what is required. The statutorily-required public process for the Part 2 zoning will begin following the final Planning Board meeting. The County is not looking to create mistrust in rural areas, and stated above, the County is seeking public input in advance of the statutorily required public process even starting. As currently proposed, the waterbody setbacks would apply to the Reservoirs, which are considered Type III watercourses with 100-foot setbacks from the highwater marks that includes 50-foot buffers within these setback that are also measured from the same highwater mark. The setback and its associated buffer are</p>
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**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 13 of 106**

Terry McCartney	625 S Smelter Rd	15 acres outside of East Helena with a trailer court on it. This proposal would affect mutiple families in the trailer court. Trailer court has been there since 1971. If the court is sold they would not have a place to live. This is impacting everyone. Farming comminties were destroyed because of zoning. Hurting the valley with proposal. Look at what you are doing and make sure it doesn't affect everyone.	I am unsure of how a mobile home court would be impacted by the proposed Part 2 zoning regulations. If there are concerns with regard to it becoming a non-conforming use, the mobile home court will be able to remain as is regardless of ownership. People will not lose their homes. How would farming communities be destroyed? Zoning can help preserve agricultural areas. The proposed Part 2 zoning has a voluminous list of uses and in the Rural Growth Area there are proposed zoning regulations that will limit lot size/density to 10 acres. This will provide both property owners and the County with predictability, especially when it comes to planning future infrastructure maintenance and improvements.
Sharon Davis	8285 Diamond Springs Dr	21 Acres. Its been a blessing to be able to help family when they need it. Looked into doing a family transfer, was told that taxes would go up about \$800. Just found out today about property is within the zoning area. The zoning regulations would not allow for what is intended for the property. The water table is a concern for her in her area. Concerned about the lighting and house height restrictions.	The proposed Part 2 zoning regulations allow a voluminous list of uses. The height restrictions are 35 feet, which is the equivalent of approximately 3.5 stories.
Steve Utick	2950 Fantasy Rd	With current subdivision regs and zoning, more is invested in developing the property than the lots can be sold for. Not developing for fun. The end goal with regulations will increase property values. One size fits all doesn't work. Subdivision regs call for requirements no matter the size. Double standards with the county and more regulations and rules to follow.	It can be very expensive to develop in parts of the Helena Valley Planning Area. Much of this is due to inadequate infrastructure. The proposed zoning regulations will provide both property owners and the County with predictability, especially when it comes to planning future infrastructure maintenance and improvements.

**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 14 of 106**

Curt Milledge	1300 Orange	Property in Birdseye, has water issues. Had water tested, the level of Nitrites keeps going down from what is acceptable. Zoning will drive people to other counties that are less restrictive. Loss of money in our county. Has property in Rimini also. Lighting restrictions are not necessary in this area, just wildlife up there. septic systems that are taken care of properly do not need to be pumped. They absorb the waste over time. Loss of revenue due to too many restrictions.	The proposed Part 2 zoning regulations will provide both property owners and the County with predictability, especially when it comes to planning future infrastructure maintenance and improvements.
Zoom Caller - Teresa Clearman		Question? Why is this not put to a vote on the next ballot instead of having the planning board decide when there are so many people affected.	The Planning Board will not be making a decision regarding Part 2 zoning regulations. They will make a recommendation to the Board of County Commissioners, who will make a decision on the regulations following a public process as specifically set out in Montana law.

**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 15 of 106**

<p>zoom caller - Doug Tapper second comment</p>		<p>Referred to Tom Rolfe's comments "Are you listening?" Has not heard any comments in favor of. Concerned that no one knew that this was happening. Repeat of above question. This is not a land grab, it feels like a land control grab. These matters should flow from the people to the government. This should be a county wide vote. let the property owners decide. How will this infrastructure that is being created be paid for? Property taxes, and they go up every year. Bought this property to live in the County, didn't want to live in the city. Feels like it's a burden.</p>	<p>All meetings/listening sessions that have occurred up to this point in time and any notices that have been provided thus far have been done outside of the start of the statutorily-required public process for Part 2 zoning and are therefore considered "above and beyond" what is required. The statutorily-required public process for the Part 2 zoning will begin following the final Planning Board meeting. The County has done this seek citizen input as the County clearly wants to hear and consider it. The County will follow the statutorily-required process prior to the adoption of any zoning. The proposed Part 2 zoning regulations will provide both property owners and the County with predictability, especially when it comes to planning future infrastructure maintenance and improvements. Hydrology was absolutely taken into account when determining the minimum lot size/density for all three proposed Zone Districts.</p>
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**Second Addendum: Written Comment Submitted at 6-16-2020 Meeting to the Planning Board, Page 16 of 106**

<p>John Herrin-second comment</p>	<p>2855 Sundown Rd</p>	<p>Repeated question about why this can't go to a vote. County Commissioners are pushing this. If this does not go to a vote it will lead to lawsuits. Other concerns with the arbitrary "lines" that indicate the boundaries. Not a lot of logic to how the lines are drawn. Looking at the growth policy 850 homes will land in each zoning district. Setbacks, restrictive. Hydrology not taken into consideration. inability to have mutple houses on a lot is a "taking".</p>	<p>The County will follow the statutorily-required process prior to the adoption of any zoning. The proposed Part 2 zoning regulations will provide both property owners and the County with predictability, especially when it comes to planning future infrastructure maintenance and improvements. The boundaries of the three zone districts have been established in a very simple way. The UR Zone District lies where the Urban Growth Area is located in the Growth Policy update. This Area was determined based on the City of Helena's proposed Urban Growth Area B. The SR Zone District lies where the Transitional Growth Area is located in the Growth Policy update. This Area was determined based on it location within the Helena Valley Alluvial Aquifer, but outside of the City of Helena's Urban Growth Area B. The RR Zone District lies in the Rural Growth Are according the Growth Policy update. This area was determined based on it location outside of both the Helena Valley Alluvial Aquifer and the City of Helena's Urban Growth Area. Hydrology was absolutely taken into account when determining the minimum lot size/density for all three proposed Zone Districts. The proposed RR zoning allows for up to two homes per lot. The details of the other two zoning classifications will be considered in the future following a public process.</p>
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# TOM ROLFE

## COUNTY COMMISSIONER

RECEIVED

JUN 16 2020

LEWIS & CLARK COUNTY  
Community Development & Planning

### An Open Letter to the Lewis & Clark County Commission: **"CAN YOU HEAR THEM NOW?"**

The voters of Lewis & Clark County sent a very strong and clear message to you two weeks ago – did you hear it? I sure did! Over 5,000 residents of the Valley and North County weren't at all shy in sharing their opinions regarding the proposed zoning plan – they do not support, endorse, like, or want government-initiated zoning for the rural areas of the county.

Private property rights are the foundation of a free society. I have always believed in the fundamental principle that attempts by government to restrict or limit those rights can only be done with majority support of the governed. Over the course of the past few months I have been to several public meetings and small private gatherings, and I've listened carefully to the comments made by many individuals in private conversations, in letters to the editor, and posts on social media. I've been to Augusta, Lincoln, Canyon Creek and Wolf Creek. The message didn't vary. I heard it and I wasn't at all surprised by it. We, the people of Lewis & Clark County take our rights seriously – all of them, including our rights to acquire, use, and dispose of the property we own for any lawful purpose.

As a candidate for the commission, I felt it was not appropriate for me to comment until the people most affected by this proposal had a chance to be heard. They have spoken and the message is unmistakable. I heard them and I agree with them. I fully and unequivocally support my fellow citizens in objecting to the imposition of zoning requirements without the support of those who are most impacted.

It's time for the current commissioners to reevaluate the zoning plan. I assume that the purpose of the public meetings is to give the Commission a sense of where your constituents stand on this matter. There can be no doubt – the current plan is not acceptable. I believe the proposed plan was developed with the best of intentions, but, as they say, the road to hell is paved with good intentions. It's time to go back to the drawing board. And this time, you not only have to listen, you have to understand and act in the best interests and at the direction of the people who you serve.

The primary election sent a lot of messages to our current and future leaders, nationally, statewide, and locally. Very few of them were subtle, but the loudest and most unambiguous in Lewis and Clark County came from outside the city of Helena. I've heard it, I agree with it, and I urge you to act in the best interests of those whose livelihoods and treasure are vested in this beautiful land: Take the proposed zoning plan in its current iteration off the table, and come back with something the people will support.

Please contact me with your thoughts and concerns at [Tom@TomRolfe.vote](mailto:Tom@TomRolfe.vote).



**Abigail J. St. Lawrence**  
*Attorney at Law*

**RECEIVED**

JUN 16 2020

**To:** Consolidated Helena & Lewis and Clark County Planning Board      LEWIS & CLARK COUNTY  
**From:** Abigail St. Lawrence, counsel for Helena Building Industry Association      Community Development & Planning  
**Date:** June 16, 2020  
**Re:** Comments on Draft Zoning Regulations

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Please find below written comments submitted on behalf of the board and members of the Helena Building Industry Association ("HBIA"), which represents businesses and individuals actively engaged in residential and light commercial construction in Lewis and Clark County and the surrounding area. HBIA has been an active leading voice in addressing Part II county-initiated zoning Lewis and Clark County is proposing for the Helena Valley Planning Area. HBIA does appreciate the constructive dialogue with County planning staff to date, which has resulted in some positive changes from the zoning map first proposed. However, HBIA does still have concerns over the Part II zoning map and regulations as proposed and so offers these comments. Please note that comments are on the map and draft regulations dates April 14, 2020. While HBIA has reviewed proposed amendments dated June 11, 2020 attached to the June 16, 2020 planning board materials as Exhibit B, these comments pertain to the full draft released to the public.

In addition to the comments below, HBIA also joins in the comments provided by the Helena Association of Realtors, but submits the following comments to provide new information. Rather than going line by line through regulations that are draft only and are in constant flux, HBIA's comments are focused more on the bigger picture. HBIA reserves the right to amend or supplement these comments pending further modifications to the draft map and/or regulations. Further, HBIA restates its May 19, 2020 public information request for copies of all written comments received by the county (including the commission and staff) or the planning board to date that are not already published on the planning department website and for any and all comments received subsequent to today's date.

**COMMENTS ON DRAFT REGULATIONS**

**Procedure and process for development of Part II county-initiated zoning**

While HBIA does appreciate that county staff have made improvements to outreach efforts and particularly communication with HBIA as a heavily interested party, there are still serious concerns about the methods by which the county has developed the zoning proposals and is pursuing adoption. From the beginning, even the zoning district map was a constantly moving target for public comment. Not only was the proposal ever-changing, those modifications were minimally publicized and the availability to the public was limited at best. HBIA itself, even with engaged legal counsel, had to constantly request updates from planning staff and make sure the organization was on the distribution list for new iterations of the proposal, which required direct and specific requests to planning staff. Proposals should be easily and widely available to the public as soon as they are developed, not just available upon request or available only shortly before meetings at which public comment will be accepted.

Consolidated Planning Board

HBIA comments

June 16, 2020

Page 2 of 5

Further, HBIA has significant concerns over the moving target nature of the zoning proposals. While HBIA understands that the procedure set out in state statute allows the county commission to have the final say over whatever regulations are adopted and, in doing so, the county commission may fully overhaul whatever recommendations come from the planning board, the proposal has been a constantly changing up to this point. As was apparent from the May planning board work session, modifications have already been made to the April 14, 2020 draft regulations outside of the public process and in response to individual comments from planning board members not openly available to the public. Further, it was also clear from conversation between county staff and planning board members at the May planning board meeting, the proposal was going to continue to evolve and change from the April 14<sup>th</sup> draft put out to the public.

The planning board at its May meeting indicated a preference for constructive comments, not just critique, but when the public does not have a clear view of exactly what the proposal is, providing constructive comment is difficult at best. Further, modifications to proposed regulations that occur in response to comments provided outside public proceedings call into question respect for governmental transparency, an issue that has plagued the process of county-initiated zoning from the very start. Finally, private communication between planning staff and planning board members raise issues concerning Montana's unique guarantees of public right-to-know and right to participate. HBIA expects that future proceedings and communications on the zoning proposal will be conducted with full transparency and opportunity for public participation.

### **Overall purpose of proposed zoning**

The zoning districts and accompanying zoning regulations purport to be focused on addressing five key concerns: water, wastewater, roads, fire protection, and flooding. It is correct that such purposes fall within the allowable parameters for zoning as set forth in Mont. Code Ann § 75-2-203. Unfortunately, the proposed regulations go far beyond those purposes.

The current proposed regulations contain little in the way of flood control measure requirements, provisions for innovative water and wastewater systems, improvements to existing county roads or standards for development of new roads, or specific fire protection measures. In fact, by setting aside the vast majority of the Helena Valley Planning Area for minimum 10-acre lots, it is reasonably likely that the zoning proposal will actually exacerbate current concerns with flooding, fire protection, and roads by incentivizing—nay, facilitating only—large lot development. Further, by pushing affordable housing on smaller lots into a more concentrated area, stresses on current water and wastewater systems, especially within Helena city limits, will only be increased.

Other counties who have undertaken county-initiated zoning have focused their efforts more on what particular uses are appropriate to what lands based on the character of the specific

properties. This approach is much more in line with the purported goals of Lewis and Clark County's zoning proposal. Lewis and Clark County would do well to follow this approach.

HBIA is particularly concerned with the encouragement of "cluster development" under the proposed regulations. Under the existing Lewis and Clark County Subdivision Regulations, "cluster development" is defined as developments with the following characteristics:

- a) An area of open space must be preserved that is at least as large as the area that will be developed.
- b) Open space must be preserved through an irrevocable conservation easement, granted in perpetuity as provided in Title 76, Chapter 6, prohibiting further subdivision of the parcel.
- c) Unless the subdivision will be provided with community sewer or water, each lot in the cluster must be a minimum of one acre.
- d) Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.
- e) The maximum number of parcels permissible in a cluster development is the maximum number of parcels that are authorized by the administrative rules adopted by the Montana Department of Environmental Quality under Title 76, Chapter 4, MCA.
- f) The maximum size of parcels, not designated as open space, allowed within a cluster development is five (5) acres.

This type of development conflicts with both the stated purposes of the Part II zoning as well as the minimum parcel sizes set out on the zoning map. HBIA suggests the concept of cluster development be reconsidered.

#### **Proposed zoning districts and impact on housing affordability**

HBIA appreciates that in the current iteration of the proposed zoning districts has eliminated the 160-acre and 20-acre minimum lot districts. As the county is aware, such lot size minimums were objectionable to nearly every stakeholder. That said, the 10-acre minimum lot sizes that occupy the vast majority of the land area in the Helena Valley Planning Area are still a significant point of disagreement and need to be re-evaluated.

There is no question that Helena and the surrounding area will continue to grow and, with that, face added challenges to provide affordable housing to the workforce necessary to fuel that growth. While Lewis and Clark County has been spared some of the extremes of housing prices that areas such as Gallatin or Missoula Counties are already experiencing, the trends are not hopeful. Minimum lot sizes of 10 acres will not facilitate affordable housing development and will only accelerate property price increases. When even the land for new building is pricy because of the sheer mass of the land area available for purchase, even when the constructed house itself is not a high-dollar build, housing is still out of reach for working families. In an effort to address county infrastructure concerns, the county zoning proposal will only

Consolidated Planning Board

HBIA comments

June 16, 2020

Page 4 of 5

exacerbate housing affordability, another issue about which county government has purported to be seriously concerned.

### **Impact on taxable value and county revenues**

Along with impacts on affordability, the zoning proposal will undoubtedly impact taxable land value and, along with that, county revenues. In a prior public meeting to roll out the idea of county-initiated zoning, county staff flippantly dismissed any public concern on property tax impacts of sweeping zoning proposals. Aside from the disregard for public input, such dismissal brushes aside some serious potential negative effects on our communities.

As discussed above, with the majority of land area within the Helena Valley Planning Area set to be designated for minimum 10-acre lots, it is foreseeable that residential development in outlying areas will be beyond the reach of working families. However, at the same time, it is also likely that housing prices within Helena city limits will continue to rise as availability of new construction is limited to ranchette style development. Consequently, in the long-run, we could see taxable value in the outlying areas be impacted and families moving outside Lewis and Clark County to find affordable housing on reasonable lot sizes. Such a migration will only exacerbate current problems of out-of-county residents taking up county resources as they continue to work, shop, and otherwise conduct life inside Lewis and Clark County without contributing to the tax base. This, in turn, will further degrade the very infrastructure the county seeks to protect with the zoning proposal.

### **Process and procedures for seeking variances and other modifications**

Sections 1, 18, 19, and 20 of the proposed zoning regulations lay out procedures for amendment to the regulations as well as seeking variances, approvals for non-conforming uses, and appealing zoning decisions. The procedures pose serious concerns in terms of regulatory certainty, as the standards for decision-making in all these procedures are nebulous, the timelines uncertain or even non-existent, and the overall transparency murky. As an organization representing citizens who will likely need to make application for variances, amendments, and the like, HBIA is seriously concerned about the expense in terms of both time and resources such unclear standards and procedures pose for both citizens and the county. Vague regulation is fertile ground for litigation, which is not an inexpensive or efficient prospect for anyone involved. The county should revise the procedures laid out in the proposed zoning regulations to ensure clear standards for decision making, well-defined timelines so both applicants and staff can plan appropriately, and fully transparency in the process.

### **Impact on home-based businesses**

Section 16 of the proposed zoning regulations address home occupations and commercial activities conducted on residential properties. This section is of particular concern to HBIA

members, many of whom run their businesses out of properties within the county, but outside Helena city limits, properties on which they also make their home. These HBIA-member businesses contribute significantly to the tax base of the county, but the Section 16 regulations raise the serious prospect that such businesses will no longer be able to remain in their present location.

In particular, the regulations limiting vehicle trips to no more than an average of 10 per day, including deliveries, and no more than two persons on site who do not reside on the property will force HBIA members to relocate, often to less-suitable locations. While HBIA members are doing much of their work on job sites throughout the county, they do often chose to operate their "home base," including office location, equipment and materials storage, and client meetings, from their residential properties. These activities regularly require more than two employees on site and generate more than 10 trips per day. HBIA asks that the county reconsider Section 16 to account for impact to existing business, not just those operated by HBIA members.

### **Interface with existing zoning**

Section 1, subsections 102 and 103 attempt to provide guidance on how the proposed Part II zoning map and regulations would interface with existing Part I zoning and other applicable regulations. However, the language of Section 1, subsections 102 and 103 is vague at best, which results in difficulties for compliance. In particular, HBIA is concerned about the language in Section 1, subsection 102 stating that the regulation that is "more restrictive or imposes a high standard or requirement" is the governing regulation where existing regulation conflicts with Part II regulations. This standard in and of itself is up for interpretation and will result in more questions than answers. HBIA suggests the development of a clear and concise standard for when existing regulations conflict with Part II regulations.

### **CONCLUSION**

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

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JUN 16 2020

LEWIS & CLARK COUNTY  
County Board of Health & Planning

Good evening Mr. Chairman, members of the Planning Board and Staff. My name is Jerry Hamlin and I reside here in Helena and I have been a Developer, Builder and Real Estate Broker in this area for over 47 years. I also served on the Jefferson County Planning Board for over 7 years.

Thank you for this opportunity to speak out against this zoning proposal. I am speaking in opposition to this proposal for several reasons but would like to make a comment first.

Our State and Federal Constitutions and our Declaration of Independence all grant every landowner certain inalienable Private Property Rights. An inalienable right refers to a right that cannot be surrendered, sold or transferred to someone else. In actuality, it is a natural right to own property.

Every landowner has an inalienable right to own land, he has the right to earn income from it, he has the right to transfer ownership, the right abandon it or to destroy it. The right to own and control your own property is vital for a healthy country and our founding fathers recognized it as one of the major inalienable rights, right up there with Life, Liberty, and of course the Pursuit of Happiness.

That inalienable Private Property Right is what causes me concern in this current zoning proposal. We have been told in previous meetings that those rights may have to be sacrificed for "the common good". I do not believe that statement is true and also would like to know who determines when something is done for the "common good". If that is a decision that can only be made by the government, I believe we are in real trouble. Here is why I believe that:

- 1) Governments are instituted to "secure" not grant or create property rights. This proposal amounts to a taking of a landowner's private property rights. A landowner loses

control of his God given right to own and use his property when county mandated zoning is implemented. In this case, the county has drawn arbitrary lines and essentially taken land for its own use (common good) within those lines.

- 2) Zoning creates an artificial scarcity of lots and the price of land skyrockets as a result. It is a well known fact that land cost is higher in places where laws governing land use and zoning are stricter
- 3) County initiated zoning is a massive “over reach” by county government with no real benefit to the landowner. There are already rules in place governing the development of land in the county and state. This zoning is not needed and is a duplication of the regulations already in force.
- 4) Top Down zoning (that which is controlled and initiated by the county government) is almost always bad. If citizens want zoning in an area, they should request it. Zoning should come from the people to the government-not from the government to the people!
- 5) This zoning proposal is especially bad for large landowners and other ranchers and farmers who have worked the land for their whole life only to find that now they can only divide off a 10 acre slice to give to their family members. Most farmers and ranchers I have heard speak at the previous hearing have voiced their opposition to this proposal. They would like to be the ones who determine whether their ground is “prime” agricultural land or not. Furthermore, as a result this proposal, they are terrified at the reduction in their land appraisal values and the resulting impact on their lines of credit at their banks.

For the government to come forth with such a drastic plan that will undoubtedly decrease property values throughout the county without considering the plan's drastic economic impact on its own budget and the budgets of landowners is tantamount to a dereliction of its duty to taxpayers.

Furthermore, for the government not to notify each and every affected landowner of the potential harm this zoning will impose on them is further evidence of the shortsightedness of this zoning proposal. I notice that when any new subdivision is proposed, all adjoining landowners must be individually noticed and given time to comment. Mere newspaper notices in this case simply do not do the job of notifying affected landowners of the impacts of this action.

And lastly, the staff has said this zoning proposal will address the 5 basic cornerstones of development. It does not! It merely duplicates existing regulations; it restricts lot size, it drives up land development costs to the point that affordable housing will be a thing of the past; it does not lay out a vision for how things should be; it does not foster good design or enhance a sense of place; it penalizes farmers and ranchers who try to provide land for their families and it takes their right to develop their property away.

In actuality, the county's new zoning proposal is not being used as a constructive force for community good and it will be detrimental to all landowners in the county. I urge you to oppose this new "top down" zoning proposal. We can and must do better! Thank you

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JUN 16 2020

LEWIS & CLARK COUNTY  
Community Development & Planning

RE: Draft Zoning Regulations

Dear County Commissioners:

As a small land owner and producer of locally Pasture raised beef, pigs and chickens, I find this proposal to be a very hard handed to the agriculture community. First, I view this as a taking of our land and property rights. It a locking up the land for uses only the planning board can approve and limits what the future holds for me or my children. The saying" They're not making any more land", should make one think farming and ranching is what we want and need to encourage and support. Adding another layer of encumbrances to the property does not help the value of the land. Zoning rural Lewis and Clark county and none of the rest surrounding communities or the balance of the county seems somewhat prejudicial to those effected and who will bear the burden for these regulations. With out an economic study of the financial impact on the current landowners means this is forced zoning from the top down and not working with the stake holders. This choses winners and losers and puts my land holding in the hands of government as to what I can use it for and how large the lots are and how many I can have and then have open space that the county must permit and approve and collect another fee to use. This is what I call a waste of good land that can be farmed or some other productive use. The regulations have no side boards to protect the landowner in his or her decision for planning future use and as I read this it all requires some fee and county approval, which is time and money

Looking at the proposed land use and right of farms and ranches, what happened to the words- encourage-support-reward-endorse, rather the encumber-block-hinder slowdown or discourage.

