ZONING ADVISORY PANEL PUBLIC COMMENT

Received Between October 8, 2021 (noon) and October 22, 2021 (noon)

As part of the County's strong commitment to an open and transparent public process, comments received from any Citizen which reference the Zoning Advisory Panel (ZAP) are usually made available to the general public through uploading the comments to the County's website prior to the next ZAP meeting. Similarly, if the commenter requests, the information may also be forwarded to the ZAP Members directly.

** Please Note: Inclusion of Public Comments herein, does not imply any support nor opposition of the comments by the County.*

*Any Web Links included in the Public Comment have not been vetted by the County and readers should proceed with caution when accessing Web links**

From:	John W. Herrin
To:	Greg McNally; Roger Baltz; James Swierc; gharris@helenahar.com; Thomas. Andrew; billgowen@helenaabstract.com; kimsmithvalley@hotmail.com; jerry1@hamlinconstruction.com; John W. Herrin; beth@triplersurveying.com; jd2.dooling@gmail.com; Nicole Giacomini; Peter Italiano; Ralph Kuney; rlchristians@gmail.com; steveburch@missouririvercontractors.com; sutick@mt.net; tim@mooreappraisalfirm.net; Tony@jbartengineers.com
Subject:	October 13 2021 Zoning Advisory Panel -- Discussion Non-conforming Uses within 2020 Zoning Regulations Rural Subzone. Analysis must be broadened to include all HVPA Growth Trends of Rural Transitional and Urban Sub-zones. More growth in EH & Helena!
Date:	Monday, October 11, 2021 4:26:00 AM

For well over a year, I and others have been requesting the County do some real Census and County Data file analysis that define land-use development growth trend over time and we believe it will show that since 2015 a lot more lots are being created and approved by the county that connect to the City of Helena and East Helena plus those being created in the Transitional area versus those being created in the Rural areas.

Again stated we believe that two regulatory factors are changing the development patterns and growth in these three Subzones.

1. The first being the 2014 District Court Ruling limiting the number of lots (roughly 13) that any subdivision maybe allowed to use the DNRC groundwater exemption for water appropriations without having to purchase existing DNRC registered water rights (see the following L & C County Growth Policy Update, Volume 2 – Helena Valley Area Plan exurpts).

LC Growth Policy Page 2.8 Chapter 2 Current Planning and Growth Management Systems -- Key Point #4. Dept. Natural Resources & Conservations: Water Rights states:

"the effect of development patterns of the exempt well rule has been felt throughout the Helena Valley Planning Area…

(Page 2.9) Now that the exempt well rule no longer applies to larger subdivisions (e.g. subdivision with > 13 lots or 10-acre feet annual allocations), **how will land use patterns change?** In the HVPA, this could result in a proliferation of smaller subdivisions to avoid the difficulties and expense of obtaining a water right. For Larger subdivisions that would need a water rights, it is likely there will be a shift away from the 1-acre lot size pattern… lots smaller than one acre. To make projects financially viable, subdividers will be forced to develop more lots at higher densities." This is the County's own Growth Policy Statements.

SO L &C County contracted planners recognized the Exempt Well DNRC regulatory changes would cause major changes in growth patterns, discouraging rural development and promoting tighter density growth going forward.

But the County has provided Zero HVPA Growth Trends analysis defining these critical changes in the location, lot-size, water & wastewater systems, and fire protection requirements etc. etc. for new subdivisions being approved in the County starting in 2015 to present and then projections going forward.

WHY has the County not Updated sections of the 2015 GP to address the major changes that have occurred?? The State of Montana enabling regulations require the County to update their Growth Policy whenever major the County administered GP areas undergo major changes – a requirement many citizens have repeatedly raised over the past 2 year Zoning process.

2. There is a second and even more Regulatory Driven barrier to non-urban growth imposed by L & C County that dramatically altered growth development patterns of the County. Starting in 2006-07, L&C planner/administrators/BoCC changed the County Subdivision regulations, adding additional regulatory requirements not contained in the State minimum regulatory Standards. These County personnel added additional regulatory requirements that required most new major subdivision to pay the full cost infrastructure improvements in order to receive approval in this County.

   For the past 17 plus years L & C County manager used Zoning and Subdivision Regulation infrastructure improvement requirements as a means to an end -- to slow rural growth. These costly infrastructural administrative requirements include off-site road improvement requirements, requirement for all subdivisions to install costly on-site fire suppression systems, and variance request barriers that are not part of the State Minimum Subdivision Regulations. To date, L & C County has not produced the State of Montana MCA required Scientific Peer reviewed studies supporting these LC added regulations and the LC County has never added the appropriate legal/administrative justifications to every major subdivision approval statement regulatory record.

   As such, I believe most major subdivisions approved by L & C County since 2006-2007 have major Administrative failings that could have been challenged in court had anyone really researched to enabling regulations behind the County taking over management of Subdivision approvals from the State.

   A prime example of how the LC added subdivision regulations have altered the development patterns of the HVPA is is the 10-11 miles of Birdseye Road County Road that does not meet the County's own County Road Design Standard and L & C County's Inserted Above State Minimum Subdivision Regulation Standards -- that most new subdivision must pay off-site road engineering design/cost estimates plus pay the County prior to final plate approval, the proportionate share costs of increased Traffic load to bring access roads up to County Standards.

   In the case of most rural property in the County including Birdseye road, these forced improvement costs -- for most major subdivisions -- drives development cost through the ceiling and therein make most rural property in L & C County uneconomic to subdivide.

The Same types of costly fire protection and road regulations contained in the County added Subdivision Regulations has severely retarded rural growth all across the entire county including the Helena Valley Planning Area (see separate October 8, 2021 Email to L & C County Re: Consultant Contract to Rewrite Subdivision Regulations).

For well over a year, I and many other trained professionals have been warning the County to Stop promoting and advancing the April 2020 draft Zoning Regulations and conduct the necessary background research and fact finding to support the 10-acre lot-size density controls and 2 building etc. restrictive Zoning Regulations. The County was repeatedly asked to produce the following required documentation to support the 2020 Zoning regulations:

1. 2015 Growth Policy:
    - is based on 2010 Census data, mid 2010s citizen surveys, growth trends, transportation plans, etc. etc. – all of which are inadequate and dated to provide a clear picture of current and future growth trends.
    - In Montana Growth Policies are not a regulatory document and therefore are not legally enforceable mandates – merely time sensitive factual background, growth projections, and policy recommendations.
    - The two volume GP documents contain exceptionally good background information about the entire County (Volume 1) and the Helena Valley Planning Area (Volume II).
    - However, the Sections discussing recommended policy directives for the Rural Subzone area of the HVPA – that the only planning tool that the Planning Authors was to recommend Volume 2- Page 5.9 "But limiting density will be the main mechanism to address the development constrains in the rural areas."

2. Unproven Health and Safety Cumulative Impacts not Adequately Addressed by State/County Subdivision and Water Rights Regulatory Administrators.

   According to County's year long 2020 Zoning Regulation hearing process, 10-acre average lot size density controls is based solely on the unsubstantiated claims presented in the 2015 Updated Growth Policy Volume 2 HVAP document, but no other real scientific reports and focused professional testimony proved these claims to be applicable to all 100,000 to 150,000 acres of private unzoned property in the HVPA.

   I have submitted multiple written documents (see attached Written testimony) refuting the technical validity of every one of the 5 County claimed environmental health and safety issues, but a brief updated overview is justified and presented herein:

   a. Groundwater Supply.

      County Claim -- The Zoning 10-acre restriction could prevent dropping water tables like what is occurring in the North Hills and East Bench

      JH Counterclaim summary

Yes, there exist a few areas exists along the urban density development stretched for miles along both sides of North Montana Avenue and to a lesser extent on the East Bench east of Fox Ridge Gold Course.

Although the density of development in these areas in spot locations in these two areas was in hindsight was not adequately researched prior to approvals, not everything in hydrogeologic three dimensional and complex systems is easily known, but now we have decades more information such mistakes should be very few and far between.

It is the legal obligations of subdivision applicants to pay for and hire competent professional hydrologist/engineers to complete detailed groundwater stress tests in target aquifers and prove that adequate groundwater will be available for all intended uses and also protect existing senior water right landowners.

As such, there is absolutely no justifications for the 10-acre lot size density controls relative to groundwater supply nor groundwater quality resources. DEQ/DNRC/County permit managers will not approve the subdivision without adequate documentations and verifications.

In addition, the smallest parcel sizes for lots with onsite individual septic systems and a well is greater than 1-acre so normal subdivision reviews have regulatory controls in place to protect existing groundwater rights property owners and as such the Zoning Regulations are not required to protect public health and safety).

b. Transportation

Rather than using the proportional share analysis (JH Comment: not only does a developer have to pay the engineering designs and road upgrade cost analysis – but then the developer must pay the county for added traffic load funded upgrades to existing access roads to the nearest State Highway – often a major or absolute barrier to rural development property located on long side roads and property miles away from a State highway.

But everyone else gets a free pass and nearly all County & Rural Improvement District maintained roads don't meet County Road Standards, but the new development must pay upfront at the highest cost standard most other won't pay for)

"… to collect a small portion of the costed needed to upgrade roads to full county paved road standards"

(JH comment note: this is shows extreme bias by Contracted & County Planners that is exact opposite of facts – see prior comment)

"..., low density zoning will be used to limit new traffic that will be generated, preventing the need for costly improvements that might never be funded" (Jh Comment; another biased statement. Who's at fault for not pay the other portions of the unfunded deficiency of road upgrades – the county and the neighboring accessing property owners, that's who is getting the free ride not developers!!).

3. Transportation Road System is deficient – note: 2015 GP Volume 1, Page 15, clearly States:

" In 2014 the L & C County Public Works Department completed a PASER analysis of paved county roads. That analysis found that within Lewis and Clark County there are 33.48 miles of hard surface roads (either paved or chip sealed) that are in very poor or failing conditions, meaning they could cost approximately $34 million to fix … the annual budget for road improvements beyond normal maintenance operations is about $500,000."

The $34 million budget short fall was 2014 and only addressed HVPA not the entire 540 plus miles of County roads that are factually getting worse with time. What is county plan for upgrading the City of Helena Water Supply shortfall of needed improvements of over $20M and the County Road deficits? Money doesn't grow on trees and One Major Untouched Issue for the ZAP Committee and County Planning is to address these issues relative to promoting growth in future City Connections and addressing road Congestion within the City of Helena.

The County should be promoting home based business and allowing rent to lease options to reduce the need to travel into Helena daily for work. Where is the analysis of traffic patterns and plans for Zoning of the 3 Sub-Zones and the need for system upgrades when County has a severe negative Bank Account balance.

c. Wildland Fire Risks – County's own 2017 Report Refutes 2015 GP claims that density controls are only valid planning tool to manage growth (see pages 31-33). The 2017 "Community Planning Assistance for Wildfire -- Recommendations for L & C County Mt" Prepared by Wildland Professional Solutions, Inc. Wildfire Planning International LLC and Land Solutions LLC state the following indictments of L & C 2015 GP 10-acre Lot size density control biased recommendations:

- L & C Local Hazard Map – shows most timbered areas in the HVPA – including some the upper west and east sides of Helena are Classified as high to extreme fire hazard.

- Most of the grassland areas of the HVPA have low to moderate wildland fire risk classifications.

Existing County Sub regulation block any such proposed subdivision developments in high fire hazard property where excess fire risk can not be properly mitigated -- so this is another fabricated false claims unsupported by the County's own Subdivision Regulations.

Summary Environmental health & safety Basis for 10-acre lot size restrictions. As presented to the County in a long list of comments letters dating back to 1.5 years and counting, I have consistently challenged to County Planning Staff and BoCC to produce real facts and documentation that 100% of the rural property has leperacy, and should be quarantined.

Where is County updated technical and scientific analysis of these 3-5 key issues supporting the 2015 GP and 2020 Zoning Regulations?

4. Social Economic Impact and Cost Impact Assessments.

During the multiple 2020 County sponsored Listening Sessions and Consolidated Planning Board, several citizens testified that the County must conduct detailed social and economic analysis of past development regulations, plus the proposed Zoning Regulations or the county could be liable for damages to private property future development rights and limitations on uses of their property.

Professor Gregory Thomas (Acting Chairman of L & C County Consolidated Planning Board) on the final vote day for the CPB decision on the County proposed 2020 HVPA Zoning Regulations (August 4, 2020) presented a very solid case for delaying the passage of the zoning proposal until the county had completed and detailed social and economic impact analysis of the regulation – or in his word

"I have had an opportunity to review and analyze relevant statistical and behavioral date about the numerous prior similar types of successful lawsuits against Lewis and Clark County during the past thirty years.

The negative potential risk exposure for Lewis and Clark County taxpayers in proceeding to implement the proposed zoning regulations without the necessary third-party socioeconomic assessment could rapidly exceed tens of millions of dollars in human resource, legal, court, settlement award, and related costs throughout the remainder of this decade."

Mr. Thomas goes on to detail the reckless behavior of the County if there proceed with this zoning regulations and cites the 8-0 US Supreme Court November 27, 2018 ruling in favor of Weyerhaeuser Co administrative taking case of US Fish & Wildlife Service attempts to condemn their property to protect the endangered dusky gopher frog – the problem being the land never has been nor would be critical habit for the dusky gopher frog.

"In writing the unanimous opinion overturning this ruling, Chief Justice Roberts observed that courts are commanded by law to "set aside any agency action that is arbitrary, capricious and abuse of discretion, or otherwise not in accordance with law.""

"**Instead of once again shooting from the hip because our current draft zoning regulations are "legally (un)defensible", it is imperative that we urge the Board of County Commissioners to promptly issue a request for proposal to perform a zoning socioeconomic impact assessment**. This way, we will have independent well-qualified third-party subject matter expert confirmation about whether or not the proposed zoning regulations make dollar and sense. The assessment results will tell us if the regulations require material revisions before adoption to better protect the property rights of all impacted landowners while honoring and respecting the spirit of the adopted holistic growth policy.

Consequently, I am asking the planning board to support a motion to advise the Board of County Commissioners to table further consideration of the proposed zoning regulations and: instead, we recommend they issue a request for proposal to conduct a zoning socioeconomic Impact assessment as outline herein".

Unfortunately the planning board voted 5-2 to adopt the Zoning regulations without further considerations and very weak rationalizations by the 5 CPB voting members.

I have repeated stated at many 2020 Zoning hearings that the County should have hired an group of qualified out-side consultants to review the scientific basis for county claims of health and safety risk (e.g. wildland fire risk, flooding, water quality and water supply, and transportation) -- in order to prove or disprove the need for additional Zoning Regulations relative to the proposed 10-acre average lot size density controls, voiding the rent/lease options and other land-use constraints incorporated into the proposed 2020 Zoning Regulations.

The County under Subdivision Regulations is required to conduct a cost to the regulated subdivision, but that specific requirement is – especially if the pretense was to protect public health and safety to which the county has failed to prove is a valid across the board valid justification for the lost private property rights as Mr. Thomas, and other have long contended.

Also, the County anti-rural development administrative regulations targeting only rural property for these harsh Subdivision and Zoning Regulations has and will continue to limit the development of reasonably priced subdivision lots. It is long been my contention that these artificially (arbitrary and capricious) subdivision regulations have increased the average cost of a rural 1-2 acre lot as much as $5,000 to $20,000 or more extra per lot because of the added infrastructure development costs.

And now the county unfairly is adding the 10-acre average lot size restrictions which will even further reduce the supply of lower cost rural property and there by increase the costs of new lots and therefore all property values – a price that can not easily be predicted, but it absolutely already has forced the cancellation of larger tract land sales and adversely harmed rural landowners

attempting to sell rural property.

IN Summary – L & C County has once again unfairly targeted only Rural property for added regulatory controls without completing the necessary environmental and socioeconomic impact assessments to prove there is a NEXUS between a clearly defined and proven problem that the Administrative Regulations clearly solve. In addition, the L & C County regulations also contain numerous legally problematic regulations that are classis legal violations of basic property rights guaranteed by the US and Montana Constitutions plus can be proven to be Arbitrary and Capricious as was the case in the Weyerhaeuser V, United States Fish and Wildlife Services dusky gopher frog case.

