

ZONING ADVISORY PANEL PUBLIC COMMENT

Received Between December 17, 2021 (noon) and January 7, 2022 (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.*

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From: [John W. Herrin](#)
To: [Andy Hunthausen](#); [Roger Baltz](#); [Lindsay Morgan](#); [Jim McCormick](#); [Tom Rolfe](#); [Greg McNally](#); [Peter Italiano](#)
Subject: Formal Request to Review All Subdivision & Zoning Regulations Relative to My December 16 Written & Verbal Documentation of Real and Damaging Anti-rural Property biased that has severely limited Rural Growth & Damaged Landowners & Entire Economy.
Date: Friday, December 24, 2021 5:10:19 PM
Attachments: [Dec 24, 2021 LLC Demand to Review Sub & Zoning Regs .docx](#)

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December 24, 2021

Dear LC County Administrators, Planning Staff, Legal Staff and ZAP Committee members,

Attached Please find my formal requests for County Legal Staff, managers and out-side consultants to quickly review the apparent and deep-seated anti-rural property bias that has been implemented and enforced on our community for the past 17 years.

I will not repeat any of the possible massive legal jeopardy claims that the county could be subjected to should my detailed legal analysis proves to be valid and the County managers have for the past 17 year illegally targeted only rural property for harsh and cumulative regulatory controls that appear to the be squarely designed to slow rural growth and push more development into the under-utilized Helena and East Helena wastewater and water supply systems.

It also appears to me at least that this was a coordinated efforts between the managers of the City of Helena and the County Planning Staff, attorney's office legal staff, the County Chief Administrators, and Certain members of the Board of County Commissioners.

As stated, I have requested a written response by January 4, 2022 about the Legal Staff presentation to the BoCC on January 6, 2022. Plus a formal BoCC hearing on removing any legally suspect Zoning and Subdivision Regulations within 2 additional weeks of internal deliberation – or the wheels of justice through the Courts will be fired up in earnest.

I am done playing the kick the can down the road and hoping this County Managers and legal team will get their act together and do what is right for the entire population and remove the "Smart Growth bias" that has been allowed to permeate the 17 year history of anti-rural growth Administrative management actions.

John W. Herrin
Hydrogeologist/permit Special/Developer

Sent from [Mail](#) for Windows

Date: December 24, 2021

To: Lewis & Clark County BoCC

From: John W. Herrin

RE: Formal request for County to:

1). Internally undertake a complete and thorough review findings report assessing the validity of my December 16, 2021 verbal testimony and supporting written legal analysis challenging the legal, technical and administrative validity, legal jeopardy risk analysis, and social/economic harm to all rural landowners and past, current and future developer etc. caused by L & C adopted Subdivision and Zoning Regulations spanning last 17 years.

2) Within 3 weeks of December 16, 2021 (January 6, 2022) BoCC hearing these findings be presented to the BoCC in the form of both a written and oral presentation by report author(s).

3) Within 3 weeks of that date the BoCC make formal motions to remove all portions of the existing Subdivision and Zoning Regulations that the County internal analysis puts the county in serious legal jeopardy of being sued in both State District County and the Federal US District Courts.

4) Request County Immediately start process of moving to hire top-notch Consultants to rewrite and update 2015 County Growth Policy Volume 2 -- Helena Valley Area Plan as required by State MCA regulations and administrative procedures. For the past 2 years, John Herrin and others have repeatedly requested in oral testimony and in writing -- LCC stop all Zoning and Subdivision regulations processes until the biased and severely outdated GP is updated as State MCA regulations require.

5) Move to Suspend all Zoning Regulations ZAP hearings until such time as the County has produced necessary background social-economic, environmental, transportation, groundwater supply & quality and wildland fire, flooding background and planning studies plus documented what has worked in other Montana communities to address growth – because without such details the County and the ZAP committee can not adequately plan for and written meaningful Zoning Regulations.

6) County must consider and internally evaluate the legal risk posed by the fact the County has been sued in the First District Court of Montana over the County's Nov-Dec adoption of the 2020 Zoning Regulations that target and discriminate against only rural property. It is my firm belief that the following targeted 2020 Zoning Regulations a

a) with the 10-acre average lot size density controls (patently illegal given no real health & safety issue apply to entire rural area),

b) 2 occupied buildings only (violates State and County adopted rent/lease options for expediated reviews), and

c) other building code restrictions without having a building permit and inspection team to enforce (see 2005 HBIA, HAR etc. vs LCC fire regulation ruling against County for inserting fire sprinklers without County having building code inspection process and inspectors).

7) County must remove any and all portions of the Subdivision Regulations that are not adequately based on both the scientific peer-reviewed studies and supported by clear evidence that these

supporting documentations provided clear , substantive, and adequate evidence to justify the proposed adoption of the Above State Minimum Subdivision Standards that were also incorporated into the actual administrative hearings records during the formal BoCC regulation adoption Administrative hearings.

