

# ZONING ADVISORY PANEL PUBLIC COMMENT

Received Between December 3, 2021 (noon) and December 17, 2021 (noon)

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**From:** [Thomas, Andrew](#)  
**To:** [County Planning Mail](#)  
**Subject:** Public Comment, ZAP, 12.13.2021  
**Date:** Monday, December 13, 2021 7:11:18 PM  
**Attachments:** [Public comment, Andrew Thomas, ZAP, 12.13.2021.docx](#)

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Hello,

Please see the attached public comment.

Thank you.

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**Andrew R. Thomas**

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## **Public Comment, Andrew Thomas, 12.13.2021**

This comment is submitted in response to earlier public comments. In particular, two documents entitled *Essential Smart Growth Fixes for Urban* and *Essential Smart Growth Fixes for Rural Planning*. Both documents advance what can be considered “Smart Growth” planning. Although conceptual elements of either document may have some utility in limited contextualized, circumstances, by and large they represent an ideologically motivated approach to planning that should be viewed in a highly skeptical way. Additionally, this approach to planning is mostly inapplicable to the issues confronted by the ZAP and if adopted would only serve to exacerbate many of the issues that gave rise to the creation of the ZAP in the first place. In general, these types of planning schemes are based upon the following presumptions:

- High density development is always desirable
- Automobile use should be limited regardless of whether it actually makes sense to limit driving
- Single family housing is not desirable in comparison to multi-family housing
- Public transportation should be prioritized regardless of the cost
- Low density development should be avoided

Considering these general premises along with a number of specific policy suggestions, it is clear that endorsing such an approach to planning in Lewis and Clark County would prove highly problematic. Given that such policies have consistently resulted in problematic outcomes for housing affordability and a number of other vital community functions there is no reason to suspect that the outcome would be different in Lewis and Clark County. Specifically, reducing supply of housing that people demand or applying expensive and restrictive planning schemes only serves to complicate and already delicate situation. Additionally, although it is likely that many advocates of Smart Growth sincerely believe this is in the interest of the community, it is a misinformed assumption at best. Looking at communities such as Portland Oregon, Seattle Washington, Bozeman, or Missoula that have endorsed these policies it is clear that they do not achieve their stated goals, and they only serve to destabilize and marginalize entire subsets of the population through soaring home prices and market restrictions which open the door for rampant speculation and rent seeking.

Given this I would highly recommend that the ZAP consider the reality of the situation in the Helena Valley with regards to current development patterns as well as clearly stated resident preferences for housing. By adopting a realistic approach that considers resident’s needs and how to efficiently meet those needs while addressing issues of public concern many of the shortcomings of overzealous planning such as Smart Growth can be avoided while achieving many of the aesthetic and efficiency orientated goals such approaches claim to achieve.

Although I plan on responding in a more detailed fashion to the above mentioned documents, I would ask the ZAP to consider carefully the following image from one documents:



This aerial from suburban Dallas shows how the "Devil's Density" is built out on the edge of the town at residential density that is not efficient with more compact development patterns.

In this image it describes an attractive suburban neighborhood with large houses and large lots as being the "Devil's Density." Given that most people would find living in such a neighborhood a desirable thing, this highlights the bias endemic to Smart Growth and similar planning. Specifically, such planning refuses to acknowledge that many people desire to live in a way not prescribed through that form of planning. Additionally, such planning holds that one approach should be forced on everyone regardless of their preference for a vaguely defined "public good." This mentality has given rise to the current issues with the comprehensive plan that the ZAP faces and if endorsed will likely create many more. Although no reasonable individual would prevent a fan of Smart Growth from voluntarily living in such a development, what is proposed in these documents arbitrarily removes any element of choice from other's preferences. In doing such it would serve only to drive development further out into other communities where such regulations are not used. Thus, applying these standards will only serve to complicate matters and have unintended consequences.

To help illustrate many of the issues associated with this type of planning below is the text of an article by Joel Kotkin and Wendell Cox entitled *Own Nothing and Love it*. The article is also available at <https://americanmind.org/salvo/own-nothing-and-love-it/>

### **An unholy alliance of planners, financiers, and leftists wants everyone to live in mass social housing developments.**

From the ancient world to modern times, the class of small property owners have constituted the *sine qua non* of democratic self-government. But today this class is under attack by what [Aristotle](#) described as an *oligarchia*, an unelected power elite that controls the political economy

for its own purposes. In contrast, the rise of small holders were critical to the re-emergence and growth of democracy first in the Netherlands, followed by North America, Australia, and much of Europe.

Today the current class of small holders face a threat from two powerful hegemonies, tech and financial interests, and increasingly intrusive bureaucracies. Both favor policies that would force higher population densities, which would likely raise [housing costs](#) and lead to lifetime renting for middle income households who would otherwise own their own homes. These forces—one long associated with the right, and the other the left—share a common agenda, though for different reasons.

Financial interests would reap a steady profit stream by creating a “[rentership society](#),” where [potential owners](#) are transformed into tenants, guaranteeing [the benefits](#) of increasing land values. Today [pension funds and Wall Street firms](#) are buying up single family homes, often at prices too high for the average buyer. For their part, the planning clerisy believes that dense urbanism is socially, economically, and environmentally superior; some even favor a return to public housing, which not long ago lost was rejected as a massively failed experiment.

### **Density Delusions**

For much of the recent past, density advocates insisted that the public, particularly [the young and educated](#), wanted out of private single family houses. But in virtually every major country the vast bulk of people have chosen suburban and exurban locations—in the U.S., Canada, UK, Australia, and Western Europe, including [London and Paris](#), as well as Toronto. Even New York City, with its surprising increase since 2010, has gained only 900,000 residents since 1950, while the suburbs have grown more than six million. [Some density advocates](#) see high house prices as reflective of economic prowess, but suburbs account for [the largest share](#) of new jobs in both Europe and the U.S., where suburbs dominate [new patents](#).

For years, surveys have [consistently shown](#) that the majority of Americans of [every generation](#) prefer a single-family home with a yard over living in a condo or apartment. [Two thirds of millennials](#), before the pandemic, favored suburbs as their preferred residence, and they overwhelmingly place priority [on homeownership](#), in fact more than earlier generations. Moreover, since 2000 minorities have accounted for [roughly 96](#) percent of suburban and exurban growth.

[These preferences](#) have only been [strengthened](#) by the pandemic, which generally hit hardest in urban areas with overcrowded housing, stressed transit, as well as entrenched poverty. [Realtors](#) report a growing interest in suburbs, leading to strong price increases occurring in the suburbs, and exurbs. This is a global phenomenon, with people heading to the periphery not only in [Australia](#) but also in France, Canada, the United Kingdom, and elsewhere. [France 24](#), a government owned international television service produced a program on the pandemic related exodus from Paris. The pandemic has also sparked [a surge in prices](#) for less dense parts of Britain.

### **Work from Anywhere**

The rise of remote work suggests this shift may be just starting. Globally, some [80 percent of workers](#) expressed a desire to work from home at least some of the time with nearly one-third of employees would prefer working remotely full time. A poll commissioned by [Bloomberg](#) found that 39 percent of employees would consider quitting if “their employers were not flexible about remote work.” Overall, according to a [recent Upwork survey](#), as many as 14 to 23 million remote workers may relocate as a consequence of the pandemic, largely to more affordable, generally less dense places to live.

The conversion of the high-rise office space into what [urbanist Richard Florida](#) describes as the “the last relic of the industrial age“ suggests a future more likely dispersed than concentrated. The shift to remote work covers a large part of the workforce which historically filled high-rise offices—media, analysts, programmers, marketers, and designers.

When the pandemic ends, a “residual fear of proximity” and the preference for less commute time will mean that roughly 20 percent or more of all work will be done from home, almost four times the already-growing rate before the pandemic. Another study from the [University of Chicago](#) study suggests as many as 34 percent of American workers could do their jobs remotely; in Silicon Valley that number approaches 50 percent.

Overall, it is widely expected [that office rents](#) will not recover for at least five years. Things could get ugly as some [\\$2 trillion](#) in commercial real estate debt becomes due by 2025, particularly in the largest transit dependent central business districts, reflecting in part [reluctance among commuters](#) to ride public conveyances as well as a preference for hybrid working arrangements.

One would think planners would try to best accommodate these clear trends. Instead, many seem determined to restrain people through urban containment policies that limit peripheral development. These policies drive up costs throughout the developed urban area. Moreover, the impact on affordability is not limited to houses—higher rents are strongly [correlated](#) with higher house prices.

## **Cali Blues**

Nowhere is the conflict between urban planning and the market greater than in California. According to the current planning orthodoxy and many politicians, single family houses are an environmental disaster and even [racist](#). Yet [minorities](#) (such as Hispanics and African Americans) have been flocking to the state’s suburbs and exurbs, accounting for *all suburban and exurban growth* between 2010 and 2015-19 in the state’s six largest metropolitan areas.

One would think that meeting minority aspirations would appeal to California’s famously progressive planning establishment. But they and their well-financed [YIMBYs](#) (Yes in My Backyard) allies have worked overtime to ban single family zoning and push new development towards the expensive and congested coast, despite the fact that three out of four Californians, [according to a poll by former Obama campaign pollster David Binder](#), do not want such bans imposed.

People in California, like elsewhere, are leaving the dense urban areas. Places like Los Angeles and San Jose have experienced large rates of net domestic outmigration. In contrast, the Inland Empire (Riverside-San Bernardino), just east of Los Angeles and Orange counties, ranked as the biggest destination in 2020 after Phoenix, according to a *Wall Street Journal* analysis. The big allure of the Inland Empire is single-family houses, which make up 74 percent of the housing stock, compared to 57 percent in Los Angeles. Sixty-four percent of Inland Empire households are homeowners compared to only 48 percent in Los Angeles; rates of homeownership for blacks and Hispanics, who are flocking there, are 20 percentage points higher than adjacent metro Los Angeles, according to data in the American Community Survey.

In their struggle to suppress popular aspirations, the planners have strong support from an unlikely source—Wall Street [investors and libertarian policy shops](#). [Though they often claim to oppose all zoning, they have supported efforts to end urban zoning while not opposing efforts to cut off suburban and exurban development](#), protecting the planners' right flank.

