



316 North Park Avenue, Helena, Montana 59623

## ZONING ADVISORY PANEL

### DRAFT Meeting Minutes

**Meeting Date and Time:** January 26, 2022, 9:30 a.m. to 11:30 a.m.

**Location:** Meeting Held Electronically Via Zoom

Pat Keim

#### Board Members Present:

Tyler Emmert

Lois Steinbeck - *joined at 9:40 a.m.*

Joyce Evans

Archie Harper

John Rausch

Dustin Ramoie

Mark Runkle

Jacob Kuntz

Kim Smith

Shane Shaw

#### Board Members Absent:

David Brown

#### County Staff Present:

Greg McNally, Planner III

#### Moderators Present:

Dr. Eric Austin

Lucia Stewart

#### Members of the Public Present:

**(as noted by the Zoom screen name or phone number listed):** Arthomas, Bill Gowen, David Knoepke, DW, HCTV, Maxwell Milton, Melanie's Phone, Patrick Marron, Ryan Leland, John W. Herrin, CDP (Staff), Conrad Evarts

### 1. Call to Order

Chair Jacob Kuntz brought the session to order at 9:31 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 ZOOM Meeting Protocols, the process of the meeting, Covid approved safety protocols and Zoom participation instruction.

#### **4. Approval of the December 22, 2021 and January 12, 2022 Meeting Minutes**

**John Rausch: Motion to approve the December 22nd and January 12th meeting minutes**

**Archie Harper: 2nd the motion**

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

#### **5. Business Items**

##### **Phase III of the Zoning Advisory Panel (ZAP) work plan: Suburban Residential Mixed-Use District**

Greg McNally reviewed the draft Suburban Residential Mixed Use Zoning District regulations. He presented the four different densities: rural density or 10-acre density, low density or 1-acre density, medium density or ½-acre density, and high density or ¼-acre density. He added that since this is a transitional area, there will be a mix of all these densities. The Growth Policy identified two main constraints in this district: road conditions and availability of fire protection. He added that the zoning in this district is focused on alleviating these impacts. The requirement for 10-acre density is in places where the road conditions don't support additional development. This zoning language matches what is stated in the Rural Residential Zoning District. The Planned Unit Development (PUD) section that is in the Rural Residential District is included as well, with the similar stipulations of being allowable if the road conditions and fire protection were mitigated. The low-density development area would be individual wells and septic systems alongside roads with ditches, similar to what is being created through the current subdivision regulations. He inquired if there should be a consideration for lot clustering in the low-density area? Cluster developments typically seen in a SR10 or 10-acre development, but it could be considered. He discussed the Suburban Residential ½-acre density zoning, which is the development type where either a public water system or individual wells could exist, and individual septic systems. This section of the draft zoning regulations accommodates these issues where performance standards need to be considered. The ¼-acre density area is where development would require roads with curb and gutter, public wastewater, and water, such as classifications that mimic the urban standards area.

Pat Keim discussed section 803, 1-acre low density zoning, regarding road width and water supply. He stated he is more comfortable with the 804, ½-acre medium density zoning,

specification on road width. He inquired if the minimum allowable road width in 803 can be defined better?

Greg McNally responded that he recognizes that this should be defined and amended in the public works manual alongside the new standards.

Tyler Emmert inquired if a map exists for these four zones being proposed in the Suburban Residential Mixed Use Zoning District?

Greg McNally responded that there is no current map in association with the four zones, as this is the document that would inform a map with regulations and classifications. There needs to be a Pavement Surface Evaluation and Rating (PASER) analysis completed regarding the roads prior to creating and populating a map.

Mark Runkle inquired if these coincided with transitional growth areas in the Growth Plan?

Greg McNally responded that this is correct, and that the transitional area is also named the Suburban Residential Mixed Use Zoning District.

Tyler Emmert stated that these are four dramatically different densities of zoning, and so to understand their location is critical to the discussion.

Greg McNally responded that it states in the Growth Policy that where the road conditions would not support greater densities there would be 10-acre density. But again, there is a need for a road inventory prior to creating a map.

