

ZONING ADVISORY PANEL PUBLIC COMMENT

Received Between June 4, 2021 (noon) and June 18, 2021 (noon)

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

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

From: [John W. Herrin](#)
To: [Peter Italiano](#); [Greg McNally](#); [Roger Baltz](#)
Subject: ZAP Committee June 8 2021 Comment Letter & Request Update On LC SubReg RFQ & Progress Report,
Date: Tuesday, June 8, 2021 2:32:12 AM
Attachments: [May 16 2021 JH 4 pg Letter to ZAP with 2020 ZoneReg Lawsuit Doc.docx](#)

Attached Please find latest comments for ZAP committee. I missed last hearing, but comments based on last three technical issues professional specialists presentations.

The plan is attach a copy of this letter to ZAP and CD&PD staff to be added to the projected had delivered Montana First District Court Filing documents filed on December 18, 2020. This 32 page legal Complaint with 26 pages of attachments is requested to be submitted to the ZAP committee for their careful review and open discussion relative to the merits of the landowner and business interest of rural land development that have and will be harmed by BoCC adopted November 19, 2020 Zoning Regulations.

In addition the attached 4 page comment letter to the CD&PD and ZAP committee should be copied or electronically forwarded to each member for consideration.

Also I have not seen any post updates on County Website or public announcements regarding the status of the very important Subdivision Regulation RFQ that originally went out in February , with not companies responding to the limited announcements. Please provide specific updates on all major progress the county has made in securing such consulting services since the CD&PD February efforts. Please post details on the County Website al the news I more widely broadcast and available to those interested parties and the informed public.

John W. Herrin
406-202-0528
2855 Sundown Road
Helena, Mt. 59602

Sent from [Mail](#) for Windows 10

Date: June 8, 2021

To: Peter Italiano/Greg McNally/ZAP

From John W. Herrin

RE: November 19, 2020 L & C County BoCC Formal Approve of Resolution to Create Zoning Regulations for the Helena Valley Planning Area – Enclosed Please find a Copy of December 18, 2020 First Judicial Court Lawsuit filed by impacted landowners and business owners challenging entire Zoning Regulations or Portions Deemed Illegal in Court Hearings.

Attached please find a copy of the Court filed legal challenge to the L & C County Board of County Commissioners (BoCC) approved November 19, 2020 approved resolution to formally adopt the Zoning Regulations for the Helena Valley Planning Area.

Copies of this Complaint will be submitted to the BoCC and Andy Hunthausen and Jim McCormick on this same day. Former Commissioner Susan Good Geise will be served via County Sheriff's officers as soon as the officers are able to make contact with Ms. Good Geise.

Please make copies available to all members of the County Zoning Advisory Panel member and other involved county officials as well as the hired facilitator.

I have been working on revising the filed copy to remove the spelling errors and reorganize the format, but other life issue have delayed the final revisions too long, so I have decided that the original version was good enough to start the formal legal challenge process and therefore it is what it is.

Again, I feel the entire ZAP committee format and the way each subject matter has been presented (e.g. wildland fire, Transportation, groundwater supply etc.) sessions have presented the ZAP committee with a lot of background information, but produced very little concrete progress towards defining real problems and how these problems will be solved by the ZAP committee work plans.

All topics should have been focused on problems present in each of the three HVPA subzones (e.g. Rural, Transitional and Urban) with the key objective is to have discussions with presenting experts for ways the ZAP committee could outline solutions for past, current and future problems that zoning regulations could solve or move the focus towards legally valid administrative and scientific regulations that are not addressed in current County and State Subdivision regulations.

Traditional zoning regulations focus on defining commercial, mixed use and residential development design and engineering requirements based in past, present and future growth trends. But the County has not updated the 2014-2015 Growth Policy as is required when major growth patterns change as they have in the HVPA over these past 6-7 years and in fact much of the growth data was based in the 2010 census which is over 10 years old now.

Plus as indicated, many trained professional and real estate specialist have repeatedly commented that the 2014-2015 Growth Policy is severely biased against rural property wherein

the authors only solution for rural property was to advocate density controls only on rural property as a means to control growth and force more new development into or near East Helena and Helena. As the legal challenge documents detail, the targeting of only rural property for harsh landuse controls that are not forced onto the Transitional and Urban lands is discriminatory and violated both Montana Administrative regulations, and the US and Montana constitutions.

The County has also steadfastly refused to address the changing growth patterns from 2014 to present in large part driven by the County's anti-rural property Zoning Regulations plus the changing legal requirements limiting groundwater exemption to about 13-lots -- based on legal ruling against DNRC – that have markedly changed the subdivision development patterns across the entire state.

The County was repeatedly asked to provide growth pattern development information in order to prove that there have been major changes from the pre-2014 growth patterns when the HVPA saw rather even distribution of growth between the three HVPA subzones. The most recent trends appear to show extreme growth in the Transitional areas, with many medium to large scale urban density development occurring with connections to city water and sewer the dominate development pattern.

Which is exactly what the 2015 Growth Policy and the County Planning Staff and BoCC have been attempting to force to happen with the regressive subdivision and zoning regulations. How much a factor the County's subdivision regulations (e.g. fire suppression and off-site road costly regulations) and the new 2020 HVPA Zoning Regulations have factored into this trend has never been addressed, but I and other are convinced the County's regulations have had a major influence on growth patterns in the HVPA.

Case in point – no major subdivisions will occur that feed into the deficient and underfunded county roads -- such as Remini Road, Priest Pass, Lake Helena Drive, Floweree Lane and Birdseye road – because of the costs to any development for cost sharing to upgrade these underfunded county roads.

Many citizen commenting on the County's 2020 Zoning Proposal requested that the county produce not only growth trend information, but also address that severe underfunding of county roads and EMS/fire etc.and the need for taxpayer funding solutions as is being done in other major cities across the US and in Montana.

The County is in essence blaming rural development as the source of all problems, when in fact the problem is the lack of creative and forward thinking county planning and funding solutions. The County needs to educate and inform the public about the increasing problems of overtaxing and lower volunteer recruitments for EMS and fire services, and County road improvement funding. The County is barred from lobbying citizens for mill-levy funding, but educational and organization outreach with the able and concerted effort of development and real estate business and people would go a long way towards solving these problems instead of playing the blame

game and illegally targeting and restricting rural development that is unnecessarily driving up all real estate costs across the Tri-county area.

These issues have been repeatedly been presented in written and verbal comments, but largely ignored by L & C County at all levels and spanning at least 16 years.

I have attempted to open all the L & C County BoCC agenda's for the past 1.5 years since the first December 2019 Zoning listening session. And I have only seen one new major subdivision go through the process and that was the Utick's family NE valley development.

Please provide the ZAP and the community growth trend data for all three HVPA zoning subzones, and show how the transportation, water supply and fire hazards concerns championed in the 2014-2015 Growth policy and 2020 Zoning Regulation Hearing are being impacted by this growth trends and where there are real fair and equitable solutions to solving these issues.

This information should have been produced prior to proposing and certainly before adoption of the 2020 HVPA Zoning Regulations that target only rural property for harsh regulatory controls—most of which will not be applied to the transitional or urban areas.

With the relative good network state maintained highways, the transportation congestion is generally concentrated in the urbans centers of East Helena and Helena and is especially bad wherever there are larger sized schools. As I indicated in my presentation to BoCC, the fact that new subdivisions along Spokane Creek would not really stress groundwater, transportation, or fire/ems services any more than new highly congested homes packed around east Helena (not actually higher fire spread risk with tighter developments) all lead to more traffic congestion near schools and major feeder roads into Helena.

So the ZAP panelists and County Planning Staff have no real valid platforms of information upon which to factor in growth going forward given the old GP information is not adequate and no effort is underway to provide such information to be used as a basis for real growth planning.

One final point – Mark Runkle stated that it is his view that all new development should have paved streets and curb/gutter. Then Tyler Emmert stated that he has four children and he feels that all new subdivisions should have sidewalks. Both ideas maybe appropriate for development that is within of near the incorporated cities, but is totally inappropriate for all transitional or rural areas. According to Mr. Runkle curb and gutter can add \$15,000 to the cost of each lot and that is from a developer that has ample on-site gravel to make his own road materials.

For rural areas in lower elevation (e.g. grasslands) with relatively low topographic relief, minimizing the use of deep runoff ditches is a better environmentally and living community design standard that should be widely adopted across the medium to lower density Transitional and Rural development landscape. This allows landowners to mow the grass right up to the road profile and allows children to walk or ride bicycles off the roadway when traffic is present.

I would like to see the ZAP panelist work progress posted on-line so the citizens can see what progress is being made in planning the future for the HVPA.

Unfortunately, I did not listen to the most recent ZAP hearing nor the next June 9 hearings, but maybe I will be able to catch up.

It is harsh to say, but the past 6 months of ZAP hearing I have yet to see real progress with developing good well-reasoned and foundational progress towards the revisions to the 2020 Zoning Regulations or the new Zoning Regulation for the transitional or urban areas.

The ZAP panel should get ahold of the 2005 -06(?) Development Standards Working Group documents, because we at that time had made a lot of progress towards consensus on building requirements and defining growth trend planning that made sense back then. Most of the work followed more traditional zoning regulations defining limits on businesses and traffic within more residential areas and landscaping and building façade issues for commercial development along major transportation roads etc. etc.

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John W. Herrin

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JUN 08 2021

LEWIS & CLARK COUNTY
Community Development & Planning

Date: June 8, 2021

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June 6 2021

Residents want a well-rounded approach to affordable housing

Fifty years ago, my grandpa saved up and bought a modest house on a small lot in the middle of Missoula for \$15,000. Today, the median price for a single-family home is over \$400,000.

In growing areas across Montana, the prospects for an average worker to achieve the dream of home ownership like my grandpa — or even simply find any affordable place to live — are increasingly bleak. The consensus emerging from experts



KENDALL COTTON

is the supply of homes isn't keeping up with demand.

The answer is obvious: build more homes. What's less obvious are the dynamics holding back development. It's time for our state and local leaders to set aside their differences and listen closely to residents demanding attention to this issue.

In the 2021 County Community Survey, 67% of Missoulians said boosting the supply of affordable housing should be the top priority for Missoula County. Most respondents prioritized boosting the supply of housing before expanding subsidy programs, indicating discontent with current subsidies and housing initiatives. As a resident explained:

"Nearly every option on the list above is a subsidy or an after-market intervention, both of which are more challenging and expensive when supply is

low and demand is high!"

Despite not being listed as an option on the survey, numerous residents said they are hoping for a more well-rounded (and less costly) approach to boosting the supply of affordable housing, calling out overly restrictive zoning and land use regulations that need reform. One resident's solution:

"WITHOUT USING ANY MONEY AT ALL, open up zoning in single family neighborhoods in Missoula to all types of housing. No minimum lot sizes, no parking requirements, very little height restrictions etc."

Research backs up this idea, with studies showing that such regulations have substantial effects on the price of homes. A 2018 report from the Missoula Organization of Realtors found 93% of Missoula County had constraints limiting housing development. A more recent report showed it takes an astonishing 138 months on average to move a residential subdivision through combined city and county approval. Once approved, developers must then undergo months of building permit review before actually starting construction.

A growing number of experts and leaders from across the political spectrum have started calling for reform. President Barack Obama developed a toolkit in 2016 providing suggestions for local governments to streamline housing permits and loosen up land-use regulations. In a 2019 executive order, President Donald Trump called

regulations "the leading factor in the growth of housing prices" and said "subsidies will only continue to mask the true cost of these onerous regulatory barriers." Montana Gov. Greg Gianforte said recently, "The most effective way to address housing affordability challenges is to reduce the panoply of regulations faced by housing development."

Residents, local organizations, experts, governors and even presidents all see government regulations as the biggest barrier to affordable housing, yet local officials seem to be focused primarily on government solutions. Case in point: omitting any mention of regulatory reform in the 2021 Missoula County Community Survey. This spring, officials lambasted the legislature for prohibiting certain zoning mandates, Bozeman is considering an "affordable housing tax" to pay for housing subsidies and Missoula has even resorted to buying up property directly in the inflated market.

Residents appear to understand that subsidies will fall short if they are not accompanied by regulatory reforms that reduce barriers to housing supply. Local leaders ought to take note. To address affordable housing, Montana needs a well-rounded approach that prioritizes regulatory reform.

Kendall Cotton is the president and CEO of the Frontier Institute, a Helena think tank dedicated to breaking down government barriers so that all Montanans can thrive.

RECEIVED

JUN 08 2021

From John Herrin

Grisen to LEWIS & CLARK COUNTY
Community Development & Planning

June 8th 2021

June 2 2021

The demise of the rule of law

Dr. David James' recent guest view comparing our modern political times with those of pre-war Germany and the rise of Hitler and Nazism was point-on. When lies trump truth; when fiction trumps fact; and when fantasy trumps reality, we are, indeed, circling the drain into fascism.

The Jan. 6 attempted putsch of our national government proves that point: lies, fiction and fantasy propagandized by elected officials — who swore to defend the Constitution, not to destroy it — are, as Dr. James noted, the absurdities that cause atrocities.



JAMES C. NELSON

And, part and parcel of this political perversion is the rejection of the rule of law. The seminal value upon which our country and state were founded, Justice Sonia Sotomayor concludes that "the rule of law is the foundation for all our basic rights."

Like any foundation, though, the rule will chip away and fall into rubble unless it is maintained and guarded. That is one of the most important duties of lawyers.

To that point, Montana's Rules of Professional Conduct bind all licensed attorneys in Montana. The preamble to those rules, among other things, sets out the

importance of the role of lawyers in society in relation to the courts and the rule of law.

Specifically, lawyers:

- are officers of the legal system and public citizens having special responsibility for the quality of justice;
 - in their conduct, should conform to the requirements of the law, in professional service to clients;
 - should use the law's procedures only for legitimate purposes and not to harass or intimidate others;
 - should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials;
 - have a duty, when necessary, to challenge the rectitude of official action, but also a duty to uphold legal process;
 - should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority;
 - as officers of the court, have a duty to engender trust in the profession and the rule of law. Trust in the integrity of the system and those who operate it is a basic necessity of the rule of law.
- One can only wonder how these principles are honored when the attorney general's office, ostensibly retained by the

legislative leadership, states in its April 12, 2021, letter to the acting chief justice of the Montana Supreme Court that its client does not recognize a particular order of the Supreme Court as binding and will not abide by it.

Certainly, every lawyer with even minimal litigation experience has been the recipient of a court order he or she didn't agree with. Lawyers know that one appeals the order, asks for further proceedings, or otherwise challenges the order within the process and procedures of the law. That's the rule of law. Telling the court to stuff it, IS NOT!

Worse, consider the precedent when the AG can tell the court his client will not abide by a court order — and apparently not be held in contempt. Don't like a court's order? Just tell the court you don't recognize it and it's not binding.

Getting back to Dr. James' article, when politicians attack the constitutional separation of powers and seek to intimidate and marginalize a co-equal branch — judges and the courts; when populist autocrats seek absolute power; when the rule of law is trashed; then democracy will spiral into the abyss of fascism.

It worked for Hitler!

James C. Nelson of Helena is a retired Montana Supreme Court Justice.

From John Heavin to Greg M
June 8th 2021

High costs for housing and limited child care hurt Bozeman economy

Labor shortages hitting nearly every industry in the city

NORA SHELLY
Bozeman Daily Chronicle

BOZEMAN — Annekje Thompson's stint in Bozeman only lasted a year.

The now 19-year-old moved to town from Roundup in April 2020 to work on a farm. That job came with housing, and she was later able to rent a room in a house while working two jobs, one at a Montessori school and another at a restaurant.

She was working more than 40 hours a week, bringing in about \$2,000 a month between the two jobs. But she needed to find new housing, and started looking for "anything and everything in Bozeman" this spring. Most places weren't affordable, and listings she saw that were within her budget were snatched up quickly.

After weeks of trying, Thompson gave up on Bozeman and moved back home.

"For people like me who are just starting out.... they get good jobs and they want to stay there. They love the place, but can't afford to live there," Thompson told the Bozeman Daily Chron-



RACHEL LEATHE, BOZEMAN DAILY CHRONICLE VIA AP

Symantha Deans and Rachel Allen talk with a prospective employee at the Town Pump booth at a job fair at the Gallatin Valley Mall on May 19, 2021.

icle. "It's really hard. And it doesn't make a lot of sense to me. It's very frustrating."

Thompson, who is planning a move to Billings instead, is one of many people across the spectrum of age and income who are being shut out of the housing market in Bozeman.

Rising housing costs and inadequate supply are forcing some Bozeman workers to bunk with an uncomfortable amount of roommates or try to make living in a hotel or camper work for a while.