The case made by the density lobby revolves around the notion that de-regulating markets and promoting density are critical to greater affordability. But studies done in several regions, including [Vancouver in Canada](#), Europe, and the United States reveal that, if anything, dense areas are associated with more expensive housing, not lower prices. California has [the highest urban density](#) of any state yet has the worst housing affordability and rents of any state, except Hawaii, as well as the second lowest homeownership rate.

But the happy marriage of pro-density advocates on the right and left seems unlikely to last. As capital markets will not produce affordable apartments under current land costs and regulatory pressure, progressives are turning back to policies like strict rent control and a new emphasis on government-built housing. We see signs of this shift in [Berlin](#), which recently passed legislation to have the city expropriate housing developments owned by large corporations with over 3000 units, some 11 percent of all apartments in the city. Protests against big Wall Street real estate firms have also grown in [Spain](#), including squatting by displaced tenants of properties owned by financial giants and harsh [new rent controls](#). Concerns were raised in the recent election that [Canada](#) might implement homeowner equity for renters as a means of reducing inequality.

Such thinking is becoming more commonplace in the United States, too. Rent control is on the upsurge, particularly in places like [California](#), Oregon, and, just this November, in [St. Paul, Minnesota](#). Convinced that the market solutions are failing, many on the [American left](#) believe the private housing market needs to be replaced with homes built for people by the state.

It is virtually impossible to imagine where the money to finance massive subsidized housing would come from. But there may be a better way: expand our urban areas to accommodate demand for affordable housing.

## **Home on the Range**

There remains ample land in America, where only 3 percent of the country is urbanized. Census data indicate that as much as [80 percent of our metropolitan areas](#) are rural or unoccupied. In



states like Colorado, Arizona, Nevada, and most spectacularly Texas, we see new developments offering affordable, safe, and family friendly communities for middle- and working-class people.

The most potent objections by planners and politicians are environmental—an *idée fixe* for progressive think tanks like [Brookings](#). Yet there has been little examination of the environmental gains from remote working and the related elimination of the work trip. The latest *Urban Mobility Report* indicates that, [among California's seven metropolitan areas](#) with more than 1,000,000 residents, there was an average reduction in excess fuel consumed due to traffic congestion during peak periods in 2020.

The environmental impacts of suburbia, even before the rise of remote work, have never been as dire as alarmists insist. A [study in Australia](#) a decade ago found that when common areas—elevators, pools, garages—and lifestyle preferences are considered, inhabitants of single-family homes and townhomes actually produce less GHG per capita than denizens of dense urban apartments. Another [recent study](#) suggested that actual GHG emission reductions were lower in parts of urban areas with lower density housing, as opposed to denser areas where GHG emissions were driven higher by greater consumption rates and a greater share of single-person households.

Increasingly, it may well be that the key issue is not environmental but one of political economy and the preservation of a large, vigorous middle class. Rather than becoming a “nation of renters,” as an analyst at [Bloomberg](#) suggests, we should take advantage of current trends, and helpful new technology, to encourage the development of less expensive, family-friendly housing. This is particularly true at a time when dense urbanization offers little opportunity for working class and middle-class residents, as urban economist [Ed Glaeser](#) has recently demonstrated.

In contrast, peripheral development could help [rebuild the middle class by expanding home ownership](#) and perhaps reverse the [rapid aging and demographic declines](#)—including [a dramatic drop in marriages](#)—that threatens our future. As former World Bank principal planner [Alain Bertaud](#) suggests, the job of planners and policy makers, as well as savvy investors, is to “keep their ears to the ground,” rather than try to maneuver the public into lifestyle choices most do not share. More than three in four Americans, according to [Pew](#), value being able to choose their lifestyle as their essential way of achieving the American dream, followed by home life, and owning a home.

More important still, small owners who long have been the bulwark of democracy must continue to play that role. The old yeoman class is not out yet, but its survival depends on standing up and demanding a new policy agenda focused on economic opportunity, lower housing costs, and the building of sustainable communities across our vast and bountiful landscape.





[Joel Kotkin and Wendell Cox](#) Joel Kotkin is the Presidential Fellow in Urban Futures at Chapman University and executive director of the Urban Reform Institute. His new book, [The Coming of Neo-Feudalism](#), is now out from Encounter. Wendell Cox is principal of Demographia, an international public policy and demographics firm and co-author of the "Demographia International Housing Affordability Survey." He is also a senior fellow with the Urban Reform Institute and worked as a visiting professor at the Conservatoire national des arts et métiers, a national university in Paris.

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**Subject:** Photo example of County Permitted 2-3 acre lots that would be banned under L & C 2020 Zoning Regs. 10-acre lot-size restrictions. No scientific, factual or legal basis for targeting only rural lands. Also 5 LC added Sub Regs are likely illegal.  
**Date:** Wednesday, December 8, 2021 2:19:35 AM  
**Attachments:** [Dec 2021 Wheat Ridge Phases I-IV Sub Photos.docx](#)  
[Photos & Anti-rural Takings examples AnnaBr & GDEst.docx](#)

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December 7, 2021

L & C County and ZAP committee and concerned citizens and business interest representatives,

I have been frustrated at not being able to communicate the problems the Zoning Advisory Panel and County face in proceeding ahead with rewriting the County Subdivision regulations and zoning regulations without first doing the necessary scientific, social economic, legal homework work necessary to produce updated Zoning and Subdivision Regulations.

The County has produced Zero factual documentations for the 2020 Zoning regulations 10-acre tract size restrictions that would apply to every blade of grass in the 100,000 plus acres of private property within the Helena Valley Planning area. One major piece of evidence that the County planning staff has steadfastly refused to produce is the growth patterns of the HVPA over the past 6 to 10 years since the last GP and 2010 Census data was produced.

The County planning staff has had 2020 census data for months yet is still presenting power point presentations based in 2000-2010 census trends with 2015 GP projects that could easily be refined and used to drive real policy decisions.

In addition L & C County has detailed information about the specific design details all approved new land parcels and subdivisions in the HVPA yet the County refuses to supply the public, the ZAP panel or anyone the real information.

**WHY? Why are we all being kept in the dark?** Where is the social and economic regulatory impact assessment baseline work – Oh yeah it would show the severe damage the existing subdivision regulations have caused this entire county for over 17 years.

The County Subdivision regulations stop nearly all rural development that is not located very close to a state maintained highway – significantly limiting the supply of more reasonably price rural lots to this County which is sorely needed in the time of significant increased demand.

Simply Economics 101. Increase demand and prices will go up. Decrease supply and prices will go up. If Demand goes way up and the supply goes way down you have the perfect storm of runaway housing and land prices.

L & C County's 5 layers of above State Subdivision Regulations has severely restricted the availability of all rural land in the County and the 2020 Zoning regulations merely fall in line with the 17-year history of anti-rural "Smart Growth" target and discriminatory regulatory property value takings administrative actions.

As stated many different times in many different public meeting and regulatory decision hearings – past, present and future generations of property owners, business owners, economically challenged etc. etc. etc. etc. – meaning everyone in the Tri-County area is being unduly harmed by past, present, and proposed regulatory changes without doing the necessary legal foundational research to build a solid castle.

The two case examples that will be presented to the ZAP panel on December 8, 2021 will underscore the need for real science and facts for the county to no put and immediate stop to the 10-acre lot size discussions and change course to solid ground.

The first real life example existing and proposed smaller tract (2-3-acre size parcels) in property I have owned for the past 6 years and plan to develop into a small rural development located in the Silver City area on the historic SC Airport landing fields.

The second is the 60-80 number of smaller track subdivisions with again 2-3 acre tract size parcels, known as the Wheat Ridge Estates (Phases I-IV). This Subdivision is surrounded very large dryland grain-fields and many larger 5-20 acre tracts that eat up a lot of real estate and promote development sprawl.

Yet all sites generally have the same underlying groundwater, wildland fire and transportation conditions and as such how can the County use parcel size as a means to **protect some undefined and undocumented public health or safety issues???**

These two simple case examples underscore the insanity of using blanket one-size-fits-all lot-size restrictions without professional expert reports based on real facts, science and legal mandates.

So the question the county must address. How is this not the definition of arbitrary and capricious when there literally thousands of what would be termed Non-conforming parcels and only a few proven examples of cumulative impacts (e.g. North Star and Emerald Ridge)? The County can not prove most of the thousands of existing homes that would be labeled non-conforming are causing severe cumulative impacts to public health and safety.

Anyone with any common sense should be able to see through the smoke and mirrors and

determine the County never had the documental proof or justification to present to the public any form of Lot-size density controls without real scientific factual information proving the regulations are both needed and solve problem and are the least restrictive solution to solving the problem.

Also State Subdivision regulations clearly state that all county's must consider the costs of regulations to the regulated public but I strongly suspect L & C County has never bothered to undertake the required Cost benefit regulatory analysis plus it clearly is the intent of the State regulations that each subdivision applicant has the right to appeal a harsh regulatory County added regulation and cost/benefits are to be fairly considered (e.g. two entrances into all subdivisions when most major ski resorts around the world only have one major and many branching offshoot roads, Prorata Shar Contributions to two offsite roads, on-site water supply/storage systems for undefined wildland fire risks, and harsh unscientific waterbody setback requirements).

By drafting County Regulations with these 5 added administrative regulations, L & C County has significantly reduced the number of rural subdivision applications oversight stopped many rural landowners from even considering a subdivision development --- all across the entire million acres of private property in the county.

In addition, the added regulations also significantly increase the costs of subdivision development which does two things --- significantly reducing supply but also driving up the costs of all new rural lots and thereby all property in the Tri-county Real Estate Market.

As such, the County for nearly 17 years has been illegally deny many subdivision variance requests and outright forcing applicants to bare additional development costs or face application denials. That is exactly what happened in the 2005-2008 Zoning and Subdivision Off-site road litigation battles resulting in the County having to pay out more than \$7million in legal costs and damages. State Subdivision regulations indicate that the County administrators and Commissioners must only force the least cost and applicant preferred alternatives, unless that approach does not meet some form of State/local Health and Safety requirement. But L & C County has not been doing RE permitting business based on these State regulatory requirements and thereby unduly harmed many subdivision applicants over decades.

WOW. I read this to mean Any County Administrative Actions involving denial of a variance request without the County Considering the impact costs, then the County could have been sued – had anyone read the actual State Subdivision regulations. And I don't believe I am wrong in this interpretation, but I welcome the County Staff and legal department to respond in writing proving me wrong.

