



316 North Park Avenue, Helena, Montana 59623

## ZONING ADVISORY PANEL

### FINAL Meeting Minutes

**Meeting Date and Time:** August 25, 2021 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:

Pat Keim  
Jacob Kuntz  
Tyler Emmert  
David Brown - *arrived at 10:50am*  
Lois Steinbeck  
Joyce Evans  
Archie Harper  
Dustin Ramoie  
John Rausch  
Kim Smith  
Mark Runkle  
Shane Shaw

#### Board Members Absent:

#### County Staff Present:

Greg McNally, Planner III

#### Moderators Present:

Dr. Eric Austin  
Lucia Stewart

#### Members of the Public Present:

**(in-person):** Andrew R. Thomas, John W. Herrin, George Harris, Chris Stockwell  
**(as noted by the Zoom screen name or phone number listed):** HCTV, CDP, max milton, Dayshadetienne, Steve Utick, Jenni Swartz

### 1. Call to Order

Chair Jacob Kuntz brought the session to order at 9:35 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 July 28, 2021 Meeting Minutes**

**Secretary Lois Steinbeck: Motion to approve the July 28 meeting minutes**

**Marc Runkle: 2nd the motion**

**Motion passed unanimously: 11-0.**

### **5. Business Items**

Greg McNally reiterated the task of the Zoning Advisory Panel (ZAP). There is a [ZAP website](#) that contains all of the activities, recordings, agendas, materials provided, work plan, a summary of the task of the panel and the bylaws. He reminded that the County Commissioners have convened the ZAP for the purpose to provide zoning recommendations of urban and suburban districts that are created, and alternative approaches to the deferred 10-acre minimum lot size in the rural districts. The Commission indicated support for 10-acre minimum lot size, but it acknowledged the public's input to consider and make recommendations on potential alternatives.

He reminded the ZAP of the Growth Policy as a document for guidance on direction and planning paradigm, a call for working with infrastructure improvements, education, and he encouraged the ZAP to revisit this document. Volume 1 summarizes the key issues, particularly of fires, water, flood, and roads. Volume 2 sets out a policy direction in the land use paradigm changes in the rural, suburban, and urban zones.

Secretary Lois Steinbeck requested a map of non-confirming parcels, which is needed before Phase III deliberations, alongside more education on the importance of non-confirming parcels. She also requested a follow-up on the postcard discussion from earlier in the year meant to inform members of the public on the ZAP deliberations and know what is happening, as she wants to hear from citizens. She also requested a list of tangential topics that are outside of mandate but are important for policy makers to be aware of so that the zoning recommendations can be the most effective.

Moderator Eric Austin responded that the public communication will coincide with the listening sessions in Phase III when there is something for the public to provide feedback on, which is still in line with the overall project timeline.

Tyler Emmert inquired if what the County passed in regards to zoning is currently applicable?

Greg McNally replied that yes they are in the current regulations, and to reference section 706, 707, and 708 in the Growth Policy.

Moderator Eric Austin provided an update that the following procedural step in Phase II is to begin to catalog, discuss, and review the individual categories and aggregate those across all five categories. And then begin to think about how those are operationalized in regulations for the urban, suburban, and rural residential districts.

Tyler Emmert inquired about Sections 707 and 713 and asked if these sections apply to people building right now and if so, who is reviewing those plans? He stated that there are people building that are non-compliant with building height.

Greg McNally replied that people should be in compliance when building and yes those rules do apply to people right now. People need to come into the Planning Department to obtain permits, and get plans reviewed at that time.

Vice Chair Dustin Ramoie inquired if there is a site plan review process in place for new development?

Moderator Eric Austin replied that there is a bigger issue that is non-compliance, and given that the ZAP is not going to fix or resolve that issue at the moment, he directed the need to table non-compliance and its review process.

Chair Jacob Kuntz called for public comment on the above items, and reminded the public that there is five minutes per person for public comment during the entire meeting.

