ZONING ADVISORY PANEL PUBLIC COMMENT

Received Between April 9, 2021 (noon) and April 23, 2021 (noon)

From: County_Planning_Mail
To: Thomas, Andrew
Subject: RE: Comment 4.28.2021
Date: Friday, May 7, 2021 2:55:00 PM

Andrew Thomas,

Thank you for additional comments. Our office will share them with the Zoning Advisory Panel members.

Best,

Greg

Greg McNally, Planner III
Lewis and Clark County
Community Development and Planning Department
316 N. Park, Rm 230
Helena, MT 59623
(406) 447-8343 (Direct)
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gmcnally@lccountymt.gov

From: Thomas, Andrew <arthomas@carroll.edu>
Sent: Wednesday, April 28, 2021 12:35 PM
To: County_Planning_Mail <County_Planning_Mail@lccountymt.gov>
Subject: Comment 4.28.2021

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.

Please see attached. Also, I would request that if possible the meeting adhere to its scheduled time and that procedural matters regarding things such as software adoption be addressed at the beginning of the meeting or in some other venue.

Thank you.

--

Andrew R. Thomas

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

Comments, Andrew Thomas, ZAP meeting 4.28.2021

Comment: Requirements for defensible space should be included in any comprehensive plan for the Helena Valley. For example consider: http://www.loscerritosnm.org/ (this could be included in covenants to subdivision plats), https://headwaterseconomics.org/wp-content/uploads/building-costs-codes-report.pdf , https://planningforwildfire.org/project/lewis-clark-county-montana/

Comment: Flexible building materials/design standards should be considered for high fire risk areas.

Comment: Based on the comments of the fire/emergency response people the major issue with fire mitigation appears to be having suitable roads for rapid response. From this it may be worth exploring requiring RID's to improve their roads to be suitable for fire response.

Comment: The ten acre lot size requirement appears to be problematic for developing appropriate infrastructure to respond to fires. Granted rural areas should not be allowed to develop to urban or suburban densities however allowing higher densities than ten acres may help in developing this infrastructure.

Comment: An analysis should be done of the following:

1. The cost of regulation in terms of limiting growth in certain areas relative to potential property tax revenues.

2. The cost of mitigation either public or private while permitting growth in the WUI.

Question: What exists in other communities in terms of programs geared towards expanding emergency services and recruiting first responders?

Comment: With regards to funding emergency services and other rural services it appears to be an issue that extends well beyond land use issues. Specifically, the issues raised appear to invite a much broader discussion of how emergency services etc. are funded. As this issue relates to matters of land use it appears to be the case that a system needs to be developed which applies progressive standards to unincorporated areas. This is very similar to the discussion that was had relative to East Helena on April 14th.

Comment: As this and other issues have clearly noted, we must consider the likely pattern of preferred development in formulating a response rather than relying on simplistic reductionist models of what is "efficient." One interesting example of land use design that considered dispersed suburban or semi-rural planning is Frank Loyd Wright's "Broadacre." See https://paleofuture.gizmodo.com/broadacre-city-frank-lloyd-wrights-unbuilt-suburban-ut-1509433082

From:	County_Planning_Mail
To:	John W. Herrin; Roger Baltz; Peter Italiano; James Swierc
Subject:	RE: March 24, 2021 ZAP Hearing on Groundwater Supply Issues in the HVPA -- Need for County to address how the Groundwater Supply Issues can not be used to Justify All est. 150,000 acres of Private Rural Property for 10-acre Lot Size Restrictions
Date:	Friday, May 7, 2021 2:55:00 PM

John Herrin,

Thank you for your comments. Our office will be sharing them with the Zoning Advisory Panel members.

Best,

Greg

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From: John W. Herrin <2freedomrings@gmail.com>
Sent: Friday, May 7, 2021 12:06 PM
To: County_Planning_Mail <County_Planning_Mail@lccountymt.gov>; Roger Baltz <rbaltz@lccountymt.gov>; Peter Italiano <PITALIANO@lccountymt.gov>; James Swierc <JSWIERC@lccountymt.gov>; Greg McNally <GMCNALLY@lccountymt.gov>
Subject: March 24, 2021 ZAP Hearing on Groundwater Supply Issues in the HVPA -- Need for County to address how the Groundwater Supply Issues can not be used to Justify All est. 150,000 acres of Private Rural Property for 10-acre Lot Size Restrictions

May 4, 2021

ZAP and LLC Landuse Managers

Impacts on Groundwater Drawdown Impacts on Surrounding Emerald Ridge Subdivision properties and the shallow perched water table(s) and deeper bedrock aquifers?

I reading the April 29, RFQ for the County Landfill, I did not see any portion of the contract addressing water supply in the area of the landfill and I don't recall any statements in the original EIS and subsequent reports discussing the Landfills impacts (if any) on the residential development that occurred after the Landfill was permitted and the groundwater withdrawal system to lower local groundwater levels were put into place.

The Site map clearly shows that the dewatering wells under the landfill have lowered local groundwater levels under the landfill, but the drawdown map is old and does not address off-site impacts.

So my question to the County – which is tied into the March ZAP meeting – is to what extent does the County landfill play in the reduced and localized groundwater availability issues that the surrounding Emerald Ridge residential landowers have and will experience in the past, now and moving forward as the landfill footprint expands.

Given the assumption is that the nearer surface localized perched water table of the Emerald Ridge area is experiencing localized and individual groundwater well supply issues, has the county undertaken any studies further defining the supply and water quality issues for this area and further more what factor the Landfill plays into the near surface and deeper aquifer water quality and quantity issues.

I know the deeper bedrock aquifer is about 400-600 feet deep under the area, but the water quality is much worse than the shallower aquifer. It contains some radionuecliatides and has a lot more metals including iron, and as an alternative water supply source for the homeowners to tap into, they would likely want to install some kind of scrubbing systems for that water source.

These issues were not adequately addressed relative to the ZAP committee and what these issues may mean for development that has the Elkhorn volcanic pyroclastic debris flow with some swelling clays that might indicate limited perched groundwater supplies and therefore issue relative to future development and density issues.

North Hills and Scratchgravel Hills MBM&G/DNRC Controlled Groundwater Study Areas.

ZAP and General Lot size density issues that to Date have not been adequately addressed.

As such, has the County identified areas within county where the staff knows for sure should have limited density (e.g. Lot size restrictions) and if so what reports, maps and documentation does the county have to support these projects?

This information should be organized and clearly presented to the ZAP panelists. What was presented to the ZAP committee on March 24, 2021 did not provide the ZAP committee any real insight into crafting zoning regulations nor helping the committee refine the 10-acre lot size issues and really defend the county's position that all Rural property should be restricted to average lot size densities relative to groundwater supply issues.

Although, as several ZAP panelist commented it was very informative, I see no way this presentation helped the ZAP panel come to any meaningful insight relative to the groundwater supply issues for the entire approximately 150,000 acres of private rural property in the Helena Valley Planning area.