If farms and ranches are to have a future in this community, it seems odd that we would want to lessen their value with zoning restrictions and government intervention. None of these choices add to the value of land or enhance the goals of water, wastewater, roads fire protection or flooding. One size does not fit all and I fear with government taking the lead, owning ground and using it as an investment for your families future is at risk. More layers of government is never good, even with good intentions, and written guidance, the future in interpretations will change and the regulations will tighten so much the cost of housing will be unaffordable and the farmer/rancher will lose.

I am opposed to zoning as I have experienced the harsh impact of enforcement and the cost to the little guy. To me this is one step away from "Rights in Common", I own it and work it and pay the taxes on the land but the government tell me if I can raise my pasture raised pig and cows or they can put me out of business because someone doesn't like me or the fact I raise pigs and cows.

Sincerely



Jim Dusenberry

1672 Sierra Rd E

Helena

June 16, 2020

Zoning Comments

Steve Netschert

300 E. Loren Rd.

Helena, MT 59602

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JUN 16 2020

LEWIS & CLARK COUNTY  
Community Development & Planning

- Initially, Zoning proposal was billed as “Zoning Light” and it would largely mirror the Fort Harrison Zoning template (19 pages) At 129 pages, it hardly feels “light”
- Concerns were expressed that this process would be the “camels’ nose in the tent” It would appear that there is more than one camel in the tent now.
- Rural mixed use intent specifically states “**Urban Development within this district is strongly discouraged**” So, where are the incentives to **STRONGLY ENCOURAGE and PROMOTE** other, more acceptable uses?
- We moved out of the City to be shed of overreaching and costly regulations and taxes. We purchased a large parcel without covenants that would allow us to enjoy all that Montana affords us and share it with others.
- We don’t want to subdivide and we would like to keep the parcel whole.
- In our case, we had hoped to share the amazing scenery and multiple outdoor recreational opportunities. But if we are only allowed to choose one or two uses, our plans are now futile.
- A 10 acre lot appears to have just as many “allowable uses” as a 40 acre or even a 200 acre lot.
- So, where is the incentive to maintain larger parcels and not subdivide?
- There got to be some incentives for the larger parcels to remain intact
- For many larger properties, one or two uses just aren’t going to pay the bills.
- Seasonal constraints and/or opportunities also need to be considered
- In many cases, primary, accessory and conditional uses could actually compliment each other.

- Consideration should be given to more allowable uses without the need for CUP. I'm concerned about what other restrictions or conditions would be put upon such an application? Would those restrictions then make the proposal cost prohibitive thus effectively killing a proposal?
- The thought of having to come to the governing body every time you want to do something on your property, will discourage participation of that process and will encourage clandestine activity. Not to mention causing more bureaucracy.
- The Helena City Commission serves as a prime example of how transparency and even handed governance can be hijacked by a few ideologues and go horribly wrong
- In past years, we have seen the County's Planning department "weaponized" with employees taunting "we don't have to pay our attorneys by the hour" my interaction with that planner has left an indelible imprint in my mind and has contributed greatly to my lack of trust in government.
- There is no predictability as to what will be permitted and is subject to the whims of those sitting in judgement.
- The variance process is yet another layer of bureaucracy that is subject to the appointments of the governing body

**The pages that follow were submitted by John Herrin**  
**~~(Pages 14-90)~~ (Pages 30-106)** note: pagination corrected 6-22-2020



Ms. Susan Giese, Chair  
Lewis & Clark County Commissioner:  
Helena, MT

Feb 17, 2020

RE: Proposed Helena Valley Zoning

Dear Commissioner Giese:

This letter is to inform you that the Lewis & Clark County Farm Bureau, with a vast membership of individuals directly involved in agriculture, is opposed to your proposed zoning effort in the Helena Valley. Your zoning effort appears to originate from a poorly worded "survey" and we are not aware of anyone has seen a written version of. The only fact finding (or survey) was your staff attending a Helena Valley Irrigation District meeting where your staff apparently asked the question "Do you want to protect Agriculture in the Valley?". This is certainly a poorly worded question upon which to base any zoning decision, as well all want to protect agriculture.

Our concerns are:

- Your proposed effort is coming from the top down versus the bottom up. This zoning action was not requested by the landowners who would be directly affected.
- The results, if adopted as proposed, would be simply an unconstitutional taking of property rights for a large portion of landowners in the valley and surrounding area.
- This Zoning will have a major negative impact on the value of much of the land within the proposed "Ag Conservation Zone District". For example, a landowner recently bought irrigated hay land. This land has development potential, and the price reflected that. If your zoning were to happen, the development potential would be eliminated, and the value of this land would revert back to agriculture values, which are much lower than development values.
- No commissioners attended the meetings. This is not acceptable.
- The assumed goals of your zoning, which will minimize development in the valley, can be achieved by existing statute. Subdivision, water rights, septic systems, etc.
- The meetings were not noted on the county calendar. It also appeared no notes or comments were recorded during the meetings.
- During each meeting held, there was no agenda developed, no explanation of why, nor any other information provided regarding the process, future development restrictions, or timeline of the commissioners' approval/denial process. Your staff were not able to answer questions directed to them regarding the purpose of the zoning. These meetings were non-informative and that is not acceptable. Meetings are to provide information and obtain feedback, which again in this case, was not recorded.

Other things you need to consider:

This zoning effort would result in essentially a conservation easement without compensation, or again, a taking of property rights.

- This zoning will eliminate future development of small parcels which afford families the opportunity to have their children engage in programs such as 4-H. 4-H is a program that builds leaders and engages them in agriculture and animal husbandry.
- Landowners have stated they will 'lock the gates' to any future hunting and fishing if this zoning is approved.
- Many landowners are depending on future potential development as financial security. This zoning would eliminate that potential.
- The devaluation of land, due to the zoning, will have financial impacts to landowners with their lending institutions.

In conclusion, we are opposed to your proposed "Ag Conservation Zone District" zoning in the Helena Valley and surrounding area.

If you have questions, feel free to contact me.

Respectfully



Karl Christians  
LCCFB President

CC: Mike Murphy, LCCFB Vice President  
LCCFB Board

## COUNTY'S TOP DOWN ZONING IS NOT GOOD FOR LANDOWNERS

Comments by Jerry Hamlin 1//23/2020

First of all, let me state that zoning can sometimes be helpful and we are not against zoning per se. Zoning is merely a tool. It has not always lived up to its promise and is often times misused. Conventional zoning, by itself, will almost never create a memorable community.

In this case, the county's new zoning proposal is not being used as a constructive force for community good and it does not foster good design or enhance a sense of place.

This new County Zoning Proposal is supposed to be addressing the five cornerstones of development:

- 1) Are there adequate roads in the area to service heavier density
- 2) Is there adequate water in the area to supply the needs of development
- 3) Can wastewater be treated and approved by the Dept. of Environmental Quality and other regulatory bodies
- 4) Is the property in a Floodplain and can it be mitigated effectively
- 5) Does the property have adequate Fire Protection and can it be efficiently serviced with police and other safety personnel.

Please notice that all of the items above **are already addressed** and subject to review in the County Subdivision Regulations; they must be reviewed and approved by the County Government, they must be reviewed and approved by the:

- Department of Natural Resources,
- Mt Dept. of Environmental Quality;
- Montana Department of Transportation, and
- In some cases, must be reviewed by several different Federal agencies.
- Fire District operating in the area and local governments.

Simply put, there are already existing, heavily enforced regulations already in effect to determine what you can and can't do with your land. Is zoning a curse to a landowner or is it a positive force for community good. We believe it is a curse for the following reasons and urge you to protest the creation of a county wide zoning district because of the following:

- 1) **A landowner loses control** of his God given right to own and use his property when zoning is implemented. In this case, the county has drawn arbitrary lines and designated different colors for each parcel of land in the county. The land next to the incorporated city limits can developed and those outside that area will be designated as low-density development areas (160 ac minimum size tract -4 units per 160 ac.)
- 2) **A landowner's property values will be decreased significantly** when the county arbitrarily draws a line around his parcel and declares there can be only 4 units of housing on 160 ac. regardless of the fact that he meets all of the requirements for more density. This is not right and it is a "takings" of an individual's property.
- 3) **Zoning creates artificial scarcity of lots and the price of land skyrockets as a result.** It is a well known fact that land cost is higher in places where laws governing land use and zoning are stricter.
- 4) **Zoning is proscriptive in nature and it is not good** for shaping the future or for improving the quality of new development. Zoning **tries** to prevent bad things from happening but forgets to lay out a vision of how things should be.
- 5) **Zoning requires individual landowners to yield their private property right to the public.** Once again, this loss of control is tantamount to a "takings" of an individual's private property right.
- 6) **Zoning is detrimental to Builders and others who had the foresight to buy land for future development and, as a result of zoning, now can not develop their as originally intended.** Is it fair to penalize a Builder who had a vision and purchased land for development in the future to have that right taken away from him because the government has decided he shouldn't be able to develop it?
- 7) **County initiated Zoning forces all newly created lots to be 10, 20 or 160** ac in size and forces all new development into a "donut" around the city of Helena, restricts a person's right to choose where he lives and it drive up the lot cost.
- 8) **County initiated zoning is a massive overage by county government with no real benefit to the landowner.** There are already rules in place governing the development in the county and state. This zoning is not needed and is a **duplication of the regulations** already in force.

9) **Top Down zoning** (that which is initiated by the county government) is almost always bad. If citizens want zoning in an area, they should request it. Zoning should come from the people to the government-not the other way around!

In summary, is this “one size fits all” government initiated zoning for all of the county, good for the landowners in Lewis and Clark County? I say the answer is a resounding NO! It should not be initiated by the government, and it is detrimental to landowners. As found in an article on the front page of the 1-1220 Independent Record, “people are moving to Helena because they realize they can’t afford to live in Bozeman. Land availability is the largest single issue facing the Helena housing market”. (Moore appraisal Services)

At a time when builders have been struggling for years to find available land to build on, this is the absolute worst time to have the county come along with such a restrictive, costly, time consuming zoning proposal that no one wants, it does not foster good design or enhance a sense of place. It penalizes landowners who try to provide land for their children and takes their right to develop the land that might have been in the family for years. I urge you to oppose this new “top down” zoning proposal put forth by your government to your detriment.

Your Turn IR

**County Zoning Plan Will Ruin Tri-county Economy Without Justification**

**Tuesday June 16 from 6-8 PM the Consolidated Planning Board will review the 2020 Zoning proposal and you are encouraged to attend in person at the Civic Center or via Zoom.**

L & C County planning staff & Commissioners are once again attempting to slow rural property development via costly regulatory requirements. The County's 2020 Zoning plan would force all rural property owners in the Helena Valley Planning Area (HVPA) to give up future development rights, including minor divisions or family transfers unless all parcels exceed the 10-acre minimum lot sizes (See L & C-CommD&P-Zoning website). Roughly 90% of buildable land in the HVPA would be impacted totally over 100,000 acres.

Rural property Zoning reinstates L & C's 1-development right per parcel, State legislation overturned for being too heavy-handed and restrictive. Only Rural Zoning restrictions preclude building a guesthouses, rental home or small business with a home. Just stupid and regressive – precluding home-based business and income forcing more travel.

This is especially bad timing given hard economic times that will persist for years. Such restrictions will drive people wanting smaller tracts of land to Broadwater, Jefferson and to Silver City etc. – increasing long-distance commutes not reducing it.

The 2020 Zoning also would supersede the 20-plus citizen initiated zoning districts that lie within the HVPA.

If the projected 850 new homes over the next 15 years are built as projected, then none of the 5 Key concerns issues will exceed any meaningful natural environment or human safety threshold. That is a fact and not wishful thinking and I will go toe to toe with any challenger.

For the past 15 years I and many others have been forced to sue the county for illegal county actions resulting in the County taxpayers having to pay damage claims and legal costs of \$8-10M. Starting in 2005 L & C County manager implemented multiple subdivision and zoning actions designed to dramatically increase cost of rural property development, resulting in over 20 lawsuits documenting repeated illegal, biased and unethical administrative targeting of rural property development.

This Rural Zoning takings is not based on Science or a vote of the citizens, but merely based on the bias and opinions of a select few top County managers and elected County Commissioners.

The County most likely will be sued by many different trade organizations, large rural landowner and normal citizen for illegally taking property rights without compensation – in essence a conservation easement without any compensation.

Zoning will depress rural property values and unduly enrich urban/fringe property plus it will drive more residents into rentals and away from home ownership. This will negatively impact already stressed small businesses; builders, realtor, skilled trades, landowners, ranchers and farmers etc. This will lower county tax income & depress economic growth.

Unfortunately, the only written justification for the 2020 Zoning proposal is the biased and unscientific County's 2015 Growth Policy documents. The 2015 GP largely based on citizen survey opinion poll

responses with a heavy dose of County manipulated and biased conclusions that ignore decades of groundwater research, County 2004 & 2014 Transportation plans, and other science-based facts.

One clear fact: existing State of Montana and L & C Subdivision regulations already require applicants to fully address and mitigate negative impacts to groundwater quality & supply, wildland fire, flooding and roads. In fact, L & C County subdivision regulations are already the most-costly, overly anti-rural growth County regulations in the State.

How have cities like -- Kalispell, Butte, Missoula, Billings and Bozeman-Belgrade etc. and all other cities across the US -- managing growth without targeting rural growth? If this Zoning proposal is challenged in Court, County managers will have to justify why they have a proven 15-plus year record of targeting only rural development for costly subdivision regulations, and zoning restrictions and not analyzing alternatives.

I submitted 3 documents to the county; overview & legal challenge summary, social-economic impacts, and 15-page scientific analysis of 5 Key County's claimed concerns -- proving the County has no real legal basis to limit rural growth using density restrictions and severe landuse restrictions, instead of fixing grossly deficient county roads and upgrading transportation networks etc. Many public commenters have stated – this is bad management top down driven with no regard for the landowners rights that will be challenged.

To date, the County refuses to send out mailer to all impacted rural landowners – violating their Mt. constitutional rights to know and comment. The County also refuses to allow impacted landowners to vote as they would be afforded under Type II Citizen initiated Zoning. They have purposefully avoided adequately informing the public at every turn since announcing the plan in December 2019.

The real truth is –The County has not produced any current and factually based written justification proving Density restriction trump private property ownership rights and justify the taking of \$100 millions of dollars in property value at the stroke of a pen.

Somehow the County Commissioner believe rural property owners will willingly give up their life investments for the “Greater Good”. The Greater Good the county is not counting on is lawsuits that could quickly and easily top the \$10 million paid out due to past county transgressions.

In fact, the US specifically states “Amendment 5 ... nor shall private property be taken for public use, without just compensation” and Amendment XIV Section 1 “.. Nor shall any state deprive any person of life liberty or property without due process of law.” And the Mt Constitution Article 2. Sec 18 “...State, Counties.... shall have no immunity from suit for injury to a person or property.”

The County staff has refused to recognize the rural property rights takings actions would damage anyone, and the staff uses terms like “Zoning generally increase predictability and stabilizes or increase property values “ but these feel good terms are hollow and are inadequate to justify the means to an end.

Respectfully submitted,

John W. Herrin  
2855 Sundown Road  
Helena, Mt 59602

JH is an Environ. Cleanup, Permitting, Hydrogeology etc. project assessment manager -- 17 years St. Mt. (State Lands ,Highways & DEQ) & Private consultant =20+years. Owned/remod. Apt. buildings & developed four L & C Subdivision Apps since 2005.

**From:** John W. Herrin  
**Sent:** Sunday, April 12, 2020 4:30 PM  
**To:** planning@lccountymt.gov; John W. Herrin  
**Subject:** Zoning Proposal Status and Website Failures

Dear Planning Staff,

We all are dealing with COVID 19 pandemic, but the County BoCC set a hearing date for the Zoning Proposal to be submitted to the Planning Board set for April 21. Plus the County committed to having the underlying regulations completed by April 1, 2020.

First and foremost – back over a month ago I requested to receive the written minutes if all three Broad of County Commissioners (BoCC) public hearing on the Zoning proposal. I asked the BoCC staff for these several times over the weeks following the hearings but they were not yet available and with the recent social distancing and travel restrictions, I have not visited your offices. But I still want to have these transcripts and therefore could you make sure someone sends them via email to my above email address. THANK YOU.

I have for the past 2-3 weeks been visiting the County Community Development & Planning (CD&P) department website to see what is the status of the promised written text and find out any new developments and postings. Unfortunately the only new information is the March 27, 2020 revised Zoning map wherein all the 160-acre and 20-acre lot size restriction designated zones within the rural lands have been reclassified as now being 10-acre tract size restricted land size zoning designations.

Is this the final version or are more alterations in the works or being considered?

Why hasn't the County bothered to update this website with real and update information such as:

1. A detailed explanation as to why the zoning map was changed so dramatically and supporting documentation for the entire Zoning proposal and details document the process milestones, a detailed list of all public comments and the county's response to each comment.
2. The County appears to base all their supporting facts and documentation solely on the L & C County Growth Policy Update 2015, however as can be seen in the long list of comments and question outlines in this document and the in the 4 Critical Reports I submitted to the county back in February and March 2 of this year – the 2015 Growth Policy is merely a planning tool documents and is totally insufficient technically, factually and legally to justify the taking of rural property land via the proposed Zoning proposal. Where are the facts supporting this specific Zoning proposal and in particular the greatly expanded on the 2015 GP 5 key elements of cumulative impact concern -- and specifically why the County's proposed 10-acre lot-size restriction is the only valid alternative that that county can use to address these unmitigated cumulative impacts? The Growth plan is now 5 years old and the County is required to do a revise GP if it is to be used as justification of the proposed Zoning plan. It also has to be revised to remove the obvious bias, invalid conclusions and generic statements that do not hold water.

3. The Website still lacks any real documentation supporting the Zoning regulations and in particular justification why only valid solution to address unmitigated cumulative impacts to the 5 key elements the county claims are threatened is to implement the 10-acre lot density restriction on all 150,000-acres of undeveloped land within the rural areas of the HVPA that are outside the County's favored growth target rural mixed use zone I call the "Sweet Zone" where the county wants to force all rural property growth.
4. The County's website is very hard for most citizens to quickly find the Zoning proposal and direct links without having to navigate the menu. Most people are very busy and can't wait to see the 5-6 items being scrolled on the front page to catch the Zoning proposal or find it hidden under the Community Planning and Development section – how many people know to look there? Several people in the listening sessions made the same comments but the county hasn't made any effort to make the Website better or user friendly for this all important major administrative action – a once in a life time proposed action that will impact the Tri-County area for decades to come.
5. The County website must have current information and daily status updates for everything happening on this very important and landmark zoning proposal. Why isn't the county planning staff posting real updates on key issues? (Note: side comment – many of the issues raised in this document have been raised by citizens and the county staff is just ignoring us like we don't matter and the county does not have been responsive to anything the citizens request as needed. The County planning staff is either not paying any attention to public comments or they are purposefully avoiding informing the public – neither excuse is acceptable).
6. On March 2, the BoCC voted to send the Zoning proposal to the Planning Board on April 21 – that is only 10 days away and still no one knows what is going on. Also the County has made no effort to explain the changes made to the 3-4 various versions of the zoning map and why the county made the changes. Immediately the County must post updates on the County Website. That is why the county has to mount a serious announcement campaign and keep the County website up to date. These website updates and public announcement updates must happen given it is our citizens' right to know as provided by the Montana and US constitutions.
7. The County must post public comments on the proposed Website and on social outlet forms like Facebook as that is the modern medium of social communication. Newspapers are a dying breed and most people now get their news on the internet, yet the County has chosen to all but ignore this fact in presenting a case they have adequately informed the citizens about this proposal!!! Why haven't the planning staff made any effort to public outreach using the internet? This is not acceptable.
8. The County must provide specific details in writing (e.g. developed a defensible social-economic impact assessment analysis report) about the Zoning proposal and be very specific detailing the plan to force all rural property owners to accept the 10-acre restrictions and also be forthcoming in stating that this action could result in at least a 50% reduction in their property values.
9. And the county must also address the fact that land values with the proposed rural mixed use area and with the city limits will likely go up as a result of reduced available lower cost rural property and the fact in 10-20 years the amount of vacant land will be very limited and

expensive. And people 10-20 years in the future will have to accept smaller and smaller home lot sizes, and more apartment/condo living housings plus more high-rise living and office buildings. In essence, Helena will resemble more urban lifestyles that many newly imported out-of-state residents were hoping to escape and surely long-term Montana residents don't want to see happened to our beautiful mountain valley surrounded by millions of acres of open-space. And as mentioned, the SE analysis must address impacts of removing 850 rural homes from the development pool and the affects that County driven action would have on affordable housing and Tri-county businesses.

To not print the true facts and to incorporate these SE impact findings into an overall written justification document will likely merely invite legal challenges down the road for the county. The Citizens must be adequately informed as to the positive and negative impacts of every important aspect of this proposal or the county planning staff is not doing there job (see my 8 page Social Economic Impact Analysis Report).

10. The public announcement to the TV, IR and social media outlets must contain a new map of the proposal and the underlying plan specifics. This should be a full page IR advertisement on the back of the first section of the paper.

Again this should happen more than just one day and should be very detailed and specific about the plan to force all rural property to be at least 10-acre in size and tell how many acres with the HVPA are impacted. The announcement should provide information about how to file out a comment letter on-line as I requested months ago. It should also provide a telephone number where citizens can call in and leave a voice message (see comment #6 below)

11. As mentioned by several people at the public hearing the Website is too difficult to navigated for most people and again it appears the county is attempting to hide this proposal from the public as much as possible. If the county does not make a lot better effort, these actions will be used as further evidence of bias if this matter ends up in court.
12. Please develop a hotline for citizens to make verbal comments over the phone which would greatly increase the citizen participation levels. These messages should be carefully and accurately transcribed and posted on the County Website right on the front page of the County Website.

I would like to clearly state for the record that this entire Zoning proposal and the process that has unfolded in unprecedented way of being only driven by the County Staff and BoCC not by citizens or landowners. And despite the county's planning staff and BoCC statements supporting there public announcement and out-reach efforts – in reality the process has not been fair to rural landowners nor has it fostered trust in the process, and proven the county staff and BoCC has any interest in being responsive to the public or making a real effort to adequately inform the public and especially the most impacted rural property owners.

The current 2020 Zoning proposal would nearly stop all future rural development in the Helena Valley Planning Area (HVPA), which at first was very surprising to learn, but actually follows a pattern of anti-rural growth policies and administrative rulings by L & C County's top development managers starting back in 2005. For simplicity, the top development growth managers for so some unstated reason have

collectively adopted an anti-rural growth, anti-urban sprawl stance that is remarkably consistent and cumulative.

It is very apparent the County top managers since 2005 collectively have colluded to drive up the cost of rural property by using their power of administrative approvals or denials plus adding subdivision regulatory requirements that result in subdivision developers to pay for costly infrastructure improvements that other Montana counties largely don't require (e.g. two county standard road entrances, cost sharing to improve off-site roads, on-site high-volume fire fighting water supply/storage systems that are not being maintained or used by rural fire districts, costly one-size fit-all road design standards etc. etc.). These restrictive subdivision development regulations are also really severely limiting growth and reasonable land development beyond just the Helena Valley planning area and really adversely impact landowners all the way to Augusta, Lincoln and to the county boundaries.