John Herrin (*in-person, transcribed from audio recording*) stated there is redundancy with the existing subdivision regulations that are onerous with fire, water, roads and it's a problem in my mind that they're basically revisiting things that are already could be in the subdivision regulations. Primarily, the 10 acres minimum is basically illegal taking of people's property for no benefit, and I've argued that point over and over again that there's no water quality issue that affects 150,000 acres. Fire is not an overriding all across the board issue. And there is water supply and I submitted to you folks with written documents that summarize James Madison's

statement that there's plenty of water for everyone. The Growth Policy that Greg just reverted back to as the Bible is a big lie. Sorry, it is. Density controls are illegal and are inappropriate in the growth policy and should have never been in there. And it's been perpetuated at every meeting that I've been to with this zoning stuff and it shouldn't be there. It was taken from North Scratch Gravel Groundwater control area where one person mistakenly said that the development pattern that was done by the subdivision that basically was breaking up the Green Meadow Ranch in 20-acre tracts, and if that trend to continue is appropriate, and that's not really what it said. It says, if you go less than that you should think about it okay. So now's picked up and then thrown in this law. Okay density controls when the only thing that were used for rural property. That's inappropriate. Why wasn't education, why wasn't transportation, why wasn't no the other alternatives considered? That's the big lie and you need to fix it.

Moderator Eric Austin stated the next step is to review the Pollunit results. There are two ways to look at the results. First is to look at the vote tally, or to look for the break points to the next tier of items, and what the ZAP's intuition says. He opened discussion asking for reaction to these rankings.

Secretary Lois Steinbeck stated a concern that what got the most votes is out of the ZAP's purview. She suggested to the group to do the economic poll again without the category of alternative multiple funding sources. The ZAP agrees that it's important but it's not part of ZAP's recommendation.

Tyler Emmert replied true but not true. If we're writing zoning for two districts, there are options, how to propose that, and to act like there's no purview.

Secretary Lois Steinbeck replied that there are no funding sources. She inquired if the ZAP can put it into zoning that a developer needs to create a rural funding district (RFD)?

Moderator Eric Austin responded that as the ZAP gets into the development of recommendations, it is helpful to answer these questions so as to avoid making a recommendation that is unfeasible. He asked the question that if he were to pull that particular item out, would it change the rankings?

Joyce Evans responded that more votes would be allocated to the water quality and wastewater processing needs.

Pat Keim stated that he agrees with Lois. If the ZAP doesn't have a say over recommending funding sources, but the ZAP does have say for areas of focus for zoning, then it's important to redistribute those votes to the things that the ZAP can have an impact on.

Moderator Eric Austin stated that it won't remove this from the ZAP discussion, but would it be useful to the ZAP's collective prioritization of these other items to redo this Pollunit?

John Rausch stated that there's no harm, because it's important but Tyler is right that there is room to influence funding mechanisms.

Secretary Lois Steinbeck stated that she would like to understand more about how the ZAP can integrate funding mechanisms into zoning regulations. She inquired if it would be appropriate to craft a motion recognizing that funding sources may not always jive with what the ZAP is able to recommend, but it is integral to consider and potentially propose a white paper for consideration to the County Commission. The ZAP talked about this in our first meetings. So how can the ZAP accomplish our mission without attention to this topic?

Tyler Emmert stated a second this informal motion.

Moderator Eric Austin stated that this will be kept on the ZAP's radar due to its importance expressed in these discussions. But if the ZAP would like to obtain a white paper or have any investment of resources directed towards this, then yes, it would be a vote.

Kim Smith stated a motion to reallocate the votes and reassess this next week.

Moderator Eric Austin stated he would redraft the economic Pollunit and redistribute it.

Shane Smith stated that the ZAP has expressed the obvious that clean water, groundwater, and septic are important and now the discussion is focused on who is going to pay for this. Who is responsible for identifying sources of funding to pay for this? He doesn't think this committee has the authority to do that. It's a function of government.

Moderator Eric Austin stated if something such as this doesn't go hand and glove with the charge, how does the ZAP pass on the recommendations? The specific answers to who is responsible is going to vary depending on what type of infrastructure is being discussed. It's going to have to have a greater degree of discussion and clarify how the ZAP deals with it in Phase III. The question remains: How to keep it on the table given the government's framework and the ZAP's charge?

Archie Harper stated he wanted to recall one of other constraints that is troubling to him is the economic constraints, and put it on this panel's purview. It's critical to have an understanding of sources of funding.

