



316 North Park Avenue, Helena, Montana 59623

ZONING ADVISORY PANEL

NOTICE OF PUBLIC MEETING - AGENDA

The Helena Valley Planning Area – Zoning Advisory Panel (ZAP) is an advisory body established by the Board of County Commissioners. The panel operates in accordance with its By-Laws as set forth in Board Resolution 2021-8.

Location: Virtual Meeting (Zoom): <https://zoom.us/j/9894780402>

The virtual meeting can also be accessed via telephone by dialing any of the following telephone numbers and entering the Meeting ID when prompted: (253) 215 8782; (346) 248 7799; (669) 900 6833; (301) 715 8592; (312) 626 6799; or (929) 205 6099 US Meeting ID: 989 478 0402

Date and Time: February 10, 2021 at 9:30 a.m.

Contact Information: email planning@lccountymt.gov Phone 406-447-8374

1. Call to Order
2. Roll Call
3. ZOOM Meeting Protocols
4. Introductions
5. Approval of January 27, 2021 Meeting Minutes
6. Election of Panel Officers (Chair, Vice Chair, Secretary) (tabled from January 27, 2021)
7. Business Items:
 - Ground Rules Review;
 - State and local land use codes and regulations; and
 - Helena Valley Planning Growth Policy Update Overview.
8. Public comment on any matter within the scope of the ZAP that is not on the agenda.
9. Announcements
 - Homework
 - Information Library
10. Next Meeting: February 24, 2021 at 9:30 a.m.
11. Adjournment

ADA NOTICE — Lewis and Clark County is committed to providing access to persons with disabilities for its meetings, in compliance with Title II of the Americans with Disabilities Act and the Montana Human Rights Act. The County will not exclude persons with disabilities from participation at its meetings or otherwise deny them County's services, programs, or activities. Persons with disabilities requiring accommodations to participate in the County's meetings, services, programs, or activities should contact Keni Gross, as soon as possible to allow sufficient time to arrange for the requested accommodation, at any of the following: (406) 447-8316 TTY Relay Service 1-800-253-4091 or 711 kgrose@lccountymt.gov 316 N Park, Room 303

State and Local Land Use Codes And Regulations

Zoning Advisory Panel

Greg McNally, Planner III

February 10, 2021

QUICK OVERVIEW

- GROWTH POLICY
- SUBDIVISION REGULATIONS
 - EXEMPTIONS
 - BUILDINGS FOR LEASE OR RENT
- ZONING
 - Citizen Initiated (Part 1)
 - County Initiated (Part 2)

GROWTH POLICY

TITLE 76, CHAPTER 1, PART 6

MONTANA CODE
ANNOTATED

What is a Growth Policy?

- AKA Master Plan, Comprehensive Plan
- “An official public document adopted and used by local governments as a guide for decisions regarding the physical development of a community.” —CTAP

GROWTH POLICY

TITLE 76, CHAPTER 1, PART 6

MONTANA CODE
ANNOTATED

- The Growth Policy is NOT a regulatory document
- Developing and adopting a growth policy is PLANNING!!
- Regulations or other tools identified in the document are not required to be adopted.
- Implementation of the document is an entirely separate public process and applicable statutes apply.

GROWTH POLICY

TITLE 76, CHAPTER 1, PART 6

MONTANA CODE
ANNOTATED

Key Aspects of a Growth Policy

- Comprehensive in Goals and Objectives
- Part of a continuous planning process responsive to needs/ desires of the community (citizens/residents/taxpayers)
- Legal basis for land-use regulations and can also be a guide for capital improvements (water, sewer, streets/roads/bridges, sidewalks/trails, parks, local government buildings, etc.)

GROWTH POLICY

TITLE 76, CHAPTER 1, PART 6

MONTANA CODE
ANNOTATED

Why Prepare One?

- To anticipate change in order to be prepared for it
- To manage construction and maintenance of public infrastructure
- To create a coordinated pattern of community growth

(avoid ad hoc decision-making with long-term consequences)

LEWIS AND CLARK COUNTY'S GROWTH POLICY

- GROWTH
POLICY, 2004

- GROWTH POLICY UPDATE,
2005 – LINCOLN AREA PLAN

- GROWTH POLICY UPDATE,
2015 – HELENA VALLEY
AREA PLAN

GROWTH POLICY

TITLE 76, CHAPTER 1, PART 6

MONTANA CODE
ANNOTATED

SUMMARY

- Growth Policy is a community vision and plan for the future
 - What do we want our places to be, really?
 - How to make it happen
- It is the “preeminent planning tool”

SUBDIVISION REGULATION

TITLE 76, CHAPTER 3

MONTANA CODE ANNOTATED

- Subdivisions in Montana are regulated by two separate laws
 - The Subdivision and Platting Act covers how the division of land impacts public health, safety and general welfare; and
 - The Sanitation in Subdivisions Act (TITLE 76, CHAPTER 4) pertains to the water supply, wastewater system and storm drainage in a subdivision.