Many rural property owner and especially large rural agricultural landowners have been told that they in no uncertain terms will never be able to develop any land beyond a simple 5 lot minor subdivision because the long rural road leading to their property would cost too much to improve as per the county regulations, or the fire protection requirements are a deal killer or the property does not have two all season road entrances. Etc. etc.

Some of these costly anti-rural growth subdivision regulations have been successfully challenged resulting in over 10 lawsuits against the county and total legal expenses paid by the taxpayers in excess of \$8 million. Money that could have been used to address one of the real planning issues this county has ignored -- and that is our increasingly underfunded county and private road system.

Having been involved in 5 lawsuits with Lewis and Clark County over the 2006-2007 Interim and Emergency Zoning and County Illegal Off-site road Subdivision denials and conditional approvals where I fought the county for almost 10 years and won close to \$900,000 in legal settlement damages -- plus now since 2015 working to permit my 4th L & C County Subdivision application -- I have learned a lot about the law and administrative management of Lewis and Clark County past and present. Couple that first hand experience with my 17 years of environmental impact assessment and regulatory permitting experience in working for the state of Montana and over 20 years of private contracting work I believe I can objective present the real facts of this county's 2020 Zoning proposal and the overriding history of the County's long-standing adversarial and authoritarian bias against rural growth in the county.

And it is patently obvious that the County has adopted an Anti-rural administrative undertone spanning the last 15 years by driving up development costs, making permitting new subdivision overly expensive and difficult with actions and requirements that are not technically or environmental appropriate or justifiable. Ultimately everyone in the Helena area has for the past 15 years been paying a much inflated cost to build, purchase, own home or developable land as a result of the County's anti-rural property actions. The underlying mentality I believe started with the fact that the City of Helena had built a modern and oversized public water supply and wastewater treatment systems and the city and County managers decided that it would be best for the community to direct as much growth towards incorporating into the city and in order to make that more of reality the County should come up with anything they could come up with to force up rural property development costs. Although I can not prove this theory as being a fact, it is the way I have been able to understand the actions of the County managers back in 2005-2008 when all the lawsuits were happening for no rational reason. And the county managers just would not back down or listen to thing any of engineers, private contractors,

builders, realtors, developers, and landowners were telling them was illegal and wrong – Note; Does that sound familiar?

Based on 15 year track record of the L & C County development managers using administrative rules and permitting decisions to slow rural growth by driving up the cost of rural development, but now with the proposed 10-acre lot size rural property restrictive Zoning plan puts the nail in the coffin for many small home construction business and rural landowner etc. This plan would only remove about 850 new homes projected to be built in the rural undeveloped land (roughly 150,000 acres) surrounding Helena and East Helena.

Now spring forward to the year 2020 – The County will not listen to rural landowners, developers, realtors, contractors, builders, and the general public – that the rural lots size restriction Zoning proposal is not workable, is not fair, is targeting one segment the regulated population for economic damages and rewarding other current landowners with the East Helena and Helena. But most telling is the potential that larger landowners in the rural mixed use “Sweet” Zone greatly enriched by this proposal (see my 8 page Social Economic Impact Analysis Report and my summary report submitted preciously). This inevitable inequity of enrichment on one side of an arbitrary line and loses on the other side will most likely result in a successful legal challenge of this Zoning proposal, yet the BoCC and the Planning Staff refuse to back down or listen to reasoned counter arguments.

The 2020 rural property zoning lot size restriction plan is a final and grand plan step by the Planning Staff and BoCC is to stop or slow rural growth in the Helena Valley Planning Area (HVPA), not matter the cost. The anti-rural growth bias does not appear to extend much beyond the small inner circle of a few environmental anti-growth groups and of course the County Planning Staff and current BoCC. In other words, I suspect that this antirural growth bias likely would not be a top priority of the average L & C County landowner and registered voter.

And if you actually look into the written comments sent in by the 3,000 respondents the 2015 Growth Policy survey, the citizens were most concerned about: 728/1200 Road = 60%; 278/120 Subdivisions =23%; 255/1200 Water wells = 21%; 249/120 taxes =21%; Sewer Septic/wastewater Systems 221/1200 =17.5%; Limits 140/1200 =11.67%; Planning 125/1200 =10.4%,; Law/Lawsuits 120/1200 = 10%; traffic 83/120 = 7%; Protection/Safety/Dangerous 65/1200= 5.4%; Government/Commissioners =4.6%; Infrastructure 39/1200= 3%; Zoning 39/12200=3%. From these more realistic and unbiased comments (versus the biased and loaded Survey Written Survey Questions), it would appear the county citizens place a very low value (3%) on Zoning as solution to their problems, but 60% indicate that the county needs to invest most of their efforts at fixing and upgrading roads. The second highest comment field was subdivisions at 23%, followed by water supplies at 21% and septic wastewater at 17.5%.

But I Contend the wastewater septic system concerns are largely lies in the capable hands of the County’s own Environmental Permitting and inspection staff and regulations. And I really don’t know of any major issues of groundwater contamination caused by on-site wastewater treatment systems that have not or could not be corrected – but I can easily cite at least half a dozen examples of groundwater contamination caused by over application of animal fertilizer (Jim Darcy School) and too many livestock

in confined corals on very coarse alluvial gravel lands in the Helena Valley bottom-lands. And water supplies evening the Scratchgravel Hills and the North Hills is adequate for a lot more development as long as it is not as dense as the tight developments of the Ranchview and eastside higher track-home developments along North Montana Avenue (see my 15-page Technical Impact Assessment Report submitted to the County in Mid February). Simple solutions to reducing groundwater withdrawals where a development plans higher density developments in the bedrock uplands is to permit limit irrigation landscape usage which accounts for 98% of the consumptive use of an average household.

The County staff and BoCC -- by not mailing out copies of the proposed Zoning Plan nor developing real supporting documents, or allowing the rural property owners to vote on the proposal after being adequately informed – believe they are the only citizens in this county that can decide the fate of rural property development in this county for the “Greater Good”.

And on top of that the county planning staff and BoCC falsely believe they can smash and rush this through the public process by pretending to engage the public with lightly attended and poorly noticed public listening sessions and BoCC hearings in the middle of the winter. Then in 4 months push I through the Planning Board and through the BoCC by June 2020.

Based on multiple comments made all three BoCC and their action to forward the Zoning Plan to the Planning Board on April 21, that the three County Commissioner are strongly in favor of and the driving force behind this 10-acre rural property assault on rural property rights. All three County Commissioners obviously view additional growth in the surrounding grassland and timbered undeveloped near Helena as a precious assets that should be protected no matter the cost. And none of them want the impacted landowners to really know what is going on and absolutely they do not want these landowners to have vote on the what happens to their property.

Note: I welcome an honest and direct response to these summary statements by each one of the County Commissioners as part of this information and impact assessment request letter.

- A. Please address me directly and answer why you will not send out maps and written explanations of the Proposed Zoning proposal. Why would the county not want to adequately inform all landowners of the potential for lot size restrictions and the potential for future lost property value? The lame excuse the Planning staff gave that it is too costly is not valid given the county mailed out 10,000 questionnaires in 2015 (see comments repeated below).
- B. Also please explain why the County refuses to allow each rural landowner to use his constitutionally guaranteed (one person one vote) rights of self determination that would adversely impact their wealth and property rights?
- C. Also please specifically address why the county won't use the Part I citizens initiated approach to the lot size restriction plan versus placing the burden and authority of this decision only in their hands?
- D. Please explain how the County is following the State of Montana and County Regulations which require the county to hold open meetings, produce all requested records, hold open meetings, and in essence allow the public the right to know and vote on all matter that affect personal property rights and the right to protest actions that result in a inappropriate taking of assets, property and wealth.

- E. Please explain why the county Planning staff refused to bring any zoning maps to any of the first three Zoning listening sessions even though I made a specific request to do so (of the CD&P support staff and directly to Greg McNally) for the third listening session at the West Valley fire hall. The only reason the county brought maps to the final meeting is I call Rodger Blatz at 3 Pm before the last February 28<sup>th</sup> listening session and guess what there still were not enough maps made available.
- F. It is obvious that the county does not really want the word to get out as to what they are planning and there is a concerted effort on the County's part to minimize all levels information and education of the citizens regarding the Zoning proposal. That include the above stated Website deficiencies, the lack of any maps either at the CD&P office (not one map in 6 visits I've made to the department), the extremely poorly written ABZs Tri-fold flier and the lack of real effort to announce the public listening sessions or BoCC hearing (despite Commissioners Hunthausen's claims of how much the county has gone overboard to inform the public) the fact that only about 150 people actually attended the listening sessions out of 7,000-10,000 rural property owners in the valley is evidence that the county's efforts were inadequate. Please correct any facts that I have wrong and please explain why the County Staff and BoCC believes there efforts to reach all citizens has been successful and a valid administrative effort.
- G. Please explain why the county has not responded to my submitted to the CD&P staff and the BoCC 4 written reports that seriously challenge nearly every aspect the proposed Zoning proposal relative to the Rural lot size restriction zoning plan? Is that normal policy for the county planning department and BoCC to totally ignore major efforts on the part of the voting public, a taxpayer and educated participant in the process at every step of the process. In addition, I have testified at everyone of the 4 listening sessions and the three Board of County commissioners hearing on this zoning proposal.

I am and every person in this county is entitled to understand every important aspect of the county supporting information and why this Zoning Rural Density restriction is the only one of 4 generic administrative options considered in the 2015 Growth Policy (page 3-3 to 3-16 Volume 2 GP). Please have your staff take the time to response to each of my 4 documents submitted to the county and this very specific question request email.

I will be the first to admit that I and others opposed to the rural property lots size restrictions have challenged the staff of the County Community Development and Planning department and the BoCC on basic procedural process matters plus issues of real technical and legal substance. And I will also recognize the fact that everyone working for the County I have spoken to either personally or in public forums have attempted to civil and not to make the differences personal, which I respect and appreciate. I have tried my best to do the same.

But that does not mean we agree with what has happened over the past 4 months relative to the multitude of County administrative short comings to date. I will attempt to clarify some of these short coming that I believe the citizens of this county justifiably must be addressed (in writing) before the actual hearing before the Planning Board takes place.

So without any other recourse I will unleash a long list of questions that the county planning staff and BoCC must address in order to move forward with this proposal. I can assure the county that these same types of questions will be used in legal discovery fact finding work by any legal action attorneys that will be busy working on court case actions against the county once and if lot-size density restriction are passed by the county.

Please consider this my formal request for the County to answer -- the best of their abilities -- all questions, concerns and fact herein presented and supported by the 4 documents I have already provided to the county these past two months. These written responses are needed at least a few days prior to the next Planning Board hearing or the county will be called out at the hearing as being unresponsive etc. etc. The county must respond to these questions and concerns in order for all landowners & residents to be adequately informed of the planned Zoning proposal and the impacts that would likely occur as a result – the social and economic impact assessment report by the county staff or hired consultants.

Please answer in writing all the questions asked below and please be very complete and specific as possible given the gravity of Zoning proposal and the likely negative impacts to our community:

1. The county in proposing -- with the 10-acre lot size restriction of over 100,000-acre of land -- a major administrative action which is in essence a taking of private property rights and real land/assess value from only rural property owners without any way to compensate these current or future landowners for the lost assets. That by definition is a legal taking of property values which are protected under the US and more specifically the Montana Constitutions. I have already written and submitted 4 documents to the County detailing these legal concerns. Please specifically address the county official legal position relative to the taking of private property rights/assets without compensation, and the legal rationale the county has for adopting lot size restrictions only on rural property when the underlying County Growth Plan 2015 Amended documents are obviously biased, untruthful, and technically unsupported by real scientific and engineering Transportation planning documents.
2. Please address the economic and social restructuring of our community the likes of which has never happened in the County nor any County in Montana. I submitted an 8 page preliminary social and economic impact assessment for the proposed three rural lot size scenario maps the county has presented from to December to the latest March 27 (10- acre rural lot size) proposal.

Peter Italiano repeatedly was asked at the December and February listening sessions if the county would conduct an social and economic impact assessment on the proposed zoning proposal. To which his repeated answer was a simple ---- NO. Then he even stated that no one had presented any information about possible economic or social impacts.

Given the county staff would not produce any impact assessment information, I developed my own assessment evaluation which I believe proves that large tract size restriction on about 90% of the undeveloped rural land in the county would severely depress land values across the entire area. Conversely land within the targeted growth areas around Helena and East Helena – I call the County's Target Sweet Zone" would see land prices significantly increase as would undeveloped, repurposed and existing homes within the two urban zones.

I also presented factual details that strongly suggest the proposed rural zoning proposal will further drive up property and housing prices in an already inflated Tri-County area and as such adversely

impact affordable housing. Which, in turn would exclude more young and less wealthy people from owning a home plus further exacerbate housing challenges for area lower income workers, and increase challenges area business are already having in attracting and retaining skilled workers.

The County is hereby requested to produce a detailed, legally and technically defensible social and economic impact assessment that justifies the proposed rural property land takings – addressing each of the topics outlined above and addressed in my 8 page Social and Economic Impact assessment report. Without such documentation the county can not fairly assess and present to the Planning Board a fair assessment of the positive and negative implications and justification for the proposed rural property zoning proposal. proposed

Given the fact that I worked for the State of Montana of over 17 years mostly as an environmental scientist that had to evaluate real estate, business, municipal, and industrial development proposals plus an additional 20plus years of private consulting, rental property ownerships and remodeling, remodeling contracting and real estate development -- I am very aware of both side of the rule making, enforcement and impact assessment process.

For instance, when the State of Montana proposes to adopt new rules they first consult the regulated community and carefully evaluate the State and Federal rules before they even begin to draft regulations. Then they develop what they consider complete set of regulations to address specific issues, and they hold multiple meeting and hearings that seek and fully address in a very open and documented process any necessary changes. The States review process seems to very fair, unbiased and well done such that in the end the final product is generally well received and works to achieve targeted and mandated objectives.

Also having been on the regulatory review side of state government – 5 years in subdivision review where I reviewed and permitted over 400 subdivision application and for nearly 10 years was a member of the coal and hardrock EIS team assessing massive development projects like Colstrip & WECO Coal Mine complex and Anaconda Minerals massive Butte -Anaconda mine complex etc – I know how much work it takes of a state permit applicant and in particular subdivision applicants to meet the County and State permitting requirements.

As an extreme example of a real and rigorous impact assessment I am amazing at the 5 years and 5-6 foot tall stack of documents that the Tintina Montana Inc/Sandfire Resources recently approve Billion dollar underground copper mine. In order for DEQ to finally approve the mine, the State hired a EIS consultant to write the Draft & final EISs -- both containing a wealth of detailed and technical information. I believe I am safe in saying that for the most part the State of Montana and DEQ in particular rarely is successfully challenged in court largely given the fact that the entire process is fair, unbiased and professional.

It is also important to note that the DEQ staff is legally required to respond to each comment and prove the State is in the right legal and technical position to approve the submittal.

Contrast the State's rule making and permitting process with that of L & C County over the past 15 years – over 10 law-suites and legal challenge costs in excess of \$8 million dollars. For the past 15 years anyone challenging the county in court will be able to prove that the county has devised a series of bad administrative and rule making decisions unduly targeting rural property for costly

development costs (e.g. two subdivision entrances, costly on-site fire protection storage/supply requirements, illegal off-site road improvement requirements, 2006-2008 Interim and Emergency Zoning requiring all new rural property owners to install very costly Level II on-site wastewater treatment systems – and now Rural 10-acre lot size restrictions).

Commissioner Good Geise in public hearing became upset at me for bringing these facts up during my testimony asking the county to eliminate the unwarranted and costly on-site fire protection supply and storage requirements – because she did not want to have past wrongs aired over HCTV and in front of those in attendance. But the clear facts remain, the county has a very poor record when it comes to making wise and unbiased administrative decisions, but the county managers never seem to pay the price – the county tax payer and those opposing the actions are the one that are victimized by the county's repeated anti-rural posturing and governmental abuses.

And despite Commissioner Good Geise statement that the county has a great recent legal track record and has a great legal team – the truth is the county is not on good legal footing with this proposed 2020 Zoning proposal given the fact that the lots size restrictions is not only an illegal taking actions, but is also not supported by the underlying documents (e.g. the 2015 Amended Growth Plan and the very detailed and technically solid facts found in the series of DRNC funded MBM&G Scratchgravel Hills and North Hill Groundwater Resource Investigation Reports).

To date the only document beyond the out-dated and as for mentioned house of cards contained in 2015 Growth Plan, the 2 County Transportation Plans and the MtBM&G & USGS hydrological reports – the only piece of paper the county has produced for this 2020 Zoning proposal is the overly simplistic and poorly written one-page double sided trifold document entitled "ABZ's of Zoning". This little flyer was obviously written years ago and really doesn't address this county's zoning proposal. It is very generic and non-specific to this 2020 zoning proposal. It merely has a 2"X2" partial map with no ledger and is a useless feature to have included – and shows malice and ill-intent to deceive. The text talks in very general terms much like Peter Italiano's 4 listening session talking points but really misses to point. It is a total worthless document and underscores the lack of effort, transparency, bias and shady management style that is very evident at every step the county has done starting with the extremely unprofessional, biased and distorted 2015 Updated County Growth Plan documents.

SO again it the citizens right to know what the proposal is, then hold listening sessions where the basics of a planning proposal are discussed, then develop a plan based in the real needs of the community. That was not done. Instead the citizen got the latest Version of the ANTI-RURAL growth County Staff idea of a "Greater Good" plan. "Greater Good" for who? County Staff must greatly expand on the County Commissioners repeating this mantra several times. And in fact, all BoCC at one pint or another stated that they were the only ones that could guard the chicken coup as they rest of us are biased and self serving. But I contend the opposite is the real truth.

The Citizen's and specifically the rural property owners -- either through persuasion or by legal means -- must guard the chicken coup and the County is the biased and self-serving entity in this conflict. Rural property owners are just attempting to protect their retirement and land investments which the county both fails to recognize as a valid and legal right, nor has the county planning staff or BoCC recognized the rural property owners have constitutionally protected legal rights to their land that cannot be taken away without some form of monitory compensation or at least a legal valid technical or procedurally valid justification -- which I firmly contend the county

absolutely does not have in thier back pocket nor have they bother to demonstrate at any level of real depth or substance.

So now is the County Chance to clear the air and justify the taking of rural property or they need to fold up the tent and go back to the drawing board. Because what the county has put out in all four listening sessions and the three BoCC hearing in February does not come close to passing mustard and AS SUCH THE TIME IS NOW – for the county to produce real facts about the 5 key environmental and human risk failures of the existing state and county administered subdivision regulations – and clearly show how the proposed rural property lot size (density Controls) solution is the only way to protect these 5 key factors from the dreaded URBAN SPRAWL.

The county Planning Staff and BoCC either need to produce these document well in advance of the next Planning Broad hearing or they likely will face repeated and protracted legal challenges. Despite what the L & C County Planning & legal Staff & BoCC, may feel is reality – they obviously have not stopped to objective review their position. I believe based on my having been involved in 5 different lawsuits with the county and having now spent the past 15 years attempting to steer the county in a progressive yet responsible direction – and knowing all the technical details of all 5 key elements the county is attempting to use as justifications – I can say nearly 100% confidence the county stands almost 0% chance of winning on this zoning proposal in court of law.

The end result -- the county and taxpayers will once again have to start writing big damage claim and settlement checks with nothing really accomplished by bad feelings, wasted energy and precious resources. Just think of how many good new connector roads and need upgrades to failing county roads could have been done with the wasted \$8,000,000 the county's mismanagement cost this community from 2005-2015.

Why would the county staff and BoCC want to go down this kind of administrative path again just to slow rural growth. What is up with the county staff consistently viewing rural growth as something they have a moral obligation to slow or stop? I am certain that is not the real over-riding viewpoint of the majority of County voters or landowners. As has been stated repeatedly by landowners and citizens like my self poised to this specific zoning proposal – we all support the idea of managing and promoting smart growth planning and fostering rules and regulations that address real issues and move our community forward.

3. The County must respond to the repeated request to answer why it is the county planning Staff (PI) and County's?? official position that ----- rural property landowners in the proposal rural 10-acre can not and will not be contacted with information flyers informing of this proposal given the fact that it would greatly impact their property values, the county's tax assessments and the schools etc etc.

What is the county's official reason for not sending out mailers to every impacted landowner? The heads of the county Planning and Administration plus each BoCC must address this issue in writing and must be very specific in addressing this and item 4 below. This is an absolute formal demand to produce (a detailed and very all encompassing written response). If the county does not respond to this and the other specific questions – the whole administrative process could be challenged in court – the constitutions requirement of an open and fair administrative hearing etc.

It is not acceptable for the County not to respond to specific written objections, and if the county continues to do so these facts and actions could be used against the county in any future legal action. It is also not acceptable for the county to use the excuse given -- would be too costly. That is absolutely not true especially given the gravity of the proposed land taking issues relative to rural property. This simple excuse the county staff muttered in one response to the question is not realistic especially given the fact that the county paid to mailed out 10,000 survey questionnaires in 2014-2015 for the Updated Growth Policy and also hired contractors do additional consulting tasks like write up the two large format Growth Policy reports.

I will point out here, the Growth Policy is not a regulatory document and therefore has no official standing or status and as such can not be used by and of itself to justify adopting regulatory standards or regulations. But to pull it back to the cost of mailing out information to impacted landowners – nothing the county could do would be more cost affective at informing the impacted public as it is obvious that with only 150 or so people attending the listening sessions and BoCC hearings – the 7,000-10,000 or so existing rural landowners would never be informed which is not only unethical it is probably illegal.

I believe it is obvious by the way they county came to 3 of 4 meeting with not one single map to hand out to the public at the listening sessions, the fact that they have only place two small adds in the newspaper and placed a few quick TV adds out – all of which where not that affective – that the county BoCC and Planning staff are purposefully attempting to slide this proposal through the process as quickly as possible and they are trying their best to keep the public uninformed (please county staff don't pretend otherwise because your actions speak volumes).

4. The County Staff and every BoCC must address in writing and be very detailed and specific as to their position on allowing each and every rural property owner in the 10-acre restriction zone the right to vote on the zoning proposal. Also address that fact that only those rural property owners that would be impacted have the right to vote on the lot size restrictions – in other wards city and Sweet Zone landowners and voters would not be allowed to decide the economic fait of any rural property lands if they don't own land in the that zone. That is the democratic compliant way to deal with this takings issue and even then that might not stop legal challenges. Please address each sentence in detail (and consider these pre-lawsuit interrogatory and discovery questions) . The vote to approve should be a super majority (60%) just like the Part I Citizen initiated zoning proposal – which I know the BoCC strongly oppose but again is likely the only legal way this lot size restriction would ever really be adopted. Good luck in getting that passed.
5. Please explain in detail how this zoning plan was created (by whom and who crafted the zoning district parcel lines). Why where the 3-4 versions of the Zoning proposal maps changes, who dictated the changes, and who had the decision on the design layout of each version of the proposal?
6. Please explain in great detail how the zoning proposed 10-acre lot size restrictions addresses each of the 5 key critical factors the county views as not being adequately addressed by current county and state subdivision regulation. Please explain the crisis issues the county is facing that no other County in the State is facing that justifies this type of large tract size restrictions. Specifically explain why the other major cities on Montana have not approached growth near their cities as L & C

County is proposing (10-acre lot size restriction on only rural property) and how have each city has managed growth to address the cumulative impacts on the 5 key elements.