Vice Chair Dustin Ramoie stated that he didn't vote for this because this is well outside the ZAP's purview. He does support bringing it up as a recommendation because it's a cause-and-effect situation.

Chair Jacob Kuntz inquired what is the County willing to do beyond a Growth Policy? Is zoning the highest purpose? Is the County willing to fundamentally change the status quo of what they've done to adapt to this new normal? What are the forgone conclusions in these areas and what are the Cities and the County willing to do to make this a reality?

Moderator Eric Austin stated that the final political Pollunit will provide a place to include that concern. And Greg McNally is here to help frame this in Phase III. He has expertise, but not the expertise that this panel represents, which is why each of the members are a part of the panel.

Chair Jacob Kuntz stated that in an email chain to Peter Italiano inquiring if there was a funding mechanism to fund a wastewater treatment plant, he had replied no. So how can the ZAP come up with recommendations in the urban and suburban area if there is no option to create this infrastructure?

Pat Keim stated it becomes the question of chicken and egg of money or priorities. If we want to create affordable subdivisions, can zoning be constructed within the rings and areas of specific concentration that then this information can be used to better support getting alternative funding sources. He stated that the ZAP needs to focus on defining what are the overall goals the group wants to achieve.

Greg McNally stated in developing urban zoning regulations, the County has to work with the City, and then zone appropriately. Once zoned, then it becomes an opportunity for development to fill those pieces within those expectations and support a funding mechanism. Under the current paradigm, everything that guides growth in Lewis & Clark County are the performance standards of water and wastewater that are set forth in the Montana subdivision regulations. That's it. So make a wise investment on public/private investment for infrastructure, the planning department is responding to the individual who comes to the door first. Is that appropriate for the whole County? Money is tight so making wise choices and investment is important since it is representative of the public. The Lewis & Clark Planning Department doesn't currently have those tools to facilitate this ability and zoning gives us the tools.

Chair Jacob Kuntz inquired if the City of Helena and East Helena agree with the urban zoning boundary?

Greg McNally replied yes, and both the cities and County match each other's boundaries.

Vice Chair Dustin Ramoie stated the City adopted the urban standard boundary which was identified as a baseline to what infrastructure could be served by the City in the 2011 Growth Policy alongside being a baseline for the creation in the County Growth Policy. The City has been at the table for a long time and the County is now catching up by attempting to adopt zoning, and is the reason why the ZAP is here. The ZAP is reacting to the issues put out by the city and fulfilling the obligations originally put out in 2009.

Tyler Emmert stated that the intentions were created, but the specific of how the funding mechanisms were going to be created was not.

Greg McNally stated that there is a list of possible funding mechanisms such as with the potential infrastructure package from the federal government and Covid-related things that could be obtained. So maintaining flexibility is important. Zoning is not set. Once it happens, he reminded the ZAP that it is a fluid and living breathing document that responds to conditions as they evolve, such as public/private partnerships to infrastructure. But if it's tied to zoning, as it changes it could pull away the flexibility.

Pat Keim stated that it's risky to list alternative funding sources because they change in the Legislature and Congress. If there is a clear growth plan, it is better positioning Lewis & Clark County to take advantage of those funding sources.

Secretary Lois Steinbeck stated a response to the conversation of affordable housing. It's a false choice to make affordable housing and development easy. Keep in mind that sometimes there are market failures because of inadequate information, and therefore affordable housing may become unaffordable in the long term, such as the loss of well water.

Tyler Emmert responded that there is data that water may not be there. More detail needs to be drawn. There is a boundary of the alluvial acquirer.

Secretary Lois Steinbeck stated that affordable housing takes into account not just water, it includes roads, fire, safety, and more. When the ZAP talks about affordable housing, she wants to be careful what the ZAP means by that, and if regulations here are driving the affordable housing costs in this Valley, then it must be driving costs in every other location.

Tyler Emmert responded that in regards to finance, he is in support of the most expensive development in the city. Property tax funds schools, so he wants big, tall buildings in the city.