Why did the County Planning Staff and BoCC ever conceive that the right solutions was restriction all rural property to 160, 20, and 10 acre average lot size density controls made any sense even on paper let alone in the real world?

The County's own 2017 contracted Consultants (Wildland Professional Solutions, Inc and Wildfire Planning International LLC and Land Solutions, LLC) on page 32 clearly refutes any blanket edict by L & C County for across the board Density Control for any of the other four 2015 Growth Policy

trumped up excuses for Density Controls (e.g. transportation, flooding, groundwater supply and groundwater quality).

The L & C County's contracted Wildland Fire Report page 32 reads as follows "This (**Wildland Urban Interface Code** review under Subdivision Regulation) 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.**

How can the County Planning Staff, ZAP Panel and BoCC etc. defend the 10-acre arbitrary lot size restrictions if the County's paid consultants determined that the 2015 Growth Policy was absolutely wrong and should have never stated that the only valid solution for managing Rural growth is Density Controls? How stupid does the County think everyone is? Really this is shameful bias designed to meet the select few anti-rural planners drafting the 2015 Growth Policy and they County can not defend these biased statements given the County's own other more professionally trained and none=agenda driven scientist have clearly stated that the 2015 Growth Policy Rural Growth density control recommendations are baseless and have to be rewritten going forward to avoid perpetuating the Big Lie.

Why this message was never considered by the County relative to all 5 claimed Environmental and safety concerns is beyond me. The Impacted landowners repeatedly warned the County and made their voices heard.

Just to highlight the warnings the public was making I will recount what future County Commissioner Tom Roth famously asked the CCCPB "Are you listening now. Are You Listening now. Are you listening now". Commissioner Roth made these prophetic statements at one of the many fall 2020 public hearings.

How could the County read the State Growth Policy Regulations and not determine that the Growth Policy was biased and had to be in part be rewritten to remove the interjected bias. And how could the county ignore the Citizens pleas for not harming their primary investment – their property without just cause.

How can the County justify the harm caused?

How could the county ignore the 1822 pages of almost 90-95 negative adverse written comments and hundreds of verbal testimony about the harm being caused and the unjust nature of this unproven County staff and BoCC driven administrative nightmare?

We the public have been demanding the County conduct a detailed Economic and Social impact assess for the 2020 Zoning Regulations, and that is exactly what Gregory Thomas \_\_ Chairman of the Consolidated C&C Planning Board recommended they recommend that BoCC table the 2020 Zoning plan to complete additional impact assessments or he warned the County would be sued.

How does the County justify their actions of harming many thousands of rural landowners for no real

positive benefit or proven justification. The County is marching towards a serious cliff without a parachute. Can you hear anyone outside your circle? Are you really listening and dropping defensive posturing to reach real truth and purpose? To serve the public and reach for the Greater Good.

Where is the proof that the County has carefully and thoroughly evaluated information contained in the 2015 Growth policy which State Statutes clearly mandate be done every 5 years and updated wherever major conditions have changed (e.g. transportation etc)?

L & C County can not justify updating any Zoning or Subdivision regulation without proof they have legal foundations to proceed and without making some effort to update the Growth Policy and define basic growth patterns, affordable housing etc. Without taking these necessary planning studies, then L & C County absolutely can not hope to win any legal challenges if they blatantly violate State law.

L & C County absolutely can not proceed with updating Zoning and Subdivision Regulations without adequately informing the citizens, business interest and landowners proving they are on solid legal and technical footing.

The number 1 planning task the County should have paid for before assembling the ZAP panel was --  
- update all legally required growth changes and develop recommendations for future growth policy that is unbiased and helps our community plan for future growth. Growth will come, and we desperately need good planning documents to help guide us forward not backwards.

I presented these same basis facts to the Planning Board and BoCC, and not one person --except for Gregory Thomas – on the County Side of the table ever acknowledged the true facts and recommended a course correction.

Why did the County not stop pushing forward and hire competent environmental, economic and legal consultants? Last fall I clearly stated to the BoCC that the County should at minimum budget \$400,000 instead of the inadequate \$100,000 Chairwomen Good Geise stated would be allocated for the 1.5 year long ZAP committee efforts.

The Existing to Community Development and Planning Staff are already overworked and underpaid, so hiring outside experts would have been and still is the best path forward.

Are you listening now?

Sent from [Mail](#) for Windows



**WHEAT RIDGE ESTATES PHASES I-IV. Locate about 1.5 mile of Highway 12 West and west of State Highway Spokane Creek Road. Roughly 60 plus lots most being 2-3 acres in size. Subdivision built in four phases – located on relatively flat lying former dryland grainfields -- with individual wells and septic systems on each lot.**



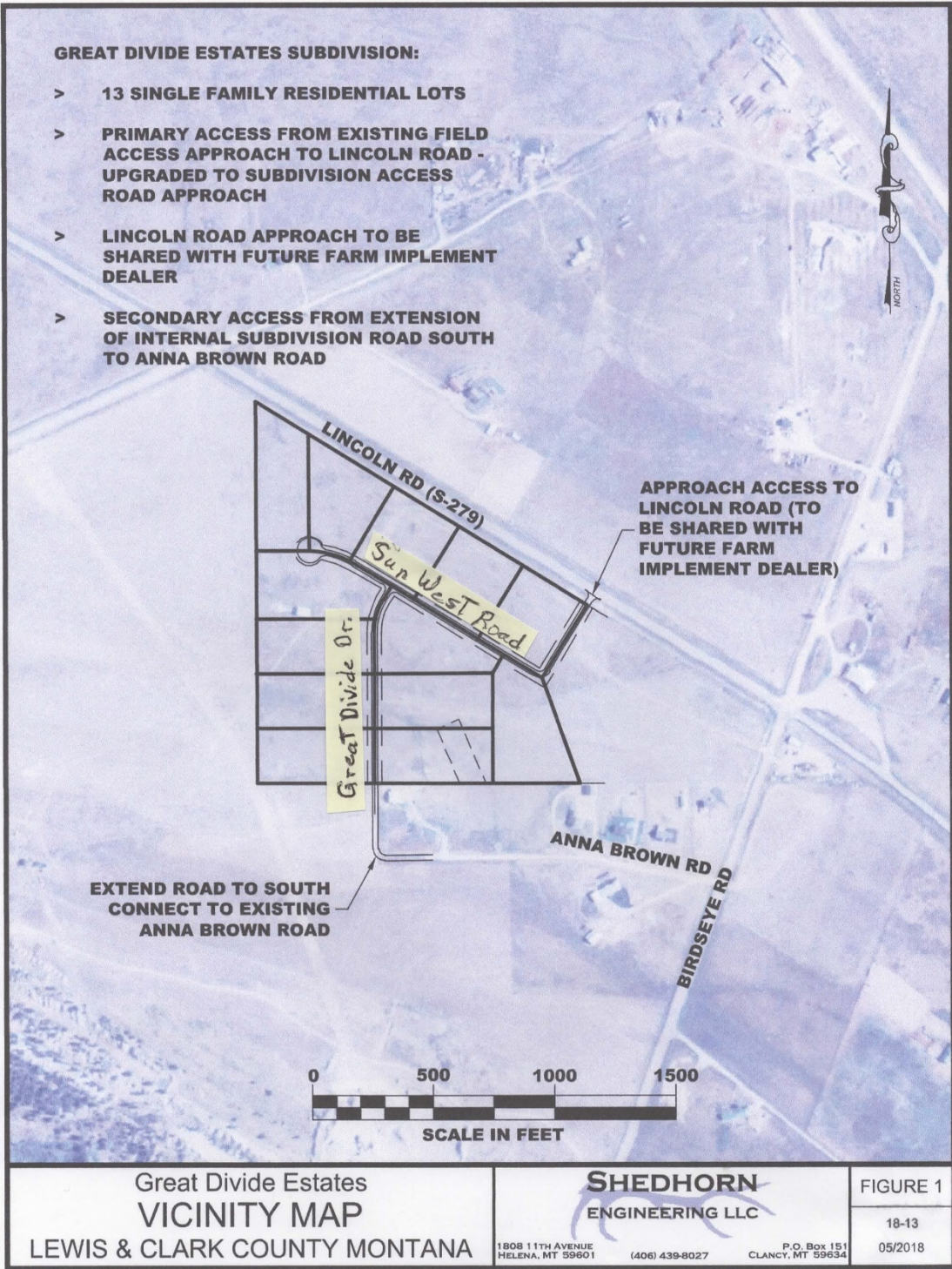


**SILVER CITY AIRPORT PROPERTY at the intersection of Lincoln Road and Birdseye Road. The Great Divide Estates Subdivision will be resubmitted to BoCC soon, creating 13 on 34-acres (2.5-acre lots) that received L & C County preliminary Plat approval in 2008 for 19 lots on 44-acres.**



Pending 13 lot Subdivision on 34-acres (2.5-acre lot size) on historic Silver City Airport approved by DNRC Water Rights Division and also was approved by L & C County in 2008 for 19 lots on 44-acres. Where is public health and safety issues? Located just outside of HVPA and therefore more valuable due to the county subdivision regulations off-site road improvements proportionate share requirements for most County rural property fortunately does not apply to this property because it is located on State Highway 279 Lincoln Road, and therefore not subject to L & C 2020 HVPA Zoning Regs or the County costly off-site road improvement proportionate share Subdivision regulations.







**Note: 5 existing homes** -- located on south fence-line of the pending 13-lot Great Divide Estates Subdivision -- all are 2-3 acres in size and county approved for individual septic and wells.

All these proposed and existing homesites have very low fire hazard. In addition, a very large pond exist less than 1 mile away and the local Canyon Creek Rural fire-chief will not recommend costly on-site water storage/supply systems but instead annual moving of 20' perimeter around the Great Divide Estates subdivision to further reduce low wildland fire risk

This land is also an easy 15-minute drive to Helena via either the Birdseye Road (County Owned) or via Lincoln Road West. The Montana Department of Transportation will soon start the major reconstruction and realignment of Lincoln Road from Green Meadow Drive to just past Birdseye Road providing increase safety travel to and from the Helena Valley.

If these parcels were inside the County's Rural area HVPA Subzone, the County supported and proposed 10-acre minimum lots size restrictions would have stopped the 5 lot Anna Brown subdivision and the pending 13-lot Great Divide Estates subdivision.