Some are simply leaving town, seeking out places where they can afford to live, and people applying

for those vacant jobs in the city are turning them down after taking a glance at the housing costs.

At the same time, labor shortages are hitting nearly every industry and every income level in the city. Some restaurants are reducing hours and considering cutting services. The city is cutting hours at the Bozeman Swim Center as positions go unfilled. Bozeman Health is having trouble filling vacancies.

Some employers are increasing their wages. Others are tacking on hiring or moving bonuses, or directly trying to help their employ-

ees find housing.

But business leaders say it isn't enough. Even people in senior level positions or those making a decent salary are getting caught in the housing crunch.

"The cost of living in the city of Bozeman is getting away from us," City Manager Jeff Mihelich said at a recent city commission meeting.

The problem isn't new — housing costs have been rising in Bozeman for years.

But most agree the problem has gotten much, much worse in the past year.

"Everything was pretty difficult before the pandemic, and it's probably just gotten worse," said Tracy Menuz with the Human Resources Development Council.

Business leaders say the county's housing crisis has become a labor crisis. The problem is evident in the ubiquitous hiring signs popping up around the city.

"You can drive downtown Main Street and you can see pretty much every bar, restaurant, store is hiring. You can go down 19th and look at all the big box stores and they're all looking for employees, and you're

Please see **BOZEMAN**, Page A9

CORRECTIONS

If you see something incorrect in the Independent Record's news coverage, please call 447-4074. Written corrections sent to Corrections, P.O.

WEATHER TRIVIA

June 1 is the earliest of only 83 days that Bozeman has never chilled to the freezing or frost-free point.

John Herrin

June 2 2021 To Lucy M.

Opportunities for greater bipartisanship

May 23 2021

The gulf between Republicans and Democrats seems wider than it's ever been. Montanans have historically been immune to some of the hyper-partisanship seen on the national stage, but the 2021



KENDALL COTTON

legislative session increasingly saw votes come down to party lines and partisan rhetoric intensify.

While it's much simpler to operate in a world of red versus blue political vitriol, what

big problems facing Montana could be solved if policymakers instead focused on their common ground?

From my perspective, here are three important issues that present opportunities for greater bipartisanship:

1. Affordable housing

With Montana amid a property "gold-rush," low housing inventory combined with extreme demand has led to a crisis of affordability.

This year we saw several proposals from Republicans and Democrats to eliminate burdensome regulations to boost the supply of housing in Montana's growing cities.

If conservative Republicans from Billings and Democratic socialists from Missoula can show support for reducing the regulatory barriers to building new homes, this approach deserves further bipartisan collaboration.

Zoning and building codes impose complex rules and restrictions on everything from lot

sizes, building heights, parking areas and more. Research shows clearly that these types of regulations have substantial effects on the price of homes. There is ample opportunity to find new ways to partner to streamline rulebooks and eliminate needless regulations that hold up housing development.

2. Property taxes

We heard a lot this session from both sides of the aisle about the need for property tax relief. Property taxes are straining the wallets of many longtime residents and contributing to higher rents, making the crisis of affordability seen in growing areas like Bozeman and Missoula even worse.

Ultimately, the responsibility for property tax relief falls on local governments to embrace budget discipline. The growth of property taxes is a direct proxy for how much the government is spending. In many cities and counties around the state, government spending has far outpaced reasonable measures of economic growth.

The state government is only responsible for a small percentage of property taxation, and what the state takes in is eventually returned to local governments and schools. With local officials in the driver's seat for spending our property tax dollars, state legislators do not have many tools for containing the growth of property taxes.

To deliver property tax relief, common ground needs to be built at the local level around the virtues of fiscal conservatism. While spending cuts can be hotly debated, most can agree

that controlling the growth of spending is prudent policy. Limiting local government growth to no more than the growth of the economy, as measured by population plus inflation, is a common-sense fiscal benchmark that people of both parties ought to be able to get behind.

3. Health care access

Lawmakers unanimously came together to expand telehealth access by eliminating unnecessary regulations that had been waived during the COVID pandemic. Another bill that received wide support expanded access to affordable prescription drugs by allowing providers to dispense prescribed medicine directly to their patients.

Could this unity continue when addressing other regulations that hold back health care access? Lawmakers may be able to find more areas of agreement around reducing barriers for medical professionals to get licensed and keep practicing in Montana. They could also look at ways to eliminate red tape and expand the ability of current practitioners to use the fullest extent of their training to care for patients.

It's easy to forget that we likely share a lot more in common with our fellow Montanans than we have different. Areas of consensus are low-hanging fruit for us to begin mending the partisan divide and make Montana an even better place to live.

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City Helena vs County Development Cost - 9

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2855 Sundown Road
Helena, Montana 59602
406-202-0528
Plaintiff Pro Se

MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS & CLARK COUNTY

)	Your Cause No. <u>DDV-2020-2015</u>
John W. Herrin,)	
Mike Fasbender,)	
Mark Deilh,)	
Jim Dusenberry,)	
Don and Barbara Bishop,)	
John Novotny,)	
Stephen Burch,)	
David Brandon,)	
Individual County Citizens)	
Plaintiffs,)	
vs.)	Complaint
)	
Board of County Commissioner of)	
Lewis & Clark County, a political)	
Subdivision of the State of Montana;)	
Andy Hunthausen, individually,)	
Susan Good Geise, individually,)	
Jim McCormick, Individually,)	
Defendants.)	

For their Complaint against the Defendants, Plaintiffs allege as follows;

PARTIES

1. COMES NOW the Plaintiff, John W. Herrin, Mike Fasbender, Mark Deilh, Jim Dusenberry, Don Bishop, John L. Novotny, Stephen Burch, David Brandon, and thousands of individual landowner and working members of the Lewis and Clark County all have or would be adversely impacted by the November 19, 2020 passage by the Lewis and Clark County Board of County Commissioners of the Zoning Regulation Helena Valley Planning area. All parties have a vested interest in real property and business interest within the County and have standing to lodge this complaint in the Montana First Judicial District Court in Helena.

2. Defendant, Lewis and Clark County is a governmental entity that is subject to suit under state law. In this action, the county has acted through, among others, the Board of County Commissioners of Lewis and Clark County (BoCC). The BoCC generally responsible for land-use regulations by the County and is specifically responsible for making determinations of land-use development administrative decisions relating to Subdivisions and Zoning etc.

3. Defendant Andy Hunthausen is and was at all time material to this action a member of the Board of County Commissioners of Lewis and Clark County and a resident of the County. He is named as a defendant individually.

4. Defendant Susan Good Geise is and was at all time material to this action a member of the Board of County Commissioners of Lewis and Clark County and a resident of the County. He is named as a defendant individually.

5. Defendant Jim McCormick is and was at all time material to this action a member of the Board of County Commissioners of Lewis and Clark County and a resident of the County. He is named as a defendant individually.

Chronological order of Public Hearing and County Administrative Actions on Zoning Regulations Helena Valley.

6. Lewis and Clark County first proposed new Zoning maps and concepts at 4 public listening sessions at various locations around the Helena Valley Planning Area starting December 18 & 19 and ending at the end of January 2020.
7. The first series of maps and generic zoning proposal contained three general subcategories within the Helena Valley Planning Area (HVPA), the largest area called the HVPA Rural Area (now called Rural Residential Mixed-use District), the valley bottom non-city area called the HVPA Transitional Area, and the third called the HVPA Urban Area. The Rural Subdistrict area was proposed for three subzone areas, the largest was initially called the Agricultural Conservation Zone (average lot size of 160-acres), the second being Rural Mixed Use Zone area (20-acre average lot size), and the third Large-lot Mixed Use Zone (10-acre minimum lot size) restrictions.
8. During subsequent BoCC public hearings in February the county indicated that they would drop the 160 and 20-acre lot-size designations from the pending regulations based upon the overwhelming negative written and public testimony the County had received at all public hearings. The County shortly thereafter posted a new, less restrictive, zoning map on the county website.
9. The County then produced their first set of proposed written regulatory zoning regulations in late spring of 2020 with a total of over 120 designated pages, some being blank for future changes. By comparison, the 2018 adopted Fort Harrison County initiated zoning District has only 19 pages of regulations, yet the County Planning staff repeatedly referred to the new 2020 Zoning proposal as “Zoning light”.

10. Starting on June 15, 2020, the Consolidated City County Planning Board (Planning Board) sponsored 5 public hearing held in the large Civic Center auditorium.
11. The final decision of the last Planning Board was held on August 4, 2020 where in the Planning Board Chairman Gregory Thomas presented a well written and factually based 4 page motion recommending to the BoCC that they delay any further action on the proposal Zoning Regulations until the county contracted with an independent consultant(s) to conduct a detailed Social and Economic impact analysis of the proposed zoning regulations, or -- in his written words -- the county would likely be sued.
12. After some discussion about the merits of Planning Board Chairman Thomas motion to recommend BoCC delay implementing the Amended Zoning proposal, the motion was rejected in a 5-2 vote. The Planning Board then voted 5-2 on a motion to recommend the BoCC adopt the amended Zoning Regulations Helena Valley.
13. The Board of County Commissioner then held 4 final public hearings in starting around September 17, 2020 and culminating with a final October 6, 2020 hearing to consider the passage of a BoCC Resolution of Intent to Adopt the Zoning regulations. The one major last minute change to final Zoning Regulations, was the additional verbiage delaying the effective implementation date to June 1 2022 for the controversial 10-acre minimum average lot-size regulations.
14. At the time of the final hearing, the County had received a total of about 1822 pages of written testimony and recorded verbal testimony from well over 100 citizens, with the overwhelming majority voicing strong opposition to many aspects of the ever-evolving Zoning proposal. As mentioned the most controversial and heated opposition to the 2020 Zoning Regulations was the overly restrictive proposal that all future land divisions create

an average lot-size density averaging 10-acres or larger – which to many commentor thought the County had no real justifiable reason to target all 150,000 acres of rural property to protect public health and safety as the County claimed. Also, many rural landowners either didn't like long list of property land-use restrictions on future uses and land-management (see 1 page summary of Zoning Regulation Exhibit 1 and Exhibit 2 Copy of Adopted Zoning Map → Rural District boundary defined in RED).

15. The BoCC on October 6 in 3-0 vote adopted the “Resolution 2020-84 -- A resolutions of Intention to Create Both Zoning Districts and Regulations for the Helena Valley Planning Area” which included on major unannounced change from all previous hearings, and that was to delay implementation of the 10-acre average lot size regulations until June 1, 2022.
16. After the 30 day protest period had passed 3-0, the BoCC passed the actual Helena Valley Zoning Regulations on November 19, 2020.
17. At the same hearing, the County similarly passed a resolution to create a 12-person Blue Ribbon Advisory Panel to craft new Zoning Regulation for the Suburban and Urban areas plus review the merits of the 10-acre lot-size restriction with a final working regulation proposal deadline of June 1, 2022.

UNLAWFUL ADMINISTRATIVE ACTIONS OF DEFENDANTS' IN ADOPTING 2020 ZONING REGULATIONS HELENA VALLEY.

18. In Montana, governmental actions under legislative authority – such as adoption of Zoning Regulation initiated by the County (Part II Zoning) detailed in MCA Title 76 Chapter 2 – are “presumed to be valid and reasonable” and will be upheld unless the decision is so lacking in fact and foundation

that “it is clearly unreasonable and constitutes an abuse of discretion.”(Schanz v. City of Billings (1979) 182 Mont. 328 335; Lake County First v. Polson City Council, 2009 Mt 332 P34-p37 (2009).

19. Plaintiffs’ 1983 taking claims, and any other reserved legal claims against the County center around the fact that the County has failed to properly adopt the zoning regulations on several key components of due process and administrative Code violations resulting in a wide range of Montana and US 14th and 5th Amendment constitutional violations of Plaintiffs civil rights.

20. Based on the Plaintiffs solid platform of video recorded public hearing testimony and over 1822 written pages of public testimony plus the clear facts of the case, the plaintiffs believe they will be able to present evidence showing the 2020 Zoning Regulation should be reversed or vacated in part or in entirety.

21. Conversely the Plaintiffs contend, the County’s top land-use administrative officers and elected Commissioner will be shown to have failed their public responsibility to administer the duties of their offices as required under Administrative Rules of Montana (ARM) and Montana Code Annotated (MCA).

22. In addition, the Plaintiffs believe we can prove that the County top administrative managers and Elected Commissioner let emotional bias and feeling cloud their judgement wherein they willfully or negligently have demonstrated a clear 16-year history and repeated pattern of unfairly targeting one class of County population (Rural Property) for compounding regulatory restrictions in an effort to slow rural growth and enhance development closer to the urban centers of Helena and East Helena (Floyd v Ravalli County, 2008 Montana District).

23. Plaintiffs further assert the County is statutorily liable pursuant to MCA 2-9-102 and 305.

24. And the Defendants knowingly violated and willfully ignored their statutory obligations to adequately inform, allow public testimony and participation, and prove the County's Growth Managers had done the necessary homework to prove the 2020 Zoning regulation meet all requisite County and State rule making and official codes requirements in developing and adopting the 2020 Zoning Regulations (Nexus failure under Dollan/Nolan case law standards).

25. The County failed to recognize their legal obligation to manage the affairs of the citizens by making sure that regulations are the least restrictive possible to meet stated objectives (MeElwain v County of Flathead, 248 Mont 231). Plus the regulations must meet a very important requirement the county absolutely violated without any documentation or nexus analysis – (MCA 203 (2) "In adoption of zoning regulations, the board of county commissioners shall consider: (b) the effects on motorized and nonmotorized transportation systems ...(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction area."

26. The County is required Under County Adopted Zoning Regulations (MCA 76-2-201-203) to produce concrete documentation of a nexus Nollan/Dolan analysis of the proposed action proving the county regulatory actions are appropriate for the entire community and especially for all financially impacted citizens. Yet Lewis and Clark County Planning Staff and BoCC all stonewall ed all specific request for document production or written analysis of any form, other than to keep pointing back to the 2015 Updated Growth Policy as their savior bible.

27. It must be clearly stated that the County's 2015 Updated Growth Policy has two major flaws that hurt the County's foundational support for adopting the 2020 Zoning Proposal.

28. First and foremost, the County's 2015 Updated Growth Policy is administratively and legally wholly outdated and so unethically written by introducing targeted and biased conclusions and statement against only rural property and past and present and future Plaintiffs, the Plaintiffs herein claim constitutionally protected and State of Montana administrative protections in all matters relate

to this deficient two volume document and therefore request the court vacate any use of the document in determining the merits of the County false claims and justifications for drafting , reviewing and adopting the Zoning Regulations Helena Valley regulations in whole or in part.

29. In passing the 2020 Zoning Regulations, the County failed to understand that they have also have a – procedural – obligation to produce a clear and compelling fact-based foundational bias for any regulatory decision, or they could be challenged for violations of regulated parties rights of equal protection and rights of due process under the Montana Constitution.

30. As a first example of the County’s procedural due process violation, the Plaintiffs herein contend that the County miserably failed to meet their regulatory obligations to manage growth under the Growth Policy (MCA 76-2-1) administrative rules, that required Lewis and Clark Managers to actively manage the Growth Policy and not just let it sit on the shelf and grow dust. Montana’s Growth Policy rules require County to update the growth policy whenever the need arises and at a minimum once every 5 years (76-2-1) all county’s must be seriously reevaluated and updated as needed and adopted growth Policy..

31. The County violated the Plaintiffs due process legal rights related to the county not updating the Growth plan on substantive grounds -- the county had no real factual information that wasn’t contained in the 5 years old growth policy and therefore substantively deficient. The County also violated the procedural due process criteria because the MCA 76-2-1 requirements that a Growth Plan be undated whenever substantial changes have occurred within the time deadline for such meaning change requirement at least every 5 years. Given the fact that the pace of growth and the pattern of growth in the Helena Valley had drastically changed over the past 5 years plus transportation systems and major highway improvements projects have dramatically changed traffic flow since 2015, and as such the County was absolutely obligated to update the Growth Policy regulations. As such

Constitutional due process legal damage claims should be considered by the court (Mt Constitution Sections 1,3,4,7,8,9).

32. So instead of updating the Growth Policy, County Community Development and Planning Department Staff and the BoCC invested valuable time crafting the 2020 Zoning Regulations in a rushed fashion putting the cart before the horse.

33. And just as importantly, the County top managers and elected official spent a considerable amount of energy this past year developing the 2020 Zoning Regulations that only target rural property for harsh and unwarranted administrative regulations in order to slow the rate of new development in the 150,000 acres of rural property(A violation of Mt Constitutional II 3 & 4).

34. The County has refused to produce the necessary underlying, technical, scientific, factual, legal, administrative and procedural basis to prove a valid nexus between the legitimate administrative action and the underlying (substantial) health, safety and general welfare foundational issues they proposit to be protecting (McElwain v. County Flathead, 248 Mont. 231 and Euclid v Ambler Realty, 272 US 365 (1926)).