Sent from Mail for Windows

From:	John W. Herrin
To:	Greg McNally; gharris@helenahar.com; billgowen@helenaabstract.com; Thomas, Andrew; jerry1@hamlinconstruction.com; beth@triplersurveying.com; Abigail St. Lawrence; mkurmove@gmail.com; db.flyz@gmail.com; James Swierc; kim@kjnranch.org; jdusenberry@janddtruckrepair.com; Jim McCormick; John W. Herrin; beth@triplersurveying.com; jonathon.ambarian@kxlh.com; jd2.dooling@gmail.com; Kathy Moore; kimsmithvalley@hotmail.com; Andy Hunthausen; Lindsay Morgan; Roger Baltz; mtpaisan@gmail.com; mj.fasbender@bresnan.net; Nicole Giacomini; Peter Italiano; Ralph Kuney; rlchristians@gmail.com; steveburch@missouririvercontractors.com; sutick@mt.net; tim@mooreappraisalfirm.net; Tom Rolfe; Tony@jbartengineers.com; trevoretaylor@hotmail.com; suzorhoy4montana@gmail.com
Subject:	Non-Conforming Use Analysis & Need for Additional Growth Trend Information. ZAP Panel discussion planned for October
Date:	Monday, October 11, 2021 12:07:18 PM

October 11, 2021

During our conversation today, Greg McNally mentioned that the percentage of Non Conforming lots (lots sizes less than 10-acre?) represent only 5.81% of the total 182,000 acres in the Helena Valley Planning area.

I immediately objected overly simplistic and unfair approach that minimizes the adverse impact to private property owners with property lot sizes less than the 10-acre 2020 Zoning Regulation restrictions – herein defined as Non-conforming Lots.

The data analysis has to be way more refined and targeted to actually show the real lot size density of the entire Helena Valley Area Plan including a summary for each subzone (e.g. Rural, Transitional and Urban).

I stated in our conversation – it is inappropriate to use simply the amount of none conforming land acreage then compare that to the total HVAP land acreage – given the fact that large segments of the HVAP are not private and can't be developed.

For well over a year, I and others have been requesting the County do some real Census and County Data file analysis that define land-use development growth trend over time and we believe it will show that since 2015 a lot more lots are being created and approved by the county that connect to the City of Helena and East Helena plus those being created in the Transitional area versus those being created in the Rural areas.

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Zoning according to the development constraints could prevent dropping water tables like what is occurring in the North Hills and East Bench

(JH Comment Notes: Yes, a few areas exists along North Montana Avenue and the East Bench, but these areas are well known and past overly dense development like occurred along North Montana Avenue would not be repeated largely because the State Regulators and Consultant know that Urban Densities in moderately productive foothill aquifers must be adequately analyzed and proven by the applicant or the DEQ/DNRC/County permit managers will not approve the subdivision. In addition, the smallest parcel sizes for lots with onsite individual septic systems and a well is greater than 1-acre so normal subdivision reviews have regulatory controls in place to protect existing groundwater rights property owners and as such the Zoning Regulations are not required to protect public health and safety).

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Where is County updated analysis of these major issue?

3. Social Economic Impact and Cost Impact Assessments.

Several county landowners and PhD Social Economist requested that the county stop the 2020 Zoning Process and go back to the drawing board to complete a detailed impact analysis on affordable housing, impacts of Zoning plan on real estate land and home prices, characterize the growth trends and availability of rural, transitional and urban building lots and trends.
Social and economic impact assessment data analysis must be provided for all three growth areas of

the HVPA – defining how the Rural, Transitional and Urban areas are changing over time.

The County must provide accurate acreage totals for the following categories in order to present and accurate picture of past, present and future growth conditions in the all the Sub-zone areas (again Rural, Transitional and Urban) :

1. Governmental owned land in each Subzone area. E.g. How many acres are owned by non-zoned entities (e.g. Federal, State and County owned lands). These lands are not subject to Zoning Regulations and therefore should be defined, but not included in any impact assessment calculations.

2. How many total private property acreages are present in all three Subzones?

3. Within each subzone, how many total existing lots are there in various size classifications (<1/4 acre, ¼-0.999 acres, 1-1.99 acres, 2-4.99 acres, 5-9.99 acres, 10-19.99, 20-39.99, 40-159.99, 160-319.999, 320-639.99, >640).

4. If possible, within each lot size categories & SubZone, it would be very important to know how many lots contain more than one household and types of households (e.g. several individual stick built homes/trailers or modular homes/2-3 plexs, 4-6 plexs, >6-20 apartment buildings, and >20 apartment buildings).

5. Within the Rural zone, how many of the various size lots are excluded from the 2020 Zoning regulations because they are within another Part I Citizen Initiated Zoning Area or within the Part II County Initiated Zoning Areas.

   Although we need to know what the lot size and home/rental/apartment etc. property characteristics of the excluded Zoning parcels, the factual basis & emphasis of analytical for the 2020 Zoning regulations must focus primarily on knowing how many actual rural properties have been included in the less than 10-acre or more than 2 building etc. Zoning Non-conforming regulatory controls.

6. In addition, a true and complete analysis of non-conforming private property that is or will be non-conforming must also give the ZAP committee, public, BoCC and landowners showing what the rural areas currently look like relative to lot-size densities.

7. In order to present this data in an easy to comprehend manner, the County Planning Staff should create a color coded lot-size density map of all rural private property plus other excluded Zoning and Governmental lands, in order to create and easy to understand visual presentation of the hard data.

8. The reasons for the county staff to undertake such detailed analytical analysis of the past and present lot-size densities and growth patterns is again to show that for one – almost all lots created in the past 20-30 years, especially along North Montana are generally less than ¼ acre in size and even more are less than 1-acre.

Knowing this information would shed light on the fact that the vast majority of existing lots in these areas are non-conforming and as such can not be changed without going through the Board of Appeals,

But even more importantly it underscores the fact that the 10-acre lot size restrictions have no real basis in fact—otherwise why did the County Planning and Environmental Staff/BoCC, and the State DEQ & DNRC Water Rights agencies permit all these homes on such small lots?

Put another way – L & C Planning Staff and BoCC are in essence saying that the County and State permitting of subdivisions with lot sizes less than 10-acres for the past 30-40 years acted without proper safeguards to protect public health in all non-conforming parcels and that these illegally permitted thousands of new homes in the HVPA Rural Areas should be branded as none-conforming parcels.

9. And to add to that, the 2020 Zoning regulations would add to every land title of lots less than 10-acres or having more than 2 buildings (that means 2 homes, 1 home and one shop or one home and a outbuilding office/business) – **would be branded as now non-conforming.**

   That is a titling and lending nightmare issue that is totally unwarranted from a legal, administrative or ethical basis.

10. **What I have been attempting since the first listening session in December 2019 -- the County has failed to prove is that there are any factual health and safety concerns that support the 10-acre lot size restriction. Where are the scientific reports that prove all private property not already developed in the Rural Subzone is forever more condemned to be only for the rich landowners that want and can afford large tracts of land.**

    The County has produced Zero factual evidence to support the claims at every single blade of grass underlying the thousands of rural properties and encompassing about 100-000 to 150,000-acres of private cannot be developed -- at a average lot size density less than 10-acre -- without causing severe public health and safety threshold violations.

At just about every public hearing I attended and was allowed to speak in the nearly year long 2020 HVPA Zoning Regulations public hearings (5 listening sessions, 6 BoCC hearings and 2 of 5 Consolidated Planning Board Hearings), I squarely challenged to County product factual evidence supporting the claims that existing County and State Subdivision Review Regulations were causing massive widespread environmental health and safety crisis,

Yet to date the County has steadfastly pointed solely to the 2015 Growth Policy as justification for lot-size density controls only for Rural Property which was severely recommendations contained in Volume II –which were invalid when written and just as invalid today.

The Prefect and Most Powerful **Proof** of the unscientific and unethical bias of 10-acre lot-size density controls for only Rural Property is written right into the L & C County's paid Planning consultants 2017 Wildfire Risk Analysis and Planning Report.

This Wildland Risk Report titled "Community Planning Assistance for Wildfire -- Recommendations for Lewis & Clark County Mt." was produced by the three premiere consulting firms: Wildland Professional Solutions Inc, Wildland Planning International LLC and Land Solutions LLC.

Page 32 the "Implementation Guidance" section was written "to resolve County inconsistencies and potential conflicts and strengthen the County's ability to objectively administer and enforce fire protections standards for subdivisions, the CPAW team recommends implementing the following:"

Section 2. Use Updated Hazard Assessment During Subdivision Review and Section Approval.
Section 3. Align Vegetation Management with Mitigation Potential Assessment.
Section 4. Ensure Implementation of Mitigation Prior to Final Approval
Section 5. Create One Set of WUI Definitions for Countywide Consistency
Section 6. Resolve Current and Potential Regulatory Conflicts
Section 7 (incorrectly #ed 5) Align Subdivision Regulations with WUI Code – which states: **"This 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.**

This is the actual fact based recommendation of the three consulting firms hired by L & C County to make wildland fire policy recommendations. It also completely shoots down the LC

administrators 2020 Zoning Regulations and the 2015 Growth Policy – given these same statements apply not only to wildland fire site and Subdivision specific management decisions rather than the indefensible one-size fits all approach -- not only for wildland fires but also is absolutely applicable to transportations, water quality, water supply and flooding issues.

Page 33 "Tips and Additional Resources"

The County Staff has committed to including in all future subdivision RIDs expanded legal Covenant requirements into the approval process in order to maintain funding for vegetative removal and maintenance requirements in order to protect property, water quality and reduce fire risk.

"Compliance with State Adoption Procedures"

"Amendments to the subdivision regulations must follow the procedures provided in Montana Cod Annotated Section 76-3-503, which require the governing body to hold a properly noticed public hearing on the regulations and its intent to adopt the regulations."

"Alignment with Growth Policies"

"Revisions to subdivision regulations should ensure they continue to implement the intent of current and future growth policies for consistency among county documents."
The 2017 CDA for Wildfire – Recommendations for L & C County Mt. goes on to reaffirm the validity of existing Subdivision Regulations Approval process and severely undercuts L & C County arguments for the need for 10-acre and other Zoning Regulations.

"For example, the Helena Valley Area Plan originally called for minimum lot sizes as a policy option that the county (Instead) use a scientific-based approach informed by hazard assessment (see Recommendation 1) to determine the acceptable number of lots and require mitigation in hazard areas. This approach is more defensible process and still achieves the same goal of community wildfire risk reduction."

This is actually written into the County Contracted 2017 Wildland Fire Risk Assessment document and absolutely destroys the County unsupported 2015 biased Growth Policy recommendation for Rural 10-acre density controls.

11. Which Brings Up a Very Important Side Issue – Why did the County Exclude all Existing Part I and II Zoning districts from the 2020 Zoning Regulations? These tracts of land represent a large segment of the Rural area (how much has not been disclosed by the County?), yet are exempt for the added 2020 Zoning Restrictions like the 10-acre, no rent or lease options, building height restrictions, forced board of Adjustment permitting for any business uses.

12. Why are existing Part I & II private property getting special treatment? What makes them special. This seems to be a form of class discrimination and targeting again only the new subdivisions for harsh property land-use and development restrictions while giving all other Part I and II Helena Valley Zoning areas a free pass. It should be noted that the 2020 HVAP Zoning Regulation only Target Rural property and include 120 plus pages of Zoning Regulations, whereas most Part I citizen initiated zoning regulations general only have a few limited property rights restrictions, and the County Initiated Fort Harrison Area Part II Zoning Regulations are only 19 pages long.

13. Two Social Economic professors clearly presented arguments supporting the need for L & C County back in July & August 2020 to Stop the 2020 Zoning Proposal freight-train and hire a qualified Socioeconomic Consulting firm(s) to complete a detailed assessment of growth patterns and the social and economic impacts of the proposed 2020 Zoning Regulation – especially answering the questions about the supply and cost of rural, transitional and urban land, housing construction and overall housing prices etc.

    Professor Andrew Thomas PhD at Carrol College presented a very good power point presentation last summer at the CCC Planning Board and Gregory Thomas PhD Social Economist in private practice was Chairman of the CCCPB until the Board decided to go along with the County 2020 Zoning Regulations to his dismay and he resigned from the board.

    Mr. Gregory Thomas stated the following in his 4 page motion to delay the vote on the 2020 Zoning Regulations and instead immediately seek outside consulting firm expertise to complete an unbiased and professional assessment of the 2020 Zoing Regulations and alternative solutions in order to meet the real public needs for addressing future growth—rather than accept the 2020 Regulations as being the one and only solution to address growth issues.

    Mr. G Thomas stated in his 4 page August 4, 2020 motion to the CCCPB the following which underscores the potential severity of another round of lawsuits against the County, in stating true and reasoned facts:

    "I have had an opportunity to review and analyze relevant statistical and behavioral data about the numerous prior similar types of successful lawsuits against L & C County during the past thirty years.

    The negative potential risk exposure for Lewis and Clark County taxpayers in proceeding to implement the proposed zoning regulations without the necessary third-party

socioeconomic assessment could rapidly exceed tens of millions of dollars in human resource, legal, court, settlement award, and other related costs throughout the remainder of this decade.

He goes on to cite the landmark November 27, 2018 Supreme Court Weyerhaeuser v US Fish & Wildlife Service case wherein the 8-0 judge ruling was summarized by Chief Justice Roberts that the courts are commanded by law to "set aside any agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

From a legal challenge perspective, these major regulatory disparities underscore the selective County Bias against new rural develop and favoring existing property rights – which is a legally problematic stance by the County given the obvious Arbitrary and Capricious Zoning Administrative actions and also appears to be targeting only new development for added and way more economically damaging regulatory controls while exempting existing Part I and II zoned property which has some of same -- physical, topographic, vegetative, groundwater, road access and maintenance -- type issues as neighboring and similar 2020 Zoning Regulated private property.

Bottom line and important fact for the ZAP committee members, Planning Staff and BoCC to consider moving forward is – L C County must define the health and safety issues of both the Subdivision and Zoning regulations and the combined impacts on past, present, and future growth patterns, property values plus the overall environmental public health and safety, and finally adequately address the cost/benefits (socioeconomic) impacts of various planning recommendations.

For nearly 2 years now, the county Planning Department, County Administrators and BoCC have collectively decided against the will of the landowner and citizens – Note: 1822 pages of written testimony and hundreds of verbal testimony of which 90-95% was against the 2020 Zoning Regulations – and they and they only know what is best for the community.

The end result is This County and This County Alone continues to target only rural property for added harsh regulatory controls even without shred of solid technical, administrative or legal footings to support their taking of private property rights without just compensation.

Sent from Mail for Windows

From:	John W. Herrin
To:	Peter Italiano; Greg McNally; Roger Baltz
Subject:	LC SubRegs Rewrite Contract --1) Request to Review Co SubReg & Contract Files 2) Request Plan Staff & Consultants meeting ASAP. 3) Summary Major Legal/Admin of Past County added SubRegs 4) Social/Economic Harm to Tri-county Economy and Rural Property
Date:	Monday, October 11, 2021 12:23:59 PM

October 8, 2021

Please forward to ZAP Committee and to L & C County Contracted Consulting firm rewriting the L & C County Subdivision Regulations.

Back in June 8, 2021 I called the County Planning Staff office to request an update and face to face meeting with the County Planning Staff and the County's hired consultant. I spoke to Peter Italiano and he stated the Request for Proposal had been re-advertised after the February 2021 RFQ received no responses.

I then called Greg McNally October 8, 2021 and found out that the consultant was Orion Planning and Design of Missoula (Allison Mouch) may be selected consultant to work on researching and advising County on rewriting the existing County Subdivision Regulations. All that Mr. McNally could say is the contract negotiations and hiring process are in the works and he could not say when or if that contact would be finalized.

It is in the best interest of everyone affected by past, present and future real estate development in the Tri-county area – including builders, realtors, contractors, homeowners & home buyers, trade associations, affordable housing advocates, plus the County tax-payers, county government planning and environmental staff, legal staff, ZAP Committee members, and County administrative managers – **to all come together to discuss the all important updates to the County Subdivision Regulations**.

I have been pushing for this these changes starting in in 2005 and yet nothing has changed other than more added Subdivision and Zoning restrictions targeting mainly rural property over the past 17 years.

The culmination of targeting rural property was the passage of the 2020 Helena Valley Planning Area Zoning regulations that required all new subdivisions approved within the roughly 150,000-acres of Rural subzone property to have 10-acre average lot size density and limited all rural property to only two buildings no matter the lot size, which nullifies the State Passed Rent/lease options of property owners. Given the severe land-use restrictions contained in the over 120 pages of the 2020 Zoning regulations targeting only rural property, I filed a legal challenge against the County in the First Judicial District Court in December 2020.

