



316 North Park Avenue, Helena, Montana 59623

ZONING ADVISORY PANEL

FINAL Meeting Minutes

Meeting Date and Time: January 12, 2022, 9:30 a.m. to 11:30 a.m.

Location: Meeting Held at Carroll College, Campus Center Building, Lower Level (All Saints Hall) and Electronically Via Zoom

Board Members Present:

Tyler Emmert - *on zoom*
David Brown
Lois Steinbeck - *on zoom*
Joyce Evans
Archie Harper
John Rausch
Dustin Ramoie - *on zoom*
Mark Runkle
Jacob Kuntz
Kim Smith

Pat Keim

Board Members Absent:

Shane Shaw

County Staff Present:

Greg McNally, Planner III
Lindsay Morgan, Planner II

Moderators Present:

Dr. Eric Austin
Lucia Stewart

Members of the Public Present:

(in-person): Andrew R. Thomas, John H. Herrin

(as noted by the Zoom screen name or phone number listed): HCTV, David Knoepke, Greg Mc, CDP, Ryan Leland, iPad (2), Steve Utick, M Milton, Angie Hubbard, HAR guy, Bill Gowen, Chris Stockwell, DW

1. Call to Order

Chair Jacob Kuntz brought the session to order at 9:33 a.m.

2. Roll Call

A quorum was established with 11 members present.

3. Zoom Meeting Protocols

Greg McNally provided an opening statement regarding the hybrid setting of both Zoom and in-person meeting protocols, the process of the meeting, Covid approved safety protocols, and Zoom and in-person participation instructions. He stated for those in-person to please enunciate and speak clearly and loudly due to having only one microphone on the center table.

4. Approval of the November 10, 2021 and December 8, 2021 Meeting Minutes

David Brown: Motion to approve the November 10th and December 8th meeting minutes

Archie Harper: 2nd the motion

Motion passed unanimously: 11-0.

5. Business Items

Moderator Eric Austin reviewed the remaining timeline of the Zoning Advisory Panel (ZAP). Today, the ZAP will be working on the Rural Residential District draft. The Suburban District will be reviewed in two weeks, with a final discussion on February 9th. He added comments on participatory processes and their existence on a continuum that can range from providing information on request of an organization or body, providing feedback and contributions on proposals. He added that on the other side of the continuum, is a thoroughly collaborative and consensus-based development of the content. He asked the ZAP to reflect on what their endorsement would need to look like on February 9th to feel successful in the participatory process. There may be a final ZAP meeting for recommendations outside of the ZAP scope on February 23rd.

Lindsay Morgan made a presentation on the Rural Residential Zoning District and the Planned Unit Development Overlay District. The 2016 Helena Valley Area Plan discusses five key issues: water, wastewater, roads, fire, and flooding. The three main issues that the rural growth area boundary is based on are: water, roads, and rural fire protection. In Section 7, it states that the rural growth area is based on a 10-acre density or a 10-acre minimum lot size. Within this area, there are two opportunities for higher density development. A cluster development or a Planned Unit Development (PUD), if the three key issues can be addressed: 1) water, by ensuring there is adequate water to meet the long term needs of the subdivision; 2) roads, by ensuring good and safe access; and 3) fire protection, by ensuring that the development would not provide burdens on existing fire protection. She discussed Section 7.06 and the addition of

exemptions to the 10-acre minimum: cluster designs or PUDs. She also discussed changes to the setbacks in Section 7.07 and Section 7.08 relating to whether the lot is above or below 10-acres.

Lindsay Morgan discussed Section 21, the Planned Unit Development (PUD) Overlay District that was in the previously approved zoning regulations. This section lays out the process, documentation required, and what mitigation is needed if all three constraints (water, roads, fire protection) can be mitigated by the property owner or developer so that a higher density than 10-acre lots could be considered. She explained the application and approval process differences between a major and minor subdivision.

Mark Runkle inquired about the road requirements, specifically the width, in regard to the roads to the development and the roads inside the development.

Lindsay Morgan responded that the current regulations and public works manual require 24-feet in width, for all minor or major collectors. In the urban areas of the County, the roads will need to meet city standards, but in relation to rural PUD requirements, it depends on the project proposals. The regulations are not looking to change the rural road standard because the density restriction would be in place, but could be a condition within a PUD, but not for the feeder roads.