35. The Plaintiffs contend based on the factual record or lack thereof, that the 2020 Zoning Regulations should be invalidated for due process violations given the nexus Dollan/Nolan legal requirements of cause and affect or factual evidence leading to proper regulatory design.

36. As briefly argued below, the county had no real large-scale proof of widespread public health and safety issues that would justify the taking of key personal property rights away from just 25% of the populations and ignore the growth issues that the entire Valley and especially the high growth areas have that also need to be addressed. The fact that the county could cite a few problem groundwater supply area problems permitted decades ago, absolutely does not justify the taking of private property rights from 4,000 plus existing landowners or the right to own a moderately price rural home for future residents.

37. As stated the State County Zoning Codes (MCA 76-2-2) and under the Growth Policy Codes (MCA 76-2-1) both require that L & C County had to update the Growth Policy not only as a basis for managing growth, but because a well researched and written Growth Policy is fundamental to crafting good regulatory controls to actually manage growth. It should be noted that the Growth Policy is not a regulatory document but is a required management element of Administrative rule making.

38. In 2020, Lewis and Clark County was absolutely obligated to document the current community growth issues and document community changes etc, since 2015 or stop the Zoning approval process altogether or delay it until the GP was properly updated.

39. Secondly, the County failed the due process and equal protection for avoiding discussions regarding or actual researching technical reports to document the actual health and safety problems within the Helena Valley Planning area. County officials absolutely refused to openly discuss or present evidence supporting the 3 of 5 key health and safety in large part because they knew that the actual facts would totally undercut their claims if they actually looked real world monitored systems.

40. Substantive regulatory due-process violations can be used when the case facts do not support the proposed regulatory controls. The county failed on both due process legal criteria -- Substantive (e.g. the County refused to produce factual supporting justification for the need for Zoning Regulations) and procedural (e.g. the county illegally targeting one class of citizen or a time-sensitive deadline is missed).

41. The County top administrators and elected Commissioners, were repeatedly asked in writing and in public hearing to produce clear proof for the need to 10-acre lot-size density controls. The County Planning staff and BoCC absolutely ignored repeated and direct questions to planning staff and BoCC to provide proof of widespread harm being allowed by State and County subdivision regulatory reviews and approvals. The County refused to provide any current written and published documentation showing the existing subdivision review processes were failing to address problems –

really an absurd an unproven claim the county will have trouble proving in court proceedings. But more importantly, the County Planning Staff and BoCC absolutely stonewalled it's citizens and refused to address the elephant in the room – they had no real valid across the board health and safety issue that justified the targeting of the entire 150,000 acres of rural property.

42. The BoCC and Planning Staff only offered a few examples of site-specific problems the county has seen in the decades of rural development. The first is two known areas where 15-25 year old subdivision development areas were experiencing groundwater aquifer supply issues – that being homes in the Emerald Ridge area located east of the Fox Ridge Golf Course, and the other being the urban density large cluster of permitted subdivision located north of Bob's Valley Market (e.g. North Star Subdivision). But both areas are the exception and are now well known and studied so past subdivision permitting mistakes are less likely to occur going forward. Plaintiff can prove with a large body of detailed groundwater research as a general rule groundwater aquifers even the more limited areas generally could support lot densities down to 1-2-acre range so the County's justification for 10-acres is absolutely unethical and unsupported by factual evidence . Plus DNRC water rights permitting and DEQ & County regulatory reviews for subdivisions are legally required to be fact-based, detailed, and legally compliant at all phases or the regulatory agency could be drawn into costly court battles. Therefore, the county's claims that these agencies are allowing major groundwater supply problems is just plain fabricated none-sense.

43. The second proof claim for justifying the 10-acre lot-size restriction was given by BoCC Chairwoman Susan Good Geise, where she cited the 2018 North Hills timber area wildfire responses by local fire districts resulted in one or two rural fire trucks experiencing some damages to truck suspensions. But these local fire districts receive large financial benefits for responding to federal and state controlled fires and we are convinced we can prove in court that even this claim makes no real defensible sense.

44. The third unsupported claims by the county was the unsubstantiated claims that large tracts of rural land were safer for homeowners and neighbors if wildland fires spread through the area, but the September 3, 2020 600 plus acre grassland fire north of Fort Harrison and Birdseye road, disproves that blanket argument. The Prickly Pear Land Trust 320 acres of 2-3 tall native grass burned up in an hour with 10-20 foot tall flames and it spread into the large 10-acre tract subdivision off Head lane. With smaller tract rural development densities, homeowners generally would mow down tall grass for aesthetics plus the tighter density of bare roads all make wildland fire risks lower given the lack of fuel.

45. And third County Claim mentioned as justification for the need for Zoning rural property was the issue of deficient rural roads. The Plaintiff contends and will work to prove in court, the County had no factual basis to further restrict only rural property and all 150,000 acres of private land, based on site specific site conditions that adequately addressed under County and State subdivision development permitting reviews and decisions.

46. The truth is most rural county roads have a dirt surface and nearly all don't meet the high-bar county road design standards. That includes the over 400 miles of county owned roads that are poorly maintained (Note: County stated maintenance shortfalls exceed \$23,000,000), almost zero county owned roads are built and maintained to their own road standards, and county consistently does not follow their own design standards when maintaining and upgrading county roads. But the final nail in the head for this argument is the fact that when a major new subdivision is proposed in Lewis and Clark County, the applicant is required to hire a roadway design engineer to develop cost estimates to upgrade two entrance access off-site roads to the county standard and then pay the calculated pro-rata share costs to the county for upgrades in those non-state, non-federal roads, and the county must put that money into the best expenditure of that money to upgrade that section of road. As such, the only classification of county residents that are forced to pay to upgrade deficient roads is the new guy – subdivision developers.

47. So in total, the county has not valid claims of across the board health and safety issues as justification for attempting to force only rural segments of the regulated community to sacrifice for the "Greater Good" of the community without just compensation (a regulatory taking claim).

48. Relative to due process violation claims then, the county failed with at least three basic required tasks to document they followed appropriate and legal regulatory protocols: (1) the fact that the County repeatedly refused to updated the Growth Policy as is legally required, (2) refused to conduct additional fact-based and scientific research and data analytical to prove where ,and (3) failed to document the need for 10-acre lot size and other land-use restriction were needed on all 150,000 acres of rural land based on valid widespread health, safety, moral, or general welfare administrative failings being managed by the County and the State agencies administering case specific subdivision and land-use permitting reviews and administrative actions.

49. As such, the County has no foundational and substantive basis for the 10-acre lot size restriction and they never will be able to prove that any issue not being address impacts all 150,000 acres of private property that would justify the 10-acre lot size restrictions. Not only that, the county fails in the second rail of dues process guarantee analysis – the 10-acre lot size restriction does not really solve any of the key element issues claimed by the county, so in the end the county fails on both rails of due process constitutional law (Snell v. City of Hamilton, 2007 Mont. DV-05-327).

50. The 2020 Zoning regulations do not appear to be adequate proof the county has meet the rather rigorous requirements set forth in the Part II County Zoning required publication of Growth Trend Analysis reporting under Title 76 Chapter 2 203. " Zoning regulations must be (b) designed to" carefully evaluated and recommend solutions for elements of past, current and future community growth patterns including: review the past growth policies and determine if the GP needs updating or modifications; fire and dangers; promote public health, safety...; facilities; light and air;

transportation; urban growth; district suitability for particular uses; and conserving building value and encouraging the most appropriate use of land.”

51. To our knowledge the County has not conducted the MCA 76-2-203 listed planning assessment evaluation and the 2020 Zoning Regulations really do not prove the county as meet these specific requirements. This could be another factually and evidentiary discovery administratively deficient.

52. MCA 76-2-203 (e) states “conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.” The County’s Zoning Regulations violate this important check on government over-reach and Plaintiffs will reserve their rights to challenge the county violated in future court pleadings. On the surface this requirement maybe one of the more compelling towards a regulatory takings claims given the severe and widespread damage these regulation have and will cause.

53. The 2020 Zoning regulations not only contain restrictions on future uses of the land beyond just the density control issues. The Zoning plan also significantly impacts the use only rural property by adding this additional property use restrictions that ¾ of the other landowners don’t have deal with.

54. Some of the examples of other land-use restrictions embedded into the zoning regulations are herein outlined.

55. Another example of Zoning regulations property land-use restriction herein discussed is the unsupported factual basis for the county’s Zoning regulation affect of superseding the long established State Subdivision regulations and replacing them with new Zoning regulation requirements with no County effort to justify the additional property rights takings.

56. Specifically, the County added into the Zoning Regulation a new requirement that increased the lots line set-backs from standard 10’ to 25’ for lots larger than 5 acres. As a result, a 5-acre landowner would lose about 11% of the buildable land on 5-acres. For existing building in the new

setback would be severely restricted for any exterior changes. Also, future land divisions would require recorded plats to have the 25' setbacks. This regulatory takings, appears to be arbitrary and capricious with no real proven legitimate State interest or legitimate reason to additionally limit landowner use with no real proven basis in fact other than someone notion of good planning (Nexus Dollan/Nolan plus McElwain v County of Flathead 1991 248 Mt. 231-235). The County has produced no supporting documentation as to the need to interject this additional level of property land-use restrictions.

57. The Zoning Regulations also preclude the legislative passed rent or lease option given the Zoning regulations would stop anyone from having multiple rental or lease buildings on a single property . These Zoning Regulations limit only rural property to 1 or 2 occupied buildings whereas rent to lease options are not limited in the number of allowed building – which could be a large income stream lose for some landowners current or in the future.

58. The regulations also restrict the size of the secondary accessory use building to being smaller than the primary building (e.g. residence). Which would imply no one can have a large shop or warehouse on their property. This is another in the list of property rights taking without compensation for the unproven and County idea of Planning 101, “Greater Good ”, “Smart Growth” of whatever term might be used to describe most of these Zoning regulation land-use restriction directives that appear to have no foundational basis, but arose from some preconceived notion of this is good planning -- as long as it isn't your property.

59. That in a nutshell looks like the County is indeed targeting and attempting to harm only the targeted unluck Rural property owners and associated business interests. The harm could run very deep and wide. Harming hundreds to thousands of rural landowners now and into the future which could have profound impacts on families for generations. The impacts may also affect so many other

areas of impacted people and business including; basics sense of wellbeing and mental health, happiness, financial security, real estate asset management and increased income streams,

60. The economic damage of the County's unwarranted and ill-conceived anti-rural development plan go well beyond individuals and spill over into the greater community which will hard to quantify and therefore could be difficult to even contemplate as part of a legal pleading, but it does not mean it is not real and significant to the overall bigger picture. By only targeting Rural property, and severely limiting the availability and desirability more reasonably priced and minimally restricted property, and community is healthier from the bottom up and not top down.

61. The County failed to document and prove to the Plaintiffs, that past and future unrestricted growth in, and only in, the Rural Residential Mixed-use District required 10-acre lot size restrictive in order to reduce unmitigated impacts to: limited groundwater aquifers, increased fire danger, and increase traffic on deficient rural roads. causing such horrible negative impacts that the entire community public health, safety, moral and general welfare was somehow being threatened. The County Planning Staff and BoCC refused addressed the underlying proof of major segments of only the Rural area that had unmitigated cumulative impacts to area resources specific named and unnamed Plaintiff requests for documentation of valley updated growth trends, scientific and proven supporting reports about unmitigated growth impacts, and how the 2020 Zoning proposal solve the problems that could not be addressed under existing land-use management permitting. By not producing updated information beyond pointing back to the 2015 Growth Policy, the county clearly did not comprehend the legal requirements under existing state statutes under which they are to operate and administer.

62. In fact that the county refused repeated request for the county to prepare and summary and map for everyone attending meetings plus actually mail out packets to inform all impacted area landowners and business interest speaks volumes to the autocratic mindset of the top County

administrators and BoCC. County Planners at listening sessions were asked would the county inform citizens with mailers and the response was "No" . When asked if the County would allow the citizens to vote on the Zoning Regulations before they are finalized, again the response was "No". Despite meeting minimum legal requirements for notice, the county made little effort to adequately inform all impacted citizens which could have been done for little money, but the County did not do it because they really did not want the citizens to know and fight them on the takings issues.

63. By not producing any form of real meaningful and substantive responses to the requests to allow the public be properly informed , the County violated the basic legal requirements of the citizens rights to know, participate and direct the outcome as guaranteed in the Montana Constitution (Article II, Sections 1,3, 4, 8 and 9) and the administrative operating codes of Government (MCA 76-2-201-203).

64. The State codes require all County's that adopt a growth policy to review the validity of and update the policy whenever changes dictate revisions, but it must be done at least every 5 years. MCA 76-1-601 requires the following "(3) A growth policy must include: (a) community goals and objective; (b) maps and text describing characteristics and features .. {e.g. real scientific analysis}; (c) projected trends for the life of the growth policy for each of the following elements (e.g. land-use, population, housing needs, economic conditions, local service, natural resources, and other...); (d) a description of policies, regulations, and other measure to be implemented for public in order to achieve the goals and objective established in (3)(a); (e) a strategy for development , maintenance, replacement of (public infrastructure); (f) and implementation plan (e.g. timetable, and revision conditions) (g) & (h) (j) an evaluation of the fire and wildland fire in the jurisdiction ...

65. The County failed to produce any updated information required for the citizen rights to know, basic nexus of proposed regulations, plus they totally failed to comply with the very rigorous MCA 76-1-601 basic stipulation that all growth policies be updated every 5 years if major changes warrant

updates. The County Planning Staff and BoCC refused to slow the Zoning Regulation review process to allow for an update to the Growth Policy or to contract/staff produce substantial and credible documentation of the Growth Trends and associate positive/negative impacts associated with growth spanning the last 5 years from the last County GP efforts, not used growth trend analysis to project growth trends into the future in order to devise a rational based Community Development and Planning management plan that the majority of citizens would support.

66. The Helena Valley Planning Area growth patterns since 2013-2015 have dramatically changes, and the County absolutely cannot justify not updating the Growth Policy prior to adopting these 2020 Zoning Regulations. As indicated many people testified that the County must provide the citizens with real and current information about community past present and future growth trends, or we or the county cannot adequately plan for future growth. our community, but more specifically we citizens require proof the proposed Zoning Regulations address real problems that can't be fixed otherwise. Plaintiffs and other repeated requested the County produced updated growth patterns on such critical items as housing needs; affordable housing; growth patterns for various size businesses, single-family, multi-family etc etc. And Planning for the future with well matched growth goals and objectives including addressing housing supply shortages and housing is being built where it is best suited and addressed other Community social, economic, environmental and infrastructure needs.

67. It is a state and Federal regulatory requirement that Administrative Regulations adopted by government must be designed to be the least impactful and minimally invasive needed to meet a valid government administrative action, especially regarding the taking of any private property rights or restricting commerce and constitutionally protected rights. The Counties 2020 Zoning regulations are a major violation of this basic State regulatory requirements and as such conflicted sections or the entire County 2020 Zoning Regulations should be vacated.

68. But instead of possibly modifying existing County Subdivision Permitting regulations and other internal growth management alternative, the instead adopt punitive and harsh property land-use controls through the lower standards of public and administrative review built into the State Zoning administrative coded (MCA 76-2-201-203). The County chose to adopt the 2020 Zoning Regulations that attempt to truncate and supersede existing County and State subdivisions regulations, and add an unwarranted second layer of regulatory controls without the necessary building the proper administrative foundational building blocks.

69. The Plaintiffs are therein prepared to prove separate or cumulative taking claims based on the administrative record Lewis and Clark abused their Administrative discretionary authority and administrative review process due process failings all the way up to the final adoption of the 2020 Zoning Regulation by the BoCC on November 19, 2020.

70. Along those lines, an additional due process failing by the County by not updating the 2015 Growth Policy is the fact that the HVAP has undergone massive changes of the last 5 years and the projected growth patterns have significantly changed from what the 2015 Growth Policy authors projected or could have imagined and these changes are and will be even more dramatic and the world adjusts to new Covid-19 accelerate living, working and playing changes to our entire social fabric. As such, it is really a good point in time for the county to be forced to get back into the game of real Growth planning and develop a new growth policy that can be used to guide future growth changes.

71. And now it is long past the correction point in history for the County to stop abusing the Administrative Authority and get back to working with the citizens as the major driving force planning through bottom up management instead of the heavy handed autocratic management style that keeps landing Lewis and Clark County in Court and placing the County and by default the taxpayers in financial jeopardy for no real rational reason.