For the past 20 years, L & C County Environmental Permitting & Planning Staff along with elected

BoCC and top Managers have chosen to Adopt Zoning and Subdivision Regulations that have repeatedly be challenged in Court – and truth is the County taxpayer have had to pay out in Legal Damages and Legal bills totaling over $7,000,000 and wasted valuable human time and resources that could have been used to address many underfunded County needs (e.g. roads, affordable housing, flooding, planning, documentation, research).

Unfortunately, L & C County nearly 20 year history of adopting harsh anti-rural growth Zoning and Subdivision regulations -- via top-down and internally agenda driven regulatory rule making biases -- resulted in these unnecessary legal battle over LC Governmental managers drafting, and adopted Zoning and Subdivision Regulation.

But the damage to the State Capital community & wider tri-county area -- caused by the LC County added Subdivision Regulations that exceed State minimum Standards -- has caused severe economic damage that could easily exceed $50,000,000 and maybe more – far exceeding the $7,000,000 in Off-site Road Lawsuits that dragged on from 2004-2015.

In Reading the State Subdivision Regulations (see actual copy State MCA regulations at the end of this email) and what is contained in the County Regulations, – it is apparent that the County added many additional requirements that severely slow rural growth in the County.

The County 17 plus year history of attempting to slow rural growth in the County, started with the 2004 Subdivision Regulations that added a requirement for all new subdivision (only) to proved massive amount of on-demand water supply to counter wildland fire risks, but Judge Sherlock threw out the entire County fire regulations because they offered an alternative of interior fire sprinkler systems, but the county lacked inspection regulations, certification and inspector work-force. Sherlock awarded plaintiffs $56,000 in damages.

Across the US, the general term of “Smart Growth” was coined about 20 years ago to describe the philosophy of slowing growth by adding regulatory restrictions on rural growth and giving favor to growth nearer city centers – with the idea that this would reduce environmental harm and reduce traffic congestion etc.

Simplified -- Urban growth good, rural growth bad.

But this philosophy promoted tight urban development at the cost of individual freedom and property right constitutional protections. But it is abundantly clear from a large body of State and Federal Court case rulings – including the 2019 8-0 Supreme Court

Also “Smart Growth” mandates must not violate County, State, or Federal laws, and unfortunately L & C County approach to regulatory rule making has repeatedly exceed the legal foundational proof to support the massive property value and property use administrative takings without proper

health and safety bedrocks.

The following detailed statements of facts, and **requests to present facts to and have open discussions with the County's contracted Consultant** is based on the Montana Code Annotated and County own Administrative Rules under the Open Meeting, Citizens Rights to Know and Participate legal frameworks.

I. Public Right to Participate and Affect Rule Making Prior to Final Drafting of new regulations is required by law and is necessary for this County to correct the major past mistakes in drafting Zoning and Subdivision Regulations without adequate Scientific, Legal, and Public buy-in/Participation.

II. County Website Information Contains No Information for Public to Know what is happening in Rewriting the Subdivision Regulations. Also County has not properly notified the public from the start as to revisions to Subdivision Regulations through Newspaper Articles, Website Posting or General Listening Sessions etc.

A. Public Notices, Website Changes, and Public Participation Early in Consultant Research Process.

1. Please provide the basic framework of the Consultant hiring process, what tasks directives have they been given beyond the posted RFQ 6 page, and general overview of number of meetings and work progress to date plus outline of where the next phases of work and hearing will be happening.

   This type of information should be posted on the County Website.

   The only postings I can find is:
   - the "Request for Qualifications" and
   - the "July 13, 2021 Notice of Public Meeting – Consultant Selection Committee Meeting".

   No information can be found about the qualifications and contact information for the selected consultant.

   Also the Website has no posted information on what is the working schedule and product milestones that the hired consultant.

   The County is not adequately informing the public and is limiting public input into the early levels of this process? That is not what is needed for the better functioning of this county governmental regulatory operations.

   What is the plan and schedule for listening sessions or other public out-reach beyond the very limited outreach to only a select few trade groups like HAR and HBIA.

B. I formally request to be informed of and included in any stack holder meetings that are yet to held and I request to see copies of the agenda outline of topics and staff meeting notes taken during

any stack holder meetings held to date.

C. Please forward a copy of this email to contracted the consultant project managers so that their staff maybe brought up to speed about these process, meeting, and issues that are here defined as needing to changed in the subdivision regulations.

D. Please have the lead contact person for the Planning Staff handling this contract, call me and arrange for a time and place for me to review all County files relating to this Contract and any older (2004-present) files containing staff meetings, emails or other documents relating to the drafting of non-state minimum County added Subdivision regulations.

E. In particular I want to inspect the files, emails, and documents to and from County agents such as Rural Fire Districts, Transportation, Parklands, environmental etc. relative to any thoughts of the need to make changes to the Subdivision Regulations dating back to 2004.

III. Starting in 2004 L & C County has added Major Sections to Their Subdivision Regulations that are beyond the State Minimum Standards.

The County must produce the Scientific Peer Reviewed reports and support administrative records proving that the added County Subdivision Regulations were absolutely necessary to protect public health and safety -- for each of the following problematic County Added Regulation that Exceed State Minimum Standards.

This requirement of valid and proven justification is an absolute State MCA regulatory requirement of all counties. And I have seen Zero proof that the county has done the necessary research and documentation to allow them to have added these harsh and generational change directives.

We need to know when and how these four subject matters where added to the County Subdivision Regulations.

As such the County must produce the all supporting reports and underlying County SE/Environmental Analysis that proves -- to the public, to the hired consultant and to me. The county must prove that they had the legal basis for these added regulations in order to protect public health, safety and general welfare. **And that there were not other options available**.

A. Fire Regulations requirement for all major subdivisions to install on-site fire protection

water supply systems capable of producing 250 gpm, 500 gpm or 750 gpm for 2 hours depending on the number of lots being created.

i. The basis of the requirement for on-site water supply systems dates back to 2004 when the County added these requirements to the subdivision regulations. WHAT Scientific Peer reviewed reports were used as the basis of the County added restrictions.

ii. Starting in December 2018 -- with my 80 plus page report and meetings with Rodger Baltz and Peter Italiano – and many public hearings before the Board of County Commissioners since, I have been sounding the alarm that the L & C County's fire regulations targeting only new developments to fund 100% of the cost of installation and maintenance of these systems.

iii. But the problem The County has in Justifying forcing only the new person (development) to pay 100% of the installation and maintenance, when many other nearby landowners pay Zero for potential added wildland fire protection.

This is exactly like the over 10 Montana First Judicial Court legal fights the County Lost in Court or had to settle regarding forcing new developments to pay 100% of the Cost for improving off-site roads while everyone else (including the County) gets a free pass.

Judge Sherlock ruled that the county violated the Constitutional and State laws of several subdivision applicants by targeting then to pay 100% of the costs, while other benefiting neighbors and the surrounding landowners got a free pass.

In total, L & C County had to pay out over $7,000,000 in court ordered damage claims and out-of-court settlements because the County illegally targeted (discriminated) against only new developments.

Montana and US Legal Case Law clearly supports the Plaintiffs legal claims of L & C administrative abuse resulting in taking of monetary value (exaction) in all 10 plus off-site road lawsuits.

This same administrative takings and Arbitrary/capricious legal claims could be welded against the county for forcing only new developments to install these very costly improvements, while everyone else gets the free pass. The County could have been sued by anyone being either denied or conditionally approved relative to the on-site fire protection requirements given the much of the legal blueprints were already blazed with the $7,000,000 Off-site legal challenges.

is targeting and discriminatory with Arbitrary & Capricious just as the L & C County 2005-2007 off-site road policy improvements constituting the well

proven administrative takings Complaint claims legal precedence. without these non-paying beneficiaries having to have these systems (with RFD access) on their development property, also they

B. The added more stringent and circular restrictions to severely limit approvals of all variance requests. The County must produce the scientific peer reviewed documentation supporting additional County hurdle to the much more basic State Regulations variance regulations. L & C County must produce not only the scientific reports but the administrative supporting documentations proving the additional variance hurdle were appropriate to address health, safety and general welfare problems that could not be address otherwise.

    i. The County added a clause that costs could not be considered when the county reviewed a Variance request to the County Subdivision Regulations.

    Why preclude costs to the developer, which appears to fly directly in the face of the State Subdivision regulations which clearly state that the County must give the applicant preferences strong and favorable considerations if the public health and safety are adequately protected.

    The 2021 Contracted consultant must dig deep into the major issue for changes going forward, but they should also complete a forensic fact finding assessment of the financial damage that has been cause to very county subdivision applicant variance request, and determine if the county violated the intent of the law.

    In my learned opinion, the county should have been subjected to a class-action lawsuit over the abuse of administrative actions on every variance request that was denied by the county where costs were not allowed to be considered plus any and all variance requests that the County denied that were not based on solid legal footings – e.g. illegal added barriers in all the 3 other above state Standards Subdivision Regulations partially detailed herein.

    Where was the scientific cost benefit and social economic impacts analysis of this very important additional restrictions.

C. The L & C County added regulations requiring all major subdivisions to have two egress and ingress roads that meet County Road design Standards.

    i. Where is the scientific peer reviewed supporting research documents for this added County? I suspect the County has done Zero work in producing any such report, given the fact that it flies in the face of nearly all major high-value developments like all major ski resorts across Montana, the US and the world.

    ii. Most timbered developments in these highly developed and expense resort communities generally have only one major access road in the winter and the

additional tree branching side real estate access roads often only have one access road.

iii. Former County Sanitarian Michael McHugh was attempting to force myself and my Partner Russel Reed (Montana Registered and seasoned Professional Engineer specializing in Subdivision Development) to pay the costs to improve an existing access road (Clink Court off Green Meadow Drive) into our proposed 34 lot later 23 lot subdivision – which we ended up suing the county over illegal denial of our subdivision resulting in a County Paid damage and legal cost settlement of $650.000.

When I questioned Mr. McHugh as to why we needed to have this second access road of Clink Court (Note: we had to purchase a property at the west end and move the modular home onto a 3-acre tract of our land in order to secure this second access – a total cost of about $100,000) – Mr. McHugh stated the reason for 2 access road is because of possible flooding of one road, or the road could be blocked when an airplane falls out of the sky. He really did say that. I couldn't believe my ears.

That is why I demand to see the Scientific Reports the county has justifying two entrances meeting county standard road specifications as a health and safety issue.

D. The County then added the compounding requirements that the major subdivisions that cause more than 10% increased Average Daily Traffic (ADT) on the two access road to the nearest State Highway.

E. The County's two off-site road requirements – the two entrances meeting county road design standards and the requirement that all new major subdivision pay for the engineering design/costs assessments and pay the county for the development prorated share of added ADT to off-site access roads to the nearest state highways is an absolute deal killer for most rural property in the County – outside property that is very near a State maintained highway.

i. L & C County has around 542 miles of roads that the Road Department must maintain.

ii. But large segments of these County roads do not meet county Road Design standards and from reading some recent reports, the County Road Department currently has a very large unfunded road improvement and maintenance budget that easily exceeds $20,000,000 and that number could exceed $50,000,000

Montana Code Annotated(MCA) 76-3-- Local Regulations No More

Stringent Than State Regulations Or Guidelines

Local Subdivision Regulations

76-3-501. Local subdivision regulations. The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

(1) the orderly development of their jurisdictional areas;

(2) the **coordination of roads within subdivided** land with other roads, both existing and planned;

(3) the **dedication of land for roadways and for public utility easements (Within Subdivision)**;

(4) **the improvement of roads (Within Subdivision)**;

(5) the provision of adequate open spaces for travel, light, air, and recreation;

(6) the provision of **adequate transportation, water, and drainage**;

(7) subject to the provisions of **76-3-511**, the regulation of sanitary facilities;

(8) the avoidance or minimization of congestion; and

(9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services

Hearing On Proposed Regulations

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to **76-3-501** or **76-3-509**, it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

Local Regulations No More Stringent Than State Regulations Or Guidelines

76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under **76-3-501** or **76-3-504**(1)(g)(iii) **that is more stringent than the comparable state regulations or guidelines that**

address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement **76-3-501** or **76-3-504**(1)(g)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) **The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.**

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation.

From:	John W. Herrin
To:	Greg McNally; Roger Baltz; Peter Italiano; Andy Hunthausen; Jim McCormick; Tom Rolfe
Subject:	L & C Zoning & Subdivision Regs -- 17 Year History of Inserting Bias into Rule Making Actions to Slow Rural Growth that has and may violate Montana MCA and Constitutional Protections under guise of protecting public Health & Safety.
Date:	Tuesday, October 12, 2021 8:36:48 PM
Attachments:	012407AnitaVtoMF.docx 2006-07 IR Art Interim ^0 Emergency Zoning Lawsuits[9351].docx IR Editoral Board Oct 2^LJ 2020 --An IR View.docx October 12 final Detailed Summary of Past Ilegal Zoning Sub Actions.docx

Folks,

Short email but long on attachments.

Comments welcome.

John Herrin
406-202-0528

Sent from Mail for Windows

From: MICHAEL J. FASBENDER [mj.fasbender@bresnan.net]
Sent: Wednesday, January 24, 2007 8:34 AM
To: 'Bill Gallagher'
Cc: 'John W Herrin'; Liane Taylor
Subject: FW: update for Anita
FYI

From: Claudia [mailto:cplotnick@cox.net]
Sent: Wednesday, January 24, 2007 12:24 AM
To: MICHAEL J. FASBENDER
Subject: Re: update for Anita

Thanks Mike - I e-mailed the IR regarding the article and was finally able to read it this afternoon. The tough thing about newspapers is that you truly don't have control - you only hope they'll be accurate and I do know that Larry does try, even if he doesn't always get it.

I also think it's smart to ask the editorial board to hold off on reporting their meeting with DEQ. Did Bill ask Ed how DEQ got involved? If not, that's a very important question to ask Kathy. How was she approached by DEQ? I know she got a letter but exactly what happened?

When I met with Crystal earlier, she told me that Kathy did NOT agree with what Ron was doing and that she had not provided any information, even though she offered several times to do so. Also, when I talked personally with Kathy, she confirmed that there was not an emergency. She clarified by saying there were a couple areas that definitely needed a moratorium but to say there is an emergency was going too far.

I asked her if she would be willing to make a statement and she said she would. I told her that Ron and the Commissioners would have it in for her and was she prepared to take the consequences. Kathy is a recent widow and has kids at home to support. She said she understood and would make the statement. She said she would like to work with the Health folks and the Planning staff to conduct a study and make a report and asked that it be a priority.

The next day, after the public hearing when I requested a decision be postponed, Crystal told me that she attended a meeting with Stahl, who confronted her and said that he would see to it that the Water Quality Protection District would be dissolved and that all that needed to be done regarding water quality was to continue taking water samples. In other words, he'd see that Kathy was without a job. I asked Kathy about the conversation and she said that she talked to Paul and they were ok with each other. You might want to ask Kathy and Paul both about Paul's threat and what their discussion was.

Then a miracle took place. Kathy, all of a sudden, came up with a miraculous report. When I read the report, it was contradictory to all the discussions we had up to that point. She said that when she began putting the information together, she realized she had all she needed. She said that Vivian was one of her best friends and that Vivian convinced (not sure that's the right word, but that's the way I took it) her that there was an emergency. Oh - I almost forgot - when I first spoke to Kathy she said that Vivian supported my recommendation regarding waiting until Kathy had time to do some research..... obviously something changed. Since Vivian supported Ed during his campaign, I wonder if he called Vivian and had her work on Kathy to say whatever Ed wanted. Don't know but wonder if that could be explored.

I told Kathy that I was very disappointed in her rapid change and she said she had to do what she thought was right..... Maybe "right" was keeping her job and letting her friend Vivian control her.

Why did Kathy insist she needed several weeks to collect and collaborate with staff and then, all of a sudden she didn't?

One question that needs to be asked is how many reports of illness, as a result of poor water quality, has there been in the county in the last 30, 20, 10, 5 years? What about the state? They won't have that information, but Kathy SHOULD know shouldn't she? She is part of the Health Department and if that is going to be the County's mantra, then they MUST have that information? If not, then how can they prove there is an emergency?

That's all I can think of now. If I come up with something else, I'll let you know.

Take care.

anita

One more thing. Stahl has said in past discussions that all you have to do is say it is a health, safety and welfare issue and the county is basically home free. I have always had a problem with that opinion - I always thought you needed proof when you make a statement like that. Don't know if it's important but thought you might like to know. anita

----- Original Message -----
From: MICHAEL J. FASBENDER
To: 'Claudia'
Sent: Tuesday, January 23, 2007 8:27 PM
Subject: RE: update for Anita

Anita-
Quick update.