7. Please explain why only L & C County has chosen to use density controls versus dealing with growth by facilitating construction of new roads and upgrading existing roads to handle growth outside of the cities as Billings, Missoula, Great Falls, Butte and Kalispell have been able to manage? Why is the HVPA so special that the county can't build an adequate road system to handle an additional approximately 850 homes spread out over the next 15 years (to 2035) across the 100,000 to 150,000 acres of undeveloped rural property? Please explain why this county has not built any new roads (outside MDT largely funded projects) and county staff members constantly complaining the lacks adequate funds to maintain their existing 500 plus miles of roads?

Who's fault is it that the county doesn't have a good road improvement mill-levee ??? Please explain why the 2005 \$5million dollar road bond levee failed and what did the county staff do to plan for road improvements and what efforts did the county do beyond paying for several costly Transportation Consultant Drafted reports only to let them largely sit on the shelf and gather dust? What other administrative and community out-reach planning tools and implementation plans could the county use to address transportation issue and future growth other than lot size density restrictions??

8. Please explain – e.g. present real evidence, supporting scientific studies and report documenting -- why L & C County needs 10-acre lot size restriction on rural property to address issues of the 4 other Key factors (flooding, on-site wastewater treatment, groundwater supply and wildland fire). I know from looking at the data the county can not technically justify the 10-acre lot size controls for the first three Key factors and that fact was covered in the detail in my 15-page Technical assessment Counter narrative report submitted to the county to which the county staff has not responded as they must. So here is your staff chance at facing the facts and justifying this proposal. Respond in detail to each key element and prove the lot density restriction zoning proposal is justifiable – otherwise pack up and reinvent the plan.
9. Please define “Greater Good” and explain why the citizens should trust the BoCC to make decisions about their landowner rights and future economic futures as social and economic future of the entire community when this county past history is to ignore well reasoned arguments not to implement many of the past attaches on Rural property resulting in over \$8 million in legal costs not to mention all the ill-will and wasted energy.
10. Please very carefully and completely explain the “Greater Good” benefits of the 10-acre lot size density controls versus a complete moral inventory of all the negative impacts and clearly show the benefits outweigh the negative impacts. This detailed impact assessment must be done and convincingly present showing the BoCC and planning staff have done their homework and understand all the ramifications of this proposal.

To demonstrate the county is acting for the “Greater Good” the county must complete a detailed and objective review of proposed Zoning regulations & the proposal. That means the county must undertake a through and complete moral inventory of the 2015 Updated Growth Plan, the County's Transportation plans, the MBM&G & USGS reports demonstrating why the rural property owners have to give up property rights and value to mitigate cumulative impacts that the County BoCC claim is for the “Greater Good”.

To date, the county has not provided any written information supporting the staff and BoCC claims they need low Density controls on rural property because current County and State subdivision reviews & regulations are grossly inadequate leading to compounded & crisis level threshold exceedances. Yet when I stated in front of the BoCC, that the county has provided no evidence that Federal, State or local water quality limits, fires, roads, floods, or wastewater treatment systems are a major problem and exceeding health or safety standard – Commissioner Good Geise and McCormick came back with == we don't need a crisis to force these Zoning Lot Size restrictions because we are impartial and looking out for the County's "Greater Good".

Fantastic if that were true. But since the BoCC is hanging their case on this "Greater Good" argument and fact that the BoCC is asking rural landowners to freely and willingly allow the county to in essence put a conservation easement on their property, then the county is under a legal and administrative obligation to present their factual case in writing for everyone to fairly evaluate and voice their objections or support based on real facts and written documentation. To date we have seen nothing to put our hands on justifying the proposed Zoning plan other than the -- as stated earlier -- the overly generic, biased and unprofessional 2015 Updated Growth Policy.

And Commissioner Good Geise in essence at the recent February BoCC hearing made reference to the fact that the county had passed the 10-acre Part II Zoning around Fort Harrison and no one protested it or filed a lawsuit – as proof they know what they are doing was right and validated this approach to planning. The County was not legally challenged given few citizens could afford to legal bills or effort to fight the County with huge staffs and resources.

However, please remember and address the fact that this 2020 Zoning plan encompasses a much larger land area potentially causing way more negative impacts spread all across the entire Tri-county area and various segments of the business community – e.g. landowners and landowners, builder realtors, small contractors, future landowners and home buyers, lower income workers, taxpayers, civic groups etc. etc. So please address how the proposed Zoning Plan has an overwhelming positive attributes that trump and supersede private property rights and the negative landowner to community economic impacts cited in other sections of the email and detailed in my 4 other documents submitted to the county.

Commissioner Good Geise also cited the fact that Commissioners were tired of dealing with the occasional fight between overlapping Part I zoning districts and this Part II County Initiated Zoning would override and essential trump the democratically and legally adopted Part I zoning rules for all 34 or so Part I citizen initiated zoning areas. PLEASE ADDRESS =the rationale that 3 BoCC could make such a far reaching decision overriding individual land-use rights and community property Zoning self-implemented Zoning in favor of "Greater Good" regulations that superseding private property and Zoning district democratic rights in favor of a dictatorship 3 person administrative action.

Further more – please clearly, convincingly, and directly address the fact that the county has no other option than to impose the large tract sizes restriction only on rural property and that option for various subsector areas within the large rural segment of the HVPA could chose to adopt Lot size restrictions if they voted to use proven and democratically based Part 1 Citizen initiated Zoning vote process.

The County must address in great detail why the Zoning Part II County initiated Zoning is the only way forward for the county and that Part I Zoning of rural land is not a valid alternative to address site specific issues like the 5 Key concerns the County cites as being a problem for unmitigated cumulative impact arguments. Please tells us why 3 county commissioners should be allowed to trump Citizen initiated Zoning across the entire rural landscape and in essence invalidate 34 Part I zoning areas and any future Part I zoning areas in the HVPA.

I will remind the county that courts and legal challenges involving administrative actions, often require a retrospective look back at the real underlying facts of the case. In this particular case, anyone challenging the county could request written documentation proving the county's chosen actions were not only legally valid, but also were the correct solution to address the problem issues. Without documentation of alternative impact assessments the county would be hard pressed to prove the Lot size density approach to dealing with future rural growth is the only valid and necessary approach the county had at it's disposal to address future growth impacts. But without adequately defining the real problems, and assessing various solutions and the positive and negative merit of each, the county can not prove the solutions they are offering solve(s) the problem(s) and that the proposed solution(s) are worth the sacrifice and are the only valid/legally acceptable path to have taken. That applies to each and every one of the 5 key elements the county staff and BoCC claim require immediate attention and corrective administrative action. And the bottom line is the real "Greater Good" the county is promising is justified at every level.

11. The County absolutely must address alternatives to the rural property 10-acre lot size restrictions – such as passing a mill levee to address deficient county road etc. To me the County long list of inadequate roads budgets are the only one of the 5 key elements that the county can really say is not being addressed by the current subdivision regulations, and the fact that the county has failed to address these deficiency's to me screams of a lack of County initiated administrative planning, priority allocation, and implementation of real corrective actions (e.g. help pass a road bond levee).

I will remind the County and anyone else reading this – that the L & C County added back in 2007-2008 additional requirement that new Subdivision development have to assess off-site road traffic impacts and must pay the county funds up-front to upgrade off-site roads if their development would increase the traffic load by more than 10% (see 2015 GP Vol 2 Page 3-10). So subdivision applicants are helping to address deficient off-site roads when few if any other road users contribute their fair share outside of RID assessments. So new subdivisions applicants – outside of the once every 10 year MDT major road reconstructions projects in the county – are the major reason county and off-site roads are being upgraded. So rural subdivision developments should receive credit where credit is due and the county should be encouraging more rural development to fix roads not opposing it at every turn.

But the 2015 Growth Plan page 3-10 in recognizing the fact that subdivision applicants are the one bright spot in addressing local deficient roads – but then they go on the traditional county illogical bashing argument I have heard from many County officials over the years that the roads are still deficient and by implication there is a major unresolved issue – the road still don't meet current county standards (Note: most notably Commissioner Mike Murray's famous oral testimony in the Christian Case and the Hamlin Construction Off-site road cases where he unflinchingly said if the developer doesn't pay 100% of the improvement costs they should not be allowed to develop the

property – which is a totally irrational and illegal position to take and resulted in the county having to pay out over \$3.2 million in damages in just those to court cases).

But I contend this consistent posturing towards the idea is impractical and lead to countless litigations that were not warranted or necessary. Look at the real world examples – the literally millions of miles of rural roads all over the country and the world and citizens form collective associations (RIDs) to manage road improvements and maintenance and the world goes on without major crisis. Almost never will you find a group of landowners that will be willing to pay the costs to upgrade their gravel road to the ideal county road design standard. So the county needs to address this particular aspects of rural roads performance and safety etc. in detail and prove the only answer to the problems of rural roads is to restrict lot sizes across the entire 100,000 to 150,000 acres of rural property in the HVPA!!!

The County absolutely must carefully review all other options or carefully present an objective and detailed alternatives impact assessment in order to avoid a legal challenge down the road. If this alternative impact assessment background work is not done before adoption of these Zoning regulations – they still likely would have to the same level of work defending and addressing these issue in responding to legal discovery, interrogatories and document production requests. But the staff and BoCC will be under legal requirements, time tables and directives which could be more harsh and time consuming than responding to my information request up front.

For those few individuals that have been there these past 15-years, they will absolutely remember the long series of court battles over off-site roads and zoning challenges that resulted in over ten years (2005-2015) long and protracted litigation cases involving over 10 plaintiffs. But with this Zoning proposal, county could be facing a lot more plaintiffs and large financial damage claims which could overwhelm the county staff resources and certainly could exceed the \$8 million in legal damage costs that ultimately the county tax-payers would have to pay.

I hope the BoCC and planning staff have their checkbooks out and are ready to contribute to the likely legal defense costs for their actions should the proceed down this property taking course. I would go one step further and ask that any BoCC or CD&P staff member or County Manager involved in this plan be willing to quit their jobs and write a self incriminating letter of resignation if this Zoning proposal results in major legal challenges against the county.

The County should immediately upon receiving this letter get the public works and engineering staff working on responding to this aspect of the County plan or the County's lack of responsive and effort will be called into questions after the fact. This is no small task and effort request and is absolutely required for the county to pass the smell test and prove their actions are not biased and are appropriate solutions to major unresolved problems.

12. Please produce documents and any written documents that support the county's 15 year (2005-2020) persistent, collective, and aggressive stance (regulations and administrative actions) that have driven up the cost of rural property development in order to slow rural growth. Please prove that the citizens that have elected the County Commissioners have been thoughtfully considered and factored into this Anti-rural development approach Lewis and Clark County has unofficially adopted and clearly has implemented.

One last request please have Mr. Italiano call me ASAP to apprise me of the Planning Board Hearing schedule so I can spread the word. This is especially important to know by Wednesday April 15 so we can prepare for this important hearing. If the hearing is to be rescheduled we also need to know that.

I also need to know what Mr. Italiano schedule is for producing the supporting documentation on the zoning proposal that still says pending on the Website despite the BoCC commitments that it would be completed by April 1.

And finally I want to know who will responsible for address all the topics hear in requested for response and the projected time table for a written response.

Respectfully Submitted

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Sent from Mail for Windows 10

Overview of L & C County County's Proposed 2020 Zoning Proposal - Rural Property Takings.

By John W. Herrin March 2, 2020

The rural property around Helena and East Helena represents about 150,000 of private property that could be developed and from the Census of 2000-2010 about 67% of the growth occurred in this rural area. The rural area represented about 95% of the buildable land surrounding Helena and East Helena, and the Counties plan it to force all new development into less than 10,000-acres (5%) of the land north and around Helena and East Helena.

**Under the County's Zoning proposal, land values will drastically drop in all the rural property and will skyrocket in the County's targeted "Sweet Zone". With only about 10,000 acre left of undeveloped land within the County's targeted "Sweet Zone" , and the availability of building lots will quickly be depleted and further limit future growth in the HVPA. In the last decade the supply of buildable lots has restricted growth and further anti-rural growth restrictions will only slow economic growth more in the greater Helena economy.**

As such rural landowners -- not just agricultural landowners -- will be immediately and severely damaged that will last **as long as** the Zoning Lot Size restrictions prohibit new rural subdivisions. And the damages will spread like a virus throughout the community, damaging small to large business and depressing the overall community growth.

The social damage will be just as horrible. The average home price in the Helena Valley Planning Area was \$250,000 just a few years ago, now exceeds \$300,000. The average price will skyrocket with the severe restrictions the county Zoning will place on available land -- which is simple supply-demand economics 101 that every high school student could tell you.

Affordable housing is at a crisis level in Helena and many employers are having real difficulty in attracting and retaining workers in large part because of the high cost of housing in Helena.

With the Zoning proposal largely taking out 95% of the buildable land in the HVPA, affordable or lower cost housing will become an even worse nightmare for our slow-steady growth western community.

The County Commissioners and Planning staff refuses to slow down and really evaluate the social and economic impacts and they have refused to present the true costs of this proposal in large part because they really know down deep inside that the damage cause won't be acceptable to most county voters or landowners.

The county has refused to bring maps to any of the first three public listening session and only did so at the last January 28th listening session -- and only then when I called Rodger Blatz (County Administrator), at 3 pm and instead his staff ignored my request on January 15 to bring 100 maps to January 23 listening session. Not one map has even been laid out in the County Planning office.

The Website is not user friendly and takes most people 15 minutes just to find the Zoning information if at all. And the county questionnaire cannot be completed on-line, so everyone must print it out and mail it in.

The County Planning staff at three listening sessions said they **would not send out mailers** to any of the impacted landowners. And they **also will not allow any of us vote on this most important land grab proposal** any county in Montana has ever considered.

The Board of County Commissioners and Planning staff keep **repeating the mantras "Predictability, land value stability and consistency" with zoning that is done all across the US.**

But almost nowhere in the US does zoning involve minimum lot size restrictions and certainly 10, 20, and 160-acre lot sizes. Nowhere in growing urban areas. Nothing like this is happening in Bozeman, Missoula, Great Falls, Billings or Butte.

Zoning is usually land-use, development type, development style restrictions etc. not property size.

The county is hiding behind these feel good generic statements that are not supported by the real facts. Groundwater supply, groundwater quality, flooding, fire and road impacts are required to be addressed by State and County Regulations.

Based on my 17 years of State government and equal number of private consulting years of environmental impact and cleanup experience including 5 years working for MDEQ in the Subdivision Division Review Section (I reviewed and permitted >400 subdivision application) and having undertaken 4 subdivision permit applications -- I can state with confidence and conviction:

- the County has no valid environmental or social justification for 10-acre lots size limits other than to just Stop rural development period.
- On Monday February 24, 2020 I submitted to the Planning Staff, the BoCC, and MACO Attorney's a well-researched and point by point assessment of all 5 key concerns the county says is covered in the 2015 HVPA Growth Policy Update. The document is 13 pages long.
- The fact is the North Hills and the Scratchgravel Hills have ample groundwater to support future growth and existing subdivision regulations require the developer to prove new wells will not cause groundwater depletion or adversely impact existing wells.
- Any property with low groundwater recharge can be allowed given the inside the home consumptive use per day is only 5 gallons -- 5 gallons -- 5 gallons. Period. In low groundwater recharge areas limiting the size of or eliminating non-native grass would eliminate any concerns of groundwater depletion given the fact that the 168 gallons of average wastewater that goes to the septic systems is returned to the groundwater.
- The Mt Bureau Mines and Geology detailed studies **indicate the worst groundwater supply areas of the SG & N Hills can sustain lot size densities down to at least 1-2-acres** -- and again that is the worst locations. As of 2009, the existing 1000 homes in the North Hills used only 8% of the available groundwater and that include 3 large high-density subdivisions that likely will never be repeated. And all these homes have bright green grass that eats of 98% of the consumed groundwater per house -- so reduce the irrigation by drip irrigation and native grasses and no one will go without water!!!

- So the County's excuse is -- RURAL GROWTH is evil and must be crushed. But they provide no real proof that a crisis that is not of their making is out there to be solved or that it could not be solved so other way:
  - like changing the subdivision regulations or
  - increasing taxes to fund roads and
  - add more full time EMS staff and equipment.
  - limit groundwater withdrawal if appropriate.
  - require higher levels of wastewater treatment.
  - build new road and upgrade existing ones.
  
- Other communities Like Bozeman, Missoula, Great Falls, Billing and Butte all are facing growth but no community is strangling their economic future by taking rural property owners land without compensation -- nor would they because they know that is a none starter for the citizens that pay the county staff and Commissioners salaries and should by law have the final vote on anything that takes away their property without compensation.
  
- You will find very few landowners that would want to grant such a permanent conservation easement on their property and still must pay the county taxes for basically having open-space. And damaging the overall economy of the community in the process of being so sweet and accommodating.
  
- Given the fact that L & C County must approve and issue Non-public septic permits to new landowners, degradation of groundwater should never occur.
  
- The 2012 Scratchgravel and 2019 North Hills fires have significantly reduced the overall fire danger of timbered property, but it still is the right of landowners to buy timbered property and accept the risk and take fire mitigation measures (e.g. steel siding and roofing) to significantly reduce fire lose risk. People that chose -THAT CHOSE - to live in timbered areas of the HVPA, must pay increased insurance for the right to live there. But this is the case all over the country. By the counties default reasoning everyone in Helena and all over the world should move out of their timbered and tree covered communities and move out into the barren lands (Like Nevada -Arizona - California or Mexico) or they might lose their house to a fire.
  
- And to address rural fire district volunteer burnout and taking them away from their real work, the county must address this issue and right now. **No more stressing out our volunteers. The younger generation is not stepping forward unless they get paid. So let's get out the checkbook and fix the problem. L & C County must start hiring EMS responders staffing regional centers 24-7 and take that burden off the RFD.**
  
- Most rural fire volunteer really like responding to help with fire suppression, but they do not want to keep responding to so many EMS calls and especially when they should not be called in the first place. For decades, now the County planning and BoCC are negligent in not addressing the real issues with RFD and should not target new

development for extinction because the county isn't taking care of real business and doing real planning and growth management.

- Roads. All subdivision greater than 5 lots, must hire an engineer to evaluate the traffic impacts to off-site roads and if there traffic would increase the average daily traffic more than 10%, then they have to pay the county for the developments pro-rata share of the cost to bring that road up to the county standards (which is very costly and the reason no major subdivision will ever happen along roads like Birdseye and Lake Helena because these deficient county roads would be too costly to for any large-scale development to make it financially viable),
  - As such, new subdivisions maybe one of the few ways rural roads are upgraded.
  - Also, the county own 2004 Transportation plan recommended the county facilitate N-S and East-West road corridors to improve future traffic flow and interconnected networks, but the county has done almost nothing to enhance the road network outside subdivision development driven improvements.
  - In 2005 the county attempted to pass a \$5,000,000 bond levy for roads and they did such a poor job of informing the public of how the upgrades would be used and what that might mean to the community over time -- the citizens voted it down.
    - The next year they came back with a \$500,000 bond levee which passed, but was not nearly enough to make a difference in the long list of county road redesign, reconstruction and maintenance. A band-aid on the elephant in the room.
  - **As a result of no active corrective action by the L & C Managers, the 536 miles of county road continue to deteriorate. Not real planning is being done by L & C County. No effort is being made to address future transportation needs in the county and how to address the backlog of upgrades and redesign needs of 536 miles of county roads and critical private roads.**
  - **And I know for fact that many of the mid and lower level staff in L & C County staff have been stymied and hindered from finding real solutions caused by poor decisions at the top levels of County management. The collective trauma especially hits the environmental staff and the public works engineers and workers who have seen many plans (e.g. 2004 etc. Transportation plans) written and knowing there are solutions out there that could fix problems, but a lack of vision and money stops them in their tracks before they can get started. So costly Transportation plans etc. sit on the shelves around the county gathering dust.**

But we are just supposed to let the county dictate via this crazy Zoning proposal to solve our roads problems because the county managers have for decades ignored real solutions or attempted to really manage growth in a meaning and well planning manner - which is their primary obligations.

And now the County planners and BoCC feel compelled to dictate a massive Social/Cultural/economic upheaval the likes of which has never been seen before outside of a third world country or a totalitarian society.

The legal challenge is easy to see coming with the county targeting Rural property owners for massive damage and then unduly enriching those lucky landowners that bought open ground in the County's "Sweet Zone". This massive transfer of wealth is unprecedented in Montana and I am quite sure almost no where in the US has this Type of aggressive government taking of property been done in modern times without some form of compensation.

The Fifth Amendment to the Constitution states "private property (shall not) be taken for public use, without just compensation."

Before this Zoning plan came into the horizon, nearly all landowners in the 150,000 acres of rural property surrounding Helena and East Helena had strong feelings of financial security in knowing their land is worth money and has gained value for them over the years and decades. And most rural property owners do not want to freely given up their hard earned investment for unproven theory the Planning staff has that 10,20, 160-acre tract size restrictions that severely hamper any future plans they might have had of making wise retirement and real estate investments.

Under the Zoning proposal many rural property owners won't be able to send their children to college, or they will not be able to retire how and when they had planned for years,

Real dreams will be smashed along with real wealth.

So many more problems will be created by this Zoning proposal than are solved it is literally unthinkable and astonishing the county staff and Commissioners can't see the forest for the trees.

How could the County Managers ever see the logic in this - if they would just stop and study case law. Study the 2005-2015 12 law- suites the county had to pay out over \$8 million to land-developers and concerned citizens because the Planning Staff and BoCC would not heed repeated and loud warning to stop the Taking of private property. The County since 1994 has repeatedly done unethical and harmful actions using their power to attempt to slow rural growth and this proposal is the ultimate conclusions of a 36-year history County mismanagement, abuse of power, and unethical administrative manipulation of innocent citizens, landowners and business people that make up this wonderful community.

The Planning staff could easily step-back and look at the social economic impacts given they supposedly did go to college and had to take at least basic classes on ethics, economics, real estate law, and yes planning. With even just a few thoughtful hours spent looking at the potential adverse impacts to rural property values and what their plan would do to county taxes, the impacts to agriculture etc. etc. they should have stopped before they even put pen to paper.

It would appear that the County Planning Staff and BoCC have no understanding of how much damage their proposed plan would have on the overall economy on not only the current generations of 22,000 rural citizens, but the damage will be perpetuated and compounded throughout the entire greater Helena and Tri-county areas plus it will compound down through the generations to come or as long as the citizens tolerate the abuse.

People who currently live in the HVPA rural zones must have a voice in all this and ultimately be given a vote on it. I personally see no way in H that once every landowner is properly informed and everyone is given a vote, that any land size Zoning restrictions would be allowed. Period. End of story.

Three County Commissioners cannot legally vote to take all this land without compensation without an informed vote of all adults being impacted. To date the County staff is showing they are ruthless authoritarian leaders than have no empathy or understanding of human nature, of what the citizen of Lewis and Clark County really need and how to get there.