Groundwater Supply issues Map Must be produced by County Staff or contracted Consultant(s) in order to Justify 10-acre lot size restrictions and a primary driving force.

The County has not produced any documentation of groundwater supply issues other than generalities of problem areas along the overly high density areas of North Montana Avenue and the other limited near surface area along Emerald Ridge.   The County Staff needs to provide the Zap Committee a concrete map depicting those areas with the rural areas of the County that must be 10-acres or greater average lot size density or that county should deny that subdivision application.

In order for the County and ZAP committee to use groundwater supply concerns as a justification for restricting lot sizes the county/ZAP must have real documentation for support such a restriction – or the county would be subject loosing in District Court litigation going forward.

Should the County chose to conduct additional groundwater modeling to complete this task, then then the Staff must provide a timetable and cost projection in order to complete this task.

Based on my experience in managing EIS teams, writing groundwater and water quality sections of 18 draft and final State of Montana EISs on massive coal and hardrock mining proposals, characterizing small to very large petroleum leak investigations for the Church Universal and Triumphant's 1990 Mol Heron Creek 28 underground diesel and gasoline tank leak debacle, to dealing with 21 years of Subdivision development permitting, my best guess estimate for the cost the County would have to expend to accurately characterize the appropriate lot size density for the estimated entire 150,000 acres of private property in the HVPA would exceed $1 Million dollars and even then the authors could only provide generalized recommendations based on the quality of available data and aquifer/testing uncertainties.

Need for Several Versions of the Past, Resent and future Lot Size Density – Not just 10-acre Non Conforming Use question raised by Tyler Emmert.

At several ZAP meetings Tyler Emmert has requested the County produce and map showing the location and number of non=conforming (?lots less than 10-acres in size?).

Although I see this as being a very critical map to produce, the county should produce multiple maps depicting various information on lot size and density -- and not just for the Rural HVPA property. TO be fair the question should also address the Urban Transition areas in a separate map. By making a map only of the rural property, it appears again the County again targeting only rural property for lot size restrictions.

In addition to making a map of the more than and less than 10-acre property (e.g. None Conforming

Use map), the County GIS and Planning Staff should be characterizing the number and general location of a range of existing lot sizes, not just those that are greater or less than 10-acres.

We need to know have many and the location of lots that can not ever been further subdivided which is a lot of the property along North Montana. We need to know past and present growth trends and anything the staff can produce to show the level and density of growth over time would be essential for everyone involved in planning for the future growth.

2014 District Court ruling Changed the Entire State interpretation of DNRC Exempt Wells – which appears to have dramatically changed Subdivision Growth Patterns across the State and in particular the HVPA. The County has relied on the 2014 growth trends defined in MBM&G/DNRC and the LCC Growth Policy to defend the 10-acre lot size restrictions and target rural property, without current factual information.

We also need to know what the growth patterns were prior to 2014 Note: partially answered in MBM&G/DNRC North Hills and Scratch Gravel Hills Controlled Groundwater Studies) but since 2014, were has the county growth happened and what were the lot size densities?

As raised with the county starting in early 2020 at County sponsored listening sessions, BoCC and Planning Board hearings, the growth trends appear to have dramatically shifted away from more rural development to more and more land development and lots being created nearer to East Helena and Helena than was the case prior to the landmark DNRC 2014 Court Ruling that forced administrative changes in the way DNRC allowed exempt wells to be permitted for subdivisions. After that adverse court ruling, DNRC agrees to limit the volume of groundwater withdrawals under the

Having sat through several Planning Board and ZAP

Sent from Mail for Windows 10

From:	County_Planning_Mail
To:	John W. Herrin; Peter Italiano; Roger Baltz
Subject:	RE: Attention Zap; JH Comments Regarding 2020 Zoning Regulations as Background Information for 12 member Zoning Advisory Panel Public In Revising 10-acre Average Lot Size & Setback Restrictions plus Concepts to be aware of Transitional and Urban ZR.
Date:	Friday, May 7, 2021 2:55:00 PM

John Herrin,

We received your documents and our office will distribute them to the Zoning Advisory Panel members.

Best,

Greg

Greg McNally, Planner III
Lewis and Clark County
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From: John W. Herrin <2freedomrings@gmail.com>
Sent: Friday, May 7, 2021 12:05 PM
To: County_Planning_Mail <County_Planning_Mail@lccountymt.gov>; Greg McNally <GMCNALLY@lccountymt.gov>; Peter Italiano <PITALIANO@lccountymt.gov>; Roger Baltz <rbaltz@lccountymt.gov>
Subject: Attention Zap; JH Comments Regarding 2020 Zoning Regulations as Background Information for 12 member Zoning Advisory Panel Public In Revising 10-acre Average Lot Size & Setback Restrictions plus Concepts to be aware of Transitional and Urban ZR.

Please distribute the attached document to the 12 member Zoning Advisory Panel.

John W. Herrin
406-202-0528
2freedomrings@gmail.com

Sent from Mail for Windows 10

December 2 2018

Justices jump to unanimity on frog case

Unanomus S.C. Ruling

GEORGE WILL

WASHINGTON – Unanimity is elusive in today's America but the Supreme Court achieved it last week. Although the dusky gopher frog is endangered, so are property rights and accountable governance. Both would have been further jeopardized if the frog's partisans in the U.S. Fish and Wildlife Service had gotten away with designating 1,544 privately owned Louisiana acres as a "critical habitat" for the 3-inch amphibian, which currently lives only in Mississippi and could not live in the Louisiana acres as they are now. The eight justices (the case was argued before Brett Kavanaugh joined the court) rejected both the government's justification for its designation, and the government's argument that its action should have received judicial deference, not judicial review.

In his opinion for the court, Chief Justice John Roberts explained that back in the day you could not sling a brick without conking a dusky gopher frog in the longleaf pine forests of coastal Alabama, Mississippi and Louisiana. But 98 percent of those forests have been supplanted by urban development, agriculture and timber harvesting. The frog species, one of which was last seen in Louisiana in 1965, was designated endangered in 2001, when about 100 were found at a single pond in southern Mississippi, where the FWS decided the frogs were at risk of extinction from hurricanes or other natural events.

The frog is, like a well-born Victorian maiden, a frail flower, requiring everything to be just so: The frog needs an "open-canopy" forest with suitable ground vegetation and food supplied if the area experiences frequent fires, and the frog only breeds in "ephemeral" ponds that are dry part of the year, thereby protecting the tadpoles from hungry fish. The FWS designated the 1,544 acres a "critical habitat" even though (1) no such frog has inhabited them for half a century and (2) none could live long there unless the land were substantially modified (e.g., trimming the canopy, producing suitable undergrowth, and experiencing fires that the acres' loblolly pines cannot withstand) and (3) the loss of the acres could cost the owners $34 million in lost timber farming and development opportunities.