WHY? What are scientific justifications for this regulatory taking action by the county? The overwhelming answer has always been the same since the first December 2019 County sponsored listening Session:

The County has never produced -- nor can produce -- proven scientific health and safety issue that justifies all private property being at least 10-acres in size or a major health and safety crisis will occur.

It should be understood by the ZAP panelist and the County that financial damage and harm has already occurred to HVPA rural landowners, realtors and builders etc. starting with the

first County Planning Staff public hearing in December 2019 – resulting in 2 years of real estate uncertainty and financial harm to the community.

The Anna Brown homes and land -- and the pending Great Divide Est. 13 new lots -- all have increased value because of the County's has for the past 17-years artificially and illegally restricted only rural growth in the county by adding unproven health and safety triggers using unscientific generalities to justify the unjustifiable regulatory subdivision and Zoning restrictions.

These same false claims apply to literally 10 of thousands if not 100,000 plus of acres of the Rural Subzone being unfairly discriminated and targeted by L & C County Staff and County Commissioners under the adopted 2020 Zoning Regulations and 5 County added Subdivision Regulations that appear to both illegal and discriminatory.



**From:** [John W. Herrin](#)  
**To:** [Jim McCormick](#); [Andy Hunthausen](#); [Tom Rolfe](#); [Roger Baltz](#); [Greg McNally](#); [Thomas Andrew](#); [billgowen@helenaabstract.com](#); [ryan@casneinc.com](#); [db.flyz@gmail.com](#); [gharris@helenahar.com](#); [jerry1@hamlinconstruction.com](#); [kim@kjranch.org](#); [jdusenberry@janddtruckrepair.com](#); [John W. Herrin](#); [beth@triplersurveying.com](#); [jonathon.ambarian@kxlh.com](#); [jd2.dooling@gmail.com](#); [kimsmithvalley@hotmail.com](#); [Lindsay Morgan](#); [mtpaisan@gmail.com](#); [mj.fasbender@bresnan.net](#); [Nicole Giacomini](#); [Peter Italiano](#); [Ralph Kuney](#); [rlchristians@gmail.com](#); [sutick@mt.net](#); [Tony@jbartengineers.com](#); [John.riley@ktvh](#); [Jim McCormick](#); [Andy Hunthausen](#); [Tom Rolfe](#); [ryan@casneinc.com](#); [jerry1@hamlinconstruction.com](#); [Greg McNally](#); [Lindsay Morgan](#); [John W. Herrin](#); [Thomas Andrew](#); [Jim Dusenberry](#)  
**Subject:** Mt Admin Codes Require L & C County to Critically Review & Update outdated Growth Policies Prior to Major Zoning & Subdivision Regs Revisions. All Zoning & SubRegs must be based on Real Facts, Science based Health, Safety Problems/Solutions -- not bias.  
**Date:** Thursday, December 16, 2021 5:31:41 AM  
**Attachments:** [Dec 15 5 Legal Problems With Sub Regs.docx](#)  
[MCA 76-2 Zoning Regs Legal Requirement LC failures Dec15 2021.docx](#)

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November 26, 2021

TO: L & C County Development Planning Managers, L & C County Zoning Advisory Panel & Informed RE Development Citizens.

## **Dear BoCC, Planners and ZAP Member plus other interested parties.**

- I. L & C County 2020-2022 Zoning Regulations for Helena Valley Planning Area.
  - A. L & C County can not proceed with any write of the Subdivision regulations or Zoning Regulations without completing a very detailed and comprehensive review of the Growth patterns of the County and updating the severely outdated and biased 2015 Updated Growth Policy. This mandate is clearly stated in the County Zoning MCAs and the County staff, BoCC and Zap panelists have been repeatedly warned that proceeding ahead with any regulatory changes given the massive changes the Helena Valley has undergone since the last 2010 Census – must be addressed in writing.

I clearly stated in the Fall 2020 BoCC listening sessions in front of hundreds of people, that the County should budget \$400,000 to conduct real scientific research into environment problem areas in the entire County. Plus address all the social and economic changes and in particular the lack of affordable housing, lack of reasonable prices and ample developable land tracts – 4 to 5 times what the County is allowing to be produced.

- B. Some of the \$400,000 should also go towards the county hiring contract attorney(s) to review all past administrative RE actions going back to at least 2005 and then create a written report to the County attorney and the BoCC that is made available to the Citizens and taxpayers.

- C. **2020 HVPA Zoning Regulations only Target Rural Property** for 120 plus pages of Zoning Regulations that have and will unduly cause financial harm to thousands of Rural Sub-zoned area land and property owners, plus caused widespread financial harm to hundreds of ancillary land development workers and business owners.
- D. The **financial harm** not only has and will cause wide spread financial harm to impacted HVPA rural property owners, but it also unfairly and illegally enriches property and real estate owners in non-rural subzone areas (e.g, HVPA Transitional and Urban Sub-zone areas or lands outside the HVPA).
- E. The **financial harm caused** by L & C County has never been addressed despite repeated written/verbal request by citizens, business owners and even Gregory Thomas (PhD & Chairman of L & C CCCPB) and is 101 discrimination and targeting of one segment of the population and favoring another which is precisely the legal cliff L & C County went off with the 2005-2015 Legal challenges and \$7 million in damage claims against the County regarding Zoning and Subdivision regulation illegal county actions.
- F. **The County – as per Growth Policy and Zoning Regulations -- is required to** (but refused to) complete the MCA required detailed scientific baseline research, growth/housing/affordability impact assessments, and other growth trend analysis to justify much of the 120 pages of Zoning Regulations.
- G. County Public Hearings and meetings Starting December 2019 and ended with November/December 2020 BoCC Resolutions to Adopt the County Zoning regulations almost entirely created by County Staff with limited real input by regulated community. As Jerry Hamlin written comment outline stated – this is **“Top Down not Bottom Up” regulatory rule making** – a deliberate authoritarian management style L & C County has used for past 17 years. leading to repeated and Costly legal challenges.
- H. **The County’s** Community Development and Planning Staff, Board of County Commissioner and the Consolidated City-County Planning Board **largely ignored the 90-95% opposition comments** (1822 pages of written and hundreds of individual verbal comments), instead adopting the 2020 Zoning Regulation largely as drafted by L & C County staff and commissioners that does not solve real problems but instead just adds additional and costly barriers to land development and unnecessarily driving up all real estate in the Tri-county area.
- I. The LC 2020 **Zoning Regulations contain several very harmful land-use restrictions** (10-acre average lot-size density-controls, limiting all rural parcels no matter lot size to having two occupied buildings). These Zoning Regulations further compound the County’s already extreme Subdivision Regulatory rural growth restrictions.
- J. 2020 Zoning Regulations, and 5 County added Subdivision Regulations (see ???) have

and will stop most new subdivisions in the HVPA.

By further restricting the supply of lower cost land, the net result is explained by simple supply/demand/price economic principals. Since roughly 2006, L & C County has added at least 5 Subdivision Regulations that has Compounding the escalating costs of all real estate in the Tri County Area. Average housing sale prices in Helena just top \$400,000 and still climbing are rich out of state buyers are eagerly snapping up at relative bargain price.

- II. **L & C County's 2021-22 Zoning Advisory Panel** – Again being largely being forced along rule making policy driven by L & C County Planning Staff instead of independently and professionally driven (e.g. hired consultants) with strong citizen inputs.
  - A. County cannot revise the Zoning regulations in 2022 without first updating the severely outdated 2015 Growth Policy given the major changes that the HVPA, County, and Nation have undergone over the past 7 years.
  - B. The County Planning Staff keeps referring back to and showing power point presentations based only on the the 2015 Growth Policy document. This 7 year old document is largely based on 2000 to 2010 census data and makes a range of growth protections and numbers of new housing units and growth impacts, which can not be quantified based on the 2020 census data plus County Real Estate records.
  - C. For over 2 years now, LCs Planning Staff has absolutely refused to make any real effort to characterize County growth patterns (70% new lots are tied into East Helena and Helena), real traffic information, (note: nearly all daily traffic problems are within the City of Helena and not on rural roads like falsely claimed in the 2015 GP).
  - D. Also as repeatedly mentioned the 2015 GP has a horrible stain on the County for allowing such blatant antirural bias to be introduced into many sections of the documents that is really can not be used as justification for neither the 10-acre tracts minimum standards which is an illegal administrative property taking violation protected by the US, Mt Constitutions and by State Administrative rules.

## Montana Code Annotated 2021

*TITLE 76. LAND RESOURCES AND USE*  
**CHAPTER 2. PLANNING AND ZONING**  
**Part 2. County Zoning**

### Criteria And Guidelines For Zoning Regulations

**76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:





- (a) made in accordance with the growth policy; and
- (b) designed to:
  - (i) secure safety from fire and other dangers;
  - (ii) promote public health, public safety, and general welfare; and
  - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
- (e) **conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

e. County Zoning and Subdivision regulations have severely harmed nearly all rural property starting over a decade ago and the financial damages are compounding over generations and families. The 10-acre minimum lots size restrictions has severely depressed the value of undeveloped Rural Property values in the HVPA, but conversely has markedly enhanced the value of undeveloped transitional and Urban land – and overall property values.

III. **The County must hire an seasoned group of Consultant** -- as was done in 2015 -- with the tasks of looking past Growth Policies and updating all necessary aspects of the GP in order to provide the framework for future growth and Subdivision/Zoning Regulation documents to follow.

IV. **The County should suspend the ZAP panel** and focus on rewriting the Growth Policy and Subdivision regulation first. Despite the County’s claims that unbridled future rural growth will cause further damage to stressed systems, the County has provide zero real proof that future rural growth can not be adequately address through revisions to the Subdivision Regulations and working with DRNC Water Rights professionals to address any permitting shortcomings.

V. County Subdivision Regulations Appear to Contain 5-6 County added Regulatory Controls that have severely restricted all rural growth across the entire county for the past 17 years (See attached Documents).

In carefully reading the actual State Administrative Codes that dictate how all State, County and City Administrative actions are to be managed -- it has become increasingly apparent that L & C County has repeatedly violated the constitutional protected and ACM required code of operations for a large segment of real estate planning, rule making and permitting decisions.

Starting about 17 years ago, L & C County made many layers of changes how real estate development Subdivision reviewed, how permit decisions are made, and barriers erected to stop nearly all rural growth from ever being considered let alone hammered with costly infrastructure requirements.