Kim Smith stated that the Montana subdivision water quality regulations are currently limited by Montana Department of Environmental Quality (DEQ) to wells $\frac{1}{4}$ mile apart, or 1,420 feet, and are limited to 10-acre feet. He suggested Lewis & Clark County use that as a criteria. In regard to roads, he stated that off-street parking and pro rata shares of road improvements are a moratorium on development because development becomes cost prohibitive and infeasible. He stated that all current parcels should be classified as conforming, so as to reduce issues such as setbacks. He added that fire hydrant spacing is something that should be predetermined by fire districts, and expressed his dislike of the current requirements.

David Brown stated he's getting input from large tract owners, particularly in the agriculture community, and their dislike of the 10-acre minimum. This seems to be a switch and bait, with the cluster development and PUD to get around the 10-acre minimum, and it could be a credibility problem in the future. He inquired on more details regarding the cluster design development.

Lindsay Morgan responded with a review of Sections 706, 707 and 708. She stated that the cluster development still maintains a 10-acre density minimum but concentrates the density to specific areas and creates a larger tract that can still be agricultural or open space in nature, and will equal 10-acre density in its overall development layout. She added that cluster design is

currently only considered, but is not currently in effect until the County Commissioners pass its approval in June, if no changes are made. She added that this is different from the PUD.

David Brown inquired what is its difference to a PUD?

Lindsay Morgan responded that PUDs would allow a development to do something more dense than 10-acres if three issues (water, roads, and fire services) were mitigated alongside the required proof.

Kim Smith stated it's impossible to zone and make it perfect for all uses and intended uses, but these two higher density mechanisms give people options.

David Brown stated that's the big rub for him, in how the regulations are taking ownership and telling folks that this open space is protecting it from future development but without compensating the landowner. He added that it seems to be a stretch and potential for litigation.

Greg McNally stated that open space can be set up by covenants in cluster developments and PUDs, but it could be revoked if those development restraints are no longer there.

Pat Keim referenced Section 7.2.04 on the permitted uses of public facilities, and if under community uses it includes fire service or ambulance service. He requested to make it clear that this is included.

Greg McNally stated it is defined under the definitions of public facilities in Section 3.

Pat Keim referenced Section 21.08.01.02 as it relates to roads, and how the width affects fire services. He stated that the width of road is critical to allow for fire tenders to move past parked vehicles on roads where street parking is allowed. He referenced Section 21.06.03 as it relates to the provision of location of fire stations. He added that it is critical for an exemption to locate a station on parcels smaller than 10 acres. He also added that in regard to water supply, he requested a preference for considering high flow hydrants or pumps in strategic locations, which could serve several subdivisions.

Tyler Emmert referenced setbacks and height restrictions, that without a building permit system, there is an issue. Majority of people don't know about the restrictions of this zoning document. He stated that if the County wants to create height or setbacks, he recommends building permits.

Lindsay Morgan responded that there is Planning Staff discussion on how to create a building review process to potentially catch these types of regulation infractions.

Tyler Emmert stated that adding more water restrictions than what Montana DEQ requires could create potential issues for the County. He added in regards to the proportional share on roads, he also recommended staying within the state law.

Secretary Lois Steinbeck referenced how PUDs and the cluster design address water. Without a comprehensive water study, it's the same issue with subdivisions. It cannot predict future water availability by only measuring well depth. The more wells that are created, it begins to affect water depth elsewhere. There is no way to enforce the 10-acre feet restriction without metering or another enforcement mechanism. It doesn't consider the cumulative impact of groundwater withdrawals.

John Rausch stated he is not a fan of 10-acre minimums. He reminded ZAP members to review the Bureau of Economic Research video, and how 10-acre zoning is a driver of expense and affordability is a consequence of the ZAP recommendations. He stated his confusion in regard to various distinctions of setbacks. He stated his support of potential water metering, which is available by radio signal now, so that developments adhere to their allocations. He added how non-conforming parcels should have a difference process to utilize the redevelopment of their lots.

Lindsay Morgan responded that there is room for recommendation for how best to clarify setbacks in a rural area. She stated in regard to non-conforming parcels that this zoning cannot restrict those properties from being developed, but they need to adhere to the regulations.

John Rausch stated that a lot line adjustment to sell a 15-acre parcel into two parcels is not allowed. He stated a recommendation to figure out a way to grandfather the non-confirming parcels and encouraged the County to figure out a way for those individuals to continue to do what they want to do.