Writing in the manner of a schoolmarm whose patience has been sorely tried by a slow pupil, Roberts said: "According to the ordinary understanding of how adjectives work, 'critical habitat' must also be 'habitat.' Adjectives modify nouns – they pick out a subset of a category that possesses a certain quality." The 1,544-acre habitat that the FWS says is essential to preserving the species would be, in its unimproved condition, lethal to the species. So, the case has been sent back to a lower court, which is directed to think long and hard about the meaning of "habitat," and to reconsider its peculiar theory that there is no "habitability requirement" when designating a "critical habitat."

The Supreme Court also rejected an impertinence that agencies of the administrative state invoke when throwing their weight around. It is the idea that courts should defer to an agency when it makes an arguably reasonable interpretation (e.g., that an uninhabitable habitat is "essential" to the existence of a species of frog) of a less-than-clear statute that the agency is administering.

This idea is the crux of progressivism's case for allowing the administrative state to boss us around without judicial review of its bossiness: This state's agencies say that they possess detailed expertise beyond Congress' ken, and courts should bow before the agencies' disinterested wisdom when construing Congress' legislative instructions, however much the instructions' ambiguities leave the agencies with vast discretion. Roberts reminded the dusky gopher frog's friends that courts are commanded by law to "set aside any agency action that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'"

Roberts cannot hope to replicate the achievement of his greatest predecessor, John Marshall, who as chief justice from 1801 to 1835 presided over a court in which approximately 95 percent of opinions were unanimous. However, in the aftermath of the Kavanaugh confirmation circus, and recent presidential ruminations about judicial partisanship, Roberts must be eager to minimize the number of 5-4 decisions, and to achieve unanimity when possible. So it was serendipitous that the frog case involved government overreaching sufficiently egregious to unite Roberts' colleagues behind an opinion that he must have relished writing.

The 8-0 ruling was doubly beneficial. It was a recuperative moment for the court. And it was a chastisement of the administrative state, the government's fourth branch, which is one too many.

George F. Will is a columnist for The Washington Post.

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Lawsuit Against L & C County for Regulatory Taking of Only Rural Property: 11/19/20 L C County Board of County Commissioners voted 3-0 to formally adopt Zoning Regulations Helena Valley.

DATE: November 30. 2020/minor updates 5/7/21, by John W. Herrin (406-202-0528)

General statements of fact:

1) LCC Zoning Regs targeted roughly 150,000 acres of private property in the Helena Valley Planning Area (HVPA) with unfair regulatory controls. On 12/18/20 Rural Citizens Filed Legal Challenge .

2) The Commissioners (BoCC)/planning staff discriminated against rural property owners by ignoring higher-growth sub districts (suburban and urban) in Helena and East Helena. Illegal Constitutional taking claims, and violations of state regulations equal protection and administrative fairness.

3) The planning staff and BoCC refused to provide current growth trends, social-economic impact analyses, or scientific proof that all 150,000 acres of rural property had to be regulated. They determined a density of ten acres or greater must be imposed with grossly unproven claims of cumulative impacts to regional groundwater, deficient rural roads, and wildland fire concerns.

4) The County's only written document repeatedly cited as justification for the harsh rural property restrictions is the severely biased and unprofessional 2015 Updated Growth Policy (HVPA). But State MCA regulations, require the County to outdate a GP every 5 years if the district undergoes major changes or implements major new Zoning regulations. In Court, the County will not be able to defend their ignoring Citizens repeated request to do a Social/economic and regulatory impact assessment that proves they have the regulatory authority to implement these Zoning Regulations.

5) State and County subdivision regulations already reduced the supply of buildable rural land and increased the pace of development in higher density subdivision closer to Helena and East Helena (Note: > 1000 new building lots approved in 2018-2019).

6) The County made no effort to justify added regulatory control through Zoning given the 3 key health safety issues are already adequately addressed under State and County Subdivision Regulations:

- Since 2014 District Court lawsuit ruling limits new subdivision to less than 13 lots or purchase existing water rights. Also DNRC/DEQ/County Sub Regs require detailed site-specific aquifer analysis proving adequate water supply and no-adverse impacts to existing landowners.
- L & C Sub Regs force subdivisions to pay engineering designs and pro-rated share cost to upgrade off-site access- roads to county standards. Given the fact that that County Sub Regs target only new developments to make these costly payments vacates the county's right to target rural property for zoning restrictions. County has >$23Million road maintenance deficit.
- Co. Sub Regs require only new subdivisions to pay the costly high-flow water supply systems, which is illegal exaction when all citizens must contribute the fire mitigation plans via taxes.

6) Although there are localized issues for all three concerns, the fact remains – it is illegal for Lewis and Clark County or State permit agencies (MDEQ & DNRC) to approve new subdivisions that cause major unmitigated health and safety impacts. If regulators did violate the law they could be sued.

7) SO the County's justifications do not make technical, administrative or legal sense. The County's legally required to prove their claims of unacceptable cumulative health and safety impacts and

justification for taking of private property rights across the entire and every blade of grass on 150,000 acres of private property.

8) We will also demonstrate on court, the county ignore the well- reasoned 1800 plus pages of written testimony and hundreds of oral testimony wherein over 90% of these citizen opinions were in strong opposition to these targeted Zoning Regulations.

9) State Regs & Mt litigation Case Law, require the County document S/E Impacts:

- At August 4 Planning Board hearing, Chairman Gregory Thomas presented a four page motion to recommend the BoCC table the Zoning Regulations until County completed a peer-reviewed Social Economic Impact assessment – or the county would be sued.
- This Zoning proposal will have a significant impact on real estate sales in the community, slowing rural property sales and increase the desirability of underdeveloped property within Suburban and urban areas. RESULT: Depressed rural property values and increased value of the Suburban and Urban areas. This is classic **DISCRIMINATION** and illegal "Regulatory Taking".
- Zoning will reduce supply of lower cost building lots & up costs for all land and future housing.
- Average home sales are greater than $300,000. Zone Regs will harm affordable housing.
- Skyrocketing RE values unfairly harm younger & lower income households, forcing them out of state or into un-zoned areas (e.g. Jefferson & Broadwater Co. or Silver City/Canyon Creek).
- Starting Dec. 2019, the County Zoning plan has damaged many Rural RE transactions. Harming surveyors, realtors, builders, trades workers/businesses, and landowners etc. etc. DAMAGES.

12) The county has not proven "legal standing" to take property rights for the "Greater Good" as stated in Montana Constitutional and Administrative law.

13) The commissioners have violated the right to free speech, the right to testify, and the right to know and participate under Article II, Section 8 and 9 of the Montana Constitution.

14) Zoning Regs restrictions on Only Rural Private property include these legally challenged failings :
- Targeting only rural property for 10-acre lot-sizes lacks legal and scientific equity basis.
- 1 primary use (e.g. residential or agricultural) & 1 subordinate accessory building (smaller). Illegally takes away State Rent/Lease income options (>5 buildings)/parcel. State DEQ reviews).
- 35' Max building height & footprint limits Un-enforceable (See 2005 HBIA vs LCC Fire Reg Case).
- Parcels > 10 acres = 25' property-line setback. Not State Standard 10 acres = 10-foot setbacks).
- Imposes County Public Works Street and parking lot standards to property. (e.g. 2 parking spots/home; daycare 1 space/2 employee + 2 parking+1/8 clients; business 4 spaces/1000 sq. ft.; B and B 1 space/rent room+2 for on-site residents; etc. Co has no enforcement authority.