The Subdivision and Zoning Regulation restrictions have really hurt the overall Helena area economy and we really have extremely low inventories of raw land on the real estate market place. The lack of supply and the major increase in damage of higher end buyers the net results is skyrocketing land and home prices in all three neighboring Counties.

We only have about 10-20 undeveloped lots on the market this fall when 2 years ago the numbers were in the hundreds. The same is true of existing houses – there is a severe shortfall of inventory and escalating home/land prices.

Many articles have been written this past year about the lack of affordable housing, lack of lower priced rentals, and troubles business are having hiring and retaining workers.

Please join the movement to correct these past mistakes and help free us the regulatory bottleneck so we can afford to live, dream and grow here.

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# Montana Code Annotated 2021

## TITLE 76. LAND RESOURCES AND USE CHAPTER 3. LOCAL REGULATION OF SUBDIVISIONS Part 5. Local Regulations

### 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.

[[[ JH Note 1: John Herrin in December 2018 (80 page plus page document submitted to Rodger Baltz and Peter Italiano) petitioned the County to Change the Fire Protection Codes that forced all subdivisions to pay for installation of on-site water supply systems capable of producing a minimum

of 250 gallons per minute for 2 hours for wildland fire suppression, but the County has not bother to remove this targeted and discriminatory costly infrastructure County Subdivision regulation – despite the fact that County Local Fire managers and departments have long recognized that this regulation was bad policy and the county should be building regional fire stations owned and managed by the County in order to assure the systems are properly maintained and are likely to be used. These systems can cost now at a minimum of around \$35,000 and can exceed \$100,000 for larger sized subdivision developments and unfairly force only the new developer/landowner/homeowner to pay for public safety that the existing neighbors or county do not have to bear yet could receive benefit.

This and other County Subdivision regulation unfairly target only new subdivisions therein driving up the cost of rural development which in turn reduces the supply of less expensive lots in the county and unquestionably leads to higher overall real estate prices in the county by reducing the supply of lots, unnecessarily driving up the cost of rural property and therein harms the overall community stressed to supply affordable housing for the community.]]]

[[[ JH Note 2: On October 8, 2021 John Herrin submitted a detailed written documentation of the suspect L & C added subdivision regulations that are above and beyond the State of Montana (MCA) codes, requiring the County to have produced detailed Scientific peer-reviewed reports documenting the health, safety or public welfare crisis that only could be addressed through the added County subdivision regulations –e.g. each new major subdivision must have:

1. **County added Requirement all major subdivision have two off-property access roads for unproven & undocumented tied to adequate access and egress(?).**

What is the rational that only in L & C County all new subdivision must have two separate access/egress roads that must meet County Public Works Road design standards? However, the fact is a large percentage of roads – in Montana, in the US, in the world, including most major ski resorts like Big Sky, Yellowstone Club, Big Mountain, Snowbird etc. etc. – only have one major access road and off these roads there are countless millions of miles of one-access branching roads.

Plus, this County also mandates that both off-site access roads be constructed to county Public Works Design manual standards when most existing rural roads (including the 530 miles of County Roads) do not meet county road design standards.

This is a double-edged sword – killing most rural development before it even gets to the drawing boards. Prime Example – There will be no new major subdivisions on Birdseye Road given the two entrances in/out and engineering design and upfront payment to the County for the Applicants traffic volume driven proportionate share contributions requirements.

The County two entrances in meeting County Standards is a major deal killer for nearly all rural property that is not located near a state highway. Most rural agricultural family can't even dream of parceling off a small bit of land to sell or give to family members or sell to other to put their children through trade school or college. These families can't take a vacation or remodel their homes, or invest needed money into their businesses. This is patently unfair and should never have been allowed to happen in the County.

2. **County added Prorata Share Payments to upgrade deficient off-development access roads.**

L & C County also added to the County Subdivision regulations the requirement that only new subdivisions and developer had to pay the county for engineering design and actual off-site road upgrades before that subdivision could be final platted. No existing landowners or the

County had to endure these costly infrastructural improvements and as such the County regulations maybe illegal Administrative takings actions.

How can L & C County justify requiring only new subdivision applicants to improve 2 entrances into their subdivision and pay for costly engineering design and pay the County the proportionate share contribution to upgrade these roads to the county standard and the county can choose how to invest those dollars in partial upgrades to off-property access roads to the nearest state highway.

At a cost of up to and more than a million dollars a mile for paved roads – no subdivisions will likely happen along most of the deficient County Road (e.g. Floweree Lane, Sierra Road, McHugh Lane, Birdseye Road).

That type of discriminatory targeting of only the new property developments is similar in nature to 10 plus 2005-2008 off-site road lawsuits filed against L & C County resulting in the county losing several protracted and expensive legal battles, that in turn resulted in the County settling many others (total wasted County taxpayer funded loses totaling over \$7,000,000).

3. **L & C County's Subdivision Fire Protection Requirement have for 16-17 years forced most new Subdivision to bear 100% of the cost to supply wildland fire water storage/supply systems on-site, when adjacent property owners & County have no financial cost sharing requirements. These rural-only, new development targeted regulations likely cannot be legally defended if challenges in court, and therefore for decades violated New Subdivision equal protection, property rights, etc. given County Regulations are a classic case of Arbitrary, Capricious, Discriminatory Administrative Takings Regulations coupled with Repeated Unfair and Prejudicial Administrative Actionsnd Discriminatory On-site Water Storage/Supply for unproven Fire Hazards .**

As mentioned many times – the county 17 plus year added Subdivision requirement forcing only new developments to have install costly on-site water storage and supply systems for unproven wildland fire risks – that the County Planning Staff and BoCC have never bothered to justify to the regulated public, taxpayers or in writing.

For over 10 years, Local County Rural Fire District personnel have been openly questioning the need for County Added Subdivision requirements dictating these costly on-site water storage/supply systems for all subdivision, plus they have openly stated that they refuse to connect to untested and unmaintained systems for fear of contaminating/plugging etc. their tenders and fire trucks.

SO why has the County planning staff, attorney staff, County Managers, and BoCC all ignored this critical issue and not acknowledged the need for change -- to remove this costly barrier that only targets the new developer/property owner will giving the existing property owners a free pass?

The long series of 2005-2007 off-site road lawsuits should have proven the L & C County and payments over \$7 million in taxpayer money to cover the Legal Court costs and damages caused by the County refusing to listen to developers, opposing legal counsels, concerned trade groups, landowners, and informed citizens that repeatedly warned County personnel that these targeted and discriminatory unwritten regulatory takings actions would be challenged in court.

**4. Setback subdivision regulations – County’s one size fits all regulations lack Legal Nexus relationship to valid scientific basis health and safety concerns.**

The L & C County incorrectly determined that property setbacks from flow rivers, streams and from even possible ephemeral drainages should be based solely on horizontal distances.

I believe this approach is invalid and is not based on State MCA required factual & scientific supporting documentary reports that were incorporated into the BoCC decision making hearings records.

These horizontal set back appear on the surface to be legally indefensible arbitrary and capricious administrative takings Subdivision Regulations that likely are not based on any real scientific fact based investigations and merely were driven by other factors that would not hold up in a legal challenge.

IN fact, the more valid approach would be to craft setback regulations would be based in real health and safety concerns not based on one-size fits all or aesthetics non-regulatory type authors/managers biases.

The geomorphic and flood geometry problems with these setback regulations was revealed in the summer Consolidated City-County Planning Board public hearings on the proposed – now adopted -- 2020 HVPA Zoning Regulations which originally parroted the existing subdivision regulations.

Many existing homeowners and landowners Missouri River Hauser lake shoreline areas stated that their homes and buildings etc. would not meet the proposed setbacks. Several landowners in the steep topography timbered lands along Ten Mile Creek in Rimini could not build a cabin, home or outbuilding because the buildable land on their mining claims was very limited and close to the TM river banks. So the County decided to drop these setback requirements from the Zoning Regulations.

But these two examples underscored the invalidity of the one-size fits all approach to L & C County Setback regulations.

First and foremost – they county likely has not produced the fact based scientific peer-reviewed studies proving the public health and safety problems not already addressed in the Subdivision Regulations (e.g. no building or septic system construction within 100-year floodplain and 100-year flood routing through any new subdivision and small vertical raised floodwater backwater heights for road crossings etc.).

So what is the health and safety issues that apply to all new subdivision parcel justifying all new subdivision meet these specific setbacks – that again are too generic, arbitrary and appear to be capricious?

For instance, the most private property on the south shore of Hauser Lake below Canyon Ferry dam could never be flooded by a 100- or even 500-year flood event at 100 feet from the active channel and therefore the 250 setback is unsupported.

Same is true of some of the historical mining claims on Ten Mile – given the vertical rise in topography in short distance on many stretches of the river and therefore the 200’ setback requirements again are overly simplistic, generic, and harmful to landowners all over the county.

Back in 2005-2006, my Civil Engineer partner Russ Reed and I attempted to permit the Green Meadow Vista 32 then 24 parcel development west of Green Meadow Auto Salvage yard – that the County denied our Application and resulted in 9 years litigations and the County having to pay us \$650,000 in damages and legal fees.

We ended up selling the 44-acre tract of land to the large solar farm electrical facility development company out of California. We had to drop back to 24-lots from 32 largely because of the County's unscientific 200-foot setback requirements, yet my partner completed a detailed Floodplain analysis of Silver Creek to prove our plans for increasing the height of the approach road.

In addition, planner Michael McHugh attempted to force additional setback from all 5-6 ephemeral drainages which would have cost even more lots. He had no basis for these claims given the abandoned railroad cuts across every ephemeral drainage so no water ever would flow in these 25,000 year old glacial runoff drainages.

SO the bottom line – these Setback regulations should be carefully reevaluated and rewritten based on real scientific health and safety foundations.

5. **County Subdivision Road Design Standards are very rigid relative to road design and construction standards. In meetings with top County Road Department Personnel in 2020, it was made clear that the County Engineering Staff should work on rewording sections of the County Road design standards and drawings to allow applicants to be more creative in addressing driving safety, traffic management and drainage controls.**
6. **Variances -- County Legally Required to Consider Costs to Regulated Community yet LC added severe topographical and site consideration and excluded costs in order to box Applicants into unwinnable variance request barriers and adverse decisions.**

## **Lewis & Clark County 2019 Subdivision Regulations -- II. SUBDIVISION ADMINISTRATION**

### **B. Variance 1. Hardship.**

The **governing body may grant a variance from the design and improvement standards** in these regulations **when strict compliance would result in undue hardship**, and when it is not essential to the public welfare.