I spoke with the IR today, and they are printing a correction tomorrow concerning a quote from my testimony. Of course, it will be on the back page in fine print. Dave Shors said he thinks that we are going to lose the injunction and the case because it will boil down to protecting public health and safety. I don't think that he and Sherlock are drinking buddies, but I do think that is something to consider that may weigh upon the judges mind. We are going to continue to try and establish that there isn't an emergency, and also that even if there is an emergency and even if the judge issues the injunction the County has other tools in their tool box to address water quality issues besides zoning.

Also, DEQ is going to the IR on Thursday to meet with the edit board. I think your conspiracy theory was probably dead on. I have a request in to Pat that the IR not editorialize until after the judge has made his decision on the injunction. I told Pat that if DEQ wants to weigh in, then L&C County can bring them in as a witness and then we will have the opportunity to cross examine them under oath.

We are going to call Kelly Blake, Crystal Ness, Kathy Moore, John Herrin, and K. Paul Stahl on Tuesday. I feel that you asked Kathy some very on point questions when she testified at the public hearing, and I am going to review that transcript, but if you can think of any more

questions of Kathy (or any of the others) that may be damning to the County please email them to me.

Thanks again for all of your help!
mike

Below are some questions/comments that Jim Taylor put together for me today:

1. Only Ms. Moore refers to herself as a "scientist". Her qualifications should be clarified.
2. Ms. Moore's water quality report is on the net. My take on the report is it is a superficial presentation of V. Drake's data. I really haven't had time to fully evaluate the report, but typical of both K.M. and V.D., is their willingness to draw broad conclusions over a very small amount of data.
3. Do nitrates make people sick? Does she have epidemiological evidence of any instances of illness anywhere in Montana at any time that connects nitrate in well water to any illness?
4. Do coliform bacteria make people sick? Ditto above… This could be interesting, because if we have an "emergency" we should be able to base it on facts rather than conjecture. Of course coliforms make people sick, but is that really what is happening in the Helena Valley???
5. In fact, is anything happening that we haven't anticipated through the process of design and review?

   Answer here – no?

   Also, you should not be defining what level of nitrate would be considered a public health issue or constitute an emergency. KM is the "scientist" (self proclaimed, ala VD). Let her define what level of nitrate would represent an emergency. Note that the level of nitrate represented in her report does not even constitute a violation of drinking water standards. Note also that much of the groundwater in the state does exceed the drinking water standard.

From: Claudia [mailto:cplotnick@cox.net]
Sent: Monday, January 22, 2007 12:46 AM
To: MICHAEL J. FASBENDER
Cc: 'John Herrin'; Liane Taylor; 'Bill GALLAGHER'
Subject: Re: update for Anita

Mike - Thanks for the update.

I think it is important to ask Marni about how and when she completed her calculations. I'd ask her why Ron directed her to rush. I talked directly to her after the initial public hearing and she was bedraggled - she was working day and night trying to get the work done. I don't think she would get up in front of the public and make a statement about the numbers unless she either had completed the work or she was specifically directed to say what she said. She is proud of the work she does but told me, during that earlier meeting, that she was about ready to quit - that she didn't like the way the process was being handled.... ordered by Ron without the backup research being done. Always, always the research and information has been completed before

the Commission considers RID's, etc. And Stahl said, during the public hearing, that zoning is conducted the same way an RID is. You might want to question Ron about that.

Marni DID have a list. I saw it as she was working on it. Alles is giving you a run around... I am not surprised that he is now calling it an inaccurate list. He told me the same thing. I asked him for a list for myself and he refused - again, saying the same thing. I told him the list could be released with the caveat that it was not accurate.... no damage done as long as a disclaimer was attached. Again, he refused. You might want to ask why he refused to give you a copy with the disclaimer.

I would ask Ron, Murray, and Tinsley how many times they met WITHOUT me being there. You will probably hear the word "never". I'd then ask how many times Ron vested with Murray about the zoning, why and what was said ..... How many times Ron met with Ed about the zoning, etc..... How many times he met with Stahl. I don't know whether all of them can be in the courtroom but I hope they are sequestered. If they can't hear each other's answers, I think you can turn the questions around and see what you get from them. I would also ask why Anita was not included in the conversations.

I would also subpoena their e-mails. In the past e-mails were sent among the four without a copy to me and I'd bet money they did here too, especially when I asked for the AG opinion.

I would ask Ron, Murray and Ed how many times they met with Tim Burton about zoning. I would also ask why the city had statistics that the Ed used and why he trusted the city rather than Kathy Moore? I'd also get a copy of the document - Kathy Moore told me she NEVER got one and when she asked, it was never supplied. It seems to have mysteriously disappeared.

Kelly Blake is new and does EXACTLY what Ron tells him. He is not a planner yet he is managing the planners. He truly doesn't know what's right - not because he's trying to evade but because he lacks the knowledge - you might be able to get him to explain what happened and what Ron said to him that made him direct staff to do the zoning process ass-backwards. I'd like to know the explanation Ron had regarding the urgency.

I spoke privately with both Kelly and Frank Rives early on and they said they told Ron they didn't feel comfortable moving forward so quickly, without completing the background information first - they tried to get him to slow down and he refused. They said they were not pleased but he is their boss. They also said that NONE of the staff agreed with the swiftness of Ron's directive. You might want to construct a question to him that might disclose this information. The staff wanted to do it the right way - Ron wanted to do it his way (or Tim's).

I read the Your Turn today also and it was completely accurate. I don't know the person who wrote it, but am glad that he did. I also read the other article. I personally think they're running scared.... They blew it big time and I hope their arrogance and disregard for the law, the public, and the process finally bites them in the behind.

Good luck. I'll be waiting to hear how it went.

anita

----- Original Message -----
From: MICHAEL J. FASBENDER
To: 'Claudia'
Cc: 'Bill GALLAGHER' ; Liane Taylor ; 'John Herrin'
Sent: Sunday, January 21, 2007 8:25 PM
Subject: RE: update for Anita

Anita-
Big day tomorrow. I think that we are prepared. Bill has been doing a great job!

Bill has subpoenaed the following:
Marni Bentley
Murray
Tinsley
Stahl
Alles
Kelly Blake
Crystal Ness
Also testifying will be myself, John Herrin, and Brian Heeney (a friend of mine who helped me set up the website and calculate the ag land protests).

Bill said that when he has asked Marni directly if she did a calculation on the non-qualified ag land prior to declaring the protest unsuccessful, that she won't give him an answer. He is going to ask her again tomorrow while she is under oath. Do you know if one was done?

I should have thought to ask you sooner, but if you can think of any questions that you think we should ask any of the above witnesses, please email them tonight or first thing in the morning. I'll cc Bill on this email, so if you get this in time please do a "reply to all" so that he can see them too.

I realize that you, like the general public, were kind of kept in the dark on a lot of this. I do recall that you said that you did see a list of the properties in the planning areas at the beginning of the protest. Initially, Alles has said that the County didn't have a list. Now he has kind of backed off and stated that they didn't have an "accurate" list.

If you haven't seen the IR today, there was a nice Your Turn, and Larry also did a "story" on how the County is moving forward with zoning options for the entire County. Personally I think it was a fluff piece that the County put out since they know that they have the hearing tomorrow.

Have a nice night,
mike

From: Claudia [mailto:cplotnick@cox.net]
Sent: Thursday, January 18, 2007 6:08 PM
To: MICHAEL J. FASBENDER
Subject: Re: update for Anita

Mike - Thanks for the update.... I'll bet Alles and Stahl had that info long ago and that's why they decided to adopt emergency zoning. Losing is always tough for folks whose egos are bigger than all of us.... I am glad that the realtors are truly going to be on board. Stahl simply doesn't understand what's in store for him - he doesn't have much respect for Bill Gallagher and thinks that, because he is new to the profession, there is nothing to worry about.... I have been impressed with Bill's doggedness and think, also, he's doing a super job. Only 4 more days until the hearing. Good luck!

Also, thank you for your comment regarding the Your Turn. You are a dear. Take care.

anita
----- Original Message -----

From: MICHAEL J. FASBENDER
To: cplotnick@cox.net
Sent: Thursday, January 18, 2007 12:19 PM
Subject: update for Anita

Hi Anita-
Hope you are enjoying some warm weather and time with family.

We got a list from DOR of ag properties, and according to our initial calculations, approximately 63% of the ag/forest land was protested, well over the 50% needed.

The Montana Association of Realtors is trying to file as an amicus, and if Stahl fights that, then they are going to file as an intervener.

Bill Gallagher is doing a wonderful job with the lawsuit. He is a self described rookie, but he is very detail oriented, and his heart is definitely in the right place.

I will let you know if I find out anything new.

I enjoyed the Your Turn you had in the IR. Very well written. You've got more class in your little finger than those other two yahoos will ever have!

Take care,
mike

Repeal interim zoning regulations

By Independent Record helenair.com Wednesday, February 25, 2009

A large portion of the Helena community surely feels vindicated by last week's findings by the new county hydrogeologist that a 2006 water quality assessment used to usher in interim zoning was flawed.

The latest draft report, released Friday by new Lewis and Clark County hydrogeologist James Swierc, says the data in his predecessor's white paper does not support a water quality emergency in the Helena Valley. Swierc told county commissioners the 2006 report shows an increase in groundwater nitrates, but there was not enough information to draw a conclusion that there is a water quality emergency.

"I don't think it's appropriate to say the groundwater quality has changed in the Helena Valley," Swierc said. "It's too big an area."

For years a vocal group of residents, mostly made up of Realtors, developers and builders, has strongly opposed the notion that the Helena Valley contains elevated, unhealthy levels of nitrates and other pharmaceuticals in the groundwater.

The interim zoning regulations were first approved in December2006 and were subsequently overturned by a district judge who said commissioners hadn't followed the public process on the original summary report, prepared by county Environmental Health Director Kathy Moore.

The rules were approved again in May 2007 and have twice been amended. The first revision removed a controversial requirement that all valley residents installing or replacing a septic system must purchase a Level Il system, which can cost two to four times as much as a standard system.

All this conflict has been promulgated on the notion there is a water quality emergency in the Helena Valley. Now a county official's report — not just an outside study provided by the group of critics says the old data used to justify that is inconclusive.

Just before the November general election, Moore admitted she made a mistake in her analysis, and that the nitrate levels had not increased as much as she originally proclaimed. She and county commissioners at the time stood by their water emergency assessment, as well as the impetus for approving interim zoning.

The news County Fabricated Groundwater Emer enc could have contributed to incumbent Commissioner Ed Tinsley being defeated in the election b Derek Brown

an engineer and former builder who sided with the critics. Tinsley won within city limits but was soundly defeated in the valley

(County hired) Hydrogeologist finds flaws in groundwater report

LARRY KLINE - Independent Record Sunday, February 22, 2009

A newly hired hydrogeologist met with his Lewis and Clark County superiors Friday and pointed out flaws in the conclusions of a report used two years ago by county commissioners to promulgate interim zoning regulations in the Helena Valley.

The data in the report doesn't support the conclusion that nitrate levels in the valley are generally rising, hydrogeologist James Swierc told officials in a presentation of his draft paper on the validity of the December 2006 summary report of data on the area[s] s groundwater.

Pointing to a graph of the data from one of the studies used by the county, Swierc said there was not enough information to draw a conclusion.

"It shows this increase, but I'm not saying there's an increase, because the data doesn't support that statement," Swierc said. "Yes, there are problems, but the data that's there doesn't go much further than that."

He also cautioned against making broad assertions about the valley's groundwater. The area isn't homogenous, he noted n it includes varying types of aquifers and soils.

"I don't think it's appropriate to say the groundwater quality has changed in the Helena Valley," Swierc said. "It's too big an area."

He acknowledged localized "hot spots" of elevated nitrate levels, but said much more work needs to be done.

Longtime critics of the county's interim zoning regulations, including Commissioner Derek Brown and the Helena Association of Realtors, called for the rules' repeal after Swierc's presentation. They also expressed respect for Swierc's analytical work, and said they were looking forward to hearing more information from him.

Commission Chair Andy Hunthausen and Commissioner Mike Murray, who both voted for the interim zoning rules, wouldn't specifically comment on whether the rules would be up for repeal before they expire in mid-May . Both said they want more time to analyze Swierc's draft paper,

and they both are trying to grasp the larger picture — how to limit cumulative impacts on groundwater to ensure future growth is sustainable.

The interim zoning regulations were first approved in December2006 and were subsequently overturned by a district judge who said commissioners hadn't allowed the public adequate time to analyze and comment on the original summary report, prepared by county Environmental Health Director Kathy Moore.

The rules were approved again in May_ 2007 and have been twice amended. The first revision removed a controversial requirement that all valley residents installing or replacing a septic system must purchase a Level Il system, which can cost two or four times as much as a standard system.

The second revision employed an aquifer sensitivity study to reduce the regulated area to an 81square-mile portion of the central Helena Valley. The study yielded a map that attempted to detail areas that were more or less susceptible to groundwater contamination, and commissioners used that to set rules on where new homes would have to include standard, Level I-b or Level Il systems.

The economic impacts of interim zoning regulations have been greatly narrowed to only affect new home construction in some parts of the central valley, but that hasn't appeased critics who believe the county never had a scientific justification to declare a water-quality emergency. The want the rules axed.

"My position throughout this has been somewhat validated, because what was presented today, although it's not conclusive, validates the position I've taken for the last year," Brown said. "We haven't proved an emergency."

"The political aspects are completely separate in a way from what he did," Brown added. "I think James Swierc provided a pretty clear objective preview of the information that could become available. "

Mark Simonich of the Realtors' association agreed on both points.

"It has always been HAR's position that the county. jumped too soon in declaring an emergency," he said.

Swierc didn't announce any conclusions of his own about the area's groundwater — he' S been on the job and looking at the data for just a few months — and he didn't make any final critique of the 2006 report, prepared by county.

"The statistics are unclear . .. my conclusion is we need a long-term monitoring project," he said. County officials recently secured a state grant that will fund some measurement work.

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Shortly after his hiring, Swierc was asked by those boards to review Moore's report. He's the first hydrogeologist employed by the county. A doctoral candidate at the University_ of Montana, Swierc earned bachelor's and master's degr.ees in engineering and geology from Dartmouth College, and has worked as an environmental consultant and college instructor. He also worked for the state Department of Environmental Quality in their Source Water Protection Program.

Commissioner Mike Murray said he wanted to spend time this weekend with Swierc s s draft report and develop further questions.

"Draft is the operative word there," he said. "No conclusions were drawn today.

"At some point, it's going to come to one of us asking him, 'Did we make a mistake?'" Murray added. "That wasn't answered today, and it wasn't posed to him.

"If the evidence isn't there . sure (the interim zoning) should go away. If the evidence is there, then 1 think it needs to stay. If I made a mistake, I'll admit it. At this point in time, I'm still not satisfied I made a mistake in approving interim zoning, "Murray said.

He admitted he may have given too much weight to the pharmaceutical studies, but said he's still concerned about the proof that septic systems are affecting the aquifer.

"I certainly though it was a worthwhile report, and I think we're on a good road to looking at things with a neutral, super qualified person," Murray added.

Hunthausen said the ongoing health of the valley's ground water is the driving concern in this discussion.

"I'm trying to look at the long-term, big picture, and . . . a healthy aquifer that can sustain growth,"

he said.• • • •

Hunthausen also acknowledges the effects interim zoning rules have had on valley residents.

"I want to do the right thing, and it's not always easy," he said. "It affects people's lives, and it's difficult. We recognize that our decisions affect people's lives, and we're trying to make things better for more people. "

Larry Kline:447-4075 or lan•y.kline@helenair.commailto:larry.kline@helenair.com

By Anita L. Varone -helenair.coml Posted: Tuesday, February 10, 2009

It has been more than three months since county officials admitted that nitrate numbers, used to justify a water quality emergency in the Helena Valley, are in error. Not only are the interim zoning regulations, which require expensive septic systems to mitigate a non-existent nitrate problem still in effect it is inexcusable that the commissioners did not immediately remove these requirements.

That means the public is still required to install expensive Level Il and Level 1B systems, even though the systems do not remove pharmaceuticals, nor is there a nitrate emergency. That IS unconscionable. The interim zoning regulations will expire in May of 2009, but the Commissioners must act now to responsibly and honorably repeal the contentious and injudicious interim zoning. It could be a positive first step in rebuilding their reputation.

Anita L. Varone Former Lewis & Clark County Commissioner, retired

Brown sworn in as commissioner

LARRY KLINE - Independent Record Thursday, January 1, 2009

Buy this photo Chad Trettin photographer - Distri- District Judge Jeffrey Sherlock swears in Derek Brown as county commissioner Wednesday.

