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Subject: Zoning Advisory Panel Failure to Address: 1) Lack of Scientific/Administrative/Legal foundation for Rural and Suburban Lot-Size Restriction, 2) Vacating Rent/Lease Options, 3) Any Alternatives to Density Controls.
Date: Tuesday, February 22, 2022 5:25:37 AM

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Dear BoCC, ZAP Committee Members, LC County Attorneys, Citizens and Trade Reps.

After over a year of biweekly hearings, on February 9, 2022, the ZAP committee held a final zoom hearing to discuss, debate and consider staff generated Draft Zoning Regulations for three Sub-Zone Districts (Rural Residential Mixed-use, Suburban (Transitional) Residential Mixed-use and Urban Residential Mixed-use Sub-Zones) of the Helena Valley Planning area.

The entire year long process came to an end with a final vote to forward County Planning Staff crafted Draft Regulations for the three HVPA Sub-zone Districts – a vote that was not valid nor appropriate given the County’s BoCC Adopted January 26, 2021 Resolution and the even more critically -- **the Entire ZAP/Panning Staff final Zoning Plan totally missed the real needs of the Community the County -- to protect and Serve all citizen and taxpayers fairly and within the legal limits of the law.**

In addition, County Managers and aids can not openly and flagrantly violate the US and Mt. Constitutionally and Administrative Rules of Montana that clearly mandate that private property rights of thousands of Rural & Suburban landowner can not be arbitrarily and capriciously taken for the greater good unless there is a valid NEXUS connection to protecting public health and safety.

The February 9 ZAP meeting violated this County’s approved Resolution 2021-8 By-laws in several very important aspects mandated by the BoCC:

1. “Article VII – Meetings, Public Participation, and Staff” **“D. Order of Business – All meetings shall be conducted in accordance with the following Order of Business”**

“4. Additional public comment ... on any item not appearing on the agenda but within the jurisdiction of the Panel. The Panel shall not respond to public comments about issues not on the agenda).”

JH & Other Comments:

- A. **The Public members were not given any time to comment on additional matters not on the**

agenda – if they had used up all allotted 5 minutes at very end of the 2 hour public hearings. The 5 minute public Testimony limits severely retarded public's right to affect County Administrative Decisions at all ZAP hearings which we objected to in many hearings.

- B. **Plus there was never any effort by ZAP managers and members to carefully incorporate the social and economic damages being caused by the proposals nor adequately considering true facts and alternatives to the proposed heavy handed Zoning Regulations that would future smash economic housing industry already severely crippled by the patently illegal LCC specific added Subdivision Regulation development costly infrastructure mandates and other cost-prohibitive administrative barriers.**

Yet the 12 member panelist, County Planning staff and hired Moderator (Eric Austin), plus other County Staff personnel were not limited in time allotted and often time the ZAP discussions wandered off-topic or comments were repeated countless times – that resulted in wasted time that often could have been allotted to way more consequential and substantive comments and back and forth discussions with Public Testimony.

The 5 Minute Public Comment total was an Arbitrary and Capricious violating citizens and landowners Montana Constitution and Administrative Rules of Montana (ARM) for Public hearings and Rule Making and severely hampered the ZAP committee from hearing and thoughtfully considering other facts, legal considerations and alternatives. Citizens Constitutional and Administrative rights have been repeatedly violated by LLC include –

Publics Rights to Know (ARM),

Rights to participate in public hearings and affect change in Governmental decisions (ARM)

Unfairly restricted citizens inputs,

Violated the US Constitutional First Amendments Rights free speech, and to petition the Government for a redress of grievances.

- C. Concerns repeatedly voiced by public testimony is the fact that the Planning Staff and ZAP committee **never allowed alternative solutions to Density Controls and the Staff Generated Draft Zoning Regulations relative to the three major concerns (water supply, fire suppression, and transportation) – as required by “Article III Section 2. Purpose/ Mission”.**

- D. **Alternative to -- County Staff Drafted Regulations including long list of private property rights constrictions – were never ever really discussed by ZAP members of Planning Staff at any meetings for over 1 year nor were they ever placed on the AGENDA ITEMS.**

As such, the Citizens and ZAP panel merely always focused only on reinforcing the Density Controls in the Rural and Suburban Districts, never seriously considering Alternatives.

The Only truly legal Alternative to address growth must avoid discriminating against one segment of the populations (new landowners and developers) and giving the County and existing homeowners a free pass. Otherwise the County can not justify the regulation,

because discrimination is illegal under the US and Montana Constitutions.

The Three Key Issues (roads, Water Supply and Emergency Services) must be done as not to force only the new person to bear unequitable costs or restriction that the existing landowner or the County is not willing to bear. Judge Sherlock's 2011 Christison VS LCC Remand Decision clearly Stated that the County can not demand payments or improvements from only the new guy, if the existing benefiting parties aren't willing or capable of paying their proportionate share contribution.