John Rausch stated that there are two ways to think about it. Affordable housing can be for certain segments of the population, and it's also important for the health of our community that the ZAP have a sense of affordability for every segment of the market. The ZAP needs to take care of the health of the overall community.

Chair Jacob Kuntz stated that all members of the community are what Habitat for Humanity is focused on.

Moderator Eric Austin moved the discussion to the social Jamboard. Are there any questions or clarifications on any of the items that have appeared on this Jamboard?

Tyler Emmert inquired if the County is opposed to the mobile home parks?

Greg McNally replied that mobile home parks could be pursued in urban and suburban areas but not in the rural areas. They would need to go through a subdivision review in the County. He's unsure of the City regulations.

Vice Chair Dustin Ramoie said they are not allowed, although some may exist due to annexation but they have a higher level of scrutiny in Conditional Use Permit (CUP) and may be required to go through another level of approval.

Tyler Emmert asked for clarification on Part 1 and Part 2 zoning.

Greg McNally responded that there are three types of zoning, municipal zoning, Part 2 zoning which is county-initiated zoning, and Part 1 zoning which is citizen-initiated zoning. Part 1 goes away when land is annexed into the City. If Part 2 zoning is established, Part 1 zoning will be retained unless there is a citizen-initiation to remove to Part 1 zoning. This relationship is set-up within the zoning document already.

Pat Keim requested a map of non-conforming parcels.

Moderator Eric Austin stated that he wanted the ZAP to begin to think about what maps or geographic information that is important for the discussions in Phase III.

Pat Keim requested a map of the Wildland Urban Interface (WUI).

Greg McNally responded that this was distributed during the fire presentation and it exists and is linked on the [ZAP website](#).

Tyler Emmert requested an interactive aquifer map of the Helena Valley.

John Rausch requested if we could create a live visual interaction and visual recording when additional comments had been made, particularly when it comes to showing maps and layers.

Greg McNally stated that the County is good about its mapping services and it's accessibility through the Internet where layers can be turned on and off, although there are some layers that are not available to the general public that may not be available.

Moderator Eric Austin moved the focus back to the Jamboard, and asked if there are any of these that are miscategorized or need to be subdivided further?

Shane Shaw inquired if the 10-acre minimum doesn't apply outside the Helena Valley Planning Areas (HVPA)?

Greg McNally replied that is correct.

Secretary Lois Steinbeck inquired what are the plans to deal with outside the boundary?

Greg McNally replied that ZAP is focused on the HVPA only.

Kim Smith stated that subdividing and the risk of subdividing may not have an effect on cost of housing but that's because the current market is so skewed. Mark Runkle created a top-of-the-line development, and is being filled with top-of-the-line homeowners. Montana subdivision regulations are not that great. It's extremely risky and difficult to work through it. The idea that not having subdivisions eventually is what is going to help the bottom end of the market. I have some specific proposals on the 10 acres and it's one of the easiest things to resolve. He thinks that the urban area is even more important to discuss if the Helena Valley wants good growth, which means bringing it in close.

Mark Runkle replied with an obligation to address Kim's comment. In response to the price and cost of housing, if a development is moved out a ways from the City core, transportation cost can greatly increase the cost of housing and make it unaffordable. Also, when the developer needs to develop a complete transportation infrastructure with bike paths, sidewalks, city sewer services, and curb & gutter, there is also a consideration to the amount of street width and length per house. Mountain View Meadows has the most affordable houses in the Helena Valley now, which has to do with street width and size of house. It's a cost trade-off for house size and infrastructure when discussing affordability. The race for affordability is directed by

simplification of infrastructure and house design, lower cost of materials, and close proximity of transportation.

Moderator Eric Austin moved the conversation to the political Jamboard, and asked if there are any items that need further discussion.

Chair Jacob Kuntz stated he recently received a call from a guy who wants to do a land swap because he doesn't want to deal with the City regulations because it's easier to deal with the County. He receives these types of calls frequently. He added that over 50% of the population qualifies for the Habitat for Humanity programs. They built 12 houses in Mountain Meadows over the years on small lots. One thing they look at is transportation distance for food and jobs and the effect on the future maintenance of the property. Our budgets in Meadow View Meadows versus in the County are comparable.