It is my long held belief that the county clearly does not have the scientific and surely does not have the peer-reviewed foundational supporting documentation to have adopted most if not all above state standards Subdivision regulations, and if this is proven to be true the Cumulative Legal Impacts and real damages could easily total over \$100 million.

8) County must dissect and analysis the who, what, when and purpose behind:

- a.) the long line (17 years) of administrative abuse and targeted anti-rural development actions,
- b.) the underlying forces & actors (e.g. non-government smart growth advocates pulling political strings of County) that made LC such an:
 - i. anti-democratic, authoritarian, anti-scientific, and anti-rural growth;
 - ii. uncaring & mean-spirited perpetual abuser of truth,
 - iii. uncaring and systematic discriminator against the average and lower wealth citizens and landowner etc. etc. through the use of severely restrictive and illegal administrative actions spanning 17 years.
 - iv. what real planning efforts were ever made by County policy managers to look into the social and economic damage being caused by their biased administrative decisions and self- police their actions based on objective and unbiased decision-making processes that includes the SE, legal and technical validity review criteria that would have prevented the rogue administrative actions by LCC for over 17 years.
- c.) County should clearly determine who in the County and City of Helena county employees and elected County Commissioners were responsible for any County administrative actions that happened that violated State and County regulatory authority over the past 17 years, and review if there could be criminal or civil charges brought against them as individuals even if they were acting in a Taxpayer paid capacity – because they should be named and punished by any and all means necessary to hold those responsible. I can clearly name several BoCC, deputy County Attorneys (K Paul Stahl), County Administrator (GT, KB, etc.) and City (Burton) who appear to have been largely responsible for these anti-rural regulations starting back in 2004-2005.
- d) The county should also look internally at those current County employed personnel who knowingly or unknowing have blood on their hands.
- e) LLC must immediately review how the checks and balances against bad administrative decisions where not incorporated into the actual decision making process at every step in the adoption of Subdivision and Zoning Regulation rule making process at every step from concept to final adoptions.
- f) It is very apparent that for 17 years, LC County’s legal staff has been missing in action and could have -- just as easily as I have done -- done the necessary due diligence reviews of all Zoning and

Subdivision Regulations are very early stages of development, to avoid the catastrophic damages to the County reputation, damaged the good-will between all parties, and not caused repeated unnecessary and repeated lawsuits. Here are just a few examples of Legal failures by LCC legal staff and managers:

- The County Staff were never held accountable for nor did the county ever apologize to the Taxpayers for wasting \$6,000,000 to 7,000,000 dollars of taxpayers money that could have been used for many other Community infrastructural improvements (e.g. E-W road networks and reconstruction projects to enhance future growth), or completing needed County Planning and real scientific planning documents.
 - Plus the County drug out the 2005-07 ten-plus off-site road lawsuits for over 9 years.
 - The County never admitted fault in the unwarranted and illegal 2006-07 Interim and Emergency Zoning regulations resulting 3 different lawsuits against the county. Which ended 9 months later with the County's own Hydrogeologist (James Sweirc) trashing the County's fraudulent and falsified Nitrates and Pharmaceutical Water Quality Impacts of Septic System report and vindicating my and others court testimonies that the County had no real basis for adopting and forcing all new valley septic applicants to pay over 4 times of cost to permit and install high-legal advanced septic systems – when normal septic systems were not causing wide-spread and WQ threshold breaking standards.
 - Plus 2006-2007 Zoning Regulation Court hearings, Kathy Moore stated for IR newspaper article that John Herrin was unethical and unprofessional in Court testimony which turns out to in fact be the exact opposite of the truth. Kathy Moore was forced to craft a scientifically and biased Helena Valley Aquifer Water Quality Report that contained extremely exaggerated claims of harmful Nitrate and Pharmaceutical increases in HVAP groundwater aquifer caused by only human waste septic systems, which she wrote under threats from LCC Deputy County attorney K Paul Stahl's to reorganize the Water Protection bureau and eliminate Ms. Moore's position if she didn't write a sky is falling report to justify County to quickly adopt the illegal Emergency Zoning and further harm rural property owners.
- 9). County must carefully evaluate the real and present danger of citizen and taxpayer initiated class-action State/Federal lawsuits against the county for the cumulative and illegal pattern of Subdivision and Zoning Regulatory anti-rural targeted administrative record of abuses. I firmly believe it will be very easy to prove in State and Federal Courts, the administrative takings and arbitrary and capricious abuse patterns and actions. The County attorney's office should be advised to seek outside legal assistance in reviewing these matter as they obviously con not self police themselves nor protect the rights of their employers – the citizens and taxpayers of L & C County.
- 10) The entire scope of the cumulative damages caused by any County Subdivision or Zoning Regulations must be carefully considered at the most important task of the County this next month. I believe that the cumulative impacts of the County Administrative targeting of rural

property spanning the last 17 years could easily exceed \$100,000,000 given the County actual litigated Zoning and Subdivision regulations cases totaled over \$7M, and

11.) Had anyone know the depth and scope of the anti-rural regulations, the County should and could have been sued into submission decades ago. But we all trusted the County to know the regulations and understand all the legal foundational underpinnings and therefore protect all of us from wrong-doing and administrative abuse. LLC has lost that right to feel targeted in reverse. No sympathy for the unsympathetic and incompetent.