WHY hasn't the County Planning Staff, ZAP panel, Board of County Commissioners and most importantly the County Attorney's office recognized this basic Legal Precedence and Refocused all Planning efforts to avoid legal challenges at all costs?

WHY did County Staff & ZAP Moderator/Chair refuse to address at many meetings Alternatives to Staff Produced Lot-Size Restrictions/Density Control and other Development limiting Aspects of the 2020 and Now 2022 Zoning Plans for the Rural and Mixed Use areas?

Given the fact that 90-95% of public comments (1822 pages written and hundreds of verbal testimony) were strongly against any Lot-Size Density Controls – then why has the Planning Staff so fixated and making unprofessional claims that the only solution to fixing widespread public health and safety concerns in the THREE KEY-Issues in Always imposing Lot-Size limits in non-urban lots???

Density Controls. The County Staff, BoCC and most ZAP members only have focused on Lot-Size Restrictions for managing growth in the Rural and last minute range of 10,5,1,1/2 acre lot sizes for the Suburban Sub-Zone District.

WHY? Why are so many County agents so focused on targeting only the new landowners and developers to pay for and pay the financial damages (private property value taking) as the only solution to manage growth – especially given the fact The County has been repeatedly challenged in Court over similar discriminatory Administrative Takings Regulatory overreach actions.

LCC has been repeatedly found guilty in imposing illegal Administrative taking of Public rights and discriminatory targeting of only one segment of the population to address fabricated health and safety problems.

In addition, the County planning staff keep falsely and unethically claiming that the State and County Subdivision Approval processes are inadequate -- and as such past present and future Subdivision Approvals will cause widespread and unrepairable public health and

Safety crisis.

The ZAP, County Planning Staff and BoCC all seem fixated on only forcing discriminatory property rights restrictions without consideration of the severe financial harm being do to the entire community.

ALTERNATIVES to Density Controls. The ZAP and Planning Staff held biweekly meetings for over 1 year – not once has any serious discussion presented for Zoning Regulations that did not involve Lot-size Density Controls.

This is in clear violation of BoCC 2021-8 Resolution that the major directive for the ZAP committed was to define and assessment all reasonable alternatives to the Rural Area 10-acre average lot-size restrictions deferred to June 2022 in the final 2020 BoCC hearing:

“The purpose of the ZAP is to assist Staff with concept recommendations on crafting the regulation for the purpose to the approved 10-acre minimum lot size/density parameters for the Rural Residential Mixed-use Zone District, the panel would seek options/alternative approaches to AMELIORATE the concerns noted by the 3 Key issues attendant to the Rural Growth Area identified within the 2015 update to the County Growth Policy” .

2. E. Agenda Item -- #3 reads “ Before a vote the Panel shall hear and receive written or oral comments from the public on that agenda item.”

On February 9, 2022, the Public testimony was again limited to only 5 minutes and was done after the official votes of the ZAP panel on the general resolutions for the 3 Subzone – Zoning Proposals. **As such, the votes by the ZAP committee members is invalid given they voted prior to hearing factual and meaningful public comments.**

This protocol violation was evident to the Citizens presenting and caused several citizens giving post decision testimony to feel like their voices were not being adequately heard nor considered in the very hurried and unprofessional manner of making these final motions decisions without adequate information, clarity and necessary technical/scientific/administrative details to allow ZAP committee members and Staff to make rational administrative decisions.

3. **Suburban Sub-Zone Area Plan** was Not adequately refined to even allow valid discussions and appeared to be another grand County effort to add layers Property Development Controls without any Social/Economic Impact Assessment nor factual Health and Safety foundations. Everyone on ZAP and public felt the pressure imposed by the BoCC mandate to finish the ZAP three Subzone Regulations by the end of the February 9 hearing, which happened but was not a satisfactory nor competent way for a years worth of effort to end.

At 2/9/22 ZAP Hearing Several ZAP committee members admitted that they really needed more

factual information on the need for density control justifications and alternatives. Plus several ZAP panelist voted against the final Suburban Zoning plan because the Planning Staff provided no accompanying map or what the criteria for each of the 10, 5, 1, ½ acre tract size Suburban density control restrictions. Note: Who is going to make the map and regulatory criteria – I see nothing but ARBITRARY/CAPRICIOUS/DISCRIMINATION written all over this plan from the get go.

The Staff and ZAP have no clue on what is really being proposed for the Suburban Subzone and as such the plan is so grossly pie-in-the-sky it can not be defended to the public nor stand a Legal Challenge. Any proposed Lot size density control maps produced with associated justification centered around Public Health and Safety issues (e.g. transportation, wildland fire risks, or groundwater supply) could easily be challenged as being Arbitrary, Capricious, and biased causing serve and irreparable harm to countless landowners.