Lindsay Morgan responded that can be done right now prior to zoning taking effect, and some folks are doing just that. She added that there is also a variance process that is in place.

Vice Chair Dustin Ramoie stated that the County is going to have to come to terms with the need to invest in staffing to enforce the new regulations, such as review applications, having a zoning officer, and have adequate enforcement. He stated a recommendation for adequate staffing for zoning enforcement.

Archie Harper referenced Section 21.08.016 and water availability issues. He referenced Kim Smith's comments on ¼ mile space as a good default and Lois's comments on how to monitor water consumption. He also referenced the aquifer presentations from watershed staff, and the variation of availability of the three acquirers in Helena Valley Planning Area. He recommended

deferring to our experts and creating the regulations to be stratified to consider the three different aquifer recharge areas.

Chair Jacob Kuntz inquired where 10-acres in size came from, such as a specific study? The Flathead Valley has a 2.5-acre density.

Lindsay Morgan responded that it is discussed in the Growth Policy for rural areas, and will respond when the passage is located.

Pat Keim stated that it's important to keep in mind that the 10-acres are not connected to the Helena aquifer.

Tyler Emmert inquired if this 10-acre minimum benefit will outweigh the costs?

Secretary Lois Steinbeck stated that from her understanding, the 10-acre minimum had to do with trying to keep rural nature and character in the Helena Valley, and citizens supported it. It's about how rural neighborhoods want to look. She stated the 10-acre minimum, along with other zoning, isn't based on study and methodology, it's based on what citizens want to do and how they want their neighborhoods to look." She added an inquiry if zoning can require water meters in PUDs?

Lindsay Morgan responded she is unsure, and will look into it.

Secretary Lois Steinbeck inquired if the County has any other way than the state subdivision regulations to determine water availability? She added if there are any current recommendations to the County Commission on how to establish a more reliable assessment?

Lindsay Morgan responded that she doesn't have an answer to this as the Planning Staff is just now starting to update our subdivision regulations.

Greg McNally responded that the Planning Staff has recognized that subdivision review is inadequate in determining water availability. He stated it is a perennial issue of determining long term water availability and how new wells impact old wells.

Secretary Lois Steinbeck stated housing affordability has more to do with the economic situation than not government regulations. Government regulations will protect the value of the homes, particularly if regulations protect homeowners from running out of water.

David Brown stated that the Montana DEQ provides a water permit for any well to be drilled. He suggested that the ZAP make a recommendation that water availability needs to have some consideration and regulations beyond the DEQ.

Archie Harper stated a consideration of risk when there's too many people pumping on a limited supply that maybe only potable water use is allowed, and irrigation is not.

Mark Runkle encouraged ZAP members to read the Growth Policy that relates to the Rural Residential District.

Public Comment on this Agenda Item

John Herrin stated (*in-person, transcribed from Zoom transcript*) I wish I had more time, but first off we'll just start out with a few newspaper clippings in the IR recently. "Raising citizens' backlash on bad policies and good governance," written by an environmentalist by the way. "Slashing red tape will grow Montana's workforce," written by what I think is a fair balanced person in responding to missed policy recommendations to support supply. "Montana's red tape in 2022," the governor orders all state agencies to streamline processes and make it more efficient. They've got rid of a lot of duplication and inadequate things, and I will say what is missing when you folks talk about groundwater quality is that the DNRC provides the initial water rights, which are very onerous very hard to cope through, and it really limits the amount of water and limits that among subdivisions that have actually been developed. I've been in the DEQ for five years and done 400 subdivisions, and I didn't take that job role lightly and say that you folks can come up with a 10-acre tract restriction and use that, there's no basis in fact. In fact, it's just the opposite. It's arbitrary and it's not based on science. For instance, I gave you this example of the Wheat Ridge subdivision and they're going through their fourth phase of 2-acre tracks out on Spokane Ridge. Now all of a sudden you can't do any more of these. Where's the fire risk? Where is the water risk? Where is the transportation risk? It's not there. In legal terms, it's arbitrary and capricious and illegal to discriminate. Its discrimination and this is part of the lawsuit that's been filed. It's because these are targeted with no basis in fact. So let's go to the real intent, and it says, right here, which is the intent is to stop high-density growth, which is basically to stop all growth except 10-acre tracts. That is going to hurt our community. We don't have a pipeline right now of subdivisions. We don't. That's driving the price of land through the ceiling and that in turn drives the price of real estate. Let's turn to the water issue that Lois keeps bringing up every time, and I'm probably getting a little agitated here but without doing an update to the Growth Policy, as you just said, we need to do that. We need to do some homework before we actually do this. That homework would take the 2015 Growth Policy, which is based on the 2010 census data and use the 2020 data. It is required by law every five years. So, the 10-acre tract came out of one sentence in the Scratchgravel Hills preliminary reports, but if you actually look back to the reports, the Bureau of Mines studied the Scratch Gravel hills and the control groundwater area for six years and did all kinds of pump tests. They did the North Hills the same way. The conclusion is yes, there are spot problems, but we can continue to control groundwater in the entire area. End of story. The 10-acre tract is