Lewis and Clark County Commissioner Derek Brown was sworn into office in a brief ceremony Wednesday, and in an interview he promised to bring new perspective, energy and expertise to the three-member board as it begins tackling the issues of 2009.

Brown will officially take his position today, taking the place of single-term incumbent Ed Tinsley, who narrowly lost are-election bid in November.

A Republican, Brown joins two Democrats: 16-year commission veteran Mike Murray, and incoming Commission Chairman Andy Hunthausen, who earned a seat two years ago.

The 58-year-old former builder, engineer and consultant said he wants to work cooperatively with his new colleagues — sentiments Hunthausen and Murray reciprocated in separate interviews Wednesday.

"I'm very much looking forward to working with them. I think we can work toward common goals," Brown said.

The interim zoning process has been long and contentious, and Brown still has a question he wants answered. This fall, officials realized they'd made a mistake when calculating the increase in nitrate contamination in valley groundwater.

They had partly based the case for a water-quality emergency on the fact that nitrate figures rose 800 percent over three decades. The actual increase is much less, some 20 percent or 50 percent.

Brown has said he believes the county lied about the existence of a water-quality emergency.

Officials have stressed the mistake was an honest one, and Hunthausen and Murray, along with Tinsley, have stuck with their belief that the valley's groundwater is threatened. They point to other studies showing a general, long-term degradation of the valley's water sources, and specific increases in some contaminants.

Brown said he believes county residents are due an explanation.

"Where' S the emergency? There hasn't been a definitive response from the Health Department," he said. He met with Health Department officials, including Environmental Health Administrator Kathy Moore, who put together the nitrate figures and assembled other relevant water-quality documents for the interim zoning hearings.

Brown also opposes the proposed requirement for paving all internal roads in new subdivisions, regardless of the development's size.

Nitrate mistake

Michael J. Fasbender, Comments posted HelenaIR.com Sunday, November 2, 2008

"Nitrate study numbers inaccurate. " This was the headline in the IR concerning county Environmental Health Chief Kathy Moore's admission that a report she submitted to the county commissioners contained erroneous nitrate numbers. Quoting from the article regarding the now proven to be false claim that nitrate levels had increased eightfold "In that instance of that report. I made an error." Moore said later in an interview.

"It was unfortunate." So to all our folks who needlessly spend $20,000 on our level Il septics systems. It was unfortunate.

John Herrin, former employee of the Montana Department of Environmental Quality, is an expert with experience in design, installation, and regulation of sewage treatment systems all over Montana. After Ms. Moore's report was first released, Mr. Herrin pointed out a number of discrepancies in her calculations and data. Following is her response taken from an IR article dated January 11, 2007:

"Mr. Herrin's demonstrated lack of knowledge about the county process, his hostility toward county officials and his scientifically unsupported statements are negative and erroneous, " Moore wrote.

It has been proven that someone was making scientifically unsupported statements that were negative and erroneous but it wasn't Mr. Herrin.

County commission settles zoning lawsuit

LARRY KLINE - Independent Record - Friday, April 25, 2008

Lewis and Clark County commissioners on Thursday signed off on an agreement to settle a lawsuit over county interim zoning regulations, though other litigation is still pending.

The county will cut a $56,000 check for attorney Bill Gallagher, who represents plaintiffs Mike Fasbender and John Herrin.

The men won a preliminary injunction last year, voiding the county's first passage of interim zoning regulations, but lost on other counts. They may appeal the case to the state Supreme Court.

District Judge Jeffrey Sherlock had said officials violated public-participation laws in the run-up to the interim rules' approval.

Shortly after the decision, county commissioners went through the process again and approved a second iteration of the interim zoning rules, which have proven more controversial than the first

document.

The new regulations, the subject of a separate lawsuit filed by Fasbender, required landowners installing new and replacement septic systems in the Helena Valley to use Level Il treatment systems, which are about four times the cost of a standard system and run in excess of $15,000.

Sherlock had already issued an order saying most of the original case's claims are now moot, but the lawsuit would still have proceeded to trial to address any financial damages Fasbender and Herrin could have requested. Thursday's settlement saves the county money it would have spent on staff time and hired experts at the trial, county attorneys said.

"Those costs add up quickly," Deputy County Attorney Jeff Sealey said.

Gallagher declined to say how the settlement will be divided between him and his clients.

Fasbender and Herrin released a statement through Gallagher on Thursday.

"Their position remains that Interim Zoning is being inappropriately used by Lewis and Clark County and counties around the state to circumvent the protest rights and protections of landowners provided by the Legislature and the Constitution," Gallagher wrote in an e-mail.

"It is our hope that this and the other zoning lawsuits ... will motivate the 2009 Legislature to more clearly define these issues and to reinforce a process that must be fair to all concerned," he wrote.

The lawsuit covered an array of issues related to the county's zoning regulations, but the item that has garnered the most attention across Montana and may be at the heart of any appeal the plaintiffs file in the state Supreme Court, Gallagher said, is a matter of interpreting state law.

The focus is on two sections of Montana law that govern the procedures for establishing county zoning regulations. The section related to permanent zoning specifically requires counties to hold

a planning board hearing, publish additional legal notices and allow a 30-day protest period for landowners.

The section governing interim zoning does not specify the same requirements. Interim zoning rules are created to serve as short-term solutions and may only stay on the books for up to two years.

Gallagher and his clients believe the two sections are related and that any interim zoning rules must go through the entire process and are subject to a protest.

Sherlock agreed with the county's assessment that the two sections are completely separate.

"To require the (commissioners) to create a protest period would create a ridiculous situation where there would be absolutely no reason to have a specific statutory requirement on emergency interim zoning," Sherlock wrote last year.

Reporter LarryKline. 447-4075 orlarry.kline@helenair.com

After the court's zoning decision

By JOHN HERRIN -Your Turn Editorial Friday, April 6, 2007

We were heartened to read Judge Sherlock's legal opinion that a few county managers, by implementing zoning, violated county landowner's constitutional rights in limiting public written and oral testimony.

This injunction halts the December 12, 2006 adopted Helena Area zoning proposal, and thereby removes the severe lot size and wastewater design restrictions. The counties ill-conceived plan would result in massive administrative headaches for county staff and volunteer boards. The counties plan would also increase the average cost of a septic system by an additional $10,000 to $20,000 per lot.

And worst of all Kathy Moore admitted in court that she did not see a Helena Valley water quality crisis until she really looked at the data a week before the December 12 the Interim

"Emergency" hearing even though she was Lewis and Clark County Water Protection District manager for years. She further admitted on the stand that Paul Stahl had threatened to eliminate her section and job

unless she gave the county a favorable report (e.g. "the sky is falling") by the December 12 hearing. Her report is seriously flawed and will be a major basis for our challenge in court.

I have over 30 years of regulatory and consultant experience in solving water quality problems, As a state EIS project manager, permit scientists, and water quality specialist I managed consultants and personally wrote the water quality sections for most of the major mines permitted in Montana. I have also worked as an environmental consultant cleaning up petroleum spills all across the state. And most recently, eight years with DEQ processing wastewater treatment plants and subdivisions permit application across the entire state including Lewis and Clark County. I have also been in private business installing septic systems and roads for developments plus recently as a developer of affordable residential lots in Lewis and Clark County.

As such I am the last person who would advocate takin a shortcut and avoiding necessary water quality treatment regulation. I have consistently stated I fully support effective and cost reasonable subdivision regulation.

Unfortunately a few county managers seem bent on forcing up rural property costs, through various regulations, as a way to limit growth and to make city serviced lots look more attractive. As such, this injunction is a victory for the small landowner attempting to sell or gift a tract of land. It also a victory for affordable housing, for home builders and ultimately homebuyers.

The judge ruling basically says government official must follow the law. This long three-year zoning battle with county managers has been a huge waste Of taxpayers' money, and could easily be avoided if the commissioners would have continued to work with the wide range of volunteer people and groups. This county needs to learn that bullying and forcing their will onto the citizens is a poor way to manage change. Across the country those governments which work with it's citizens in reaching consensus are more effective and rarely challenged.

Commissioner Varone's in listening to the testimony wisely noted "why not do zoning right, rather than fast."

And finally we want to extend our sincere appreciation to all those people and business that helped in the protest votes for Canyon Creek/Marysville and the Helena Area plus our legal challenges. Without the community support we would not have been successful.

John Herrin of 1229 Leslie Avenue was a plaintiff in the lawsuit against the county.

Judge moves to nullify county's interim zoning regs

By LARRY KLINE IR Staff Writer Tuesday, March 20, 2007

A district judge on Monday issued a preliminary injunction nullifying Lewis and Clark County's interim zoning regulations. The decision by Judge Jeffrey Sherlock doesn't prevent county commissioners from implementing a new set of interim zoning rules —as long as they give opponents ample opportunity to counter county officials' claim that a groundwater emergency exists in the Helena Valley.

County Commissioner Ed Tinsley on Tuesday said the zoning regulations will be back before the commission within a month.

Two developers, John Herrin and Mike Fasbender, are suing the county over its zoning rules, which were approved in December. The regulations set building height and setback regulations, require all new lots to have only one use, such as residential or commercial, and set a controversial five-acre minimum lot size for newly subdivided parcels with on-site, individual septic systems.

In a court document, Sherlock said the preliminary injunction is not a decision on whether a water-quality emergency exists — a claim by county officials, which the developers have rej ected.

Sherlock wrote he was troubled by several aspects of a Dec. 12 public hearing, where commissioners heard a water-quality report and took testimony from opponents and proponents before approving the regulations on the same day.

The judge wrote that county actions likely violated zoning opponents' constitutional right to participate.

County officials didn't respond to several requests by Fasbender and others seeking the details of the water-quality report in the days leading up to the hearing, Sherlock noted. The report was given at 9 a.m. and the decision made by noon that day — giving residents little time to analyze the information and respond.

"The problem remains in the fact that participants at a public hearing should not have to guess what the government's justifications are for its actions," Sherlock wrote.

Fasbender and Herrin were entitled to know why the county considered the situation an emergency and be allowed to present rebuttal evidence, he added.

The developers' attorney, Bill Gallagher, could not be reached for comment Tuesday morning.

Read more of this story in Wednesday's IR.

Zoned out

By LARRY KLINE -IR Staff Writer Helena IR Sunday, December 31, 2006

It was Day 3 of my new job here at the Independent Record, and I already knew what my big assignment was that week.

Little did I know it Emergency Zoning would become my big story for the rest of 2006.

During that week in August, I read the county's proposed zoning regulations. I met with Lewis and Clark County officials. I took note of the full-page ads already prompted by the issue. I learned of the controversies inherent with any mention of the "z-word."

And now it was time for a good old-fashioned public hearing.

I was excited about it - I love public forums - but thought I was coming into the game late in the fourth quarter. County commissioners, planning board members and the public had debated the rules for months.

I figured what turned out to be a three-hour-long hearing would be among the final stories I'd write about the regulations, which then were proposed for the Helena Valley, Canyon Creek Marysville and Canyon Ferry areas. I assumed the issue would wrap up quickly and neatly. Silly me.

1 did a search this week. I've written more than 20 stories about the regulations in the last four months.

The public forum was a doozey, with more than two dozen folks taking time to opine on the rules, which regulate building heights and setbacks, lot uses, and set a controversial five-acre minimum lot size for new parcels with septic systems.

It felt darn good to return that night and try to condense the complex hearing into a readable story while on deadline. I loved it.

The issue since has gone through so many permutations. First Canyon Ferry was dropped from consideration. Then a citizens' protest nixed the rules in Canyon Creek-Marysville.

Then the county failed to twice publish a notice in the IR, negating the rules in the Helena Valley. A citizens' protest there had narrowly failed, but a dispute over the county's analysis of the protest still simmered.

Officials held another hearing and approved the same regulations, though under a different state statute that allows for interim zoning rules.

As promised by developers and attorneys, a lawsuit over the new regulations and the Helena Valley protest results showed up in District Court.

The story isn't my favorite because it involves controversy, debate and lawsuits. It's my favorite because of how important it is to the people involved and to the IR's readership.

Everyone, on all sides of the issue (and there are more than two: some want zoning, some don't, and others want zoning but not these rules), has said they believe they're sticking up for those who live in the valley.

It's intriguing because the issue has so many angles. And it's a cornerstone sort of matter - any discussion of zoning eventually leads you back to growth in the valley, concerns over groundwater and private property rights.

Lucky for me, the issue's not dead. The rules' fate will be decided by a judge.

And I love a good court hearing.

An IR View: Helena Valley zoning plan still needs work Oct 2, 2020

It's clear that some type of zoning is needed to protect landowners in the Helena Valley.

It's also clear that the zoning plan proposed by Lewis and Clark County still needs some work.

Although the overwhelming majority of those who have publicly commented on the county's current zoning plan are opposed to the proposal, the Lewis and Clark County Commission is expected to vote on the issue as early as Tuesday. Approving a zoning plan without buy-in from the affected landowners would be a recipe for disaster, and we urge the commissioners to pump the brakes and get this right before the final decision is made.

One of the biggest sticking points for opponents is a proposed 10-acre lot size minimum, which some landowners believe will decimate the value of their land by preventing them from subdividing their property for future development and drive up housing prices by limiting the supply. Lewis and Clark County Commission Chair Susan Good Geise said the urbanization and suburbanization of the Helena Valley will make it more difficult to address issues such as water, wastewater, fire protection, roads and flooding, and the minimum lot sizes will help keep growth at a predictable and manageable level.

However, every piece of land is different. And the county's plan should do more to account for the individual characteristics of individual parcels of land instead of relying on this one-size-fits-all approach.

Geise argues that the many critics of the plan have had years to voice their concerns and should have spoken up earlier in the process. While that may

be true, we don't believe pushing through an inadequate plan just to get it on the books serves the citizens well.

Geise also emphasized that she promised her constituents that she would proceed with county-initiated zoning (as opposed to citizen-initiated zoning), and she is leaving the county commission at the end of the year. While we certainly respect her personal convictions, we don't believe she has to vote for an imperfect plan to keep her promise.

We recently met with representatives from many of the groups leading the opposition. While they made it clear that they cannot support the current plan, they do see the benefits of zoning in general.

Likewise, both candidates running to succeed Geise, Tom Rolfe and Mike Fasbender, also said they would support a different zoning plan.

Instead of voting on the proposal in its current form, the current commission should form a committee charged with developing a fair compromise by a firm deadline. The committee should include city and county officials, Helena Valley landowners, and representatives from the real estate, banking, agriculture, affordable housing and construction industries.

The county should devote staff and resources to the effort. Likewise, the critics need to work closely with the county on finding common ground.

This is too important to get wrong. We want to believe that people with good intentions can achieve the common good on behalf of all concerned in our community and Lewis and Clark County.

As the saying goes: If there is a will, there is a way.

This is the opinion of the Independent Record editorial board.

T0: L & C County Zoning Advisory Panel and Board of County Commissioners

FROM: John W. Herrin

DATE: August 21, 2021

SUBJECT: Recommendation for Immediate Course Correction of ZAP Committee Towards Defining Needed Health, Safety & Public Good Solutions for the Three Sub-Zone Areas (Rural, Transitional & Urban) with Helena Valley Planning Area.

Herein please find additional comments on various Topics that pertain to the underlying and supporting facts, issues, and Ideas -- relating to the 2022 Zoning Regulations the ZAP committee has been tasked with developing.

The primary objective of my comments will be to again revisit L & C County's very checkered history of internally developing Zoning and Subdivision Regulations that openly discriminate and target only the Rural private property for burdensome, costly and unwarranted regulatory controls based on biased administrative actions by County officials.

The reason to revisit the past mistakes again is to lay the foundations for my and many others claims that the County actions are once again only targeting rural property and severely taking of thousands of landowners property value and rights without just compensation or due process regulatory actions.

AS stated before, nearly all (90-95%) of the 1822 pages of written testimony and hundreds of verbal comments -- starting December2019 and ending at November 2020 Final BoCC hearing – was strongly against the Adopted 2020 HVPA Zoning Regulations. Yet the Consolidated Planning Board members voted 5-2 to approve the Zoning Regulations and the three BoCC all voted for the regressive regulations.

This County's Anti-rural property targeted Regulatory control strategy started way back in 2004 and has been compounded over the years by Copunty crafted and adopted Subdivision and Zoning Regulations designed to drive up development costs – but never based on real science or fact required documentations.