Such a variance shall not have the effect of nullifying the intent and purpose of these regulations. The governing body may not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

The governing body shall not approve a variance unless it makes findings based upon the evidence in each specific case that:

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare, **(1) or injurious to other adjoining properties;**
- b. **(2) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship** to the owner would result if these regulations were enforced;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations or applicable, adopted plans. Innovative designs that address energy conservation, transportation efficiency, affordable housing, ADA accessibility, or preservation of the natural environment which do not circumvent the purpose of these regulations may be reasons for granting of a variance by the governing body.



**(3) Costs or financial considerations are not a valid reason for granting a variance, (4) nor are hardships that are self-imposed.**

John Herrin Comments – Comparing the State Subdivision Regulations with the County Enacted Subdivision Regulations regarding Variance from Regulations – L & C County added at least 4 statements that are not contained in the State Minimum Standards.

As such, the County must provide formal documentation in the BoCC hearing public record that they had scientific peer-reviewed reports supporting the need for added L C County variance regulations.

Why did L & C add these specific condition that must be applied to all County Variance Requests??? They appear to be designed to severely limit the ability of nearly all subdivision applicants to be granted a variance request for any reason.

Without the underlying proof of Scientific peer-reviewed studies incorporated into the County's BoCC review and approval process of the various subdivision regulations – I contend the County should have been sued by nearly all subdivision applicants starting when these added barriers were inserted into the County's subdivision regulations.

That means nearly all applicants that had a valid cost etc. reasons to request a variance from the County was most of the time unfairly denied based in these L & C County added regulatory requirements (e.g. two entrance meeting County Road Design Standards, Applicants having to pay 100% of the engineering design and actual reconstruction of off-site roads, wildland fire requirements for installation of on-site storage, and fire suppression supply water, water-body setback requirements, etc.).

In addition, many many property owners and perspective land buyers/developers have been stopped from pursuing land developments in the 90% of rural land in the County because of these artificially constructed barriers.

**(1)** State regulations make no mention of injurious impacts to neighbors which as long as they relate directly to the proposed subdivision and involve health and safety issues, it may be legal, but if injurious involves financial or perceived rights extending from one property to the other that are not directly health and safety driven they may not be legal (e.g. visual impacts, daylight shadows, smells, property uses, etc.

**(2)**

Lewis and Clark County added these very restrictive conditions to the basic state Subdivision Standards -- particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship.

These Particular Physical demands of a subdivider may have some underlying health and safety aspect that would allow these physical factors to be considered when reviewing a regulatory variance request. However, I always wondered why these additional criteria were in the County Sub Regs, but it wasn't until I compared the County Regs to the States, that I fully understood

that these are added barriers to most subdivision applicants that the County could and likely has used to deny a variance request.

Unless the County can produce the Scientific peer-reviewed studies to support these added limitations and also factor in costs into the equation, then I feel that the county was unfairly hamstringing applicants into a no-win situation. The County has provided zero fact-based evidence justifying the need for these added physical denial barriers and I suspect they really can't even make up good justifications for every variance request applicant to meet these harsh and restrictive criteria in addition to all the other variance barriers.

**(3) According to these County added Variance Review conditions --** Applicants are not allowed appeal to the County to grant variances changes relative to cost/benefits and financial factors. Why was this denial barrier added to these all important variance regulations? It merely seems as a strongarm tactic that should never have seen the light of day. And all because someone in the County (Planning/Environmental/Administrative Staff) either did not bother to read the State Subdivision regulations closely enough or they chose to purposely slam this in as one more means to slow subdivision growth in the County.

Either answer is unforgiveable and could be reason for criminal or civil legal referrals.

**It is absolutely clear that L & C County illegally added the above statement that the County cannot consider Costs or Financial considerations in determining the validity and merits of granting or deny an Applicants variance request(s).**

**How did this get past the County's legal Staff?? It sure appears to be purposefully added to allow the County to deny nearly all variance requests. Does the County have any real legal liability if harmed parties filed a class-action lawsuit? – despite the 30-day legal filing claims deadlines. If conspiracy and collusion misdeeds can be proven, then are County or individuals susceptible drawn-out, unwarranted and unnecessary legal battles.**

**(4) No variance shall be granted if conditions are self imposed??**

I'm not sure I even know how this condition would ever apply but it may or may not be appropriate. If the self imposed issues are a result of illegally adopted County Subdivision regulations, then this self imposed barrier may not be appropriate either. The County planning staff maybe able to clarify this through adding a few brief notes of examples to the requirement might help.

But again, the County must prove Scientific peer-reviewed studies and documentation of incorporation of these into the public decision making records.

State of Montana MCA regulations read as follows:

TITLE 76. LAND RESOURCES AND USE  
CHAPTER 3. LOCAL REGULATION OF SUBDIVISIONS

## Part 5. Local Regulations

**76-3-506. Provision for granting variances.** (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, **to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.**

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in **76-3-609(2)** is not subject to the public hearing requirement of this section.

**76-3-511. Local regulations no more stringent than state regulations or guidelines.**

(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.

John Herrin Comment: I strongly suspect that County 5 added Subdivision regulations – as outlined in this and other supporting documents – were added for the purpose of slowing or eliminating as much rural development in the County as possible, given the repeated County's Staff anti-rural development 17 year administrative record and the now revealed apparent administrative targeted and discriminatory administrative Zoning and Subdivision actions.

Although it is possible that many of the current L & C County legal, planning, administrative staff and Commissioners really never researched the basic legal requirements they kept passing along, therefore may have unknowingly perpetuated the Targeting of Rural Property with excessive, unwarranted and likely illegal subdivision and Zoning Regulations. However, a good many of the County Real Estate permitting and rule making actors also have blood on their hands given they have perpetuated the big lie of 10-acre tract size Zoning and never addressed the clear problems know in many of the Subdivision Regulations.

I know for a fact that Starting in December 2018, Rodger Baltz, Peter Italiano and Greg McNally plus several County Commissioners were made aware that forcing all new subdivision to install unnecessary and unused on-site water storage/well supply systems -- or their subdivision would be denied -- was financially damaging to all rural real estate and likely illegally targeted one segment of the populations to bear all costs when everyone else including the county got a free ride.

In December 2018, I submitted an 80 page document to Rodger Baltz and Peter Italiano documenting the major technical and legal problems what County had with the long-standing Fire Protection Regulations, yet nothing was ever done including May 2019 revisions to the Subdivision regulations where I testified that these on-site fire water supply regulations are unnecessarily driving up all permitted subdivision land costs and thereby increasing the costs of all property in the HVPA.

No one in the County lifted a finger to correct the problems which could have been done with a few quick meetings with Rural Fire District managers and planning staff – had anyone cared to listen and take action.

Meanwhile any major rural subdivision applicant these past 3 years, has had to knuckle under and agree to install the costly (\$35,000 to \$100,000) onsite fire water supply systems or see their real estate investment go under.

## Local Subdivision Regulations

**76-3-501. Local subdivision regulations.** (1) The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (a) the orderly development of their jurisdictional areas;
- (b) the coordination of roads within subdivided land with other roads, both existing and planned;
- (c) the dedication of land for roadways and for public utility easements;
- (d) the improvement of roads;
- (e) the provision of adequate open spaces for travel, light, air, and recreation;
- (f) the provision of adequate transportation, water, and drainage;
- (g) subject to the provisions of **76-3-511**, the regulation of sanitary facilities;
- (h) the avoidance or minimization of congestion; and
- (i) 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.

### Montana Code Annotated 2021

TITLE 76. LAND RESOURCES AND USE

CHAPTER 3. **LOCAL REGULATION OF SUBDIVISIONS**

#### Part 1. General Provisions

##### Statement Of Purpose

**76-3-102. Statement of purpose.** It is the purpose of this chapter to:

- (1) promote the public health, safety, and general welfare by regulating the subdivision of land;
- (2) prevent overcrowding of land;
- (3) lessen congestion in the streets and highways;
- (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;

- (5) require development in harmony with the natural environment;
- (6) promote preservation of open space;
- (7) promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;
- (8) **protect the rights of property owners;** JH Comment – LC County RE managers have repeatedly violated the public trust, their sworn duty to protect and serve, and do what is in the best interest of the entire community taken as a whole – by unfairly and illegally targeting only rural property for harsh unethical administrative regulatory taking of valuable private property rights.
- (9) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey; and
- (10) provide for phased developments.

## Montana Code Annotated 2021

TITLE 76. LAND RESOURCES AND USE  
CHAPTER 4. STATE REGULATION OF SUBDIVISIONS  
Part 1. Sanitation in Subdivisions

### Rules For Administration and Enforcement

**76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the provisions of **76-4-135**, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:.....

# Montana Code Annotated 2021

## TITLE 76. LAND RESOURCES AND USE

### CHAPTER 2. PLANNING AND ZONING

#### Part 2. County Zoning

##### Minimum Lot Size Restrictions

**76-2-212. Minimum lot size restrictions.** A board of county commissioners may not adopt zoning regulations under this part that require minimum lot sizes in an area zoned for residential use unless:

(1) the zoning regulation requiring minimum lot sizes is **applied to land that is within 3 miles of the limits of an incorporated municipality;** or

[[JH NOTATION: The vast majority of the Rural Residential Mixed-use HVPA subzone is well beyond 3 miles of the city of Helena or East Helena. As such, the L C County can't use this legal way to justify Lot Size Density Controls]].

(2) the county has adopted a land use map in its growth policy pursuant to **76-1-601(5) that sets forth projected population densities and recommended minimum lot sizes.**

[[ JH NOTE: For the past 2 years, L & C County Planning Staff and BoCC have provided zero legal, factual or scientific evidence justifying the need for 10-acre Minimum lot size land-use restrictions on 100-150,000 acres of Rural Residential Mixed-Use Subzone property.

The only County provided density map that might classify as meeting the 76-2-212 (2) population density maps requirements is the 2015 Growth policy Volume 1 Chapter 1 Figure 2, yet this dated density map provides ample proof that the vast majority of the Rural HVPA Sub-zone has moderate to low density and therefore is inadequate evidence to justify meeting this MCA regulatory enactment requirement. It does however prove our long-standing legal and technical challenges that the County has not real proof of the need for Lot Size Density Controls on every tract of land in this targeted district.