16) County defined boundary lines, but Rural to Suburban illogically cuts land parcels into two Subzones. The county changed Rural Boundary on the Northern limits to exclude cutting lands, but did not do the same for southern boundary. Illegal arbitrary and capricious taking of property ➔ Borders lack factual design, location, and placement (e.g., platted land split in two sub districts)

17) 2018 US Supreme Court 9-0 endangered frog case ➔ was administrative "Regulatory Taking"= 2020 LCC Zoning Regulations takings given arbitrary & capricious regs. Plus discrimination is illegal.

November 19, 2020 L & C County Zoning Regulations – Highlighted Problem Language – By John Herrin 5/7/201

"MCA 2.3.201. Legislative Intent – liberal construction. The legislature finds and declares that public boards, commissions … exist to aid in the conduct of the peoples business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly.

The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed."

Helena Valley Zoning Regulations – November 19, 2020 - Sections 7, 8, 9. – (Partial Abbreviated County Adopted Regulations focusing on targeted Property-Use Restrictions).

701

Intent To provide for lower density residential development (JH Comment: discriminatory & aligns with 16-year regulatory attaches and bias targeting only rural property for harsh unwarranted regulatory controls),

along with an opportunity for continued agricultural activities, within the rural areas of the Helena Valley.

Also, on a limited basis, to provide areas for non-residential uses in balance with residential development and agricultural activities as an

integral part of the community providing essential services **and employment opportunities**.

Non-residential development within this district should be permitted in compact centers rather than in extended strips of development along roadways to provide for orderly development, minimized traffic congestion, and to provide for safe pedestrian movement.

Urban development within this district is strongly discouraged. Expansion of urban development into rural areas is a matter of public concern because of the challenges in satisfactorily addressing the impacts associated with the five key issues identified in the Growth Policy.

Those key issues (fire, water, wastewater, roads, and flooding) along with the potential for conflicts between agricultural and urban activities support the lower development intensity levels of the Rural Residential Mixed-Use zone district.

Development or use of land in this district is permitted only in accordance with the provisions herein.

702 Principal Uses Only one (1) principal use is allowed on each parcel.

The following principal uses are allowable in the Rural Residential Mixed-Use District:

702.01 Agriculture ,702.02 Apicultural, 702.03 Community Residential Facility – Type-I 702.04 Community Uses: 702.04.01 Education Facility 702.04.02 Library 702.04.03 Open space/trails 702.04.04 Park 702.04.05 Public Facilities (without outdoor training) 702.05 Day-care Facility 702.05.01 Adult Daycare 702.05.02 Family Daycare 702.05.03 Group Daycare 702.06 Forestry 702.07 Horticulture 702.08 Residence 702.08.01 A single dwelling unit residence per parcel 702.08.02 A two – dwelling unit residence per parcel 702.09 Septic Waste and Domestic Sludge Application. 7 - 3 702.10 Silviculture 702.11 Telecommunication Facility 702.12 Temporary Use 702.13 Utility Site 702.14 Worship Facility.

703 Accessory Uses.

Each permitted accessory use shall be customarily incidental to the principal use (?) established on the same parcel; be subordinate to and serve such principal use; be subordinate in area, extent, and purpose to such principal use; and contribute to the comfort, convenience, or necessity of users of such principal use.

The following uses shall be allowed only when a principal use has already been established on the parcel:

703.01 Accessory Uses and Buildings

703.02 Home Occupations, in compliance with Section 16, of these Regulations.

703.03 Temporary Uses, in compliance with Section 15 of these Regulations.

704 Conditional Uses The following uses are permitted, upon approval of a Conditional Use Permit (CUP) by the Board of County Commissioners (BoCC), in accordance with Section 14, of these Regulations:

704.01 Airstrip etc. etc.

705 Special Exception Uses

The following uses are allowed in addition to an established principal use, an accessory use, or conditional uses:

705.01 Agricultural

706 Minimum Lot Area

The following requirements of this Section 706 shall become effective and in full force and effect June 1, 2022. The minimum parcel size shall be ten (10) Acres.
????

However, in order to permit creative and environmentally sensitive site design, smaller parcel sizes may be permitted through the use of a Cluster Design as detailed below.

706.01 Cluster Lot Design

The purpose of this section is to encourage alternative design techniques that efficiently make use of land and water resources; protect environmentally sensitive areas, natural features and soils of agricultural importance; and promote cost savings in infrastructure development and maintenance.

Clustering development allows for the creation of lots smaller than the minimum lot sizes established in these Regulations (?), with the balance of the property maintained in open space.

706.01.1 The minimum size of parcels to be developed is the effective minimum size allowable under the Administrative Rules of Montana adopted by the Montana Department of Environmental Quality under Title 76, Chapter 4, MCA.

706.01.2 Apart from any parcel that will remain as undeveloped open space, the maximum size of each parcel to be developed in a cluster development is two (2) acres.

706.01.3 To reduce the potential for groundwater depletion due to the concentration of wells, the maximum number of parcels to be developed in a cluster development is ten (10). Additional non-clustered lots can be included in a subdivision plan for a cluster development to achieve the maximum density allowed under the Rural Residential Mixed-Use District as shown in Figure 1.

706.01.4 The minimum amount of land preserved in a cluster development is equal to the base density of ten (10) acres per parcel, minus the area in new lots planned for development. For example, an 80-acre parcel can be divided into eight (8) lots (80 acres ÷ a base density of 10 acres per lot). In the eighty (80) acre example below in Figure 1, each of the eight (8) cluster lots is one (1) acre in size as allowed under DEQ rules for water and wastewater. The 9th parcel, seventy-two (72) acres in size, is to be preserved as open space and/or a resource use(s). Under this development scenario, approximately ninety (90) percent of the parcel is maintained in open space, and the need for road construction is minimized.

The one hundred sixty (160) acre example below in Figure 1, shows a second example of development of a one hundred sixty (160) acre parcel. A one hundred sixty (160) acre parcel of land can be divided into sixteen (16) lots planned for development (160 acres ÷ a base density of 10 acres per lot).

Each of the ten (10) cluster lots (the maximum number of cluster lots allowed) planned for development is two (2) acres in size. An added six (6) non-clustered lots of ten (10) acres each are allowed on the parcel being subdivided to achieve the full development potential of the quarter section of land. The 17th parcel, eighty (80) acres in size, is to be preserved as open space and/or a resource use(s). Under this development scenario, approximately half of the parcel is maintained in open space, and the need for road construction is minimized.

Numerous other combinations and configurations are possible so long as they comply with the provisions for cluster development and the density restrictions.