Kim Smith stated that the Lewis & Clark road department has an analysis of the roads that could be utilized to simply put together a drafted map to where the roads would require more restrictive zoning to be located. He thinks it would be useful to have.

Greg McNally responded that the Planning Staff will look into obtaining the map, but he anticipates a more involved process.

Kim Smith responded that if the goal is to get denser development towards the city, with ¼-acre lots alongside raising the bar on standards to reflect city standards with water and sewer standards, he believes that same problems will arise. It will be cost prohibitive and will end up pushing development away from the city.

Pat Keim stated his agreement about the possibility of high infrastructure standards may push development out, which causes concern to how the 10-acre density in the rural area is being created.

Greg McNally stated any additional comments can be made on Jamboard or by contacting the Planning Staff.

### **Public Comment on this agenda item**

Andrew Thomas stated (*transcribed from Zoom transcript*) Yes, thank you. Just one thing that I would like to include in this is under [Montana Code Annotated] MCA 76-3-103, you have categorization for minor subdivisions and phased developments and overlay developments. I'm just curious, is there any intention to add specific verbiage to this, which I think it's moving in the right direction to delineate different standards for minor versus major subdivisions and the expectations for them in this area, or in the rural area. Because I think that the economics of having somebody who's splitting up a parcel into let's say three lots in terms of their review is going to be substantially different than someone who is planning to do a 20-unit or a 50-unit subdivision. That's my comment. Thank you.

Bill Gowen stated (*transcribed from Zoom transcript*) as the Government Affairs Chairman for the Helena Association of Realtors that for the record, I just wanted to make one comment to what I'm hearing here is that the rural area is not the only 10-acre density that's being proposed. And I find that as a surprise. It's very shocking to me as that was not something that has been discussed in the past. It seems like it's kind of a bombshell. I have serious problems, and so do most of the people out there who dislike the 10-acre minimum density and its effect and the dangers that it can cause in some other areas. That is not going to accomplish what the intent of the zoning is. And so, if we're going to make maps and show people where things are, we need to make the maps and get them in the regulations. Get the regulations all in the regulations, not in some other book. Thank you.

### **Phase III of the ZAP work plan: Rural Residential Mixed-Use District**

Moderator Eric Austin inquired if the ZAP members had any questions or clarifications on the drafted Rural Residential Zoning District regulations.

Tyler Emmert stated a recommendation to identify where setbacks could vary from 10-to-25ft based on the future use of major roads, and make those regulations easily accessible.

Secretary Lois Steinbeck requested the Planning Staff provide information that could be appropriate with zoning documents to help measure water in the long term. She stated that looking at the number of wells is not an accurate prediction of the carrying capacity of the aquifer prior to development, as it's monitored until it's drawn down to a point that all wells in an area may be impacted. She added that she's heard a lot of people asking what's the scientific basis for the 10-acre minimum, but it's not all about science. It's based on where people want

to live, how people want to live, and what people want their neighborhoods to look like. Not everything needs to have a scientific basis.

Mark Runkle inquired when and how the ZAP is going to address the charge to provide recommendations for alternatives to the 10-acre minimum. He added that some of the confusion of where the 10-acre minimum originated was from it being an offshoot from the original 160-acre minimum in rural areas that was decreased to 10-acre by the County Commissioners.

Moderator Eric Austin responded that if the ZAP would like to provide alternatives to the 10-acre minimum, that can be achieved in numerous ways. If the panel has proposals or recommendations, they can be emailed or be posted on Jamboard and those will be distributed to other panelists for consideration.

Pat Keim stated the need for a mechanism to locate the emergency facilities on something less than 10-acre minimum.

Kim Smith inquired if there is adequate fire protection in the transition area that would allow for smaller lots? He inquired about the West Valley area specifically.

Pat Keim responded no, he doesn't think so. There's a shortage in the Fox Ridge Golf course area, above Bird's Eye, and above Lincoln Road on both sides of the interstate. He added that West Valley has two stations that cover a lot of territory, and will need more if it's going to grow.

