



316 North Park Avenue, Helena, Montana 59623

## **ZONING ADVISORY PANEL**

### **Approved Meeting Minutes**

**Meeting Date and Time:** April 14, 2021 9:30 a.m. to 11:36 a.m.

**Location:** Meeting Held Electronically Via Zoom

#### **Board Members Present:**

Mark Runkle  
Pat Keim  
Tyler Emmert  
David Brown  
Lois Steinbeck  
Joyce Evans  
Archie Harper  
Dustin Ramoie  
Kim Smith  
John Rausch

#### **Board Members Absent:**

Jacob Kuntz  
One Vacant Position

#### **County Staff Present:**

Peter Italiano, Director  
Greg McNally, Planner III

#### **Moderators Present:**

Dr. Eric Austin  
Lucia Stewart

#### **City of East Helena Present:**

Mayor James Schell  
Jeremy Fadness, WWC Engineers

#### **Members of the Public Present (as noted by the Zoom screen name or phone number listed):**

Chris Stockwell, David Knoepke, Gloria Soja, HCTV, Kathy Moore, Maxwell Milton, Steve Utick, McConnell - COH, Andrew Thomas, Peter Schade

### **1. Call to Order**

Vice Chair Dustin Ramoie brought the session to order at 9:33 a.m.

### **2. Roll Call**

A quorum was established with 10 members present.

### **3. Zoom Meeting Protocols**

Greg McNally provided an opening statement regarding the ZOOM Meeting Protocols, the process of the meeting, Covid approved safety protocols, and Zoom participation instruction

### **4. Approval of March 14, 2021 Meeting Minutes and March 24, 2021 Meeting Minutes**

John Rausch mentioned that in the March 14th meeting minutes his name was misspelled on page 7, and on the March 25th meeting minutes his name was missing from the attendance. He requested those updates.

**Secretary Lois Steinbeck: Motion to approve minutes, with the changes presented by John Rausch**

**Archie Harper: 2nd the motion**

***Motion passed: 10-0***

### **5. Business Items**

Greg McNally introduced East Helena Mayor James Schell and Engineer Jeremy Fadness from WWC Engineers to present the City of East Helena Growth Policy.

James Schell noted the City of East Helena is an active participant with Lewis & Clark County.

James Schell provided a presentation (which can be found on the [ZAP website](#)) of the City of East Helena, where he reviewed the boundaries of the City of East Helena. He discussed the Highland Meadows Subdivision and Vigilante Subdivision, as well as the additional properties in and around the City.

James Schell discussed a brief history of the land that had previously been the ASARCO lead smelter plant. It is currently being cleaned up by the EPA as a superfund site, which was required to be annexed into the City of East Helena in 2010 and added 2,500 acres of additional land. This addition created an extensive amount of undeveloped property that the City of East Helena needs to provide services to, and he noted the Prickly Pear Land Trust involvement in the clean-up and resale of the property.

#### **Board Discussion:**

Greg McNally pointed out the La Casa Grande and the East Valley Part 1 citizen-initiated zoning districts, since neither district is involved in the ZAP zoning recommendation process. He noted

the suburban mixed-use zoning district and the rural mixed-use zoning district areas surrounding the City of East Helena. He requested further explanation of the proportionate share and the potential annexation of properties surrounding the City.

Jeremy Fadness responded that municipalities and cities have more flexibility with requiring offsite infrastructure improvements with annexation than within the subdivision review process. Typically, municipalities require any offsite improvements become a condition of annexation because there's more latitude in Montana code with the annexation process. As part of annexation conditions, the Vigilante Subdivision was required to improve Plant Road from Valley Drive to the subdivision, and roads along the boundaries of the subdivision. Highland Meadows was already in the city limits so the City could not utilize the annexation process for improvements. Therefore, the City of East Helena required a preliminary engineering report and traffic study from Highland Meadows for Valley Drive. This study outlined the proportion cost share required by Highland Meadows as a condition of approval prior to final planning of phase one. The City is currently using those funds to construct some of those improvements.