707 Maximum Gross Density.

The following requirements of this Section 707 shall become effective and in full force and effect June 1, 2022.

The gross density shall not exceed one (1) Parcel per ten (10) Acres.

708 Minimum Setbacks (see 708.04 for non-conforming parcels)

The following requirements of this Section 708 shall become effective and in full force and effect June 1, 2022.

708.01 Principal Use: (also apply to Special Exception Uses)

Front: Twenty-five (25)feet.

Side: Twenty-five (25) feet.

Rear: Twenty-five (25)feet.

708.02 Accessory Use:

Front: Twenty-five (25)feet.

Side: Fifteen (15) feet.

Rear: Fifteen (15)feet

710 Building Height

Maximum building height: thirty-five (35) feet

712 Parking Standards

All non-residential parking requirements shall be as established in the Institute of Transportation Engineers (ITE) parking standards established in that document entitled "Parking Generation Manual, 5th Edition, 2019" or as otherwise set forth herein. All calculations are rounded up to the nearest whole number. The following minimum number of off-street parking spaces shall be provided under this zoning district: etc.

713 Lighting Standards

It is the purpose and intent of these Regulations to encourage lighting practices and systems that will minimize light pollution, glare, and light trespass, while maintaining nighttime safety, utility, and security.

SECTION 8 SUBURBAN RESIDENTIAL MIXED-USE DISTRICT (SR)

The Suburban Residential Mixed-Use Zone District is hereby adopted. Its boundaries are as depicted on the Zoning Map. Detailed regulations to be adopted with a future amendment.

SECTION 9 URBAN RESIDENTIAL MIXED-USE DISTRICT (UR)

The Urban Residential Mixed-Use Zone District is hereby adopted. Its boundaries are as depicted on the Zoning Map. Detailed regulations to be adopted with a future amendment.

NANCY SWEENEY
CLERK DISTRICT COURT
FILED BY K. RASMUSSEN
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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

MICHAEL J. FASBENDER, JOHN W. HERRIN, and JOHN AND JANE DOES 1-25, Plaintiffs, v. LEWIS AND CLARK COUNTY BOARD OF COUNTY COMMISSIONERS, DEPUTY COUNTY ATTORNEY K. PAUL STAHL, and CHIEF ADMINISTRATIVE OFFICER RON ALLES, Defendants.	Cause No. BDV-2006-898 **ORDER ON DEFENDANTS' MOTION TO DISMISS FOR MOOTNESS**

This case arose from the enactment of interim zoning regulations by the Lewis and Clark County Board of County Commissioners (BOCC) on or about December 12, 2006. Plaintiffs' eighteen-page complaint was filed on December 18, 2006. On March 19, 2007, this Court issued a preliminary injunction against the interim zoning regulations due to a procedural violation in their adoption. The Court held that Sections 8 and 9 of Article II of the Montana Constitution were

1 violated in the enactment of the interim zoning regulations because at the time of the
2 hearing on the enactment of those regulations, Plaintiffs did not know of the BOCC's
3 justification supporting the enactment of the regulations.
4 Later, on May 15, 2007, the BOCC passed new zoning regulations
5 replacing the regulations adopted on December 12, 2006. Shortly thereafter, Plaintiffs
6 filed a petition of appeal on June 11, 2007 in Lewis and Clark County District Court
7 Cause No. BDV-2007-430. Subsequently, on October 23, 2007, this Court issued its
8 Order on Cross-Motions for Summary Judgment. The Court held: "In enacting the
9 interim zoning regulations, the County was not required to go through the procedural
10 requirements set forth in Section 76-2-205, MCA, in light of the fact that the County
11 provided opportunity for a hearing after having given notice of its proposed interim
12 zoning." The Court went on to hold that "The County's process leading up to the
13 adoption of the permanent zoning on November 16, 2006, is declared to be void for the
14 failure of the County to fully comply with all of the notice and advertising provisions
15 of Section 76[]-2-205(5), MCA." Thereafter, on December 11, 2007, Defendants
16 moved to dismiss this case on the basis of mootness. A hearing before the Court was
17 held, and the matter is now ready for decision.
18 In Shamrock Motors, Inc. v. Ford Motor Co., 1999 Mont. 21, 293 Mont.
19 188, 974 P.2d 1150, the Montana Supreme Court discussed the matter of mootness. In
20 that decision, the court noted: "A matter is moot when, due to an event or happening,
21 the issue has ceased to exist and no longer presents an actual controversy. A question
22 is moot when the court cannot grant effective relief. If the parties cannot be restored
23 to their original position, the appeal becomes moot." Id., ¶ 19 (citations omitted).
24 In order to determine whether this action is moot, the Court must go
25 through the various allegations of the complaint. It is clear that much of the complaint

1 is moot. For example, a good portion of the complaint was spent on what Plaintiffs
2 call the "Ag/Forest protest" procedure. This Court has already ruled on the County's
3 process in this regard, and nothing remains to be decided in that arena. However, the
4 Court concludes that some portions of Plaintiffs' complaint are not moot and should
5 proceed ahead.

6 Count One is denominated a declaratory judgment action. Reviewing
7 Count One, it appears that most of Count One concerns the "Ag/Forest protest."
8 Obviously those matters are moot.

9 There are other requests in Count One that deal with matters other than
10 the "Ag/Forest protest." For example, in paragraph 58 of the complaint, Plaintiffs seek
11 declaratory ruling as to the "*Bryant* Rule." This Court has already ruled on the
12 County's compliance with the "*Bryant* Rule" in its previous Orders, and this portion of
13 Count One is also moot.

14 Next, Plaintiffs seek a declaration of the unconstitutionality of Section
15 76-2-206, MCA (2005). This Court concludes that this portion of Count One is moot
16 as well, since Rule 24(d) of the Montana Rules of Civil Procedure requires that when a
17 party raises the constitutionality of an act, the Montana Attorney General shall be
18 notified. Here, the Court realizes that Plaintiffs did file a notice to the attorney general
19 on or about February 13, 2008. That is much too late. Rule 24(d) requires that the
20 notice "be given contemporaneously with the filing of the pleading or other document
21 in which the constitutional issue is raised." Here, the attorney general was not given
22 notice as to the challenge to Section 76-2-206, MCA, when the complaint was filed
23 with this Court.

24 The next claim for relief in Count One is for a declaratory ruling that the
25 interim zoning regulations is void for unlawful enactment. The Court concludes that

this request for relief is also moot. This Court has already ruled on the procedure the County used in enacting the interim zoning regulations, and the Court has issued a preliminary injunction against the enforcement of those regulations. The regulations have now been replaced and formally rescinded by the County. This Court's declaration that the old interim zoning regulations passed by the County on December 12, 2006 are now null and void would only drive an extra nail into the already well-nailed coffin of the interim zoning regulations that were passed on December 12, 2006.