Kim Smith responded that the 10-acre minimum was never put forward in the suburban transition area in public meetings, which may cause a stir.

Archie Harper stated that the 10-acre proposal in the transitional area also came as a surprise. He discussed the three main concerns the Farm Bureau has about the 10-acre minimum on the economic impacts to surrounding neighbors and properties. These are: 1. Zoning would result in conservation easement without compensation. 2. Many landowners are leaning on future development as financial security. 3. The 10-acre minimum will result in devaluation of the land. He requested comments from the Planning Staff and discussion from ZAP members.

Greg McNally responded that the Planning Staff does not believe it is a takings. The development of property is a process which needs approval. Devaluation of land is unknown and a fixture of the market. And that there are provisions or alternatives in the regulations that can provide options to alleviate some of those concerns. He added that these regulations are meant to evolve over time.

Shane Smith suggested that these regulations should be vetted by a lawyer to make sure it's assured that it's not a takings or an issue coming forward, as it may be examined in a courtroom. He referenced that the County Commissioners have spent litigation money in the past on decisions that didn't go as planned.

Greg McNally responded that the County Attorneys will be involved in County Commissioners decisions, but a judge can always rule otherwise. At this point, Planning Staff and County Commissioners feel comfortable with what is being proposed.

Chair Jacob Kuntz inquired on the importance of the origination to the concept of 10-acres came from, and if this lot size has occurred in other communities regarding rural density?

Greg McNally responded that the Growth Policy references Powell County.

Tyler Emmert stated that there is a legal hole in zoning larger neighborhoods non-conforming.

#### **Public Comment on this agenda item**

Andrew Thomas stated (*transcribed from Zoom transcript*) Yes, just a couple of observations here regarding the interplay between the rural and transitional districts. It may be more advantageous to simply draw a line around the Valley and consider that entire area transitional if you're going to include 10-acre minimums in lesser developed parts of it and then provide a mechanism for higher density to be included in a higher density zone if that's the case. Because conceivably development is, you know, going to be more or less suburban in that Valley. The other thing that I would ask the panel to consider and the Planning Staff to consider since, especially the planning staff as, you know, has time and more sophisticated tools is to run models in terms of different densities in the rural and transitional area with regards to their potential impact. You know, more than 10-acres, less than 10-acres and so on, to get an idea of the potential infrastructure, water, as well as economic impacts of that. Because you know, objectively, I think it would provide a more rational basis rather than simply settling on a certain amount. And also skeptically consider what are the unintended consequences of having certain standards. So with cluster developments, I did submit an article about, you know, how they potentially increase fire risk. So Boulder County in Colorado just had 3,000 homes burn mostly due to cluster development. That was considered very good planning, but it has a risk in it, and given the fire last fall that occurred in the Scratch Gravel Hills, you know, again, these things should be objectively contemplated. One final comment per Miss Steinbeck's comments about rural character. You're more than free to have Type One Zoning in the area that you live in, but I think coming in and saying that an entire area should meet, you know, the standards of your own subjective preference, I think is a little bit contentious and unfortunately leads to conflict because different people have different value systems. Thank you.

Secretary Lois Steinbeck responded that her neighborhood did apply for Part One Zoning with 10-acre minimums, but the County denied it pending approval of the process currently taking place.