72. As part of the County's researching and writing the 2015 Updated Growth Policy, the County Planning staff and contracted specialist held meeting the various groups starting in 2013 and 2014 eventually leading to the June 2014 mailed out "Growth Policy Update" to many state regulatory agencies and local trade groups. In 2015, the County mailed out 10,335 very detailed opinion surveys to all households and business within the Helena Valley Planning Area. Then produced the very large and detailed 2015 Updated 2 volume set Growth Policy – volume 1 dated June 2015 with updated survey results through September 2015. Volume 2 was printed in November 2015.

73. The County is required to produce proof of the existence and areal extent of problems, then prove the proposed administrative rules can solve these problems in the least restrictive and efficient manner allowed to meet the administrative and legal objectives. The County 2020 Zoning Regulations violate this legal mandate.

74. State codes governing County initiated zoning (MCA 203) require the county to assess existing conditions of the proposed zoned areas relative to current and future growth impact on public health, safety and general welfare. And more impacts of current and future growth on a wide range of topic including schools, transportation & roads, wastewater, fire, groundwater supply and roads --which is what the county has claimed are being irreparably being harmed --, but the county staff and BoCC provided very limited proof of site specific issues, but never and real detailed written documentation that current Subdivision regulations are inadequate to address damaged but growth.

75. The only class of citizens and land that has to comply with these 2020 Zoning Regulations is the approximately 150,000-acres of private property that is within the newly named Rural Residential Mixed-use District (Rural). However, about 3/4 or more of existing business and residential landowners in the HVPA are not covered under these 2020 Zoning Regulations and therefore do not have to worry about the negative headaches and negative economic impacts that Regulated property owners will have to saddled with going forward.

76. The County purposefully excluded from the Rural Zoning Regulated District, and State of Federally owned lands, and private property that was already zoned via County Initiation Zoning (e.g. the approximate 40 square mile Fort Harrison Rural Zoning District) and the roughly 32 preexisting Part 1 Citizen Initiated Zoned areas with at least 53 different land use designations, and land with the other two major HVPA subzones district defined in the 2020 Zoning Regulations as the Suburban Residential Mixed-use and the Urban Residential Mixed-use areas (Helena and East Helena).

77. By excluding roughly 3/4 of the population within the Growth Policy defined Helena Valley Planning area, and conversely including an estimated 4,000 plus number of existing residential homeowners, the County regulations artificially and without merit created two different classes of HVPA citizens/landowners – those regulated and those not regulated.

78. It will be proven in court that by artificially and illegally creating these two class of HVPA citizens/landowners, the county has cause severe widespread and irreparable undue harm to those that are regulated. And with the regulatory controls -- by artificially forcing more growth into the unregulated Districts -- the county conversely most likely unduly enriched the ¼ of the population not regulated, creating a clear a violation of Plaintiffs Constitutionally protected rights of substantive due process violations (Snell v City of Hamilton, 2007 Mont.Dist. LEXIS 132 -- Mt. Article II, Section 17) and equal protection violations (McElwain v County of Flathead, 248 Mont 231) . In all reality, the County we believe by design or unwittingly has created a valid basis for Plaintiffs to further request the Court to Consider that the County violated their civil rights based on Montana and US Constitutional protections and therefore damage claims should be awarded.

79. Plaintiffs and others within the Tri-county community have already undertaken preliminary assessments of the social and economic damages that the proposed L & C County Zoning Regulation have and will cause. Those damages include wide-ranging impacts of lost real estate sales once the perspective buyers were advised by honest realtors of the pending and not passed Zoning Regulations. We have already documented economic harm these regulations have cause in triggering lost real estate sales that have had primary and secondary etc. economic ripple effects on a wide range of area business owner, workers, landowners, and developer etc. including real estate agents/brokers, surveying companies, title companies, home builders and associated trades, marketing, lenders to name just a few known examples.

80. The County violated the Plaintiffs and all citizens Montana Constitutionally protected rights of Popular Sovereignty (Article II Section 1) "All political power is vested in and derived from the people. All government of right originates with the people, in founded upon their will only and is instituted solely for the good of the whole." And Article II Section 9 "Rights to know. No person shall be deprived of the right to examine documents or observe the deliberations of all public bodies or agencies of state government and subdivisions ..." And State of Montana Codes Annotated (MCA 2-6-) Montana public records law.

81. As such, County should be held accountable for all reasonably allowed damage claims for not doing the necessary homework and for not reversing course based on the volumes of real factual reasons the county should not have adopted these Zoning Regulations with serious structural foundation failures that break the nexus chain to rational government administrative rule making decisions to minimally manage growth.

82. Plaintiffs also will work hard to prove to the court, that the County regulations have additional serious credibility and legal problems relating to certain aspects of County Staff crafted 2020 Zoning

Regulations and Map. We believe that County has made no effort to prove and will have difficulty in justifying, additional problematic County Planning Staff regulatory choice incorporated into the final 2020 Zoning Regulation. And we hope to prove that these choice likely meet the threshold of being arbitrary and capricious administrative failures that broaden the scope of fatal flaws that should be overturned by the court as deemed appropriate. If we prove that the County as acted in an arbitrary and capricious manner in decision making, should constitute a violation of the Plaintiff due processes protections if we can prove both procedural and substantive component fatal flaws (Snell v City of Hamilton, 2007 Mont, 21 Judicial District Dist.Cause DV-05-327).

83. The County violated the Plaintiffs and all citizens Montana Constitutionally protected rights of Popular Sovereignty (Article II Section 1) "All political power is vested in and derived from the people. All government of right originates with the people, in founded upon their will only and is instituted solely for the good of the whole." The Plaintiffs contend the County made insufficient actions to adequately inform all impacted rural landowners, but require any party proposing a development to make all neighbors have been properly notice with mailed information.

84. Specifically, the county personnel were repeatedly asked to mailout fliers with a summary of the major elements of the proposal along with a copy of the zoning map – and especially make those mailers directed to all impacted landowners. But the county absolutely refused to implement this simple, low cost, reasonable effort to adequately inform all impacted citizens. But the County in Subdivision and now in Conditional or special use permits would require citizens to pay for and properly notice any impacted neighbors. The County can not justify post a few uninformative fliers out in the valley with not real information other than look at out website and believe they have really made an effort to properly inform impacted citizens.

85. The County dutifully went through the motions in holding many listening sessions and public hearings, but in the end the top administrators and BoCC made no effort to be truly transparent nor

responsive in addressing proof of major health and safety compounding issues warranted to one-size fits all blanket zoning solutions – when it is apparent all these claimed issues are very isolated and could be adequately address through existing County and State Subdivision regulations and other associated permitting requirements.

86. The County knowingly violated the citizens right to know the basis for the taking of private property and sovereignty rights.

87. Specifically Article II Section 9 “Rights to know. No person shall be deprived of the right to examine documents or observe the deliberations of all public bodies or agencies of state government and subdivisions ...” And State of Montana Codes Annotated (MCA 2-6-) Montana public records law.

88. Plaintiffs legal claims are also based in part on the well documented 16-year history of the Lewis and Clark County’s highest administrative and elected officials willing and knowingly targeting rural property for restrictive regulatory controls that caused severe economic damage to many citizens. The County’s basis for restricting rural growth is the general umbrella planning principals of “Smart Growth” which advocates giving incentives for development close to urban centers and discouraging growth in rural areas.

89. Proof of the underlying administrative bias against rural growth can be found in the only real documents the County has repeated cited as the basis for adopted regulatory controls including the 2020 Zoning Regulations – the L & C County’s 2004 Growth Policy and 2015 Updated Growth Policy, Volumes 1 & 2.

90. On the surface the Growth policy looks impressive with lots of charts, fact and color, but inside the “Smart Growth bias is evident to any objective scientist or planner etc. The authors imprinted biased statements highlighting issues anti-rural throughout the document which is important because it even though the Growth Policy is not a regulatory document, all growth

Management decisions are supposed to follow the Growth plan including Subdivision and Zoning regulations.

91. In total, the county has lost at least 5 landmark court cases (HBIA et.al v L & C County , Fasbender & Herrin v. L & C County 2007, Christison v L & C County, and Hamlin v L & C County (, and - -- Development on Holter Lake Lodge v L & C County). Because of these court loses, the County reluctantly made out-of- court settlements involving at least 5 other First District Court cases. In total, the County tax-payers funded documented settlement damages in excess of \$6,000,000 (see Independent Record articles).

92. It has been shown and will be shown in this district court case, that Lewis and Clark County willfully and negligently targeted rural property through administrative actions that violated many of the complaints and other unnamed citizens their Montana and US constitutional rights of: regulated and general public's rights to know that the county is following all legal requirements, and making appropriate administrative decisions; citizens rights to actively observe and where allowed influence administrative outcomes; citizens rights to have County administrator do the least damage possible to meet proven regulatory controls and where appropriate weigh on the side of the applicant; and the basic requirements of justice and fairness be incorporated into all administrative ruling; and citizens and regulated entities rights to own and proper on their property, in their businesses, in their choices relative how and where the live, and freedom for enjoying life and families without undue governmental abusive regulatory overreach.

93. As such, the regulations only target Rural property for harsh unwarranted regulatory controls design to limit and strictly control rural development which is by design discriminatory and illegal based on State MCA ??? and Montana Constitutional (II.3) protections of Equal protection and Inalienable Rights "rights to pursue life's basic necessities, enjoying and defending their lives, liberties,

acquiring, possessing and protecting property, and seeking their safety, health and happiness” plus violations of US Constitutional rights guaranteed by 5th and 14th amendments .

94. The 2015 Growth Policy and 2020 Zoning regulations blatantly encourage growth in the Suburban and Urban areas that are un-zoned yet have the highest current housing development growth rates. A discriminatory, arbitrary and capricious purposeful construct of these Zoning Regulations by County authors and elected officials.

95. These arbitrarily and capriciously regulations -- by target only rural property -- reduce the availability of lower-development-cost land that therein further drives up cost for all new real estate construction and further accelerates costs increase of all Tri-county real estate sales. Simple economic theory sales as supply decreases and demand stays the same or increased, the end result is priced must go up. By reducing the supply of affordable land and housing, the 2020 Zoning Regulations have and will cause economic damage to many area business owners, workers and the overall economy driving out many potential buyers and thereby adversely impacting a wide range of business and landowners through the community.

96. Legal Arguments of Arbitrary, Capricious and abuse of administrative regulatory actions causing taking by the L & C County Board of County Commissioner Adopting the Zoning Regulations Helena Valley (see Weyerhaeuser Co. v US Fish and Wildlife Service “Dusky gopher frog case 8-0 Supreme Court Ruling in favor of Weyerhaeuser Co. SC 586 US Docket 17-71 October 2018; Hamlin Co. v Lewis and Clark County First District Cause number BDV 2008-208; Back Door Development v Lewis and Clark County and; Fasbender and Herrin v Lewis and Clark County First District Court BDV-2006-898)

97. In order to clarify and underscore the 16 year history of administrative abuse by the county (see exhibit 3), we can prove, if necessary, that the overriding theme of most top County administrators, attorneys, elected County Commissioners, and land-use staff that the pervasive

unwritten agenda is to work towards slowing the rate of rule growth by using harsh regulatory reviews and administrative decisions to help meet this “Smart Growth” type anti-rural growth philosophy by crafting subdivision and Zoning Regulations that help dissuade people and business from even applying for and actually completing subdivision applications in Lewis and Clark County.

98. Over the Past 16 year and even longer, The County’s long the fact that the L & C County officials’ long line of successional leaders that subscribed to this philosophy are not alone, for the “Smart Growth” mindset is shared all across the country, but objective scholars contend this type of thinking has resulted in escalating housing and land prices caused by constriction of the supply of lower cost and reasonably managed land development regulatory management.

99. Both documents (2020 Zoning Regulations and the 2015 Updated Growth Policy) unfairly point to the only way to reduce negative cumulative impacts to areas resources – like rural roads, fire hazards, water quality and water supply, and flooding -- is to limit rural growth using lot-size density controls. Out of four very basic growth management options, the 2015 GP authors only chose density controls for rural areas then smattered massive over-generalizations supporting this one-size fits all regulatory.

100. The Growth Policy totally ignore the idea of adopting lot size restrictions on the Suburban and Urban Subzone, instead focusing on infrastructural and education out-reach as reasonable future growth objects going forward. Therein lies the basis for class discriminations Constitutional violations wherein the county unfairly, illegally and administratively targeted only one class of citizens for harsh property rights controls in favor of other segment of the population .

101. Additionally the County also violated the Plaintiffs due process protections by crafting a Zoning Regulation map that arbitrarily and capriciously defines District boundaries with no underlying proof of validity or factual basis other than staff driven concepts of what makes sense.

102. Specifically, the actual mapped boundaries of the three major 2020 Zoning Regulations districts were largely a product of County staff planning sessions that never involved the public. And most importantly, the location of some segment of the Rural and Suburban boundary line location must be challenged as being arbitrary and capricious. Two named plaintiffs, Don and Barbara Novotne, and Jim Dusenberrys' agricultural properties were split into two leave portions of both properties in the two different districts and therefore different regulatory restrictions. Barring a total injunction on the Zoning Regulations, the best solution would have been for the division line to have been drawn down the middle of the county road called Sierra Road. Therefore we contend the actual physical conditions of both designated classifications are no different on neither parcel such that the property deserves two different land management classifications. None of the three county cited health and safety concerns are really valid concerns for either landowner parcels and the as such the county's actual choice of where these lines could be challenged as being arbitrary and capricious.

APPEAL OF THE NOVEMBER 19, 2020 COMMISSION ADMINISTRATIVE DECISION

1. Based on the evidence presented herein, it is clear that the county is in violation of State statues (MCA 76-1-601, 76-2) and numerous State and Federal Constitutional violations detailed above for that reason and that reason alone the 2020 Zoning proposal must be vacated and the county sent back to update the Growth policy before any new Zoning proposal is considered in the future.

2. In summary, the county has no rational, scientific and legal basis for targeting only rural property for costly land-use restrictive Zoning Regulations with unproven planning directives lacking basic foundational grounding in solving real problems, and appear design only to take private property rights away from only 25% of the HVP while leaving everyone else unscathed. The Plaintiffs have detailed the long list of failures and Constitutional and Administrative violations of the Plaintiffs

protected rights and as such the Court must consider all appropriate legal remedies allowed under the law.

3. Based on the long list of administrative due process and constitutional violations of the Plaintiffs caused by the County's seriously compromised and abuse of power Administrative review process and ultimately Administrative Rule making adoption process government over-reach due process claim warranting requests for past, current and future damages or as another facet of the regulations that could be stricken in part or as part of the hole court order correction action.

RESERVATION OF CLAIMS

Plaintiff hereby reserve any ab all claims for relief that may arise under state or federal law form the actions and decisions alleged above.

PRAYER FO RELIEF

WHEREFORE, , Plaintiffs pray for the following relief:

1. For judgment reversing or invalidating the November 19, 2020 final decision rendered by the Board of County Commissioners approving a Resolution 2020-97 to formally adopt the Zoning Regulations Helena Valley;
2. For award of all actual damages, including compensatory and consequential damages, incurred by the Plaintiffs in an amount determined at trail;
3. Fore an award and judgment for costs and for reasonable attorneys fees and litigations expenses to the extent allowed by law;
4. For such other and further relief at law or in equity the Court may deem appropriate under all of the circumstance in this case.

THEREFORE the Plaintiff respectfully asks this court to grant the following:

John W. Herrin
(Your signature)
John W. Herrin
(Print your name)
12/21/20
(Date)

State of Montana)
County of Lewis & Clark) : ss

John W. Herrin being first duly sworn, upon oath, deposes and says as follows:
I am the Plaintiff in the foregoing Complaint. I have read the foregoing Complaint and the facts of the matter contained herein are true, correct and complete to the best of my knowledge and belief.

John W. Herrin
Plaintiff

Signed and sworn to (or affirmed) before me this 21st day of December 2020.

J. Higgins
(Signature of notary)

(Printed name of notary public)

Notary public for the state of _____

Residing at: deputy clerk of district

My commission expires: court

Praecipe

FILED

DEC 21 2020

ANGIE SPARKS, Clerk of District Court
By _____ Deputy Clerk

JREIDGERS

I, John W. Herrin, request page 30 & 31
of December 18th, 2020 Complaint ^{DDV} ~~AVA~~ 2020-2015
be replaced with signed copies of complaint.

John W. Herrin

December 21, 2020

Herein are a few key parts of the 2020 Zoning Proposal Helena Valley regulations contained in is biased against rural property as proof here is a small portion of the zoning regulations are as follows:

Page 7-2 "Section 7 RURAL RESIDENTIAL M-U DISTRICT (RR) Intent.