Thus, this Court concludes that Count One of the complaint is moot. However, in looking at Count Two, the Court concludes differently. Although much of Count Two focuses on the protest of the proposed zoning, there are issues therein that still remain. For example, in paragraph 64(B)(9), Plaintiffs complain about their failure to receive the requested information within a reasonable amount of time prior to the hearing on December 12, 2006. In the prayer for relief for Count Two, Plaintiffs seek injunctive relief, which is moot, but they also seek, in paragraph 65(B), monetary damages. The monetary damages, if any, would have to be limited to the time period between December 12, 2006, and March 19, 2007, when this Court issued its injunction. While it is certainly true that this is a short period and Plaintiffs may not be able to prove that they were damaged during that period of time, this Court has not addressed the damage issue and cannot say that Plaintiffs could not recover anything in this regard.

In Defendants' brief, they suggest that the complaint does not set forth a dollar amount of damages. All Plaintiffs have to do, however, is to set forth a plain statement of the relief they seek. While Plaintiffs' eighteen-page complaint is certainly detailed, there is no legal requirement that Plaintiffs set forth a dollar amount of the

1 damages they are seeking. To the knowledge of this Court, Defendants have never
2 requested such information, which they are entitled to do. However, the Court cannot
3 conclude with nothing before it that Plaintiffs are not entitled to any damages.

4 Thus, the monetary damages portion of Count Two is not moot.

5 The same analysis applies to Count Three. Plaintiffs' request for
6 injunctive relief is moot, but, again, they are seeking monetary damages for alleged
7 violations of the Montana Constitution. Again, much of Count Three is moot,
8 especially those portions dealing with the much discussed "Ag/Forest protest."

9 Count Four alleges an abuse of discretion. The Court concludes that the
10 declaratory relief sought as to Count Four is moot, but, again, the monetary damages
11 allegation is not and should be allowed to proceed forward.

12 This Court realizes that the window for the monetary damages Plaintiffs
13 must be able to prove is a short one, that being from December 12, 2006, to
14 March 19, 2007, when this Court enjoined the enforcement of the regulations.
15 However, nothing has been shown to this Court, at this stage of the proceedings, that
16 Plaintiffs should not be given the opportunity to present whatever evidence they may
17 have that they were, in fact, damaged during that time period.

18 Therefore, the Court hereby ORDERS, ADJUDGES, AND DECREES
19 as follows:

20 1. Count One of Plaintiffs' complaint is moot.

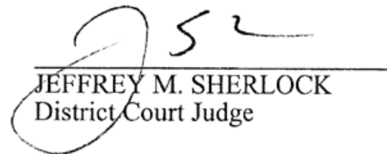
21 2. The requests in Counts Two, Three, and Four for injunctive or
22 declaratory relief are moot.

23 3. The claims for monetary damages in Counts Two, Three, and
24 Four are not moot, but are limited to the time period of December 12, 2006, through
25 March 19, 2007.

4. All matters already decided by this Court by its Orders of October 23 and March 19, 2007, are moot.

5. All matters in the complaint seeking redress based on the "Ag/Forest protest" are deemed to be moot.

DATED this 13 day of March 2008.



JEFFREY M. SHERLOCK
District Court Judge

pcs: W.A. (Bill) Gallagher
K. Paul Stahl/Jeff Sealey

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MICHAEL J. FASBENDER, JOHN W. HERRIN, and JOHN AND JANE DOES 1-25, Plaintiffs, v. LEWIS AND CLARK COUNTY BOARD OF COUNTY COMMISSIONERS, DEPUTY COUNTY ATTORNEY K. PAUL STAHL, and CHIEF ADMINISTRATIVE OFFICER RON ALLES, Defendants.	Cause No. BDV-2006-898 **ORDER ON DEFENDANTS' MOTION TO AMEND ANSWER**

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Defendants have moved the Court to allow them to amend their answer. The Court will allow the amendment since it does not appear to prejudice Plaintiffs in any way.

The three proposed amendments are:

1. Allegations relating to monetary damages fail to state a claim upon which relief can be granted.

2. Allegations relating to the constitutionality of Section 76-2-206, MCA, have not been properly noticed as required by Rule 24(d), M.R.Civ.P.

3. The complaint fails to state a claim upon which relief can be granted.

The second item in the proposed amended answer is now moot, since the Court previously ruled that proper notice was not given to the attorney general on the constitutional question.

The first and third amendments will be allowed. Again, the Court does not feel this prejudices Plaintiffs in any way, since the Court, as noted in an earlier Order, does not feel that Plaintiffs were under any obligation to present a dollar amount of damages in their complaint. Rather, it is up to the Defendants to ask for a statement of damages pursuant to Section 24-4-312, MCA.

The Court hereby ORDERS, ADJUDGES AND DECREES that Defendant's motion to leave to amend answer is GRANTED, except that those portions of the amended answer dealing with the constitutionality of Section 76-2-206, MCA, will not be filed as the matter is moot.

DATED this 13 day of March 2008.

JEFFREY M. SHERLOCK
District Court Judge

pcs: W.A. (Bill) Gallagher
K. Paul Stahl/Jeff Sealey

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Social-Economic Impact Analysis

2020 L & C County Zoning Proposal 2/29/2020 by John Herrin.

1. Economic Costs – Simple Math Calculation Damage to Rural Property – Takings.

Note: Source of Basic Land Sale Values came from Tim Moore of Moore Appraisal 12/28/2019.

Dry Land Agricultural Sale Price = $300/acre. Confirmed by 2/18/2020 Verbal Testimony by Mark Dehl at L & C County Board of County Commissioners Hearing on Zoning Proposal.

A low end average land price for 10-20-acre size lots in HVPA = $5,000/acre. Added value if 1-2-acre lots sold for home sites would likely be $37,500 to $85,000/acre.

- Given the fact that most land or builders buy land based on the number of homes that can be built on a property – with Zoning future land buyers will primarily looking at one home per lot and only pay a little more money for additional acreage. So whereas a buyer might pay $75,000 for a one-acre lot, they might only pay a little more if any for the added acreage in a 20-acre tract – especially if there suddenly are a lot of 20-acre tracts on the market. Under zoning the additional acreage really does not add much if any added value to the property.
- And most rural property buyers do not want a 10-20 acre size lot as it is too much land for them to maintain or keep weeds under control. As a general rule, most rural land buyers want land sizes from ¼ to 2 acres in size and any lot size greater is not what most landowner want or need.

Rough calculation of the amount of rural land in the HVPA = about 150,000-acres and assume 40,000-acres already divided into 10-acres lots on average. Leaves about 110,000-acres that could be future divided.

A. Potential Total Land Value 2020 Takings Claim Scenario #1.

Low end calculation damage in lost value if large agricultural tracts were zoned 160-acres or larger. $5,000-$300= $4,700 . $4,700 X 110,000 acres = **$517,000,000 dollars lost in value.**

B. Potential Total Land Value 2020 Takings Claim Scenario #2.

Another way to calculate lost value was given by John Navotney (2/18/2020 BoCC Zoning Hearing) backed up by another ranch/farmer -- stating the fact that their Loans with Banks could be cut in half their land value if the land was zoning by the county (equal to creating a conservation easement on the property). Under zoning, area banks would likely cut agricultural credit-lines in half (Note: which seems overly generous). Mr. Navotney also indicated that he paid more than the value of two adjacent tracts of land to add to his business, because it had more value than agricultural production would justify and if the bank cut his loan ability in half he would have to come up with $200,000 in operating capital that he does not have,

Assuming an average per-acre undeveloped lot at $5,000 X 50% = $2,500 in lost value.