David Brown inquired about the Red Fox Meadows Subdivision that has wastewater treatment services but not water providing services, and was not annexed. The City of Helena requires annexation for providing any services. He asked for an explanation of the reasoning between the City of Helena and the City of East Helena in the differing approaches.

Jeremy Fadness responded that Red Fox Meadows Subdivision initially proposed an onsite community wastewater treatment system. However, the cost started getting fairly high on that system, and so they approached the City and asked if it would be acceptable to pump wastewater to East Helena for treatment. They agreed to pay the same rate that the City of East Helena residents pay per connection for treatment of that wastewater. At that time, the City of East Helena had extensive capacity, although it would have preferred that the subdivision had annexed into the City. Red Fox Meadows is unusual because it's not adjacent to the City boundary, so annexation would have been difficult. Therefore, the East Helena City Council overrode that requirement, and decided it would be more important to take some financial burden off the residents of East Helena for the investment put into the wastewater treatment plant.

James Schell added that the East Helena City Council made these decisions before the Highland Meadow Subdivision and the Vigilante Subdivision were created, when the City had more capacity and was more interested in cost-sharing. The water and sewer district maintains that infrastructure, not the City of East Helena.

David Brown asked about the land north of Prickly Pear School that is not developable due to being in the floodplain and has sustained 2 major floods in the last 10 years. He asked if that is addressed in the City's planning considerations?

Jeremy Fadness responded that the City of East Helena has a good floodplain delineation through that area, and that floodplain maps are included in the growth policy.

David Brown inquired about an incident of the sheet flow in January when the ground did not absorb water due to frost, and it therefore flooded adjacent properties. He asked who was responsible for that kind of a flood event where no storm water system is in place to manage these incidents? He inquired how that kind of thing should be planned for in the growth policy?

Jeremy Fadness responded that East Helena manages the 100-year floodplain within its Growth policy. He added that as per the subdivision regulations, no development is allowed within a floodplain. The area David Brown was referring to is dedicated in a subdivision plat as open space, and that subdivision is required to treat its stormwater onsite via detention ponds.

Pat Keim asked how the Fox Ridge Subdivision connectivity to the East Helena wastewater treatment plant was constructed and paid for?

Jeremy Fadness responded that the developer was responsible for installing all infrastructure to transfer the wastewater to East Helena.

Mark Runkle stated that he's stricken by the amount of development adjacent to the City of East Helena that's not annexed, nor is it participating in the infrastructure. He added that this situation may speak to the extreme propensity for developers to develop outside of the city limits, adjacent to Helena and East Helena. Also this situation speaks to the core of what the ZAP is supposed to do, which is setting development guidelines to assist in making it more sense for developers to want to develop in the city limits. He asked if that is consistent with what the City of Helena, East Helena and the County's plans are?

Jeremy Fadness responded that he would like to see consistent regulations and standards that are similar to what the City of Helena and the County has with the urban standards boundary. Within this boundary is where the regulations set the standards so that if a development is annexed into the City from the County, it is compatible with the City. Therefore, setting up development standards for areas that are compatible with the City of East Helena, particularly

the agricultural lands that are in the County that are prone to annexation, would help for any of that future annexation issues that might come up.

Mark Runkle stated that is a blatant example of what happens when the right standards are not in place and the developers are allowed to continue to push the future impacts due to rudimentary development standards and the cost of fixing connectivity issues onto future residents.

Secretary Lois Steinbeck inquired about what kind of wastewater issues would force annexation or require city services be extended?

Jeremy Fadness responded that the primary reason is due to age of the infrastructure. Due to small lot sizes of La Casa Grande (0.5 acre or 1 acre lots), it's difficult to replace drain fields or create new septic systems. There have been previous discussions of this subdivision hooking up to the City of East Helena, but it would require La Casa Grande creating a water and sewer district, installing the infrastructure in order to meet city standards, and then connecting the infrastructure. Then, the City would consider annexation. Another option is if a special improvement district were created by the City during annexation to construct the sewer mains, which is a method to finance the infrastructure to serve that area.