Any map the County Planning Staff could create for the Suburban areas surely would harm and reward various property owners that likely could result in countless lawsuits and damage claims against the County. It truly is a can of worms with no real logic or forethought.

4. **RURAL Residential Mixed-Use Sub-Zone.** Was subject of many discussions over the past year, but the County ZAP/Planning Staff totally failed to prove why all 180,000 acres of private property in the Rural Subzone area has to have 10-acre lot size restrictions?????

Why are so many members of County's Administrators, Commissioners, Planning Staff and ZAP members so fixated on 10-acre tract sizes as the only solution? Why not 1, 5, 20, 40, 160? No rational reason is the answer.

FACTS:

1. **Groundwater Inadequate Reason for Blanket 10-acre Lot-size Limits on Any HVPA property.**

DNRC litigation Settlement set the Exempt Well limits at 1 house per acre. SO unless developers manage to creatively secure additional water rights from connected sources, the 1-acre minimum is the law of the land for non-municipal connected subdivisions. Yet the LCC planning Staff keep pointing to the severely Biased and outdated 2015 LCC Growth Policy as their go to bible and no other facts matter. WRONG, WRONG, WRONG.

In addition, DNRC funded two expensive and comprehensive legal challenged Controlled Groundwater Studies in the Helena Valley foothills. They Contracted with the Mt. Bureau of Mines and Geology for 5-6 year very comprehensive groundwater data analysis plus installation of costly monitoring and complicated modeling analysis for the North Hills and Scratchgravel Hills Controlled Groundwater Study areas. In the end, they found that overall both areas had ample groundwater to supply projected growth and therefore dropped the study and future blanket restrictions on additional wells in both areas – yet cautioned that future permitting carefully consider cumulative impacts of growth. Bottom line is future permitting must proceed on a case by case basis through Subdivision & DNRC Water Rights permitting process.

2. County's Contracted 2017 Wildfire Assessment Report Absolutely Destroys County's Claims of Health and Safety Concerns for fire to Justify 10-acre Lot-size Restrictions!!!

Same is true for Wildland Fire – I repeatedly cited the County's own December 2017 Community Planning Assistance for Wildfire (pages 32 & 33) which clearly refute the County's biased and unethically Anti-rural 2015 Updated Growth Policy statements relative to the only solution for managing Rural Area growth is Density Controls.

On page 32, the unbiased and Scientific Authors wrote “ This (WUI) approval process will determine the number of developable lots that can be properly mitigated in the WUI. As. A result, Section 18-7.4 (**Building Density Requirements**) will no longer apply and should be deleted.

Page 33 reads as follows “For example, the Helena Valley Area Plan ((& Growth Policy)) originally called for minimum lot size policy options to address growth in the wildland-urban interface. This CPAW report instead recommends that the **county use science-based approach informed by hazard assessment (see Recommendation 1) to determine the acceptable number of lots and required mitigation in hazard areas.**

This approach is more defensible process and still achieves the same goal of community wildfire risk reduction.”

This smacks the COUNTY's One-Size-Fits-All Density Controls square in the chin. **It is a knockout blow that the County Planning Staff, BoCC and Legal Staff that collectively and repeatedly refuse to address in any public**

hearings and should be a clear red-flag warning that the County decades of misdirection and false claims has been exposed by their own hired Guns (again → James Swierc did the same thing with the 2006-2007 Emergency Zoning Regulation County Produced Liable and False County Staff produced Water Quality Report that ran all over the Newspaper and lead to Derek Brown Beating out incumbent Ed Tinsley for County Commissioner.

The same illogical and unscientific factual challenge can be waged against the County in attempting to justify using rural road functional classification to justify the Suburban Sub-zone or Rural Lot-size Restrictions given the fact that almost none of the County's own roads meet the County's own Public Works Design Manual Road Design Standards. Plus most Rural Improvement Districts and Private roads don't meet County Road Design Standards and nearly all responsible parties refuse to pay for road improvements beyond their own design standard – not the county's.

So again, the County has no rational, scientific, moral or legal grounds to force heavy handed Lot-size density controls only on newly created developments and then allow others to unfairly get off Scott-free. **That is the very definition of discrimination and Administrative bias.**

Science and site specific facts are the only valid and legally acceptable approach to addressing growth – just as the LLC paid for 2017 Wildfire Assessment Report clearly states.

HOW can the County Legal department read these short factual statements and come away with a valid legal loophole to defend the County in any reasonably foreseeable legal arguments when the County's own paid for documents shoot the County right in the foot?

5. Yet to many ZAP committee members, County Commissioners, and Planning Staff members repeatedly are inserting personal bias (e.g. NIMBY) or few case examples of limited groundwater

supplies for past development density as a One-size-fits-all Solution with out really considering the real facts.