Where is the legally required NEXUS between a health and safety issue relative to land density which warrants to Administrative Taking of all private property rights?

The County has not bothered to provide the detailed Environmental and Health Risk geographic, hydrologic, wildland fire, flooding, septic system wastewater pollution, transportation, social economic, affordable and reasonable housing price ownership barriers, conditions of the HVPA and therefore illegally enacted the 2020 Zoning Regulations and has wasted the past year doing nothing to provide the necessary Growth Policy Updates, scientific research/documentation, forward thinking planning based in real facts, and then provided reasonable frameworks for Zoning Regulations.

Starting in December 2019, John Herrin and many others ample verbal and written testimony refuting L & C County the unproven claims of widespread harmful health and safety risks across many thousands of HVPA Rural landowner parcels. The County never produced anything close



to meeting the legally required threshold to prove there is a real relationship (NEXUS) between the need for lot-size density controls (10-acre) and proven health and safety problems that would not allow smaller lot sizes on most areas of the varied environmental landscape of 150,000 +- acres of private property in the Rural SubZone district.

For the past 2 years, L & C County has solely relied on the biased and severely outdated 2015 Updated Growth Policy to justify the 10-acre minimum Lot Size Density Controls – but this document is filled with blatant false narrative claims targeted against only rural property while giving a free pass and therein illegally enriched the County’s favored landowners -- the rapidly growing Urban and Transitional Residential areas that do not have any Lot -size density control restrictions.

In fact, the 2020 Census clearly shows that over 66% of the 2010-2020 growth in the Helena Valley Planning Area connected into Helena and East Helena public water systems which is exactly what the County hired Consultant and County Planners drafting the 2015 Growth Policy Stated was their prime objectives. That happened without the Rural 10-acre minimum Lot-size restriction being formally enacted.

As such, the Rural Zoning Regulations are discriminatory, illegal, reduce rural property values and illegally enrich other landowners, plus they totally lack any county produced scientific and fact-based health and safety crisis foundations that Justify the horrendous financial damages caused to the Tri-county community.)

## Montana Code Annotated 2021

### TITLE 76. LAND RESOURCES AND USE

### CHAPTER 2. PLANNING AND ZONING

### Part 2. County Zoning

#### Awarding Of Costs Upon Appeal From Board Decision

**76-2-228. Awarding of costs upon appeal from board decision.** Costs may not be allowed against the board of county commissioners or the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

[[ JH NOTATION: The 2018 landmark 8-0 U.S. SUPREME COURT Decision Weyerhaeuser versus US Fish & Wildlife Service in the Endangered Dusky Gopher Frog Case Chief Justice Roberts stated “ set aside any agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” as cited by L & C County Consolidated Planning Board Chairman Dr. Gregory Thomas who recommended the Planning Board recommend tabling the 2020 Zoning Regulation targeting only Rural Property for harsh 10-acre and other restriction – until the county hired a consultant to perform the necessary social and economic impact assessments (JH Side Note: and environmental & transportation etc. impact assessments and justification supporting documentations. At fall 2020 BoCC hearing Mr. Herrin stated that the County should budget at least \$400,000 to updating the Growth Policy and producing the necessary environmental, health, safety, development growth patterns and analysis,(etc.. impacts on housing rents and sale prices/land values of Subzones

districts/real estate taxes & values) --of past, present and future County Subdivision and Zoning Regulations, and other MCA mandated documentation and planning requirements ).

In addition – we have a large set of State of Montana decided court case decisions supporting the fact that the county is required to have some valid reasons for imposing harsh restrictions not only on existing landowners protected property rights, but in addition severely restricting and harming existing and future landowners, and associated land development business interests in the entire Tri-County area.

The County must prove there is a valid Nexus between the proposed regulations and taking of private property rights to protect public safety, health or public welfare. The County has been repeatedly asked to prove the case for forcing all private property in the HVPA Rural Residential Mixed-use subzone to be limited to 10-acre average lot size or some documentable public health, safety or welfare threshold would be exceeded.

But the County has steadfastly only pointed back to the severely dated and unfairly biased 2015 Growth Policy as justification without bothering to make any legally defensible justification for the financial and emotional damages being caused by this “one-size fits all” administrative takings action.]]

**TITLE 76. LAND RESOURCES AND USE**  
**CHAPTER 2. PLANNING AND ZONING**  
**Part 2. County Zoning**

**Criteria And Guidelines For Zoning Regulations**

**76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

- (a) made in accordance with the growth policy; and
- (b) designed to:
  - (i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and general welfare {{ L & C County has repeatedly failed to really address the real health, safety and general welfare issues of the County for the 20-30 years, plus targeted rural proposed for harsh and financially damaging Subdivision & Zoning Regulation administrative Actions that are not substantiated in law, or MCA mandates; and



(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the board of county commissioners shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

(d) the character of the district and its peculiar suitability for particular uses; and

(e) **conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

[[ JH Comments: Pure and Simple. L & C County for the past 17 years has purposefully, with malice, and knowingly targeted only rural lands in the County for harsh Subdivision and Zoning Regulations that have severely damaged the business and economic health of the community under the unproven pretense of following the law and making regulatory Zoning and Subdivision regulations beyond the State Standards in order to protect public health and safety.

The Cumulative negative impacts to all rural lands in L & C County – not just the HVPA – could warrant a legal challenge against the such as a class Action lawsuit, given the fact that large portions of the L & C County Zoning and Subdivision regulations appear to be intentionally crafted to harm rural landowners and enrich landowners within or near Helena and East Helena. L & C County in crafting administrative rules that patently discriminate against one group of taxpayers and rewarding another appears to meet the definitions defined under MCA 76-2-228 “**unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision.**”

Starting around 2005, L & C County has enacted a long series of Zoning and Subdivision Regulations with the unstated but obvious intent of slowing rural growth by every means possible to drive up the costs and creating often insurmountable barriers to developing reasonably priced rural land across the entire county. That was the desired intent – slow rural growth and drive more development into the City of Helena that had ample additional water supply and sewage treatment systems capacity. The accepted coined term for the government intervention into free-market systems has been coined “Smart Growth”.

Again the long-series of County growth permitting managers knowingly or unknowingly have perpetuated the constrictive regulatory policies through these long series of Zoning and Subdivision regulatory rulemaking and administrative decisions that lead us to this very point near total financial collapse of our affordable housing market – even displacing two income households, ordinary state worker, hospital staffing, and normal business worker recruitment problems that are getting worse by the month.

L & C County harsh regulatory actions have driving up the costs of every existing tract of land and overall real estate in the entire Tri-county area. Simple supply and demand economic principals explain the last 2 years of explosive real estate prices in the Helena Area – large increase in demand driven

largely by rich out-of-state buyers coupled with the County caused extreme regulatory restrictions placed on all rural subdivisions for the past 17 years has resulted in the massive 25% or higher average real estate sales price run up this past year.

The Helena area currently has less than 15% of the real estate inventory it had just 2 years ago and no way to supply the ever increasing short fall of buildable land. Many area realtors and builders etc. etc. are finding it harder and harder to stay working and are really worried about their future.

Hundreds of citizens, business owners, landowners, real estate trade group representative have submitted more than 2500 pages of written testimony and verbal comments and approximately 90-95% of those comments were in opposition to the County's 10-acre minimum lot size density controls and other harsh land-use restrictions (e.g. only 2 occupied buildings on any property no matter the lot size with agriculture businesses given a free pass).

L & C County's 2015 Growth Policy, all other limited scope documentations, and all public hearings information presented by L & C County affiliated persons, have steadfastly avoided addressing the primary damage illegal Zoning and Subdivision Regulatory damages to the community spanning 17 years. The County failed to address this basic legal Zoning Regulatory State Regulatory mandate to prove and document that the 2020 Zoning regulations and the forthcoming 2022 Zoning Regulations as defined under MCA regulatory requirements:

**Criteria And Guidelines For Zoning Regulations (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

L & C County managers for the past 17 years have repeated failed to retract the harsh regulatory rules and BoCC actions unless legally challenged and even then they regenerate a new approach to future limit rural growth without ever stopping to address this basic Legal MCA mandate to conduct a fair and honest review, process.

A lot of these repeated problems should have been avoided had the County really involved the public in more bottom-up driven planning instead of always dictating policy from the top-down]]

**From:** [John W. Herrin](#)  
**To:** [Greg McNally](#); [Lindsay Morgan](#)  
**Subject:** Zoning Advisory Panel Urban and Transitional Problems and Suggested Solutions  
**Date:** Thursday, December 16, 2021 5:47:25 AM  
**Attachments:** [Dec 3 2021 URBAN Subzone Regs Problems ^LO Solutions.docx](#)  
[Dec Transitional Area JH Issues-Solutions.docx](#)

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

12/16/21

Please pass along these outlined comments for the ZAP committee Urban and Transitional HVPA Subzone areas.

Sent from [Mail](#) for Windows

URBAN Subzone Regulations -- L & C County 2020 & 2021 Zoning Regulations for Helena Valley Planning Area.

The following facts and suggestions should be considered by ZAP and County for addressing growth in Urban areas of Southern L & C County:

I. Facts/Possible Solutions?

A. FACT 1. The number one long-term Health and Safety Issue facing the Helena Valley Planning Area & in particular the City of Helena is the **Wildland Fire hazards especially on western & Southern Forested areas spreading into the city** (see 12/3/2021 Independent Record's article entitled "Wildfire destroys 24 houses in central Montana town").

**Wildland-Urban Interface Possible Solutions to Consider:**

1. County/City/USFS maybe should consider – making **clear cut vegetative break on W & N sides of Upper South Sides of Helena**. Past thinning of forested areas on Mount Helena may not be adequate and actually may enhance the intensity of wildland fires under extreme fire behavior conditions that are every year increasing in severity across the Western US due to global warming driven forces that appear to be intensifying with each passing year.
2. Install **backup generators for key water systems in forested areas in case of NWE power outages**.
3. **Revisit legality of requiring all homes in high and extreme fire hazard areas to complete a County Dictated property fire hazard assessment and implement mitigation measures** (e.g. removing trees near homes, delimiting lower branches, installing fire resistant siding and roofing. (Side Note: All new subdivisions approved in the County have to do these kinds of mitigation assessments and these plans must be approved by local Rural and or city Fire departments plus be approved by CCCPB & BoCC, but everyone else gets a free ride – legal targeting and discrimination issues?)
4. **Add additional fire suppression systems and extensions of existing systems to increase the wildland-urban interface safety net and response capabilities.**

B. FACT 2. The **older sections of the City of Helena and EH Public Water and Sewer Systems are structurally and health deficient**. According to City Engineer Ryan Leland, the County total unfunded reconstruction water system needs exceed \$40 million and only has defined funding source totaling around \$13Million (see November 9, 2021 -- IR Guest View by Sean Logan "Pay close attention to the way Helena allocated ARPA funds). How and when can these shortfalls ever be made up without raising City service fees and increased property taxes?