To provide for lower density residential development, along with the opportunity for continued agricultural activities ...Also, on a limited basis, to provide areas for non-residential uses in balance with residential development and ag – as an integral part of the community providing essential services & employment opportunities. Non-residential development ... should be permitted in compact centers rather than extended strips of development along roadways to provide orderly development, minimize traffic congestion, and to provide for safe pedestrian traffic .

701. 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. The key issues (fire, water, wastewater, roads, & flooding) along with the potential for conflicts between ag., and urban activities support the lower densities levels of the RR district. Development or use of land in this district is permitted only in accordance with the provisions herein."

702 (pg. 7-2) Principal Uses. Only one (1) principal use is allowed on each parcel. The following principal uses are allowed in the RR district (14 uses mostly forestry, ag, residential, churches).

703 (pg .7-3) 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 (e.g. residential or church or ag); 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.

704 (pg. 7-3) Conditional Uses. The following uses are permitted, upon approval of the Consolidated Use Permit (CUP) by the BoCC, in accordance with section 14... Listing 49 business designations plus 704.39.01 multiple -Dwelling Unit Residential per parcel.

705 (pg. 7-5) Special Exception Uses. The following uses are allowed to an established principal use, an accessory use, or conditional uses – (e.g. Ag, Comm Residential Facility, Day-care, forestry, Horticulture, Silviculture, Telecon Facility).

706 Minimum Lot Area (pg. 7-6) –Shall become effective and in full force and effect June 1. 2022.

Minimum parcel size shall be ten (10) Acres. However, in order to permit creative and environmentally sensitive site design, smaller parcel sizes maybe permitted through the use of Cluster Design... below.

706.01 Cluster Lot Design (pg. 7-6).

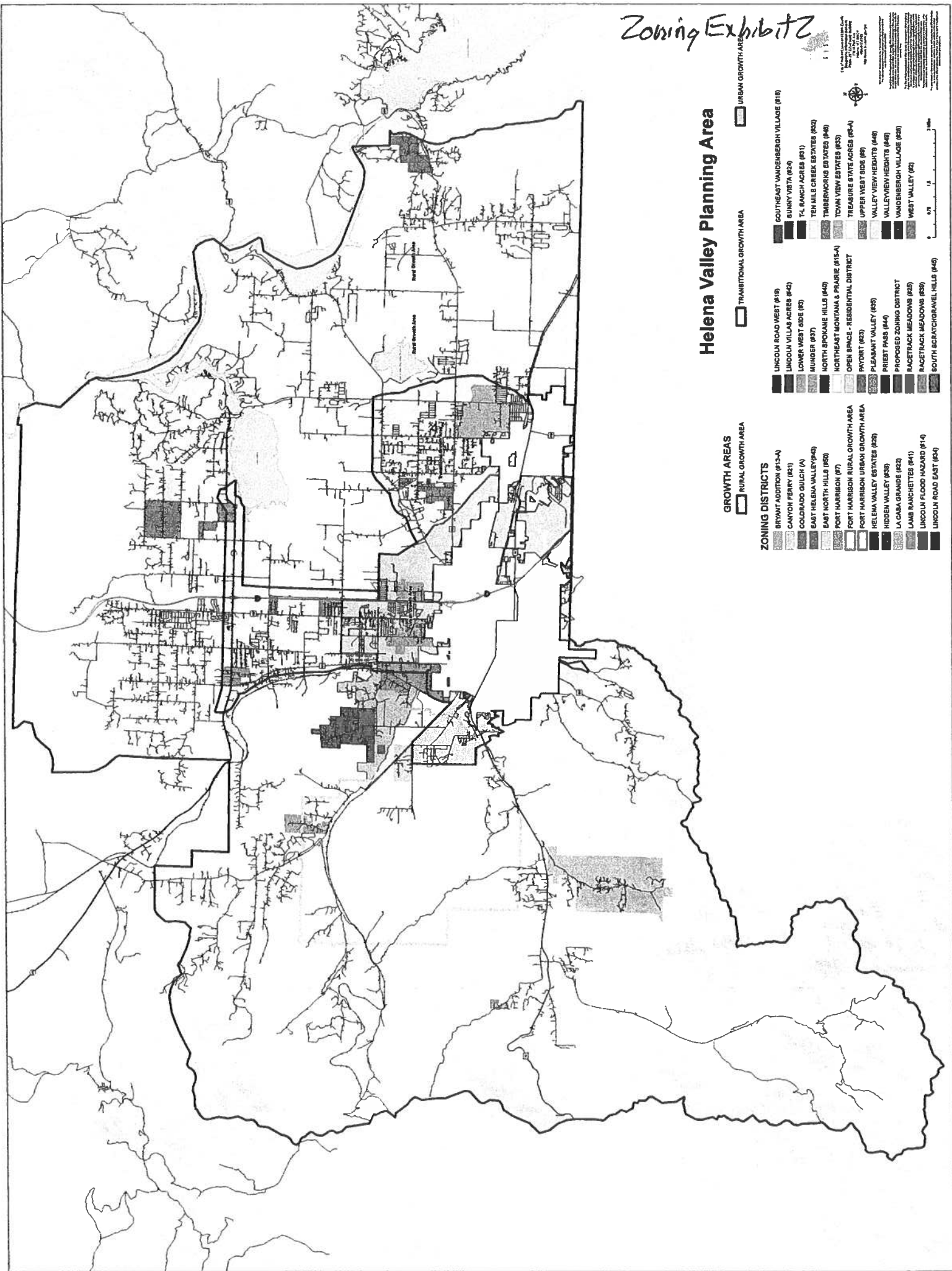
706.02 Open Space Standards

707 (pg.7-8) 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 no exceed one (1) Parcel per ten (10) Acres.

708 (pg. 7-8) Minimum Setbacks (see 708.04 for non-agriculture parcels). Principal and Accessory uses all side 25' for lots >5-acres (Note: normal subdivision setbacks are 10' for boundary lines).

Zoning Exhibit 2

Helena Valley Planning Area



GROWTH AREAS

RURAL GROWTH AREA

TRANSITIONAL GROWTH AREA

URBAN GROWTH AREA

ZONING DISTRICTS

- BRYANT ADDITION (#13-A)
- CANYON FERRY (#21)
- COLORADO OULICH (A)
- EAST HELENA VALLEY (#45)
- EAST HELENA VALLEY (#50)
- EAST NORTH HILLS (#58)
- PORT HARRISON (F7)
- PORT HARRISON RURAL GROWTH AREA
- PORT HARRISON URBAN GROWTH AREA
- HELENA VALLEY ESTATES (#29)
- HIDDEN VALLEY (#36)
- LA CARA GRANDE (#22)
- LAMB MANCHETTES (#41)
- LINCOLN FLOOD HAZARD (#14)
- LINCOLN ROAD EAST (#34)

- LINCOLN ROAD WEST (#19)
- LINCOLN VILLAS ACRES (#42)
- LOWER WEST SIDE (#2)
- MUMDER (#37)
- NORTH SPOKANE HILLS (#40)
- NORTHEAST MONTANA & PRAIRIE (#15-A)
- OPEN SPACE - RESIDENTIAL DISTRICT
- PAYCOTT (#23)
- PLEASANT VALLEY (#28)
- PRIEST PASS (#44)
- PROPOSED ZONING DISTRICT
- RACETRACK MEADOWS (#25)
- RACETRACK MEADOWS (#39)
- SOUTH SCRATCHORAVEL HILLS (#46)

- SOUTHEAST VANDERBERG VILLAGE (#18)
- SUNNY VISTA (#24)
- T-L RANCH ACRES (#21)
- TEN MILE CREEK ESTATES (#23)
- TIMBERWORKS ESTATES (#46)
- TOWN VIEW ESTATES (#53)
- TREASURE ESTATE ACRES (#24-A)
- UPPER WEST SIDE (#9)
- VALLEY VIEW HEIGHTS (#48)
- VALLEYVIEW HEIGHTS (#49)
- VANDERBERG VILLAGE (#22)
- WEST VALLEY (#2)

City of Helena Planning Commission
 Planning Department
 100 North Park Street
 Helena, MT 59601
 406.261.2000
 www.cityofhelena.com

September 22, 2020

To: Leo Gallagher, L & C County (Attorney), Susan Good Geise, Andy Hunthausen, Jim McCormick (Commissioners), and Rodger Blatz (Chief Administrator).

From: John W. Herrin (Citizens of L & C County)

RE: The Proposed 2020 Zoning Plan for the HVPA - Specifically the proposed 10-acre average Minimum Lot-size Density Control Regulations - will likely be challenged in District Court because County Plan has the following fatal flaws:

- A. General Legal Challenges based on Counties Entire Supporting Evidence Being the Deficient, Overtly Biased and Outdated 2015 Updated Growth Plan Is the County's only basis for the zoning proposal - grossly inadequate foundation for Future Growth Management.
- 1) The 2020 Zoning proposal illegally, willfully, and maliciously target and discriminates against one class of landowners (Rural), and by design and purpose intent rewards and enriches another class of landowners (Transitional and Urban) by use of very restrictive regulatory controls incorporates into the pending 2020 Zoning Regulations for the Helena Valley Planning Area (HVPA),
 - 2) The regulations were solely Crafted by 5 County Community Development and Planning Department (CD&PD) staff in close consultation and at the direction of the Three Board of County Commissioner. County staff were the sole authors of the original set of maps and regulations for the 2020 Zoning proposal, allowing almost zero outside influence into the master design and content - until it was set in stone. Although the County CD&PD staff did meet with about 20 trade and civic groups, these groups only saw the original county Zoning 3 main District SubZone designations (Rural, Urban and Transitional) with the rural SubZone future broken down into 160, 20 and 10-acre Rural targeted lot size restrictions. At those 20 outreach meetings the county had zero written details to hand out nor any written regulations. Still the overriding sentiments was this plan was a horrible idea from inception and should go back to the drawing board.
 - 3) SO to put it down in no uncertain terms - this entire 2020 Zoning Proposal is totally County Driven with very limited actual formative changes allowed into the actual final plan except for the County backtracking to 10-acre average lot sizes for all rural property instead of the highly controversial 20 and 160-acre more restrictive original plan. With the April drafting and release of the 129 page Draft regulations, the targeted restrictions primarily focused on rural property came into focus. One additional change the county made was to remove water-body set-back requirements which are already in County subdivision regulations. Otherwise the entire plan is still Top-down county written and conceived growth plan that very few of the hundreds of people written and verbal testimony supported the rural 10-acre lot size aspects of the proposal.
 - 4) In the 2020 Zoning proposal (Rural Mixed Use SubZone area) CD&PD staff total rationalization and justification for the incorporating the 10-acre lot size density controls for the entire estimated 150,000 acres of undeveloped rural SubZone lands as the only rational

County growth management tool --- falsely claims that existing subdivision, MDT access permits, water rights, fire mitigation etc. regulations Administered by L & C County and various State agencies grossly and illegally allow cumulative impacts that require L & C County restrict Rural property Lot-sizes (implement density controls) in order to protect public health, safety, and general welfare.

- 5) To date the county has provide ZERO real scientific, factual and date analysis documentation supporting these false claims -- proof which are nearly impossible for the county to develop without lying or fabricating date,. So it really should come as no surprises the county CD&PD staff has produced Zero responses to hundreds of citizens requested for more factual proof of problems, and proof the Zoning rural lot size density controls are the only valid solutions (Note the county must evaluate reasonable alternative impact mitigation measure that address specific issues).
- 6) And most difficult to for the County to prove and most problematic politically is the unsubstantiated claims in the 2015 Updated Growth Policy that current subdivision review and approval process under existing County and State rigorous Permitting regulations somehow allow multiple developments to create unmitigated large scale cumulative impacts to water supplies, roads or increase fire risks. That claim alone is patently false and cannot be supported - which is exactly why the county staff has avoid even attempting to dig down into the facts to attempt to valid these claims of pending problems. Not only that, by implication the 2015 Growth Policy and resultant 2020 Zoning proposal authors are incriminating their own agency and state of major permitting oversight and gross mismanagement for allowing large scale cumulative impacts to occur over 150,000 acres of land if developed - a total false assumption without merit or proof.
- 7) Then the county would have to prove that the proposed 10-acre Lot Size restrictions and all added 129 pages of new Zoning regulations are necessary to address the unmitigated cumulative impacts on future water supply resources (e.g. water user rights), increase fire hazards (note actual wildland fire danger will significantly drop for higher density rural development and increase with >10-acre lot size Zoning), and create unsafe added traffic on deficient rural roads,
- 8) But the entire master plan targeting only rural property would drastically harm rural property owners by decreasing property value, while conversely enriching Urban and Transitional property - is an illegal arbitrary taking action without compensation that has no foundational facts to justify the harm inflicted on all 150,000 acres of privately owned land.
- 9) The County CD&PD staff has repeatedly used such feel good false claims as - the Zoning proposal will "increasing growth predictability", "increasing real estate values" (only for the County favored Urban and Transitional Landowners) and the classic claim -- for the "Greater Good".

None of which are true fact-based statements that really justify the significant damage it will cause to 1000s of current families all the way to large agricultural landowners. Nothing good for any of these landowners will come from this proposal and that is why so many rural landowner are fight this proposal with everything they have. It will destroy landowner wealth, savings, and options plus cause adverse impact the overall fabric of the community and

change the overall social & economic balances by future driving up the already high home prices (Helena area now > \$300,000) which future compounds our communities already crisis issues of affordable housing and worker attraction/retention problems for area businesses.

10) The County Commissioners message to all citizens in February 25, 2020 BoCC hearing was ---- we citizens are not able to make these complicated decisions in part because we are too wrapped up in our own biased world that we need to submit and give up our property rights to the capable County Leaders discretion for the "Greater Good" of community.

11) At February 25, BoCC hearing on the 2020 Zoning proposal, Mark Diehl gave testimony about the adverse economic damage this plan could have on area farmers and ranchers. He testified that even with good wheat prices his dryland farmland in the Spokane bench barely makes any money and the gross income is normally only about \$200/acre (JH confirmed his number on August 8 private oppositional meeting where in he said this year is good and he will get around \$200/acre income, but his costs just to put the wheat in the ground is \$130/acre and when you consider costs to harvest and ship it to Butte railhead, the profit is less than \$30-40/acre). He went on to testify he could not afford to buy land at current market prices.

Mr. Diehl also stated something along the lines here written (not verbatim). Jerry Hamlin's development right across Canyon Ferry road is getting around \$70,000 per acre for home-sites and The Diehl family should not have to give up future property rights and land value for the county unproven plan. Even though Mr. Diehl further stated -- that although he has no intention of selling his land (and he has received many offers from developers) he strongly opposes the 2020 Zoning plan because it severely restricts his future options and the county shouldn't be allowed to take his property right without compensation.

Later on in the meeting Commissioner Good Geise in her comments, made some kind of disparaging statement comment along the lines that -- Mr. Diehl is not telling the truth about dryland farming income and he shouldn't be giving such testimony given he lives in a very expensive home. WOW really. That proves bias against important public testimony and her attempts to unethical and illegally sway public opinion, proves bias against rural property owners valid concerns about the significant lose of future land value, income and property rights, plus these statements severely damage the public image of credible public input being openly dismissed by county officials. But it is more important to call this Administrative abuse of power by a county official and it is by no means the only time Commissioner SGG has attached citizens during public testimony.

Although not directly related to this Zoning Regulations, but related to the county's overall targeting of rural property is the fact that Commissioner Susan Good Geise has many times attempted to intimidate, control and disparage me in public testimony which is potentially illegal and is forbidden by Montana's protective open meeting law regulations.

Commissioner GG, has on multiple occasions interrupted, chastised, attempted to intimidate, misdirect, censor, belittle, slander, countless times interrupted, and told me to cut my testimony short and also interrupted me to telling how and what I should be presenting to the BoCC. Such behavior is specifically prohibited during public testimony illegally (MAC

1.3.102, 2-3-103 to 109, 2-3-201 to 203, etc) and her repeated actions are illegal under the public hearing laws of Montana and under the County open meeting procedures that the county is forced by the Governor mandate to have written, adopted and all county official must follow.

- 12) MCA 76-2-202 Establishment of Zoning District - Regulations states “.. establish zoning regulations ... **that are considered best suited to carry out the purpose of this part**”.

Best suited for the County is not to adopt the false claim and baseless zoning regulations, and the county cannot in good conscious move forward with these all the outline deficiencies documented in the hundreds of pages of written and verbal testimony with the county providing no meaningful and detailed technical, legal, administrative, or factual based justification for these harsh Rural Property Density control regulations other than to lamely keep pointing back to the defective, biased, and outdated 2015 Growth Policy which is merely an opinion minority report by group of county and contracted planners that lacked scientific and intellectual filters to remove bias from their written GP facts presented and conclusions reached.