Any person advocating Lot Size Density Controls as a solution to Growth Management should sell their homes and move into The PLACER CENTER CONDOS or an apartment because that is precisely what they are dictating future generations must do to afford to live in the Helena AREA.

6. WHERE is the proof --

Case example is this partial poster board ZAP panelist comment that mirror Chest pounding false claims like this:

- a. "Comments received from ZAP: It is concerning that Subdivision Regulations would be used to determine water adequacy. Well logs provide inadequate data to project future "carrying capacity" of water availability for development. A hydrology report and recommendation from a hydrogeologist is needed."

JH Comment – Please Read MBM&G multiple Hydrogeologic Reports produced for the Scratchgravel Hills and North Hill DNRC Controlled Groundwater Areas and you will see groundwater overuse problems are the exception not the rule and to claim otherwise is like believing the world is flat. It simple is not true.

Yes a few problem areas in the HVPA have developed in granitic bedrock, perched aquifer and heavily urban density areas along N Montana, but these problem areas are limited in scope and can not be used as justification to taking away future money from hundreds to thousands of rural landowners without just health and safety justifications. Also labeling thousands of homes in the HVPA as being non-conforming screams of the absurdity of the false claims of the only solution for controlling growth is Lot-size and other 2020 Zoning Regulation landuse restrictions (e.g. only 2 buildings pre lot that destroys the one way to produce more affordable housing is through the rent/lease non-subdivision process that these 2020 Zoning and now 2022 Zoning Regulations would preempt).

The County Planning Staff knows full well that all major subdivision require on-site or nearby aquifer stress pump-testing of production well and several monitoring wells to determine draw-downs over 24-36 hours or longer with resulting data inserted into accepted modeling programs to determine the hydrologic characteristics of the tapped aquifers. Yet the County Planning Staff at every opportunity restate the 2015 Growth Policy lies that the LLC and State of Montana Subdivision regulations do not consider cumulative impacts on groundwater withdrawals and would allow senior water rights holders to be adversely harmed.

This repeated false claims that State and County Staff are illegally allowing subdivisions to adversely damage large segments of the existing and future landowner is absolutely

not true and would result in repeated lawsuits against the developers and Government agencies if senior water rights were rendered useless.

- b. As such, several citizens giving after-the-fact verbal testimony were noticeably upset at the lack of professional supporting information being presented (e.g. the county planning staff offered no maps, permitting review criteria, variance requests criteria for the SUBSUB Zoned lot-size density limits for the Suburban area), just to highlight the more obvious lack of full disclosure, public accountability, failures caused undue trauma to public witnesses, causing agitated verbal testimony given the decisions had already been made by panel – and 4 citizens constructive inputs were moot, and
- c. By not allowing Citizen to present testimony before the final decisions on these Critical 3 SubZone proposed regulations, the County once again violated their own Administrative regulations plus **violated the Citizens US First Amendment Rights** “Congress (LLC) shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or the press; or the right of the people to peacefully to assemble, and **to petition the Government for a redress of grievances**”.

7. LEGAL CHALLENGE ISSUES – These Need to be addressed by ZAP Committee, Planning Staff and County Legal Staff at Final February 25, 2022 Public Hearing.

- a. **The year long ZAP hearing process --just like the year long 2020 Zoning Hearing process -**
- violated the Montana Constitution Article II Declaration of Rights Section

3. ARTICLE II --- Inalienable rights.

“All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life’s basic necessities, enjoying and defending their lives, liberties, acquiring, possessing and defending their property, and seeking their safety, health and happiness in all lawful ways.”

- b. **The County’s 2020 & 2022 Zoning Regulations clearly are and would be Administrative Takings of private property rights without compensation and all density lot-size restriction lack the legal required NEXUS between the proposed regulations fixing or addressing a problem and the actual scientifically proven health and safety crisis.**
- c. **Mt Constitution Article II Section 8. Right of participation reads as follows (Note: The Right for public participation are also detailed in the State of Montana Administrative Rules and the L & C County Administrative Rules)**

The public has the right to expect government agencies to afford such reasonable

opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.”

(Note: The County Planning Staff and ZAP moderators purposefully and willfully restricted public verbal testimony plus never ever fully discussed hundreds of pages of written comments countering all the propaganda and misinformation being introduced into the ZAP hearings just like happened in the year long 2020 Zoning series of Zoning Regulation hearings.