**All three BoCC and every Planner working on this Zoning proposal should be held personally accountable for the economic and emotional damage they will unleash.**

Under the County Zoning proposal, they are only targeting rural property for the massive taking and financial damage - which is why I am certain the county will be sued as a class-action lawsuit. No government can discriminate and target one class of citizens and reward another class of citizens without getting sued. Why wouldn't all the rural property owners join and file a class action lawsuit against L & C County and name the BoCC personally?

The county needs to answer why they want to punish only rural property owners? Why do they feel is correct to take the life savings and investments from just rural property owners for your "Greater Good" dreamscape???? Greater Good of who. Greater Good - - Why. Greater Good says who?

**L & C County staff will be asked all kinds of Interrogatory and discovery questions they will not be able to answer, and they will spend the next 2-5 years being twisted into pretzels attempting to justify the unjustifiable. SO much for "Greater Good".**

From 1776 to 1812, the Fledgling US colonies fought back England in two major wars to break the bounds from the rule of the British Rule. Largely over the rights of citizens to self-rule, the right to protest against tyranny, the right to bear arms, the right to religious and personal freedom, the right to own property, the right to start a business and prosper without unethical and illegal government interference.

So, it must be said -- **all most everyone opposing the County Rural Planning proposal agrees that L & C County has for decades needed progressive and reasonable growth planning and implementation** -- just not this kind of zoning or planning. Smashing all rural

development is absolutely not what the citizen truly need or desire, nor did they ask for despite the claims by the county to the contrary.

Back to the Past County Miss-steps let's talk about ---- **Open Space** .

Sometime around 2010, a well-funded out-of-state environmental organization with strong local support, advanced the idea of selling the voters of Helena to vote for a new shiny object called "Open-space". They came up with a slick advertising campaign and mailed out very well laid-out and flashy information fliers, and thereby convinced the unsuspecting public to vote for an **open space bond levy – \$10,000,000 – and in My opinion the worst investment the poor citizens of L & C County could have ever made.**

**We needed \$10,000,000 investments in good roads and other infrastructure to facility growth. But again L & C County managers failed to assist L & C County plan and build for the future. Not real implementation of transportation plans.**

Any larger tract landowner willing to do some research, could apply for money from the County to keep tier land as open space. And I do not blame any landowner for applying for the money given we have the accumulated taxpayers money to give away. However, is this a wise use of our precious tax money? Again I would say most independent observers would say no. Not when that same amount of money would go a long way to improving the condition of our deficient infrastructure - specifically county roads.

The winning lottery ticket open-space landowners get a big pile of money and the citizen get nothing but blue sky and air. Generally, no additional public access is granted.

With 50% of the land around Helena being federal open-space and Mount Helena being the Second Largest City Park in the nation, why do we need more county funded open-space?

Plus, many large landowners over the past few decades have chosen to enter conservation easements where they get generous tax creates -- but the public normally receives no added public access or benefit, but landowner receives a generous tax break for years to come.

The County is asking us all to limit the growth our community. Limit growth to 5% of the available land for the **Greater Good**.

They want us to pile into the coal train, to shut up, be civil, enjoy the ride as they drive us all off the Grand Canyon just like Thelma and Louise in the 1991 Classic movie.

**They tell us they only are doing this massive land grab for the Greater Good.** But this great Good will end up destroying this community for as long as it is let stand. Or until we elect county commissioner who are for the people, by the people and of the people.

Our Great fore-fathers and -mothers fought the be free of English rule from 1776 to 1812 and we barely made the break several times. They fought for our freedoms.

- Most importantly our freedom to own land and to prosper free of tyranny and oppressive government interference in free commerce.
- Stand up and be counted. Tell the Board of County Commissioners and Planners that the real bosses of this community are the citizens and we will not be oppressed.
- We will not be subservient to Lords and Masters. Especially when they are not truthful and forthright with the people, honest in all administrative actions, and act in their biased self-interest.
- The County is required to act in the best interest of this community as a whole,
- To date the County Planning Staff and BoCC appear to be so convinced that rural property is so evil they must cut off supply of rural land or this community will not survive another moment.
- In the County managers ideal world -- rural landowners would freely and willingly give up their land for the "Greater Good" of the present and future generations so we all can live in a congested city surrounded by millions and millions of acres of open space. That is their vision of our future.

**“2020 Proposed Zoning – Technical Basis Failures to Disclose Report” by John W. Herrin (Private Environmental Scientist and Hydrogeologist).**

**February 22, 2020.**

**L & C County’s Rational for Large to Very Large Tract-Size Restrictions on Rural Property based on Cumulative Impacts to the 5 Key Concerns Defined in the 2015 County Updated Growth Policy:**

- Septic System Wastewater Impacts on **Groundwater Quality**,
- **Groundwater Supply** -- Existing and New Groundwater Well Impacts on Groundwater Elevations and the Potential for Dewatering Wells,
- **Roads**. Impacts of Additional Traffic on already Deficient Roads in the HVPA.
- **Flooding**, As it Relates to Additional Homes in the Valley,
- **Wildland Fire** Issues Relative to New Homes and Subdivisions, and

**A. Overview of MBM&G HYDROLOGIC RESEARCH REPORTS FOR THE SCRATCHGRAVEL HILLS AND THE NORTH HILLS:**

After the two December 2019 public hearings, Mr. Herrin read and digested the 10 plus years of water quality and groundwater supply research finding published by the Montana Bureau of Mines and Geology (MBM&G) Hydrological Investigation Reports (e.g. Scratch-gravel Hills Open-file Report 636 and North Hills Open-file Report 62B & 654) technical reports.

These three very detailed and expensive MBM&G Reports were final summary reports and hydrological investigations for the two small mountain ranges bordering the Helena valley bottomlands -- the 20 square mile Scratch Gravel Hills and the larger (52 square Mile) North Hills. Within these two more mountainous areas of the Helena valley, additional home-site development has withdrawn groundwater and area residents have been concerned about sustainability of groundwater with continued growth. Back in the mid 2000’s, the Department of Natural Resources designed portions of both Hills as Temporary Groundwater Control Areas – directing staff of the DNRC & MBMG to conduct further studies to help determine existing and future impacts on groundwater quality and supply.

Based on 10 years plus of research findings and impact assessment, **I believe the State agency reports do not support the County's blanket, simplistic and overly restrictive Zoning Proposal (minimum 10-acres, 20-acres, or 160-acre in size) for all rural (est. 150,000-acres) property within the Helena Valley Planning Area.**

The purpose of the two hydrologic study areas research was to provide Lewis and Clark County and State agencies with additional groundwater quality and aquifer characteristic details that were used to defining existing and future impacts of rural development on groundwater quality and supply.

The main objectives were to "assess the sustainability of current and potential future groundwater withdrawals, the potential for impacts to senior water-rights holders from groundwater withdrawals, and the potential for impacts to groundwater quality from septic effluent".

The following is my abbreviated interpretations the MBM&G three final hydrologic system research findings:

#### **I. Groundwater Quality – Natural and Septic Waste Impacts.**

- **Although a few groundwater supply wells water samples (1 in 78 North Hills and 5 of 25 in Scratchgravel Hills) were found to exceed drinking water standards -- due to both natural sources and septic wastewater -- these cases of contamination would generally never occur under current county and State subdivision regulatory reviews coupled with proper engineering design and per-application site specific studies.**

##### **1. North Hill Groundwater Study Area**

The MBM&G collected water samples (2005-2010?) from 28 representative wells within the North Hills study area. Of the **74 total water quality samples** were collected from 25 groundwater supply wells, and **only one sample exceeded the recommended drinking water standards** – and that was for nitrate (>10mg/l). No other listed drinking water quality standard was exceeded in any of the 78 collected samples.

The fact that only one water sampled out of 78 exceeded WQ standard, is actually very good news and indicates **as a general rule, existing subdivision permitting regulations are**

**working well and are adequately protecting human health.** And for the one water quality sample with the elevated nitrates, it is logical to assume the homeowner was immediately informed and a course of corrective action take to upgrade or fix the suspected wastewater septic systems and/or reconfigure/repair the well in order to provide the homeowner with safe drinking water.

It is noted in both the Scratch Gravel Hills and North Hills MBM&G reports indicate nearby groundwater wells can be contaminated wastewater seepage in those areas where the underlying soils are coarse-textured, low organic matter, and are shallow. Another key design consideration is the connection between surface infiltration water and fractures that could carry septic waste to downgradient wells completed in fractured marine sedimentary or granitic bedrock.

As such, a site-specific septic and well design plan required of any new proposed septic systems should prevent any future problems with wastewater contamination of groundwater. L & C County also has initiated a rather vigorous septic system inspection regulations in order to facilitate all county permitted septic systems are being properly maintained.

## **2. Scratch Gravel Hills Well Water Quality Test Results.**

For the Scratch-gravel Hills 25 domestic wells were sampled, and drinking water quality standards were exceeded for nitrate (3 sites), arsenic (1 site) and uranium (1 site) – with arsenic and uranium being naturally occurring elements near a fault zone and granitic bedrock that is unrelated to septic system pollution contamination. The one high arsenic sample was found along a know fault zone with moderately bad water quality and the high uranium test site correlated with granitic/bedrock mineralized contact zones.

As mentioned, in both MBM&G study area reports, septic systems must be carefully designed and maintained in areas where surface soils are coarse texture and lack fines or organic matter to adequately remove nitrate from septic system wastewater. Properly designed wastewater treatment septic systems should remove most of the nitrates before reached groundwater, but in highly fractured bedrock areas where surface infiltration can leach quickly and easily into bedrock groundwater, nitrate laden wastewater could travel towards downgradient wells and thereby contaminate a well that is either located in the wrong location, not cased deep enough, or not properly sealed.

Again, given the fact that the L & C County regulations require all new septic system applicants to unearth a backhoe test pit to a depth of 8 feet and the County Sanitarian staff must inspect the test pit and characterize site specific soil/rock profiles, with the County staff making the determination as to the final design approvals for all non-public individual or cluster septic systems, future groundwater supplies should be protected. For public wastewater treatment

systems, these systems are reviewed and approved by the professional engineering staff at MDEQ.

Under the current L & C County septic permit and subdivision review site assessment recommendations are done by the County Sanitarian staff and as such, the county must evaluate the agencies permitting and inspection processes if large-scale groundwater quality situations persist.

As such, L & C County's proposed Zoning regulations that all rural property to have to be 10, 20, or 160-acres in size has no real factual basis from a groundwater quality and human health perspective.

## **II. Groundwater Supply & Impacts of Current and Future Development.**

From 2005-2014, the MBM&G Conducted Detailed Groundwater Aquifers Hydrologic Investigations including complicated Scenario Modeling of both the North Hills and Scratch Gravel Hills. These reports included Preliminary Findings relative to Subdivision Well/Lot Densities.

The Following is John Herrin's **SUMMARY of FACTUAL FINDINGS** based on these MBM&G detailed hydrologic studies. The wide-ranging Bureau efforts included drilling many monitoring wells where important data was missing and then building reliable modeling programs to assess existing groundwater conditions within 4 distinct areas of the North Hills, and several in the Scratchgravel Hills. Then the researchers projecting future growth patterns impacts on groundwater supply and groundwater elevations/drawdown.

**Using the MBM&G modeling results, Mr. Herrin took their research work to the obvious conclusion – Generally speaking, groundwater supplies are sufficient for moderately dense subdivisions (1-2 acre lot size or smaller) even in the more limited areas of the HVPA (the Granite Bedrock areas of the Scratch Gravel Hills and the Helena Valley Fault-line of the North Hills).**

**Future development proposals would have to conduct site-specific hydrologic investigations as per County & State Regulations, but the results will likely confirm that the vast majority of the Helena Valley buildable Rural property could support lot densities even below the worst-case blanket average of 1-2-acre lot sizes.**

It is important to note, that as of 2009 there were at the 2150 total residents in the North Hills were collectively using about 7.5% of the available groundwater and even in the most dense areas north of Lincoln Road and along N Montana (Townview, Ranchview, & Northstar etc.) the percentage of use was still only 19%.

The MBM&G Open-file Report 654 (Hydrologic Investigation of the North Hills, page 342) **summary states "While there may be an overall deficit in the North Hills study area groundwater budget, it is slight, and cannot be definitively measured using a water budget. That there is a budget deficit is shown by some hydrographs (wells) that have consistent downward trends, which are localized to areas where bedrock and Tertiary aquifers are used for high-density housing developments."**

**Numerical modeling can evaluate** the likelihood that the aquifers can come into equilibrium with current stresses, or if the current level of development exceeds the aquifer's ability to supply water over the long term. If current development can be supported, the level of development that can be sustained will also be evaluated."

From the 1950 to the present, Lewis and Clark County, the US Geological Survey, and the Montana Bureau of Mines and Geology have been collecting detailed groundwater aquifer information on the Helena Valley Planning Area. Within the Helena Valley Planning Area, groundwater generally follows the overall landscape, with highwater elevation groundwater in higher elevation topographic areas – and all groundwater eventually flowing towards Lake Helena. And these research findings show the overall pattern and potentiometric contours of confined and unconfined aquifers are remarkably consistent over time.

Despite the interconnectedness and overall consistency of the overall HVPA groundwater aquifers, actual the site-specific depth and productivity of groundwater wells can be highly variable, and that statement is especially true of areas underlain by granitic bedrock within the Scratchgravel Hills. A few sites underlain by granite across the Scratchgravel Hills have produced very little if any water despite drilling to depths of even 500 feet. Groundwater supply from other sedimentary bedrock (e.g. The very old and hard Belt rocks) can also be a bit unpredictable but generally better than granitic bedrock sources.

The areas underlain by thicker deposits of unconsolidated colluvial and alluvial deposits generally can produce higher volumes of groundwater especially at lower elevations in the valley. These unconsolidated deposits exist in the lower elevation and valleys of the Scratchgravel Hills and most of the non-timbered areas of the North Hills.

**Site specific groundwater hydrologic testing is required of all major subdivision applicants, and a subdivision application must affirmatively demonstrate that all proposed groundwater supply wells (be it individual, multi-user or public) will not deplete groundwater supply for that well or any existing wells.**

Water rights lawsuits, forced MDNRC to limit water right annual with-drawals to 10-acre feet, unless the applicant purchase water rights from nearby existing water-rights leaseholders. As a

general rule, the 10-acre feet limit on new subdivision projects, would limit the number of new lots to 13, unless additional water rights are purchased. This rather new legal water-right limit has dramatically changed the tenure of all new subdivision developments further limiting growth in some areas where additional water rights can not be obtained or not obtained at a price to make a project feasible.

It is impressive to note -- and more importantly contrary to the L & C County Zoning proposal -- that both the Scratchgravel Hills and the North Hills Controlled Groundwater Study area detailed hydrologic investigations determined that even in the more restrictive hydrogeologic conditions, that both mountain ranges could support home densities in the range of 1-2-acre, and even less than 1-acre on the lower elevation slopes of both mountain valley grassland pediment deposits.

And based on metered public water supply and wastewater treatment systems, the average water use per household per day ranges from 400 to 500 gallons (average 435g/day), which includes an amount of 168 gallons is returned to groundwater via wastewater infiltration back into the groundwater (recycling).

**The actual non-irrigation water use per household is only 5 gallons per day.** For the green-grass covered lots of the Northstar, Skyview, Townview, and Ranchview Subdivisions the 6 month irrigation season removes (on an annual average) 267 gallons per day from the groundwater aquifers.

In fact, **lawn and landscape irrigation makes up 98% annual groundwater consumed at each house.** As discussed below, reducing the amount of irrigation water wasted per household can have a dramatic positive affect on future groundwater supply and depletion balances in the more limited aquifer supply systems.

Even in the high-density growth of homesites in the Pumping area A (1995=130 homes, 2005=312 homes, and 2009=441 homes, projected 2014 =570 homes) the drawdown total of the 35-40 feet from the 10 high capacity public groundwater well battery.

In tota, the NW upper grassland and timbered slopes west of the Interstate covers an area of 12,572 acres and has 991 homes that consumptively uses about 7.5% of the available groundwater flow in this section of the NW west of Interstate 15 North Hills. The lot size density equates to 12.6-acres per lot.

Using simplified ratios approach to the amount of available groundwater use under the North Hills, if the average lots size over the majority of the North Hill were reduced to:

- **3.2-acres, irrigation/domestic use would withdraw 30% of groundwater flow.**
- **2.1-acres/lot density consumptive use would increase to 45% of GW flow.**

However, this density would never be reached in any open free-market development future scenario given the fact that many existing lots already built on in the North Hills would not be reduced in size and many of these are already larger 10-acre or larger. SO the densities would never reach these smaller average lot size densities.

As is repeatedly mentioned through this Impact Assessment Report, all new subdivision proposals in the rural areas would have to conduct site-specific hydrogeology and aquifer pump-tests to confirm adequate water supplies and prove the development would not adversely impact existing groundwater supplies.

In addition, it should be emphasized that new landowners are being more environmental responsible and as such **new landowners likely would accept significant restrictions on irrigation usage, to significantly reduce household groundwater usage** (e.g. zero land landscape design especially in the timbered areas of the HVPA).

Plus water irrigation conservation methods such as **drip irrigation significantly reduce irrigation use of gardens and tree/shrubs.**

**Eliminating nonnative green grass lawns is the biggest water conservation measure** and many new landowners could easily give that up and let native grassland species come back that don't require additional irrigation water.

If new development required very small patches of or no irrigated lawns, the average **consumptive water usage per household could easily kept under a 100 gallons per household** and thereby allow a lot more houses to be built at higher densities than outlined above. And that to me is something all new upland developments in the valley should be actively considering and the County should be actively investigating instead of attempting to arbitrarily dictate one-size fits all 3 Zoning areas (10, 20, and 160-acre tract sizes).

The MBM&G **hydrologic studies of the Scratch Gravel Hills, also indicate that even in the lowest productive bedrock supply zones could provide ample and sustained groundwater supplies even at densities of 1-2 acre lot sizes if landowners in limited groundwater areas agreed to low irrigation limits, and most of the non-timbered areas could support lot densities less than 1-acre in size.**

It also should be noted in the 2013 MBM&G "Hydrologic Investigation of the Scratchgravel Hills Study Area" on page 51, "Recommendations" the report states "This study shows the Scratchgravel hills Stock and the Helena Formation (bedrock aquifers) are particularly limited in their ability to supply water to wells. Current lot sizes on these units are typically 10-acres or more, and no area-wide groundwater declines is seen at this time. Study results suggest that if

**development at a density greater than one home per 10-acre (64 homes per square mile) is proposed, target groundwater levels should be defined. Modeling can assist in setting these targets... Use of models in this way should allow effective, but not overly restrictive, controls to be adopted. Monitoring would be needed to ensure that target groundwater levels are maintained.**

All new subdivisions application proposals are required to submit detailed and site-specific groundwater investigations that clearly and conclusively define adequate groundwater supply for the proposed subdivision and also adequately protect all existing water rights. All subdivision applications are required to contain these detailed groundwater system characterization and impacts reports that must be completed by competent scientists and engineers or the application can be denied by Lewis & Clark County or DEQ regulatory review staff.

It is important to note, that the very well planned and executed MBM&G groundwater reports done for the North Hills and the Scratch Gravel Hills areas are very helpful and enlightening, however they stop short of providing enough information to fully characterize the actual density of homes that should be allowed on any patch of ground outside the few select areas that the Bureau modeled in detail.

In the agencies final 2013 Summary Report "Hydrologic investigation of the North Hills Study Area" the agency conducted detailed groundwater modeling on two select sites to illustrate the extremes of development density likely in the North Hills:

- the lowest likely groundwater supply zone in the North hills was the clay rich Helena Valley Fault Zone (roughly located where the grassland give way to the timbered forest lands).
- The second modeled area was the highest housing development density -- located about 1 mile north of Lincoln Road and west of N Montana Avenue.

The MBM&G 2014 North Hill Technical Report summary states the following:

- "While there may be an overall deficit in the North Hills study area groundwater budget, it is slight, and cannot be definitively measured using a water budget. That there is a deficit is shown by hydrographs that have consistent downward trends, which are localized to areas where bedrock and Tertiary aquifers are used for high-density housing developments.

Overall, the North Hills area transmits about 13,750 acre-feet of water per year as groundwater. The range is from 12,000 to 15,000 acre-feet per year.

**In total, domestic wells within the North Hills -- above the Helena Valley Irrigation Canal & valley-bottom alluvial aquifers -- withdraw about 8% of the total flow (1,070 acre-feet).**

Sub-Area 2 (**North of Lincoln Road and West of N Montana**) has the highest percentage of water used by wells using about 19% of the available groundwater flow, and that is the area with the clearest evidence of falling water levels (and highest density of development).

The results of this analysis were used to constrain the groundwater model prepared for the North Hills study area (Waren and others, 2013). Numerical modeling can evaluate the likelihood that the aquifer can come into equilibrium with current stresses, or if the current level of development exceeds the aquifer's ability to supply water over the long-term. If current development can be supported, the level of development that can be sustained will also be evaluated."

The MBM&G chose to drill several groundwater test wells along the **most groundwater limited area of the North Hills – the Helena Valley Fault**. Then the Bureau researchers modeled what would happen to groundwater levels under two different average density scenarios:

- 47 homes evenly spaced on a 160-acre ¼ section tract of land which works out to be **3.5-acre per lot size**. The model indicated a **cumulative drawdown would only be about 14 feet**.
- Then they modeled a scenario with **10 times the density (0.35/acre/lot) on the same North Helena Valley fault-line and the result was a drawdown of 160 feet**.
- So my mid-point calculation would indicate a lot density of **1.6-acre would result in a drawdown of about 73'** and
- **2.45-acre lots would result in a 30 foot drop** – a likely lower limit of likely acceptable overall regional drawdown. What the MBMG modeling indicates at even in the **worst-case area** of the upper non-timbered grassland slopes of the North Hills the lower limit of density along the **Helena Valley Fault line would be 1.5-2 acre minimum lot size**.

Again, firmly stated, L & C County has no technical basis for the 10, 20 and 160-acre tract sizes and this is particularly true relative to groundwater resources. Groundwater quality and quantity resource are protected by existing county and State regulations and to say otherwise is not factual or truthful. If the county sees a real need for additional protections they should facilitate additional groundwater resource investigations to address specific issue and potential adverse impact.

The County cannot support the taking of rural land without compensation – a legal taking issue that will likely end up with L & C County and MACO having to defend an illegal administrative action plan that is unsupported technically or legally.

**The County could have spent the past 2 years facilitating additional groundwater modeling research investigations, and then devise a Zoning plan or propose changes to the subdivision regulations of there is scientific evidence that affirmatively demonstrates they can use groundwater supply as basis for limiting lot sizes over large tracts of lands.**

As such, it is my professional opinion that the county has not proven a groundwater supply or water quality scientific basis for the 10-acre, 20-acre or 160-acre lots size restriction Zoning proposal.

### **III. ROADS**

At the 4 County sponsored listening sessions, the only real factual statements supporting the Zoning proposal relative to the 5 Key concerns given by Mr. Italiano was his statement that they had this recent subdivision up in the north hills and it did not meet county standards and it was very rough and difficult to accept as adequate to allow new development. However, he failed to give any more specifics, and the failure of existing roads is something the County cannot be blamed solely on new development.