- 13) Prior to the first June 16 Planning Board Hearing, the county mailed out 13,000 Post card however this all important notification did not meet adequate notice requirements of 76-2-205 Procedure for Adoption of Regulations and Boundaries Violations of State mandated open meeting laws

- (1) Notices of a public hearing on the proposed Zoning District boundaries and of the regulation for the zoning district must:
- (2) (a) state;
- (i) The boundaries of the proposed district;
- (ii) the general character of the proposed zoning regulations
- (iii) the time and place of the public hearing

- 14) Based on State of Montana open meeting laws, the public has a right to know all aspects of a proposed regulatory proposal that is Significant in scope and impact - and this 2020 Zoning proposal absolutely qualifies as being significant government action. The county and most importantly the BoCC and CD&PD staff are missing in action (see all the examples of the county making very limited effort to adequately and legally inform all area citizens of the most important and defining regulatory control administrative action this county has every considered.

- 15) MCA 2-3-201 makes it very clear that legislative intent of open meeting laws is to be liberally constructed and applied to assure all board and commission hearings are done “to aid in the conduct of the peoples’ business”. That means people business trumps County bias and agenda drive regulatory planning and implementation actions. In other words, the 2020 Growth Plan by law must serve the interests of the County as a whole and not allow targeting, abuse, negligent, willful bias to supersede the public right to know and affective direct change policies where change is warranted.

16) Montana's Open meeting laws mandate that the county hold open meetings and provide for public input into any proposed action that is deemed significant to the community being impacted. The citizens have an absolutely right to know and the county cannot hide behind vague promises and statement when proposing such drastic measures as taking property rights from thousands of rural property owners without justice cause.

17) The County repeated and cumulative actions show willful, corrupt, negligent, and a personal agenda driven violation of the Montana's most advanced open meeting laws in the US (see MCA 1-1-204 for Terms Denoting State of Mind; MCA 70-30-11 (facts Necessary to be Found Before Condemnation; MCA 76-2-201 to 203 County Zoning **(must be best suited to carry out the purposed for this part** ((e.g. 203 (b) (i) secure safety from fire and other dangers, (ii) promote public health safety and general welfare, and (III) facilitate the adequate provisions 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 provisions of adequate light and air (BS), (b) the effects on motorized and nonmotorized transportation systems (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction area

The County's 2020 Zoning Plan, absolutely violates existing and future rural property owner property rights by the taking future value and not respecting the property rights owners most appropriate use of their land as this section of the zoning regulation so stipulates!!!!

18) The highest and best use on most of the upland grassland areas --that are being targeted for 10-acre restriction -- is more homes and less dryland farming. With new 1-2 acre size homes the actual wildland fire risk is lower than larger (10-acre lot), the County tax base is increased when low value ag. land is converted to very high value real estate value across the county, and that in turn provides a dramatic increase in Rural Fire District income (Note: County 2015 GP & 2020 Zoning plan absolutely ignores the fact over the past 30 plus years the increased number of HVPA homes and the massive increased tax base has allowed the County to fund massive increases in Rural Fire District building and equipment all across the HVPA--making our community safer and more capable of responding to emergency than any time in our communities history). The bottom line is - the HVPA is safer than ever before because of increased RE values added by new homes and home prices -- all benefits the County 2020 Zoning plan would purposefully depress because of the personal bias of the BoCC and CD&PD staff.

19) MCA 76-2-202 (Establishment of Zoning Districts - Regulations) and MCA Title 2 Part 2 Chapter 3 (Public Participation in Government Operations) guarantee that it is the public right to be heard, absolute right to know, and right to affect change in County rule making plans. The Citizens being impacted, and for that matter everyone in the county, has the right to know how this proposal will impact the social and economic fabric of our community and we require to affirmatively demonstrate that all our critical need to know concerns have been addressed, and all our well-reasoned facts and problems against this proposal have been faithfully and completely considered by the PB, CD&PD and the BoCC in making the necessary modifications to the proposal to make it legally adopted.

The county has offered no meaningful responses to all concerns against the 2020 Zoning Rural property regulations, other than to point back to the 2015 Growth Policy. What is the CD&PB, PB and BoCC justification for ignoring real facts and evidence provided against this proposal and more importantly how can the county prove that the County Citizens Rights to Know fundamental and legal obligations have been fulfilled? The county has made no effort to respond to my, Jerry Hamlin's and many others collective long lists of questions and concerns to prove or disprove any of our counter claims - and by default then we should assume we are right and the county is wrong - because the County has vacated their obligations to adequately inform, consider and act in the best interest of the Community as a whole.

20) At the second Planning Board Hearing (June 25, 2020), Chairman Gregory Thomas illegally interrupted John Herrin's second time testifying before the PB regarding the damage and illegal basis for 2020 Zoning proposal. For some unknown reason, Mr. Thomas acting as meeting moderator and near the end of a long public hearing process, decided to start telling Mr. Herrin that he was repeating the same arguments that had been made in the 60 plus pages of documents he had submitted to the county prior to the hearing. Mr. Herrin attempted to gather his thoughts and started to think about what he meant--rather than sticking to his previous line of talking point. I said something along the lines of Social and Economic Impacts detailed in my 6 page document - and again Chairman Thomas interrupted me and curtly said something along the line "I know what you've said before --- see I've written Social Economics on this envelop" and he held it up in the air and I could see the word he had printed on the envelop

(Note: I was quickly was thinking to myself -- Like what you wrote down -two words really matters. Do you really understand what is being said - {{ 9/21/2020 observation - in reality Dr. Thomas proved he had read my Social/economic paper arguing against the County planning Docs because he cited the Louisiana Frog 7-0 Supreme Court case of Takings which I had written into that report and added Mr. Woods? (National Columnist) Newspaper Column editorial in the long list of submittals to the county)

Anyway back to my second stanza of testimony on June 25 - I began trying to talk, but Mr. Thomas continued to interrupt me = asking me several times - do you have any new information we have not already heard?

Which is the same question that he interrupted the speaker right before me when he asked him - do you have any thing we haven't already heard before -- asking him to cut his testimony short and not repeat details. He also had to gather his composure but he went on the discuss things he had said in the meeting the week earlier and submitted in writing, but that is his right to reinforce those points he and I felt the PB and County must consider (person who owns 5 mining claims in Remini).

After the third time interrupting me and repeating the same question "do you have any new information" I pleaded with him to stop talking so I could speak. But he would not stop harassing me and I watched the video recording and timed his tirade - it went on for 3 minutes none stop. I really do not know what he was saying after the first few clear interruptions asking if I had anything new to add - he just talked non-stop into the

microphone for 2 more minutes. About every 20 seconds I would plead with him to just stop talking. Just stop talking Just stop talking so I can give my testimony.

During the minutes that I had to endure the shaming and bullying, my adrenaline levels began to rise and as I explained in my last email to the County on this matter my adrenaline levels went through the roof, and I said to the Planning Board and Mr. Thomas several times " You (meaning PB members) are not asking the planning staff the right questions. It is apparent that you don't know how to ask the right questions. They (the CD&PD staff) need to respond to all our long list of questions and explain why we need this plan to protect what? The County staff has provided no real answers or proof - or something along those lines.

The absolute truth is for most Planning Board members (and for the record city representatives) they never really grasp the technical aspects of how wrong the blanket approach that targeting every tract of land over the entire 150,000 plus acres of rural property was not only the wrong approach technically - it was even more wrong because it was illegally targeting one segment of the population for harsh regulatory controls, when neighbors right across the road were dancing in the street with the county blessing enrichment gifts. They just did not understand these very clear and basic failures and therefore voted to approve this illegal 2020 Zoning plan 5 to 2.

21) At the very important third Planning Board hearing on July 17 at the Civic Center Auditorium, the County brought forward James Swierc (hydrogeologist L & C Water Quality Protection District) to provide information about water supply issues and water quality issues in the HVPA. Unfortunately I came into the meeting about 20 minutes after the start at 6PM - and James was already outlining some of the water supply issues of the valley and describing the variability of flow in various bedrock formations and valley fill aquifers. I stood behind in the Civic center auditorium entry hallway behind Mr. Swierc for over 10 minutes and eventually I took the closest seat to the right of the entry hallway.

Mr. Swierc presentation was at times technical and bit scattered from what I witness but was accurate as always. However in the end I believe the Planning Board member were left just a confuses about the need for blanket Zoning lot size restrictions as they were at the start.

As such, I starting thinking about the hydrogeology water supply issues as I listened to other speakers making public comments.

I patiently waited until the very end of the public testimony to standup as Andrew Thomas finished his 15 minute testimony and then 5 minutes of answering Planning board member questions. The only other person waiting to Talk was Bill Gowen and as I stepped down into the entry way waiting position Chairman Thomas announced that the public hearing was closed. I wasn't sure what he meant by that statement, but I suspected it was a power move to cut my testimony off.

Sure enough, after Bill Gowen's 5 minute testimony I steep up to the microphone and Mr. Thomas quickly announced a second time -

“the Public hearing portion of this hearing is closed”.

I said “Really. I have been patiently waiting for 2 hours and you are doing that to me. Why? Why won’t you let me give testimony.”

Chairman Thomas, finally responded, that I could come back and testify at the next public hearing. By the way I was not able to testify at the lightly attended 3PM hearing on July 21 or the final Planning Board hearing on August 4 - because the County did not have any Planning Board hearings posted in the County Website when I visited it on July 28 and July 31. I would have attended both hearing had I been informed by the county website or other forms of modern information communication (e.g. newspaper, social media etc.)

It was illegal for Chairman Thomas to deny me the ability to testify to the planning Board on July 17 (MCA 2-3-201 Legislative intent - The legislature finds and declares that public boards commissioners 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.

And MCA 2-3-103 Public participation - govern to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participated in agency decisions that are of significant interest to the public. (2) The governor shall ensure that each board, bureau, commission Adopts coordinated rules for its programs.

The County managers and attorney’s office obviously either has not writeup and adopt detailed opening meeting laws protocol documents for all employees to read or the County managers have been negligent it training Board and Commissioners on proper open meeting laws and what behavior is expected from county personnel conducting and managing public hearings. If L & C County had written Open Meeting Administrative Rules and implemented annual training then the decades of County Managers public hearing abusive behavior would not have happened.

Chairman Thomas 3 minute tirade did illegally interrupt, degrade, verbally attack or willfully try to stop my verbal testimony and failing that he attempted to shame me into losing my concentration which partially worked. Altering and intimidating witnesses in illegal. And in doing so the County representative altered the course of events?

The County mangers are legally required to encourage all citizens to testify and not stop or alter public free speech. The objective of rural making open meeting is to provide the decision makers and the public as much information and perspectives as possible so in the end the best possible decisions are reached.

In harashing, bullying and demanding Mr. Herrin submit to his demands - Mr. Thomas clearly violated Mr. Herrin’s US and MT Constitutional rights to free speech and in addition clearly violated Mr. Herrin’s right to presenting important verbal testimony to the Planning Board which can not be redone or corrected. This violation happened not once but twice to Mr.

Herrin and Mr. Thomas also to much lesser degree harassed other witnesses as described above.

Chairman Thomas blocking my public testimony at the end of the July 17 hearing, is even worse than harassing a witness as the victim never has that chance to affect change and inject reasoning into the process. Although it might look like the County planned to block my testimony for fear of allowing incriminating evidence to be introduced, but I suspect that Mr. Thomas acted on his own behalf trying to even a score on the street brawl fight he started on June 25. A fight he lost last time and he simply conceived the testimony block plan at the last minute as a way to get even.

No matter the reason, Chairman Thomas illegal abuse of power violated public trust, citizens rights to participate & affect change, and everyone's right to know the facts pertaining to significant governmental rulemaking decisions.

Mr. Thomas said that I could attend the next hearing - when I was standing right in front of the mic and he could have easily allowed me to talk because that was my legal right to do so and he had no valid legal right nor reason to bar my testimony. The worst thing is because I was so upset by being shamed and harmed by Mr. Thomas for second time, I collected my papers and left before I could hear when the PB planned their next hearing. However when I pulled up the County PB hearing August calendar it didn't list any meetings and as such I missed the final August 4. I and many others missed that final meeting and the 3pm July 21 hearing because again the county appeared to be attempting to minimize public awareness to reduce the number of combatants attaching their proposal.

In addition to Mr. Thomas's abuse of power Chairwomen Susan Good Geise has on at least 4 different BoCC hearing asked Mr. Herrin speed up or wrap up public testimony, plus at the Myles Minor Subdivision and post hearing open discussion session wherein Mr. Herrin level new arguments against the zoning proposal causing Chairwomen GG, to illegally interrupt Mr. Herrin at least 5 times, scolding me for taking up valuable time while she rambled on and on about my need to speed up my presentations, or another time telling me how to cut down on the topics discussed at any meeting limiting my presentation to 2-3 topics, and twice stopping the entire hearing for over 5 minutes each calling Neko (Deputy County Attorney) to discuss legal strategies in dealing with my reality check public testimony that she did not want to hear.

And none of the other County personal at the meeting stepped in to stop the abusive behavior. Those County personnel present included Neko (attorney), Chief Administrator Rodger Blatz, or the other 2 County Commissioner made any effort to reign in the out of control Chairwomen GG.

No one stopped the abuse at the Planning Board or BoCC hearing I suspect because no one in the county ever bothered to really read or was trained on the MCA regulations or the County adopted Open Meeting laws manual.

The State open meeting laws also strictly prohibit legal matter consultation during the hearing - that is unless official legal court filing papers had been served involving the county or matters of limited privacy concerns - neither exemption was a factor and as such

everyone one in the county was enabling Commissioner Good Geise in abusing her power in these 5 long interruptions in just a short 30 minute span of time.

As a side note: had SGG not interrupted my presentation it would have been over in 15 minutes, half the time it actually took because she was always interrupting the hearing proceedings. Yet she even had the nerve to complain how much time I was wasting talking about the factual failing of the proposed Zoning plan.

Commissioner Good Geise was so preoccupied with beating me down, shaming me and winning the war of words, that she absolutely did not listen or truthfully adsorb what I was saying about the failures of the 2020 Zoning proposal, instead she was only focused on making me look bad and disrupting the message she did not want to hear. That is totally not surprising because I knew she wasn't really listening to anyone presenting objections to this pet plan she has her heart set on advancing at any cost.

Back to SGG mind set "The Fix is In" statement fits her repeated abuse of power and clearly not listening to what I have said in all matters that have come before her in county hearings - I can clearly see it in her eyes and her mannerism. Conversely, Commissioner McCormick has always been most respectfully but most importantly extremely attentive to every word in hearings and that open attitude is refreshing and so contrasting to the negative, controlling, abusive, and narcissistic attitude of Chairwomen Good Geise.

Last month I sent a letter to the BoCC and Rodger Blatz detailing these abuse of power charges and I have not heard one word back from anyone at the county. As such, now I have moved this up the chain to include the County Attorney's office and I really should contact MACO again, but as I understand it MACO only gets involved once the county is sued. That is too bad - as the county really needs better administrative management to correct these issues which are systemic.

The secondary issue here is Commissioner Good Geise power play twice calling Neko to the her desk and obviously consulting him twice for 5 minutes each time, proving beyond a doubt that the County Administrative Managers and Legal Staff have not had any employee public hearing training given the open meeting laws of Montana are so easy to find and read even a third-grader would know that this action was not permitted → period never and yet this legal consultation has happened many times over the past years particularly with Chairwomen Good Geise in charge.

Why - because she and the legal staff aren't consulting prior to meetings or She is using these consultations are a means to regroup and redirect public hearings. This abuse has to stop. All county personnel need to have read and understand this simple principals of how to conduct legally compliant public hearings. I stated these same facts to the county in the letter last month so hopefully public hearings will operate in a more civil and legal manner from this time forward.

Collectively, the Planning Board Chairman and Commissioner Chairwomen Good Geise have struck harsh verbal blows at Mr. Herrin in an attempt to silence him and alter or diminish the impact of his public testimony in an effort to win at all cost mentality which is not allowed in statute nor is I allowed in the court of public opinion.

The county could and still may be sued over these series of abuse of power actions during formal public testimony, which all depends on what the county does on the 2020 Zoning proposal.

Lewis and Clark County must immediately implement and annually update a top down anger management and public interaction training program so that this type abuse of administrative power never happens within the halls of County government.

In addition, I believe the training of all top county managers must go way deeper into the laws that govern proper rule making and administration. Because in my and many others well schooled and seasoned and collective perspective, this entire Zone Plan has been absolutely been mismanaged from the very beginning. It should never have seen the light of day from the very start, because the entire underlying objective was to slow rural growth any way possible regardless of the objections and real science, facts or balanced planning principals.

The 2020 Zoning Plan is all about Agenda driven - not need driven objectives. The county cannot prove they have a rational plan based in science, facts or reality, so the spread fear and mis-information to promote an environment group agenda that has taken over the entire planning department starting back in 2004 and maybe further back than that.