8. QUESTIONS ZAP< BoCC, Planning Staff Must Address:

Why Can't the ZAP panelist and County Planning Staff and County Commissioners ????? ---

- Listen and read the long list of factual and Scientific information provided over the past years to reach solid Regulatory Planning?
- Steer the Planning Staff away from these draconian Massive Governmental Overreach Regulations that do way more harm than good?
- Put their personal biases aside and vote on any agenda item based on the real needs of our community?
- Make decisions based on logic and facts to **direct Zoning & Permitting policies that are the least restrictive possible and yet protect Public Health and Safety?**

9. Truth and Facts largely being ignored by ZAP< BoCC, and Planning Staff:

Here are the true Facts that few of the driving forces behind the Illegal aspects of the discriminatory Zoning & Subdivision Regulations have repeatedly failed to consider, openly discuss (they all deflect and avoid real meaningful discussions and reaching reasonable solutions to address real problems:

- All County Employees and Volunteers (ZAP & Planning Board, Commissioner, Planning Staff, Legal Staff, and Administrators) are bound by law and the **Montana/US Constitutions not to cause undue and unnecessary harm to their Citizens and Property Owners in conducting County Business?**
- **The bottom line job is – the County has Already Enacted Subdivision and Zoning Regulations Starting in 2005 and still on-going that are unnecessary, legally suspect, cause severe shortages of lower cost land parcels to feed our housing needs** (Note: for the last 3-4 months the number of available homes on the Helena area MLS has dropped to below 30 – resulting in nearly every home listing being gone in days after a bidding

war)?

- All Volunteers and County Paid Employees are **bound by the hypocritical oath – Thou Shall do no harm not justified by the science and facts** (just Like Doctors and Health-care workers)?
- The Current County Planning Department developed Zoning Regulation do way more harm than good – like using a slug-hammer to kill pesky flies.
- **The fact remains – These Rural and Suburban Zoning Regulations are being written and driven by County Staff and are largely are not the correct solution to address growth needs of our community.**
WHY does this keep happening?? Why DOES LCC manager have such Authoritarian thought processes that they can never admit a mistake, self police themselves away from personal bias and see the bigger picture – a picture with the least amount of government red tape possible and yet still protect public health and safety. None of the County added Subdivision Restrictions were done in the best interest of our Community and The same is true of these poorly thought out overly burdensome Zoning Regulations.
- Very variance for the standard one-home, one shop etc. model would have to go through another layer of Review – the Board of Adjustments. Ouch – any hopes on being treated fairly here???
- Yet the County Staff with Support of Select few Commissioners and Administrators, have collectively bought into the biased anti-rural growth philosophy termed “Smart Growth” to managing Growth Development.
- Yet the European decentralized growth management planning models are proving to create better planning and management styles that keep land and real estate prices down and not force everything into Urban Centers. Where is the bad traffic congestion in HVPA → in Helena. Not East Helena, not Bob’s Valley Market.
- By implementing 10-acre or other lot-size restrictions and all kinds of Conditional Use permitting, the County is inadvertently pushing some growth into Jefferson, Broadwater and outside the HVPA donut of LCC. How does that help driving patterns and is that really good growth management planning?
- Large 10-acre average lot size restrictions will make cash-rich out-of-state land buyer happy, but that just eats up massive amounts of land that could be used for homes without any real adverse impacts to the three Key Concerns. SO why force this on our community. This is extremely bad land-use policies as it doesn’t meet the tried and true Planning montra -- highest and best use economic Axium.

- Forcing as much growth into Urban centers only unduly restricts free market forces and often leads to escalating housing and land prices that drive more and more people out of the homeownership market and into rentals or housing crisis living conditions.
- With less than 30 homes on the MLS market for the past 3-4 months and all properties going into bidding wars – the reality of a lack of supply is beyond any historical reality this community has ever faced. Given time, more and more young people and fixed income people will be forced out of the Helena area will be forced to leave our area to find areas where they can afford housing that matched wages. LCC 17-year history of adding regulatory brakes to our free-market economy is finally really catching up to use and biting us all in the backside.
- It is an unsustainable path the County has had a direct hand in orchestrating and to claim otherwise belies the facts.
- So Stop the backsliding and move toward promoting the least restrictive Subdivision and Zoning Policies possible and still encourage well planned, safe and healthy growth.
- The County's 2014 Transportation plan shows that nearly major wrecks in the County occur on paved roads. So the County can't claim safety as a rationale for forcing only the new homeowners and Subdivision to fix off site roads nor as justification for limiting lot-sizes on Rural or Suburban lands.
- The same County's 466 page 2014 Transportation plan also indicates that the County and City of Helena unfunded road and transportation safety needs now total around \$330,000,000 with the very high majority of which will never get funded under current County funding sources.
- Around 2006, L & C County included a \$5,000,000 road bond levee to which the taxpayer voted down – in part for lack of outreach, education and effort on the County as well as trade-groups etc. etc. But nearly all County bond levees fail the first go around (e.g. schools, the County Jail etc.). So the County came back with a \$500,000 road bond levee which does come close to the hundreds of millions in County wide road improvements ideally desired.
- But in 2013, a slick out of state sponsored postcard campaign convinced the County Taxpayer to fund a \$10,000,000 open space bond levee to give away million dollar lottery winnings to the Prickly Pear land Trust and handout agricultural landowners for Open-space and nothing more. Preventing any land development on these lands forever. Example is the Gehring Ranch on Lincoln Road received a million dollars to keep raising cattle and bison without having to change any major aspect of their daily operations – and providing no real added benefit to the Taxpayers – where as

directing that money into roads would have made a huge difference.