12). Hammer. Should the County choose to ignore all the evidence produced against them for the last 17 years, let me make it clear that all county citizens (past, present and future), construction trade and real estate sales groups (etc.), long-term renters who haven't been able to afford housing, all home owners that have not been able to upgrade the housing, all lower to middle income workers living here or planning to live here that can't afford to move into Helena to help with our labor shortages etc. etc. all could have standing in a legal fight against the County.

We will mount a newspaper and social media campaign divulging the administrative abuses and we will ask anyone who thinks they might have a legal claim to contact us and join our legal fight where appropriate. But we will also ask them to document their damages and personal damage stories in copy letters to the County. The number of such people would overwhelm the county and provide proof of the depth and scope of the damages caused by the County's illegal actions.

13) Solutions – rescind and admit wrong on all illegally adopted Zoning and Subdivision regulations within 6 weeks and we will evaluate the truthfulness and validity of the effort. We can not guarantee what our course of actions will be going forward, but trust me the ball is squarely in LCC court and only they can make a long overdue course correction or risk compounding the damages and risk escalating costs.

14). LLC County should know all too well that if they drag all these requested changes out, and lawyers get involved, then the ultimate costs to the County will undoubtedly be significantly higher and the public rath against the county even more heated. The County should have done the Course corrections years ago – at least starting in December 2018 when I met with Rodger Baltz and Peter Italiano about the need to fix all the problems in the Subdivision Regulations which maybe addressed in hiring a consultant in 2022 to rewrite the Sub. Regs. But right there the county was put on firm notice that their Subdivision Regulations were illegal and harming real people and yet nothing has been done to remove the illegal and targeting failed Subdivision infrastructural barriers. Also the County must first update the Growth Policy or legal challenges are again possible and maybe inevitable.

15) Please respond in writing what your course of action will be by January 5, 2022 so that we may be at the January 6, 2022 BoCC hearing to listen, present or both.

John W. Herrin

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From: [Thomas, Andrew](#)
To: [County Planning Mail](#)
Subject: Public Comment 12.22.2021
Date: Monday, December 27, 2021 8:22:38 PM
Attachments: [A. Thomas, ZAP public comment, 12.22.2021.docx](#)

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Please see attached.

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Andrew R. Thomas

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Public Comment, Andrew Thomas, 12.22.2021

Per my comments at the December 22, 2021 ZAP meeting.

1. I strongly suggest that the ZAP and planning department develop a costing model for various types of planning that could be implemented to help understand the fiscal impacts of various approaches. Specifically, with regards to form-based codes the ZAP should inquire of Bozeman, Missoula, and Billings about their experience. Costing should consider the entire cost of the project as well as a per unit cost for residential or commercial spaces.
2. Additionally, a costing model should also attempt to break down what specific improvements such as sidewalks, lighting, pedestrian or bike paths, cost. This may prove beneficial since it allows for planners to elect to use certain but not all features in designing a development. Also, costing should be done to consider the cost impact of being flexible with regards to what type of development qualifies for urban zoning. For example, the county maximum of ¼ acre lots for urban residential likely results in an infrastructure cost of \$X. However, if a developer approaches the county with a plan that proposes 1/3 acre lots that are included in an urban zone a costing model should be available that consider the cost of non-conforming infrastructure in the urban area as well as the possible costs of not including that infrastructure in the urban area. The underlying rationale for such an approach is to be able to realistically consider the alternative and their respective costs rather than to simply assume one approach is best.
3. With regards to flexibility of what is defined as urban. It is critical to consider trade-offs. As I had mentioned in the ZAP meeting the county must be realistic about the type of development that occurs. Even if a suburban development is not ideally suited for urban zoning the trade off in terms of public services and long-term costs should be considered. For example, there are many subdivisions somewhat contiguous to the City of Helena that have relatively small lot sizes and can be considered suburban in their design. The question that should be very carefully and practically considered is whether the county should compromise and include such development in an urban area. Although not perfect many issues might be resolved by having a more inclusive approach. By having more flexible standards in the urban and suburban areas a greater density of people can be more efficiently included in a given area. Whereas, taking an approach that favors strictly high-density developments in these areas might backfire since it may motivate people to move further way from efficient public services.
4. Also, per the comment made at the ZAP meeting regarding covenants that restrict homes to only those that are owner occupied. Given the current issues with the financialization of housing and speculation, See, <https://www.ohchr.org/EN/Issues/Housing/Pages/FinancializationHousing.aspx>, <https://www.cnn.com/2021/08/02/business/family-homes-wall-street/index.html>. Any policies that help promote affordable home ownership, regardless of the type of property, should be considered.