Resulting in a long series of over 12 District Court of Zoning and Subdivision lawsuits spanning 16 years, to date costing county taxpayers over $7,000,000 in valuable funds that could have been put positive community needs, rather than waste all the time effort and money in such a negative, damaging and unprofessional course of actions.

The issue is not only one of wasted county funds, but it also spills into a lot of public resentment against the County administrators that really has not improved in the least over these past decades, despite many changes in County personnel. How is that possible? Why does it keep happening?

Why has L & C County – the seat of State Government and the Capital of this Great State --- been the seat of such Totalitarian rule making – devoid of real community, pollical, emotional, financial, and bottom-up community driven rule-making as required by the Montana Enabling MCAs and 1972 Montana Constitution? Anyone have any answers? We all need to know – WHY does this nightmare keep happening?

In this letter, I'll attempt to make clear statements that the County Must Stop and Seriously Consider or the County will again likely be sued, waste valuable energy and resources (e.g. money), that could be better served in solving real health, safety and public good issues rather than force regulations that lack clear and scientific-based purpose.

I. County is legally required to update 2015 Growth Policy before any new Zoning or Subdivision Regulations are adopted.

Montana Code Annotated 2019

TITLE 76. LAND RESOURCES AND USE
CHAPTER 1. PLANNING BOARDS
Part 6. Growth Policy

Growth Policy -- Contents

76-1-601. Growth policy -- contents.

(1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) **land uses;**

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources;

(viii) sand and gravel resources; and

(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements (where is this analysis):

(i) **land use;**

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary"

JH note: Where is the County Lead effort to update the HVPA growth conditions and supporting factual baseline information to make informed decisions? As such, Logic and facts dictate

that L & C County update the GP before the 2020 & 2020 Zoning and Subdivision Regulations can undergo major changes;

II. L & C County has been sued over 12 Times in District Court over last 16 years – Costing Taxpayers over $7,000,000. In all cases, L & C County adopted Zoning and Subdivision Regulation that violated State Administrative Regulations and Montana Constitutional protections because the County failed to produce factual proof – based on real science and proper administrative actions – that public health and safety warranted the proposed administrative restrictions being imposed.

WHY is Lewis and Clark County administrative rules always being challenged in Court when other counties are not?:

FACT 1. The County planning Staff and BoCC appear to be targeting rural growth for costly Subdivision and Zoning regulations in order too slow rural growth and promote growth near or in Helena and East Helena (Herein termed County Smart Growth Bias).

FACT 2. County managers have for past 20 plus year always presented Regulations that were internally crafted and driven with almost zero to very limited Public input. As others have testified, L & C County uses Top down and an unbending authoritarian rule making management style that does not bend to the will of the people or serve the constitutionally protected --- public property rights, will still protecting public welfare for the greater good.

Jerry Hamlin on January 23, 2020 3 page comment Letter after seeing the County Staff HVPA Map (with 160-, 20-, 10-acre SubZones) --leadoff Title Captured many Citizens initial reaction -- "County's Top Down Zoning is Not Good For Landowners".

Former L & C County Commissioner (2001-2006) Anita Verone's October 4, 2012 letter to IR Editor was entitled -- "**Commission has taken county down dangerous Path**" referring to the long list of Court Challenges being waged against the County over 2004-2007 County passed Zoning and Subdivision Regulations.

Her second sentence very telling " The last four years of my tenure, I witnessed commissioners enacting many illegal requirements; a water quality emergency declaration using fabricated data, forcing emergency zoning attempts, public roads building regulations."

Editorial Comment by Independent Record Newspaper February 25, 2009 "Repeal Interim Zoning Regulations" excerpts reads as follows:

- "A large portion of the Helena community surely feels vindicated by last week's findings by the new county hydrogeologist that a (County Written) 2006 water quality assessment used to usher in interim zoning was flawed.
- The latest draft report, released Friday by new L & C County hydrogeologist Js Sweirc, says the data in his predecessor's white paper does not support a water quality emergency in the Helena Valley.
- "I don't think it's appropriate to say the groundwater quality has changed in the Helena Valley" Sweirc said. "It's too big and area."
- For years a vocal group of residents, mostly made up of Realtors, developers and builders, has strongly opposed the notion that Helena Valley contains elevated, unhealthy levels of nitrate other pharmaceuticals in the groundwater.
- All this conflict has been promulgated on the notion there is a water quality emergency in the Helena Valley. Now a county official's report -… says the old data used to justify that is inconclusive.
- Just before the November general election, (Kathy) Moore admitted she made a mistake in her analysis and that nitrate levels had not increased as much as she originally proclaimed.
- She and County commissioners at the time stood by their water emergency assessment, as well as the impetus for approving the interim zoning.
- The (IR October 2008) news (article) "County Fabricated Groundwater Emergency" could have contributed to incumbent Commissioner Ed Tinsley being defeated in the election by Derek Brown" -- (a Montana Registered PE, and success engineering and Construction Business Owner).

John W. Herrin (the author of this ZAP/BoCC Summary Letter) was Co-plaintiff and expert Water Quality Specialist in Court Testimony against the County on their illegal 2006 Interim and Emergency Zoning Regulations.

- My review of Ms. Moore report revealed that she had severely and unethically misrepresented the severity of nitrate contamination in the valley and only 2-3 cases where thought to have been caused by on-site septic systems (source US Geological Survey Scratch Gravel Hills WQ Report by Ms. Thamke et al).
- In fact, way more problematic nitrate contamination was being caused by tilling of agricultural fields, overuse of fertilizers and concentrated livestock waste sources in the valley.
- Plus part per billion diffuse concentrations of pharmaceuticals has been found in groundwater underlying all most industrialized areas worldwide, and there is no human health standard yet set for pharmaceuticals by the US -EPA. And the city of Helena wastewater discharge to Prickly Pear Creek side channel has pharmaceuticals that could cause problems for aquatic life downstream.
- Ms. Moore attached me personally in an IR article stating that my professional integrity was suspect, yet it turns out she was the one demonstrating unethical bias in trying to justify the County need to have a real emergency. In her defense, she was forced to support these false claims by TWO COUNTY COMMISSIONERS hell bent on jamming these rediculous and unethical Emergency Zoning Regulations in order to further slow rural housing building plans across the Helena Valley.

- The 2006 County Interim and Emergency Zoning Regulations mandated all new rural on-site septic systems in the county must meet DEQ level II treatment standards.

- Level II wastewater Treatment systems generally were costing at least $20,000 and required electrical power supply and controls plus expensive maintenance. Back in 2006-2007 standard gravity septic systems were costing around $3,000-4,000 and pressure-dosed systems were costing about 1-2 thousand more.

- In total, the County reported about 32 homeowners or builders had to pay 3-7 times more for their drainfields than warranted. And many other unnamed landowners and perspective rural land purchasers had their dreams of a new rural home smashed by the county's targeted Zoning regulations.

- The unstated reason Commissioner Tinsley and Murray (supported by unethical legal advice and actions of Deputy County Attorney K Paul

Stahl, and Kelly Blake and other County Planning Staff plus I strongly suspect complicate conspirator input from the City Manager) was to force up the cost of rural development and thereby push more growth to the underutilized city of Helena wastewater and water supply systems.

- All 32 property owners that had to endure the upfront added costs to design and install these costly Level II wastewater treatment systems should have banded together and sued L & C County for damages and legal fees. Unfortunately, none of these aggrieved landowners realized that they could have mounted a class action lawsuit against the county and maybe even drawn in other landowners who could not build their dream home because of the significant added cost.

From 2004-2007, Lewis and Clark County Board of County Commissioners and select members of the County Planning and Environmental Health Department Staff came up with their own set of Zoning and Subdivision regulations based on an objective to slow rural growth and installed additional infrastructure cost barriers to further slow rural growth that are not really grounded in true health and safety problem.

Yet the County has never been fully held accountable for the series of Administrative legal liability failures and made the appropriate internal checks and balanced required to stop such illegal and abusive governmental misdeeds did not happen going forward.

If white collar crimes were more severe -- **Many people should have been fired** and many others forced to pay back the county for the taxpayer money they illegally saddled the taxpayers to pay instead of paying for real benefiting needs.

Yet here we stand once again – administrative and regulatory arbitrary and discriminatory, targeting only rural property for costly Subdivision or Zoning Regulatory landuse restrictions or permitting exactions.

In every case, costly legal battles should have never happened had the County Staff and Elected Official listened to and rewritten the regulations with citizens and regulated community inputs.

Based the County 17-year history of L & C County adopting Subdivision and Zoning regulations that impose harsh landuse development and zoning restrictions only on rural property – despite repeated objections by a vast

majority of public testimony opposing the series of targeted regulations -- L & C County managers repeatedly overruled the will of the people they are supposed to protect and serve.

For the past 17 plus years, L & C County managers largely ignore most of the public inputs that question their prechosen regulatory targeting of rural property for harsh regulatory controls – despite over-riding public testimony opposing such harmful regulations.

But even more importantly, the County repeatedly violated the State of Montana Administrative codes by refusing citizens requests for scientific, peer reviewed and rational factual proof that these Targeted Regulations address proven health, safety and public good problems in the least restrictive and affective administrative fix.

L & C County has lost 4 different regulatory types of lawsuits and been forced to settle over 8 other lawsuits totaling over $7,000,000 because the County refused to follow the peoples leads and also adhere to their public Servant duty to fairly review and legally adopt Real Estate Management Regulations that comply with County/State/Federal regulations and Constitutional guarantees.

WHY has L & C County been the major source of attempted State legislated regulatory changes to Subdivision, Zoning and Growth Policy regulations – resulted in repeated embarrassing testimony at legislative hearings?

Where is the "Greater public good" and adherence to the Montana Constitution that states:

"Popular Sovereignty. All Political power is vested in and derived from the people. All government of right originated with the people, is founded upon their will only, and is instituted solely for the good of the whole."

Had the County planning and environmental staff, planning board members or Board of County Commissioners actually listened to public comments and not injected personal "Smart Growth" type bias into the rule making and administrative process – none of the costly legal challenges would have occurred.

That is where the 12-member Zoning Advisory Panel is so critical in changing the pattern of administrative abuse. Every ZAP committee

member has a voice and opinion that can change this pattern and framework of the 2022 Zoning Regulations – based on real facts, science, health and safety issues assessments then crafting zoning regulations that make our Tri-county Community better for everyone for decades to come.

III. I have submitted several more detailed written testimony to the ZAP panel this past week. Please take the time to read and then debate the real merits in your public and private discussions. Our citizens are tired of constantly reading in the newspaper and having to pay for legal and administrative mistake by the county these past 17 years.

IV. I will also attach a few of the more appropriate 2020 Zoning Proposal comment letters to assist the ZAP panel and BoCC going forward.

From:	Thomas, Andrew
To:	County_Planning_Mail
Subject:	ZAP 10.17.2021 Public Comment
Date:	Sunday, October 17, 2021 9:10:09 PM
Attachments:	Public Comment, ZAP, 10.15.2021, Andrew Thomas.docx Propublica, Land Conservation, 10.17.2021.docx

Please see the attached public comment and supporting information.

--

Andrew R. Thomas

Department of Business/MAcc Program
332B Simperman Hall
Office: 406-447-5454
Cell: 509-592-0720
ARThomas@Carroll.edu

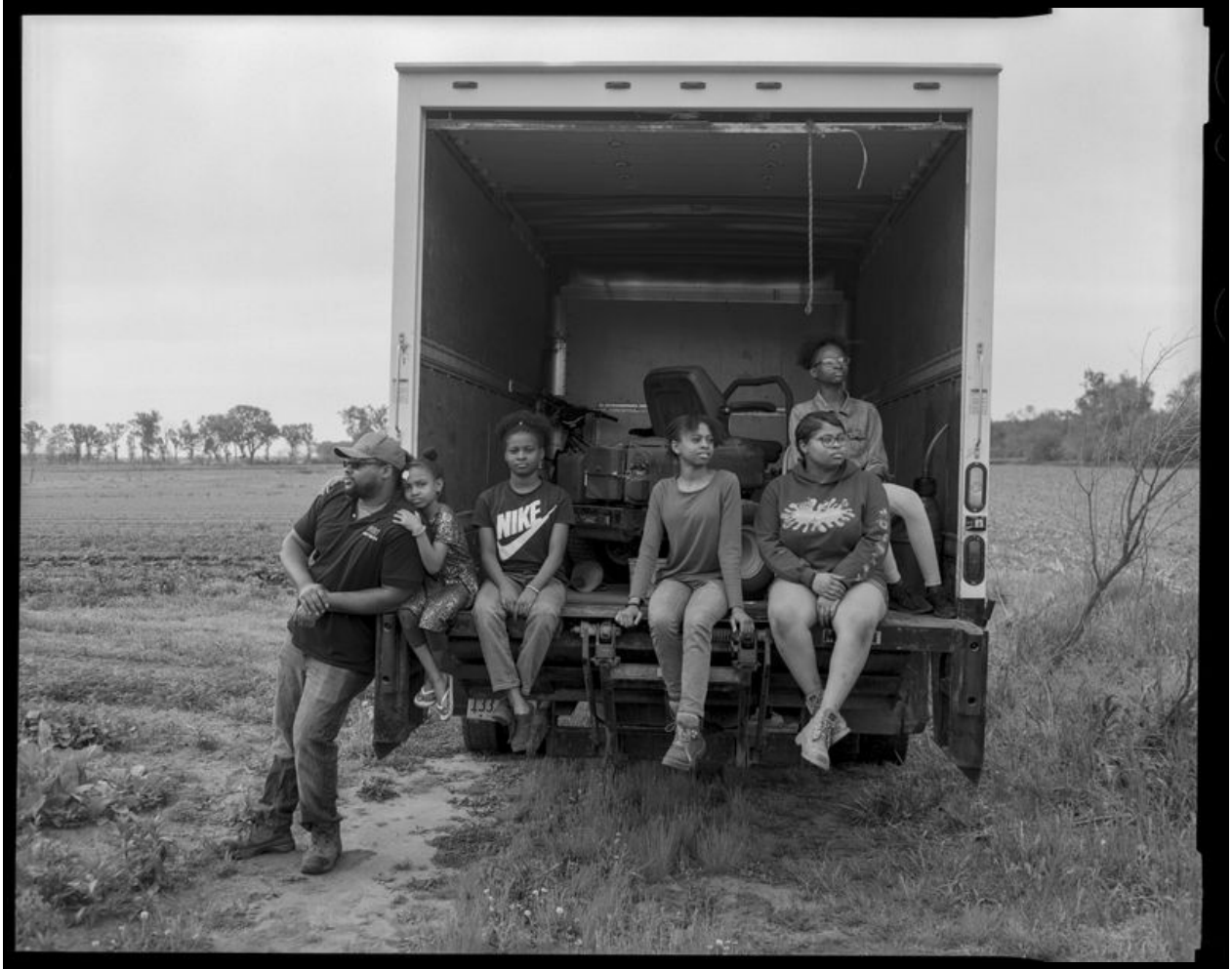
Public Comment, ZAP, Andrew Thomas, 10/15/2021

Per the comments relating to non-conforming lots. I would suggest that the ZAP consider the following

1. An inventory of all lots in the proposed zoning areas.
    a. Size of lots
    b. Use of lots
2. An assessment of the nature of land being used for current residential development in the proposed areas.
    a. Size of lots developed
    b. Number of lots subdivided
3. Also, local builders and financers should be engaged to understand the costs associated with developing at different densities.
4. Once the relevant information is collected, it can be used to determine what a reasonable minimum lot size should be for a certain area. Given that there have been no lots sizes for any of these areas before, historical precedent likely will reflect natural market trends in terms of development cost and individual preferences. But assessing the lots size requirement to what has occurred it will help ensure what defines nonconformity in the future is not arbitrary. Also, as mentioned in other testimony it is necessary for the ZAP to consider an objective and reasonable process for seeking a variance. In general, most people are not opposed to regulation so long as it is objective and there is a reasonable process for appeal.
5. Lot size restrictions that are not based on objective data should be implemented via the consensus of local residents under Part I Zoning.

Given the prior discussions of open space, the attached article which can also be found at: https://www.propublica.org/article/conservationists-see-rare-nature-sanctuaries-black-farmers-see-a-legacy-bought-out-from-under-them, provides insight into what can occur if land conservation efforts do not consider community needs. Although the group discussed in the article is different in many regards from the residents of Lewis and Clark County, both groups share many things in common. As the article discusses, all too often well-intentioned outsiders do things that disrupt communities in ways that are avoidable and not to the benefit of the vast majority of people who live there.

https://www.propublica.org/article/conservationists-see-rare-nature-sanctuaries-black-farmers-see-a-legacy-bought-out-from-under-them



Environment

Conservationists See Rare Nature Sanctuaries. Black Farmers See a Legacy Bought Out From Under Them.

by Tony Briscoe, photography by Rashod Taylor, special to ProPublica Oct. 14, 5 a.m. EDT

In Pembroke, the well-intended efforts of mostly white nature conservationists overlook one thing: The township's Black farming community has never fully supported them. Now, a generations-old way of life is threatened by the push for conservation.