In fact, since 2007, Lewis and Clark County added a requirement that new major subdivision have to pay for engineering traffic analysis on off-site access roads and if the subdivision increases the traffic volume on that off-site road by more than 10%, then the developer must pay their market share contribution to bring that road to the current county road design standard. The County then must spend that amount of money on upgrades to that segment of road. So only new major subdivision actually subsidize and improve many existing rural road users. Also, if a subdivision has to contribute to improving off-site county roads, the county taxpayers and the general public receive the benefits without having to invest taxpayer dollars to upgrade deficient roads.

At the two December listening sessions, Mr. Italiano even lamented that one of the reasons to stop additional rural growth was the fact that Lewis and Clark County has over 536 miles of county roads and they don't have the earmarked funds to adequately maintain and upgrade these roads.

The lack of good roads in the county, and in particular good county roads -- is a decades old problem that has not and is not being properly addressed either privately or by the County. Unfortunately, it appears that the County is making the claim by default that any new rural

development will cause significant future problems, but they have not produced a single bit of supporting evidence or supplied any published report findings to support this claim.

Truth is the county CD&P and BoCC have not made any effort to address the transportation issues other than to try to severely restrict rural growth via the 2020 Zoning proposal. Back in 2004-2005 I read through the Lewis and Clark County 2004 Transportation plan and attended a public meeting on newly developed L & C Transportation plan.

The main recommendation from the transportation engineers was for the county to actively facilitate the layout and construction of N-S and EW corridors over the valley to facilitate future growth in the valley. But to my knowledge the county has not been able to make much headway on basic and future growth driven roadway system improvements, largely due to a lack for money and public commitments. This community failure to implement adequate transportation network upgrades, has left the HVPA deficient to the overall detriment to this county and future generations.

Looking back in time again to sometime around 2005-2006, L & C County managers did develop an election petition to the County Voting ballot, requesting a \$5,000,000 bond authority for road construction and maintenance. Unfortunately, the \$5million dollar bond levee failed to pass in large part because the county did a very poor job of educating the public on the merits of the investment and did not hold any public meeting on it that I know of. And I do understand that the county by law cannot openly advocate for bonding funding, but a way around that is holding educational outreach and public hearings to spread the word and gain public support. Plus beneficiary groups could have been formed to advocate for transportation plan funding outside of the actual county itself.

A year or so later the county came back with a \$500,000 road maintenance bod levee which did pass but is too small a fund to do much and certainly does not allow the county to make major roadway reconstruction upgrades that are sorely needed all over the county.

Yet several years later, an out-of-state and local environmental advocacy groups sponsored an open space bond levee. The developed and mailed out thousands of very well-designed mailers to all the citizens in the county. And this simple and low-cost effort resulted in the County voters approving a \$10,000,000 open-space bond-levee.

In my opinion, this taxpayer funded open space bond levee has been the single worst county funded investment in modern times and instead that amount of bonding should have gone into our transportation systems. I've read about just about everyone of the half-doze or so open-space bond levee give ways the County has approved that merely enrich the landowner with nor real benefit the county taxpayers other than OPEN-SPACE (e.g. no additional hunting or hiking access or development or access road or parkland areas).

The only open-space land investment this county has made in the past 10 years that really had public benefits was the last one in NW L & C County afforded the citizens any real benefit back – added access to large tracts of public lands. All the other open-space payments gave the County citizen nothing in return except to keep the land out of development – which in the end just spreads growth (e.g. Gehring Ranch = \$1,000,000 to raise more buffalo).

With more than 50% of the land surrounding Helena being open-space – Mount Helena the second largest city park in the US, the vast Federal forested areas managed by the BLM & USFS, state lakes & lands, and large agricultural conservations easement (e.g. Metropolitan Bar and McMaster's ranch etc.) in my humble opinion the citizen of L & C County needed improved road and transportation investments not more open space.

It is obvious, L & C County requires major transportation network improvements including connecting N-S & E-W corridors, however the County for the past 30-40 years has not gone much beyond the preliminary planning documents and did not aggressively move forward with funding solutions that result in actual on the ground transportation upgrades. By not addressing these funding and infrastructure improvements issues decades ago, the costs and logistical hurdles keep compounding with no real County plans to address the issue beyond this overly simplistic and likely illegal land grab Called Zoning 2020.

Taking of 95% of the rural land out of development with this Zoning proposal will not allow existing rural roads to be improved and this plan with drastically cut future tax revenues coming into the county so the future prospects for planning and actual road network improvements will likely be even more severely retarded.

#### **IV. Flooding**

Since the mid 2000's, all new subdivision development must affirmatively demonstrate that all flood surface water is not impeded and is safely passed through the subdivision. In addition, the subdivision is required to store the increased runoff generated by the impermeable surfaces within each lot and to create stormwater retention facilities adequate to store the hypothetical increased runoff amount generated by a 2-year 1-hour storm event. Such is not the case for older subdivisions or properties constructed in prior time periods.

In addition, county and state law preclude construction of any permanent building within the floodplain and the county even has a 200-foot setback from any active floodplain.

As such, the county has not real factual basis for requiring large to very large rural property minimum tract size restrictions relative to flooding issues or impacts to flood-prone lowlands.

## V. Wildland fires.

County and State subdivision regulations require all new major subdivision developments to research and fund the writing of a complete Preliminary Plat Application and Supplement report that adequately details the existing environmental site characteristics and impacts that could be expected if the application for development is approved. As part of the Plat Application, each major subdivision applicant must adequately address wildland fire hazards and propose a mitigation plan that the local County Rural Fire Districts support.

In addition, since 2007-2008, Lewis and Clark County has required all new major subdivision to commit to installing on-site fire suppression water supply systems (either 250-750 gpm wells or 30,000 or higher static water storage structures) in the unlikely event of a wildland fire threatening the surrounding landscape. Unfortunately, the county has not backed off this on-site fire water supply storage/well requirement even though most older systems are not being properly maintained and the rural fire districts are refusing to hook up to them for concern about contaminated water and lack of maintenance.

In December 2018, I produced over 100 pages of documentation requesting the county remove this costly requirement and testified at BoCC minor subdivision rewrite hearing in Mid May 2019, and the three BoCC voted to request that the County Planning Staff to complete a detailed review of this issue by the fall of 2019. But I asked Peter Italiano on or about December 28, 2019 where he was on rewriting the subdivision regulations to remove this requirement and he said he had had to put it in the back burner because he has been so busy working on the Zoning proposal.

Given the fact that large swaths of timbered land in the Scratchgravel Hills burned in 2012 and this past fall large acreage of the North Hills burned when an explosive rifle bullet ignited the forest. As such, **the fire danger in large segments of the HVPA have been significantly reduced.** And the Forest is undertaking major effort to mitigate the spread of wildland fires especially in the Rimini and Upper Tend Mile Creek watershed. Plus the City of Helena recently announced an major fire mitigation plan is underway in the South Hills etc.

In order for L & C County to use the **wildland fire danger as justification for the 10. 20, and 160-acre Rural property lot-size restrictions,** the county **must provide solid scientific evidence** that justifies the land value takings for each tract of land that is proposed to become open-space.

The County has to **complete a very detailed and credible economic cost benefit analysis** which to date the county refuses to even consider or acknowledge that they obligation to address.

Social-Economic Impact Analysis

2020 L & C County Zoning Proposal 2/29/2020 by John Herrin.

**1. Economic Costs - Simple Math Calculation Damage to Rural Property - Takings.**

Note: Source of Basic Land Sale Values came from Tim Moore of Moore Appraisal 12/28/2019.

Dry Land Agricultural Sale Price = \$300/acre. Confirmed by 2/18/2020 Verbal Testimony by Mark Dehl at L & C County Board of County Commissioners Hearing on Zoning Proposal.

A low end average land price for 10-20-acre size lots in HVPA = \$5,000/acre. Added value if 1-2-acre lots sold for home sites would likely be \$37,500 to \$85,000/acre.

- Given the fact that most land or builders buy land based on the number of homes that can be built on a property - with Zoning future land buyers will primarily looking at one home per lot and only pay a little more money for additional acreage. So whereas a buyer might pay \$75,000 for a one-acre lot, they might only pay a little more if any for the added acreage in a 20-acre tract - especially if there suddenly are a lot of 20-acre tracts on the market. Under zoning the additional acreage really does not add much if any added value to the property.
- And most rural property buyers do not want a 10-20 acre size lot as it is too much land for them to maintain or keep weeds under control. As a general rule, most rural land buyers want land sizes from ¼ to 2 acres in size and any lot size greater is not what most landowner want or need.

Rough calculation of the amount of rural land in the HVPA = about 150,000-acres and assume 40,000-acres already divided into 10-acres lots on average. Leaves about 110,000-acres that could be future divided.

**A. Potential Total Land Value 2020 Takings Claim Scenario #1.**

Low end calculation damage in lost value if large agricultural tracts were zoned 160-acres or larger.  $\$5,000 - \$300 = \$4,700$ .  $\$4,700 \times 110,000 \text{ acres} = \$517,000,000$  dollars lost in value.

**B. Potential Total Land Value 2020 Takings Claim Scenario #2.**

Another way to calculate lost value was given by John Navotney (2/18/2020 BoCC Zoning Hearing) backed up by another ranch/farmer -- stating the fact that their Loans with Banks could be cut in half their land value if the land was zoning by the county (equal to creating a conservation easement on the property). Under zoning, area banks would likely cut agricultural credit-lines in half (Note: which seems overly generous). Mr. Navotney also indicated that he paid more than the value of two adjacent tracts of land to add to his business, because it had more value than agricultural production would justify and if the bank cut his loan ability in half he would have to come up with \$200,000 in operating capital that he does not have,

Assuming an average per-acre undeveloped lot at  $\$5,000 \times 50\% = \$2,500$  in lost value.

Damage calculation using this alternative calculation would result in  $\$2,500 \times 110,000\text{-acres} = \$275,000,000$ . Based on 50% lost value for conservation easement.

**C. Potential Total Land Value 2020 Takings Claim Scenario #3 - higher density rural land development.**

And if the land were developed into higher density lots for resale to future home buyers, the damage to the landowner/developer would be significantly greater than  $\$2,500\text{-}\$4,700/\text{acre}$ .

Using the lower end value of medium density development enhanced property lost value could be  $\$50,000/\text{acre} \times 110,000\text{-acres} = \$5.5 \text{ Billion dollars}$ .

If the total end value of an acre of land were more (e.g. in higher density development) the total could be even higher.

Now all these simplistic calculations assume that every acre of land in the County's Rural designed HVPA area would be developed to a higher value -- and would not happen.

Each and every person in the rural areas would have to go to court to prove real damages and hire experts to determine the actual damages. Which would be a huge burden on the citizens, and the county creating a lot of wasted negative energy and expense for everyone, However, we should note, that if county lost in court (a high probability), then the court award plaintiff's additional damages including legal and court costs.

But what these simplistic calculations do underscore is the general scope land that is being impacted and the scope of real-life damage this Zoning plan could have on business owners and property owners. It also underscores the potential cumulative impacts lot size restriction could have by withdrawing land value and the future opportunity for normal growth patterns in the community.

Basic economic theory states for every dollar spent in the community compounds 5 fold as it travels through the community. So any money taken out of rural property owners, builders and trade associated trades people is money taken out of the community, with compounding negative impacts to everyone living and working here.

The county estimates that roughly 22,000 people currently live in the estimated 150,000 acres of rural land which equates to about 8,800 homes

(Note: John Herrin asked for but has not been given housing or population estimates for any of the three major rural property classifications).

Beyond just agricultural business landowners impacts, the Zoning proposal would likely significantly reduced the overall value of all current or future rural property and the negative property loss more than likely would in large part correlate with the size of the land underlying it. Larger land tracts would be more impacted than smaller ones, and lands closer to the county "Sweet Zone likely impacted the most.

Also the larger the tract size the county Zoning dictates (e.g. 10, 20, 160 -acres) the more negative the impacts would be on the underlying land value,

In a large extent, more recent land purchases would be the most vulnerable to adverse damages given their respective mortgages would likely be higher and the price of the purchased land higher.

Most recent larger tract Non-agricultural landowners purchased land with inflated property values based on the potential future value of the land were to be subdivided. Under the County large tract size Zoning proposal, the inflated prices of more recent purchases likely would not be recoverable in the short or long -term. In some cases this could put new land purchaser's in a financial bind with their lenders or in real terms especially if the market value of rural land greatly depreciates as is expected under this Zoning proposal, Future financial gains when the large tract lands are resold may not even recover the purchasers original investment when profits were almost assured without Zoning.

How many existing landowners would lose value would generally depends on the size of the property they own and the physical characteristics of the property. Many of these existing landowners with larger tracts of land, would like see the most significant drop total value.

These basic damage calculations also help put into perspective County maybe subjecting the taxpayers and citizens to the risk of protracted legal actions and possible costly damage claims if the 2020 Zoning plan is adopted with large tract size restrictions on rural property. The County and tax payer do not have large sums of money sitting around to defend legal actions and possibly of having to pay the legal bills of plaintiff's plus settle damage claims if the courts rule against the county on the 2020 Zoning plan to severely restrict lot sizes only on rural property in the HVPA.

## **2. Secondary Economic Impact of Large Tract-Size Rural Zoning on Overall HVPA Economy.**

With the large -tract size restriction only on rural property, the overall growth in the Helena Valley Planning Area will be greatly surprised going forward and significantly lower future economic growth of the HVPA.

Additional damage would occur to future generations of landowner as land values climbed significantly in the Sweet Zone (driving up future home purchase prices ) and land values in rural areas remained severely depressed.

And additional Economic damage would occur to overall HVPA economy as almost no rural building would be occurring on 90% pf the available undeveloped land of the HVPA. The economic impacts include a wide range of small to medium size local business such as home builders, realtors, construction trade contractors, and all Helena area business large and small.

There is no easy way to calculate the secondary impacts of this county proposal and it is beyond my limited knowledge to even venture an estimate other than to say this plan would have a very significant reduction in the future growth of the HVPA and as such a significant reduction in economic growth of the community for as long as the Zoning Lot Size restriction stand in place.

## **3. Other Social and Economic Impacts.**

- **Schools and County Taxes.**

Recent Independent Record news articles state that the Helena school district is about \$1,000,000 (Helena IR 1/29/2020) in the red and must layoff a large number of teachers, and support staff plus find other ways to trim the school district budgets to make up for budgetary shortfalls. The primary reason is that construction of a new elementary and high school in East Helena.

But the Zoning proposal will remove a large portion of future tax income to the county and both East Helena and Helena school districts.

Taking 90% of the available land out of the future growth of the HVPA, will have significant impacts on all future county tax revenue income into the county. The county staff are the correct party to do such an economic impact analysis, but to date the County Planning Staff and BoCC has refused citizens request to consider completing an economic impact assessment even on very basic level so it is not possible to quantify the impacts beyond a simple statement that they will be significant.

- **Cost of Land Will Increase in HVPA with Proposed Rural Zoning.**

- The cost of land in rural areas will be severely depressed as noted above.
- Land value within the L & C County targeted "Sweet Zone" (L & C County's Urban, Mixed Urban and Mixed transition) will have to go way up.
- Current undeveloped landowners will have an immediate and significant increased land value as soon as the L & C County Zoning proposal is passed.
- Prices in County Targeted "Sweet Zone" would like go up at least 10% or more that over time the increased value would greatly increase the rate the same property would have increased without Zoning.
- Fact is there is not that undeveloped land left in the county's Targeted "Sweet Zone" -- rough calculation <10,000 acres), over time this very limited land supply will begin to compound land and ultimately home priced forcing more and more people to live in Condos or apartments.
- As indicated, as land prices march upward the average size of lots will have to greatly decrease - so much for living the dream of owning land in the Big Sky State.
- Currently, the average price of Helena homes the past two years was close to \$300,000 and not that many years ago the average price was around \$250,000. With the Zoning Proposal, the average price is bound to go way up and therefore more county residents will be forced to live in condos, apartments or public subsidized housing.

- Affordable housing is now called homes costing less than \$250,000 however most of these priced homes are smaller, many need remodeling and generally have hidden costly repair problems down the line. And less and less young people and people on fixed income can afford a mortgage on a \$250,000 home and one that needs work.
  - **Lack of and Need For Affordable Housing**
- More apartments and public housing would have to be built to accommodate those citizens that could not afford to buy homes.
- 11/23/2018 IR article entitled "Employees need affordable housing" and further states "People come from Billings and Butte to work for me but can't find anywhere reasonable to live" says Terry Gauthier owner of 2 McDonald's restaurants. "Lack of people to hire impacts subcontractors, such as plumbers and electricians, more than anything else. He said waiting for subcontractors to have time for a job often adds one to two months to a house project. He could build three more homes per urea with more readily available staff." says Chuck Casteel, owner of Casteel Construction.
- The lack of employees and affordable housing is costing home buyers more money for completed housing which in turn hurts the community with higher housing costs --were additional quotes in the IR article attributed to Donna Durkel (Helena Building Industry Association).
- In Missoula housing prices jumped 30% from 2010 to 2018, but wages have not kept pace for most wage earners (IR May 6, 2018). And the percentage of income dedicated to housing increases dramatically opposite the amount people earn, making housing the largest cost to most lower income earners. Discretionary funds evaporate which leads to household instability, plus social and emotional household stress and costs to society.
  - **Growth is Limited by County Regulations.**
- Overly Restrictive Subdivision and Zoning Regulations do have a large impact on land and home prices, but with a huge influx into Montana from out-of-state buyers with large equity positions, the real estate markets are not currently severely limited by price.

The lack of supply of affordable land in Helena is future documented in other reports cited below and the County's Zoning Plan will only severely compound the supply restriction and upward spiral of housing costs in Helena.

As a factual backdrop lets look at the basic real estate market of western Montana and in particular the Helena RE market. In western Montana real estate has seen a impressive rise at over 4% -- rising at a rate of 30% since 2013. Bozeman tops the charts at 55% growth rate (11% a year). Helena by contrast Helena real estate price increases lagged behind the average at 16% from 2013-2018, an average annual growth rate of 3%.

"Helena's economy continues slow grow" (IR 1/30/202) article states wages in L & C County remained flat from 2016-2018, and then spiked to 5% in 2019 largely due to

legislative cuts that impacted the 53% of the local job pool of state workers from 2017-2018. Predicted economic growth in for Helena in 2020 is 2% and 1.6% thereafter. In 2019 the work force in the County topped 34,596 people , a gain of 494 (1.4%) workers in 2019 (Source Cathy Burwell CEO of Helena Chamber of Commerce).

The main factor driving up real estate costs faster than wages, is the influx of cash-rich out-of-state buyers driving up the demand for more land and more single family housing. In recent years more out-of-state buyers are now looking at Helena are real estate market after they visit the higher priced markets of Bozeman and Missoula, looking for the rural smaller city lifestyle but still being able to afford a home with the desired amenities.

Unfortunately, as stated above, too many long-term residents and those living on fixed incomes (elderly and lower wage earners) are being squeezed out of the home market and into rentals and public housing by the steady increase in land and home prices.

And even so, the UoM Bureau of Business Economic Research (2018) did note that the average home sales price from 2013-2018 for L & C County was less than the average for the major cities of Montana at 16% (3% a year), large attributed to "Part of the difficulty in building more in Helena is the lack of available lots and high costs of lots that could be available for builders" .

Since 2005 L & C County administrative and revised subdivision regulations have limited the availability of reasonably priced lots as the UoM researchers recognized in their report.

It is easy to document costly subdivision regulations L & C County adopted in 2005-2008 that remain in effect to this day. Starting back in 1994 with a proposed zoning plan restricting rural growth -- that solidly opposed by the citizen and finally culminating in this large tract restriction Zoning plan of 2020.

It has long been my contention, that the L & C County Community Development and Planning Department and a long series of elected Board of County Commissioners have viewed rural growth as a problem that warrants limitations. To those means it would appear that these county managers decided the best way to slow rural growth is to incorporate costly regulations or take administrative actions (e.g. \$8,000,000 off-site road lawsuits) to increase the cost and limit the spread of rural subdivisions.

And collectively these regulations have slowed and limited where rural growth occurs in this county resulting in limited supply of affordable and available building lots in the HVPA. The county mandated health and safety requirements intended to limit the extent of and amount of rural growth included the following costly subdivision application requirements and now pending Zoning lot size restrictions:

- On-site fire water supply storage/wells.
- Two access/egress roads into all subdivisions.
- 2007-2009 Interim and Emergency Zoning forcing all new rural individual septic systems to meet the highest Level II treatment level costing \$20,000

- Forcing all new subdivision to pay 100% cost to upgrade off-site roads.
- 2020 Zoning Regulations Rural property lot size restrictions;

These added costs are somewhat unique to L & C County subdivision regulations and as stated were incorporated to driving up rural property and overall real estate costs/prices. Specifically;

- L & C County requires all new subdivision developments to install on-site fire suppression storage whereas existing rural homes and community don't have to have any such fire water storage/supply (a takings legal argument that no one yet has challenged). Although the access to and maintenance hundreds of on-site storage/well fire suppression systems rests with the rural fire districts, they are not maintaining most of them nor will they allow their equipment use these unmaintained sources in the event of a wildland fire. The added the cost to each new lot created HVPA is generally ranges from \$5,000-\$10,000. With no real benefit and long-term liability to the county.
- L & C County also requires two roads into all subdivisions (A unique requirement to L & C County) and both roads must be constructed to current county road design standards. A prime example of a huge block of very expensive real estate with only one road in is the Big Sky Ski and Recreational resort. This major and Billions of dollar in real estate area only has one road and it is very steep-sided so if blocked no one goes in or out.

**So why does L & C County require two entrances? Their rational is for safety of landowners and EMS during a fire and if one road is blocked, then the secondary route is needed to protect life and property. However, using that rational Big Sky Resort should not exist. Older subdivision in Helena and Montana should be condemned or redesigned if this is a real safety threat. Nor should millions of acres of developed land in Montana, all across the US or the world where only 1 road enters a group of homes.**

Locally the Great Divide Ski area cannot be developed for a subdivision development despite the fact that the US Forest Service granted federal land for a community drainfield to Kevin and Nilla Taylor (35-year owners of the GDSR), but because of this county's unique two entrance requirement prevented them from developing the property.

This situation is not unique to the Marysville road area, for there are many rural roads all across the county were only one main road reaching huge swaths of rural land.

It would appear to anyone objectively looking at this two egress/ingress requirements of L & C County managers, the county main purpose for the two entrance requirement it to meet their unwritten objectives ----

- slow or severely impede all growth in rural areas of L & C County,

- driving up rural property costs and thereby force more people to live near Helena and East Helena
  - encourage growth in under-utilized city Helena & EH wastewater and water systems.
- Zoning if adopted would as discussed above have major, far-reaching and long lived impacts to the entire community. So in summary, regulations absolutely do negatively impact growth, negatively impact affordable and all housing prices thereby impacting households at all income levels.

Summary Notes and Comments by John Herrin January 26 & February 6, 2020

Thursday 1/23/20 meeting at the West Valley Fire Hall #1 Forestvale Rd. 6-8PM

Roughly 80 citizens were in attendance. A vote of those favored the Zoning proposal after an hour of discussion was about 90% opposed and 10% or less (about 5-6 people) did not vote for or against the Zoning proposal. The vote of the large acreage ranchers mostly standing in the back was 100% opposed.