10. After 1 year of by weekly ZAP meetings – these Major Growth Management issued have not been addressed (WHY?):

1. During the preparation for writing the LLC Growth Policy Update 2015 Volume 1 – Key Issues Report, The County hired consultants and LLC Planning Staff developed detailed public opinion survey, resulting in 10,335 surveys being mailed out to households (?? Why only 10,335 households??). 2977 surveys were returned (28.8%), and of those 1197 (11.6% of mailed surveys or 40% of returned surveys) wrote written comments.
2. Of the Written comments received were categorized as follows (Page 30 Chapter 7, Figure 2):

	%Written	%Survey	%Mailed
• Road(s)	60	24	7
• Subdivision(s)	23	9	3
• Water/wells	21	9	2.5
• Tax(es)	21	9	2.5
• Sewer/septic/WasteW	18	7	2
• Home/housing/schools	18	7	2
• Development/Land/	11	5	1.3
• Law/lawsuits/ 1.1	10	4	1.1
• GROWTH/Planning/Costs	10	4	1.1
• Traffic/Fire/ 1.1	7	3	0.8
• Protection/safety/Danger	6	2.1	0.6
• Infrastructure/Zoning	3	1	0.3

- A. These written responses tell us that 60% of the people who bothered to write comments were concerned about condition of our roads, and around 20% of them were concerned about subdivisions and water/wells.
- B. 10% of written comments mentioned Law/Lawsuits, and an equal number highlighted growth, planning and money/Costs while traffic and fire concerns feel to around 6% of written comments but less than 1% of the total number of mailed surveys.
- C. Zoning comments dropped down to only 3% of written comments and that number drops to only 1% of respondents of the mailed surveys and only 0.3% of the total number of citizens receiving questionnaires.
- D. These Surveys point to the fact that very few citizens viewed Zoning as a real solution to fixing our Growth issues.

II. County ZAP and BoCC failed to ever consider the adverse Impacts to home and land values of the Rural and now Suburban Subzone areas.

- A. No one in the Planning Staff and very few of the Volunteer Citizen advisory committee member have bother to discuss in any detail the adverse impacts to creating lower cost land parcels that could be built instead of forcing new development onto small lots located in or near Helena or East Helena.
- B. Where is the Cost/Benefit analysis of these proposed Zoning and Subdivision regulations?
- C. Gregory Thomas (PhD Social/Economic PhD & former LLC Consolidated City County Planning Board Chairman) made a motion to the CCCPB at the final August 2020 CCCPB hearing that they recommend to County Commissioners that they table the Rural Zoning regulations and hire an independent consulting firm to complete a detailed social and economic Impact analysis or the County would be sued.
- D. The County was sued over the 2020 Zoning Regulations that takes private property value for the greater good without doing the necessary Growth Policy Updates and actually defining growth trends and finding real equitable solutions.
- E. That is exacting what happened and 1 month after the County BoCC voted to approve the November 2020 HVPA Zoning Regulations – and the lawsuit details not only the discriminatory targeting and illegal Administrative Taking of private property rights without the proper proof and NEXUS between County claimed transportation, water supply and wildland fire risk that Could Only Be Solved WITH 10-acre lot size restriction across the entire 180,000 acre of rural property adverse impacts of the Lot Size Density controls and other land-use restrictions as purely fabricate problems.

III. THE COUNTY’S Resolution 2021-8 – HVPA –Zoning Advisory Panel Article III Authority, Purpose/Mission, Power, & Duties Section 2. Purpose/Mission.
 “The purpose of the ZAP is to assist Staff with concept recommendations on crafting the regulations for the approved 10-acre minimum lot size/density parameters for the Rural Residential Mixed -Use Zone District, the panel would seek options/alternative approached to ameliorate the concerns noted by the 3 key Issues attendant to the Rural Growth Area identified within the 2015 update to the County Growth Policy.