Secretary Lois Steinbeck inquired about the City of East Helena approach to fire services and its capacity, and if all of the areas outside of the City are volunteer fire services.

Jeremy Fadness responded that all the properties within the city limits of East Helena are served by a volunteer fire department. There are mutual aid agreements to support service calls with West Valley and other volunteer rural fire districts. The City is currently in need of more volunteers for its fire districts, and even more volunteers as development continues.

Secretary Lois Steinbeck inquired if there are any studies or analysis on the capacity of volunteer fire departments or of the demands placed on volunteer fire departments by development?

Jeremy Fadness responded that when a subdivision is in the development process, the City meets with the Fire Chief to discuss the quantity and placement of fire hydrants, fire flows, and their capacity to serve the subdivision. It's a case-by-case analysis per development. It is required to provide fire service in the city limits, but a development that is being annexed is a different discussion. The City can require emergency services improvements, depending on the size of the development, but again, is the Fire Chief's decision.

Tyler Emmert asked Mark Runkle about his first hand experience where his development project is located within three growth policies jurisdictions: City of Helena, City of East Helena, and Lewis & Clark County. He asked why Mark Runkle chose Helena versus East Helena to provide city services, and what advice he would provide to anyone whose development could be considered within all of these growth policies?

Mark Runkle responded that the City of Helena has been a really good partner with Mountain View Meadows with the City's standards of development. The decision to go to Helena predates his involvement, but it would have required less capital to attach to East Helena. He stated that the development pattern and the methods within the Helena Valley are adverse to city development. He would advise that the right and best thing to do is to develop on municipal water and sewer systems instead of contributing to the extreme sprawl. He added his advice to the City of East Helena and City of Helena would be to create good partnerships with developers. He added that the city staff needs to be counseled directly by the city managers, who need to be pro-development, but at the same time making sure that it's done right.

Jeremy Fadness added that from his experience as an engineer for the Mountain View Meadows starting in 2005, that it came down to the lack of wastewater capacity in the City of East Helena to serve the subdivision at that time.

Pat Keim responded to Secretary Lois Steinbeck's earlier question about fire services. He stated that there are 12 fire districts in Lewis and Clark County with defined boundaries, which are obsolete when it comes to collaboration during an event. He began working in the Lewis and Clark County fire service over 30 years ago. He added that there are the same number, if not fewer, volunteers as back then. This number continues to go down when one would intuitively think that as the population increases that more people would be available to volunteer, but it is not the case. Many new residents are not aware that the fire department is a volunteer department. He added what has changed is the increased numbers of medical calls and medical assist calls. In his early days, it was probably 75% fire calls, and 25% medical calls. It's exactly the opposite, which has added stress on all of the volunteer fire departments across the Valley.

Tyler Emmert asked Mark Runkle if he had it to do over again, would he develop the Mountain View Meadows on city services?

Mark Runkle said no.

Tyler Emmert stated that Mark Runkle's development project is exactly what the City of Helena and East Helena growth policies are talking about wanting. Yet it's really hard to do, and the advice from people doing it is, "Don't do it." He stated that the ZAP needs to think through its recommendations so that it lends to the types and locations of development that the growth policies are asking for.

James Schell added that if it was a down real estate market, the City of East Helena would be shaking their heads with an absolute yes.

Secretary Lois Steinbeck requested a ZAP meeting on the synergy of what needs to happen so that next time a developer is asked if they wanted to be within the city limits, they respond, "Yes, absolutely." The ZAP needs to make sure that the zoning recommendations and the identified issues will help facilitate the kind of development that the growth policy anticipates.

Tyler Emmert stated his observations in the different approaches between the two cities. He stated that the City of East Helena is promoting things within its growth policy and looking for solutions. He added that during the ZAP meeting with the City of Helena, the City was hesitant to commit towards anything that promotes its growth policy.

Mark Runkle inquired about the previous discussion of the 2,500 acres that was annexed into the City of East Helena and the subsequent problems. He inquired if there was a mechanism for the City to own the land, manage the individual purchasing, and therefore the annexation of this property in order to implement the infrastructure needs.