Damage calculation using this alternative calculation would result in $2,500 X 110,000-acres = $275,000,000. Based on 50% lost vale for conservation easement.

C. Potential Total Land Value 2020 Takings Claim Scenario #3 – higher density rural land development.

And if the land were developed into higher density lots for resale to future home buyers, the damage to the landowner/developer would be significantly greater than $2,500-$4,700/acre.

Using the lower end value of medium density development enhanced property lost value could be $50,000/acre X 110,000-acres = $5.5 Billion dollars.

If the total end value of an acre of land were more (e.g. in higher density development) the total could be even higher.

Now all these simplistic calculations assume that every acre of land in the County's Rural designed HVPA area would be developed to a higher value -- and would not happen.

Each and every person in the rural areas would have to go to court to prove real damages and hire experts to determine the actual damages. Which would be a huge burden on the citizens, and the county creating a lot of wasted negative energy and expense for everyone, However, we should note, that if county lost in court (a high probability), then the court award plaintiff's additional damages including legal and court costs.

But what **these simplistic calculations do underscore is the general scope land that is being impacted and the scope of real-life damage this Zoning plan could have on business owners and property owners.** It also underscores the potential cumulative impacts lot size restriction could have by withdrawing land value and the future opportunity for normal growth patterns in the community.

Basic economic theory states for every dollar spent in the community compounds 5 fold as it travels through the community. So any money taken out of rural property owners, builders and trade associated trades people is money taken out of the community, with compounding negative impacts to everyone living and working here.

The county estimates that roughly 22,000 people currently live in the estimated 150,000 acres of rural land which equates to about 8,800 homes

(Note: John Herrin asked for but has not been given housing or population estimates for any of the three major rural property classifications).

Beyond just agricultural business landowners impacts, the Zoning proposal would likely significantly reduced the overall value of all current or future rural property and the negative property loss more than likely would in large part correlate with the size of the land underlying it. Larger land tracts would be more impacted than smaller ones, and lands closer to the county "Sweet Zone likely impacted the most.

Also the larger the tract size the county Zoning dictates (e.g. 10, 20, 160 -acres) the more negative the impacts would be on the underlying land value,

In a large extent, more recent land purchases would be the most vulnerable to adverse damages given their respective mortgages would likely be higher and the price of the purchased land higher.

Most recent larger tract Non-agricultural landowners purchased land with inflated property values based on the potential future value of the land were to be subdivided. Under the County large tract size Zoning proposal, the inflated prices of more recent purchases likely would not be recoverable in the short or long -term. In some cases this could put new land purchaser's in a financial bind with their lenders or in real terms especially if the market value of rural land greatly depreciates as is expected under this Zoning proposal, Future financial gains when the large tract lands are resold may not even recover the purchasers original investment when profits were almost assured without Zoning.

How many existing landowners would lose value would generally depends on the size of the property they own and the physical characteristics of the property. Many of these existing landowners with larger tracts of land, would like see the most significant drop total value.

These basic **damage calculations also help put into perspective County maybe subjecting the taxpayers and citizens to the risk of protracted legal actions and possible costly damage claims if the 2020 Zoning plan is adopted with large tract size restrictions** on rural property. The County and tax payer do not have large sums of money sitting around to defend legal actions and possibly of having to pay the legal bills of plaintiff's plus settle damage claims if the courts rule against the county on the 2020 Zoning plan to severely restrict lot sizes only on rural property in the HVPA.

2. Secondary Economic Impact of Large Tract-Size Rural Zoning on Overall HVPA Economy.

With the large -tract size restriction only on rural property, the overall growth in the Helena Valley Planning Area will be greatly surprised going forward and significantly lower future economic growth of the HVPA.

Additional damage would occur to future generations of landowner as land values climbed significantly in the Sweet Zone (driving up future home purchase prices) and land values in rural areas remained severely depressed.

And additional Economic damage would occur to overall HVPA economy as almost no rural building would be occurring on 90% pf the available undeveloped land of the HVPA. The economic impacts include a wide range of small to medium size local business such as home builders, realtors, construction trade contractors, and all Helena area business large and small.

There is no easy way to calculate the secondary impacts of this county proposal and it is beyond my limited knowledge to even venture an estimate other than to say this plan would have a very significant reduction in the future growth of the HVPA and as such a significant reduction in economic growth of the community for as long as the Zoning Lot Size restriction stand in place.

3. Other Social and Economic Impacts.

- **Schools and County Taxes.**

Recent Independent Record news articles state that the Helena school district is about $1,000,000 (Helena IR 1/29/2020) in the red and must layoff a large number of teachers, and support staff plus find other ways to trim the school district budgets to make up fir budgetary shortfalls, The primary reason is that construction of a new elementary and high school in East Helena.

But the Zoning proposal will remove a large portion of future tax income to the county and both East Helena and Helena school districts.

Taking 90% of the available land out of the future growth of the HVPA, will have significant the impacts on all future county tax revenue income into the county. The county staff are the correct party to do such an economic impact analysis, but to date the County Planning Staff and BoCC has refused citizens request to consider completing an economic impact assessment even on very basic level so it is not possible to quantify the impacts beyond a simple statement that they will be significant.

- **Cost of Land Will Increase in HVPA with Proposed Rural Zoning.**

- The cost of land in rural areas will be severely depressed as noted above.
- Land value within the L & C County targeted "Sweet Zone" (L & C County's Urban, Mixed Urban and Mixed transition) will have to go way up.
- Current undeveloped landowners will have an immediate and significant increased land value as soon as the L & C County Zoning proposal is passed.
- Prices in County Targeted "Sweet Zone" would like go up at least 10% or more that over time the increased value would greatly increase the rate the same property would have increased without Zoning.
- Fact is there is not that undeveloped land left in the county's Targeted "Sweet Zone" -- rough calculation <10,000 acres), over time this very limited land supply will begin to compound land and ultimately home priced forcing more and more people to live in Condos or apartments.
- As indicated, as land prices march upward the average size of lots will have to greatly decrease – so much for living the dream of owning land in the Big Sky State.
- Currently, the average price of Helena homes the past two years was close to $300,000 and not that many years ago the average price was around $250,000. With the Zoning Proposal, the average price is bound to go way up and therefore more county residents will be forced to live in condos, apartments or public subsidized housing.

- Affordable housing is now called homes costing less than $250,000 however most of these priced homes are smaller, many need remodeling and generally have hidden costly repair problems down the line. And less and less young people and people on fixed income can afford a mortgage on a $250,000 home and one that needs work.