Max Milton stated (*transcribed from Zoom transcript*) Good morning, thank you. I've got three questions and a few points. So one question is that I live in a citizen Type One Zoning district, Racetrack meadows with 10-acre minimums. What happens if one of my neighbors or even myself decide I want to put in for one-acre lots. How is that treated? So that's my question in this rural area. I'm curious both in rural, but particularly in the suburban. I've been looking at the map and parcel sizes and you know there's a lot of already small parcels in that district, and there are a lot of larger parcels. So I'm curious how it would be to go through the process. Question two, I appreciate that Greg brought up that they talked about other counties that have used 10-acre minimums, but it'd be really helpful to the public, I think, and this is a request for the County to work with the paper to do an exhaustive, you know, series on zoning in rural areas, particularly close to urban areas from around the state. What have other counties done that worked? What have other counties done that hasn't worked? It'd be really helpful because I think a lot of people have pointed out there's going to be fireworks and sparks when some of these things go public, and we spent a lot of time in 2020 with a lot of very angry comments about the 10-acre or any kind of lot size minimum. It'd be a waste of time to have to go through that again if we can't somehow, you know, inform people of what the spectrum of options are. So that's a request. And then, in all due respect to Dr. Thomas' comment that the Valley will be mostly urban. There's a significant amount of working agricultural land in the Valley. It provides a lot of ecological services. I think it provides social services, particularly around this issue of the cost of providing services to Lewis & Clark County and the City of Helena. We say in state law and our Growth Policy that ag lands are important. I don't know how we guarantee the future of those working ag lands? You can't just do it with, I mean minimum lot sizes might help, but we have this problem of people having other expectations of how to use their land. If we care about working ag lands being in our communities, we need to find some tools to keep them. I'm not sure what those are. They might be expensive, but I think we have to have that discussion, as well. So anyway, those are my comments. Thank you very much for the opportunity.

Chair Jacob Kuntz stated that Mr. Gowen has approximately 3.5 minutes remaining.

Bill Gowen stated (*transcribed from Zoom transcript*) Thank you. Just a quick comment to echo Dr. Thomas' comments. I wholeheartedly agree that there are some definite concerns and risks we need to address. I also want to point out that we've tried to do this in the past. But I really,

really believe that if you take away development, you lose value. And that value is what makes these operating loans. It's very important to understand how agricultural lending works and speak to that. And that's some of the Farm Bureau's concern is there's a value of property that it can be developed in the future. And it builds its value. And without that then you have a loss of value of the agricultural land, which is going to make it more difficult to operate. Agricultural operations have to be taken into consideration here, and it's not. And I can't emphasize that more. Our agricultural folks out there need to be able to get those operating loans and if we take that value away, they won't be able to get that operating loan. Thank you.

John Herrin stated (*transcribed from Zoom transcript*) Well, the whole 10-acre thing is definitely a takings issue. To say otherwise is false and a lawsuit was filed over the proposal. It's sitting there kind of waiting to see what you folks are going to do, and all I hear now is it's going to be switched over into the transitional area. And essentially feeding in with what Habitat for Humanity is doing and stuff like that, with affordable housing, is basically you are blackballing a whole chunks of land. And there is no across-the-board water quality or water supply issues. In fact the Bureau of Mines studied for six years both the North Hills and the Scratch Gravel Hills. And so Lois keeps championing the idea that there are problems and, yes, we know there are limited resources, but right now the North Hills is only using about 8% of the available groundwater. And so fire protection basically, all of the floor land areas in the transitional years has very low fire risk. You have to get the fire departments, each one of them, to sign-off on the fire for every subdivision and, in fact, by pointed out repeatedly that the County's own 2017 Wildland Fire thing basically said that the 10-acre tract parcels in the Growth Policy is not what they need to do, and that all things will be done on an individual basis. That is the same for groundwater supply, for fire, and for roads. And in fact, the only people that are fixing offsite roads are the new people in the subdivisions with a pro rata share. So, I believe that the subdivision regulations are adequate. That we don't need these, especially the 10-acre or the lot size restrictions on any of this stuff. And I don't understand why we keep going that way when we should be looking at more of the availability of EMS services. The transportation the county is paying, they only got a half a million dollar budget for maintenance that should be \$10 million. The open space bond levy that was passed should have been roads instead. So we've got bad planning on top of bad planning and now we're going to make it even worse. The economic damages are significant. And in fact, the subdivision regulations are now being looked at as a class action lawsuit. And there's 10 parts to this subdivision regs that appeared to be very illegal in stopping rural growth. And so we're trying to add another layer with this zoning stuff further restricting the supply, which I'm over trying to emphasize. Yes, it is taking of people's property rights and development rights. And to say that you're sitting on this committee, each ZAP member has a vote, and if you pride yourself in saying what's fair is fair. Fair is not taking people's property rights for a pie in the sky, maybe. You have to have facts.