C. FACT 3. The **Stormwater, Pavement and Roads of Helena and East Helena** are way behind in resurfacing and reconstruction with **no real solutions being implemented to correct the compounding backlog of infrastructural improvements**. Again how & when will funding match needs?

- D. FACT 4. The Cities of Helena and East Helena (see IR 10/1/21 Chamber Commerce Cathy Burwell “East Helena becoming a Boom-town” need to **address the aesthetic shortcomings of all commercial and business requirements because both cities are not planning adequately for remodeling, property upgrades and new construction aesthetic improvements** (Note: Comparison to Bozeman revitalization to Helena/EH is obvious to anyone that visits both communities). Where is the City of Helena and L & C County reforming real estate non-residential aesthetic standards?
- E. FACT 5. L & C County/Cities need to invest considerable resources and time working on significantly **increasing the amount of affordable rental, group housing, single family and condo type housing** to address the massive shortage of lower-medium income wage earners, homeless, workers etc. housing that is hitting all of Montana and especially western Montana communities (see IR 12/3/2021 article entitled “Mt rents outpacing wages” with statements like “Housing prices used to be much lower relative to income.”

2010-2020 Montana saw 10% population growth and only 7% increase in number housing and situation only got worse 2020 and going forward with increased in-migration of equity rich out-of-area buyers . Plus per capita household sizes dropped from 3.7 in 1940 to 2.5 in 2020, and 63% of US households only have 1-2 people, so the need for additional housing is even further compounded beyond just the population growth statistics would forecast.

Given the County’s 17 year track record of adding very restrictive and legally questionable Subdivision and Zoning regulations that unfairly target and limit rural growth in favor of forcing growth into the Urban centers, the end result is severely constricted supply of reasonably priced development land and starter homes (See Helena Association Realtors 11/21 Report to County ZAP indicating 69-93% drop in single family homes for sale).

The extreme drop in supply coupled with big increase in demand has created a perfect storm of increased property values – placing more that 50% of western Montana homes at This severe drop in for-sale land and homes compounded by a significant increased demand and many equity-rich out-of-state buyers, resulted in Helena & Western Montana RE costs skyrocketing over the past 2 years ( Note: Average home value at \$394,500 and increase of nearly 28% in past year -- Source IR 11/25/21 article “Housing crunch hits hospitals hard”)

- F. FACT 6. **Homeless Rates 4-5 Times lower in states with less restrictive land development regulations** (e.g. Tokyo, Houston, Florida) than States like California, New York, Oregon, Washington where heavy handed subdivision, zoning and building permit regulations are artificially restricting supply and driving up development costs (see December 3, 2021 IR Article “Mt rents outpacing wages” and .

**L & C County and the City of Helena definitely fall into the most restrictive of development categories in Montana** – unnecessarily severely restricting rural growth through unrealistic and harmful subdivision and zoning regulations design specifically to increase the costs of rural development in order force more development into the urban centers, but then Helena in particular

has a bad reputation for harsh and inconsistent building code regulations that make the cost of building within the city more than reasonably necessary.

City is **building affordable housing that is less attractive & questionable layouts** on public housing and private developments – e.g. Public Housing Complex west Henderson, and or the Plain Jane -no creativity-no privacy multiplexes recently constructed north of Walmart and at the Custer I-15 interchange.

1. Possible Solutions 1: Raise Property Taxes on existing homes in both communities.
2. Solution 2.: Hold Meetings in Communities to see if citizens can provide meaningful solutions with active participation of businesses and City/County planners or contracted Consultants.
3. Solution 3: Propose bond levee to pay for needed infrastructural improvements & affordable housing based on Community need and public participation meetings/hearings.
4. Solution 4. Consider pay each lower income person/family \$500/month – a new wave of decreasing poverty and homelessness being combated across the Country started in Stockton California (see Facebook post 12/3/21).
5. Solution 5: Tap into waves of State/ Federal Funding coming out in various 2021 Federally funded American Rescue, Infrastructure and Build Back Better etc. legislation.
6. Solution 6: Add additional Community Development Planning Staff and hire contracted professional consultants to make long range planning and Growth Policy/zoning/subdivision regulation updates as required by law. County must hire independent seasoned urban development experts in architecture, planning, and engineering, to help reduce the CR&PD staff case loads, and allow for better and more creative short-, mid- and long-term planning.

**G. Roads within and entering Helena are overriding bottleneck traffic congestion transportation problems in the HVPA and Tri-county area. And L & C has never been ahead of needed transportation network upgrades to meet growth demands.**

Within the HVPA and the Tri-county area --- nearly all traffic delays and long stacks of vehicles occur within the Helena City limits. The major traffic jams occur on the major I-15 exists/entrances, and along all the major State Highway and County roads once they hit the Helena City Limits. Even with major funding by State Highway funds over the past 30 years, the internal road network within Helena has largely remained unchanged and therein limits to capacity leading to major congestion bottlenecks that have and will get worse with time.

Solutions:

- 1) Work in timing synchronization and traffic flow optimizing computer control traffic lights at every major choke point in the systems.
- 2) County must research and secure additional funding Sources to solve transportation problems County wide.
- 3) Plan, fund and build better road network across the entire HVPA . As the September 1, 2014 IR article entitled “Help steer solutions to transit problems” states –2013 traffic shows over 17,000 vehicles crowd Custer Avenue at the Four Georgian School and “ While Helena has fairly good



roads to funnel traffic on north-south directions, the same can't be said for E-W travel". This same theme was in the 2004 & more recent County Funded Transportation Planning reports.

- 4) The County must reverse the anti-rural bias introduced into the Subdivision and Zoning Regulations to allow less restricted decentralized business-residential growth to reduce traffic flows into Helena.
- 5) WHAT has the County done to address vehicular transportation problems → beyond paying small percentages of State Highway funded road improvements? L & C has never bothered to request voters to increase the totally inadequate \$500,000 road maintenance property tax Mill-levy, and yet staff openly admit the unfunded County-road reconstruction/maintenance shortfall is approaching \$50 million or more.
- 6) WHY no public meetings and educational, and infrastructure improvements for HVPA Urban and Transitional Sub-Zones as recommended in 2015 Growth Policy?? With limited planning, fundings, and action efforts the County has never kept pace with growth – and yet Bozeman is showing what is possible with real actions.

Transitional Subzone Regulations -- L & C County 2020 & 2021 Zoning Regulations for Helena Valley Planning Area.

The following facts and suggestions should be considered by ZAP and County for addressing growth in Transitional areas of Southern L & C County (HVPA):

I. Facts/Possible Solutions?

FACT 1. The most problematic long-term issues within the Urban Transitional Subzone area of the valley bottom lands of the Helena Valley Planning Area are:

A. The need for more funding & creative long-range solutions for Infrastructure improvements to accommodate existing and future growth in the lower elevation lands located near to the two urban centers (Helena and East Helena).

1). Public Water and Sewer

- a. Public and Water System Extensions beyond current city Helena and East Helena jurisdictional limits. The City of Helena stated to ZAP panel that they are not actively pursuing the broad reaching extensions of the city limits and supporting infrastructure into the Transitional areas unless the subdivision applicants largely pay the cost to extend public water and sewer.
- b. City of Helena has repeatedly stated that it does not want to add subdivisions to their public W & WW systems without annexation – but that might stop development like 40 Degrees north from connecting into the city water and sewer districts given all the other costs to make a subdivision development meet other building development regulations and costs (e.g. curb & Gutter, street-lights, paving, signage etc. requirements).
- c. Funding Sources are limited within the City of Helena and East Helena and State Grant funding is competitive across the State and Federal funding pipelines. But with additional Federal Money coming out of DC (The Build Back Better and Infrastructure Regulations) , could the County or Cities hire additional staff or contractors to seek out more money sources, including considering increasing county property tax mill levees to with matching Federal/State funds to expand Sewer and Water into the Transitional areas for more concentrated Urban density growth?
- d. County could retain a contractor to investigate the concepts of decentralized public wastewater and water supply systems that might be able to operate under the City or County Water Rights (note: it appears based on IR news articles that City has 2025 Deadline to use existing WR near existing Missouri River Water Treatment Plant and is there any possibility of expanding that WR or supply to a wider net to promote the increased future expansion beyond the limits of the current system.
- e. Given the fact that the underlying Deep Helena Valley Bottom Aquifer is world class and ample water exists to create public water systems for millions of people, is there DNRC Water Rights issues and 10-50 years planning Steps that can be under taken to accommodate the future expansion .
- f. One of the best future moves for future development planning would be to for the County/private funding of tapping into the nearly unlimited valley bottom aquifers and pumping water up to the higher elevation valley fill and mountains storage tanks (like

Wolstein and Saddle Drive Cisterns), allowing tighter development away from the more agriculturally productive valley bottom lands – therein preserving local agricultural producing business and developing homes on the marginally agriculturally productive valley side sloping lands.

## 2. Transportation.

### a. Roads.

- 1) Helena Valley Planning Area has a fairly good system of North South road networks (e.g. I-15 with 5 interchanges, Montana Avenue, Lake Helena Drive, Green Meadow Drive, McHugh and Applegate etc.) but as September 1 2014 IR article “Help Steer Solutions to Transit problems” in announcing public hearings, the statement states “While Helena has fairly good roads to funnel traffic on north-south directions, the same can’t be said for the east-west travel.
- 2) So what has the County done to promote the increased improvements on the valley bottom Transitional areas? The major none-state highway valley bottom road network relies on the underfunded and functionally inadequate network of county roads (e.g. Birdseye Road, Applegate, Floweree-Sierra Roads, Lake Helena Drive, Valley Drive, etc), but most lesser feeder private roads come no where close to meeting the County’s Public Works Design Manual gravel and paved road standards and most of the roads and limited funding allocated for real upgrades beyond basic low level maintenance.