- A. Assist Staff with the drafting of regulations for the Urban Residential Mixed-Use Zone District (inclusive of collaboration with the City of Helena regards infrastructure planning)

????? Was that done with ZAP and Planning Staff -- 2014 Transportation Plan

- B. Assist Staff with the drafting of regulations for the Suburban Residential Mixed-Use Zone District; and

- C. **Suggest Potential options to address the 3 Key Issues (water, Road, and Fire) in the Rural Residential Mixed-use District, in lieu of the approved (but with implementation deferred) 10-acre minimum lot size/density.**
- D. **Alternatives to Density Controls for the Suburban Sub-zone District were never mentioned. And in fact the ZAP only held two meetings on the Suburban Sub-zone – totally inadequate which working Session after 1 year of meetings. WHY? This is the most complicated area to craft real true and progressive Zoning Regulations and all that came out was another layer of County regulations that don't hit the true target. They will cause more harm (financial, compounding housing shortages and insecurities, impeding creative and needed business growth, discriminating against non-city landowners & future residents etc. etc. etc. etc.) – more harm than solving real problems.**

IV. Alternatives to County Planning Staff's Growth Management Zoning Regulations.

1. **The BoCC in their 2012-8 Resolution Mandated** the County Planning Staff and ZAP committee carefully Evaluated for the County's Written Plans versus All Reasonable Alternative or the County will likely be challenged in Court.
2. **One final ZAP meeting is not adequate given this was their main charge for work product. The staff crafted the same regulations they would have done without the ZAP spending 1 year in biweekly meetings. SO why didn't the Planning Staff, Chair and Moderator focus at ever meeting pay the groundwater to alternative at ever turn?**
3. **The County Should create a systematic Matrix evaluation methods evaluating the important merits and negative aspects of the County's Plan versus all reasonable alternatives (e.g. Cost/Benefit, Legal Merits, Public Acceptance -- Matrix Analysis).** This is what a professional Consulting firm would have done to manage decisions, and for that the BoCC and Planning staff have to take full credit.
4. **The ZAP committee could see the need for real planning and data collection but the County refused to update the Growth Policy nor do any real homework. And for that major reason we all will have been paying the price -- Garbage In and Garbage Out. For That Reason the COUNTY GETS A BIG F for lack of effort and professional foresight.**
5. **The ZAP/Planning/Legal Staff must incorporate legal challenge and legal merits of all alternative paths forward in a separate and detailed evaluation matrix and narrative. This is the most important task that no one in the county has ever bothered to complete but is essential given the 17 year history of costly and unwarranted legal challenges LCC has self inflicted – causing undue personal damages to litigants, but untold damages to the entire**

County. Not to mention the financial costs (over \$7,000,000 and Counting) of self inflicted authoritarian Management Styles of Past and Present County Staff and elected officials including the County's legal staff – which has repeatedly been MIA when they could have easily stepped forward and prevented unnecessary litigation and bad blood across all tiers of life in the Tri-County Area.

6. **County Must consider one of the main alternative to addressing growth problems is taxing all benefiting parties to address wildland fire, roads, and maybe even public water/wastewater systems** (Note: The City of Billings promoted extensions of public works knowing taxation income in the future will return infrastructural improvements)
7. The County must consider legally defensible taxation and Improvement District types of non-discriminatory policies where everyone benefiting from road, Fire or water supply solutions share equally rather than introducing discriminatory and illegal barriers to growth that County Subdivision & Zoning Regulations are causing.
8. **PAID EMS WORKERS** – funded by increased County Property Taxes.

I have stated several times that the ZAP committee must **consider recommending added property tax solution for adding professional full time EMS services stationed across the County to respond to every increasing EMS calls.** As Pat Kiem Stated, 20 years ago the balance of fire to EMS calls was 75% fire to 25% health calls, but now the ratio is exactly the opposite. Given the fact that the younger generation is less inclined to public service, the volunteer basis for EMS services is unsustainable. Therefore, the County has to consider hiring paid EMS workers hopefully stationed at fire halls and equipped to handle such calls – especially the late night calls that harm volunteer trade workers ability to keep their businesses flowing.

9. **PROPERTY TAXES FOR ROADS AND RIDS.** County Increased Property Taxes for improving roads. Build consensus through informational and area specific meetings. Example was Colorado Gulch which 20 years ago passed a RID plan to pave their roads. It barely passed but now everyone still living up their who voted against it is happen it actually happened. Hard sell now with all the higher cost of living expenses and increased real estate values – and yes it should have been done decades ago. But maybe just maybe this could happen.
10. **PROPERTY TAX INCREASES FOR ADDITIONAL REGIONAL WATER FILL STATIONS FOR FIRE SUPPRESSION.** This is the real solution that the County absolutely must implement to help protect our community and the increasing wildland & urban fire risk is happening every year it seems. This has to be the solution and the County must immediately remove the Subdivision requirement for on-site water storage facilities

– given again it is discriminatory to force only new development to bare the costs for area water supply systems especially when most of the County mandated Subdivision on-site fire storage systems are never used and never will be. RURAL Fire Districts often refuse to tap into these older systems for fear of getting contaminated water into their tanks or finding it a waste of time when the systems don't work or they need to tie up a truck just to pump the water.