Science has to rule. You can't make up stuff. It is illegal. It's arbitrary and capricious. Those are legal terms. It's an administrative takings of property value that's harming people, and it has harmed people for 17 years. And I tell you, I'm going to talk to the Attorney General and see if we can't look at what's going on in this County as anti-rural growth stuff and see if they want to come in and tell the legal department: Hey, do your job. The attorneys aren't doing their jobs. They haven't been doing them for 17 years, allowing the illegal stuff to be put in the subdivision regs. And now we have this whole property takings with no justification. You cannot say 180,000 acres of rural land has any validity for water supply or fire protection. A lot of it is grassland. It's low risk. No different than the city. In fact, as Andrew said, you start packing houses in real tight, you burn house to house. If you have 1/2 acre and 1-acre tracts with grass in between, you don't burn them down. So stop the insanity please. This is crazy. I mean here it has been three years of this process and we're still talking about 10-acres when it had no valid reason to be in the subdivision regs, I mean the Growth Policy. In the first place, it was introduced by people with severe anti-rural growth.

## **6. Public Comment on Items Not on the Agenda**

None.

## **7. Announcements**

Moderator Eric Austin reminded the panel to submit comments and feedback on the Jamboards.

Pat Keim stated in reference to 802.01.04.05 that public facilities are listed as principal uses in the rural area. But in 802.03.035 is public facilities listed as a conditional use. Is this a conflict?

Greg McNally stated he will take a look and address as necessary.

Moderator Eric Austin stated that the County Commissioners requested that the ZAP complete its recommendations of the current drafted regulations by Feb 9th. There are current arrangements for one final meeting for February 23rd to focus on priorities and recommendations that fall outside of the scope of the draft regulations.

Tyler Emmert stated that these regulations are a long way from submitting a recommendation to the County Commissioners. He recommends outside legal and planning consultants with significant experience in zoning regulations be hired. He added that given the size and scope, it should be justifiable to develop an appropriate document.

Secretary Lois Steinbeck stated a request to create a Jamboard for final meeting recommendations, and for the final meeting to last longer than two hours.

Vice Chair Dustin Ramoie stated he is unavailable on February 23rd.

Shane Smith stated that obviously these recommendations are not ready to go. He stated he was under the impression that the ZAP had until June to complete its work. He would vote no to approve anything since the ZAP has had eight months to agree on the shared values, and little time on the regulations. It seems irresponsible to pass zoning when the work is not done to do it effectively. He expressed his concern about the process and the acrimony it has caused, and his concern for creating one more meeting.

Greg McNally responded that the panel set-up to complete the work within one year. The County Commission has indicated that they want a recommendation to come out of the panel by February 9th. The additional meeting that is being discussed is to focus on the recommendations that are above and beyond the scope of what the panel's charged to do. The Planning Staff's solution to host an additional meeting would be an ability to identify and pass those things on to the County Commission because it provides the ZAP an ability to express valuable opinions to pass on to the Commission. He added in regard to the timeline, that the current Rural Residential District is on hold until June 2022. This recommendation that comes for the ZAP also needs to be reviewed by the planning board, needs additional public hearings, then reviewed by the County Commissioners, and a whole another layer of meetings and drafting. This is why the Commissioners requested completion by February 9th to allow an adequate window of time to find completion by June 2022.

Tyler Emmert stated that the ZAP is charged with providing alternatives to the 10-acre minimum, which has not been completed.

Greg McNally responded that the Planning Staff prepared and presented an alternative with the Planning Unit Development (PUD) as a tool to address those key issues.

Tyler Emmert responded that staff provided this and not the ZAP.