Again to clarify - I am a moderate Democrat not a wing nut conspiracy zealot attaching the county out of a irrational mindset. Absolutely the opposite. I believe we all must make sure government is "Of the People, By the People and For the People" and that everyone has to be treated equally and legal protections written into law must be followed - even by Federal and County Government. Personal bias cannot be allowed to dictate Governmental agendas that hurt the very citizens the government is there to protect.

Pure and simple -- Lewis and Clark County is guilty of abuse of power and manipulating government actions based on principles that herein have been shown over and over to be illegal and not appropriate regulatory actions. The 2020 Zoning regulations really solve Zero problems that can't be solved other ways that have way less adverse impacts. If that simple measure of legality is proven, the county will face millions of dollars in legal action for no good reason other than - bias and unprofessional incompetence on the part of all county personnel involved dating back to the 2014 Growth Policy and even further. The Anti-rural growth targeting agenda era must end here and now, or it will be exposed for all the world to see and it won't viewed kindly by taxpayers that have to fund the legal defense and damage claims.

Back to the Legal Arguments.

By not allowing Mr. Herrin to testify at 3 planning board hearings, the citizen rights to know and have input into the 2020 Zoning plan has been irreversibly compromised. And large has

lead me to craft this long list of legal challenges the county faces if they chose to move forward and approve this abusive, targeted, illegal etc etc, 2020 Zoning proposal.

Base on the evidence presented herein and the likely prospects that additional legal challenge ammunition can be collected to shot more holes in the 2020 Zoning house of Cards → why would the County Attorney's office allow the BoCC to move forward with the proposal? .

22) MCA 276-2-204 (Role of Planning Boards) is to recommend boundaries and appropriate regulations for the various zoning districts. Simply put → by voting to approve and advance the amended 2020 Zoning regulations to the BoCC - the L & C County PB failed in the legal State mandated duties including the following limited summary of basic factual, administrative, legal reasons the PB should have rejected the 2020 Zoning proposal:

- a) The PB failed to adequately evaluate the legal quagmire this proposal would face in court if challenged in Court (The County's PB main duty) but instead interjected repeated personal bias into their collective decision to advance. The list of basic legal jeopardy issues that were presented in public testimony include:
 - i) The 2020 Zoning plan illegally targets only the very large Rural SubZone property for very harsh lot-size controls (minimum 10-acre average lot sizes) plus the bulk of the 129 pages of associated zoning regulations - based on the County's totally inadequate documentation of widespread unmitigated cumulative impacts being allowed to happen because County and State regulation permitting failures (a total legally indefensible position detailed in countless documents and public testimony).
 - ii) The 2020 Zoning proposal only targets the 150,000 plus acres of undeveloped rural property in the HVPA for these harsh Zoning mandated property right restrictions which has been clearly labeled as massive government overreach and would drastically reduce property values many rural property owners lands that in many cases is the single largest asset these citizens own - and therein causing major emotional as well as long lasting financial damage.
 - iii) The 2020 Zoning plan would reduce the value of rural property now and into the future taking assets away from large numbers of rural property owner, while in turn unduly enriching landowners owning and developing property in the County favored Urban and Transitional areas. As detailed elsewhere, it is illegal for Government agencies in Montana to discriminate against anyone, and this proposal 2020 Zoning plan is by design - solely supported based on the 2015 Undated Growth Policy that clearly advocates discrimination against rural property -- wages economic war against rural property in order to enhance and promote growth near the urban centers.
 - iv) The county's proposal fails to pass most basic human rights to own and protected private property that is guaranteed by the Montana and US constitutions, but in protecting those rights it perfectly legal for those property owner to sue for lost property value especially if the County knowingly targeted them for excessive regulatory actions that introduce discriminatory bias into the legal claims. The

County has built a crumbling house of cards that we have shot all kinds of holes through, we've knocked them down and as I've stated the final straw is this house of cards in built on quick-sand (the Law) that will consume the cards for never more to be seen.

v) The PB failed to listen to many people - including Dr. Gregory Thomas PhD and Chairman of the PB - that this proposal will cause major disruptions of the social and economic fabric of the Tri-county area and would increase the overall cost to develop and therein increase the overall cost of housing in our already over priced local market. Example of written and verbal reasons were included in both Dr. Gregory and Andrew Thomas's well-written and document SE Impact preliminary analysis that to then warranted tabling the 2020 Zoning plan and hiring and independent third party consultant(s) to conduct a through SE impact assessment on the entire 2020 Zoning proposal.

vi) The Planning board ignored both top flight researchers recommendations and moved to advance the boundary maps and regulations to the BoCC. Dr. Gregory Thomas 4 page August 4, 2020 motion to table letter to the PB and County includes these damning statements (Quote Marks not included for GT comments to reduce confusion):

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

(2) The negative potential risk exposure for the L & C County taxpayers in proceeding to implement the proposed zoning regulations without the necessary third-party socioeconomic assessment could rapidly exceed tens of millions of dollars in human resource, legal, court, settlement award, and other related costs throughout the remainder of this decade. (JH Comment - how true and the County Attorney's office and MACO need to dissect all this in a hurry or lawsuits will likely start and hopefully the courts will allow injunctive relief to block it from being implemented until the critical legal issues are decided in Court).

(3) "As reported by the Helena Independent Record on Friday, January 15. 210, following are comments made by Commissioner Good-Geise:

(a) Everything we do in subdivisions: we have to be exceptionally careful to follow the language and not be arbitrary and capricious (JH Added Note Here - Commissioner SGG is correct in stating the legal benchmark, but has not followed these legal guideline at any point in the design, interaction with other BoCC and CD&PD staff, the public and during public hearings given she has rose-colored glasses on that doesn't allow her to objectively review scientific, legal and analytic data and come to rational conclusions. Actions and words repeatedly demonstrate her desire to added more restrictive regulations to further constrain rural growth - which has severely compromised her objective assessment of the facts presented in the 2020 Rural Zoning hearings. But the law and facts clearly point to her and the County proposal as being

Arbitrary and Capricious takings administrative power grab of private property rights without just cause)

- (b) As commissioner, I believe it's our job to look forward, learn from the past ... to make sure that those (costly legal mistakes of 2002-2007), whether it be interpretation or application of statutes, or process, are never repeated.
- (c) There will always be a tension between the county, which represents all the people (JH comment -- but not rural property owners or developers) who live here, and developers who are in the business of building homes for those people.
- (d) The challenge is making welcome the new people while making sure people who have lived here a long time have their property rights respected (JH Comment. This is another unstated but evident by action and words SGG personal bias favoring existing landowners over the new person who might just be a rich person coming in from out of state).

- (4) When running for the commission in 2006, Commissioner Hunthausen said his priorities for office included "common-sense zoning for predictable and sustainable growth. It is more important now than ever that all decisions made by our elected official and our county employees be made in a well-reasoned manner"

vii) Equally important I have contended all along, in addition to the need to adequately inform the public and justify their 2020 Zoning proposal on SE grounds, the County has to also complete a detailed environmental impact assessment report by an independent third-party consultant(s) or the county will lose in court - because fact., laws and science are the only real basis for making these kinds of decisions.

viii) During the many hours of public testimony in 5 PB hearings and through hundreds of pages of citizen, business owners, lawyers, and trade group etc. written comments, the Planning Board members were adequately informed that this action is illegal and unsupported by legal, administrative and social economic reasons. Instead of voting against this proposal based on all this serious and overwhelming damning evidence presented against the 2020 Zoning proposal, and almost no defense factual evidence refuting all the legal, administrative and 2015 GP bias & professional ethics problems, the PB member chose to interject personal bias into the process ((long list of PB member interjecting personal bias into the review and approval process as is evident just listen to August 4 final hearing rational given by several PB members plus just listen to the comments made by PB member Lois Steinbeck at BoCC February hearing and other revealing biased and unscientific comments made by PB members during the hours of public hearings)).

ix) The County Attorney's office and top administrators have been negligent by not properly advising the PB and BoCC at every step of this process and properly vetting this county Zoning regulations at every step of this rule making, and public involvement process. I see major major legal problems all along in this process and therefore the fact that the PB and BoCC purposefully ignored those well documented facts, science and legal warnings in favor of unsupported generic "Feel Good" statements by County -- severely undercuts the County legal defense going forward.

This 2020 Zoning proposal is so patently illegal, the County from this time forward must always prejudge regulations for legal foundational issues to avoid this type of year long of unnecessary public trauma.

- x) The CD&PD staff, BoCC and Planning Board members have purposefully cherry picked historic problems (e.g. York Road teenager's death, water supply problems NW of Bob's valley market and fires) as justification for area wide Rural zoning regulations. However, these issues can all be adequately addressed under current subdivision and water rights etc. regulations without the massive targeting of only rural property for such wide-spread and damaging administrative property rights taking actions. There is not one shred of evidence was presented at the PB hearings documenting the need for the rural 10-acre lot size regulations solving wide-spread unmitigated health, safety and public welfare issues.
- xi) The PB ignored public testimony that existing Subdivision regulation adequately address cumulative and site specific impacts to groundwater supplies, fire protection, and roads (see all the points I and others have submitted over the past 9 month which the County PB was given in numerous addendums).
- xii) The Planning Board inserted personal bias and a false belief that the 2015 Updated Growth Policy adequately characterized existing market and administrative conditions and therefore accepted the County CD&PD inferences that the 2020 Zoning Rural SubZone property and landuse restrictions, were an appropriate course of action -- which is emphatically not the case.

23) And the County's answer cannot be - it is my personal opinion that I hate rural development and it will not happen under my watch. Nor can a County Commissioner answer - I voted to approve this zoning proposal because my family has ranching/farming operations near Choteau and as such I cannot allow these poor dryland ag businesses to slowly eaten up by the evil developers.

24) Obviously, these 2015 GP planners felt future rural growth would ruin the community and past trends would continue to allow dramatic negative impacts -- which in reality has not happened based on trends of the past 6 years where most growth is tightly clustered in large developments located within 1-2 miles of Helena and EH.

(Key Factual Clarification side Note: The MBM&G 2005-2014 etc, North Hills Controlled Groundwater Research studies do project (and now verified) excessive and problematic over withdrawal of groundwater in only one area of the HVPA of concern; Pumping Area A -- located W of Montana Ave and 1-2 Miles North of Lincoln Road - that was permitted in many phases back mostly prior to 2000 wherein hundreds high-density home supplied by 10 clustered groundwater wells were permitted by L & C County/DEQ. Over the past 20-30 year, these high-density series of developments public supplies wells have dropped groundwater levels as much as 60 feet adversely impacting existing neighboring wells which is being sorted out in court and DRNC etc. However these types of high density housing development were I hind-sight poorly researched and designed ----- problems that will not be allowed to happened going forward given much tighter regulatory controls, existence of

huge amount of groundwater data now available all over the HVPA, and the advanced computer modeling and aquifer testing capabilities.

As a general rule, the MBM&G reports indicate that existing homes in the North Hills only consume about 10% of the available groundwater in the moderately productive valley fill tertiary gravel aquifer. All new subdivisions in the HVPA will be required to document to a very high degree sustainable groundwater supplies for internal and neighboring groundwater users).

25) The 2020 Zoning proposal targets rural growth for density controls are entirely based on the extremely biased and anti-rural growth assessments statements contained in the County's 2015 Update Growth Plan. The 2 volume GP unduly and unprofessionally contains unsubstantiated, inflammatory, discriminatory, unscientific statements that purposefully paint a picture that continued rapid rural property growth -- will add to unmitigated cumulative impacts to environmental and human environments and thereby would exceed critical health and safety thresholds (Note: health and safety claims the County has not bothered to technically, administratively or legally defined to the public nor has the County bothered to update any information contained in the outdated 2015 Updated Growth Policy.

26) Specifically county has provided no scientific, technical, or analytic information documenting the past, current and future growth trends and associated impacts for the entire Helena Valley Planning Area. Without such information the County cannot fulfill their legal obligation to allow the public, landowners, and impacted business interests etc. to properly evaluate the proposal, the cost/benefits, and overall merits of three alternatives (with no zoning, with zoning and zoning with modifications). The County must provide the following information in order to prove their one-size fits all 10-acre lot size restrictive zoning regulations are necessary to protect public health, safety and general welfare as required in order to pass Part 2 County initiated zoning ((MCA 76-2-201 to 209):

a) County must carefully and accurately define growth trends (1. Pre Oct 2014; 2. October 2014 to 2019; 3. 2020; and 4. 2021 to 2035 or some other future benchmark) for all three subzones (Rural, Transitional and Urban). October 2014 is a key growth changing inflection point as First District Court ruling on exempt DNRC water rights dramatically changed historic residential development patterns dramatically favoring large high density development with public water and wastewater system generally located near cities versus pre-2014 economics that tended to favor moderate density rural property with individual wastewater and well systems.

(Side Note: the County's 2015 Updated PG targeted rural property solely for harsh density controls was based on isolated past subdivision permitting mistakes and past growth patterns -- both conditions which no longer are valid justifications for the anti-rural growth bias statements that are now found in the limited oral and written justifications the County Staff and BoCC have used to support the Zoning proposal harsh rural 10-acre etc regulations. A complete failure of the county to provide accurate growth patterns and projects is a fatal flaw in the foundations of the current Zoning proposal and vacates all targeted regulations as invalid until the scientific growth data is produced.

b) Fabricated generalities cannot be the basis for allowing ----

L & C County to aggressively and unconstitutionally override and supersede decades long, well established and to date legal County and State regulatory protocol and administrative Regulations (e.g. County very restrictive Subdivision Regulations, State Subdivision Regulations, DNRC Water Rights etc.) & permitting laws– and allow the County Zoning to supersede these regulations with more restrictive but unnecessary rural property density controls in order to avert undocumented future crisis.

c) It will be proven in court that the collective mindset of the County's administrative staff, Planning Board, and BoCC is unethically biased against rural growth and has purposefully denied the public the necessary information such as:

i) County staff and BoCC have repeatedly refused to create and mail out maps and overview summaries to all registered property owners;

ii) Refused to properly notifying all impacted landowners about public hearings - examples of county purposefully withholding critical information from the public include:

(1) About 10 days prior to the first June 16, 2020 Planning Board Hearing, the County mailed out 13,000 (Note -- 50% say they did not receive it) postcards announcing the June 16 2020 Zoning PB hearing, but the county purposefully and Corruptly only listed a time of the meeting but did not even post the meeting location. But just as important, the county did not notify the public as to the boundaries of the HVPA or the 3 Subzones (e.g. simply include a map) nor any details about the proposal.

(i) WHY no map or summary or location?? The answer is clear and born out by the consistent pattern L & C County has used all along the entire Zoning proposal campaign - they purposefully have attempted to limit public knowledge and limit maps being given out to anyone in order to limit the resistance and limit the public comments against this proposal because they know it is widely unpopular and they would have a much harder political backlash if more people knew about this proposal.

iii) The County entire technical, administrative, scientific, and legal foundational justification for the overall character of the 2020 Zoning proposal is solely based on the over 5 year-old 2015 Updated Growth Policy that is so outdated in many key facets that it cannot be used to justify the 2020 Zoning 10-acre lot size density controls. A few of the important reasons this old GP information is not adequate to characterize current and future growth patterns, impacts, regulatory controls, cumulative impacts, and appropriateness of 10-acre Density controls are as follows:

(1) The growth patterns (e.g. housing types, lot sizes, types of utilities) within the HVPA has changed dramatically since October 2014 (District Court Ruling limiting new Subdivisions to 13 home or less-- unless they buy Water Rights or connect to existing public water systems -e.g. Helena or EH). The vast majority of new growth pre 2014 was in the North Hills, but that switched to most subdivisions being large on-site public systems or connecting to Helena or EH public systems (over 1,000 new homes being started in 2020-21).

Based on these dramatic demographic changes, the 2015 Growth Plan rationale for the need for the County to Create Zoning Regulations with Rural Property Density Controls based in huge increases in cheap to construct rural is no longer valid given DNRC regulations pushed growth toward cities and dramatically reduced rural growth, As such, the major rationalization for the need for Rural Density lot-size restrictions has evaporated. EVAPORATED - so there is no real rampant growth pressure on rural property and if so the county has not provided in peace of real current statistic anyone can use to understand the scope of the problem - which really isn't a problem and the reason the CD&PD has not bothered to produce any current growth analysis because that would destroy their agenda driven plans.

- (2) The 2015 GP states that valley rural roads are deficient then and would be increasingly deficient going forward. However the 2015 GP recognizes the fact that the only funding available for improving this rural mostly gravel roads was and is real improvements paid only by new subdivision development (as per County subdivision prorata share contributions requirements).