dead because you're fighting the Bureau of Mines and geology. You cannot regulate lot size. It's a case-by-case basis, and the DNRC are required by law to look at the cumulative impacts. It should never have gotten put in the regulations. When we go to court, we're going to ask everybody, how did you come up with it and nobody can tell where this came from. What's the basis? What's the science? I'm a scientist. I require facts. You should require facts. By the way, a supermajority is five people who go against anything in this room. It goes down. And that was mandated by the County Commissioners. So five of you, please vote against the 10-acre tracts. Also we need to have rent-to-lease. This just went out the window with this. We need that in there because we need affordable housing, We need RV parks. We need mobile home parks. We need to streamline the process and get them in quick.

Andrew Thomas stated (*in-person, transcribed from Zoom transcript*) to respond to the question regarding the minimum lot sizes, I will remind the ZAP panel that during the deliberations 160-acre lot minimum was floated in portions of the County, and so was 20-acre lot minimum. Very bluntly stated, arbitrary standards result in arbitrary outcomes. I would strongly again discourage ZAP from endorsing a 10-acre minimum. Now with that said, what should occur in this place. Very simply said, rely upon on state minimum standards and evaluate each lot on a per lot or per development basis, and if for example, the Planning Department can determine a justifiable reason for a 5-acre lot, 10-acre lot, or 20-acre lot in that particular development and if it's defensible, that means that the lot owner or developer can challenge that then whatever better evidence can be presently will ultimately determine the lot size. This creates administration efficiency in terms of defending the state's interest and protecting water rights and other development-related issues but it also defends the property owners interests. Now, if for example, if a community wants higher lot size because it's their aesthetic preferences, such as what Ms. Steinbeck was referring to, then they can use Part 1 zoning is available to create whatever minimum they feel is desirable. Now with regards to the Planning Development Overlay, I think it's a very good idea. It accounts for the cumulative effects of a large development but critically what has to be questioned is, what is the cost for smaller developments or single parcel owners. You have to divide that. A person who wants to divide 20 acres into three lots is not going to have the economic resources that a large developer does. If you look at the cumulative effect of the number of houses built, and you force everyone to go through the Planned Development Overlay District, it's going to add to cost and prohibit more development, or at least make it substantially more costly. Now to that end, what I've seen in either of these documents that were distributed today, one final thing that should be questioned is what ultimately is the legal recourse? I have not reviewed recently how the County ordinances relate to the ability to appeal any decision of either the County Commissioners or the Planning Board in a State Court, but it should be considered in both the Planned Development Overlay District. Ultimately when you look at a lot of the discussion about threatened lawsuits, one if you have a transparent process of evaluating each lot and if

you have a defensible policy in regards to regulating that good. But also if you provide landowners explicit legal recourse that takes the ultimate administrative decision outside of the government body and into a neutral court it would probably be desirable for all parties. Thank you.

Chair Jacob Kuntz stated that the meeting has run out of time for public comments, and requests all further public comment be submitted in writing.

1. Announcements

Moderator Eric Austin reminded the panel to submit their comments and feedback on the Jamboards. The meeting on January 26th will be focused on the suburban regulations.

Mark Runkle: Motion to end the meeting

John Rausch: 2nd the motion

Motion passed unanimously: 11-0.

8. Next Scheduled Meeting

January 26, 2022 at 9:30 a.m. on Carroll Campus and Zoom.

Adjourned at 11:32 a.m.