James Schell responded that the City is not in the land business, so he's unaware if that would be considered as an option. He added that the Prickly Pear Land Trust is currently remediating an expansive open space area in the previous ASARCO site, which will eventually be turned over to the school district. The Trust had wanted the City to consider assuming that land as park space, but it's too much to assume into the City's public works department.

Jeremy Fadness added that if the City had to do it over again, the City would not allow the annexation of that land into the City of East Helena. It deprived the City of the annexation process and developer's infrastructure investment when that land was developed.

Peter Italiano stated that unfortunately, the lack of comprehensive planning back then is something everybody is paying a price for, especially with that 2,500 acres that was annexed prematurely. He stated that today's issues of flooding in points distant to the city, fire-related

capacity issues, service delivery issues, and road issues represent a dearth of comprehensive planning. These issues show the absolute critical need for comprehensive zoning in the County.

Peter Italiano stated that some of the flooding issues in these old growth developments existed long before the County and the City had floodplain development regulations. It's a huge challenge when there is urban-type density in flood-related areas where it shouldn't exist in the first place. He added that trying to ameliorate the problem is almost impossible and to focus on moving forward. For example, Red Fox Meadows has a large stormwater detention facility, which should hopefully alleviate future flooding events.

Peter Italiano stated the way Montana's statutes are defined, especially for a county that lacks zoning, growth is managed by the state subdivision statutes. The statutes do not allow for the County's ability to make the determination of whether or not the level of service from a particular fire agency is adequate. But as zoning comes into place in the Helena Valley and more development occurs under a zoning type paradigm, there may be more flexibility on the determination.

Peter Italiano stated that fire agencies have the ability to adjust their revenue stream relative to their service delivery. Currently, the subdivision regulations encourage the County to create offsite individual fire water supply systems with wells, pumps, and both. All those require long term ongoing maintenance and funding, so the County typically sets up a micro sized rural improvement district. One question could be asked whether or not that's the appropriate method as opposed to simply allowing the fire service to generate the revenue needed, which could move the County from the small scale and more towards the medium or regional type approach to fire suppression.

Peter Italiano stated that when assessing roads, the County and City are stuck with proportionate share, which is unfortunate from his perspective. He stated it's the framework that the Montana statutes require, and it does create challenges unless assessing some type of process within zoning. He added that the Vigilante Subdivision is the appropriate way to develop, where it bears the cost of its own impact. As other County staff have previously stated, Lewis and Clark County has more or less  $\frac{2}{3}$  of the growth occurring in the County and  $\frac{1}{3}$  in the cities, and this ratio needs to be flipped. This philosophy is one of the underlying tenets of the growth policy. When it's not flipped and it continues to occur in the County, the long-term effects are citizens subsidizing the development. Over time, the more urban-esque type developments in the rural areas wind up requiring additional services and the citizens' wind up paying for that through the general tax program. By moving that kind of development closer to and then within the city, this scenario becomes flipped. This potential cost shift is one of the



reasons why the County growth policy recommends zoning and why it's important that the ZAP finalize the zoning in a manner that addresses all of these concerns.

Secretary Lois Steinbeck requested a continued discussion to understand funding mechanisms for fire services and fire districts, and alternatives that may be available if reliance on strictly volunteers becomes problematic in supporting public safety in areas.

Secretary Lois Steinbeck requested information on what happens when a developer is in multiple planning districts, how does City and County staff manage that process?

Tyler Emmert stated that it's worth noting that Jefferson County is not interested in this discussion.

Greg McNally stated that there are multi-jurisdictional planning efforts underway. Both the City of Helena and the City of East Helena have taken into account how to manage growth as jurisdictional boundaries increase. The City of Helena created an urban standards boundary, and the County created theirs to match the City's boundary. The County and City of East Helena are working together on improvements to Valley Drive, and are utilizing a proportion share to make those improvements. Those are example discussions that continually occur between these jurisdictions as these growth issues occur.