Shane Shaw stated that the flood committee manages the \$100 per year that is paid by the residents in the floodplain to leverage federal grants, including FEMA funds for mitigation for alternative walls, bridges and waterways and this is in collaboration with the County and the County engineers.

Moderator Eric Austin replied there is an interagency and intergovernmental collaboration and coordination, and a move towards more creative recognition and partnerships.

Archie Harper inquired about Part 1 and Part 2 zoning and how one might affect the other. What will happen when Part 2 comes down the road? Are those that are more restrictive supersede the other?

Greg McNally stated there is a distinct separation, and there is a specific section in the Growth Policy that speaks to this and how it is applied. Part 1 zoning regulations will remain intact, even if Part 2 zoning is adopted, unless there is a citizen-initiation to remove to Part 1 zoning.

Moderator Eric Austin reminded ZAP members that the Jamboards are open to make additions, but change the sticky note color. Last part of the social, technical, economic, environmental and political (STEPP) analysis will be to aggregate all topics and look at them collectively.

## **6. Public Comment on Items on the Agenda**

John Herrin (*in-person, transcribed from audio recording*) stated first off, I was going to say that the growth policy has to be updated for subdivision regulations that are being propagated and

the zoning regulations. That has to be looked at. The Growth Policy was done on the 2010 census, and now we have the 2020 so it's absolutely the right time. Actually, this is something I've been harping on since December 2019 when the growth zoning stuff was first proposed. The county has refused to do it and I'm not sure why, but you guys need that information. You need to update this. Everybody keeps pointing back to a document that is 2014 data at the earliest. And the census data now says Helena has grown by 15% and it's happening in Helena and East Helena. You look at it Okay, now we got a new one that's going to go on the upper West side of hell and 109 units and you look at everything that is happening in East Helena. So where is the growth happening? If you don't have the data, you don't have the information and you can't do good planning, okay. Period. So stop. Make the County give you the data, just like you're asking Tyler for where is the nonconforming map. We should be asking where's the growth happening? In 2014 with the groundwater regulations restricting to 13 units or you have to buy water rights, the whole development pattern in the whole County, and if you happen to notice as I've been looking over the last year and I haven't seen any rural subdivisions going through the subdivision process. Almost zero. So where's our pipeline for the future? It's dead and part of that is because we've got the zoning subdivision regs requiring two entrances to meet county standards. That needs to change. Okay, economic growth, I think we need to absolutely look at our fire districts and EMS. EMS should be full time positions and we need to fund it. We can't keep making volunteers go get somebody on the toilet and that's why the Fire Chief of Tri-valley had to go pick someone five times. I spent a lot of my last year and a half doing. We need million dollars in funding. We need to get hire somebody else to do the work to get us more funding.

George Harris (*in-person, transcribed from audio recording*) stated as the CEO for Association of Helena Realtors that the polling results were provided to Dr. Austin and Greg, and he presumes it will be coming out the Zoning Advisory Panel as well. The information comes from a highly reputable American Strategies, a national polling firm, and the National Association of Realtors has put this information together. We would like to have the opportunity to present the information and Dr. Austin suggested that Mr. John Rausch, who is on your panel and who is affiliated with our association, will present it, and so, in the next week or two whenever we can work it into this schedule, we would like the opportunity to present this information. I wanted to get it out to you in advance, so that you have time to study it and review it. Any questions that you have, you could again direct those questions to us so that we can be prepared to answer those questions. I think you'll find that it's a very detailed report and that it's also very reputable in terms of the institution which did the poll. Again, if you have any specific questions, you can email me at [gharris@helenahar.com](mailto:gharris@helenahar.com). And the other thing is that, like to bring you up to date on, is that we have, in fact, have another study that's going on right now and that is a housing affordability and that's through the University of Montana Bureau of Business and Economics Analysis and we would like to be able to present the findings and results, as well. We

want to thank the National Association Realtors. I would like to thank you as a panel and we're here as a partner, not as an adversary and hopefully it will provide that data which will be meaningful to your process. Thank you.