V. Montana Constitutional Violations. Article II Declaration of Rights reads:

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

JH and Others Comments – L & C County has for the past 17 years repeated ignored the true will of the citizens, refused to allow citizens impacted -- by a wide range of proposed County Added subdivision and Zoning Regulations -- to allow them to really have their concerns and voices heard by the County Staff, Commissioners, and County Appointed boards a true say and have a vote on proposed added regulations that adversely impact their private property rights for the unproven greater good.

Why does the County allow Part 1 Citizen Taxpayers/Landowners Initiated Zoning and Rural Improvement Districts to have vote on measures that restrict land-development and land-uses without reasonable representation?

In 2020 Peter Italiano was repeatedly asked if the County had not mailed out informational flyer to all impacted Rural Landowner – his (PI) answer was a simple NO. WHY? The Public has a right to know and right to defend Constitutionally Protected Private Property Rights and Life's bounty unrestricted by illegal Government interventions.

The Montana Constitution “Article II. Section 3. Inalienable Rights → All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives, liberties, acquiring, possessing and protecting property, and seeking their safety, health, and happiness in all lawful ways.”

Mr. Italiano was also repeatedly asked in County Sponsored listening sessions if the Rural

Landowners would be given a vote on these 2020 Rural Sub-Zone District Zoning Regulations and again his answer was – NO.

The 2020 & 2022 Zoning Regulations do not adequately represent the true values and concerns of the Rural and Suburban landowners given the fact that during the 2020 original Zoning hearing 90-95% of the 1822 pages of Written and Hundreds of Public Oral Presenters voiced strong opposition to the Zoning Proposals and especially the 10-acre Rural average lot size restrictions.

VI. Additional Legal Challenge and Questions LLC staff have never addressed, yet the Public, Taxpayers, and Landowners have a legal Right to Demand answers.

- 1. State Zoning Regulations require that LLC update the outdated and biased 2015 GROWTH POLICY -- prior to passage of 2020 HVPA Rural Zoning Regulations, and absolutely prior to enacting these 2022 Zoning Regulations.**

How can the ZAP committee, planning staff and County Administrators justify the 2 years of County Planning efforts in the Zoning Regulation Public Hearing process when the State Montana Administrative Rules clearly mandate any adopted GP must be critically evaluated at least every 5 years and where growth and community listed inputs significantly change, then the Growth Policy must be updated.

LLC has been warned for over 2 years that they can not move forward with adopting Zoning Regulations without spending about \$400,000-500,000 to update the deficient and severely biased 2015 GP – if any new Subdivision or Zoning Regulations are proposed.

The county has refused to follow many State Administrative Rules, but this pattern of ignoring Constitutional, Administrative, and Legal requirements is Collective Administrative incompetence and easy to prove in a court of law.

So why would the County official ignore this very simple and obvious mandate??? How can the LLC legal staff, BoCC, Planning Staff and volunteer Board members claim any cover or excuses when the written and public record clearly shows LLC Staff from top to bottom has been repeatedly informed that they are purposefully driving the County's ship into the rocks?

This is an absolute -- LLC can not adopt any changes to Subdivision or Zoning Regulations without

first updating the GP and completing additional transportation, housing, social economics, infrastructure system etc. analysis to help direct planning and regulatory policy.

I and others have repeatedly warned LLC managers and boards, that the County is heading the Taxpayers into unnecessary and potentially costly legal jeopardy by not stopping the Subdivision and Zoning Regulation freight train and do the necessary and legally required homework to pass the mandatory tests.

2. LCC 17 Year History of using Subdivision & Zoning Regulations to drive up the costs of or stop most Non-Urban Developments across the Entire County was illegal -- Arbitrary, Capricious, Discriminatory, and Biased -- Administrative Policies resulting in severe shortages of lower infrastructure/cost real estate land development which translates to significantly escalating housing prices over past 17-years.

3. 2021 =26% increased average home sale price increases with average home prices over \$420,000 that is above the average working wage earning qualification ceiling of \$350,000 – and the last 3 months there are less than 30 homes on the market leading to massive price bidding wars and hundreds of realtors/builders/contractors starving to death.

SHAME on all those responsible actors – and they should have to pay back everyone they have hurt unfairly for not seeing the damage their actions have caused.

Why did the Lewis and Clark County Attorney’s office, Planning Staff and County Commissioners choose to introduce extremely costly infrastructure Subdivision Application Requirements and barriers for past 17 years – that were designed to stop or slow the rural growth outside urban centers? (e.g. two entrances into all new subdivision must meet County Road Design Standards that most non-State Highways and rural roads do not meet → meaning many rural properties in County will never be developed like along Birdseye Road, onsite fire water storage systems that are never used, severe water body setbacks lacking hydrologic merits,??????) and

Why Did The Euclidian “Smart Growth” Bias is written right into the County 2015 Updated Growth Policy and is so clearly biased against Rural Growth it can not be used as justification for any County Zoning decisions???????

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