Bill Gowen stated (*transcribed from Zoom transcript*) Thank you, and I appreciate that. I have just been observing this. In general, when you facilitate a meeting, when somebody brings up a proposal, you vet that proposal, and you failed to do that, Mr Austin. I believe that you have some bias here, and it concerns me because your job is to facilitate this and not direct it. And that is very concerning to me because the public process is to hear what everyone has to say and come up with some alternatives. Not just what Staff comes up with, and they come up with very good things. I mean they're good at what they do, but it's not the only option here. And so

I really think you need to go back to Tyler's proposal and poll the panel and see where you come down on that. Is this a recommendation that should be made and not just push it off to the side and talk about other things, and say no, we have to vote on what's in front of us. I think that's really, really critical. I appreciate you giving me this extra time, but I think it's important for all the panel members and for the validity of all the time and effort that everyone has put in here. So thank you for your time. I thank all of the members for all of your extra time and I appreciate that chance to speak.

Mark Runkle stated that the ZAP needs to ask themselves if there are adequate alternatives to the 10-acre minimum that address the availability of roads, water, and fire that are different from the Planning Staff's recommendation. There is not much comment on the Jamboards and he asked Eric to keep the ZAP focused on these things. He added his support for an additional meeting.

Tyler Emmert stated that he submitted a proposed alternative but was concerned that it may not pass the standards and was tossed out. It was based on the three aquifers with zoning based on this, alongside what the agricultural owners south of Lake Helena would want.

Archie Harper stated that he's currently pulled in opposition directions. Growth Policy provides a good justification for the 10-acre minimum. But when he listens to people in the Farm Bureau, there seems to be a risk of takings, and he doesn't like the prohibition of what he can do with his property. Are there other means or proposals that could more adequately address the 10-acre minimum that the ZAP is not considering?

Chair Jacob Kuntz stated that he needs to read the suburban draft regulations again and the added costs to the key developments, which is significantly different than in the urban district. He feels there is missing information to make an informed discussion.

Secretary Lois Steinbeck stated that the recent comments really resonated but the risk of no-zoning is greater than putting in regulations that can be changed. She wished this process had gone differently and the ZAP had more time to consider alternatives.

Tyler Emmert stated he did submit three other communities' alternatives to zoning with links and resources, and thought that the ZAP would review those alternatives at some point.

Chair Jacob Kuntz inquired when is the meeting for the ZAP to discuss the alternatives to the 10-acre minimum?

Moderator Eric Austin responded that this was the intent of the Jamboard, and at the meeting on February 9th.

John Rausch stated he wishes there was a more effective working way to communicate internally within the ZAP as the Jamboard was not a robust or adequate way to engage. He added that looking at a process in reverse there can always be observations and feedback on how a process could have been done better.

Tyler Emmert stated that Jamboard is not an adequate location to record and share extensive comments and feedback with the specifics of zoning.

Moderator Eric Austin agreed and responded that in the interim he will present the alternative recommendations in a more thorough way so that it's transparent and presentable.

Archie Harper stated that since Jamboard doesn't provide the space, he recommended an email to each of the panel members that highlights the specifics of the ZAP member's alternatives.

*Chair Jacob Kuntz left the meeting at 11:30 a.m.*

Greg McNally stated a request to provide an additional John Herrin public comment period due to the allowance provided to other members of the public.

John Herrin stated *(transcribed from Zoom transcript)* Well, Tyler's comments basically he posted two things. One that the County considers hiring a consultant. That should have been done in the first place, about a year ago. And the other thing is that the Growth Policy requires every five years, to look at, in detail and update it where necessary. Well the transportation, the growth, the affordability, the housing situations have all changed since 2010. We have 2020 data now this whole process is messed up and Tyler and everybody's struggling with the fact that here we have all this demands on you folks to try and come up with a plan, and you don't really have a lot of background, other than pointing back to the deficient and bias 2015 Growth Policy. So back to Tyler's request, I believe that you have two things. One, you should be asking yourselves in this forum. Does it not make sense to hire a consultant to update the Growth Policy? And to come up with this refining this whole zoning stuff so that you can actually have a product that's defensible? Because right now, everybody is indicating we've had a mess and you don't have enough information to make educated statements and policy.

**Secretary Lois Steinbeck: Motion to end the meeting**

**Archie Harper: 2nd the motion**

**Motion passed unanimously: 10-0.**

## **8. Next Scheduled Meeting**

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

**Adjourned at 11:35 a.m.**