ProPublica is a nonprofit newsroom that investigates abuses of power. Sign up for Dispatches, a newsletter that spotlights wrongdoing around the country, to receive our stories in your inbox every week.

Join ProPublica reporters Tony Briscoe and Lizzie Presser on Thursday, Oct. 21 for a virtual conversation about threats to Black land ownership and diversity in environmental movements.

The Sweet Fern Savanna Land and Water Reserve, in the heart of Pembroke Township, Illinois, offers a glimpse into what much of the area looked like before European settlers drained swamps and cleared forests to grow corn and soybeans.

At least 18 threatened or endangered plant and animal species, including the ornate box turtle and regal fritillary butterfly, have been sighted here. Mature oaks tower over verdant fields of clustered sedge and Carolina whipgrass. Warbling songbirds and buzzing cicadas add a mellow soundtrack to the tranquil scene.

Sign Up

Sixty miles south of Chicago, this wildlife reserve is among nearly 2,900 acres owned by private individuals and environmental groups — most prominently, The Nature Conservancy — trying to establish a network of nature sanctuaries in Kankakee County. Their efforts have overlapped with those of the U.S. Fish and Wildlife Service, which two decades ago put forward a plan to buy up and preserve thousands of acres of what conservationists consider a rare habitat, one that includes the nation's largest and most pristine concentration of sandy black oak savanna.

But these well-intended efforts overlooked a key consideration: the support of the residents of Pembroke and surrounding areas. Across the region, the

acquisition of land by both the federal government and private conservationists occurred — and planning for more continues — in the face of persistent objections from local communities, including residents of this longtime Black farming community.

Founded by formerly enslaved people and later a haven for Black Southerners fleeing racial violence during the Jim Crow era, Pembroke became renowned as a symbol of Black emancipation and touted as one of the largest Black farming communities north of the Mason-Dixon Line. In its heyday, farmers and ranchers here not only raised their own food but supplied fresh produce to Kankakee and Chicago. Today, a small number of Black farmers are trying to hang on to what little they have left, while other parts of the township have struggled as well, with loss of jobs, a declining population and a crumbling village hall.

Some land for these nature sanctuaries was purchased at county auctions after local residents fell behind on their property tax payments, or from outsiders who picked up the delinquent parcels and flipped them, raising echoes of predatory practices that have long plagued Black landowners.

Adding to the opposition in Pembroke is the cold, hard math of property taxes. Newer environmental designations and restrictions have allowed outside groups to receive tax breaks that local elected officials argue are eroding an already precarious tax base.

The loss of Black-owned land in this community exposes a cruel irony. Pembroke has been one of the few places Black landowners could gain a foothold in Illinois, in part because this land was passed over by white settlers who presumed its sandy soils were worthless. And now, after generations without large-scale development or landscape-destroying corporate farming, this land has become sought after by outside conservationists because Pembroke’s savannas remain largely untouched.

Years of protest have done little to dissuade those pushing for more land to be dedicated for conservation.

Local residents have already seen what the future might hold. Most of the sites reserved for conservation ban long-standing local traditions like hunting and picking wild fruit, restrictions designed to remain in place forever, even if the

land changes hands. In a community known for Black cowboys, new conservation-minded owners barred horseback riding but, in a couple of instances, protected the right to cross-country ski, not a popular pastime in Pembroke.

Before the arrival of private conservationists, there were no permanent legal restrictions on this land. And, in a place where neighbors knew each other, landowners permitted horseback riders to travel historic trails and passersby to pick wild blackberries regardless of property lines.

The tension has become an ongoing case study in how predominantly white environmental organizations and government agencies — willfully or not — can marginalize communities of color by prioritizing conservation goals over the wishes of residents.

For their part, the conservationists working in Pembroke say they are protecting the area's most valuable resources and paying taxes on many properties after previous owners had fallen behind and contributed nothing. The Nature Conservancy has stopped buying at tax auctions and says it wants to learn from its experiences in Pembroke. "We understand that for our conservation goals to work in earnest, we need to listen to the residents who know their community best," the conservancy said in an emailed statement.

But as conservationists and the federal government continue to press on toward their ultimate goal of preserving savannas, some Pembroke residents like Cornell Ward Jr. find themselves on the outside looking in.

One muggy and overcast July afternoon, Ward, a thin-framed 63-year-old man with salt-and-pepper dreadlocks, stood on a gravel road outside Sweet Fern Savanna.

Ward remembers a time when much of Sweet Fern Savanna belonged to Black farmers, including him. Peering beyond the barbed wire fencing and signs threatening to prosecute trespassers, he could see the patch of land where he once grew soybeans. The small patch of land — two adjacent parcels, totaling 3 acres — represented a chance for him to carry on a family legacy that extends back 60 years in Pembroke. Ill and unemployed, Ward lost his properties after he failed to pay $1,511.40 in taxes; they were purchased about a decade ago at

county auctions by the preserve's owner, an 85-year-old conservationist from Chicago's south suburbs.

"How did they get all of this?" Ward wondered aloud.

Humble Beginnings and Lost Land

No one knows how Joseph "Pap" Tetter escaped the horrors of slavery in North Carolina, only that he, his wife, children and extended family arrived in what would become Pembroke Township in a wagon one day around 1861.

Tetter homesteaded 42 acres of land, which he parceled out and sold to fellow settlers. Proceeds went to help liberate more enslaved people via the underground railroad, according to oral histories.

Unlike the black, spongy soil that made Illinois an agricultural powerhouse, Pembroke's sandy soil — widely considered some of the poorest in the state — didn't retain moisture that would allow commodity crops like corn to thrive. But the land offered a fresh start for people who had been owned as property and forced to farm under threat of violence. Through trial and error, they found what could survive the sandy soil, growing specialty crops like okra, collards, peas and watermelons.

"It was available for African American farmers to come in and settle, because it wasn't being snapped up by European American farmers," said Mark Bouman, a program director at the Field Museum's Keller Science Action Center in Chicago who has worked with residents, including a local project in conjunction with The Nature Conservancy, and has studied Pembroke's history. "And so it was kind of like the leftovers."

Ward's family moved to the area in the late 1950s after briefly resettling in Chicago following the lynching of 14-year-old Emmett Till in their home state of Mississippi.

Ward's father, a construction worker, used recycled lumber and materials to build the family's house on land in northeastern Pembroke, where they raised chickens, goats, pigs and cows. Ward and his 10 brothers and sisters tilled the fields, sowed vegetable seeds and pulled the harvest from the earth by hand.

When Ward's father died in 1999, he left no will. The siblings couldn't agree on the fate of the property. Eventually, the family lost the land due to unpaid taxes. On his own, Ward still owned properties elsewhere in Pembroke but then lost those as well. Now some of that land is part of Sweet Fern Savanna.

Farming in Pembroke required long hours in the field, perseverance and faith; the small operations never yielded great wealth. But families carved out a modest living, enjoying the tranquility and spaciousness of the countryside.

Holding on to the land, however, proved tough. Pembroke's farmers have suffered from the same racial inequities that permeate the American agriculture industry. Without capital or access to loans, they often used outdated equipment or planted by hand. Most farmed their land without irrigation systems, commercial fertilizers and pesticides — the hallmarks of modern agriculture. Many didn't grow at the scale that would warrant crop insurance, leaving them vulnerable to drought or floods.

As time passed, Black farmers in Pembroke owned less and less land, due in part to financial hardship and lack of access to legal services that complicated the process of bequeathing property to heirs.

Their plight was not unlike that of other Black farmers across the country. In 1920, Black farmers owned about 15 million acres; by 2017, they owned around 4.6 million acres, according to a federal report.

In Illinois, an agricultural behemoth, Black-owned farms collectively make up only 18,659 acres — less than a tenth of a percent of the state's agricultural lands.

Outsiders Gobble Up Acres

The push to preserve and restore rare natural habitats in Kankakee County, where Pembroke is the largest township by area, might have stalled out two decades ago if the only party interested was the federal government.

The U.S. Fish and Wildlife Service drafted the first plans to create a national wildlife refuge at the Illinois-Indiana border more than 20 years ago, but it was stymied when local residents raised objections and an Indiana congressman blocked federal funding. "We will not establish a national wildlife refuge here until we get funding from Congress, and Congress will not support funding

unless the people want it," Bill Hartwig, then-regional director of the service, told the Chicago Tribune in 1998.

There were no such promises from The Nature Conservancy, which had endorsed the federal plan and accumulated land on the Indiana side of the border. Without any announcement or public input, it began buying on the Illinois side too.

The Arlington, Virginia-based land trust has been praised for its efforts in protecting more than 125 million acres of land globally. But the organization also has been the subject of scrutiny for its real estate dealings.

A 1994 government watchdog report found some environmental land trusts, including The Nature Conservancy, had profited handsomely in some cases from selling land to the federal government. A 2003 Washington Post investigation found the organization had imposed permanent land-use restrictions on some of its properties to guard their natural features, but later sold the land to current and former trustees at reduced prices, some of whom built houses there.

The Nature Conservancy temporarily suspended that program and later announced it would cease selling land to its board members, trustees and employees altogether.

In Kankakee County, The Nature Conservancy started by purchasing 128 acres of forest on the edge of a large commercial farm in Pembroke for $183,000 in 2000. But much of Pembroke consists of tiny, slender tracts of land, meaning the organization had to work on a much smaller scale to expand its footprint.

Some of those tracts became available through public auctions of land lost due to unpaid taxes in Kankakee County. The Nature Conservancy said it has collected 201 deeds at tax sales, totaling 448 acres. It's not possible to determine the race of all the former owners of the forfeited land, but the population of Pembroke is predominantly Black; local residents and politicians say most of the owners affected by tax sales were Black too.

Because the tax-sale properties tended to be small, those parcels made up less than one-fifth of the conservancy's acreage in Kankakee County, according to the organization's own figures. But, among local elected officials, the purchases

raised questions about the ethics of buying land forfeited in financially distressed communities.

Those sales, along with the local belief that conservationists were serving as an extension of Fish and Wildlife, fueled a backlash. After an auction in 2015, The Nature Conservancy stopped buying through the tax sales.

That same year, Fish and Wildlife reemerged to reveal it would be pursuing the dormant plans for what it called the Kankakee National Wildlife Refuge and Conservation Area, and the next year it accepted a 66-acre donation to establish the refuge. (The refuge is intended to be primarily in Kankakee County, with a small portion in Iroquois County; the initial donation consisted of land in Iroquois.)

Sharon White, who was Pembroke Township supervisor at the time, joined with other area politicians from the U.S. Congress, the state legislature and local government to push back. The Kankakee County Board voted 22-2 in favor of a resolution objecting to plans for the refuge.

The Nature Conservancy, because of its deep pockets, drew special attention, and White met with conservancy officials.

In November 2016, White placed an advisory referendum on the ballot, asking: “Should The Nature Conservancy be allowed to purchase land within Pembroke Township to establish a conservation marshland?”

Voters left no doubt about their preference, answering “no” by a margin of 708-123. (The Nature Conservancy and its supporters say the vote was misleading because it misstated the type of habitat they are seeking to safeguard in Pembroke; conservationists want to protect savannas.)

“Coming from outside, assumptions were made by the conservation organizations that what they did for the good of the Earth, everybody would automatically love it,” said Bouman, the Field Museum director. “They’ve learned.”

In response to the local outcry, The Nature Conservancy took conciliatory steps, agreeing to temporarily halt land acquisition efforts for eight months. It also agreed to participate in ongoing efforts by the Field Museum and local residents in a Pembroke community planning project.

But conservancy leaders struck a different tone in emails with federal and state government officials. Those emails were obtained through a Freedom of Information Act request by ProPublica and examined for this story. Conservancy officials acknowledged the resistance from Pembroke residents and elected officials, but minimized the situation as a “melodrama” in internal documents circulated in a 2016 email.

In an email later that year, Fran Harty, then director of terrestrial conservation at The Nature Conservancy, urged Fish and Wildlife Service officials not to scrap the refuge plans despite community resistance.

“It is important that USFWS does not pull out all together because it will feed the

idea that all you have to do is throw a tantrum and USFWS will pack up and leave,” Harty wrote.

In 2017, Harty speculated how financial hardships for farmers might favor the group’s strategy.

“All it takes is two years of bad corn prices and it changes the chess board,” Harty told a Fish and Wildlife representative.

Officials from The Nature Conservancy’s Illinois chapter, including Harty, who retired in September, declined to be interviewed but provided a statement saying the organization will continue to work with residents of Pembroke toward its conservation goals.

“TNC does not tolerate environmental racism or injustice of any kind as we pursue our land and water conservation work in Illinois and across the world,” the statement said. “TNC’s pursuit of conservation must be inclusive and conducted with humility, trust, and respect.”

White remains skeptical of that commitment, even more so after learning of a 2015 email unearthed by ProPublica.

In 2015, while White was engaged in talks with The Nature Conservancy, she was behind on taxes for some of the parcels she owned in Pembroke. During that time, Harty shared a list of tax-delinquent parcels in Pembroke in an email to a federal official ahead of a county auction, with the note: “Fyi. I will let you

know how this works out." Highlighted in yellow were seven parcels owned by White.

In an interview, White acknowledged she was having trouble keeping up with her taxes due to financial hardship at that time. She paid her taxes, plus interest and late fees, to redeem the deeds before her properties were put up for auction.

In a recent interview, White said she had no idea that her properties, mostly wooded lots neighboring her three-bedroom home, had been discussed by The Nature Conservancy and Fish and Wildlife.

"They knew me and they were trying to buy properties from underneath me," White said.

A spokesperson for The Nature Conservancy said the organization wasn't interested in purchasing these parcels, and only highlighted White's properties "on an information basis to show the areas that were tax delinquent."

The recipient of the email was John Rogner, who at the time was a Fish and Wildlife Service coordinator. Rogner, now the assistant director of the Illinois Department of Natural Resources, declined to comment about the exchange, saying he did not recall the contents or context of the message.

Regarding the agency's push for a national wildlife refuge despite the longstanding opposition in Pembroke and elsewhere in the county, the Fish and Wildlife Service said it has sought further public input and will be publishing a final planning report. The agency also emphasized that it will only buy land from willing owners.

"We want to create a sustainable plan for both people and wildlife," Fish and Wildlife said in a statement. "This is a formative, collaborative process that's mostly about listening."

Rogner said that part of the federal process also includes working closely with private conservation groups. That's what happened in Kankakee County.

"They had already brought under protection significant parcels of land," Rogner said about The Nature Conservancy, "thus accomplishing some of what the service might have done under the refuge authorization. We coordinated with

them in that they shared information about their land conservation so that we could better define what the service role should be."

Fish and Wildlife also has a relationship with the Friends of the Kankakee, a nonprofit created by Marianne Hahn, the suburban woman who founded the Sweet Fern Savanna.

The group's stated mission is to support the Fish and Wildlife Service and the Kankakee wildlife refuge. The 66 acres donated by Friends of the Kankakee turned the refuge from an idea to a reality.

A Way of Life Threatened

Pamela Basu, the eldest of the Ward children, is the only one who still owns land in Pembroke and farms there.

As she watches the conservationists buy up parcels and add restrictions, she sees a way of life disappearing.

When Basu was growing up, property lines meant little in a community where neighbors knew each other. Horseback riders followed historic trails. Hunters pursued wild game in the woods.

Basu belongs to a thinning cadre of elders trying to carry on the community's traditions. She still walks the historic trail on her property, where she collects wild herbs and berries that she uses to concoct sauces, jams and tinctures. Each year, she hosts festivals featuring a farmer's market, live performances and a nature walk.

"When I was growing up, you could walk from one end of the community to the other with trails," said Basu. "You can't walk through the woods anymore. You picked berries, herbs — you knew where things were. We've lost that part of our culture, and now you can't pass that on to other generations."

Outsiders are increasingly determining the future of the land. Over the years, commercial farmers and real estate speculators have purchased land lost or sold by Pembroke residents. In the past two decades, conservationists also took an interest in the area.

Even though conservationists share a love of the land with the farmers, they often have a very different view of how it should be used.