  - **Lack of and Need For Affordable Housing**

- More apartments and public housing would have to be built to accommodate those citizens that could not afford to buy homes.

- 11/23/2018 IR article entitled "Employees need affordable housing" and further states "People come from Billings and Butte to work for me but can't find anywhere reasonable to live" says Terry Gauthier owner of 2 McDonald's restaurants. "Lack of people to hire impacts subcontractors, such as plumbers and electricians, more than anything else. He said waiting for subcontractors to have time for a job often adds one to two months to a house project. He could build three more homes per urea with more readily available staff." says Chuck Casteel, owner of Casteel Construction.

- The lack of employees and affordable housing is costing home buyers more money for completed housing which in turn hurts the community with higher housing costs --were additional quotes in the IR article attributed to Donna Durkel (Helena Building Industry Association).

- In Missoula housing prices jumped 30% from 2010 to 2018, but wages have not kept pace for most wage earners (IR May 6, 2018). And the percentage of income dedicated to housing increases dramatically opposite the amount people earn, making housing the largest cost to most lower income earners. Discretionary funds evaporate which leads to household instability, plus social and emotional household stress and costs to society.

  - **Growth is Limited by County Regulations**.

- Overly Restrictive Subdivision and Zoning Regulations do have a large impact on land and home prices, but with a huge influx into Montana from out-of-state buyers with large equity positions, the real estate markets are not currently severely limited by price.

  The lack of supply of affordable land in Helena is future documented in other reports cited below and the County's Zoning Plan will only severely compound the supply restriction and upward spiral of housing costs in Helena.

  As a factual backdrop lets look at the basic real estate market of western Montana and in particular the Helena RE market. In western Montana real estate has seen a impressive rise at over 4% -- rising at a rate of 30% since 2013. Bozeman tops the charts at 55% growth rate (11% a year). Helena by contrast Helena real estate price increases lagged behind the average at 16% from 2013-2018, an average annual growth rate of 3%.

  "Helena's economy continues slow grow" (IR 1/30/202) article states wages in L & C County remained flat from 2016-2018, and then spiked to 5% in 2019 largely due to

legislative cuts that impacted the 53% of the local job pool of state workers from 2017-2018.   Predicted economic growth in for Helena in 2020 is 2% and 1.6% thereafter. In 2019 the work force in the County topped 34,596 people , a gain of 494 (1.4%) workers in 2019 (Source Cathy Burwell CEO of Helena Chamber of Commerce).

The main factor driving up real estate costs faster than wages, is the influx of cash-rich out-of-state buyers driving up the demand for more land and more single family housing. In recent years more out-of-state buyers are now looking at Helena are real estate market after they visit the higher priced markets of Bozeman and Missoula, looking for the rural smaller city lifestyle but still being able to afford a home with the desired ammenities.

Unfortunately, as stated above, too many long-term residents and those living on fixed incomes (elderly and lower wage earners) are being squeezed out of the home market and into rentals and public housing by the steady increase in land and home prices.

And even so, the UoM Bureau of Business Economic Research (2018) did note that the average home sales price from 2013-2018 for L & C County was less than the average for the major cities of Montana at 16% (3% a year), large attributed to "Part of the difficulty in building more in Helena is the lack of available lots and high costs of lots that could be available for builders" .

Since 2005 L & C County administrative and revised subdivision regulations have limited the availability of reasonably priced lots as the UoM researchers recognized in their report.

It is easy to document costly subdivision regulations L & C County adopted in 2005-2008 that remain in effect to this day. Starting back in 1994 with a proposed zoning plan restricting rural growth -- that solidly opposed by the citizen and finally culminating in this large tract restriction Zoning plan of 2020.

It has long been my contention, that the L & C County Community Development and Planning Department and a long series of elected Board of County Commissioners have viewed rural growth as a problem that warrants limitations. To those means it would appear that these county managers decided the best way to slow rural growth is to incorporate costly regulations or take administrative actions (e.g. $8,000,000 off-site road lawsuits) to increase the cost and limit the spread of rural subdivisions.

And collectively these regulations have slowed and limited where rural growth occurs in this county resulting in limited supply of affordable and available building lots in the HVPA. The county mandated health and safety requirements intended to limit the extent of and amount of rural growth included the following costly subdivision application requirements and now pending Zoning lot size restrictions:

- On-site fire water supply storage/wells.
- Two access/egress roads into all subdivisions.
- 2007-2009 Interim and Emergency Zoning forcing all new rural individual septic systems to meet the highest Level II treatment level costing $20,000

- Forcing all new subdivision to pay 100% cost to upgrade off-site roads.
- 2020 Zoning Regulations Rural property lot size restrictions;

These added costs are somewhat unique to L & C County subdivision regulations and as stated were incorporated to driving up rural property and overall real estate costs/prices. Specifically;

- o L & C County requires all new subdivision developments to install on-site fire suppression storage whereas existing rural homes and community don't have to have any such fire water storage/supply (a takings legal argument that no one yet has challenged). Although the access to and maintenance hundreds of on-site storage/well fire suppression systems rests with the rural fire districts, they are not maintaining most of them nor will they allow their equipment use these unmaintained sources in the event of a wildland fire. The added the cost to each new lot created HVPA is generally ranges from $5,000-$10,000. With no real benefit and long-term liability to the county.

- o L & C County also requires two roads into all subdivisions (A unique requirement to L & C County) and both roads must be constructed to current county road design standards. A prime example of a huge block of very expensive real estate with only one road in is the Big Sky Ski and Recreational resort. This major and Billions of dollar in real estate area only has one road and it is very steep-sided so if blocked no one goes in or out.

  So why does L & C County require two entrances? Their rational is for safety of landowners and EMS during a fire and if one road is blocked, then the secondary route is needed to protect life and property. However, <u>using that rational Big Sky Resort should not exist. Older subdivision in Helena and Montana should be condemned or redesigned if this is a real safety threat.</u> Nor should millions of acres of developed land in Montana, all across the US or the world where only 1 road enters a group of homes.

  Locally the Great Divide Ski area cannot be developed for a subdivision development despite the fact that the US Forest Service granted federal land for a community drainfield to Kevin and Nilla Taylor (35-year owners of the GDSR), but because of this county's unique two entrance requirement prevented them from developing the property.

  This situation is not unique to the Marysville road area, for there are many rural roads all across the county were only one main road reaching huge swaths of rural land.

  It would appear to anyone objectively looking at this two egress/ingress requirements of L & C County managers, the county main purpose for the two entrance requirement it to meet their unwritten objectives ----
  - slow or severely impede all growth in rural areas of L & C County,

    - driving up rural property costs and thereby force more people to live near Helena and East Helena
    - encourage growth in under-utilized city Helena & EH wastewater and water systems.

- Zoning if adopted would as discussed above have major, far-reaching and long lived impacts to the entire community. So in summary, regulations absolutely do negatively impact growth, negatively impact affordable and all housing prices thereby impacting households at all income levels.