I. County Opening remarks.

Rodger Baltz (L & C Chief Administrative Office) opened the public hearing on the Helena Valley Planning Area Draft Map and basic plans for Zoning of valley. He welcomed everyone and then introduced Peter Italiano (Supervisor of the Community Development Planning Department) as the main person to present the Staff's proposal.

Mr. Italiano summarized the overall plan for five proposed zone districts: the HCPA Urban transitional area; the HHPA Transitional Area; and for the HHPA Rural Area consisting of three lot size driven subzones for the property (10, 20, and 160-acre minimum lot size). He said that this Zoning proposal is based on findings and conclusions presented in the published and Board of County Commissioner approved 2015 Growth Policy for the Helena Valley Planning Area.

Mr. Italiano in essence said the adopting the proposed zoning would increase predictability of growth and force most of the future growth to the Urban and Suburban Fringe zones near Helena. The need for zoning was justified to address the 5 Key strategies identified in the Growth Policy: water, water quality, flooding, fire protection and roads. He future stated that the county maintains over 530 miles of roads and doesn't have to money to address the roads. Plus he indicated that they recently ran into a problem on how to address off-site roads to a proposed subdivision in the North Hills where the access roads were not in very good condition (?Was that Kim Smith's subdivision??).

But Mr. Italiano offered no additional specific details as to how the proposed large lot sizes of the rural property would address the 5 key environmental/infrastructural issues that reportedly underly and support the 10, 20 and 160-acre lot size Zoning classification districts.

II. John Herrin's Opening Remarks.

After many other citizens comment, I stood and presented obvious shortcoming of the proposal and the major heart-burn issue revolve around the large takings of rural property without compensation – a constitutional violation of the Montana and US constitutions. I also told the audience that I would be sending the county a long (30 plus page) letter detailing more reasons why this proposal is wrong for our county. I also mentioned that I made the same arguments at the December 18 & 19, 2019 prior Zoning public meetings.

One of the main points I wanted to make at the meetings is the existing subdivision review regulations by the County and State adequately address the 5 key strategies that the Planning Staff is using as a basis for this massive taking of property rights. The impacted landowners need to be notified, informed and have a vote. And the vote should be 60% of the impacted landowners (only) like PART 1 zoning. At least 50% vote should be required and city of Helena landowners should be able to vote on what

happens on rural property. Rural property owners can not vote on City Helena or EH matters, so the converse rules should apply.

I also talked for about 10 minutes mainly stating that the county has a pattern of trying to slow rural growth over the past 15 years and this zoning plan will smash any major growth in the rural areas especially the large 160-acre agricultural conservation zone. And the landowner get nothing for this zoning but lose everything.

Simple laws of supply and demand state that as you restrict supply and the demand grows prices will go way up.

As such the transitional lands around Helena will see huge increases in value and the rural property values will plummet (>\$5000/acre). The county contends they are trying to protect agriculture property owners, but this plan could cause major financial problems for ranchers (e.g. loan security issues with lenders, and agricultural landowners plans for retirement etc.) Fact is most Montana ranchers and farms have the vast majority of their life's hard work and assets tied up in the land. What happens when they want to retire or sell the business – it won't be worth nearly as much as if the land had real estate development value as a backup plan and merely will command depressed (sustainable agricultural production) sales value.

By Zoning only rural property for large to very large tract sizes unduly depresses the value of rural property owners (a massive real estate grab that is a Legal Taking Argument) without some form of compensation, while conversely enriching land-owners property within the county's ideal "Sweet" Zone.

The result is the county could end up in endless lawsuit and court challenges where no one wins. And the damage claims against the county in the short term could easily bankrupt the county.

### III. Other Landowner Comments during Question and Answer Session

{JH Note: The County must record and translate into writing every community outreach session or otherwise there is no official record of what was said and therefore the Board of County Commissions(BoCC) and the Planning staff cannot document (count) the real concerns and opinions of the citizens. Given the fact that none of the three current County Commissioners bothered to attend any of the three Zoning public meetings speaks volumes to biased administrative management style that historically lead to so much citizens outrage and in many cases unnecessary legal battles}.

Andy Skinner stood up and said that this Zoning proposal is huge taking of property rights and the citizen get nothing for it. He said he has done a few subdivisions and has to fight the county in getting it done. Paraphrasing Andy -- this plan just will end up with the county getting sued. We don't need it or did we ask for it.

Several of the big ranch holders were in the audience and made really good comments.

One obviously agitated rancher asked twice why can't the county send out notices and information to each landowner so they could be informed. When asked directly if they would send out information, Peter I said NO.

- A. Need for economic Cost Benefit and/or economic impact Assessment documentation report on this Zoning proposal.

Veronica White had to ask Peter twice -- will the county do an economic impact assessment? After avoiding the question the first time, at the second ask PI again Said "No."

{JH side comment #1 -- I am adding more detail my comment letter along these lines as it is very important point and L & C County staff has to be forced to do some form of economic impact analysis or they can't defend their takings actions. And anyone with half a brain wouldn't even think about this large tract Zoning proposal because potential is real that the county will end up in wasted time effort and likely have to pay out large damage claims that could easily approach or exceed a Billion dollars (250,000 acres X \$5,000/acre = \$1.25 Billion dollars potential damages)}

{JH Side Note #2: on need for County to do an Complete and Trough Impact Analysis of Zoning Proposal : Anytime the State or Federal government propose a major action, they are required to do detailed socio-economic impact analysis along with characterizing environmental impacted associated with the proposed action and several administrative alternatives including that no action alternative.)

{JH Side Note #3: Fore over 8 years I worked State EIS Impact team researcher and report author for over 10 major coal and hardrock mines that were permitted by Montana from 1978-1986 (e.g. WECO's Colstrip Westmoreland Coal Mine Expansions and Anaconda Copper & Minerals Butte-Anaconda Copper Mine expansion). As such, I understand the need for doing detailed environmental and economic impact assessments on major regulatory actions like this Zoning proposal clearly qualifies.

Although the County maybe exempt from the more normal State/Federal EIS requirements, I would assume for the State of Montana administrative frameworks would apply to this major Zoning administrative proposal given the magnitude of the social and economic damages it likely would cause to the Greater Helena economy.

However, even if not per say a regulatory requirement, the US and State constitutions require that property cannot be taken without due process and compensation. As such, the county landowners and citizen must be informed of the economic damage to individual property values and the associated overall cost/benefits of this Zoning proposal, regardless of whether anyone calls it a social/environmental/economic impact analysis or not.

The county cannot escape the fact that they would be required -- by the court of public opinion and likewise the courts -- to openly and professionally document the key environmental/infrastructural benefits/cost of the zoning including detailed cost benefits assessment supporting or not supporting the proposed Zoning plan.

If the County and the county's legal/underwriting parent organization MACO (Montana Association of County's) administrators and legal minds where to critically look into the prospects of legal challenges to this Zoning plan -- the Rural Property 10, 20, and 160-acre lot size restriction aspects of this plan would be removed from further consideration.

We could argue in court that this Zoning plan as is, is way more impactful to the community than a USFS timber sale, or the State in issuing major mining permit. This Billion dollar takings cannot be allowed because:

- the benefits are very low,
- future growth impacts could be addressed through changes to existing County and State subdivision review regulations (if warranted) plus at a significantly lower social/economic cost and still be environmentally and socially responsible governmental administrative planning (e.g. change existing subdivision regulations), and
- This Zoning proposal offers very little documented benefits.

Then when asked if the County would allow the citizen to vote on what happens with their lands. Mr. Italiano again said No.

Mr. Italiano then stated the planning staff will write up the underlying rules, then go to the Planning Board, then the BoCC for final approval -- by the end of this year (Note: before Susan Good Geese retires!!!)

- B. Planned Unit Development. County Staff States only way future development of rural land in the HVPA could propose lots smaller than designative would be for applicants to pay for costly engineering and permitting consulting work for a PUD subdivision application.

At every meeting Mr. Italiano said anyone in the rural area that wanted to do a subdivision, all they had to do was submit a Planned Unit Development (PUD) engineered subdivision application and ask the BoCC for a variance, that two county commissioners would likely approve (??? That all depends on who sits on the 3 thrones).

In all three public hearing Mr. Italiano clearly stated that the only way ((his planning staff now sees the future)) to create lots less than the minimum 10, 20, or 160 -acres the Zoning proposal dictates, would in his words require a landowner/developer to submit a PUD plan for the proposal with the hopes that it would be approved with no guarantees.

But Mr. Italiano never mentioned that fact that requiring costly and prohibitive PUD type applications is not the only option unless they wrote the regulation that way – which is precisely what Mr. Italiano said in all three meetings. However, the applicants should have the right to submit a normal subdivision application proposal which cost way less to design and create with larger lots and less infrastructural cost. A normal subdivision -- with lots larger than the small PUD city lots, without central sewer and water supplies -- would be in more keeping with more rural surrounding lands. It is patently obvious PUD requirements is just one more sign that the county wants to restrict future rural growth with this unwarranted burdensome targeting of only rural property with the PUD requirements.

SO here again Peter Italiano is admitting that once passed the variance from the very large and restrictive lot size zoning proposal would be very difficult, costly, and as such very few if anyone would want to go through the process especially given the long history of regulatory abuse subdivision developers/engineers/landowner have had to endure at the hands of the county administrators and staff for the past 15-years.

But I countered about how costly engineering and permitting a high density Planned Unit Development (central water sewer, paved roads, street lights, sidewalks etc.) and is generally very high density. SO you'd have these high density mini-cities inside large chunks of rural land, which doesn't make any sense and isn't justifiable.

- C. L & C County has a long history of dragging out for years simple changes to existing property change applications and harassing property owners use of their lands while ignoring many other land-use problems evident in all corners of the county.

Three people highlighted how unreasonable the county is managing just simple issues (Daryl Rutherford fighting the county 6 years for simple 4 rental/home septic system on his 5-acre property) and another women (Veronica White – legal add to attorney Dave Gallic) said the county was very rude and very hard too work with. To which Mr. Italiano said I'd like to know who that person was and she said "she sits in the desk right next to you." No response.

Then Craig Winterburn said that he wanted to gift a 20-acre tract of land to a 30-year ranch-hand when he wanted to retire. He said it took him 6 years and cost him \$12,000 to \$13,000 just to get the simple one lot land gift transfer done.

- D. Zoning proposal once passed will allow county to creep changes and interfere in the Zoned landowners future land uses in ways we might not now see coming.

I later said, once they get this done the landowners lose all their rights to do what they want to do with their land. From this point forward the county has the control and it is nearly impossible to reverse county-initiated zoning once it is adopted.

Others voiced the sentiment that once they pass this type of Zoning, the county can add all kinds of future restrictions.

- E. County Planning Staff and BoCC hidden Agenda – to swiftly and unfairly move to Adopt the Zoning Regulations by the end of Commission Susan Good Geese term in November.

Peter Italiano and the few staffers & BoCC believe they have the upper hand and can just keeping pushing this plan through the sham meetings, then quickly write up some rules, and get it to the county commissioner for a vote without allowing the citizen to participate in the rule making process. But even more so, they believe that they do not have an obligation to even consider changing their plans in anyway shape or form.

- F. L & C County has a 15-year Anti-rural property Agenda that has driven up the cost of all Helena area Real Estate – the Average price of a Home in Helena >\$300,000.

The County has a 15-year pattern of pretending to hold open and fair public meetings, and to respectfully and fairly review all public comments (oral or written) and then make changes and additions to the plans as appropriate.

However the results are always the same. \*The County rarely if ever makes meaningful changes to the their preordained Subdivision Regulation agenda, while claiming the administrative process was fair and unbiased. For the past 15 plus years L & C County has attracted -- We KNOW BEST- Type -- managers

that ignore public comments and creative solutions in favor of an outcome that a select few county employees believe is justified to slow urban sprawl and slow growth unless it is close to Helena and East Helena.

In the past the plan was to drive up the cost to develop rural property (e.g. costly road designs, requiring 2 entrances into subdivision, and costly on-site fire water storage & supply systems but not requiring the same of existing landowners). But now the County's Zoning proposal goes way beyond reason, in essence creating a near total moratorium on any additional growth on 85% of available land around Helena.

But this pattern has not gone undocumented and will be used against the likely legal challenge to the county on this final assault on rural property rights and governmental administrative actions that illegally target rural property and citizens that pay their salary and are in fact their bosses.

The county environmental/planning staff and a select few top managers and BoCC, have consistently ruled with an iron fist and act like we are stupid and subservient not knowing what is in Our Community's best interest.

We know that the planning staff and administrators are only going through the motions with a predetermined end game of not changing anything about the rural zoning plans. Although Mr. Italiano says the rural zoning boundaries are merely lines on the map, they are not set in stone.

But layout of the boundaries is not the real issue – the issue is that all the rural property should not have any lot size restriction despite what the unsupported County Growth Policy says. In fact, the county adopted Growth Plan statement, contains statements that rural property should be 10-acre size lots is not anything the citizen voted on and is based on cherry picked statement by the few people attending public meeting that most citizens never heard about or knew what the next step might be.

We all live in an age of information overload and the county has manipulated the public into watching them pass subdivision regulations, Board of County Commissioner (BoCC) administrative actions -- that are designed to slow rural growth and 15-year pattern has now reached to ultimate cliff.

For the past 15-years that I -- and many other scientist/engineers, developers, property owners, -- have been trying our best to direct L & C County managers not to keep targeting rural property with costly regulations that really are not warranted, but the abuse continues to this day.

Note: In December 2018 I submitted an 80 page letter asking the county to look into reducing or eliminating the requirements for on-site fire protection storage and supply system which most rural fire district managers no longer want to see constructed because the systems may not be properly maintained and the districts don't see the need for the on-site water supply systems on all new subdivisions – note a taking legal case given the fact the county only requires on-site water storage for new subdivisions but not for existing communities.

The county staff and BoCC refuse to listen to anyone who isn't supporting their preconceived administrative agendas and they manipulate the system to make sure citizens and educated public opinions aren't part of the regulatory process.

Given the fact that the county adopted Growth Policy that is not a regulatory document and really does not represent the real views of the community, we do not have to accept the county's latest Zoning proposal as being the only way to move forward with managed and fair growth planning.

If the county really wanted to know what people think about proposed regulations they would hold open panel discussions where all side could present ideas, and the would post notices and video-tape record meetings, and make an aggressive effort to inform all impacted landowners of the proposal (e.g. reaching out to the public through available public media forms such as Utube, Facebook, and Helena Civic TV, etc.. That way more people could get the needed information to make an educated decision on whether to support the Zoning Plans.

The county also should facilitate public debate and panel discussions so the voters would know the Positive and Negatives of the rules in order to help direct the outcome and create rules that actually meet citizens best interest.

But L & C County managers never want the citizens to have control – it is always their driven agenda – slow and stop rural growth and don't let the citizen know what your doing and don't listen to them because WE KNOW BETTER.

To find out what they citizen really think, let those impacted have a vote on the or any other plan and let's see how that goes for the county!! To do otherwise is an unconstitutional-takings of property, which the Montana and US Constitutions affirmatively say is illegal.

We also have firsthand knowledge that the county staff do not have an open mind relative to the proposed 10, 20 and 160-acre lot size Rural Zoning taking proposal given the fact that Peter Italiano in all three public meetings give the same general speak and without really thinking about criticisms and feedback received so far and instead repeat exactly the same message.

The staff opening refuses bring copies of the zoning maps and is negligent in not recording of verbal comments and responses. So the County staff is actively and illegally suppressing the citizens Mt and US Constitutional rights to know and participate in rule making regulations that directly impact them, their families, future generations and their neighbors and friends. The Zoning proposal will impact our community for generations ahead if not stopped or significantly modified.

**G. County Staff Refusing Reasonable Requests to Inform the Regulated Public and Violating Landowners/Citizens Rights to Know.**

On January 15 when I was the County offices I asked the CD&P secretary if she would make up 100 11"X17" maps for these next two meetings. I also as Greg M to make sure they brought maps to these meetings and the fact that they didn't have then available at the last 2 meeting is wrong and violates the citizens rights to know.

GUESS WHAT – the county did not bring any maps to the January 23, 2020 public hearing held at the West Valley Fire Hall???

The county is not making this well know either and is trying to make it impossible to comment – website comment form isn't interactive which I brought up and asked Greg McNally why? He said he would look into it. Website is hard to find where they have the zoning hidden away. Takes 10 minutes just to find it

under Community Planning and Development or the 3 second blast out of 6 on the News leader board on the home page.

The county is not recording anyone verbal comments. No one is taking notes, they don't even have a tape recorder or video. SO citizens asked twice why aren't the County Commissioner here to listen to their comments? No answer from staff.

One ranchers again was smart enough to ask who was for this Zoning plan – and even though 2 people talked about why they thought Zoning in general was a good idea and we need to do something, by the time they heard all the negative comments not one person raised their hand. Of the roughly 80-90 people there when asked if they opposed it the vote was about 90% against it. That is not recorded by the county staff, but everyone in attendance is witness to the overwhelming vote against the county Zoning proposal as currently presented.

The lack of maps, the lack of recording everyone's verbal comments, lack of proper noticing all impacted etc. proves the County Staff are unprepared, incompetent or even worse exerting administrative bias into what is supposed to be a fair and open public scoping process. Peter Italiano said at all 3 public hearings is nothing is set in stone and the plans can be adjusted, but that is not a factual or truthful statement.

If the county staff were really listening the majority of rural property owners reactions in not only these 3 public meetings but the meetings they had with HRA, HBIA, Irrigation District (note: Actual vote is 16 opposed and 0 in favor of Zoning), and the County Planning Staff representatives were being proactive and accepting public input, they would have scrapped the 10,20, 160-acre rural property proposal altogether and re-revised entire plan to be more like everyone expected and is normal – land-use & building restriction zoning without any lot size restrictions.

SO the County Zoning Proposal managers can and will be held accountable on procedure failures and I am documenting them the base I can. These managers and the County will likely be sued over just the procedural failure in addition to the takings and A & C legal arguments. Mike Fasbender, William Gallagher and I won in District Court in Interim zoning by the county not properly noticing hearings and rushing to pass it at the end of testimony rather than waiting 2 days to pretend they had read the 20 pages of documents I submitted about the lack of evidence for an groundwater quality crisis.

By the way I know we can raise money with a crowd funding effort after this last meeting. I proposed we hold our own meetings and announce it with a big add a couple times in the newspaper, AM 950, TV and Social media etc. Facebook. Need to create a non-profit or PAC to be legal and build up a war-chest. I've heard from many people they would support an information campaign against this BS and I know the large landowners would gladly through in money

On January 28<sup>th</sup> I did get an interview with Channel 9/12 Televisions Station staff and it aired on the 5 and 9 newscasts (see attached written summary). On March 2, 2020 2PM meeting with Independent Record Editorial Broad for those that can attend and lend their voice to the chorus against this zoning proposal.

## Commission has taken county down dangerous path

YOUR TURN

October 04, 2012 12:00 am • By Anita L. Varone

(9) Comments

Recent articles discussing county government prompted me to write. I was honored to represent Lewis & Clark County as a commissioner from 2001-2006. The last four years of my tenure I witnessed commissioners enacting many illegal requirements; a water quality emergency declaration using fabricated data, forced emergency zoning attempts, public road building regulations.

I questioned the validity of the valley water quality data. The Environmental Health director (Kathy Moore) privately told me there was no emergency; there were three small areas requiring immediate attention. She said she would publically share the information but, when the time came, she reported the opposite.

Prior to the meeting, the commissioners discovered she was going to provide truthful information. She was directed to falsify the figures. A subsequent lawsuit revealed the deputy county attorney told her he could make her department go away if she did not falsify the facts»

Commissioner Hunthausen supported Commissioners Tinsley and Murray as they threw the law to the wind and supported using fictitious water quality information. All three passed emergency zoning and were almost successful in conning the public.

The IR exposed their dishonesty in 2008, reporting there never was an emergency. The commissioners never offered a truthful explanation.

Attempts to provide statutory information to the commission repeatedly fell on deaf ears and several lawsuits were filed. For example, the Christisons' subdivision was one of many illegal decisions. Having lost the lawsuit, at least seven similar lawsuits are on hold until the Christison case is completed. Other past litigants are now asking for reconsideration of their suits.

The county attorney's office is also to blame for what is still happening. The deputy county attorney told me the commission could make any decision it wants, and unless the county is sued, it is law. He said all the commission had to do was say their decision was based on public health, safety and welfare" and he could defend it. He said that even if the county lost in court, it would win in the end because he would bankrupt the plaintiff with their attorney fees.

The county now must pay the Christisons' attorney fees. When the cost of private attorneys, county staff and county attorney fees is added to the current \$673,000, it's not a stretch to assume we'll be paying at least \$1 million. Misleading legal advice will cost us millions in future lawsuit decisions.

This year's budget has roughly \$440,000 to settle lawsuits or prepare for court. That's not enough. If a recent estimate of \$16 million in lost lawsuits is accurate, one of two things must happen: our taxes will dramatically increase or services will be drastically reduced, meaning massive layoffs. Both could happen. Don't forget, there's no plan for road improvements.

We all should be offended when Commissioner Hunthausen said, "It's our responsibility to follow the law"; he's frustrated that some are portraying the commission as anti-development.

Commissioners Hunthausen and Murray have always been anti-development. The resulting lawsuits are proving it. They break the law to serve their purpose, and you and I are paying for it.

It's not about subdivisions, it's about anything they want to do. Words are meaningless; it's their voting record that's important.

Commissioner Hunthausen took credit for being the instrumental supporter on a cornucopia of county projects. His claims are inaccurate. In at least one instance he takes credit for a project that he resigned from before completion.

When I was a commissioner, I told folks they should become involved and run for office so they could change laws they disagreed with. My fellow commissioners said if they didn't like what the commission did, they could sue; the county had staff attorneys and the public had to pay theirs by the hour.

Mike Fasbender took both suggestions seriously. He filed several lawsuits and won because the other commissioners illegally manipulated the law. He also filed for county commissioner. Mike's a brave man: bright, honorable, honest and more than anything else, he'll follow the law. I think our county deserves it

Anita L. Varone is a former Lewis & Clark County Commissioner.

[View \(9\) Comments](#)

1. Builder- October 06, 2012 8:10 am

Prattler (County) says there are overcrowded schools in the Valley, a traffic nightmare, failing water systems, flooded developments, and wildfire-prone communities.

Well, the taxpayers need to step up and fund some solutions. The community WILL be growing, and it's not up to the developers to fund infrastructure improvements or slow down our legal right to build.

Mike Fasbender is on our side, and as he has stated so many times, if there is a legal way to do it, "No" and "I can't" will be unacceptable responses.

As Verone rightly pointed out, the water quality emergency declaration used fabricated data. The ground has been a great filter for our toilets for the last hundred years, and nothing has changed. We don't need the costs associated with higher standards for septic drain fields.

The people are coming, and we need to BUILD. The valley water is fine, there is ample drinking water, and plenty of room for more septic drain fields that meet existing standards, and not the more costly ones the current commission wanted.

Our LEGAL right to develop must be protected! Fasbender is our man, and we need to get him elected.

2. Bean12 - October 04, 2012 9:03 pm

I think Prattler has lost his mind! Obviously he has never seen the county regulations nor has he ever tried to do anything in this county. His bias and ignorance of the regulations is very apparent even to a casual observer. Contrary to what he preaches no doubt lives in a subdivision created by former bad word developers! Why is it that everyone who has theirs doesn't want anyone new to come here and get theirs? I believe this is called "not in my backyard" syndrome.