SUBDIVISION REGULATION

TITLE 76, CHAPTER 3

MONTANA CODE ANNOTATED

- Subdivision requirements under state statute:
 - For Counties
 - For Incorporated municipalities
 - Each must adopt local regulations
- Regulates the process of creating new lots
 - Does not strictly govern use on new lots unless the property is zoned;
 - Guides design of lots, roads, parkland, and other local services.
- Mitigates impacts resulting from development

SUBDIVISION REGULATION

TITLE 76, CHAPTER 3

MONTANA CODE ANNOTATED

- Subdivisions determine the long-term pattern of land development and how services and infrastructure are provided*, including:
 - Roads;
 - Fire protection;
 - Solid waste;
 - Water & wastewater;
 - Stormwater;
 - Emergency services;
 - Parkland;
 - And more...

***ONE
SUBDIVISION
AT A TIME**

SUBDIVISION REGULATION

TITLE 76, CHAPTER 3

MONTANA CODE ANNOTATED

TYPES OF SUBDIVISIONS

- First Minor subdivision: (5 or fewer lots)
 - Statutory 35 working day review period
 - No public hearing
 - No environmental assessment
- Subsequent Minor subdivision: (5 or fewer lots)
 - Statutory 35 working day review period
 - Public hearing
 - Environmental assessment
- Major subdivisions: (6 or more lots)
 - Statutory review period 60 working days for 49 lots or less
 - Review period 80 working days for 50 + lots
 - At least one public hearing required
 - Environmental assessment

SUBDIVISION REGULATION

TITLE 76, CHAPTER 3

MONTANA CODE ANNOTATED

MAJOR SUBDIVISION REVIEW PROCESS

1. Pre-application meeting
2. Submittal of subdivision application...preliminary plat, DEQ info, environmental assessment, etc.
3. Completeness and Sufficiency Review
4. Public notice, agency notice
5. Staff analysis of the application, preparation of staff report & findings, recommendation
6. At least one public hearing required.
7. Governing body decision within:
 - 60 working days if 49 lots or less;
 - 80 working days if 50 or more lots.
 - Clock starts at date of sufficiency.
 - Penalties apply

SUBDIVISION REGULATION

TITLE 76, CHAPTER 3

MONTANA CODE ANNOTATED

FINAL PLAT APPROVAL AND FILING

Governing body shall examine final plat and approve it only if:

- Conforms to the conditions of approval;
- Conforms with statute, ARM, and local regulations;
- All taxes and special assessments have been paid; and
- Written consent to the subdivision by lienholders is provided.

Final plat filed with Clerk & Recorder and lots can be sold

SUBDIVISION REGULATION

TITLE 76, CHAPTER 3

MONTANA CODE ANNOTATED

EXEMPTIONS

- Subdivision & Platting Act – Sections 76-3-201 and 207, MCA
- EXAMPLES:
 - Family transfers; court order divisions; utility or ROW; cemetery lots; Agricultural covenant; aggregations; boundary line relocations.

BUILDINGS FOR LEASE OR RENT (BLR)

Overview:

- ❑ Title 76, Chapter 8, Montana Code Annotated;
- ❑ Review process established for the rent or lease of buildings or units within a building, to consider impact of development;
- ❑ Removed subdivisions for lease or rent from MSPA, except for RVs and campgrounds (rent of land).

BLR EXEMPTIONS

- ❑ Where zoning is in place – no BLR review required, just follow what is required under zoning regulations (§ 76-8-103(1)(a), MCA) & follow applicable DEQ requirements.
- ❑ Where zoning is not in place (§ 76-8-103(1)(b), MCA):
 - ❑ One of 3 or fewer buildings in existence or under construction prior to September 1st, 2013;
 - ❑ Subject to lodging facility tax (except RVs and mobile home parks);
 - ❑ The building is for farm or agricultural use;
 - ❑ If proposed to be served by water/wastewater but not intended for lease or rent – owner declaration to run with land ensuring building(s)/unit(s) will not be leased or rented. (§ 76-8-103(1)(b), MCA).
- ❑ First three (3) or fewer buildings in existence or under construction prior to September 1st, 2013, do not count toward BLR local review requirements.

BLR REVIEW PROCESS

-
- ❑ First three (3) or fewer BLRs on a single tract of record requires review and approval pursuant to Title 50 and Title 76, as applicable (§ 76-8-106, MCA).
 - ❑ Four (4) or more BLRs on a single tract of record require local review per (§ 76-8-102, MCA).
 - ❑ Application requirements – details in local regulations. Generally requires review fee, deed, evidence of ownership, detailed site plan and narrative addressing:
 - ❑ Existing and proposed buildings and their location on the subject property;
 - ❑ Proposed water, sewer, and solid waste disposal facilities;
 - ❑ Emergency medical, fire, and police services;
 - ❑ Existing and proposed access to and from the site, and onsite circulation;
 - ❑ Potential significant impacts on the surrounding physical environment or human population as a result of the proposed building for lease or rent, including proposed mitigation measures.