The 2015 PG authors entire argument against rural property relative to deficient rural Roads is circular and in really incriminating for the County. The 2015 PG roads section Volume 2 Page 3-2) falsely claims new subdivision traffic would further degrade rural gravel roads and no one could afford to maintain them or bring them up to county standards - which is a crazy assertion given the County Roads and RIDs could be improved if the County managers made it happen, WRONG. The County extracts payments from only new development, and then turns around and blames only the new guy as the unacceptable threshold breaker. This is circular reasoning like a dog chasing it's tail.

Plus the 2015 PG and county planners fail to reveal the fact that most deficient rural gravel roads are not built to the ideal county standard which no one living on these roads is willing to pay for the upgrades and therefore they chose to drive on gravel roads that are rough and not well maintained etc. because they chose to spend their money fixing the struts on their cars every 5 years instead. The point is they chose to live on these roads - and for the 2015 GP authors to blame the only party on the block that is paying their fair share (the new guy) just is a laughable and invalid claim that should never have been allowed into the County produced document. It is biased and just another example of shaming and targeting new development as the bad actor.

- (3) The 2015 GP cannot be used as a basis for traffic congestion and safety issue facts given the massive, mostly MDT State Funded State Highway Safety and Significant Road Reconstruction Improvements (e.g. Custer Ave, Interstate I-15, and several large and expensive new safety driven roundabouts). Because of these major MDT investments, the overall traffic safety and flow patterns are significantly improved over the last 10 years allowing many commuters to reach Helena more safety and in less time - with the major traffic congestion now in Helena proper not in outlying areas. SO again the County cannot use the old GP information to make claims that justify the 10-acre rural property restrictions.

B. Chronological History of Mis-steps by County Staff and BoCC

1) Four December and January listening sessions.

At every listening session, citizens repeatedly complained that most area landowners and the general public did not know about this proposed Zoning plan and also repeatedly requested the impacted landowner have a right to vote for or against the proposal.

- a) At the December 19 listening session Peter Italiano refused to give me a map after the hearing even though he raised one up at the meeting. He said he didn't have one but that was lying - he just didn't want people having copies
- b) On January 15 John Herrin visited County CD&PD and politely suggested to Christine that the county must bring 100 maps to the third listening session on January 23 because the people attending need to know and take these back home to study them. Her response was "Your not my boss and you can't tell me what to do. Then she said it would be too expensive to print them up." To which I responded, it will be too expensive for the county in legal challenges if they don't want to spend less than \$100 to bring maps to public meetings.

So I again asked if I could speak to Greg McNally and she contacted Greg and he came to the front office. I flatly said to Greg - **"it is inappropriate for the County to keep holding these listening sessions and not have any maps or information to hand out except for the non-specific old ABZ of zoning trifold flyer which doesn't even mention density controls or anything about the 2020 zoning plan.** Greg was just listened and made no commitments to provide more information.

I also raised the issue that the county was not video or audio taping these listening sessions and none of the County Commissioners where attending them, so how was the BoCC able to know what concerns and questions were being raised by the public. He said the staff was informing BoCC member after each listening session, which is exactly the same answer I got from Peter Italiano in my meeting with him in his office the next day. Peter also did not commit or comment about my concerns that the county must bring maps to all the listening sessions.

- c) January 23 Big Sky Fellowship Church Listening session. County CD&PD staff show up with zero maps to hand out. The county staff made sure there were no maps again because there entire game plan has been to keep the public in the dark as much as possible.

At the January 23 listening session John Novotny asked Peter Italiano if the county would sent out mailers detailing the plan to all area landowners. He said "no". Then he asked would the county allow citizens to vote on the zoning proposal. And again Mr. Italiano answer was "no".

- i. John Novotny then asked for a show of hand of those that were opposed and about 90% of the 70 people in the audience raised their hands in opposition to the proposal. Then he wisely asked how many people were for this proposal and no one raised their hands. The county did not ask for nor did they bother to record these questions or survey votes - why? The answer is the staff did not want a record of these adversarial discussions in the official record.

4) 4th Listening Session at the West Valley Fire Hall.

Because the county had held 3 listening session and purposely chose to not provide and written documentation hands outs or maps, I called Rodger Blatz at 3 PM and left a message on his voice mail that the **County staff had been politely asked 3 times prior to bring copies of the map to the listening session and his staff had openly refused to do so.** I warned him that he had better make sure they brought maps to this last meeting or it would become a public issue.

However given the county's tack record and uncertainty whether Mr. Blatz had received the message, I went to Staples and paid \$65 to print up 100 copies of the map to hand out. Fortunately the county finally brought maps to the meeting and as such I only handed about 10 maps.

At the January 28, at the West Valley fire station listening session, Ronnie White twice asked Peter Italiano if the county would conduct a detailed social economic impact assessment. Peter Italiano responded "No" again with no explanation or further discussion. WHY?

2) Two BoCC Public Hearings.

At February 18 and February 25, 2020 BoCC hearings, the majority of people taking time to testify voiced strong opposition to the proposed 2020 Zoning plan and at the very last minute the BoCC voted to the remove the 20 and 160 Lot-size zoning rural subZones and instead decided to make the entire Rural Area Zoning SubZone a minimum average lots size of 10-acres. Commissioner Good Geise stated "we heard you loud and Clear".

3) 5 Planning Board Hearings

- (i) On or about June 6, 2020 the County finally made an effort to inform are residents about 2020 Zoning proposal when the County Claims to have mailed out 13,000 postcards to HVAP residents. But this number has not been confirmed and just a general survey of people attending the Planning board hearings, only about 50% said they had received it and that is not a good sign of distribution coverage.

But more importantly is the fact that the 13,000 mailed post card were purposefully devoid of any meaning information and as such was grossly

inadequate at reaching and informing the impacted landowners or the general public as to the extent of the Helena Valley Planning area and what was being proposed.

Several people giving testimony at the subsequent 5 Planning Board hearing expressed dismay at the characterization of this as the Helena Valley planning area, given they felt living in Remini they were not in the zoning area and likely many other landowner mistakenly think the same. The Helena Valley Planning area to them implied land with the actual Helena area valley and not tributary basins. Without seeing an actual map this misconception is widespread among the impacted residents of Southern Lewis and Clark County.

Based on the above stated public outreach failings (Note: more could be written), I believe that county CD&PS has been purposefully limiting the outreach and informing all impacted landowners about the Zoning proposal and many key failings that appear to be purposefully crafted to keep citizens in the dark as much as possible for fear the more people know and the more they know the more resistance the county will face. That is not what the law or the citizens require of their elected officials.

1. State Open meeting laws require the County to conduct any and all public hearing and rule making proceedings in a fully transparency, with fair and equitable treatment of all citizens regardless of personal preferences or biases of the County growth development administrators.
2. Why then did the County in the early June mailer not include an all important map showing the overall HVPA Boundaries and the 3 Zoning Districts so that everyone receiving the announcement clearly knew where their properties lie and the types of regulations that they could expect.
3. The June mailer should have contained a detailed summary of the proposed regulations and additional restriction for the three Subzone areas. Again without these plan details many rural landowners would not know there land was being targeted for massive Zoning regulations and to this day many impacted still do not know what is being proposed. The lack of transparency and factual information the County is not meeting legal requirements that impacted Citizens have a legal rights to Know, especially with the County plan to limit and control all future rural property transactions.
4. But the mailer even failed to include the location of the first Planning Board hearing in June on the County claimed 13,000 mailer they sent out. Why were the County planners so negligent as to even tell the property owners where the meeting was being held and simple basic details like a map and summary details?? Again if feels like "The Fix is IN"
5. How can the county claim they are being fully transparent and fair public involvement process with such low level manipulations in their favor?

4) Summer 2020 County Held 5 Planning Board hearings (June 16, June 25, July 17, July 21, and August 4)

Some time in August, Commissioner Good Geise was contacted by one of the area builder about the 2020 Zoning plan. The Contractor indicated concern about the proposal and what it might do the building industry and the economy. At the end of the discussion Commissioner Good Geise framed her opinion on the likelihood this proposal would be adopted by stating "The Fix is In".

a. "The Fix is In".

A valid interpretation of this statement is: Commissioner Good Geise will be voting for the 2020 Zoning proposal and at least one other of 2 County Commissioners will also vote for it so the 2020 Zoning proposal will be adopted by the county in the coming months.

Another interpretation that seemed to be implied is - it doesn't matter what anyone writes, testifies or otherwise presents will change the outcome - the 2020 Zoning proposal is a done deal.

That is a really big deal and underscores just how messed up not only Commissioner Good Geise is but also undercuts the County entire purpose of objective rule making and "Government of the people, by the people and for the people".

Commissioner Good Geise, you must recuse yourself from any further involvement in the Zoning process because she cannot be trusted to be objective and do what I right for the County and it's citizens. Period Full Stop,

5) The Counties 5 Major Key Elements of Concern that justify the only rural property rights taking actions is based solely on the outdated and biased 2015 GP. The three key issues the BoCC and CD&PD staff claim warrant the restrictions on rural property, include:

- a. deficient and capacity stressed road networks,
- b. increased fire-risk & emergency response safety concerns,
- c. negatively impact already stressed upland water supply aquifers,
- d. degrade groundwater quality (Note County admits this issue isn't part of the overall reasons justifying the 10-acre Density controls, but provided no real explanations why it was included in 2015 GP), and
- e. compound flooding problems (Note: County indicated that this issue was not a factor determining the Rural 10-acre density controls in the 2020 Zoning proposal).

6) Opponents Major Legal Counter Arguments against the County's 5 Key areas of concern and the need for Lot Size Density controls to protect health & safety.

- a) County's plan would illegally take future value, enjoyment, safety, security, and inheritance etc. rights from thousands of rural property owners by severely limiting the

use of their land including transferences and impose severe land-use restrictions. However, the County's 2020 Zoning plan would conversely reward landowners owning and developing property within the County's preferred Transitional and Urban subzones located near to Helena and East Helena. That plan of taking from one class and giving to another class would easily be challenges in court based on taking and arbitrary and capricious legal case law.

- b) This proposal clearly violates the US Constitution - Fifth Amendment clause "private property [shall not] be taken for public use, without just compensation" and the Montana Constitution Article II Section 3. Inalienable Rights. All persons are born free and have certain inalienable rights. They include the right to.... And the rights of pursuing life's basic necessities, enjoying and defining their live and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways."
- d) "Constitution of the State of Montana Article II. Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originated with the people, is founded upon their will only, and is instituted solely for the good of the whole"
- e) The County's proposed 2020 Zoning plan violates basic constitutional protections of illegal property takings administrative actions without compensation or legal authority. Enjoyment, use, business and wealth protections are inherently built into the US and Montana Constitutions and as such future wealth, retirement, inheritance etc. current and future assets of only rural property owner cannot be taken by L & C County without ample and a mountain of proof (Note: the administrative, factual, scientific proof standards and measurement bar is extremely high and not proven by the county).
- f) The county has made not effort to document that the future rural home-site development growth patterns across the entire 150,000 plus acres of undeveloped rural land would violate health, safety and general welfare standards or other legally valid threshold criteria.
 - g) The County's Zoning proposal Rural SubZone boundaries and regulations were developed by 5-6 Community Development staff members (February-March Greg McNally verbal statement made to John Herrin at the L & C County Offices) --- without widespread input from citizens or landowners. The Plan would place all kinds of additional property restrictions beyond just simple 10-acre average lot size restrictions, and again these regulations were predominately written by these same CD&PD staff without meaningful public input as required by opening laws and Mt. Constitution protections of equal protection, rights to know and participation in government decision making processes. All political power is vested in and derived from the people which the county officials have purposefully, willfully, and maliciously ignored.
 - h) The end result is a proposed Rural Zoning plan that is almost entirely developed by county staff without bottom up grassroots inputs that would have dramatically altered the entire plan and avoided all the likely legal challenges given a very

high percentage of rural property owners speaking at the 11 public hearings have voiced strong opposition to this proposed plan.

- i) The County managers have often claimed that the public comments, input and concerns have been loud and clear, but the truth is as Commissioner Good Geise told a builder “the fix is in” and this statement aligns with the arrogant, abusive, and unwavering attitude that the public is not able to vote on this proposal, nor has most the rural landowners been adequately informed on purpose, because the County Planning Staff and BoCC are fixated in smashing this proposal through before Commissioner Good Geise term ends at the end of this year.
- (a) All kinds of legal takings, arbitrary, capricious arguments can be raised on how this proposal was conceived, grown, hatched and

From: [Thomas, Andrew](#)
To: [County Planning Mail](#)
Subject: ZAP meeting 6.9.2021 Comments
Date: Sunday, June 13, 2021 10:33:49 PM
Attachments: [ZAP Panel 6.9.2021 A. Thomas Comments.docx](#)

Please see attached.

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ZAP Panel 6/9/2021, Comments Andrew Thomas

1. Given certain development patterns, it may be desirable to consider increased monitoring for septic systems as density rises in certain areas. Also, it may be useful to mandate septic inspections for houses when they are sold. Such monitoring could allow for a higher density of property to be built in each area.

2. With regards to subdivisions. After speaking with a few developers, I was consistently told that current state DEQ standards are quite adequate for on-site systems provided they are properly designed and maintained. However, from the perspective of the ZAP, it may be useful to consider how planning could occur that allows for future integration of on-site systems into larger systems. Although this is likely inapplicable in most of the Helena Valley area in certain transitional areas in the north valley this may be a desirable consideration. Much like water infrastructure, wastewater in these areas appears to be something that eventually warrants a municipal service level.

3. Much like water, it would be useful for the ZAP to consider extending limited services to areas outside of urban standards areas as special utility districts. Red Fox Meadows represents an example of how this could occur. Although such efforts do not extend urban level infrastructure to new developments, they can improve services and allow for higher density development later. For example, if 100-unit subdivision 2 miles from a wastewater treatment facility were allowed to hook up the facility, it could be the case that later other development in between those developments could utilize the same infrastructure for wastewater. This would facilitate orderly and efficient development of the area.

JUN 14 2021

LEWIS & CLARK COUNTY
Community Development & Planning**Public Comment to Helena Valley Planning Area (HVPA) Zoning Advisory Panel (ZAP),
6/10/2021, by Chris Stockwell, Helena, MT**

Mission Summary (from "About the Zoning Advisory Panel," Lewis and Clark County website): *The panel will be tasked with providing recommendations on regulations for the approved Urban and Suburban Residential Mixed-Use Zone Districts, as well as options or alternative approaches to the approved and temporarily deferred 10-acre minimum lot size/density parameters for the Rural Residential Mixed-Use Zone District.*

This mission encourages the determination of desired outcomes for zoning prior to proceeding. Here are zoning principles recommended by Strong Towns to achieve financial solvency. For a summary of these principles, see [this](#) source. For context, see the [Strong Towns](#) website and pay \$25 for the fascinating, Strong Towns 101 podcast. These principles handle the multi-generational challenge of zoning, individual liberty in property development, and are equally applicable to rural, suburban, and urban zoning.

1. **Achieve financial solvency.** Governments must project both long-term benefits and costs of infrastructure maintenance to ensure the prosperity of the community. Developments begin as financial assets and age to become long-term maintenance liabilities that must be paid for with tax money. Normally, we just assume development will pay for itself. Not true. Do the math.
Supporting principles:
 - a. **Do not squander land.**
 - b. **Transportation is a means of creating prosperity in a community, not an end-in-itself.**
 - c. **Job creation comes from a healthy local economy, not inefficient, showy projects.**
 - d. **Strong communities—urban, suburban, or rural cannot happen without engaged citizens.**
 - e. **Citizens collaboratively build a prosperous community. Local government is not the implementation arm of state and federal government.**

2. **Empower human liberty:**
 - a. **Support local investments in incremental growth.** Great towns and counties are built by incremental improvements made as community wealth grows. This empowers local entrepreneurs.
 - b. **Emphasize resiliency of result over efficiency of implementation.** Enable smaller, redundant projects in expansion and infill zones. As with the human body, redundancy empowers communities to meet unforeseen challenges and opportunities.
 - c. **Adapt to Feedback.** Do public input well, but feedback has only begun when zoning regulation is in place. Zone so that entrepreneurs can provide feedback by building local solutions as the future unfolds.
 - d. **Enable Chaotic (but Smart) Innovations.** Wealthy societies provide top down, complicated solutions to maintain perceived order. We need bottom-up, cooperative solutions, arising from local needs and oversight.
 - e. **Do no lose human scale.** Human scale is one of our major attractions. We can walk, bike, produce food & go outdoors. One can see farms from many urban streets and vice versa.

3. **These principles shine a bright light on form-based zoning.** Only [form-based zoning](#) with effective public input can design and achieve human health and liberty, incremental growth, and achieve the necessary integration of the urban, suburban, and rural transect.