Take a deep breath Prattler and realize how lucky you are that these kind of abuses are by our local County attorney office and current and past commissioners have been exposed!

I, for one County resident, am tired of paying for these unnecessary needless lawsuits and I will vote for Mike Fasbender to try to get things changed

3. poncho - October 04, 2012 6:11 pm

Sounds familiar. In Park County, Montana, in a zoning dispute with the county over not following the correct procedures, the county attorney responded "we don't care what state law is, this is the way we do it in Park County. If you don't like it, sue us."

forthekids - October 04, 2012 5:12 pm

I just heard that Mike Fasbender presented a letter this morning at Hometown Helena that he had written to L&C County 6 or 7 years ago before all of the lawsuits started. In the letter he cautioned the County that their road requirements were violating the law and exposing the taxpayers to needless liability. How prophetic. (Note: Letter was regarding the County Pending Denial of the Green Meadow Subdivision owned by Russel Reed and John Herrin – that the County ended up paying \$650,000 in damage settlement costs). I sure wish he had been on the Commission 8 years ago ... think of how many millions of dollars the taxpayers would have saved. Former Commissioner Varone is spot

on , we need to get Mike Fasbender on the Commission and stop hemorrhaging taxpayer money ASAP.

5. redstarl O - October 04 2012 11:22 am

The news is finally getting out! Lewis & Clark residents need to pay attention to this former County Commissioner. She was a great Commissioner, she had "common sense", and she had the residents of Lewis & Clark County foremost in mind when she was a Commissioner. However, she got absolutely no help from **Commissioners Murray and Tinsley who constantly voted her down 2-1 during her tenure.** Her admonitions to them to follow the law fell on "deaf ears" and that is why we see all of the lawsuits! Thank God we have people like Anita Verone who aren't afraid to stand up and tell the truth! We need more people like her who understand that good, well planned growth can occur in this County without negatively affecting the health, safety and welfare of County residents. **These needless lawsuits must end** and that is why I am voting for Mike Fasbender!

6. steeline - October 04, 2012 9:29 am

For those of you who believe that if there are no more subdivisions in the Valley there will be no more costs to the tax payers, I have news for you. I ask you, **what is your alternate plan to accomodate the POPULATION GROWTH in the area?** It makes me believe we have some self serving folks in Helena that want to keep Helena and vicinity just the way it was 150 years ago. Fighting land use changes is an old worn out scare tactic that has no validity today. People we have a situation that has to be delt with and that is POPULATION GROWTH.

To date not many people are complaining about TOO MANY PEOPLE on earth, they complain about too much development. That is the challenge. Short sighted and self serving groups will continue to resist land development and demonize those who can see the future more clearly and move to advance an accomodation vision for those residents that are here now and for the new people who are coming here with their families. When there is a way to stop population growth then land use changes would follow suit.

**So when you hear a person rant about land development, ask them, how many children did they bring into the world?** There in lies the real problem. It is not about if you build it they will come, it is about you better build it because they are coming. We have to get Helena and L&C County Right,

Prattler- October 04 2012 7 O am

No surprise here! Verone has been development shill for over 20 years while the County has attempted to implement zoning and development standards. Standards needed to govern growth and assure that public health and safety issues are not neglected. During this time a well-funded and vocal minority of developers, contractors and real estate agents who have a significant financial interest in the status quo have consistently decried the lack of consistency while delaying the process indefinitely through endless "working groups", committees, hearings, and lawsuits.

Under the guise of These proffer feigned outrage while uncontrolled development continues to burden taxpayers with demand for additional unfunded public services. The fact is that the Commissioners and staff have had their hands tied by the lack of a legal basis for controlling development. A legal defense can only be created by enacting the same comprehensive zoning and development standards that have been consistently thwarted by the very people who are once again whining about lack of standards. Commissioner Brown, former Commissioner Verone, and wannabe Commissioner Fasbender are among the champions of growth at any price.

Look around and see the results: overcrowded schools in the North Valley, a constant traffic nightmare in the City, failing community water systems, flooded developments, and wildfire-prone communities. The only success story is the enactment of minimal fire standards for new developments which were vehemently contested by the development and real estate interests.

Skeptical? Use the search function on this site with the names cited above or terms such as "comprehensive growth plan" or "zoning". The results are enlightening and present a history that the greed mavens would prefer you forget

1.           forthekids October 04 2012 2:53 pm

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In the letter he cautioned the County that their road requirements were violating the law and exposing the taxpayers to needless liability. How prophetic. I sure wish he had been on the Commission 8 years ago ... think of how many millions of dollars the taxpayers would have saved. Former Commissioner Varone is spot on ... we need to get Mike Fasbender on the Commission and stop hemorrhaging taxpayer money

2.           forthekids - October 04, 2012 2:39 pm

**What a ridiculous argument. It's ok for the Commission to break the law,** because the ones who are trying to get them to follow the law are "greed mavens"???

Further, you reveal your complete lack of understanding of the process by stating that "uncontrolled development continues to burden taxpayers". I would love to hear your example of "uncontrolled development". Subdivisions are required statutorily to go through both local and state review. Even family transfers of property have to be reviewed and approved.

In re-reading your post, I don't think I can hardly find a sentence in it that has any basis in fact.

## Repeal interim zoning regulations

By Independent Record helenair.com Wednesday,

February 25, 2009

A large portion of the Helena community surely feels vindicated by last week's findings by the new county hydrogeologist that a 2006 water quality assessment used to usher in interim zoning was flawed.

The latest draft report, released Friday by new Lewis and Clark County hydrogeologist James Swierc, says the data in his predecessor's white paper does not support a water quality emergency in the Helena Valley. Swierc told county commissioners the 2006 report shows an increase in groundwater nitrates, but there was not enough information to draw a conclusion that there is a water quality emergency.

"I don't think it's appropriate to say the groundwater quality has changed in the Helena Valley," Swierc said. "It's too big an area."

For years a vocal group of residents, mostly made up of Realtors, developers and builders, has strongly opposed the notion that the Helena Valley contains elevated, unhealthy levels of nitrates and other pharmaceuticals in the groundwater.

The interim zoning regulations were first approved in December 2006 and were subsequently overturned by a district judge who said commissioners hadn't followed the public process on the original summary report, prepared by county Environmental Health Director Kathy Moore.

The rules were approved again in May 2007 and have twice been amended. The first revision removed a controversial requirement that all valley residents installing or replacing a septic system must purchase a Level II system, which can cost two to four times as much as a standard system.

All this conflict has been promulgated on the notion there is a water quality emergency in the Helena Valley. Now a county official's report — not just an outside study provided by the group of critics says the old data used to justify that is inconclusive.

Just before the November general election, Moore admitted she made a mistake in her analysis, and that the nitrate levels had not increased as much as she originally proclaimed. She and county commissioners at the time stood by their water emergency assessment, as well as the impetus for approving interim zoning.

The news County Fabricated Groundwater Emergency could have contributed to incumbent Commissioner Ed Tinsley being defeated in the election by Derek Brown.

# County settles another subdivision suit for \$650K

**\$150K left in coffers for sole remaining case**

**AL KNAUBER**  
*Independent Record*

Lewis and Clark County has settled one of two remaining lawsuits that originated from previous regulations requiring

improvements to roads outside of subdivisions.  
The \$650,000 settlement with Rubicon Development Corp., Russel Reed and John Herrin, which involved their plans for Green Meadow Vista major subdivision, came with no admission of liability by the county, according to the release and settlement agreement.

This settlement brings the previous total of \$4,813,000 paid

through seven other lawsuits to \$5,463,000, according to figures provided by county officials.

County officials have been budgeting money for legal settlements, and this year's budget contains \$1 million that was carried forward from last year's budget as well as an additional \$800,000.

With the settlement of the Rubicon Development Corp. lawsuit, the county has

\$150,000 remaining in this year's budget to use toward the sole remaining case that will go to trial because settlement talks were unsuccessful, said Eric Bryson, the county's chief administrative officer.

The lawsuits all involved off-site road improvements that at that time were required by county subdivision regulations, Bryson said previously, when he also noted that there has not

been a road lawsuit filed since the regulations were changed.

County officials have previously explained they opposed adding more traffic from new subdivisions onto county roads that were inadequate for existing traffic levels because of liability concerns. The choice they saw was to risk liability from traffic accidents as a result

*More COUNTY, page 3A*

## County

*continued from Page 1A*

of new subdivision traffic or risk lawsuits from developers.

A district court, ruling against the county in one of the previous lawsuits, said it was not appropriate for the county to require a developer to pay not only for the impacts of a subdivision but to also address pre-existing deficient road conditions, which is the county's responsibility.

The county's subdivision regulations were revised nearly six years ago to allow developers to pay only a proportionate share of the cost to improve roads outside of subdivisions.

Herrin, who is an equal partner with Reed in Rubicon Development, said Tuesday he's "glad to

I'm probably not going to invest in Lewis and Clark County anymore."

"We finally got justice, which we should have had in the first place," Herrin said.

The subdivision proposed by Rubicon was initially 33 lots, then reconfigured in 2007 to 22 lots, Herrin said.

Requirements for off-site roads, fire protection and providing for two entrances into the subdivision became issues that Herrin said were taken to court.

The \$650,000 settlement, he added, pays for some \$550,000 in land, development costs and legal fees.

The remaining \$100,000 represents the "profit" on an investment that began in 2005, Herrin said, adding "that's a bad investment."

Land for the subdivision is being sold for development as a solar-

Yet to be resolved among the lawsuits that originated from off-site road improvements is one involving Chris Goodman and Jerry Lappier for Lookout Lodge, Bryson said.

The 2007 staff report that recommended denial of approval for the subdivision said the proposal was to create two lots, each for a tourist home or a single-family dwelling. The existing 2.95 acre tract would be divided into two lots ranging in size from 1.29 acres to 1.66 acres.

Access to the lots would be from the Craig River Road.

Both sides aren't allowed to discuss the failed settlement negotiations to avoid prejudicing potential jurors and the judge who will hear the case, Bryson said.

*Al Knauber can be reached at al.knauber@helenaair.*

word of outside 2 hours

# Subdivision suits have cost county nearly \$5M

AL KNAUBER  
Independent Record

Subdivision lawsuit settlements from nearly a decade ago have cost Lewis and Clark County \$4,780,000, although two from those days have yet to be resolved.

The lawsuits, said Eric Bryson, the county's chief administrative officer, all involved off-site road improvements that at that time were required by county subdivision regulations. Those regulations were revised nearly six years ago to allow developers to pay only a proportionate share of the cost



Bryson



Hunthausen



Geise



Murray

each of the next two fiscal years. These two subsequent payments, Bryson explained, are structured so the county can budget for them.

The settlement also provided that Hamlin's 165-acre subdivision with 127 lots and about 235 living units, Red Fox Meadows, be approved.

While the district court noted in the Hamlin decision that the county was within its rights to require a developer to pay a reasonable fee to address impacts caused by a subdivision, "What is not appropriate, however, is for the county to require the developer to pay not only for

the impacts of his subdivision, but also to address a preexisting deficient road which is the County's responsibility."

To prepare for lawsuit settlements or judgments, the county set aside \$2 million in this fiscal year's budget. The county had budgeted about \$1 million in the previous fiscal year's budget toward potential legal liabilities from ongoing lawsuits that date back to before the subdivision regulations were revised in 2009.

Of the two lawsuits from before the change in subdivision

More COUNTY, page 3A

FRIDAY, JANUARY 16, 2015

## County

continued from Page 1A

regulations, one may be resolved by a state law passed by the Legislature two years ago, Bryson said. The Montana Association of Counties provided the county's legal defense, he noted.

Hamlin said on Thursday that emails related to his subdivision, which he obtained through the discovery process of his lawsuit, led him to believe he wasn't treated fairly.

"All of that is beginning to make me feel I was set up and I was dead before I started.

"I'm making statements based on the record," he added.

He pointed to his support for Republican candidates for the county commission, one of whom successfully won election, and his opposition with others to a proposed county regulation for home construction, to explain his belief.

However, the district court disagreed, as does commission Chairman Andy Hunthausen, who said he had not met Hamlin before Hamlin's subdivision came before the commission.

"I try to treat everybody the same," Hunthausen said.

"There was nobody out to get anybody," he added.

The money paid to settle these lawsuits — some date from eight years ago — is troubling for Commissioner Susan Good Geise.

"Everything we do in subdivisions, we have to be exceptionally careful to follow the language and not be arbitrary and capricious," she said.

"As a commissioner, I believe it's our job to look forward, learn from the past ... to make sure that those mistakes, whether it be interpretation or application of statutes, or errors in process, are never repeated," she said.

Engaging the Helena Building Industry Association in dialogue as a public works manual was being assembled she said, shows

the county's commitment to moving forward.

The county has also been seeking to engage builders, those involved in real estate sales and others as it works to update its growth policy, which examines development against the need to provide for fire and flood protection as well as wastewater disposal, roads and the availability of water.

There will always be a tension between the county, which represents all of the people who live here, and developers who are in the business of building homes for those people, Geise said.

"The challenge is making welcome the new

people who have lived here a long time have their property rights respected," she said.

The challenge, she added, is making sure development is done right.

When running for the commission in 2006 as a Democrat, Hunthausen said his priorities for office included "common-sense zoning for predictable and sustainable growth."

Changing the subdivision language to include a developer paying only a proportional share of the cost for impacts — county subdivision regulations included this in 2009 — was important to him, he said.

filed road lawsuit since that time," Bryson, the county's chief administrative officer, said.

"I'm confident that it won't happen again," Commissioner Mike Murray said of the issue behind these lawsuits.

"I'm certainly disappointed that we were in a position to settle, but we were," he added.

The fiscal impact on the county from settling the lawsuits meant a tight budget this fiscal year and likely next year, too, he noted.

"And hopefully it will be over," Murray said.

Al Knauber can be reached at al.knauber@helenaiv.

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## [UPDATED] Subdivision lawsuits have cost county nearly \$5 million

JANUARY 15, 2015 11:37 AM • AL KNAUBER  
INDEPENDENT RECORD

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The lawsuits, said Eric Bryson, the county's chief administrative officer, all involved off-site road improvements that at that time were required by county subdivision regulations.

Those regulations were revised nearly six years ago to allow developers to pay only a proportionate share of the cost to improve roads outside of subdivisions.

The most recent of those settlements came in November, when the county commission approved a \$2.5 million settlement with Hamlin Construction and Development Co. and Jerry and Barbara Hamlin individually and as trustees of the family's revocable living trust, whose proposed subdivision was denied.

Terms of that settlement called for a payment of \$1.5 million by Dec. 5, 2014, and two subsequent \$500,000 payments, one of which will be made in each of the next two fiscal years.

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Of the two lawsuits from before the change in subdivision regulations, one may be resolved by a state law passed by the Legislature two years ago, Bryson said.

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[UPDATED] Subdivision lawsuits have cost county nearly \$9 million

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# December 2, 2018 Justices jump to unanimity on frog case

Unanimous S.C. Ruling

WASHINGTON — Unanimity is elusive in today's America but the Supreme Court achieved it last week. Although the dusky gopher frog is endangered, so are property rights and accountable governance. Both would have been further jeopardized if the frog's partisans in the U.S. Fish and Wildlife Service had gotten away with designating 1,544 privately owned Louisiana acres as a "critical habitat" for the 3-inch amphibian, which currently lives only in Mississippi and could not live in the Louisiana acres as they are now. The eight justices (the case was argued before Brett Kavanaugh joined the court) rejected both the government's justification for its designation, and the government's argument that its action should have received judicial deference, not judicial review.



GEORGE WILL

The Supreme Court also rejected an impertinence that agencies of the administrative state invoke when throwing their weight around. It is the idea that courts should defer to an agency when it makes an arguably reasonable interpretation (e.g., that an uninhabitable habitat is "essential" to the existence of a species of frog) of a less-than-clear statute that the agency is administering.

This idea is the crux of progressivism's case for allowing the administrative state to boss us around without judicial review of its bossiness. This state's agencies say that they possess detailed expertise beyond Congress' ken, and courts should bow before the agencies' disinterested wisdom when

ceived judicial deference, not judicial review.

In his opinion for the court, Chief Justice John Roberts explained that back in the day you could not sling a brick without conking a dusky gopher frog in the longleaf pine forests of coastal Alabama, Mississippi and Louisiana. But 98 percent of those forests have been supplanted by urban development, agriculture and timber harvesting. The frog species, one of which was last seen in Louisiana in 1965, was designated endangered in 2001, when about 100 were found at a single pond in southern Mississippi, where the FWS decided the frogs were at risk of extinction from hurricanes or other natural events.

The frog is, like a well-born Victorian maiden, a frail flower, requiring everything to be just so: The frog needs an "open-canopy" forest with suitable ground vegetation and food supplied if the area experiences frequent fires, and the frog only breeds in "ephemeral" ponds that are dry part of the year, thereby protecting the tadpoles from hungry fish. The FWS designated the 1,544 acres a "critical habitat" even though (1) no such frog has inhabited them for half a century and (2) none could live long there unless the land were substantially modified (e.g., trimming the canopy, producing suitable undergrowth, and experiencing fires that the acres' lobbily pines cannot withstand) and (3) the loss of the acres could cost the owners \$3.4 million in lost timber farming and development opportunities.

Writing in the manner of a schoolmarm whose patience has been sorely tried by a slow pupil, Roberts said: "According to the ordinary understanding

agency is administering. This idea is the crux of progressivism's case for allowing the administrative state to boss us around without judicial review of its bossiness: This state's agencies say that they possess detailed expertise beyond Congress' ken, and courts should bow before the agencies' disinterested wisdom when

construing Congress' legislative instructions, however much the instructions' ambiguities leave the agencies with vast discretion. Roberts reminded the dusky gopher frog's friends that courts are commanded by law to "set aside any agency action that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'"

Roberts cannot hope to replicate the achievement of his greatest predecessor, John Marshall, who as chief justice from 1801 to 1835 presided over a court in which approximately 95 percent of opinions were unanimous. However, in the aftermath of the Kavanaugh confirmation circus, and recent presidential ruminations about judicial partisanship, Roberts must be eager to minimize the number of 5-4 decisions, and to achieve unanimity when possible. So it was serendipitous that the frog case involved government overreaching suitably egregious to unite Roberts' colleagues behind an opinion that he must have relished writing.

The 8-0 ruling was doubly beneficial. It was a recuperative moment for the court. And it was a chastisement of the administrative state, the government's fourth branch, which is one too many.

George F. Will is a columnist for The Washington Post.

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# Let flawed court precedent fall

Supreme Court Takings Clause

WASHINGTON — The doctrine that court precedents should have momentum for respect — the predictability of settled law gives citizens due notice of what is required or proscribed — is called stare decisis. This Latin translates as: “To stand by things decided.” The translation is not: “If a precedent was produced by bad reasoning and



GEORGE WILL

has produced irrational and unjust results, do not correct the error, just shrug, say, ‘well, to err is human,’ and continue adhering to the mistake.”

Last week, the Supreme Court was roiled by an unusually pointed disagreement about stare decisis. It occurred in a case that demonstrated how, when judicial review works well, Americans’ rights can be buttressed and American liberty enlarged by a process that begins when the denial of a right is challenged by someone who thinks that precedents, although important, are not graven in granite by the finger of God. Someone like Rose Mary Knick.

This 70-year-old got her dander up and challenged a 34-year-old Supreme Court precedent that substantially impeded her ability to contest a township ordinance that significantly burdened her property rights over her 90 rural acres in eastern Pennsylvania. In the past, that state had many burials on private land, and in 2012 Knick’s township decreed that all cemeteries (defined as any land ever used for burials) must be open to the public during daylight, and that township personnel could enter such properties to look for violations.

There is some evidence that long ago there might have been

a small burial plot on Knick’s property.

The Fifth Amendment’s Takings Clause says that “private property [shall not] be taken for public use, without just compensation.” Knick, who was exposed to cascading fines for resisting the township’s ordinance, wished to challenge the ordinance as a taking. But because of a 1985 court ruling, she was confronted with what Chief Justice John Roberts last week called a “Catch-22.”

That ruling held that before having access to federal courts, a plaintiff must first achieve a state court decision on the takings claims.

But, wrote Roberts, if after the time and expense of the state process the plaintiff receives an adverse ruling there concerning just compensation, that ruling generally precludes a subsequent federal suit. So the court ruled 5-4 (Roberts with Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Brett Kavanaugh in the majority) that the 1985 ruling should not stand as a burden on plaintiffs seeking a federal remedy for state infringements of their constitutional rights.

Writing for the minority (joined by Justices Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor), Elena Kagan, making what Roberts rightly termed “extreme assertions,” said the court’s decision “smashes a hundred-plus years of legal rulings to smithereens.” It does not, but suppose it did. What if those supposedly pertinent prior rulings — prior to 1985 — also were wrong?

A brief filed with the court on Knick’s behalf by Washington’s Cato Institute and others argued that the 1985 decision was an anomaly that effectively consigned “Takings Clause claims to second-class status. No other individual constitutional rights claim is systematically excluded from federal

court in the same way.” The post-Civil War 14th Amendment was enacted to secure federal rights for all citizens, which requires access to federal courts “to vindicate their federal rights.” Congress wrote that amendment and other laws because, according to the brief, it worried that “state courts could not be trusted to adequately enforce the federal Constitution against the coordinate branches of state government.”

In the court’s long and often luminous history, there is no nobler episode than the protracted, piecemeal erosion — most dramatically, with the 1954 Brown decision concerning school desegregation — of the now completely overturned 1896 Plessy v. Ferguson precedent upholding the constitutionality of (supposedly) “separate but equal” segregated public facilities.

Also, in 1943, in a 6-3 ruling, the court reversed an 8-1 ruling from just three years earlier that had upheld the constitutionality of laws requiring school pupils to salute the U.S. flag, regardless of deeply held religious objections to the practice.

More recently, the court has held (in 2003, when overturning a 1986 precedent upholding the constitutionality of anti-sodomy laws) that stare decisis is not an “inexorable command.” Quite right. The inexorable command is to reason correctly so that justice is done, especially when constitutional rights are at stake.

“Fiat Justitia ruat caelum” is Latin for “Let justice be done though the heavens fall.” Perhaps that would not be prudent. However, when a flawed precedent falls, this is hardly equivalent to the heavens falling.

George F. Will is a columnist for The Washington Post.

February 20 2020 *Listening Session*

Comments on L & C County's proposed Zoning of the Helena Valley Planning Area

*19 people  
Files out  
of about 80 people*

Print Name and Sign Signature:

Address Residence & Mailing:

Phone Number:

*All voted same*

1. Do you favor the L & C County Zoning Map and General Plan as outlined? Yes  No  
Comments:
2. Do you believe the County Planning Staff is adequately advertising meetings? Yes  No  
Comments:
3. Has the Staff & info adequately justified the need for large tract rural property? Yes  No  
Comments:
4. Do you feel rural property values will drastically go down with County Zoning?  Yes No  
Comments:
5. Should The county Video Record all public Zoning Meetings?  Yes No  
Comments:
6. Should L & C Co mail Maps & economic impacts details to all HVPA landowners?  Yes No  
Comments:
7. Could the County be held liable for damages to rural property owner's lands?  Yes No  
Comments:
8. Must County Hire a Consultant to do an Zoning Economic Impact Assessment?  Yes No  
Comments:
9. Will you actively support efforts to counter the Counties proposal?  Yes No