BLR REVIEW PROCESS

- ❑ Ten (10) working days to determine whether application is complete;
 - ❑ If application incomplete, written notification of missing or insufficient information.
- ❑ Sixty (60) working days from complete to approve, conditionally approve, or deny application.
- ❑ To approve, application must:
 - ❑ Comply with the BLR regulations and other regulations applicable to the property;
 - ❑ Minimize potential significant impacts on the physical environment and human population in the area;
 - ❑ Provide adequate access, emergency, medical, fire protection, police, water, sewer, and solid waste facilities;
 - ❑ Comply with any applicable flood plain regulations.
- ❑ Decision must be provided in writing to applicant within 60 day review timeframe.

BLR ADOPTION PROCESS

- ❑ Local jurisdictions were required to adopt regulations by September 1st, 2013.
- ❑ Regulations must contain requirements of (§ 76-8-107, MCA).
- ❑ 30 day notice prior to public hearing to consider comment and adopt/modify regulations.
- ❑ Governing body can increase number at which local review begins for all or certain types of BLR by majority vote (§ 76-8-108(1)(a) and (b), MCA)
- ❑ Governing body can adopt additional regulations for local review by supermajority vote (§ 76-8-108(2), MCA)

Introduction - Types of Zoning

- Euclidean or Conventional Zoning
 - Traditional, use-based zoning (most common in MT)
- Performance Zoning
 - Intensity of use and mitigation
- Form-Based Codes
 - Focused on the form development takes, not necessarily use
- Hybrid Zoning Code
 - Combines Euclidean and form-based codes

The Basics

County Zoning

- Title 76. Ch. 2, Parts 1 & 2
- Part 1 – Planning & Zoning Commission
 - Establishment of a district **requires** planning & zoning commission.
- Part 2 – County Zoning:
 - Commissioners request planning board to make recommendations;
 - Commissioners hold a public hearing to make decision.

Municipal Zoning

- Title 76, Ch. 2, Part 3 MCA
- **Must** appoint zoning commission to recommend zoning boundaries and regulations to the City Council;
- City Council ultimately renders a decision on the proposed zoning regulation after at least one public hearing.

The Basics

County Zoning – Part 1

- Upon petition of 60% of more of property owners in proposed district of 40 acres or more
- County Commission must appoint Planning and Zoning Commission to adopt district boundaries and regulations
- Proposed district may be protested by 50% of titled property ownership in the district

County Zoning – Part 2

- Initiated by County Commissioners
- Requires County or City-County Planning Board to recommend zoning district boundaries and regulations
- Must be in conformance with adopted growth policy
- County Commission may adopt or amend districts or regulations after public hearing
- Protest? *Williams* case

The Essentials – The Zoning Administrator

- Staff in support of the board of adjustment
- Receives applications for zoning districts & amendments, conditional use permits and variance requests;
- Reviews applications and plans, issues zoning permits and coordinates inspection of properties.
- Enforces the regulations; provides guidance and interpretation.
- Prepares staff reports and recommendations as required.
- Prepares and maintains records of all proceedings.

The Essentials – The Board of Adjustment

- Hears appeals on administrative decisions;
- Review Conditional Use Permits (CUP);
- Review variance requests.

The Essentials – Conditional Use Permits

- Conditional uses are those uses not permitted “as a matter of right” but those which may be appropriate in a zoning district under certain safeguards or conditions.
- Can provide relief from strict requirements of the regulations.
- CUP process is intended to provide a detailed review of a proposed development that could have adverse impacts on the community or neighborhood.
- Examples of conditional uses could include:
 - Bed & Breakfast
 - Greenhouse/Nursery
 - Vehicle Repair

The Essentials – Variances

- Provide relief to those who have property that has unusual characteristics that make strict compliance virtually impossible.

- Meant to allow deviations from physical standards such as:
 - Property setbacks
 - Lot coverage
 - Lot size and dimensional requirements
 - Building height & width

The Essentials – Variances

- Not meant to permit uses restricted by the zoning!!
- The “generous” granting of variances, especially use variances, can seriously undermine the purpose and integrity of an ordinance.
- Frequent granting of variances may indicate:
 - Need to re-evaluate regulations;
 - Need to re-evaluate process, review criteria, need;
 - Amend the regulations to either permit the use “By Right” or as a potential CUP.

The Essentials – Variances

- Common (& recommended) to prohibit the granting of variances that would allow uses that are not authorized in a district.
 - Approval of a variance can be “conditioned” to ensure mitigation of any issues identified.

The Essentials – Establishing Hardship

- "Hardship" refers to circumstances peculiar to the particular property.
- To grant a variance, the Board of Adjustment must find that an "unnecessary hardship" would otherwise occur with respect to a particular property:
 - Shape, size, topography or configuration.

The Essentials – Establishing Hardship

- Courts have found that financial or economic difficulties by the property owner are not "unnecessary hardships".
- The granting of a variance should not result in de facto rezoning (i.e. variances to use).
 - Under statute, this should be addressed through an amendment process.

MONTANA COMMUNITY TECHNICAL ASSISTANCE PROGRAM

Community Development Division
Montana Department of Commerce
301 S. Park Avenue
Helena, MT

<https://comdev.mt.gov/Programs/CTAP>

Search: Montana CTAP



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