Among them is Hahn, a retired microbiologist. For years, Hahn volunteered at a nature area near her residence in Homewood, Illinois. But she was vexed by her lack of authority in the preserve. “If somebody wanted to put a trail right through the middle of a prairie, I couldn’t do anything about it. So I thought, why don’t I get my own nature preserve?”

Her larger goal: “My concept of all of this is that, in a small way, I'm saving God's creation.”

A friend and fellow conservationist suggested she make a trip to Pembroke, an area with cheap land and abundant biodiversity. She did and was stunned by the rare prairie plants growing right along the roadside.

She bought 60 acres of land near the center of Pembroke Township two decades ago. This would become the foundation of the township’s first state-designated conservation area: Sweet Fern Savanna.

Creating the nature reserve meant that fields that once produced crops would need to be restored to their previous form. To Hahn, that made perfect sense.

“The parcels aren’t good for farming; people can’t make a living on them. They let them go for taxes — anyone can buy them,” said Hahn, who acquired a small number of the land parcels for Sweet Fern Savanna from auctions. “Should we not buy something that’s being offered to the public at an open auction?”

Over the years, the reserve has more than doubled in size. Signs mark the perimeter, warning, “No Horses. No ATV’s. Violators will be prosecuted.” The site is cordoned off by barbed wire fences, which Hahn said she installed after trash, including roof shingles, was dumped on her property.

Visits to the reserve are allowed only with Hahn’s written permission. For those she lets onto the property, Hahn permits them to hike, birdwatch, cross-country ski, camp and hunt. She said she allows one of her Pembroke neighbors to run his dogs on her property and a friend to hunt wild turkey and deer. Though she has chided trespassing horseback riders, she said, she has never prevented any of her neighbors from picking wild berries there.

Camping and cross-country skiing will no longer be allowed in 2026, according to state records that outline land restrictions for the site. Hahn has also included a special provision to allow a single burial site.

“It was not my intention to create a park. It was my intention to have a nature preserve,” Hahn said.

Hahn’s reserve is one of seven protected areas covering more than 1,100 acres in Pembroke. Five belong to The Nature Conservancy, and, like Hahn, the nonprofit has signed legal agreements with the state imposing some permanent restrictions on these properties in perpetuity with little, if any, public input. These designations are proposed by the landowner, then approved by the Illinois Department of Natural Resources and, in some cases, the governor.

Within the nature preserves created by the conservancy, hiking and sightseeing are allowed. But hunting, fishing, camping, campfires, motorized vehicles and horseback riding are not permitted. The preserves also permanently ban farming, agricultural grazing and time-honored traditions like harvesting wild fruit and plants. (Fish and Wildlife, meanwhile, does allow for wild herbs and fruits to be harvested on the acres it owns, after getting input from the community.)

At Tallmadge Savanna Land and Water Reserve, The Nature Conservancy permits cross-country skiing and deer hunting. But hunting privileges are only granted to those who have completed eight hours of volunteer conservation work.

Local residents wonder why recreation in these natural areas has to be limited.

“I haven’t seen any benefit to the community,” said White, the former township supervisor, who keeps horses in nearby Watseka, Illinois, which is in a different township. “I believe in conservation. There are national parks all over the country where there are hiking paths, horseback riding and camping. So why is it that is restricted to that extent in our community?”

What Is Best for the Local Economy?

The changes brought on by conservationists go beyond how the land is used.

After gaining ownership, conservationists have obtained state designations or imposed land restrictions that drastically reduce what they have to pay in property taxes.

The Nature Conservancy, for example, has enrolled some of its Kankakee County land in the state's Conservation Stewardship Program, which allows the property to be assessed at 5% of its fair market value. Separately, conservancy land that is earmarked for nature preserves are only assessed at $1 per acre.

As a result, the nonprofit didn't owe taxes on at least 38 of its parcels in 2020, comprising 382 acres, according to county tax records. That's because the amounts owed are so small that the county treasurer doesn't even send out a bill. In some instances, the conservancy pays less than the previous property owners were billed.

In a community where the median household income hovers around $29,000, local residents say it has been difficult to have land seized for failure to pay taxes and then see the new owners get a hefty tax break. In one instance, a Black farmer forfeited a 3-acre parcel of land in 2004 after falling behind on a $580.90 annual tax bill. The Nature Conservancy bought his land at tax sale, and two years later obtained a state conservation designation that allowed the organization to pay $19.60 annually in taxes — 96% less than the yearly amount the farmer lost it for.

But The Nature Conservancy argues that its presence can actually benefit local tax rolls, which can be hurt when landowners fall into delinquency. Organization officials say the group has paid more than $425,000 in county taxes since 2001.

Such arguments, however, have proved unconvincing in Kankakee County. Politicians and residents — Black and white — have strongly opposed conservation-related restrictions and tax breaks.

Antipathy has been especially intense in Hopkins Park because of the village's desperate need to reverse years of economic stagnation and disinvestment. The conflict pits The Nature Conservancy, which in a 2019 tax filing reported $1.1 billion in revenue, against the mayor of a village that collected less than $37,000 in taxes for that year. Mayor Mark Hodge has led the chorus of naysayers who

believe The Nature Conservancy moved too quickly to acquire land, undercutting local development plans along the way.

The conservancy purchased six parcels on Main Street, one of a limited number of places within the township served by water and sewer lines. It also bought land within several residential subdivisions. Though some of these properties were on major township roads, in some cases these areas still had a rural feel, marked by undeveloped land and trees.

“They bought property on our Main and Central streets,” Hodge said. “When they own the property, that means a house can’t go there, a business can’t go there because they are not willing to relinquish it. That would be tax revenue that we would receive for any water, sewer and other utilities. It’s unfortunate.”

He added: “It’s obvious that this is David and Goliath, the big guy trying to crush the small guy.”

The Nature Conservancy said it is unaware of any instances where its landholdings have blocked potential development. Conservancy officials said they considered selling one Main Street parcel to a developer interested in bringing a discount store to the site, but the developer withdrew for unknown reasons.

Hodge himself has picked up property this way, although he notes that the land he buys does not end up getting tax breaks in the ways conservationists have. He has been criticized within the community for his foray into commercial and residential real estate, but he says his personal investments also help the village by refurbishing properties.

In recent years, despite the legacy of farming in Pembroke, the community has become better known for its endemic poverty and lack of basic amenities. The township has lost more than half its population since 1980, and now has fewer than 2,000 residents. There are no grocery stores, pharmacies or banks in the 52-square-mile community.

Hopkins Park is marked with artifacts of disinvestment and broken promises. A factory building that once churned out military rations, and later products for Nestlé, is mothballed. Concrete silos sit abandoned on an unnamed road, the remains of a state plan to build an 1,800-bed women’s prison that officials

predicted would bring 900 jobs to the area. The project was scrapped due to state budget constraints — after $13.2 million had been spent on site work.

Hodge said the constraints on development and the tax breaks amount to "community genocide."

When landowners reduce or eliminate their tax payments, the remaining property owners in the tax district must pay more to make up for the lost funding needed for things like schools and roads, said Nick Africano, Kankakee County's treasurer.

"These are communities that can least afford a hit to their school and village budgets," Africano said. "They struggle for every nickel. I think it works for one set of people, and unfortunately most have no stake in our community."

Still a Tension in the Air

In the face of intense criticism, The Nature Conservancy in 2016 invoked new principles and procedures for conservation in Kankakee County.

In addition to ending purchases of land through tax sale, the charity said it has been much more judicious with its land acquisition, ending the purchases of properties connected to village water and sewer lines — in other words, land that has development potential. Since its land-buying moratorium was lifted in late 2017, the organization has acquired roughly another 230 acres, most recently a 10-acre parcel in November 2020.

It now acknowledges that there have been missteps. "We want to ... understand where we may have fallen short of our values, and adjust our approach where necessary," the Illinois chapter said in an October statement to ProPublica.

Johari Cole, a Pembroke farmer, sees some hope in the adjustments made so far and said that disdain for the conservationists is misguided. She owns a home and 40-acre tract of land where she farms vegetables and raises goats. She's also been an ardent supporter of environmental preservation, leading the Fish and Wildlife Service's program to teach local adolescents about conservation in 2019. The agency, along with The Nature Conservancy, helped fund the program through the community nonprofit Cole runs.

Cole argues that the landholdings of private conservationists are dwarfed by the acreage held by outside commercial farmers. Like private conservationists, they, too, have also purchased tax-delinquent property at county auctions, contributing to Black land loss, Cole said. And because the assessed value of farmland in Illinois is based, in part, on soil type (and the soil in Pembroke is considered poor), they pay little in taxes.

“We’re dealing with two extremes: locking land up in conservation and locking in commercial ag,” said Cole, who is board president for the Community Development Corporation of Pembroke and Hopkins Park.

“I’ve told the mayor, you’ve got the same issue on both sides, but you’re only looking at one.”

The Nature Conservancy has cited Cole’s group as one of its local partners as it seeks community input. It also has worked with the Black Oaks Center for Sustainable Renewable Living, a nonprofit with the goal of reclaiming 1,000 acres in Pembroke for Black farmers, letting its apprentices farm on portions of conservancy land at no cost.

More recently, following questions from ProPublica about its activities in the township, the conservancy said it had assigned two top officials who specialize in diversity and equity to work with the Illinois team in Pembroke. There also will be a review of “our interactions with the community in Pembroke Township and the Village of Hopkins Park.” (The conservancy did not make those officials available to be interviewed for this story.)

In Hopkins Park, Hodge remains unimpressed by the conservancy’s efforts. He said communication still is lacking and the conservancy remains mum on basic information like how many acres it intends to buy.

Even though the conservancy is consulting with diversity and inclusion experts, “they are going against people’s wishes,” Hodge said. “The people have voiced their objection clearly. They do not want this refuge in our community. We want to set aside some land in the community for conservation. But we don’t want to set our community aside for conservation.”

His skepticism extends to government officials at the state and federal levels. And, across the region, tension ratcheted up again in recent months when the

Fish and Wildlife Service moved forward on its large-scale conservation plans, after it found new funds for land acquisition beyond the original 66 acres.

In July, the service unveiled a plan for protecting and restoring up to 12,700 acres of land in an area that includes parts of eastern Pembroke Township, Momence Township and Iroquois County.

It didn't take long for the Kankakee County board to once again voice its displeasure, passing a resolution that month to reaffirm its objection to the government's plans in a 24-0 vote.

The service's public meetings on its plans revealed a wide range of concerns from county residents. Among them: Roosevelt Smyly, whose family has owned land in Pembroke for more than 70 years.

He attended a Fish and Wildlife open house to voice his opposition. He feels that conservationists are insulting local residents with the implication that they are not capable of taking care of the land.

"That's what really offends people like me," Smyly, 71, said in an interview. "You've come from somewhere else and you're going to upset the way that I live."

Hoping and Praying

On a slate gray morning in late May, Robert Thurman Sr. grabbed a paper bag of string bean seeds and poured them into the hopper of a garden seeder. He lined up the two-wheeled contraption and leaned into it as he planted his first row.

Soon, six of Thurman's children brought trays of burgeoning tomato plants from their greenhouse. They placed each in the ground by hand, watered them with a 5-gallon bucket and packed the soil tight around them.

Thurman's family has owned land in the township for around 80 years. Skeptical of financial institutions, he only pays for farm equipment out of pocket. He typically buys older equipment for fear of being "tractor poor." And he's at the mercy of weather because he doesn't have crop insurance in the event of drought or flooding.

“I’m hoping and praying to God that we can be on a bigger scale, because right now I can’t afford it,” Thurman said. “If something happens to my crop, it just happens.”

As the number of Black farmers in Illinois and across the country has tumbled, the state and federal government have said they want to stem Black land loss and encourage more diversity in agriculture. Gov. J.B. Pritzker brought a delegation to Pembroke earlier this year to acknowledge the racial disparities that exist in the state’s No. 1 industry.

“We have to face the often brutal history of why we work the land but no longer own or have access to the land,” said Lt. Gov. Juliana Stratton, the first Black woman in Illinois history to hold that role, standing before a podium in the gymnasium of a local elementary school.

It hardly makes any difference to Thurman. He had no idea the governor was in town and hasn’t paid a lot of attention to the controversy surrounding preservation. He knows there are no promises in farming. But so long as he has his land, it’s an opportunity he intends to pass down to his children.

“I’m going to live a certain way of life,” he said. “If it comes to a point to where they try to take me off my land, they are going to have to do a helluva move. Because I’m gonna be here as long as God sees fit to have me on this earth.”

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Why Developers in Denver Should Embrace Form-Based Code in Zoning Regulations

Zoning regulations can be tricky to navigate for developers. In a perfect world, a developer would be able to buy the land they want and do with it what they want. However, zoning laws are in place for good reason. Without zoning regulations, there's the risk of incompatible land use (such as building a factory next door to a residential home), which can cause a variety of issues, including decreasing property values.

Most cities today use Euclidean zoning, the conventional zoning system. Euclidean zoning is relatively easy to understand: each zone is reserved for specific uses and has its own regulations. While Denver used Euclidean zoning for many decades, it switched to form-based code last decade. At first glance, a form-based code may seem more complicated than traditional Euclidean zoning; however, there are many advantages to form-based code zoning regulations — both to the city and developers.

How Does Form-Based Code Differ From Traditional Zoning Regulations?

What Benefits of a Form-Based Code?

When comparing Euclidean zoning to form-based code, you might assume that form-based code is more restrictive and complex for developers than traditional zoning. However, there are many benefits to form-based code. These benefits also eliminate some of the drawbacks of Euclidean zoning. Six reasons why form-based code is more favorable for land development regulation in Denver include:

1. Eliminates the Drawbacks of Euclidean Zoning

Euclidean zoning has too many drawbacks to being beneficial to developers or the city's residents and businesses. In Euclidean zoning, rules and regulations often do not consider the context. There are many consequences to Euclidean zoning, as well, including economic and racial segregation, which do significant damage to the city's communities. Form-based code is based on the context of the existing construction in a given neighborhood instead of being based on the intended "use" of an entire zone. Form-based code helps eliminate all these drawbacks.

2. Provide Developers With Flexibility

A lack of unique new construction hurts the aesthetic of the city. Unfortunately, this is what happens when zones are drawn up with heavy restrictions on use and development in a zone. With a form-based code, developers have more flexibility as to where they can build, what they can renovate, and more, resulting in more aesthetically diverse buildings that give the city and its communities a more unique appeal.

3. Revitalize Urban Neighborhoods

When entire zones limit development potential, developers can be scared away: the complexity, financial ramifications, and constraints are often not worth the headache. Urban neighborhoods that could benefit from restoration won't attract new developers if the zoning regulations are too strict. Form-based code zoning is much friendlier to developers in areas like this. A developer might have more leeway to build a unique residential project in a desirable location–based on the number of units, height, and design – rather than be limited to only a commercial or high-rise development.

4. Help Local Businesses to Thrive

Form-based code does not limit commercial businesses to specific zones, allowing local business owners can set up shop throughout the city. This is beneficial to smaller business owners who can not afford rent in more commercial areas of town. Because Euclidean zoning can restrict businesses to commercial use zones only, they can easily be priced out of the city. On top of that, form-based code might allow a building form that permits a business owner to live in an apartment located above their business. It also allows business owners to find areas of the city in need of their particular service instead of being forced to set up shop on the same block as their direct competition.

5. Help Create More Walkable Neighborhoods

A city becomes more walkable when form-based code is introduced. As a result of form-based code, a neighborhood might include residential buildings, businesses, and open spaces, allowing its residents to walk to local amenities without needing to rely on a car. Euclidean zoning tends to restrict neighborhoods to a specific use. If you live in a strictly residential neighborhood, it will take much longer to get to the nearest grocery store or park. The more walkable the neighborhood, the higher the residents' quality of life and helps reduce carbon emissions.

6. Promote More Affordable Housing

Euclidean zoning causes different neighborhoods to be restricted by different rules and regulations. One of the unintended consequences of this is economic segregation. Unfortunately, if all new home construction is occurring in the same zones, it causes all the demand to be concentrated in those zones, resulting in a lack of affordable housing. Form-based code allows new construction and residential renovation to occur throughout the city instead of forcing it to be concentrated in specific areas. As a result, there are more affordable housing opportunities for current and future residents.

Denver Developers Should Favor Form-Based Code

Although most real estate developers throughout the country are likely more familiar with Euclidean zoning codes, it is an outdated model with many drawbacks. Form-based code in zoning regulations is much more beneficial to the city, its residents, and developers. We suggest that developers in Denver embrace form-based code for all its benefits. We can help you navigate Denver's form-based code zoning regulations and help you understand the ins and outs. [Note: Note Denver uses form-based coding.