Jeremy Fadness stated that there were beginnings of meetings between the City of Helena, City of East Helena, and Lewis and Clark County to facilitate co-planning efforts, but those ceased due to COVID19. The City of East Helena is interested in working with the County on creating an urban standards boundary, similar to what was completed with the City of Helena. But when looking at the land use map in the City of East Helena planning area, there's not a lot of land outside of the city limits that is available for development. The City is going to struggle in the future with how to incorporate those areas into the City and bring them up to City standards if City services are requested.

Pat Keim responded to Secretary Lois Steinbeck's previous comment on fire department funding. There are two mechanisms for funding. One is from creating a fire district with a tax assessment, which is collected through the property taxes. The second is charging fees for being a resident in a fire service area. There are two ways tax revenues can increase. The first is by an increase in the value of the mill levy, and the value of property within the district. The second way is by trying to get a vote to increase the property tax. An attempt to increase taxes on each individual district has not been done by the fire departments for a number of years in the valley. He stated his opinion that it would fail, as it's the current record of special district tax

votes. He added that all of the fire departments in Montana are struggling with a proposal put forth in the current legislature to sunset special taxing districts every 5 or 10 years, which means a reauthorization, which is a scary proposition.

Peter Italiano stated that local government is not a for-profit entity and that's good, because sometimes what local government has to do is for the good of the people. If the City of Helena and the City of East Helena have to make decisions on whether or not to annex certain properties, those annexations would probably never occur. But the local government is charged with providing what is the general greater good of the people in overall public health. Comprehensive planning looks at that kind of approach of what is good for the whole community, and not just a particular piece of property.

#### **6. Public Comment (*transcribed verbatim*)**

Vice Chair Dustin Ramoie called for public comment.

No public comment.

Vice Chair Dustin Ramoie called public comment items not on the agenda.

No public comment.

Public comment closed.

#### **7. Announcements**

Moderator Eric Austin reviewed the ZAP work plan and timeline. He added that he is cataloging all previous ZAP requests through the meeting minutes.

Peter Italiano responded to the previous requests for a map of all non-conforming parcels within the County based on the current rural 10-acre minimum zoning. He stated that the County has drafted a map that is almost complete, but needs to be reviewed further for parcels that should not be included prior to sharing it with ZAP.

Moderator Eric Austin requested that the ZAP review the previous meetings and presentations for any additional questions, or topics that need to be covered so there's adequate time and the informational process is comprehensive.

Tyler Emmert referenced the non-conforming map being compiled by the County and stated his hesitation to remove duplicate parcels since common ownership between two parcels doesn't necessarily equate to same uses. He stated that the map highlights the spots that the ZAP may

need to put a little elbow grease on if the ZAP wants to call the zoning as it's currently written as comprehensive zoning. He suggested that large chunks of nonconforming parcels may suggest an open space donut zoning rather than a comprehensive zoning. He added that the ZAP may need to consider this issue when assessing the most comprehensive zoning.

Greg McNally shared some upcoming educational opportunities with [Future West](#).

Greg McNally stated that the public comment will continue to be compiled on Friday at noon prior to the upcoming meeting and provided to the ZAP members. These comments will also be posted on the [ZAP website](#). He requested that ZAP members keep these public comment packets, but he will create a final compilation later in the ZAP work plan.

Greg McNally stated the subsequent meeting will be focused on fire suppression and management. The meeting will review the community wildfire protection plan, which is a joint plan between Jefferson County, Broadwater County, Lewis and Clark County and the cities of East Helena and Helena. He also requested the ZAP to review Lewis & Clark County key issues report regarding fire protection.

Tyler asked that the next meeting on fire address how the forests in the South Hills should be managed, and any grant funding mechanisms to do so.

**Pat Keim: Motion to end the meeting**

**Mark Runkle: 2nd the motion**

***Motion passed: 10-0***

## **8. Next Scheduled Meeting**

April 28, 2021 at 9:30 a.m.

**Adjourned at 11:36 a.m.**