Andrew Thomas (*in-person, transcribed from audio recording*) stated just a few comments pursuant to today's discussion. There is a widespread agreement with a site that except regarding taxation and finding new sources, even though it's outside of the scope specific assignment of this panel. If a consensus can be reached recommending that the Commissioners but also City explore ways of either having specific levies or other ways of raising funding to improve the infrastructure, you will definitely be appreciated. Again, this is an across-the-board thing that is supported by both developers, people, real estate industry, as well as citizens. Every improvement district wants more money. Next point regarding the affordability. Affordability is a cross the board issue, especially when you look at Community Development. I did submit an article that substantiates this. Home ownership, especially in lower middle-class, working-class people, and middle class people, is really what represents the backbone of the Community. The more homeownership you have here, and it's going to be an income range of \$50,000 to \$100,000, the better your community will be. There was a comment about the scope of this panel, I think it is critical that you understand that this affects the entire Helena Valley Planning Area, not just what you think of as being the Helena Valley. I would ask the panel to very carefully differentiate between the valley, which I think needs one set of policy actions, and the areas that are rural and have a lower density, outside of what you would refer to as the bowl. Just a couple of comments about the comments regarding takings and compensation and consistency. Again, the Fifth Amendment makes no guarantee for just compensation for regulatory takings unless the government completely takes the property. And also there's no guarantee that regulation should maintain property values. Again, I would ask you to look at the discussion that I submitted regarding appeals. I think if you have a process that balances the State interest against the private property interest in each specific case, you'll get rid of a lot of that concern. Just a couple of comments about politics. There are a couple things that you're dealing with here that are national level trends that you see over and over again. I submitted some comments a while back regarding various political issues and I explicitly submitted things that aren't academic just to highlight what's going on. You have a rural-urban divide. It tends to parallel a conservative-liberal divide. There's a lot of polarization. And this creates animosity and creates lack of understanding amongst the two groups. Anything that you can do to bring about a compromise to make things maybe a little bit more purple rather than red and blue, will resolve a lot of these issues. Another couple of points. A lot of the conflict is also generational. A lot of the concerns that have given rise to this panel about water availability or environmental issues are beliefs that are prioritized mostly by older people, ie: baby boomers. people who live in a different economic time. Housing affordability was not as much of an issue and that has changed. I think that there needs to be a specific effort made to create more recognition about

the veracity of all parties' perspectives and to come up again with reasonable compromise. Thank you.

Max Milton (*via ZOOM, transcribed verbatim*) stated he did post some comments for this meeting about what they've done over in Missoula with the County and the City working together on what we would call the urban transition area. And I just would suggest that we might want to have the planner there talk a little bit about that process because I do believe the City and the County is going to have to work together on that Urban Transition Zone, which I think fits in the political Jamboard. It also fits in having the ability to go out and find funding, and it also relates to a comment on the social Jamboard about Euclidean zoning. The comment was that it's going extinct. But particularly in the urban transition area. I think what that form based code that they've done in Missoula offers is a lot of flexibility of housing types. I just wanted to recall attention to that. Thanks.

Secretary Lois Steinbeck stated a thank you to the written comments and their value for reference.

## **7. Announcements**

Moderator Eric Austin stated there are two more new Pollunits alongside a repost of the economic Pollunit. The last piece will be the aggregated list from across all five categories, and complete one more prioritization. In the meeting four weeks from now, the ZAP will look at all of the ideas generated thus far. This review will start the conversation about what the process of inputs and outputs will look like as the ZAP moves into Phase III as far as assistance, recommendations, and what the ZAP can anticipate seeing from the County as a way to set up the transition into the last phase.

Moderator Eric Austin stated the request to bring together a subgroup within the ZAP to start a conversation about creating a public listening session, what that will look like and the timing, marketing, and advertising. If you are interested, please inform Eric and Lucia.

Greg McNally stated that the non-conforming parcels will be reviewed at the next meeting, if it doesn't interfere with the STEEP process and its time allocation. He reminded the ZAP to review the zoning regulation section with regards to non-conforming parcels of the Growth Policy.

**Shane Shaw: Motion to end the meeting**  
**Vice Chair Dustin Ramoie: 2nd the motion**

**Motion passed unanimously: 12-0.**

**8. Next Scheduled Meeting**

September 8, 2021 at 9:30 a.m.

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